

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT NO 2/1997

DIRECTOR-GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT

RE:: COUNCILLOR JOHN FREDERICK
MILLER, ORANGE CITY COUNCIL

STATEMENT OF DECISION

Dated: 20 November 1997

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RE: COUNCILLOR JOHN FREDERICK MILLER,
ORANGE CITY COUNCIL

STATEMENT OF DECISION

DIRECTOR-GENERAL'S REPORT

As required by section 468(1) of the Local Government Act, 1993, the Director-General has presented to the Tribunal a Report of the investigation of a complaint made by the Director-General under section 460 of the Act against Councillor John Frederick Miller of Orange City Council.

The complaint was that Councillor Miller may have contravened section 451 of the Local Government Act, 1993 in relation to his participation in Ordinary Meetings of the Council held on 7 and 21 November 1996 concerning a proposal before the Council that the Council provide financial assistance to the Orange Chamber of Commerce & Industry (OCCI) in a campaign to promote the idea of people doing their shopping at Orange. It came to be called the "Shop Orange" campaign.

On 1 April 1997 the Tribunal received Notice from the Director-General under section 465 of the Act that he had decided to investigate that complaint.

The Tribunal received his Report of the investigation on 17 September 1997 and, having considered the Report, decided to conduct a hearing into the complaint. The Report became Exhibit A in the proceedings.

PROCEDURE

As it appeared to the Tribunal from the Report that the relevant facts might not be in dispute, a Statement of Prima Facie Facts (Exhibit E) was furnished to the parties on 16 October 1997 for their consideration together with a Notice advising that the Tribunal had decided that it would conduct a hearing into the complaint and proposing a procedure for dealing with the matter if the parties were in agreement on the facts as set forth in the Statement of Prima Facie Facts. (Notice to Parties: Exhibit D. Letters to parties: Exhibits B & C).

The Notice emphasised that the parties were at liberty to accept or dispute all or any of the statements of fact set forth in the Statement of Prima Facie Facts and to submit that there were other or different relevant facts for which they would contend. It further advised the parties that if they elected to accept and adopt the facts as set forth, the Tribunal, if it saw fit, would be able to act upon those facts without further investigation or proof.

Thereafter both parties notified the Tribunal that they concurred in the Tribunal's statement of facts and the procedure proposed (Director-General, letter 29 October 1997: Exhibit F. Councillor Miller, letter 31 October 1997: Exhibit G).

Councillor Miller's letter to the Tribunal of 31 October 1997 contained explanations for the conduct by him which was questioned by the complaint and submissions on the question of what action the Tribunal should take in the matter. A copy of this letter and Councillor Miller's submissions was provided to the Director-General (Exhibit H).

On 13 November 1997, Mr Paul Chapman, Manager, Legal Services Branch of the Department of Local Government, wrote a letter to the Tribunal containing written submissions on behalf of the Director-General on the question of the action which the Tribunal should take in the event that it made findings that the complaint against Councillor Miller had been proved

(Director-General, letter 13 November 1997: Exhibit K. Written submission for Director-General on action by Tribunal: Exhibit L). A copy of these written submissions was forwarded to Councillor Miller by letter on 13 November 1997 (Exhibit M).

The Tribunal appointed 19 November 1997 for the hearing of the matter. The hearing was conducted at the hearing rooms of the Commercial Tribunal in Sydney on that date. Mrs Jean Wallace appeared to represent the Director-General. Councillor Miller appeared in person.

The Tribunal outlined the purpose of the proceedings and after the Director-General's Report (a copy of which had been earlier provided to Councillor Miller) and the exhibits referred to above had been recorded, the Tribunal invited both parties to offer further evidence and written or oral submissions if they wished to do so. No further material or submissions were tendered by the Director-General or Councillor Miller. The Tribunal concluded the hearing and adjourned to consider its final conclusions on the complaint and prepare the written Statement of Decision required by section 484 of the Act.

THE RELEVANT LEGISLATION

Section 451 of the Act provides:

451. (1) A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is present at a meeting of the council or committee at which the matter is being considered must disclose the interest to the meeting as soon as practicable.

(2) The councillor or member must not take part in the consideration or discussion of the matter.

(3) The councillor or member must not vote on any question relating to the matter.

A "pecuniary interest" is defined in the Act by section 442(1) as follows:

442. (1) For the purposes of this Chapter, a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated as provided in section 443.

(2) A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in section 448.

The relevant provisions of section 443 are as follows:

443. (1) For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the person; or**
- (b) another person with whom the person is associated as provided in this section.**

(2) A person is taken to have a pecuniary interest in a matter if:

- (a) the employer of the person, has a pecuniary interest in the matter; or**
- (b) the person is a member of a company or other body that has a pecuniary interest in the matter.**

In relation to sections 442(2) and 443(2)(b), section 448 provides:

448. The following interests do not have to be disclosed

- an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not)**

THE RELEVANT FACTS

On the basis of the material contained in the Director-General's Report, the acceptance by both parties of the facts as set forth in the Statement of Prima Facie Facts and the admissions made by Councillor Miller in his letter to the Tribunal dated 31 October 1997, the Tribunal finds that, on the question whether Councillor Miller contravened section 451 of the Act in relation to the meetings in question, the material facts and events were as set forth in the Statement of Prima Facie Facts which is to be taken to be incorporated in this Statement of Decision. A copy of that Statement is attached as an Appendix to this decision.

Those facts show that the matter before the Council meetings of 7 and 21 November 1996 for consideration was whether the Council should make a cash contribution of \$10,000 to the Orange Chamber of Commerce & Industry towards an advertising campaign which it was proposing to conduct to promote shopping at Orange.

The facts also show that Councillor Miller was at that time a member and held the office of Secretary of the OCCI and as Secretary he was a member of the OCCI Executive. The office of Secretary was honorary and Councillor Miller received no remuneration from his position.

The facts further show that Councillor Miller was at the relevant time a sub-editor in the employ of the Central Western Daily (CWD), an Orange local newspaper and that the CWD was to be involved in the "Shop Orange" campaign.

ISSUES FOR DETERMINATION BY THE TRIBUNAL

The Tribunal's Notice to the Parties (Exhibit D) contained a statement of the issues to be determined by the Tribunal as they appeared from the material in the Director-General's Report. The Notice advised the parties that they were at liberty to submit that the issues to be determined were different or that there were other relevant issues and they were invited to specify what they considered the issues should be. Both parties accepted the issues as put forward by the Tribunal in the Notice. These were as follows:

"ISSUES

It appears to the Tribunal from the material in the Report that it is not likely to be disputed that Councillor Miller attended the Council Meetings in question, did not disclose to the meetings any pecuniary interest in the matter before the Council, took part in the consideration and discussion of and voted on the matter.

On the basis of the facts set forth in the Statement of Prima Facie Facts, the issues for determination by the Tribunal would seem to the Tribunal to be:

- 1. Whether, by virtue of Councillor Miller having:
 - (a) held office as Secretary of the Orange Chamber of Commerce and Industry AND/OR**
 - (b) been employed by the Central Western Daily newspaper**at the time of the Council Meetings of 7 and 21 November 1996, he had a pecuniary interest within the meaning of the Local Government Act, 1993 in the question before the Council for decision at those meetings, namely, whether, and, if so, in what manner, the Council should provide financial assistance to the Orange Chamber of Commerce and Industry for its “Shop Orange” campaign.**

Involved in the above issue are the questions whether:

- (a) The Orange Chamber of Commerce and Industry; or**
 - (b) The Central Western Daily newspaper**
- held a pecuniary interest within the meaning of the Local Government Act, 1993 in the question before the Council for decision at those meetings.**
- 2. If the Tribunal finds that one or more contraventions by Councillor Miller have been proved, whether any, and, if so, what action should be taken by the Tribunal.”**

THE TRIBUNAL’S FINDINGS

At the hearing, after the evidence and submissions on the matter were completed, the Tribunal informed the parties that, on the basis of the material before the Tribunal, it would be making findings that Councillor Miller, by virtue of his association with the OCCI and the CWD had a pecuniary interest, within the meaning of the Act, in the matters before the Council meetings. The Tribunal's findings follow:

Orange Chamber of Commerce & Industry

The evidence established that the Orange Chamber of Commerce & Industry, as an institution, was dedicated to the promotion of the financial interests of those engaged in commerce and industry in Orange and that its activities were designed to promote the economic interests and welfare of its members and, incidentally, the Orange City community generally.

The OCCI had embraced the “Shop Orange” idea as a method of promoting those interests and had adopted it as one of its projects. It had turned its attention to raising funds in order to carry out the promotion. If the promotion turned out to be successful the benefit to its members and the community would be of a financial kind. No doubt success would earn for the OCCI some credit and reputation as a business institution but the measure of success would lie and was intended to lie in the economic advancement of the members and the community.

It would follow, in the view of the Tribunal, that the interest of the OCCI in the “Shop Orange” campaign and in the approach of the OCCI to the Orange City Council for money to support the campaign was financial in character. It was not driven by simple benevolence towards the welfare of the community.

It is evident that, for these reasons, the OCCI had an interest in the matter which was before the Council for consideration at its meetings on 7 and 21 November 1996. In the opinion of the Tribunal, it should be concluded that that interest was pecuniary within the meaning of the legislation. In the terms of section 442(1), there was a reasonable likelihood or expectation of financial gain to the OCCI if the Council was to grant the money. It would enable the OCCI to proceed with its proposed campaign with a view to achieving the financial benefits envisaged by it.

Councillor Miller included with his submissions an account of the expenditure which had been incurred by the OCCI and reimbursed by the Orange City Council. The Tribunal considers that the accounts provide ex

post facto proof that there was a reasonable likelihood or expectation of appreciable financial gain for the OCCI if the funds sought were to be granted by the Council. The items of expenditure in the account represented liabilities which the OCCI had incurred in launching the campaign and which it had hoped and intended would be discharged from the funds which it had sought from the Council. The fact that this is what happened reinforces the conclusion that it was a financial benefit for itself in the conduct of its activities that the OCCI was seeking from the Council. This gave the OCCI a pecuniary interest in the question whether the Council should decide to make a financial contribution to its campaign.

For the foregoing reasons the Tribunal finds that Councillor Miller, by virtue of his having held office as Secretary of the Orange Chamber of Commerce & Industry, had a pecuniary interest within the meaning of the Act in the matter before the Council for decision at the meetings in question.

In his written submissions, Councillor Miller implied that the provisions of the legislation would not have been intended to apply to him by virtue of his office of Secretary of the OCCI because that office was in practice an empty title as the OCCI employed a person to perform all of its secretarial work so that he was its Secretary in name only. If this were sound reasoning it would imply that section 448 of the Act would not be referring to him in using the expression, "the holder of an office."

It appears to the Tribunal that the legislation is concerned to distinguish between members of a body such as a club or other organisation and those appointed to an office because an appointment as an office holder imports a status involving a duty in the office holder actively to promote the interests of the body and also an interest of the office holder in the affairs and welfare of the body beyond that of a mere member and such that an office holder should be prohibited from participation in a matter under consideration by a Council if the body itself has a pecuniary interest in the matter. Furthermore public perception is a factor not to be overlooked. The public

may be expected to regard the holder of an office as liable to have his or her judgment in a matter affected by the fact that the organisation in which the office is held has a financial interest in the outcome of the issue before the Council. The office holder can also be expected by the public to be under the influence of the body's directors or committee and a desire to maintain his or her office, either of which might compromise a proper exercise of the public responsibilities involved in decision making on the Council. In the present case only Councillor Miller would know, if it be the fact, that his office as Secretary of the Orange Chamber of Commerce & Industry was just an empty title. The public could not be expected to know, nor could his fellow Councillors. In the Tribunal's view, even if the office of Secretary of the OCCI was an empty title it could not assist Councillor Miller on the question whether he was obliged to conform to the requirements of section 451 of the Act.

Central Western Daily

The material in the Director-General's Report and the facts set forth in paragraphs 5 and 9 of the Statement of Prima Facie Facts (Exhibit E) show:

- (a) It was the Orange Chamber of Commerce & Industry's intention that the Central Western Daily newspaper was to be involved in the promotion of the "Shop Orange" campaign;
- (b) The Central Western Daily was itself keen to be involved in the campaign;
- (c) The "Shop Orange" Committee, operating under the auspices and with the authority of the Orange Chamber of Commerce & Industry, proposed to the Council's General Manager a campaign budget which included substantial sums to be provided for media activity in the campaign as well as for the costs of printing;
- (d) The OCCI proposals and budget were part of the promotion put before the Council meetings of 7 and 21 November 1996 in connection with the proposal that the Council provide

\$10,000 as a contribution to the campaign; and

- (e) At that time it was being proposed by the OCCI as part of its campaign program that the Central Western Daily would be involved in paid press advertising as well as voluntary pre-launch publicity and sponsorship.

In his written submissions, Councillor Miller made reference to a letter dated 15 May 1996 addressed to the General Manager of the Orange City Council under the letterhead of the OCCI signed by Mr John Payne as the Chairperson of the "Shop Orange" subcommittee of the Orange Chamber of Commerce & Industry. That letter contained the following:

'The media groups are assisting the funding of the campaign through discounted air time and print space as their contribution to the shop owners financial requirements. The media groups see the long term benefit to such a campaign as being the development of a vibrant commercial centre that will continue to advertise and in turn use their services.' (Exhibit A, Part Attachment 19)

On the basis of the foregoing, the Tribunal infers from the evidence that the Central Western Daily involved itself in the campaign because of a prospect of appreciable financial gain in the future if the campaign was to go ahead. The fact that the realisation of financial benefit would be in the future if the campaign was successful would not prevent there being for the Central Western Daily a pecuniary interest in the question of a monetary contribution to the campaign by the Council. As the facts show (para.12) the Executive of the OCCI at its meeting on 11 November 1996 expressed disappointment at Council's decision at that time only to underwrite any shortfall in the campaign up to \$10,000 instead of making a cash contribution because "up front money" was needed to get the campaign underway. Thus it appeared that any prospects of the Central Western Daily benefiting financially in the future from the "Shop Orange" campaign depended upon a decision by the Council to provide that "up front money".

The evidence proves that Councillor Miller was fully aware of all of the foregoing facts from his having been in attendance at both the OCCI Executive meetings and the meetings of the Council.

In his submissions to the Tribunal (Exhibit G) Councillor Miller stated that he did not consider that there was any link between the \$10,000 given by the Council and the Central Western Daily because he understood that the newspaper would not derive any benefit “directly” from the \$10,000 in question. As to the amount budgeted for the media in the “Shop Orange” campaign Councillor Miller stated that it was his understanding that the amount referred to pre-advertising that the media would contribute by way of sponsorship of the campaign. He also stated that it was his understanding that the Central Western Daily had in fact contributed around \$8,000 worth of free advertising to the campaign launch and the initial push to get the campaign going.

In order to constitute a pecuniary interest, the financial benefit does not have to be derived “directly” from a decision by a Council on a matter. The benefit may be one which would be derived indirectly and in the future and there may be contingencies upon which the derivation of the benefit depends.

In the present case, the Tribunal infers from the evidence that the interest of the Central Western Daily in the Council's decision whether or not to fund the campaign was an interest in the prospects of future financial gains even though they would be dependent on a successful outcome of the campaign. As section 442(2) recognises, such an interest may be too remote or insignificant to be considered as a pecuniary interest for the purposes of the Act. That provision provides its own test, namely, that the interest is so remote or insignificant that “it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.”

In the opinion of the Tribunal, the prospect of financial gain for the Central Western Daily if the “Shop Orange” campaign got underway as a

result of the Council contributing \$10,000 for that purpose, could reasonably be regarded as likely to influence any decision on the matter. If, as Councillor Miller understands, the Central Western Daily contributed \$8,000 worth of free advertising to the campaign launch, this would suggest that the newspaper did not consider that the prospects of future financial gain from the campaign was either insignificant or remote.

For these reasons the Tribunal concludes that the Central Western Daily did have a pecuniary interest, within the meaning of the Act, in the matter before the Council at the meetings of 7 and 21 November 1996 and that, by virtue of section 443(1)(b) and (2)(a), Councillor Miller had a pecuniary interest in the matter which required him to conform to the requirements of section 451 of the Act.

Conclusion

As it is not disputed that Councillor Miller did not disclose a pecuniary interest to the meetings and participated and voted on the matter, on the basis of the above findings, the Tribunal concludes that the complaint against Councillor Miller has been proved and the Tribunal must pass to the question whether it should take any, and, if so, what action under section 482 of the Act.

ACTION BY THE TRIBUNAL

Section 482(1) of the Act provides as follows:

- “482. (1) The Pecuniary Interest Tribunal may, if it finds a complaint against a councillor is proved:**
- (a) counsel the councillor; or**
 - (b) reprimand the councillor; or**
 - (c) suspend the councillor from civic office for a period not exceeding 2 months; or**
 - (d) disqualify the councillor from holding civic office for a period not exceeding 5 years.”**

Councillor Miller sought to explain and excuse his contraventions of the Act on the grounds of ignorance and mistake but even now that he admits that he

is better informed as to the requirements of the legislation he appears to continue to entertain some difficulty in accepting that a Councillor may be bound to comply with the pecuniary interest provisions requiring disclosure of interests and non-participation in meetings because of pecuniary interests of others with whom the Councillor has an association, even though the Councillor personally has no pecuniary interest in a matter. The apparent reluctance of Councillor Miller to accept that position seems to have been shared by some other Councillors with whom he joined in the rescission motion dated 15 November 1996 which was adopted by the Council at its meeting on 21 November 1996. These Councillors were interviewed by the Department's Investigation Officers in the course of the investigation into this present complaint.

As to Councillor Miller's plea of ignorance, he stated to the Tribunal in his submissions by his letter of 31 October 1997 (Exhibit G) that his view of his obligations regarding the Chamber of Commerce and his position as Secretary remained as stated by him in the letter he had written to the Department of Local Government dated 9 January 1997. This letter is Attachment 2 to Exhibit A. The letter states that when he was elected to Orange City Council in September 1995 he made a serious attempt to become familiar with all of the requirements of the position of Councillor and studied in detail information which was provided to him by Council officers at the time of his election. He said that this information included the Orange City Council Code of Conduct and the 13th Edition of **Bluett, Local Government Handbook**. As to this publication he stated that he was advised to read it carefully as everything that he would need to know about how a meeting was governed was contained in this book. He said that he did study the book carefully especially the specific sections dealing with the conduct of Councillors as contained in Chapter 14 headed "Honesty and Disclosures of Interest". The letter went on to quote extracts from **Bluett** summarising some of the pecuniary interest sections of the Act. On the basis

of these quotations and the fact that his office as Secretary of the OCCI was an honorary position he declared in his letter that he did not consider that at the time the “Shop Orange” campaign was before the Council, and he still did not consider, that he had a pecuniary interest in that matter. He went on to state that he certainly did not have a reasonable likelihood or expectation of appreciable financial gain or loss in relation to the campaign. The letter then acknowledged that section 448 of the Act had been drawn to his attention by the Director-General and went on to further acknowledge that in view of his position with the OCCI he had “an interest in matters raised by the Chamber of Commerce.” He claimed that he had disclosed this interest in his return of interests under section 449(3) of the Act but did not realise that he had an obligation also to disclose that interest at meetings. He stated that he believed that the declaration in his section 449(3) return covered such matters where there was no possibility of a financial gain or loss to himself. Councillor Miller’s letter concluded:

“In summary, I must advise that until I received your letter dated 16 December 1996 I was unaware that I had an obligation to declare at a Council meeting “interests” in addition to recording such interests on the section 449(3) Return. I did understand that I was required to declare pecuniary interests immediately at a Council meeting.”

In his letter of 31 October 1997 he stated:

“Since the matter was brought to my attention by the Department of Local Government I realise that under the provisions of the Act I had a responsibility to declare an interest in the matter which I failed to do and my failure is largely due to my definition of “pecuniary interest” and the fact that I did not believe I had such an interest in the matter in question. The fact that the section of the Act which refers to my pecuniary interest (what interests do not have to be disclosed - section 448) in terms of Chamber of Commerce involvement is separate from the other sections referring to interests also did not help.”

It is not easy to accept that a person of Councillor Miller's qualifications and experience could have so misread the relevant sections of the Act if he had studied the sections themselves. Section 443(1)(b) states plainly that for the purposes of Chapter 14 a person has a pecuniary interest in a matter if the pecuniary interest is the interest of another person with whom the person is associated as provided in that section. Equally clearly, subsection (2) provides that a person "is taken to have a pecuniary interest in a matter" if, (amongst other associations) the employer of the person has a pecuniary interest or the person is a member of a company or other body that has a pecuniary interest in the matter. In every case the expression used in these provisions to describe the interest which is attributed to the person is "pecuniary interest", not the word "interest" by itself. While section 448 uses the word "interest" by itself, section 442(2) in which reference is made to interests of a kind specified in section 448 is clearly stating an exception from the definition of "pecuniary interest" in section 442, and section 448 states clearly that the holder of an office in a club or organisation is not exempt from the operation of sections 442 and 443.

The above detailed explanation is not given in **Bluett** but that publication is correctly self-described as only a "Handbook". In an introduction (at pp.XV & XVI) the authors point out that it was not possible to include in the book the detailed material in the legislation and the object was to give an overall picture and "provide signposts" to where the reader may find further information on particular topics in the Act itself. It is also stated that reference would be made in the book to the various sections of the Act "where further detail may be obtained". In the sections of the Handbook from which Councillor Miller obtained the quotations included in his letter to the Director-General there is a reference to section 443 and 448 and in relation to section 443 the author states (at pp.135-136):

"Section 443 defines and clarifies who has a pecuniary interest. This section should be studied carefully as it relates not only to individuals but also to a spouse, de facto partner or relative of a person, and

certain other persons. There are also certain specified situations where a person is not taken to have had a pecuniary interest.”

In view of the author’s specific advice to the reader to study carefully the sections of the Act to which reference is made in the book on particular topics, the Handbook can hardly be blamed for a misunderstanding of a Councillor’s obligation if the Councillor has made no reference to the sections of the legislation themselves.

It would be a matter for concern if Councillors believed or were led to believe that on the important question of disclosure of pecuniary interests it was sufficient to rely on a brief and incomplete summary of the legislation to be found in **Bluett**.

When interviewed in relation to the complaint Councillor Miller told the investigating officers that it had not entered his mind that he had had a pecuniary interest because the “Shop Orange” campaign was for the benefit of the entire community, that his understanding was that he had no pecuniary interest unless he stood to gain “a personal financial benefit” and that, in relation to section 448 of the Act, he believed that he had “a conflict of interest, not a pecuniary interest.” (Exhibit A, Attachment 4, pp.4, 10, 11, 12, 16). In support of his position he quoted statements made by Councillors Davies, Shearing and Gleeson to the Investigators. These Councillors supported Councillor Miller’s claim that he did not believe that he had a pecuniary interest at the time because he had nothing to gain personally out of the Council’s decision. However, the statements made by Councillors Davies and Gleeson on which Councillor Miller relied demonstrated the same kind of ignorance or misunderstanding of a Councillor’s obligations in the case of pecuniary interests of persons or bodies with whom they are associated as Councillor Miller. Councillor Gleeson told the Investigating Officers that he had only recently read section 448 of the Act.

The submissions made to the Tribunal on behalf of the Director-General (Exhibit L) makes the point that Councillors, as elected members,

occupy positions of considerable public trust and are to be expected to acquaint themselves properly and adequately with their legal obligations as Councillors, particularly in respect of pecuniary interests, as they bear heavy responsibilities to act fairly and scrupulously when participating in Council decision making.

The Tribunal agrees with this submission and would point out that the time has come when, in the opinion in the Tribunal, little weight can be given on the question of what action the Tribunal ought to take when a contravention of the Act has been proved, to explanations and excuses put forward on the ground of ignorance or misunderstanding of the requirements of the legislation. The Local Government Act, 1993 commenced to operate on 1 July 1993 which is more than four years ago. The last elections were in September 1995 so that new Councillors have had more than two years to acquaint themselves with the relevant provisions of the Act and to obtain advice if in doubt as to their operation. As the submission for the Director-General states, many Council's have established procedures to provide new Councillors with copies of legislation and other material to inform and educate them in the performance of their civic duties and Councillors are made aware of the resources available to assist them. Apart from publications and circulars distributed by the Department to Councils for the information of staff and members of Councils the Department of Local Government provides information to assist any Councillor who seeks it in relation to pecuniary interest obligations as well as other matters. Copies of the decisions of this Tribunal are supplied to the Local Government & Shires Association and are now available on the Local Government "Home Page" on the Internet.

The submission on behalf of the Director-General refers to previous decisions of this Tribunal in cases when the pecuniary interest of the Councillor was not one of personal benefit but was derived by virtue of section 443 of the Act from the pecuniary interest of associated bodies in which the Councillor held office or of employers by whom the Councillor was

employed. In those cases the excuses put forward included claims that a Councillor was not bound to comply with the Act if the Councillor did not stand to benefit personally from the Council's decision on a matter. That erroneous view can only bring trouble upon the Councillor who holds it, including the risk of sanctions which may be imposed by this Tribunal which include suspension or disqualification. This view needs to be eradicated if the objects of the legislation are to be achieved and public confidence in the performance of local government powers and functions maintained. Whether or not Councillors agree with or accept the policy underlying the provisions of the Act which visit derivative pecuniary interests of others on Councillors themselves, it is a policy of the legislature by which all are bound as a matter of law and this Tribunal has a responsibility, when a complaint of a contravention of the Act has been proved, to exercise its powers so as to implement the policy and promote compliance with the legislation.

In concluding his submissions to the Tribunal, Councillor Miller, in his letter of 31 October 1997, wrote:

“I do admit that I have made a mistake under the provisions of the Act but it was only a technical breach stemming from an honest, or even naive, mistake and that I have well and truly learned my lesson with this matter having been under the spotlight for many months. In that time I have suffered a lot personally as I am a perfectionist who likes to get things right in everything I do. Since it was identified that I should have declared an interest in this matter and not debated or voted, I have stuck to the rule rigorously in all matters pertaining to the Chamber of Commerce, even those not involving the Shop Orange campaign. I have also written to the Chamber informing that I will not be seeking re-election as secretary nor as an executive member at the annual general meeting on November 17.

As such I believe that the penalty I have already incurred is sufficient in this matter and I can assure the Tribunal that I am giving a lot more

thought to the declarations of interest and encouraging other councillors to do the same.

For these reasons I believe it appropriate for the Tribunal to, at worst, reprimand me for this mistake.” (Exhibit G, p.3)

For the Director-General, it was submitted that a Councillor who failed to perform his obligations in relation to pecuniary interests should not expect to be excused from the consequences even though the failure has resulted from ignorance and acceptance of misinformed advice and that Councillor Miller’s contravention should be regarded as a serious breach of his legal obligations as a Councillor. It was further submitted that neither counselling nor reprimanding was appropriate in the present case and that a more appropriate penalty would be a suspension of Councillor Miller from civic office for a period not exceeding two months.

Conclusion

In the Tribunal's view there is a considerable force in the Director-General's submission. Pleas of ignorance or misunderstanding of the law or of good intentions are all too easily put forward after the contravention has occurred as excuses for not comply with the law. However, in the present case the Tribunal, on the information before it, judges Councillor Miller’s explanations for his conduct and his assertions that there will be no repetition as honest and sincere. His desire to comply with his obligations and to avoid the possibility of any failure in future is demonstrated by the fact that he has declined re-election to the office of Secretary of the Orange Chamber of Commerce & Industry or appointment to its Executive. The Tribunal also accepts that the complaint against him, his subsequent realisation that he had contravened the Act, and his having been placed “under the spotlight for many months” has caused him personal distress. The only cause for concern to the Tribunal is that he describes his contravention as “only a technical breach” which both trivialises a Councillor’s obligation to comply and

suggests a continuing failure on his own part to appreciate the purpose of the legislation.

The legislature has sought to avoid public doubts and speculation, as well as concern by other Councillors, as to whether a Councillor, who is associated by family relation or other connection with another person or body having a financial interest in a matter of Council business, was influenced in his participation in the Council's debate and decisions, not by the merits of the matter or public interest considerations, but by the financial interests of the Councillor's associate in the matter. To achieve this purpose the legislature has declared through sections 442 and 443 of the Act that, in the cases specified, the Councillor is to be deemed to have a pecuniary interest in the matter whether the Councillor has a personal financial interest or not. The legislature has not treated the matter as "technical." By section 451 it has prohibited the Councillor from participating at all or voting on the matter. Again, the promotion of public confidence in Council decision making and the integrity of Councillors exercising local government powers is plainly evident. Therefore, the Tribunal strongly counsels Councillor Miller against persisting in any idea that he would be excused from compliance if he personally had no financial interest in such a matter or that if he failed to comply it would be considered only a technical breach deserving only lenient treatment by the Tribunal.

As well as being so counselled as above, the Tribunal considers that Councillor Miller deserves to be severely reprimanded for his contraventions of the Act and will order accordingly.

ORDER OF THE TRIBUNAL

The Tribunal orders that Councillor John Frederick Miller of Orange City Council be and he is hereby severely reprimanded for his

contravention of section 451 of the Local Government Act, 1993 by failing to disclose a pecuniary interest and by participating in the consideration and discussion and voting on the matter of a proposal to provide financial assistance to the Orange Chamber of Commerce & Industry for its "Shop Orange" campaign which was before the Council at its meetings on 7 and 21 November 1996.

The Tribunal's Order will be furnished to Councillor Miller, the Director-General and Orange City Council forthwith.

Copies of the Tribunal's Statement of Decision will be provided to Councillor Miller and the Director-General in accordance with section 484(1) of the Act. Pursuant to section 484(3) copies will also be provided to Orange City Council and such other persons as the Tribunal thinks fit.

SCHEDULE

Statement of Prima Face Facts provided by the Tribunal to the parties on 16 October 1997 and attached hereto as an appendix to this Statement of Decision.

Dated: 20 November 1997



K J HOLLAND Q.C.
Pecuniary Interest Tribunal