

Local Government Pecuniary Interest and Disciplinary Tribunal

Procedure Manual

Local Government Pecuniary Interest and Disciplinary Tribunal

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Preface

The Local Government Pecuniary Interest and Disciplinary Tribunal (herein referred to as “the Tribunal”) is constituted under Chapter 14, Part 4, of the Local Government Act 1993 to hold hearings into and decide allegations of contraventions of Part 2 of that Chapter (which deals with failure to disclose interests) and to perform such other functions as are conferred or imposed on it by that Act or any other Act (s.489). From 1 January 2005 that Act conferred on the Tribunal the additional function of holding hearings into and deciding allegations of contraventions of Part 1 of that Chapter (which deals with misbehaviour).

Under the Act, complaints of contraventions of Part 2 are dealt with in the first instance by the Director-General of the Department of Local Government. There is a procedure laid down. See Chapter 14, Part 3, Division 1. Complaints do not come under the jurisdiction of the Tribunal before this procedure has been followed.

In the case of complaints of contraventions of Part 2, the Tribunal’s functions are initiated by either a report presented to the Tribunal by the Director-General of an investigation into a complaint carried out by the Director-General or a report received by the Director-General from another authority under s.467 of the Act and presented to the Tribunal by the Director-General pursuant to s.468.

Under the Act, in the case of alleged misbehaviour (Part 1) the process for the suspension of a councillor from civic office is initiated either by a request or a report as referred to in s.440H of the Act. The Director-General may deal with such report or request (s.440J and K) or may refer a matter that is the subject of a request or report for consideration by the Tribunal (s.440N). In either case the Director-General is required to prepare a written statement of reasons (s.440Q).

A councillor against whom an order for suspension is made by the Director-General may appeal to the Tribunal within 28 days after the order was served on the councillor (s.440M).

The Tribunal, after considering a report presented to it, may decide to conduct proceedings into the complaint (s.469) or into the matter referred to it (s.470A) or it may decide, for reasons to be stated in writing, not to conduct proceedings [(s.469), (s.470A)].

In relation to both complaints and matters referred to it, the Tribunal may determine to conduct a hearing. It may determine the proceedings without a hearing if:

- a) the person who made the complaint and the person against whom it was made both so agree or in the case of a referred matter the Director-General and the Councillor to whom the report relates both so agree, and
- b) there are no material facts in dispute between these two persons, and
- c) in the opinion of the Tribunal, public interest considerations do not require a hearing [(s.470), (s.470B)].

The Tribunal may decide to refer a matter before it to another authority to be dealt with if it considers that it is more appropriate that the authority deal with the matter and the authority agrees to the referral (s.486).

By s.471(1) of the Act, the Tribunal may determine its own procedure subject to the Act. This enables the Tribunal while conforming with the general requirements of the Act in exercising its jurisdiction to adopt for each case such procedures as appear as most conducive to a fair and just hearing and an economical and expeditious determination of the particular complaint.

The Tribunal intends to maintain such flexibility of procedure but, for the assistance of all concerned, has made a determination of procedures and forms which will generally be followed unless the particular case calls for some variation. That determination now follows.

Determination of Procedure

For the purpose of the conduct of its proceedings the Tribunal, pursuant to s.471(1) of the Act, hereby determines that where the particular case does not call for variation and there is no contrary direction by the Tribunal the procedures and forms generally to be followed are those set forth in this determination.

The Tribunal further determines that there will be permitted or directed by the Tribunal from time to time such variations to these general procedures and forms as to the Tribunal appear most conducive to a fair and just hearing and an economical and expeditious determination of each individual case.

These determinations are made without prejudice to the power of the Tribunal under s.471(1) to determine generally and from time to time its own procedure, subject to the Act.

Registers

- 1) The Tribunal will maintain as part of the records of its procedures the following Registers:
 - a) Register of Notices, being Notices pursuant to s.465 received by the Tribunal from the Director-General of complaints being investigated by the Director-General (s.462(1)) or referred to another authority for investigation (s.462(2)).
 - b) Register of Reports, being Reports pursuant to s.468 received by the Tribunal from the Director-General of an investigation by the Director-General into a complaint or of an investigation by another authority sent to the Director-General under s.467.
 - c) Register of Referrals, being referrals made by the Director-General under s.440N of matters the subject of a request or report referred to in s.440H.
- 2) The Registers will record appropriate particulars, including:
 - the Tribunal's serial number of the proceedings;
 - date of receipt by the Tribunal of the notice, report or referral;

- the source of the Report (the Director-General or other authority) and any file or other reference number;
- the name of the council;
- the name of the person or persons against whom the complaint has been made, or the councillor to whom the referred matter relates;
- nature of the complaint or matter;
- action taken by the Tribunal;
- the outcome of the proceedings.

Action by the Tribunal

- 3) Upon receipt of a Report the Tribunal will:**
- a) consider the Report;**
 - b) make a decision whether to:**
 - i) Conduct proceedings into the complaint (s.469) or matter (s.470A);**
 - ii) Conduct a hearing or determine the proceedings without a hearing [(s.470) or (s.470B)];**
 - iii) Refer the complaint or matter to another authority (eg the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police, the Director of Public Prosecutions) if the other authority agrees to the referral (s.486).**

No Proceedings

- 4) If the Tribunal, after considering a Report, decides not to conduct proceedings into the complaint or matter, a written statement of its decision with reasons will be provided to the person against whom the complaint was made, the complainant and the Director-General (s.469) or the Councillor to whom the Report relates, the Council concerned and the Director-General (s.470A).**

Hearings

- 5) If the Tribunal decides to conduct proceedings and a hearing, the hearing will be held in public unless the Tribunal, after having had regard to any matters it considers are related to the public interest, decides otherwise (s.472).
- 6) If the Tribunal decides to conduct a hearing, the following procedures will apply:

Parties

- a) Generally the parties to proceedings before the Tribunal will be the Director-General and either the person or persons against whom a complaint or complaints (as referred to in ss. 460, 464 and 467) have been made or the Councillor to whom the report relates (as referred to in s.440H and s.440N).

In special circumstances the Tribunal may at its discretion direct or allow other persons, bodies or authorities to participate as parties in its proceedings.

The reference to “parties” in this determination is to be understood accordingly.

Notice

- b) Notice in writing will be given to the parties of the Tribunal’s decision to conduct a hearing -
 - i) giving particulars of the complaint or complaints or matter to be heard;
 - ii) specifying the apparent issues;
 - iii) requesting the parties promptly to advise the Tribunal of their intentions as to:
 - their legal representation (if any)
 - adducing evidence before the Tribunal
 - calling witnesses

- making submissions
 - any other matters relevant to a hearing
- iv) requesting particulars of witnesses and documents if they desire the Tribunal to issue any summons under s.475(1) or notice under s.476(1) of the Act;
- v) drawing attention to the Tribunal’s right under s.471(2)(b) to receive information or submissions by oral or written statements;
- vi) inviting the parties to indicate whether they desire to have a preliminary conference or hearing for settling any procedural matters such as:
- requiring further particulars of a complaint, matter or defence
 - defining issues
 - issuing summonses or notices for witnesses or documents
 - inspection of documents
 - appointing a date for hearing
 - other procedural matters

(NOTE: A preliminary conference or hearing may be appointed by the Tribunal of its own motion or at the request of a party but it will remain in the discretion of the Tribunal whether to conduct a preliminary conference or hearing at the request of a party).

- 7) When the Tribunal appoints a date for hearing, notice in writing will be given to the parties not less than 14 days before the hearing date unless the Tribunal considers that there are circumstances of urgency or otherwise justifying shorter notice.
- 8) The Tribunal will conduct its hearings in accordance with the provisions of Chapter 14, Part 3, Division 4 of the Act. Attention is drawn particularly to s.471(2), ss. 473 to 478 and s.483.
- 9) Decisions of the Tribunal in proceedings before it will be made by written statement in accordance with s.484.

Adjournments

- 10)** The Tribunal may adjourn proceedings for any reason it thinks fit (s.489). Generally hearings will be expected to proceed at the time appointed by the Tribunal so as to avoid inconvenience to parties and witnesses, additional expense and undue delay in the determination of complaints and matters. However, proceedings may need to be adjourned in order to do justice to the parties or for other proper reasons. Applications for adjournment made in the course of a hearing will be dealt with by the Tribunal as they arise.

Applications for adjournment prior to the commencement of a hearing are to be made in accordance with the following procedure unless otherwise directed or permitted by the Tribunal.

- a)** Notice of the application shall be given to the Tribunal and other parties as early as possible before the date of hearing. Unless circumstances do not permit or the Tribunal allows a shorter period of notice, not less than seven days' notice should be given.

- b)**
 - i)** Consent applications may be made to the Tribunal informally by letter or notice in writing stating reasons for the adjournment and containing an endorsement of consent to the application signed by the parties or their legal representatives.
 - ii)** If the Tribunal decides to grant the application without hearing the parties it will notify the parties and appoint another hearing date.
 - iii)** If the Tribunal is unwilling to grant the application without hearing the parties it will notify the parties and appoint a time and place to receive evidence and/or hear submissions on the question of adjournment before deciding whether or not to grant the application.

- c)
 - i) Contested applications shall be made by the applicant by motion on notice to other parties at a time and place appointed by the Tribunal and shall be supported by an affidavit or statutory declaration setting forth any facts relied on as the basis for the adjournment a copy of which shall be delivered to the other parties with the notice of motion.
 - ii) If on the hearing of the application the Tribunal grants the adjournment it will appoint another hearing date.

Applications

11)

- i) Unless the Tribunal otherwise directs or allows, an application to the Tribunal for any direction or in respect of any interlocutory or other matter in relation to proceedings before the Tribunal shall be made by motion on such notice to such other persons or parties and at such time and place as the Tribunal on request shall specify to the applicant for the purpose of such application.
- ii) The original notice of motion to be served shall be produced to the Tribunal for authentication by its seal or signature before being delivered to other persons or parties and a copy thereof shall be lodged with the Tribunal for its records.

Tribunal's power to report contempt

12) The Tribunal may report the following matters to the Supreme Court (s.486A):

- a) if a person refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question that is put to the person by the Tribunal after being called or examined as a witness before the Tribunal,
- b) if, in proceedings before the Tribunal, a person wilfully threatens or insults:

- i) a member or officer of the Tribunal, or
 - ii) any witness or person summoned to attend before the Tribunal, or
 - iii) a practising legal practitioner or other person authorised to appear before the Tribunal,
- c) if a person misbehaves himself or herself in proceedings before the Tribunal,
- d) if a person interrupts proceedings before the Tribunal.

If the Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court. However, a person is not liable to be punished for contempt under the subsection if the person establishes that there was a reasonable excuse for the act or omission concerned.

Witness expenses

- 13) The determination of witness expenses provided for by s.481 will be made by the Tribunal in respect of each witness as each case arises and will be made according to the applicable circumstances.

No Hearings

- 14) After considering the Report and other documents and material the Tribunal may determine the proceedings without a hearing if the complainant and the person complained of, or the Director-General and the Councillor to whom the Report relates (as the case may be), so agree and there are no material facts in issue between them and the Tribunal is of the opinion that public interest considerations do not require a hearing.

Forms

- 15) The forms to be used in connection with the proceedings of the Tribunal may be in or to the effect of the forms contained in the Schedule to this determination.

Schedule

Heading

Affidavits, Written Submissions and Other Documents to be filed with or tendered to the Tribunal to be used in its proceedings may, for the purpose of identification, be headed on the first page: “Local Government Pecuniary Interest and Disciplinary Tribunal”; and should show the Tribunal’s serial number of the proceedings, the names of the parties and the name, address, telephone number and facsimile number (if any) of the solicitor for the party, or if not represented by a solicitor, an address of the party at which documents may be served on the party.

Summons to Give Evidence

Local Government Pecuniary Interest and Disciplinary Tribunal Local Government Act 1993, s.475

Summons to Give Evidence

To: (Name)
(Address)

You are hereby summoned to attend for the purpose of giving evidence before the Local Government Pecuniary Interest and Disciplinary Tribunal at (location) on (date) at (time) and until you are excused or released from further attendance by the Tribunal.

Date

20

By order of the Tribunal (signed by member)

NOTE that by s.475 of the above Act -

- 1) You must not, without reasonable excuse:
 - a) fail to attend as required by this summons; or
 - b) fail to attend from day to day unless excused, or released from further attendance, by the Tribunal.
- 2) If you fail to comply with the above you will be liable to incur a penalty. (Maximum penalty: 20 penalty units).

Summons to Give Evidence and Produce Documents

Local Government Pecuniary Interest and Disciplinary Tribunal Local Government Act 1993, s.475

Summons to Give Evidence and Produce Documents

To: (Name)
(Address)

You are hereby summoned to attend and produce this summons and the documents described in the schedule and attend for the purpose of giving evidence before the Local Government Pecuniary Interest and Disciplinary Tribunal at (location) on (date) at (time) and until you are excused or released from further attendance by the Tribunal.

Schedule

Date 20

By order of the Tribunal (signed by member)

NOTE that by s.475 of the above Act -

- 1) You must not, without reasonable excuse:
 - a) fail to attend and produce documents as required by this summons; or
 - b) fail to attend from day to day unless excused, or released from further attendance, by the Tribunal.
- 2) If you fail to comply with the above you will be liable to incur a penalty. (Maximum penalty: 20 penalty units)

Notice to a Person to Attend and Produce Documents

Local Government Pecuniary Interest and Disciplinary Tribunal Local Government Act 1993, s.476

Notice to Attend and Produce Documents

To: (Name)
(Address)

You are hereby required to attend and produce this notice and the documents described in the schedule before the Local Government Pecuniary Interest and Disciplinary Tribunal at (location) on (date) at (time) and until excused by the Tribunal from further attending.

Schedule

Date

20

By order of the Tribunal (signed by member)

NOTE that by s.476 of the above Act, if you fail, without reasonable excuse, to comply with this notice, you will be guilty of an offence. (Maximum penalty: 20 penalty units).

Notice to a Corporation for Production of Documents

Local Government Pecuniary Interest and Disciplinary Tribunal Local Government Act 1993, s.476

Notice to Attend and Produce Documents

To: (Name of Corporation)
(Address)

- 1) (Name of Corporation) is hereby required to produce this notice and the documents described in the schedule by causing its proper officer to attend and produce them before the Local Government Pecuniary Interest and Disciplinary Tribunal at (location) on (date) at (time) and until the officer is excused by the Tribunal from further attending.

- 2) The officer who is to attend is required to make inquiries for the purpose of answering, and, on attending, is required to answer such questions as the Tribunal requires him or her to answer concerning the possession or custody of those documents.

Schedule

Date

20

By order of the Tribunal (signed by member)

NOTE that by s.476 of the above Act, failure, without reasonable excuse, to comply with this notice constitutes an offence.
(Maximum penalty: 20 penalty units).

Notice of Motion

(Heading: see above)

TAKE NOTICE that application will be made to the above Tribunal at (location) on (date) at (time) for the following (order, direction, etc as the case may be):

- 1]
- 2] State concisely the nature of each order, direction, etc. which is sought.
- 3]

Date 20

(signature)

Party or Legal Representative

(Name and Address)

**The above determination of procedure is made by the
Tribunal in September 2005.**

David Miller

(Signature)

Signed
D P F OFFICER QC
Pecuniary Interest and Disciplinary Tribunal

Extracts from the Local Government Act 1993

(As at 1 September 2005)

Note: The extracts from the above Act which follow are provided here for the assistance and convenience of persons interested to know the functions and procedures of the Local Government Pecuniary Interest and Disciplinary Tribunal. They should not be taken to be a complete statement of relevant legislation. Other provisions may be relevant. Amendments to the legislation may be made after the publication of this booklet.

Chapter 14 Honesty and disclosure of interests

Introduction

This Chapter places obligations on councillors, council delegates and staff of councils to act honestly and responsibly in carrying out their functions.

The Chapter also provides for the adoption of codes of conduct for councillors, staff and other persons associated with the functions of councils. However, the Chapter does not affect any other duties imposed by other laws or any offences created by other laws.

It also requires that pecuniary interests of councillors, council delegates and other persons involved in making decisions or giving advice on council matters be publicly recorded and requires councillors and staff to refrain from taking part in decisions on council matters in which they have a pecuniary interest.

The Chapter enables any person to make a complaint concerning a failure to disclose a pecuniary interest and provides for the investigation of complaints.

The Chapter also establishes the Local Government Pecuniary Interest and Disciplinary Tribunal.

The Tribunal is empowered to conduct hearings into complaints and to take disciplinary action against a person if a complaint against the person is found to be proved.

Part 1. Conduct

Division 1 – Conduct generally

439 Conduct of councillors, staff and delegates

- 1) Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.
- 2) Although this section places certain duties on councillors, members of staff of a council and delegates of a council, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

440 Codes of conduct

- 1) The regulations may prescribe a model code of conduct (**the model code**) applicable to councillors, members of staff of councils and delegates of councils.
- 2) Without limiting what may be included in the model code, the model code may:
 - a) relate to any conduct (whether by way of act or omission) of a councillor, member of staff or delegate in carrying out his or her functions that is likely to bring the council or holders of civic office into disrepute, and
 - b) in particular, contain provisions for or with respect to conduct specified in Schedule 6A.
- 3) A council must adopt a code of conduct (**the adopted code**) that incorporates the provisions of the model code. The adopted code may include provisions that supplement the model code.
- 4) A council's adopted code has no effect to the extent that it is inconsistent with the model code as in force for the time being.

- 5)** Councillors, members of staff and delegates of a council must comply with the applicable provisions of:
 - a)** the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and
 - b)** the model code as in force for the time being, to the extent that:
 - i)** the council has not adopted a code of conduct, or
 - ii)** the adopted code is inconsistent with the model code, or
 - iii)** the model code contains provisions or requirements not included in the adopted code.
- 6)** A provision of a council's adopted code is not inconsistent with the model code merely because the provision makes a requirement of the model code more onerous for persons required to observe the requirement.
- 7)** A council must, within 12 months after each ordinary election, review its adopted code and make such adjustments as it considers appropriate and as are consistent with this section.
- 8)** Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, but nothing in this section affects rights or liabilities arising apart from this section.

Division 2 - Serious Corrupt Conduct

440A Definition of “serious corrupt conduct”

In this Division:

serious corrupt conduct means corrupt conduct (within the meaning of the Independent Commission Against Corruption Act 1988) that may constitute a serious indictable offence, being:

- a) in the case of conduct of the holder of a civic office — conduct in connection with the exercise or purported exercise of the functions of the civic office, or
- b) in the case of conduct of a member of staff of a council — conduct in connection with exercise or purported exercise of the duties of the member of staff.

440B Dismissal from civic office for serious corrupt conduct

- 1) The Governor may dismiss a person from civic office and disqualify the person from holding civic office for a period not exceeding 5 years if:
 - a) the Independent Commission Against Corruption, in a report referred to in section 74C of the Independent Commission Against Corruption Act 1988, recommends that consideration be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, and
 - b) the person is suspended from the civic office by the Minister under this Division, and
 - c) the Minister advises the Governor that the dismissal of the person is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions.
- 2) Before advising the Governor on a dismissal, the Minister is to give the person a reasonable opportunity to show cause why he or she should not be dismissed from civic office.

440C Temporary suspension from civic office for serious corrupt conduct

- 1)** The Minister may, without notice or inquiry, suspend a person from civic office:
 - a)** if the Independent Commission Against Corruption, in a report referred to in section 74C of the Independent Commission Against Corruption Act 1988, recommends that consideration be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, or
 - b)** if criminal proceedings for serious corrupt conduct are instituted against the person, or
 - c)** if the person makes an admission of serious corrupt conduct.
- 2)** A person, while suspended from civic office under this section:
 - a)** is not entitled to exercise any of the functions of the civic office, and
 - b)** is not entitled to any fee or other remuneration to which the person would otherwise be entitled as the holder of the civic office.
- 3)** A suspension under this section may be removed by the Minister at any time.
- 4)** A suspension under this section is removed in the following circumstances:
 - a)** if the person is not dismissed from civic office, or criminal proceedings in connection with the serious corrupt conduct are not instituted, within 6 months after the suspension,
 - b)** in the case of a person against whom criminal proceedings are instituted in connection with the serious corrupt conduct — if the proceedings are withdrawn or dismissed.
- 5)** If a suspension is removed, any fee or other remuneration withheld may (if the Minister so directs) be subsequently paid to the person concerned.

440D Temporary suspension of staff in connection with serious corrupt conduct

- 1)** The general manager may suspend a member of staff of a council from duty:
 - a)** if the Independent Commission Against Corruption, in a report referred to in section 74C of the Independent Commission Against Corruption Act 1988, recommends that consideration be given to the suspension of the member of staff from duty with a view to the institution of disciplinary or other proceedings against the member of staff for serious corrupt conduct, or
 - b)** if criminal proceedings for serious corrupt conduct are instituted against the member of staff, or
 - c)** if the member of staff makes an admission of serious corrupt conduct.
- 2)** If the general manager so directs, a member of staff, while suspended from duty under this section, is not entitled to any salary or other remuneration to which the person would otherwise be entitled as a member of staff.
- 3)** A suspension under this section may be removed by the general manager at any time.
- 4)** A suspension under this section is removed in the following circumstances:
 - a)** if disciplinary or criminal proceedings in connection with the serious corrupt conduct are not instituted within 6 months after the suspension,
 - b)** in the case of a member of staff against whom disciplinary or criminal proceedings are instituted in connection with the serious corrupt conduct — if the proceedings are withdrawn or dismissed.
- 5)** If a suspension is removed, any salary or other remuneration withheld may (if the general manager so directs) be subsequently paid to the member of staff.
- 6)** The Minister may exercise the functions of the general manager under this section in connection with:

- a) conduct of a general manager, or
 - b) conduct of any other member of staff (but only if the Minister is satisfied that the general manager has failed to act under this section without reasonable cause).
- 7) This section does not limit any other power to suspend a member of staff from duty.

440E Application of Division

This Division applies to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after the commencement of this Division.

Division 3 - Misbehaviour

440F Definitions

- 1) In this Division:
misbehaviour of a councillor means any of the following:
- a) a contravention by the councillor of this Act or the regulations,
 - b) a failure by the councillor to comply with an applicable requirement of a code of conduct as required under section 440(5),
 - c) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,

but does not include a contravention of the disclosure requirements of Part 2.

Note. A contravention of the disclosure requirements of Part 2 is dealt with under other provisions of this Chapter.

- 2) A reference in this Division to misbehaviour or an incident of misbehaviour includes a reference to misbehaviour that consists of an omission or failure to do something.

440G Formal censure of councillor for misbehaviour

- 1) A council may by resolution at a meeting formally censure a councillor for misbehaviour.
- 2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.
- 3) A council may pass a formal censure resolution only if it is satisfied that the councillor has misbehaved on one or more occasions.
- 4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.
- 5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

440H How is the process for suspension of a councillor for misbehaviour initiated?

- 1) The process for the suspension of a councillor from civic office is initiated by:
 - a) a request made by the council by resolution communicated to the Director-General, in which the council states its belief that grounds may exist that warrant the councillor's suspension, or
 - b) a request made by the Director-General to the council for a report from the council in relation to the councillor's alleged misbehaviour, or
 - c) a report made by the Ombudsman in which the Ombudsman states that the Ombudsman is satisfied that grounds exist that warrant the councillor's suspension, or
 - d) a report made by the Independent Commission Against Corruption in which the Commission recommends that consideration be given to suspending the councillor under this Division.

- 2) The council must make a report to the Director-General requested under subsection (1) (b) before the date specified in the Director-General's request or any later date allowed by the Director-General.
- 3) This section authorises such requests and reports to be made, and a reference in this section to a report made by the Independent Commission Against Corruption or the Ombudsman is a reference to a report made to the Director-General under the authority of this subsection or under any other provisions of this or any other Act.
- 4) Nothing in this section affects any function under any other provisions of this or any other Act that authorises the making of a report or recommendation concerning suspension of a councillor from civic office.

440I What are the grounds on which a councillor may be suspended?

- 1) The grounds on which a councillor may be suspended from civic office under this Division are that:
 - a) the councillor's behaviour has:
 - i) been disruptive over a period, and
 - ii) involved more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension, or
 - b) the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
- 2) The process for the suspension of a councillor from civic office cannot be initiated by a request made by the council unless:
 - a) where subsection (1) (a) applies — the councillor has:
 - i) on two or more occasions been formally censured for incidents of misbehaviour that occurred during the period concerned, or
 - ii) on at least one occasion been expelled from a meeting of the council or a

committee of the council for an incident of misbehaviour during the period concerned, or

- b)** where subsection (1) (b) applies — the councillor has:
 - i)** been formally censured for the incident of misbehaviour concerned, or
 - ii)** been expelled from a meeting of the council or a committee of the council for the incident of misbehaviour concerned.
- 3)** Subsection (2) does not affect the Director-General’s power to initiate the process for the suspension of a councillor from civic office.
- 4)** Furthermore, subsection (2) does not prevent the Director-General from initiating the process for the suspension of a councillor from civic office as a result of a request or report referred to in section 440H.

440J How are requests and reports dealt with?

- 1)** The Director-General may arrange for a departmental report to be prepared into the matters raised by or connected with a request or report referred to in section 440H.
- 2)** The Director-General may authorise a member of the staff of the Department to conduct an investigation into any or all of those matters to assist in the preparation of the departmental report.
- 3)** The preparation of a departmental report is a prerequisite to a decision by the Director-General to suspend the councillor from office, but is not necessary if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant the councillor’s suspension.
- 4)** In this Division, departmental report means a report prepared by a person authorised by the Director-General to do so.

440K Suspension by Director-General for misbehaviour

- 1)** The Director-General may by order in writing suspend a councillor from civic office for a period not exceeding one month:

- a) if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant the councillor's suspension, or
 - b) if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant the councillor's suspension.
- 2) A copy of the order must be served on the councillor.
 - 3) A councillor, while suspended from civic office under this section:
 - a) is not entitled to exercise any of the functions of the civic office, and
 - b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the civic office.

440L When does an order of suspension take effect?

The period of suspension under an order made by the Director-General commences on the date 7 days after the service of the order on the councillor or the date specified in the order for the commencement of the period of suspension, whichever is the later.

440M Appeals against suspension

- 1) A councillor against whom an order of suspension is made by the Director-General may appeal against the order to the Pecuniary Interest and Disciplinary Tribunal.
- 2) Such an appeal may not be made more than 28 days after the date the order was served on the councillor.
- 3) The Tribunal may stay the order of suspension until such time as the Tribunal determines the appeal.

- 4) The Tribunal may:
 - a) confirm the order, or
 - b) quash the order, or
 - c) amend the order consistently with the powers of the Director-General.
- 5) If the order is quashed, any fee or other remuneration withheld is payable to the councillor.
- 6) If the order is amended, the order as amended has effect as if it had been made in that form by the Director-General.
- 7) The regulations may make provision for or with respect to the making, hearing and determination of appeals under this section.

440N Referral of matters to Pecuniary Interest and Disciplinary Tribunal

- 1) The Director-General may refer a matter that is the subject of a request or report referred to in section 440H for consideration by the Pecuniary Interest and Disciplinary Tribunal instead of suspending the councillor concerned under this Division.
- 2) However, a matter that is the subject of a request by a council may not be referred to the Tribunal unless the councillor concerned has previously been suspended under this Chapter for misbehaviour.
- 3) The preparation and consideration of a departmental report is not a prerequisite to a decision by the Director-General to refer a matter to the Tribunal, but the Director-General may take into consideration a departmental report into the matter if one is prepared.
- 4) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Director-General. A report may contain or be accompanied by such material and observations as the Director-General thinks fit.

- 5) The regulations may make provision for or with respect to the reference of matters to the Tribunal under this section.

4400 Are there alternatives to suspension or referral to Pecuniary Interest and Disciplinary Tribunal?

- 1) The Director-General may, after considering a request or report made under section 440H and any relevant departmental report prepared under section 440J, decide to take no further action on the request or report, whether or not a departmental investigation or departmental report has been authorised, started or completed, if satisfied that no further action is warranted.
- 2) The Director-General may, instead of suspending a councillor from civic office under this Division or referring the matter to the Pecuniary Interest and Disciplinary Tribunal, refer the matter to the council with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise.

440P Expenses to be borne by council

- 1) The Director-General may recover the reasonable expenses incurred by or in respect of the Department in considering and dealing with a request made by a council under section 440H from the council, including the expenses of any departmental investigation and departmental report into the matters raised by or connected with the request.
- 2) The Director-General may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the Department's expenses.
- 3) An amount equal to the expenses as so determined is payable to the Department as a debt by the council concerned, except as determined by the Director-General.
- 4) The council may apply to the Administrative Decisions Tribunal for a review of whether any part of the expenses so determined are not reasonable expenses.
- 5) The Director-General must give effect to any decision of the Tribunal on a review of the determination of the amount of the expenses.
- 6) A reference in this section to expenses incurred includes a reference to remuneration paid to departmental staff.

440Q Reasons to be given

- 1) The Director-General is required to prepare a written statement of reasons for:
 - a) imposing or deciding not to impose a period of suspension, or
 - b) referring a matter to the Pecuniary Interest and Disciplinary Tribunal.
- 2) The statement of reasons is to be provided to the council and councillor concerned.

Part 2. Duties of disclosure

Division 1 – Preliminary

441 Who are “designated persons”?

For the purposes of this Chapter, designated persons are:

- the general manager
- other senior staff of the council
- a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person’s duty as a member of staff or delegate and the person’s private interest
- a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council’s functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member’s duty as a member of the committee and the member’s private interest.

442 What is a “pecuniary interest”?

- 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.
- 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.

443 Who has a pecuniary interest?

- 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)** the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or
 - c)** a company or other body of which the person, or a nominee, partner or employer of the person, is a member.
- 2)** (Repealed)
- 3)** However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (1) (b) or (c):
 - a)** if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - b)** just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - c)** just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

444 What disclosures must be made by a councillor?

A councillor:

- a)** must prepare and submit written returns of interests in accordance with section 449, and
- b)** must disclose pecuniary interests in accordance with section 451.

445 What disclosures must be made by a designated person?

A designated person:

- a) must prepare and submit written returns of interests in accordance with section 449, and
- b) must disclose pecuniary interests in accordance with section 459.

446 What disclosures must be made by a member of a council committee?

A member of a council committee, other than a committee that is wholly advisory, must disclose pecuniary interests in accordance with section 451.

447 What disclosures must be made by council advisers?

A person giving advice to the council at a council or council committee meeting must disclose pecuniary interests in accordance with section 456.

DISCLOSURE OF INTERESTS

How and when disclosed and nature of interests disclosed	Councillor	Member of council committee	Council adviser	General manager	Senior staff member	Staff member, delegate or committee member, holding “designated person” position (s 441)
• At meetings: Pecuniary interests (ss 451, 456)	√	√	√	x	x	x
• In dealings with council matters: Pecuniary interests (s 459)	x	x	x	√	√	√

PENALTIES FOR BREACH OF DISCLOSURE REQUIREMENTS (s 482)

Councillor	Committee member	Council adviser	Council employee
<ul style="list-style-type: none"> • Counselling • Reprimand • Suspension from civic office for up to 6 months • Disqualification from civic office for up to 5 years 	<ul style="list-style-type: none"> • Counselling • Reprimand • Suspension from the committee for up to 6 months • Disqualification from membership of any council committee for up to 5 years 	<ul style="list-style-type: none"> • Counselling • Reprimand • Suspension as council advisor for up to 6 months • Disqualification as council advisor for up to 5 years 	<ul style="list-style-type: none"> • Counselling • Reprimand • Recommend taking of disciplinary action by the council • Recommend dismissal

448 What interests do not have to be disclosed?

The following interests do not have to be disclosed for the purposes of this Chapter:

- a) an interest as an elector,
- b) an interest as a ratepayer or person liable to pay a charge,
- c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,
- d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,
- e) 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),
- f) an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee,
- g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
 - i) land in which the person or a person, company or body referred to in section 443 (1)(b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or
 - ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i),

- iii) if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,
- h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,
- i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,
- j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
 - i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,
 - ii) security for damage to footpaths or roads,
 - iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,
- k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
- l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,
- m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,
- n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,

- o)** an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- p)** an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate.

Division 2 - Disclosure of interests in written returns

449 Returns disclosing interests of councillors and designated persons

- 1)** A councillor or designated person must complete and lodge with the general manager, within 3 months after becoming a councillor or designated person, a return in the form prescribed by the regulations.
- 1A)** A person must not lodge a return that the person knows or ought reasonably to know is false or misleading in a material particular.
- 2)** A person need not lodge a return within the 3-month period after becoming a councillor or designated person if the person lodged a return in that year or the previous year or if the person ceases to be a councillor or designated person within the 3-month period.
- 3)** A councillor or designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form prescribed by the regulations.
- 4)** A person need not lodge a return within the 3-month period after 30 June in a year if the person lodged a return under subsection (1) within 3 months of 30 June in that year.
- 5)** Nothing in this section prevents a councillor or designated person from lodging more than one return in any year.
- 6)** Nothing in this section or the regulations requires a person to disclose in a return lodged under this section an interest of the person's spouse or de facto partner or a relative of the person.

450 (Repealed)

450A Register and tabling of returns

- 1) The general manager must keep a register of returns required to be lodged with the general manager under section 449.
- 2) Returns required to be lodged with the general manager under section 449 must be tabled at a meeting of the council, being:
 - a) in the case of a return lodged in accordance with section 449 (1) — the first meeting held after the last day for lodgement under that subsection, or
 - b) in the case of a return lodged in accordance with section 449 (3) — the first meeting held after the last day for lodgement under that subsection, or
 - c) in the case of a return otherwise lodged with the general manager — the first meeting after lodgement.

Division 3 – Disclosure of pecuniary interests at meetings

451 Disclosure and presence in meetings

- 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 nature of the interest to the meeting as soon as practicable.
- 2) The councillor or member must not be present at, or in sight of, the meeting of the council or committee:
 - a) at any time during which the matter is being considered or discussed by the council or committee, or
 - b) at any time during which the council or committee is voting on any question in relation to the matter.

- 3) For the removal of doubt, a councillor or a member of a council committee is not prevented by this section from being present at and taking part in a meeting at which a matter is being considered, or from voting on the matter, merely because the councillor or member has an interest in the matter of a kind referred to in section 448.

Note. The code of conduct adopted by a council for the purposes of section 440 may also impose obligations on councillors, members of staff of councils and delegates of councils.

452 (Repealed)

453 Disclosures to be recorded

A disclosure made at a meeting of a council or council committee must be recorded in the minutes of the meeting.

454 General disclosure

A general notice given to the general manager in writing by a councillor or a member of a council committee to the effect that the councillor or member, or the councillor's or member's spouse, de facto partner or relative, is:

- a) a member, or in the employment, of a specified company or other body, or
- b) a partner, or in the employment, of a specified person,

is, unless and until the notice is withdrawn, sufficient disclosure of the councillor's or member's interest in a matter relating to the specified company, body or person that may be the subject of consideration by the council or council committee after the date of the notice.

455 (Repealed)

456 Disclosure by adviser

- 1) A person who, at the request or with the consent of the council or a council committee, gives advice on any matter at any meeting of the council or committee must disclose the nature of any pecuniary interest the person has in the matter to the meeting at the time the advice is given.

- 2) The person is not required to disclose the person's interest as an adviser.

457 Circumstances in which sections 451 and 456 are not breached

A person does not breach section 451 or 456 if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

458 Powers of Minister in relation to meetings

The Minister may, conditionally or unconditionally, allow a councillor or a member of a council committee who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:

- a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
- b) that it is in the interests of the electors for the area to do so.

Division 4 - Disclosure of pecuniary interests in council dealings

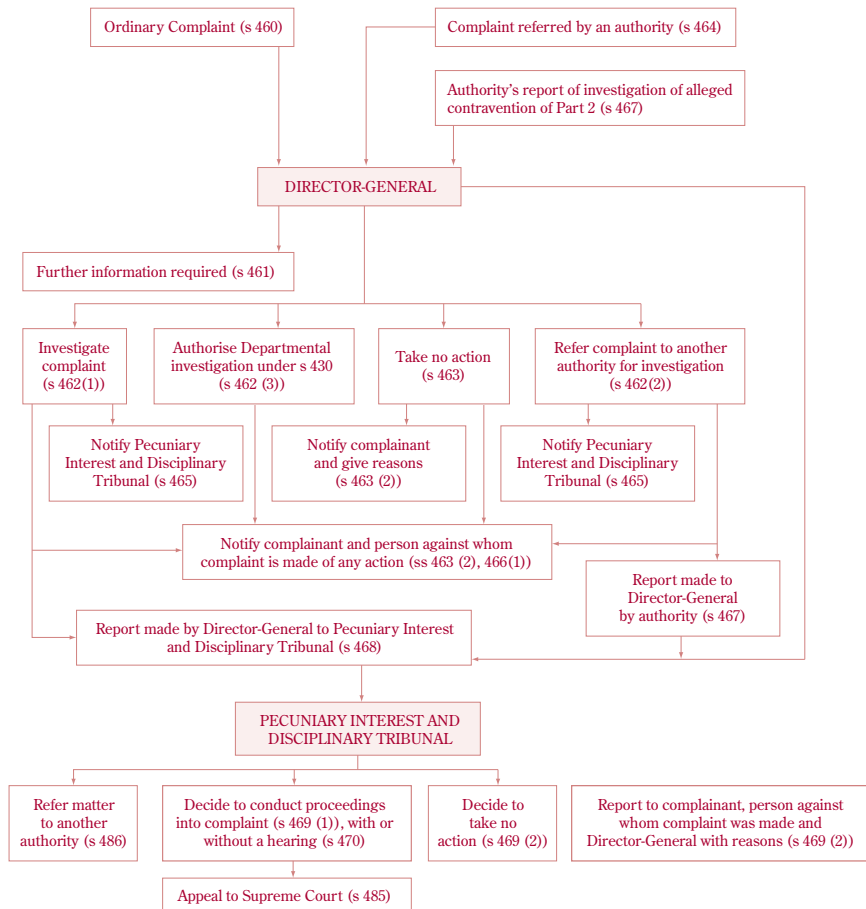
459 Disclosure of pecuniary interests when dealing with council matters

- 1) A designated person must disclose in writing to the general manager (or if the person is the general manager, to the council) the nature of any pecuniary interest the person has in any council matter with which the person is dealing.
- 1A) However, subsection (1) does not require a designated person who is a member of staff of the council to disclose such a pecuniary interest if the interest relates only to the person's salary as such a member of staff or to his or her other conditions of employment or the like.

- 2) The general manager must, on receiving a disclosure from a designated person, deal with the matter to which the disclosure relates or refer it to another person to deal with.
- 3) A disclosure by the general manager must, as soon as practicable after the disclosure is made, be laid on the table at a meeting of the council and the council must deal with the matter to which the disclosure relates or refer it to another person to deal with.

Part 3. Complaints concerning non-disclosure

Management of Pecuniary Interest and Disciplinary Complaints



Division 1 – Making and investigation of complaints

460 Complaints concerning failure to disclose pecuniary interests

- 1) A person may make a complaint to the Director-General, or the Director-General may make a complaint, that a person has or may have contravened Part 2.
- 2) A complaint:
 - a) must be in writing, and
 - b) must identify the complainant and the person against whom the complaint is made, and
 - c) must give particulars of the grounds of the complaint, and
 - d) must be verified by statutory declaration, and
 - e) must be lodged with the Director-General.
- 3) The provisions of subsection (2) (b), in so far as they require a complaint to identify the complainant, (d) and (e) do not apply to a complaint made by the Director-General.

461 Director-General may require further information

The Director-General may require the complainant to provide further particulars of the complaint within the time specified by the Director-General.

462 Investigation of complaints

- 1) The Director-General may investigate a complaint.
- 2) The Director-General may refer a complaint for investigation to an authority, being the Ombudsman, the Independent Commission Against Corruption, the Commissioner of Police or the Director of Public Prosecutions, if the authority agrees to the referral. Such a referral may

be made whether or not the Director-General has begun to investigate the complaint.

- 3) The Director-General may decide not to investigate a complaint but to authorise an investigation under section 430 in respect of a matter to which the complaint relates.

463 Decision not to investigate a complaint

- 1) The Director-General may decide to take no action concerning a complaint (including a complaint referred to in section 464(2)) if the Director-General considers that the complaint falls into any of the following categories:
 - a) the complaint is frivolous, vexatious or not made in good faith,
 - b) the subject-matter of the complaint is trivial or does not warrant investigation,
 - c) the subject-matter of the complaint has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings,
 - d) the complaint raises issues that require investigation by another person or body,
 - e) there is or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant,
 - f) the complaint relates to a matter that occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint,
 - g) the complainant has failed to provide further particulars of the complaint within the time specified by the Director-General.
- 2) If the Director-General decides to take no action concerning a complaint (including a complaint referred to in section 464(2)), the Director-General must notify the complainant and give the reasons for the decision.

464 Referral and investigation of complaints by other authorities

- 1) An authority who receives a matter (otherwise than from the Director-General) for the purpose of investigation is authorised by this Act to refer the matter to the Director-General if the matter involves a possible contravention of Part 2.
- 2) A matter referred to the Director-General under this section is taken to be a complaint made by the Director-General.

465 Pecuniary Interest and Disciplinary Tribunal to be notified of investigations

The Director-General must notify the Pecuniary Interest and Disciplinary Tribunal of a decision to investigate a complaint or to refer a complaint for investigation to an authority.

466 Persons to be notified of complaint

- 1) The Director-General must, within 3 months after receiving a complaint, making a complaint or having a matter referred to the Director-General under section 464, give the person against whom the complaint is made notice of the nature of the complaint and whether any action has been, or is intended to be, taken concerning the complaint.
- 2) At the same time as notice is given to the person against whom the complaint is made, the Director-General must notify the complainant whether any action has been, or is intended to be, taken concerning the complaint. However, at the time the notice is given to the person against whom the complaint is made, the Director-General is not obliged to notify the complainant of the decision not to investigate a complaint if notice of that decision has already been given under section 463(2).

467 Reports of investigation of complaints by authorities

An authority who has investigated an allegation that a person has or may have contravened Part 2 (whether or not the allegation was referred for investigation by the Director-General), is authorised by this Act to send any report prepared by the authority concerning the investigation to the Director-General.

468 Presentation of reports to Pecuniary Interest and Disciplinary Tribunal

- 1) The Director-General must present a report to the Pecuniary Interest and Disciplinary Tribunal of an investigation into a complaint carried out by the Director-General.
- 2) The Director-General must present to the Pecuniary Interest and Disciplinary Tribunal any report received under section 467 from an authority.

Division 2 - Proceedings before the Pecuniary Interest and Disciplinary Tribunal – pecuniary interest matters

469 Pecuniary Interest and Disciplinary Tribunal to decide whether or not to conduct proceedings into a complaint

- 1) After considering a report presented to it in relation to a complaint, the Pecuniary Interest and Disciplinary Tribunal may decide to conduct proceedings into the complaint.
- 2) If the Pecuniary Interest and Disciplinary Tribunal decides not to conduct proceedings into a complaint, it must provide a written statement of its decision, and the reasons for its decision:
 - a) to the person against whom the complaint was made, and
 - b) to the person who made the complaint, and

c) to the Director-General.

- 3) To avoid doubt, a decision by the Pecuniary Interest and Disciplinary Tribunal not to conduct proceedings into a complaint is not a decision to which section 484 (Pecuniary Interest and Disciplinary Tribunal to provide details of its decisions) or 485 (Appeals to Supreme Court) applies.

470 Circumstances in which Pecuniary Interest and Disciplinary Tribunal may dispense with hearing

- 1) After considering the report of the Director-General and any other document or other material lodged with or provided to the Tribunal, the Pecuniary Interest and Disciplinary Tribunal may determine the proceedings without a hearing if:
- a) the person who made the complaint and the person against whom the complaint is made have agreed that the proceedings may be determined without a hearing, and
 - b) there are no material facts in dispute between the person who made the complaint and the person against whom the complaint is made, and
 - c) in the opinion of the Tribunal, public interest considerations do not require a hearing.
- 2) To avoid doubt, a decision by the Pecuniary Interest and Disciplinary Tribunal to determine proceedings into a complaint without a hearing is a decision to which sections 484 (Pecuniary Interest and Disciplinary Tribunal to provide details of its decisions) and 485 (Appeals to Supreme Court) apply.

Note. Section 484 requires the Pecuniary Interest and Disciplinary Tribunal to inform certain parties of decisions in proceedings before it.

Division 3 – Proceedings before the Pecuniary Interest and Disciplinary Tribunal – misbehaviour matters

470A Pecuniary Interest and Disciplinary Tribunal to decide whether or not to conduct proceedings into a referred matter relating to misbehaviour

- 1) After considering a report presented to it under section 440N in relation to a referred matter, the Pecuniary Interest and Disciplinary Tribunal may decide to conduct proceedings into the matter.
- 2) If the Pecuniary Interest and Disciplinary Tribunal decides not to conduct proceedings into a referred matter, it must provide a written statement of its decision, and the reasons for its decision:
 - a) to the councillor to whom the report relates, and
 - b) to the council concerned, and
 - c) to the Director-General.
- 3) To avoid doubt, a decision by the Pecuniary Interest and Disciplinary Tribunal not to conduct proceedings into a referred matter is not a decision to which section 484 or 485 applies.

470B Circumstances in which Pecuniary Interest and Disciplinary Tribunal may dispense with hearing

- 1) After considering a report presented to it under section 440N and any other document or other material lodged with or provided to the Tribunal in relation to the report, the Pecuniary Interest and Disciplinary Tribunal may determine the proceedings without a hearing if:
 - a) the Director-General and the councillor to whom the report relates have agreed that the proceedings may be determined without a hearing, and
 - b) there are no material facts in dispute between the Director-General and the councillor, and
 - c) in the opinion of the Tribunal, public interest considerations do not require a hearing.

- 2) To avoid doubt, a decision by the Pecuniary Interest and Disciplinary Tribunal to determine proceedings in a referred matter without a hearing is a decision to which sections 484 and 485 apply.

Division 4 – Proceedings before the Pecuniary Interest and Disciplinary Tribunal – general provisions

471 General conduct of proceedings

- 1) The Pecuniary Interest and Disciplinary Tribunal may determine its own procedure, subject to this Act.
- 2) In the conduct of any proceedings, the Pecuniary Interest and Disciplinary Tribunal:
 - a) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
 - b) may receive information or submissions in the form of oral or written statements, and
 - c) may consult with such persons as it thinks fit.

472 Private and public hearings

- 1) A hearing is to be held in public unless the Pecuniary Interest and Disciplinary Tribunal decides otherwise.
- 2) In reaching such a decision, the Pecuniary Interest and Disciplinary Tribunal is to have regard to any matters which it considers are related to the public interest.

473 Representation at hearings

At a hearing before the Pecuniary Interest and Disciplinary Tribunal, a person is entitled to be represented by a legal practitioner.

474 Presentation of cases at hearings

A party to proceedings before the Pecuniary Interest and Disciplinary Tribunal conducted by hearing may:

- a) call and examine any witness, and
- b) cross-examine any witness called by another party, and
- c) examine any copy of any document or part of a document produced in the proceedings, and
- d) produce documents and exhibits to the Pecuniary Interest and Disciplinary Tribunal, and
- e) otherwise adduce, orally or in writing, to the Pecuniary Interest and Disciplinary Tribunal such matters, and address the Pecuniary Interest and Disciplinary Tribunal on such matters, as are relevant to the proceedings.

475 Power to summon witnesses and take evidence at hearings

- 1A)** This section applies only to proceedings conducted by hearing.
- 1)** The Pecuniary Interest and Disciplinary Tribunal may summon a person to appear in proceedings before the Pecuniary Interest and Disciplinary Tribunal, to give evidence and to produce such documents (if any) as are referred to in the summons.
 - 2)** The Pecuniary Interest and Disciplinary Tribunal may require a person appearing in the proceedings to produce a document.
 - 3)** The Pecuniary Interest and Disciplinary Tribunal may, in proceedings before it, take evidence on oath, and for that purpose the Pecuniary Interest and Disciplinary Tribunal:
 - a) may require a person appearing in the proceedings to give evidence to take an oath in a form approved by the Pecuniary Interest and Disciplinary Tribunal, and
 - b) may administer an oath to a person so appearing in the proceedings.

- 4) A person served with a summons to appear in any such proceedings and to give evidence must not, without reasonable excuse:
 - a) fail to attend as required by the summons, or
 - b) fail to attend from day to day unless excused, or released from further attendance, by the Pecuniary Interest and Disciplinary Tribunal.
- 5) A person appearing in proceedings to give evidence must not, without reasonable excuse:
 - a) when required to be sworn — fail to comply with the requirement, or
 - b) fail to answer a question that the person is required to answer by the Pecuniary Interest and Disciplinary Tribunal, or
 - c) fail to produce a document that the person is required to produce by this section.

Maximum penalty: 20 penalty units

476 Power to obtain documents

- 1) The Pecuniary Interest and Disciplinary Tribunal may, by notice in writing served on a person, require the person:
 - a) to attend, at a time and place specified in the notice, before the Pecuniary Interest and Disciplinary Tribunal, and
 - b) to produce, at that time and place, to the Pecuniary Interest and Disciplinary Tribunal a document specified in the notice.
- 2) A person who fails, without reasonable excuse, to comply with a notice served on the person under this section is guilty of an offence.

Maximum penalty: 20 penalty units

477 Privilege concerning answers and documents

- 1) A witness summoned to attend or appearing before the Pecuniary Interest

and Disciplinary Tribunal at a hearing is not excused from answering any question or producing any document or other thing:

- a) on the ground that the answer or production may incriminate the witness, or
 - b) on any other ground of privilege, or
 - c) on the ground of a duty of secrecy or other restriction on disclosure, or
 - d) on any other ground.
- 2) An answer made, or document or other thing produced, by a witness at a hearing before the Pecuniary Interest and Disciplinary Tribunal is not (except as otherwise provided by this section) admissible in evidence against the witness in any civil or criminal proceedings or in any disciplinary proceedings.
- 3) Nothing in this section makes inadmissible:
- a) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (1), or
 - b) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.
- 4) If:
- a) an Australian legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Pecuniary Interest and Disciplinary Tribunal, and
 - b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between the practitioner (in his or her capacity as an Australian legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Pecuniary Interest and Disciplinary Tribunal,

the Australian legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

478 Additional complaints

- 1)** The Pecuniary Interest and Disciplinary Tribunal may in proceedings before it deal with one or more complaints about a person.
- 2)** If, during any such proceedings, it appears to the Pecuniary Interest and Disciplinary Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the person concerned:

- a)** whether instead of or in addition to the complaint which was made, and
- b)** whether or not by the same complainant,

the Pecuniary Interest and Disciplinary Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

- 3)** If another complaint is taken to have been referred to the Pecuniary Interest and Disciplinary Tribunal under subsection (2), the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Pecuniary Interest and Disciplinary Tribunal, just and equitable in the circumstances.
- 4)** If another complaint is taken to have been referred to the Pecuniary Interest and Disciplinary Tribunal under subsection (2), the Tribunal may do either or both of the following:
 - a)** reconsider any decision under section 470 to determine proceedings on the original complaint without a hearing and, if appropriate, recommence proceedings in relation to that complaint, or that complaint and any additional complaint, by way of hearing,
 - b)** decide, in accordance with section 470, to determine proceedings, in relation to the original complaint, any additional complaint or all complaints, without a hearing.

- 5) This section does not apply to proceedings in relation to a matter referred to the Pecuniary Interest and Disciplinary Tribunal under section 440N.

479 Adjournments

The Pecuniary Interest and Disciplinary Tribunal may adjourn proceedings for any reason it thinks fit.

480 Release of information

- 1) The Pecuniary Interest and Disciplinary Tribunal may, if it thinks it appropriate in the particular circumstances of the case (and whether or not on the request of a person):
- a) in the case of proceedings in relation to a complaint — direct that the name of any witness is not to be disclosed in the proceedings, or
 - b) in the case of proceedings in relation to a complaint — direct that all or any of the following matters are not to be published:
 - the name and address of any witness
 - the name and address of a complainant
 - the name and address of the person against whom the complaint was made
 - any specified evidence
 - the subject-matter of a complaint, or
 - c) in the case of proceedings in relation to a matter referred to the Tribunal under section 440N—direct that all or any of the following matters are not to be published:
 - the name and address of any witness
 - the name and address of the councillor to whom the referred matter relates
 - any specified evidence
 - the subject-matter of the referred matter.

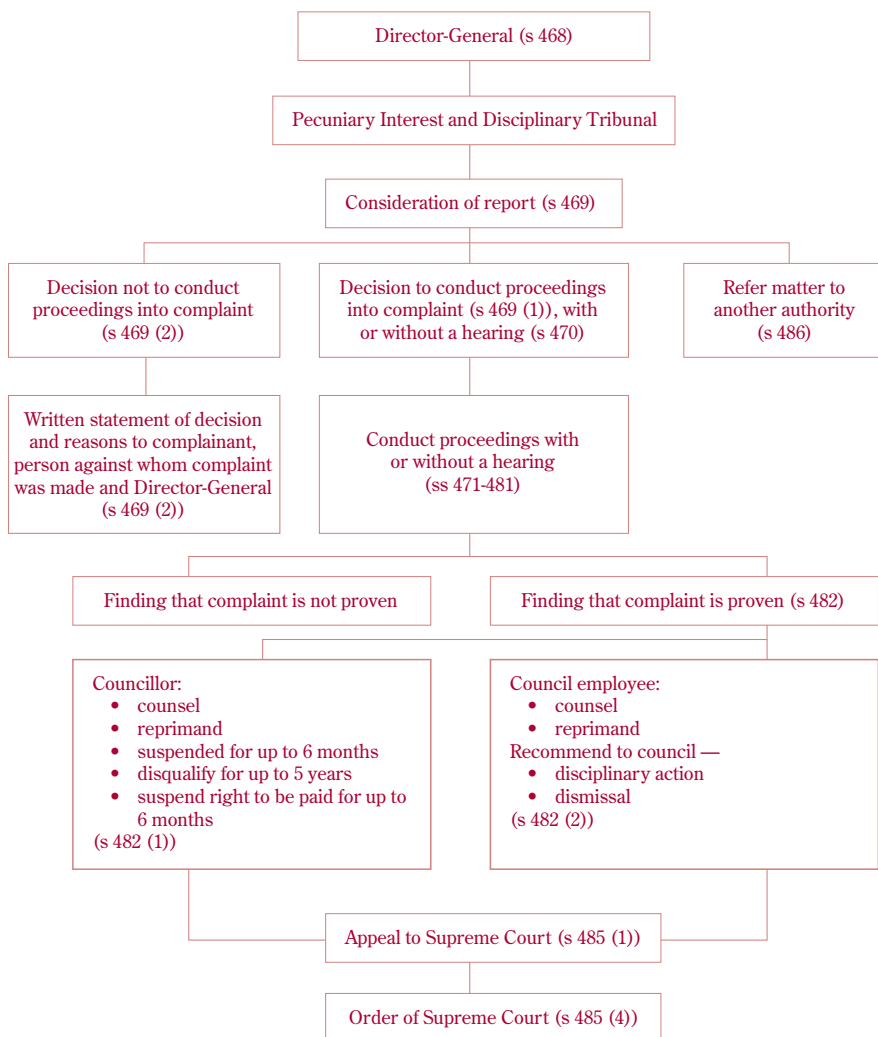
- 2) A direction may be amended or revoked at any time by the Pecuniary Interest and Disciplinary Tribunal.
- 3) A direction may be given before or during proceedings, but must not be given before the proceedings unless notice is given of the time and place appointed by the Pecuniary Interest and Disciplinary Tribunal for consideration of the matter to:
 - a) a person who requested the direction, and
 - b) the complainant or the person against whom the complaint was made, or the councillor to whom the referred matter relates, as appropriate, and
 - c) such other person as the Pecuniary Interest and Disciplinary Tribunal thinks fit.
- 4) A person who contravenes a direction given under this section is guilty of an offence.

Maximum penalty: 20 penalty units (in the case of an individual) or 150 penalty units (in the case of a corporation).

481 Witnesses' expenses

A person who is required to appear or to give evidence before the Pecuniary Interest and Disciplinary Tribunal is entitled to be paid such allowances and expenses as the Pecuniary Interest and Disciplinary Tribunal may determine in respect of the person.

Proceedings before the Pecuniary Interest and Disciplinary Tribunal—pecuniary interest matters



482 Decision of Pecuniary Interest and Disciplinary Tribunal — pecuniary interest matters

- 1)** The Pecuniary Interest and Disciplinary 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 6 months, or
 - d)** disqualify the councillor from holding civic office for a period not exceeding 5 years, or
 - e)** suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).

- 2)** If it finds a complaint against an employee of the council is proved, the Pecuniary Interest and Disciplinary Tribunal may:
 - a)** counsel the employee, or
 - b)** reprimand the employee, or
 - c)** recommend that the council take specified disciplinary action against the employee (including counselling or reprimanding the employee), or
 - d)** recommend dismissal of the employee.

- 3)** The Pecuniary Interest and Disciplinary Tribunal may, if it finds a complaint against a member of a council committee is proved:
 - a)** counsel the member, or
 - b)** reprimand the member, or
 - c)** suspend the member from office as member of the committee for a period not exceeding 6 months, or

- d) disqualify the member from holding office as a member of any committee of that council for a period not exceeding 5 years.
- 4) The Pecuniary Interest and Disciplinary Tribunal may, if it finds a complaint against an adviser to a council is proved:
- a) counsel the adviser, or
 - b) reprimand the adviser, or
 - c) suspend the adviser from office as adviser for a period not exceeding 6 months, or
 - d) disqualify the adviser from holding office as an adviser to that council for a period not exceeding 5 years.

482A Decision of Pecuniary Interest and Disciplinary Tribunal — misbehaviour matters

- 1) This section applies where a matter has been referred to the Pecuniary Interest and Disciplinary Tribunal under section 440N.
- 2) The Tribunal may, if it finds that the behaviour concerned warrants action under this section:
- a) counsel the councillor, or
 - b) reprimand the councillor, or
 - c) suspend the councillor from civic office for a period not exceeding 6 months, or
 - d) suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).

483 Standard of proof

A finding of the Pecuniary Interest and Disciplinary Tribunal is to be made on the balance of probabilities.

484 Pecuniary Interest and Disciplinary Tribunal to provide details of its decisions

- 1)** The Pecuniary Interest and Disciplinary Tribunal must provide a written statement of a decision made in proceedings before it to the person against whom the proceedings were taken, to the person who made the initial complaint (or to the relevant council in the case of a matter that has been referred to the Tribunal under section 440N) and to the Director-General and must do so as soon as practicable after the decision is made.
- 2)** The statement of a decision must:
 - a)** set out the findings on material questions of fact, and
 - b)** refer to any evidence or other material on which the findings were based, and
 - c)** give the reasons for the decision.
- 3)** The Pecuniary Interest and Disciplinary Tribunal may also:
 - a)** provide the statement of a decision to any other persons that the Pecuniary Interest and Disciplinary Tribunal thinks fit, and
 - b)** if it thinks fit, and subject to section 480, make the statement of a decision publicly available.
- 4)** The Director-General may, if he or she thinks fit, and subject to any direction made by the Pecuniary Interest and Disciplinary Tribunal under section 480, make any statement of decision provided to the Director-General by the Pecuniary Interest and Disciplinary Tribunal publicly available.

485 Appeals to Supreme Court

- 1)** A party to a proceeding before the Pecuniary Interest and Disciplinary Tribunal may appeal to the Supreme Court against any decision of the Pecuniary Interest and Disciplinary Tribunal in the proceeding, other than a decision of the Tribunal determining an appeal to the Tribunal under section 440M.

- 2)** An appeal must be made within 28 days after the day on which the statement of the decision of the Pecuniary Interest and Disciplinary Tribunal is provided to the person making the appeal or within such further time as the Supreme Court allows.
- 3)** The Supreme Court may stay any decision made by the Pecuniary Interest and Disciplinary Tribunal, on such terms as the Court thinks fit, until such time as the Court determines the appeal.
- 4)** On the hearing of an appeal, the Supreme Court may:
 - a)** make an order reversing, affirming or amending the decision appealed against, or
 - b)** remit the matter to the Pecuniary Interest and Disciplinary Tribunal for decision by the Pecuniary Interest and Disciplinary Tribunal in accordance with the order of the Court, or
 - c)** make an order directing a rehearing of the proceedings in respect of which the decision appealed against was made, or
 - d)** make such other order in relation to the appeal as the Court thinks fit.

486 Referral of matters by Pecuniary Interest and Disciplinary Tribunal

Despite section 489(1) and (1A), the Pecuniary Interest and Disciplinary Tribunal may refer a matter before it to an authority if it considers that it is more appropriate that the authority deal with the matter and if the authority agrees to the referral.

486A Contempt of Pecuniary Interest and Disciplinary Tribunal

- 1)** The Pecuniary Interest and Disciplinary Tribunal may report the following matters to the Supreme Court:
 - a)** if a person refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question that is put to the person by the Tribunal after being called or examined as a witness before the Tribunal,
 - b)** if, in proceedings before the Tribunal, a person wilfully threatens or insults:
 - i)** a member or officer of the Tribunal, or
 - ii)** any witness or person summoned to attend before the Tribunal, or
 - iii)** a practising legal practitioner or other person authorised to appear before the Tribunal,
 - c)** if a person misbehaves himself or herself in proceedings before the Tribunal,
 - d)** if a person interrupts proceedings before the Tribunal.
- 2)** If the Pecuniary Interest and Disciplinary Tribunal reports a matter to the Supreme Court under subsection (1), the Court may deal with the matter as if it were a contempt of the Court. However, a person is not liable to be punished for contempt under this subsection if the person establishes that there was a reasonable excuse for the act or omission concerned.

Part 4. Local Government Pecuniary Interest and Disciplinary Tribunal

487 Establishment of Pecuniary Interest and Disciplinary Tribunal

For the purposes of this Chapter, there is established a tribunal to be known as the Local Government Pecuniary Interest and Disciplinary Tribunal.

488 Constitution of Pecuniary Interest and Disciplinary Tribunal

- 1) The Pecuniary Interest and Disciplinary Tribunal consists of one part-time member, appointed by the Governor, who is a barrister or solicitor eligible for appointment as a District Court or Supreme Court Judge or who is a retired District Court or Supreme Court Judge.
- 2) A person is not qualified for appointment if, within 12 months before the appointment, the person has been a councillor or an employee of a council.
- 3) Schedule 4 has effect with respect to the Pecuniary Interest and Disciplinary Tribunal.

489 Functions of Pecuniary Interest and Disciplinary Tribunal

- 1) The Pecuniary Interest and Disciplinary Tribunal has exclusive jurisdiction at first instance to decide allegations of contraventions of Part 2 of this Chapter.
- 1A) Accordingly, proceedings at first instance to decide allegations of contraventions of Part 2 of this Chapter may not be brought before, or entertained by, any other tribunal or any court.
- 2) The Pecuniary Interest and Disciplinary Tribunal has such other functions as are conferred or imposed on it by or under this Act or any other Act.

490 **Annual report**

The Pecuniary Interest and Disciplinary Tribunal must, within 2 months after the end of each year, provide a report to the Minister concerning proceedings that have been conducted before it during that year.

Definitions

Extracted from Dictionary to Local Government Act 1993

councillor means a person elected or appointed to civic office, and includes a mayor.

de facto partner means:

- a) in relation to a man — a woman who is living or has lived with the man as his wife on a bona fide domestic basis although not married to him, and
- b) in relation to a woman — a man who is living or has lived with the woman as her husband on a bona fide domestic basis although not married to her.

relative, in relation to a person, means any of the following:

- a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse,
- b) the spouse or de facto partner of the person or of a person referred to in paragraph (a).

senior staff of a council means the general manager of the council and the holders of all other positions identified in the council's organisation structure as senior staff positions.

Extracts from the Local Government (General) Regulation 2005

(As at 1 September 2005)

Note: The extracts from the above Regulation which follow are provided here for the assistance and convenience of persons interested to know the functions and procedures of the Local Government Pecuniary Interest and Disciplinary Tribunal. They should not be taken to be a complete statement of relevant legislation. Other provisions may be relevant. Amendments to the legislation may be made after the publication of this booklet.

Part 8. Honesty and disclosure of interests

Division 1 – Preliminary

180 Definitions

In this Part and Schedule 3:

address means:

- a) in relation to a person other than a corporation, the last residential or business address of the person known to the councillor or designated person disclosing the address, or
- b) in relation to a corporation, the address of the registered office of the corporation in New South Wales or, if there is no such office, the address of the principal office of the corporation in the place where it is incorporated, or
- c) in relation to any real property, the postal address of the property or particulars of title of the property.

disposition of property means a conveyance, transfer, assignment, settlement, delivery, payment or other alienation of property, including the following:

- a) the allotment of shares in a company,
- b) the creation of a trust in respect of property,
- c) the grant or creation of a lease, mortgage, charge, easement, licence, power, partnership or interest in respect of property,
- d) the release, discharge, surrender, forfeiture or abandonment, at law or in equity, of a debt, contract or chose in action, or of an interest in respect of property,
- e) the exercise by a person of a general power of appointment over property in favour of another person,

- f) a transaction entered into by a person who intends by the transaction to diminish, directly or indirectly, the value of the person's own property and to increase the value of the property of another person.

gift means a disposition of property made otherwise than by will (whether or not by instrument in writing) without consideration, or with inadequate consideration, in money or money's worth passing from the donee to the donor, unless it is a financial or other contribution to travel.

interest means:

- a) in relation to property — an estate, interest, right or power, at law or in equity, in or over the property, or
- b) in relation to a corporation — a relevant interest (within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth) in securities issued or made available by the corporation.

listed company means a company that is listed within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth.

occupation includes trade, profession and vocation.

professional or business association means an incorporated or unincorporated body or organisation having as one of its objects or activities the promotion of the economic interests of its members in any occupation.

property includes money.

travel includes accommodation incidental to a journey.

181 Return dates and periods

- 1)** A reference in this Part or in Schedule 3 to the return date for a return made by a person under section 449 (1) of the Act is a reference to the date on which the person became the holder of a position required to make such a return.
- 2)** A reference in this Part or in Schedule 3 to the return period for a return by a person under section 449 (3) of the Act in a particular year is a reference to:
 - a)** if the last return made by the person was a return under section 449 (1) of the Act, the period commencing on the first day after the return date and ending on 30 June in that particular year, or
 - b)** if the last return made by a person was a return under section 449 (3) of the Act, the period commencing on the expiration of the period to which that return relates and ending on 30 June in that particular year.

182 Matters relating to the interests that must be included in returns

1) Interests etc outside New South Wales

A reference in this Part or in Schedule 3 to a disclosure concerning a corporation or other thing includes a reference to a disclosure concerning a corporation incorporated, or other thing arising or received, outside New South Wales.

2) References to interests in real property

A reference in this Part or in Schedule 3 to real property in which a councillor or designated person has an interest includes a reference to any real property situated in Australia in which the councillor or designated person has an interest.

3) Gifts, loans etc from related corporations

For the purposes of this Part and Schedule 3, gifts or contributions to travel given, loans made, or goods or services supplied, to a councillor or designated person by two or more corporations that are related to each other for the purposes of section 50 of the Corporations Act 2001 of the Commonwealth are all given, made or supplied by a single corporation.

Division 2 – Pecuniary interests to be disclosed in returns

183 Real property

- 1) A person making a return under section 449 (1) of the Act must disclose:**
 - a) the address of each parcel of real property in which he or she had an interest on the return date, and**
 - b) the nature of the interest.**
- 2) A person making a return under section 449 (3) of the Act must disclose:**
 - a) the address of each parcel of real property in which he or she had an interest at any time since the last return under Part 2 of Chapter 14 of the Act was made, and**
 - b) the nature of the interest.**
- 3) An interest in a parcel of real property need not be disclosed in a return if the person making the return had the interest only:**
 - a) as executor of the will, or administrator of the estate, of a deceased person and not as a beneficiary under the will or intestacy, or**
 - b) as a trustee, if the interest was acquired in the ordinary course of an occupation not related to his or her duties as the holder of a position required to make a return.**
- 4) In this clause, interest includes an option to purchase.**

184 Gifts

- 1) A person making a return under section 449 (3) of the Act must disclose:
 - a) a description of each gift received since the last return under Part 2 of Chapter 14 of the Act was made, and
 - b) the name and address of the donor of each of the gifts.
- 2) A gift need not be included in a return if:
 - a) it did not exceed \$500, unless it was among gifts totalling more than \$500 made by the same person during a period of 12 months or less, or
 - b) it was a political contribution disclosed, or required to be disclosed, under Part 6 of the Election Funding Act 1981, or
 - c) the donor was a relative of the donee.
- 3) For the purposes of this clause, the amount of a gift other than money is an amount equal to the value of the property given.

185 Contributions to travel

- 1) A person making a return under section 449 (3) of the Act must disclose:
 - a) the name and address of each person who made any financial or other contribution to the expenses of any travel undertaken by the person since the last return under Part 2 of Chapter 14 was made, and
 - b) the dates on which the travel was undertaken, and
 - c) the names of the States and Territories, and of the overseas countries, in which the travel was undertaken.
- 2) A financial or other contribution to any travel need not be disclosed under this clause if it:
 - a) was made from public funds (including a contribution arising from travel on free passes issued under an Act or from travel in government or council vehicles), or

- b) was made by a relative of the traveller, or
 - c) was made in the ordinary course of an occupation of the traveller that is not related to his or her functions as the holder of a position requiring the making of a return, or
 - d) did not exceed \$250, unless it was among gifts totalling more than \$250 made by the same person during a 12 month period or less, or
 - e) was a political contribution required to be disclosed under Part 6 of the Election Funding Act 1981, or
 - f) was made by a political party of which the traveller was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable the traveller to represent the party within Australia.
- 3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) is an amount equal to the value of the contribution.

186 Interests and positions in corporations

- 1) A person making a return must disclose:
- a) the name and address of each corporation in which he or she had an interest or held a position (whether remunerated or not) on the return date (in the case of a return under section 449(1) of the Act) or at any time since the last return under Part 2 of Chapter 14 of the Act was made (in the case of a return under section 449(3) of the Act), and
 - b) the nature of the interest, or the position held, in each of the corporations, and
 - c) a description of the principal objects of each of the corporations, except in the case of a public company.
- 2) An interest in, or a position held in, a corporation need not be disclosed if the corporation is:
- a) formed for the purpose of providing recreation or amusement or for promoting commerce, industry, art, science, religion or charity, or for any other community purpose, and
 - b) required to apply its profits or other income in promoting its objects, and

- c) prohibited from paying any dividend to its members.
- 3) An interest in a corporation need not be disclosed if the interest is a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company.

187 Positions in trade unions and professional or business associations

A person making a return must disclose:

- a) the name of each trade union, and of each professional or business association, in which he or she held any position (whether remunerated or not) on the return date (in the case of a return under section 449(1) of the Act) or at any time since the last return under Part 2 of Chapter 14 was made (in the case of a return under section 449(3) of the Act), and
- b) a description of the position held in each of the unions and associations.

188 Dispositions of real property

- 1) A person making a return under section 449(3) of the Act must disclose particulars of each disposition of real property by the councillor or employee, at any time since the last return under Part 2 of Chapter 14 of the Act was made, under which he or she wholly or partly retained the use and benefit of the property or the right to re-acquire the property.
- 2) A person making a return under section 449(3) of the Act must disclose particulars of each disposition of real property to another person, since the last return under Part 2 of Chapter 14 of the Act was made, that is made under arrangements with, but is not made by, the person making the return, being a disposition under which the person making the return obtained wholly or partly the use of the property.

189 Sources of income

- 1) A person making a return must disclose:
 - a) in the case of a return under section 449 (1) of the Act — each source of income that the person reasonably expects to receive in the period commencing on the first day after the return date and ending on the following 30 June, and
 - b) in the case of a return under section 449 (3) of the Act — each source of income received by the person since the last return under Part 2 of Chapter 14 of the Act was made.
- 2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a person is a reference to:
 - a) in relation to income from an occupation of the person:
 - i) a description of the occupation, and
 - ii) if the person is employed or the holder of an office, the name and address of his or her employer or a description of the office, and
 - iii) if the person has entered into a partnership with other persons, the name (if any) under which the partnership is conducted, or
 - b) in relation to income from a trust, the name and address of the settlor and the trustee, or
 - c) in relation to any other income, a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- 3) The source of any income need not be disclosed by a person in a return if the amount of the income received, or reasonably expected to be received, by the person from that source did not exceed \$500, or is not reasonably expected to exceed \$500, as the case may be.

190 Debts

- 1) A person making a return must disclose the name and address of each person to whom the person was liable to pay any debt:
 - a) in the case of a return under section 449(1) of the Act — on the return date, or
 - b) in the case of a return under section 449(3) of the Act — at any time since the last return under Part 2 of Chapter 14 of the Act was made.
- 2) A liability to pay a debt must be disclosed by a person in a return whether or not the amount, or any part of the amount, to be paid was due and payable on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be.
- 3) A liability to pay a debt need not be disclosed by a person in a return if:
 - a) the amount to be paid did not exceed \$500 on the return date or at any time since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, unless:
 - i) the debt was one of two or more debts that the person was liable to pay to one person on the return date or at any time since the last return was made, as the case may be, and
 - ii) the amounts to be paid exceeded, in the aggregate, \$500, or
 - b) the person was liable to pay the debt to a relative, or
 - c) in the case of a debt arising from a loan of money the person was liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or
 - d) in the case of a debt arising from the supply of goods or services:
 - i) the goods or services were supplied in the period of 12 months immediately preceding the return date or were supplied since the last return under Part 2 of Chapter 14 of the Act was made, as the case may be, or

- ii) the goods or services were supplied in the ordinary course of any occupation of the person that is not related to his or her duties as the holder of a position required to make a return.

191 Discretionary disclosures

A person may voluntarily disclose in a return any interest, benefit, advantage or liability, whether pecuniary or not, that is not required to be disclosed under another provision of this Part.

Division 3 – Form of return

192 Form of return

For the purposes of section 449 of the Act, the form set out in Schedule 3 is prescribed.

Division 4 – Conduct Generally

193 Code of Conduct

For the purposes of section 440 (Codes of conduct) of the Act, the Code called The Model Code of Conduct for Local Councils in NSW published by the Department in December 2004 is prescribed as the model code of conduct.

194 Acts of disorder

For the purposes of Chapter 14 (Honesty and disclosure of interests) of, and Schedule 6A (Code of conduct) to, the Act, the acts of disorder specified in clause 256 (1) are prescribed as acts of disorder.

Division 5 – Appeals Against Suspension

195 Making of appeal

An appeal under section 440M of the Act is to be made:

- a)** in accordance with any relevant procedures set out in the Pecuniary Interest and Disciplinary Tribunal Procedure Manual published by the Pecuniary Interest and Disciplinary Tribunal, as in force from time to time, or
- b)** if there are no such relevant procedures (or no such manual)—by giving written notice of the appeal to that Tribunal.

Schedule 3. Form of return – disclosure of interest

(Clauses 180 – 182 and 192)

Disclosures by Councillors and Designated Persons Return

- 1 The pecuniary interests and other matters to be disclosed in this return are prescribed by Part 8 of this Regulation.
- 2 If this return is the first return required to be submitted by you after attaining the position of councillor or designated person, do not complete Parts C, D and H of the return. All other Parts of the return should be completed with appropriate information as at the return date, that is, the date on which you attained that position.

If this return is not the first return required to be submitted by you after attaining that position, all Parts of the return should be completed with appropriate information for the relevant return period since the last return, that is, the period from the return date of the last return to 30 June in this year or the period from the end of the last return period to 30 June in this year (whichever is appropriate).

- 3 The particulars required to complete this form are to be written in block letters or typed.
- 4 If any space is insufficient in this form for all the particulars required to complete it, an appendix is to be attached for that purpose which is properly identified and signed by you.
- 5 If there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.
- 6 “*” means delete whichever is inapplicable.

Important information

This information is being collected for the purpose of compliance with section 449 of the Local Government Act 1993. You must not lodge a return that you know or ought reasonably to know is false or misleading in a material particular. Complaints made about contraventions of these requirements may be referred to the Local Government Pecuniary Interest and Disciplinary Tribunal.

The information collected on this form will be kept by the general manager at the council chambers in a register of returns. Everyone is entitled to inspect the register of returns free of charge. You may correct or update the information contained in the register of returns by submitting a fresh return at any time.

Disclosure of pecuniary interests and other matters

by
(full name of councillor or designated person)

*as at
(return date)

*in respect of the period from(date)
to(date)

.....
(councillor's or designated person's
signature)

.....
(date)

	A. Real Property		
	Address of each parcel of real property in which I had an interest *at the return date/*at any time during the return period	Nature of interest	
	B. Sources of income		
	1 *Sources of income I reasonably expect to receive from an occupation in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of income I received from an occupation at any time during the return period:		
Description of occupation	Name and address of employer or description of office held (if applicable)	Name under which partnership conducted (if applicable)	
	2 *Sources of income I reasonably expect to receive from a trust in the period commencing on the first day after the return date and ending on the following 30 June: *Sources of income I received from a trust during the return period:		
	Name and address of settlor	Name and address of trustee	

	<p>3 *Sources of other income I reasonably expect to receive in the period commencing on the first day after the return date and ending on the following 30 June:</p> <p>*Sources of other income I received at any time during the return period: (Include description sufficient to identify the person from whom, or the circumstances in which, that income was received)</p>		
	C. Gifts		
	Description of each gift I received at any time during the return period	Name and address of donor	
	D. Contributions to travel		
Name and address of each person who made any financial or other contribution to any travel undertaken by me at any time during the return period	Dates on which travel was undertaken	Name of States, Territories of the Commonwealth and overseas countries in which travel was undertaken	

	E. Interests and positions in corporations		
Name and address of each corporation in which I had an interest or held a position *at the return date/*at any time during the return period	Nature of interest (if any)	Description of position	Description of principal objects of corporation (except in case of public company)
	F. Positions in trade unions and professional or business associations		
	Name of each trade union and each professional or business association in which I held any position (whether remunerated or not) *at the return date/*at any time during the return period	Description of position	
	G. Debts		
	Name and address of each person to whom I was liable to pay any debt *at the return date/*at any time during the return period.		

	H. Dispositions of property		
	1 Particulars of each disposition of real property by me at any time during the return period whereby I retained, either wholly or in part, the use and benefit of the property or the right to re-acquire the property at a later time.		
	2 Particulars of each disposition of property to a person by any other person under arrangements made by me, being dispositions made at any time during the return period, whereby I obtained, either wholly or in part, the use and benefit of the property.		
	I. Discretionary disclosures		

