

LOCAL GOVERNMENT LAW JOURNAL

Volume 10, Number 4

May 2005

ARTICLES

CASENOTES – NEW SOUTH WALES COURT OF APPEAL

James Johnson 165

POLICY AND PRACTICE – NEW SOUTH WALES

Matthew Baird 172

MATERIAL PERSONAL INTEREST AND CONFLICT OF INTEREST FOR COUNCILLORS UNDER THE LOCAL GOVERNMENT ACT 1993 (QLD)

Andrew Davis

This article outlines the procedures in the *Local Government Act 1993* (Qld) for dealing with a conflict of interest involving a material personal interest and the sanctions that can be imposed on a councillor who allows a conflict, or the potential for a conflict, to arise between the public interest they are sworn to protect and material personal interest. These requirements are cast in a practical context through the explanation of various situations where such an issue can arise. 181

THE REVIEW OF PLANNING DECISIONS IN THE NEW STATE ADMINISTRATIVE TRIBUNAL (WA)

Martin Flint and Clara Bowman

The State Administrative Tribunal (SAT) came into operation in Western Australia on 1 January 2005. One of the changes brought about by the introduction of the SAT is the abolition of the Town Planning Appeal Tribunal (TPAT). All applications for the review of a planning decision, previously referred to as “appeals”, are now to be made to, and determined by, the SAT. The practice, procedure and operation of the SAT in its review of planning decisions is similar to that of TPAT, but does involve some changes which local governments and those representing them will need to be aware of. Set out below is a summary of some of the more important changes to the planning appeal system, as well as those significant matters where there has been no resultant change.185

LOCAL GOVERNMENTS AS MODEL LITIGANTS

Andrew Davis

The expectations on a government party in the conduct of litigation are much higher than those of other litigants. It is expected that the government, as the elected representatives of the people they serve, will be responsible and accountable in their discretion to resort to the legal system. It is also expected that they will not take advantage of the people under whose authority they act or of the legal system through which they may seek relief. These expectations have been accepted as being of such importance that they have been adopted as mandatory regulations enshrined under the obligation to act as a “model litigant”190

IS SENIORS LIVING (2004) KEEPING SEPP 5 ALIVE?

Robert Stokes

State Environmental Planning Policy No 5 has probably generated more sustained community conflict, litigation and parliamentary consideration than any other environmental planning instrument introduced under the statutory framework established by the *Environmental Planning and Assessment Act 1979* (NSW). Since its initial introduction in 1982, it has been the subject of three government reviews, each followed by extensive amendment. The latest amendment, in March 2004, saw the policy reincarnated as State Environmental Planning Policy (Seniors Living) 2004. In tracing the development of State Environmental Planning Policy No 5 and its successor, this article analyses the reasons for its tempestuous history, and assesses whether successive amendments have adequately addressed the concerns of local governments and communities.....194

INDEX.....211

Guidelines for Contributors

Contributions to the journal are welcome and should be sent to the Production Editor, *Local Government Law Journal* Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to lglj@thomson.com.au, for forwarding to the Editor.

Manuscript

- Submission of a manuscript will be held to imply that it is original, unpublished work and has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 5,000-6,000 words for articles or 1,500-2,000 words for section commentary or book reviews.
- An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- All material published in this journal is refereed.

Style

1. Levels of headings should be clearly indicated (no more than four levels).

2. Cases

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote.
- Give at least two and preferably all available citations, the first listed being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; Other company series (ie, CCH, Butterworths), media neutral citation.
- “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1
- Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG & GG v Minister for Community Services* [2002] NSWCA 247 at [19]
- For international cases best references only should be included.

3. Legislation should be cited as follows:

Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.

4. Books:

- should be cited as follows: Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
- In footnotes do not use *ibid* or *op cit* the following style is preferred:
 - 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 - 5. Austin, n 4, p 56.

5. Journals

- Journal articles should be cited as follows (wherever possible use official abbreviations not the full name for journal titles): Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.
- In footnotes do not use *ibid* or *op cit* the following style is preferred:
 - 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
 - 7. Sheehy et al, n 6 at 221.

6. Internet citations

- Cite internet publication as for any other document, with URL underlined in angle brackets, and date the document was viewed, eg: Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <<http://subscriber.lawbookco.com.au>> viewed 25 June 2002

For further information visit the Lawbook Co. website at www.lawbookco.com.au or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Local Government Law Journal* comprises four parts a year.

Customer Service and sales inquiries:

Tel: 1300 304 195

Fax: 1300 304 196

Web: www.lawbookco.com.au

Email: LRA.Service@Thomson.com

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1324-1265

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW