

ITS NOT A WITCH HUNT


[BUT WE DON'T
EXPECT
YOU TO LOVE US]

**THE COMPLIANCE
OFFICER INVESTIGATED**





BEEN THERE - DONE THAT




Protecting your Rs

An Animal Management
Officer In the Poo

WE KNOW!

- There are only so many ways to beat the system
- Someone will have done it before
- Poor management/supervision lets it happen
- Procurement is the most problematical area
- Auditors and investigators have 20/20 hindsight
- Don't bother with the bullshit – it only smells worse the more we dig
- We acknowledge that stuff happens



THE INVESTIGATOR DOES *NOT* MAKE A DECISION ABOUT WHAT WILL HAPPEN

- The investigator scopes the investigation
- The investigator investigates
- The investigator weighs up the evidence obtained
- The investigator draws a conclusion
- The investigator makes recommendations
- **The CEO (or delegate) makes the decision**

ADMINISTRATIVE ACTION COMPLAINTS

LOCAL GOVERNMENT ACT 2009 (QLD)
section 268(2)

An administrative action complaint is a complaint that is

- (a) about an administrative action of a local government,
- (b) is made by an affected person.

MISCONDUCT COMPLAINTS

LOCAL GOVERNMENT REGULATION 2012 (QLD) **section 279**

The chief executive officer may take disciplinary action against a local government employee if the chief executive officer is satisfied the employee has—

- (a) failed to perform their responsibilities under the Act; or
- (b) failed to perform a responsibility under the Act in accordance with the local government principles; or
- (c) taken action under the Act in a way that is not consistent with the local government principles.

MISCONDUCT COMPLAINTS

THERE IS LOTS OF OTHER LEGISLATION IN QUEENSLAND THAT APPLIES EG:

Crime and Corruption Act 2001

Information Privacy Act 2009

Public Interest Disclosure Act 2010

Public Records Act 2002

Public Sector Ethics Act 1994 (Code of Conduct)

MISCONDUCT ALLEGED

Do We Tell The Respondent?

FOR

IN PRINCIPLE ITS ONLY FAIR
THEY MAY IMMEDIATELY MAKE ADMISSIONS
THEY MAY HAVE EVIDENCE THAT SHOWS THEY ARE INNOCENT
THEY WONT HEAR ABOUT IT BY THE BACK DOOR

AGAINST

THEY MAY INTERFERE WITH WITNESSES
THEY MAY MANUFACTURE EVIDENCE
THE ALLEGATION MAY NOT STACK UP
IN QLD THE CCC MUST BE ADVISED BEFORE INVESTIGATION (CORRUPT CONDUCT)

BURDEN OF PROOF

THE BALANCE OF PROBABILITIES

Briginshaw v Briginshaw (1938) is the reference for the *balance of probabilities*:

- when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality; and
- it is enough that the affirmative of the allegation is made out of the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony or indirect inferences.

NATURAL JUSTICE

NATURAL JUSTICE AND THE COMPLAINANT - IN PRINCIPLE

- Can I identify any bias I have against the complainant?
- Have we had previous dealings that came out badly?
- Will the complainant believe that my investigation will be unbiased?
- How would me handling this matter appear to an outsider (the Office of the Ombudsman, Councillors, the media, a member of the public)?

NATURAL JUSTICE


NATURAL JUSTICE AND THE STAFF MEMBER

- Can I identify any bias I have against the staff member(s)?
- Will the respondent [and other staff members/union] believe that my investigation will be unbiased?
- How would me handling this matter appear to an outsider?

NATURAL JUSTICE

IN PRACTICE – THE STAFF MEMBER(S)

- Mutual respect
- No surprises - the process should be transparent
- No surprises - all allegations are on the table
- Unfettered opportunity to explain
- Appropriate support
- Convenience and comfort
- Confidentiality



DR. GEORGE J. THOMPSON'S
VERBAL JUDO
**5 UNIVERSAL TRUTHS
OF HUMAN INTERACTION**

- People feel the need to be respected
- People would rather be asked than be told
- People have a desire to know why
- People prefer to have options over threats
- People want to have a second chance

THE REPORT

**SUBSTANTIATED, NOT SUBSTANTIATED, or
NOT SUBSTANTIATED OR UNSUBSTANTIATED**

(Sustained, Not Sustained, or Not Sustained or Unsustained)

- Legislation
- Policies and Procedures
- Background
- Evidence for and Against
- Conclusion
- Recommendations about the complaint
- Other Recommendations –
management action or systems improvement

WE KNOW!

Verbal Judo
and
The Art of
Holding Your
Breath



ITS NOT A
WITCH HUNT



YOUR QUESTIONS