

Lake Macquarie City Council



Laura Kendall and Steve Brown going to a lynchin'

LMCC is a Council which flies largely under the radar, notwithstanding some pretty unusual appointments in their HR area over the years. It's in its HR decision-making that it sometimes shows some lapses of judgement. Notwithstanding the wisdom and benign leadership of GM Brian Bell, they did find themselves in the Federal Court in a bullying and harassment case that ran for weeks and cost the Council an absolute bleeding fortune.

So in a way it wasn't a surprise this year to find a member of ours involved in an investigation by Organisational Performance Manager (!) Laura Kendall and the Manager Development Assessment and Compliance Steve Brown where both of them, right from the start, were absolutely convinced that he was guilty as charged. A couple of people more likely to get excited about a lynchin', would be hard to find.

Ms Kendall, acknowledged in the Minister for Local Government's Women in Local Government awards last year, pursued the investigation with the sole purpose of nailing someone - compromising procedural fairness by failing to do a number of things that would have allowed the employee to establish their innocence. What the heck, the noose is ready to be thrown over the hangin' tree and all they need to do is beat out a confession and find the innocent employee guilty.

Just about everything was a problem. There was a flavour of intimidation right from the start - called to a meeting with Ms Kendall and Mr Brown at 2:30 in the afternoon on the Friday before the Anzac long weekend our bloke was told they were undertaking an investigation but details, although in the Council's possession, were withheld. At the next meeting, on his return to work after the long weekend on 27 April, four allegations were made. The Council had documents relevant to three of them but refused to provide them.

Notwithstanding their refusal to provide these documents, Ms Kendall pressed the employee to make confessions. When Mr Brown asked whether he could be shown the evidence, her response was "not yet". Not yet, why provide the evidence if you can squeeze out a confession?

Ms Kendall put to the member that "in my experience, people were more likely to be accurate in their immediate response than any considered response". This was unacceptable pressure to make a confession where he had no information or awareness of what was being alleged. The implication was that employees would be more likely to tell the truth if they didn't go away to think about it or to check the evidence.

Again referring to her "experience" she observed that "there are two types of employees, those who accept their punishment and move on to end up with fulfilling jobs, and those who make trouble". Leaving aside the employee is entitled to see and challenge any evidence, this is not procedurally fair, pressures an employee to cop it, fair or unfair, right or wrong.

Ms Kendall's LinkedIn profile shows that her first HR job was Lake Macquarie in 2014 (and then that time included a "less than a year" secondment as AGM at Broken Hill), so had been in the HR

job for less than a year before conducting the investigation. Still, she has an impressive asset management and engineering background.

When pressed by depa to check our member's story with a witness who would be happy to be interviewed, they refused to do so. We said we would unless they objected (and they didn't) and when we contacted the witness and asked for a statement about the circumstances, Ms Kendall then responded that our "contact ... causes a significant concern and leads us to the view that we cannot be satisfied Mr X's (witness name withheld) responses were made on the basis of his own knowledge and recollection of the relevant events alone". That is, the member being investigated lied, so did the witness, and so did I.

Remember, depa only contacted the witness because they refused to do so and they similarly refused to contact another witness we urged them to contact on one of the other allegations that was subsequently withdrawn. They don't want witnesses to get in the way of a good lynchin'.

Failing to provide evidence to a person under investigation is a chronic and substantial failure of procedural fairness. In the end, a significant and punitive punishment was imposed but an appeal to GM Brian Bell resulted in his intervention and overriding most of Ms Kendall's decisions and penalties in a way that properly recognised the failure to provide procedural fairness, the employee's service and valuable contribution to the organisation and, in an embarrassing turnaround, also recognised the lack of training and skill of those who conducted the investigation. More training needed please.

Well done Brian, you pulled this one out of the fire.

But, if it's true that for every action there is an equal and opposite reaction, Ms Kendall and Mr Brown and their clumsy, sub- professional, venal and partial investigation may well do everyone a favour.

Ms Kendall to a greater extent than Mr Brown, can claim responsibility for our claim in our log of claims for the 2017 Award to fill out some detail in clause 39 Disciplinary Procedures where a Council is obliged to "properly conduct and speedily conclude an investigation". Ms Kendall showed that the Award needs to be more detailed, more explicit and more helpful to those who don't understand that underlying every investigation is a presumption of innocence. That's why in **claim number 16** you will find the 12 minimum requirements for procedural fairness we are pursuing to go into the 2017 Award.

Interestingly, the Director of Corporate Services has been conducting a review of the policy on investigation and disciplinary processes in parallel with this fiasco, we have spoken and provided a list of our 12 requirements of procedural fairness. That was three months ago and we haven't heard a peep since, despite chasing up before going to press with this issue.

So Lake Macquarie gets a nomination.