Toowong Dispute, November 2013

Investigation Process Incorporating Terms of Reference.

**Background**

In November, 2013, members of the Brisbane City Council (BCC) Toowong Depot determined to take protest action in support of a fellow member who had been dismissed from his employment. Subsequent to this, disciplinary action was instituted by the BCC resulting in a series of final warnings and two dismissals.

Due to the serious nature of this situation the State Branch Executive (the Executive) resolved to:

A. formally and independently review the events leading to the action, and
B. appoint an independent person to undertake the review.

**Objectives**

The Executive’s objective is to establish as accurately as possible whether or not officers or officials acted in the best interests of:

a. the members concerned, and
b. the union as an entity.

Specifically the Executive wishes, through the review, to establish a factual matrix of the actions and events leading to members taking this protest action, including any advice and/or reasons given to members.

The review will:

1. determine whether the officers/officials responsible for the depot acted in accordance with their obligations under the rules of the RTBU
2. determine whether the officers/officials responsible for the depot acted in accordance with the directions of the Branch Secretary
3. determine whether the circumstances that led to RTBU members receiving disciplinary penalties were avoidable
4. if appropriate, make recommendations about how the matter might have been better handled and how the RTBU might, if necessary, avoid a repeat of the circumstances in the future.

**Responsibilities**

The Executive shall oversee the investigation. Between meetings the Branch Secretary or in his absence, the Branch President, shall ensure the efficient progress of the investigation and subsequent delivery of findings.

The Executive shall engage a retired Industrial Commissioner to undertake a thorough investigation in line with the purpose of the investigation.

The commencement of these arrangements shall be 8 September, 2014 and will be concluded at the time the findings and recommendations are delivered to the Executive by the Investigator.
Investigation

The Investigator will be responsible for the schedule and conduct of the review.

The RTBU shall provide reasonable secretariat services to the Investigator on request.

All officers and officials shall cooperate with requests of the Investigator.

The Investigator shall assemble evidence in a manner of his choosing and in keeping with the principals of natural justice. The Investigator shall not be bound by the rules of evidence and may gather information as he sees fit.

The Investigator shall provide progress reports to the State Branch Executive and may formally seek further directions or modifications to these terms of reference where obviated by the investigation or as he sees fit.

The appropriate standard of proof

Allegations must be proved “on the balance of probabilities”. It must be more probably than not that the allegations are made out.

This standard of proof is that found in the often cited case of *Briginshaw v Briginshaw* (1938) 60 CLR 336. The Briginshaw test (or Briginshaw standard as it is often called) possesses a measure of flexibility, so that the more serious the allegation the higher the degree of probability required.

Record and store information appropriately

The Investigator will maintain a central investigation file, which is a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. This file will be stored securely to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

Prepare the investigation report

A report will be drafted at the conclusion of the investigation. The report will be for the records of the Executive, and the report will be prepared to ensure procedural fairness.

The investigation may lead to one of a range of possible outcomes being determined by the Branch executive, including but not limited to:

- introduction of policies, procedures or practices
- changes to policies, procedures or practices
- disciplinary action or charges under the rules of the Union

The role of the Investigator

There are two key tasks for the Investigator:

- ascertain all relevant facts pertaining to the issue
- at the conclusion of the fact finding exercise, report findings; the reasons for the findings, referring to the material on which they are based; and, if appropriate, make relevant recommendations.

Recognise and avoid conflict of interest

All investigations must be conducted without bias, in an impartial and objective manner.
Observe procedural fairness

Due process will be observed in every part of this investigation.

Procedural fairness will be observed by the investigator through:

- providing all parties with a reasonable opportunity to put their case, whether in writing, at a hearing or interview
- considering all submissions carefully
- taking into account all relevant factors and no irrelevant factors
- acting fairly and without bias
- Providing anyone involved in the investigation with the opportunity to respond to any allegations or adverse comment against them that could be contained directly or indirectly in the body of the Investigator’s Report
- conducting the investigation without undue delay

Attending interviews

Members will be requested to attend interviews at a mutually convenient time and place.

The RTBU will not reimburse witnesses for wages or lost time, but will reimburse any reasonable out of pocket expenses incurred to attend the interview.