

Melinda's Story - Frustrating Incompetence by a Senior Officer of the Australian Public Service Commission (APSC)

I had made a complaint of harassment (which was a breach of the APS Code of Conduct) by an Executive Level officer in my APS agency. My claims were supported by witnesses and an accidental confession by the accused. As a result of making a complaint, I was victimised by the accused and his supporters, which I also reported. In submitting to my APS agency that I was illegally harassed, I referred to relevant human rights legislation and guidelines produced by the Australian Human Rights Commission. There were many questionable aspects to the way my claims were investigated by my APS agency. It was clear to me that the investigation was never meant as a genuine inquiry, but rather as an opportunity to try to falsely paint me as the wrongdoer. Predictably, my accusations were found to be unsubstantiated. Following this finding, the harassment escalated. I made the decision to resign from my APS agency, in order to protect my health and safety, and took up work in a different APS agency.

I subsequently decided to contact the APSC to see what assistance it could offer. I was referred to a senior officer in the APSC. His immediate response during our telephone conversation was that the APSC could not help me and then said nothing more. Being taken aback by this short response and awkward silence that followed, I tried to get the APSC officer to elaborate on his reasons and he expressed exasperation about how so many people mistakenly believe that the APSC can help them, when it cannot. I asked him in what circumstances could the APSC have helped me. He said that if I was still an APS employee, I could seek whistleblower protection under the Public Service Act. I told him that I still am an APS employee. He apologised and said that he just assumed that I was no longer in the APS. The APSC officer then proceeded to say that he was not sure if I was a whistleblower. I asked him for the definition of a whistleblower. He said that he did not know the definition and I would have to look that up on the APSC website. I asked him where I should look on the APSC website and he said that he did not know.

In asking questions around what the rate was of successful review applications, the APSC officer indicated that they were low and expressed a belief that many applicants just seek a review because they are simply dissatisfied with the outcomes of their APS agencies' inquiries/investigations. He also said that the APSC would not be able to consider any references to human rights legislation and guidelines of the Australian Human Rights Commission in support of my case due to a recent court decision that found that APS agency inquiries/investigations into APS Code of Conduct breaches can only take into account content in APS documents.

I subsequently spent many hours trying to find the alleged APSC's definition of a whistleblower and the court case which established the principle that the APSC officer referred to, but I could not find either. I then decided to send an email to the APSC officer asking for the name and citation of the case he referred to. He replied with the court case reference (which was by no means a recent court case) and, more interestingly, acknowledged that his interpretation

of the court decision was inaccurate, but he still personally believed that the broader principle he espoused remained sound.

As it was clear to me that I was dealing with an APSC officer who was incompetent and had no genuine interest in assisting me, I chose not to pursue exercising my legal rights with the APSC.

There are numerous concerns I have with the way the APSC handled my enquiry. Firstly, assumptions should never be made by any APS officers when it comes to dealing with enquiries from stakeholders. As my story demonstrates, if it was not for my decision to question the APSC officer's claim that the APSC could not assist me, I would have been left with false advice.

Secondly, it is astounding that a senior officer of the APSC (whose wages are funded by Australian tax payers) is unaware of what exactly amounts to whistleblowing in the Commonwealth, does not know the content of his own APS agency's website and does not even bother to try to explore these issues (at least for the benefit of his own education). I only later found out, through my own research, that there was no specific definition of a whistleblower since the Public Service Act classes all APS employees making complaints of breaches of the APS Code of Conduct as whistleblowers. This meant that, contrary to the advice given by the APSC officer, I was definitely a whistleblower entitled to protection under the Public Service Act.

Thirdly, it was clear that the APSC officer was trying to cast negative insinuations around his prejudiced belief that applicants seek reviews from the APSC simply because of dissatisfaction with outcomes of APS inquiries/investigations. Yet, there is nothing wrong with this being the reason for a review application - why else would any review/appeal mechanism exist in democratic societies? With complainants rarely being given the reasons for outcomes of APS inquiries/investigations due to (questionable) claims that doing so would be in breach of the Privacy Act, complainants are left with no way of confidently knowing whether decisions were based upon acceptable evidence or whether procedures were followed. If the APSC officer's prejudiced views are typical of most officers in the APSC, then complainants will have little hope in receiving satisfactory assistance from the APSC.

Finally, the APSC officer giving me an inaccurate interpretation of a court case (which went to my detriment) is nothing short of grave incompetence and unprofessionalism. At all times, APS officers (particularly senior APS officers) should strive to provide accurate and timely advice to stakeholders and if there are any doubts about the accuracy of that advice then they should conduct further research without being prompted by stakeholders. APS officers should also be aware that their personal views (as the APSC officer tried to pass off) hold no weight and should not be given as advice to stakeholders.