

Julie, Nadia, Tracey and Kathleen's Stories: Australian Human Rights Commission (AHRC) Left a Sour Taste

Julie's Story

My experience with the AHRC is a mixed one. My first AHRC case officer and the AHRC conciliator were professional and showed empathy without being partial, but my second AHRC case officer's treatment of me and the general administration of my complaint unfortunately left me feeling that I was probably better off never going to the AHRC in the first place for my complaint of workplace sexual harassment, discrimination and victimisation. My concerns are expressed below.

At the time of making my complaint, I was told by the first AHRC case officer that I would have someone contact me to discuss the preliminary issues I raised in my complaint before my employer would be contacted. After a couple of months had passed without hearing from the AHRC, I assumed my complaint had been lost in the system and I did not pursue it, as I had essentially moved on from my bad experience and was putting it behind me.

To my surprise, three months after I made my complaint, I received a letter in the mail stating that my employer had just been contacted about my complaint and the AHRC had asked my employer a series of questions about my complaint. Notably, the AHRC had given my actual complaint to my employer without giving me the chance to revise it (as promised), the AHRC wrongly referred to me as a male and the AHRC misstated my complaint by suggesting I had made allegations against individuals which I had never made. At best, I felt this showed sloppiness. If the AHRC was not taking the time to make sure my complaint was reflected accurately, this would give the impression to my employer that my complaint did not matter to the AHRC.

After an agonising wait, I finally received my employer's response from the AHRC four months after my complaint was sent to my employer. I was shocked by the outrageous and hurtful lies contained in my employer's response. One such lie was to manipulate events and a timeline to create a bizarre story that my complaint of sexual harassment against an employee was a fabrication because I had a grievance against a different employee. The story was so nonsensical and could easily be dispelled with documentary evidence that I never had a grievance in the first place, that I assumed no one would have taken the claim seriously.

In a subsequent phone conversation with my second AHRC case officer, I stated I wanted to put my side of the story on the record. Rather than the case officer saying something like 'Of course you are entitled to do that', the case officer instead stated 'Well, it was notable that you had made a sexual harassment complaint only a few days after you had a grievance and people have been known to make up harassment complaints following grievances'. I could not believe what I had just heard and I felt sickened! The AHRC should know that employers are in the businesses of unfairly discrediting complainants, and are not beyond fabricating evidence, due to real liability risks. If the AHRC does not know this, then AHRC case officers should at least not be making statements in favour of employers' accusations until they have seen all the evidence. My case officer also made a number of other judgemental, inappropriate and erroneous comments, which upset me greatly.

Because my employer had made a number of accusations that were based on various documents, but they did not enclose the documents, I asked the AHRC case officer if she could ask my employer for the documents. The case officer said my employer did not have to provide me the documents, but she could ask them for the documents if I really wanted her to. I thanked her for this and suggested that she might

want to note to my employer that because I would be entitled to the documents through freedom of information channels which would result in the documents being public information, that my employer might prefer to produce the documents through the AHRC channel instead, as that way the documents retain confidential status. I had assumed the latter course meant confidentiality protection because my employer's response to my complaint contained a confidentiality disclaimer with a threatening insinuation of bad consequences for me if I breached the disclaimer. Thus, I had limited showing my employer's response to anyone except my lawyer.

My AHRC case officer subsequently phoned me, saying in a sharp and condescending manner something to the effect of 'I need to make something absolutely clear to you - the AHRC is impartial. We are not on your side, we are not on your employer's side, and I will not be repeating threats on your behalf to your employer'. I was confused and asked her what threats I had made. My case officer responded that my request for documents through the conciliation conference was a threat. I was shocked and said that I did not see my request as a threat, rather I saw it as an incentive for my employer to offer documents through a confidential process. The case officer continued to say something like 'Well I viewed it as a threat and if I viewed it as a threat, I am sure your employer will view it as a threat too'. I felt the case officer's reaction was erroneous and disproportionate, but in the interest of diplomacy, I apologised to the case officer.

Still annoyed, the case officer continued to tell me that my employer's confidentiality disclaimer was not legally binding on me as I had believed. I could not believe that my case officer had allowed a number of weeks to pass before she told me that the AHRC did not recognise my employer's confidentiality disclaimer as legally binding! At the time of receiving my employer's response, I was really distraught at how my employer had no regard for the truth and my reputation, and I really could have benefited from sharing my employer's response with my friends to receive emotional support. Instead, I suffered in isolation when there was no need for this, all because the AHRC failed to clarify my administrative rights in their complaints process.

I had also requested that I have a shuttle conciliation conference instead of a face-to-face conciliation conference, as I did not want to sit in the same room as one of my perpetrators. My case officer refused this request without giving me any reasons. As a compromise, I asked if, at the very least, only my employer's lawyers could be in the room and my perpetrator sits outside the room. My case officer said she can ask my employer if they would be willing to do this, but said that my perpetrator should be in the room as he knows the facts of the case. I felt that all of the administrative rights around shuttle conciliations advertised on the AHRC website were false and misleading.

In the end, I found sitting across from my perpetrator and having my employers' lawyers constantly antagonise me during the conciliation conference highly distressing. To the conciliator's credit, he could see that a face-to-face conciliation was not working and was harmful to me, so he invited my employer's representatives to leave the room and engage in a shuttle conciliation instead. The conciliation did not result in a resolution (due to my employer's obstructive behaviour) and it was indirectly admitted to the conciliator by my employer's lawyers that they were never there to genuinely settle with me, but were there to cross-examine me. I believe that if my AHRC case officer had done a proper job in assessing my employer's intentions for conciliation, she would have recognised that my employer was not a suitable candidate for conciliation and therefore I would not have incurred thousands of dollars in legal expenses in preparation for the conciliation conference.

In general, I found my second AHRC case officer to be cold, disinterested and unprofessional. She would have a number of excuses for no communication with me or delayed communication: 'I'm very busy', 'I

was travelling', 'I lost my voice for a week', 'Your email went to my junk mail', 'I left you a phone message at 6.30pm on Friday night and this was the earliest I could contact you' (thereby leaving me to fret over the weekends as to what her ambiguous messages were about). There was no doubt in my mind that my case officer treated me worse once she received my employer's response, which was proof to me that there was no impartiality on her part.

By the time the AHRC closed my complaint, nearly 12 months had passed since I made my initial complaint - I felt worse at the end of the AHRC process than I did going into it. I've concluded that I would have been better off never going to the AHRC and, based on my experience, I would recommend anyone else who works for the Commonwealth and has experienced unlawful workplace mistreatment to think twice before going to the AHRC.

Nadia's Story

After decades of high performance and complaint-free service to my employer, and having been promoted to the executive level, I developed a medical condition which required a number of workplace setting adjustments. When I flagged my medical condition with my employer, I was confronted with an attitude of denial and minimisation of the severity of my condition. Despite my attempts to bring my employer's attention to my medical reports, my employer continued to discriminate against me, so I lodged a complaint with the AHRC.

The AHRC prompted a conciliation conference between myself and my employer, which I attended alone. The standard request at the start of the conciliation conference for an undertaking to keep discussions private and confidential was made. At the conference, my employer made a proposal to which I responded I would seek advice on. I was given ten days to seek advice. After the conciliation conference, I retained the services of a pro bono advocate from a not-for-profit advocacy organisation. The advocate brought to my attention a number of legal and policy rights I had which were not brought to my attention by the AHRC or my employer. By not knowing about these rights, I had been put at a disadvantage in the conciliation conference.

With my permission, my advocate sent an email to my employer about my employer's proposal and my rights, and to consider a counter-proposal based on the new information my advocate provided me. At the same time, my advocate wrote to the AHRC telling them that he was now my advocate and he copied me into the email. I followed up this email with a confirmation email that I wanted all future communications to go through my advocate. Shortly after, my advocate called up the AHRC to introduce himself.

To my advocate's shock, the AHRC case officer responded in a highly strange and agitated manner, stating to my advocate 'I don't see you and I don't acknowledge you and I don't want to talk to you about this case'. My advocate asked what was the reason for this. The AHRC case officer replied with 'I can't talk to you' and hung up.

The AHRC officer responded with an email to me saying: 'I do not think you should have discussed the conciliation proceedings with a third person, aside from your immediate family members, as agreed at the conciliation conference. This has the potential to send the wrong message to [your employer], and may jeopardise the settlement of the complaint. I also do not think it is appropriate for me to speak to [your advocate] about confidential conciliation proceedings.'

I found this email intimidating and the notion of excluding my right to advocacy a preposterous one. Having an advocate help ameliorate the power imbalances between my employer and I is something the AHRC should support.

Shortly after this, the AHRC case officer's supervisor called up my advocate asking him about his qualifications and whether he was a practicing lawyer. My advocate indicated that he worked for a not-for-profit advocacy organisation and it was irrelevant to the AHRC process whether or not he had a legal practice certificate. The supervisor indicated to my advocate that I had breached my oral confidentiality agreement at the conciliation conference by speaking to him about my case if he is not a legal representative or financial adviser. My advocate replied that it was highly concerning that the AHRC would agree to such a strict restriction given that I should be allowed to seek out the advice I desired and I should not be penalised for receiving pro-bono advocacy.

My advocate subsequently requested the supervisor to put her concerns in writing. The supervisor became agitated by this request and refused to put anything in writing. My advocate stated that he would make a formal complaint about his client's treatment by the AHRC. The supervisor's response was 'We are not threatened by you at the Australian Human Rights Commission'. My advocate responded with 'Let's see what Commissioner Graham Innes has to say about your conduct'. At this point, the supervisor swiftly hung up on my advocate.

The next day, the AHRC supervisor called my advocate and offered an apology, saying that she was having a bad day and was impatient. My advocate accepted the supervisor's apology. The supervisor then claimed that the only reason why she was concerned about me having an advocate is that the AHRC thought my employer could withdraw its settlement offer if I spoke to someone other than a legal practitioner or financial adviser - the AHRC wanted me to accept my employer's offer, as they thought it was in my interests to do so.

My concerns with the AHRC's behaviour in my case is that I felt they were out of line in their initial opposition to me having an independent advocate and encouraging me to accept the settlement offer when it was my decision to make without interference. In my view, the AHRC went beyond being partial towards my employer to potentially sabotaging my efforts to resolve my case in my best interests. I would advise complainants using the AHRC's services to be very cautious of them - they seem to care more about crossing cases off their lists rather than the substance of outcomes.

Tracey's Story

My story is a simple case of the AHRC doing nothing to ameliorate power imbalances between myself and my employer. I was a target of workplace sexual harassment by an older male colleague and I was victimised severely by my employer when I made a complaint.

I went through the process of making a complaint to the AHRC with the assistance of a women's advocacy service. Several months later, after a completely distorted and misleading response from my employer, a conciliation conference was set up between myself and my employer.

I was present with my advocate. Across from us were six men all in black suits with brief cases representing my employer - it was all very staged. Needless to say, I was extremely intimidated and I was shocked that the AHRC conciliator allowed for such disproportionate numbers in the conciliation conference when the conciliator's role was to create a somewhat level playing field. I was attacked throughout the conference and was so shaken up that my advocate had to request the conciliation come

to an end. I never took my case to court due to having no money and my fears of entering into another intimidating forum.

In my opinion, the AHRC is a joke!

Kathleen's Story

I experienced disability discrimination by my employer - an APS agency in Canberra - resulting in the loss of my permanent job after 17 years in the APS. I then pursued the matter through the AHRC and found the process entirely disempowering and time-wasting.

The AHRC took forever to set up the conciliation conference. The AHRC only comes to Canberra intermittently, which I found odd, and a date that suited all parties could not be found after about three or four attempts. Thus, I eventually opted for a phone conference since a face-to-face conference was too difficult to arrange.

There was absolutely no support given to me and the advice on my rights was non-existent. It was just me against my former employer, which, to me, amplified my powerlessness. I had been encouraged by the AHRC to not involve lawyers, but realised part way through the process that I had done myself a huge disservice in complying with the AHRC's pressure. When I subsequently asked the AHRC for time to explore the issue of legal representation, I was only given a few weeks and then hurried into finalising things. In the end, I just wanted to not think about it anymore and move on with my life.

All that my AHRC experience reinforced was that the APS can do what it pleases when an important scrutineer agency, such as the AHRC, is a toothless tiger.

I looked at pursuing my case through the courts. While being told I had 'a tidy case', it was difficult to justify the \$25,000 to \$40,000 it would cost to do so. APS agencies do not have to bear a similar financial burden, so the playing field is certainly not an even one. APS agencies get away with bullying, discrimination and victimisation because they bear no consequences to their bottom line. The taxpayer pays for this lopsided relationship. My story is a step in the direction of saying THIS IS NOT OK!