

Lauren's Story - Victimisation-Enablers: The Fair Work Ombudsman, Comcare and the Australian Public Service Commission

I had been employed with my APS agency for around a decade, working my way up to the executive level. My saga began when I uncovered serious malpractices in my APS agency's administration of a particular project that had serious financial implications for some of our stakeholders. I reported this through my APS agency's whistleblowing channels. My APS agency responded heavy-handedly by utilising many of the containment strategies and victimisation tactics described in APSbullying.com website. These strategies and tactics included: a compulsory referral to an apparent hired gun psychiatrist based on false allegations of mental instability; an APS Code of Conduct investigation of me based on manufactured claims of me being a workplace bully; sabotaging and undermining my work performance and reputation; forcing me to remain in a hostile environment; and denying me my right to go to work because I refused to attend an illegitimate psychiatric assessment whilst also cutting off my pay. Prior to my whistleblowing report, I had always been highly commended for my work performance and conduct, and never had my mental stability questioned.

I subsequently reached out to a number of APS scrutineer agencies, including the Office of the Fair Work Ombudsman, Comcare and the Australian Public Service Commission, essentially asking them to exercise their legislative functions to assist in protecting me against the victimisation being perpetrated against me by my APS agency. All of these scrutineer agencies let me down gravely, as outlined below. The only solace I had was in an independent oversight agency publicly confirming that my whistleblower allegations of malpractice were substantiated.

Office of the Fair Work Ombudsman (FWO)

The FWO responded to my complaint by appointing a senior case officer to my matter. The case officer contacted me saying that he had not had time to read my submission fully, but wanted to arrange a time with me to discuss my complaint. I thought it was strange that the FWO would enter into formal communications with me and seek to arrange an appointment with me before even properly reading my complaint.

In the same breath, the case officer went on to say that he got the impression that my complaint was about work performance issues and therefore the Fair Work Act may not be applicable. I told him that nowhere in my complaint did I refer to work performance issues and asked him where he got this idea from. The case officer mumbled something like 'I am sure I read it here somewhere'. I asked him if he had any informal discussions with my APS agency without my knowledge, but he would not give me a straight answer.

The case officer then said in an arrogant tone something to the effect of 'the Fair Work Act only deals with physical injuries like when you have your hands cut off, not psychological injuries arising from bullying'. This was blatantly wrong. The Fair Work Act protects employees who exercise a workplace right (such as making a whistleblower report) from adverse actions (such as victimisation), which result in an injury (which can be physical, psychological or reputational). It was incredible that an employee of the FWO did not even understand his own agency's legislation.

Being quite disturbed by the case officer's incompetence and unprofessionalism, I escalated my matter to a legal officer in the FWO and complained about the case officer's conduct. Despite my escalation of my matter, I received a call from the very same case officer I complained about. He did not call me to deal with my complaint against him, but instead called to tell me to say that the FWO could not help me since I had noted to him in our last conversation that I was contemplating taking legal action against my employer (even though I had not actually commenced legal action).

My complaint of incompetence and unprofessionalism against the case officer was never addressed and it was clear to me that the FWO was simply looking for any excuse not to be involved in my matter. Consequently, I decided not to waste any more of my time and walked away from the FWO.

Comcare

It was not until 3 months after I made a complaint to Comcare that I received a response from an officer of this scrutineer agency. The officer claimed that Comcare does not investigate actual victimisation allegations, rather it only investigates the shortcomings in processes adopted by employers to deal with victimisation. I was taken aback by this statement, especially given that Comcare's complaint form specifically asked for in-depth details of each victimisation incident.

I expressed to the officer my concern that Comcare's processes to deal with victimisation were inadequate and that my understanding was that Comcare could organise an intervention which could give rise to sanctions against my APS agency for victimisation under the new Work Health and Safety Act. I was told that Comcare would look into this.

It was another 2 months before I heard from Comcare again. I was told that the material I provided was considered and a decision was made not to intervene as it was reasonable for my APS agency to direct me to attend a psychiatric assessment and that the psychiatric assessment was a legitimate method to resolve my victimisation allegations. I was dumbfounded that a scrutineer agency would, firstly, condone a victimisation tactic such as a dubious psychiatric assessment and, secondly, view a medical process (rather than a legal or administrative process) as a 'resolution' tool. I was told to go back to my APS agency to resolve my issues.

I subsequently made a formal complaint to Comcare about how appalled I was at its position given that it did not specifically address each of the grounds of my initial complaint and that it did not bother to find out what else had happened over the 5-month period since I had initially lodged my complaint. Comcare responded by saying that a senior officer will undertake a review of Comcare's decision.

Another 2 months later, I was informed that Comcare decided to intervene in my matter. I was relieved to hear that Comcare had finally made the right decision, particularly since Comcare's Regulations provide that Comcare will not intervene in a matter unless it is satisfied that an employer did not ensure a safe workplace for its employees. Naturally, I expected the next step to be a determination of sanctions to be made against my APS agency.

Unfortunately, my relief was short-lived. I was subsequently told by Comcare that despite its decision to intervene, it would be premature for Comcare to decide that my employer did not ensure a safe workplace for me. This contradicted Comcare's Regulations. Instead, Comcare wanted me to attend a tape-recorded interview for an investigation that was to start from scratch.

I was completely frustrated with Comcare's display of erratic conduct and mixed messages. I asked Comcare for its investigation procedures, to which Comcare never clearly responded. I later found out that Comcare does not have investigation procedures. Having heard of APS investigators' manipulation and intimidation techniques of complainants during interviews, I was not prepared to be interviewed alone in a room, being electronically recorded for any given-length of time, and having no procedural certainty. Victims of crime are not even subject to electronically recorded interviews with no procedural certainty. In the face of this, I tried to negotiate an alternative investigation method that was less intimidating and had more procedural certainty by asking for written questions that I could respond to. Comcare refused to move from its position and refused to provide me with an explanation as to why it was intervening before making a decision as to the safety of my workplace, all in direct contradiction to Comcare's Regulations.

After a total of 8 months and being pushed into a corner by Comcare, I could see that it was time to walk away from Comcare too, as its incompetence, delays, flip-flopping and lack of necessary procedures were all leading to my substantial detriment and a waste of my time.

The Australian Public Service Commission (APSC)

The APSC's response to my complaint was basically silence. I received an acknowledgement letter that they received my complaint and did not hear from them again. Over a 9-month period, I made numerous calls to the APSC to try to ascertain the status of my complaint. I was told by an officer of the APSC that they were very busy and were attending to other priorities. One cannot help but wonder how many other complaints the APSC had received about other APS agencies for it to be too busy to deal with my complaint.

At the end of 9 months, I informed a senior officer of the APSC that the amount of time the APSC had allowed to pass without addressing my complaint was unacceptable and that I was no longer interested in the APSC investigating my complaint. The senior officer's response was that they can choose to investigate my complaint regardless of whether or not I want the APSC to investigate it. I think this statement was made simply to protect the APSC against risk.

To date, I still have not heard from the APSC and I assume that my case has been lost in the system.

Overall Impression of APS Scrutineer Agencies

My experiences with the FWO, Comcare and the APSC demonstrate to me that these scrutineer agencies are essentially enabling victimisation of APS employees. Words cannot adequately describe how exhausting and demoralising it is to be left hanging from day to day, week to week, month to month by scrutineer agencies, and then discover in the end that these scrutineer agencies seem to exist more for the purpose of upholding the status quo in APS agencies rather than to genuinely assist complainants. I feel I have been fed a big lie about the purported checks and balances existing in our democratic systems. The scrutineer agencies I dealt with did not understand and follow their own procedures, used delay and frustration tactics to try to make me go away, paid lip service to legislation they were responsible for administering, and were staffed by individuals who were incompetent and had become entrenched in a culture of 'containing' complainants and their complaints.

My recommendation to anyone wanting to go down any review process with these scrutineer agencies is to expect a detrimental result and be prepared to take these scrutineer agencies to court if they do indeed create a detrimental result. If you do not have the ability and resources to take these scrutineer agencies to court and go all the way to the end, then do not bother approaching them, otherwise they will destroy you through the process of attrition and will ultimately triumph.

The APS scrutineer agencies need to take a fresh look at developing new methods in administering their legislative functions in a competent and efficient manner within their existing allocated resources, and work hard on changing prejudiced views held about complainants that have become entrenched in the culture of all APS agencies.