

Sarah, Vicki and Amanda's Story - Fair Work Ombudsman Wrongly Turned Us Away

Sarah's Story

My story is short and to the point, really. I had suffered victimisation by my APS agency as a result of complaining about sexual harassment by an older male colleague, which resulted in my resignation.

I called up the office of the Fair Work Ombudsman to seek their assistance. A young woman from the office of the Fair Work Ombudsman fielded my call. She seemed eager to get rid of me and quickly told me that the Fair Work Ombudsman could not assist me as the *Fair Work Act* does not apply to public servants. I naively believed this young woman and I naturally didn't pursue any legal action under the *Fair Work Act*.

Months later, I was astounded to find out that the *Fair Work Act* actually *does apply* to Commonwealth public servants. By the time I found out, it was too late for me to do anything and, regardless, I was not keen to return to seek help from an agency that employed incompetent and uninterested employees.

It is laughable that a Fair Work Ombudsman employee got such a basic jurisdictional issue wrong and I am deeply concerned about all of the other APS employees this Fair Work Ombudsman employee has wrongly turned away.

Vicki's Story

I worked for a Commonwealth department for around 1.5 years. I experienced sexual harassment from an new older male worker who also started appearing around my home (which my mother also witnessed) over a three-month period. I was only 26 years old at the time.

After finding out that other young women were also experiencing unsettling behaviours from this man, I decided to complain to my supervisor. My supervisor, who, myself and other female colleagues believed, always had an underlying misogynistic streak, behaved in a dismissive and disbelieving manner towards me and even tried to justify the man's behaviour by asking me 'Have you ever thought that maybe the guy is just in love with you?' Interestingly, my department, which employed over 5000 employees, did not have a sexual harassment policy or training in place at the time of my complaint.

My supervisor pressured me to confront my harasser, which I eventually succumbed to, but quickly regretted. My harasser vehemently denied everything, accused me of being a liar and insane, and came up with a bizarre accusation that I had breached the APS Code of Conduct in trying to stop the harassment. Naturally, I expressed anger at being attacked by a man who knowingly harassed me for so long, to which I was unjustly chastised for by my supervisor.

I tried to escalate the matter to our branch head, but the department's investigator insisted that I had to be interviewed by him (in fact he berated me over the phone so severely for my resistance to the formal path that I burst into tears). The investigator's interview turned out to be a set-up, a 'containment' strategy. Despite claims from the outset that the interview was a fact-finding exercise, it was really an interrogation that barely touched on the facts and was designed to paint

me as the wrongdoer by insinuating that I invited the behaviour and that I was mentally ill (despite the fact that I had no history of mental illness and my mental state was never questioned by the department before I made a sexual harassment complaint). My supervisor refused to second me to another job that I found and essentially said that when I come back to work, he was going to arrange for me to see a psychiatrist. This was outrageous victimisation... my supervisor and the investigator were hot on the old nut, slut and angry bitch defences that so many female sexual harassment complainants endure from scared employers. It was clear to me and my family that I had to get the hell out of there... my department had lost the plot!

Some months later, I decided to get legal advice. My lawyer said that I had an adverse action claim and suggested I call up the Fair Work Ombudsman, which I did. A young woman from the office took my call and I told her my story. She told me that the Fair Work Ombudsman could not assist me because the *Fair Work Act* does not apply to public servants. I said to her 'No... my lawyer said that it does apply to me, so why don't you go check what you have just told me with your supervisor?' The young woman did so and came back to tell me that I did indeed have access to the *Fair Work Act* as a Commonwealth employee, but since my case was one of unfair constructive dismissal, I had passed the 14-day legislative deadline and the *Fair Work Act* therefore no longer applied to me. I said to her 'No... my lawyer said that I had an adverse action claim which has a legislative timeframe well over the 14-day period for unfair dismissals, so why don't you go check that with your supervisor'. The young woman did so and came back to tell me again that I was right.

At that stage, I decided to not pursue my rights under the *Fair Work Act*, as I viewed the incompetence and disinterestedness of the Fair Work Ombudsman as a warning sign.

Having since found out that other Commonwealth employees have also been wrongly told by the Fair Work Ombudsman that the *Fair Work Act* doesn't apply to them, I am left wondering whether this is an issue of incompetence due to systemic poor training of officers or this is an issue of systemic corruption, that is, the Commonwealth protecting the Commonwealth.

Amanda's Story

During my time with a Commonwealth department, I developed a physical medical condition. I negotiated with my manager to purchase leave and to work a part-time week to try to manage the condition – this was for a period of 3 months. During this time, I noticed a marked change in the way that my manager treated me – I felt I was at the brunt of her hurtful put-downs, unnecessary micro-management (even though I had over 15 years experience in the public service), and undermining of my work through exclusion and misleading directions.

In the ongoing management of my health condition, my doctor recommended I continue working on a part-time basis and provided me with a supporting letter. I subsequently applied for an extension of part-time work. My manager responded to this request by letting me know that I would be unable to remain in my position and undertake it on a part-time basis (interestingly the person who replaced me works on a part-time basis). They provided me with three possibilities including a move within the department, a move within the APS or a voluntary redundancy. I was told to think about my options. During the next few days, I was offered a temporary position back in my old department for a period of 12 months on a part-time basis. My manager refused my request for a temporary transfer and said that I 'could always resign'. When I asked further questions about my options, these were ignored. When I pushed the issue, I was told again that my temporary transfer application had been declined and that there were no alternative positions for me within the department or the APS. At this point, with my health declining (mostly due to the stress I was

being put under), my position became untenable and I was forced to resign. I had to forgo my permanent position to protect my health.

I later put in a freedom of information request to my former department and found that all along I was to be given a voluntary redundancy even though I had not asked for one and even though we were told by the Executive that no one would be forced to take one.

After leaving, I turned to some organisations for support and information. I approached the Fair Work Ombudsman and was told that because I was an APS employee that the *Fair Work Act* did not apply to me. I am highly concerned that a scrutineer agency entrusted with the responsibility to reign in employer abuse could get such a simple legal right so wrong!