

## **Submissions in Response to Interim Report.**

### **The Selection Process for Commissioners to the Fair Work Commission.**

I have previously supplied submissions to the Productivity Commission inquiry into the Fair Work Act 2009 ("FW Act"). Those submissions remain unchanged.

The Productivity Commission interim report into the FW Act has raised concerns by some parties of perceived bias in relation to the decisions of some Commissioners of the Fair Work Commission ("FWC").

Those concerns are apparently based upon whether the Commissioners were drawn from the employee or employer side of the workplace relations equation.

The Productivity Commission interim report has raised issues of how the traditional processes for selecting Commissioners to the FWC should be abandoned and replaced by a system that selects Commissioners on pure merit, regardless of their background in the workplace relations community.

The present system for selecting Commissioners to the FWC has shown it to be lacking, or vulnerable, in relation to the appointment of the then Fair Work Ombudsman ("FWO") to the FWC in about 2013.

My submissions show how probity and other checks associated with the system of appointing Commissioners, has failed and must be called into question.

The then FWO had headed the Office of the Fair Work Ombudsman ("OFWO") during a period of extensive unlawful conduct in a small part of its' senior administration.

This involved events that had probably never been seen before in the Commonwealth's Public Service, where senior OFWO staff were able to use the public service agency head powers of the then FWO, to take revenge upon a small number of honest investigation staff of the OFWO, who had reported quite serious issues in regard to the security of information held by the OFWO.

Those in the senior ranks of the OFWO, who were using the public service agency head powers to cover up the previous unlawful conduct of themselves and their colleagues, involved the FWO and the OFWO into conduct that fell far short of what the Commonwealth and the community could reasonably demand of any employee of the Commonwealth.

Having that form of conduct that completely ignored workplace law, come from within the OFWO and at a level where it was being applied by senior OFWO staff who were acting as though they had the public service agency head powers of the then FWO, is concerning.

In defence of the then FWO, he probably fell victim to unlawful conduct created by senior staff in his Brisbane and Canberra offices, who were out to cover up their involvement in unlawful conduct.

The actions of the then FWO's delegate exposes an age old problem that occurs when a person holds delegations to act "in the shoes" of another and it is unclear when the person is doing things as a delegate and when they are not.

This can be addressed very simply by the delegate indicating "as delegate of ....." when exercising delegation.

There was very serious unlawful conduct in the senior ranks of the OFWO and it is more than likely that the then FWO's public service agency head powers were used as a weapon in events that saw many unlawful acts.

The then FWO's career in the FWC may be on the line as the result of unlawful conduct in the senior ranks of the OFWO, but honest employees of the OFWO, were put through hell, when the might and the power of the Commonwealth was corruptly channelled against senior level investigation staff, who had reported a massively serious issue.

The OFWO had suffered a major breach in its' computer based information security, that had left confidential record insecure for up to five months.

Significant components of that issue could be traced back to senior staff in the OFWO Brisbane and Canberra offices.

It is more than likely that there had been an attempt to corrupt the OFWO staff selection process.

A major breach in privacy and security affecting OFWO investigation staff had resulted from what was probably an attempt to corrupt the staff selection process of the OFWO, with confidential records for employees, being left insecure. Amongst those records were sham record affecting some staff.

It is then seen that the unlimited resources of the OFWO and then the Commonwealth, were applied against staff who had reported or identified how they had been affected by the privacy issue.

It is seen that the OFWO, along with one or more of the senior staff involved in breach of privacy issues, had ambitions upon receiving human resource management awards.

The OFWO and its' senior Canberra administration staff from the unit implicated in causing breach of privacy issues, engaged in sham events to "set up" witnesses and to divert attention away those responsible for unlawful conduct in the OFWO.

Governance measures in the Commonwealth's Public Service, should make it immune from such self-centred actions, of some who may wish to abuse power and position to cover up unlawful conduct, or to unlawfully attack witnesses.

Governance failed time and time again and multiple public service agencies have shown how governance becomes completely ineffective when it can be not only avoided, but seemingly "lawful" excuses being relied upon and accepted for failing to follow governance procedures.

Comcare told of how (in its' opinion) the Howard Government had legislated to allow it to accept excuses for failures to comply with governance obligations.

Failures in the OFWO were made all the more easier, when senior OFWO staff who were already implicated in unlawful conduct, were able to investigate matters that quite clearly involved themselves and their immediate colleagues.

The process reached quite sickening proportions, when those involved in callous, sham events, were able to use the public service agency head powers of the then FWO, as a vehicle in a very public campaign to discredit the good character of a few honest OFWO staff who found themselves pitted against a very corrupt system of administration in the OFWO.

It wasn't just the FWO and OFWO that failed, it was the whole Commonwealth.

For the past six years, the Commonwealth has demonstrated an almost comical degree of failure, showing how ludicrously simple it is for public service agencies to cover up unlawful conduct and to engage in sham events that will ensure that honest staff never again, report unlawful conduct.

That failure has not only been within the OFWO, but also the Commonwealth's workers' compensation agency Comcare and then the Australian Government Solicitor ("AGS").

Senior Brisbane and Canberra staff of the OFWO were involved in sham processes, where they changed around words of an OFWO administrative procedure and claimed those changes in wording, made it unlawful for OFWO staff to report breaches of Commonwealth privacy laws in the agency, including reporting sham "employee records" coming from within the Brisbane office of the OFWO.

The OFWO told of how some person who wished to remain anonymous, informed it of the imaginary, but very convenient "law".

Senior OFWO staff conducted secret sham "investigations" to "find" witnesses who had reported the breaches in privacy law affecting the OFWO, had breached the secret, imaginary "law" they had made up.

Senior OFWO staff relied upon their "findings" of witnesses having breached their secret, imaginary "law", to bring further secret and equally unlawful proceedings under public service law, before setting out to publicly humiliate and defame witnesses in front of the OFWO.

Everything done by senior OFWO staff, was unlawful, including those who had relied upon the public service agency head powers of the then FWO, to make extremely serious allegations against the good character of witnesses, was unlawful and a disgrace to everything the FWO and OFWO should have stood for.

When an ongoing campaign of intimidation against me eventually caused me serious illness and a claim upon workers' compensation, the Commonwealth's Comcare workers' compensation agency Comcare, showed the ease with which the Commonwealth's workers' compensation laws could be used against those who report unlawful conduct that is occurring in high levels of the Commonwealth Public Service.

Comcare told of how I could be denied workers' compensation for having breached a secret imaginary "law" that senior OFWO staff had made up.

The Comcare workers' compensation process revealed a Comcare and public service scam that is directed against employees of the Commonwealth who report unlawful conduct.

As was the case in the OFWO with its' secret imaginary "law", that Comcare scam is made all the more easier to apply, with Comcare and its' staff acting at appallingly inept standards of governance, skills, abilities and common sense.

Similar comments have to be directed at the AGS, where the AGS joined with Comcare and the OFWO and showing how easily misconduct or corruption could be covered up in the Commonwealth's Public Service, when the Commonwealth quite obviously lacks the governance, skills and abilities to protect itself from misconduct or corruption.

While those failures of the Commonwealth were obviously directed at a small number of OFWO staff who had come up against a corrupt and very incompetent system, the ultimate victim of so much unlawful conduct is quite clearly the then FWO and the OFWO, where issues that could have been resolved years ago, are still present.

In matters involving the OFWO, Comcare and AGS, it becomes difficult to identify the boundaries between misconduct, corruption, incompetence and outright stupidity, where those agencies told of how the OFWO had suffered a massively serious information security breach that lasted up to five months. Sham OFWO "disciplinary" proceedings were directed at the staff who had reported the matter.

Those sham “disciplinary” proceedings had been launched by those implicated in causing the long running breach in employee privacy and security affecting key investigation staff.

The then FWO had headed the OFWO during a period in which the OFWO was involved in multiple breaches of Commonwealth privacy law, along with multiple contraventions of the FW Act adverse action protections.

Those FW Act adverse action matters were disturbing in nature, where OFWO staff were viciously and unlawfully attacked for having reported massively serious privacy and security issues that faced what should have been a high level, secure workplace relations compliance agency.

Several senior OFWO were involved in conduct that was criminal in nature, supplying criminally false information within the OFWO and then to Comcare and the AGS.

The OFWO was implicated in further contraventions of the FW Act adverse action protections, in encouraging Comcare to block workers’ compensation protections for any OFWO staff who suffered illness or injury as the result of the OFWO campaign of intimidation against witnesses.

Comcare should have also faced prosecution under the FW Act adverse action protections, along with more serious proceedings, where Comcare staff became involved in a matter coming out of the OFWO, where there were quite extreme levels of deceit and for reasons of incompetence or arrogance, Comcare staff willingly became involved in the unlawful conduct coming from within the OFWO.

The OFWO had applied sham proceedings against witnesses, that were very similar in nature to what was seen in the now infamous Godwin Grech “utegate” saga against the then Prime Minister.

It would be thought that the Commonwealth would have learned from “utegate”, but it quite clearly hadn’t.

It is also quite concerning to see that closely associated with “utegate” style of proceedings, the OFWO relied upon allegations that caused the Royal Commission into Trade Union Governance and Corruption to make quite scathing comments in relation to the CFMEU.

The Royal Commission said of the CFMEU:

*Those who speak out about union wrongdoing become the subject of baseless slurs and vilification.*

That is exactly the same tactic that senior OFWO staff applied in relation to staff who had reported a major breach in privacy and information security.

Comcare and the AGS turned that tactic into an art form.

### **Differences in the Application of the FW Act Between the Commonwealth and the Rest of the Community.**

The present FWO recently took prosecution action against a Trade Union in the Federal Court matter of the *Fair Work Ombudsman v the Maritime Union of Australia*

That matter should raise concerns as to the way in which the Commonwealth applies the FW Act to itself and the way in which it applies the FW Act to the rest of the community, including Trade Unions.

In the Maritime Union matter, there had been a stop work event on the Western Australia waterfront, where a small number of employees did not stop work.

The Maritime Union and one of its' officials distributed posters that named the employees and called them scabs.

The Maritime Union and its' official were ordered to pay penalties and damages orders totalling \$215,000.

The damages order were in relation to the emotional distress suffered by the named employees.

In contrast, the OFWO had suffered a massively serious breach in privacy and security affecting its' computer network, which the OFWO was said went on for up to five months.

Several senior level investigation staff of the OFWO Brisbane office identified that something was seriously wrong with the security of confidential information held by the OFWO.

They faced a "brick wall" in reporting the matter. One report got "lost" but in reality, was probably used as the basis for a sham complaint against witnesses.

In "utegate" fashion, a report made using the dedicated OFWO / DEEWR reporting system, conveniently "failed" and that too was allegedly "lost".

OFWO staff had their Trade Union act on their behalf and visit the Canberra office of the OFWO.

Senior OFWO staff were able to access and use the highest level of resources to conduct secret, unlawful and obviously sham proceedings against witnesses, before secretly distributing documents and emails throughout the OFWO.

Events within the OFWO, were directed at Trade Union members who had faced a brick wall in the OFWO, in reporting what was obviously a very serious issue.

The OFWO didn't call witnesses "scabs" or anything like that.

The actions of the OFWO were probably far worse than that.

The OFWO set out to discredit the good character of witnesses who included senior level investigation staff like myself, who had many years unblemished record as investigators and in several cases, including myself, prosecutors before the Courts.

The OFWO distributed documents where it told that I had breached an administrative procedure that prevented me from reporting breaches of privacy and other matters.

The OFWO could not make an administrative procedure to prevent me from reporting breaches of Commonwealth privacy law.

The OFWO had changed words in what was already a fatally flawed administrative procedure.

OFWO "administrative investigators" who were acting in reliance upon what they claimed were powers given to them by an administrative procedure, were actual acting ultra vires Commonwealth privacy law.

A small army of Commonwealth public servants over the past six years, has failed to identify how the administrative procedure could not do what the OFWO claimed, or that the words had been unlawfully changed, or that the words in their correct form, applied to other things entirely.

The OFWO then claimed I must have hacked into the secure section of its' computer network to access the material that I had reported as insecure.

There was an unknown amount of what had previously been confidential material, that had been left in an insecure state on the OFWO computer network.

When matters were reported, OFWO staff had downloaded that insecure material onto CD's and those CD's had been hidden away.

The OFWO had made accusations of me having routinely hacked into its' secure computer network, but did not enquire how I did what I am alleged to have done.

The OFWO claimed that I and about six other OFWO staff who had either identified or reported breaches of privacy, had breached four elements of the APS Code of Conduct.

That allegation was stupidity and something obviously designed to discredit the good character of employees.

To have six or more investigation staff of the OFWO each being accused of four breaches of the APS Code of Conduct, would suggest a state of anarchy in the investigation ranks of the OFWO.

Again, there was no sense of urgency in anything done by the OFWO.

The OFWO had levelled incredibly serious allegations against six or more staff, that relied upon the use of the then FWO's public service agency head powers.

Everything that had been done by the OFWO and those acting under the then FWO's agency head powers, was a calamity in law and if the allegations were genuine, the OFWO and its' Canberra human resource management team, had made such a horrendous mess of proceedings, that everything was fatally flawed in law.

The OFWO publicly threatened me with severe disciplinary proceedings and termination of my employment.

The OFWO had to prove its' allegations, which were fatally flawed in law.

The OFWO had a senior Canberra human resource staff member review the matter.

The person who conducted that review was a senior staff member whose name was linked to the breach of privacy matters.

The OFWO withdrew its' allegations and proceedings, when it "found" its' computer reporting system had allegedly failed and how I had reported serious issues some four months before.

The Trade Union had of course visited the OFWO in relation to breach of privacy matters, during that four month period.

The FWO and OFWO did not have any basis in law to bring any form of proceedings against staff who had reported that massively serious breach in privacy and security.

I have provided attachments explaining events within the OFWO and Comcare.

## **Wider Unlawful Conduct In the Commonwealth Public Service**

The Productivity Commission will see that events within the OFWO, “dovetailed” into much wider unlawful conduct in the Commonwealth’s Public Service, with Comcare showing how it is a very simple case to set up those who report unlawful conduct that perhaps the Commonwealth does not want to know about.

Comcare has told of how it is a simple task to have the employee who reported unlawful conduct, denied workers’ compensation protections, if episodes of bullying and harassment cause them illness or injury.

The Productivity Commission may come to share my view that serious questions have to be asked of the Comcare system of workers’ compensation and how easy it is for less than honest agencies of the Commonwealth’s Public Service, to rely upon the shortcomings in the governance, skills and abilities of Comcare, to be able to “legally” bully and harass witnesses who report unlawful conduct and then have them denied workers’ compensation protections.

### **The Effects Upon the FWC.**

I knew the then FWO as an honourable person and I would have great difficulty in accepting that he would have knowingly become involved in such grubby events within the senior ranks of the OFWO.

It is more than likely that the then FWO is just as much a victim of the unlawful and irresponsible conduct in the OFWO, as were several senior level investigation staff who paid such a heavy price for having the courage and the concern for the Commonwealth and the OFWO, to step in and report issues which had significant implications for the integrity of OFWO operations.

Regardless of what, if any role the then FWO played in unlawful conduct in the senior ranks of the OFWO, he has been left ultimately responsible for conduct within his agency that was aggressive and outrageous to the extreme.

In a further example of that outrageous and aggressive conduct in the senior administration of the OFWO, I accepted an offer of redundancy, after being faced with an incredibly flawed workers’ compensation process involving Comcare and the OFWO.

The OFWO human resource team made another mess in relation to the redundancy process, where they purportedly made me redundant, but did not do what was required in law to lawfully terminate my public service employment.

The OFWO did not pay about a day’s annual leave which records showed was owing.

I made several attempts to have the OFWO correct errors which created incredibly serious issues in law for me and the OFWO, as until the present FWO and the OFWO, do what is required in law, I am still technically employed by the OFWO.

I discussed this with senior OFWO human resource staff on several occasions, including when it sought to pay my workers’ compensation claim from its’ own funds, when the Comcare matter was being set down for trial in the Administrative Appeals Tribunal.

A person claiming to be from the OFWO came to my home about six weeks after that meeting and made threats about what the OFWO would do, if I did not sign a document promising to “walk away” from having the OFWO correct its’ errors.

The person came to my home a week after we had been affected by the Brisbane flood of January 2011.

Our home wasn't too badly affected by flooding, but my wife and I spent two weeks living in an open carport and a car.

Our home faced into ten metre deep floodwaters, which caused massive destruction to neighbouring homes.

How that woman could come to my home and make threats at that time, defies all faith in humanity.

That has been my final contact with the OFWO, but it was also a very significant event.

I am almost certain that the person who came to my home was not an OFWO employee and was probably just another chapter in senior Brisbane and Canberra staff making up the rules to suit themselves.

Knowing the then FWO, I am certain that he would not have been involved in, or sanctioned that event.

The FWC finds itself the final victim in a series of events where so many things in the Commonwealth failed.

The FWC now finds itself directly linked to massively unlawful conduct within the Commonwealth, that was directed against staff of the OFWO, who had reported so much unlawful conduct.

This is clearly contrary to all things the FWC stands for.

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Attachment 1 The OFWO.

Attachment 2 Comcare



## **Attachment 1. The OFWO .**

The OFWO was the victim of major breaches in computer based privacy and security failures, when it was first formed in 2009.

For reasons best known to those involved, senior human resource management staff of the OFWO Canberra office, had duplicated an unknown amount of confidential employee records and placed those duplicate copies on the insecure part of the OFWO national computer network.

Anybody in the OFWO could access the unlawful duplicate copies of previously confidential records relating to key investigation staff.

The investigation staff affected were involved in some of the highest level of compliance operations.

The breach in privacy also identified how a senior staff member of the Brisbane office had been involved in writing secret, sham “reports” on a number of staff.

The breaches in privacy were to last up to five months.

Brisbane investigation staff noticed an inconsistency in the security of information more than two months after the breach in privacy had first commenced.

Brisbane investigation staff noticed new versions of old documents and those new version had been made by someone other than the original author. The breaches of privacy were first discovered by investigation staff thinking that the contents of records that related to them, may have been unlawfully altered.

In that process, it then became obvious that staff could access confidential records for other staff.

An urgent verbal report to a Brisbane deputy director went unheeded.

It is more than likely that a later complaint from somebody “who wished to remain anonymous”, within the senior ranks of the Brisbane office, was based upon information supplied to the Brisbane deputy director.

An urgent report to the joint OFWO / DEEWR computer based privacy complaints reporting system, was allegedly “lost” when the system “failed”.

When there was no response by the OFWO, Brisbane based staff who had reported matters, then enlisted the assistance of their Trade Union and had the Canberra office of their Trade Union personally visit the Canberra office of the OFWO.

That visit was in relation to privacy and security issues that not only affected the privacy and security of Union members, but the privacy and security failures potentially affected the integrity of the FWO’s compliance operations.

There were the issues of genuine records of the OFWO being in an uncontrolled environment. There were also issues of non-genuine records in that same environment.

Nobody knows what information was leaked out of the OFWO, or how it was used after leaving the OFWO.

There was the risk of information falling into the wrong hands and pressure being put on investigators to make certain decisions, under threat of records being publicly exposed.

This was particularly the case for staff affected by sham records.

The OFWO assured the Trade Union that privacy issues had been corrected.

It was later seen that highly sensitive information was still insecure after that time.

Highly sensitive information turned up in a place where it quite clearly should not have been, raising issues of whether sensitive information was being placed under false names, to make it less obvious to leak out of the OFWO.

It was later revealed that senior Canberra staff had simply downloaded some of the offending insecure information onto CD's and those CD's were hidden in the Canberra office of the OFWO.

This created an enormous security issue, as the CD's could have been taken out of the OFWO and copied.

The OFWO told of how it then received a complaint from a person who wished to remain anonymous, (allegedly) telling how those who had reported breaches of privacy, had breached an OFWO administrative procedure and the APS Code of Conduct.

I am unsure of what the document contained, as the document has never been produced by the OFWO.

A number of people have told of what the document contained, but this has highlighted the enormous evidentiary failures of the Commonwealth, when public service agencies purportedly acting in law, simply accept what someone tells them, is on a document.

The OFWO told of how document came from the senior ranks of the Brisbane office of the OFWO.

The person who wished to remain anonymous was most probably a senior Brisbane manager who was either involved in, or had knowledge of the writing of secret sham reports on various staff.

The OFWO told of how the "anonymous complaint" went through several hands.

The OFWO told of how the "anonymous complaint" ended up in the hands of senior staff from the Canberra human resource management office, that was implicated in causing the breaches in privacy.

The OFWO Canberra human resource management team conducted a secret and unlawful series of "investigations" that lasted nearly two months.

Those masquerading in the role of administrative investigators, ignored mandatory procedural and governance obligations and their actions became fatally flawed in law from the first moments.

Everything done past that time, was done without lawful authority and an obscene waste of public funds.

Senior staff whose names were directly linked to the breaches of privacy, were allowed to conduct secret and unlawful "investigations" against witnesses, based upon that "anonymous complaint".

There were blatantly obvious ethical and integrity issues in senior OFWO human resource management staff being involved in the investigation of matters that involved themselves, or their colleagues.

This was made all the more concerning, when it was later seen that the OFWO Canberra human resource management unit and some of its' staff, were seeking national recognition under human resource management awards and OFWO human resource management staff were possibly seeking to cover up conduct that would be detrimental to their quest for awards.

Senior Brisbane and Canberra staff put in place failures in law that firmly place the lack of skills and abilities of multiple Commonwealth public service agencies in perspective.

Senior Brisbane and Canberra staff have told of how staff of the OFWO had breached the OFWO administrative procedure "Protocol for the use of information" when they reported breaches of privacy and security.

Privacy matters are regulated by Commonwealth privacy laws and an OFWO administrative procedure could not over-rule, or seek to alter the application of Commonwealth law in the agency.

An OFWO administrative procedure could not purport to make it unlawful for OFWO staff to report unlawful events that directly affected them.

For that failure in such fundamental principles in law, to occur in such a senior level of the OFWO, is deeply concerning.

To see that same failure in fundamental principles in law to spread through Comcare and then the AGS, has truly frightening implications for the Commonwealth.

The administrative procedure contained a host of drafting errors and could not be applied by the OFWO.

Senior Brisbane and Canberra staff have told of how they came to the conclusion that by changing around words of a part of the administrative procedure until they came up with what they "considered" the words meant.

Adding or removing words in a document is not a valid element in the Rules of Interpretation and is not something recommended when taking matters before the Courts, particularly when the Judge or Magistrate is one who wears half rimmed glasses on the tip of their nose and looks over them, to use words you have never heard before, to dispense lessons in law.

Once again, such failures in basic principles in law by seemingly specialist agencies, have immensely serious implications for the Commonwealth.

The OFWO could not make an administrative procedure that purportedly interfered with the operation of Commonwealth law. The draftsperson who made the administrative procedure did not purport to alter the operation of Commonwealth law.

The clause that was unlawfully altered by senior staff from the Brisbane and Canberra offices of the OFWO, addressed other issues entirely.

The OFWO told of how staff had allegedly breached a clause of the administrative procedure named "The APS Code of Conduct".

The OFWO has told that if it proved a breach of that clause, it could bring proceedings under the APS Code of Conduct, that formed part of the Public Service Act.

The OFWO could not create such a linkage.

It was quite obvious why that clause had been chosen, as senior OFWO staff were seeking to “set up” and discredit witnesses, claiming they had breached the APS Code of Conduct.

It is a testament to the incredible incompetence of those who were acting under the public service agency head powers of the then FWO, a multitude of senior OFWO staff, Comcare decision making and legal staff, AGS legal staff and legal staff of a private law firm assisting Comcare, showed that they all came to grief on such basic issues.

The OFWO could not investigate serious breaches of Commonwealth privacy law that had occurred within its’ agency and it could not apply an administrative procedure that the OFWO claimed, made it unlawful under public service law, for OFWO staff to report the breaches of privacy law that affected the OFWO.

Senior OFWO Canberra human resource management staff who claimed they were conducting investigations into privacy related matters, were acting ultra vires Commonwealth privacy law.

Senior OFWO staff then constructed a document, which they secretly distributed throughout the senior ranks of the OFWO.

That occurred before those affected by the unlawful actions of the OFWO, were made aware of the sham actions.

The document revealed how senior OFWO staff had acted ultra vires Commonwealth privacy laws, to “find” that witnesses had;

- Breached an administrative procedure that had no application in privacy law.
- Had hacked into the secure section of the OFWO national computer network, to report how documents in that secure part of the OFWO national computer network, were “insecure”.
- Had breached four aspects of the APS Code of Conduct, for having reported breaches of privacy law. This included claims that I had wasted Commonwealth resources by reporting the breaches of privacy that had affected the OFWO.

I, along with others, were publicly threatened with dismissal.

The document had been signed by a person who was acting in a senior role.

The occupant of the position was implicated in causing at least some of the breaches in privacy

Several senior staff in Brisbane and Adelaide were ordered by a Canberra colleague, to distribute emails to many other staff, telling how those who had reported breaches in privacy, had breached the imaginary “law”.

The Canberra staff member’s name was also linked to the breaches in privacy that staff had reported. There were enormously serious issues in regard to the actions of that person.

Senior Brisbane staff joined in with the actions commenced by their Canberra colleagues and engaged in quite serious acts of verbal abuse and threats against witnesses.

In one instance, I contacted the then FWO and had him order a senior Brisbane staff member to cease their verbal abuse of another staff member, who was suffering significant distress. I was extremely concerned for the person’s state of health.

Issues associated with that event went on to demonstrate the incredibly serious failures in the OFWO processes.

The senior Brisbane staff member had a bundle of documents as “evidence” that “proved” the employee had breached a “law” that did not exist.

The “evidence” of the OFWO had been obtained unlawfully, by those masquerading as administrative investigators.

The senior Brisbane staff member had no lawful right to access than unlawfully obtained “evidence”.

The OFWO had engaged in an incredibly incompetent and unlawful process, where the FWO and OFWO did not produce any form of “evidence” to those accused of wrongdoing, to prove the OFWO claims.

Others within the OFWO were running around with “evidence”, which apart from the host of other failures of the OFWO, had been obtained unlawfully and couldn’t be used in law.

If this had been a genuine investigation of the OFWO, things like unlawfully obtaining “evidence” and others running around showing others, would have fatally flawed the OFWO proceeding in law.

It was more than obvious that senior OFWO staff had callously set out to cause emotional distress to staff who had reported unlawful conduct.

The OFWO withdrew allegation about six weeks later, claiming it had “found” lost documents and that the proceedings it had conducted were made in error.

The OFWO was to claim that if it did not “lose” documents, it would not have done what it did.

That is of course speculation and inadmissible.

The OFWO had done many things in reliance upon an anonymous complaint” and a “law” that someone had made up. Everything in those events were unlawful and incompetent in the extreme.

There was no excuse in law for the OFWO and those who had acted so unlawfully.

The OFWO told of how the FW Act adverse action protections for employees going to their employer with a complaint or enquiry, could be avoided by simply “losing” the complaint, then “finding” it after the OFWO had engaged in incredibly unlawful and incompetent processes against the employee.

The failures in governance of the OFWO were sickeningly obvious, where the review of the actions of the OFWO, were conducted by a senior Canberra staff member whose name was linked to breach of privacy matters that staff had reported.

The OFWO had no grounds in law to bring any form of proceedings against those who had reported unlawful conduct.

The actions of the OFWO were an almost certain contravention of the FW Act adverse action protections.

Several senior OFWO staff had engaged in criminal conduct and should have faced criminal prosecution.

## **Other Unlawful Conduct Involving the OFWO**

A senior OFWO staff member involved herself in criminal conduct, supplying criminally false information to Comcare, where she sought to influence Comcare to deny workers' compensation protections for any OFWO staff who suffered illness or injury as the result of the OFWO attempts to cover up its' unlawful conduct.

The criminally false information was that I had breached an administrative procedure that purportedly made it unlawful for me to report the breach of privacy and security matters.

There was other fatally flawed information supplied to Comcare, with hearsay, references to "evidence" that hadn't been produced, "evidence" that had been obtained unlawfully, "investigators" acting without lawful authority after having ignored mandatory procedural obligations, speculation etc.

That same criminally false and otherwise inadmissible information was also given to the AGS.

The person involved herself and the OFWO in further contraventions of the FW Act adverse action protections, in seeking to unlawfully influence Comcare to block workers' compensation protections for OFWO staff.

The OFWO involved itself in further contraventions of the FW Act, when I simply gave up and accepted an offer of redundancy, after having faced an incredibly inept workers' compensation process involving the OFWO and Comcare.

The OFWO blundered in that redundancy process.

The OFWO told of how it must have "lost" the notice that was required to lawfully terminate my public service employment. Until that notice is supplied, I am still lawfully employed by the OFWO.

The OFWO did not pay just under a day's annual leave.

The OFWO continued its' same unlawful and incompetent culture, when I sought to have it correct matters that have immensely serious implications in law.

I had met with two senior OFWO human resource management staff and their AGS representative.

The OFWO offered to pay my workers' compensation claim from its' own funds, provided I agreed the OFWO had not acted unlawfully.

The OFWO showed its' underlying culture, when a person claiming to be from the OFWO, came to my home about six weeks after that meeting and made threats about what they would do, if I did not walk away from having the OFWO correct the serious blunders in law, associated with the redundancy process.

The OFWO hadn't lawfully terminated my public service employment and I technically remain an employee of the OFWO until my employment is lawfully terminated.

That can only occur from the date the OFWO eventually provides me with the written notice.

This has quite serious implications for me, as I am now retired and I really want these forms of issues removed from my life in relation to superannuation and other benefits for retired persons.

The person making threats in relation to the failure to lawfully terminate employment, came to my home a week after our home had been affected by the Brisbane flood of January 2011.

My wife and I spent two weeks living in emergency accommodation in a car and an open carport.

My wife and I spent nearly 12 months living in a “ghost town”, until neighbouring homes were repaired.

Little more can be said of the culture of the OFWO administration team,

## **Attachment 2 Comcare.**

Comcare has told that I am not entitled to workers’ compensation protections.

Comcare has relied upon a flawed interpretation of the Howard government workers’ compensation laws that related to “*reasonable administrative action etc*”.

Comcare has told of how it was simple process for the Commonwealth to bully and harass employees of the Commonwealth who report unlawful conduct.

Comcare has told of a “scam” that allows it to deny workers’ compensation protections for employees of the Commonwealth who have reported unlawful conduct that the Commonwealth, or perhaps some within the Commonwealth, would prefer were not reported or exposed.

The Comcare workers’ compensation scam has five components and targets employees of the Commonwealth who report unlawful conduct.

A public service agency that wishes to take revenge upon an employee who reports some unlawful issue, could simply;

- Lose any employee reports of unlawful conduct.
- Come up with sham, unsubstantiated allegations against a witness
- Bully and harass the witness, with the intention of causing emotional distress, illness or injury.
- Withdraw the sham allegations, when sufficient injury has been caused to the employee.
- Have Comcare deny the witness workers’ compensation protections.

Comcare has told of how the Commonwealth could simply do what the OFWO had done and make up all sorts of outlandish allegations against those who report unlawful conduct, not put one shred of evidence forward to support the allegations and then simply withdraw the allegations at some later date.

Comcare has told that even in cases where its’ employees had quite obviously reported very serious issues in law, they were still vulnerable to attacks by both their employing agency and by Comcare.

The elements of the Comcare scam is seen in one of its’ decisions, where the decision maker wrote:

- (1) *In September 2009 you complained as you had found a document relating to you in the print room. Your complained to the privacy mailbox, the CPSU and the Deputy Director in Queensland.*
- (2) *You found that the document was insecure on the system and there were about six other documents referring to you which were similarly insecure. Other staff were affected in the same way.*

- (3) *You have since been told that there was a mishap on the system in about July 2009 which removed the security protections on documents perhaps until December 2009.*
- (4) *In November the FWO commenced disciplinary action against you for possibly accessing the documents you had requested be removed from unrestricted viewing.*
- (5) *The FWO alleged you had breached the "Protocol for the use of information". It was then suggested that you breached the APS Code of Conduct and you risked dismissal as a result.*

The Comcare decision maker went on to say in various parts of their decision;

- (6) *The FWO informed senior staff of the allegations which two of those staff considered to be so serious they sent an email warning others not to do what you had done.*
- (7) *On 4 January 2010, Ms ... contacted you to discuss and seek clarification on the issues raised and the outcome you were seeking.*
- (8) *Ms ...wrote to you on 6 January 2010 noting that you had sent an email on 21 September 2009 titled "Privacy complaints and queries". It is noted that this went to a DEEWR mailbox and was not emailed back to the FWO.*
- (9) *Ms ... wrote "it is clear to me that in sending that email you were attempting to alert management to a number of documents that were confidential having been found in an unsecured state. The email clearly indicated your concern in relation to this matter and in so doing shows that there was never any case for you to answer in relation to this matter."*
- (10) *Ms ... further notes "It is clear that this matter escalated unnecessarily and could have been resolved much earlier".*
- (11) *On 23 November 2009, Ms...a/g Executive Director Human Resources wrote to you after receiving information that you had accessed documents not related to your official duties. The letter from Ms ...states that before she decides whether or not to undertake a formal investigation into your actions, she is asking you to explain your actions. Ms .... writes that this matter may result in possible investigation into breaches of the Code of Conduct and sets out the elements of the Code of Conduct that may be considered and possible sanctions should a breach be determined.*
- (12) *I consider it was reasonably open to your employer to write to you and request you provide an explanation of your actions in relation to accessing documents on the system not required for your work. I also consider it reasonably open to your employer to explain the possible actions and sanctions that may be taken should an investigation take place and you be found to have breached the code of conduct.*
- (13) *I note that when the Agency was eventually made aware of your email originally sent on 21 September 2009, the matter was finalised with no further action taken.*
- (14) *Therefore I am satisfied on the evidence before me that your injury resulted from reasonable administrative action taken in a reasonable manner*
- (15) *I am satisfied that you have sustained a psychological injury and that this condition was significantly contributed to by your employment. However, I am also satisfied that your injury resulted from reasonable administrative action taken in a reasonable manner*



*(16) Accordingly, I have disallowed your claim for compensation under section 4 of the Act.*

From that decision, it can be seen that the Comcare scam was directed against employees of the Commonwealth who report unlawful conduct in the Public Service.

In paragraph 1, 2 & 3, it is blatantly obvious that the then FWO and the OFWO had a major failure in relation to security of confidential information it held upon its' computer network. The OFWO had acted in an arrogant and unlawful manner when faced with reports and evidence of major breach in its' information security.

The OFWO probably fell into that failure by allowing those who were implicated in causing the breach in privacy, to "investigate" matters that quite clearly referred to their own unlawful conduct, or the unlawful conduct of their colleagues.

The OFWO admitted that it suffered a major breach in privacy in paragraph 9.

Comcare has claimed the employee reports of privacy failures were "lost" in paragraph 8.

The OFWO shared a computer network with DEEWR and had a shared system for reporting breaches of privacy occurring on its' shared computer network. The OFWO has told of how the arrangement between DEEWR and the OFWO, in relation to privacy breaches, fell into disrepair and how that system probably did not work anymore.

Paragraph (1) told of how there had been multiple reports of that breach of privacy.

Comcare has told of how some form of complaint was made against those who had sought the assistance of their Trade Union in having the FWO and OFWO respond to very serious and long running breach of privacy issues

The OFWO and Comcare have not produced any evidence to show what form that complaint took, or what "evidence" it contained.

Comcare staff told of how they relied upon what they were told the document contained. A piece of "evidence" must be produced into evidence for it to be spoken about.

Comcare could not talk about things it had not seen.

That complaint was made against six or more staff and there are issues of how anybody else, without access to system administrator powers on the computer network, would possibly know what documents a person had accessed upon the computer network.

Any "evidence" of the OFWO, had been obtained unlawfully.

The OFWO told of how it had recorded the number of times I had accessed an insecure record that related to me, in my attempts to determine if the record had been unlawfully altered.

Comcare relied upon a criminally false allegation in paragraph 11, where it spoke of the a/g Director Human Resources claiming I had *accessed documents not related to your official duties*.

They were unlawfully changed words within an administrative procedure. The words in their correct form referred to something entirely different.

The administrative procedure had no application to the matters in hand.

The Comcare decision maker provided a further variation of those words in paragraph 12, where they spoke of *accessing documents on the system not required for your work*.

Privacy issues, particularly those of the massive magnitude of those affecting the OFWO, are dealt with under Commonwealth privacy law and it did not matter what words may have or have not been in OFWO administrative procedures, as they had no application.

Paragraph 11 should raise immense concerns in relation to the OFWO and Comcare.

In paragraph 3, Comcare had spoken of how the OFWO had suffered a breach in its' computer based privacy that extended for up to five months and was reported by me at nearly three months.

In paragraph 9, Comcare told of how the Director of the OFWO Human Resource team had admitted that I had reported documents of a confidential nature that were in an insecure state on the OFWO computer network.

In paragraph 11, Comcare spoke of how the acting Director of the OFWO Human Resource team had commenced disciplinary action, because I had reported what I did.

The person was acting ultra vires Commonwealth privacy laws and had no rights whatsoever to commence the actions she did.

A small army of public servants had claimed an OFWO administrative procedure should make it unlawful for me to report incredibly serious and long running breach of its' privacy and security.

Comcare told of how those actions were commenced because I had allegedly breached a "law" that a senior OFWO staff member had made up and quite clearly, a host of other commonwealth employees were incapable of identifying as being false.

Comcare then told of how the acting director of the OFWO Human resources then identified elements of the APS Code of Conduct she "considered" may have been breached as the result of me having breached a "law" that did not exist.

The APS Code of Conduct is a section of the Public Service Act and an allegation of a breach of the APS Code of Conduct is an allegation of a breach of Commonwealth law, that needs to be proven to the balance of probabilities.

A public service agency requires credible evidence of an element of the APS Code of Conduct, having been breached, to commence proceedings.

If proceedings are to be taken under the APS Code of Conduct, they need to be taken lawfully and in compliance with documented procedures.

That clearly did not happen.

The OFWO had commenced APS Code of Conduct proceedings without reasonable cause.

Comcare did not have one shred of evidence placed before it, to justify OFWO proceedings under the APS Code of Conduct.

The OFWO had raised incredibly serious allegations of four sections of the APS Code of Conduct having been breached.

The “evidence” relied upon by the OFWO alleging extensive unlawful conduct on my part, had been written by the same person who had written paragraphs 9 & 10. Ie

*(9) Ms ... wrote “it is clear to me that in sending that email you were attempting to alert management to a number of documents that were confidential having been found in an unsecured state. The email clearly indicated your concern in relation to this matter and in so doing shows that there was never any case for you to answer in relation to this matter.”*

*(10) Ms ... further notes “It is clear that this matter escalated unnecessarily and could have been resolved much earlier”.*

The Comcare decision maker wrote:

*Based upon the information provided by you , Ms ....determined that a Code of Conduct investigation was not required.*

In law, the burden for arriving at evidence of alleged wrongdoing falls with the accuser and the accused is not obliged to say or provide anything to the accuser.

The OFWO had made four massively serious allegations under the APS Code of Conduct and those four allegations and according to the OFWO and Comcare, those allegations could simply go away, when the OFWO found something that had been in existence for four months.

In another part of their decision, the Comcare decision maker said

*Ms ... wrote to you in relation to a preliminary assessment, not a Code of Conduct Investigation.*

The document was titled “Alleged Breaches of the APS Code of Conduct”.

The Comcare decision maker went on to say:

*The preliminary assessment was conducted to determine the facts of the matter and if any action needed to be taken,*

This contradicts with paragraph 6, where Comcare told of how the OFWO had informed senior staff and two had considered matters to be so serious, that they emailed others and warned then not to do what I had done.

In paragraph 10, Comcare told of how the OFWO conceded matters *had escalated unnecessarily*

In paragraph 8, Comcare told of how the OFWO “found” an email report of the breach of privacy I had sent nearly four months earlier.

Comcare said in paragraph 13, that the OFWO withdrew all proceedings, when it conveniently became aware of the urgent breach of privacy report I had sent, some four months previous.

Even if the OFWO had “found” what it claimed to have “lost” that did nothing to alter the fact of the unlawful conduct involving the OFWO.

Apart from other issues in evidence, Comcare could not speculate that the OFWO would have done things differently. Comcare had to rely upon fact.

In paragraph 14, Comcare said it was “reasonable administrative action etc”, based upon the OFWO allegedly “finding” a document, which in reality, it did not matter if the document was lost, found, or somewhere in between.

Comcare spoke of matters that occurred in late November 2009.

The injury leading to the workers' compensation claim, occurred in late January 2010.

I had suffered a number of quite disturbing comments in that two month period.

A subsequent re-consideration decision of Comcare highlighted the extreme lack of skills of Comcare in relation to privacy law, where the decision maker told of how an anonymous complaint had been made against me, alleging I had breached the APS Code of Conduct, for having breached words in an administrative procedure that did not exist.

*The documents in question were confidential documents relating to yourself and other employees located on an insecure (as in all staff had access) site on the OFWO network.*

Both Comcare decision makers told of how they had made decisions in law, when in fact, they had come anywhere even remotely close to doing what was required of them in law.

This was particularly evident in the case of the re-consideration officer, who simply told of how the balance of probabilities, was satisfied by what he "considered"

The Comcare re-consideration officer told of how the provisions relating to "reasonable administrative action etc, could be satisfied OFWO staff telling that they had acted upon "*the information the OFWO had at the time*".

This sees Comcare claiming it can apply a second class of law, that is heavily reliant upon "wilful blindness", where, according to Comcare, an administrative investigator could purposely avoid becoming aware of facts that are detrimental to their case.

Provisions relating to "reasonable administrative action etc" were introduced into the Commonwealth's workers' compensation law by the Howard Government.

Those provisions were to protect the Commonwealth when it acted reasonably and lawfully, in matters that eventually led to an employee suffering illness, as the result of some administrative action of the Commonwealth.

Prime Minister Howard and his Government didn't and couldn't make laws that protected the Commonwealth when it acted unlawfully and incompetently. He couldn't make any such law.

Then Prime Minister Howard is a person of the utmost highest integrity and would not have made laws that protected those who acted unlawfully or incompetently towards the Commonwealth.

It is clear that Comcare staff were seeking to apply then Prime Minister Howard's workers' compensation laws in a diametrically opposite manner to their lawful application.

The laws were being applied in that manner against employees of the Commonwealth who had reported unlawful conduct and Comcare's actions were clearly designed to callously and unlawfully avoid workers' compensation protections, as well as help cover up unlawful conduct in the senior levels of the Commonwealth Public Service.

When I sought the lawful review of the flawed Comcare "decisions" Comcare unlawfully allowed a private law firm to act as though it had the powers of Comcare and order me under duress to a medical examination.

That medical examination was to take place more than 12 months after I had suffered illness and more than six months after I was cleared by my doctor.

Comcare then had the same private law firm seek access to other medical records.

Comcare gave those records to the OFWO.

Comcare had joined in with an enormously unlawful attack upon honest OFWO investigation staff, who had done what the Commonwealth would probably want of an investigator and follow some serious issues through.

The actions of Comcare were directly linked to the actions of the OFWO.

The FWC now finds itself entangled in the shambles in law of the OFWO and Comcare.

Comcare should have faced proceedings under the FW Act adverse action protections.