

**SUBMISSION TO VETERANS AFFAIRS INQUIRY INTO**  
**SYSTEMS OF COMPENSATION & REHABILITATION FOR VETERANS**

Alleged discrimination by the ADF  
regarding my employment as a psychologist subcontractor  
during the period of an accepted workers' compensation claim  
resulting in the termination of my employment

1. I allege the ADF discriminated against me from the moment I first complained to my ADF manager about sustaining a work injury due to harassment by an ADF work colleague.
2. Also, in the period, between making my application for workers' compensation & it being accepted, the ADF as my 'host employer' terminated my employment as a subcontractor (without my knowledge & without the right of redress), contrary to what I believe should be the protection intended by the Fair Work Act 2009 for injured workers (ref. 1, p.1(a)).
3. Following this, the ADF has continued to discriminate against me, without substance, right up until the present time, evidenced by the fact it has informed its most recent allied health contractor it will not employ again without reason (ref. 2, p.3(a), ref. 3, p.2(a)).
4. Most importantly, when I originally presented my medical certificate for a workplace injury the ADF, as well as my direct employer (the ADF's allied health contractor) 'coerced' (ref. 4) me into getting my medical certificate changed to be 'fit for normal duties' (ref. 1, p.1(b)).

This was even though I was suffering from severe bouts of anxiety from harassment for which I had been hospitalised.

5. While I did what I was told at that time, by both the ADF & my direct employer, in asking my doctor to change my medical certificate I did so because I felt threatened & was also too weak to object.
6. While I was aware that getting my medical certificate changed might be illegal & said as much at the time to my direct employer, my manager's only retort was she was very familiar with Joint Health Command practises & said I would be fired by the ADF if I presented a medical certificate for a work injury.
7. Horrifyingly, I have only recently found out I was then dismissed by the ADF for presenting this altered medical certificate, which was in fact due to its own instruction (ref. 1, p.2(d) & ref. 5(a)).
8. This was even though the ADF knew there might be repercussions for doing so (ref. 1, p.2(c)).

9. At no time when I was recovering from my injury did the ADF as my 'host employer' or my direct employer ever inform me of my dismissal, despite my enquiry following a 'termination letter' at the end of my employment contract (ref. 6 & 7 a,b,c,d).
10. This was despite repeated requests for a Return to Work plan in the ADF by my rehabilitation provider once my workers' compensation claim had been accepted (ref. 8, p.2(a), ref. 9, p.2(c)).
11. Instead, my direct employer kept all parties involved in my rehabilitation expectant for some time, by telling my rehabilitation consultant I was able to obtain a return to work program for my injury as a psychologist in the ADF if another position became available, while knowing full-well this was highly unlikely to occur due to my dismissal (ref. 9, p.1(a), p.2(b)).

This was instead of correctly informing my rehabilitation provider I had been dismissed and it was unlikely I would ever be employed by the ADF again.

In also lying about the possibility of future employment with the ADF to its worker's compensation employer I believe my employer was committing insurance fraud.

12. This was after my direct employer had also lied to my rehabilitation provider about my own position being made redundant at the end of my contract, instead of letting them know I had been replaced (ref. 10 & ref. 5(c)).
13. In fact, my direct employer was obstructive right from the beginning of the rehabilitation process, witnessed by several unsuccessful attempts by my rehabilitation provider to make contact to establish a Return to Work program for me (ref. 9, p.2(c)).
14. I have also recently found out that at the time of my dismissal, the ADF added to its reasons for dismissal allegations my behaviour appeared to have been 'in breach of WHS obligations' (ref. 5.b, d).

I was never informed of this & believe the ADF contravened its own HR policies in not giving me any opportunity to defend myself regarding these allegations, allow me to rectify my behaviour, or issue me with any kind of warning after a fair and proper investigation in accordance with the Fair Work Act (ref. 29).

15. While I might have exhibited some behaviours at work that related to my injury which were of concern to the ADF, I was always ready & willing to alter my behaviour as required to keep my job.

At the time, as a significantly injured worker, I needed support not coercion or dismissal without the right to defend myself.

16. Also, I allege the ADF colluded with its allied health contractor (my direct employer) to conceal from me the fact I had been dismissed to prevent possible litigation.

In this regard, the ADF has informed me it has sort legal advice on my case, but I am not privy to this because of 'legal professional privilege' (ref. 11, p.2(a)).

17. The ADF also washed its hands of any involvement in my rehabilitation even though my injury had been caused by an ADF work colleague (ref. 12, p.2(b)).
18. Because I didn't know at the time that I had been dismissed, as well as discriminated against in other ways, I couldn't make an application to the Fair Work Commission in the required time.
19. It was only recently when the ADF's new allied health contractor, informed me the ADF was discriminating against me for further employment that I was prompted to find out why (ref. 2, p.3(a)).
20. In my efforts to do this, I was initially refused most of my file by the ADF (ref. 11, p.4(b)).  

It was only after 7 months, on appealing to the OAIC, that I was finally able to obtain the information to prove that the ADF had coerced me into changing my medical certificate & had discriminated against me in other ways leading to the termination of my employment (ref. 13).
21. While I have recently considered taking these matters belatedly to the Fair Work Commission &/or the Federal Court, I have hesitated because of the stress, as well as the cost.
22. I have also considered the unlikely prospect of winning a case against a government department that has a known history of significant discrimination against injured workers (ref. 14), as well as having its own lawyers and the considerable financial backing of public money for its legal defence.
23. Finally, it should be noted that I started work as a subcontractor in the ADF at the beginning of November 2012 (ref. 15) & based on my positive performance after a couple of months was offered permanency as an employee in my ADF position by my direct employer (ref. 16).

With 'permanency' it was common practise that ongoing subcontracting positions such as mine with the ADF were in the form of short-term contracts issued for 6 months at a time, which were then rolled over.

Importantly, it was only after sustaining a work injury that both the ADF and my direct employer began their discrimination against me & I was dismissed.

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## COMMENT

It seems apparent the Australian government has for some time taken advantage of weak workers' compensation legislation & the dilute Fair Work Act regarding its role as 'host employer' in regard to its subcontracting staff across several government departments, including the ADF.

I believe, in efforts to progressively dismantle workers' rights, these departments have contracted out an increasing number of previously salaried positions, so they can wash their hands of workers' compensation responsibilities, as the ADF did in my case (ref. 17).

However, I understand several recent decisions regarding 'host employers' have indicated the Fair Work Commission is beginning to recognise the unfairness of the insufficient legislation of the Fair Work Act (ref. 18, 19, 20).

It is my hope the current Veterans Affairs' inquiry will contribute to strengthening legislation regarding workers' rights, especially for those injured in the workplace, & improve the protection of approximately 20% of the work force who are on insecure casual contracts, as I was (ref. 21, 22, 23, 24).

Being discriminated against &/or dismissed by 'host employers' without the right of redress can only demoralise the 'casualised' work force, including what I believe is now a significant number of ADF subcontract personnel.

I believe this discrimination is not in the intended spirit of the Fair Work Act, professional obligation or occupational health and safety regulations (ref. 25).

It is my opinion my recovery took significantly longer because of being so unfairly rejected by both the ADF & my direct employer, the ADF's allied health contractor.

Added to this, was the high unlikelihood I would get a Return to Work plan with a new employer because of the severity of my work injury.

While I was not 'actively engaged' in the armed defence of my country, I believe the kind of discrimination that was exercised against me by the ADF is still highly likely to be perpetuated against any of its personnel without compulsion if there continue to be no checks and balances.

In conclusion, I ask what is the point of the Fair Work Act if it doesn't protect from abuses by 'host employers', such as those inflicted on me by the ADF?

I beseech Veterans Affairs, based on cases such as mine, to lobby government to afford all injured workers more protection under the Fair Work Act.

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Written & submitted by –

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## References

1. ADF 'dismissal' instruction to allied health contractor of me as an injured worker – email 5/3/13
2. Lie Detector Test 1/6/17 – my phone conversation with a manager of the ADF's new allied health contractor 11/8/16
3. Human Rights Commission submission – 15/1/17
4. 'coercion' as defined by the Fair Work Act 2009, Division 3, Workplace Rights, s. 343.
5. ADF email.5/3/13
6. Termination letter – ADF allied health contractor – 24/6/13
7. My enquiry re termination letter & allied health contractor reply – email 4/7/13
8. Rehabilitation provider report - 21/8/13
9. Rehabilitation provider Report – 26/7/13
10. Redundancy advice – ADF allied health contractor – email – 3/7/13
11. ADF Correspondence – April 2017.
12. ADF Correspondence – 4/5/17
13. ADF revised file access ff OAIC investigation – email 27/10/17
14. Cameron, S. How the army closed ranks against rape victim Private Veronica Wadley. The Australian, 2013 June 1.
15. ADF locum contract – ADF allied health contractor – 6/11/12
16. ADF Employee contract – ADF allied health contractor – 18/12/12
17. 'The increasing casualization of the labour markets around the world, with Australia leading the race with a few other nations, is another defining characteristic of the neo-liberal era.

It is another manifestation of how governments have relaxed regulations and actively targeted worker protection by introducing anti-union legislation to favour capital.

Casual work traps workers into low-pay and precarious jobs.'

Mitchell, B. Economics Professor/Director, Centre of Full Employment & Equity, Uni. Newcastle, NSW, Australia. Blog 2011 June 28.

<http://Bilbo.economicoutlook.net/blog/?p=15091>

18. Tasmanian Ports Corporation Pty Ltd t/as Tasports v Mr Warwick Gee [2017] FWCFB 1714. <https://www.holdingredlich.com/workplace-relations-safety/ban-of-employee-from-host-employer-s-worksites-did-not-constitute-a-valid-reason-for-the-dismissal-by-the-labour-hire-employer>
19. Kool v Adecco (2016) Unfair dismissal proceedings <https://www.employee-assist.com.au/unfair-dismissal-labour-hire/>
20. Tasmanian Ports Corp Pty Ltd v Gee (2017) FWCFB 1714 <https://www.claytonutz.com/knowledge/2017/may/labour-hire-companies-cant-rely-on-host-employers-processes-to-dismiss-an-employee>
21. 'Research has found North American employees deferred claiming compensation because they feared job loss. This may also apply to Australian employees who have experienced job insecurity because of their precarious work status.

Around 1/5 of Australia's workforce are employees without leave entitlements (casual) who do not have permanent job security.'

The incidence of accepted workers' compensation claims for mental stress in Australia. Safe Work Australia. 2013 April, p12.

22. 'The move away from secure employment is one of the dominant trends in the Australian workplace during the past decade, and it has largely not been to the benefit of workers.

If you don't have security of work, you are not in a position to stand up for your entitlements.'

Jeff Lawrence, the ACTU Secretary.

'Casual workers are more likely to be sacked than those in permanent positions.'

Uni. Melbourne's Household, Income & Labour Dynamics in Australia (HILDA) Survey 2011. cited in Adonis J. Casual work: a blessing or a curse? Sydney Morning Herald, 2011 June 24.

23. 'Contract mineworkers represent 35 to 40% of the workforce, but account for 66% of lost time injuries in 2015.

Contract workers know they could lose their job in an instant if they raise concerns about safety that might impact production and this fear is leading directly to accidents.'

CFMEU. <http://www.standupspeakoutcomehome.org.au/news/disaster-safety-mineworkers-confront-riotinto-over-casualisation-mining-jobs>

24. A review of research up until 2001 indicated

'...precarious employment was associated with deterioration in OHS in terms of injury rates, disease risk, hazard exposures, or worker knowledge of OHS and regulatory responsibilities.'

Quinlan, M., et al. (2001). Globalization and Occupational Health the global expansion of precarious employment, work disorganization, and consequences for occupational health: a review of recent research. *International J. Health Services*, 31(2), 335–414.

25. 'Victim safety planning is one of the major management strategies for all violence risk assessments and is a responsibility under both professional obligations and occupational health and safety regulations.'

Zapf, P. Past President American Psychology-Law Society (Division 41, American Psychological Association). *Forensic Psych*, 2016 Mar. 29.

<https://www.linkedin.com/pulse/victim-safetyplanning-responsibility-under-both-obligations-zapf>

26. Workcover medical certificate – 15/2/13

27. Workcover medical certificate – 20/2/13 & email to ADF allied health contractor

28. Workers Compensation insurer – letter of acceptance of claim

29. Fair Work Act 2009 s 394 – Unfair Dismissal. 2018 case - Jessica McGlashan v The Entrance Discount Variety Pty Ltd t/a The Base Warehouse. <https://www.fwc.gov.au/documents/decisionssigned/html/2018fwc3284.htm>

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### **Chronological Order of Events**

- 7/2/13** Workers' compensation claim – date accepted from by
- 15/2/13** Medical Certificate of Capacity – VIC Workcover Authority (ref. 26)
- 18 or 19/2/13** Instruction to alter my medical certificate to be 'fit for normal duties' by my direct employment manager (ADF allied health contractor)
- 20/2/13** Medical Certificate of Capacity – VIC Workcover Authority (ref. 27, p.3 & 4)
- 21/2/13** Workers' compensation claim - submission to my direct employer (ADF allied health contractor) (ref. 27, p.1)
- 4/3/13** ADF instruction to obtain altered medical certificate 'fit for normal duties'
- 5/3/13** ADF 'dismissal' instruction to my direct employer (ADF allied health contractor), including allegations of WHS misconduct without the opportunity for redress
- 6/3/13** ADF instruction to replace me to my direct employer (ADF allied health contractor)
- 25/3/13** Workers' compensation claim – letter of acceptance (ref. 28)
- 3/13 - 26/7/13** Rehabilitation Provider difficulty contacting my direct employer (ADF allied health contractor) for RTW Plan (report)
- 24/6/13** Employment termination letter from my direct employer (ADF allied health contractor)

- 3/7/13** Lying about available ADF psychologist positions available my direct employer (ADF allied health contractor)
- 3/7/13** My direct employer (ADF allied health contractor) lying to rehabilitation provider about my ADF position being made redundant
- 4/7/13** Employment termination letter – my enquiry
- 4/7/13** Reply from direct employment manager (ADF allied health contractor) reply to my enquiry re-termination letter – advised I had done nothing wrong
- 20/8/13** Avoiding RTW plan with same employer – my direct employer (ADF allied health contractor) (Rehabilitation provider report)
- 20/8/13** Instruction to find me a new employer – Workers; compensation insurer to rehabilitation provider
- 20/10/16** The ADF's new allied health contractor informing me ADF will never employ me again & knowledge of previous ADF discrimination against injured workers
- 27/10/17** Release of my ADF file –  
including ADF instruction to not re-employ me again (disc. p.469-482 available on request)