

Comcare accused of unconscionable conduct in appeal

[Tom McIlroy](#), SMH, 3 October 2017

A tribunal has labelled efforts by federal insurer Comcare to recoup payments to an ACT government employee involved in a workplace bullying dispute unfair and "unconscionable".

In a strongly worded decision handed down last month, Administrative Appeals Tribunal deputy president Gary Humphries said Comcare had used "unethical tactics" against former refugee Charles Koker, employed by the territory's Community Services Directorate at the Bimberi Youth Detention Centre.

Comcare disputed the criticism on Tuesday and said it would not seek repayment in the case.

Mr Koker was injured while attempting to restrain a young person at Bimberi in June 2013 and was in the process of completing a return to work program when he was told by his bosses to stay home after an incident involving his supervisor two years later.

The tribunal was told the youth worker reported feeling harassed after being asked by multiple unit managers and team leaders for medical certificates related to his absences from work in May 2015.

Medical certificates said Mr Koker should not have direct or indirect contact with his supervisor, and he was instructed to stay home and to "rest up" due to a lack of other suitable duties for him to perform.

He told the tribunal he would have accepted any offer of work made to him by his employer. Doctors cleared him to work normal hours in administrative duties in October 2015.

That month he submitted a claim for workers compensation related to anxiety and depression which he said he first noticed and sought treatment for as a result of "poor behaviour and abused behaviour" by a supervisor at work in May 2015.

Mr Koker told the tribunal he sought to return to work over a period of about seven months but was always told to remain at home.

Comcare issued determinations that Mr Koker was entitled to incapacity payments in 2015, but reconsidered the case and in April 2016 decided he was entitled to \$24,949 less than he had been paid.

Mr Humphries, the former ACT senator and chief minister, said attempts to recover more than \$10,000 he had been led to believe he was entitled to was "unconscionable".

He said Mr Koker had been effectively directed to stay home from work for most of nine months, despite being capable of engaging in suitable work.

"Mr Koker has relied on Comcare's implicit representations – that he was entitled to incapacity payments while he was directed to remain away from work – to his significant financial detriment.

"Had he been told early in this period that he was not entitled to this support, he would have had the option of quitting his position and seeking employment elsewhere.

"But he was not told this, and he now incurs a substantial debt which was entirely avoidable had Comcare dealt with him fairly."

Mr Humphries required Comcare to pay Mr Koker's costs for the case.

"Comcare is to be commended for the efforts it has made in recent years to reduce the premiums paid by its employer clients," he said in the decision.

"If its efforts to reduce costs extend to unethical tactics such as those employed against Mr Koker in this case, however, this effort must be regarded as much less commendable than it might first have seemed."

A Comcare spokesman said the insurer had not acted unfairly or unethically.

"Comcare has not and will not pursue a debt from the employee in this case," the spokesman said.

"This was an incorrect assumption by the deputy president, based on a document presented at the hearing that indicated debt recovery was a possibility.

"Comcare has written to the Administrative Appeals Tribunal President to take issue with the comments made in this decision. The Tribunal found Comcare's decision in this case to be correct, and there was no evidence of unethical behaviour."

ACT Policing had 'cavalier' approach to accessing telecommunications data, Commonwealth Ombudsman finds

ABC, 28 April 2021

Key points:

- The Commonwealth Ombudsman made eight recommendations to the AFP about their telecommunications use
- The Ombudsman says it is essential full reporting takes place, and public trust is maintained
- Chief Police Officer for the ACT Neil Gaughan says changes have already been made within the force

The Commonwealth Ombudsman has released his report into the Australian Federal Police's "cavalier" use of telecommunications data.

Launched in response to a disclosure the AFP made to the Ombudsman over a year ago, Michael Manthorpe's report, released this morning, makes eight recommendations.

"My Office's investigation identified that the internal procedures at ACT Policing and a cavalier approach to exercising telecommunications data powers resulted in a culture that did not promote compliance with the Telecommunications (TIA) Act. This contributed to the non-compliance identified in this report," Mr Manthorpe said.

While investigating ACT Policing's use of location pings from mobile phones, the Ombudsman's office found that between 2015 and 2019 only nine out of more than 1,700 individual accesses to data were fully compliant with the law.

The Ombudsman said that meant the privacy of individuals may have been breached and the unauthorised pings may have been used to prosecute people.

"The Commonwealth Ombudsman has made eight recommendations, and we accept all of them," ACT Chief Police Officer Neil Gaughan said.

"We acknowledge that poor internal processes regarding the administration of these powers were not up to community expectations, and my expectation is that we do better."

Commonwealth Ombudsman Michael Manthorpe says law enforcement agencies need to report how their powers are being used, so that compliance can be assessed and publicly reported.(ombudsman.gov.au)

The telecommunications compliance issues identified in the Ombudsman's report were related to the use of location-based services (LBS) or 'pings', dating back to 2007.

LBS requests are used for investigations into serious offences, or offences that carry a jail sentence of more than three years, such as murder, firearms offences, aggravated robbery, drug trafficking and terrorism.

The pings cannot identify an exact location, or provide metadata or private communication to a mobile device, but instead identify the general area a phone is in.

The Ombudsman investigation identified that many of the authorisations made by ACT Policing for LBS between October 2015 and 2019 were not properly authorised or reported to the Ombudsman, or the relevant Commonwealth Minister.

"This means LBS could have been accessed unlawfully,' Mr Manthorpe said.

"This could have a number of potential consequences, for example, the privacy of individuals may have been breached and we have been unable to rule out the possibility that unauthorised LBS may have been used for prosecutorial purposes."

Commissioner Gaghan said police are going through previous convictions to see if any have been compromised.

"We are currently working with the ACT DDP to ensure that those matters are looked into," he said.

However Officer Gaghan says he does not anticipate any issues because the data was mainly used to find suspected offenders, rather than as evidence in court.

Full, immediate reporting required

The investigation found the AFP and ACT Policing missed a number of opportunities to identify and address that ACT Policing was accessing LBS outside the AFP's approved process earlier.

The Ombudsmen's office also said they were "not satisfied that the scope of the breaches [had] been fully identified by the AFP nor the potential consequences and consider it is possible breaches have occurred in parts of the AFP other than ACT Policing".

Mr Manthorpe said law enforcement agencies needed to be wise about how they use their powers.

"Indeed, the Parliament currently has before it proposed legislation which will further extend the powers of law enforcement agencies, in relation to being able to detect and disrupt criminal activity," Mr Manthorpe said.

"A critical factor in effective oversight of such powers is that law enforcement agencies need to report to the Ombudsman about how the powers are being used, so that compliance can be assessed and publicly reported.

"In this case full reporting did not occur to the Ombudsman for a considerable period of time."

ACT Policing 'committed' to appropriate conduct

In a press release, ACT Policing say they are "committed to ensuring access to mobile device locations during an investigation is conducted appropriately and transparently".

"ACT Policing has implemented a number of measures to prevent identified issues from reoccurring," Commissioner Gaughan said.

"As police officers we have access to special powers for investigative purposes to ensure the safety of the entire community. We take this responsibility seriously, and accept and apologise for our past non-compliance outlined in the Ombudsman's report.

"I want the community to be assured that we have changed our approach to requesting and approving access to mobile device locations, which my officers are implementing daily."

Commissioner Gaughan said ACT Policing was already making improvements to its operations.

"Since January last year, ACT Policing has worked closely with the AFP and the Commonwealth Ombudsman to make a number of improvements to our processes to enhance compliance," he said.

"All location requests on mobile devices are now centralised through the AFP Covert Analysis and Assurance business area, with consideration to urgent requests required by ACT Policing to support our operations and community safety.

"The AFP has updated internal policies and alerted all employees who use these laws for investigation to be aware of their obligations and requirements.

"The AFP will continue to review these policies and practices to ensure ongoing compliance and identify further training requirements."