

Submission to the Inquiry into the employment of people with disabilities

by

Shannon Read

Background

I was employed in the ACT Public Service from June 1997 to September 2015.

I was a hard-working and dedicated officer. My last performance appraisal (August 2012) contained the following statement from the senior manager:

Thank you Shannon for your very strong contribution to the work of the office - you have had some excellent feedback from clients, and have managed a significant workload.

I suffer from a chronic, debilitating, long-term medical condition, the main symptoms of which are pain (with various degrees of severity) and fatigue. From 2005 to 2014 I had 6 operations for my condition, 4 of which were major.

I worked part-time because of my medical condition.

I left the ACTPS because of the way I was treated as a person with a disability.

The reasons for my submission

Though it is quite painful for me to consider these matters again, I think it is important for the committee to have 'real life' examples of behaviour and attitudes. In my experience, the reality of being a person with a disability in the ACTPS did not match the rhetoric contained in the policy documents.

I also want to set out some suggestions that I have that would improve the lives of people with disability working in the ACTPS.

It is hard enough living with a disability without also having to deal with disappointing behaviour and attitudes. It is very damaging. I became a lawyer because I am committed to justice and fairness, and have always stood up for myself and others. Having to stand up against inappropriate behaviour and attitudes was very wearing and demoralising.

I hope that, by sharing my story and ideas, the experiences of ACTPS employees with disability in the future will be much better than mine.

My treatment in the workplace

Lack of understanding about what constitutes a disability

Even though the managers at my workplace occasionally expressed sympathy when I was not well or was faced with more surgery, it is my belief that my medical condition was not considered to be a 'real' disability by them.

The senior manager wrote the following about me in August 2015:

Ms Read seems to identify herself by her medical condition. She identifies as a person with a disability, and appears to expect special treatment rather than reasonable adjustments whether special treatment is appropriate or necessary;

I was very disappointed by this comment. I identify as a person with a disability because I *have* a disability. I did not expect 'special treatment': I just wanted to be treated fairly and reasonably (see further below).

The senior manager said the following to me in June 2015:

It has been going on for a long time. We have been more than patient.

A disability does tend to go on 'for a long time', that is the very nature of a disability!

Another example is when my then-supervisor said to me in September 2013 that 'something stressful happens and you take a day off' (or words to that effect). After I followed up on that comment the supervisor apologised, which I appreciated, but I remained concerned that the significant detrimental impact that his comment had had on me was not understood. It was, in effect, a denial of my disability. It was very demoralising for the supervisor to characterise my reason for taking sick leave as 'stress'.

Disappointing behaviour and attitudes

The accusation that I expected 'special treatment'

It is, unfortunately, indicative of the attitude towards me as a person with a disability that my requests for reasonable adjustments were characterised by management as expecting 'special treatment'.

I asked for the following reasonable adjustments: part-time work, the ability to occasionally work from home, to use recreation leave to take the occasional day off when needed instead of further reducing my part-time hours (which had the benefit of being flexible and better for me financially), and to attend work late on occasions when my pain was severe, until the painkillers had 'kicked in'.

I was permitted to work part-time, and attend work late on occasions, but, as stated below, they were viewed negatively.

The trial of working from home didn't last long, and using recreation leave instead of further reducing my working hours also petered out. I was made to feel that I was asking for something 'extra', so I didn't pursue it.

I still struggle to understand why things were made so difficult for me, but other people's circumstances were readily accommodated.

For example, one colleague worked 2.5 days each week following the birth of her first child. About 4 or 5 weeks before she was due to go on maternity leave for the birth of her second child, she applied to return to full-time work. That application was approved. The result of this meant that instead of being paid 18 weeks' maternity leave at the part-time rate, she was paid at the full-time rate, a net gain of 9 weeks' paid leave.

When another colleague's husband was unemployed, she returned to full-time work until he secured employment.

Another colleague was permitted to work compressed hours for childcare purposes, that is, she worked full-time but did so in 4 days a week.

Negative attitudes about my part-time status

My part-time status was questioned by the senior manager. As far as I am aware, no other people at my workplace who were part-time had their part-time status questioned. This was even the case for 2 people who were part-time, even though their children had left school. So being part-time was a lifestyle choice for them. It was a necessity for me, and, I would have thought, the very least reasonable adjustment that could be made.

Negative attitudes about arriving late for work

The job I had did not require me to be at my desk by a certain time.

In August 2015 the senior manager stated that management had 'allowed Ms Read to come to work late, when she feels able to attend'.

This was true, but was not unique to me. Other people were able to come in late, be absent during core business hours and leave early, for any number of reasons. Some reasons that people were not in the office during core business hours included having tradespeople at their homes, to attend medical and dental appointments, to go to the hairdresser and to attend school functions.

Like my colleagues, I made up the time later. I also on occasion went to work on my day off, and not just to make up time, but when needed.

Flexible attendance arrangements is a sensible arrangement, and is permitted by the Enterprise Agreement.

Making an issue of my occasional, unavoidable lateness to work because of my disability, when being absent during core hours was not an issue for other people, was very disappointing.

Negative attitudes about my use of sick leave and other leave

In August 2015 the senior manager stated that my long-term medical condition had required me to take 'significant amounts of personal leave over several years, at times exhausting personal leave credits available to her'. The leave I took for surgery or when suffering from severe pain was unavoidable because of my disability. It is true that I exhausted my sick leave entitlements on occasion (so had to use other leave, including long-service leave and purchased leave). The number of surgeries I had to have tended to chew up my sick leave entitlements. I also took carer's leave in 2008 when my mother was dying of cancer.

My longest absences from work because of my disability related to surgery, and that was scheduled in advance. Despite my disability, I did not take excessive unplanned sick leave. Because I was so conscious of my own use of sick leave, I would (informally) keep an eye on colleagues' use of sick leave. My unplanned sick leave was comparable to some of them who had children. They used more leave than other people, as they needed to use personal leave for their own and their children's illnesses. I used more leave than other people because of my disability.

Other people's use of leave was not treated negatively like mine was. The following are 3 examples. One colleague regularly applied for, and had approved, a significant amount of purchased leave so he could travel. He also used his long-service leave for that purpose. Another colleague's child was very ill around 2010 and was in hospital in Sydney. She was told to take off as much time as she needed, and was even offered the opportunity to work remotely from Sydney. In 2015 another colleague was granted an extension to her maternity leave of at least 3 months.

The point I am making is that people's life experiences require them to take leave, even significant amounts of leave, for different purposes. Unfortunately for me I had to take leave because of my disability. That my leave was viewed in such negative terms by management was very demoralising.

Suggestions

1 Conditions of employment should include extra paid leave for people with disability, similar to the leave available for people experiencing domestic violence

The Enterprise Agreement that was in force in 2012 contained the following clause:

F4.23 The head of service may, where such treatment is justified, grant an officer who has completed ten years of service an additional period of paid personal leave for personal illness or injury. This leave may be at either full or half pay. Such leave will not be granted if the absence is due to a condition for which the officer is receiving compensation under the Safety, Rehabilitation and Compensation Act 1988.

On 27 November 2012 my then-supervisor refused to grant me a period of 10 days' additional paid personal leave at full pay under clause F4.23 following major surgery I had on 24 September 2012. My supervisor told me 'if you don't like it you can appeal'. I appealed his decision to the internal reviewer. The internal reviewer confirmed the original decision. I appealed that decision to the Fair Work Commission.

I needed more than 10 days' additional leave because of ongoing pain and other symptoms relating to my surgery, which I took in the form of long service leave and recreation leave. I only applied for 10 days' additional paid personal leave because I thought that that period was a fair and reasonable period to apply for.

At the preliminary hearing Commissioner Deegan suggested to the other side that they should consider settling the matter. That happened, and I was eventually granted the additional paid personal leave. I attach an email of 13 November 2013 from my then-solicitor, Mr Peter Waight, to the senior manager, that contains further information about the Fair Work Commission matter.

Despite my best efforts, the equivalent of clause F4.23 in the subsequent Enterprise Agreement (clause F4.30) was changed so that it only applies if a personal illness or injury poses a serious threat to an employee's life. There are now no additional paid leave provisions for people with disability. Indeed, the only additional entitlement available to people with disability in the whole Enterprise Agreement relates to flexible working arrangements.

I propose that provisions like the leave provisions available for people experiencing domestic violence be included for people with disability. If the ACTPS is serious about attracting and retaining people with disability, the conditions of employment need to be as supportive as possible. Just offering part-time work is not enough.

2 There should be real and meaningful training and follow-up

All staff employed in the ACTPS should undergo real, meaningful disability awareness training. Managers should attend additional training about how to appropriately supervise people with disability. This training should be delivered by people with disability. The training needs to be implemented in the workplace, with clear objectives established in each work group, and clear outcomes demonstrated.

3 The performance agreement of a supervisor of a person with a disability should contain performance measures about that supervision

This would ensure that there was some accountability for the supervisor's actions.

4 There is a need for an advocate for ACTPS employees with disability

In theory the HR area of a directorate should be available to advise managers about how to appropriately deal with people with disability. Unfortunately, I found the HR area to be combative and belligerent.

The current situation in the ACTPS is that a person with a disability is at the mercy of the person's supervisor and HR area.

There needs to be an independent person to act as an advocate for ACTPS employees with disability. This person would provide advice to managers and support for employees with disability.

In my view this is the most important change that needs to be made to improve the lives of ACTPS employees with disability.