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Productivity Commission
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Disability Discrimination Act Inquiry.

I wish to make the following submission to this Inquiry.

I have made a Disability Discrimination complaint against the National Capital Authority (NCA), my former employer, and the Willemsen Group who own the building leased to NCA

I have Multiple Sclerosis and retired from the Commonwealth Public Service on 23 October 2001 on invalidity grounds. This unplanned retirement came about due to exacerbation of my condition as a result of actions taken by my employer - National Capital Authority. Prior to my retirement, I worked for over 32 years with the Commonwealth.

I was diagnosed with Multiple Sclerosis in 1992 and at that time was an EL1 Officer Working for National Capital Authority at Brisbane Avenue Barton. NCA had leased the building without undertaking an access audit. These premises had numerous problems including a car parking structure for more than 100 staff at the rear of the building. There was only one pedestrian access into the building via 8 stairs up or down the fire escape and the concrete entry ramp to the car park was very steep making it inaccessible for pedestrian access. This building had no suitable parking at the main entrance, which accommodated the lift, and no disabled parking facilities.

In 1995 my condition deteriorated due to office air conditioning problems and my mobility decreased requiring me to use a wheelchair and I had to purchase an automatic vehicle. My employer provided supportive documentation for a sales tax exemption for the purchase of an automatic car, as I was deemed unable to travel to work by public transport. I was allocated a parking space close to the rear entrance but was unable to get my wheelchair into the building because of the 8 rear stairs. I was also required to leave the building on some days in order to undertake site inspections and attend outside meetings.

I put forward a proposal for the building to be modified with the provision of rear ramp or lift which would improve access for all employees and visitors. The building owner, Willemsen Group, and my employer, NCA, consistently ignored this proposal although I believe neither could claim unjustifiable hardship.

When it became evident that I could no longer negotiate the rear steps, a single disabled space was allocated at the front of the building. This did not conform to the disabled car parking standards and was in fact the loading zone with the garbage hopper. On more than one occasion, the garbage contractor blew his horn forcing me to go out and move my car while he accessed the space to empty the garbage hopper. I was then required to drive around the suburb of Barton while the hopper was emptied, as there were no alternative parking spaces. On a number of occasions,

maintenance contractors and visitors who had previously used this space, parked there denying me access to my workplace.

I then had to come to work, get out of my car and find an NCA employee to drive my car up to the rear parking area. On one occasion I was working late and the only other person left in the building did not have a drivers licence. I was required to ask my daughter to drive 20 kms from our home to assist me.

Willemsen Group and NCA continued to ignore the request for improved access to the rear of the building. It was also stated in NCA OH&S meeting minutes that, as NCA intended to move from the building in 2 years, they were not prepared to pay for the modifications. When I made inquiries in regard to the proposed move to the Treasury building, I was advised by the officer who was coordinating the transfer arrangements, "you are the biggest problem" this referred to special requirements to accommodate me as an employee with a disability in the new accommodation.

An Access Audit conducted by consultant - Chris Marcar - identified the need for rear access in addition to disabled parking spaces at the front of the building. The Willemsen Group refused to finance such works or rectification of the portico roof drainage problem. NCA stated that appropriate spaces could not be provided in that location. I then put forward a suggestion that created 2 disabled parking spaces at the front of the building. NCA finally agreed to fund the works and the spaces were completed in November 2000. Unauthorised persons including Roger Pegrum, Spouse of NCA CEO Annabelle Pegrum, various contractors and visitors continued to park in these spaces denying me access and causing me additional stress.

NCA and staff organized social and work activities without any consideration regarding my condition including car parking arrangements, stairs, disabled toilets and air conditioning. I was always seen as the "last" issue for consideration and was expected to attend and put up with whatever was on offer.

My immediate supervisor David Wright continually discriminated against me by:

- downgrading my rating for senior officers allowance in 1993, stating that it was due to my Multiple Sclerosis – not my attitude or work performance. The CEO - Lindsay Nielsen - reviewed this decision and reinstated my rating.
- questioning the use of my car for work purposes even though he was aware I needed it to transport my wheelchair
- questioning my role as OH&S workplace representative,
- ignored me for acting or promotional opportunities even though I was the most senior and experienced officer available.
- use the performance appraisal system to attempt to get me to resign or to have me demoted by implying that my performance was not affected by my MS condition of which I had provided specialist opinions that I suffered from fatigue and memory loss.

He then set up work tasks that were outside my duty statement as a Development Control officer knowing that I was not able to successfully complete them. He also threatened my support person stating that, if he assisted me with them, there would be repercussions for him.

All of these actions were totally contradictory to the written recommendations of the Commonwealth Medical Officer, my neurological specialists, an independent access audit consultant and the Commonwealth Rehabilitation Service (CRS) who identified the need for review of the difficult work situation I had with my Director - David Wright. As a result of these recommendations, an EL2 officer was appointed as my professional support officer and those arrangements worked extremely well for both myself and for the whole section particularly when the Director was away on 4 months leave.

In February 2001 the CEO Annabelle Pegrum undertook a major reorganisation of NCA including “involuntary redundancy” of six staff including – my immediate EL2 support officer – without giving any consideration to the possible impact that such action could have and did have on my work and health situation. In addition, NCA was demanding that all staff prepare an Achievement Agreement statement as well as completing the normal workload.

With the unexpected departure of the EL2 officer on the day the redundancies were announced, David Wright - the Director - made no arrangements to compensate for the resulting additional workload placed on me even though he was fully aware of the potential impact on my condition. I was left to assist and orientate new inexperienced staff who arrived the day the redundancies were announced in addition to my own workload, the Achievement Agreement and deal with enquiries in regard to the duties of the now redundant EL2 position.

As a result of this, I suffered an exacerbation on arrival at work on 16 March 2001. The First Aid Officer, declined to assist me even though he clearly understood my condition and I advised him I was ill. He advised me that he had an important meeting to attend. A new staff member, who knew nothing about my MS condition, took me home in my car while the Director, who was familiar with my condition and possible needs, sat in his office and observed, then promptly contacted the Human Resource Manager by Email advising that “I looked ashen, had been taken home but my condition on the day had nothing to do with the work situation”.

Due to increased immobility and memory loss, I was unable to return to work and have been forced to retired on invalidity grounds when my sick leave credits were exhausted.

I commenced Comcare action against the Authority but submissions prepared by the Authority and NCA staff were false and extremely harmful to my health and I was therefore unable to proceed. My solicitor was advised that Comcare intended to appeal any decisions that were in my favour as there was concern for an MS exacerbation being regarded as a work related condition.

I was extremely concerned by the content of these submissions, particularly the submission prepared by David Wright, so I made a Disability Discrimination Claim against NCA and the Willemsen Group for the ongoing discrimination.

I thought that the Human Resources and Equal Opportunity Commission (HREOC) was designed to help people in similar situations to me but I have found that this not the case. As a complainant, you are left entirely to your own devices and constantly

advised by HREOC staff “you should speak to a solicitor”. I have approached a number of solicitors for advice but their experience in this area is limited. A number of solicitor firms in the ACT are concerned they may have a conflict of interest and such work may compromise any future contracts with the Commonwealth.

I have also contacted the DDA legal service in the ACT. This service is currently under funded and cannot even staff their office on a regular basis. Although they have given me some advice, I was constantly reminded, that as I had assets and have a Comsuper pension, they could not represent me at any hearings. There is no consideration given to the fact that my income and that of my spouse has decreased by two thirds due to my incapacity and the requirement to have a carer.

The current role of HREOC in my opinion is just an excessive waste of taxpayer’s money particular given that they have no decision-making role. I am also concerned that one is put in a situation where by making a complaint against an employer other colleagues also become involved, and from my experience, they are required to comply with the wishes of the employer - I believe is further discrimination against me.

In my case, even though the Willemsen Group has offered an apology, NCA has consistently denied any discrimination even though documentation has been provided to them and the President of HREOC. As a result, the HREOC President decided my claim did not lack substance.

No doubt in the public sector, big brother (management) will always have the upper hand against an employee as they have access to the Australian Government Solicitor. It appears with the advice and representation at of the government solicitor using taxpayer’s funds, they can deny an discrimination and force the matter to be terminated leaving the complainant with only 2 options - withdraw or impart on an expensive legal battle in the Federal Magistrates Court where once again, unless the complainant had unlimited financial resources, the other party has all the resources and the “old school tie” contacts to run their case.

In regard to the Commonwealth and undue hardship, I believe my employer could not claim undue hardship in order to deny reasonable access to the workplace, which in fact exacerbated my condition. I am now forced to live the rest of my life with an exacerbated disability that could have been prevented. I have also been denied the right to continue in the employment that meant so much to me. My spouse has had her career severely restricted, as she is required to care for me almost full time, and due to our assets acquired through our own effort, she is precluded from receiving the carer’s pension.

The conduct of HREOC staff also needs to be reviewed. On the day of my conciliation hearing, the HREOC officer Helen Hurwitz, admitted that she had not even read the file and appeared to be in a hurry to deal with the matter as she was preoccupied by the fact her daughter- in - law was in Sydney to have a baby and Helen had made prior arrangements to take leave and mind another grandchild.

Ms Hurwitz conducted the hearing in a biased manner as she was giving advice on the merits of the case and was favouring the respondents. Part way through the meeting,

she recommended that we all needed a break and should go our own ways. She proceeded to meet with the respondents, in an area where she believed we could not see her. Following this incident, she terminated the conference even though she stated we could do with another hour, her excuse being that she needed to return to Sydney.

After terminating the conference she accompanied my spouse and I to the door, but as we went down the corridor we overheard her having a further discussions with the respondents. Ms Hurwitz was saying that she did not believe that I had made contact with any solicitors. I had in fact forwarded some documentation to HREOC from a solicitor and believe she would have known this had she read the file.

The venue for the conciliation conference at Australian National University was not fully accessible for a person with a disability. There is only one disabled parking space in an enclosed courtyard and there was a requirement to go to the reception desk to obtain a permit and then return and place on the car windscreen to avoid being fined.

The meeting room was small and felt crowded and the air conditioning system was not operational. In order to overcome this problem, the side doors had to be opened but this denied me privacy. Ms Hurwitz made enquiries in regard to the location of the disabled toilets and advised me that it was located in the ladies toilet. She stated, in a demeaning tone, that if I needed to use the toilet she would “stand guard outside”.

I believe this action calls for another Disability Discrimination claim against HREOC for the way I was treated, but I cannot continue to put my time and energy into making a claim that will have no productive outcome for me or other people with disabilities.

I am concerned at the resources used by HREOC funded by taxpayers including myself, being used to provide employment for public servants and others in community based organizations, many of whom have no idea of what it is like to be a person with a disability or the facilities and support we require in order to get on with our daily life.

It would be more appropriate to allocate resources designed to improve and implement legislation that enables people with disabilities to have equal standing in the community and employment. One recommendation is that when a business or community facility is set up, sold or transferred, a new lease is not issued until a disability access audit is conducted and its recommendations complied with.

Please contact me if you wish to discuss my submission further, I would like to attend the hearings.

Trevor Oddy
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