

## Making it Work – Summary Notes

Making it work was a live, web forum, which was held via [www.cancerconnections.com.au](http://www.cancerconnections.com.au) on July 13, 2010. The following is an edited summary of this conversation.

Please note, this information is general only, and not designed for personal legal, financial or investment advice. Please seek the advice of a qualified solicitor and/or financial planner in making decisions.

<p><b>Kate (CCVic)</b></p>	<p>Welcome everyone!</p> <p>Thanks to everyone who have emailed their questions in - we will probably focus on these questions to start with, but will probably have time at the end for others if you have them</p> <p>Can I introduce our guest experts for tonight – Cath (who works in Human Resources), and Kate (Solicitor) &amp; Chris (Solicitor) (who will be helping with legal questions)</p> <p>With us we also have Felix &amp; Louisa from Cancer Council NSW, and Carole from Cancer Council Victoria.</p> <p>My name is Kate Wakelin and I manage Telephone &amp; Internet Support Groups at Cancer Council Victoria</p> <p>So, what I'll do, is let everyone know some of our emailed questions, and see where we go from there !</p> <p>One of the first questions was:</p>
<p><b><i>What are my rights on my return to work?</i></b></p> <p><b><i>I have requested part time work which they initially said no to but have now been offered a position as an admin assistant in a different section of the company (still within my broader area but not in my original Team.) I was a Consultant in my department before cancer and feel this is a demotion.</i></b></p> <p><b><i>I have been what can only be construed as bullied by my Manager. I have decided (as of yesterday) I no longer want to work in the company as I do not want to face him or his Manager as he too has treated me negatively since my return. I have a number of examples of this and have been stressed by actions which were taken against me.</i></b></p> <p><b><i>Can I file for destructive dismissal and if so what course of action do I take? The HR team have been involved but have not been very helpful. I have been told this can be a long drawn out process and could be extremely stressful.</i></b></p>	
<p><b>Kate (Solicitor)</b></p>	<p>Firstly, because your illness is not work related you do not have a legal right to return to work on a part time basis or on alternate duties.</p>

	<p>Despite this your employment cannot be terminated for a temporary absence from work due to illness and you cannot be discriminated against on the grounds of disability or impairment in your employment</p> <p>Your employer cannot discriminate against you in making a decision about whether or not to accommodate your request for flexible working arrangements.</p> <p>However, most state discrimination legislation provides for exceptions in relation to discriminatory conduct on the ground of disability when a person is unable to carry out the inherent requirements and when it would impose unjustifiable hardship on an employer to take steps (for example providing certain services) not to discriminate against an employee.</p> <p>You may have the option of making a complaint to the relevant body alleging discrimination in the workplace in relation to the demotion.</p>
<b>Kate (CCVic)</b>	What would be "the relevant body" Kate?
<b>Kate (Solicitor)</b>	If your employment is terminated you may be able to make an unfair dismissal claim or adverse action claim at Fair Work Australia. Complaints in relation to discrimination can be made to the Australian Human Rights Commission or the relevant body in your State, for example the Anti-discrimination board in New South Wales.
<b>KymJ</b>	<b><i>Does the employee have a right to return to her original position?</i></b>
<b>Kate (Solicitor)</b>	She does have a right to return to her original position if she can perform the inherent requirements of her role. The issue arises where the employee may not be able to perform the role for an extended period of time.
<b>Kate (CCVic)</b>	what would the person's rights be in that situation (where they are not able to perform their role)?
<b>Cath (HR)</b>	I would encourage anyone have difficulties with their employer to seek mediation to try and find a solution - (See the list of contacts at the end of this document)
<b>Jane</b>	<b><i>What is classified as a reasonable period of time to request flexible work options in you department before the company can either ask you to resign or commit to full time?</i></b>
<b>Kate (Solicitor)</b>	It is up to the employer, there is no set criteria, but you would look at what was reasonable in all the circumstances
<b>Jane</b>	<b><i>If you feel you have a definite claim regarding bullying or a case of constructive dismissal how do you go about putting in a claim?</i></b>
<b>Kate (Solicitor)</b>	<p>You can make an application for unfair dismissal at Fair Work Australia, but you would need to seek specific advice as there are some exceptions to who can make a claim.</p> <p>The time limit to file an unfair dismissal claim is 14 days from the date the</p>

	dismissal takes effect.
<b>Cath (HR)</b>	Jane, I suggest as a first step you set out your claims in a letter, providing as much specific detail as possible and give it to your employer.
<b>Kate (CCVic)</b>	I have another question from a HR perspective, for Cath:
<b><i>How does one cover illness-related gaps on a CV?</i></b>	
<b>Cath (HR)</b>	The simplest solution is to something generic like "Career Break" which is not an uncommon thing now
<b>Kate (CCVic)</b>	I'm interested to hear from our participants - what have people put on a CV when they've had time away from the workforce related to cancer?
<b>Leonie</b>	You could always cite personal reasons which can be a plethora of explanations
<b>deejjay</b>	You could always say travel, study, staying with relatives interstate
<b>Chris (Solicitor)</b>	An employer doesn't have a right to know the precise details of an illness or injury that requires you to be absent from work but you will be required to provide the certificate from a doctor to support your absence
<b>Leonie</b>	they are not allowed to ask the reason but the person can skirt around the issue. You do not have to tell your employer that you have had cancer unless it is going to create a risk to you or the workplace.
<b>Deejjay</b>	Once I needed to cover the name of a workplace as it was counting against me when applying for jobs. I said temping whilst studying.
<b>Kate (CCVic)</b>	deejjay, was that queried at all?
<b>Deejjay</b>	I'm not sure yet. I felt I had a good chance of getting the job but didn't. I'm waiting for the letter to ask for feedback but they stated in their information they do sick leave checks.  If a govt employer is going to knock one back for a job due to sick leave taken do they need to discuss it with you first so you can explain.
<b>Cath (HR)</b>	You should be specific with your employer about anything you cannot do, and emphasise the things you can do. Other people may need to know from a OHS perspective what you can't do but they don't need to know your diagnosis. You can tell your employer not to reveal this as it is personal information.
<b>Kate (CCVic)</b>	<b><i>I'm wondering if anyone here has disclosed this - how has that gone for people?</i></b>

	<b><i>Cath, does that mean that they need to keep this confidential under law?</i></b>
<b>Cath (HR)</b>	Medical information is personal and private and can only be revealed to others who genuinely need to know. Others in the workplace will need to know if there are specific things you can't do (for safety reasons) but they do not need to know why
<b>Kate (CCVic)</b>	<b><i>Kate, what would deejay's rights be if they felt they had been discriminated against?</i></b>
<b>Kate (Solicitor)</b>	As discussed above, an employee may have rights at the relevant tribunal to make a complaint in relation to discrimination
<b>Leonie</b>	<b><i>Could she not contest the appointment if it was based on her sick leave that is explainable</i></b>
<b>Cath (HR)</b>	Re gaps in CV - the most important thing is put something against the time break even if it is vague. In 99% cases employers only question breaks if they are left unexplained Re telling a prospective employer: If you are physically and mentally capable of performing a job you have no reason to reveal an injury or illness.
<b>Chris (Solicitor)</b>	In relation to Leonie's question, whether the appointment can be contested will depend on the processes (perhaps set out in ebas) which apply to that workplace
<b>Carole (CCVic)</b>	<b><i>I was talking to someone who is a contractor What are his rights and entitlements when he is working under contract ?</i></b>
<b>Leonie</b>	So long as the contractor meets his obligations under his contract he does not need to tell the company
<b>Kate (Solicitor)</b>	If he is an independent contractor he is effectively working for himself and so would make his own arrangements in relation to what jobs he can perform.
<b>Jane</b>	<b><i>I have been told that often it is very difficult for an employee to prove discrimination or bullying. What can you do if the HR department seem a little incompetent in their response to your concerns</i></b>
<b>Kate (Solicitor)</b>	In response to Jane, it can be difficult, it is advisable to discuss the issue with your employer first, There is not a lot you can do about the employer's lack of knowledge
<b>Cath (HR)</b>	Jane - if you provide specific details such as what was said and when - and particularly if you have witnesses it makes it easier to make a complaint. You can seek advice from the Anti Discrimination Board in your State
<b>Kate (Solicitor)</b>	Further to Jane, there is usually a conciliation conference first at discrimination tribunals, which is an informal process to try and resolve a complaint

<b>Jane</b>	When I had appointments and had to take the day off I was refused the opportunity to work the next day instead. I wanted to work but was told I couldn't but was given no reason.
<b>Kate (CCVic)</b>	<p>We did have another question emailed in which I think would be good to get some group input about:</p> <p><i>I will be returning to work next week after 8 months sick leave. have had anxiety attacks just thinking about returning to work as I am afraid I shan't remember how to do my job. It involves a lot of computer work &amp; following government contracts. While I have been having treatment I have, on occasions, been incapable of remembering a lot of ordinary things, &amp; unable to do fairly simple things eg looking up a phone number. Now being on the Tamoxifen I am experiencing hot flushes, mood swings etc ( in a word - a bitch!).</i></p> <p><i>I need to return to work for financial reasons, &amp; am aware that I need to face up to my fear of returning to work.</i></p> <p><i>I believe the actuality will be less stressful than the anticipation.</i></p> <p><i>Do you have any ideas to overcome these feelings?</i></p> <p>I'm wondering if there are others who have suffered a loss in confidence about returning to work?</p>
<b>Fiona</b>	Absolutely Kate
<b>Lizd</b>	Absolutely
<b>Jane</b>	Absolutely - it is difficult to work when management block you at every turn and even tell you to put in 10 mins leave and will not let you make up time for appointments. When others in you team are permitted to make up time.
<b>Kate (CCVic)</b>	<p>Fiona, what's been your experience?</p> <p>We've heard a bit from our experts, but I'd be interested to know if there are any strategies that people would like to share from their own experience</p>
<b>Fiona</b>	<p>Spoke to my GP and I am seeing the psychologist attached to the Medical centre</p> <p>She is great to talk things out with and look at coping strategies.</p>
<b>Jane</b>	I suggest you get as many letters of support you can and if there is a back to work coordinator deal through them.
<b>Kate (CCVic)</b>	Fiona, can you share some of the things you have found helpful?
<b>Fiona</b>	Not projecting too much and staying in the present. Prioritising.

	A useful book: Changing your thinking by Sarah Edelman.
<b>Deejay</b>	You may be able to get referred to somewhere like CRS Australia through Centrelink to have help in returning to work
<b>Li</b>	My boss has been very supportive and I have been at part time for 8 months, but I give up the Tamoxifen as it does affect my work.
<b>Felix (NSWCC)</b>	Re: CONFIDENCE, Seeking advice from Anti-Discrimination Board, Ombudsmen and other related bodies that can assist the employer to see what their responsibilities are will be of benefit to the employee
<b>Cath (HR)</b>	I would recommend that you seek assistance from the Anti Discrimination Board to get basic advice and assistance in how to make a claim
<b>Kate (Solicitor)</b>	Fair Work Australia also has a info line if people have queries about unfair dismissal or discrimination in employment.
<b>Kate (CCVic)</b>	I'm wondering if others have questions that they wanted to ask, particularly regarding HR or legal issues?
<b>Fiona</b>	<b><i>How does the tamoxifen effect your work?</i></b>
<b>Li</b>	Mood swings, difficult to concentrate and think clear and depressed
<b>Kate (CCVic)</b>	<b><i>I'm wondering if others have struggled work-wise due to ongoing treatment/side effects?</i></b>
<b>Lizd</b>	I gave up Arimedix due to side affects. Couldn't take Tamoxifen as I had minor strokes due to treatment.
<b>Kate (CCVic)</b>	<b><i>I know that fatigue is often also a problem - how have people coped at work regarding this?</i></b>
<b>Jane</b>	I explained to my manager that I was having problems with memory and readjusting to my work programs etc so his response later was to give me a poor performance review after only working 26 days the days were only part time hours too  He has made it blatantly clear through his actions he does not want me there It is too hard for him to accommodate my needs at this time.
<b>Kate (CCVic)</b>	Jane, that sounds really tough!
<b>Deejay</b>	Working part time and being able to swap a day. Also flexible hours. Some may be able to work from home
<b>Fiona</b>	Yes, I'm concerned about possible fatigue.
<b>Kate</b>	It sounds like there is a real range, in terms of how supportive and flexible

<b>(CCVic)</b>	people's workplaces are: deejjay, were you able to negotiate some of these things for yourself?
<b>Deejjay</b>	I was already part time and the workplace has flexible hours thus there wasn't too much change needed
<b>Cath (HR)</b>	Jane - I think you should talk to someone in HR or higher up in the organisation. If your performance was due to the symptoms then a poor review is inappropriate
<b>Kate (Solicitor)</b>	I suggest that if people are having problems with their employer make sure you take notes at the time so you have a clear record of the conversations etc that have occurred.
<b>Jane</b>	I wish I had done that then .....now it is his word against mine ....and there are so many issues since my return
<b>Li</b>	I have been refused couple of jobs I apply with no reason and the sickness does play part of it, but no one will admitted, so I don't apply any job any more for the time being, just relax take it easy.
<b>Lizd</b>	I was offered a job back where I worked until they knew of my cancer and my husbands (don't know what that had to do with my job)
<b>KymJ</b>	One of the Cancer Councils puts out a booklet about Cancer in the Workplace. It may be a good resource
<b>Kate (CCVic)</b>	We'll make sure we put a link to this book in our summary (refer to the end of these notes)
<b>Louisa (NSWCC)</b>	The Cancer in the Workplace booklet is being completely revised at the moment based on feedback from patients and carers about their issues in the workplace  We are also going to create a new booklet to help employers with these issues
<b>Felix (NSWCC)</b>	<b><i>I'm wondering if many participants have considered or have seen their GP about a Mental Health Care Plan about their current situation or whether this is regarded as being a possible black mark on their work record or suitability for work or continued employment?</i></b>
<b>Jane</b>	Felix - I got one recently
<b>Fiona</b>	I think seeing my psychologist is through the Mental Health Care Plan
<b>Li</b>	I have counselling through cancer council and Gov council service
<b>Kate</b>	so that sounds like an option a few people have taken up  Jane, have you found this helpful in dealing with workplace issues?

<b>Jane</b>	Yes - I felt she at least was on my side
<b>Lizd</b>	I believe it is a black mark. At least where I used to work and they were supposedly a caring place but made it difficult for employees who had a mental health plan
<b>Kate (CCVic)</b>	<i><b>Kate, do people have a legal obligation to disclose a mental health plan to their employer?</b></i>
<b>Kate (Solicitor)</b>	No employees don't have to disclose a mental health plan to their employer. However if they choose to keep their employer informed they can.  If your employer treats you differently because you disclose your mental health plan, that would be discrimination
<b>Cath (HR)</b>	You do not have to reveal that you have a Mental Health Plan. If you have a specific issue that impacts on your ability to do your job, you need to advise your employer of only that.
<b>Felix (NSWCC)</b>	There seem to be a number of main issues here: the need for info and advice but also the difficulty individuals experience after negative experiences with their employers.
<b>Kate (CCVic)</b>	<i><b>Kate, can you let us know what happens when people have run out of sick leave?</b></i>
<b>Kate (Solicitor)</b>	People may be able to request some unpaid leave from their employer, or take annual leave instead. Another option is to use long service leave if you have any.  Further in NSW if you have to resign from work due to illness you may be able to access long service leave on a pro rata basis after 5 years of service
<b>Jane</b>	<i><b>Do you have to use up your annual leave when having time off for treatment or should you be allowed to chose how you take that leave?</b></i>
<b>Kate (Solicitor)</b>	you don't have to use annual leave - you may wish to look into leave without pay as another option if you do not wish to take annual leave
<b>Jane</b>	Too late - they made me use my annual leave .....
<b>Cath (HR)</b>	Jane - if you have any entitlements to paid leave, once your sick leave runs out your employer can direct you to use it for further absences in certain circumstances
<b>Li</b>	I used up all sick and annual leave in half pay to extend my leave for treatments
<b>Kate (CCVic)</b>	That sounds like another good option Li, in terms of at least having some funds coming in...

<b>Kate (Solicitor)</b>	taking leave at half pay is a good option to extend your leave, if you can negotiate that with your employer
<b>Chris (Solicitor)</b>	you can also take sick leave without pay so long as you provide medical certificates to prove there is a proper basis for the leave
<b>Kate (CCVic)</b>	Chris, even if there is annual leave accrued?
<b>Chris (Solicitor)</b>	You don't have to use annual leave when you use all your paid sick leave. An employer can only require you to use annual leave in limited circumstances where you have excessive amounts of annual leave
<b>Fiona</b>	Some people may be able to utilise income protection insurance.
<b>Kate (CCVic)</b>	Good point Fiona - I know that some superannuation schemes have this built in, worth checking it out
<b>Kate (CCVic)</b>	<b><i>Cath, I'm also wondering, what about when someone has needed to take an extended period of leave and feel they've lost work skills in the process?</i></b>
<b>Cath (HR)</b>	If anyone needs help to increase their skills or to find work after a lengthy absence due to illness they should contact CRS who can assist them with retraining and job seeking
<b>Kate (CCVic)</b>	Cath, can you tell us more about CRS?
<b>Cath (HR)</b>	CRS employs Occupational Therapist and Psychologist to assess the capabilities of their clients and then to work with them to help them return to work.
<b>Kate (CCVic)</b>	Thanks Cath - we'll make sure we include links to CRS in our summary.
<b>Cath (HR)</b>	They can help you access training and job seeking assistance as well
<b>Fiona</b>	Sorry but what does CRS stand for?
<b>Kate (CCVic)</b>	Good question Fiona - Commonwealth Rehabilitation Service
<b>Deejay</b>	<b><i>I've heard that the federal privacy act does not cover employee records. What would be the advice for employees with cancer as they may assume it is covered.</i></b>  <b><i>And sign consent for employer access to health records rather than say getting their doctor to write a letter?</i></b>
<b>Cath (HR)</b>	Employee records are covered by the Privacy Act. Personal information has

	to be protected by your employer - this includes your bank details, tax file number and medical records.
<b>Jay</b>	<i>Apologies if this has been covered already, but I would like to know if I'm legally required to declare my cancer diagnosis as an existing medical condition on any job application.</i>
<b>Kate (Solicitor)</b>	Hi Jay, if it will affect your work and how you can perform the job, you may need to disclose it, but there is not general obligation to advise your employer in relation to cancer.
<b>Cath (HR)</b>	As a general rule, you need to concentrate on what you can actually do - not what you can't. If you are capable of doing the job you are applying for, then talk about your abilities!
<b>Carole (CCVic)</b>	<i>Can people with cancer access their super if they have run out of sick leave etc ?</i>
<b>Kate (Solicitor)</b>	People may be able to access super, but this will depend on the terms and conditions of their super fund and the requirements under the superannuation act. People should seek specific advice in relation to their individual circumstances.
<b>Carole (CCVic)</b>	Just to let the chat room know we also addressed superannuation in our last forum . Call the Cancer Helpline 13 11 20 for more details (or see <a href="http://www.cancervic.org.au/moneymatters">www.cancervic.org.au/moneymatters</a> )
<b>Kate (CCVic)</b>	<p>So I'm just looking over some of the things that we have discussed tonight.</p> <p>It seems like there are many issues that people face in relation to work and cancer.- certainly plenty of issues in relation to legal and discrimination issues, but I'm also hearing people who's confidence has suffered as a result of being ill.</p> <p>Just to let you know there will be an edited transcript available for people to download within the next week or two.</p> <p>I would really like to thank our guests tonight for their time and care in addressing these concerns.</p> <p>And thanks everyone for coming along and for your input!</p>
<b>Carole (CCVic)</b>	Don't forget you can call the Cancer Helpline 13 11 20 if you have more questions.

**For further information:**

## **FAIR WORK OMBUDSMAN**

[www.fwo.gov.au](http://www.fwo.gov.au)

For people who have a question or problem relating to the workplace, the role of the Fair Work Ombudsman is to work with **employees, employers, contractors and the community** to promote harmonious, productive and cooperative workplaces. They investigate workplace complaints and enforce compliance with Australia's workplace laws.

## **FAIR WORK AUSTRALIA**

[www.fwa.gov.au](http://www.fwa.gov.au)

Fair Work Australia is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions relating to:

- the safety net of minimum wages and employment conditions
- enterprise bargaining
- industrial action
- dispute resolution
- termination of employment
- other workplace matters.

Fair Work Australia Information Line: **1300 799 675**

## **CANCER COUNCIL NEW SOUTH WALES WORKING WITH CANCER**

[www.cancercouncil.com.au/editorial.asp?pageid=2233](http://www.cancercouncil.com.au/editorial.asp?pageid=2233)

*Working With Cancer* was developed in association with **employers and with people diagnosed with cancer**. *Working With Cancer* resource helps to make attending work or returning to work easier for patients, carers and survivors and their colleagues. Please note this is a New South Wales resource. Please contact your local **Cancer Council Helpline 13 11 20**

## **ANTI DISCRIMINATION**

[www.antidiscrimination.gov.au](http://www.antidiscrimination.gov.au)

A portal to assist individuals and businesses to navigate discrimination laws, this Gateway provides a snapshot of each anti-discrimination system including information about the grounds and areas of public life on which a complaint can be made in each jurisdiction. Individuals and businesses can also find contact details for each anti-discrimination commission, anti-discrimination board or human rights commission through this gateway.

## COMMONWEALTH REHABILITATION SERVICE

[www.crsaustralia.gov.au](http://www.crsaustralia.gov.au)

If you have a disability, injury or health condition and want to get or keep a job, this website provides information and advice to help manage the barriers people face in getting a job.

## CENTRELINK

[http://www.centrelink.gov.au/internet/internet.nsf/individuals/iid\\_index.htm](http://www.centrelink.gov.au/internet/internet.nsf/individuals/iid_index.htm)

Working with an illness, injury or disability, Centrelink provides a wide range of services to help you look for work and make career-related decisions.

## EARLY RELEASE SUPERANUATION

[www.apra.gov.au/superannuation/early-release-of-superannuation-benefits.cfm](http://www.apra.gov.au/superannuation/early-release-of-superannuation-benefits.cfm)

In Australia superannuation generally cannot be accessed before you are at least 55 years old.

However, under some very specific circumstances, the law allows you to access your superannuation earlier.

This information outlines those situations in which you may make an application to APRA, your fund or another agency for the release of your funds.

Further information is contained in APRA's brochure "**Superannuation - Release of Benefits - Early release of Superannuation Benefits – Information for Applicants**".

## CHRONIC ILLNESS ALLIANCE

[www.chronicillness.org.au/workwelfarewills/index.htm](http://www.chronicillness.org.au/workwelfarewills/index.htm)

**WorkWelfareWills** is a plain English web guide to legal issues around health and life changes. It was produced for use in Victoria only as some of the laws will be different in other states of Australia.

## FINANCIAL ADVISORS

Information will vary from state to state Please contact your local **Cancer Council Helpline 13 11 20**