

WORKPLACE NEWS

CLIFFORD GOULDSON
LAWYERS

Dismissal because of domestic violence deemed not discrimination

In January last year, in the Queensland Industrial Relations Commission, Deputy President Swan dismissed a complaint made by a worker that claimed she had been sexually discriminated against by her employer due to an unfortunate event of domestic violence.

The worker (Ms Wright) had her employment terminated after she had failed to attend work due to an incident of domestic violence that had occurred the night before.

Following the dismissal, Ms Wright lodged a complaint with the Anti-Discrimination Commission on the basis that her dismissal amounted to sexual discrimination, as defined in the *Anti-Discrimination Act 1991* (the **Act**).

Ms Wright's reasoning for lodging her complaint was that, as a woman, she had a disproportionate likelihood of being a victim of domestic violence when compared to men and because her employer terminated her employment, her employer had discriminated against her.

The employer in this case did not dispute the fact that women are more likely to experience domestic violence and even went as far as to quote a survey undertaken by the Australian Bureau of Statistics, that included statistics such as:

1. approximately one in four women experienced violence by an intimate partner, compared to one in thirteen men;
2. women were nearly three times more likely to have experienced partner violence than men, with approximately one in six women and one in sixteen men having experienced partner violence since the age of 15;
3. one in four women and one in six men reported experiencing emotional abuse by a current and/or previous partner since the age of 15.

The employer argued that, while this disproportion was apparent, men also experienced domestic violence, and that domestic violence was not a characteristic of being a woman, which is essential to proving discrimination under the Act.

Deputy President Swan accepted both parties' submissions that women are more likely to be victims of domestic violence but did not accept Ms Wright's argument that the likelihood of being a victim was a characteristic of being a woman.

The Commission therefore found that the employer did not discriminate against the worker and

the complaint was dismissed.

The case presents an interesting discourse on the provisions of the Act that prohibit employers from discriminating against workers on the basis of what the Act describes as a 'characteristic' that a person has. The Case demonstrates that this determination is not always easy to identify.

The Commission found that the Applicant's argument essentially came down to the Applicant claiming that she had been discriminated against because of an inability to reasonably keep personal issues out of the workplace, which the Commission determined was not a trait that women generally have.

If you are unsure as to whether you have been discriminated against in the workplace, or have been accused of discriminating against an employee, contact one of our workplace experts for advice.

For more information contact our [Workplace Team](#).

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