



# Worker's general protections claim fails in the Federal Court

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**Date:** Monday May 13, 2024

Former basketball coach Shane Heal made a general protections claim against his employer, Sydney Flames Basketball Pty Ltd, in 2023. Heal alleged that a decision to suspend him was due to his exercise of a workplace right and not due to an independent investigation (instigated by his employer) in response to complaints made against him by members of the basketball team. His general protections claim ultimately failed.

General protections are a set of protections for employees which prohibit a range of actions in the workplace, including but not limited to, adverse action, coercion, misrepresentation, unlawful termination and others.

The Federal Court of Australia handed down its judgment in [Heal v Sydney Flames Basketball Pty Ltd \[2024\] FCA 401](#) in April 2024. The decision emphasises what is required when establishing that the making of a complaint constitutes the exercise of a workplace right for the purposes of a general protections claim under the *Fair Work Act 2009* (FW Act).

Under the FW Act, a person has a workplace right if they:

- are entitled to the benefit of a workplace law, workplace instrument (for example, an award) or an order made by an industrial body;
- have a role or responsibility under a workplace law, workplace instrument or order made by an industrial body;
- are able to initiate or participate in a process or proceedings under a workplace law or instrument;

- are able to make a complaint or inquiry to a person or body with capacity to seek compliance with a workplace law or instrument; or
- are able to make a complaint or inquiry in relation to their employment. [*our emphasis*]

## Background to the case

### Worker suspended pending outcome of an independent inquiry

Shane Heal, a former Australian basketball player and coach of WNBL club the Sydney Flames, was suspended in January 2023 pending the outcome of an independent investigation by his employer. The club launched the investigation following complaints made by team members about Mr Heal's conduct and behaviour towards them.

Following the investigation, Mr Heal was asked to show cause (provide an explanation) as to why his employment should not be terminated.

### Heal makes a general protections claim

Mr Heal subsequently made a general protections claim, which was disputed by the employer, and the matter proceeded to the Federal Court for hearing and determination.

Mr Heal claimed he was suspended after he exercised his workplace rights and that his employer had breached the FW Act by taking unlawful adverse action and suspending him for exercising those workplace rights.

Heal alleged that in January 2023:

- the team's president had aggressively approached him at training and questioned his performance;
- the confrontation was witnessed by other team staff;
- he felt that he didn't have support from management and that his role was under threat; and
- he reported the incident to the team's CEO, informing him it was unacceptable for the president to speak to him that way.

Under cross-examination, however, Mr Heal accepted that the president did not raise her voice at him, make aggressive gestures, or that he was intimidated by her.

### Federal Court judgment

Mr Heal's general protections claim failed.

In his extensive judgment, Halley J dismissed Mr Heal's adverse action claim, noting:

- Mr Heal would have been offended by the criticisms by the president, but the subsequent conversation with the CEO did not amount to Mr Heal asserting his rights to a safe workplace or his right not to be bullied;
- reporting the confrontation with the president to the CEO *"amounted to conveying a "grievance" regarding [the president], however, I do not accept that it amounts to the making of a "complaint" (to the CEO), because Mr Heal did not seek "consideration, redress or relief"*.

## Court considerations when determining general protections claims

When making a general protections claim, the court must consider:

1. whether each exercise of a workplace right occurred as alleged by the employee;
2. whether each alleged workplace right was a workplace right within the meaning of the FW Act (s 341(1)(c));
3. whether each instance of alleged adverse action occurred;
4. whether each instance of alleged adverse action was adverse action within the meaning of the FW Act (s 340 and s 342(1));
5. the identity of the decision-maker(s) with respect to each instance of alleged adverse action; and
6. the reasons for the decision maker(s) taking each instance of alleged adverse action having regard to the FW Act (s 360 and s 361).

Importantly, the employee bears the onus of establishing the existence of each contested workplace right and each instance of adverse action in dispute. It is only then that the reverse onus with respect to the reasons for the decision being taken to pursue the adverse action arises.

Accordingly, an employee must ensure that they have sufficient evidence to meet that onus.

## Get help from an employment lawyer

If you are considering making a general protections claim, or you are the subject of a general protections claim, we recommend that you seek legal advice immediately.

Gilshenan &Luton are recognised experts in the area of workplace investigations, criminal law, and professional misconduct. We conduct investigations for private and public sector agencies, and act for those the subject of such investigations.

## Contacting Gilshenan &Luton Employment Lawyers

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