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Sexual Harassment: Unprecedented claim against David Jones acts as reminder to take sexual harassment seriously

The widely publicised \$37million claim by Kristy Fraser-Kirk against the board of David Jones and its former CEO, Mark McInnes, should act as a wake up call to any employers (and directors) who do not take sexual harassment seriously.

The case

Ms Fraser-Kirk claims that McInnes sexually harassed her at a number of David Jones functions. Her complaints include that McInnes attempted to kiss her on the mouth, put his hand up her clothing, repeatedly invited her to Bondi (where he lived) with the clear implication this would be for sexual intercourse and also texted, emailed and called her.

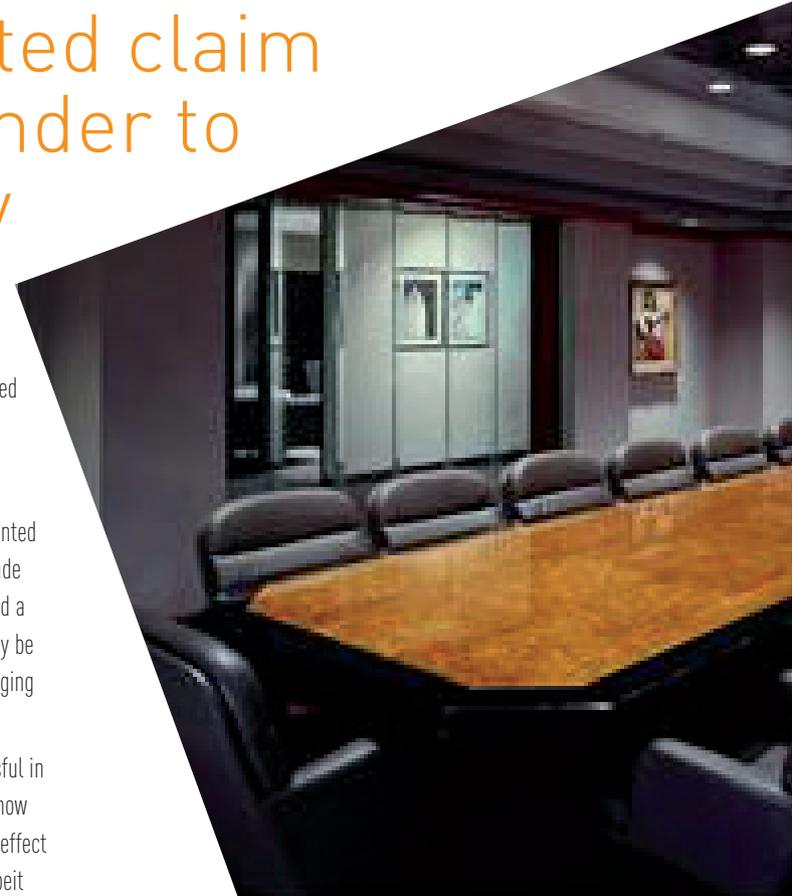
She goes on to claim that when she first reported the incident to her supervisor and the general manager she was told they were not surprised because this conduct had happened before. She says she was told that next time it happened she should be clear and say 'no, Mark'. No action was then taken against McInnes.

Ms Fraser-Kirk has included David Jones in the claim on the basis that it knew or ought to have known McInnes was a danger to young women and deliberately sent her into his presence after she had raised concerns about his conduct.

Unprecedented claim

The value of the claim against David Jones (\$37million) is unprecedented in Australia because Ms Fraser-Kirk is claiming punitive damages made up of a percentage of David Jones' profits while McInnes was CEO and a percentage of McInnes' remuneration package. Punitive damages may be awarded to act as a deterrent to the defendant and others from engaging in such conduct again.

While it remains to be seen whether or not Ms Fraser-Kirk is successful in her claim for such damages (if the case settles we may never know how much Ms Fraser-Kirk is paid), her claim has already had a damaging effect on David Jones' reputation and share price. Substantial damages (albeit



in the hundreds of thousands rather than millions) have been awarded in Australia and this case serves as a timely reminder that sexual harassment must be taken seriously.

What should directors and employers be doing?

Ms Fraser-Kirk's claim names the board of David Jones as defendants. This highlights the growing trend of pursuing directors personally for breaches of workplace legislation, as raised in our last alert concerning a claim against a former sole director for unpaid redundancy entitlements.

Accordingly, we strongly recommend that directors and companies review and satisfy themselves that the policies, processes and training in place to handle complaints of sexual harassment are comprehensive and sufficient. Clear and well understood processes that apply to all members of staff – from the most junior staff member to the CEO – must be in place and must be followed.

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