

Don't do it: that's the bottom line

Report Fiona Carruthers

The number of headline-grabbing multimillion-dollar sexual harassment payouts should have been enough to deter any executive from bottom-patting or its verbal equivalent.

Mark McInnes's downfall is a timely reminder to many managers that they might wish to review the landmark cases.

In 2004, blue-chip investment bank Morgan Stanley forked out \$54 million to 340 women who took a sexual harassment class action against the bank, accusing it of not promoting or paying women as much as men, plus discriminatory practices such as holding client meetings in strip clubs and senior managers making lewd comments.

In 2003, cleaning giant Dial Corp paid \$10 million to 100 women working at one of its suburban soap factories. The women had experienced sexual harassment for more than a decade.

In 1998, Mitsubishi Motor Manufacturing of America was ordered to pay \$34 million to 486 female employees for sustained harassment.

Closer to home, former PricewaterhouseCoopers executive Christina Rich sent shock waves through the finance sector when she went after her employer to the tune of \$10 million for sexual harassment. Her case settled out of court for an undisclosed sum in March 2008.

In June last year, the Federal Court ordered Employment Services Australia (part of Adelaide building company Hickinbotham Group) to pay \$466,000 to a former consultant, Malgorzata Poniatowska, after two former colleagues sexually harassed her and the company failed to act on her claims.

The sex discrimination commissioner with the Human Rights and Equal Opportunity Commission (HREOC), Elizabeth Broderick, said that "sadly, the incident with Mark McInnes reminds us that sexual harassment is alive and well – and systemic."

Complaints lodged with HREOC are at a record high. There were 547 complaints under the Sex Discrimination Act in 2008-09, compared with 347 in 2005-06.

Ms Broderick said many more women and men were now speaking out against sexual harassment in the office, but most harassment was still going unreported.

"In 2008 we did a study and

asked women whether they had experienced any unwelcome contact of a sexual nature which offended or humiliated," she said.

"About 22 per cent of women said yes, but only 16 per cent of them reported it.

"What was just as troubling was that of the population who said no, when we questioned them further 20 per cent had experienced unwelcome physical contact in the office, such as repeated hugging, kissing or touching that was offensive or humiliating."

Ms Broderick said women continued to put up with harassment because of their fears of "victimisation and/or career death".

Fiona Inverarity, a partner at Truman Hoyle specialising in employment and industrial law, said although details of what happened at David Jones remained unclear, she would wager the female employee

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Truman Hoyle's Fiona Inverarity

claiming harassment would not get a fraction of McInnes's payout if the matter went to court.

"The irony is she would not get much money," Ms Inverarity said. "Her employment won't be terminated, so she would just be looking at payment for suffering and damages and that would be in the thousands – say \$5000 to \$20,000 maximum. It's an interesting contrast to Mark McInnes, who will get \$1.5 million over what he was contractually entitled to. It [leads to] the question: why did they pay him more than they had to?"

Ms Inverarity said it was a "salutary lesson" that "sexual harassment doesn't have to be extreme, such as sexual favours – it's all illegal". "In my experience there are a lot more people lodging discrimination cases – not necessarily sexual harassment but also bullying as a form of harassment that can lead to job loss," she said.

In Melbourne, the managing director of recruitment and human resources firm Slade Group, Anita Ziemer, reflected that despite the legal penalties involved in harassment, "unfortunately human instincts override a lot of social conditioning".