

# HARMERS CLIENT ALERT: MORE THAN \$330,000 IN DAMAGES AWARDED TO SEXUALLY HARASSED EMPLOYEE

On 23 December of 2015, the Victorian Civil and Administrative Tribunal (“VCAT”) awarded more than \$330,000 as compensation to Ms Collins, an employee who had been repeatedly sexually harassed by her employer, Mr Smith, the owner and manager of the Geelong West Licensed Post Office.

This case, *Collins v Smith (Human Rights)* [2015] VCAT 1992 (23 December 2015), continues a recent trend whereby courts and tribunals are awarding significant awards of damages in sexual harassment and human rights cases.

In this case, VCAT followed the reasoning of the Full Bench of the Federal Court of Australia in the recent case of *Richardson v Oracle Corporation Australia Pty Ltd* [2014] FCAFC 82, where it was acknowledged by the Federal Court that awards of damages had, for many years, fallen behind in respect of community standards and understanding of the experience of hurt and humiliation that victims of sexual harassment experience, and the loss of enjoyment of life occasioned by mental illness or distress caused by unlawful sexual harassment.

It is vital that employers are aware of the significant exposure that unlawful sexual harassment can cause their organisations, and that employers take pro-active steps to mitigate against this risk.

## MANAGER LIKENED MS COLLINS TO AN UN-DRIVABLE LAMBORGHINI

Ms Collins was repeatedly subjected to sexual harassment from Mr Smith over a period of 4-5 months during her employment. During that time Mr Smith:

- requested that Ms Collins have sex with him and that they have a sexual relationship;
- tried to kiss Ms Collins and touch her inappropriately;
- made sexual comments, such as “I can’t get the thought of making love to you out of my head!”;
- sent Ms Collins sexualised text messages;
- and said to Ms Collins “if I had a Lamborghini in the garage, and I can’t drive it, then I don’t want it here anymore”.

Ms Collins claimed that her hours were cut as a result of rejecting Mr Smith’s advances, and that she eventually became too distressed by his conduct to continue her employment.

Ms Collins commenced proceedings against Mr Smith in VCAT, and at the conclusion of the trial, VCAT found that the vast majority of Ms Collins’ allegations of sexual harassment against Mr Smith had been proven, and that Mr Smith had contravened the *Equal Opportunity Act 2010* (Vic).

## DAMAGES FOR SEXUAL HARASSMENT

When determining the quantity of damages to award to Ms Collins, Judge Jenkins looked to previous authorities, and had regard to the following cases:

- *Tan v Xenos (No 3)* [2008] VCAT 584 – a sexual harassment case where Ms Tan was awarded general damages of \$100,000;
- *Poniatowska v Hickinbotham* [2009] FCA 680, a sexual harassment case where the complainant was awarded \$90,000 general damages in a total award of \$466,000;
- *Willett v Victoria* [2013] VSCA 76, where the Court awarded the Applicant – who had suffered from and was the target of significant bullying and harassment in her workplace – general damages of \$250,000;
- *Swan v Monash Law Book Cooperative* [2013] VSC 326 – a bullying and harassment negligence case where Ms Swan was awarded general damages of \$300,000;
- *Ewin v Vergara (No 3)* [2013] FCA 1311 – a sexual harassment case where Ms Ewin was awarded \$110,000 in general damages and \$293,000 for loss of past earning capacity;
- *GLS v PLP* [2013] VCAT 221 – a sexual harassment case where a general damages award of \$100,000 was made; and
- *Richardson v Oracle* [2014] FCAFC 82 – a sexual harassment case where Ms Richardson was awarded general damages of \$100,000 in a total award of \$130,000.

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In *Collins v Smith*, VCAT made an award in favour of Ms Collins for compensation in an aggregate sum of \$332,280, comprising:

- (a) general damages of \$180,000;
- (b) aggravated damages of \$20,000
- (c) past loss of net earnings and superannuation of \$60,000;
- (d) future loss of net earnings and superannuation of \$60,000; and
- (e) out of pocket expenses, incurred or to be incurred, of \$12,280.

## LESSONS FOR EMPLOYERS

As can be seen from the compensation award made to Ms Collins, and from the recent cases noted by VCAT, Courts and Tribunals are now more likely to make more significant awards of damages where there have been contraventions of human rights laws. This increases the potential risk and exposure of employers and highlights the importance of taking pro-active steps within your own workplace to properly manage and address these issues. To this end:

- It is important for employers to establish appropriate company policies, that set out the expectations of the employer in relation to appropriate behaviour at work, as well as the consequences and implications for employees if and
- when their behaviour falls below these expected standards.
- Employers should also carefully develop employment contracts, job descriptions, employee targets, and performance review processes that are all consistent with ensuring compliance with appropriate workplace behaviours.
- Employers must develop a proper grievance procedure for your workplace, so that employees that are subjected to sexual harassment (or any form of inappropriate workplace behaviour) have a supportive and fair process to follow in order to raise their concerns with their employer without fear of reprisal.
- Having proper policies and procedures in place however is not, in and of itself, enough. Employers must ensure that all employees are adequately and regularly trained in relation to those policies and the relevant law, to ensure the policies are actively understood by your workforce at all times. Such training is vital across the full spectrum of your workforce, from your most junior employee to your most senior managers.
- Be aware that an employer organisation will be held vicariously liable for any unlawful sexual harassment, unless you can show that you have taken all reasonable steps to prevent the unlawful behaviour.

If you have any questions about sexual harassment in the workplace, or questions about any other aspects of discrimination law or employment law generally, please feel free to contact Harmers Workplace Lawyers to seek advice. Our office contact details are as follows:

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