CAYMAN ISLANDS



SEXUAL HARASSMENT BILL, 2022

A BILL FOR AN ACT TO CRIMINALISE SEXUAL HARASSMENT; TO REQUIRE EMPLOYERS AND EDUCATIONAL INSTITUTIONS TO FORMULATE A SEXUAL HARASSMENT POLICY; TO ESTABLISH A SEXUAL HARASSMENT TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: The Parliament

Memorandum of

OBJECTS AND REASONS

This Bill seeks to criminalise sexual harassment, to require employers and educational institutions to formulate a sexual harassment policy, to establish a Sexual Harassment Tribunal and for incidental and connected purposes.

PART 1 – PRELIMINARY

Part 1 contains preliminary provisions which comprise clauses 1 and 2.

Clause 1 provides the short title and commencement.

Clause 2 is the interpretation clause which sets out the definitions of various words and terms used throughout the Bill.

PART 2 – CRIMINALISATION OF SEXUAL HARASSMENT

Part 2 provides a description of the types of actions which constitute sexual harassment and provides for the offence of sexual harassment. Part 2 contains clauses 3 to 6.

Clause 3 sets out the types of conduct that would amount to sexual harassment.

Clause 4 sets out the penalties where a person is convicted of the offence of sexual harassment.

Clause 5 provides for the offence of intimidating a complainant.

Clause 6 provides for the offence of making a false complaint.

PART 3 – MANDATING SEXUAL HARASSMENT POLICIES IN THE WORKPLACE

Part 3 deals with mandating the implementation of sexual harassment policies in workplaces and the scope of such policies. Part 3 contains clauses 7 to 11.

Clause 7 provides for the duty of an employer to formulate a sexual harassment policy for implementation in the workplace.

Clause 8 provides that an employer must report to the Royal Cayman Islands Police Service any complaints of sexual harassment reported to the employer.

Clause 9 provides for the duty of an employer to safeguard a complainant.

Clause 10 provides that the employer may be held liable for the offence of sexual harassment in certain circumstances.

Clause 11 provides for the offence of intimidating a complainant who is an employee or third party.

PART 4 – PREVENTION OF SEXUAL HARASSMENT IN EDUCATIONAL INSTITUTIONS

Part 4 deals with the creation and implementation of sexual harassment policies and curriculum in educational institutions. Part 4 contains clauses 12 to 18.

Clause 12 provides for the education of the contents of the legislation to all students at all public and private secondary and tertiary educational institutions.

Clause 13 requires all educational institutions to formulate a sexual harassment policy, to be implemented for students, separate from the sexual harassment policy for teachers and staff which will be implemented according to the mandated policy for the workplace.

Clause 14 requires the Department of Education Services, or the governing body, as applicable, to implement a life skills course which will include the topics of sex education, sexual harassment and sexual assault in all public and private secondary and tertiary educational institutions and requires the Director of the Department of Education Services or the governing body to ensure that the newly implemented course is taught at all public and private secondary and tertiary educational institutions.

Clause 15 provides that an owner or operator of an educational institution must report to the Royal Cayman Islands Police Service any complaints of sexual harassment reported to the owner or operator of the educational institution.

Clause 16 provides for the duty of an owner or operator of an educational institution to safeguard a complainant.

Clause 17 provides for the penalties where an owner or operator, or teacher or other member of staff of an educational institution commits an act of sexual harassment against a student of the educational institution.

Clause 18 provides for the offence of intimidating a complainant who is a student.

PART 5 – SEXUAL HARASSMENT TRIBUNAL

Part 5 provides for the Sexual Harassment Tribunal and contains clauses 19 to 25.

Clause 19 provides for the establishment and the constitution of the Sexual Harassment Tribunal.

Clause 20 provides for the jurisdiction of the Sexual Harassment Tribunal to hear certain matters.

Clause 21 provides that the appointment of members to the Sexual Harassment Tribunal and the procedure in respect of matters to be heard by the Sexual Harassment Tribunal are set out in Schedules 1 and 2 respectively.

Clause 22 provides for the various awards and decisions which the Sexual Harassment Tribunal may make in respect of a matter brought before the Tribunal.

Clause 23 provides that an award or a decision of the Sexual Harassment Tribunal shall be binding on the plaintiff and the defendant appearing before the Tribunal and shall take effect from such date as may be specified in the order of the Tribunal, having regard to the circumstances of the case.

Clause 24 provides that a plaintiff or defendant who is dissatisfied with an award or a decision of the Tribunal may appeal to the Grand Court.

Clause 25 provides for various offences in relation to attendance at a hearing before the Sexual Harassment Tribunal. This clause also provides for the offences of refusing to provide certain information and providing false information to the Tribunal.

PART 6 – GENERAL

Part 6 provides for general matters and contains clause 26 to 29.

Clause 26 provides that the Policy Co-ordination Unit of the Cabinet Office shall review sexual harassment policies required to be formulated under the legislation.

Clause 27 provides that the Cabinet may by Order amend the Schedules.

Clause 28 provides for the making of regulations.

Clause 29 provides that this Act binds the Crown.

Schedule 1 provides for matters related to the appointment of members of the Sexual Harassment Tribunal.

Schedule 2 provides for the procedure for making complaints to the Sexual Harassment Tribunal and for investigations and hearings by the Sexual Harassment Tribunal.

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ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Sexual Harassment Act, 2022.

(2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet.

Interpretation

2. In this Act —

"**civil partnership status**" means the status or condition of being —

(a) single;

(b) a party to a civil partnership;

(c) a party to a civil partnership but living separately and apart from one's civil partner;

(d) a former civil partner where the civil partnership is dissolved;

(e) a surviving civil partner; or

(f) a person who, although not in a civil partnership with another person, is living with that other person in the same household as if the person is in a civil partnership with the other person;

"**complainant**" means a person by whom or on whose behalf a complaint of sexual harassment is made;

"**defendant**" means a person about whose conduct a complaint has been made to the Tribunal in respect of any of the matters specified in section 20(a);

"**Department of Education Services**" means the agency under the Ministry of Education, led by the Director of the Department of Education Services, responsible for education in relation to the conduct of Government schools;

"**Director of the Department of Education Services**" means the person appointed under the general powers provided under the *Public Service Management Act (2018 Revision)* who is responsible for the implementation of education policy in Government schools, and performs such other functions as are provided for in this or any other Act;

"**educational institution**" means a public or private —

(a) secondary or tertiary school;

(b) institution of technical, vocational, professional, or higher education; or

(c) institution that provides —

(i) education to prepare for the award of any degree, qualification or certification; or

(ii) education for persons with special education needs and disabilities;

"**employer**" means any person who has entered into or stands ready to enter into a contract of employment with an employee, and includes —

(a) an agent or representative of the employer; and

(b) a supervisor of the employee;

"**governing body**" means the trustees or group of persons responsible for executive decision making authority in relation to the conduct of schools or post-compulsory education and training institutions;

"**marital status**" means the status or condition of being —

(a) single;

(b) married;

(c) married but living separately and apart from one's spouse;

(d) divorced;

(e) widowed; or

(f) a man or a woman who, although not married to a person of the opposite sex, is living with that person in the same household as if the man or woman were the husband or wife of that person;

"**plaintiff**" means a person who makes a complaint to the Tribunal in respect of any of the matters specified in section 20(a);

"**respondent**" means a person about whose conduct a complaint of sexual harassment has been made;

"**Royal Cayman Islands Police Service**" means the Royal Cayman Islands Police Service referred to in section 3 of the *Police Act (2021 Revision)*;

"**sexual harassment"** means the conduct specified in section 3(1);

"**third party**" means a person who has a business or professional relationship with or connection to an employer or the employees of the employer;

"**Tribunal**" means the Sexual Harassment Tribunal established under Part 5; and

"**unwelcome**", in relation to sexual behaviour, means any conduct of a sexual nature in relation to another person without that person's explicit consent.

PART 2 - CRIMINALISATION OF SEXUAL HARASSMENT

Conduct that amounts to the offence of sexual harassment

3. (1) A person commits the offence of sexual harassment against another person where that person —

(a) makes an unwelcome sexual advance towards another person;

(b) makes an unwelcome sexual comment to another person;

(c) makes an unwelcome sexual comment about another person in that person's sight and hearing;

(d) makes an unwelcome request to another person for sexual favours;

(e) makes an unwelcome sexual gesture to another person;

(f) provides another person with unwelcome sexual images or graphics;

(g) makes unwelcome sexual physical contact with another person;

(h) provides another person with unwelcome audio of a sexual nature;

(i) transmits unwelcome electronic messages of a sexual nature to another person;

(j) makes unwelcome sexual innuendos to another person;

(k) engages in conduct of a sexual nature knowing that there is a likelihood that the person to whom the conduct is intended to affect will become aware of the conduct; or

(l) directly or indirectly engages in any other form of unwelcome conduct of a sexual nature,

and the person to whom the conduct is directed regards the behaviour as offensive or humiliating, where that reaction is reasonable in the circumstance.

(2) For the purposes of determining whether a person committed the offence of sexual harassment, the following factors shall be taken into account —

(a) the age of the complainant;

(b) the age of the respondent;

(c) the relationship between the complainant and the respondent;

(d) any disability of the complainant; and

(e) any other relevant factors that it is reasonable to take into account.

(3) For the purposes of determining whether a person committed the offence of sexual harassment, the following factors shall not be taken into account —

(a) the sex of the complainant and the respondent;

(b) the civil partnership status or the marital status of the complainant and the respondent;

(c) the sexual preference of the complainant and the respondent;

(d) the religious beliefs of the complainant and the respondent;

(e) the colour, nationality or ethnicity of the complainant and the respondent; and

(f) the immigration status of the complainant and the respondent.

Penalties in respect of sexual harassment

4. A person who commits the offence of sexual harassment is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of five years, or to both.

Offence of intimidating a complainant

5. (1) Subject to sections 11 and 18, a person shall not subject, or threaten to subject, a complainant to any adverse action or detriment —

(a) on the ground that the complainant —

(i) has made, or proposes to make, a complaint of sexual harassment under this Act;

(ii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under this Act;

(iii) provides or proposes to provide evidence or testimony as a witness in proceedings under this Act; or

(iv) has made in good faith a complaint that a person has engaged in conduct prohibited under this Act; or

(b) on the ground that the person believes that the complainant has done, or proposes to do, an act or thing referred to in paragraph (a)(i) to (iv).

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of six months, or to both.

Offence of making a false complaint

6. A person who knowingly makes a false complaint of sexual harassment commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of one year, or to both.

PART 3 - MANDATING SEXUAL HARASSMENT POLICIES IN THE WORKPLACE

Duty of employer to formulate sexual harassment policy

7. (1) Within two months of the coming into force of this Act, an employer shall formulate a written sexual harassment policy which is to be implemented in the workplace.

(2) The sexual harassment policy referred to in subsection (1) shall include —

(a) a definition of sexual harassment that is in accordance with this Act;

(b) a statement indicating that every employee is entitled to employment free from sexual harassment;

(c) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;

(d) a statement explaining how the employer will deal with sexual harassment directed towards an employee or a third party by another employee;

(e) a statement indicating the categories or types of support available to employees or third parties who are victims of sexual harassment;

(f) a statement indicating that the employer will take such disciplinary measures as the employer considers appropriate against any person under the employer's direction who subjects any employee or third party to

sexual harassment, and an explanation as to the categories or types of disciplinary measures which may be taken;

(g) a statement indicating that the employer will not disclose the name of a complainant, or the circumstances related to the complaint to any person except where the disclosure —

(i) is made in accordance with section 8;

(ii) is necessary for the purposes of an investigation of the complaint by the Royal Cayman Islands Police Service;

(iii) is necessary for taking disciplinary measures in relation to the complaint;

(iv) is necessary for the conduct of a prosecution in relation to the complaint; or

(v) is made in compliance with the directions of a court; and

(h) any other prescribed matters.

Duty of employer to report complaints of sexual harassment

8. (1) Subject to subsection (2), where a complaint of sexual harassment is made to an employer, the employer shall file a report with the Royal Cayman Islands Police Service within two business days of receiving the complaint.

(2) An employer shall report an act of sexual harassment in accordance with subsection (1) if the act is alleged to have taken place —

(a) on or within the premises of the workplace; or

(b) by another employee or a third party.

(3) Where an employee or third party alleges sexual harassment, the employer shall solicit the following details —

(a) the conduct which forms the basis of the complaint of sexual harassment;

(b) the date and time that the act of sexual harassment is alleged to have taken place;

(c) the exact location at which the act of sexual harassment is alleged to have taken place; and

(d) the identity of the person who is alleged to have committed the act of sexual harassment.

(4) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Additional duties of the employer

9. (1) An employer shall ensure that each employee and third party receives a copy of the sexual harassment policy referred to in section 7 and that each employee and third party is aware of and understands the content of the sexual harassment policy.

(2) An employer shall not place an employee who is alleged to have committed an act of sexual harassment ("the respondent") on leave, unless —

(a) the safety or well-being of the complainant is under direct threat from the respondent; or

(b) upon reviewing the evidence, the employer is satisfied that the conduct of the respondent amounted to an act of sexual harassment.

(3) Where an employee referred to in subsection (2) is placed on leave —

(a) the leave shall be paid leave; and

(b) the amount of pay and the duration of the leave shall be determined in accordance with any applicable laws or, where there is no applicable law, having regard to what is reasonable in the circumstances.

(4) Notwithstanding subsections (2) and (3), where an employee who is alleged to have committed an act of sexual harassment was previously convicted of sexual harassment, the employer shall place that employee on leave.

(5) Where an employer decides not to place an employee who is alleged to have committed an act of sexual harassment on leave, the employer is liable to pay wages to the employee for any period of absence relating to an investigation of the complaint which is being carried out by the Royal Cayman Islands Police Service.

(6) Where an employee is the complainant, an employer is liable to pay wages to the complainant for any period of absence relating to an investigation of the complaint being carried out by the Royal Cayman Islands Police Service.

Liability of employer for acts of sexual harassment

10. An employer is liable for an offence of sexual harassment committed by the employer's agents and employees if it is proven that —

(a) the conduct occurred during the course of employment; and

(b) the employer knew, ought reasonably to have known or was informed of the conduct and, on becoming aware, suspicious or informed, failed to take the steps outlined in this Act.

Offence of intimidating an employee or third party

11. (1) An employer or a fellow employee or third party shall not subject or threaten to subject an employee or third party to any adverse action or detriment —

(a) on the ground that the employee or the third party —

(i) has made, or proposes to make, a complaint of sexual harassment under this Act;

(ii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under this Act;

(iii) provides or proposes to provide evidence or testimony as a witness in proceedings under this Act; or

(iv) has made in good faith a complaint that a person has engaged in conduct prohibited under this Act; or

(b) on the ground that the employer, fellow employee or third party believes that the employee or the third party has done, or proposes to do, an act or thing referred to in paragraph (a)(i) to (iv).

(2) An employer, fellow employee or third party who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of six months, or to both.

PART 4 - PREVENTION OF SEXUAL HARASSMENT IN EDUCATIONAL INSTITUTIONS

Provisions of this Act to be taught in educational institutions

12. An owner or operator of an educational institution shall ensure that the provisions of this Act are taught as a mandatory subject in the life skills course referred to in section 14.

Duty of educational institutions to implement sexual harassment policy

13. (1) Within two months of the coming into force of this Act, an owner or operator of an educational institution, in addition to formulating a written sexual harassment policy referred to in section 7 for teachers and other members of staff in the workplace, shall formulate a written sexual harassment policy referred to in subsection (2) for the students, for the purposes of this Part.

(2) The sexual harassment policy referred to in subsection (1) shall include —

(a) a definition of sexual harassment that is in accordance with this Act;

(b) examples of conduct which may amount to sexual harassment and the different scenarios in which sexual harassment may occur;

(c) a statement explaining how complaints of sexual harassment may be brought to the attention of the owner or operator of the educational institution;

(d) a statement explaining the conduct and behaviour expected from students while on or within the property of the educational institution;

(e) a statement explaining how the owner or operator of the educational institution will deal with the sexual harassment of students by a fellow student or by a teacher or staff member;

(f) a statement explaining the appropriate action or response where a student, teacher or other member of staff witnesses the sexual harassment of a fellow student, teacher or member of staff on the property of the educational institution or by a fellow student, teacher or member of staff;

(g) a statement indicating the categories or types of support that is available to students, teachers or other members of staff who are victims of sexual harassment;

(h) a statement indicating that the owner or operator of the educational institution will take such disciplinary measures as the owner or operator of the educational institution considers appropriate in respect of any reported or proven cases of sexual harassment that have occurred on or within the property of the educational institution or by a fellow student, teacher or member of staff, and an explanation as to the categories or types of disciplinary measures which may be taken;

(i) a statement indicating that the owner or operator of the educational institution will not disclose the name of a complainant, or the circumstances related to the complaint to any person except where the disclosure —

(i) is made in accordance with section 15;

(ii) is necessary for the purposes of an investigation of the complaint by the Royal Cayman Islands Police Service;

(iii) is necessary for taking disciplinary measures in relation to the complaint;

(iv) is necessary for the conduct of a prosecution in relation to the complaint; or

(v) is made in compliance with the directions of a court; and

(j) any other prescribed matters.

Course on life skills

14. (1) The Department of Education Services or the governing body, as applicable, shall establish and implement a syllabus for a course on life skills, which shall include —

(a) sex education;

(b) education on the sexual harassment policy of the particular educational institution;

(c) education on sexual assault;

(d) education on the provisions of this Act; and

(e) education on any other prescribed matters.

(2) The Director of the Department of Education Services or the governing body, as applicable, shall ensure that the course on life skills is taught at every educational institution.

Duty of owner or operator of educational institutions to report complaints of sexual harassment

15. (1) Subject to subsection (2), where a complaint of sexual harassment is made to an owner or operator of an educational institution, the owner or operator of the educational institution shall file a report with the Royal Cayman Islands Police Service within one business day of receiving the complaint.

(2) An owner or operator of an educational institution shall report an act of sexual harassment in accordance with subsection (1) if the act is alleged to have taken place —

(a) on or within the premises of the educational institution; or

(b) by a fellow student, teacher or member of staff.

(3) Where a student, teacher or other member of staff alleges sexual harassment, the owner or operator of the educational institution shall solicit the following details —

(a) the conduct which forms the basis of the complaint of sexual harassment;

(b) the date and time that the act of sexual harassment is alleged to have taken place;

(c) the exact location at which the act of sexual harassment is alleged to have taken place; and

(d) the identity of the person who is alleged to have committed the act of sexual harassment.

(4) An owner or operator of an educational institution who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Duty of owner or operator of an educational institution to safeguard complainant

16. (1) An owner or operator of an educational institution shall ensure that each student, teacher and member of staff receives a copy of the sexual harassment policy referred to in section 13 and that each student, teacher and member of staff is aware of and understands the content of the sexual harassment policy.

(2) An owner or operator of an educational institution shall not place a teacher or other member of staff who is alleged to have committed an act of sexual harassment ("the respondent") on leave, unless —

(a) the safety or well-being of the complainant is under direct threat from the respondent; or

(b) upon reviewing the evidence, the owner or operator of the educational institution is satisfied that the conduct of the respondent amounted to an act of sexual harassment.

(3) Where a teacher or other member of staff referred to in subsection (2) is placed on leave —

(a) the leave shall be paid leave; and

(b) the amount of pay and the duration of the leave shall be determined in accordance with any applicable laws or, where there is no applicable law, having regard to what is reasonable in the circumstances.

(4) Notwithstanding subsections (2) and (3), where a teacher or other member of staff who is alleged to have committed an act of sexual harassment was previously convicted of sexual harassment, the owner or operator of the educational institution shall place that teacher or other member of staff on leave.

(5) Where an owner or operator of the educational institution decides not to place a teacher or other member of staff who is alleged to have committed an act of sexual harassment on leave, the owner or operator of the educational institution is liable to pay wages to the teacher or other member of staff for any period of absence relating to an investigation of the complaint which is being carried out by the Royal Cayman Islands Police Service.

(6) Where a teacher or member of staff is the complainant, the owner or operator of the educational institution is liable to pay wages to the complainant for any period of absence relating to an investigation of the complaint being carried out by the Royal Cayman Islands Police Service.

(7) An owner or operator of an educational institution may place a student who is alleged to have committed an act of sexual harassment in a different classroom from the complainant for the duration of the investigation into the complaint, and depending on the outcome of the investigation, for such duration of time

after the investigation as the owner or operator of the educational institution considers necessary.

(8) An owner or operator of an educational institution shall not suspend or expel a student who is alleged to have committed an act of sexual harassment ("the respondent"), unless —

(a) the safety or well-being of the complainant is under direct threat from the respondent; or

(b) upon reviewing the evidence, the owner or operator of the educational institution is satisfied that the conduct of the respondent amounted to an act of sexual harassment.

Penalty where act of sexual harassment committed against a student by an owner or employee of an educational institution

17. Notwithstanding section 4, where an owner or operator, or teacher or other member of staff of an educational institution commits the offence of sexual harassment against a student, the owner or operator, or teacher or other member of staff is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of six years, or to both.

Offence of intimidating a student

18. (1) An owner or operator of an educational institution, a teacher, a member of staff or a fellow student shall not subject a student who alleges sexual harassment to any adverse action or detriment —

(a) on the ground that the student —

(i) has made, or proposes to make, a complaint of sexual harassment under this Act;

(ii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under this Act;

(iii) provides or proposes to provide evidence or testimony as a witness in proceedings under this Act; or

(iv) has made in good faith a complaint that a person has engaged in conduct prohibited under this Act; or

(b) on the ground that the owner or operator of an educational institution, the teacher, the member of staff or the fellow student believes that the student has done, or proposes to do, an act or thing referred to in paragraph (a)(i) to (iv).

(2) An owner or operator of an educational institution, a teacher, a member of staff or a fellow student who contravenes subsection (1) commits an offence and is

liable on summary conviction to a fine of six thousand dollars or to imprisonment for a term of one year, or to both.

PART 5 - SEXUAL HARASSMENT TRIBUNAL

Establishment and constitution of Tribunal

19. There is established the Sexual Harassment Tribunal which shall consist of seven members appointed by the Cabinet, as follows —

(a) two members, who shall be attorneys-at-law, who have each practised for at least ten years;

(b) two members who shall be trained and certified mediators, who have each practised for at least two years; and

(c) three other members, who shall be selected from among persons who in the opinion of the Cabinet, are qualified to be members as having had the experience of, and shown capacity in, matters relating to worker representation, gender affairs, mental health, employer representation and labour relations.

Jurisdiction of Tribunal to hear certain matters

20. Subject to this Part and Schedule 2, the Tribunal has jurisdiction to —

(a) hear and determine —

(i) a complaint made by an employee or third party ("plaintiff") that the relevant employer ("defendant") has failed to act in accordance with the sexual harassment policy of the workplace, where a complaint of sexual harassment is made to the employer;

(ii) a complaint by a teacher, a member of staff or a student ("plaintiff") that the relevant owner or operator of the educational institution ("defendant") has failed to act in accordance with the sexual harassment policy of the educational institution, where a complaint of sexual harassment is made to the owner or operator of the educational institution;

(iii) a complaint in relation to a matter arising under or a contravention of section 7(1), 8(3), 9, 12, 13(1), 15(3) or 16; and

(iv) a complaint in respect of a disclosure made by an employer or an owner or operator of an educational institution other than in the circumstances set out in section 7(2)(g) or 13(2)(i); and

(b) make any of the awards or decisions specified under section 22.

Appointment of members and procedure of Tribunal

21. (1) The appointment of members to the Tribunal and the procedure in respect of matters to be heard by the Tribunal are set out in Schedules 1 and 2 respectively.

(2) Subject to this Act, the Tribunal may regulate its procedures and proceedings as it thinks fit, and may prescribe forms to be used in connection with complaints brought under this Act.

(3) The rules of the Tribunal as first constituted and any amendments made shall be published in the *Gazette*.

Awards of Tribunal

22. (1) After conducting a hearing, the Tribunal may —

(a) dismiss the complaint;

(b) find in favour of the plaintiff and make a determination, which may include any one or more of the following awards —

(i) a declaration that the defendant has engaged in conduct amounting to non-compliance with this Act, in the manner specified in the declaration, and that the defendant shall not repeat or continue the conduct;

(ii) a direction to the defendant to perform any reasonable act or course of conduct to redress any loss or damage suffered by the plaintiff;

(iii) a direction to the defendant to reinstate the plaintiff;

(iv) a direction to the defendant to pay to the plaintiff damages by way of compensation for any loss or damage suffered by reason of the conduct of the defendant;

(v) a direction to the defendant to take such action, within such time, as the Tribunal may direct to ensure that the conduct referred to in subparagraph (i) ceases, and to report to the Tribunal on the action taken; or

(vi) a declaration that it would be inappropriate for any further action to be taken on the matter; or

(c) make such other award or decision as may be appropriate in relation to the complaint.

(2) The Tribunal may, in making an award under subsection (1)(b), take into consideration, injury to the plaintiff's feelings and any humiliation, mental or emotional distress suffered by the plaintiff.

(3) Where the Tribunal makes an award by way of a direction for the payment of compensation to the plaintiff, the sum so payable may be recovered by the plaintiff summarily in a court, without limit of amount, as a civil debt.

Effect of award or decision

23. An award or decision of the Tribunal shall be binding on the plaintiff and the defendant appearing before the Tribunal and shall take effect from such date as may be specified in the order made by the Tribunal, having regard to the circumstances of the case.

Appeal

24. A plaintiff or defendant who is dissatisfied with an award or a decision of the Tribunal may appeal to the Grand Court.

Offences in relation to attendance at hearing

25. (1) A person directed to attend a hearing of the Tribunal and who fails without reasonable excuse to do so, commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of three months, or to both.

(2) A person who, without reasonable excuse, fails or refuses to furnish relevant information or produce relevant documents as required by the Tribunal commits an offence and is liable on summary conviction to a fine of three thousand five hundred dollars or to imprisonment for a term of three months, or to both.

(3) A person appearing before the Tribunal as a witness at a hearing, who —

(a) refuses or fails to be sworn or to make an affirmation; or

(b) refuses or fails to answer a question required to be answered by the Tribunal,

commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of two months, or to both.

(4) A person who —

(a) interrupts the proceedings at a hearing of the Tribunal;

(b) uses insulting language towards the Tribunal when the Tribunal is exercising any powers or performing any functions under this Act,

commits an offence and is liable on summary conviction to a fine of two thousand or to imprisonment for a term of one month, or to both.

(5) A person who —

(a) publishes anything in contravention of a direction of the Tribunal to keep certain information confidential; or

(b) furnishes to the Tribunal any information or makes a statement at a hearing, knowing that the information or statement is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine of three thousand dollars or to imprisonment for a term of six month, or to both.

PART 6 - GENERAL

Review of sexual harassment policy

26. (1) An employer or an owner or operator of an educational institution shall submit its sexual harassment policy to the Policy Co-ordination Unit of the Cabinet Office for review prior to implementation.

(2) The Policy Co-ordination Unit of the Cabinet Office may direct an employer or an owner or operator of an educational institution to revise its sexual harassment policy if the policy does not contain the information required under this Act and any regulations made under this Act.

(3) The Policy Co-Ordination Unit of the Cabinet Office may, in reviewing a sexual harassment policy submitted under this Act, consult with the Ministry of Education, the Department of Labour and Pensions, and any other ministry, portfolio or government entity it considers appropriate.

Amendment of Schedules

27. The Cabinet may by Order amend the Schedules.

Regulations

28. The Cabinet may make regulations generally for the effective implementation of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations prescribing —

(a) the content of sexual harassment policies referred to in this Act;

(b) any reporting and notification requirements;

(c) investigation procedures in relation to sexual harassment;

(d) an administrative penalty system in respect of a contravention of, or an offence under, this Act or regulations made under this Act, including —

(i) forms and procedures for imposing the administrative penalty; and

(ii) how the administrative penalty shall be paid and may be enforced,

and such other matters that are necessary to give effect to the creation of the administrative penalty system; and

(e) the form and submission of reports on sexual harassment.

Act binds the Crown

29. This Act binds the Crown.

SCHEDULE 1

(section 21)

Appointment of Sexual Harassment Tribunal

Appointment of chairperson and deputy chairperson of the Tribunal

1. (1) The Cabinet shall appoint a chairperson and two deputy chairpersons from amongst the members of the Tribunal, at least two of whom are attorneys-at-law.

(2) In the absence or inability of the chairperson to act in any sitting of the Tribunal, the deputy chairperson shall act as the chairperson at that sitting.

Hearing panel of Tribunal

2. (1) A complaint made to the Tribunal shall be heard and determined by a panel consisting of three members of the Tribunal.

(2) The chairperson or a deputy chairperson appointed pursuant to section 19(a) may chair a panel constituted under subparagraph (1).

(3) In assigning members of the Tribunal to the panel, the chairperson of the Tribunal shall take into consideration the necessary experience and expertise that are necessary to enable the panel to determine the issues raised in any matter before it.

Disclosure of interest in relation to matter before Tribunal

3. (1) A member of the Tribunal who, whether directly or indirectly, has an interest in any matter that is brought before the Tribunal shall —

(a) by notice, declare the nature of the interest on the first opportunity at which it is practicable for the member to do so; and

(b) not take part in any deliberations or decisions of the Tribunal with respect to that matter.

(2) A notice given by a member at a hearing of the Tribunal to the effect that the member is interested in any matter before the Tribunal shall, for the purposes of subparagraph (1), be a sufficient disclosure of the member's interest in relation to the matter.

(3) A member need not attend in person at a hearing of the Tribunal in order to make a disclosure which the member is required to make under this paragraph if the member takes reasonable steps to ensure that the disclosure is made by notice which is taken into consideration and read at the hearing.

(4) Where the Cabinet is satisfied that a member of the Tribunal is unable to carry out the duties as a member properly and effectively because of any conflict of interest or potential conflict of interest in a matter before the Tribunal, the Cabinet shall replace that member or direct that member to abstain from taking part in any proceedings relating to any matter affected by the member's conflict of interest or potential conflict of interest.

Tenure of Office

4. The members of the Tribunal, subject to this Act, shall hold office for a period not exceeding three years and shall be eligible for re-appointment.

Acting appointments

5. (1) The Cabinet may appoint a person to act in the place of the chairperson of the Tribunal or any other member of the Tribunal in the case of the absence, inability or refusal of the chairperson or other member to act.

(2) An acting appointment made under subparagraph (1) shall be made in the same manner and from among the category of persons as would be required in the case of the original appointment.

Resignation

6. (1) A member of the Tribunal, other than the chairperson, may at any time resign from that office by instrument in writing addressed to the Cabinet and transmitted through the chairperson, and from the date of the receipt by the Cabinet of the instrument, that member shall cease to be a member of the Tribunal.

(2) The chairperson may at any time resign from that office by instrument in writing addressed to the Cabinet and the resignation shall take effect as from the date of receipt by the Cabinet of that instrument.

Revocation of appointment

7. The Cabinet may revoke the appointment of a member of the Tribunal for —

(a) the inability of the member to discharge the functions as a member of the Tribunal, whether arising from infirmity of body or mind;

(b) dereliction of duty;

(c) misbehaviour; or

(d) the absence of the member or the inability or refusal of the member to act.

Filling of vacancies

8. (1) If a vacancy occurs in the membership of the Tribunal, the Cabinet shall appoint a person who shall hold office for the remainder of the period for which the previous member was appointed.

(2) An appointment made under subparagraph (1) shall be made in the same manner and from among the category of persons as the appointment of the previous member.

Remuneration of members

9. The members of the Tribunal shall be paid such remuneration which may include salaries, fees or other benefits, and such reasonable allowances in respect of expenses properly incurred by them in the performance of their duties, as the Cabinet shall determine.

Staff of Tribunal

10. (1) The Cabinet shall ensure that the Tribunal is provided with a secretary and with such additional staff as may be considered necessary to assist the Tribunal in the performance of its functions.

(2) The secretary of the Tribunal shall be responsible for —

(a) keeping a record of the proceedings of the Tribunal;

(b) keeping in safe custody the documents of the Tribunal;

(c) recording statements of witnesses called before the Tribunal; and

(d) performing such other duties as the Tribunal may require.

(3) The secretary and other staff of the Tribunal shall be paid such remuneration which may include salaries, fees or other benefits, and such reasonable allowances in respect of expenses properly incurred by them in the performance of their duties, as the Cabinet shall determine.

SCHEDULE 2

(sections 20 and 21)

Procedure for making complaints and for investigations and hearings by Tribunal

Making of complaint

1. (1) A person who alleges that —

(a) an employer has failed to act in accordance with the sexual harassment policy of the workplace, where a complaint of sexual harassment is made to the employer;

(b) an owner or operator of an educational institution has failed to act in accordance with the sexual harassment policy of the educational institution, where a complaint of sexual harassment is made to the owner or operator of the educational institution;

(c) there has been a contravention of section 7(1), 8(3), 9, 12, 13(1), 15(3) or 16; or

(d) there has been a disclosure made by an employer or an owner or operator of an educational institution other than in the circumstances set out in section 7(2)(g) or 13(2)(i),

may make a complaint, in writing, in the manner set out by the Tribunal, and the complaint shall set out the details of the alleged contravention.

(2) A complaint made under subparagraph (1) shall be made within the period of twelve months from the date of the alleged contravention.

(3) Notwithstanding subparagraph (2), the Tribunal may, in circumstances which it considers to be exceptional, grant leave for a complaint to be made after that period.

(4) Subject to subparagraph (5), a person shall, before making a complaint under subparagraph (1), exhaust the use of any internal mechanisms and procedures that are available to the person, as provided for in the policy issued by the employer or the owner or operator of an educational institution, as applicable, in accordance with this paragraph.

(5) The Tribunal may grant leave to a person to make a complaint to the Tribunal in the circumstances provided in subparagraph (6), notwithstanding that the person has not complied with subparagraph (4).

(6) The circumstances referred to in subparagraph (5) are that the Tribunal is satisfied that the person has —

(a) shown cause as to why the person reasonably believes that the person's rights may be prejudiced if the person were to comply with subparagraph (4); or

(b) provided evidence to show that no internal mechanisms or procedures, or no adequate internal mechanisms and procedures have been made available to the person.

Particulars of complaint not to be communicated

2. (1) Where a complaint has been lodged with the Tribunal, a person having any official duty or being employed in the administration of this Act shall not divulge or communicate any particulars of the complaint to any other person, unless —

(a) the Tribunal so permits; or

(b) the particulars of the complaint are divulged or communicated to another person as a lawful disclosure.

(2) For the purposes of subparagraph (1), "**lawful disclosure**" means a disclosure made in accordance with section 3(1) of the *Confidential Information Disclosure Act, 2016*.

Investigation and reports of findings

3. (1) Subject to subparagraph (2), upon receipt of a complaint, the Tribunal may cause an investigation to be conducted into the particulars of the complaint by a person authorized by the Tribunal as the Tribunal considers necessary and appropriate, having regard to the nature and circumstances of the complaint.

(2) For the purposes of conducting an investigation under subparagraph (1), a person authorized by the Tribunal to conduct the investigation may, by written notice —

(a) require a person to disclose information regarding a complaint;

(b) require a person to furnish any information disclosed in a complaint;

(c) specify the time within which a person shall furnish any information disclosed in the notice; and

(d) require a person to —

(i) attend at such time and place as may be specified in the notice;

(ii) give such evidence as the person authorized by the Tribunal to conduct the investigation considers necessary; and

(iii) produce any document or exhibit in the possession or control of the person relating to any matter disclosed in a complaint.

(3) A person served with a notice under subparagraph (2) shall not be compelled to give evidence or produce any document which the person would not be compelled to give in evidence, or produce in any proceedings before a court.

(4) Upon completion of an investigation, the person authorized by the Tribunal to conduct the investigation shall submit a report of the findings to the Tribunal.

Lack of grounds for making complaint

4. Pursuant to a report submitted under paragraph 3(4), where the Tribunal finds that there is no evidence to support the complaint or the complaint is frivolous or vexatious, the Tribunal shall, in writing, inform the plaintiff and the defendant of the facts and reasons for its finding, and the Tribunal shall take no further action in relation to the complaint.

Procedure in relation to a hearing

5. (1) The following procedures shall apply in relation to a hearing conducted by the Tribunal —

(a) notice of the time and place at which the hearing is to be held shall be given to the parties in relation to the complaint, and the notice shall be of not less than ten days;

(b) a record of the evidence adduced before the Tribunal shall be made, dated and signed by the members;

(c) documents produced as exhibits before the Tribunal shall be marked, dated and initialled by the chairperson and shall be attached to the file of the hearing; and

(d) in the absence of any party duly notified to attend, the matter, which is the subject of the complaint may be decided by the Tribunal *ex parte*.

(2) The Tribunal shall not conduct a hearing or shall discontinue a hearing, if the Tribunal receives notice that the plaintiff does not wish the hearing to be held or to be continued.

(3) The Tribunal —

(a) may endeavour, by any means that it considers reasonable, to resolve a complaint which is the subject of a hearing; or

(b) shall take steps that it considers reasonable, to effect an amicable settlement of the complaint, and for this purpose may adjourn a hearing at any stage to enable the parties to negotiate with a view to settlement by amicable arrangements.

Evidence before Tribunal

6. The Tribunal may take evidence on oath or affirmation for the purpose of the hearing.

Attendance at hearing

7. (1) The Tribunal may, for the purpose of a hearing, by notice in writing, direct any person specified in subparagraph (2), to attend at a time and place specified in the notice for the purposes of the hearing.

(2) Directions under subparagraph (1) may be given to —

(a) the plaintiff;

(b) the defendant; and

(c) any other person who, in the opinion of the Tribunal, is likely to be able to provide information relevant to the hearing or whose presence is, in the opinion of the Tribunal, likely to be conducive to the settlement of the matter to which the complaint relates.

(3) The Tribunal may in a notice under subparagraph (1), require the person to produce any document specified in the notice.

(4) The Tribunal shall give each party to a hearing reasonable opportunity to call witnesses or give evidence, examine and cross-examine witnesses and make submissions to the Tribunal.

Right to representation

8. A party to a hearing may be represented by an attorney-at-law or any other person, or may elect to be self-represented.

Tribunal may prohibit publication of evidence, etc.

9. (1) In the interest of the administration of justice, public safety, public order or public morality, the Tribunal conducting a hearing in the exercise of its jurisdiction under this Act may direct that —

(a) the name, identity, and address of any person shall be protected in the manner specified by the Tribunal;

(b) in relation to a witness called or appearing before the Tribunal, the name, identity, and address of the witness and such other

particulars concerning the witness, as in the opinion of the Tribunal shall be kept confidential, shall not be published; or

(c) no particulars of a complaint shall be published without the prior written approval of the Tribunal.

(2) A person shall not publish any information in contravention of a direction under subparagraph (1).

Passed by the Parliament the day of , 2022.

Speaker

Clerk of the Parliament