

PROPOSED SEXUAL HARASSMENT BILL

Submitted by:

Joint Action Group Against Violence Against Women (J.A.G)

- * **Women's Centre for Change, Penang - *Organising Chair***
- * **Women's Development Collective**
- * **Women's Aid Organisation**
- * **All Women's Action Society**
- * **Sisters In Islam**
- * **Malaysian Trades Union Congress, Women's Section**
- * **Persatuan Sahabat Wanita Selangor**
- * **Women's Candidacy Initiative**

For further information, contact: Women's Centre for Change 24-D, Jalan Jones, 10250 Penang, Malaysia.
Tel: 04-2280342, Fax: 04- 2285784, Email: wccpen@po.jaring.my, Website: www.wccpenang.org.

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SEXUAL HARASSMENT BILL

(Act No. of)

Preamble

A Bill relating to sexual harassment and to provide redress for people who have been sexually harassed.

A Bill recognising that sexual harassment is a violation of human dignity and constitutes discrimination and the denial of the fundamental right to equal opportunities at work and in other areas of public activity.

A Bill to give legal effect in part to the Code of Practice on the Prevention and Elimination of Sexual Harassment at the Workplace 1999.

A Bill to give effect in part to the **United Nations Convention on the Elimination of All Forms of Discrimination Against Women**, to eliminate as far as possible, discrimination involving sexual harassment in the workplace, in educational institutions and in other areas of public activity and to promote recognition and acceptance within the community of the principle of the equality of women and men.

PART 1 PRELIMINARY

1. (1) This Bill may be cited as the Sexual Harassment Bill 2001. *Short title and commencement*
(2) This Bill commences on a day to be proclaimed.

2. In this Bill, unless the context otherwise requires -- *Interpretation*

“**accommodation**” includes residential and business accommodation and premises;

“**club**” includes a social, recreational, sporting or community service club, or society, or a community service organisation;

“**complainant**” means a person who lodges a complaint or on whose behalf a complaint is lodged;

“**complaint**” means a complaint lodged under this Bill;

“**court**” means the federal civil courts and the state syariah courts and includes a tribunal;

“**Director**” means the Director on sexual harassment appointed under section 26 and where applicable includes any person authorised or delegated by the Director under section 30;

“**educational authority**” means the person or body administering an educational institution;

“educational institution” means a school, college, university or other institution at which education or training is provided;

“employee” includes --

- (a) a person employed under a contract of service;
- (b) a person employed in the public services or appointed to a statutory office;
- (c) a person engaged under a contract for services;
- (d) a person who is engaged to perform any work the remuneration for which is based wholly or partly on commission;
- (e) a person engaged for the purposes of training, pupillage or apprenticeship;
- (f) an unpaid worker or volunteer;

“employer” includes --

- (a) a person who employs another person under a contract of service;
- (b) a person who engages another person under a contract for services;
- (c) a person who engages another person to perform any work the remuneration for which is based wholly or partly on commission;
- (d) a person who engages another person as a trainee, pupil or apprentice;
- (e) a person who engages an unpaid worker or volunteer;

and includes the agent, manager or factor of such first mentioned person and “person” shall be construed to include person, firm, corporation, company, society, co-operatives, trade unions, organisations and any entity with legal capacity to engage an employee as defined under this Bill;

“employment” includes --

- (a) employment under a contract of service;
- (b) employment under the public services or under a statutory appointment;
- (c) engagement under a contract for services;
- (d) work that is remunerated wholly or partly on commission;
- (e) training, pupillage or apprenticeship;
- (f) unpaid work or voluntary work;

“employment agent” means a person who carries on a business of providing services for the purpose of finding employment for people seeking to be employed or procuring employees for people seeking to employ them, or both;

“industrial organisation” means --

- (a) an organisation of employees;

- (b) an organisation of employers;
- (c) any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment including a cooperative;

“inquiry” means an inquiry held under Division 4 of Part 5;

“judicial officer” means a member of a court or tribunal but does not include a judge of the High Court, the Court of Appeal or the Federal Court;

“occupational qualification” means an authorisation or qualification that is needed for, or facilitates--

- (a) the practice of a profession;
- (b) the carrying on of a trade or business;
- (c) the engaging in of any other occupation or employment;

“parent” includes --

- (a) step-parent;
- (b) adoptive parent;
- (c) foster parent;
- (d) guardian;

“parental status” means the status of being a parent or not being a parent;

“public services” for purposes of this Bill has the same meaning as accorded under Article 132 of the Federal Constitution but does not include a judicial officer which is specifically defined herein;

“qualifying body” means a person or body that is empowered to confer, renew or extend an occupational qualification;

“respondent” means a person about whom a complaint has been lodged under this Bill;

“services” include, without limiting the generality of the word--

- (a) access to and use of any place that members of the public are permitted to enter;
 - (b) banking services, the provision of loans or finance, financial accommodation, credit guarantees and insurance;
 - (c) provision of entertainment, recreation or refreshment;
 - (d) services connected with transportation or travel;
 - (e) services of any profession, trade or business, including those of an employment agent;
 - (f) services provided by a government department, public authority, State-owned enterprise or municipal council--
- but does not include education or training in an educational institution;

“Tribunal” means the Tribunal established under this Bill;

“unpaid worker” or “volunteer” means a person who performs any work for an employer for no remuneration;

“workplace” means any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be a person's principal place of business or employment including a ship, aircraft, vehicle, and virtual or cyber spaces and any other context that results from employment responsibilities or employment relationships and

includes in the case of any member of both Houses of Parliament and any State Legislative Assembly --

- (a) the whole of Parliament House and State Legislative Assemblies;
- (b) any ministerial office or electoral office of any member; and
- (c) any other place that the member otherwise attends in connection with his ministerial, parliamentary or electoral duties;

PART 2

PROHIBITION OF SEXUAL HARASSMENT

3. For the purposes of this Bill, sexual harassment is defined as any form of unwanted verbal or non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. *Sexual harassment*

4. (1) An employer shall not sexually harass -- *Harassment by employers and employees*
 - (a) a person seeking employment with that employer;
 - (b) an employee of that employer.
 - (2) An employee shall not sexually harass --
 - (a) another person employed by his or her employer;
 - (b) his or her employer;
 - (c) a person seeking employment with his or her employer.

 - (3) For the purposes of this section a member of the governing body (however called) of a body corporate or unincorporated association is to be taken to be an employer of employees of that body corporate or unincorporated association.

5. (1) A person shall not sexually harass another person at a place that is a workplace of either or both of them or in the course *Harassment in common workplaces*

directly or indirectly of either person's work or employment or in connection with either person's work.

- (2) For the purposes of this section it is irrelevant --
- (a) whether each person is an employer, an employee or neither; and
- (b) if they are employees, whether their employers are the same or different.
6. A partner in a firm shall not sexually harass -- *Harassment by partners*
- (a) a person seeking admission to that firm as a partner;
- (b) another partner in that firm.
7. (1) A member of an industrial organisation shall not sexually harass -- *Harassment in industrial organisations*
- (a) a person seeking to become a member of that organisation;
- (b) another member of that organisation;
- (c) an employee of that organisation.
- (2) An employee of an industrial organisation shall not sexually harass --
- (a) a person seeking to become a member of that organisation;
- (b) a member of that organisation.
8. (1) A member of a qualifying body shall not sexually harass -- *Harassment by qualifying bodies*
- (a) a person seeking action in connection with an occupational qualification;
- (b) another member of that qualifying body;
- (c) an employee of that qualifying body.
- (2) An employee of a qualifying body shall not sexually harass --
- (a) a person seeking action in connection with an occupational qualification;
- (b) a member of that qualifying body.
- (3) In this section “**action in connection with an occupational qualification**” means conferring, renewing, extending, revoking or withdrawing an occupational qualification.
9. (1) An employee of an educational institution shall not sexually harass -- *Harassment in educational institutions*
- (a) a person seeking admission to that institution as a student;
- (b) a student at that institution.
- (2) A student at an educational institution shall not sexually harass --
- (a) another student at that institution;
- (b) an employee of that institution;
- (c) a member of the educational authority administering that institution.

- (3) A member of an educational authority shall not sexually harass --
- (a) a person seeking admission to the institution administered by the authority as a student;
 - (b) a student at that institution.
10. (1) A person shall not sexually harass another person in the course of providing, or offering to provide, goods or services to that other person. *Harassment in the provision of goods and services*
- (2) A person shall not sexually harass another person in the course of receiving or selecting goods or services provided by that other person.
- (3) This section applies whether or not the goods or services are provided or received for payment.
11. A person shall not sexually harass another person in the course of providing, or offering to provide, accommodation to that other person. *Harassment in the provision of accommodation*
12. A member of a club, including a member of the committee of management or other governing body, shall not sexually harass -- *Harassment in club*
- (a) a person seeking to become a member of the club;
 - (b) another member of the club;
 - (c) an employee of the club.
13. A person engaged in a sporting activity shall not harass another person engaged in a sporting activity. For the purposes of this section, a person is engaged in a sporting activity if -- *Harassment in sports*
- (a) the person is involved in an organised sporting competition;
 - (b) the person is coaching a person or team, or is being coached, for the purposes of an organised sporting competition;
 - (c) the person is carrying out an activity relating to the administration of a sport or an organised sporting competition;
 - (d) the person is officiating at an organised sporting competition or carrying out related duties or functions;
 - (e) the person is officially involved in a function relating to a sport or an organised sporting competition.
14. A councillor of a municipal council shall not sexually harass -- *Harassment in local government*
- (a) another councillor of that council;
 - (b) a non-councillor member of a committee of that council.

15. (1) A judicial officer shall not sexually harass a non-judicial officer, or a member of the staff, of a court of which the judicial officer is a member. *Harassment by judicial officer*
- (2) Sub-section (1) shall not apply in relation to anything said or done by a judicial officer in court or in chambers in the exercise, or purported exercise, of judicial powers or functions or in the discharge, or purported discharge, of judicial duties.
16. (1) A member of Parliament or a State Legislative Assembly shall not sexually harass -- *Harassment by member of Legislative bodies*
- (a) a member of his or her staff;
- (b) another member of Parliament or a State Legislative Assembly;
- (c) a member of the staff of another member of Parliament or a State Legislative Assembly;
- (d) an officer or member of the staff of the Parliament or a State Legislative Assembly;
- (e) any other person who in the course of employment performs duties at Parliament or a State Legislative Assembly.
- (2) Subsection (1) shall not apply in relation to anything said or done by a member of Parliament or a State Legislative Assembly in the course of proceedings which is privileged under the law.
- (3) For the purposes of this section, "proceedings" mean proceedings before --
- (a) both Houses of Parliament; or
- (b) the State Legislative Assembly; or
- (c) a committee of either (a) or (b).

PART 3 VICTIMISATION AND VICARIOUS LIABILITY

DIVISION 1 VICTIMISATION

17. A person shall not victimise another person. *Prohibition of victimisation*
18. (1) A person victimises another person if the person subjects or threatens to subject the other person to any detriment because the other person, or a person associated with the other person -- *Victimisation*
- (a) has made a complaint against any person;
- (b) has brought proceedings under this Bill against any person;
- (c) has given evidence or information, or produced a document, in connection with any proceedings under this Bill;

- (d) has attended a conciliation conference under Part 5;
 - (e) has otherwise done anything in accordance with this Bill in relation to any person;
 - (f) has alleged that any person has contravened a provision of Part 2 or 3, unless the allegation is patently false and was not made in good faith;
 - (g) has refused to do anything that would contravene a provision of Part 2 or 3; or
 - (h) because the person believes that the other person or the associate has done or intends to do any of those things.
- (2) It is sufficient for sub-section (1) (f) that the allegation states that the act would constitute the contravention without actually stating that this Bill, or a provision of this Bill, has been contravened.
- (3) In determining whether a person victimises another person it is irrelevant --
- (a) whether or not a factor in sub-section (1) is the only or dominant reason for the treatment or threatened treatment as long as it is a substantial reason;
 - (b) whether the person acts alone or in association with any other person.
- (4) For the purposes of this section, "detriment" includes humiliation and denigration.

DIVISION 2

AUTHORISING OR ASSISTING SEXUAL HARASSMENT

19. A person shall not request, instruct, induce, encourage, authorise or assist another person to contravene a provision of Part 2 or 3. *Prohibition of authorising or assisting sexual harassment*
20. If, as a result of a person doing any of the things specified in section 19, the other person contravenes a provision of Part 2 or 3, both persons shall be taken to have contravened the provision and a complaint about the contravention may be lodged against either or both of them. *Liability of person who authorises or assists*

DIVISION 3

VICARIOUS LIABILITY

21. If a person in the course of employment or while acting as an agent -- *Vicarious liability of employers and principals*
- (a) contravenes a provision in Part 2 or 3; or
 - (b) engages in any conduct that would, if engaged in by the person's employer or principal, contravene a provision of Part 2 or 3
- both the person and the employer or principal must be taken to have contravened the provision, and a complaint about the

contravention may be lodged against either or both of them in the event whereof all references to the respondent shall mean the person and where applicable the employer or principal.

22. An employer or principal is not vicariously liable for a contravention of a provision of Part 2 or 3 by an employee or agent if the employer or principal proves, on the balance of probabilities, that the employer or principal took reasonable precautions to prevent the employee or agent contravening the Bill and took reasonable action upon receipt of a complaint relating to sexual harassment.
- Exception to vicarious liability*

DIVISION 4

DUTY TO FORMULATE POLICY

23. (1) It shall be the duty of every employer to take all reasonable steps to create a sexual harassment-free environment and to inquire into sexual harassment complaints and where appropriate, take action against --
- Duty to formulate policy*
- (a) any person who contravenes a provision in Part 2 or Part 3; and
- (b) any person who requests, instructs, induces, encourages, authorises or assists another person to contravene a provision of Part 2 or 3.
- (2) Every employer shall complete its inquiry into and decide complaints made pursuant to subsection (1) within one month from the date the complainant makes the complaint.
- (3) It shall be the duty of every employer --
- (a) to develop and, as often as may be appropriate, revise a written statement of its general policy with respect to sexual harassment in compliance with the guidelines and codes of practice from time to time issued pursuant to Part 4;
- (b) to train all management and staff on their role in preventing sexual harassment;
- (c) to provide the policy to new employees and to distribute and promote the policy at all levels of the organisation; and
- (d) to disseminate information thereon.
24. (1) Every employer shall establish a sexual harassment committee in accordance with this section if --
- Sexual Harassment Committee*
- (a) there are 40 or more persons employed at the workplace; or
- (b) the Director or the Tribunal directs the establishment of such a committee at the workplace.
- (2) The composition of a sexual harassment committee established under subsection (1) shall reflect the organisational composition of the employees, and where applicable, members and students of the employer and shall,

as far as is practicable, consist of an equal number of men and women.

- (3) The function of the committee and any other matter relating to the establishment or procedure of the committee shall be as prescribed by the Director.
25. The sexual harassment committee established at a workplace shall -- *Functions of sexual harassment committee*
- (a) keep under review the measures taken to promote and create a sexual harassment-free environment;
 - (b) accept a complaint of sexual harassment;
 - (c) investigate a complaint of sexual harassment;
 - (d) with the complainant's consent, attempt to amicably resolve a sexual harassment complaint through conciliation;
 - (e) record the terms of any agreements reached to resolve a sexual harassment complaint; and
 - (f) refer a sexual harassment complaint to the employer for further action.

PART 4 DIRECTOR AND TRIBUNAL

26. (1) The Yang di-Pertuan Agong shall appoint a Director on sexual harassment who shall have the general direction, control and supervision of all matters relating to sexual harassment under this Bill. *Appointment of Director*
- (2) The Minister may appoint Assistant Directors and officers as he considers necessary or expedient for the purposes of carrying out and giving effect to the provisions of this Act.
- (3) A person appointed as the Director may hold that office in conjunction with any position or office.
- (4) The Director shall in addition to the powers, duties and functions conferred on him under this Act, exercise such other powers, discharge such other duties and perform such other functions as may be expedient for the purposes of carrying out and giving effect to the provisions of this Act.
- (5) The Minister may appoint a person to temporarily assume the duties of the Director for a period not exceeding 12 months if there is no Director or the Director is unable to perform the duties of the office of Director because of illness or absence.

27. The Director has the following functions -- *Functions of Director*
- (a) to advise and make recommendations to the Minister on matters relating to sexual harassment;
 - (b) to promote the recognition and approval of acceptable attitudes, acts and practices relating to sexual harassment;
 - (c) to consult and inquire into discrimination and the effects of sexual harassment;
 - (d) to disseminate information about sexual harassment and its effects;
 - (e) to undertake research and educational programmes to promote attitudes, acts and practices against sexual harassment;
 - (f) to prepare and publish guidelines and codes of practice for the avoidance of attitudes, acts and practices of sexual harassment;
 - (g) to investigate and seek to conciliate complaints made in relation to sexual harassment;
 - (h) to collect and analyse data relating to complaints made in relation to sexual harassment;
 - (i) to make recommendations to the Minister as to reforms, whether of a legislative nature or otherwise, that the Director believes will further the objectives of this Bill; or
 - (j) any other prescribed functions.
28. (1) The Minister may, upon the recommendation of the Director, approve guidelines and codes of practice comprising such directions as may appear to him to be necessary or proper for the guidance of persons in complying with the requirements of the provisions of this Act. *Approval of Guidelines*
- (2) The Minister may, upon the recommendation of the Director, from time to time revise the guidelines and codes of practice by amending, deleting, varying or adding to the provisions of the guidelines and codes of practice.
- (3) The Minister shall cause to be published in the *Gazette* the guidelines and codes of practice.
29. The Director has the following powers -- *Powers of Director*
- (a) to determine the procedures to be followed in any investigation of conciliation;
 - (b) to intervene, with the leave of a court or tribunal in proceedings before the court or tribunal (other than the tribunal established pursuant to Section 33 hereof), that involve issues relating to sexual harassment;
 - (c) to do all things necessary or convenient to perform the functions of the Director.
30. The Director, in writing, may delegate to any person any of the *Delegation*

- functions or powers of the Director other than this power of delegation and authorise any person to act on his behalf.
31. (1) The Director is to submit a report to Parliament by (date) (month) in each year on the operation of the Bill for the 12 months to (date) (month) immediately preceding. *Annual Report*
- (2) The Minister is to arrange for the annual report to be tabled in each House of Parliament within 14 sitting days of receipt of the report if Parliament is then in session, but if Parliament is not then in session, within 14 days of the commencement of the next session of Parliament.
32. (1) Parliament may at any time direct the Director to provide a report on any aspect of the operation of the Bill. *Special report*
- (2) A report under sub-section (1) is to be included in the next annual report.
33. (1) There shall be established a Tribunal. *Tribunal*
- (2) The Chairperson(s) of the Tribunal shall be appointed by the Yang di-Pertuan Agong from any of the following persons --
- (a) a legal practitioner of not less than seven years standing;
 - (b) a Sessions Court judge; or
 - (c) a former judge.
- (3) The other members of the Tribunal shall be drawn from a panel of persons appointed by the Minister representing --
- (a) employers;
 - (b) workers or employees;
 - (c) members of clubs, industrial organisations, sporting activities and educational institutions; and
 - (d) persons with the experience and expertise relevant to the inquiry before the Tribunal.
- (4) For the purpose of dealing with any inquiry, the Tribunal shall be constituted of --
- (a) the Chairperson appointed under subsection (1); and
 - (b) two members selected by the Chairperson from the panels specified in subsection (2);
- provided always that the selection of the members of the Tribunal shall reflect their experience and expertise in the subject matter of the complaint.
- (5) A Tribunal convened for any particular inquiry shall consist of at least one member of each sex.

PART 5
COMPLAINTS AND THEIR RESOLUTION

DIVISION 1
MAKING A COMPLAINT

34. (1) The following may complain to the Director -- *Who may complain*
- (a) a person who claims that another person has contravened a provision in Part 2 or 3 in relation to that person;
 - (b) if that person is unable to complain because of imprisonment or incapacity --
 - (i) a person authorised by that person to act on his or her behalf; or
 - (ii) if that person is unable to authorise another person, any other person on his or her behalf;
 - (c) if that person is a child --
 - (i) the child; or
 - (ii) a parent of the child's behalf; or
 - (iii) if the Director is satisfied that the child or a parent of the child so consents, any other person on the child's behalf.
- (2) An authorisation under sub-section (1) (b) (i) may be given --
- (a) in writing; or
 - (b) in any manner approved by the Director.
- (3) Two or more people may complain jointly.
- (4) It is not necessary for the alleged contravention to relate exclusively to the complainant.
- (5) It is not necessary for the complainant to have exhausted the remedies available to him under Division 4 of Part 3 before making a complaint under this section provided that the Director may require the complainant to explain the reasons for not exhausting such remedies.
35. (1) A person complains to the Director by lodging a written complaint with the Director by hand, facsimile or other electronic transmission or by post. *Lodging complaint and time limits*
- (2) A complaint shall set out the details of the alleged contravention.
 - (3) The Director shall assist a complainant in writing his or her complaint.
 - (4) A complaint is to be made within 24 months after the last incident of alleged sexual harassment -- but such complaint

may include incidents of alleged sexual harassment by the same respondent occurring prior to the said period.

- (5) The Director may accept a complaint made after the 24-month time limitation has expired if the Director is satisfied that it is reasonable to do so.

DIVISION 2

PROCEDURE AFTER A COMPLAINT

36. Within 14 days of accepting a complaint the Director is to notify the respondent of that acceptance and give the respondent a copy of the complaint. *Notification of acceptance of complaints*
37. The Director shall accept a complaint from a complainant who had previously agreed with another person not to lodge a complaint if the Director reasonably believes that it is fair to do so. *Agreements not to complain*
38. (1) A complainant may apply to the Director to withdraw a complaint. *Withdrawal of complaints*
- (2) An application to withdraw a complaint is to include a statement of the reasons for withdrawal of such complaint.
- (3) The Director, on receipt of an application to withdraw a complaint, may investigate the circumstances for the application.
- (4) If the Director is satisfied that an application to withdraw a complaint is made voluntarily, the Director is to --
- (a) grant the withdrawal; and
- (b) record the terms of any agreement reached between the complainant and the respondent;
- (5) Without prejudice to sub-section 5 of section 35, the complainant may, within 3 months from the date of such withdrawal, apply to reinstate the complaint.
- (6) The withdrawal of the complaint does not prevent the Director from investigating the complaint under section 39 if the Director is satisfied that --
- (a) the complaint was not withdrawn voluntarily; or
- (b) it is in the public interest to do so.
- (7) A complainant who withdraws a complaint is not entitled to make another complaint in relation to the same matter without the permission of the Director except as provided under sub-sections (4) and (5) of this section.

39. (1) The Director shall investigate a complaint in any manner that is appropriate to the circumstances. *Investigation of complaints*
- (2) In investigating a complaint, the Director is to have regard to the desirability of maintaining the confidentiality of all persons involved in the investigation.
40. (1) The Director may dismiss a complaint if the Director has had no substantive response from the complainant in the period of 60 days following a request by the Director for a response in relation to the complaint. *Director may dismiss a stale complaint*
- (2) As soon as possible after a dismissal under sub-section (1), the Director shall by written notice notify the complainant and the respondent of the dismissal.
- (3) A complainant may take no further action under this Bill in relation to the subject matter of a complaint dismissed under this section.
41. The Director has 30 days within which to complete the investigation at the end of which the complaint shall proceed to a conciliation. *Completion of investigation*

DIVISION 3 CONCILIATION

42. (1) In any proceedings under this Division the complainant and the respondent shall represent themselves and both or either of them shall not be represented by an advocate, adviser, consultant or by any other person whatsoever. *Representation in conciliation*
- (2) The complainant may be accompanied by a person who is not an advocate, adviser or consultant provided always the person shall have no right of address and shall abide by any directions issued by the Director in relation to confidentiality of any matter raised or discussed in the proceedings.
43. (1) The Director shall attempt to resolve by conciliation any complaint within 60 days from the completion of investigation under section 41. *Conciliation of complaints*
- (2) The Director, by written notice, shall direct the complainant and the respondent to a conciliation conference at a specified time and place.
- (3) A person, without reasonable excuse, shall not fail to comply with any direction given under sub-section (1).
- (4) A conciliation conference is to be held in private.

- (5) A person may use an interpreter at a conciliation conference.
44. (1) The Director is to record the terms of any agreement reached to resolve a complaint. *Conciliated complaints*
- (2) The record made by the Director is to be signed by both parties.
- (3) The Director is to --
- (a) provide a copy of the record to each party; and
- (b) hold the original record on file.
- (4) An agreement is enforceable as if it was an award of the Tribunal under section 60 (1).
45. Anything said, written or done in the course of conciliation proceedings and all allegations and evidence adduced at the conference shall be privileged and shall not to be taken into account in any subsequent proceedings held in relation to a complaint. *Conciliation proceedings not admissible*

DIVISION 4 INQUIRY

46. (1) The Director is to refer a complaint to the Tribunal for inquiry if the Director -- *Referral for inquiry*
- (a) believes the complaint cannot be resolved by conciliation;
- (b) has attempted to resolve the complaint by conciliation but has not been successful;
- (c) believes that the nature of the complaint is such that it should be referred for inquiry; or
- (d) is requested by the complainant to do so.
- (2) The Director is to refer a complaint within three months of the date of a notification under section 36 regardless of whether an investigation or conciliation has been completed.
- (3) A referral for inquiry is to be accompanied by a statement of case only and not anything done in the course of conciliation under Division 3 of this Part.
- (4) The Director shall assist a complainant in writing the statement of case.
- (5) The Director is to give a copy of the statement of the case to the complainant and the respondent.
47. (1) Before the Tribunal holds an inquiry into a complaint, the Director is to arrange for a directions conference to be conducted in relation to the complaint. *Directions conference*

- (2) The Director, by written notice, may require any person to --
- (a) attend a directions conference; and
 - (b) provide and produce specified information and documents to a directions conference.
- (3) A person, without reasonable excuse, must not fail to comply with a requirement notified under sub-section (2).
- (4) The Director, if the complainant does not comply with a requirement to attend a directions conference in respect of that complaint, may --
- (a) dismiss the complaint; and
 - (b) award costs to be paid by the complainant to the respondent.
- (5) A directions conference is to be held in private.
48. (1) The following matters are to be addressed at a directions conference -- *Directions conference report*
- (a) issues raised in the complaint which remained unresolved;
 - (b) admitted facts;
 - (c) facts to be established;
 - (d) witnesses to be called;
 - (e) documents to be provided;
 - (f) the listing of a complaint before the Tribunal.
- (2) The Director is to arrange for a written report to be made on matters addressed at a directions conference.
- (3) A copy of the directions conference report is to be provided, without delay to the following persons --
- (a) each member of the Tribunal;
 - (b) the complainant;
 - (c) the respondent;
 - (d) any person joined as a party to the inquiry under section 49(2).
49. (1) The Tribunal may hold a single inquiry in relation to 2 or more complaints if they arise out of substantially the same events. *Proceedings relating to inquiry*
- (2) The Tribunal, on its own motion or by application of a person, may join a person as a party to the inquiry by giving that person reasonable notice in writing.
50. The Tribunal may deal with a complaint as a representative complaint, if it is satisfied that the complaint was made by a member of a class of persons against whom the alleged sexual harassment was similarly directed. *Representative complaints*

51. The making of a representative complaint by any person does not preclude the making of any other complaint by any other person in respect of the same discrimination or prohibited conduct. *Ordinary complaint not precluded*
52. (1) The Tribunal may amend any complaint -- *Amendment of complaints*
 (a) Which is made on behalf of a class of persons so that it can be dealt with as a representative complaint under section 50; or
 (b) if it considers it just to do so in the circumstances.
 (2) There shall be no award as to costs if a complaint is amended.
53. An inquiry is to be held in public unless the Tribunal directs that it be held in private. *Hearing of inquiry*
54. (1) In any proceeding before the Tribunal a person may represent himself or be represented with permission of the Tribunal by an advocate, an officer or employee of a trade union whether or not he is a member of such union, or, notwithstanding anything to the contrary contained in any written law relating to the registration of trade union, by way of an official of an organisation (not being a trade union) of employers or of employees as the case may be, registered in Malaysia or by way of an employee or volunteer of any other society registered in Malaysia. *Representation before the Tribunal*
 (2) A person may use an interpreter at an inquiry.
 (3) If the Tribunal gives permission for one person to be accompanied or represented by another person at the hearing of an inquiry, any other person taking part in the hearing may also be accompanied or represented by another person.
55. (1) The Tribunal is to conduct an inquiry with as little formality as the requirements of this Bill and a proper consideration of the matters before the Tribunal permit and may generally direct and do all such things as are necessary for the expeditious determination of the matters before it. *Conduct of inquiry*
 (2) The Tribunal may give directions relating to procedure to reduce delay.
 (3) Any question of law or procedure is to be determined by the Chairperson.
56. (1) A person who raises an issue at an inquiry is to prove that issue on a balance of probabilities. *Burden of proof*
 (2) It is not necessary for evidence of sexual harassment to be corroborated before a respondent can be found liable in a

sexual harassment complaint.

57. (1) The Tribunal may take evidence on oath or affirmation and for that purpose a member of the Tribunal may administer an oath or affirmation. *Evidence*
- (2) The Tribunal, by written notice, may require any person to appear before it to give evidence.
- (3) A person, without reasonable excuse, must not fail to comply with a requirement notified by the Tribunal under sub-section (2).
- (4) The Tribunal --
- (a) is not bound by the rules of evidence but must observe the rules of natural justice;
- (b) shall conduct the hearing in accordance with equity and good conscience and the substantial merits of the case without regard to technicalities and legal form; and
- (c) may inform itself on any matter as it thinks fit.
58. Any person may with the permission of the Tribunal, and without becoming party to the proceeding, intervene as a friend of the Tribunal for the purpose of rendering assistance to the Tribunal by way of argument and/or written submissions. *Leave to intervene*
59. (1) The Tribunal may order one or more of the following -- *Publication of evidence*
- (a) any oral evidence given before it is not to be published;
- (b) any documentary evidence produced to it is not to be published; and
- (c) any information that might enable a party or witness to be identified is not to be published.
- (2) The Tribunal may make an order subject to any conditions it thinks fit.
- (3) A person must not publish evidence or information contrary to an order made by the Tribunal.
60. (1) If The Tribunal finds that after an inquiry that a complaint is substantiated, it may make one or more of the following awards -- *Awards*
- (a) that the respondent must not repeat or continue the sexual harassment;
- (b) that the respondent must redress any loss or injury suffered by the complainant and caused by the respondent's sexual harassment;
- (c) that the respondent must employ, re-employ or promote the complainant;

- (d) that the respondent must pay to the complainant, within a specified period, an amount the Tribunal considers appropriate as compensation for any loss or injury suffered by the complainant and caused by the respondent's sexual harassment, such amount to include but not be limited to loss of wages;
 - (e) that the award includes a specified sum by way of exemplary damages;
 - (f) that a contract or agreement is to be varied or declared void in whole or in part;
 - (g) if the respondent's employer is a party, that the respondent, if an employee, be disciplined, demoted or dismissed;
 - (h) if the respondent's organisation, club or educational institution is a party, that the respondent, be suspended or expelled;
 - (i) that it would be inappropriate for any further action to be taken in the matter;
 - (j) that either or both the complainant and the respondent be referred to and receive counselling;
 - (k) any award it considers appropriate.
- (2) The Tribunal may dismiss a complaint if it finds after an inquiry that the complaint is unsubstantiated.
- (3) Where the Tribunal is not unanimous on any question or matter to be determined, a decision shall be taken by a majority of members and if there is no majority of members, by the Chairperson.
61. (1) In respect of a substantiated complaint, the Tribunal shall require the respondent to apologise to the complainant and make any retractions the Tribunal considers appropriate. *Apologies and retractions*
- (2) If the complaint related to sexual harassment carried out in public, any apology or retraction is to be published by the respondent in a manner directed by the Tribunal.
- (3) If the complaint related to sexual harassment carried out in private, any apology or retraction is to be made as directed by the Tribunal.
- (4) A person must not fail to comply with a requirement or direction made by the Tribunal under this section.

62. (1) The Tribunal shall make its award without delay and where practicable within 3 months from the final hearing date; *Time and reasons for award*
- (2) The Tribunal shall state in writing its reasons for the award or dismissal together with any findings of fact that it has made in those proceedings.
63. The Tribunal may make an award for costs *Costs in certain circumstances*
- (a) Where in the opinion of the Tribunal the proceedings are frivolous or vexatious; or
- (b) Where in the opinion of the Tribunal the proceedings have been instituted for the purpose of delay or obstruction.

DIVISION 5 ENFORCEMENT OF AWARD AND REVIEW

64. (1) The Director shall, enforce an award made under section 60(1) if the award is not complied with within a period of 3 weeks by filing the following documents free of charge, in the High Court -- *Enforcement of award*
- (a) a copy of the award certified by --
- (i) a member who presided over the inquiry, if the Tribunal consisted of more than one person; or
- (ii) the member who constituted the Tribunal if there was one person;
- (b) an affidavit stating the extent to which the award has not been complied with.
- (2) If the documents are filed in accordance with this section, the award made by the Tribunal is enforceable as if it were an order of the High Court.
65. (1) A person may apply to the High Court for a review of an award made under section 60(1). *Review and Appeals*
- (2) A person may apply for review to the High Court against a dismissal under section 60(2);
- (3) A person may appeal to the High Court against a determination on a question of law under section 55(3).

DIVISION 6
MISCELLANEOUS

66. (1) A person who has been dismissed from employment under Section 60 of this Bill cannot institute or prosecute proceedings in respect of that dismissal under section 20 of the *Industrial Relations Act, 1967*. *Proceedings under the Industrial Relations Act, 1967*
- (2) Where a person brings proceedings under section 20 of the *Industrial Relations Act 1967* in respect of dismissal from employment, and those proceedings are determined, that person cannot institute or prosecute proceedings under this Bill in respect of the dismissal.
- (3) Sub-section (2) does not apply where the proceedings under section 20 of the *Industrial Relations Act, 1967* are dismissed on a ground that does not relate to sexual harassment of the person.
- (4) Where a person brings proceedings under this Bill in respect of dismissal from employment, and those proceedings are determined, that person cannot institute or prosecute proceedings under section 20 of the *Industrial Relations Act, 1967*, in respect of the dismissal.
- (5) Sub-section (4) does not apply where the proceedings under this Bill are dismissed and the proceedings under the *Industrial Relations Act, 1967*, do not relate to the sexual harassment of the person.

PART 6
OFFENCES

67. A person giving any information under this Bill must not -- *False and misleading statements*
 (a) make any statement knowing it to be false or misleading; or
 (b) omit any matter from a statement knowing that without that matter the statement is misleading.
68. A person who gives any information under this Bill shall not be liable for any civil disciplinary (breach of professional ethics) or criminal prosecution. *No liability for giving information*
69. A person shall not, without reasonable excuse, refuse or fail -- *Failure to furnish information*
 (a) to furnish information; or
 (b) to produce a document when so required under this Bill.
70. A person shall not -- *Offences in respect of proceedings*
 (a) hinder any proceedings under this Bill;

- (b) obstruct, molest, interfere or use insulting language towards a person exercising any power or performing any function under this Bill;
- (c) create or take part in a disturbance relating to proceedings under this Bill in or near a place where those proceedings are being conducted; or
- (d) do any act or thing in relation to the Tribunal that would constitute a contempt of court .
71. A person shall not publish any information that identifies or tends to identify the complainant or the respondent or the employers of either party. *Publication of information*
72. A person may refuse to give information, answer a question or produce a document under this Bill if the giving of the information, the answering of the question or the production of the document would tend to incriminate the person. *Protection against self incrimination*
73. (1) An offence under this Bill is to be prosecuted summarily. *Offences are to be dealt with summarily*
- (2) A person who by any act or omission contravenes any provision of this Bill, or any guidelines, codes of practice or regulations made hereunder shall be guilty of an offence, and if no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a fine not exceeding one thousand ringgit for every day or part of a day during which the offence continues after conviction.
74. (1) Proceedings for an offence under this Bill or under any regulation may be brought by the Director. *Director to bring proceedings for offences*
- (2) The Director and any officer authorised by him in writing shall have the right to appear and be heard before a court in any proceedings for an offence under this Bill.

PART 7 GENERAL

75. This Bill does not apply to sexual harassment which took place before the commencement of this Bill. *Non-application of Bill*
76. (1) Where, for the purposes of this Bill, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground. *Acts done on behalf of bodies*

- (2) Where a person attends a conciliation conference under this Bill, or appears before the Tribunal, on behalf of a body of persons, whether corporate or unincorporate, any conduct by that person when so attending or appearing shall be deemed, for the purposes of this Bill, to be the conduct of the body.
77. (1) A complaint or other proceeding under this Bill against an unincorporated association may be instituted and carried on against the association in the name of its president, secretary, public officer or other similar officer. *Proceedings against unincorporated associations*
- (2) The death, resignation or removal of the person against whom the proceeding was instituted does not affect the continuity of the proceeding and it may be continued against the association in the name of that person's replacement.
78. (1) Without prejudice to section 23 hereof, an employer shall take all reasonable measures to ensure that -- *Obligations of organisations*
- (a) its members, officers, employees and agents are made aware of the sexual harassment to which this Bill relates; and
- (b) no member, officer, employee or agent of the organisation engages in, repeats or continues conduct of the kind to which an award under section 60 with respect to that employer relates.
- (2) An employer who does not comply with sub-section (1) is liable for any contravention of this Bill by any of its members, officers, employees and agents.
79. If -- *Protection of people giving evidence and information*
- (a) a complaint has been lodged; or
- (b) a document or any information or evidence has been produced or given to the Director under this Bill --
- a person is not personally liable for any loss, damage or injury suffered by another person by reason only of the lodging of the complaint or the production of the document or giving of the document, information or evidence.
80. (1) The Director, a member of the Tribunal or a person acting under the direction or authority of the Director or Tribunal is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done on good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the Director or the Tribunal. *Protection from civil actions*
- (2) Where --
- (a) a complaint has been made to the Director; or
- (b) a submission has been made, a document or information furnished, or evidence given, to the Director or Tribunal;

a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint or submission was made, the document or information was furnished or the evidence was given.

81. (1) The Minister may make such regulations as are necessary or expedient for the purposes of this Bill. *Regulations*
- (2) Without limiting the generality of sub-section (1), those regulations may --
- (a) prescribe any form for the purposes of this Bill;
 - (b) prescribe penalties for the breach of, or non-compliance with any provision of any regulation.