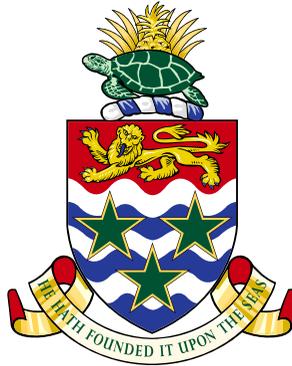


**CAYMAN ISLANDS**



# **SEXUAL HARASSMENT BILL, 2023**

**A BILL FOR AN ACT TO PROVIDE FOR THE PREVENTION OF SEXUAL HARASSMENT; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:**



## Memorandum of OBJECTS AND REASONS

This Bill seeks to provide for the prevention of sexual harassment and the introduction of remedies in circumstances where a person makes a sexual harassment complaint.

### PART 1 - PRELIMINARY

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

Clause 1 of the Bill 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. Of particular note are the definitions of “complainant”, “respondent”, “employer”, “employee” “institution” and “Tribunal”.

### PART 2 - PROTECTION FROM SEXUAL HARASSMENT

Part 2 deals with acts that would constitute sexual harassment and the various persons falling within the scope of the legislation. It contains clauses 3 to 19.

Clause 3 sets out the circumstances to be satisfied in order for an act of sexual harassment to be constituted and it identifies the types of conduct that would amount to sexual harassment. The conduct includes —

- (a) making an unwelcome sexual advance towards a person;
- (b) making an unwelcome sexual comment to a person;
- (c) making an unwelcome sexual comment about a person in their sight and hearing;
- (d) making an unwelcome sexual gesture to a person;
- (e) providing a person with unwelcome sexual images or graphics;
- (f) making it appear to a person seeking employment that the offer of employment or the terms of employment are contingent on the person’s acceptance of sexual advances;
- (g) making it appear that a person will receive preferential treatment or other advantage in the employment context only if that person submits to sexual harassment; and
- (h) directly or indirectly engaging in any other form of unwelcomed conduct of a sexual nature.

Clause 4 provides that every employer shall formulate a policy statement concerning sexual harassment in the workplace. It stipulates that the policy statement should include —

- (a) a definition of sexual harassment that is in accordance with section 3 of this legislation;

- (b) content indicating that every employee is entitled to employment free from sexual harassment;
- (c) content indicating how the employer will deal with the sexual harassment of an employee where it is directed towards a fellow employee or a third party;
- (d) content indicating that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee or third party to sexual harassment;
- (e) content explaining how complaints of sexual harassment may be brought to the attention of the employer; and
- (f) content indicating that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures.
- (g) content indicating that the employee has a right to seek redress through conciliation or mediation or from a Tribunal under this Act; and
- (h) content indicating that an employee who alleges sexual harassment shall exhaust all internal mechanisms and procedures including conciliation and mediation before instituting proceedings before the Tribunal.

Clause 5 prohibits employers and employees from committing acts of sexual harassment.

Clause 6 requires an employer to take appropriate action on becoming aware, reasonably suspicious or informed of an act of sexual harassment which —

- (a) is directed to an employee or any person with whom the employer has contracted to facilitate the operations of the place of employment; and
- (b) occurs during the course of employment or on the employer's premises.

Clause 7 imposes sexual harassment liability on an employer for an act of sexual harassment committed by an employer's agents, supervisors and employees if it is proven that —

- (a) the conduct occurred during the course of employment or on the employer's premises; and
- (b) the employer knew, ought reasonably to have known or was informed of the commission of such conduct and on becoming aware, suspicious or informed, failed to take reasonable steps to prevent the continuation of the conduct.

Clause 8 provides that an employee of an institution shall not sexually harass a person who is an inmate, child, ward, resident, client, patient or third party at that institution. This prohibition extends to an inmate, ward or patient of an institution sexually harassing an employee or another person who is an inmate, ward or patient of that institution.

It also provides that a person who is in charge of an institution shall —

- (a) formulate a policy statement in accordance with this Act against sexual harassment of inmates, wards or patients of that institution; and



- (b) take all practicable measures to bring the policy statement to the attention of all employees, inmates, wards and patients by publishing it in a manner which would reasonably allow them to become aware of the policy.

Clause 9 provides that a person who is an employee of an educational institution shall not sexually harass a person who is a student at that educational institution or a person who is seeking to become a student at that educational institution. This prohibition extends to a person who is a student at an educational institution sexually harassing another student at that educational institution or an employee of that educational institution.

It also requires a person who is in charge of an adult educational institution or the relevant educational authority shall —

- (a) formulate a policy in accordance with this legislation against sexual harassment; and  
(b) bring the policy statement to the attention of all employees by publishing it in a manner which would reasonably allow the employees to become aware of the policy.

Clause 10 provides that a member or employee of a body which is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practise of a profession, the carrying on of a trade or the engaging in an occupation, shall not subject to sexual harassment a person who applies for such an authorisation or qualification.

Clause 11 provides that a member of an association shall not sexually harass another member of that association or a person seeking to become a member of that association.

Clause 12 stipulates that a member of an organisation shall not subject to sexual harassment any person who —

- (a) is a member of that organisation;  
(b) has applied for membership of that organisation; or  
(c) is a third party.

Clause 13 prohibits a person who operates an employment agency or a member of staff of an employment agency from sexually harassing another person in the course of providing or offering to provide any of the agency's services to that other person.

Clause 14 provides that a person who supplies goods, services or facilities for the benefit of the public or a section of the public shall not subject the intended recipient of those goods, services or facilities to sexual harassment.

Clause 15 provides that a landlord shall not subject a tenant to sexual harassment and a tenant shall not subject a landlord to sexual harassment.

Clause 16 prohibits sexual harassment in the course of transactions relating to —

- (a) the disposing of, or offering to dispose of, real or personal property to that other person;  
(b) the acquiring, or offering to acquire, real or personal property from that other person;  
or

- (c) the giving a licence or consent for the disposal of an interest in real or personal property.

Clause 17 provides for the professional relationships under sections 10, 11, 12, 13, 14, 15 and 16 to regulate their conduct in accordance with the relevant provisions of this Act. Also persons falling within those sections may issue, with modifications that are consistent with the relationship between the parties, the sexual harassment policy statement specified in the Schedule.

Clause 18 prohibits the victimisation of or the imposition of a detriment on a person who —

- (a) has made, or proposes to make, a complaint under the legislation;
- (b) 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 the legislation;
- (c) proposes to provide evidence or testimony as a witness in proceedings under this legislation; or
- (d) has made in good faith an allegation that a person has engaged in conduct prohibited under this legislation.

Clause 19 provides that a person shall not induce or attempt to induce, pressure or attempt to pressure another person into engaging in sexual harassment.

### **PART 3 - SEXUAL HARASSMENT COMPLAINTS MADE TO THE GENDER EQUALITY TRIBUNAL**

Part 3 deals with the making of sexual harassment complaints to the Gender Equality Tribunal and the procedure to be followed when such complaints are made. It contains clauses 20 to 31.

Clause 20 provides for sexual harassment complaints to be made to the Tribunal by a person who —

- (a) believes that they are being, or have been, subjected to sexual harassment; or
- (b) has reasonable grounds for believing that another person is engaging or has engaged in sexual harassment contrary to this legislation.

Clause 21 provides for the procedure to be adopted by the Tribunal on receiving a complaint. The procedure includes —

- (a) recording the complaint;
- (b) carrying out investigations in relation to the alleged conduct;
- (c) requesting information from any person and making inquiries; and
- (d) adjourning an inquiry at any stage to enable the complainant and respondent to arrive at an amicable resolution.



The clause also provides for the Director of Labour to conduct an investigation and upon completion of an investigation, the Director is required to submit a report of the findings to the Tribunal.

Clause 22 sets out the procedure for discontinuing proceedings where the Tribunal is satisfied that the complainant does not wish for proceedings to be commenced or continued or where the complaint is frivolous, misconceived, lacking in substance or vexatious.

Clause 23 provides for the procedure of the Tribunal during the hearing of a complaint. During the hearing of a complaint, the Tribunal has the power to —

- (a) compel the production of documents or any other information or thing from any person who the Tribunal has reasonable grounds to believe can assist in determining whether an act of sexual harassment has been committed;
- (b) issue summonses to compel the attendance of witnesses at the hearing; and
- (c) examine witnesses on oath, affirmation or otherwise at the hearing.

Clause 24 provides that the Tribunal may adjourn proceedings at the request of a complainant in order to facilitate resolution of the matter.

Clause 25 provides for the orders to be made after the Tribunal is satisfied that the complainant's allegations are substantiated or that the complaint is frivolous or vexatious. These orders include requesting —

- (a) that the respondent not repeat or continue the sexual harassment;
- (b) that the respondent perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant; or
- (c) that the respondent pay damages to the complainant by way of compensation not exceeding twenty thousand dollars for any loss or damage suffered by reason of the conduct of the respondent.

Clause 26 permits the complainant and respondent at any stage after the filing of a sexual harassment complaint and before the commencement of a hearing to enter into an agreement to settle a sexual harassment complaint.

Clause 27 stipulates a person who is, or has at any time been, a member of the Tribunal or has an official duty to administer this legislation shall not, either directly or indirectly —

- (a) divulge or communicate to any person, any information relating to the affairs of another person acquired by the member of the Tribunal as a result of the member's office for the purposes of this legislation;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person given for the purposes of this legislation.

Clause 28 prohibits the publication of any report of the proceedings of the Tribunal unless leave of the Tribunal is granted.

Clause 29 provides for the remuneration and expenses of the Tribunal, the Director, the Deputy Director and the Inspector.

Clause 30 contains the immunity and indemnity provisions in respect of members of the Tribunal the Director and Inspector.

Clause 31 permits a person aggrieved by a decision of or any power exercised by the Tribunal to appeal to the Grand Court against that decision or exercise of power.

#### **PART 4 - MISCELLANEOUS**

Part 4 contains clauses 32 to 36 which provide for miscellaneous matters such as the standard of proof and the making of regulations.

Clause 32 provides that a question of fact arising in any proceedings under the legislation, other than criminal proceedings, shall be decided on a balance of probabilities.

Clause 33 empowers the Governor in Cabinet to make regulations for the effective implementation of the legislation and for carrying the legislation into effect.

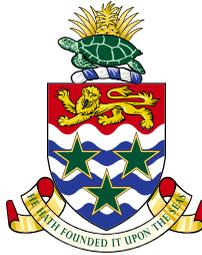
Clause 34 specifies that the legislation binds the Crown.

Clause 35 repeals section 7(2), (3) and (4) of the Gender Equality Act, 2011.

Clause 36 provides for the savings and transitional provisions.



## CAYMAN ISLANDS



## SEXUAL HARASSMENT BILL, 2023

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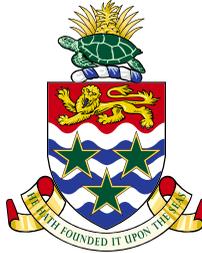
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**CAYMAN ISLANDS****SEXUAL HARASSMENT BILL, 2023**

**A BILL FOR AN ACT TO PROVIDE FOR THE PREVENTION OF SEXUAL HARASSMENT; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

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, 2023.
- (2) This Act shall come into force on such date as may be appointed by order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

**Interpretation**

2. In this Act —

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

“**association**” includes a group of persons associated together for social, literary, cultural, political, religious, sporting, athletic or for any other lawful purpose;

“**authorisation or qualification**” includes recognition, registration, enrolment, approval and certification;

“**casual employee**” means a person who is employed on an irregular or intermittent basis;

“**complaint**” means a grievance made to the Tribunal pursuant to section 20;

“**complainant**” in relation to a complaint, means the person by whom or on whose behalf a complaint is made;

“**court**” means the Grand Court or a court of summary jurisdiction;

“**Deputy Director**” means the Deputy Director of Labour appointed under section 71(1) of the *Labour Act (2021 Revision)*;

“**Director**” means the Director of Labour appointed under section 71(1) of the *Labour Act (2021 Revision)*;

“**domestic work**” includes the provision of household work services, elderly care services, childcare services, baby-sitting services and landscaping services;

“**domestic worker**” means a person who is employed to do domestic work;

“**educational institution**” includes a school, college, university, vocational training body, or any other institution at which education or training is provided to a student;

“**employee**” includes —

- (a) any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract is oral or written, expressed or implied, full or part-time;
- (b) a person whose services have been interrupted by a suspension of work during a period of leave;
- (c) an apprentice;
- (d) an intern;
- (e) a student gaining work experience;
- (f) a domestic worker;
- (g) a casual employee;
- (h) a seasonal employee; and
- (i) a person on employment probation;

“**employer**” includes —

- (a) any person who has entered into or stands ready to enter into a contract of employment with an employee whether the contract is oral or written, expressed or implied, full-time or part-time;
- (b) an agent or a representative of the employer; or
- (c) a supervisor of the employee;

“**employment**” includes part-time and temporary employment and work under a contract of services;



“**employment agency**” means any person who, whether for payment or not, assists another person to find employment or other work or assists employers to find employees or workers;

“**facilities**” includes any place —

- (a) in which members of the public or a section of the public are permitted to enter;
- (b) which provides —
  - (i) accommodation as a hotel, boarding house or other similar establishment;
  - (ii) banking, insurance, grants, loans, credit or financial services;
  - (iii) education;
  - (iv) entertainment, recreation, food or refreshment;
  - (v) transport or travel services;
  - (vi) child care services;
  - (vii) health or social services;
  - (viii) sporting activities; and
  - (ix) religious activities;

“**inspector**” means an inspector appointed under section 71 of the *Labour Act (2021 Revision)*;

“**institution**” includes —

- (a) a place for the care of minors and includes —
  - (i) a boarding home;
  - (ii) a group home;
  - (iii) a foster home;
  - (iv) a residential care home;
  - (v) a children’s home;
- (b) a nursing home or other place for the custody of the elderly and differently-abled;
- (c) a prison or correctional facility; or
- (d) a medical, treatment, wellness or psychiatric facility;

“**landlord**” means a person who grants to another person the exclusive right of tenancy of accommodation and includes —

- (a) an agent or a personal or legal representative of, or any other person acting on behalf of, a landlord;
- (b) a person to whom a landlord assigns the management of a tenancy agreement;

- (c) a trustee in bankruptcy, liquidator, receiver or committee appointed by any court or by law in respect of the property of a landlord;
- (d) the purchaser at a judicial sale of the residential premises of a landlord;
- (e) a charge of the residential premises of a landlord who acquires title thereto in accordance with section 72 of the *Registered Land Act (2018 Revision)* or pursuant to a judicial sale thereof, or who enters into possession of the residential premises, and the assignees of such charge; or
- (f) any person who becomes the owner of property on which residential premises are situated, or that consists of residential premises, with respect to which at the time the person becomes the owner there are subsisting tenancy agreements;

**“organisation”** means an organisation of workers, an organisation of employers, a non-profit organisation or any other organisation whose members carry on a particular profession, trade or activity for the purposes for which the organisation exists;

**“place”** includes a ship, aircraft, vehicle or a private or public place;

**“relationship status”** means a person’s status or condition of being —

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) party to a civil partnership;
- (d) divorced;
- (e) widowed; or
- (f) a person who, although not married to another person —
  - (i) is living with the second mentioned person in an intimate or cohabitational relationship in the same household; or
  - (ii) is in a visiting relationship with the second mentioned person;

**“respondent”** in relation to a complaint, means the person who is alleged to have engaged in sexual harassment;

**“services”** includes —

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation, food, refreshment, clothing or household items;
- (c) services relating to transport or travel;
- (d) services of the kind provided by the members of any profession or trade;

**“student”** means a person who has attained the age of sixteen years;



“**supervisor**” in relation to a person, means a fellow employee who by virtue of the employee’s employment is in a position of authority over that person;

“**tenant**” in relation to any accommodation that is the subject of a tenancy agreement, means the grantee of a tenancy of the premises under the agreement and where relevant, includes —

- (a) a prospective tenant;
- (b) a former tenant;
- (c) a lawful successor in title of a tenant to the premises;
- (d) the personal representative of a deceased tenant; and
- (e) an agent of a tenant;

“**third party**” means any person who by virtue of that person’s professional or social relationship with or in connection to or association with another person could potentially be exposed to sexual harassment during the course of employment or while on the premises of the second-mentioned person;

“**Tribunal**” means the Gender Equality Tribunal established under section 23 of the *Gender Equality Act, 2011*; and

“**visiting relationship**” means a close personal relationship —

- (a) between two persons who do not share a common household residence; and
- (b) that is identifiable by virtue of its nature and intensity having regard to —
  - (i) the amount of time that the persons spend together;
  - (ii) the place where that time is ordinarily spent;
  - (iii) the manner in which that time is ordinarily spent;
  - (iv) the duration of the relationship; and
  - (v) the existence of a child (if any) of both parties.

## PART 2 - PROTECTION FROM SEXUAL HARASSMENT

### Commission of an act of sexual harassment

3. (1) A person commits an act of sexual harassment against another person if having regard to —
- (a) all the circumstances referred to in subsection (2); and
  - (b) the effect of the conduct described in subsection (3) against the person alleging sexual harassment,

it is reasonable for the person alleging sexual harassment to conclude that the conduct was directed towards the person alleging sexual harassment and was calculated to —

- (i) offend, humiliate, disrespect or degrade the person alleging sexual harassment;
  - (ii) intimidate, threaten or compel the person alleging harassment by putting the person alleging harassment in fear of being placed at a disadvantage or prejudiced if the person alleging sexual harassment does not submit to the sexual harassment; or
  - (iii) create a hostile environment for the person alleging sexual harassment, or violates their dignity.
- (2) For the purposes of subsection (1)(a), the circumstances to be taken into account include —
- (a) the sex, age, relationship status, sexual preference, gender identity, religious belief, colour, nationality or ethnicity of the person alleging sexual harassment;
  - (b) the relationship between the person alleging sexual harassment and the person who is alleged to have engaged in the act of sexual harassment;
  - (c) any disability of the person alleging sexual harassment; or
  - (d) any other relevant circumstance.
- (3) The conduct referred to in subsection (1)(b) includes conduct which involves —
- (a) making an unwelcome —
    - (i) sexual advance towards a person;
    - (ii) request for sexual favours from a person;
    - (iii) sexual comment to a person;
    - (iv) sexual comment about a person within the person's hearing;
    - (v) sexual gesture to a person;
    - (vi) sexual contact with a person;
    - (vii) sexual innuendos to a person;
  - (b) providing a person with unwelcome —
    - (i) sexual images or graphics;
    - (ii) audio of a sexual nature;
  - (c) transmitting unwelcome electronic messages of a sexual nature to a person;
  - (d) exposing a third party to the conduct described in paragraphs (a) to (c);
  - (e) making it appear to the person seeking employment that —
    - (i) the offer of employment to that person; or
    - (ii) the terms on which employment is offered,are contingent on that person's acceptance of or submission to sexual advances from the prospective employer;



- (f) making it appear to a co-employee that the prospects or working conditions of that co-employee are contingent upon the co-employee's acceptance or tolerance of sexual harassment from the person or their employer or supervisor;
  - (g) making it appear to another person that preferential treatment or other advantage would only be provided to a person if that person accepts or submits to an act of sexual harassment;
  - (h) engaging in conduct of a sexual nature knowing that there is the likelihood that the person whom the conduct is intended to affect will become aware of the conduct; or
  - (i) directly or indirectly engaging in any other form of unwelcome conduct of a sexual nature.
- (4) Any conduct described in subsection (3) shall constitute sexual harassment irrespective of —
- (a) the method used to convey the conduct; or
  - (b) whether the conduct was committed on a single occasion.
- (5) A person who alleges sexual harassment under this Act may make a complaint to the Tribunal in accordance with section 20.

### **Sexual harassment policy statement and contents**

4. (1) Every employer shall —
- (a) issue a policy statement in writing concerning the prevention of sexual harassment and the protection of an employee in the workplace; and
  - (b) bring the policy statement to the attention of all employees by publishing the statement in a manner which would reasonably allow an employee and third party to become aware of the policy.
- (2) A policy statement required under subsection (1) shall include —
- (a) a definition of sexual harassment that is in accordance with section 3 of this Act; and
  - (b) content indicating —
    - (i) that an employee is entitled to employment in an environment that is free from sexual harassment;
    - (ii) how the employer will deal with the commission of an act of sexual harassment by an employee where the conduct is directed towards a fellow employee or a third party;
    - (iii) 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 explaining the disciplinary measures that may be taken in respect of sexual harassment;
- (iv) how a complaint of sexual harassment may be brought to the attention of the employer and the internal mechanisms and procedures that are available to an employee or a third party for the making of any complaint relating to sexual harassment and the resolution and settlement of the complaint;
  - (v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures;
  - (vi) that the employee has a right to seek redress through conciliation or mediation or from the Tribunal, under this Act; and
  - (vii) that a person who alleges an act of sexual harassment has been committed against them shall exhaust all internal mechanisms and procedures including conciliation or mediation that are available to the person, before instituting proceedings before the Tribunal.
- (3) An employer may adopt the sexual harassment policy statement set out in the Schedule.
- (4) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

### **Employer and employee obligations**

- 5.** (1) An employer shall not sexually harass —
- (a) an employee;
  - (b) a prospective employee; or
  - (c) a third party.
- (2) An employee shall not sexually harass —
- (a) a fellow employee;
  - (b) a prospective employee;
  - (c) an employer; or
  - (d) a third party.

### **Employer's duty to employee**

- 6.** (1) An employer shall make every reasonable effort to ensure that neither an employee nor a third party is sexually harassed —
- (a) during or arising out of the course of employment with the employer; or
  - (b) while on the employer's premises.



- (2) An employer who becomes aware, reasonably suspects or is informed of the commission of an act of sexual harassment which —
- (a) is directed towards an employee or a third party; and
  - (b) occurs during, or arises out of the course of employment with the employer, or occurs while on the employer's premises,
- shall take immediate and reasonable action to prevent the continuation of the sexual harassment.
- (3) An employer who fails to take the required action under subsection (2) shall be liable for the failure to act, and an employee who is aggrieved by the failure of the employer to act may make a complaint to the Tribunal.

### **Liability of employer**

7. An employer is liable for an act of sexual harassment committed by the employer's employees and agents only if it is proven that —
- (a) the conduct occurred during the course of employment with the employer or on the employer's premises; and
  - (b) the employer knew, ought reasonably to have known or was informed of the commission of such conduct and, on becoming aware, suspicious or informed, failed to take immediate and reasonable action to prevent the continuation of the conduct.

### **Institutions**

8. (1) A person who is in charge of an institution shall —
- (a) issue a policy statement in accordance with this Act for the prevention of sexual harassment and the protection of a child, ward, client, patient or third party at the institution;
  - (b) bring the policy statement to the attention of all employees, inmates, children, wards, residents, clients, patients and third party at the institution by publishing the statement in a manner which would cause any person to become aware of the policy; and
  - (c) make every reasonable effort to ensure that an inmate, a child, ward, resident, client, patient or third party is not sexually harassed at the institution or on the premises of the institution.
- (2) A person who is in charge of an institution may adopt the sexual harassment policy statement set out in the Schedule.
- (3) A person in charge of an institution or an employee of an institution shall not sexually harass a person who —
- (a) is an inmate, child, ward, resident, client, patient or third party at the institution; or

- (b) is seeking admission to the institution.

### **Educational institutions**

9. (1) A person who is in charge of an educational institution shall —
- (a) issue a policy statement in accordance with this Act for the prevention of sexual harassment and the protection of a employee, student and third party;
  - (b) bring the policy statement to the attention of all members of staff, students and any other persons at the educational institution by publishing it in a manner which would reasonably allow them to become aware of the policy; and
  - (c) make every reasonable effort to ensure that a member of staff, student or third party is not sexually harassed at the educational institution or on the premises of the educational institution.
- (2) A person who is in charge of an educational institution or an employee of an educational institution shall not sexually harass —
- (a) another employee of that educational institution;
  - (b) a person who is a student at that educational institution;
  - (c) a person who is seeking to become a member of staff or student at that educational institution; or
  - (d) a third party.
- (3) A student at an educational institution shall not sexually harass —
- (a) another student at that educational institution;
  - (b) a member of staff of that educational institution;
  - (c) a person who is seeking to become an employee of or student at that educational institution; or
  - (d) a third party.
- (4) A person who is in charge of an educational institution may adopt the sexual harassment policy statement set out in the Schedule.

### **Qualifying bodies**

10. A member or employee of a body which is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in an occupation, shall not subject to sexual harassment a person who applies for such an authorisation or qualification.



**Associations**

11. A member of an association shall not sexually harass another member of that association or a person seeking to become a member of that association.

**Organisations**

12. A member of an organisation shall not subject to sexual harassment any person who —
- (a) is a member of that organisation;
  - (b) has applied for membership of that organisation; or
  - (c) is a third party.

**Employment agencies**

13. A person who operates an employment agency or an employee of an employment agency shall not sexually harass another person in the course of providing or offering to provide any of the agency's services to that other person.

**Goods, services and facilities**

14. (1) A person shall not sexually harass another person or a third party in the course of providing, or offering to provide, goods, services or facilities.
- (2) A person shall not sexually harass another person or a third party in the course of seeking or receiving goods, services or facilities.

**Accommodation**

15. (1) A landlord shall not sexually harass a tenant of the landlord.
- (2) A tenant shall not sexually harass the landlord of the tenant.

**Real or personal property**

16. A person shall not sexually harass another person in the course of transactions with that other person in relation to —
- (a) the selling of, or offering to sell, real or personal property to the second-mentioned person;
  - (b) acquiring, or offering to acquire, real or personal property from the second-mentioned person; or
  - (c) giving a licence or consent for the disposal of an interest in real or personal property.

**General professional relationship obligation**

17. A person in sections 10, 11, 12, 13, 14, 15 and 16 —
- (a) shall regulate their conduct in accordance with the relevant provisions of this Act; and

- (b) shall issue, with modifications that are consistent with the relationship between the parties, the sexual harassment policy statement specified in the Schedule.

### **Victimisation as a result of a complaint**

- 18.** (1) A person shall not subject or threaten to subject another person to any detriment —
- (a) on the ground that the second-mentioned person —
    - (i) has made, or proposes to make, a complaint 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) proposes to provide evidence or testimony as a witness in proceedings under this Act;
    - (iv) has made in good faith an allegation that a person has engaged in conduct prohibited under this Act; or
  - (b) on the ground that the first-mentioned person believes that the second-mentioned person 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 five thousand dollars or to imprisonment for a term of one year or both.

### **Pressure to engage in sexual harassment**

- 19.** (1) A person shall not induce or attempt to induce, pressure or attempt to pressure another person into engaging in sexual harassment by —
- (a) providing or offering to provide that other person with any benefit; or
  - (b) subjecting or threatening to subject that other person to any detriment.
- (2) An act falls within subsection (1) if it is made in such a manner that the person in question is likely to hear it or hear of it.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for term of one year or to both.



## **PART 3 - SEXUAL HARASSMENT COMPLAINTS MADE TO THE GENDER EQUALITY TRIBUNAL**

### **Complaint to Tribunal**

- 20.** (1) A person who alleges that —
- (a) the person has been subjected to sexual harassment; or
  - (b) another person is engaging in or has engaged in sexual harassment,
- may, in the form approved by the Tribunal, file a written complaint with the Tribunal setting out the details of the alleged sexual harassment.
- (2) A complaint shall be made within eighteen months from the date of the alleged act of sexual harassment to which the complaint relates and in the case of a series of acts of sexual harassment, within eighteen months from the date of the last alleged act of sexual harassment was committed.
- (3) Notwithstanding subsection (2), the Tribunal may accept a complaint made after the expiration of the eighteen month period if —
- (a) it considers the reasons for the delay to be reasonable; and
  - (b) is satisfied that the complainant initiated action pursuant to subsection (5) within the period stated in subsection (2).
- (4) Subject to subsection (5), a person, before filing a complaint under subsection (1), shall exhaust the use of any internal mechanisms and procedures that are made available to that person, as provided for in the policy statement issued by an employer a person in charge of an institution, a person in charge of an educational institution or any other person who has authority to issue a sexual harassment policy statement.
- (5) The Tribunal may grant leave to a person to make a complaint to the Tribunal in the circumstances provided in subsection (6), notwithstanding noncompliance with subsection (4).
- (6) The circumstances referred to in subsection (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 subsection (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 as is required under section 4(2)(iv).
- (7) The Tribunal may refuse to hear a complaint if it determines that the complainant did not seek to comply with the relevant internal mechanisms or procedures.

- (8) Where a complaint is made by a person other than the individual who is alleged to be a victim of sexual harassment, the Tribunal shall refuse to hear the complaint unless it is satisfied that the alleged victim consented to the intervention of the other person.
- (9) The Tribunal may adopt such procedures and systems as it considers appropriate in the circumstances to determine a particular complaint.

### **Procedures to be followed on a complaint**

- 21.** (1) On receiving a complaint under section 20, the Tribunal shall —
- (a) record the complaint and provide the complainant and the respondent with a copy of that record and of any document filed in support of the complaint which is signed by the person receiving the complaint;
  - (b) cause an investigation to be conducted by the Director into the particulars of the complaint;
  - (c) furnish to the complainant and the respondent a prescribed statement setting out the procedures that will be followed in relation to the complaint and the rights of the complainant and the respondent; and
  - (d) where there is evidence of the commission of an offence under this Act refer the matter to the Director of Public Prosecutions.
- (2) For the purposes of conducting an investigation under subsection (1), the Director may, by written notice —
- (a) require a person to furnish any information disclosed in a complaint;
  - (b) specify the time within which information disclosed shall be furnished; and
  - (c) require any person to —
    - (i) attend at such time and place as may be specified in the notice;
    - (ii) give such evidence as the Director 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) The Director shall be assisted by the Deputy Director and an Inspector for the purposes of conducting an investigation under this Act.
- (4) A person served with a notice under subsection (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.
- (5) A person who, without reasonable cause, fails to comply with a notice referred to in subsection (2) commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.
- (6) Upon completion of an investigation, the Director shall submit a report of the findings to the Tribunal.



**Discontinuance of complaint**

- 22.** The Tribunal may decide against commencing proceedings, or may discontinue proceedings, in relation to a complaint, where the Tribunal is satisfied that —
- (a) the complainant does not wish that the proceedings be commenced or continued; or
  - (b) the complaint is frivolous, misconceived, lacking in substance or vexatious.

**Hearing of complaint**

- 23.** (1) Where the Tribunal decides to hear and determine a complaint, the Tribunal shall give a written notice of the complaint and the date, time and place of the hearing to the parties to the complaint.
- (2) Where the Tribunal decides not to hear and determine a complaint after completion of an investigation, the Tribunal shall provide the complainant with written notice setting out the reason for its decision.
- (3) In hearing a complaint the Tribunal shall, as is reasonably required, have the power to —
- (a) compel the production of documents or any other information or thing from any person who the Tribunal has reasonable grounds to believe can assist in determining whether an act of sexual harassment has been committed;
  - (b) issue summonses to compel the attendance of witnesses at the hearing; and
  - (c) examine witnesses on oath, affirmation or otherwise at the hearing.
- (4) The Tribunal on receiving a document pursuant to subsection (3)(a) —
- (a) may take possession and make copies of, or take extracts from, the document;
  - (b) may retain possession of the document for such period as is necessary for the purposes of the inquiry to which the documents relate; and
  - (c) during the period under paragraph (b), shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Tribunal, to inspect at all reasonable times such documents as that person would be entitled to inspect.
- (5) A summons issued by the Tribunal under this section shall be under the hand of the chairperson.
- (6) A person who —
- (a) fails without reasonable excuse to comply with a requirement or a summons under subsection (3);
  - (b) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (3);

- (c) hinders, obstructs, prevents or interferes with the Tribunal in the exercise of a power under this section;
  - (d) directs insulting language towards the Tribunal when the Tribunal is exercising any powers or performing any functions under this Act; or
  - (e) furnishes to the Tribunal any information or makes a statement at an inquiry knowing that the information or statement is false or misleading, commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.
- (7) A party to a matter before the Tribunal under this section shall be entitled to appear at the hearing and may be represented by an attorney-at-law or any other person who in the opinion of the Tribunal is competent to assist the person in the presentation of the matter.
- (8) The Tribunal shall give the complainant and the respondent a reasonable opportunity to call witnesses, present evidence, examine and cross-examine witnesses and make submissions to the Tribunal.

### **Adjournment of proceedings**

- 24.** Where a hearing has commenced under section 22, the Tribunal may, at the request of the complainant, adjourn the proceedings at any stage to enable the complainant and the respondent to arrive at an amicable solution.

### **Findings of Tribunal**

- 25.** (1) After a hearing the Tribunal shall, in writing, notify the complainant and the respondent of its findings and make an appropriate order specified in subsection (3).
- (2) The findings of the Tribunal may stipulate that the complainant's allegations are —
- (a) substantiated or unsubstantiated; or
  - (b) frivolous or vexatious.
- (3) The Tribunal, pursuant to subsections (1) and (2), may make any one or more of the following orders —
- (a) that the respondent not repeat or continue the sexual harassment;
  - (b) that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
  - (c) that the respondent shall pay damages to the complainant by way of compensation not exceeding twenty thousand dollars for any loss or damage suffered by reason of the conduct of the respondent;
  - (d) that where the complaint relates to sexual harassment by a fellow employee, that the employer shall take appropriate action to ensure that



- the sexual harassment ceases and to report to the Tribunal, within a specified time period, on the action taken;
- (e) that the respondent pay the legal fees and any other costs of the complainant not exceeding ten thousand dollars;
  - (f) that the complainant pay the costs incurred by the Tribunal and those of the respondent not exceeding ten thousand dollars if the Tribunal finds that the complainant's actions are frivolous or vexatious;
  - (g) that it would be inappropriate for any further action to be taken in the matter; or
  - (h) any other order or declaration as may be appropriate having regard to all circumstances surrounding the complaint; or
  - (i) dismiss the complaint.
- (4) Where the Tribunal makes an order for the payment of compensation to a complainant the sum payable may be recovered by the complainant in court as a civil debt.
- (5) A person who fails to comply with an order of the Tribunal made pursuant to subsection (3) commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.

### **Agreement**

- 26.** (1) If at any stage after the filing of a sexual harassment complaint and before the commencement of a hearing by the Tribunal an agreement is made between the complainant and respondent, they shall notify the Tribunal, in writing, of the terms of the agreement.
- (2) The Tribunal, on receiving notification pursuant to subsection (1), may permit the complaint to be resolved in accordance with the terms of the agreement and request that the complainant, in writing, confirm withdrawal of the complaint.

### **Confidentiality**

- 27.** (1) Subject to subsections (3) and (4), a person who is, or has at any time been a member of the Tribunal or has an official duty to administer this Act shall not, either directly or indirectly —
- (a) divulge or communicate to any person, any information relating to the affairs of another person acquired by the member of the Tribunal as a result member's office for the purposes of this Act;
  - (b) make use of any such information as is mentioned in paragraph (a); or
  - (c) produce to any person a document relating to the affairs of another person given for the purposes of this Act.

- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.
- (3) A person who is, or has at any time been a member or has an official duty to administer this Act shall not be required except where it is necessary to do so for the purposes of this Act —
  - (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the member of the Tribunal as a result of the member's office; or
  - (b) to produce in a court a document relating to the affairs of another person of which the member of the Tribunal has custody, or to which the member has access, as a result of the member's office.
- (4) Subsection (3) shall not prevent a person from being required, for the purposes of or under an Act, to divulge or communicate information, or to produce a document, that is required or permitted by that Act to be divulged, communicated or produced.
- (5) This section shall not prohibit a person from —
  - (a) making a record of information for the purposes of exercising a function under this Act or any other law in force in the Islands; or
  - (b) divulging or communicating information, or producing a document that is required or permitted by an Act to be divulged, communicated or produced, if the information is divulged or communicated, or the document is produced, for the purposes of or under that Act.
- (6) A defendant bears the burden of proof in relation to a matter in subsection (4).
- (7) In this section —

“**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions; and

“**produce**” includes permit access to.

### **Publication of Tribunal proceedings**

- 28.** (1) Subject to subsection (2), no person shall publish a report of any proceedings of the Tribunal unless leave is first granted by the Tribunal.
- (2) The Tribunal may direct that —
  - (a) any evidence given before it;
  - (b) the contents of any document produced to it; or
  - (c) any information that might enable a person who has appeared before it to be identified shall not be published or shall be published only in such manner, and to such person, as the Tribunal may specify.



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

### **Remuneration and expenses**

- 29.** (1) A member of the Tribunal shall be paid such remuneration and allowances as may be determined by the Cabinet.
- (2) The expenses of the Tribunal shall be paid out of the general revenue of the Islands.

### **Protection from liability**

- 30.** (1) A member of the Tribunal shall not be liable in damages for anything done or omitted in the discharge or purported discharge of the functions, responsibilities, powers and duties under this Act unless it is shown that the act or omission was in bad faith.
- (2) The Government shall indemnify a member of the Tribunal against all claims, damages, costs, charges or expenses incurred in the discharge or purported discharge of the functions, responsibilities, powers and duties under this Act, except claims, damages, costs, charges or expenses caused by the bad faith of that member of the Tribunal.

### **Appeal**

- 31.** A person aggrieved by a decision of any power exercised by the Tribunal may, within twenty-eight days of the decision, appeal to the Grand Court against that decision.

## **PART 4 - MISCELLANEOUS**

### **Standard of proof**

- 32.** A question of fact arising in any proceedings under this Act, other than criminal proceedings, shall be decided on a balance of probabilities.

### **Regulations**

- 33.** The Cabinet may make such Regulations as are required for the effective implementation of this Act and generally for carrying this Act into effect.

### **Act binding on Crown**

- 34.** This Act binds the Crown.

### **Repeal**

- 35.** Section 7(2), (3) and (4) of the *Gender Equality Act, 2011* is repealed.

**Savings and transitional provisions**

- 36.** (1) Any regulations made pursuant to section 41 of the *Gender Equality Act, 2011* in relation to sexual harassment and in force immediately before the coming into force of this Act, so far as they are not inconsistent with the provisions of this Act, continue in force as if made under this Act.
- (2) Every complaint, matter and proceeding filed or commenced pursuant to section 7(2), (3) and (4) of the *Gender Equality Act, 2011* and partly dealt with immediately before this Act came into force, may be continued, completed, enforced and dealt with in all respects as if this Act had not come into force.
- (3) Every complaint, matter and proceeding filed or commenced pursuant to section 7(2), (3) and (4) of the *Gender Equality Act, 2011* and not dealt with immediately before this Act came into force, shall be taken to be a complaint, matter or proceeding commenced under this Act, and the provisions of this Act are to apply accordingly.
- (4) In the case of an appeal made under section 40 of the *Gender Equality Act, 2011* in relation to proceedings based on section 7(2), (3) or (4) of the *Gender Equality Act, 2011* that has been commenced but not finally determined before this Act comes into force, the Grand Court shall continue to deal with the appeal as if this Act had not come into force.



## SCHEDULE

*(sections 4(3), 8(2), 9(4), and 17(b))*

### Sexual Harassment Policy

#### Purpose

1. (1) It is the policy of [ NAME OF ENTITY] or [NAME OF PERSON] to provide an environment free from harassment of any kind and for any reason, whether because of sex, age, relationship status, sexual preference, gender identity, religious belief, colour, race, creed, national or ethnic origin, disability, or any other factor or relevant circumstance.
- (2) An employee and any third party or person on the premises of [NAME OF ENTITY] or [NAME OF PERSON] is entitled to work, provide services or be in an environment free of sexual harassment.
- (3) Sexual harassment violates an individual's fundamental rights and personal dignity, it is unlawful, and will not be tolerated by [NAME OF ENTITY] or [NAME OF PERSON]
- (4) When [NAME OF ENTITY] or [NAME OF PERSON] determines that an allegation of sexual harassment is credible, it will take prompt and appropriate corrective action.

#### Definition

2. (1) Sexual harassment is unwanted or unwelcomed sexual attention of an offensive nature made by a person who knows, or reasonably should know, that the attention is unwanted or unwelcomed and the person to whom it is made may conclude that the conduct was intended to —
  - (a) offend, humiliate, disrespect or degrade him/her/them;
  - (b) intimidate, threaten or compel him/her/them by putting him/her/them in fear of being placed at a disadvantage or prejudiced if he/she/they does/do not submit to the sexual harassment; or
  - (c) create a hostile environment for him/her/them, or violate his/her/their dignity.
- (2) Sexual harassment encompasses a wide range of inappropriate conduct or acts, under the law but in addition to the conduct or acts prohibited under the law other examples of specifically prohibited conduct by [NAME OF ENTITY] or [NAME OF PERSON] include —
  - (a) promising, directly or indirectly, a person a reward if the person complies with a request of a sexual nature;

- (b) threatening, directly or indirectly, to retaliate against a person if the person refuses to comply with a request of a sexual nature;
  - (c) denying, directly or indirectly, a person an opportunity if the person refuses to comply with a request of a sexual nature;
  - (d) engaging in sexually suggestive physical contact or touching or grabbing of another person in a way that is unwelcome;
  - (e) repeatedly standing too close to or brushing up against a person;
  - (f) engaging in explicit language, sexually suggestive gestures, or indecent exposure;
  - (g) making sexual or romantic advances toward a person and persisting despite the person's rejection of the advances;
  - (h) sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via e-mail or other electronic means;
  - (i) verbal abuse of a sexual nature;
  - (j) repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he/she/they, is not interested;
  - (k) A [Supervisor/Director/Manager] or [Other Authority] in particular should be careful not to pressure any person on the premises of [NAME OF ENTITY] or [NAME OF PERSON] to socialise;
  - (k) giving gifts or leaving objects that are sexually suggestive;
  - (l) repeatedly making sexually suggestive gestures;
  - (m) making or posting sexually demeaning or offensive pictures, cartoons or other materials in the workplace;
  - (n) off-duty, unwelcome conduct of a sexual nature that affects the [work/school] environment;
  - (o) deliberately creating an overall offensive environment, including use of vulgar language, displaying, storing, or transmitting sexually explicit photographs or other materials, and the telling of sexual stories.
- (3) Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own may not be sexually harassing.
- (4) Certain behaviours, such as conditioning promotions, awards, grades, training or other benefits upon acceptance of unwelcome actions of a sexual nature, are always wrong and prohibited by [NAME OF ENTITY] or [NAME OF PERSON].
- (5) An [employee/a ward/inmate] or [name of any other relevant person] is prohibited from harassing another [employee/ ward/ inmate] or [name of any other relevant person] or third party whether or not the incidents of harassment



occur on [NAME OF ENTITY] or [NAME OF PERSON] property and whether or not the incidents occur during [working] or [other relevant hours].

- (6) The victim can be of the same sex as the harasser. The harasser can be a [Supervisor/Director/Manager], another [employee, or a non-employee/ ward/ inmate] or third party who has a business relationship with [NAME OF ENTITY] or [NAME OF PERSON] or may be on the premises of [NAME OF ENTITY] or [NAME OF PERSON].
- (7) Although sexual harassment may often involve a person in a greater position of authority as the harasser, a person in a position of lesser or equal authority may also be found responsible for engaging in prohibited sexual harassment.
- (8) Consensual sexual or romantic relationships between [employees] are deemed unwise and are strongly discouraged by [NAME OF ENTITY] or [NAME OF PERSON] in particular if one [employee] has supervisory authority over the other [employee].

### **Employees'/Students'/ Wards'/ Inmates' Rights and Responsibilities under this Policy**

3. (1) All incidents of sexual harassment or inappropriate sexual conduct should be reported by an employee or third party regardless of their seriousness.
- (2) If an [employee/a student/ ward/ inmate] or a third party believes that they have been subjected to sexual harassment or any unwanted or unwelcome sexual comment, conduct, innuendo, gesture, contract, advance or attention by anyone (e.g., a co-worker or other person), they should —
  - (a) make their discomfort and/or disapproval directly and immediately known to the alleged harasser orally or in writing that such conduct is unwelcome and offensive and must stop; and
  - (b) report the incident immediately to the [Supervisor/Director/Manager/Dean] or, if the [Supervisor/Director/Manager/Dean] is responsible for the sexual harassment, report the conduct to another person of appropriate authority.
- (3) If the person does not wish to communicate directly with the offending person, or if such communication has been ineffective, the person is encouraged to report the unwelcome conduct as soon as possible to a responsible [Department] official. It is usually most effective, although it is not required, that the official be within the person's supervisory chain. Responsible Department officials include first-or second-line supervisors, the offending person's supervisor, the management officers, the [Director/Manager/Executive Director] or [Assistant Director / Assistant Manager / Assistant Supervisor or President / Board].
- (4) A person should feel free to raise concerns and make a report without fear of reprimand.

- (5) Alleging harassment without following the reporting procedures may be considered evidence of a malicious intent on the part of the complainant.
- (6) The privacy of the complainant and of the person accused of sexual harassment must be maintained and all information must be kept strictly confidential.
- (7) A person shall not retaliate against or victimise an employee or third party for filing a complaint of sexual harassment or for cooperating in an investigation of a sexual harassment complaint.
- (8) The employee shall not make a false complaint of sexual harassment.

### **Employer's Responsibilities under this Policy**

4. (1) If [NAME OF ENTITY] or [NAME OF PERSON] receives an allegation of sexual harassment, or has reason to believe sexual harassment is occurring, it/they will take the necessary steps to ensure that the matter is promptly investigated and addressed.
- (2) If the allegation is determined to be credible, [NAME OF ENTITY] or [NAME OF PERSON] will take immediate and effective measures to end the unwelcome behaviour.
- (3) [NAME OF ENTITY] or [NAME OF PERSON] is committed to take action if it/they learn/s of possible sexual harassment, even if the individual does not wish to file a formal complaint.
- (4) All complaints will be promptly and carefully investigated by the administration, and all employees are assured they will be free of any and all reprisal or retaliation from filing such complaints.
- (5) An administrative investigation will include interviews with all relevant persons, including the complainant, the accused and other potential witnesses. In determining whether an alleged conduct constitutes sexual harassment, the record as a whole and the totality of the circumstances, such as the nature of sexual advances and the context in which the alleged incidents occurred will be examined. A determination of appropriate action will be made from the facts, on a case-by-case basis.
- (6) The administration will review the finding with the complainant at the conclusion of its investigation. If the investigation reveals that the complaint appears to be valid, immediate and appropriate corrective action, up to and including discharge, will be taken to stop the harassment and prevent its reoccurrence. If the validity of the complaint cannot be determined, immediate and appropriate action will be taken to assure all parties are reacquainted with the sexual harassment policy and to avoid sexual harassment in the future.

**Any finding can be appealed to the GENDER EQUALITY TRIBUNAL on the basis of the Sexual Harassment Act 2023, in the prescribed manner,**



**after all internal mechanisms and procedures that are available to the complainant have been exhausted.**

- (7) If a complaint involves a member of the administration, then a written request should be made to the [Chairperson of the Board] to establish a [Committee] to investigate the complaint.
- (8) Prevention is the best tool for the elimination of sexual harassment. [NAME OF ENTITY] or [NAME OF PERSON] and the administration express strong disapproval of any acts that can be construed as an act of sexual harassment of any [person/employee] or third party on the premises of [NAME OF ENTITY] or [NAME OF PERSON]. (This includes inappropriate jokes, displays of posters, etc.).

### **Resolution**

5. (1) An employee often can stop or prevent sexual harassment by immediately and directly expressing his/her/their disapproval of an individual's sexually oriented attention or conduct. In many cases, an informal warning by the [Director/Manager] to an alleged harasser, combined with appropriate follow-up supervision and monitoring of the employee's behaviour might be sufficient to prevent or stop sexual harassment. If the employee is uncomfortable addressing the [Director], the [Board] may be approached directly.
- (2) If this approach does not stop the sexual harassment, a thorough and impartial investigation of all complaints will be conducted in a timely and appropriate manner.
- (3) The investigation will be conducted by the [Director / Manager / Executive Directors / Assistant Director / Human Resources Manager / the employee's immediate supervisor or an impartial party not named in the complaint.
- (4) An [employee] of [NAME OF ENTITY] or [NAME OF PERSON] who has been found to have sexually harassed another [employee], third party or visitor/patron of [NAME OF ENTITY] or [NAME OF PERSON] will be subject to disciplinary action up to and including termination.
- (5) An employee who has made a frivolous or vexatious complaint of sexual harassment shall be subject to disciplinary action up to and including termination.

### **Confidentiality**

6. (1) All inquiries, complaints and investigations are treated with confidentiality. Information is revealed strictly on a need-to-know basis. However, the identity of the complainant usually is revealed to the accused and witnesses.

