

CAYMAN ISLANDS



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

THE SEXUAL HARASSMENT BILL, 2013

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 10.

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 his or her sight and hearing;
- (d) making an unwelcome sexual gesture to a person; and
- (e) providing a person with unwelcome sexual images or graphics.

Clause 4 prohibits employers and employees from committing acts of sexual harassment.

Clause 5 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.

Clause 6 imposes sexual harassment liability on an employer for an act of sexual harassment committed by his agents, supervisors and employees if it is proven that-

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

Clause 7 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 his 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.

Cause 8 provides that a person who is in charge of an institution shall-

- (a) formulate a policy in accordance with this legislation against sexual harassment of inmates, wards or patients of that institution; 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 9 provides that 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 prohibits a person who or an employee of an educational authority which provides facilities for vocational training in order to assist another person to become fit for employment from subjecting that person to sexual harassment.

Clause 11 provides that a member 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 12 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 13 stipulates that a member of an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession, trade or activity for the purposes of which the organisation exists shall not subject to sexual harassment any person who-

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

Clause 14 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 15 provides that 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 16 provides that a landlord shall not subject his tenant to sexual harassment and a tenant shall not subject his landlord to sexual harassment.

Clause 17 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 18 prohibits the victimisation of or imposing a detriment on 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 another person to engage 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 29.

Clause 20 provides for sexual harassment complaints to be made by a person who-

- (a) believes that he or she is being, or has 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.

It also 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.

Clause 21 imposes penalties against a person who, in the opinion of the Tribunal knowingly or wilfully makes a false, vexatious or frivolous complaint against another person for an alleged contravention of any provision of the legislation.

Clause 22 provides that the Tribunal may decide against commencing an investigation or discontinue an investigation where it reasonably believes that the complainant does not wish that the inquiry be made or continued.

Clause 23 sets out the procedure for the hearing of sexual harassment complaints by the Tribunal.

Cause 24 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 25 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 26 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 his 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 27 prohibits the publication of any report of the proceedings of the Tribunal unless leave of the Tribunal is granted.

Clause 28 contains the immunity and indemnity provisions in respect of members of the Tribunal.

Clause 29 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 30 to 34 which provide for miscellaneous matters such as the standard of proof and the making of regulations.

Clause 30 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 31 empowers the Governor in Cabinet to make regulations for the effective implementation of the legislation and for carrying the legislation into effect.

Clause 32 specifies that the legislation binds the Crown.

Clause 33 contains the repeal provisions.

Clause 34 provides for the savings and transitional provisions.

THE SEXUAL HARASSMENT BILL, 2013

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CAYMAN ISLANDS

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

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. This Law may be cited as the Sexual Harassment Law, 2013 and shall come into force on such date as may be appointed by order made by the Governor in Cabinet. Short title and commencement

2. In this Law- Interpretation

“accommodation” includes residential and business accommodation;

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

“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;

“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;

“educational authority” means a body responsible for the administration of an educational institution or provision of vocational training;

“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, express 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; or
- (e) 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;
- (b) an agent or representative of the employer; or
- (c) a supervisor of the employee;

“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.

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

“facilities” includes-

- (a) any place which members of the public or a section of the public are permitted to enter;
- (b) accommodation in a hotel, boarding house or other similar establishment;
- (c) places providing banking, insurance, grants, loans, credit or finance services;
- (d) places providing education;
- (e) places providing entertainment, recreation, food or refreshment;

- (f) places providing transport or travel; and
- (g) places accommodating any profession or trade;

“institution” includes places of custody and medical and mental accommodation;

“landlord” means a person who grants to a 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 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 chargee of the residential premises of a landlord who acquires title thereto in accordance with section 72 of the Registered Land Law (2004 Revision) or pursuant to a judicial sale thereof, or who enters into possession of the residential premises, and the assignees of such chargee; 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; and

(2004 Revision)

“marital status” means the status or condition of being-

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) widowed; or
- (f) a man and a woman who, although not married to each other, are living with each other in the same household as husband and wife;

“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, clothes, 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 eighteen years;

“supervisor” in relation to a person, means a fellow employee who by virtue of his employment is in a position of authority over that first-mentioned 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 appropriate, 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 his professional relationship with or connection to the employer could potentially be exposed to sexual harassment during the course of employment; and

“Tribunal” means the Gender Equality Tribunal established under section 23 of the Gender Equality Law, 2011.

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 upon the person against whom the conduct described in subsection (3) is alleged to have been committed,

it is reasonable for the sexually harassed person to conclude that the conduct was directed towards him or her and was calculated to-

- (i) offend, humiliate, disrespect or degrade him or her;
- (ii) intimidate, threaten or compel him or her by putting him or her in fear of being placed at a disadvantage or prejudiced if he or she does not submit to the sexual harassment; or
- (iii) create a hostile environment for him or her, or violate his or her dignity.

(2) For the purposes of subsection (1)(a), the circumstances to be taken into account include-

- (a) the sex, age, marital status, sexual preference, religious belief, colour, nationality or ethnicity of the person who has alleged sexual harassment;
- (b) the relationship between the person alleging sexual harassment and the person who is alleged to have engaged in the sexual harassment; or
- (c) any disability of the person alleging sexual harassment.

(3) The conduct referred to in subsection (1)(b) includes conduct which involves-

- (a) making an unwelcome sexual advance towards a person;
- (b) making an unwelcome request for sexual favours from a person;
- (c) making an unwelcome sexual comment to a person;
- (d) making an unwelcome sexual comment about a person within his or her hearing;
- (e) making an unwelcome sexual gesture to a person;
- (f) making unwelcome sexual contact with a person;
- (g) providing a person with unwelcome sexual images or graphics;
- (h) providing a person with unwelcome audio of a sexual nature;
- (i) transmitting unwelcome electronic messages of a sexual nature to a person;
- (j) making unwelcome sexual innuendos to a person;
- (k) engaging in conduct of a sexual nature knowing that there is a likelihood that the person to whom the conduct is intended to affect will become aware of the conduct;
- (l) directly or indirectly engaging in any other form of unwelcome conduct of a sexual nature; or
- (m) exposing third parties to any of the conduct described in paragraphs (a) to (l).

(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.

4. (1) An employer shall not sexually harass-

Employer and employee obligations

- (a) a person whom he employs;
- (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) his employer; or

- (d) a third party.
- Employer's duty to employee
5. An employer who becomes aware, reasonably suspects or is informed of the commission of an act sexual harassment which-
- (a) is directed towards 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,
- shall take immediate and appropriate action to prevent the continuation of the conduct.
- Liability of employer
6. An employer is liable for an act of sexual harassment committed by his agents, supervisors and employees only if it is proven that-
- (a) the conduct occurred during the course of employment; and
 - (b) the employer knew, ought reasonably to have known or was informed of the commission of such conduct and, on becoming aware, suspicious or informed, failed to take reasonable steps to prevent the continuation of the conduct.
- Sexual harassment policy statement and contents
7. (1) Every employer shall-
- (a) formulate a policy statement concerning sexual harassment in the workplace; 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.
- (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 Law;
 - (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 his 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.

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

8. (1) A person who is in charge of an institution shall- Institutions

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

(2) An employee of an institution shall not sexually harass a person who is an inmate, ward or patient at that institution or who is seeking admission to that institution.

9. (1) A person who is in charge of an adult educational institution or the relevant educational authority shall- Educational institutions

- (a) formulate a policy in accordance with this Law 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.

(2) A person who is an employee of an adult educational institution shall not sexually harass-

- (a) a person who is a student at that educational institution; or
- (b) a person who is seeking to become a student at that educational institution.

(3) A person who is a student at an adult educational institution shall not sexually harass-

- (a) another student at that educational institution; or
- (b) an employee of that educational institution.

10. A person who or an employee of an educational authority which provides facilities for vocational training in order to assist another person to become fit for employment, shall not subject that person to sexual harassment. Vocational training bodies

11. 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 Qualifying bodies

in an occupation, shall not subject to sexual harassment a person who applies for such an authorisation or qualification.

Associations 12. 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 13. A member of an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession, trade or activity for the purposes of which the organisation exists shall not subject to sexual harassment any person who-

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

Employment agencies 14. 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 15. A person who provides 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-

- (a) in the course of providing or offering to provide those goods, services or facilities; or
- (b) in circumstances where he is seeking to benefit from those goods, facilities or services.

Accommodation 16. (1) A landlord shall not subject his tenant to sexual harassment.
(2) A tenant shall not subject his landlord to sexual harassment.

Real or personal property 17. A person shall not sexually harass another person in the course of transactions with that other person in relation to-

- (a) disposing of, or offering to dispose of, real or personal property to that other person;
- (b) acquiring, or offering to acquire, real or personal property from that other person; or
- (c) giving a licence or consent for the disposal of an interest in real or personal property.

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 Law;

- (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 Law;
- (iii) proposes to provide evidence or testimony as a witness in proceedings under this Law; or
- (iv) has made in good faith an allegation that a person has engaged in conduct prohibited under this Law; 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.

19. (1) A person shall not induce or attempt to induce another person to engage in sexual harassment by-

Pressure to engage in sexual harassment

- (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

20. (1) A person who-

Complaint to Tribunal

- (a) believes that he or she is being, or has 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 Law,

may, in the form approved by the Tribunal, file a complaint with the Tribunal indicating that he or she has been sexually harassed or another person is being sexually harassed within the meaning of section 3.

- (2) On receiving a complaint under subsection (1) the Tribunal shall-
 - (a) record the complaint and provide the complainant and the respondent with a copy of that record signed by the person receiving the complaint;
 - (b) subject to section 22, carry out investigations in relation to the alleged conduct;
 - (c) request information from any person and make such inquiries as it thinks fit;
 - (d) rely on any means or evidence it considers reasonable to resolve a complaint;
 - (e) subject to subsection (5), 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
 - (f) adjourn an inquiry at any stage to enable the complainant and respondent to arrive at an amicable resolution.

(3) A complaint shall be made within six months from the date on which the alleged sexual harassment was committed.

(4) The Tribunal may accept a complaint made after expiration of the six months period if it considers the reasons for the delay to be reasonable.

(5) The Tribunal may adopt such procedures and systems as it considers appropriate in the circumstances to determine a particular complaint.

Penalty for false complaint

21. A person who, in the opinion of the Tribunal knowingly or wilfully makes a false, vexatious or frivolous complaint against another person for an alleged contravention of any provision of this Law 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.

Discontinuation of investigation

22. The Tribunal may decide against commencing an investigation or discontinue an investigation where it reasonably believes that the complainant does not wish that the inquiry be made or continued.

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 a complaint is made by a person other than the individual who is alleged to be the victim of the sexual harassment, the Tribunal shall refuse to

deal with the complaint unless it is satisfied that the alleged victim consented to the intervention of the other person.

(3) 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.

(4) For the purpose of discharging the functions of the Tribunal under this Law, 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.

(5) The Tribunal on receiving a document pursuant to subsection (4)(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.

(6) A summons issued by the Tribunal under this section shall be under the hand of the chairperson.

(7) A person who-

- (a) fails without reasonable excuse to comply with a requirement or a summons under subsection (4);
- (b) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (4);
- (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 Law; 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.

(8) 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.

(9) 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.

Findings of Tribunal

24. (1) Where after a hearing under section 23, the Tribunal finds that-

- (a) the complainant's allegations are substantiated; or
- (b) the complaint is frivolous or vexatious,

it shall, in writing, notify the complainant and the respondent of its findings and make an appropriate order specified in subsection(2).

(2) The Tribunal pursuant to subsection (1) 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;
- (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;

- (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.

(3) 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.

(4) A person who fails to comply with an order of the Tribunal made pursuant to 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.

25. 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 and the Tribunal may permit the complaint to be resolved in accordance with the terms of the agreement and request that the complainant, in writing, confirm his or her withdrawal of the complaint. Agreement

26. (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 Law shall not, either directly or indirectly- Confidentiality

- (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 his office for the purposes of this Law;
- (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 Law.

(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 Law shall not be required except where it is necessary to do so for the purposes of this Law-

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the member of Tribunal as a result of his 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 he has access, as a result of his office.

(4) Subsection (3) shall not prevent a person from being required, for the purposes of or under a Law, to divulge or communicate information, or to produce a document, that is required or permitted by that Law 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 Law 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 a Law 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 Law.

(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

27. (1) No person shall publish a report of any proceedings of the Tribunal unless he is first granted leave of the Tribunal.

(2) 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.

Protection from liability

28. (1) A member shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was in bad faith.

(2) The Government shall indemnify a member against all claims, damages, costs charges or expenses incurred by that member in the discharge or purported discharge of his functions, responsibilities, powers and duties under

this Law, except claims, damages, costs, charges or expenses caused by the bad faith of that member.

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

PART 4 - MISCELLANEOUS

30. A question of fact arising in any proceedings under this Law, other than criminal proceedings, shall be decided on a balance of probabilities. Standard of proof

31. The Governor in Cabinet may make such Regulations as are required for the effective implementation of this Law and generally for carrying this Law into effect. Regulations

32. This Law binds the Crown. Law binding on Crown

33. Section 7(2), (3) and (4) of the Gender Equality Law, 2011 is repealed. Repeal

34. (1) Any regulations made pursuant to section 41 of the Gender Equality Law, 2011 in relation to sexual harassment and in force immediately before the coming into force of this Law, so far as they are not inconsistent with the provisions of this Law, continue in force as if made under this Law. Savings and transitional provisions

(2) Every complaint, matter and proceeding filed or commenced pursuant to section 7(2), (3) and (4) of the Gender Equality Law, 2011 and partly dealt with immediately before this Law came into force, may be continued, completed, enforced and dealt with in all respects as if this Law 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 Law, 2011 and not dealt with immediately before this Law came into force, shall be taken to be a complaint, matter or proceeding commenced under this Law, and the provisions of this Law are to apply accordingly.

(4) In the case of an appeal made under section 40 of the Gender Equality Law, 2011 in relation to proceedings based on section 7(2), (3) or (4) of the Gender Equality Law, 2011 that has been commenced but not finally determined before this Law comes into force, the Tribunal shall continue to deal with the appeal as if this Law had not come into force.

Passed by the Legislative Assembly the day of , 2013.

Speaker.

Clerk of the Legislative Assembly.