



LAWS OF MALAYSIA

Act 840

ANTI-SEXUAL HARASSMENT ACT 2022

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ANTI-SEXUAL HARASSMENT ACT 2022

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LAWS OF MALAYSIA

Act 840

ANTI-SEXUAL HARASSMENT ACT 2022

An Act to provide for a right of redress for any person who has been sexually harassed, the establishment of the Tribunal for Anti-Sexual Harassment, to raise awareness and to prevent the occurrence of sexual harassment, and to provide for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

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

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different parts or provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“award” means an award made by the Tribunal in respect of any complaint or matter referred to it or any decision or order made by it under this Act;

“prescribed” means prescribed by the Minister in the regulations made under section 26;

“sexual harassment” means any unwanted conduct of a sexual nature, in any form, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is reasonably offensive or humiliating or is a threat to his well-being;

“Minister” means the Minister charged with the responsibility for women, family and community development;

“complainant” means a person who commences a proceeding before the Tribunal to have a matter dealt with by the Tribunal;

“Administrator” means the Administrator of Anti-Sexual Harassment under section 24;

“interlocutory order” means an order that—

(a) is made pursuant to a complaint of sexual harassment to the Tribunal in the course of any proceedings of the Tribunal; and

(b) is incidental to the principal object of that proceedings,

and includes any directions about the conduct of that proceedings, but does not include any partial or interim order making a final determination in respect of that proceedings;

“party” means a complainant or respondent;

“respondent” means a person against whom a proceeding is commenced by the complainant;

“Tribunal” means the Tribunal for Anti-Sexual Harassment established under section 3.

PART II

TRIBUNAL FOR ANTI-SEXUAL HARASSMENT

Chapter 1

Establishment and organization

Establishment of Tribunal

3. There shall be established a tribunal to be known as the “Tribunal for Anti-Sexual Harassment”.

Members, terms of office and allowances

4. (1) The Tribunal shall consist of the following members who shall be appointed by the Minister:

(a) a President and a Deputy President to be appointed from amongst the members of the Judicial and Legal Service;

(b) not less than five other members which shall comprise of—

(i) persons who are members of or who have held office in the Judicial and Legal Service; or

(ii) persons who are admitted as advocates and solicitors under the Legal Profession Act 1976 [*Act 166*], the Advocates Ordinance of Sabah [*Sabah Cap. 2*] or the Advocates Ordinance of Sarawak [*Sarawak Cap. 110*], and who have not less than seven years’ standing; and

(c) not less than five other members, as may be determined by the Minister, who have knowledge of or practical experience in matters relating to sexual harassment.

(2) Where the President is for any reason unable to perform his functions or during any period of vacancy in the office of the President, the Deputy President shall perform the functions of the President.

(3) The President, the Deputy President and the members of the Tribunal shall hold office for a term of three years and may be reappointed only for another term consecutively.

(4) The President, the Deputy President or the members of the Tribunal may at any time resign his office by giving three months' written notice to the Minister.

(5) The Minister may at any time revoke the appointment of members of the Tribunal appointed under paragraphs (1)(b) and (c), and fill any vacancy in its membership.

(6) The President and the Deputy President shall be paid such fixed allowances and other allowances as the Minister may determine.

(7) The members of the Tribunal appointed under paragraphs (1)(b) and (c) shall be paid a daily sitting allowance during the sitting of the Tribunal and such lodging, travelling and subsistence allowances as the Minister may determine.

Disqualification

5. The President, the Deputy President and the members of the Tribunal appointed under subsection 4(1) shall be disqualified from being a member of the Tribunal if—

- (a) the person is adjudged bankrupt by a court of competent jurisdiction;
- (b) the person is certified by a qualified medical officer to be physically or mentally incapable of continuing office;
- (c) the Minister is of the opinion that the person has engaged in any paid office, commission or employment which conflicts with the duties of the person under this Act;
- (d) the person's conduct, whether in connection with his duties as a member of the Tribunal or otherwise, has been such as to bring discredit to the Tribunal;

- (e) the person has been convicted on, a charge in respect of—
- (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment, in itself only or in addition to or in lieu of a fine, for more than two years; or
- (f) the person absents himself from three consecutive sittings of the Tribunal without leave of the President.

Secretary, officers and staff

6. The Minister shall appoint—

- (a) a Secretary to the Tribunal; and
- (b) such number of other officers and staff of the Tribunal as may be necessary to carry out the functions of the Tribunal.

Chapter 2

Jurisdiction of Tribunal

Jurisdiction of Tribunal

7. (1) The Tribunal shall have jurisdiction to hear and determine any complaint of sexual harassment made by any person.

(2) The complaint of sexual harassment made under subsection (1) shall refer to sexual harassment which occurs after the coming into operation of this Act.

(3) A complaint of sexual harassment referred to the Tribunal under this Act is subject to the Limitation Act 1953 [*Act 254*].

Exclusion of jurisdiction of court

8. (1) Where a complaint of sexual harassment is lodged by any person to the Tribunal, the issues in dispute in that complaint of sexual harassment, whether as shown in the initial complaint or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless—

- (a) the proceedings before the court were commenced before the complaint of sexual harassment was lodged with the Tribunal;
- (b) the complaint of sexual harassment involves any conduct constituting a crime under the provisions of any written law; or
- (c) the complaint of sexual harassment before the Tribunal is withdrawn or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the claim of sexual harassment to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the claim of sexual harassment before the court is withdrawn or struck out.

Determination of rules and procedure

9. (1) The proceedings of the Tribunal shall be conducted in accordance with such procedure as may be determined by the Tribunal.

(2) The President shall cause the procedure determined under subsection (1) to be reduced into writing and published in such a manner as the President deems fit.

(3) In conducting the proceedings under subsection (1), the Tribunal shall have the powers to—

- (a) make an interlocutory order;
- (b) determine the relevancy, admissibility and weight of any evidence;

- (c) take evidence on oath or affirmation and for that purpose a member of the Tribunal may administer an oath or affirmation;
- (d) order the provision of further particulars in a statement of complaint of sexual harassment or statement of reply;
- (e) order the preservation and interim custody of any evidence for the purposes of the hearing; and
- (f) summon the parties to the proceedings or any other person to attend before the Tribunal to give evidence or to produce any document, record or other thing in his possession or otherwise to assist the Tribunal in its deliberations.

(4) A summons issued by the Tribunal under this section shall be served and enforced as if it were a summons issued by a court.

(5) The Tribunal shall determine the complaint of sexual harassment on the balance of probabilities.

Chapter 3

Conduct of proceedings

Commencement of proceedings

10. Any person may lodge a complaint of sexual harassment under this Act with the Tribunal in a prescribed form together with a prescribed fee.

Notice of complaint of sexual harassment

11. Upon a complaint of sexual harassment being lodged under section 10, the Secretary to the Tribunal shall give a written notice in the prescribed form to the complainant and the respondent of the details of the day, time and place of the hearing.

Sittings of Tribunal

12. (1) Each sitting of the Tribunal shall be determined by the President and shall comprise of a panel of three members of the Tribunal as follows:

(a) the President or the Deputy President appointed under paragraph 4(1)(a), or any other member of the Tribunal appointed under paragraph 4(1)(b), as a Chairperson; and

(b) any other two of the members of the Tribunal appointed under paragraph 4(1)(c).

(2) The panel for each sitting of the Tribunal in subsection (1) shall comprise of at least a woman.

(3) The Tribunal may sit in one or more sittings on such day and at such time and place as the President may determine.

(4) If the Chairperson referred to in paragraph (1)(a) presiding over any proceedings in respect of a complaint of sexual harassment dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the complaint of sexual harassment shall be heard and continued and presided over by any other Chairperson as determined by the President.

(5) If any of the members of the Tribunal referred to in paragraph (1)(b) in respect of a complaint of sexual harassment dies or becomes incapacitated, or is for any other reason unable to complete or dispose of the proceedings, the President shall appoint any other member of the Tribunal to the panel to continue the proceedings.

(6) Where the term of appointment of any Chairperson or member of the Tribunal referred to in paragraph (1)(b) expires during the pendency of any proceedings in respect of a complaint of sexual harassment, the term of his appointment shall be deemed to have been extended until the final disposal of the complaint of sexual harassment.

Right to appear at hearing

13. (1) At the hearing of a complaint of sexual harassment, every party to the proceedings shall be entitled to attend and be heard.

(2) No party shall be represented by an advocate and solicitor at a hearing unless, in the opinion of the Tribunal, the matter in question involves complex issues of law.

(3) If one party is allowed to be represented by an advocate and solicitor under subsection (2), the other party shall also be so entitled.

(4) Subject to subsections (1) and (2), a party who is a minor or any person under a disability may be represented by his next friend or guardian *ad litem*.

(5) Where a party who is a minor or any person under a disability is represented by his next friend or guardian *ad litem*, the Tribunal may impose such conditions as the Tribunal considers necessary to ensure that the other party to the proceedings is not substantially disadvantaged.

Hearings to be closed

14. All hearings before the Tribunal shall be closed to the public.

Tribunal may act in absence of party

15. The Tribunal may hear and determine a complaint of sexual harassment before it notwithstanding the absence of any party to the proceedings if it is proved to the satisfaction of the Tribunal that a notice of the hearing has been duly served on the absent party.

Negotiation for settlement

16. (1) The Tribunal may, as regards to every complaint of sexual harassment within its jurisdiction and with agreement of the parties, assess whether, in all the circumstances, it is appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the complaint of sexual harassment.

(2) Without limiting the generality of subsection (1), in making an assessment the Tribunal shall have regard to any factors that, in the opinion of the Tribunal, are likely to impair the ability of either or both of the parties to negotiate an agreed settlement.

(3) Where the parties reach an agreed settlement, the Tribunal shall approve and record the agreed settlement and the agreed settlement shall then take effect as if it is an award of the Tribunal.

(4) The Tribunal shall proceed to determine the complaint of sexual harassment if—

- (a) it appears to the Tribunal that it would not be appropriate for the Tribunal to assist the parties to negotiate an agreed settlement in relation to the complaint of sexual harassment; or
- (b) the parties are unable to reach an agreed settlement in relation to the complaint of sexual harassment.

Reference to Judge of High Court on question of law

17. (1) Before the Tribunal makes an award under section 19, the Tribunal may, in its discretion, refer to a Judge of the High Court a question of law—

- (a) which arose in the course of the proceedings;
- (b) which, in the opinion of the Tribunal, is of sufficient importance to merit such reference; and
- (c) the determination of which by the Tribunal raises, in the opinion of the Tribunal, sufficient doubt to merit such reference.

(2) If the Tribunal refers any question of law under subsection (1) for the decision of a Judge of the High Court, the Tribunal shall make its award in conformity with such decision.

(3) For the purposes of reference to the High Court on any question of law, a Federal Counsel authorized by the Attorney General may appear on behalf of the Tribunal in any proceedings before a Judge of the High Court.

Procedure where no provision is made

18. Where no provision is made relating to procedures of the Tribunal, subject to this Act and any regulations made under this Act, the Tribunal shall adopt such procedure as the Tribunal thinks fit.

Chapter 4

Award and order of Tribunal

Award of Tribunal

19. (1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall state in writing reasons for the award or dismissal of the complaint of sexual harassment together with any finding of facts that the Tribunal has noted or recommendations that the Tribunal has made in those proceedings.

Order

20. (1) In making an award under section 19, the Tribunal may make any one or more of the following orders:

- (a) an order for the respondent to issue a statement of apology to the complainant as specified in the order;
- (b) if the complaint related to any act of sexual harassment which was carried out in public, an order for the respondent to publish a statement of apology to the complainant in any manner as specified in the order;
- (c) an order for the respondent to pay any compensation or damages not exceeding two hundred and fifty thousand ringgit for any loss or damage suffered by the complainant in respect of the act of sexual harassment; or
- (d) an order for the parties to attend any programme as the Tribunal thinks necessary.

(2) The Tribunal may make such ancillary or consequential orders or relief as may be necessary to give effect to any order made by the Tribunal.

(3) The Tribunal may dismiss a complaint of sexual harassment which the Tribunal considers to be frivolous or vexatious.

Criminal penalty for failure to comply with award

21. (1) Any person who fails to comply with an award made by the Tribunal under section 19 within thirty days from the date on which the award was made, commits an offence and shall, on conviction, be liable to any of the following:

- (a) in the case where any compensation or damages is ordered by the Tribunal, a fine which is two times the total amount of the compensation or damages, or to imprisonment for a term not exceeding two years, or to both; or
- (b) in the case where no compensation or damages is ordered by the Tribunal, a fine not exceeding ten thousand ringgit, or to imprisonment for a term not exceeding two years, or to both.

(2) In the case of a continuing offence, the person shall, in addition to the penalties specified under subsection (1), be liable to a fine not exceeding one thousand ringgit for each day or part of a day during which the offence continues after the conviction.

Award of Tribunal to be final

22. (1) An award made under subsection 16(3) or section 19 shall—

- (a) subject to section 23, be final and binding on all parties to the proceedings; and
- (b) be deemed to be an order of a court and be enforced accordingly by any party to the proceedings.

(2) For the purposes of paragraph (1)(b), the Secretary to the Tribunal shall send a copy of the award made by the Tribunal to the court having jurisdiction in the place to which the award relates or in the place where the award was made and the court shall cause the copy of the award to be recorded.

Challenging award on ground of serious irregularity

23. (1) Any party to the proceedings of the Tribunal may, upon notice to the other party and to the Tribunal, apply to the High Court challenging an award in the proceedings only on the ground of serious irregularity affecting the award.

(2) If there is shown to be serious irregularity affecting the award, the High Court may—

(a) remit the award to the Tribunal, in whole or in part, for reconsideration; or

(b) set aside the award in whole or in part.

(3) For the purposes of this section, “serious irregularity” means an irregularity of one or more of the following kinds which the High Court considers has caused substantial injustice to the applicant:

(a) failure of the Tribunal to deal with all the relevant issues that were put to it; or

(b) uncertainty or ambiguity as to the effect of the award.

PART III

ADMINISTRATOR OF ANTI-SEXUAL HARASSMENT

Administrator

24. The Secretary General of the Ministry responsible for women, family and community development shall be the Administrator of Anti-Sexual Harassment.

Functions and powers of Administrator

25. (1) The Administrator shall have the following functions:

- (a) to formulate policy or issue guidelines relating to the prevention or awareness of sexual harassment;
- (b) to promote any activity including to request any person to display any notice at any place relating to the prevention or awareness of sexual harassment;
- (c) to administer any matter relating to the prevention or awareness of sexual harassment; and
- (d) to carry out any other functions for the betterment and proper implementation of this Act.

(2) The Administrator shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of its functions under this Act.

PART IV**GENERAL****Power to make regulations**

26. (1) The Minister may make such regulations as may be necessary or expedient in respect of the Tribunal.

(2) Without prejudice to the generality of subsection (1), the regulations may be made for—

- (a) prescribing the forms to be used in proceedings under this Act;
- (b) prescribing and imposing fees and providing for the manner for collecting and disbursing such fees; and
- (c) prescribing any other matters for the better carrying out of the provisions of this Act.

Special provision for police report under any written laws

27. Notwithstanding a complaint of sexual harassment being made under this Act, a complainant, or any other person shall not be precluded from lodging a police report for any offence relating to sexual harassment under any written laws.

