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Research Study on
Workplace Sexual Harassment
25 November 2012

AWARE Sub-Committee on
Workplace Sexual Harassment 2011-2012
25 November 2012

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The AWARE Sub-Committee on Workplace Sexual Harassment 2011 – 2012

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About AWARE

AWARE is Singapore's leading advocacy group dedicated to promoting gender equality. Since its inception in 1985, AWARE has brought women's perspectives to national issues and has focused on public education, research and advocacy. AWARE provides valuable support services to women in the community including a crisis helpline, legal advice, counselling and assistance in dealing with hospitals, police and the courts. AWARE is a not-for-profit, non-governmental organisation and is funded solely by donations, grants, and members' subscriptions.

CONTENTS

Section A: Executive Summary	6
Section B: Introduction	7
Positive Duty to Legislate against Sexual Harassment	
Singapore’s Commitment to CEDAW	
Purpose of Report	
Definition of Workplace Sexual Harassment	
Section C: The Need for Adequate Sexual Harassment Protection	10
Why Care about Sexual Harassment Protection?	
Sexual Harassment is Common in Singapore	
Sexual Harassment Causes Substantial Pain and Suffering to Individuals	
Sexual Harassment is Bad for Business and Productivity	
Singapore is Committed to Ensuring Safe Workplaces for Everyone	
Laws specifically addressing Sexual Harassment are the Norm in Leading Business Centres	
Section D: Inadequacies in Laws and Mechanisms	15
Inadequacies of Current Laws and Lack of Avenues for Assistance	
Absence of Specific Law on Sexual Harassment	
Inadequacy of Criminal Laws and Procedures	
Criminal Redress Alone is Insufficient	
Civil Remedies are Extremely Limited	
Lack of Avenues for Assistance	
Summary of Inadequacies of Current Laws and Lack of Avenues for Assistance	
Section E: Recommendations	22
Recommendations	
Specific Sexual Harassment Law	
Statutory Obligation on Organisations	
Administrative Body Requirement	
Enhanced Civil Remedies	
The Form of Legislation	
Stand-alone Harassment Act (new Act)	
Harassment Act (new Act)	
Incorporation of Sexual Harassment Provisions into the Employment Act	
Incorporation of Sexual Harassment Provisions into the Workplace Safety and Health Act (WSHA)	
Anti-Discrimination Act	
Option of implementing a Voluntary Code	

Appendix A – Workplace Sexual Harassment Laws in Other Countries

30

Hong Kong

Australia

The Philippines

New Zealand

Section A: Executive Summary

1. This is AWARE's second major report on Workplace Sexual Harassment. The first report published in 2008 indicated that Workplace Sexual Harassment was prevalent in Singapore. Of the 500 respondents surveyed, 54% had experienced some form of Workplace Sexual Harassment.
2. In this Report, drawing from the experiences of victims of Workplace Sexual Harassment supported by AWARE through our various support services (Helpline, Legal Clinic and Counselling), we review the current laws relating to Workplace Sexual Harassment.
3. The Report highlights the inadequacies of the current system, which provides recourse primarily through the criminal law provisions in the Penal Code and the Miscellaneous Offences (Public Order and Nuisance) Act.
4. The current law which deals with this issue primarily through the criminal law is inadequate for the following reasons:
 - Criminal remedies are often not the appropriate remedy as they aim to punish the offender rather than to stop the offender's actions or to provide compensation to the victim, which are usually what the victim seeks.
 - Victims of Workplace Sexual Harassment have very few options for seeking assistance and intervention. Most companies are not equipped to deal with Workplace Sexual Harassment. MOM and TAFEP lack the authority to do so.
 - There is no specific sexual harassment legislation and an explicit statement by the State that sexual harassment is unacceptable.
 - Civil remedies under the common law are limited as the common law generally does not award damages for emotional distress and psychological damage.
5. Singapore is obliged under CEDAW to enact laws that will provide adequate protection against Workplace Sexual Harassment. The absence of such laws gives rise to workplace cultures and practices that are tolerant of sexual harassment i.e. workplaces with no policies or procedures to prevent or deal with harassment, where harassers go unpunished and victims suffer in silence.
6. All global business centres except Singapore have put in place specific laws to deal with Workplace Sexual Harassment. Singapore is a laggard in this respect.
7. AWARE urges the State to give priority to enhancing the laws in this area. The law needs to be reformed to provide for the following:
 - (1) Explicit legal protection against sexual harassment;
 - (2) Impose affirmative duties for employers to take steps to prevent sexual harassment;
 - (3) Establish / empower an administrative body to handle complaints and promote application of the law;
 - (4) Wide range of civil remedies and sanctions.

Section B: Introduction

1. Positive Duty to Legislate against Sexual Harassment

Singapore is obliged under the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)¹ to enact legislative provisions on sexual harassment in the workplace and in educational institutions.

In 2007 and 2011, in response to Singapore's CEDAW Reports, the UN CEDAW Committee expressed its concern about the lack of a legal definition and prohibition against sexual harassment. The UN CEDAW Committee urged Singapore to **"take steps to enact legislative provisions on sexual harassment at the workplace, as well as in educational institutions, including sanctions, civil remedies and compensation for victims"** (hereafter referred to as **"CEDAW SH Obligation"**).

The reason why the UN CEDAW Committee has prioritised the need for adequate sexual harassment protection is set out in General Recommendation No. 19 of 1992 which states:

"Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace...

Sexual harassment is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment."

2. Singapore's Commitment to CEDAW

Singapore prides itself in keeping its commitment to its international treaty obligations and generally does not accede to an international convention unless it is fully satisfied that it can give effect to the provisions of the international convention.²

In her statement to the UN CEDAW Committee at the 49th CEDAW Session on 22 July 2011, Madam Halimah Yacob reiterated that Singapore takes its "obligations under CEDAW very seriously, not just because we ratified the Convention, but more

¹ CEDAW was adopted in 1979 by the United Nations General Assembly and is often described as an international bill of rights for women. Singapore ratified CEDAW in 1995.

Governments that ratify CEDAW are legally bound to put its provisions into practice. They commit to undertaking a series of measures to end discrimination against women. They also commit to submitting national reports to the UN CEDAW Committee at least every four years, describing the steps they have taken to comply with the Convention.

² "When we adhere to an international treaty, we want to be sure that we will be able to implement the provisions faithfully, or to put it the other way, we do not want to be accused, after we have become a state party, that we are in breach of the provisions." Comments of Minister of Law, Professor Jayakumar, to a question posed by Mr Simon Tay during Parliamentary Debates, Parliament No. 9, Session No. 2, Volume No. 73, Sitting No. 8, Sitting Date: 13 March 2001

importantly, because we believe in gender equality as a way of achieving progress in our society.”

3. Purpose of Report

This Report has been prepared to assist the State to fulfill its CEDAW SH Obligation by:

- a) Showing why, apart from the treaty compliance reasons, it is necessary and in the best interest of Singapore to provide adequate legislative protection against sexual harassment;
- b) Showing why the current laws and mechanisms are inadequate;
- c) Recommending the steps to be taken to address the gaps in the current system.

4. Definition of Workplace Sexual Harassment

The phrase “Workplace Sexual Harassment” when referred to in this Report covers **sexual harassment in workplaces and educational institutions.**

As Singapore is a signatory to CEDAW, we shall, in this paper, adopt the definition of sexual harassment set out in the CEDAW Committee’s General Recommendation No. 19 of 1992:

“**such unwelcome sexually determined behavior** as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions.”

Under this definition, common forms of sexual harassment would include the following:

- Receiving career threats such as indications that you will be fired or withheld promotion if you did not accede to requests for a date, or sexual favours;
- Sexual assault and rape at the workplace;
- Verbal sexual harassment – being addressed by unwelcome and offensive terms such as ‘bitch’, ‘dick’, ‘darling’, ‘bimbo’, ‘ah kua’, etc;
- Verbal sexual harassment – receiving unwelcome comments or being asked intrusive questions about appearance, body parts, sex life, menstruation etc;
- Verbal sexual harassment – being made to repeatedly and intentionally listen to dirty jokes, crude stories that are unwelcome and discomforting;
- Verbal sexual harassment – receiving unwelcome sexual suggestions or invitations;
- Verbal sexual harassment – being repeatedly subjected to sexually suggestive, obscene or insulting sounds, which are unwelcome and offensive;
- Visual sexual harassment – repeatedly receiving emails, instant messages, SMSes, which contain unwelcome language of a sexually-explicit nature;

- Physical sexual harassment – being brushed against or touched in any way that was unwelcome and discomforting;
- Physical sexual harassment – being stood very close to or cornered in a way that was unwelcome and discomforting;
- Physical sexual harassment – being forcibly kissed or hugged, or being forcibly made to touch someone.

Section C: The Need for Adequate Sexual Harassment Protection

1. Why Care about Sexual Harassment Protection?

Aside from treaty compliance requirements, the State should care about and ensure that there is adequate protection against Workplace Sexual Harassment because:

- a) Sexual harassment is common in Singapore;
- b) Sexual harassment causes substantial pain and suffering to individuals;
- c) Sexual harassment is bad for business and productivity;
- d) Singapore is committed to ensuring safe workplaces for everyone;
- e) Sexual harassment laws are the norm in leading business centres.

2. Sexual Harassment is Common in Singapore

As part of its Research Study on Workplace Sexual Harassment published in 2008 ("**2008 Study**")³, AWARE undertook a public opinion survey to find out the level of awareness, opinions and attitudes on this issue.

The public opinion survey showed that of the 500 respondents:

- **54.4%** reported that they had **experienced some form of sexual harassment**;
- **25%** knew of **other people** who had experienced **some form of sexual harassment**;
- **30%** of those who had been harassed indicated that they had been **harassed several times**;
- **12%** of those who had been harassed had received **threats of termination** if they did not comply with the requests of the harassers.

The survey also showed that sexual harassment occurs to both sexes, although of the respondents who had experienced sexual harassment, there were more **female victims (79%)** than **male victims (21%)**.

Harassers often target the less empowered, such as junior employees or foreign workers whose first language is not English and who depend on their jobs for their right to stay in Singapore. The case below is an example of this.

Case #1

Q, a Vietnamese woman employed as an administrative executive, was molested twice by her manager. The first time he kissed her on the forehead and said it was part of the training. She did not report it as she did not want to make an issue of this.

The second time, he locked her in a room, pinned her against the wall and tried to lift up her skirt. She eventually managed to escape and ran out of the room.

³ http://www.aware.org.sg/wp-content/uploads/AWARE_Research_Study_on_Workplace_Sexual_Harassment.pdf

Thereafter, the manager tried to touch Q whenever he saw her. Q did her best to avoid him in the office.

Q was miserable at work but did not report or tell anyone in the office as she was on an "S Pass" and was afraid to lose her job. She was also not very fluent in English and was not very comfortable communicating in English.

At home, she cried to herself during the period of the harassment. She did not tell her husband what happened as she felt ashamed about the incident. Her husband was deeply concerned and managed finally to get her to tell him about what had happened. He persuaded her to report to the employer, to make a police report and to come to AWARE.

AWARE's Helpline (1800-7745935) received **27** calls in 2010 and **21** calls in 2011 from female victims of **sexual harassment in workplaces and educational institutions**. This is comparable to the **20** calls on **domestic violence** in 2010 and **26** calls received on domestic violence in 2011.

The victims who approached AWARE in 2011 suffered a wide range of indignities, from being pinned down, groped on the breasts and buttocks, or forcibly french-kissed to non-physical sexual harassment such as asking the victim for "a quickie", referring to the victim as a "piece of ass" and other inappropriate, lewd comments on the victim's dressing, appearance and personal life.

3. Sexual Harassment Causes Substantial Pain and Suffering to Individuals

Sexual harassment victims call the Helpline because they are emotionally and psychologically disturbed by what is happening in their workplace, especially when the harassment is perpetrated by their boss. The subordinate is obliged to carry out the orders of his or her boss. However, the situation becomes very confusing and troubling for the subordinate when the boss takes advantage of his or her authority to violate the subordinate's dignity with sexually suggestive comments or physical advances.

In the worse cases, sexual harassment can make a person's life miserable and even dangerous.⁴ The victim's dependence on the job as his or her means to earn a living causes the victim to endure continuous severe harassment in silence. The case below is particularly egregious and occurred during the economic recession – the victim endured severe harassment but did not report the situation to anyone as she did not want to lose her job during this period.

Case #2

T, an administrative clerk, was sexually abused by her boss for close to a year. She did not report to the police for a long time as she was the sole breadwinner of the family and she was afraid of losing her job during the economic recession. The company was a very small business run by her boss and his partner.

Initially, the perpetrator touched her breasts and knees. This then escalated to the perpetrator forcing T to perform oral sex on him more than once. Each time she struggled but did not call the police. About a year after the first incident, the

⁴ Sexual Harassment at Work: National and International Responses, Deidre McCann, Conditions of Work and Employment Series No 2, ILO, 2005

perpetrator tried to rape her. He failed but ejaculated on her. It was only at this point that she decided to report to the police and to come to AWARE.

4. Sexual Harassment is Bad for Business and Productivity

Sexual harassment costs employers in terms of decrease in employee productivity, staff turnover, poor staff morale, damaged reputation and legal claims.⁵

In most of the cases that AWARE dealt with, the incident(s) caused the victim distress and confusion. Victims lose concentration at work as they become wary of and focus on avoiding the harasser at all cost. They fret about their options and what they should do about the situation. Often, the victim takes leave from work to get a respite. In most cases, the incident(s) results in at least one party person leaving the workplace.

In one of the cases we came across, the organisation managed the sexual harassment investigation poorly, allowing the investigations to drag and involving unnecessary employees in the investigation. Cliques formed in the department with staff taking sides. For many weeks, the issue took precedence and distracted the staff from their work.

There has been no study in Singapore of the financial costs of sexual harassment to businesses in Singapore. However, studies from the US indicate that the cost is substantial. A survey of U.S. federal government employees estimated sexual harassment cost the U.S. government \$327 million between 1992 and 1994.⁶

5. Singapore is Committed to Ensuring Safe Workplaces for Everyone

The National Strategy for Workplace Safety and Health in Singapore (WSH 2018)⁷, adopted by the Workplace, Safety and Health Council, the Singapore National Employers' Federation (SNEF) and the National Trades Union Congress (NTUC), sets out the following vision for workplace in Singapore:

"A safe and healthy workplace for everyone; and a country renowned for best practices in workplace safety and health"

It is noted that the current workplace safety and health regime, which covers all workplaces (not just factories) addresses only mechanical, physical and chemical hazards and excludes psychosocial hazards such as violence, bullying and sexual harassment.

⁵ Sexual Harassment at Work: National and International Responses, Deidre McCann, Conditions of Work and Employment Series No 2, ILO, 2005, page 6

⁶ US Metric Systems Correction Board, Sexual Harassment in the Federal Workplace: Trends, Progress, Continuing Challenges (1994)
http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=253661&version=253948&application=A_CROBAT (accessed, 30 May 2012)

⁷ https://www.wshc.sg/wps/themes/html/upload/cms/file/WSH2018_lowres.pdf

Workplace sexual harassment is generally regarded as giving rise to an unsafe and unhealthy workplace.⁸ Thus, sexual harassment is specifically addressed in the workplace safety codes of many countries.⁹

Singapore recently ratified the Promotional Framework for Occupational Safety and Health Convention demonstrating Singapore's commitment to ensuring workplace safety and health. The ILO emphasizes¹⁰ the promotion of mental health and well being as integral to workplace safety and health. The State is obliged under its ILO obligations to provide explicit legal protection against sexual harassment¹¹.

In Singapore, the absence of regulations specifically dealing with workplace harassment in the workplace safety and health legislation or any other legislation is a glaring omission that must be addressed if Singapore is to realize its vision as a "country renowned for best practices in workplace safety and health".

6. Laws specifically addressing Sexual Harassment are the Norm in the Leading Business Centres

Singapore strives to be a leading global business centre.

Singapore ranked a joint 9th with Austria in Bloomberg's 2012 list of "Top Countries for Business"¹². It is noted that, **with the exception of Singapore**, all the Top 12 Countries for Business – Hong Kong, Netherlands, United States, United Kingdom, Australia, Germany, Japan, France, Austria, Singapore, Switzerland and Canada – **have implemented laws which specifically address Workplace Sexual Harassment**. See the table on page 21 for more details.

The absence of effective laws dealing with Workplace Sexual Harassment creates a national working environment that tolerates sexual harassment. This affects Singapore's global competitiveness in terms of its reputation and ability to attract and retain the best human talent.

In the following case, the sexual harassment incidents and the management's lack of support when the victim (*P*), a highly qualified female employee, reported the incident had caused an international bank to lose this employee. The bank had spent substantial time and money to recruit and train *P* in Singapore. The unpleasant experience caused *P* to leave the company and Singapore.

⁸ Such conduct can be humiliating and may constitute a health and safety problem – CEDAW Committee's General Recommendation No. 19 of 1992

⁹ Australia (Queensland and Victoria), Canada (Quebec, Ontario, Saskatchewan), Ireland, Sweden and the United States.

¹⁰ The Promotional Framework refers to the the Occupational Safety and Health Convention which defines Health as indicating "not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work - which supports a wider definition of Workplace Safety.

¹¹ Address Sexual Harassment at Work, ST, 15/6/2012.

¹² <http://www.bloomberg.com/slideshow/2012-01-20/top-20-countries-for-business.html> accessed on 2 April 2012

Case #3

P, a Chinese national who graduated from a top US University was employed by the Singapore office of an international bank. P was recruited as part of an elite group of graduate trainees and had signed on to a one year contract with the bank. She was contractually obliged to compensate the bank if she terminated the contract prematurely.

P was forcibly french-kissed and molested by her senior boss after an office party. He continued to harass her for a few months by touching her waist, shoulder and neck and making inappropriate comments about her dressing and his lust for her.

P was distressed and upset by the constant harassment and experienced repeated nightmares and insomnia during this period.

P wanted to resign but felt trapped by her one year commitment and the penalty she would have to pay for premature termination.

P told her direct supervisor about the harassment. The direct supervisor told P that she could not do anything about it as the harasser was "too senior" within the firm and very influential in the industry.

P consulted a lawyer who advised her that there was little that she could do legally and that she should report the case to the Police.

P did not want to report the case to the Police as she wanted to continue working in the industry and did not want to risk having a "bad" reputation.

P then came to AWARE who assisted her to report the case directly to HR. She managed to get some monetary compensation from her employer but was so disillusioned by her experience that she left Singapore and her job to start afresh in a new country.

Section D: Inadequacies in Laws and Mechanisms

1. Inadequacies of Current Laws and Lack of Avenues for Assistance

In this section, we review why the current laws (criminal and civil) are inadequate to deal effectively with sexual harassment. Aside from the inadequacy of laws, this section also highlights the limited avenues that a victim has to seek assistance in Workplace Sexual Harassment cases.

INADEQUACY OF LAWS

2. Absence of Specific Law on Sexual Harassment

There is no specific legislation in Singapore which deals with sexual harassment.

Neither the Employment Act nor the Workplace Safety and Health Act contains any provisions on sexual harassment.

The absence of a specific law on harassment is problematic.

Even though some forms of sexual harassment would be caught under general penal provisions such as "Outrage of Modesty" or "Insult of Modesty", the lack of a specific provision outlawing sexual harassment means that **there is no explicit and direct statement by the State that Workplace Sexual Harassment is unacceptable.**

3. Inadequacy of Criminal Laws and Procedures

Although there is no specific offence of sexual harassment, there are criminal provisions which are relevant. However, the criminal law route is problematic for the following reasons:

- a) As the provisions do not specifically deal with Workplace Sexual Harassment, some forms of sexual harassment may not be caught under the current criminal laws;
- b) The criminal offences which cover non-physical sexual harassment, i.e. Section 509 of the Penal Code and Section 13A of the Miscellaneous Offences (Public Order and Nuisance) Act, are non-seizable offences¹³. This means that, generally speaking, the Police will not have power to arrest the offender and to prosecute the case. The victim will have to engage a lawyer to invoke the private summons procedure against the offender.

Let's look first at the scope of the current criminal laws and their coverage of Workplace Sexual Harassment.

Physical sexual harassment would generally be caught under the offences of "Outrage of Modesty"¹⁴, "Rape"¹⁵ and "Unlawful Sexual Penetration"¹⁶ under the Penal Code.

¹³ Non-arrestible offences.

¹⁴ Section 354, Penal Code

However, **non-physical sexual harassment**, including verbal harassment may **not** be **caught** under the current **criminal law**. The relevant sections are Section 509 of the Penal Code and Section 13A of the Miscellaneous Offences (Public Order and Nuisance) Act.

The "**Insult of modesty**" offence under Section 509, Penal Code, states:

"509. *Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both:"*

Section 509 only applies to a person "intending to insult the modesty of any woman". However, sexual harassment (as commonly understood) focuses on whether the behavior was "unwelcome" and is not concerned with the intention of the harasser (unlike Section 509). Thus, Section 509, with its requirement of "intention to insult" is arguably narrower than the commonly accepted definition of sexual harassment.

Further, Section 509 only protects women, whereas sexual harassment applies to both women and men.

The "**Intentional Harassment**" offence under Section 13A, Miscellaneous Offences (Public Order and Nuisance) Act states:

"13A. —(1) Any person who... with intent to cause harassment, alarm or distress to another person —

(a) uses threatening, abusive or insulting words or behaviour; or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting;

thereby causing that person or any other person harassment, alarm or distress, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000."

Section 13A may also not cover all cases of sexual harassment as it deals only with behavior and words that are "threatening, abusive or insulting". Thus it may not cover situations such as where the harasser talks about the sexual positions that he enjoys, his unsatisfactory sex life with his wife or issues sexual invitations to the victim. These words may be unwelcome or offensive but may arguably not be threatening, abusive or insulting.

Aside from the scope of the criminal law provisions, the bigger problem is that the criminal offences relating to non-physical sexual harassment cases i.e. "Insult of Modesty" and "Intentional Harassment" are non-seizable¹⁷ offences in respect of which the Police generally do not have the power to take action¹⁸.

¹⁵ Section 375, Penal Code

¹⁶ Section 376, Penal Code

¹⁷ Not arrestable.

Thus, where a person lodges a complaint about non-physical harassment to the Police, the Police will generally not act. Instead, the Police will usually give the complainant a form to lodge a complaint to the Magistrate. The complainant will have to take out a private summons in the Criminal Court on her own. While the initial complaint can be made without a lawyer, where the matter is not resolved via court mediation, the complainant will generally have to engage a lawyer to continue with the proceedings.

In this regard, it is noted that the MCYS statement given to the UN CEDAW Committee for the 4th Periodic Report¹⁹ that "the Police will investigate all reports and / or complaints of sexual harassment at the workplace" is inaccurate.²⁰

To summarise, the present criminal law provisions and procedures do not adequately protect against non-physical sexual harassment.

4. Criminal Redress Alone is Insufficient

Most complainants, especially in the case of non-physical harassment (that is, where the complainants' safety is not in issue), simply want the harassment to stop, an apology to be given by the harasser or, in some cases, compensation from the harasser or the organisation and for the harasser to be removed.²¹

Thus, the criminal route, which takes time and aims to punish the offender than stop the offender's actions or provide compensation for the victim, is often not an appropriate remedy.²²

Also, many victims do not want to report to the Police because they are afraid of adverse publicity (**Case #4**) or they want to continue working in the organisation.

The criminal route, which aims to punish the harasser, is not an ideal remedy for these complainants. The case below demonstrates this point clearly where the victim was comfortable to report to MOM but not to the Police.

Case #4

K was subjected to a few instances of verbal sexual harassment by her immediate boss, H, which began when they were on a conference outside Singapore.

¹⁸ Investigate and prosecute the case.

¹⁹ Responses to the list of issues and questions with regard to the consideration of the fourth periodic report <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-SGP-Q-4-Add1.pdf> accessed on 7 April 2012

²⁰ AWARE is not recommending that these offences be made seizureable and that the Police be empowered to act in every case of non-physical harassment. However, there should be an administrative body that should have the power to intervene in every case of sexual harassment.

²¹ Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 94, 101

²² Ibid, at p 102

In a taxi on the way to the airport, H referring to K when speaking to X, a male colleague, said "the only reason why you are looking at the back is because there is a piece of ass sitting here".

On another occasion, K was seated in between the H and X, while the two talked about sex openly across her.

When K and H were alone on a business trip, he invited her to "lie down in his room". K declined.

Since the last incident, H started to blame K for things that had nothing to do with her, undermining her efforts and opportunities for promotion. K and H were the only two persons in the Singapore office she worked in and she was afraid to confront H directly.

The company had a policy to deal with sexual harassment but K felt that she could not tell anyone in the office as she was afraid of what H might do to her since there was no one else working in the Singapore office. H has a very bad temper and K was afraid of what he may do to her physically. K resigned from the company and told her HR department of the incidents only after the resignation.

K reported to MOM after she resigned but MOM referred her to the Police instead.

K approached AWARE for advice after she resigned. She did not report to the Police because she found the thought of going to the police daunting and she was afraid it would affect her next employment.

5. Civil Remedies Are Extremely Limited

Victims of sexual harassment may have civil remedies against their organisation under the common law (tort or contract). However, in practice, Workplace Sexual Harassment victims are unlikely to pursue a civil suit against their organisation (employer or educational institution) as legal representation is expensive and the common law generally does not award damages for emotional distress and injured feelings. Thus, even if the victim had a strong case against her organisation, it does not make financial sense for her to pursue this as the Court will only be able to award her damages for her financial loss and not emotional distress.

In our experience, civil remedies have proven to be useful only in cases involving larger or international companies. In cases involving such companies, a lawyer's letter of demand seeking compensation for the victim who has lost her job or resigned because of the incident might result in some compensation for the victim, usually amounting to two to four months of salary. The victim thus gets some redress without having to initiate a civil action. Often, the victim who has suffered intense distress will not be satisfied with the settlement amount of two to four months of salary. However, she usually accepts it because it does not make financial sense to incur legal fees to pursue the claim in court when the law does not award damages for emotional distress.

6. LACK OF AVENUES FOR ASSISTANCE

Aside from the inadequacy of the current laws, it will be seen that a victim of Workplace Sexual Harassment usually has limited avenues to seek assistance or intervention. The following section discusses the limitations of the organisation, unions, MOM, and TAFEP as avenues for assistance.

6.1 Organisation

Ideally, the employer should be the first line of defence for the victim. A sexual harassment victim should be able to approach his or her management / administration or HR for help, advice, and to stop the harassment.

However, in our experience, most organisations do not have any sexual harassment policies or procedures in place and are not trained to deal with this. This is not surprising given that there is currently no statutory obligation on employers to do so.

Aside from having to deal with the emotions caused by the harassment itself, many of the victims in the cases were extremely stressed by the aftermath of the harassment. Some victims had limited options as there was no one in the organisation to turn to. Others had to deal with hostile, unsympathetic, or inept human resource managers who made them feel worse after they reported the harassment.

The above is supported by our 2008 Study stated that:

- "Many companies in Singapore are either unaware about the issue of workplace sexual harassment, or reluctant to broach the subject.
- Many companies in Singapore either do not have specific policies in place to address sexual harassment in their work environment, or do not have the scope within other employment policies and procedures to deal with the problem should it arise."²³

Further, our experience has shown that company interventions are often poorly executed and may cause greater harm to the victim. **Case #5** below is an example of this.

Case #5

The victim, N, was molested by her male colleague while they were on work assignments outside Singapore. The harasser pinned her down in a hotel room and grabbed her breasts. Both parties were employed by a public listed company.

N felt violated and scared and called her boss the next morning for permission to fly back to Singapore immediately. She was afraid to meet the harasser again. N's boss was unsympathetic and asked her: Have you been raped, and if not, then what is the big deal?" The boss refused to allow N to fly back to Singapore on the next flight as the Economy Class tickets for that flight were sold out.

N was very upset by her boss's insensitive response and the company's lack of concern for her safety and well-being.

²³ For more details, refer to Section 2 of the 2008 Survey (pp 28 – 33).

N made a police report in the country where the incident took place and in Singapore. The Singapore Police was not able to follow up as the incident took place outside Singapore. She was not able to pursue the case in the foreign country as she stopped going there.

6.2 Unions

Employees who are union members have the additional remedy of lodging a complaint with their union. The problem is that only about 18% of all companies are unionised²⁴, and these would be the larger companies. Thus, the union route is not available to the majority of employees. It is also unclear whether there is a standard response applied by different unions, what it is that the unions do to address such complaints, and what the results are.

6.3 MOM

MOM generally does not have any authority in sexual harassment cases as sexual harassment is not covered under the Employment Act.

Where the complaint on sexual harassment might also be characterised as an employment dispute, e.g. unfair dismissal, the employee may seek redress through MOM. However, most sexual harassment cases do not involve unfair dismissal.

In cases where there is no unfair dismissal, MOM may still try to mediate, as a matter of goodwill. However, it is not obliged to do so and has no authority to force companies to attend mediation meetings in such cases.

6.4 TAFEP

TAFEP was formed to educate employers to adopt fair employment practices and to assist them to put employee grievance handling procedures in place.

Unfortunately, TAFEP has no direct authority over organizations. Where it receives complaints of sexual harassment, it may voluntarily assist the complainants by calling up the organisation. However, it has no power to investigate or sanction.

7. Summary of Inadequacies of Current Laws and Lack of Avenues for Assistance

In summary, the current system which deals with Workplace Sexual Harassment primarily through the criminal law suffers from the following significant shortcomings:

- Criminal remedies are often not the appropriate remedy as they aim to punish the offender rather than to stop the offender's actions or to provide compensation to the victim, which is usually what the victim seeks. Also, criminal actions take time and involve the risk of adverse publicity. While the criminal remedies are necessary, they are insufficient, especially in relation to non-physical sexual harassment which the Police do not have the authority to arrest and prosecute.

²⁴ Email from MOM to AWARE dated 19 December 2011.

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- Victims of Workplace Sexual Harassment have very few options for seeking assistance and intervention:
 - Companies are generally not equipped to deal with Workplace Sexual Harassment – they lack awareness, policies and procedures on sexual harassment.
 - Unions may be helpful but only a minority of companies are unionized. It is also unclear what unions actually do in response to complaints of sexual harassment.
 - MOM and TAFEP both lack official authority.
- There is no specific sexual harassment legislation and an explicit statement by the State that sexual harassment is unacceptable.
- Civil remedies under the common law are limited as the common law generally does not award damages for emotional distress and psychological damage. Further, the Court does not have the power to order the reinstatement or promotion of an employee or to order one party to stop his behavior.
- The above inadequacies need to be addressed urgently. The next section sets out our Recommendations for legal reform.

Section E: Recommendations

1. Recommendations

Many countries have already implemented specific legislation dealing with sexual harassment, whether as part of anti-discrimination legislation, employment or workplace safety and health legislation. Singapore can draw from the experiences of these countries to implement the laws necessary to supplement the existing criminal laws.

We also refer to ILO's publication on *Action against Sexual Harassment at Work in Asia and the Pacific* (2001) which extracts "best practices" based on studies of the laws and practices in Australia, Bangladesh, China, Hong Kong SAR, India, Japan, the Republic of Korea, Malaysia, Nepal, the Philippines, Sri Lanka, and Thailand.

To address the current gaps in our laws and practices, Singapore needs to **enact new legislation** to provide for the following "**4 Key Elements**":

- (1) Explicit legal protection against sexual harassment ("**Specific Sexual Harassment Laws**");
- (2) Impose affirmative duties for employers to take steps to prevent sexual harassment ("**Statutory Obligation on Employers**")
- (3) Establish / empower an administrative body with resources and competence to handle complaints and promote application of the law ("**Administrative Body Requirement**")
- (4) Wide range of civil remedies and sanctions ("**Enhanced Civil Remedies**")

These 4 Key Elements will be examined more closely below.

2. Specific Sexual Harassment Law

To protect against Workplace Sexual Harassment, it is necessary to implement specific legislation²⁵ which explicitly outlaws Workplace Sexual Harassment ("**WSH Law**"). The WSH Law must provide a comprehensive definition of Sexual Harassment which should include²⁶:

- The unwelcome nature of the prohibited conduct i.e. physical, verbal and non-verbal or other action
- Quid pro quo²⁷ (sexual blackmail) and hostile working harassment²⁸

²⁵ The actual form of the law i.e. whether it is a new Act or a new section to be incorporated into an existing act will be discussed later.

²⁶ Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 77

²⁷ Quid pro quo (meaning 'this for that') harassment refers to a demand by a person in authority, such as a supervisor, for sexual favours in order to obtain or maintain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer, or the job itself. It forces an employee to

Ideally, the provisions should cover both workplaces and educational institutions.

The WSH Law should also provide a broad scope of protection to cover as many persons as possible, including professors and teachers, supervisors and staff or between colleagues, clients, guests, customers, patients, contract workers, and other service providers, and to cover work-related harassment that takes place outside the office.

Except for Singapore, the Top 12 Business Centres listed in Bloomberg's 2012 List all have implemented legislation that specifically addresses Workplace Sexual Harassment.

The table below shows each country's sexual harassment legislation and the administrative body set up to deal with sexual harassment cases. In this respect, Singapore is a laggard as it does not have any legislation that deals with Workplace Sexual Harassment.

Countries	Name of Legislation²⁹	Administrative Authority
Hong Kong	Sex Discrimination Act	Equal Opportunities Commission
Netherlands	Working Conditions Act; Equal Treatment Acts	Equal Treatment Commission
United States	Title VII of the Civil Rights Act of 1964	U.S. Equal Employment Opportunity Commission; State's fair employment agency.
United Kingdom	Equality Act 2010; Health and Safety at Work Act 1974; Protection from Harassment Act 1997; European Commission Code of Practice 1991 on Sex Harassment	Equal Opportunities Commission; Equality Commission for Northern Ireland; Employment Tribunals
Australia	Sex Discrimination Act	Australian Human Rights Commission

choose between giving in to sexual demands or losing job benefits. Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 22

²⁸ A hostile working environment refers to unwelcome sexual advances, requests for sexual favours or other verbal, non-verbal or physical conduct of a sexual nature which interferes with an individual's work performance or creates an intimidating, hostile, abusive, offensive or poisoned work environment. Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 22

²⁹ As can be seen, the laws that specifically prohibit sexual harassment and provide victims with recourse to criminal, civil and administrative remedies may be contained in a variety of enactments, from stand alone Anti-Discrimination Acts to Employment Codes to Workplace or Occupational Health and Safety legislation. The form of the legislation is less important than the fact that there is legislation that specifically outlaws sexual harassment in the workplace (and in some cases, educational institutions), imposes obligations on the organization to keep their organization free of harassment and provides recourse to an administrative authority.

Germany	Protection of Employees Act 1994; General Act on Equal Treatment (2006, amended 2009)	Federal Anti-Discrimination Agency
Japan	Equal Employment Opportunity Law	None. This is one of the criticisms of the system.
France	Art. 222-33 du Code Pénal	None
Austria	Federal Equal Treatment Act 1993; Equal Treatment Act 1979; Clerk Act 2000; Student Teacher Act 2000	Equal Treatment Commission at the Federation for Health and Women
Singapore	No explicit legislation on workplace sexual harassment	None
Switzerland	Federal Act on Gender Equality 1995 (Gender Equality Act)	Canton Conciliation Boards
Canada	Canadian Human Rights Act; Canada Labour Code; Criminal Code of Canada; Newfoundland and Labrador Human Rights Act 2010	B.C. Human Rights Tribunal; Human Rights Clinic

It is also noted that the other leading business centres in the Asia Pacific – Korea and Taiwan – have all established laws specifically addressing sexual harassment:

- a) Korea has implemented the Gender Discrimination Prevention & Relief Act and set up the Presidential Commission on Women's Affairs (PCWA) to conduct sexual harassment investigations.
- b) Taiwan implemented the Gender Equality in Employment Act and Sexual Harassment Prevention Law. Complaints are reported to the Commission on Gender Equality in Employment.

3. Statutory Obligation on Organisations

Ideally, the organisation should be the first line of defence for the victim. However, in our experience, most organisations do not have any sexual harassment policies or procedures in place and are not trained to deal with this.

It is thus essential for the WSH Law to impose a statutory obligation on organisations to take steps to protect against Workplace Sexual Harassment.

"The main aim of most victims of sexual harassment is not to sue their employer for damages, but that the offensive behaviour should stop, that it should not recur and that they should be protected against retaliation for having brought a complaint. Therefore, the most effective way to deal with sexual harassment is to develop and implement a preventive policy at enterprise level."³⁰

³⁰ Michael Rubinstein, 'Dealing with sexual harassment at work: The experience of industrialized countries' in ILO. 1992. Conditions of Work Digest: Combating Sexual Harassment at Work, Geneva.

Further, prevention is better than cure. Organisations are well placed to prevent harassment by implementing policies that create a zero tolerance culture to sexual harassment.

It has been recognized that workplace policies are an effective tool for preventing sexual harassment. Throughout Asia and around the world, governments, employers' workers' organizations and NGOs are increasingly advocating that sexual harassment be addressed through workplace policies and complaints procedures.³¹

The U.S. experience has shown that employers will respond to legislation that creates an obligation (with financial consequences for non-compliance) on employers to protect their workplaces against sexual harassment.

In the U.S., facing the prospect of financial penalties for failing to take action against sexual harassment, the vast majority of companies — 97 percent according to the Society of Human Resource Managers — have written policies against sexual harassment, and 62 percent have formal anti-harassment training programs.³²

Further, the number of sexual harassment complaints filed with the Equal Employment Opportunity Commission has fallen steadily in recent years, from 16,000 in 1997 to 12,510 in 2007. The decline, experts say, is the result of companies stepping up their sexual harassment training and enforcement.³³

The laws in Canada, Belgium, Sweden, and Switzerland require employers to take certain affirmative steps to prevent its occurrence. The Korean Equal Employment Act imposes obligations on the employer to prevent, educate and take disciplinary measures against employees who have committed sexual harassment. The Australian and Hong Kong legislation (see Appendix A) holds employers liable for the acts of their employees unless they can show that they took all reasonable steps to prevent the incident.³⁴

Imposing such obligations on the employer will go a long way to ensure that employers take measures to prevent sexual harassment in the workplace and that they are equipped and motivated to properly deal with sexual harassment incidents when they arise. This is an effective solution to prevent sexual harassment at the workplace as the employers are best placed to prevent and stop the harassment.

We highly recommend that the WSH Law imposes obligations on employers to take the necessary steps to prevent and deal with sexual harassment, failing which they may be held liable to the victim.

5. Administrative Body Requirement

In addition to imposing obligations on employers, it is necessary to provide for an administrative authority to receive and deal with sexual harassment complaints. This is necessary to supplement the current situation where the Police and the Courts are the main authorities to deal with such cases. The Courts are too expensive and complex for

³¹ Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 100

³² <http://theweek.com/article/index/101896/sexual-harassment-a-fine-line> (accessed on 2 April 2012)

³³ Ibid.

³⁴ Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 82-84.

lay persons to bring their claims on their own, and many victims do not want to Police for such matters. In **Case #4**, the victim refused to go to the Police for fear of adverse publicity but had no problems going to MOM to seek help.

As discussed above, there is currently no administrative mechanism in place in Singapore to assist complainants. Both MOM and TAFEP lack the necessary authority.

An administrative authority is especially needed where the harasser is in control of or in a position to influence the management of the organisation.

In Bloomberg's 2012 list of "Top Countries for Business", most of the countries have established an administrative authority to deal with sexual harassment complaints. See the table above at page 21 for the names of the administrative authority.

The administrative authority should be the default go-to agency for all sexual harassment complaints where the victim is not able to resolve this within the organisation. This body should have the authority to receive complaints, inquire into the complaint and try to resolve the complaint by conciliation.

The purpose of conciliation is to bring the parties together to look for ways to resolve the dispute. Conciliation is completely voluntary. The conciliator does not act as an advocate for either side but acts as a facilitator. Settlements vary and may include a letter of apology, financial compensation, enactment of better practices in the company etc. Where parties reach a settlement, the agreement signed by the parties constitutes a contract and is legally binding.

See **Appendix A** for a summary of the conciliation processes applicable to sexual harassment cases under the Hong Kong Sex Discrimination Ordinance and the Australian Sex Discrimination Act.

6. Enhanced Civil Remedies

Currently, the civil remedies available to a victim of harassment under the common law are extremely limited. The WSH Law should specifically provide for the victim with the right to claim against the harasser or the organization for a wide range of remedies³⁵ including:

- a) Damages, including damages for injured feelings, aggravated and punitive exemplary damages;
- b) Declaration that the harasser or organisation shall not repeat or continue the offending act
- c) Order that harasser or organization shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the victim;
- d) Order that the organisation take steps to provide harassment-free work environments;
- e) Order that the organization shall employ, re-employ or promote the victim.

These remedies are provided in the Hong Kong Sex Discrimination Ordinance and the Australian Sex Discrimination Act, which deal with Workplace Sexual Harassment.

³⁵ Action against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 101-103.

7. The Form of the Legislation

While it is clear what is required to address the gaps in the current legislation, there are several possibilities as to the form of this legislation.

The proposed WSH Law could be:

- A stand-alone Sexual Harassment Act; or
- Part of a new Harassment Act, that addresses all the following forms of harassment:
 - Sexual harassment
 - Cyber-bullying,
 - Stalking and general harassment.
- Incorporated into the Employment Act
- Incorporated into the Workplace Safety and Health Act.

Whichever form of legislation is chosen, it is essential that the legislation incorporates the 4 Key Elements, namely:

- (1) Explicit legal protection against sexual harassment;
- (2) Impose affirmative duties for employers to take steps to prevent sexual harassment;
- (3) Establish / empower an administrative body with resources and competence to handle complaints and promote application of the law;
- (4) Wide range of civil remedies and sanctions.

We shall now examine the possible forms of legislation for the WSH Act.

7.1 Stand-alone Harassment Act (new Act)

Ideally, the WSH Law should be a stand-alone Sexual Harassment Act and we would urge the Government to adopt this tack as it offers the neatest and most flexible solution and sends a strong clear message for organizations to provide a harassment-free environment.

A stand-alone Harassment Act offers the greatest flexibility as such an act can cover both workplaces and educational institutions. A new administrative authority should be set up to administer this Act.

7.2 Harassment Act (new Act)

It is noted that the Ministry of Home Affairs is considering introducing laws to combat cyber bullying and other forms of harassment on the Internet.

If the State is not inclined to enact a separate stand-alone Harassment Act, we would urge the State to consider expanding the proposed cyber-bullying law to a comprehensive Harassment Act to deal with all forms of harassment – cyber-bullying, stalking, general harassment, and incorporating the WSH Law.

It is noted that Miss Indranee Rajah has already identified the need for a law that protects stalking and general harassment that is not covered by the limited provision in the Miscellaneous Offences Act that deals only with “threatening, abusive and insulting” behaviour.³⁶

We would urge the State to take an innovative and progressive approach to enact a comprehensive law that covers all the various forms of harassment and incorporates the WSH Law. There is support for the proposed cyber bullying law to extend beyond online bullying.³⁷

A new administrative authority should be set up to administer this Act.

7.3 Incorporation of Sexual Harassment Provisions into the Employment Act

Some countries incorporate their sexual harassment protection provisions in their labour codes.

It is noted that the State has recently called for a review of the Employment Act, including extending the scope of the Act to cover professionals, managers and executive staff.

We would urge the State in its review of the Employment Act to consider incorporating the WSH Law into the Act. The advantage of this approach is that the administrative body in charge of the Employment Act, MOM, could quite conveniently be the administrative authority for workplace sexual harassment cases.

However, in some ways, this would not be an optimal solution because of the limited coverage of the Employment Act. Even if the Act were to be extended to cover managerial and executive staff and domestic workers, it could not be extended to cover clients, customers and contractors of companies, and students in educational institutions.

7.4 Incorporation of Sexual Harassment Provisions into the Workplace Safety and Health Act (WSHA)

As discussed above, workplace sexual harassment is an aspect of workplace safety and it would be logical to specify that the Workplace Safety requirements should extend to preventing and dealing with workplace sexual harassment. However, this would also not be an optimal solution because there is currently no administrative body set up to resolve workplace safety issues under the WSHA. Further, the Act, being oriented to physical and not psychological safety, only protects the actual workplace and not to

³⁶ Parliamentary Debates, 17 May 2002 Parliament No 10, Session No 1 Volume No 74, Sitting No. 12; and 12 March 2004; Parliament No 10, Session No 1 Volume No 77, Sitting No. 9.

³⁷ “Most Singapore lawyers contacted [about the proposed cyber bullying law] said Singapore should consider broadly targeting acts such as harassment and invasion of privacy, rather than aim specifically at online bullying. “Government to Consult on Cyber Bullying Laws” ST, 2 April 2012

incidents that are work-related but occur outside the office or work site, which is often the case in workplace sexual harassment.

Finally, it would be awkward to extend the Act to protect against harassment by persons such as clients and customers and to extend it to educational institutions.

7.5 Anti-Discrimination Act

Many countries have incorporated anti-sexual harassment provisions in their anti-discrimination law.

Ideally, Singapore should introduce an equality or anti-discrimination law to prohibit discrimination on the basis of sex (and possibly, race, religion, sexuality, age and disability) and include the sexual harassment prohibitions in this new law.

This is the model adopted in Hong Kong and Australia, where the Sex Discrimination Ordinance and the Sex Discrimination Act respectively, specifically protects against sexual harassment.

If Singapore is planning to enact anti-discrimination legislation, it would be appropriate to incorporate sexual harassment provisions in this legislation. However, it does not appear that the State is currently considering enacting such legislation.

7.6 Option of Implementing a Voluntary Code

AWARE advises against a purely voluntary adoption of an employers' code to deal with sexual harassment. Workplace sexual harassment has serious psychological effects on the complainant. It should not be left to organisations to decide whether or not they should adopt necessary anti-sexual harassment measures.

The Malaysian experience is instructional. In Malaysia, the Code of Practice against Sexual Harassment is voluntary and the number of companies that have adopted a workplace policy against sexual harassment is only about 1%.³⁸

However, if the State does decide to adopt a voluntary code as an initial step to address workplace sexual harassment, it is important to learn why such voluntary codes have failed in other countries and to ensure that we implement our voluntary code in a way that is effective.

³⁸ Action Against Sexual Harassment at Work in Asia and the Pacific, ILO 2001, p 122.

Appendix A – Workplace Sexual Harassment Laws in Other Countries

1. Hong Kong

1.1 Legal Provisions

The law on sexual harassment is contained in the Sex Discrimination Ordinance (SDO) enacted in 1996. Hong Kong deals with sexual harassment as a form of sex discrimination.

The SDO protects against two forms of sexual harassment. The first includes any unwelcome sexual behavior or conduct which is offensive, humiliating or intimidating. The second form is that of "a sexually hostile working environment" where there are actions, languages or pictures of a sexual nature that make it difficult for a person to work.

Some positive aspects of the SDO are as follows:

- It declares sexual harassment unlawful not only in employment but also in educational institutions and other fields.
- It protects employees, contract workers, job applicants, trainees and people using employment services.
- It provides for vicarious liability i.e. anything done by a person in the course of employment shall be treated as done by the employer as well as by him, whether or not it was done by the employer's knowledge or approval unless the employer took reasonable steps to prevent the employee from perpetrating the alleged act of sexual harassment. This provision makes employers proactive in protecting their employees.
- The SDO expressly provides for awarding punitive and exemplary damages to a victim of sexual harassment.

In Hong Kong most complaints received by the Equal Opportunities Commission (EOC) in recent years were of sexual harassment.³⁹

1.2 Authorities and Enforcement Mechanisms

The authority in charge of implementing the SDO is the Equal Opportunities Commission of Hong Kong (EOC).

A sexual harassment complainant may:

- Lodge a complaint with the EOC; or
- Commence civil proceedings in the District Court against the alleged wrongdoer.

³⁹ Equal Opportunities Commission, Work Review- Statistics, available at <http://www.eoc.org.hk/EOC/GraphicsFolder/ShowContent.aspx?ItemID=5157> and <http://www.eoc.org.hk/EOC/GraphicsFolder/ShowContent.aspx?ItemID=7517> . Number of cases reported for sexual harassment: 2005: 60; 2006: 85 and 2007: 105.

In practice nearly all actions are commenced by means of a complaint to the EOC. The EOC is obliged to investigate all matters and then try to settle the matter through conciliation. Conciliation is a voluntary process. The conciliator does not act as an advocate for either side but acts as a facilitator. Settlements vary and may include a letter of apology, financial compensation, enactment of better practices in the company etc.

If the complaint cannot be resolved through conciliation, the complainant may apply to the EOC for legal assistance to go to court. Assistance may include the giving of legal advice, representation by the EOC's lawyers, legal representation by outside lawyers or any other form of assistance the EOC considers appropriate.

2. Australia

2.1. Legal Provisions

The law on sexual harassment is contained in the Sex Discrimination Act (SDA) enacted in 1996. Australia deals with sexual harassment as a form of sex discrimination.

The SDA makes it unlawful for a person to sexually harass another person in a number of areas including employment, education, the provision of goods and services and accommodation. It is wide enough to cover staff and students in educational institutions, clients, customers and contract workers.

Sexual harassment is defined as unwelcome and unwanted behaviour in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.⁴⁰

An employer may be held vicariously liable for acts of sexual harassment committed by its employees. The SDA makes employers liable for acts of sexual harassment unless they have taken all reasonable steps to prevent it from taking place.

Lack of awareness that the harassment was occurring is not in itself a defence for employers.

The SDA makes sexual harassment a civil not criminal offence, but the more serious types of harassment may also be offences under the criminal law.

2.2. Authorities and Enforcement Mechanisms

⁴⁰ SDA as extended by the Sex and Age Discrimination Legislation Amendment Act 2011. For a critique of the definition of sexual harassment under the SDA, see Mason, Gail; Chapman, Anna -- "Defining Sexual Harassment: A History of the Commonwealth Legislation and its Critiques" [2003] FedLawRw 6; (2003) 31(1) Federal Law Review 195 <http://www.austlii.edu.au/au/journals/FedLRev/2003/6.html>

Victims of sexual harassment can lodge a complaint with the Australian Human Rights Commission (“Commission”).

When the Commission receives a complaint about a sexual harassment issue, the Commission has authority to inquire into the complaint and try to resolve the complaint by conciliation.

The Act does not require conciliation to be attempted in every complaint and where complaints of unlawful discrimination are deemed inappropriate for conciliation (a complaint must reach a substance threshold before conciliation is attempted) or are unable to be resolved by conciliation they may be terminated by the Commission. When the Commission terminates the complaint, it may lodge an application to the Federal Court within 28 days.

Unlike Hong Kong, the Commission does not provide legal representation or advocacy to any parties.

3. Philippines

3.1. Legal Provisions

The Anti-Sexual Harassment Act of 1995 was enacted primarily to protect and respect the dignity of workers, employees, and applicants for employment as well as students in educational institutions or training centers.

This law declares unlawful all forms of sexual harassment in an employment, education or training environment including behaviours that lead to hostile environment, but it only prohibits sexual harassment by persons in a position of authority, influence or moral ascendancy of authority.⁴¹

⁴¹ Section 3. Work, Education or Training – Sexual Harassment Defined. Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

In a work-related or employment environment, sexual harassment is committed when:

(1) The sexual favour is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favourable compensation, terms, conditions, promotions or privileges; or the refusal to grant the sexual favour results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;

(2) The above acts would impair the employee’s rights or privileges under existing labor laws; or

(3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

The Act further defines in detail the steps that employers and heads of educational institutions must take to prevent sexual harassment, including:

- Issuing rules for the investigation, prosecution, and resolution of sexual harassment cases; and
- Setting up a decorum and investigation committee to investigate and resolve sexual harassment cases and to conduct initiatives to create awareness of and prevent sexual harassment in the organisation.

It prescribes that the committee should be composed of at least one representative of management, union (where applicable), supervisory employees and rank and file employees.

The Act provides for three kinds of enforcement mechanism for every case of sexual harassment. These are:

- Filing a criminal complaint for sexual harassment, following the criminal procedure;
- Filing an administrative complaint for sexual harassment within the workplace, school or training institution, specifically with the committee on decorum and investigation; and
- Filing a civil case for damages to enforce the liability of the employer or head of office or institution, where it applies.

The Act sets penalties for violations of its provisions.

3.2 Authorities and Enforcement Mechanisms

The Act provides that “the employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken.”

The law also requires the employers or the head of the covered institutions to prevent or deter the commission of acts of sexual harassment and to provide for procedures for resolution, settlement or prosecution of acts of sexual harassment. If a company ignores a complainant, they may go to the police and file a report.

Any person who contravenes the Act shall be penalized by imprisonment of not less than one month nor more than six months, or a fine of not less than ten thousand pesos (SGD 600) nor more than twenty thousand pesos (SGD600), or both such fine and imprisonment at the discretion of the court.

At the same time, the law does not preclude the victim of sexual harassment from instituting a separate and independent action for damages and other affirmative relief.

In the Philippines, the Department of Labor and Employment (DOLE) has developed training modules and conducted workshops together with the ILO. The DOLE has also published

training modules on gender sensitivity, counselling and law enforcement, and has provided training to company trainers for use within their organizations.

4. New Zealand

4.1 Legal Provisions

New Zealand has two statutes dealing with sexual harassment: the section under the Human Rights Act and Section 118 of the Employment Relations Act. The latter document defines sexual harassment. This gives an employee a claim of a personal grievance. The employee may choose to report violations either under the Employment Relations Act or through the Human Rights Act.⁴²

An employee may bring a personal grievance against his or her employer for sexual harassment if the employee is requested by the employer to engage in sexual activity, or if the employer engages in unwelcome or offensive behaviour of a sexual nature, as follows:

- Requests for sexual activity (quid pro quo harassment).
- Unwelcome or offensive behaviour (hostile environment)

An employee also has a right to bring a personal grievance claim against his or her employer for failing to deal properly with sexual harassment by fellow employees if a fellow employee the employer's customers or clients makes a request for sexual activity or engages in unwelcome or offensive behaviour towards the employee and the employer fails to take practicable steps to prevent the repetition of the harassment.

4.2. Authorities and Enforcement Mechanisms

When a complaint of sexual harassment arises, the employer is expected to have a workplace policy to deal with the issue. If the matter is not settled, they can then go to the New Zealand Department of Labour for mediation.⁴³

From there, the matter can also be brought to the Employment Relations Authority. The Authority then investigates the claim and makes a decision based on the merits of said claim.⁴⁴ The employee can also gain damages from the perpetrator in the court of law.

⁴² <http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html>

⁴³ <http://www.dol.govt.nz/workplace/knowledgebase/item/1355>

⁴⁴ <http://www.era.govt.nz/about.html>