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26 March 2024

## Understanding the Framework of Malaysia's Anti-Sexual Harassment Tribunal

In December 2023, the Women, Family, and Community Development Minister, Datuk Seri Nancy Shukri, formally issued appointment letters to members of the Tribunal for Anti-Sexual Harassment (“**Tribunal**”) pursuant to Section 4 of the Anti-Sexual Harassment Act 2022 (“**Act**”), marking the commencement of the Tribunal's operations.

More recently, on 8 March 2024, the Anti-Sexual Harassment (Tribunal For Anti-Sexual Harassment) Regulations 2024 (“**Regulations**”) came into operation. The Regulations establish the procedural framework for handling sexual harassment complaints within the Tribunal.

### Commencement of Proceedings

“Sexual harassment” under the Act is defined as 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, humiliating, or is a threat to their well-being.

Before proceeding to hear a sexual harassment complaint, a Complaint of Sexual Harassment (**Form 1** of the First Schedule of the Regulations) must be submitted along with an RM30.00 fee by the Complainant.

Once **Form 1** is recorded in the Register, the Secretary to the Tribunal is responsible for returning two signed and sealed copies of **Form 1** to the Complainant. The Complainant is then obligated to serve a copy of the signed and sealed **Form 1** on the Respondent within 14 working days from the date of receiving the signed and sealed copies.

Upon receiving the signed and sealed Complaint of Sexual Harassment, the Respondent must file their Statement of Defence (**Form 2** of the First Schedule) along with an RM10.00 fee within 14 working days from the receipt date.

Subsequently, the Secretary will serve a copy of the signed and sealed Statement of Defence on the Complainant within 14 working days from the date the Statement of Defence is recorded in the Register.

### **Proceedings at the Tribunal**

Following the filing of the above documents, a notice of hearing will be issued to both the Complainant and the Respondent. This notice will specify the date, time, and location of the hearing, served no less than 14 working days prior to the first scheduled hearing date.

During the Tribunal hearing, the Complainant shall be entitled to adduce evidence, call any witness or produce any document, record or material to support their case.

After the Complainant has presented their case, the Respondent will have the opportunity to present their case and may adduce evidence, call any witness or produce any document, record or material to support their case.

Once both parties have concluded presenting their respective cases, brief oral or written submissions may be made by the Respondent and subsequently by the Complainant.

An award made after the hearing shall be in **Form 4** of the First Schedule. In case of dismissal of the sexual harassment complaint, this will be recorded in **Form 5** of the First Schedule.

It's important to note that notwithstanding any provisions to the contrary in these Regulations, the Tribunal retains the authority to conduct hearings and proceedings as it deems appropriate, issuing necessary or expedient directions.

### **Impact of the Establishment of the Tribunal**

The establishment of the Tribunal addresses a significant gap in the legal framework concerning sexual harassment within the workplace. Under the Employment Act 1955, sexual harassment complaints are only regulated in cases directly involving an employer and their employee. However, instances may arise where an employee experiences harassment from a third party while carrying out their duties for the employer. In such cases, especially if the harassment doesn't occur on the employer's premises, the existing law offers limited recourse for the employer to take action.

The Tribunal will be able to hear such cases and can award 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 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;

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- c) an order for the Respondent to pay any compensation or damages not exceeding RM250,000.00 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.

Moreover, despite the lodging of a sexual harassment complaint under the Act, it's important to note that neither the Complainant nor any other individual is prohibited from filing a police report for any offence related to sexual harassment under any written laws.

#### Conclusion

The establishment and operations of the Tribunal mark a significant advancement in addressing concerns related to sexual harassment, offering a specialised platform for fair adjudication and resolution of such cases.

Although legal representation is generally prohibited for both the Complainant and Respondent during Tribunal proceedings (unless the matter involves complex issues of law), it's important to note that parties are still permitted to seek legal counsel for guidance on the process and assistance with document preparation.

Our earlier insight on this topic can be found [here](#).

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