

What is the

ANTI SEXUAL HARASSMENT ACT?

What it is:

The Anti-Sexual Harassment Bill is an Act to provide for a right of redress for any person who has been sexually harassed. It covers the establishment of the Tribunal for Anti-Sexual Harassment, the promotion of awareness of sexual harassment, and to provide for related matters.

Why do we need an Anti Sexual Harassment Act?

Women's groups believe existing laws on sexual harassment are scattered and not accessible to everyone.

For example the provisions under the Employment Act cater only to those earning below RM2,000 and is not extended to East Malaysia. Under the Penal Code, the standard of proof is 'beyond reasonable doubt' which makes it difficult to prove sexual harassment. The Multimedia and Communications Act deals more with sexual harassment in digital spaces.

There is a public circular for civil servants but that applies only to those in the public service. The Code of Practice on the Prevention and Eradication of Sexual Harassment but that is just a code and it isn't mandatory.

A standalone act would cover all areas, protect all people and not be limited to work spaces alone.

What does law cover?

Under the law, sexual harassment 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 or humiliating or is a threat to his well-being.

However, it is unclear if the complainant has to show that she or he was the direct target of sexual harassment or if it will also cover cases where harassment is not directed at individuals but creates a hostile or intimidating environment.

For example, in school if a teacher makes sexual jokes or innuendos in class, a student may not be able to report it even though he or they feels uncomfortable or offended or humiliated.

This is a grey area that needs to be tested but one that activists want addressed.

Can I report a case to the tribunal now?

It will take some time before the law can be enforced. It has to be gazetted first and the Tribunal will also have to be set up, implementation guidelines drawn up and a monitoring system put in place. The government says that the Tribunal will be up and running within a year.

Can a victim report a case that happened a few years back?

According to the Act, a complaint referred to the Tribunal is subject to the Limitation Act 1953 (Act 254) - after the coming of the Act. This means when the Act comes into force (for example Jan 1, 2023) and the sexual harassment occurs in Feb 3, 2024, the complainant has 6 years to report from Feb 3, 2024.

How to report a case to the tribunal?

The procedure for reporting has not yet been made public. However, the Women, Family and Community Development says that the tribunal system does not require both the complainant or respondent to have legal representation, so this will not be a financial burden to anyone.

The tribunal is a civil system and so the burden of proof will be on the balance of probability unlike a court where claimants would have to prove their case beyond reasonable doubt.

Will the tribunal hearings be public?

No, the tribunal hearings are behind closed doors.

Will the complainant have to face her harasser?

Yes, every person involved in the proceeding has a right to attend. It is only closed to the public. — Source: Anti Sexual Harassment Advocacy Group

