

Singapore Protection from Harassment Act in force

Summary

The Protection from Harassment Act 2014 (the “**Act**”) came into effect on 15 November 2014. The Act offers protection from a range of disruptive and anti-social behaviours, including harassment within and outside the workplace, cyber-bullying and stalking.

Prior to the introduction of the Act, harassment offences fell under a confusing framework consisting of both criminal legislation and common law. In order to create a unified piece of legislation to protect against harassment, the Act consolidates and extends the offences set out in the Miscellaneous Offence (Public Order and Nuisance) Act (Cap 184) (the “**MOA**”), introduces a new offence of unlawful stalking and abolishes the common law tort of harassment.

The introduction of the Act, and related media coverage, has led to an increase in public awareness of the issues of harassment and remedies available. Hence, employers should review their existing policies and procedures in relation to those matters and respond to changing expectations to provide protection to their employees against all types of harassment in the workplace.

The key issues for employers to consider are as follows:

- (i) new protections provided for victims of harassment under the Act (**New offences and remedies under the Act**);
- (ii) legal obligations for employers to protect and compensate victims of harassment in the workplace (**Employer’s legal obligations to protect and compensate victims of harassment**); and

media and public pressure on employers to protect employees from harassment (**Reputational risk**).

New offences and remedies under the Act

Outlined below are the criminal offences, civil and self-help remedies provided for victims under the Act. The introduction of civil remedies allows victims to claim for compensation from the harasser. This is significant because, as outlined in further detail in paragraph 2, a victim may be able to

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bring a claim against an employer either for the employer's own conduct, or the misconduct of its employees.

Criminal Offences

Criminal offences provided under the Act include:

- > **Unlawful stalking** - The Act introduces a new offence of unlawful stalking which largely mirrors the UK offence implemented in 2012 under the Protection from Harassment Act 1997. Stalking is defined broadly in the Act as "*a course of conduct*" which "*causes harassment, alarm or distress*" that can occur once or on multiple occasions and includes following, loitering, giving or sending material to the victim (including emails) and surveillance.
- > **Cyber-bullying and extended penalties** - The powers of the courts to penalise offenders have been extended under the Act and, unlike the MOA, the Act makes it clear that the courts may also prosecute acts of harassment committed online. The courts will also be able to impose larger fines (up to \$5,000), longer imprisonment sentences (up to 12 months), community orders, increased penalties for repeat offenders (a fine of up to \$10,000 and up to two years in imprisonment sentences) and prosecute acts committed outside of Singapore in certain circumstances. It should be noted that the extraterritorial application of the Act means that any acts of workplace harassment committed by employees in a foreign office against employees in a Singapore office (and *vice versa*) will also be caught under the Act.
- > **Criticisms** – There is some suggestion that the Act does not go far enough to protect victims. For instance, the Act has been criticised for not including an express provision for employers to provide safe environments and appropriate guidelines and training to employees. In addition, the extraterritorial reach of the Act does not extend to situations where both the victim and the harasser are outside Singapore when the prohibited conduct takes place, such as on business trips.

Civil and self-help remedies

Criminal redress, which is the main form of sanction currently provided for under the MOA, is considered by the Association of Women for Action and Research ("**AWARE**") as insufficient for victims of harassment because it punishes the harasser without adequately protecting or compensating the victims. The Act has introduced additional civil and self help remedies for victims of harassment:

- > **Damages** - The courts will be able to award such damages in respect of a harassment offence as they, having regard to all the circumstances, think just and equitable¹. The Act does not set a more

¹ This does not apply to acts of harassment directed at a public servant or public service worker in relation to the execution of the victim's duty as such public servant or public service worker under section 6 of the Act (see Section 11 of the Act, read with the Protection from Harassment (Public Service Worker) Order 2014).

detailed framework as to the calculation of damages. Hence, it will be interesting to see the extent to which the Singapore courts will look to/depart from UK case law in this respect.

- > **Protection Orders** - The District Court may award a protection order or, in special circumstances, an expedited protection order which will function as a form of common law injunction. For example, the court may either prohibit the respondent from doing anything in relation to the victim or in a case involving an offending communication, order that no person is to publish or continue to publish the offending communication for the duration of the order. Failure to comply with such an order is an offence under the Act.
- > **Exemptions** – Pursuant to the Protection from Harassment (Exempt Class of Persons) Order 2014, the court will not be able to make a protection or expedited protection order against, *inter alia*, persons who are not the originator of the offending communication/statement, or persons who are in the business of operating any facility for network access, making available any service relating to the transmission or routing of data, or providing online search engine services.
- > **False statement of fact** - If a false statement of fact about a victim of harassment is published, the court may order the publication of a notification which brings attention to the false statement and sets out the truth. Such an order would not apply to “mere conduits”, such as network service providers or search engines. Following such an order, the victim would have no claim for damages or criminal sanctions. While this measure provides an alternative remedy for victims which avoids costly and lengthy criminal or civil proceedings, it may be insufficient where it is not possible to identify a harasser and where irreparable damage is caused to a victim’s reputation by the false statement.

Employer’s legal obligations to protect and compensate victims of harassment

Under the Act, an employer may be subject to a claim from a victim of harassment either because of the employer’s own conduct or because of the wrongful actions of its employees.

Potential offences committed by an employer

- > **Offences under the Act** - Parliament has clarified² that the Act applies to all “persons”, including “any company or association or body of persons, corporate or unincorporated”³. Any company or organisation could potentially therefore be found guilty of an offence under the Act if its behaviour was found to amount to harassment. If a company

² **Second Reading Speech by Minister for Law, K Shanmugam, on the Protection from Harassment Bill, 13 March 2014** (<http://www.mlaw.gov.sg/news/parliamentary-speeches-and-responses/2R-by-minister-on-protection-from-harassment-act.html>); and **Speech delivered by MP for Aljunied GRC, Pritam Singh in Parliament on 13 March 2014** (<http://wp.sg/2014/03/protection-from-harassment-bill-mp-pritam-singh/>).

³ As defined in the Interpretation Act (Cap 1).

produced a communication which the courts found to be threatening, abusive or insulting against a victim, it could be held liable and be sentenced to pay a fine and/or damages to the victim.

- > **Duty of care** - Where a victim does not meet the relevant tests to bring a claim for harassment under the Act, he/she could potentially bring a claim directly against his/her employer for a breach of the common law duty of care owed to its employees to provide a safe workplace, competent and qualified staff, adequate or suitable equipment, and proper supervision⁴ (for example, if the conduct is affecting an employee's workplace and the employer fails to take appropriate measures to remedy the situation).

Potential offences for which an employer may be liable for the acts of its employees

- > **Vicarious liability** - As stated above, the Act provides the courts with the power to award damages to a victim of harassment. If a victim is able to claim damages from the harasser, in certain circumstances, the harasser's employer could be vicariously liable for these damages and may be ordered to pay fines and/or damages on behalf of the employee. Under common law, for an employer to be vicariously liable for a tort committed by its employee there must be sufficient connection with the employment. The court will need to establish two elements: (i) that the harasser was an employee; and (ii) whether the harassment occurred in "the course of employment". The first limb is generally relatively straightforward, although there may be scope for dispute where an individual purports to be an independent contractor. The second limb though requires more complex consideration of legal tests such as the "close connection test", and policy considerations such as deterrence and victim compensation. Essentially, the courts must decide (namely, whether the actions of the harassing employee were so closely connected with the employment that it would be fair and just to hold the employer vicariously liable⁵.

If vicarious liability is established, the employer will be obliged to pay any damages awarded to the victim which the harasser would otherwise be liable for. There is no indication in the Act as to how damages will be calculated by the court, but, as previously mentioned in the context of the measure of damages which can be awarded to victims of harassment by the Singapore courts, UK case law may provide useful guidance.

- > **Aiding and abetting** - An employer may potentially be found criminally liable for aiding or abetting any criminal offence under the Act committed by its employees. Under the Penal Code, the instigation or facilitation of a criminal act may be said to aid or abet the doing of that act. Hence, employers must take appropriate measures to ensure that

⁴ *Chandra a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR 786; [2009] SGCA 58

⁵ *Lister v Hesley Hall* [2002] 1 AC 215 and *Skandinaviska Enskilda Banken v Asia Pacific Breweries* [2011] SGCA 22

they are not seen to have aided or abetted any act of harassment committed by their employees.

Reputational risk

Employers need to bear in mind not only legal liability but also, and perhaps more importantly, the reputational risks associated with harassment claims.

- > **Increasing awareness** - Reports of workplace harassment in Singapore (directed towards both male and female victims) are increasing, with significant media attention on the inadequacy of the protections provided in Singapore compared to other jurisdictions, such as the UK and Hongkong. In a survey conducted in 2008 by AWARE in Singapore, 54.5% of 500 respondents reported they had experienced some form of workplace sexual harassment; 30% said they had been harassed several times and 11.4% had received threats of termination. In 2012 alone, the AWARE Helpline received 43 cases of workplace sexual harassment and, in 2014, AWARE expected a 30% rise in reported cases, largely due to the increased visibility on this issue and Parliament's introduction of the Protection from Harassment Bill 2014 in March 2014⁶.
- > **Reputational Risk** - High profile harassment scandals, such as the resignation of Mark Hurd as CEO of Hewlett Packard ("HP") in the US in 2010, following allegations of irregularities in his expenses claims being used to cover up a close personal relationship with a female employee, can cause significant damage to a company's reputation and have serious financial repercussions. For instance, HP's shares price plunged 8.3% in after hours trading following the announcement of Mark Hurd's resignation and the story continues to be referenced in the media today.
- > **Safeguarding** - Employers in Singapore need to consider not only whether they are protecting themselves against employees who may bring a claim against the company but also whether their internal policies and procedures are sufficient and adequate to protect their reputation and position in the market. Regular staff training on this type of issues will also be key to raise employee awareness and promote a culture where any form of harassment or similar misbehaviour is not tolerated and/or condoned.

⁶ Report on Conference on Harassment in Singapore: Realities, Conundrums and Approaches Moving Ahead (18 November 2013) http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/12/Conference-Harassment-in-Singapore_report-updated.pdf

Further Information

If you wish to contact our team regarding any of the issues raised in this alert or would like further information about training sessions which we can offer on this topic, please contact **Laure de Panafieu**, **Joel Cheang** or **Denise Bryan** in our Singapore office.

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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