



**REPORT OF THE JOINT SELECT COMMITTEE ON ITS DELIBERATIONS ON
THE BILL SHORTLY ENTITLED “THE SEXUAL HARASSMENT ACT, 2020”**

**1. ESTABLISHMENT, COMPOSITION AND TERMS OF REFERENCE OF THE
COMMITTEE**

On July 16, 2019, the Honourable Olivia Grange, CD, MP, Minister of Culture, Gender, Entertainment and Sport, having obtained suspension of the Standing Orders, moved:

THE SEXUAL HARASSMENT ACT, 2019

BE IT RESOLVED that this Honourable House appoint a Special Select Committee comprising the following Members:

Hon. Olivia Grange, CD, MP
Hon. Delroy Chuck, QC, MP
Mr. Franklin Witter, MP
Mrs. Marisa Dalrymple Philibert, MP

Ms. Natalie Neita, MP
Mr. Horace Dalley, CD, MP
Dr. Angela Brown-Burke, MP
Miss Ann-Marie Vaz, MP

to sit jointly with a similar Committee to be appointed by the Senate to consider and report on a Bill shortly entitled, “*The Sexual Harassment Act, 2019*”.

On August 2, 2019, Senator the Honourable Kamina Johnson Smith, Minister of Foreign Affairs and Foreign Trade and Leader of Government Business, having obtained suspension of the Standing Orders, further moved:

THE SEXUAL HARASSMENT ACT, 2019

BE IT RESOLVED that this Honourable Senate appoint a Special Select Committee comprising the following members:

Sen. Kavan Gayle, CD
Sen. Dr. Saphire Longmore
Sen. Kerensia Morrison

Sen. Donna Scott Mottley
Sen. Sophia Frazer-Binns

to sit jointly with a similar Committee appointed by the House of Representatives to consider and report on the Bill shortly entitled “*The Sexual Harassment Act, 2019*”.

Members of this Honourable House are reminded that on October 6, 2020, the Honourable Olivia Grange, Minister of Culture, Gender, Entertainment and Sport, having obtained suspension of the Standing Orders, moved:

BE IT RESOLVED that this Honourable House appoint a Select Committee comprising the following Members:

Honourable Olivia Grange, CD, MP
Honourable Delroy Chuck, QC, MP
Mr. Franklin Witter, MP
Miss Kerensia Morrison, MP

Ms. Rhoda Moy Crawford, MP
Ms. Tamika Davis, MP
Ms. Joyce Denise Daley, MP
Dr. Angela Brown-Burke, MP

to sit jointly with a similar Committee to be appointed by the Senate to consider and report on a Bill shortly entitled, "*The Sexual Harassment Act, 2020*".

WHEREAS on October 9, 2020, Senator the Honourable Kamina Johnson Smith, Minister of Foreign Affairs and Foreign Trade having obtained suspension of the Standing Orders, further moved:

BE IT RESOLVED that this Honourable Senate appoint a Committee comprising the following members:

Sen. Kavan Gayle, CD
Sen. Dr. Sapphire Longmore
Sen. Natalie Campbell-Rodriques

Sen. Donna Scott Mottley
Sen. Gabriela Morris

to sit jointly with a similar Committee appointed by the House of Representatives to consider and report on the Bill shortly entitled "*The Sexual Harassment Act, 2020*".

On November 3, 2020, the Honourable Edmund Bartlett, CD, MP, and Leader of House, having obtained suspension of the Standing Orders, moved:

BE IT RESOLVED with reference to the resolution approved by this Honourable House on the October 6, 2020, appointing a Special Select Committee comprising the following members to sit jointly with a similar Committee appointed by the Senate to consider and report on a Bill shortly entitled, "*The Sexual Harassment Act, 2020*" that the names "**Dwight Sibblies**" and "**Lothan Cousins**" be added thereto.

On November 13, 2020, the Minister of Foreign Affairs and Foreign Trade and Leader of Government Business moved the following motion:

BE IT RESOLVED with reference to the resolution approved by this Honourable Senate on the October 9, 2020, appointing a Special Select Committee comprising the following members to sit jointly with a similar Committee appointed by the House of Representatives to consider and report on a Bill shortly entitled, "*The Sexual Harassment Act, 2020*" that the names "**Kamina Johnson Smith**" and "**Sophia Frazer-Binns**" be added thereto.

Your Committee members are as follows:

Hon. Olivia Grange, CD, MP
Hon. Delroy Chuck, QC, MP
Mr. Franklin Witter, MP
Miss Kerensia Morrison, MP
Ms. Rhoda Moy Crawford, MP
Ms. Tamika Davis, MP
Ms. Joyce Denise Daley, MP
Dr. Angela Brown-Burke, MP
Mr. Dwight Sibblies, MP

Mr. Lothan Cousins, MP
Sen. the Hon. Kamina Johnson Smith
Sen. Kavan Gayle, CD
Sen. Dr. Sapphire Longmore
Sen. Natalie Campbell-Rodriques
Sen. Donna Scott Mottley
Sen. Sophia Frazer-Binns
Sen. Gabriela Morris

On February 9, 2021, the Honourable Olivia Grange, Minister of Culture, Gender, Entertainment and Sport, having obtained suspension of the Standing Orders, moved:

BE IT RESOLVED, with reference to the Select Committee appointed by this Honourable House on October 6, 2020, to sit jointly with a similar Committee appointed by the Senate to consider and report on a Bill shortly entitled, "*The Sexual Harassment Act, 2020*", that the Committee be allowed to hold virtual meetings, whether wholly virtual or partly virtual and partly physical, utilizing available information and communications technologies in the manner more specifically outlined below:

Preserving the rights, powers and privileges including voting rights, normally accorded to a Member of a Committee, the Committee is empowered to:

1. convene and hold meetings in virtual spaces created using information and communications technologies which shall be considered committee meetings for the purposes of its mandate;
2. allow access and participation from remote locations as are enabled by means of information and virtual technologies, by Members and other persons authorized by the Committee;
3. include Members accessing and participating from remote locations as a part of its quorum;
4. receive, consider, deliberate on, and respond to, feedback and submissions in formats, modes and media, and via platforms, modes and media enabled by means of information and communications technologies, from any person;
5. consider any and all information generated, communicated and received via formats, platforms, modes or media as enabled by means of information and communications technologies, as forming a part of the record of these committee meetings.

Members are further reminded that on February 9, 2021 and February 12, 2021, respectively, the Leaders of the House of Representatives and the Senate, moved:

BE IT RESOLVED, with reference to the Sessional Select, Joint Select and Select Committee which are appointed in the current Session of Parliament, and where these Committees have not completed their deliberations, that in the new Session of Parliament both Houses be empowered to enable these Committees to proceed with the issues referred to them from the stage reached before prorogation:

BE IT FURTHER RESOLVED that the composition of all these committees remain unchanged except, where necessary, by further motion taken and approved by the Houses of Representatives and the Senate, respectively:

AND BE IT FURTHER RESOLVED, with reference to the matters identified below, which are included in the Order of Business in this Session of Parliament but for which deliberations have not been completed, that in the new Session of Parliament, both Houses be empowered to proceed with them from the stage reached before prorogation:

1. Item 1 under Government Business, “The Protected Disclosure (Amendment of First Schedule) Order, 2021”; and
2. All matters referred to Committees.

Overall, your Committee held twenty-four (24) meetings to deliberate on the Bill shortly entitled, “*The Sexual Harassment Act, 2020*” commencing during the 2019/2020 Parliamentary Session on November 28, 2019. Your first appointed Committee held six (6) meetings (Appendix 1a). Your Committee at its first sitting on November 28, 2019, decided to give an opportunity to stakeholders and the wider public to make submissions on the Bill. In that regard, your Committee wrote to the Norman Manley Law School; the University of the West Indies (UWI) Mona; the Jamaica Confederation of Trade Unions (JCTU); the Private Sector Organisation of Jamaica (PSOJ); Jamaicans for Justice (JFJ); the Ministry of Education, Youth and Information; the Jamaica Federation of Musicians; the Ministry of Health and Wellness; the Ministry of Labour and Social Security; the Ministry of Tourism; the Ministry of Justice; the Women’s Resource and Outreach Centre (WROC); the Jamaica Employers Federation (JEF); the Jamaican Bar Association (JAMBAR); the Jamaican Vintage Artistes Association; the Rent Assessment Board (the Ministry of Economic Growth and Job Creation); the Jamaica Household Workers’ Union; the Jamaica Council of Churches; the Centre for the Investigation of Sexual Offences and Child Abuses (CISOCA); Woman Incorporated (Crisis Centre); Women’s Media Watch; and the Jamaica Society for Industrial Security.

Public Notices inviting written submissions from individuals and organisations were also placed in the Jamaica Observer and the Sunday Gleaner on December 8, 2019, February 2, 2020, and July 20, 2020.

The deliberations for your second appointed Committee started during the 2020/2021 Parliamentary Session on October 28, 2020 and held eighteen (18) meetings to deliberate on the Bill, including twelve (12) virtual meetings to review the matrix of submissions. We completed our deliberations on the Bill on May 28, 2021 (Appendix 1b).

Your Committee first appointed to consider and report on the Act received submissions and oral presentations from the following groups:

- Ministry of Labour and Social Security;
- Ministry of Tourism;
- Jamaica Network of Seropositives;
- University of the West Indies (UWI) Institute of Gender and Development Studies;
- Jamaica Coalition for a Healthy Society;
- Women's Empowerment for Change (We Change);
- Jamaica Lands;
- Hugh Shearer Labour Studies Institute Consortium for Social Development and Research (University of the West Indies Open Campus);
- Jamaica AIDS Support for Life; and
- Mr. Douglas Seeratan.

At its meeting held on November 12, 2020, your newly appointed Committee agreed to adopt the previous submissions and oral presentations heard. We received additional submissions and heard oral presentations from the following:

- Ministry of Education, Youth and Information;
- Ministry of Economic Growth and Job Creation (Rent Assessment Board);
- Norman Manley Law School
- Jamaica Confederation of Trade Unions (JCTU);
- Private Sector Organisation of Jamaica (PSOJ);
- Jamaica Chamber of Commerce (JCC);
- Girls Who Know Ja (GWK JA);
- Association of Women's Organisation (AWOJA)
- Jamaica Household Workers' Union;
- Jamaica Tertiary Education Commission (JTEC);
- Independent Jamaican Council for Human Rights (IJCHR);
- Soroptimist International Jamaica;
- Bureau of Gender Affairs;
- United Nations Development Programme (UNDP) Jamaica;
- Jamaicans for Justice; and
- Mr. Matondo K. Mukulu.

Technical teams were present from the Ministry of Culture, Gender, Entertainment and Sport/Bureau of Gender Affairs; Office of the Parliamentary Counsel; Attorney-General's Chambers; and Legal Reform Department.

2. OVERVIEW

“...this is another opportunity for victims to be protected, whilst dealing appropriately with perpetrators....a signal must be sent to those who sexually harass women and men in employment, in institutions or in landlord-tenant relationships that their days of getting away with it has come to an end...” (Grange, O., November 2019, House of Representatives).

In an article entitled *Towards an End to Sexual Harassment: The Urgency and Nature of Change in the Era of #Metoo*, sexual harassment is defined as “a human rights violation of gender-based discrimination, regardless of sex, in a context of unequal power relations such as a workplace and/or gender hierarchy”. The article states that “sexual harassment expresses and reinforces inequalities of power” and it creates “hostile or intimidating environments without relying on specific exchanges” (*UN Women, December 2018*).

Sexual harassment therefore has deleterious effects on a person who is the target of such treatment. For far too long victims of sexual harassment have been left without recourse, forced to cower in shame and retreat to the halls of silence. Vulnerable victims have recounted negative experiences resulting from being sexually harassed, particularly at the workplace, in learning or training institutions, hospitals, nursing homes, places of safety and correctional centres, among others. The intent of the sexual harassment legislation is to address concerns about sexual harassment which is employment related, occurring in institutions, or arising in the context of relationship of a person who owns or leases or rents accommodation. Currently, there is no existing legislation that can be used as redress for a claim of sexual harassment since the specific concept is not included in any law in Jamaica. Victims of sexual harassment do not have recourse for sexual harassment but can try to pursue other remedies if other criminal acts or labour violations occur during the sexual harassment incident, which shows the lacuna in the law.

The Bill shortly entitled “*The Sexual Harassment Act, 2020*” is seeking to provide protection, prevention and redress where a claim of sexual harassment that is employment related, occurs in educational institutions, or arises in the context of accommodations is made. The passage of this piece of legislation will address claims of sexual harassment and deal an effective blow to sexual harassment, thereby putting an end to the longstanding issue where both men and women commit sexual harassment without facing any repercussions. Its aim is to also embolden the voices of all women and men who suffer the effects of being victims of sexual harassment, restore their confidence and provide a process for redress.

3. FINDINGS AND RECOMMENDATIONS

Your Committee after extensive review of the Bill now has the honour of presenting its findings and recommendations.

PART I - Preliminary

Clause 1 – Short title and commencement

Clause 1 refers to the short title of the Bill entitled “*The Sexual Harassment Act, 2020*”. Your Committee does not accept the proposed titles of “The Sexual Harassment (Employment) Prevention Act” or “the Prevention of Sexual Harassment (Employment) Act (POSH)” but ***agrees to amend the short title to read “the Sexual Harassment (Protection and Prevention) Act, 2021”.***

Clause 1 also refers to the commencement of the Bill. Your Committee notes the proposal in relation to commencement and ***agrees that the implementation of the Act should be staggered to allow sections or Parts of the Act to be brought into force at varying times. We also agree to the implementation of Part V, which provides for the Tribunal, before the remainder of the Act comes into force.***

Clause 2 – Interpretation

Clause 2 sets out the definitions that should be generally considered in the context of the substantive provisions in which they are used.

Your Committee notes the observation that there is no definition of ‘landlord’ or ‘tenant’ and the terms ‘lessor’ and ‘lessee’ which are relevant and the proposal for them to be included. ***Your Committee does not accept the proposal to add definitions for the terms ‘landlord’, ‘tenant’, ‘lessor’ and ‘lessee’, as such terms are not used in the Bill.***

We also agree to utilize the term ‘accommodation’ instead of the terms ‘landlord’ and ‘tenant’ in the Memorandum of Objects and Reasons to allow for consistency throughout the legislation.

Your Committee notes the proposal to define the term ‘workplace’ with a suggested definition being “*any place where an employee is engaged in work for the employee’s employer*” as defined in the Canadian Labour Code. The view was expressed that co-workers could be considered to still be engaged in a work environment combined with the view that the term ‘workplace’ would not be confined to walls but is considered as such once there is a work relationship between the parties.

Clause 2 – Interpretation cont'd.

Your Committee also notes the proposal to add a definition for the term 'workplace' to mean:

- a. public and private spaces where they function as a place of work;
- b. places where a worker is paid, takes a rest break or a meal, or changing facilities; and
- c. employer-provided accommodation and transportation; work-related events, trips, training and social activities.

Your Committee notes further the proposal that the definition of 'workplace' should include private homes or households. *Your Committee does not accept the proposals to define 'workplace', as the term is not used in the legislation and agree the definition should remain as is.*

We note the proposal to expand the definition of the term 'institution' by adding 'private sector businesses'. *Your Committee does not accept the proposal to add 'private sector businesses' to the definition of the term 'institution' and agree the definition should remain as is.*

Your Committee notes the proposal to add the word 'written' to the definition for the term 'sexual advance' to capture any perpetrator who may choose to harass an individual through letters or any other form of written communication. *Your Committee does not accept the proposal to add the word 'written' to the definition of the term 'sexual advance' as it is already provided for at clause 2(2) and agree the definition should remain as is.*

Your Committee agrees to include a definition of the term 'document' to mean 'in addition to a document in writing, anything in which information of any description is recorded'.

We also note the proposal to amend the definition of 'sexual advance' taking into consideration physical contact of a sexual nature which can be taken as a criminal offence rather than sexual harassment. *We do not accept the proposal to delete subparagraph (a) in the definition of 'sexual advance' and agree the definition should remain as is.*

There are several proposals to expand and/or amend the definition of the term 'sexual harassment' as follows:

- (i) to delete the word 'unreasonably' from the definition of the term 'sexual harassment' which reads: "interfering unreasonably with the work performance of the person to whom the sexual advance is made" as it could give rise to a defence that the interference was reasonable. *Your Committee accepts the proposal. We agree to delete the word 'reasonably' from paragraph (a) of the definition of 'sexual harassment' due to the subjective nature of the word; and also agree to delete the word 'unreasonably' from paragraph (b)(i) of the definition of 'sexual harassment' as it is thought to be too subjective.*

Clause 2 – Interpretation cont'd.

(ii) to expand the term ‘hostile work environment’ to include institutional settings as currently only work environments are addressed. *Your Committee does not accept the proposal.*

(iii) to amend the definition of the term ‘sexual harassment’ by removing the word ‘unwelcome’ to address circumstances where a person lacks the capacity to legally give consent to sexual activity. In our deliberations, one fundamental area of concern was the treatment of children under this piece of legislation. We sought to determine whether the proposed legislation should be applicable to children, noting that sexual advance towards a child is a criminal matter; the age of consent, being 16 years of age, means only persons 16 years and older can legally consent to engage in sexual activity; and the applicability of the law to institutions of learning or training. *Your Committee does not accept the proposal and agrees that the Sexual Harassment Bill should not apply to any person under the age of 16 years, and this would be given effect by inserting a specific provision in the Bill. We also agree that a review be made of relevant legislation to ensure that there is no lacuna in the law as it relates to the issue of sexual advances towards children.*

(iv) to expand and amend the definition of the term ‘sexual harassment’ as a sexually-based violation of a person’s human rights, including in a context of unequal power or gender relations. It may be (1) unwelcomed sexually-determined behaviour as physical contact or advance, sexually-coloured remarks, showing pornography, and sexual demand whether by words or actions, direct or implied, over a series of persistent, pervasive occurrences or a single serious incident by another person or persons; (2) unwelcomed sexually-determined behaviour in exchange for a benefit or to prevent a detriment; and/or (3) a sexually-hostile environmental condition, made up of persistent, pervasive conduct or a single serious incident. Such conduct may be degrading and may constitute a health and safety problem. *Your Committee does not accept the proposal to expand and amend the definition of the term ‘sexual harassment’ in the manner proposed.*

(v) to expand the definition of ‘sexual harassment’ to include ‘other unwelcome conduct of a sexual nature’ and thereafter remove the definition of “sexual advance” which was viewed as containing a restrictive list of five (5) forms of sexual advance. The view expressed was that it would then be left to the Tribunal, to interpret and apply the legislation to real life experiences, which will have the effect of not closing the categories of what constitutes sexual harassment whilst at the same time, ensuring that the evolution does not open the floodgates whereby anything that is raised is giving the blessing of the law. *Your Committee does not accept the proposal to expand and amend the definition of the term ‘sexual harassment’ in the manner proposed.*

Clause 2 – Interpretation cont'd.

(vi) to amend the definition of the term 'sexual harassment' to ensure that the various elements of the definition be linked, to change the disjunctive term 'or' to 'and'. *Your Committee does not accept the proposal to make all elements of the definition of 'sexual harassment' inextricably linked and instead agrees that it should remain disjunctive. With the exception of (i) above, your Committee agrees the definition of 'sexual harassment' should remain as is.*

In relation to the definition of 'sexual harassment', we note the proposal for the adoption of a similar provision to section 3(2) of the Barbados Employment Sexual Harassment Prevention Act, 2017, which states that "nothing included in the definition of sexual harassment should be interpreted as precluding a finding of same when there is a single incident". *Your Committee does not accept the proposal, as there is no provision in the Act that stipulates a series of such incidents versus a single incident.*

Your Committee agrees to include a definition of the term 'sexual harassment claim' to mean 'a sexual harassment claim made pursuant to section 5 or 6'.

Your Committee notes the proposal to include a specific definition for the term 'online sexual harassment' that complements provisions in the *Cybercrimes Act* and to identify the use of technology as a medium for sending or requesting pornographic and other such materials. *Your Committee does not accept the inclusion of the proposed definition for the term 'online sexual harassment', as the language in the Act is wide enough to cover the commission of sexual harassment in various forms, online or otherwise.*

Your Committee notes the proposal that all references to the terms 'reasonable' or 'reasonableness' in the Sexual Harassment Bill be removed due to its subjective nature. *Your Committee does not accept the proposal to delete the terms 'reasonable' or 'reasonableness' and agrees such references throughout the Act should remain as is, except in specific instances as outlined in this Report.*

Your Committee deliberated on the inclusion of a definition for the term 'harasser' in clause 2 and include 'third parties', in keeping with the United States of America (US) Equal Employment Opportunity Commission (EEOC), which states "*The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer*". *Your Committee does not accept the proposal to define the term 'harasser', as it is not used in the legislation. However, we agree to expand the scope of Part III specifically the new clause 9 to provide protection to workers from third parties (clients, customers, subcontractors, service providers, etc.). We also agree to include provision to address the worker sexually harassing 'third parties'.*

Clause 2 – Interpretation cont'd.

Your Committee notes the proposal for a definition for the term 'person in charge', recognizing that the terminology is commonly used but that the 'person in charge' may refer to another employee and not necessarily the employer. In educational institutions, views were expressed that the term could refer to the Chairman of the Board or a Principal, that is whether it refers to the person who has the power to approve institutional policies and take disciplinary action or otherwise. *Your Committee does not accept the proposed definition for the term 'person in charge' and agrees that it would be left to the ordinary interpretation of the term.*

We note the proposal to expand the definition of the term 'worker' to include a 'person conducting a business or undertaking'; to also include corporate entities, companies, partnerships, and employers; as well as 'individuals exercising the authority, duties or responsibilities of an employer'. *Your Committee does not accept the proposals to expand the definition of 'worker'; but agrees the definition should be amended by deleting the words "a person conducting a business or undertaking" and substituting therefor the words "an employer". Your Committee also agrees to define the term 'client' to mean 'a person who conducts business with an employer'.*

PART II – Prevention of Sexual Harassment

Clause 3 – Duty to ensure environment free of sexual harassment.

Clause 3 refers to the duty of the employer to ensure environment free of sexual harassment. In relation to clause 3(1) and the proposal to define the term 'reasonable effort', *your Committee agrees that no change should be made to the clause.*

We note the proposal that sexual harassment in tertiary educational institutions can also occur between students. *Your Committee accepts the recommendation that sexual harassment in tertiary educational institutions may happen between a person who is not a student and a student as well as student to student.*

Your Committee also notes the observation made in relation to the use of the word 'environment' in the marginal note of clause 3, as it relates to a business place *that no change should be made to the clause*, and whether the employer has a responsibility to address complaints of sexual harassment between two workers which occurred outside of working hours and outside of the physical office setting. *We agree that once a working relationship exists and an act of sexual harassment is committed by one worker to another outside of the physical work place or work space, then redress could be sought under the legislation but acknowledge that no change is required to the provision.*

Clause 4 – Duty of employer and person in charge of institution to issue policy statement.

Clause 4 addresses the duty of the employer and person in charge of institution to issue a policy statement.

Your Committee notes the observation that there was need for clarity as to the reason for subclause 4(1) being subject to subclause 4(4). *Your Committee accepts the recommendation and agrees that clause 4(1) should not be subject to clause 4(4); the words and comma “subject to subsection (4),” should be deleted; and clause 4(1) should now begin with the words “Every employer...”.*

Your Committee also notes the proposals that the State designs a *Sexual Harassment Workplace Policy Guide* or Template and mandate that all businesses and institutions utilize this guide to develop their policies. *Your Committee accepts the recommendations and agrees that a Sexual Harassment Workplace Policy Guide or Template will be included in the Schedule to assist as a guide to all businesses and institutions, including small businesses and/or those organisations which may not have internal mechanisms.*

Your Committee agrees that clause 4(3)(b) should be expanded to include ‘clients’ so that the policy statement required under clause 4 must also state that clients (in addition to workers, students, residents, wards, inmates, patients or members at or of an institution) are entitled to an environment free of sexual harassment.

We note the proposal regarding the need for clarity regarding the term ‘disciplinary measures’ in the Bill and questions on whether the term means the same as other disciplinary action such as suspension, demotion, and dismissal or the same as the term ‘disciplinary action’ in clause 4(3)(c). *Your Committee does not accept that there is need for clarity and agrees that the issue regarding understanding the term ‘disciplinary measures’ is addressed in the current version of the Bill. However, we agree with the proposal that clause 4(3)(c) should be expanded so that the Policy Statement is also required to state that due process must be exercised when disciplinary measures are taken.*

We also agree that clause 4(3)(c) should be expanded to include reference to ‘client’.

Your Committee also notes the proposal that every employer should be charged with the responsibility to conduct training sessions for new and existing staff regarding sexual harassment. These training sessions should include role play, scenarios, and examinations, thus allowing employees to identify appropriate behaviors at work and those inappropriate behaviours that are identified in the training sessions can be rectified. *Your Committee accepts the recommendations but agrees that provisions would be placed in a Schedule along with the Policy Statement.*

Clause 4 – Duty of employer and person in charge of institution to issue policy statement cont'd.

Your Committee notes the proposal that in addition to the duty of the employer or person in charge of an institution to issue a Policy Statement in keeping with creating an environment free from sexual harassment, there should be appointed in each such organisation a designated employee who shall be called the 'Welfare Officer' and shall receive training and sensitization on the issue of sexual harassment. This person would be charged with the responsibility of the sensitization campaign within this organisation. *Your Committee does not accept the recommendation but agrees that rather than a requirement, it should be a recommendation for a person in the organisation or institution to be designated as the Welfare Officer.*

Your Committee notes the proposal that the Bill should expressly indicate that the Policy Statement must be issued within a specific time after the Act comes into force or following the time of the establishment of a new business. *Your Committee accepts the recommendation and agrees that the Bill should include a timeline for the development of a Policy Statement, in keeping with the phased implementation of the legislation. We also agree that there would be a transitional period of one year from the commencement of the Act to allow organisations time to get their affairs in order, with the assistance of the prepared guidelines. We agree further that once the one-year transition period has expired, new businesses/institutions should have their Policy Statement ready.*

Your Committee notes the proposal that a clause should be added for the Policy Statement to indicate the "internal mechanisms and procedures available to someone who had been accused of sexually harassing a worker, student, a resident, a ward, an inmate, a patient, or a member, as the case may be". *Your Committee does not accept the recommendation as it is already addressed at clause 4(3)(d). However, we agree that the word 'client,' should be inserted after the word 'worker,' in the second line of clause 4(3)(d).*

We also agree that the word 'clients,' should be inserted after the word 'workers,' in the first line of clause 4(3)(g).

We note the proposal for the use of the term 'victim' at clause 4(3)(h) to be amended so that the provision instead refers to "a statement to the effect that a person who *reports an instance/instances of* sexual harassment..." OR "a statement to the effect that a person who *makes a complaint of* sexual harassment...". *Your Committee accepts the recommendation and agrees to substitute the word 'complainant' for the word 'victim'.*

Clause 4 – Duty of employer and person in charge of institution to issue policy statement cont'd.

Your Committee also notes the proposal that clause 4(3)(h) needs to be amended or removed to ensure that the highest degree of fairness is achieved. We note further the concern that the internal mechanisms and procedures are to be exhausted before going before the Tribunal which may in certain instances result in employer intimidation due to the power dynamics. *Your Committee accepts the recommendation to amend the clause, on the basis that persons may be victimized or intimidated. We recommend that clause 4(3)(h) be amended further to allow persons to approach the Tribunal directly, where the circumstances so warrant. We agree that the amended clause 4(3)(h) should now read:*

“subject to section 27(5), a statement to the effect that a complainant shall exhaust all internal mechanisms and procedures that are available to the complainant, before making a complaint to the Tribunal”.

Your Committee also agrees to insert a new clause 4(4) to address the transitional period for the framework document, that is the Policy Statement, so that there is a requirement within twelve months from the date of commencement of the Act for every employer and person in charge of an institution to ensure that the policy statement is prepared and that they take all steps reasonably required to bring the policy to the attention of each worker, client, student, resident, ward, inmate, patient or member.

We agree further to the insertion of a new clause 4(6) to allow the Minister to amend the First Schedule, when necessary.

Clause 5 – Duty of employer to take action to deal with sexual harassment.

Clause 5 addresses the duty of the employer to take immediate and appropriate action to deal with sexual harassment of a worker where the employer becomes aware of the sexual harassment. *Your Committee agrees that the marginal note for clause 5 should be deleted and replaced with “Procedure for lodging sexual harassment claim and duty of employer”. We also agree to the reformulation of the provisions of clause 5 to create a new clause 5 in keeping with the following decisions:*

- that a provision should be included to give a timeline of two (2) days for the employer to notify the person complained against that a sexual harassment claim has been made against such a person, and the notification must include basic information of the allegation(s);*
- that a provision should be included to allow for electronic notice to be given to the accused;*
- to establish a specific timeline, that is, a period of no later than fourteen (14) days, to commence investigation of the claim and that any other appropriate action should be dealt with immediately; and*
- to include penalties for failure of the employer to comply with the timeline, but that the matter remains civil in nature.*

Clause 6 – Duty of person in charge of an institution to take action to deal with sexual harassment.

Clause 6 addresses the duty of person in charge of an institution to take action to deal with sexual harassment. *Your Committee agrees that the marginal note for clause 6 should be deleted and replaced with “Procedure for lodging sexual harassment claim and duty of person in charge of an institution”. We also agree to the reformulation of the provisions of clause 6 to create a new clause 6 in keeping with the following decisions:*

- *provision should be included to give a timeline of two (2) days for the institution to notify the person complained against that a sexual harassment claim has been made against such a person, and the notification must include basic information of the allegation(s).*
- *that a provision should be included to allow for electronic notice to be given to the accused.*
- *to establish a specific timeline, that is, a period of no later than fourteen (14) days, to commence investigation of the claim and that any other appropriate action should be dealt with immediately; and*
- *to include penalties for failure of the institution to comply with the timeline, but that the matter remains civil in nature.*

Your Committee notes the proposal to add a clause that allows for recourse where the institution has taken immediate and appropriate action under subclause (1) and processed the complaint, but the complainant is aggrieved by the outcome, so that the complainant is allowed to make a submission to the Tribunal indicating why he or she is aggrieved and present evidence to substantiate the claim. *Your Committee accepts the recommendations and agrees to expand the provisions of clause 27(1) by inserting a subparagraph (d) to permit direct application to the Tribunal for a hearing where the complainant is dissatisfied with the results of the internal mechanisms and feels that his or her complaint has not been addressed adequately.*

Your Committee notes the observation that there is no immediate requirement for the employer or person in charge of an institution to ensure that accurate and complete records are maintained and retained in keeping with legal requirements. *Your Committee accepts the recommendation regarding the keeping of records and agrees that it should be a standalone clause which creates a duty for the keeping of records, the particulars of the records, how long records will be kept, the duty of confidentiality, among other things. We also agree to add provisions that address breaches in relation to the keeping of records, ensuring confidentiality, etc.*

Clause 7 - Making of complaint against employer and person in charge of an institution.

Your Committee agrees to the insertion of provisions for a new clause 7 with the marginal note reading "Making of complaint against employer and person in charge of an institution". This new clause 7 should address sexual harassment claims against an employer or a person in charge of an institution which can be made directly to the Tribunal.

Clause 8 - Maintaining of register.

Your Committee agrees to the insertion of a new clause 8 with the marginal note reading "Maintaining of register". This new clause 8 addresses maintenance of a register in respect of sexual harassment claims lodged pursuant to sections 5 and 6. We also agree that these records should be kept for up to eight (8) years, that is, the six (6)-year limitation period and an additional two (2) years.

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

PART III – Forms of Sexual Harassment and Related Prohibited Conduct

Clause 9 – Sexual harassment by an employer, supervisor or co-worker

Clause 9 covers sexual harassment by an employer, supervisor or co-worker. Your Committee notes the proposals to:

- (a) expand the scope of Part III to include harassment between an employee and a customer, client, visitor or any other person who accesses services and the immediate duty of the employer to address same;
- (b) explicitly state how to treat sexual harassment by 'third parties' such as non-contracted persons (vendors, clients and business partners) who interact with institutions and businesses; and
- (c) expand the scope of the Bill to include not only employers, supervisors, and co-workers as perpetrators of sexual harassment, but also sexual harassment by relatives of employers and even friends in cases involving household workers.

Your Committee accepts the recommendations and agrees that sexual harassment by 'third parties' should be addressed by expanding the scope of Part III, specifically to include in the new clause 9 'third parties' such as non-contracted persons (customers, vendors, clients, and business partners), who interact with institutions and businesses as categories of persons that may be vulnerable to sexual harassment.

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 9 – Sexual harassment by an employer, supervisor or co-worker cont'd.

We also note the observation with respect to contracts for service and the proposal that a condition of such contracts must be that contractors must not sexually harass any worker or person engaged in business on the company's premises. *Your Committee does not accept the recommendation that a condition of contracts for service must be that contractors must not sexually harass any worker or person engaged in business on the company's premises. However, we agree that sexual harassment by 'third parties' should be addressed by way of amendment to clause 9 which recognizes sexual harassment by 'third parties' in order to expand protection to persons providing, and persons receiving, goods, services, and facilities. We also agree to define 'third parties' in relation to those who provide goods, services and facilities and agree further to use the provisions of section 28G of the Australian Sex Discrimination Act, 1984.*

We note the proposal that if the Bill is aimed at creating a safe environment for all workers, it should extend the context of, and protection from, 'sexual harassment' occurring in other directions, that is, a worker harassing a supervisor or manager, as well as colleague to colleague on the same level. *Your Committee accepts the recommendation and agrees to include a standalone provision to protect an employer (supervisor or manager) from being sexually harassed by a worker.*

Your Committee notes the use of the term "complaint or claim" and the proposal for a review of the clause to ensure consistency in language and to ensure the policy intent is captured. *Your Committee accepts the recommendation for consistency in the language and agrees the renumbered clause 9(10) should read:*

"An employer shall not take any action which adversely affects the opportunities, terms and working conditions of a worker who has lodged a sexual harassment claim or made a complaint under this Act, or who has given testimony or otherwise participated in any investigation, procedure or hearing initiated under this Act".

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 10 – Sexual harassment at an institution

Clause 10 addresses sexual harassment at an institution. We note the proposal to expand the scope of Part III to clearly address sexual harassment between or among individuals enrolled in an institution as defined by the Bill. ***Your Committee accepts the recommendation.***

We note the observation that the scope of the legislation is too narrow, mostly dealing with institutions and workplaces. We note the proposal for the scope to be unlimited, with emphasis placed on specific settings; namely, workplaces, institutions, tenancy, churches, clubs and associations, sporting activities, vendors, receipt of goods and services. ***Your Committee accepts the recommendation to expand scope of the Bill and agrees to insert a provision to address student-to-student harassment in institutions.***

Clause 11 – Sexual harassment in relation to accommodation

Clause 11 addresses sexual harassment in relation to accommodation. ***Your Committee notes the proposal to include in clause 11 provisions to address the following matters, but agrees that this piece of legislation was not appropriate to address these matters:***

- sexual favours should not be suggested or requested in lieu of rent, bills or repairs to the property;
- landlords shall not utilize technological instruments such as camera to spy on their tenants or invade their privacy.
- a landlord should not seek or a tenant offer, sexual favours for the continuation of a tenancy agreement;
- a landlord who may have personal information (relationship status, financial status, occupation, work situation, etc.) about a tenant should not use the knowledge that he had to exploit the tenant for sexual favour;
- landlords who have keys for their tenant's dwelling, should not use it as an opportunity to enter the dwelling in pursuit of sexual favours;
- landlords who have keys for their tenant's dwelling, should not use it as an opportunity to enter the dwelling in pursuit of sexual favours;
- a landlord should not exploit a tenant's vulnerability (loss of employment, loss of spouse, loss of financial support, etc.) for sexual favours; and
- special provision should be made for children in residential accommodation for complaints to be made on their behalf.

In keeping with legislative efforts currently underway, your Committee recommends that amendments be made to the relevant legislation, including the Cybercrimes Act and/or the Sexual Offences Act to make the utilization of technological instruments such as cameras to spy on tenants, which invades their privacy, a criminal offence. We also recommend that the Ministry of Justice considers leading the charge to the amendment Sexual Offences Act and the Offences Against the Persons Act and other discrete legislation.

PART IV – Designation of Authorized Officer

Clause 12 – Designation of authorized officers.

Clause 12 authorizes the Minister to designate certain field officers in the Bureau of Gender Affairs as Authorized Officers to function as investigators of complaints.

We note the proposal to include rules to guide these Authorized Officers, as well as to inform the complainants and alleged harassers of their role(s). Some of these rules need to address:

- a) the confidentiality of the investigation;
- b) the responsibility to interview both the complainant and the alleged harasser;
- c) presenting an alleged harasser with a written document containing details of the complaint against him or her;
- d) separately interviewing all witnesses;
- e) taking appropriate notes and written statements;
- f) collecting and reviewing all documents concerned; and
- g) preparing a written report for the Tribunal.

We also note the proposal for Authorized Officers to be thoroughly sensitized on sexual harassment issues. We note further the proposal for the Authorized Officers who support them to be trained and certified in matters pertaining to Sexual Harassment, Gender Awareness and Sensitivity, Diversity and Inclusion, and Intersectionality.

Your Committee does not accept the recommendations to include the rules as proposed, as the rules should be made in relation to the Tribunal and not the designated Authorized Officers. However, we accept there is no longer a mechanism in the legislation that involves the Minister or the Ministry as it relates to the clause and the Authorized Officers should be trained on matters relating to sexual harassment. Accordingly, we agree to the reformulation and insertion of a new clause 12 with the marginal note reading: ‘Designation of Authorized Officers, etc.’. The new clause 12 should address the following matters:

- *the role of the designated Authorized Officers to ensure that clauses 3 and 4 are properly observed;*
- *the specific powers of the designated Authorized Officers to enter premises to undertake their inspection, among other things;*
- *the period of compliance with the direction of an Authorized Officer to be within 30 days;*
- *the penalty for willfully obstructing or failing to comply with a lawful request of an Authorized Officer should be a fine not exceeding \$1,000,000.00 or imprisonment for a term not exceeding twelve months; the penalty for an employer failing to comply with a direction issued by an Authorized Officer should be a fine not exceeding \$1,000,000.00.*
- *that the function to investigate would no longer be a duty to be performed by Authorized Officers; and*
- *that training and sensitization on matters relating to sexual harassment should be a feature of appointment for Authorized Officers.*

PART V – Sexual Harassment Tribunal

Clause 13 – Establishment and constitution of Tribunal. Second Schedule.

Clause 13 addresses the establishment and constitution of the Tribunal.

Your Committee notes various proposals to amend clause 13 for the Tribunal to comprise one member named by the Jamaica Confederation of Trade Unions (JCTU) and one by the Jamaica Employers' Federation (JEF); an individual with mental health training and/or expertise; psychologists; and persons qualified in labour relations. We also note the proposals that one of the final four (4) members must be a representative of civil society with the requisite skills set as outlined in the Bill. We note further the proposal for the members appointed to the Tribunal to be experienced in human rights, human resource management and/or sociology. The members of the Tribunal should have the required training and experience to hear the matters. This should be clearly set out in the legislation.

Your Committee agrees to the amendment of the marginal note for the new clause 13 to read: 'Establishment and constitution of Tribunal. Second Schedule'.

Your Committee accepts the proposals above and agrees to an increase in the membership of the Tribunal from twelve (12) to fourteen (14). We also agree to accept the recommendations that the Tribunal should comprise members with expertise in worker representation, gender affairs, mental health, employer representation, certified mediators and other areas that will relate to the Tribunal. We agree further that there would be no cap on any of the professions comprising the Tribunal.

Your Committee notes the recommendation for the Tribunal to include a minimum of five (5) members from each gender, and a panel of three (3) to include one of each gender. A proposal was also made that appointments to vacancies should meet the overall standards set in clause 13. *Your Committee accepts the recommendation and agrees there should be gender balance so that one of each gender is represented on each panel, and that the Tribunal should be able to call upon persons with any other expertise as required.*

We also note the observation that the option of mediation was not included in the Bill and the proposal to include the option therein for appropriate cases and for the Authorized Officers to serve as a mediator before the matter is referred to the Tribunal. *Your Committee accepts and agrees with the recommendation to include the mediation process as an option before going directly to the Tribunal.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 13 – Establishment and constitution of Tribunal. Second Schedule. cont'd.

Your Committee notes the proposal for the membership of a specialist person with experience and empathy in matters relating to children and youth affairs to be included in clause 13. We also note the recommendation that consideration be given to amend clause 13(1) to also include “in the other members” category, a person selected after consultation with the Minister responsible for youth and children. *Your Committee does not accept the recommendation but agrees that the Tribunal should be able to call upon any expertise that may be required.*

Your Committee notes the observation that the Act does not highlight criteria, selection process, performance monitoring, or communication with the public on performance of the Tribunal and the suggestion that there should be a maximum turnaround time for the cases to be heard and decided on at the Tribunal. We note further the proposal for both the Tribunal members and the Authorized Officers who support them to be trained and certified in matters pertaining to Sexual Harassment, Gender Awareness and Sensitivity, Diversity and Inclusion, and Intersectionality. *Your Committee agrees that training in matters relating to sexual harassment should be a feature of appointment. We also agree that the selection process for Tribunal members is already provided for in the legislation and the other matters, including the turnaround time for cases to be heard and decided on, should be addressed in accordance with the Tribunal rules and should not be legislation.*

Clause 14 – Appointment of Chairperson of the Tribunal

Clause 14 addresses the appointment of Chairperson of the Tribunal. We note the observation that if the chairperson has to be a part of every panel which hears the matters, there may be prolonged delay in hearing matters; and the proposal that in this case, a deputy chairperson should also be appointed. The deputy chairperson would also be in a position to chair a panel. *Your Committee agrees to the reformulation and insertion of a new clause 14 with the marginal note reading: ‘Appointment of Chairperson and Deputy Chairperson of the Tribunal’. The new clause 14 is in keeping with the decision for the establishment of an overall Chairperson and two (2) deputy chairpersons of the Tribunal thereby allowing for up to three (3) simultaneous hearings. We also agree that the two (2) deputy chairpersons should be attorneys-at-law which is in keeping with the features of appointment of the Chairperson.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 15 - Jurisdiction of Tribunal to hear complaints.

Clause 15 addresses the jurisdiction of the Tribunal to hear complaints. We note the observation/concern about how the panel would make a decision after hearing complaints; whether there should be voting; whether there should be a decision of the panel by the majority of its members; what would obtain if there were deadlock; and whether the persons chairing should make a decision if there is a deadlock.

We note the proposal that the Bill also makes provision for the following in relation to the Tribunal:

- what would happen if one or more of the members of the panel dies, become incapacitated or ceases to be a member of the Tribunal, after the panel commences hearing a complaint, but before an award/decision has been handed down;
- how the panel would make a decision after hearing a complaint (i.e., whether decisions ought to be taken by voting and whether the decision of the panel ought to be made by the majority of its members);
- whether the chairperson should make a decision if there is deadlock; and
- whether the *Arbitration Act* will be applicable to the proceedings of the Tribunal.

Your Committee does not accept the recommendations regarding the making of a decision if there is deadlock, as there could be no deadlock with a three-member panel. However, we accept the recommendation regarding the operation of a panel and agree to include provisions to address issues of incapacitation, death, etc., of panel members once a hearing commences.

Your Committee also agrees that the renumbered 'clause 15(a)(ii)' should be amended by deleting the word 'claim' in the first line and substituting therefor the word 'complaint'.

Your Committee notes the proposal for a review of the clause to determine if there should be a reference to clause 4(3)(f) or clause 4(4). *Your Committee accepts the proposal and agrees that the renumbered clause 15(a)(iii) should read:*

'a complaint made by a person in relation to a matter arising under sections 4(4), 7, 9, 10, 11 or 27(1)(d) and'.

We also agree to delete 'clause 15(1)(b)' and renumber 'clause 15(1)(c)' as 'clause 15(b)'. We agree further to amend the numeral after the word 'section' at clause 15(b) (as renumbered) to read '36' instead of '34'.

Clause 16 - Hearing Panel of Tribunal

Clause 16 seeks to address the hearing panel of the Tribunal. Your Committee notes the observation that in relation to clause 16(2), it appears that the panel of three (3) should consist of a female, an attorney-at-law, and the chairperson of the panel (who is also an Attorney-at-law), so that two attorneys end up on a panel. *Your Committee agrees to the reformulation and insertion of a new clause 16. However, in our deliberation, we noted that a correct reading of the clause does not require two (2) attorneys to be on each panel, as clause 16(2) in referring to the requirement for an attorney to be on the panel goes further to state that the said attorney should also be the chairman of the panel. The chairperson of the panel is therefore free to appoint any other member to be the third member of the panel once a female member is appointed as well as an attorney.*

Clause 17 – Disclosure of interest in relation to matter before the Tribunal.

Clause 17 seeks to address the disclosure of interest in relation to matters before the Tribunal. Your Committee notes that in relation to clause 17(2), it was proposed that the notice by a member who has an interest in a matter before the Tribunal be served prior to the hearing of the complaint so as not to delay the commencement of the matter. If this is done, another member may be appointed to replace the member required to give a notice under this section. *Subsequent to the deliberations, your Committee accepts and agrees with the recommendation to the extent that disclosure of conflict of interest should be required to be made prior to a hearing, where possible. It was noted that whilst a hearing is in process, if it is recognized that there is a conflict of interest or potential for same, a member would be required recuse himself or herself from being a panel member in the proceedings. We also agree that the issue of ‘to whom’ disclosure of conflict of interest should be made should be left to the Tribunal to prescribe in its procedural rules.*

Clause 18 - Tenure of Office

Clause 18 addresses tenure of office. *Your Committee notes there are no proposals for this clause, and agrees that no change should be made to clause 18.*

Clause 19 - Acting appointments

Clause 19 seeks to address acting appointments. Your Committee notes the proposal for a review of the provision for the Minister to appoint any person to act in place of the chairperson or any other member of the Tribunal as the latter part of this clause only spoke to the chairperson. We note the observation that the use of the words “appoint any person to act” suggests that the person would not have to meet any specific criteria to be eligible to act.

Your Committee accepts the observation regarding the appointment of any person to act and agrees that the specific criteria must be observed. We also agree that a subparagraph should be added to indicate that whoever is chosen to act, whether as chairperson or member, must meet the same initial criteria as the chairperson or member who was first appointed. We agree further to amend clause 19 to now read:

“The Minister may appoint any person to act in the place of the chairperson of the Tribunal or any other member of the Tribunal in the case of the absence, inability or refusal of the chairperson or the other member to act, so however that, such appointment shall be made in the same manner and from among the category of persons as would be required in the case of the original appointment”.

Clause 20 – Resignation

Clause 20 addresses resignation. *Your Committee notes there are no proposals for this clause, and agrees that no change should be made to clause 20.*

Clause 21 - Disqualification

Clause 21 seeks to address disqualification. Your Committee notes the proposal to include a provision to disqualify any person found guilty of prior acts of sexual harassment. *Your Committee does not accept the recommendation but agrees to amend the clause by deleting subclauses 21(b) to 21(d) and inserting therefor a new subclause 21(b) to address the fit and proper requirements under section 2(5).*

Clause 22 - Revocation of appointment

Clause 22 seeks to address revocation of appointment. Your Committee notes the proposal that the term ‘misbehaviour’ might be too subjective. *Your Committee does not accept the recommendation.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 22 - Revocation of appointment cont'd.

Your Committee notes the proposal that consideration be given to the use of the words "infirmity of body or mind" at clause 22 to ensure it was not construed in such a way that it allows for discrimination against persons with disabilities, which would be in breach of *the Disabilities Act* and *the Mental Health Act*. During our deliberations, it was raised that these are terms used in several pieces of legislation particularly for the establishment of boards and tribunals, as well as that the phrase comes from the Constitution of Jamaica and has been under judicial scrutiny before. *Based on Wednesbury's rules of reasonableness, it is also expected that the Minister will act in a reasonable manner to determine the ability of members of the Tribunal to function and the Minister needs to be able to retain that power in order to revoke appointments where necessary. Your Committee does not accept the recommendation and agrees that no change should be made to clause 22.*

Clause 23 - Filling of vacancies

Clause 23 provides for the filling of vacancies. Your Committee notes the proposal that the Tribunal of twelve (12) should include a minimum of five (5) members from each gender, and a panel of three (3) to include one of each gender. Appointments to vacancies should meet the overall standards set in clause 13, and as such, *your Committee does not accept the recommendation and agrees that no change should be made at clause 23.*

Clause 24 - Publication of membership

Clause 24 addresses the publication of membership. *Your Committee notes there are no proposals for this clause, and agrees that no change should be made at clause 24.*

Clause 25 – Remuneration of members

Clause 25 addresses the remuneration of members. *Your Committee notes there are no proposals for this clause, and agrees that no change should be made at clause 25.*

Clause 26 – Staff of Tribunal

Clause 26 addresses the staff of the Tribunal. Your Committee notes the proposal to insert a provision that ensures the secretariat for the Sexual Harassment Tribunal is one which enables the Tribunal to operate effectively in an independent and impartial manner. *Your Committee does not accept the recommendation and agrees that no change should be made at clause 26.*

PART VI – Procedure for Making Complaints, Investigations and Hearing by Tribunal

Clause 27 - Making of complaint

Clause 27 addresses the making of complaints. Your Committee notes the proposal that the jurisdiction of the Tribunal as set out in clause 27 be reconciled with the jurisdiction set out under clause 15 of the Bill; in that clauses 3(1) and (2) were not referenced in clause 15 but were referenced in clause 27. *Your Committee agrees to the reformulation and insertion of a new clause 27. We also agree that reference to clauses 3(1) and (2) should be made in clause 15 to reflect that the Tribunal has the jurisdiction to hear complaints where a breach of the said clauses 3(1) and (2) are alleged. We agree further that the references at clauses 3, 15 and 27 should be consistently reconciled and adequately cross referenced.*

In relation to the new clause 27(1)(a), we agree that persons who allege that an employer or person in charge of an institution has failed to comply with clauses 3(1) or (2) or has breached clause 4(4) should be required to make a complaint to the Tribunal within twelve (12) months from the date of alleged contravention.

In relation to the proposal regarding a complainant who is dissatisfied with the outcome of a complaint to allow him or her to make a submission to the Tribunal, *we agree to insert provisions which will outline grounds for direct application to the Tribunal where the complainant is dissatisfied with the results of the internal mechanisms and feels his or her complaint has not been addressed. In relation to the new clause 27(1)(d), if persons are not satisfied with the findings of the employer or person in charge of an institution pursuant to a claim made under clauses 5 or 6, they should be required to make a complaint to the Tribunal within twelve months from the date of alleged contravention.*

Your Committee notes the observation that under the clause dealing with ‘making of complaint’, it does not appear to make provision for children who are harassed in residential premises or to allow for these children to make complaints either through an adult or another individual. In our deliberations, the issues raised included whether a child could be sexually harassed based on the definition of sexual harassment as a child cannot welcome sexual advances and is unable to give consent; that any form of sexual advance toward minors should be treated as a crime and would not be a matter to be dealt with by a tribunal; the need for a specific ‘carve out’ for the treatment of a child with a complaint; and whether there would be a role for the Office of the Children’s Advocate.

Clause 27 - Making of complaint cont'd.

Your Committee does not accept the recommendation but agrees that the treatment of any form of sexual advance or offence in relation to children should be treated as a criminal offence under relevant legislation with the relevant penalties. To this end, we recommend that the Sexual Offences Act, the Child Care and Protection Act and the Offences Against the Person Act, be reviewed, so that appropriate amendments may be made to criminalize sexual harassment of children.

We also note the observation that *The Child Care and Protection Act* and *The Public Defender (Interim) Act* both include provisions for a complaint to be made by a child, his parent, guardian, next friend, or person in *loco parentis*. *Your Committee does not accept the recommendation, as we agree that persons under sixteen years of age will be removed from the remit of this piece of legislation and a provision would be inserted in the Bill to indicate said decision.*

Your Committee notes the proposal that a simple, but comprehensive Complaint Form should be set out in a Schedule in the Bill. It should also be stated that a complaint can be lodged by someone (such as a trade unionist or caregiver) other than the complainant on behalf of a complainant. *Your Committee accepts and agrees with the recommendation that a comprehensive Complaint Form should be set out in a Schedule. However, we do not accept the recommendation that a complaint can be lodged by someone other than the complainant but acknowledge that a complainant may receive assistance by another person to complete the Complaint Form; however, under such circumstances, the matter cannot proceed without the consent, knowledge, or involvement of the complainant.*

Your Committee notes the proposal for the time limit to make a complaint to the Tribunal, which is currently twelve (12) months, to be extended in some cases of sexual harassment by the Tribunal in similar circumstances as set out in clauses 27(4) and 27(5). We also note the proposal that the period for making a complaint, particularly in relation to clause 27 (1)(a) should be extended to three (3) years. *After extensive deliberations, your Committee accepts the overall recommendation and agrees to expand the time limit to make a complaint from twelve (12) months to the maximum allowed in civil matters, being six (6) years, with the provision that in extraordinary circumstances, the Tribunal may hear complaints that are made beyond the six (6)-year limitation period.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 28 - Particulars of complaints not to be communicated.

Clause 28 addresses the particulars of complaints not being communicated. *Your Committee notes there are no proposals for this clause, and agrees that that no change should be made to clause 28.*

Clause 29 - Investigation and report of findings

Clause 29 addresses investigation and report of findings. Your Committee notes the proposal that based on the particular facts or circumstances it may not be readily apparent that a claim is 'frivolous or vexatious'. *In our review of clause 29, your Committee agrees that reference to 'Authorized Officer' at clause 29(1) and throughout clause 29 should be deleted and replaced with words to allow the Tribunal to authorize any person or request that any individual conduct an investigation, so that the investigation is not limited to 'Authorized Officers' as defined in the Bill. Consequential amendments would therefore be required with respect to the use of the words 'Authorized Officer' in clause 30.*

Clause 30 - Lack of grounds for making of complaints.

Clause 30 addresses lack of grounds for making of complaints. We note the proposal for an amendment to read: "Pursuant to a report submitted by an Authorized Officer under clause 29(5), where the Tribunal finds that there is no evidence of sexual harassment, *or that a charge of sexual harassment cannot be sustained...*". *Your Committee agrees to the reformulation and insertion of a new clause 30 in keeping with the decision that a provision should be included to accommodate the possibility for investigations or the proceedings of the Tribunal that have already been started to be discontinued, if it appears at a later point that the complaint was not well founded and was frivolous or vexatious.*

Clause 31 - Procedures to apply in relation to a hearing conducted by Tribunal.

Clause 31 addresses the procedures to apply in relation to a hearing conducted by Tribunal. We note the proposal to amend clause 31(3)(b) to read "*shall take*" instead of "*shall lake*". *Your Committee accepts the recommendation and agrees to amend clause 31(3)(b) and substitute the words 'shall take' for the words 'shall lake'.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 31 - Procedures to apply in relation to a hearing conducted by Tribunal.

Your Committee notes the observation that the language at clause 31(3) suggests that the aim of Tribunal is to mediate rather than hear complaints and the proposal that consequently, the said clause 31(3) should be deleted. *Your Committee does not accept the recommendation to delete clause 31(3) and agrees that no change should be made to the clause 31(3), on the basis that a mediatory approach is to be always encouraged and is always the best way for civil matters. Whilst we understand the Tribunal is not charged with mediation as its key focus, we believe it is still appropriate that mediation is one of the available remedies.*

Clause 32 - Evidence before Tribunal

Clause 32 addresses evidence before the Tribunal. We note the proposal that the Bill specifies that the applicable standard of proof is the civil standard. *Your Committee accepts that the applicable standard of proof is the civil standard but does not accept the recommendation that the Bill specifies the civil standard of proof, i.e., proof on a balance of probabilities, as being the applicable standard. The standard of proof is clear in civil matters and therefore need not be expressly included in the provisions of the Bill.*

Clause 33 - Attendance at hearing

Clause 33 addresses attendance at a hearing. We note the proposal to amend Clause 33(3) by deleting the “full stop” after the word “may”. *Your Committee accepts the recommendation to delete the “full stop” after the word “may” at clause 33(3).*

We also note the proposal for consideration and inclusion of language to allow persons (complainant or any other persons) to attend and give testimony remotely. This could also be considered for proceedings at the levels of the employer or institution. *Your Committee does not accept the recommendation to allow for testimony to be given remotely or otherwise and agrees to allow the Tribunal to decide during the establishment of its Procedural Rules.*

Clause 34 - Right to representation

Clause 34 addresses the right to representation. *Your Committee notes there are no proposals for this clause, and we agree that no change should be made to clause 34.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 35 - Tribunal may prohibit publication of evidence, etc.

Clause 35 addresses the power of the Tribunal to prohibit publication of evidence, etc. *Your Committee notes there are no proposals for this clause, and we agree that no change should be made to clause 35.*

Clause 36 - Award of Tribunal.

Clause 36 addresses award of the Tribunal. Your Committee notes the observation that there is a passing mention of restorative justice in clause 36(1)(b)(ii), but there is no provision for training for behavior modification mandated for perpetrators where it is found that sexual harassment occurred. *Your Committee accepts the recommendation and agrees that the making of an award (for example, psychosocial support) is applicable to the complainant, the perpetrator, and the payment for such services, is within the remit of the Tribunal but this will not be included in the legislation.*

In relation to the observation about a lack of provision at clause 36(1)(b)(ii) for the distinction of the awards, *we do not accept the recommendation that there should be a time limit required for the respondent to comply with an award of the Tribunal as it is already addressed in the provisions of the legislation and agree that the matter would be best addressed by the Tribunal.*

We note the observation that clause 36(1)(b) does not outline the basis on which damages arising from sexual harassment would be assessed. We also note the recommendation that the Committee considers whether, in relation to clause 36(1)(b)(iii), payment of compensation would be appropriate or in what circumstances would a direction to employ the prospective worker be appropriate.

On the treatment of a prospective employee (specifically the option to employ or re-employ at clause 36(1)(b)(iii) and its relation to clause 9(9) which acknowledges there can be sexual harassment in the recruitment process. *Your Committee agrees that it would be inappropriate for the Tribunal to recommend employment of a prospective worker without an evaluation being done to determine the competence of said person. We also agree that employment should not be an option of award for the prospective worker. We agree further to delete the word 're-employ' as it appears at clause 36(1)(b)(iii) and substitute therefor the word 'reinstate'.*

Clause 36 - Award of Tribunal cont'd.

We further note other proposals relating to clause 36(1)(b)(iii), including the re-employment of the complainant/employee, compensation and in some instances providing the option of re-employment to the complainant. *We agree that the clause provides the Tribunal with a range of circumstances under which an award could be determined regarding compensation to the complainant/employee, or reinstatement of the complainant/employee to his/her substantive post.*

We note the observation regarding clause 36(1)(b)(v) and how one would vary the termination of a contract or agreement (to redress any loss or damage suffered by the complainant). *Your Committee does not accept the recommendation and agrees to delete clause 36(1)(b)(v).*

We note further the proposal that a list of acts be specified such as a letter of apology, etc., and there should be a cap total sum awarded to \$2M or 2 years' salary, whichever is greater. *Your Committee does not accept these recommendations but agrees that such determinations are to be left to the directives of the Tribunal. We also agree to rephrase the language in clause 36(2) to cover mental and emotional distress suffered by the complainant.*

Your Committee accepts the recommendation and agrees to include another provision similar to clause 36(3) to provide redress through the Court for noncompliance for non-monetary awards by the Tribunal.

Your Committee accepts the recommendation and agrees to delete clause 36(4), as it is not in keeping with the scheme of the Bill and in light of the aforementioned decision regarding inclusion of a clause similar to clause 36(3).

We note the observation that the Bill does not expressly seek to cover disclosure made in the public domain, neither does it state whether it falls under *sub judice* rule that is disclosure of matters before the Committee. *Your Committee does not accept the recommendation as it is already addressed by clause 35(1).*

We note the proposal for the inclusion of provisions for dismissal and certain other actions in the Bill, as well as the inclusion of provisions to prevent double awards for the same types of action. *Your Committee does not accept the recommendation.*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

Clause 37 - Effect of award

Clause 37 addresses the effect of an award. *Your Committee notes there are no proposals for this clause, and we agree that that no change should be made to clause 37.*

Clause 38 – Appeal

Clause 38 addresses the appeal. *Your Committee notes there are no proposals for this clause, and we agree that that no change should be made to clause 38.*

PART VII – Offences and Penalties

Clause 39 - Offences in relation to attendance at hearing.

Clause 39 addresses the offences in relation to attendance at a hearing. We note the observation regarding clause 39(3)(b), and on all the offences throughout the Bill, that this clause has the same penalty regime for all the listed offences, which gives the impression that all offences have the same level of seriousness and thus should be accorded the same penalty. However, the offences are different and may have various levels of seriousness. Your Committee also notes the proposal that the penalty should therefore be adjusted, accordingly. *Your Committee accepts the recommendation and agrees to a regime of layered penalties/fines to address breaches at clause 39(4). Your Committee subsequently agrees that the regime of penalties/fines should be amended to address Clause 39(4)(a) to Clause 39(4)(e), as follows:*

- *Clause 39(4)(a) - \$500,000.00 or one-month imprisonment on default of payment*
- *Clause 39(4)(b) - \$500,000.00 or one-month imprisonment on default of payment*
- *Clause 39(4)(c) - \$1,000,000.00 or 12 months imprisonment on default of payment*
- *Clause 39(4)(d) - \$1,000,000.00 or 12 months imprisonment on default of payment*
- *Clause 39(4)(e) - \$1,000,000.00 or 12 months imprisonment on default of payment.*

Clause 40 - Offence of adverse action

Clause 40 addresses the offence of adverse action. Your Committee notes the observation regarding what constitutes an adverse action at clause 40(1) and the subsequent proposal for the term “an *adverse action*” to be defined. *Your Committee does not accept the recommendation to define the term “adverse action”, on the basis that any term that is not used or used more than once throughout the legislation takes the normal dictionary meaning.*

Clause 40 - Offence of adverse action cont'd.

Your Committee also notes the observation regarding clause 40(2), and on all the offences throughout the Bill, noting that this clause has the same weight (the same level of seriousness and the same penalty) as the other offence provisions. However, the offences are different and may have different levels of seriousness. Your Committee notes further the proposal that the penalty should therefore be adjusted accordingly. *Your Committee accepts the recommendation and agrees to amend the term of imprisonment to read 'imprisonment for a term not exceeding twelve months' instead of 'three months'.*

Clause 41 - Offence of making false complaints, etc.

Clause 41 addressed the offence of making false complaints, etc. Your Committee notes the proposal to add the word 'knowingly' to clause 41(1). *We accept the recommendation and agree that clause 41(1) should now read:*

'A person who knowingly makes a false complaint under section 27 commits an offence.'

Your Committee notes the observation regarding clause 41(2) and all the offences throughout the Bill, noting that this clause has the same weight (the same level of seriousness and the same penalty) as other offence provisions. However, the offences were different and may have different levels of seriousness. Your Committee also notes the proposal that the penalty should therefore be adjusted accordingly. *Your Committee does not accept the recommendation but agrees that with the insertion of the word 'knowingly' at clause 41(1), no change should be made to clause 41(2).*

Your Committee notes the observation that the penalty of a fine not exceeding \$1M at clause 41 for making false complaints, etc., was high; however, it was a relatively low penalty for the actual perpetrator. We also note the proposal to review clause 41 to avoid deterring victims from their deserved justice and that the maximum limit of \$1M be reduced. *Your Committee does not accept the recommendation that the maximum limit of \$1M be reduced and further agrees there should be no change at clause 41(2).*

(CLAUSES 9-46 (PREVIOUSLY CLAUSES 7-44) HAVE BEEN RENUMBERED AS A CONSEQUENCE OF THE ABOVE AMENDMENTS)

PART VIII – Miscellaneous

Clause 42 - Regulations

Your Committee notes the observation that the Regulations associated with legislation oftentimes lag. We note the proposal for the Regulations for this piece of legislation to be in place to address the concerns about procedural matters arising from the Bill. *Your Committee accepts the recommendation that the Regulations are to be in place in keeping with the implementation of the legislation but agrees that no change should be made to clause 42.*

Clause 43 - Tribunal may regulate its procedures and proceedings.

Clause 43 addresses the fact that the Tribunal may regulate its procedures and proceedings. *Your Committee notes there are no proposals for this clause; however, we recommend an amendment of clause 43 to allow the Tribunal to make its own Procedures and Rules which would include the Complaint Forms and these Rules will be gazetted.*

Clause 44 - Review of Act

Clause 44 addresses the review of the Act. Your Committee notes there are no proposals for this clause. *However, we agree to a period of eighteen (18) months for the first comprehensive review of the Act after the date of commencement of the Act, which is reasonable and allows for assessment of the legislation, the Policy Statement, and guidelines, as well as how the Tribunal operates.*

Clause 45 - Power of Minister to amend monetary penalties.

Clause 45 addresses the power of Minister to amend monetary penalties. *Your Committee notes there are no proposals for this clause, and agrees that that no change should be made to clause 45.*

Clause 46 – Act binds the crown.

Clause 46 addresses the fact that the Act binds the crown. *Your Committee notes there are no proposals for this clause, and agrees that no change should be made to clause 46.*

Memorandum Of Objects and Reasons:

Your Committee agrees to amend the Memorandum Of Objects and Reasons as follows:

'At present, sexual harassment is not specifically recognized in any existing legislation in Jamaica. However, there is consensus that legislation is necessary to address concerns about sexual harassment which is employment related, occurring in institutions or arising in relation to the provision of accommodation'.

SCHEDULE

First Schedule:

Section 4(3) - Sexual Harassment Workplace Policy

Your Committee accepts and agrees with the proposal that a Sexual Harassment Workplace Policy Statement Template will be included in a Schedule to assist as a guide to all businesses and institutions, including small businesses and/or those organisations which may not have internal mechanisms.

Your Committee accepts and agrees with the proposal that provisions outlining training sessions (which will include role play, scenarios, and examinations, thus allowing employees to identify appropriate behaviors at work and that inappropriate behaviours that are identified in the training sessions can be rectified) will be placed in a Schedule along with a Code.

Second Schedule:

Clause 13(4) - Oath of Office for Members of Tribunal

Your Committee notes there are no proposals for the Oath of Office for Members of Tribunal, and we agree that no change should be made to the clause.

GENERAL RECOMMENDATIONS

We note the proposal that references to the 'court' throughout the Bill should be extended to the Supreme Court. *Your Committee does not accept the proposal and agrees that the references to the 'court' throughout the legislation should remain as is.*

Your Committee accepts and agrees to include provisions in the Bill to address fit and proper eligibility requirements prior to the selection of members appointed to serve on the Tribunal.

We note the proposal to contemplate a ceiling on the amount of compensation to be awarded by the Tribunal. *Your Committee does not accept the recommendation for a ceiling to be placed on the amount of compensation awarded by the Tribunal.*

We note the proposal to mandate public education around sexual harassment in multiple spaces. *Your Committee accepts with the recommendation to mandate public education on sexual harassment in multiple spaces.*

We note the proposal for the provision of therapeutic support on behalf of the victim to be paid for by the offending party (once found liable). *Your Committee does not accept the recommendation, as clause 36(1)(c) addresses awards by the Tribunal.*

We note the proposal to insert a provision to address concurrent matters, such as those involving complaints of sexual harassment, as well as an allegation of unjustifiable dismissal and how to treat them. In this example, the Sexual Harassment Tribunal will have an overlap with the jurisdiction of the Industrial Disputes Tribunal (IDT). *Your Committee does not accept the recommendation.*

We note the proposal to insert the provision which requires that each member of the Sexual Harassment Tribunal undergoes mandatory training prior to assuming functioning roles on the Tribunal. *Your Committee does not accept the recommendation for mandatory training of the members of the Tribunal to be placed in the legislation but agrees that requirements for mandatory training would be included in the policy document.*

We note the proposal to provide support services to assist complainants through the process of making a complaint. *Your Committee does not accept the recommendation as there is provision for Authorized Officers who would be investigating the complaints, as well as the Complaint Form and policy template as support services.*

GENERAL RECOMMENDATIONS cont'd.

We note the observation that victimization is recognized at clause 40, thus creating a criminal offence to be dealt with in the Parish Court. When such a breach is heard in the Parish Court, the putative victim (i.e., the person who has lost his/her job or bonus) has no remedy before advancing a separate claim to the Tribunal to obtain damages as the Bill does not create victimization as a legitimate standalone complaint. We also note the proposal to either create a standalone victimization provision which can be advanced in the Tribunal, with the Tribunal empowered to make a financial award for such a breach; or empower the Parish Court to make an award to the victim. *Your Committee does not accept the recommendation to include specific provisions to allow the Tribunal to protect a person who has made a complaint against any adverse action, as in addition to clause 40, the concern is already addressed at clause 9(10), clause 10(3) and clause 15.*

We note the proposal that the State must also consider that the 'workplace' in the 21st Century is not confined to a physical building or space, as modes of working shift to smartphones, online platforms, and informal spaces. The legislation thus must be evidence of that dynamic. *Your Committee does not accept the recommendation, as 'workplace' is not defined in the legislation.*

We note the proposal that the prohibition of victimization of employees should be considered. *Your Committee does not accept the recommendation, as the legislation adequately addresses the matter.*

At this time, your Committee agrees it will not include sexual harassment towards board members, or by board members in the Bill; *however, we note the urgent need to address the matter and recommend that in the interim, the necessary policy guidelines and a code of ethics be developed to address concerns of sexual harassment towards board members, or by board members, among other things. We also recommend the development of a code of ethics within one year in keeping with the development of the Policy Statement. We recommend further that, among other things, sexual harassment towards board members, or by board members be dealt with at the first, comprehensive review of the Act, that is, within 18 months of its commencement.*

ADDITIONAL RECOMMENDATIONS

CONSEQUENTIAL AMENDMENTS

Your Committee recommends that there should be a review of relevant legislation such as the Sexual Offences Act, the Child Care and Protection Act and/or the Offences Against the Person Act by the Ministries with portfolio responsibilities to ensure there is no lacuna as it relates to the commission of any sexual advance towards persons under the age of sixteen years.

In relation to clause 11 which addresses sexual harassment in relation to accommodation, *your Committee recommends that amendments be made to the Cybercrimes Act and/or the Sexual Offences Act to make the utilization of technological instruments such as cameras to spy on tenants, which invades their privacy, a criminal offence. It was agreed that such matters do not fall within the remit of this piece of legislation.*

CONSEQUENTIAL AMENDMENTS

‘Street Harassment’: One area of concern raised in our deliberations was the proposal by several presenters to expand the scope of the Bill to include sexual harassment on public roads and in public areas (‘street harassment’). *Whilst acknowledging the gravity and prevalence of the behaviour in the society, we agree that the scheme of the Bill is to continue to reflect the policy, which is, at this time, to legislate for sexual harassment that is employment related, which occurs in institutions, or arises in the context of the provision of accommodation. It is our recommendation that ‘street harassment’ be considered a criminal offence which should be addressed in other appropriate legislation. Your Committee also recommends that consideration be given by the Ministry with the responsibility for the Offences Against the Person Act to provide for it as a criminal offence.*

4. ACKNOWLEDGEMENTS

Your Committee wishes to express sincere gratitude to all those individuals and organisations that made written submissions and oral presentations or participated in the deliberations. Your Committee wishes to thank the Ministry of Education, Youth and Information; the Ministry of Economic Growth and Job Creation (Rent Assessment Board); the Ministry of Tourism; the Norman Manley Law School; the Jamaica Network of Seropositives; Women's Empowerment For Change (We Change); the Ministry of Labour and Social Security; Jamaica Lands; the Hugh Shearer Labour Studies Institute Consortium for Social Development and Research (University of the West Indies); Jamaica Aids Support for Life; Soroptimist International Jamaica; Jamaica Confederation of Trade Unions (JCTU); the Private Sector Organisation of Jamaica (PSOJ); the Jamaica Chamber of Commerce (JCC); the University of the West Indies (UWI) Institute of Gender and Development Studies; Jamaica Coalition for a Healthy Society; Girls Who Know Ja (GWK JA); the Jamaica Household Workers' Union; the Jamaica Tertiary Education Commission (JTEC); the Independent Jamaican Council For Human Rights (IJCHR); Jamaicans For Justice (JFJ); the Association of Women's Organisation (AWOJA); Mr. Matondo K. Mukulu; and the United Nations Development Programme (UNDP) Jamaica.

Special recognition to the staff of the following entities for the technical guidance provided to the Committee throughout its deliberations: the Ministry of Culture, Gender, Entertainment and Sport/the Bureau of Gender Affairs, the Office of the Parliamentary Counsel, the Attorney-General's Chambers, and the Legal Reform Department.

Your Committee is grateful to the acting Clerk to the Houses and her staff for the invaluable assistance and kind courtesies extended during the meetings.

Houses of Parliament
June, 2021

ATTENDANCE RECORD

Committee (No.1)

***6 MEETINGS**

Members	Present	Absent	Apology
Hon. Olivia Grange, CD, MP, Chair	6	-	-
Hon. Delroy Chuck, QC, MP	5	-	1
Mr. Franklin Witter	4	2	-
Mrs. Marisa Dalrymple Philibert	-	5	1
Mrs. Ann-Marie Vaz	-	1	5
Ms. Natalie Neita	-	4	2
Mr. Horace Dalley	3	3	-
Dr. Angela Brown-Burke	3	1	2
Sen. Kavan Gayle, CD	6	-	-
Sen. Dr. Sapphire Longmore	5	-	1
Sen. Kerensia Morrison	5	1	-
Sen. Donna Scott Mottley	4	-	2
Sen. Sophia Frazer Binns	6	-	-

ATTENDANCE RECORD

Committee (No.2) Members appointed on October 6, 2020 & October 9, 2020

Commenced meeting October 28, 2020

18 MEETINGS

Members	Present	Absent	Apology
Hon. Olivia Grange, CD, MP, Chair	18	-	-
Hon. Delroy Chuck, QC, MP	12	3	3
Mr. Franklin Witter, MP	10	8	-
Miss Kerensia Morrison, MP	7	10	1
Ms. Rhoda Moy Crawford, MP	14	3	1
Ms. Tamika Davis, MP	13	4	1
Ms. Joyce Denise Daley, MP	2	15	1
Dr. Angela Brown-Burke, MP	10	2	6
**Mr. Dwight Sibbles, MP (Nov 3, 2020)	15	1	1
**Mr. Lothian Cousins, MP (Nov 3, 2020)	3	13	1
@Sen. the Hon. Kamina Johnson-Smith (Nov 13, 2020)	10	4	2
@Sen. Sophia Frazer-Binns (Nov 13, 2020)	15	-	1
Sen. Kavan Gayle, CD	18	-	-
Sen. Dr. Sapphire Longmore	17	-	1
Sen. Natalie Campbell-Rodrigues	15	-	3
Sen. Donna Scott-Mottley	13	1	4
Sen. Gabriela Morris	15	3	-

**** Mr. Dwight Sibbles, MP could have only attended a maximum of 17 meetings.**

**** Mr. Lothian Cousins, MP could have only attended a maximum of 17 meetings.**

@Sen. the Hon. Kamina Johnson-Smith could have only attended a maximum of 16 meetings

@ Sen. Sophia Frazer-Binns could have only attended a maximum of 16 meetings.

**LIST OF AMENDMENTS TO THE SEXUAL HARASSMENT
BILL TO BE TABLED IN THE HOUSE OF REPRESENTATIVES**

PROVISION

AMENDMENT

Clause 1

Delete the clause and substitute therefor the following –

“Short title and commencement. 1. This Act may be cited as the Sexual Harassment (Protection and Prevention) Act, 2021, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*, and different days may be appointed by the Minister under this section in respect of different provisions of this Act.”.

Clause 2

1. Delete the marginal note and substitute therefor the following –

“Interpretation and application.”.

2. In the definition of “complaint” delete the numeral “25” and substitute “27”.

3. Insert the following new definitions in the proper alphabetical sequence –

““client” means a person who conducts business with an employer;

“document” means, in addition to a document in writing, anything in which information of any description is recorded;

“sexual harassment claim” means a sexual harassment claim made pursuant to section 5 or 6;”.

4. In the definition of sexual harassment delete the words “reasonably” and “unreasonably” wherever they appear.

5. In the definition of “worker”, delete the words “a person conducting a business or undertaking” and substitute therefor the words “an employer”.

6. Insert after subclause (3), the following new subclauses –

“ (4) The provisions of this Act shall not apply to a person who is under the age of sixteen years.

(5) For the purposes of section 13(2), a person is a fit and proper person if –

(a) the person –

(i) has not been convicted of an offence involving fraud, dishonesty or moral turpitude or, of an offence listed in the Second Schedule of the Proceeds of Crime Act or an offence that is similar to any such offence in another jurisdiction;

(ii) is not a bankrupt, within the meaning of the Insolvency Act; and

(iii) is in compliance with any tax and other statutory requirements imposed on the person;

(b) the employment record of the person or any other information does not give the Minister reasonable cause to believe that the person carried out any act involving dishonesty or impropriety that will interfere with the ability of the person to fulfil his or her functions; and

(c) the person is, in the opinion of the Minister –

(i) a person of sound probity and is able to exercise competence, diligence and sound judgment in the fulfilling of their functions;

(ii) a person who possesses the knowledge, skills and experience which are necessary for the intended functions to be carried out by that person; and

(iii) a person whose appointment will not raise an issue of conflict of interest or undue influence.”.

Clause 4

1. In subclause (1), delete the chapeau and substitute therefor the following –

“ (1) Every employer –”.

2. In subclause (3) –

(a) delete the chapeau and substitute therefor the following –

“ (3) The policy statement required under this section shall be in accordance with the Sexual Harassment Framework

Document set out in the First Schedule and shall include the following –”;

(b) delete paragraph (b) and substitute therefor the following –

“ (b) a statement to the effect that –

- (i) workers;
- (ii) clients;
- (iii) students, residents, wards, inmates, patients or members, as the case may be, at or of the institution,

are entitled to an environment that is free of sexual harassment;

(c) in paragraph (c) –

(i) insert the word “client,” after the word “worker”;

(ii) delete the semi-colon where it appears and substitute therefor the following –

“and that due process shall be exercised in this regard;”;

(d) in paragraph (d), insert the word “client,” after the word “worker”;

(e) in paragraph (g) insert the word “clients,” after the word “workers”;

(f) delete paragraph (h) and substitute therefor the following –

“ (h) subject to section 27(5), a statement to the effect that a complainant shall exhaust all internal mechanisms and procedures that are available to the complainant before making a complaint to the Tribunal.”.

3. Insert the following new subclause as subclause (4) –

“ (4) Within twelve months from the date of commencement of this Act, every employer and person in charge of an institution shall ensure that the policy statement required under this section is prepared and shall take such steps as are reasonably required to bring the policy to the attention of each worker, client, student, resident, ward, inmate, patient or member, as the case may require.”.

4. Re-number subclause (4) as subclause (5).

5. After subclause (5), insert the following new subclause as subclause (6)

–
“ (6) The Minister may, by order, amend the First Schedule.”.

Clause 5

Delete the clause and substitute therefor the following –

“Procedure for lodging sexual harassment claim and duty of employer.

5. – (1) Where a worker alleges that he or she has been sexually harassed by another worker or a client, that worker may lodge a sexual harassment claim, in writing, with the employer.

(2) Where a sexual harassment claim is lodged with an employer under subsection (1), the employer shall –

- (a) in the case where the sexual harassment claim is made against a worker, notify the worker in writing or electronically, within two days of receipt of the sexual harassment claim;
- (b) in the case where the sexual harassment claim is made against the client, take such action as he or she considers appropriate in the circumstances, to bring the matter to the attention of the client; and
- (c) commence an investigation into the particulars of the sexual harassment claim, within fourteen days of the sexual harassment claim being lodged and complete the investigation without delay.

(3) An employer who fails to take the required action under subsection (2) shall be liable for the failure to act, and a worker who is aggrieved by the failure of the employer so to act, may make a complaint in respect thereof to the Tribunal.”.

Clause 6

Delete the clause and substitute therefor the following –

“Procedure for lodging sexual harassment claim and duty of person in charge of an institution.

6. – (1) Where a student, resident, inmate, ward, patient or member, as the case may be, alleges that he or she has been sexually harassed by –

- (a) a person who is a member of staff or in a position of authority at an institution or;
- (b) by one of his or her peers at an institution;

such student, resident, inmate, ward, patient or member, as the case may be, may lodge a sexual harassment claim, in writing, with the person in charge of the institution.

(2) Where a sexual harassment claim is lodged with a person in charge of an institution under subsection (1), the person in charge of the institution shall –

- (a) as the case may require, within two days of receipt of the sexual harassment claim, notify the person who is a member of staff or in a position of authority or the student, resident, inmate, ward, patient or member, who is the subject of the sexual harassment claim, either in writing or electronically of the sexual harassment claim; and
- (b) commence an investigation into the particulars of the sexual harassment claim, within fourteen days of the sexual harassment claim being lodged and complete the investigation without delay.

(3) A person in charge of an institution who fails to take the required action under subsection (2) shall be liable for failure to act and a student, resident, ward, inmate, patient or member, as the case may be, who is aggrieved by the failure of the person in charge of the institution to take action, may make a complaint in respect thereof to the Tribunal.

Insertion of new clauses

After clause 6, insert the following new clauses –

“Making of complaint against employer or person in charge of an institution.

7. Notwithstanding the provisions of section 27(4), where an allegation of sexual harassment is made against an employer or a person who is in charge of an institution, the worker, client or student, resident, ward, inmate, patient or member, as the case may be, may make a complaint directly to the Tribunal.

Maintaining of register.

8. – (1) An employer and person in charge of an institution shall maintain or cause to be maintained, a register containing the following information in respect of every sexual harassment claim lodged pursuant to section 5 or 6 –

- (a) the name of the parties to the sexual harassment claim;

- (b) the particulars of the sexual harassment claim;
- (c) the date of which the sexual harassment claim was lodged;
- (d) any action taken by the employer or person in charge of an institution in relation to the sexual harassment claim;
- (e) such other particulars relating to the sexual harassment claim as may be prescribed.

(2) An employer and person in charge of an institution shall ensure that the information contained in the register is kept in a secure manner and that the confidentiality of the information is preserved, and shall –

- (a) take all necessary and appropriate measures to protect the information contained in the register from unauthorized access, unauthorized use and unauthorized disclosure; and
- (b) ensure that any person who has access to the register adheres to the measures referred to in paragraph (a), at all times.

(3) No person shall disclose information which is recorded in the register, in relation to a sexual harassment claim, unless the disclosure is made with lawful authority.

(4) Pursuant to subsection (3), a disclosure is made with lawful authority only if, and to the extent that –

- (a) the disclosure is made to a party to the sexual harassment claim upon their request;
- (b) the disclosure is made to the Tribunal, where a complaint is made to the Tribunal pursuant to section 27;
- (c) the disclosure is made for the purposes of, and is necessary for, the discharge of any functions under this Act or any other relevant enactment;

(d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise.

(5) A person who knowingly or recklessly discloses information kept in a register in contravention of subsection (3) commits an offence and shall, on summary conviction in a Parish Court be liable to a fine not exceeding five hundred thousand dollars or in default of payment thereof to a term of imprisonment not exceeding one month.

(6) The information in the register shall be kept for a period of eight years.”.

Renumbering of remaining clauses

Renumber the clauses, which follow the new clauses 7 and 8 as inserted, respectively.

Clause 9 as renumbered

1. Renumber subclauses (4), (5) and (6) as subclauses (8), (9) and (10), respectively.

2. Insert after subclause (3), the following new subclauses –

“ (4) A client shall not sexually harass a worker.

(5) A worker shall not sexually harass a client.

(6) A worker shall not sexually harass a supervisor.

(7) A worker shall not sexually harass an employer.”.

Delete subclause (10), as renumbered and substitute therefor the following –

“ (10) An employer shall not take any action which adversely affects the opportunities, terms and working conditions of a worker who has lodged a sexual harassment claim or made a complaint under this Act, or who has given testimony or otherwise participated in any investigation, procedure or hearing initiated under this Act.”.

Clause 10
(as renumbered)

After subclause (3), insert the following new subclause –

“ (4) A student, resident, ward, inmate, patient or a member of an institution shall not sexually harass one of his or her peers.”.

Clause 12
(as renumbered)

Delete the section and substitute therefor the following –

“Designation
of authorized
officers, *etc.*”

12. – (1) The Minister with responsibility for gender affairs may designate persons being field officers attached to the Bureau of Gender Affairs, as authorized officers for the purposes of ensuring the proper observance and compliance with the provisions of sections 3 and 4.

(2) A person designated as an authorized officer shall undergo the requisite training to assist them in the carrying out of their functions under this Act.

(3) An authorized officer shall be furnished with a certificate of designation.

(4) An authorized officer in performing any functions or exercising any powers under this section, shall produce the certificate of designation.

(5) For the purposes of carrying out their functions under subsection (1), an authorized officer may –

- (a) with a warrant, enter any place of employment or institution, in order to ascertain whether the provisions of sections 3 and 4 are being complied with;
- (b) inspect any place of employment or institution to ensure compliance with the provisions of sections 3 and 4; or
- (c) inspect and take copies of documents and other information or require any person at a place of employment or an institution, to provide such information as may be reasonably required, for the enforcement of the provisions of this Act.

(6) Subsection (5)(c) shall not apply to any documents or other information that is protected by legal professional privilege.

(7) A person who –

- (a) willfully obstructs or assaults an authorized officer in the exercise of any function or power under this Act; or

(b) fails to comply with a lawful request made by an authorized officer, commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million or to imprisonment for a term not exceeding twelve months.

(8) An authorized officer, on finding that an employer or person in charge of an institution is not in compliance with any of the provisions of sections 3 or 4, may issue a direction setting out the terms of compliance, and the time (not being more than thirty days) within which the employer or person in charge of the institution shall comply with the direction.

(9) An employer or person in charge of an institution who fails to comply with a direction issued under subsection (8), commits an offence and shall on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars.”.

Clause 13
(as renumbered)

1. In subclause (1) –

(a) delete the word “Schedule” in the marginal note and substitute therefor, the words “Second Schedule”;

(b) in the chapeau –

(i) delete “subsection (2)” and substitute therefor “subsection (3)”;

(ii) delete the word “twelve” and substitute therefor the word “fourteen”;

(c) delete paragraph (c) and substitute therefor the following –

“(c) the other members who shall be selected from among persons who appear to the Minister responsible for gender affairs, after consultation with the Minister responsible for Justice and the Minister responsible for labour and social security, to be qualified as having had the experience of, and shown capacity in, matters relating to worker representation, gender affairs, mental health, employer representation and labour relations.”.

2. Insert the following new subclause as subclause (2) –

“ (2) A person shall not be appointed as a member of the Tribunal unless the person satisfies the fit and proper eligibility requirements specified under section 2(5).”.

3. Renumber the current subclauses (2) and (3) as subclauses (3) and (4), respectively.

Clause 14
(as renumbered)

Delete the clause and substitute therefor the following –

“Appointment of
Chairperson and
Deputy
Chairperson of
the Tribunal.

14. – (1) The Minister shall appoint a chairperson and two deputy chairpersons from amongst the members of the Tribunal who are attorney-at-law.”.

(2) In the absence or inability of the chairperson to act in any sitting of the Tribunal, one of the deputy chairpersons shall act as the chairperson at that sitting.”.

Clause 15
(as renumbered)

1. Delete the number “(1)” at the beginning of the chapeau.
2. In paragraph (a) (i), delete the words, “section 5(1)” and substitute therefor the words “section 5(2)”.
3. In paragraph (a) (ii) –
 - (a) delete the word “claim” and substitute therefor the word “complaint”;
 - (b) delete the words “section (6)(1)” and substitute therefor the words “section (6)(2)”.
4. Delete paragraph (b) and substitute therefor the following –

“ (iii) a complaint made by a person in relation to a matter arising under section 4(4), 7, 9, 10, 11 or 27(1)(d); and”.
5. Re-letter paragraph (c) as paragraph (b) and delete the number “34” and substitute therefor the number “36”.

Clause 16
(as renumbered)

Delete the clause and substitute therefor the following –

“Hearing
panel of
Tribunal.

16. – (1) A complaint made to the Tribunal pursuant to section 15 shall be heard and determined by a panel consisting of three members of the Tribunal.

(2) The chairperson or a deputy chairperson appointed pursuant to section 14(1) may chair a panel constituted under subsection (1).

(3) In appointing a panel pursuant to subsection (1), the chairperson of the Tribunal shall, at all times, ensure that there is a gender balance amongst the membership of the panel.

(4) In assigning members of the Tribunal to the panel, the chairperson of the Tribunal shall take into consideration the necessary experience and expertise that are necessary to enable the panel to determine the issues raised in any matter before it.”.

Clause 17
(as renumbered)

Delete subclause (1) and substitute therefor the following –

“ (1) A member of the Tribunal who in any way, whether directly or indirectly, has an interest in any matter that is brought before the Tribunal shall –

- (a) by notice, declare the nature of the interest on the first opportunity at which it is practicable for the member to do so; and
- (b) not take part in any deliberations or decisions of the Tribunal with respect to that matter.”.

Clause 19
(as renumbered)

Delete the clause and substitute therefor the following –

“Acting
appoint-
ments.

19. The Minister may appoint any person to act in the place of the Chairperson of the Tribunal or any other member of the Tribunal in the case of the absence, inability or refusal of the chairperson or other member to act, so however that, such appointment shall be made in the same manner and from among the category of persons as would be required in the case of the original appointment.”.

Clause 21
(as renumbered)

1. Insert the word ‘or’ after the semi-colon at the end of paragraph (a).
2. Delete paragraphs (b), (c) and (d)¹ and insert the following new paragraph as paragraph (b) –

¹ These criteria fall within the fit and proper eligibility requirements.

Clause 27
(as renumbered)

“(b) does not or no longer satisfies the fit and proper eligibility requirements under section 2(5).”
Delete the clause and substitute therefor the following –

“Making of
complaint.

27. – (1) A person who alleges that –
- (a) an employer or person who is in charge of an institution has failed to comply with section 3(1) or (2);
 - (b) a contravention of section 5(2), 6(2), 7, 9, 10 or 11 has been committed against the person;
 - (c) an employer or a person in charge of an institution has disclosed information in contravention of section 4(4); or
 - (d) he or she is aggrieved by or not satisfied with the findings of the employer or a person who is in charge of an institution, as the case may be, pursuant to a sexual harassment claim made under section 5 or 6;

may make a complaint, in writing, in the prescribed manner to the Tribunal, setting out the details of the alleged contravention.

(2) A complaint shall be made –

- (a) in the case of subsection (1) (b), within a period of six years from the date of the alleged contravention, or in the case of a course of conduct or series of alleged acts, within a period of six years from the date of the last alleged act; and
- (b) in the case of subsection (1) (a), (c) or (d), within the period of twelve months from the date of the alleged contravention.

(3) Notwithstanding subsection (2)(a), the Tribunal may, in circumstances which it considers to be exceptional, grant leave for a complaint to be made after the period specified thereunder.

(4) Subject to subsection (5), a person shall, before making a complaint under subsection (1)(b), exhaust the use of any internal mechanisms and procedures that are available to the person, as provided for in the policy statement issued by an employer or a person in charge of an institution, as the case may be, in accordance with this section.

(5) The Tribunal may grant leave to a person to make a complaint to the Tribunal in the circumstances provided in subsection (6), notwithstanding that subsection (4) has not been complied with.

(6) The circumstances referred to in subsection (5) are that the Tribunal is satisfied that the person has

(a) shown cause as to why the person reasonably believes that the person's rights may be prejudiced if the person were to comply with subsection (4); or

(b) provided evidence to show that no internal mechanisms or procedures, or no adequate internal mechanisms and procedures have been made available to the person as is required under section 4(3)(d)."

Clause 28
(as renumbered)

Delete "25" and substitute "27".

Clause 29
(as renumbered)

1. Delete subclause (1) and substitute therefor the following –

" (1) Subject to subsection (2), upon receipt of a complaint, the Tribunal may cause an investigation to be conducted into the particulars of the complaint by such person authorized by the Tribunal as the Tribunal deems necessary and appropriate, having regard to the nature and circumstances of the complaint."

2. In subclause (2), delete the words "an authorized officer" and substitute therefor the following –

"a person authorized by the Tribunal to conduct the investigation".

3. In subclause (5), delete the words "the authorized officer" and substitute therefor the following –

"person authorized by the Tribunal to conduct the investigation".

Clause 30
(as renumbered)

1. Delete the chapeau and substitute therefor the following –

“Pursuant to a report submitted under section 29(5), where the Tribunal finds that there is no evidence of sexual harassment or a complaint is frivolous or vexatious, the Tribunal shall, in writing, inform –”.

2. Delete paragraph (b) and substitute therefor the following –

“ (h) any person against whom the complaint was made of the facts and reasons for its finding, and the Tribunal shall take no further action in relation to the complaint.”.

Clause 31
(as renumbered)

In subclause (3)(b), delete the word “lake” and substitute therefor the word “take”.

Clause 33
(as renumbered)

In subclause (3) delete the full stop after the word “may”.

Clause 36
(as renumbered)

1. In subclause 1(b)(iii) delete the words “employ or re-employ” and substitute therefor the word “reinstate”.

2. Delete subclause (1)(b)(v) and re-letter the remaining paragraphs accordingly.

3. Delete subclause (2) and substitute therefor the following –

“ (2) The Tribunal may, in making an award under subsection (1)(b), take into consideration, injury to the complainant’s feelings and any humiliation, mental or emotional distress suffered by the complainant.”.

4. Delete subclause (4).

Clause 39
(as renumbered)

1. Delete subclause (4) and substitute therefor the following –

“ (4) A person who –

(a) interrupts the proceedings at a hearing of the Tribunal;

(b) uses insulting language towards the Tribunal when the Tribunal is exercising any powers or performing any functions under this Act,

commits an offence and shall on summary conviction in a Parish Court, be liable to a fine not exceeding five hundred thousand dollars or, in default of payment thereof, to a term of imprisonment not exceeding one month.

2. Insert after subclause (4), the following new subclause –

- “ (5) A person who –
- (a) publishes anything in contravention of section 35;
 - (b) permits, divulges or communicates any particulars of a complaint in contravention of section 28;
 - (c) furnishes to the Tribunal any information or makes a statement at a hearing, knowing that the information or statement is false or misleading in a material particular,

commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars, or, in default of payment thereof, to a term of imprisonment not exceeding twelve months.”.

Clause 40
(as renumbered)

In subclause (2), delete “three months” and substitute therefor “twelve months”.

Clause 41
(as renumbered)

Delete subclause (1) and substitute therefor the following –

“ (1) A person who knowingly makes a false complaint under section 27 commits an offence.”.

Clause 43
(as renumbered)

1. Renumber the clause as “43(1)”.

2. Insert the following new clause as subclause (2) –

“ (2) The rules of the Tribunal as first constituted and all amendments made thereafter, shall be published in the *Gazette*.”.

Clause 44
(as renumbered)

In subsection (2), delete “five years” and substitute therefor “eighteen months”.

Amendment and
insertion of new
Schedule

1. Rename the current Schedule as the “Second Schedule”.

2. Insert the following new Schedule –

“ **FIRST SCHEDULE** (Section 4(3))

Sexual Harassment Workplace Policy

The physical, emotional and mental health and safety of all students/faculty/staff, members/private contractors contracted by, or on behalf of [insert name of organization], or other third parties conducting business with the [insert name of organization] and interacting with its students/employees etc is of paramount importance. [Insert name of organization] prohibits sexual harassment and this policy was

established to address any occurrence of sexual harassment at the [insert name of organization].

International Agreements and Policy Linkages

International Protocols and Conventions to which the country is committed which upholds sexual harassment as a form of violence, a human rights issue, and an obstacle to development.

The **International Labour Organization (ILO)** has formally recognized sexual harassment at the workplace as being harmful. Sexual harassment, the International Labour Office pointed out, is a violation of the fundamental rights of workers, and it constitutes a health and safety hazard, is an issue of discrimination, an unacceptable working condition and a form of violence, usually against female workers. In its Convention No. 111 on Discrimination in Employment and Occupation, the ILO cites issues of health and safety to employee welfare and workplace productivity, as they are affected by sexual harassment.

The proposed Sexual Harassment (Protection and Prevention) Act, 2021 is also intended to facilitate redress for women and men in the workplace, educational institutions and in situations of accommodation.

The *National Policy for Gender Equality (NPGE)* approved by Cabinet in 2011 promotes the objective and goal of sustainable behaviour change and an environment where females and males at all stages of the life cycle can enjoy their full human rights and develop their full potential as citizens. The policy also mandates the Ministry of Culture, Gender, Entertainment & Sport and other entities to create mechanisms for persons to report and have redress for labour issues involving sexual harassment.

The *Gender Sector Plan of the Vision 2030 National Development Plan* finalized in 2010 specifically identifies sexual harassment as a deterrent to national development. The plan identifies the absence of sexual harassment policy and legislation as a weakness in the economy and education, and stipulates the development of sexual harassment policies in the workplace as an output indicator of the Plan.

Organization's Zero Tolerance Commitment to Sexual Harassment

[Insert name of Organization] is committed to ensuring that men and women are able to work in an environment free of sexual harassment, where safety is ensured, and human dignity is valued and protected. [Insert name of Organization] takes a zero-tolerance approach towards sexual harassment and is committed to ensuring that its environment is free of any such behaviour that constitutes sexual harassment.

Definition of Sexual Harassment

Sexual Harassment shall be defined as any conduct, act or behaviour that constitutes unwanted and unwelcome conduct of a sexual nature by one person toward another. It is recommended that the definition as prescribed by the Sexual Harassment (Protection and Prevention) Act, 2021 is used for the organisation's policy.

Forms of Sexual Harassment

The various forms of sexual harassment include:

Physical harassment– unwanted pinching, patting, touching, kissing, groping, and hugging which has clear sexual undertones.

Verbal harassment– unwelcomed comments on appearance/physical attributes private/personal life, sexually suggestive or explicit jokes, insults and 'put-downs' based on a person's sex. It is important to note that often times, harassers hide behind the argument that comments are "compliments". This does not mean that the behaviour is acceptable.

Non-verbal/Gestural harassment– sexually suggestive gestures e.g. winks, licking of lips, gestures with hands, fingers, legs.

Psychological/Emotional Harassment - consists of persistent proposals and unwelcome requests, unwanted invitations to go out on dates, insults, taunts or innuendos of a sexual nature.

Written/graphic/visual/audio harassment– via internet communication (including electronic messages and attachments), letters, land line telephone, cellular telephones, distribution and display of pornographic materials (visual and audio), obscene and sexually explicit language.

Quid Pro Quo: This form of sexual harassment is recognized where harassers use a position of power and authority to negotiate job benefits (employment, re-employment, continued employment, individual favourable compensation, terms, conditions, promotions, privileges). This also applies to public goods (social services, security, social benefits, natural resources), socially and economically valued goods (housing, school admission, scholarships, security) which are conditional on an exchange of sex or physical contact, and refusal leads to failure to access any of the above.

Stalking/Cyber Stalking– Obsessively following, besetting, contacting and watching a person, either in person or using the internet, telephone, mail, and other media, which is motivated by what the perpetrator believes are feelings of desire and love, constitute sexual harassment.

Voyeurism ("Peeping Tom")– The act of watching, taping, recording, photographing a person without their knowledge, in a clandestine manner or otherwise, while the person uses or inhabits a space where they have an expectation of privacy such as their domicile, a public bathroom, changing room etc., is a sexually harassing act.

Intimidation/Bully/Retaliation–Persons often use non-sexual behaviour to accommodate sexual harassment. Therefore any act of intimidation meant to prevent someone from reporting sexually harassing behaviour or to punish someone for reporting sexually harassing behaviour must be considered as a type of sexual harassment.

NB: Acts or comments of a sexual nature, not intended to harass, can constitute sexual harassment if another person feels uncomfortable with such subjects. Claiming to not understand or failing to know that an act is harassing, does not mean that it is not in fact, sexual harassment.

Toxic Environment– A combination of the above, can create a toxic and oppressive environment for the direct target but also for other persons who are not targeted. Even if a person is not the direct target of sexual harassment but is made uncomfortable and is offended by the creation of a toxic environment, they should be able to make a report of sexual harassment.

Such behaviour is not tolerated and [insert name of organization] shall take reasonable steps to prevent sexual harassment.

This policy shall be effective as of [insert date here].

Responsibility

The following roles and responsibilities will apply under this policy:

[State the role and Responsibility of]

- Management
- Employee
- Human Resource Department
- Welfare Officer/Committee
- Anti-Sexual Harassment Dispute Settlement Committee

Internal Mechanisms

Reporting Procedure

Persons who, understanding the definition of sexual harassment as outlined above, wish to bring forth a claim of sexual harassment against individual/individuals affiliated with [insert name of organization] may do so by:

- 1) Documenting the incident/incidents/conditions in writing.
- 2) Make a report, in writing, to a designated responsible officer.

Once such a report is made, it is the responsibility of the organization and the Responsible Officer to pursue and investigate the claim.

Welfare Officer/Committee

[Insert name of organization] has designated the following person(s) as an officer/officers responsible for accepting and/or preparing reports of sexual harassment.

If the Welfare Officer determines that there is merit to the claim, the Officer may proceed to carry out the set of actions which are in keeping with the internal provisions to treat with the issue. If a mutually agreed upon resolution is achieved, it shall be documented and consensus achieved regarding the treatment of the claim, to the relevant records of the organization (i.e. human resource files, academic records, *etc.*)

If a mutually agreed upon resolution is not achieved or if the Responsible Officer deems it necessary, the report shall be referred to the Sexual Harassment Tribunal which has oversight for sexual harassment matters. The Tribunal shall take all reasonable steps necessary to evaluate the claim of sexual harassment and make a determination of liability or lack thereof of the accused harasser(s).

Anti-Sexual Harassment Dispute Settlement Committee

[Outline how complaints will be dealt with by the Committee]

Protection Against Retaliation

The act of bullying, intimidation and threats which are meant to accommodate sexual harassment or retaliate against an individual/individuals who have made a claim of sexual harassment shall be treated as acts of sexual harassment and shall be treated accordingly. Reference can be made to the Sexual Harassment (Protection and Prevention) Act, 2021.

False Claims

Person/persons, who is/are found to wilfully and knowingly bring forth a false claim of sexual harassment against another individual, shall be liable for a breach of the sexual harassment policy and shall be reprimanded accordingly.

Liability for Harassment/Sanctions

A person/persons who are found to be in breach of this policy shall be found liable for sexual harassment and reprimanded accordingly. To the extent that **[insert name of organization]** failed to enforce this policy it shall be in breach of the policy.

Confidentiality

All claims of sexual harassment shall be documented and thoroughly archived for the purposes of monitoring and evaluation. However, **[insert name of organization]** will endeavour to protect the privacy of all parties involved throughout the course of the investigation. If an individual/individuals are found to be in breach of said policy, the expectation of privacy shall be relaxed to the extent that it is legally permitted.

Legislation

Under present Jamaican law, the Sexual Harassment (Protection & Prevention) Act, 2021 should be used as the instructive legislative framework for this policy and redress for sexual harassment cases shall be applied as outlined in the Act.”.

Amendment of
Second Schedule
(as renamed)

3. In the Second Schedule delete the following –

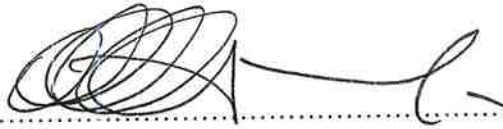
“(Section 11(2))” and substitute therefor “(Section 13(4))”.

Amendment of
Memorandum
of Objects and
Reasons

Delete the first paragraph and substitute therefor the following –

“At present, sexual harassment is not specifically recognized in any existing legislation in Jamaica. However, there is consensus that legislation is necessary to address concerns about sexual harassment which is employment related, occurring in institutions or arising in relation to the provision of accommodation.”.

SIGNATURE OF MEMBERS



Hon. Olivia Grange, CD, MP

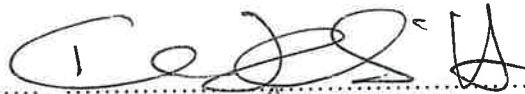


Hon. Delroy Chuck, QC, MP

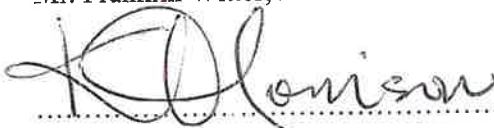
Mr. Lothan Cousins, MP



Mr. Franklin Witter, MP

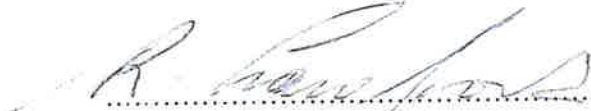


Sen. the Hon. Kamina Johnson Smith



Miss Kerensia Morrison, MP

Sen. Kavan Gayle, CD



Ms. Rhoda Moy Crawford, MP

Sen. Dr. Sapphire Longmore

Ms. Tamika Davis, MP

Sen. Natalie Campbell-Rodriques

Ms. Joyce Denise Daley, MP

Sen. Donna Scott Mottley

Dr. Angela Brown-Burke, MP

Sen. Sophia Frazer-Binns

Mr. Dwight Sibbles, MP

Sen. Gabriela Morris

