



The Cayman Islands Law Reform Commission

Sexual Harassment

Final Report

1st May, 2013

The Cayman Islands Law Reform Commission

Chairman: Mr. Ian Paget-Brown

Members: Cheryll Richards, QC
Mrs. Eileen Nervik
Mr. Kenneth Farrow, QC

Director: Ms. Cheryl Ann Neblett

Legislative Counsel: Mr. José Griffith

Executive Officer: Mrs. Kimberly Allen

Table of Contents

	Page
Acknowledgements	4
Introduction	5
Background	5
Research and Consultation Process	5
<i>Proposals of the Young Business and Professional Women’s Club on Sexual Harassment and Stalking</i>	6
<i>Overview of the Sexual Harassment Issue</i>	6
Recommendations	8
Conclusion	9
Appendix 1- Final Report Sexual Harassment Bill, 2013	10
Appendix 2- Consultation Sexual Harassment, Bill 2012	11
Appendix 3- Response to comments from- The Ministry of Community Affairs, Gender and Housing The Cayman Islands Law Society comments Bishop Nicholas Sykes	12

ACKNOWLEDGEMENTS

The Law Reform Commission extends thanks to all stakeholders and the general public for the valued contribution leading up to the formulation of legislative proposals intended to respond to and provide adequate remedies for acts of sexual harassment.

SEXUAL HARASSMENT

INTRODUCTION

1. The Law Reform Commission (LRC) submits for consideration a Bill entitled “The Sexual Harassment Bill, 2013”. This Bill, reflected in Appendix 1, contains legislative proposals which seek to respond to the issues that touch and concern acts of sexual harassment in the workplace environment and other contexts.

BACKGROUND

2. Following upon the Report of the Special Advisory Committee on Gender Violence in 2008, the then Cabinet issued a directive¹ that the issue of gender violence should be examined by a committee established by the Portfolio of Legal Affairs in consultation with the then Ministry of Health and Human Services. It was instructed that the examination should fall within the parameters of the LRC and address interpersonal and gender-based violence issues such as rape, marital rape, sexual harassment, stalking, domestic violence, incest, child abuse and prostitution.

3. The Report of the Special Advisory Committee on Gender Violence along with the Report prepared by the Young Business and Professional Women’s Club on Sexual Harassment and Stalking was subsequently referred to the LRC in 2009 by the Senior Policy Advisor (Gender Affairs) in the Ministry of Community Affairs, Gender and Housing.

4. In responding to the referral the LRC sought to deal first with the issue of domestic violence. Our research culminated in a Final Report on domestic violence and the subsequent enactment of the Protection From Domestic Violence Law, 2010. This report now seeks to address the issue of sexual harassment.

RESEARCH AND CONSULTATION PROCESS

5. In advancing our research, the LRC treated this project as a legislative drafting project. Generally, our law reform process entails the preparation of an Issue Paper or Consultation/Discussion Paper setting out the LRC’s preliminary suggestions for reform. However, depending on the subject matter and on whether the LRC was provided with research material which it believes fully discusses the pertinent issues, we may opt to formulate a consultation Bill which is guided by the findings of that research. Accordingly, the LRC has opted for this approach in dealing with the sexual harassment issue having had the benefit of reviewing the report of the Young Business and Professional Women’s Club on Sexual Harassment and Stalking.

¹ Extract From Minutes of the Cabinet of the Cayman Islands, Item No 2812 or Meeting No 178/08 on 16th December, 2008 (see para. 4c) and Cabinet Paper by the Honourable Minister of Health and Human Services, 8th April, 2009, (see para. 7).

Proposals of the Young Business and Professional Women's Club on Sexual Harassment and Stalking

6. The primary conclusion which emerged from the Report of the Young Business and Professional Women's Club on Sexual Harassment and Stalking is that there is a need for comprehensive legislation to protect potential victims from sexual harassment. It was recommended that the legislation include the following-

- (i) a test of sexual harassment which combines a subjective test that takes into account the perception of the alleged victim and an objective test which takes into account the perception of a reasonable person;
- (ii) a civil offence of sexual harassment which enables one party to bring an action directly against the alleged perpetrator;
- (iii) remedies which include dismissal of a complaint, power to direct reimbursement of legal fees in bringing an action, directions to stop the offending conduct, compensation for any loss or damage suffered, employer being ordered to take appropriate action and penalties for victimising a complainant; and
- (iv) power to compel information or documents, direct the attendance of witnesses prohibit publication of details of hearings and impose punishment for interruption of proceedings.

Overview of the Sexual Harassment Issue

7. In seeking to give effect to these recommendations, the LRC commenced its review by providing a brief overview of the sexual harassment issue. It was indicated that sexual harassment refers to unwanted and unwelcome conduct of a sexual nature engaged in by a person who directs that conduct to another person.

8. The essential characteristic of the definition is that the conduct is unwelcomed and the sentiments are not reciprocated by the recipient.

9. In our review, we indicated that cultural perceptions, attitudes and justifications for sexual harassment have contributed to a failure to understand and adequately respond to the problem. Consequently, many persons do not know how to report sexual harassment or from whom to seek assistance. As a result, the problem is usually ignored and not enough is done to address it primarily because there is no comprehensive legislation or policy to respond to the issues.

10. Whilst a majority of the victims of sexual harassment conduct are women, men also suffer from sexual harassment by women and it is possible for sexual harassment to occur between members of the same gender. Therefore, it was thought appropriate that legislation which requires a sexual harassment policy and provides appropriate remedies needs to be

formulated in a manner which addresses both male and female victims regardless of the gender of the perpetrator or aggressor.

11. The issue of sexual harassment, the LRC noted, has long been recognised internationally and in recent years has been increasingly viewed as a major international human rights problem. Several developed countries have already enacted legislation to deal with sexual harassment and many of their educational institutions have crafted sexual harassment policies and codes of conduct to address the problem.

12. Regionally, the CARICOM Secretariat has developed model sexual harassment legislation. The model has been adopted by a number of Caribbean jurisdictions. Therefore, by introducing a comprehensive sexual harassment policy and equally comprehensive legislation for the benefit of the Islands, we would be acting in a manner consistent with regional and international legislative trends.

13. The LRC observed that in an effort to protect human dignity and ensure the right of individuals to a safe and non-threatening environment, the Cayman Islands Government enacted the Gender Equality Law, 2011. We however pointed out that this Law dealt only with sexual harassment as it relates to gender discrimination within employment and occupational contexts.

14. However, the LRC is of the view that the Gender Equality Law, though a positive development, is restrictive in nature and does present limitations in light of the broader spectre of the sexual harassment issue. In complementing the recommendations of the Young Business and Professional Women's Club on Sexual Harassment and Stalking we believe that there is also a need for legislation which mandates the formulation of a sexual harassment policy and expands the contexts in which the conduct can occur to include, among other things, educational and other institutions, associations and accommodations.

15. Indications are that some organisations and institutions in the Islands have in place a code or a policy to combat sexual harassment conduct. However, without a national sexual harassment policy or comprehensive legislation requiring the formulation of such a policy, there appears to be no obligation on the part of organisations or institutions to put policies in place or where policies exist, to enforce those policies. It seems necessary therefore to address a sexual harassment policy on a holistic statutory basis.

16. In advancing this process, the LRC prepared for consideration a draft Sexual Harassment Bill, 2012 which was published on 3rd August, 2012 for public consultation (see Appendix 2) and was forwarded to the-

- Hon. Chief Justice;
- Ministry of Community Affairs, Gender and Housing;
- Cayman Islands Law Society;
- Cayman Islands Bar Association;
- Cayman Islands Society of Professional Accountants;
- Society of Trust & Estate Practitioners;
- Cayman Islands Chamber of Commerce;

- Cayman Islands Bankers' Association;
- Cayman Islands Compliance Association;
- Human Rights Commission; and
- Cayman Islands Real Estate Brokers Association

17. The provisions of the Bill are informed by several legislative precedents including the Australian Sex Discrimination Act, 1984, the Bahamian Sexual Offences and Domestic Violence Act, 2006, the CARICOM Model Law on Sexual Harassment, the Belizean Sexual Harassment Act, 2000, the California Civil Code, the Canadian Labour Code and the Sex Discrimination Act, 1975 of the United Kingdom.

18. The consultation period on the Bill expired on 27th September, 2012 by which time we received comments from the Ministry of Community Affairs, Gender and Housing, the Cayman Islands Law Society and Bishop Nicholas Sykes. These comments and the responses of the LRC are reflected in Appendix 3.

19. Following upon the examination of the comments, the LRC revised the Bill to reflect those amendments which were consistent with its objectives to respond to the sexual harassment issue.

RECOMMENDATIONS

20. Accordingly, the LRC recommends for consideration the proposed Sexual Harassment Bill, 2013. The Bill contains legislative proposals which-

- (i) include a definition of sexual harassment;
- (ii) identify the types of conduct that may constitute sexual harassment;
- (iii) require the formulation of policies dealing with sexual harassment conduct in a number of professional relationship settings;
- (iv) provide for sexual harassment complaints to be made to the Gender Equality Tribunal; and
- (v) introduce protective remedies for victims or potential victims who have been or might be exposed to sexual harassment conduct within different interpersonal relationships.

21. As part of the process to give effect to the recommended proposals it will be necessary for consequential amendments to be made to the Gender Equality Law, 2011 to do the following-

- (i) define sexual harassment in accordance with the definition in the proposed Sexual Harassment Bill; and
- (ii) expand the functions of the Gender Equality Tribunal to include the hearing and determination of complaints submitted pursuant to the sexual harassment legislation.

CONCLUSION

22. Sexual harassment presents a social challenge and increased public advocacy might be useful in order to raise awareness about the issues. Persons at different levels have to play a role in the prevention of sexual harassment and protection of victims. It is critical to identify these persons not only at the company or organisational levels, but also at the governmental level. In addition, every member of society has a part to play in helping to create a no-tolerance environment for sexual harassment in all circumstances.

23. The Government can lead the way by implementing policies, legislation and programmes that define the problem and enforcing clear guidelines on preventative and remedial measures. This would help foster a no-tolerance climate for sexual harassment and encourage more persons to be socially responsible while maintaining a safe and conducive professional environment for all.

24. It is equally important that organisations and associations such as family service and counselling organisations and voluntary organisations be instrumental in providing support and services to individuals who experience sexual harassment, especially if the latter are reluctant or afraid to report incidents, or uncertain and confused about their legal rights.

25. The first and critical aspect in this process is the formulation of comprehensive legislation. Accordingly and against the background of the issues identified, the legislative precedents examined and the comments of stakeholders, the Law Reform Commission submits for the consideration of the Hon. Attorney General its Final Report on Sexual Harassment including a draft Sexual Harassment Bill, 2013.

Ian Paget-Brown
Chairman

1st May, 2013

APPENDIX 1

FINAL REPORT SEXUAL HARASSMENT BILL, 2013

APPENDIX 2

CONSULTATION SEXUAL HARASSMENT, BILL 2012

APPENDIX 3

**RESPONSE TO COMMENTS ON THE CONSULTATION
SEXUAL HARASSMENT, BILL 2012**

COMMENTATORS-

THE MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING

THE CAYMAN ISLANDS LAW SOCIETY

BISHOP NICHOLAS SYKES

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
PART 1 - PRELIMINARY		
<p>Interpretation</p> <p>2. In this Law- “employee” includes-</p> <ul style="list-style-type: none"> (a) any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract be oral or written, express or implied, full or part-time; (b) a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off; (c) an apprentice; or (d) a person on employment probation; <p>“employer” includes-</p> <ul style="list-style-type: none"> (a) any person who has entered into or stands ready to enter into a contract of employment with an employee; (b) an agent or representative of the employer; or (c) a supervisor of the employee; <p>“employment” includes part-time and temporary employment and work under a contract of services;</p> <p>“employment agency” means any person who, whether for payment or not, assists another person to find employment or other work or assists employers to find employees or workers;</p> <p>“facilities” includes-</p> <ul style="list-style-type: none"> (a) any place to which members of the public or a section of the public are permitted to enter; (b) accommodation in a hotel, 	<p style="text-align: center;">CAYMAN ISLANDS LAW SOCIETY</p> <p>Whilst "employee" is presently widely defined, it could usefully be expanded in order to specifically include interns.</p> <p>The inclusion of employees on temporary lay-off within the definition may cause some difficulties in that it creates a situation where an employer may be obliged to take action to prevent the continuation of sexual harassment conduct notwithstanding that its perpetrator is not employed by them at that moment in time. The obligations to protect employees from and prevent employees from committing acts of sexual harassment should be limited to periods when employment is current and the employee is thus within the direct control of the employer.</p> <p>The definition of “facilities” may be too wide, in that any place to which a member of the public or a section of the public are permitted to enter might</p>	<p>The amendment has been made to expand the definition of employee.</p> <p>Reference to persons on lay-off has been removed from the definition.</p> <p>The intention of the definition is not necessarily to exclude domestic settings but rather to offer protection to persons who may be exposed to sexual</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>boarding house or other similar establishment;</p> <p>(c) places providing banking, insurance, grants, loans, credit or finance services;</p> <p>(d) places providing education;</p> <p>(e) places providing entertainment, recreation, food or refreshment;</p> <p>(f) places providing transport or travel; and</p> <p>(g) places accommodating any profession or trade;</p> <p>“gender” means the cultural, economic, social, and political characteristics, roles and opportunities through which women and men are socially constructed and valued;</p> <p>“institution” includes places of custody and medical and mental facilities;</p>	<p>arguably encompass any place to which any person at all has access, since each individual person can be viewed as a section of the public. If the intention is to exclude domestic settings from the scope of the Law, this could be achieved by a specific exclusion for dwelling house.</p> <p>BISHOP NICHOLAS SYKES</p> <p>The word "gender" is not remotely interpreted in this law - or in other laws - in this way, nor should it be. In practice, the word "gender", except in very rare instances, is now seen to be a substitute for the word "sex", as is widely displayed in immigration forms and the like. The regular way of responding is to fill in the words male or female. This means, for a start, that to include the words "women" and "men" in the definition of "gender" would be to form a logical circle: if "women" and "men" are included, as here, in a definition statement of "gender", how do you define women and men?</p> <p>It seems that (perhaps in order to avoid the immediate consequences of this obvious circularity) the original framers of this definition made a fundamental change in the direction of subjectivity. So "gender" has now become some variety of <i>social construction</i> - a subjective interpretation - rather than an objective reality. As said before, this law never understands the sex or gender of a person as a variety of social construction, nor should it. The definition should reflect the way the law regards it, i.e it should return to objectivity and move away from a subjective construction</p>	<p>harassment in the various facilities provided. Further domestic settings can also be a place of employment. For example, persons employed as domestic helpers and gardeners would fall under this category. The onus is on the responsible person to ensure that sexual harassment is not condoned within his facility.</p> <p>This definition was adopted from the Gender Equality Law for consistency. However, there is merit in the argument put forward. We have not been able to identify the precedent relied upon by the draftsman of the Gender Equality Law. The actual definition has not been included in any of the Sex Discrimination legislation examined. There has been debate as to whether there is a distinction between use of the words “sex” and “gender” and whether they are synonymous. For purposes of the Sexual Harassment Bill there is perhaps no need to define gender. We have replaced the word “gender” with “sex” in clause 3(3). This would be consistent with the reference to “sex” in the Constitution.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>“landlord” means a person who grants to a person the exclusive right of tenancy of accommodation and includes-</p> <ul style="list-style-type: none"> (a) an agent or a personal or legal representative of, or any other person acting on behalf of, a landlord; (b) a person to whom a landlord assigns a tenancy agreement; (c) a trustee in bankruptcy, liquidator, receiver or committee appointed by any court or by law in respect of the property of a landlord; (d) the purchaser at a judicial sale of the residential premises of a landlord; (e) a chargee of the residential premises of a landlord who acquires title thereto by foreclosure or pursuant to a judicial sale thereof, or who enters into possession of the residential premises, and the assignees of such chargee; and (f) any person who becomes the owner of property on which residential premises are situated, or that consists of residential premises, with respect to which at the time the person becomes the owner there are subsisting tenancy agreements; 	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>The definition of “landlord” seems unnecessarily wide.</p>	<p>This definition is consistent with that which exists in the Residential Tenancies Law.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
PART 2 - PROTECTION FROM SEXUAL HARASSMENT		
<p>Commission of an act of sexual harassment</p> <p>3. (1) A person commits an act of sexual harassment against another person if, having regard to-</p> <ul style="list-style-type: none"> (a) all the circumstances of the case referred to in subsection (3); and (b) the effect upon the person against whom the conduct described in subsection (2) is alleged to have been committed, <p>it is reasonable to conclude that the conduct was directed towards the person alleging sexual harassment and was calculated to-</p> <ul style="list-style-type: none"> (i) offend, humiliate, disrespect or degrade that person; (ii) intimidate, threaten or compel that person by putting him in fear of being placed at a disadvantage or prejudiced if he does not submit to the sexually harassing conduct; or (iii) create a hostile environment for, or violate the dignity of, that person. <p>(2) In this section “sexual harassment” includes conduct which involves-</p> <ul style="list-style-type: none"> (a) making an unwelcome sexual advance towards a person; 	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 3(1)</p> <p>The definition of sexual harassment in the Sexual Harassment Bill appears to have a different and potentially higher standard than the definition of sexual harassment in the Gender Equality Law.</p>	<p>In determining whether sexual harassment has been committed it is our view that emphasis should not be placed on what may have been the intention of the alleged harasser or what was reasonable for him to conclude as result of his conduct as contemplated under the Gender Equality Law and the Australian Sex Discrimination Law. Rather, focus should be placed on the act of sexual harassment and an assessment by the Tribunal of whether it was indeed reasonable for the victim to conclude that he or she was being subjected to sexual harassment. In the Sexual Harassment Bill, to constitute sexual harassment, the Tribunal will look at the circumstances of the victim, the type of conduct engaged in and whether it was reasonable for the victim to conclude that the conduct was directed towards him or her and intended to adversely affect him or her in any of the ways identified. It is the victim who is making the complaint, so he or she bears the burden to satisfy the Tribunal that he or she was sexually harassed. The Bill seeks to apply a reasonable victim test in this regard.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>(b) making an unwelcome request for sexual favours from a person;</p> <p>(c) making an unwelcome sexual comment to a person;</p> <p>(d) making an unwelcome sexual comment about a person in his sight and hearing;</p> <p>(e) making an unwelcome sexual gesture to a person;</p> <p>(f) making unwelcome sexual contact with a person;</p> <p>(g) providing a person with unwelcome sexual images or graphics;</p> <p>(h) providing a person with unwelcome audio of a sexual nature;</p> <p>(i) transmitting unwelcome electronic messages to a person;</p> <p>(j) making unwelcome sexual innuendos to a person;</p> <p>(k) engaging in conduct of a sexual nature knowing that there is a likelihood that the person to whom the conduct is intended to affect will become aware of the conduct;</p> <p>(l) exposing third parties to sexual harassment conduct; or</p> <p>(m) engaging in any other form of unwelcome conduct of a sexual nature.</p> <p>(3) For the purposes of subsection (1), the circumstances to be taken into account include-</p> <p>(a) the gender, age, marital status, sexual preference, religious belief, colour, nationality or ethnicity of the person who has alleged sexual harassment;</p> <p>(b) the relationship between the person alleging sexual harassment and the</p>	<p>BISHOP NICHOLAS SYKES</p> <p>Clause 3 - Commission of an act of sexual harassment.</p> <p>In my view it is very important to be careful, in the drafting, to exclude the possibility of sweeping into the legal definition of "sexual harassment" behaviour which, for example, only "offends", or is "unwelcome" - but does not actually need to be sexual harassment under a normal construction of that concept. If this exclusion is not carefully done, it allows the tribunal members far too much latitude to determine, on a subjective basis, whether any behaviour is sexually harassing or not. Such a lack of determination of their powers is going to lead to injustice at some point.</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Subclause (1) may be considered unduly subjective as it removes the requirement contained in the Gender Equality Law whereby conduct will only amount to sexual harassment in circumstances where it is reasonable for the conduct to have that effect. Inclusion of this phrase may give some comfort that individuals or employers will not be exposed to liability in circumstances where a complainant adopts an unreasonable interpretation of a party's actions.</p> <p>Clause 3(1)(i)-(iii) is not explicitly limited to offending, intimidating, creating a hostile environment etc in the context of unwelcome sexual behaviour. As such, it seems possible that an offence is created when a person, having regard to the factors may offend, intimidate, violate dignity etc with</p>	<p>The legislation does lend itself to some amount subjectivity as do other legislative precedents upon which the Bill was based. The definition of what constitutes sexual harassment under the Bill cannot be examined in isolation. While offensive conduct alone will not amount to sexual harassment, it will reach that level if the conduct was of an unwelcome sexual nature and engaged in because of, for example, the sex of the person or the authority which a person holds. These factors, together with any other relevant circumstances, will be considered by the Tribunal. The intention is to minimise the level of subjectivity in arriving at a decision</p> <p>Clause 3(1) seeks to adopt the reasonable victim test in that the Tribunal would be required to determine whether, having regard to all the circumstances, it was reasonable to conclude that sexual harassment was the intention of the accused.</p> <p>The factors identified in clause 3(1)(i)-(iii) are the end result of actions which may be construed as sexual harassment. They are not intended by themselves to constitute any offence.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>person who is alleged to have engaged in the sexually harassing conduct;</p> <p>(c) any disability of the person alleging sexual harassment; or</p> <p>(d) any other relevant circumstance.</p>	<p>behaviour that is not a sexual harassment. Clause 3(1)(i)-(iii) should explicitly refer to a sexual context.</p> <p>The inclusion of the word “disrespect” in clause 3(1)(i) is extraordinary - it is a colloquialism of indistinct meaning and renders the drafting imprecise, meaning different things to different people. It seems highly unlikely that any type of conduct intended to fall within the scope of the statute would not be covered by the remaining wording of “offend, humiliate or degrade”.</p> <p>BISHOP NICHOLAS SYKES</p> <p>I have been advised that the effect of s.3 (2) is to exclude from the definition of sexual harassment any type of behaviour which does not involve (a) to (m). I hope that this is so and hope also that this either is sufficiently clear or can be made so.</p> <p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 3(2)</p> <p>It would seem that this non-exhaustive list of conduct which is defined as sexual harassment is more prescriptive than the GEL. Further statutory guidance may be useful in clarifying what the SHB covers, but is it also possible (even with subparagraph (m)) that this will limit what is determined to constitute sexual harassment? Perhaps this would be better placed in sexual harassment policies or codes of conduct? Whether or not the SHB includes a list of conduct which is defined as sexual harassment, for the sake of clarity and completeness, a provision should be</p>	<p>Disrespect is defined in the Oxford Dictionary as meaning lack of respect or courtesy. The fact is that words will assume different meanings depending on the perspective of a particular person. Hence, the inclusion of an interpretation section and where that does not clarify the meaning of a word, references to the dictionary. This Bill can be regarded as social legislation and the language used attempts to reflect how society may view or refer to certain actions. It is for the Tribunal to determine whether that view falls within the ambit of the legislation.</p> <p>The intention of clause 3(2) is indeed to exclude the various forms of conduct described in paragraphs (a) to (m) which are not of a sexual nature.</p> <p>The intention behind the list is to identify the various types of conduct as we know them today in order to inform the policies that will require formulation. The list does provide for flexibility by use of the word “includes”. The word “includes” makes it clear that the definition is not exhaustive. The Bill provides for the engagement in any other form of unwelcome conduct of a sexual nature. Use of the words “any form” includes statements. For clarity, the provision could benefit from including the words “directly or indirectly” to address the concern in relation to</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>included to state that <i>conduct of a sexual nature</i> includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.</p> <p>BISHOP NICHOLAS SYKES</p> <p>In clause 3(2) (i) <i>transmitting unwelcome electronic messages to a person</i> should, corresponding to the other parts from (a) to (m), make clear that these would be unwelcome messages of a sexual nature.</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Clause 3(2)(i) refers to transmitting unwelcome electronic messages with no reference to sexual material.</p> <p>Given the “catch-all” provision in section 3(2)(m) of “engaging in any other form of unwelcome conduct of a sexual nature”, it is unclear what the specific examples of sexual harassment conduct in subsections (a) to (l) add to the section. There is an obvious advantage to retaining flexibility in order to adapt to the circumstances of individual cases, and this can be achieved with a simple definition of sexual harassment as "unwanted conduct of a sexual nature" without further elaboration.</p> <p>The list of circumstances to be taken into account in clause 3(3) contain a number of matters (in particular the religious belief, colour, nationality and ethnicity</p>	<p>conduct being directed to the person or in his presence.</p> <p>Agreed. The words of a sexual nature have been included.</p> <p>The words “of a sexual nature” have been included.</p> <p>Legislation should be formulated in a manner which removes any uncertainty as to what is in contemplation. In this instance, the objective is to identify the types of conduct that are likely to amount to sexual harassment while indeed leaving the law open for the inclusion of additional conduct. Hence, the use of the word “includes” and the “catch-all” clause in 3(2)(m).</p> <p>The objective of the legislation is to facilitate the determination of what may be regarded as a subjective concept in an objective manner. As a</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>of the complainant) which do not have any obvious relevance to a proper determination of whether conduct amounts to sexual harassment or not. The inclusion of these criteria import the associated risk of varying levels of protection along racial or faith-based lines, which would be both undesirable and potentially in breach of the provisions of section 16 and 19 of the Cayman Islands Constitution (non-discrimination and rational administrative actions).</p> <p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 3(3) provides a list of circumstances to be taken into account when determining whether a person has committed an act of sexual harassment against another person. In reading a dozen various assessments of the amendments from individuals and entities in the public and private sector, none of the authors comment specifically on this new list of factors. Given this background, we do not see the harm in a non-exhaustive list of considerations. However, we also note the following:</p> <ul style="list-style-type: none"> • its inclusion makes the SHB more prescriptive than the GEL in a similar consideration; • the Cayman Islands does not have the same kind of legislative history regarding anti-discrimination as Australia; 	<p>result there is a need to rely on as many factors as possible before arriving at a conclusion. The factors identified are not intended to be construed in isolation as reasons for determining whether a sexual harassment claim is of merit. The tribunal will certainly have to make a decision which does not offend the Constitution. Considerations based on religion, for example, could be used to determine whether it is felt that because the victim is of Anglican denomination in a Catholic based working environment, the likelihood is that he did receive the sexually harassing message which was intended to offend him. Similar provisions exist in the Australia Sex Discrimination Law and the Human Rights Act. We are not seeking to protect discriminatory actions but rather we are seeking to use the factors to reasonably determine if a remedy is required.</p> <p>The circumstances in the Bill are deliberately non-exhaustive, while Cayman may not share a similar legislative history as Australia, it does not follow that we cannot be informed by the principles. These circumstances are intended to guide the Tribunal in identifying factors which may or may not substantiate a sexual harassment claim.</p> <p>On the issue of reference to disability, it is a concept dealt with in our Constitution in the context of discrimination and it has not been defined. I believe in this instance we can safely rely on the ordinary dictionary meaning of disability which is the lack of ability to do something.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>(4) Any conduct described in subsection (2) shall constitute sexual harassment irrespective of-</p> <p>(a) the method used to convey the conduct; or</p> <p>(b) whether the conduct was committed on a single occasion,</p> <p>even though some or all of the conduct, when viewed in isolation, may appear minor.</p>	<ul style="list-style-type: none"> • “disability” is not defined in the SHB as it is in the Australian SDA; and • we do not have a law focused on preventing discrimination on the basis of disability to reference for a definition of “disability”, though it is our understanding that a Legal Subcommittee for Persons with Disabilities was working on one in 2009. <p>BISHOP NICHOLAS SYKES</p> <p>In clause 3(4) should not this be left to the judgement of the Tribunal?</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Section 3(4)(b) states that harassment can occur irrespective of whether "the conduct was committed on a single occasion". This is a high benchmark and does not sit neatly alongside section 6 of the Bill which states that an employer is "only" liable if he became aware or suspected a breach and then failed to take "reasonable steps" to correct the situation. In the UK (in the employment context), there is no harassment "unless A knows that B has been harassed in the course of B's employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion."</p> <p>The concluding phrase in clause 3(4), ". ..even though some of the conduct, when viewed in isolation, may appear minor should be deleted. Given</p>	<p>The intention is to make it clear that as a matter of law the method relied upon to engage in the conduct or the number of times the conduct has been engaged in, is irrelevant in determining whether the act of sexual harassment has been committed.</p> <p>The objective is to make the party liable for the act of sexual harassment irrespective of however many times it occurred. We do not agree with the UK provision. If the employer becomes aware of sexual harassment on the first occasion, then effort should be made to deal with it in accordance with the Law.</p> <p>This is the intention. The provision seeks to make it clear that a singular act of sexual harassment is not a minor occurrence. If the accused touches the hand of</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>the potential liability under the legislation, surely it cannot be correct that someone might be liable "if all of the conduct...may appear minor".</p> <p>On balance, we would suggest reverting to a simpler definition of sexual harassment akin to that utilised in section 7(3) of the Gender Equality Law, which would be easier to both understand and more straightforward to apply.</p>	<p>the victim and it is felt that it is done in a sexually harassing manner, then it should be accorded serious legislative treatment. The objective is to prevent escalation and serve as a deterrent.</p> <p>Legislation should be formulated in simple and clear language, however, at the same time it should be formulated in manner that removes doubt and addresses all possible scenarios. It should seek to provide guidance on the factors that must be considered in determining whether an offence is properly constituted. We believe that the GEL does not adequately achieve this objective for the contemplated scenarios and there is a likelihood that in the application of the GEL the factors articulated in the Bill will be considered by the Tribunal in arriving at a determination. The difference with this Bill is that we have sought to expressly mention the factors that may have to be considered.</p>
<p>Employer and employee obligations</p> <p>4. (1) An employer shall not sexually harass-</p> <ul style="list-style-type: none"> (a) a person whom he employs; (b) a prospective employee; or (c) a third party. <p>(2) An employee shall not sexually harass-</p> <ul style="list-style-type: none"> (a) a fellow employee; (b) a prospective employee; (c) his employer; or (d) a third party. 	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Although the approach adopted in the Bill is clearly intended to limit actionable sexual harassment to certain defined relationships, the drafting of section 4 may create an anomaly in this regard. The definition of "third party" is ambiguous, in that "any person who by virtue of his professional relationship with or connection to another person could potentially be exposed to sexual harassment conduct could be said to include parties that are encountered outside of the employment context. The effect of section 4 may therefore be to render actionable acts of sexual harassment by anyone who is an employer or employees, irrespective of whether that harassment has anything to do with the employment.</p>	<p>The intent of this provision is to ensure that persons who provide services to an employer other than the employee or persons who have cause to be in the employer's place of business are protected from sexual harassment. However, the words "course of employment" have been included for clarity.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>Sexual harassment policy statement and contents</p> <p>7. (1) Every employer shall-</p> <p>(a) formulate a policy statement concerning sexual harassment in the workplace; and</p> <p>(b) bring the policy statement to the attention of each person under his direction.</p> <p>(2) A policy statement required under subsection (1) shall include-</p> <p>(a) a definition of sexual harassment that is in accordance with section 3 of this Law;</p> <p>(b) content indicating that every employee is entitled to employment free from sexual harassment;</p> <p>(c) content indicating how the employer will deal with the sexual harassment conduct of his employee where it is directed towards a fellow employee or a third party;</p> <p>(d) content indicating that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee or third party to sexual harassment;</p> <p>(e) content explaining how complaints of sexual harassment may be brought to the attention of the employer; and</p> <p>(f) content indicating that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 7</p> <p>It is unclear whether the policies required to be formulated in accordance with the SHB can be combined into one general sexual harassment policy if an entity by virtue of its status falls into multiple categories under the SHB. It is assumed that these entities can either formulate one policy or multiple policies and that an educational institution may choose to follow a policy issued by an authority while formulating its own policy for workplace sexual harassment.</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Does every employer, no matter how few employees, have to have written policies and procedures?</p>	<p>The proposals require employers to formulate a sexual harassment policy which is consistent with the provisions stipulated in the Law. All other institutions, to the extent that they are not employers, are required to formulate a sexual harassment policy which contains the core elements of the law. In those instances, the provisions provide for such a stipulation. The critical element to be borne in mind is that a sexual harassment policy must contain, at minimum, the elements contained in the Law.</p> <p>The provision seeks to protect persons within the employment setting. Therefore, policies and procedures will be required irrespective of number.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>for the purposes of investigating the complaint or taking disciplinary measures.</p> <p>(3) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.</p>		
<p>Denial of employment benefits and opportunities</p> <p>8. An employer shall be held liable for sexual harassment if he refuses to provide an employee with any employment benefits because of that employee's refusal to submit to sexual harassment.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 8</p> <p>It is unclear whether this clause refers to an employee having refused to submit to sexual harassment by the employer; by any other person; or by the employer and/or any other person. The reference to "shall be held liable for sexual harassment" would imply that it refers to the second scenario. If that is the intention of the clause, for clarity it would be useful to state here "...to submit to sexual harassment conduct of another agent, supervisor, representative, employee or third party".</p> <p>That being said, if an employer refuses to provide an employee with any benefits because of his or her refusal to submit to sexual harassment, ipso facto the employer is aware of the sexual harassment and is presumably not taking reasonable steps to prevent the continuation of the conduct. Therefore, the employer would already be liable for the sexual harassment conduct under clause 6.</p>	<p>This clause has been deleted and a provision formulated to address the victimisation and adverse action in one provision in order to avoid repetition. This is reflected in clause 18.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>In circumstances where benefits are withheld by reason of a refusal to submit to sexual harassment, sexual harassment must by definition be present as a condition precedent. This being the case, it is unclear why section 8 is necessary, as in the situation described the employer would already have themselves committed either an act of sexual harassment and/or an offence under section 6 by reason of their failure to take reasonable steps to prevent its continuation. There is also a strong likelihood that an employer would also be in breach of contract in doing so. This section does not make sense and needs clarification.</p>	<p>This clause along with clause 9 has been deleted since their import is already captured in clause 21.</p>
<p>Prohibition against adverse action when proceedings instituted</p> <p>9. (1) An employer shall not engage in any action which adversely affects an employee who has rejected the employer's sexual harassment conduct and who pursuant to this Law has-</p> <ul style="list-style-type: none"> (a) made a sexual harassment complaint; (b) instituted sexual harassment proceedings; (c) given testimony in sexual harassment proceedings; and (d) collaborated or participated in any investigation, procedure or hearing involving sexual harassment conduct. <p>(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 9</p> <p>This clause refers only to an employer engaging in these actions against an employee. The GEL, on the other hand, makes it an offence for any person to engage in such actions against any other person. As another employee or other person may also engage in these actions (either on behalf of the employer or not) and may engage in these actions to adversely affect a person other than an employee (e.g. a third party witness) it would be more appropriate to prohibit such conduct from any person (not just an employer) directed toward any other person (not just an employee) in the SHB.</p>	<p>This was intentional since our objective is to place emphasis on the employer/employee situation. However, we believe making the provision of broader application would be more beneficial.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>imprisonment for a term of one year or both.</p>	<p>The SHB protects only employees who have already taken some action on a complaint not employees who are suspected of having taken action or may take such action.</p> <p>The SHB refers only to actions which adversely affect an employee, not to threats of such action. The GEL, on the other hand, makes it an offence for any person to threaten such action.</p>	<p>The Bill has been amended to address this concern in clause 18.</p> <p>The Bill has been amended to address this concern in clause 18.</p>
<p>Institutions</p> <p>10. (1) A person who is in charge of an institution shall-</p> <p>(a) formulate a policy in accordance with this Law against sexual harassment of inmates, wards or patients of that institution; and</p> <p>(b) bring the contents of the policy to the attention of each person who is directed by him.</p> <p>(2) A person who is a member of staff of an institution shall not sexually harass a person who is an inmate, ward or patient at that institution or who is seeking admission to that institution.</p> <p>(3) An inmate, ward or patient of an institution shall not sexually harass a member of staff of that institution.</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>There should be a reasonableness provision in notifying wards, patients etc. For example, how would you prove that you have brought policy to attention of a severely mentally deficient patient?</p>	<p>The provision has been amended to require the person in charge to publish the policy in a manner in which it can be brought to the attention of all employees.</p>
<p>Educational institutions</p> <p>11. (1) A person who is in charge of an educational institution or the relevant educational authority shall-</p> <p>(a) formulate a policy in accordance with this Law against sexual harassment; and</p> <p>(b) bring the contents of the policy to the</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>On a strict construction, because educational institutions include all facilities at which education is provided, the Bill as drafted would require the contents of the sexual harassment policy to be drawn to the attention of children attending a kindergarten class. A kindergarten falls within the definition of "educational institution" and its pupils are within the</p>	<p>A definition of student has been included to mean a person who has attained the age of eighteen.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>attention of each person for whom he or it is responsible.</p> <p>(2) A person who is a member of staff of an educational institution shall not sexually harass-</p> <p>(a) a person who is a student at the educational institution; or</p> <p>(b) a person who is seeking to become a student at the educational institution.</p> <p>(3) A person who is a student at an educational institution shall not sexually harass-</p> <p>(a) another a student at that educational institution; or</p> <p>(b) a member of the staff of that educational institution.</p>	<p>definition of persons for whom the person in charge of that kindergarten is responsible. The same would hold true for very young children at elementary school. Although this is a difficult and sensitive issue, consideration should be given to providing for a minimum age below which pupils need not be informed of the contents of the policy.</p>	
<p>Vocational training bodies</p> <p>12. A person who or an employee of a relevant educational authority which provides facilities for vocational training in order to assist another person to become fit for employment, shall not subject that person to sexual harassment.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 12</p> <p>For consistency in the legislative framework, it would be useful for the Sexual Harassment Bill and the GEL to use the same language when referring to similar things. In the description of a vocational training body, the GEL states in section 11 “A person or educational authority recognised as providing facilities for training for employment...” whereas the SHB states in clause 12 “A person who or an employee of a relevant educational authority which provides facilities for vocational training in order to assist another person to become fit for</p>	<p>The intention of the provision in the SHB is to attach liability to a person who provides vocational training in the first instance and to an employee of an educational authority. Educational authority is defined to include “body” and in the Interpretation Law person includes body. In this instance, we now wish to target the employees in the educational authority.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	employment...”.	
<p>Associations</p> <p>14. A member of an association shall not sexually harass another member of that association or a person seeking to become a member of that association.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 14</p> <p>As the term “association” is only used in clause 14, it would be in keeping with the drafting style to define the term here in clause 14 instead of in clause 2. (We are not sure if there is a movement toward moving all definitions to the interpretation clause? If so, clauses 3(2), 13(2) and 40(6) all include definitions of terms in those clauses.)</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>This section seems to be too widely drawn. As drafted section 14 prohibits sexual harassment by one member of another because they belong to the same association. Either you regulate all conduct between the sexes or you relate it to the abuse of power and the workplace.</p>	<p>The definition of association has been placed in the interpretation clause.</p> <p>The intention of the provision is to regulate conduct between the members of the same organisation. The provision achieves this objective by seeking to focus on those relationships outside of the normal employer/employee situation.</p>
<p>Organisations</p> <p>15. A member of an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession, trade or activity for the purposes of which the organisation exists shall not subject to sexual harassment any person who-</p> <p>(a) is a member of that organisation; or</p> <p>(b) has applied for membership of that organisation.</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>If by coincidence the two persons involved are members of the same union the Law bites. If members of different unions it does not.</p>	<p>The intention of the provision is to regulate conduct between the members of the same organisation.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>Goods, services and facilities</p> <p>17. A person who provides goods, services or facilities for the benefit of the public or a section of the public shall not subject the intended recipient of those goods, services or facilities to sexual harassment-</p> <ul style="list-style-type: none"> (a) in the course of providing or offering to provide those goods, services or facilities; or (b) in circumstances where he is seeking to benefit from those goods, facilities or services. 	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 17</p> <p>We are unclear on the reason for the difference between clause 17 of the SHB and section 13 of the GEL. The SHB refers to “a person who provides goods, services or facilities for the benefit of the public or a section of the public” whereas the GEL refers to “a person who, whether for payment or not, provides goods and services or makes facilities available”. The provision in the GEL would seem to capture a wider range of persons than the provision in the SHB.</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>It is unclear what is intended by this section.</p>	<p>Use of the words “whether for payment or not” do not necessarily make the provision wider. The focus of the SHB is the provision of goods and not if payment is attached to that provision. It is implied that provision of goods or services in any form and in accordance with any terms will be captured.</p> <p>This provision seeks to regulate relations between for example the consumer and supplier. That is, the supplier of goods shall not sexually harass the consumer during the course of the provision of those goods.</p>
<p>Accommodation</p> <p>18. (1) A landlord shall not subject his tenant to sexual harassment. (2) A tenant shall not subject his landlord to sexual harassment.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 18</p> <p>As the terms “landlord” and “tenant” are only used in clause 18 it should be placed in the interpretation section.</p>	<p>The definition has been placed in the interpretation clause.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>Sexual harassment complaint to the Tribunal</p> <p>20. A person who considers that he is, or has been, subjected to sexual harassment conduct in a manner described under this Law may make a complaint to the Sexual Harassment Tribunal in accordance with section 34.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 20</p> <p>This clause seems unnecessary. (Complaints are addressed in clause 34 and the term “complaint” is defined in clause 2 for interpretation of clauses 21 and 22).</p>	<p>This clause has been deleted and its revised provisions are reflected in clause 20.</p>
<p>Victimisation as a result of a complaint</p> <p>21. (1) A person shall not subject or threaten to subject another person to any detriment-</p> <p>(a) on the ground that the second-mentioned person-</p> <p>(i) has made, or proposes to make, a complaint under this Law;</p> <p>(ii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under this Law;</p> <p>(iii) proposes to provide evidence or testimony as a witness in proceedings under this Law; or</p> <p>(iv) has made in good faith an allegation that a person has engaged in conduct prohibited under this Law; or</p> <p>(b) on the ground that the first-mentioned person believes that the second-mentioned person has done, or proposes to do, an act or thing referred to in paragraph (a)(i) to (iv).</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 21</p> <p>It seems that this clause would cover all adverse actions referred to in clause 9 and that clause 9 could be deleted entirely.</p>	<p>This clause has been deleted and its revised provisions are reflected in clause 18.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year or both.</p>		
<p>Penalty for false complaint</p> <p>22. A person who, in the opinion of the Tribunal makes a false, vexatious or frivolous complaint against another person for an alleged contravention of any provision of this Law commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 22</p> <p>It would seem that this clause would be better placed in Part 3. Also, as the penalty is quite high it may be more appropriate to limit this to a person who “knowingly makes a false, vexatious or frivolous complaint” to require <i>mens rea</i> in order for the action to constitute an offence.</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Section 22 of the Bill (Penalty for false complaint) would benefit from the insertion of the word "wilfully" prior to "false".</p>	<p>This provision has been placed in clause 21 of Part 3. The word knowingly will be included however it must be borne in mind that it is ultimately left to the Tribunal to determine whether there was any mal-intent on the part of the complainant.</p> <p>The amendment has been made and is reflected in clause 21.</p>
<p>Pressure to engage in sexual harassment</p> <p>23. (1) A person shall not induce or attempt to induce another person to engage in sexual harassment conduct by-</p> <p>(a) providing or offering to provide that other person with any benefit; or</p> <p>(b) subjecting or threatening to subject that other person to any detriment.</p> <p>(2) A person who contravenes subsection (1) commits an offence and is liable on summary</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 23</p> <p>The parallel provision in the GEL (pressure to discriminate) also includes the following clarification in section 21(2): “An offer or threat is not prevented from falling within subsection (1), because it is not made directly to the person in question, if it is made</p>	<p>The amendment has been reflected in clause 19.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
conviction to a fine of five thousand dollars or imprisonment for term of one year or to both.	in such a way that the person is likely to hear it or hear of it.” If the SHB also included this clarification it would strengthen the clause.	
PART 3 – SEXUAL HARASSMENT TRIBUNAL		
<p>Establishment of Tribunal</p> <p>24. There is established the Sexual Harassment Tribunal for the purpose of hearing complaints under this Law.</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Given that the Gender Equality Law has already established a tribunal with a connected remit, similar jurisdiction and identical qualifications for membership, it may be appropriate to consider combining the two bodies, not only for the sake of reducing costs and administrative convenience, but also in order to create a simpler system which will be easier to understand for potential complainants under both Laws. This might well involve an expansion in membership to accommodate the increased workload for the single body, but this might in itself prove beneficial in terms of improved availability for tribunal members.</p>	<p>We are cognisant of the financial implications attached to the establishment of a sexual harassment tribunal. The proposals however seek to give effect to the recommendations of the Young Business and Professional Women Task Force on sexual harassment and it was therefore felt that in spite of the GEL Tribunal and the similarities with the proposed sexual harassment tribunal, we should hold true to the fact that this legislation is separate from the GEL and in fact seeks to expand those provisions of the GEL which deal with sexual harassment. We have however made the appropriate amendments in Part 3 in order for sexual harassment complaints to be made to the Gender Equality Tribunal.</p>
<p>Composition of Tribunal</p> <p>27. (1) Subject to subsections (2) and (3) and to section 28, the Tribunal shall comprise five members, who shall be appointed by the Governor in Cabinet on such terms and conditions as the Governor in Cabinet may specify in the members’ instruments of appointment.</p> <p>(2) The members of the Tribunal shall be-</p>	<p>BISHOP NICHOLAS SYKES</p> <p>Clause 27</p> <p>Under the provisions of part 3 a situation could arise in which the Tribunal could operate without its chairperson and therefore perhaps without an attorney-at-law. Since the Tribunal is acting as a mini-court, it would be advisable for an attorney-at-</p>	<p>The issue of an attorney not being present during deliberations will not arise given that a properly constituted Tribunal requires an attorney to act as Chairman. If no Attorney is appointed then the Tribunal cannot execute its functions in its legal</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>(a) an attorney-at-law who shall be the chairperson; and</p> <p>(b) four other persons each of whom has experience and qualifications in any of the following or related fields-</p> <ul style="list-style-type: none"> (i) gender relations; (ii) social development; (iii) human rights; or (iv) employment. 	<p>law always to be present when a case is being determined. This should be provided for in the law.</p> <p>However, I am not, out of concern for justice, favourably inclined towards increasing the number of tribunals that are not in some way descended from or carefully integrated with the judicial system. I hope this issue might be looked into carefully.</p>	<p>capacity.</p>
<p>Complaint to Tribunal</p> <p>34. (1) A person who believes that he is being, or has been, subjected to sexual harassment may, in the form approved by the Tribunal, file a complaint with the Tribunal indicating that he has been sexually harassed within the meaning of section 3 of this Law.</p> <p>(2) A person who has reasonable grounds for believing that another person is engaging or has engaged in sexual harassment conduct contrary to this Law may, in the form approved by the Tribunal, file a complaint with the Tribunal.</p> <p>(3) On receiving a complaint under subsection (1) or (2), the Tribunal shall-</p> <ul style="list-style-type: none"> (a) record the complaint and provide the complainant and the respondent with a copy of that record signed by the person receiving the complaint; (b) carry out investigations in relation to the alleged conduct; (c) request information from any person and make such inquiries as it thinks fit; (d) rely on any means it considers reasonable to resolve a complaint; 	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 34</p> <p>Subsections (1) and (2) are very similar; it would be clearer to delete subsection (1) and allow subsection (2) to stand alone. If an individual believes he or she has been subjected to sexual harassment, then ipso facto he or she believes another person has engaged in sexual harassment.</p>	<p>Sub-clause (1) seeks to make the victim the subject, whereas sub-clause (2) deals with a situation where a third party is aware of sexual harassment being directed to another person. The provision has the effect of being a whistle blower provision and is intended to protect persons who may be fearful of making a complaint. In the end however the victim will have to give testimony in the interest of due process.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>(e) furnish to the complainant and the respondent a prescribed statement setting out the procedures that will be followed in relation to the complaint and the rights of the complainant; and</p> <p>(f) adjourn an inquiry at any stage to enable the complainant and respondent to arrive at an amicable resolution.</p> <p>(4) A complaint shall be made within six months from the date on which the alleged sexual harassment was conducted.</p> <p>(5) The Tribunal may accept a complaint made after expiration of the six months period if it considers the reasons for the delay to be reasonable.</p> <p>(6) The Tribunal may, adopt such procedures and systems as it considers appropriate in the circumstances to determine a particular complaint.</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>There should be an outside discretionary cut off point for complaints.</p>	<p>It is felt that the tribunal should be left to exercise its discretion based on the circumstances of the case.</p>
<p>Complaint particulars not to be communicated</p> <p>35. (1) Where a complaint has been made under section 34, no member of the Tribunal or any other person having any official duty or being employed to administer this Law shall, unless the Tribunal permits, divulge or communicate to any other person, any particulars of that complaint.</p> <p>(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for a term of one year or both.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 35</p> <p>This clause appears to have considerable overlap with clause 40 (Confidentiality), though this clause specifically extends to “any other person having any official duty or being employed to administer this Law” and the penalty here includes one year imprisonment. Would it be more succinct and appropriate to extend clause 40 (specifically 40(1) and 40(3)) also to “any other person having any official duty or being employed to administer this Law” and add the custodial penalty to clause 40(2)?</p>	<p>The provision has been reformulated and is reflected in clause 26.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>Discontinuation of investigation</p> <p>36. (1) The Tribunal may decide against pursuing an investigation or discontinue an investigation where-</p> <p>(a) it reasonably believes that the complainant does not wish that the inquiry be made or continued; or</p> <p>(b) it is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.</p> <p>(2) Where the Tribunal decides against pursuing or decides to discontinue an investigation in relation to a complaint, it shall, within fourteen days of that decision, provide the complainant with notice in writing and the reasons for the decision.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 36</p> <p>It is unclear whether the notice referred to in clause 36(2) relates only to the investigation or if that decision also closes the complaint for no further action by the Tribunal.</p> <p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Where the Tribunal is charged with an investigative function, it may be considered inappropriate to permit it to discontinue an investigation or, more importantly, to decide not to pursue an investigation at all, because it forms a preliminary view that the complaint is misconceived.</p>	<p>Any notice given by the Tribunal in relation to pursuit of an investigation or its discontinuation will effectively bring the issue to an end with no further action. For clarity the word “pursuing” has been changed to “commencing”. See clause 23.</p> <p>The provision has been amended to stipulate that the Tribunal may decide against commencing an investigation or discontinue an investigation where it reasonably believes that the complainant does not wish that the inquiry be made or continued</p>
<p>Hearing of complaint</p> <p>37. (1) Where the Tribunal decides to hear and determine a complaint, the Tribunal shall give a written notice of the complaint and the date, time and place of the hearing to the parties to the complaint.</p> <p>(2) Where a complaint is made by a person other than the individual who is alleged to be the victim of the sexual harassment, the Tribunal shall refuse to deal with the complaint unless it is satisfied that the alleged victim consented to the intervention of the other person.</p> <p>(3) Where the Tribunal decides not to hear and determine a complaint, the Tribunal shall provide the</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 37</p> <p>In subsection (2) it is unclear whether the alleged victim has to explicitly consent to the submission of the complaint to the Tribunal, or if it is sufficient for the alleged victim to have given some form of consent for the complainant to intervene in some capacity.</p>	<p>The intention is that the Tribunal has to be satisfied that the victim has given consent to a third party to intervene on his behalf.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>complainant with written notice setting out the reason for its decision.</p> <p>(4) For the purpose of discharging the functions of the Tribunal under this Law, the Tribunal shall, as is reasonably required, have the power to-</p> <p>(a) compel the production of documents or any other information or thing from any person who the Tribunal has reasonable grounds to believe can assist in determining whether sexual harassment conduct has been committed;</p> <p>(b) issue summonses to compel the attendance of witnesses at the hearing; and</p> <p>(c) examine witnesses on oath, affirmation or otherwise at the hearing.</p> <p>(5) The Tribunal on receiving a document pursuant to subsection (4)(a)-</p> <p>(a) may take possession and make copies of, or take extracts from, the document;</p> <p>(b) may retain possession of the document for such period as is necessary for the purposes of the inquiry to which the documents relate; and</p> <p>(c) during the period under paragraph (b), shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Tribunal, to inspect at all reasonable times such documents as that person would be entitled to inspect.</p> <p>(6) A summons issued by the Tribunal under this section shall be under the hand of the</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>What happens to documents and copies and practically how are they to be kept safe and for what period?</p> <p>Clause 37(4) provides for the power to compel production of documents. There is no provision for the right of a holder of confidential information or documents to object to such production, or to appeal an overly broad production order.</p> <p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Subsection (5)(c) seems to place an unnecessary burden on the Tribunal. Would it not be more appropriate for the Tribunal to make a certified copy of each document that is received pursuant to subsection (4)(a) and return the originals?</p>	<p>The Bill provides for confidentiality. Therefore, where the Tribunal determines that copies should be made of a document, it is incumbent on the Tribunal to ensure that the documents are either destroyed or stored safely. Where the documents are original documents, then such documents are to be returned after the investigation has concluded. The Tribunal has the power to retain documents for as long as is necessary. Where the confidentiality provisions are breached, then the person in breach will be subject to sanctions under the legislation.</p> <p>The appeal provision has been amended to allow for a party to appeal any power exercised by the Tribunal.</p> <p>Subclause (5)(a) already allows the Tribunal to make copies of or take extracts from a document.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>chairperson.</p> <p>(7) A person who-</p> <ul style="list-style-type: none"> (a) fails without reasonable excuse to comply with a requirement or a summons under subsection (4); (b) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (4); or (c) hinders, obstructs, prevents or interferes with the Tribunal in the exercise of a power under this section; (d) directs insulting language towards the Tribunal when the Tribunal is exercising any powers or performing any functions under this Law; or (e) furnishes to the Tribunal any information or makes a statement at an inquiry knowing that the information or statement is false or misleading, <p>commits an offence and is liable on summary conviction to a fine of five thousand dollars.</p> <p>(8) A party to a matter before the Tribunal under this section shall be entitled to appear at the hearing and may be represented by an attorney-at-law or any other person who in the opinion of the Tribunal is competent to assist the person in the presentation of the matter.</p> <p>(9) The Tribunal shall give the complainant and the respondent a reasonable opportunity to call witnesses, present evidence, examine and cross-examine witnesses and make submissions to the Tribunal.</p> <p>(10) The Tribunal may order a party to pay the legal fees and any other costs of the other party where it believes that it is just and fair to do so.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>We wondered if the offence provided for in subsection (7)(d) would be considered reasonably justifiable or if it would hinder freedom of expression granted in the Bill of Rights?</p> <p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Subsection (10) would be better placed within clause 38, as it relates to the findings, not the hearing.</p>	<p>The right of freedom of expression is not an absolute right and as such legislation can restrict the freedom in the interest of public order. In the provision, it is an offence to use insulting language during tribunal proceedings. This can be viewed as reasonable in light of the need to ensure order and respect during the conduct of tribunal proceedings.</p> <p>The provision has been placed in the revised clause 24.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>The provisions as to costs in clause 37(10) pose some difficulty in that, because they do not refer to the “standard basis” costs regime applicable in most cases where awards are made by the Grand Court, they are likely to amount to full indemnity awards. This might expose a party, whether complainant or respondent, to extremely significant costs consequences in the event that a decision of the Tribunal goes against them. This might in turn deter complainants from litigating genuine complaints, or enable a party with access to significant financial or legal resources to exert very significant pressure on an opponent by running up costs in order to increase financial risk.</p> <p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>The variance across the penalties seems reasonable except for the provision for offences under clauses 37(7) which relate in part to interference with the resolution of a complaint and the Tribunal’s powers and failure to comply with an order of the Tribunal. Is there a reason that these two clauses do not provide the option for a custodial sentence?</p>	<p>Given the seriousness of sexual harassment conduct, it is felt that a victim should be mindful of the consequences when making frivolous and vexatious claims. If such claims are made, justice requires that the affected party receive some form of compensation for the damage inflicted as a result of the false claims. We agree that such costs may not be in line with Grand Court rules however this does not preclude the Tribunal from referring to all sources in order to arrive at fair compensation. At the same time however, a limitation should be placed on costs. Hence, a maximum limit of ten thousand dollars has been stipulated.</p> <p>These provisions are similar to those in the Gender Equality Law and as such seek to follow the non-custodial approach to the penalties. However, we do believe that given the seriousness of the breaches, custodial sentences should also be introduced</p>
<p>Findings of Tribunal</p> <p>38. (1) Where after a hearing under section 37, the Tribunal finds that-</p> <p>(a) the complainant’s allegations are substantiated, the Tribunal shall notify the complainant and the respondent in writing of its findings and make an appropriate order; or</p>	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>Whilst the penal provisions of section 38(1) in relation to the payment of the costs of frivolous or vexatious complaints are sensible, it may be preferable to word this as a discretion rather than a mandatory consequence in order to preserve the ability to take a different course in an appropriate case.</p>	<p>Clause 24 has been reformulated to give effect to this recommendation.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>(b) the complaint is frivolous or vexatious the Tribunal shall, in writing, notify the complainant and the respondent and order the complainant to pay the costs incurred by the Tribunal and those of the respondent.</p> <p>(2) The Tribunal pursuant to subsection (1)(a) may make any one or more of the following orders-</p> <p>(a) that the respondent not repeat or continue the sexual harassment conduct;</p> <p>(b) that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;</p> <p>(c) that the respondent shall pay damages to the complainant by way of compensation not exceeding twenty thousand dollars for any loss or damage suffered by reason of the conduct of the respondent;</p> <p>(d) that where the complaint relates to sexual harassment by a fellow employee, that the employer shall take appropriate action to ensure that the sexual harassment ceases;</p> <p>(e) that it would be inappropriate for any further action to be taken in the matter; or</p> <p>(f) any other order or declaration as may be appropriate having regard to all circumstances surrounding the complaint.</p> <p>(3) Where the Tribunal makes an order for the payment of compensation to a complainant the sum payable may be recovered by the complainant in</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 38</p> <p>Compensation that may be ordered under clause 38(2)(c) is referred to as “damages” and, though this is not qualified as being “material damages”, we query whether or not this may limit compensation to be equal to the amount of quantifiable damage or loss that the Tribunal determines was suffered by the victim? The GEL seemingly appears to allow a broader use of a compensation order under section 35(a)(ii) to include punitive considerations in determining the amount ordered. This clause does not address what the Tribunal may do if a complaint is not substantiated and not found to be frivolous or vexatious. What if a complaint is found to be false, incorrect or unsubstantiated?</p> <p>The variance across the penalties seems reasonable except for the provision for offences under clauses 38(4), which relate in part to interference with the resolution of a complaint and the Tribunal’s powers and failure to comply with an order of the Tribunal. Is there a reason that these two clauses do not provide the option for a custodial sentence?</p>	<p>Under clause 24 it is an offence to make a false, frivolous or vexatious claim. In instances where a complaint is unsubstantiated the Tribunal may decide not to pursue any further action and order that the complainant pay the just costs of the respondent.</p> <p>These provisions are similar to those in the Gender Equality Law and as such seek to follow the same non-custodial approach to the penalties. We however do believe that given the seriousness of the breaches, custodial sentences should also be introduced.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>court as a civil debt.</p> <p>(4) A person who fails to comply with an order of the Tribunal given pursuant to subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars.</p>		
<p>Agreement</p> <p>39. If at any stage after the filing of a sexual harassment complaint and before the commencement of a hearing by the Tribunal, an agreement is made between the complainant and respondent, they shall notify the Tribunal, in writing, of the terms of the agreement.</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 39</p> <p>This provision may refer simply to a “complaint”, as that term is defined in clause 2.</p> <p>If an agreement is reached and communicated to the Tribunal, what does the Tribunal do then? Should the written notification include a request from both parties to withdraw the complaint? Can the SHT take an action on the agreement itself, e.g. sanction or reject it? What happens if an agreement is made between the complainant and the respondent after the commencement of a hearing? Does the Tribunal still have to issue its own findings? Can it consider any agreement in its decision and/or in its orders?</p>	<p>The provision has been amended to reflect that where an agreement is made between the complainant and respondent, they shall notify the Tribunal, in writing, of the terms of the agreement and the Tribunal may permit the complaint to be resolved in accordance with the terms of the agreement and request that the complainant, in writing, confirm his or her withdrawal of the complaint.</p>
<p>Confidentiality</p> <p>40. (3) A person who is, or has at any time been a member, shall not be required except where it is necessary to do so for the purposes of this Law-</p> <p>(a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the member as a result of his office; or</p> <p>(b) to produce in a court a</p>	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>Clause 40</p> <p>Would it be better for subsection (5) to follow subsection (3) directly?</p>	<p>This provision has been amended and is reflected in clause 26.</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
<p>document relating to the affairs of another person of which the member has custody, or to which he has access, as a result of his office.</p> <p>(5) Subsection (3) shall not prevent a person from being required, for the purposes of or under a Law, to divulge or communicate information, or to produce a document, that is required or permitted by that Law to be divulged, communicated or produced.</p>		
General Comments		
	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>General Comments:</p> <p>Could the goals of the Sexual Harassment Bill not be achieved through appropriate amendments to the Gender Equality Law, 2011?</p>	<p>It is debateable as to whether the sexual harassment concept should be included in legislation dealing with sex discrimination. Though several authorities term sexual harassment as a form of discrimination, we believe that there is still scope to question whether sexual harassment can be properly termed sex discrimination. If we consider that to discriminate means to treat unequally or cause one to suffer a disadvantage due to a specific set of circumstances, then arguably if an employer sexually harasses men and women in the work place without discriminating based on sex, then would it not call into question whether there is in fact discrimination? Discrimination will occur where it is proved that the employer sexually harassed a female because of her gender or where a female who refuses to submit to sexually harassing conduct is prejudiced in</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
		<p>employment as result of her refusal.</p> <p>It seems more appropriate to address sexual harassment in discrete legislation given the serious import of the conduct and equally to recognise the conduct as being outright unlawful irrespective of whom it is directed towards or the manner in which it is conducted. If a female contends that she was not considered for promotion because she did not submit to sexual harassment, then she may bring an action for discrimination based on sex. At the same time, we need to recognise that another serious offence has been committed, that is, sexual harassment and so she should not be deprived of an action for sexual harassment in its substantive form. By linking sex discrimination and sexual harassment in the manner reflected in the Gender Equality Law, arguably, the essence of the conduct that is sexual harassment is diminished. Further, perhaps our Constitution should have dealt with sexual harassment specifically as has been the case with the human rights legislation in some other jurisdictions.</p> <p>The legislative treatment of sex discrimination and sexual harassment varies depending on the jurisdiction being examined. Sexual harassment is dealt with in the UK Sex Discrimination Act 1975, the Australian Sex Discrimination Act 1984 and the Hong Kong Sex Discrimination Ordinance, 1997. In all these laws substantive treatment is given to sexual harassment by specifically recognising that sexual harassment is unlawful in the same or similar contexts in which sex discrimination is made unlawful.</p> <p>In Canada, sexual harassment is dealt with under the</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
		<p>Labour Code and the Canadian Human Rights Act. In South Africa it is dealt with in the Labour Relations Act, 1995. In New Zealand, sexual harassment and sex discrimination are dealt with under the Human Rights Act, 1993. In Bermuda it is dealt with under the Human Rights Act 1981. In Bahamas it is dealt with under the Sexual Offences and Domestic Violence Law. In Belize it is dealt with under the Sexual Harassment Law.</p> <p>It seems to be a matter of approach and in our view the sexual harassment provisions in the Gender Equality Law do not go far enough. As such we believe it is more effective to deal with sexual harassment in discrete legislation.</p>
	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>General Comments:</p> <p>While we acknowledge the Interpretation Law and its provision that “words importing the masculine gender include females”, it would be best practice to follow the lead of the Cayman Islands Constitution, 2009 and use gender inclusive (e.g. he or she) or gender neutral language (e.g. person, complainant, victim).</p>	<p>As correctly pointed out, under the Interpretation Law, the masculine gender embraces the feminine. The Law specifically provides that in all Laws and other instruments, unless there is something in the subject or context inconsistent with such construction, or unless it is therein otherwise expressly provided words importing the masculine gender includes females.</p> <p>The UK Sex Discrimination Act deals with sexual harassment in the context of a man directing the conduct to a woman or another person. The Hong Kong Ordinance also makes reference to a person directing the conduct towards a woman or another person. The Australian Sex Discrimination Act, the</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
		<p>Belizean Sexual Harassment Act and the Caricom Model Bill make reference to “person” and not “his” or “her”.</p> <p>In light of these legislative precedents the question obviously is whether the subject or context of the current proposals fall within the exception under the Interpretation Law. Sexual harassment affects both male and females and perhaps the Bill should reflect gender neutrality in clearer language and not leave it to the provisions of the Interpretation Law. However, as it stands the use of “his” is by law correct as it also includes “her”.</p>
	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>General Comments:</p> <p>At some points the provisions refer to “sexual harassment”, while at other points the provisions refer to “sexual harassment conduct” (e.g. clause 37(2) vs. clause 37(4)(a)). Does consistency in the use of this terminology matters or are the two are legally interchangeable?</p>	<p>For clarity and consistency the expression sexual harassment is the term that will be referenced in the Bill.</p>
	<p>MINISTRY OF COMMUNITY AFFAIRS, GENDER AND HOUSING</p> <p>General Comments:</p> <p>We do not see why complaints cannot be made to the Gender Equality Tribunal established under the GEL and the SHB refer to that Law and Tribunal. We also note that the SHB gives the SHT the function of promoting an understanding and acceptance of and compliance with the SHB (in line with the</p>	<p>We are aware of the financial implications attached to the establishment of a sexual harassment tribunal. The proposals however seek to give effect to the recommendations of the Young Business and Professional Women Task Force on sexual harassment and it was therefore felt that in spite of</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>CARICOM Model.) Would it be more appropriate for the Government entity whose subject area includes gender affairs to carry out this function instead of, or at least in conjunction with, a semi-judicial tribunal?</p>	<p>the GEL Tribunal and the similarities with the proposed sexual harassment tribunal, we should hold true to the fact that this legislation is separate from the GEL and in fact seeks to expand those provisions of the GEL which deal with sexual harassment. We will however make the appropriate amendments in order for sexual harassment claims to be made to the Gender Equality Tribunal. Additionally, we agree that the responsibility for promoting the legislation should fall with the purview of the relevant Government agency.</p>
	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>General Comments</p> <p>Sexual harassment conduct is not a defined term though it is used persistently. It must be related to clause 3(1) "act" and not the 3(2) conduct that may be lawful. The obligation on the employer should only kick in when an act of sexual harassment is committed.</p>	<p>For clarity and consistency the expression sexual harassment is the term that will be referenced in the Bill.</p>
	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>General Comments</p> <p>This legislation is likely to have an impact on</p>	<p>We do not share the concerns in this regard. The</p>

Consultation Sexual Harassment Bill, 2012	Comments from Consultation	Law Reform Commission Response
	<p>relations between the sexes and decisions are likely to impact legal standards of behaviour in society generally. They should not be the province of lobby groups, careerists or those with a vested interest in expanding some field in which they profess expertise. In this more than most legislation it is imperative on principle that tribunal members represent the broad spectrum of the public (or at least insofar as possible the mainstream). Specifically they should not be anything other than experienced general members of the public with unspecific generalised backgrounds.</p>	<p>composition of the tribunal is designed to reflect the expertise of those we believe to be most competent to address the required issues. Perhaps we can consider expanding the composition to also include persons with generalised backgrounds but not to the exclusion of the necessary expertise.</p>
	<p>CAYMAN ISLANDS LAW SOCIETY</p> <p>General Comments</p> <p>Is the intention to try to cover every conceivable relationship? What happens in relationships that are not covered by clauses 10 to 19?</p>	<p>The Bill seeks to bring to the fore that sexual harassment can occur in several contexts and as such it seeks to inform the public that conduct of a certain type within their professional relationship may be viewed as sexual harassment and appropriate remedies may be pursued. The law cannot practically cover all relationships but seeks to identify common relationships in which exposure to sexual harassment is most likely. In cases where a relationship is not covered, the victim would have to pursue other legislative remedies and as part of the reform process the law can later be amended to recognise new types of conduct and relationships.</p>