



**RESEARCH STUDY
ON
WORKPLACE SEXUAL
HARASSMENT
2008**

AWARE Sub-Committee on
Workplace Sexual Harassment

AWARE is Singapore's leading advocacy group dedicated to promoting gender equality. Since its inception in 1985, AWARE has brought women's perspectives to national issues and has focused on Research & Advocacy, Public Education, and Direct Services.

Our mission is to identify areas for improvement in gender equality, encourage positive change, and support women in realizing their highest potential. We believe that gains made by women are not gains made at the expense of men. Rather, they are gains which benefit families and society as a whole.

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FOREWORD

The *Research Study on Workplace Sexual Harassment (2008)* is AWARE's first major report on the issue of sexual harassment.

The report is the result of sixteen months of research by AWARE's Sub-Committee on Workplace Sexual Harassment. I congratulate and thank the volunteer team for an excellent study and for their contribution to the understanding of sexual harassment in the workplace in Singapore.

In 1993, AWARE conducted a brief but revealing study on this topic. While the report was limited in its scope, and therefore not published, it did reveal the existence and preponderance of workplace sexual harassment in Singapore. Fifteen years later, our research shows that sexual harassment is still a significant challenge for employees.

First, our research shows that sexual harassment in the workplace is high. Employees are being subjected to unsafe work environments that can affect their emotional and physical health.

Second, it shows that almost **7** out of **10** employees surveyed were not aware of any sexual harassment policies in their workplace. That these employees are either not being protected, or are not aware of any protections in place, is startling indeed.

Third, the report shows that recipients of sexual harassment are not only women, but men as well. Women and men can be both the harassers or the victims of sexual harassment.

International studies have shown that sexual harassment not only negatively impacts the individual, but also those around them, including colleagues. It has the potential to affect the emotional well-being of an entire workforce, leading to loss of employee morale, decline in productivity, and an erosion of a company's public image. It is truly in the individual and the company's best interest to ensure a safe workplace.

The government, employers, organizations like AWARE, and individuals can all work together to create a more positive, healthy work environment in our country. Going forward, we first must strive to better understand and explore this problem, as our report's findings are just the tip of the iceberg. A no-tolerance climate must be expected by all stakeholders. This attitude can be cultivated by establishing a clear policy against sexual harassment, mechanisms for redress and awareness trainings for managers and staff.

AWARE looks forward to working with the government, employees, organizations, and individuals to bring about a better, healthier work environment for Singaporeans. Our goal is lofty, but our determination is strong. Together, we can effectively confront this challenge.

Constance Singam
President

PREFACE

Over the last sixteen months, a group of formidable women in Singapore – lawyers, writers, public relations professionals, journalists, social workers, caregivers, mothers, wives - somehow carved out the time from their busy lives to voluntarily devote hundreds of hours to develop this research study on workplace sexual harassment.

The impetus behind the project lay in a sense of indignation at some of the experiences of sexual harassment that were being relayed via the AWARE helpline, a sense of empathy because every person on the team knew at least one person who had been a recipient of harassment, and a firm desire to contribute in some way to learning and raising awareness about the issue.

The journey has been a long, but interesting and rewarding one. Along the way, we learned that sexual harassment is a complex challenge, one that is often controversial and contentious. Attitudes towards sexual harassment run the gamut from discomfort, fear and concern, to disbelief and indifference. We learned that for many, the subject is still taboo, still one where victims prefer to suffer in silence rather than confront their harassers or report their actions. Many are reluctant or uncomfortable about even recognizing what has happened to them, or confused or guilt-ridden that they may have brought it on themselves. We learned that this taboo is reinforced by the limited policies and procedures to tackle sexual harassment within workplaces in Singapore – where protections for victims are scant, the fear of being humiliated, of losing one's job, of missing out on a promotion, are powerful deterrents to coming forward.

But we also learned that the issue is slowly coming out of the shadows. There is a definite growing awareness of the problem, supported by media interest and the shift by some progressive companies and organisations towards real strategies to confront it. It is not a challenge to be tackled alone – stakeholders such as government, civil society, and the private sector must join to acknowledge and pay attention to the problem. Sexual harassment at work does not only have a negative impact on the individual, it is also bad for business; hostile work environments foster poor productivity and can have a damning effect on an organisation's public image.

The critical element that informed all our efforts from start to finish is the basic understanding that sexual harassment is about the violation of dignity and respect of the victim. This means that it is never ethically or socially acceptable, and that it should never be condoned or tolerated by any culture, religion or society.

We hope that this report will help speed up the process of dialogue – to heighten awareness, to provoke further discussion, and to stimulate thinking on effective solutions. It is only the start, and we hope that other efforts will follow to more deeply examine the prevalence and scope of the problem, and the best ways to resolve it.

Leigh Pasqual
Chairperson
AWARE Sub-Committee on Workplace Sexual Harassment

ACKNOWLEDGEMENTS

This research study would not have been possible without the guidance, advice and assistance of the AWARE secretariat, the AWARE Executive Committee, and past presidents of AWARE, Zaibun Nissa Siraj and Braema Mathi. We also thank Harmin Kaur, Deeksha Vasundra, Dr Murli Desai, Melanie Hildebrandt, Law Soo Leng, Veena, Kerry Wilcock, and Raqvind Kaur, all of whom provided valuable assistance in the course of the project. Special thanks go to Constance Singam, president of AWARE, whose support was invaluable, and to AWARE's helpline workers who give their time and energy every day to support those who are in distress.

We also recognise the important efforts of the Youth@AWARE committee, and the AWARE working committee that produced a report on sexual harassment in 1994: Nori Yamaguchi, Josephine Tee, Leong Kah Yuen, Irene Yee and Claire Chiang. Their report played a significant role in initiating this project, and in informing and shaping the current research.

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INTRODUCTION

BACKGROUND TO THE ISSUE

Unwelcome and unwanted conduct of a sexual nature is an age-old problem. Lacking a specific, recognizable name for many decades, this sort of conduct or its perpetrators have been called by many different names. In Asia, some of these names have included 'gatal' (Malay), 'hum sup' (Cantonese), 'buaya' (Malay), 'chee ko pek' (Hokkien) and 'pombale porikki' (Tamil). For the majority of victims, at least for those who have made their situation known, their complaints or cries for help have typically been ignored, trivialized, or denied.

The term 'sexual harassment' as a descriptor for this conduct was only coined in the 1970s. Since then the issue has become a recognised phenomenon throughout the world in all cultural and occupational contexts. According to the International Labour Organisation (ILO), sexual harassment is a clear form of gender discrimination based on sex, a manifestation of unequal power relations between men and women. The problem relates not so much to the actual biological differences between men and women – rather, it relates to the gender or social roles attributed to men and women in social and economic life, and perceptions about male and female sexuality in society that can lead to unbalanced male-female power relationships.¹

Workplace Sexual Harassment

As increasing numbers of women have joined the labour force over the last 3 decades, what has also increased is their vulnerability to unwanted attention at the workplace. Today, the problem of sexual harassment in workplaces is acknowledged as a serious issue – as an occupational hazard and a violation of human rights. The ILO has called it a violation of the fundamental rights of workers, a safety and health hazard, a problem of discrimination, an unacceptable working condition, and a form of violence, usually against women workers.² Although both men and women can be subjected to sexual harassment, quantitative and qualitative research shows that women are much more likely to be victims and men perpetrators in societies globally.³

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has also noted the seriousness of the issue, describing sexual harassment in the workplace as gender discrimination and a form of gender-based violence in the CEDAW Committee's General Recommendation No.19. The CEDAW Committee has called on States parties to the Convention to take steps to address the problem – "*States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace.*"⁴

¹ See N. Haspels, Z. Kasim, C. Thomas and D. McCann, *Action against Sexual Harassment at Work in Asia and the Pacific*, International Labour Office, Bangkok Area Office and East Asia Multidisciplinary Advisory Team, (International Labour Organization, 2001).

² See ILO Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment, 1985 and ILO Resolution on ILO Action on Women Workers, 1991 – www.ilo.org

³ N. Haspels et al., *Action against...*, p.154

⁴ CEDAW Committee General Recommendation No.19, 1992 -

<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom1>

Beyond the harmful effects sexual harassment can have on workers, it also carries negative implications for the corporation/enterprise. It leads to workplace tensions, which in turn can impede team work and performance, and encourage absenteeism, all of which ultimately lowers productivity. The organization stands to lose valuable employees with otherwise good work performance, and could suffer from a negative public image should victims go public with their situations. There is also a financial risk in the form of lawsuits and payment of damages and fines.

Addressing the Problem in Asia

Workplace sexual harassment is a relatively new concern in most Asian countries. Advocates against sexual harassment suggest that in the more traditional and conservative societies of Asia, victims may be reluctant to come forward with complaints or confront their harassers because they may be shy or ashamed, fearful of retaliation, or may not know what to do about it. Often victims also may not even know that what is happening to them is sexual harassment, considering it just part and parcel of working life.

Apologists tend to label sexual harassment as a Western phenomenon, or they downplay its existence, describing the problem as more often that of 'miscommunication' rather than a real intent to harass.

Whatever the case, the issue has undeniably become more prominent in the last decade, thanks to the efforts of civil society groups and the media, and pressure from international organizations. While there are still no binding international standards that specifically mention sexual harassment, a growing list of countries have taken legislative action to recognise it as abusive behaviour, and to punish and prevent it.

Progress has been made in a number of Asian countries to institutionalize ways of dealing with the problem. In 1995, the Philippines passed an Anti-Sexual Harassment Act, and its Civil Service Commission adopted guidelines to promote zero-tolerance for workplace sexual harassment.⁵ Thailand amended its Labour Code in 1998 to include penalties for sexual violations by superiors.⁶ Malaysia adopted its Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace in 1999 which provides guidelines to employers on forms of sexual harassment, complaint and grievance procedures, disciplinary rules and penalties, and protective and remedial measures. The Malaysian Trade Unions Congress also incorporated a sexual harassment clause in its collective agreements.⁷

In 1996, the Sex Discrimination Ordinance, which includes explicit provisions on sexual harassment in employment, came into force in Hong Kong⁸, while in India in 1997, a landmark judgment by the Supreme Court established sexual harassment as a 'social problem of considerable magnitude' and a violation of the fundamental rights of women

⁵ See 'National Guidelines in the Philippines – Harassment in the Workplace', ILO - <http://www.ilo.org/public/english/employment/gems/eeo/guide/philip/haras.htm> and National Commission on the Role of Filipino Women - http://www.ncrfw.gov.ph/inside_pages/downloads/ra/ra7877.pdf

⁶ See ILO NATLEX -

http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=THA&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY

⁷ McCarthy, Jennie M., *Landmark Decision on Sexual Harassment for Malaysian Women*, New England International and Comparative Law Annual, 1997.

⁸ ILO, NATLEX -

http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CHN&p_classification=05&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY

workers, and laid down guidelines 'for the protection of these rights to fill the legislative vacuum.'⁹

Another area of progress has been in the collection of data on workplace sexual harassment, including sex-disaggregated data in particular. Numerous studies and surveys have been undertaken in Asian countries in recent years by non-governmental organizations, lawyers' associations, workers' organizations (such as trade unions), and government departments.

In 2001, a seminal publication titled '*Action against Sexual Harassment at Work in Asia and the Pacific*' was published by the ILO Bangkok Area Office and East Asia Multidisciplinary Advisory Team. The book draws from 12 country studies in the Asia-Pacific region and distils the considerations and outcomes of an ILO Regional Seminar on workplace sexual harassment held in Malaysia in 2001. The publication offers excellent insights into the different perceptions and attitudes towards sexual harassment in the Asia-Pacific region, provides definitions of sexual harassment and outlines the effects of the problem on victims, organizations and companies, as well as on society as a whole.

Workplace Sexual Harassment in Singapore

The issue of workplace sexual harassment in Singapore, while not completely unknown, remains for the most part a 'hidden' problem.

Incidents have been described from time to time in the press, often on the 'more severe' types of sexual harassment like rape, molestation and assault that are considered criminal acts.¹⁰ Less is heard about the 'less severe' forms of harassment which are not considered criminal, such as verbal abuse, physical touching, repeated lewd emails or sms-es, or unwelcome comments on behaviour or dress.

There are several possible explanations for the 'silence'. Victims who do want to come forward to report sexual harassment may be frustrated in their efforts – they may not know what actions can be taken, where they can report what is happening and/or seek assistance. Their workplace may also lack appropriate policies or procedures to deal with the situation.

Many other victims may be unwilling to come forward. As mentioned earlier, they may be ashamed or embarrassed about what has happened to them, preferring to keep quiet about it rather than risk being ridiculed or labeled (for example, as 'frigid' or 'easy', or having 'asked for it'). They may also be afraid of losing their income, or reluctant to confront the harasser who may be a superior or someone of prominent social standing, who may be able to negatively influence their career movement. Other victims may lack awareness of what sexual harassment actually is, or lack awareness about what to do about it, or they may feel that nothing can be done unless it involves rape or sexual assault.

⁹ *Vishaka and Ors. V. State of Rajasthan and Ors.* 1997.6 SCC 241. See also N. Haspels et al., *Action against...*p.169

¹⁰ One particular form of workplace sexual harassment has received significant air-time in the media and in official debates – that of foreign domestic worker abuse. Numerous cases that have been reported over the last few years, often with horrifying details of the kinds of abuse endured by domestic workers, have shone an unwelcome spotlight on official policies towards migrant workers, and public perceptions, attitudes and even levels of tolerance for such crimes. While AWARE considers workplace sexual harassment in the case of domestic workers of critical concern, it is a subject beyond the scope and limitations of this study, and is thus not considered in the research. The sub-committee hopes, however, that the subject can be explored in future research undertaken by AWARE and its partners.

To date, sexual harassment is not considered an offence in Singapore. There is no legal definition and no specific legislation on workplace sexual harassment – victims can seek redress only for actions considered criminal under the penal code, or must seek civil redress through common law (as opposed to statutory laws). Little official data is also available on the scope and prevalence of the problem in Singapore.

In its Concluding Comments after the review of the Singapore government's third report in August 2007, the CEDAW Committee stated its concern over the lack of a legal definition and prohibition of sexual harassment in Singapore. It also called on Singapore to *"take steps to enact legislative provisions on sexual harassment at the workplace as well as in educational institutions, including sanctions, civil remedies and compensation for victims"*.¹¹

Anecdotal evidence

Anecdotal evidence gives reason to believe that the issue is slowly emerging from the shadows. Calls to AWARE's helpline in the last two years have seen an increase in the number of cases related to incidents of workplace sexual harassment. While the numbers are relatively small, more importantly, the nature of these cases provides cause for concern. *[Case studies referenced in this report may have some details omitted to protect the privacy of the client.]*

Small group discussions among women and men and informal surveys conducted by AWARE have revealed a growing number of women in Singapore who have experienced some form of workplace sexual harassment, or who know at least one other person who has. Although the numbers are smaller, it has also emerged that men in Singapore are also victims of sexual harassment, and increasingly so, with both women and men as the harassers.

We at AWARE acknowledge that this anecdotal evidence is hardly conclusive, and is representative of only a small segment of the population. We also acknowledge that it is unclear if this anecdotal evidence shows that the actual incidence of sexual harassment may be on the rise, or whether more victims are sharing their experiences because they feel better able to confront their situation, and/or are more aware of avenues to seek assistance.

What is clear, however, is that workplace sexual harassment does exist in Singapore, and does warrant attention to address the problem. Much more information and knowledge is required to determine the scope, extent and prevalence of the problem so as to deal with it in the most effective way possible.

Description by AWARE helpline of a call made to the helpline in 2008:

"Client rang to check if she was a victim of sexual harassment. She was unsure of her rights and how to approach situation. Boss is making ongoing requests for her to wear "sexy clothing" and wear perfume. He makes comments about her clothing and perfume, eg. whether he feels she looks sexy enough. He is making requests for her to cut his toenails, and rub cream on elbows. There was also a request from him to give him an injection. She offered to give in his arm, but he insisted she inject in his bottom. He has an expectation she should accompany him on social occasions as an escort. Client is feeling unsafe, and has difficulty asserting her boundaries. She was advised to go to Nurses association etc., plus to ensure she is not isolated with him too much. She is looking for another job."

The caller was Chinese, female in her 20's, working in a private clinic; harasser is her boss, an elderly male doctor.

¹¹ Concluding Comments of the Committee on the Elimination of Discrimination Against Women: Singapore, August 2007 – www.un.org/womenwatch/daw/cedaw/39sess.htm. Singapore became a States party to the Convention in 1995; states parties are legally obliged to take action to end discrimination against women.

PURPOSE AND SCOPE OF THE STUDY

The AWARE Sub-Committee on Sexual Harassment in the Workplace (SH Sub-Comm) was formed in March 2007 to undertake research on awareness, opinions and attitudes towards workplace sexual harassment in Singapore.

The 2007-2008 project builds on earlier research on sexual harassment conducted by AWARE in 1994 that was never publicised. This previous research, which was based on a trial survey conducted in 1992 and a wider survey of companies conducted in 1993, was somewhat limited in scope – the 1993 survey focused only on Japanese companies in Singapore.¹² Nevertheless, findings from this research were revealing. Of the 35 respondents in the 1992 trial survey, 22 indicated they had experienced some form of sexual harassment at work. Of the 389 respondents in the 1993 survey, about half said they had experienced some form of sexual harassment at work. 47.3 percent said they had experienced one or more forms of verbal and/or visual harassment, and 27.8 percent said they had experienced physical harassment.

In addition to the findings from the 1994 research, a growing body of anecdotal evidence in the following years suggested an increase in cases of workplace sexual harassment, or at least a greater willingness by victims to describe incidents of sexual harassment. The issue began to crop up repeatedly in small AWARE group discussions, workshops and meetings.¹³ There was an increase in calls to AWARE's helpline: in 2006, 8 calls on sexual harassment were received, followed by 19 in 2007. While the numbers are still relatively few, what is disquieting is the nature of the cases described.

Description by AWARE helpline of a call made to the helpline in 2008:

"Caller is in her 20's, Filipino, working as a supervisor in a restaurant. The incident occurred while she was resting in the back room. Her male colleague leaned over her, touched her breast and pressed on her, until he ejaculated on her. Prior to this incident, he took every opportunity to caress and touch her inappropriately, despite her telling him "NO."

Caller contacted our helpline and sought counseling support due to the trauma of the incident. She experienced high anxiety and had difficulty sleeping. Subsequently she felt generally afraid of men and nervous at work. She was initially too embarrassed to tell her boyfriend, as she felt he may blame her and then leave her. She finally found the courage to tell him. He was supportive and this alleviated some of her anxiety. Her boss transferred her to a new workplace after hearing the incident.

The harasser was still employed in the organization. Caller contemplated making police report, but was unsure of the impact on her job."

This growing anecdotal evidence, combined with the general lack of official data and information on workplace sexual harassment in Singapore, suggests that more research on the issue would be useful, as first steps, to determine attitudes and awareness levels amongst people working in Singapore, and ascertain if certain trends were becoming evident.

This is what the 2007-2008 study purports to do. It is not an attempt to examine prevalence rates, neither is it intended to be a comprehensive, exhaustive look at the problem in Singapore. Instead, the study hopes to shed some light on the issue as evidenced from public perception, and show through its findings some of the trends that

¹² Access to Singapore companies proved difficult. The final survey exercise was conducted with Japanese companies because of the assistance of the Japanese Chamber of Commerce and Industry, Singapore (JCCI).

¹³ All of the fifteen volunteer members of the SH Sub-comm. for example, know at least one person who has experienced workplace sexual harassment. Some committee members have even experienced it themselves.

may be developing that need to be addressed. Its scope includes a look at the existing legal environment for redress for victims, and at some best-practice company policies and practices that are attempts to prevent the problem and protect victims.

The 2007-2008 AWARE study will be used primarily to raise awareness about workplace sexual harassment in Singapore, in the hopes that this will contribute to a better understanding of the issue, and stimulate discussion and thinking on the most effective ways to address it.

The Study

Three basic principles informed the committee's approach to the study. First, it was felt that it would be important to make the survey portion of the study as the start-point for the research, as gender-neutral as possible to limit gender bias with respect to trends that might emerge in the course of the research.¹⁴ Gender-neutrality was taken into consideration in the design of the survey, and in attempts to solicit responses from the public (both men and women were approached to complete the survey).

Second, the study focused on a direct approach to individuals to take the survey, rather than approaches to companies to conduct the survey with their employees. Survey responses were captured through various modes, including online at the AWARE website, through viral dissemination via networks and contacts, and through several 'street' exercises where responses were obtained at random from individuals in public areas around Singapore. To widen our reach, companies that were approached to share their policies on workplace sexual harassment were also simultaneously asked if they would notify their employees that a survey on the issue was ongoing. They were not otherwise requested to endorse the survey or request their employees to take it.

Third, the committee considered it crucial to provide information on positive treatment of the problem where evident, and include good policies and practices undertaken by companies and organizations in Singapore. This was intended not only to balance the approach to the research, but also to offer best-practice examples that other companies might wish to follow.

The study consists of four main sections:

1) Public Opinion Survey – a survey was created that involved the inputs of people from various backgrounds and in various capacities, so as to reflect a variety of viewpoints. The survey targeted 500 respondents, offering both online and offline modes of response, including 'street' survey exercises to obtain views at random from members of the public.

2) Company Policies and Practices - companies in Singapore were approached to share their existing human resource or other policies and/or practices that addressed workplace sexual harassment. Information on the presence or lack of such policies and practices reflects attitudes towards workplace sexual harassment from the employer's perspective. It also offers an opportunity to learn from organizations that do have good policies in place to deal with sexual harassment should it arise. A total of 92 companies were approached.

¹⁴ This was done while simultaneously acknowledging that the international body of research does point to a much larger number of women experiencing workplace sexual harassment than men.

3) Legal Position in Singapore – an evaluation of the current legal position in Singapore dealing with redress for sexual harassment is provided, setting out legal recourse currently available for victims of sexual harassment; and highlighting areas of the law which should be subject to further study, so as to combat the problem in Singapore.

4) Recommendations - These are offered, from a rights-based perspective, both at the 'individual' level, and the 'employer' level, informed by data provided by the opinion survey and company best practices.

UNDERSTANDING WORKPLACE SEXUAL HARASSMENT

Sexual harassment is a clear form of gender discrimination based on sex, although this relates not so much to the actual biological differences between men and women, but to social roles attributed to men and women, and perceptions about male and female sexuality in society. Sexual harassment is a clear manifestation of unequal power relations – it is not about deriving sexual pleasure out of the act, but about asserting power. In the workplace, harassers are usually in senior positions, wield decision-making authority or other influences that can affect career outcomes, and/or desire to assert or exhibit power and control vis-à-vis the victim. The latter tends to have limited decision-making authority, lack self-confidence, be in a vulnerable or insecure position, or be socialized to ‘suffer in silence’.

Definitions

Perceptions on what constitutes sexual harassment vary among and within societies. They depend on how men and women are socialized within that society, the existence of gender stereotypes, of socio-economic hierarchies that may exist in public and private life, and set notions and hierarchies that may exist in the workplace.

For these reasons, it is impossible to compile an exhaustive list of harassing conduct that should be prohibited. Some acts may be easily identifiable as ‘sexual’ harassment, such as kissing, fondling and physical contact with genital areas, while many other kinds of verbal, non-verbal, physical conduct may not. This can vary according to cultural and social practices and according to the context in which it occurs. In some cultures for example, a kiss on the cheek in greeting is considered normal behaviour, while in other cultures, this may be considered a sexual advance. What is acceptable in some workplaces, such as sexually suggestive posters for example, may not be tolerable in others.¹⁵

There is universal consensus however, on the key characteristics of definitions of sexual harassment, with the most essential common denominator being that it is **unwanted and unwelcome** by the recipient. This is what distinguishes it from friendly behaviour that is welcome, and mutual, such as flirting for example. This also helps prevent seemingly innocuous behaviour (such as a remark intended as a compliment) from being treated as sexual harassment, and protects alleged harassers from being held responsible for behaviour which they could not *reasonably* have been expected to realize would be considered harassment.¹⁶

Key elements found in most definitions include¹⁷:

- a) conduct of a sexual nature, and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient.
- b) a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job.
- c) Conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

¹⁵ N. Haspels et al., *Action against...*, pp.18-20.

¹⁶ See McCann, Dierdre, ‘Sexual Harassment at Work: National and International Responses’, in *Conditions of Work and Employment Series No.2*, ILO, 2005 <http://www.ilo.org/public/english/protection/condtrav/pdf/2cws.pdf>

¹⁷ N. Haspels et al., *Action against...*, p.19.

The definition most commonly cited comes from the European Commission's Council Resolution (1990) on the protection of the dignity of men and women at work, and its accompanying Code of Practice: "*Sexual harassment means unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work. This can include unwelcome physical, verbal or non-verbal conduct*".¹⁸

The Code of Practice further states: "*The essential characteristic is that it is unwanted by the recipient, that it is for each individual to determine what behaviour is acceptable to them and what they regard as offensive. Sexual attention becomes sexual harassment if it is persisted in once it has been made clear that it is regarded by the recipient to be offensive, although one incident of harassment may constitute sexual harassment if sufficiently serious. It is the unwanted nature of the conduct which distinguishes sexual harassment from friendly behaviour, which is welcome and mutual.*"

The UN Committee on the Elimination of Discrimination Against Women, in its General Recommendation No.19, defines sexual harassment as including '*such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.*'

The European Commission, the CEDAW Committee, and the ILO also refer in their definitions to *types* of sexual harassment in the workplace, both of which are considered necessary to be included for adequate coverage. There are two principal types: '**quid pro quo**' harassment, and a '**hostile working environment**'.

Quid pro quo ('something for something') harassment is also referred to as 'sexual blackmail' – it refers to the abuse of authority by a person (with such authority), who demands sexual favours, forcing the recipient to choose between acceding to these or losing certain job benefits (such as a salary increase, a promotion, or even the job itself). An example of this type of harassment would be when an employer for example, threatens to fire an employee if he or she does not give in to sexual demands.

"Unwelcome sexual advances or verbal or physical conduct of a sexual nature which has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment."

ILO Thesaurus, 2005

The other type of sexual harassment refers to conduct that 'creates an intimidating, hostile, or offensive working environment for the recipient', interfering with his or her work performance. An example would be a work environment where an individual is subject to unwelcome comments about his or her body parts by fellow employees, resulting in the individual feeling embarrassed and distressed and unable to work properly.

Other important aspects contained in definitions of sexual harassment include the notion that it occurs along a continuum, from sexist remarks to non-verbal seductive gestures to

¹⁸ European Commission Recommendation, 27 November 1991 on the protection of the dignity of women and men at work (92/131/EEC); the Code of Practice came into effect in 1992. (<http://europa.eu/scadplus/leg/en/cha/c10917b.htm>)

career threats, sexual assault and rape.¹⁹ Along this continuum, sexual harassment can take place only once, or can be repeated.

Some forms of sexual harassment, such as sexual assault, are inherently offensive and egregious, and need occur only once to be considered a clear form of harassment (and in many countries a criminal offence). Other forms may not be so easily distinguished from harmless behaviour as discussed above. Sexist remarks or non-verbal sexual gestures for example, often present themselves as clearer intentions to harass, when they are carried out more than once, and more specifically, when they occur despite the recipient indicating that such behaviour is unwanted, unwelcome and offensive.

Once again, in determining what constitutes sexual harassment, the contextual difficulty that arises is removed if what is considered is the unwanted and unwelcome nature of the conduct.

Definition of the Workplace

This study expands the concept of the workplace from just the physical space or location of the corporation/enterprise where work takes place. It includes work-related venues and interactions that employees may be involved in, so long as these are related to their employment. Harassers therefore need not only be employers or colleagues, but can also include clients and customers. For example, an incident where an employee receives harassing SMSes from another colleague or client is considered workplace harassment, even though those SMSes may not be sent at the physical workplace, or during working hours. Similarly, sexual harassment that occurs on a person's way to and from work, or during a client interaction or work-related dinner or function is also considered workplace sexual harassment.

Forms of Workplace Sexual Harassment

The following forms, or examples, of sexual harassment are those most commonly referred to:

- Receiving career threats such as indications that you will be fired or withheld promotion if you did not accede to requests for a date, or sexual favours
- Sexual assault and rape at the workplace
- Verbal sexual harassment – being addressed by unwelcome and offensive terms such as ‘bitch’, ‘dick’, ‘darling’, ‘bimbo’, ‘ah kua’, etc;
- Verbal sexual harassment – receiving unwelcome comments or being asked intrusive questions about appearance, body parts, sex life, menstruation etc;
- Verbal sexual harassment - being made to repeatedly and intentionally listen to dirty jokes, crude stories that are unwelcome and discomforting;
- Verbal sexual harassment – being pestered for dates or receiving unwelcome sexual suggestions or invitations;

¹⁹ See Lee Tsen-Ta, Jack, ‘Workplace Sexual Harassment in Singapore: The Legal Challenge’, in Singapore Academy of Law Journal, 1999.

- Verbal sexual harassment – being repeatedly subjected to sexually suggestive, obscene or insulting sounds, which are unwelcome and offensive;
- Visual sexual harassment – repeatedly receiving emails, instant messages, SMSes, which contain unwelcome language of a sexually-explicit nature;
- Visual sexual harassment – having someone expose their private parts to you, or repeatedly stare at your body parts in a way that is unwelcome and discomforting;
- Visual sexual harassment – being made to repeatedly look at sexually explicit images or pictures, or being shown obscene sexual gestures, that are offensive and unwelcome;
- Physical sexual harassment – being brushed against or touched in any way that was unwelcome and discomforting;
- Physical sexual harassment - being stood very close to or cornered in a way that was unwelcome and discomforting
- Physical sexual harassment – being forcibly kissed or hugged, or being forcibly made to touch someone;

Description by AWARE helpline of a call made to the helpline in 2006:

“Caller (Chinese) said that a male colleague took a photo of her breasts and shared it with other colleagues including her ‘big boss’. She had previously rejected the colleague’s advances. Her ‘big boss’ told her to take a week’s leave while he sorted out the matter. She is worried that she will be fired because although she is more senior than the harasser, she is new at the company. Caller has sought lawyer’s advice and was told to either report to the police and face the consequences or to forgive and forget. She is confused, frustrated and worried.”

SECTION ONE: Public Opinion Survey

APPROACH

The objective of the public opinion survey was to provide some insight into levels of awareness, opinions and attitudes on sexual harassment in the workplace in Singapore. The intent was not to gauge prevalence rates, but rather it was an attempt to offer a glimpse into public perception and experiences on this issue.

The survey questions were developed based on earlier work done by the Youth At Aware Committee with help from Dr. Margaret Gremli, and in reference to the unpublished AWARE 1993 sexual harassment survey. Questions were further refined with input and feedback from a group of resource persons, including academics, social workers, counsellors and AWARE committee members.

Pilot Run of Survey

To test the comprehensibility of the survey questions, a pilot run was conducted with AWARE's helpline volunteers. 20 completed surveys were collected over a 3 week period. Respondents were asked not only to fill out the survey but also to offer feedback on its structure and clarity.

The 20 respondents were all female and aged between 21 and 55. More than half (11 persons) indicated that they considered workplace sexual harassment a problem, while 8 respondents did not think so, and 1 had no response. 13 respondents were aware of policies in their organisation/company that protect individuals from sexual harassment, as well as a department or resource person whom they could approach to report sexual harassment. Only 1 respondent indicated she had received some form of training in her workplace on how to deal with workplace sexual harassment.

5 respondents indicated they had experienced at least one of the three forms of sexual harassment (verbal, visual and physical) described in the survey. 4 out of these 5 respondents experienced more than one form of sexual harassment. Verbal harassment ranked as the most frequent form of sexual harassment experienced, while visual and physical harassment were ranked equally. 18 respondents indicated that they knew of at least one person who had experienced sexual harassment.

Feedback received from the pilot run was used to further refine the survey, including the length of estimated response time, sensitivity of terms used and the flow of questioning.

Final Survey

The final public opinion survey consisted of 41 questions and was divided into 4 sections:
Part A: Personal details
Part B: General awareness of workplace sexual harassment in Singapore
Part C: Incidents of workplace sexual harassment in Singapore
Part D: Experiences of workplace sexual harassment.

All respondents were asked questions to assess their levels of awareness and understanding of sexual harassment (Part B). However only those who indicated having experienced sexual harassment in the workplace (Part C) were asked to answer more detailed questions on those experiences (Part D).

Confidentiality of all personal information provided was stressed, and AWARE's helpline information was included in case certain questions brought up difficult memories for respondents. Several respondents who had indicated experiencing sexual harassment in Part C chose, however, not to reveal further details of this experience in Part D. This could indicate a level of discomfort in remembering or confronting the issue on the part of these respondents. This could also mean that several respondents might not have been willing to reveal that they have been sexually harassed in the first place.

The survey was conducted from August to December 2007 and was made available to the public:

- Online on AWARE's website www.aware.org.sg
- Through viral dissemination via networks and contacts of the committee and AWARE members;
- In 'street' exercises where individuals were approached at random in public areas (Bugis, Orchard and Raffles Place MRT stations, and the Woodlands area).

A total of 500 responses were received. Out of these:

- 290 were received online and 210 via 'street' exercises, emails and post;
- 369 were female and 124 were male respondents. 7 respondents chose not to reveal their sex.

FINDINGS

Awareness of Sexual Harassment

332 (66.4%) of the 500 respondents surveyed registered a high level of awareness of sexual harassment in the workplace.

Table 1: Levels of Awareness of Respondents

Awareness	Respondents	Percentage
High	332	66.4%
Medium	84	16.8%
Low	35	7%
No awareness	43	8.6%
No answer	6	1.2%
TOTAL	500	100.0%

This was assessed by asking respondents to identify which of the following instances constituted sexual harassment:

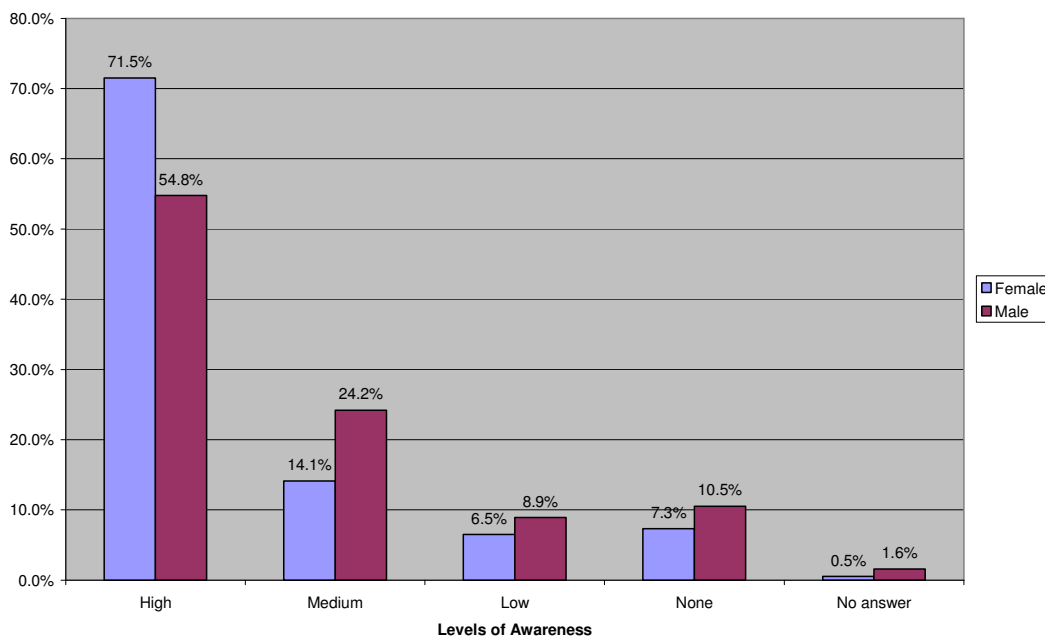
- Receiving career threats such as indications that you will be fired or withheld promotion if you did not comply with requests for a date or for sexual favours
- Being repeatedly shown obscene sexual gestures, such as hand, tongue or body gestures that made you feel uncomfortable or were offensive to you
- Having someone repeatedly stand very close to you or corner you in a way which made you feel uncomfortable
- Being sexually assaulted by your superior, colleague, subordinate or client
- Feeling like someone was frequently staring at parts of your body, making you feel uncomfortable
- None of the above.

Respondents who were able to identify four or five instances of sexual harassment were assessed as having a high level of awareness. The ability to identify two or three instances was assessed as a medium level of awareness, while one meant a low level of awareness and none, as no awareness at all.

Out of the 369 women respondents surveyed, 264 (71.5%) registered a high level of awareness as compared to only 68 (54.8%) of the 124 men surveyed.

27 (7.3%) women respondents and 13 (10.5%) men respondents registered no awareness of what sexual harassment in the workplace is. Overall the male respondents were less aware of the different forms of sexual harassment, with more men recording low, medium and no level of awareness.

Graph 1: Levels of Awareness of Sexual Harassment in the Workplace



Note: Out of the 7 respondents who did not indicate their sex, 2 registered a medium level of awareness, 3 no awareness and 2 did not answer.

Interestingly, out of 84 respondents with a medium level of awareness, 31 (36.9%) did not identify career threats as sexual harassment. It is also notable that 23 (27.4%) respondents did not recognise sexual assault as sexual harassment. This may be due to a limited understanding of the different forms and scope of sexual harassment.

Awareness of Mechanisms for Redress Within the Workplace

Respondents were asked whether they were aware of any company policies in their workplace on sexual harassment and whether they knew who they could approach or make a report to regarding sexual harassment. Out of 500 respondents, only 115 (23%) said they are aware of the existence of company policies on sexual harassment and a person / department to approach or make a report of sexual harassment.

333 (66.6%) of the 500 respondents indicated that they were not aware of any policies in their workplace on sexual harassment.

While there appears to be a low level of awareness of company policies on sexual harassment, 252 (50.4%) of the 500 respondents indicated that they were aware of a department or resource person they could approach on this issue. This perhaps provides employees with some avenue for redress even though it may not be a formal one or one that is equipped to specifically deal with sexual harassment.

Description by AWARE helpline of a call made to the helpline in 2006.

“The woman (Chinese) worked in a manufacturing company. Her head of department touched her neck and talked about touching her. She was emotionally disturbed and went to see a doctor. However, she was not given medical leave as the doctor was told by her company not to do so. She was being picked on for laziness and lateness thereafter. She resigned from the company and filed a police report as requested by the human resource manager and her boss before they would consider taking any action. In the end, she was released earlier from work and the company refused to pursue the matter, stating that the police report is too brief. There is also no documentation about this incident during exit interview. Caller is currently jobless. She said MOM refused to give her assistance because she had made a police report.”

Who Experiences Sexual Harassment?

272 (54.4%) of the 500 respondents surveyed indicated having experienced some form of sexual harassment. 215 (58.3%) women respondents and 52 (42%) men respondents indicated having been sexually harassed at the workplace. 5 out of the 7 respondents who did not indicate their sex reported experiencing sexual harassment.

Table 2: Experienced Sexual Harassment

Experienced Sexual Harassment	Respondents	Percentage
Yes	272	54.4%
No	214	42.8%
No answer	14	2.8%
TOTAL	500	100.0%

Table 3: Experienced Sexual Harassment by Sex

Experienced Sexual Harassment	Female		Male	
	Yes	215	58.3%	52
No	148	40.1%	66	53.2%
No answer	6	1.6%	6	4.8%
TOTAL	369	100.0%	124	100.0%

This reinforces the point that sexual harassment is not merely a problem faced by women. The data appears to challenge the general perception that sexual harassment is merely about women misunderstanding the intentions/ advances of their male colleagues.

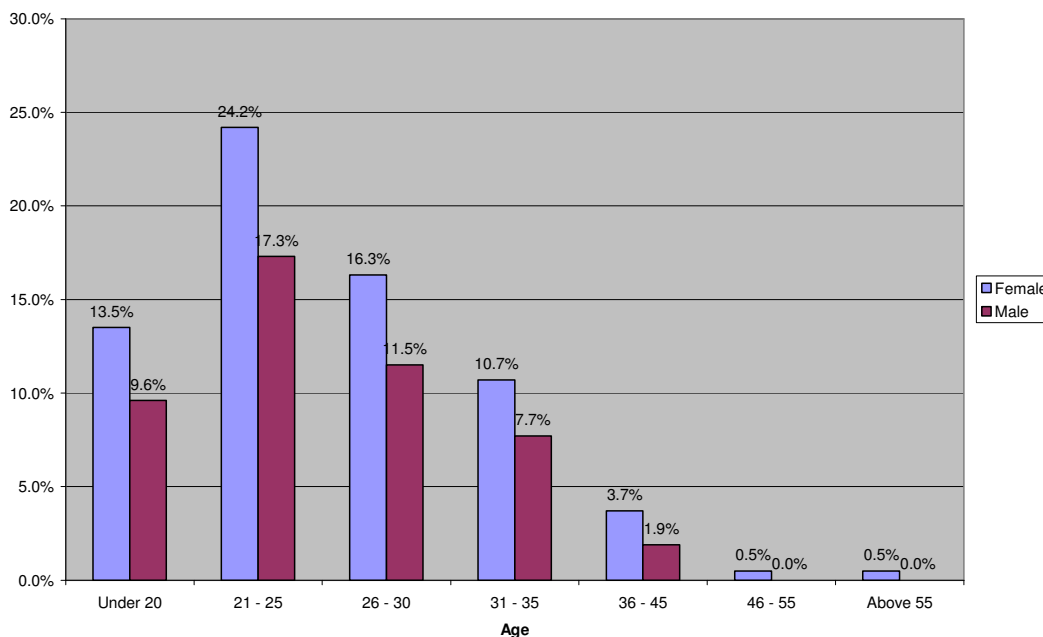
It is also worth noting that this finding coincides with the conclusion of a Malaysian study in 2003 that the difference between the number of women and men respondents who experienced sexual harassment 'is not as large as might be generally expected'.¹

Age when Sexual Harassment Occurred

Women respondents of all ages reported cases of sexual harassment in the survey. While a large portion of respondents chose not to reveal the age at which they experienced some form of sexual harassment, many of those who did were from the age groups under 20, 21-25, 26-30 and 31-35. Two women respondents reported experiencing multiple incidents of sexual harassment when they were between the ages of 21 – 35.

Out of the 215 women respondents who reported experiencing sexual harassment and who answered this question, the highest percentage was from the age group 21-25 (52 / 24.2%), followed by the 26-30 (35 / 16.3%) age group. Men respondents showed a similar trend. Out of the 52 men who reported experiencing sexual harassment, the largest age group were between the ages 21-25 (9 / 17.3%) and 26-30 (6 / 11.5%).

Graph 2: Experienced Sexual Harassment by Age



Note 1: Two women respondents (0.9%) had several encounters with sexual harassment at different stages of their life (ages ranging from 21-35).

Note 2: Out of the 7 respondents who did not indicate their sex, only 1 revealed his/ her age when harassed (26-30 years old). 95 respondents who reported experiencing sexual harassment but did not indicate their age are not reflected in this graph.

¹ This phenomenon was also highlighted in C. Ng, Zanariah Mohd Nor, Maria Chin Abdullah, *A Pioneering Step. Sexual Harassment & The Code of Practice in Malaysia*, Women's Development Collective and Strategic Information Research Development, 2003.

Occupation when Sexual Harassment Occurred

Both women and men respondents from various occupational levels were shown to experience some form of sexual harassment. From respondents who answered this question, the highest number of incidents of sexual harassment occurred to those in executive positions (48 women and 5 men), followed by administrative staff (28 women and 2 men). However several respondents from higher occupational levels also indicated being harassed: 19 women in management positions, 2 women and 3 men from senior management positions.

Knowledge of Others who Experienced Sexual Harassment

Respondents were also asked whether they knew of people who had experienced some form of sexual harassment. About a quarter responded yes.

Table 4: Respondents with Knowledge of Others Who Experienced Sexual Harassment

Knowledge of others who experienced:	Number of Respondents	Percentage
➤ Verbal Sexual Harassment	130	26%
➤ Visual Sexual Harassment	81	16.2%
➤ Physical Sexual Harassment	79	15.8%

Note: Due to multiple responses, the total does not add up to 100%.

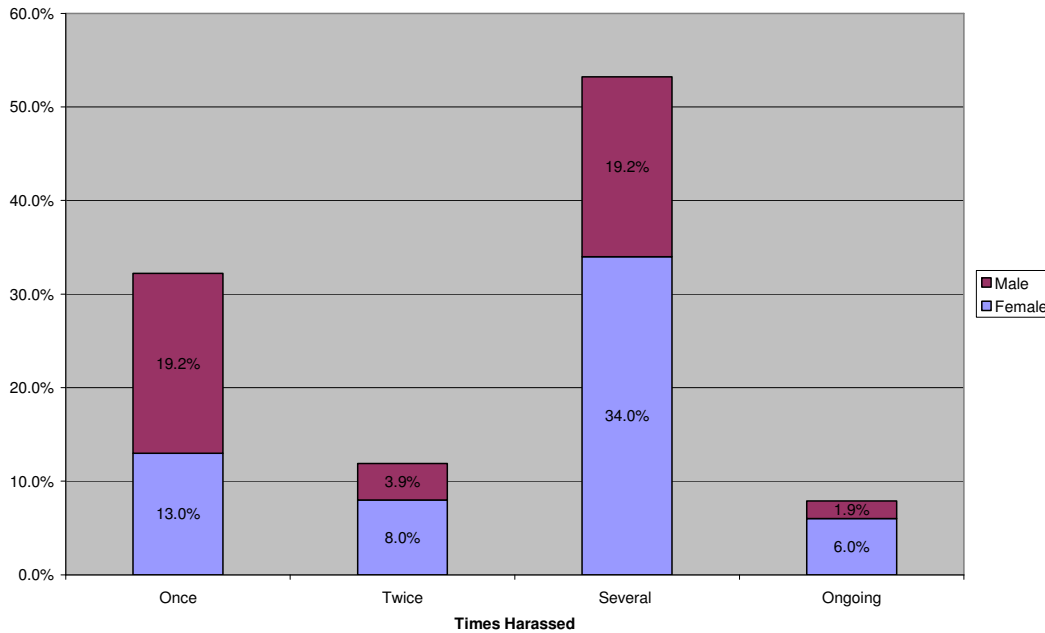
Those who answered yes were also asked to indicate how many people they knew who had experienced some form of sexual harassment. The numbers are staggering, totaling up to 447 for verbal sexual harassment, 268 for visual sexual harassment and 180 for physical forms of sexual harassment. This does not include those who responded with qualitative answers such as “quite a few”, “too many”, “lots”. One respondent indicated that most of her colleagues experienced sexual harassment and another respondent reported “1, but maybe more, but friends don’t talk about it. Embarrassing.”

Number of Times Harassed

Respondents who experienced sexual harassment were asked to give an indication of the number of times they were harassed. Of those who answered this question, alarmingly, 73 (34%) women respondents and 10 (19.2%) men respondents reported being harassed several times. This data suggests that harassment, if left unchecked, could in some cases escalate - harassment tends not to be an isolated one-off incident.

It is also disturbing to note that 13 women (6% of women respondents) and 1 man (1.9% of men respondents) continued to experience sexual harassment at the point of being surveyed.

Graph 3: Number of Times Experienced Sexual Harassment



Note 1: 1 out of the 7 respondents who did not indicate his/ her sex, reported being harassed several times. The others did not provide this information.

Note 2: 113 respondents who reported experiencing sexual harassment but did not answer this question are not reflected in this graph.

Where Did Incidents of Sexual Harassment Occur?

Respondents were also asked whether they experienced sexual harassment outside of the workplace but during work-related business or activities. 54 (19.8%) out of 272 respondents who experienced sexual harassment and answered this question reported being harassed outside the office. Respondents were asked to specify where these incidents actually took place. Responses included “office parties, lunch outings”, “networking event”, “client’s office”, “team retreat”, “guardhouse”, “lunch hours and while with superior outside for appts”, “during meals with client”, “social/ team building”, “meeting sites conducted outside the office”, “organisation events”. The data shows that it is critical for the definition of the workplace to encompass more than the actual office space or place of business, and to take into consideration ‘work–related interactions that are often not considered as the workplace’. The bigger issue is one of ‘the access that a perpetrator has to the persons being harassed by virtue of a job situation or relation.’²

Forms of Sexual Harassment

Respondents were asked to identify which forms of sexual harassment they had encountered from a list of examples provided in the survey. This list consisted of 19 instances of verbal, visual and physical forms of sexual harassment.

² N. Haspels, Z. Kasim, C.Thomas and D. McCann, *Action against Sexual Harassment at Work in Asia and the Pacific*, International Labour Office, Bangkok Area Office and East Asia Multidisciplinary Advisory Team, (International Labour Organization, 2001), p.23

Being “repeatedly addressed by terms that are unwelcome or offensive to you such as ‘girl, boy’, ‘darling’, ‘cha bor’, ‘sayang’, ‘saku’ ‘bimbo’... or similar judgmental terms” was most frequently experienced by 137 (50.4%) of the 272 respondents who reported having been sexually harassed.

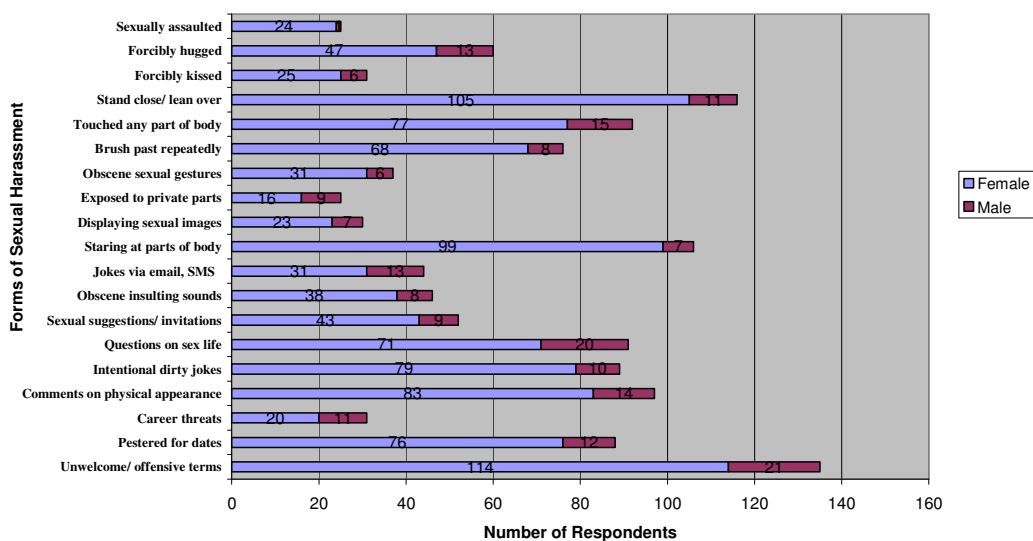
Comment from male survey respondent:

“I’m a guy with several female colleagues and a male superior who likes to make crude, suggestive remarks about other women who walk past or are seated in the canteen during lunch. But my female colleagues do not know where to complain to, or they are afraid to, it would help if there was an anonymous service they can alert.”

The second highest reported incident was that of having someone “repeatedly stand very close to you/ lean over you/ corner you in a way which made you feel uncomfortable”. 117 respondents (43%) indicated experiencing this form of physical sexual harassment.

Feeling “that someone was frequently staring at parts of your body, which made you feel uncomfortable” was ranked third highest, with 106 respondents (39%).

Graph 4: Forms of Sexual Harassment Experienced



31 respondents (11.4%) reported receiving “career threats such as termination, withholding of promotion,” if they did not comply with requests for a date or any more serious forms of sexual favours. This form of ‘quid pro quo’ harassment is considered ‘particularly reprehensible, since it represents a breach of trust and an abuse of power’ by those in a position to ‘give or take away employment benefit’.³

³ Ibid. p.20

25 respondents (9.2%) reported being sexually assaulted by their superior, colleague, subordinate or client - a grim reminder of how severe sexual harassment in the workplace can get.

The responses indicate that respondents have experienced a wide range of forms of sexual harassment. While some are perceived as more severe than others, they all create a negative work atmosphere, otherwise known as a 'hostile working environment'. This includes 'verbal, non-verbal or physical conduct of a sexual nature which interferes with an individual's work performance or creates an intimidating, hostile, abusive, offensive or poisoned work environment.'⁴

Several respondents shared more particular experiences of workplace sexual harassment in the survey:

"my boss said that I was wearing too low cut in front of ALL my other colleagues. and he said that rather loudly and in a joking manner. for example, "Wah... so low ah!... let who see..."

...

"1) Placing hand under the sleeves of my blouse by ex male colleague and said "i want to feel the material". 2) Taking advantage by squeezing his way behind me in the cramped pantry."

...

"I work in a Dj booth surrounded by men and drunken colleagues. Every other day I receive remarks about my bodyparts, about how sexy I am, and what would have if. I've been repeatedly invited, touched, hugged and stared at. I would work on the booth and be hugged from behind from any other guy who decided to say hello to me. At first I thought they were my friends, then I realize they were just drunken male colleagues. I have made my stand about where and who I am, that I am not to be spoken or touched in such manner or teased again. I even receive an invitation from a so called superior who decided to terminate my employment to protect himself."

Experiencing Multiple Forms of Sexual Harassment

The table below shows the number of people who experienced 10 or more forms of sexual harassment out of the 272 respondents who experienced sexual harassment. It is worrying that many respondents experienced multiple forms of sexual harassment, with two respondents indicating experiencing as many as all 19 forms listed in the survey.

Our observations also show that out of the 25 respondents who experienced sexual assault, 24 reported multiple forms of harassment. This could indicate that when left unchecked, sexual harassment may often escalate both in frequency and severity.

⁴ Ibid.

Table 5: Number of Respondents who experienced multiple forms of sexual harassment

Number of Forms of sexual harassment experienced	Respondents
10	4
11	10
12	9
13	3
14	4
15	1
16	1
17	1
18	0
19	2

Note: Extract of analysis therefore the total does not add up.

Impact of Sexual Harassment

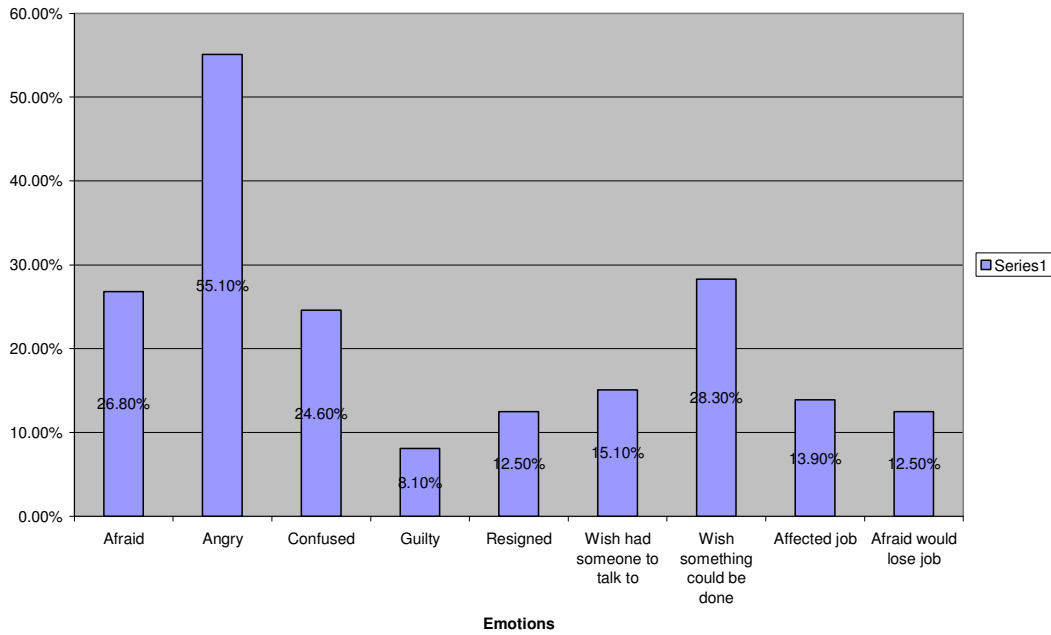
150 (55.1%) respondents who experienced some form of sexual harassment and answered this question reported feeling angry about the incident. Many indicated they were afraid (73 / 26.8%) and confused (67 / 24.6%) about the situation. A smaller percentage (22 / 8.1%) reported feeling guilty about the situation. 38 (13.9%) respondents who experienced sexual harassment felt it affected the way they did their job. Respondents also used words like *'disgusted'*, *'frustrated'*, *'embarrassed'*, *'humiliated'*, *'uncomfortable'* and *'insecure'* to describe how the incident of sexual harassment made them feel. One respondent even shared that as a result, she would often get ill.

Description by AWARE helpline of a call made to the helpline in 2006:

"Caller is in her 40's, in the culinary profession. After some misunderstanding, a male colleague started acting very personal towards her. On one occasion, he deliberately bumped into her breast. She reported the incident to the human resource department. However, the human resource department treated the incident as a personal conflict instead of sexual harassment. They want her to get over the event. Caller has resigned. She is very frustrated. She intends to make a police report and also to write to her superior."

While it is clear that emotions run high in such situations, many indicated that they wish something could be done about it (77 / 28.3%) or that they had someone to talk to (41 / 15.7%). However, 34 (12.5%) respondents were concerned that they would lose their job or not be promoted if they took action – a real concern in situations where no formal mechanisms for redress have been put in place. 34 (12.5%) respondents also felt resigned to the situation. One respondent in fact reported that she left her job after being sexually harassed by her superior - an indication of the lack of effective avenues for redress, leaving her with little choice but to remove herself from the situation.

Graph 5: Emotions upon Experiencing Sexual Harassment



Most of the respondents indicated experiencing various feelings upon being sexually harassed, with only 69 respondents identifying one type of emotion. Many respondents also reported experiencing a combination of these emotions, showing the intensity of emotions evoked from such an experience.

Relationship to Harasser

By Sex

Out of the 272 respondents (female, male and no specified sex) who reported experiencing sexual harassment and answered this question, 155 (57%) reported that their harasser was male. Both women and men respondents were more likely to have been harassed by the opposite sex: 145 (67.4%) of 215 women respondents reported being harassed by men. 15 (28.9%) of 52 men respondents reported being harassed by women. However 7 (3.3%) women respondents and 9 (17.3%) men respondents actually reported being harassed by someone of the same sex. One male respondent reported being harassed by both sexes.

Table 5: Relationship to the Harasser by Sex

Sex of Harasser	Respondents	
	Female	Male
Male	67.4%	17.3%
Female	3.3%	28.9%
Both	0.0%	1.9%
No answer	29.3%	51.9%
TOTAL	100.0%	100.0%

By Occupation

Out of 272 respondents who experienced some form of sexual harassment and answered this question, 73 (26.8%) experienced some form of sexual harassment from their colleagues, while 47 (17.3%) were harassed by their superior.

Alarming, 29 (10.7%) respondents reported experiencing harassment from a combination of various harassers. This was reported by both women and men respondents, with women reporting a higher percentage of such cases.

Though smaller in number, 13 (4.8%) respondents reported being harassed by their clients. This is noteworthy as it shows the need for the definition of the workplace to 'cover a broader spectrum, including clients'⁵ so as to ensure remedies are able to provide employees with adequate protection and recourse. One respondent had reported being harassed by a vendor while another by a security guard.

Table 6: Relationship of Respondents to Harasser

Harasser	Respondents who experienced sexual harassment	
	Count	Percentage
Superior	47	17.3%
Colleague	73	26.8%
Subordinate	2	0.7%
Client	13	4.8%
Various	29	10.7%
Others	12	4.4%
No answer	96	35.3%
TOTAL	272	100.0%

Table 7: Relationship of Female and Male Respondents to Harasser

Harasser	Female		Male	
	Count	Percentage	Count	Percentage
Superior	44	20.5%	3	5.8%
Colleague	62	28.8%	10	19.2%
Subordinate	0	0.0%	2	3.8%
Client	9	4.2%	4	7.7%
Various	26	12.1%	3	5.8%
Others	9	4.2%	3	5.8%
No answer	65	30.2%	27	51.9%
TOTAL	215	100.0%	52	100.0%

Description by AWARE helpliner of a call made to the helpline in 2007.

"A man called on behalf of his wife, who had been sexually harassed by her client while working on a project. Caller made a report to wife's manager, but instead of taking action on the client, the manager asked caller and his wife to "give another chance" to the client. Caller asked if there is any recourse available since his wife's company is not doing anything."

⁵ Ibid. p.23

By Industry

The 272 respondents who reported experiencing some form of sexual harassment were from diverse sectors and industries. From the data of respondents who experienced sexual harassment and answered this question, the sectors with a higher number of respondents are listed in the table below.

Table 8: Industries where Respondents experienced Sexual Harassment

Industry	Number of respondents who experienced sexual harassment (out of 272)
Business, trade, banking & finance	18
Sales and marketing	15
Hospitality	12
Civil service	11
Education, lecturing & teaching	11

Note: Extract of analysis therefore the total does not add up.

However, acknowledging the limitations of this survey⁶, it is not drawing any conclusions as to which are the higher risk sectors or industries in Singapore. There are several factors in workplaces that could promote the incidence of sexual harassment. For example, other studies have shown that sectors where women have to work in male-dominated jobs or situations where large numbers of women, (typically low skilled) are supervised by a few men are high risk sectors. Similarly, positions with little or no job security also expose workers to a higher risk of sexual harassment.⁷ Certain industries, for example the hospitality and service industry, also have inherent vulnerability risks because greater interaction is required and with a wider range of work-related individuals, such as clients, customers and vendors.

⁶ As the survey was not intended to be a prevalence survey, data collected is based on a limited sample size without targeting specifically the full range of industries and occupations of the working population in Singapore.

⁷ N. Haspels et al., *Action against...*, p.55

SECTION TWO: Company Policies and Practices

APPROACH

Companies in Singapore were approached to share their human resource or other policies and/or practices, if any, that addressed workplace sexual harassment. Beyond specific policies on sexual harassment, they were also asked to share provisions within other human resource policies that might otherwise address complaints of harassment, as well as any common practices (as part of corporate culture for example) in the absence of an official policy. The issue was presented within the context of companies' efforts to provide support and protection for their employees and ensure that they were afforded a safe and conducive working environment.

The main objective in gathering this information was to ascertain attitudes towards workplace sexual harassment from an employer's perspective, as well as to learn from companies that were proactive in tackling the problem. In addition, AWARE has been approached in the past by companies for best practice human resource clauses that are gender-sensitive, and that offer necessary support and protection for women in the workplace. An overview of the policies and practices of companies that have responded to this research effort will be shared in the hope that this can be useful to others. AWARE also intends to develop guidelines to assist companies in creating effective measures to protect their employees from sexual harassment.

A total of 92 companies were approached between April 2007 and February 2008, mainly representing Singaporean, American, European and Japanese companies. Sectors included finance, manufacturing, services, hotels and education. In addition, several public-sector entities were approached including International Enterprise Singapore (IE), the National Trades Union Congress (NTUC) and the Ministry of Manpower (MOM), as well as a not-for-profit organisation, the Singapore Human Resources Institute.

A letter of introduction describing the research project was faxed or emailed to personnel or human resource departments, addressed to the human resource director or other senior manager (if this contact information was available). This was then followed up with a phone call to confirm that it had been received by the relevant person or department. At least two phone calls were made to each organisation in an attempt to obtain a response, and letters were re-faxed or emailed again where necessary. Attempts were made in all cases to speak directly to someone from the relevant department, so as to better explain the research inquiry and answer any questions.

FINDINGS

Broadly speaking, the overall response from enterprises to this exercise can be surmised as 'disinterest' or 'reluctance' to engage on the subject. Table 1 below gives a breakdown of types of responses obtained. The vast majority of companies approached did not respond, despite numerous phone messages or emails from AWARE sub-committee members. Staff from a large number of companies seemed protective of senior managers when the research project was described, refusing to transfer phone

"We have no inputs and we do not believe such a problem exists in Singapore."

Verbal response from one organization (declined to respond in writing).

calls or provide contact information for relevant persons or departments. Of the companies that did respond, several declined to participate, either stating that they did not have any policies in place, or without giving any specific reason. Only a handful of companies responded in writing.

The Ministry of Manpower confirmed that there were no official guidelines for employers on workplace sexual harassment. They responded in writing to say: *“There are currently no plans to develop guidelines for workplace harassment in Singapore. You may wish to refer to the TAFEP guidelines on fair employment practices, but it might not be completely relevant for AWARE’s research purposes.”*

Six companies and one public-sector organisation did, however, willingly share their policies/practices. All acknowledge that, whether or not the problem exists in their workplace, there are processes in place to deal with complaints (should they arise), identify and reprimand inappropriate behaviour and provide the necessary protection for victims, as well as witnesses.

Table 1: Breakdown of company responses

	Results of Outreach	No. of Companies	% of Companies
a)	Shared policy and/or informed staff about the survey	8	8.7%
b)	Totally uncontactable or no response despite leaving message with staff or answering machine	43	46.7%
c)	No response or declined request after resending letter	17	18.5%
d)	No confirmation on either accepting or declining request despite confirming receipt of letter	18	19.6%
e)	Outright decline of request	6	6.5%
	TOTAL	92	100.0%

Although in no way conclusive, the following can be inferred from this exercise:

- Many companies in Singapore are either unaware about the issue of workplace sexual harassment, or reluctant to broach the subject.
- Many companies in Singapore either do not have specific policies in place to address sexual harassment in their work environment, or do not have the scope within other employment policies and procedures to deal with the problem should it arise.

Despite these findings, anecdotal evidence gathered from speaking to a range of people, (both men and women), in supervisory or managerial positions, revealed that there do exist ‘informal practices’ within work environments to help in dealing with complaints of sexual harassment. These often involve direct relationships between staff and managers and are confined to individual units or teams. The onus is on senior managers to maintain open communication channels with their staff, and to be trusted to keep information confidential so that victims feel comfortable coming forward.

While these ‘informal’ practices are certainly useful in helping to limit sexual harassment, their

“My female staff went to see a customer at his house, and during her presentation, he kept asking her personal questions like was she single, what kinds of guys she liked, etc. After the meeting, when she offered her hand for a handshake, he pulled her towards him for a hug and a kiss on the cheek.

She spoke to me the next day about whether it was appropriate for him to do that. I said it depended on whether it made her uncomfortable. If it did, then it was inappropriate and I said I would speak to the guy.”

Male, 30s, manager at a local bank - He said he did not know of any official policies that dealt with this, since most of the time, managers would help settle such issues faced by staff.

Description by AWARE helpline of a call made to the helpline in 2006:

“The caller, (Chinese), was being stared at uncomfortably by her male colleague. He would intentionally stop by her office door and stare at her. She spoke to her boss and had a meeting with the boss, harasser and herself. She felt humiliated during the meeting. It was not helpful to her. She feels very nervous and worried all the time.”

Description by AWARE helpline of a call made to the helpline in 2006:

“Caller is in her 20’s, female and a civil servant. She was verbally and physically harassed by her colleague at work. She went to her superior who did not give her any assistance – instead he asked her to think of her colleague’s career, and sign a statement that she accepted his apology and won’t pursue the matter. She is very upset over the incident, she cries a lot and feels very humiliated and dirty. She is suffering from migraines.”

effectiveness is too dependent on the manager or supervisor in question, on the nature of the working relationships he or she has with staff, and on the authority and knowledge he or she has to best confront the problem. Where it can fall short, for example, is in cases where the harasser is the manager him or herself, where the harasser is above the manager in the corporate hierarchy or where the manager lacks authority or knowledge of how to deal with complaints of harassment. In the latter situation particularly, despite well-meaning intentions, attempts by a manager to mediate between victim and harasser could actually make the situation worse and even more uncomfortable for the victim.

In the absence of an official policy or guidelines, managers may also be reluctant to deal with such complaints if they do not think their actions will be supported by the company’s senior management.

OVERVIEW OF BEST PRACTICES

The companies and public agency that offered information on their policies/practices were:

- Singapore Airlines Limited
- IBM
- McKinsey & Company (Asia)
- The Body Shop
- Shell
- PricewaterhouseCoopers (PwC)
- International Enterprise Singapore (IE)

While not all had a specific policy directed at sexual harassment, all had scope within other employment policies that either referenced sexual harassment explicitly, or referred to harassment in general (that was then expandable to include cases of harassment based on sex discrimination).

The following is an overview of best practices collated from the policies/practices that were shared: -

➤ **Targeting sexual harassment with a specific policy or within broader policies prohibiting harassment**

IE Singapore has an explicit sexual harassment policy and procedures that complement *'existing procedures in grievance handling and disciplinary action'*, and is intended to *'protect both potential victims of sexual harassment as well as persons who are wrongfully accused of sexual harassment.'*

Other organisations such as Shell, IBM and The Body Shop have broader harassment policies that also include reference to harassment based on sex, gender and sexual orientation, (besides race, religion, age, nationality etc).

All four organisations make clear in their policies that harassment (including that based on sex) is prohibited – language used includes *'unlawful'*, *'a breach'* of the organisation's terms and policies, *'unacceptable behaviour'*, *'misconduct'*. All also clearly state that pending an investigation, disciplinary action, including termination and expulsion, will be taken against harassers.

PwC and IBM include reference to harassment within corporate codes of conduct that are relevant not only to their external business relationships but also to internal interactions among their employees.

➤ **Explicit definition of harassment including sexual harassment**

The Body Shop, Shell and IE Singapore provide explicit definitions of harassment, with IE Singapore including both types of workplace sexual harassment – quid pro quo harassment and hostile environment harassment. The Body Shop and IE Singapore also go further to offer examples of what could constitute 'harassing behaviour'.

All organisations use words like *'unwelcome'*, *'unwarranted'*, *'offensive'* and *'unwanted'* to distinguish between actions that can be considered sexual harassment and those that could be harmless.

Examples from The Body Shop of conduct that could be considered harassment:

"The use of unwanted physical contact, violence, bullying, gestures, looks or language, of which intimidates, humiliates or offends the listener or recipient."

"The use of unwanted obscene gestures, jokes, leers or any other action which offends, intimidates or humiliates the recipient."

"Unwelcome sexual advances, pressure, continued suggestions for social contact outside of the workplace, offensive flirtations, suggestive comments or unwanted physical contact which could be construed as sexual in nature."

"Examples of sexual harassment include (but are not limited to) the following: a supervisor suggests that a higher performance rating may be given to a subordinate if the subordinate submits to the supervisor's sexual advances; a supervisor implicitly or explicitly threatens termination if a subordinate refuses the supervisor's sexual advances; sends sexually explicit messages to his/her voicemail or email or via other modes of communication."

Sexual Harassment Policy and Procedures, IE Singapore

➤ **Clear procedures outlined to deal with harassment**

The majority of policies describe clear procedures for grievances and complaints to be made. This includes identification of a department or person (such as the unit chief, department head, or immediate supervisor, etc) to whom the report should be made, and a description of the process that would follow – for example, investigation of the allegations, remedial action (depending on circumstances) and disciplinary action if harassment was determined.

Shell also includes a description of informal procedures in its policy, stating that *‘informal methods of dealing with the situation are often the quickest, of lowest profile and most effective..’*. The policy provides options for the informal handling of a complaint such as suggesting that employees ask their immediate manager to speak to the alleged offending party on their behalf. It also then offers options on what should be said – for example, *“The alleged offender should be asked to stop his/her behaviour”*; *“The impact of his or her behaviour should be explained – that it is unwanted, causes discomfort and interferes with work.”*

Shell advises employees to keep written records to support informal attempts to stop unwanted behaviour. The policy also makes clear that at any point, the recipient of harassment is able to access formal procedures if so desired (for example, if the harassment is very serious, or if informal attempts to prevent it fail).

It is important to note that most of the policies require that staff must be made aware of them, and know the procedure for complaints. This serves as a deterrent to would-be harassers if they know that they could be reprimanded for their actions (including having their employment terminated).

➤ **Protection for victims and witnesses from retaliation**

“We have a firm ombudsperson who amongst other issues, can address any gender or discrimination or harassment issues that arise. This position is currently held by a senior woman, who also works in the area of professional development and training, and all employees have confidential access to her.”

McKinsey & Company (Asia)

Most policies not only mention protection for victims, but for witnesses as well, particularly from retaliatory acts. Confidentiality is stressed and assurance is given that neither the victim nor the witness will suffer reprisal as a result of making a complaint or providing information about a complaint. Confidential channels are provided – for Singapore Airlines for example, *‘whistle blowers may write or telephone or email a special address’* – and staff appointed to conduct investigations into alleged sexual harassment must come from other departments and not be related in any way to the complainant and alleged harasser so as to be impartial.

Some policies also explicitly mention protection for persons wrongfully accused of sexual harassment. IE Singapore states that it is considered a breach for any employee to knowingly make a false complaint of sexual harassment or provide false information regarding a complaint. Shell, as mentioned above, encourages victims to speak with alleged harassers first to ask them to stop and to explain the impact of their behaviour. This is especially helpful in cases where the alleged harasser may not have any intent to harass and may not know that his actions are offensive and unwelcome.

➤ **Extending definition of harasser beyond colleagues to vendors and clients**

The possibility of harassers being others besides just employees of the company is referenced for example in the Singapore Airlines policy, where they are defined not only as co-workers and supervisors, but as vendors or customers as well. This also expands the boundaries of what constitutes a workplace beyond the physical office space. It is particularly useful in the airline industry and in other industries where employees are not desk-bound, must travel abroad, or spend a lot of time interacting with clients, vendors or customers (such as the public relations industry, sales and marketing jobs, the tourism industry, etc). By expanding the definition beyond just colleagues or co-workers, protection is thus provided for any work-related case of sexual harassment, even if the harasser is not directly employed by the company.

➤ **Responsibility of supervisors and managers to ensure work environment is free of harassment and that staff know about procedures for complaints**

Several of the policies place responsibility on managers and supervisors to ensure that the workplace is free of harassment. This helps to balance the onus on the victim to report harassment, with the onus on the supervisor to take necessary action should such a report be made. It also requires the supervisor to be vigilant in watching for unwelcome behaviour, whether or not victims actually speak up. This is helpful in situations where victims may be too scared or too ashamed to report harassment.

IBM's code of conduct states: *"In respecting and valuing the diversity among our employees, and all those with whom we do business, managers are expected to ensure a working environment that is free of all forms of harassment."*

IE Singapore includes a clause called 'Supervisor's Obligation to Report': *"Any supervisor who experiences, witnesses or receives a written or oral report or complaint of sexual harassment or related retaliatory act shall promptly report it to the Disciplinary Authority."*

Several policies also go further to place the burden of responsibility on witnesses of any sexual harassment to come forward. Shell, IE Singapore and The Body Shop explicitly require employees to take action (through reporting) or support the company in investigations, if they witness another employee being harassed. This could be useful in situations where the manager or supervisor might be the harasser and the victim their subordinate – third party witnesses can be especially helpful in reporting harassment in such cases.

Description by AWARE helpline of a call made to the helpline in 2007:

"Caller is in her 20's, Malay. She witnessed a sexual harassment incident and wanted to know a number to call to press charges. She wants to make a stand about how 'a woman's dignity should be respected'."

➤ **Women's Initiatives**

Companies like McKinsey & Company (Asia) and Shell have women's initiatives within the workplace that organise a range of activities for women employees, as well as provide a platform to address issues they might face in terms of professional development, work-life balance, employment discrimination and other concerns. These initiatives are good vehicles to also address sexual harassment issues should these arise, and offer a means to tackle the problem collectively and offer support for victims.

SECTION THREE: Legal Position in Singapore

This section is derived from a memo developed by lawyers on the Sub-committee that evaluates the current legal position in Singapore dealing with redress for sexual harassment.

1. In this section, we:
 - (a) set out the legal recourse currently available for victims of sexual harassment; and
 - (b) highlight areas of the law which should be subject to further study, so as to properly combat the growing problem of workplace sexual harassment in Singapore.

LEGAL RECOURSE FOR VICTIMS OF SEXUAL HARASSMENT

2. We should state at the outset that at present, there is no statutory sexual harassment law in Singapore i.e. there is no specific legislation addressing and dealing with the issue of sexual harassment.¹
3. As the law stands, sexual harassment is not recognised as a distinct legal wrong. Victims of sexual harassment must seek either **civil** or **criminal** redress.
4. Civil redress has to be sought under common law. Common law refers to law developed through decisions of courts and similar tribunals, rather than through legislative statutes. The civil redress available to victims includes claims against the harasser and/or the victim's employer. As against the harasser, claims for trespass and the tort of harassment may be made. As against the victim's employer, claims in tort and contract may be made.
5. Victims may look to **criminal** laws for more serious forms of sexual harassment, including offences relating to physical assault, sexual assault, indecent exposure, outrage of modesty.

Claims in Tort Against Harassers

6. A tort refers to a civil wrong which does not arise out of contractual or statutory duties.
7. Tort law in Singapore arguably allows a victim of sexual harassment to sue his/her harasser for (1) trespass; and/or (2) harassment.

- (1) Trespass to Persons

¹ It should also be noted that the Tripartite Guidelines on Fair Employment Practices released by the Tripartite Alliance for Fair Employment Practices, are also silent on the issue of sexual harassment.

8. Sexual harassment to an individual can occur as a result of unwanted physical contact with the victim, which is a form of “trespass.” Therefore, a victim of sexual harassment may bring an action against his or her harasser in trespass. Generally, an act of trespass must be done deliberately or negligently.² It must be noted that claims in trespass for personal injuries must be made within three years after the cause of action, in line with the Limitation Act.³
9. Trespass to persons may take any of three forms depending on the form of harassment suffered:
 - (a) *Battery*
 10. Battery is committed when there is actual infliction of unlawful physical contact with the victim, without his or her consent. There need not be intention to cause harm upon the other person. The fact that there was an intention to commit the unwanted physical contact will suffice.
 11. For example, a person who kisses a newly met colleague may be found liable for battery.⁴ The legal test seems to be whether the physical contact imposed was in excess of that “generally acceptable in everyday life”.⁵ What is generally acceptable will naturally vary among and within societies, according to social and cultural practices and the context within which it occurs.
 - (b) *Assault*
 12. Assault is committed where there is an overt act indicating an immediate intention to commit a battery, coupled with the capacity of carrying that intention into effect.⁶ As such, a person can be guilty of committing assault, but not battery.⁷
 13. One such example would be where a person approaches his victim menacingly, shouting lewd remarks like “I am going to rape you!”
 - (c) *False Imprisonment*
 14. The tort of false imprisonment is committed where the harasser absolutely deprives the victim of his or her liberty at any time, without lawful cause.⁸ One example would be where a person prevents another from leaving a room, using his physique to block the only exit of the room.
 15. Unfortunately, sexual harassment often consists of acts, which do not amount to battery or assault or false imprisonment, for example verbal harassment with no physical contact with the victim. Therefore there are limitations to making a claim in tort (for trespass against the person) for acts of sexual harassment.

² See *Fowler v Lanning* [1959] 1 QB 426, *Wilson v Pringle* [1987] QB 237.

³ See Section 24A, Limitation Act (Cap. 163).

⁴ *R v Chief Constable of Devon & Cornwall, ex parte CEGB* [1982] QB 458 at 47 1.

⁵ *Collins v Wilcock* [1984] 1 WLR 1172.

⁶ *Stephens v Myers* (1830) 4 C & P 349.

⁷ *Jones v Shenvood* [1942] 1 KB 127.

⁸ *Bird v Jones* (1845) 7 QB 742.

(2) Tort of Harassment

16. Sexual harassment may not always arise in the form of physical contact. Very often, sexual harassment takes the form of unwelcome non-physical actions, such as verbal abuse and lewd remarks. Victims of such sexual harassment are often confronted with the hurdle of proving some form of harm i.e. injury to health, physical harm or nervous shock or psychiatric harm.
17. It was previously necessary to prove nervous or psychiatric shock in order to satisfy the requirements of tort law.⁹
18. However, the recent landmark decision of the Singapore High Court in *Malcomson Nicholas Hugh Bertram & Anor v Naresh Kumar Mehta*¹⁰ made clear that a course of action in harassment may arise even though the victim did not suffer any nervous shock. It was sufficient that the victim was worried, emotionally distressed, or annoyed.
19. The Singapore High Court significantly defined “harassment” as ‘a course of conduct by a person, whether by words or action... which he ought reasonably to know would cause worry and emotional distress or annoyance to another person’.¹¹ While it was expressly stated in *Malcomson* that this definition was not conclusive and pertained to the facts of the case, the definition is important because it enables victims of sexual harassment to gauge the kinds of acts that Singapore courts will consider as falling within the tort of harassment.
20. *Malcomson* involved an ex-employee who subjected the managerial staff of the company to harassment by making frequent phone calls, sending emails and sms messages to the CEO Malcomson and other staff. He also entered the company’s premises and Malcomson’s home without permission.
21. There should be no reason why the underlying principles of harassment should not apply to instances of sexual harassment in the workplace. Colourful remarks, unwanted physical contact and lewd actions made in the workplace by one colleague to another should be able to constitute sexual harassment, even where the victim suffers no nervous shock but only emotional distress or annoyance.
22. With the advent of the decision in *Malcomson*, it appears that sexual harassment victims in Singapore could claim an injunction against the offender, under general tortious claims for harassment. However, the law in this area is still in its infancy. It remains to be seen how it will be developed, and what requirements will need be satisfied by victims.

⁹ See *Wilkinson v Downton* [1897] 2 QB 57 where the defendant was found liable in tort for playing a joke on the plaintiff by telling her that her husband was seriously injured in a car accident, and causing her to suffer nervous shock; and *Khorasandjian v Bush* [1993] QB 727 (CA) where the victim was threatened with violence and peppered with incessant phone calls. The Court of Appeal held that while the victim did not suffer any nervous shock or mental illness, it was foreseeable that further continued harassment by the appellant would cause such illness.

¹⁰ [2001] 4 SLR 454.

¹¹ *Supra* note 10, para 31.

Claims in Tort Against Employers

23. In common law, an employer may incur liability to an employee who sustains injury in the course of his employment.

(1) Employers' Duty to Ensure Safety of Employees

24. An employer has a non-delegable duty to take reasonable care for the safety of his employees.¹² The employer does not have an absolute duty to ensure his employees are safe but he is under an obligation to exercise due care and skill in ensuring their safety.¹³ The test of what is reasonable for the employer to have done to ensure the safety of his employees depends on the circumstances of the case.¹⁴

25. Although this has not been determined either in the United Kingdom or Singapore, it is possible that an employer's common law duty towards his employees extends to ensuring that they will not be subject to sexual harassment at work.¹⁵

26. In a recent Singapore High Court decision,¹⁶ it was held that if an employer has any reason to anticipate his employee's misconduct, which was likely to be dangerous to fellow employees, the employer was under a duty to those other employees to take reasonable steps to avoid harm arising from it. However, in order to establish liability, it would be necessary to show that the employers had knowledge as to the actions of the misbehaving employee, and the likely outcome of such actions.

27. In terms of sexual harassment, what this means is that if the employer is aware that an employee has on past occasions sexually harassed someone, the employer should take reasonable steps to ensure that it does not happen again and will be liable for damages should it happen again.

28. The difficulty with suing the employer is the ambiguity as to whether a workplace where there are acts of sexual harassment will be held by the courts to be an "unsafe" work environment.

(2) Vicarious Liability of Employers

29. An employer may be held vicariously liable for the torts committed by his employee in "the course of his employment".¹⁷ The employer will not be liable for any negligence of the employee committed outside the scope of the employee's employment.¹⁸

30. Cases suggest that an employer will only be vicariously liable for the acts of an employee who sexually harasses another employee if the harasser exercises

¹² Walton et al, "*Charlesworth & Percy on Negligence*" (Sweet & Maxwell, London: 2001) at page 687

¹³ *Supra*, note 12 at page 690

¹⁴ *James v Hepworth and Grandage Ltd* [1967] 2 All ER 829

¹⁵ Jack Lee Tsen-Ta, "*Workplace Sexual Harassment in Singapore: the Legal Challenge*" 11 S.A.c.L.J. 27 at page 51

¹⁶ *China Construction (South Pacific) Development Co Pte Ltd v Shao Hai* [2004] SGHC 59

¹⁷ *Supra*, note 12 at page 124

¹⁸ *Supra*, note 12 at page 134

some form of disciplinary or supervisory control over the victim.¹⁹ This limits the liability of employers.

31. The problem with suing an employer in tort is that the victim of the sexual harassment would have to establish that he or she has either suffered physical or psychological harm as a result of the sexual harassment and is therefore entitled to damages. However, it is arguable that the decision of the Singapore High Court in *Malcomson's* case may be extended to include victims who only suffer from annoyance, worry, grief and emotion. If the victim only suffers economic loss (for example quits from his or her job because of the sexual harassment), then he or she would have no claim in tort against the employer.

Contractual Claims Against Employers

32. A victim of sexual harassment may argue that the harassment amounts to a breach of his/her contract of employment.
33. Where an employee ends his/her employment due to an intolerable work environment created by sexual harassment, she or he may be able to claim that the departure amounted to constructive dismissal and this potentially gives her or him a right to a range of remedies relating to dismissal. For example, the dismissal breaches an express term in the employment contract relating to notice period, wrongful dismissal or even an implied term such as the requirement of mutual trust and confidence. Alternatively, she or he may have a claim for unfair or unlawful termination of employment.
34. The victim may also claim breach of the employment contract if it can be demonstrated that he/she suffered detrimental changes to the terms and conditions of his/her employment because of his/her refusal to participate in the sexual demands of a superior or fellow worker.
35. The difficulty is that the victim must show and prove to the Court that his/her employer intended to breach the terms of the employment contract. Understandably, this may be difficult and problematic.
36. The terms of the employment (allegedly breached) can be either express or implied. Implied terms include:
- (a) An employer must provide reasonable care for his employee's safety.
 - (b) An employer will not, without reasonable and proper cause, conduct himself in a manner calculated as likely to destroy or seriously damage the relationship of trust and confidence between himself and the employee. An implied term of confidence and trust is breached where an employer seduces his employee in circumstances where the employer exerts undue influence over the employee.²⁰
 - (c) An employer must not use intolerable behavior and bad language on employee.²¹

¹⁹ *Bracebirdge Engineering Ltd v Darby* [1990] IRLR 3

²⁰ *Wood v Freeloder Ltd* [1977] 1 RLR 455

²¹ *Palmanor Ltd v Cedron* [1978] 1RLR 303

- (d) An employer must take an employee's complaint of sexual harassment seriously.²²
37. If there is a breach of an employment contract, an employee can terminate his/her employment, provided the breach is so fundamental that it "goes to the root of the contract." The victim can then also sue for damages.
38. In some cases, there is no outright dismissal. But there is conduct on the part of the employer which makes the worker consider that she has been dismissed without just cause, for example an order for transfer or demotion or when a worker is made redundant or asked to retire. Any of these may constitute constructive dismissal as the employee had in effect been driven out of employment.
39. If there is wrongful dismissal, the Courts will usually not enforce a contract of employment. The employee must accept the breach and sue for damages to recover monetary loss resulting from the premature or early termination of the contract, for example salary or wages, value of benefits in kind including commissions, pension rights, stock options, and accommodation.
40. Most victims are likely to find contractual remedies dissatisfying as Courts generally do not enforce the employment contract by forcing the employer to re-employ the employee. A victim has to quit his/her job and pursue a course of action during which he/she may not be employed or receive any earnings. In effect, the victim encounters double disadvantage.

Sexual Harassers' Criminal Liability

41. Criminal law can be used to address cases of sexual harassment. There is currently no specific offence of harassment either in the *Penal Code* (Cap. 224) or in any other legislation. However, depending on the severity of the sexual harassment, the act in question may be punishable under the *Penal Code* or some other legislation as a criminal offence.
42. The table below gives a flavour of the criminal laws in Singapore which may be applicable to acts of sexual harassment:

Section	Offence Provision	Punishment	Comments
(i) Causing Harassment, Alarm or Distress			
Section 13A(1) of the Miscellaneous Offences (Public Order and Nuisance) Act	Having the intent to cause harassment, alarm or distress to another person, to use threatening, abusive or insulting words or behaviour or to display any writing, sign or	Conviction to a fine not exceeding \$5,000	<ul style="list-style-type: none"> These offences would cover unwanted acts such as making lewd remarks or suggestions, telling vulgar jokes to the victim, and possibly even displaying pornographic visual displays in the victim's sight (e.g. posters, computer

²² *Supra*, note 19

Section	Offence Provision	Punishment	Comments
	<p>visible representation which is threatening, abusive or insulting whether in a public or private place</p> <p>Note: Even if it cannot be proven that the offender acted intentionally, the offender may still be charged under s. 13B (1) of the same Act for the said acts caught under s. 13A (1).</p>		<p>screen-savers).</p> <ul style="list-style-type: none"> The term “harassment” is not defined in the Act, and the ordinary meaning connotes persistent or continual action on the part of the perpetrator. Thus a single incident might not constitute harassment.
(ii) Outrage of Modesty			
Section 354 of the Penal Code	Use of assault or criminal force (defined in s. 351 and s. 350 respectively) with intent to outrage modesty or knowledge that such act is likely to outrage modesty	<ul style="list-style-type: none"> Imprisonment of up to 2 years, or with fine and caning or any 2 of such punishments. A jail sentence is very likely for an offender who has touched the victim more intimately (e.g. the placing of hands on a victim’s buttocks or kissing the victim). A heavier sentence may be imposed when the Court takes as aggravating factors the youth of the victim, the fact that the offender has abused a position of trust and the manner in which the offender conducts his defence. 	<ul style="list-style-type: none"> The victim’s gender is irrelevant. Minor acts of unwanted contact such as kissing or touching caught within the section. A man who lightly slapped his secretary on her bottom was fined S\$2,000.²³ Benchmark sentence is at least 9 months imprisonment with caning if the victim’s private parts or sexual organs have been intruded upon.²⁴
Section 354A(1) of the Penal Code	Voluntarily causing or attempting to cause death, hurt, wrongful restraint in order to outrage modesty	Imprisonment between 2 and 10 years and caning	If the offence is committed in a lift or against any person under the age of 14 years, the punishment is an enhanced jail term between 3 and 10 years with caning

²³ *Soh Yang Tick v PP* [1998] 2 SLR 42

²⁴ *Tan Boon Hock v Public Prosecutor* [1994] 2 SLR 150

Section	Offence Provision	Punishment	Comments
Section 509 of the Penal Code	Having the intent to insult the modesty of any woman, to utter any word, make any sound or gesture, or exhibit any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by the woman	Imprisonment of up to 1 year or with a fine or both	<ul style="list-style-type: none"> • Would seem to cover most forms of sexual harassment. • No assault or criminal force is required. • Useful in criminalizing acts of sexual harassment. • The intrusion on a woman's privacy, intending to insult her modesty is also caught within this section. A man who peeped at a woman through a hole in the bathroom door while she was showering was fined S\$2,000.²⁵ • May include situations where a man harasses a woman by hounding her and making improper sexual remarks to her.
(iii) Rape and Unnatural Offences			
Section 375 of the Penal Code	A man having sexual intercourse with a woman against her will or without her consent, or with her consent when such consent has been obtained by putting her in fear of death or hurt	<ul style="list-style-type: none"> • Imprisonment of up to 20 years with fine or caning. • Where in order to commit or facilitate the commission of rape, a person voluntarily causes hurt to a woman or puts her in fear of death or hurt to herself or any other person, that person must serve a minimum of 8 years in prison and be caned with at least 12 strokes of cane 	<ul style="list-style-type: none"> • If the offender pleads guilty thereby saving the victim from further embarrassment and suffering of reliving the experience in court, he may be given a reduction of one-quarter or one-third of the standard sentence • The victim's youth, an abuse of trust or a position of responsibility by the offender and the presence of perversities and gross indignities forced on the victim are all aggravating factors that will justify a longer sentence
Section 376 of the Penal Code	Sexual Assault by penetration including anal and oral sex	<ul style="list-style-type: none"> • Maximum jail term of 20 yrs and fine or caning 	<ul style="list-style-type: none"> • Subjecting a woman to fellatio, cunnilingus or anal intercourse against her will is caught under this section. • Section also covers situations where men force other men to

²⁵ *Tan Pin Seng v. PP* [1998] 1 SLR 418

Section	Offence Provision	Punishment	Comments
			engage in fellatio or anal intercourse
Section 377A of the Penal Code	Commission of an act of gross indecency with another male	Imprisonment of up to 2 years	Section covers a relatively wide range of conduct – from indecent touching to fellatio
(iv) Special Class of Victims: Domestic Maids			
Section 73 of the Penal Code	An employer or member of the employer's household who ill-treats a domestic maid by causing hurt or grievous hurt (s. 323-325), wrongful confinement (s. 342-344), offences impacting the domestic maid's modesty (s. 354 and 509), and any attempt, abetment or conspiracy to commit the foregoing crimes.	The court may sentence the employer of the domestic maid or member of his household, as the case may be, to one and a half times the amount of punishment to which he would otherwise have been liable for that offence	Enhanced penalties for the offences committed against domestic maids, who are in a vulnerable position against their employers
(v) Employer's Criminal Liability for Employee's Wrongdoing			
Section 109 of the Penal Code	Abetment of a criminal offence.	The same for the actual criminal offence itself	<ul style="list-style-type: none"> • Also includes doing anything either prior to or at the time of a commission of an act in order to facilitate the commission of the act, and thereby facilitating the commission of the act. • It must be proved beyond a reasonable doubt that the employer not merely aided the harasser but intentionally aided him i.e. he must have deliberately acted or refrained from acting to prevent the wrongdoer in harassing the complainant. • Mere neglect or oversight on the employer's part is insufficient. Thus it would be difficult to see how an employer by failing to investigate and act on the complaints of sexual harassment, facilitates the

Section	Offence Provision	Punishment	Comments
			commission of the act since the omission takes place after the event

43. Victims of sexual harassment may find criminal remedies inadequate as:
- (a) crimes of outrage of modesty, criminal intimidation, criminal trespass and more serious forms of unwanted sexual advances such as molest or rape are inadequate to deal with instances of sexual harassment which lack the elements of threats of violence and/or use of force. Our criminal laws deal with the more overt and physical forms of sexual assault and violations. They are not well equipped to tackle the more subtle instances of work-related sexual harassment;
 - (b) to succeed in any prosecution, criminal law requires that the offence against the accused be proven beyond reasonable doubt, which is a strict standard of proof;
 - (c) prosecution of the harasser is at the discretion of the Attorney General's Chambers. There is no guarantee that action will be taken against the harasser. Further, even if action is taken, the victim will not be compensated in any way since the harasser will either be fined or jailed.²⁶ Victims cannot usually recover damages or costs; and
 - (d) criminal courts are not empowered to grant interim relief, for example, interim injunctions to restrain the behaviour of a perpetrator pending the outcome of prosecution. This may not fulfill the victim's ultimate goal of bringing the unwanted behaviour to an end quickly and quietly.

AREAS OF LAW FOR FURTHER STUDY

44. While there are avenues of redress available to victims of sexual harassment under tort, contract and criminal law, they do not provide adequate remedies for victims of sexual harassment. There are lacunas in the law and this must be addressed.
45. It has been suggested that there are four main possible approaches to the problem of harassment generally (not confined to sexual harassment):
- (a) recognise a general tort of harassment;
 - (b) extend one of the existing categories of tort law to cover acts of sexual harassment which are not presently covered;
 - (c) enact specific legislation to address the issue of harassment

²⁶ *Supra*, note 15 at page 78

- (d) amend Section 13A and 13 of the Miscellaneous Offences (Public Order and Nuisance) Act to address the issue of harassment generally.²⁷
46. We are of the view that further research and study is required to combat the problem of sexual harassment.
47. It would be highly useful for a study to consider the enactment of specific legislation on sexual harassment. The study should explore the inclusion of the following key elements in the proposed legislation dealing with the issue of sexual harassment:
- (a) A wide definition of sexual harassment to cover verbal and non-verbal action and conduct. The definition must cover all scenarios: where the harassment is between a superior and subordinate, in other words a *quid pro quo* scenario; harassment between co-workers / colleagues subordinates; and harassment by third parties, for example customers and clients (e.g. hotel, airline and service industries) and those hired on a “contract basis”;
 - (b) Delineation of the liability of employers and the alleged harasser;
 - (c) Imposition of affirmative duty on the part of employers to prevent sexual harassment;
 - (d) Fair and clear procedures for both the accused and complainant;
 - (e) Procedures to protect victimization of a complainant;
 - (f) A wide range of remedies including damages, sanctions and disciplinary action which must be taken by employers against harassers who have been found to be guilty;
48. A study should also look into the development of clear guidelines for employers to follow in the implementation of codes of conduct in their offices to deal with sexual harassment at the workplace, including harassment as between clients, customers and employees.
49. Critically, research should also be undertaken to explore the establishment of an administrative body or tribunal to handle complaints. For example, a department within the Ministry of Manpower. Administrative bodies are better suited to resolve a victim’s complaint quickly and efficiently and thereby addresses the victim’s primary aim to bring an end to the unwanted behaviour. Administrative mechanisms are also preferable as the litigation process is usually lengthy and expensive, and is likely to serve as a deterrent to a victim.
50. We are of the firm view that the taking of steps to deal with issue of sexual harassment, including the enactment of specific legislation not only makes eminent sense, but is also supported by the Constitution of the Republic of Singapore (“the Constitution”).

²⁷ Mark Lim, Gene Kwek & Eric Tan, “After *Malcolmson v Mehta*: Charting New Waters in the Law of Harassment in Singapore – Civil and Criminal Perspectives” [2002] 14 SAclJ 302 at 333

51. Article 9(1) of the Constitution provides that “No person shall be deprived of his life or personal liberty saves in accordance with law”. The word “life” in Article 9(1) has not been interpreted by Singapore Courts. However, the Malaysian case of *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan*²⁸ has held that the right to “life” includes protection of the health and strength of workers as well as just and humane conditions of work.
52. A vital part of everyday life includes the right of an employee to proper working conditions i.e. a working environment, which is free of sexual harassment.
53. Armed with the support of the Constitution, we hope that our paper inspires further studies to fight the growing problem of sexual harassment.

²⁸ [1996] 1 MLJ 261

KEY RECOMMENDATIONS

GENERAL

Workplace sexual harassment in Singapore is clearly a social challenge that warrants attention. Greater public advocacy is needed to raise awareness about the issue and bring it out of the shadows.

There are actors at different levels that can play a role in its prevention, and in offering protection and support for victims. It is important to identify these actors not only at the company or organizational levels, but also at the state level. In addition, every individual has a part to play in helping to create a no-tolerance environment for sexual harassment at the workplace, whether it is providing support to recipients of sexual harassment, or speaking up against it.

The government can lead the way by implementing policies and programmes that define the problem and enforce clear guidelines on preventative and remedial measures. This would help create a no-tolerance climate for sexual harassment at the workplace and encourage more employers to be socially responsible, and to maintain a safe and conducive work environment for their employees.

Employers should consider establishing policies that firmly prohibit sexual harassment, institute clear mechanisms to address complaints, and provide training for managers and staff to recognise and deal appropriately with the problem.

Organisations and associations such as family service and counselling centers (voluntary welfare organizations), community legal clinics, industry associations, and unions among others could be instrumental in providing much-needed 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 what to do.

Much more work is needed to understand the scope and extent of workplace sexual harassment and identify the best possible solutions or avenues of redress. There is certainly a need for greater research into the prevalence rates and scope of workplace sexual harassment in Singapore, such as research into its occurrence and impact as experienced by specific groups, including migrant domestic workers and students (i.e. in schools and universities).

Further study would be useful on the feasibility of specific legislation to deal with sexual harassment, as well as the possible establishment of administrative mechanisms to handle complaints. For example, a department within the Ministry of Manpower, or an administrative body such as a tribunal. Administrative mechanisms can be helpful solutions, since the litigation process may be lengthy and expensive, and is likely to serve as a deterrent to a victim.

AT THE INDIVIDUAL LEVEL

What you can do as a recipient of sexual harassment:

- Tell the harasser to stop, expressing your feelings about the situation and making it clear that his / her behaviour is unwelcome and unwanted. If done in privacy, and the inappropriate behaviour ceases, the relationship can continue positively.

- If the harassment does not cease after you have made a clear request for it to stop, ensure that you keep a written record of all incidents of harassment in detail, including words, gestures, actions, time and place, and witnesses (if any). This helps in terms of remembering details for official investigation and reporting.
- It is often useful to speak to persons that you trust about the incident(s). Friends, family and trusted colleagues could help ease emotional distress. Colleagues could also act as 'safety nets' in the workplace, helping to diffuse uncomfortable situations, deterring further incidents, and possibly acting as witnesses.
- Make a report to the human resource department of your organization – request for an investigation, appropriate disciplinary action and preventive practices.
- If your organization has no human resource department, report to a higher authority who has the power to make decisions about what can be done (supervisor, head of department, etc).
- Consult a legal clinic or private lawyer to know your rights and strength of your case if you want to press charges – this is helpful in the event that you want to sue for damages, or breach of contract if there is a clause regarding sexual harassment in your employment contract.
- Make a police report, especially if there has been physical contact. The most obvious case for police investigation is 'outrage of modesty'. You need to know however, that once a police report is made, it is out of your hands.
- If the police will not investigate, you may take out a private summons against the harasser. Consult a lawyer or legal clinic first to understand the proper procedures and consequences – hiring a private lawyer is advisable but can be costly.
- Explore other avenues of support – organisations exist that can offer trauma counseling, information about rights, and help to determine what action is appropriate, such as neighbourhood Family Service Centers, counseling centers, and free community legal clinics. AWARE runs a helpline, legal clinic, and offers face-to-face counseling, and a 'Befriender' programme for the public.

What you can do if a friend/loved one is being harassed:

- A common fear of recipients of sexual harassment is that of not being believed. Provide a listening ear and acknowledge his/her feelings – do not judge or minimize his/her feelings or suggest that you doubt what he/she is saying.
- Recipients of sexual harassment often feel confused, afraid, angry or depressed about what has happened to them. Be patient - give them time to address their fears and emotions; do not rush them into making a hasty decision on what action to take.
- Recipients of sexual harassment may feel guilty or ashamed about what has happened to them. Emphasise that no one asks to be harassed and that they are not to be blamed for any unwanted and unwelcome attention.

AT THE ORGANISATION LEVEL

There are several actions that employers can take to provide support and protection for their employees and ensure they enjoy a safe and conducive working environment.

What you can do as an employer:

- Establish a policy that explicitly prohibits sexual harassment in the workplace. This can be a stand-alone policy or integrated within broader policies on harassment in general.
- Establish a no-tolerance culture towards harassment – ensure that all employees are made aware not only about what constitutes sexual harassment, but also about possible disciplinary actions that may be taken against harassers, or against those who make false reports of harassment.
- Managers and supervisors should be made responsible for ensuring that their staff are protected from sexual harassment. Training should be provided for managers and supervisors to help develop their skills and sensitivity to deal with complaints effectively.
- Establish clear procedures to tackle grievances and complaints of sexual harassment – this includes identification of a department or person to whom the report should be made, and a description of the process that will be followed, including disciplinary actions that will be taken if necessary.
- Ensure strict confidentiality and impartiality in the treatment of complaints of sexual harassment – confidential reporting channels should be made available, staff appointed to conduct investigations should come from other departments and not be related in any way to the complainant or alleged harasser, assurances should be given to the complainant and any witnesses that neither will suffer any reprisals as a result of making a complaint or providing information about a complaint.
- Extend the definition of workplace sexual harassment beyond the physical office space, and beyond staff directly employed by the company – protection should be provided for any work-related incident of sexual harassment, no matter the time or place it occurs, and whether the harasser is a co-worker, client, customer or vendor.

Your Rights as an Employee:-

You have the right to work in a safe and conducive environment that is free of any form of harassment.

You have the right to be treated with respect.

You have the right to say 'NO' to unwanted and unwelcome physical, verbal and visual actions.

You have the right to seek recourse to protect yourself and prevent further harassment.

You have the right to make choices on what action to pursue, regardless of what others may tell you.

Remember...no one asks to be harassed – do not feel ashamed, do not blame yourself. Do not suffer in silence – it is your right to be free of sexual harassment.