

Data Protection and Cyber Regulation

- Unit 3: Prevention of Online Threats and Falsehoods



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Topics Covered

1. Protection from Harassment Act 2014
2. Protection from Online Falsehoods and Manipulation Act 2019

Readings for this Unit

1. Protection from Harassment Act 2014 (*POHA*), Sections 3 to 7, 11, 12, 15 and 15A to 15E
2. Protection from Harassment (Exempt Class of Persons) Order 2014
3. Protection from Harassment (Prescribed Internet Intermediaries and Others) Regulations 2020
4. Protection from Online Falsehoods and Manipulation Act 2019 (*POFMA*), Sections 7 to 16, 20 to 28, 32 to 34, 40 to 43 and 48
5. Protection from Online Falsehoods and Manipulation Regulations 2019, Regulations 3 to 8

Scope of this Unit

- As this unit is part of the module on Data Protection and Cyber Regulation, we are looking into how the use of data and information is regulated by the law
- While POHA can apply in the offline world, we are focusing on how it applies in the online world
- POHA and POFMA (and the recent Online Safety Act) have similar approaches in dealing with online conduct that may harm an individual

1| **Protection from Harassment Act 2014**

Part 1: Scope and Offences

Scope of the POHA

- Definitions:
 - **entity**: any company or association or body of persons (whether corporate or unincorporate), but excludes any public agency;

Criminal Offences under POHA

(I) Section 3: Intentionally causing harassment, alarm or distress

- An individual or entity must not cause any person to harassment, alarm or distress by engaging in any of the following conduct with the intent of causing, harassment, alarm or distress to another person:
 - use any threatening, abusive or insulting words or behaviour
 - make any threatening, abusive or insulting communication
 - publish any identity information of the target person or a related person of the target person
- Contravention is an offence which may lead to a fine not exceeding \$5,000, imprisonment for up to 6 months or both
- It is a defence for the accused individual or entity to prove that their conduct was reasonable

Criminal Offences under POHA

(I) Section 3: Intentionally causing harassment, alarm or distress (continued)

- Illustrations:

(c) X and Y were formerly in a relationship which has since ended. X writes a post on a social media platform making abusive and insulting remarks about Y's alleged sexual promiscuity. In a subsequent post, X includes Y's photographs and personal mobile number, intending to cause Y harassment by facilitating the identification or contacting of Y by others. Y did not see the posts, but receives and is harassed by telephone calls and SMS messages from strangers (who have read the posts) propositioning Y for sex. X is guilty of an offence under section 3(2) in relation to each post.

(d) X records a video of Y driving recklessly in a car on the road. X posts the video on an online forum, where people share snippets of dangerous acts of driving on the road. X posts the video with the intent to warn people to drive defensively. X has not committed an offence under this section.

Criminal Offences under POHA

(II) Section 4: Harrassment, alarm or distress

- An individual must not engage in any of the following conduct which is likely to be heard, seen or otherwise perceived by any person and is likely to cause harrassment, alarm or distress:
 - use any threatening, abusive or insulting words or behaviour
 - make any threatening, abusive or insulting communication
- Contravention is an offence which may lead to a fine not exceeding \$5,000
- It is a defence for the accused individual or entity to prove that:
 - the accused had no reason to believe that the words or behaviour used or communication made would be heard, seen or otherwise perceived by the person in question
 - their conduct was reasonable

Criminal Offences under POHA

(II) Section 4: Harrassment, alarm or distress (continued)

- Illustration:

(a) X and Y are classmates. X posts a vulgar tirade against Y on a website accessible to all of their classmates. One of Y's classmates shows the message on the website to Y, and Y is distressed. X is guilty of an offence under this section.

Criminal Offences under POHA

(III) Section 5: Fear, provocation or facilitation of violence

- Note elements of the offence(s), penalties and defences
- Illustrations:
 - (a) X and Y are classmates. X writes a post with threatening and abusive remarks against Y on a website accessible to all their classmates. X writes a subsequent post on the same website, stating Y's identity information and stating "Everyone, let's beat Y up!". X is guilty of an offence under this section in respect of the subsequent post.

Criminal Offences under POHA

(III) Section 5: Fear, provocation or facilitation of violence

(continued)

- Illustrations:

(b) X writes a public post on a social media platform containing threats against Y. X publishes a subsequent public post stating A's home address and a message "I know where you live". X is guilty of an offence under this section relating to conduct mentioned in section 5(1A)(a)(i) if X intends the subsequent post to cause Y to believe that violence will be used against A, or an offence under this section relating to conduct mentioned in section 5(1A)(b)(i) if X knows that it is likely that Y will believe that violence will be used against A as a result of X's subsequent post.

(c) X writes a post (on a social media platform to which Y does not have access) containing threats of violence against Y and calling others to "hunt him down and teach him a lesson". B posts Y's home address in reply to X's post. B is guilty of an offence under this section.

Criminal Offences under POHA

(IV) Section 6: Offences in relation to public servant or public service worked

- Note elements of the offence(s), penalties and defences
- Illustration:

X is unhappy that a public servant, Y, refused to waive a late payment charge. X writes several posts on an open social media platform with abusive comments about Y in relation to the incident. In a subsequent post, X posts Y's name, home address and photograph on the same open social media platform in order to cause Y distress. Y is distressed by the subsequent post. X is guilty of an offence under this section.

Part 2: Civil Remedies

Civil Remedies under POHA

(I) Section 11: Action for statutory tort

- Victim under sections 3, 4, 5 or 7 may bring civil proceedings against the individual or entity alleged to have contravened one of those sections (the “respondent”)
- In such proceedings, the court may award damages to the victim if satisfied on a balance of probabilities that the respondent had contravened one of those sections

Civil Remedies under POHA

(II) Section 12: Protection Order

- Victim under sections 3 to 7 may make an application to court for a protection order
- In such proceedings, the court may make a protection order if satisfied on a balance of probabilities that the respondent had contravened one of those sections
- Deeming provision if the respondent had been convicted of an offence under the relevant section

Part 3: Orders relating to False Statements

Orders relating to False Statements

- Types of orders:
 - Stop publication order
 - Correction order
 - Disabling order
 - Targeted correction order
 - General correction order
- Note procedural requirements in sections 15, 15A to 15E
- An order may be made even if the statement has been amended or has ceased to be published
- An order may be made against a party in or outside Singapore
- An order may require the relevant party to do or refrain from doing an act in or outside Singapore

Orders relating to False Statements

(I) Section 15A: Stop Publication Order

- Court may make a stop publication order (*SPO*) against any individual or entity (the respondent) if:
 - Satisfied on a balance of probabilities that the respondent published the relevant statement;
 - Satisfied on a balance of probabilities that the relevant statement is a false statement of fact; and
 - It is just and equitable to do so.
- SPO may be made even if the respondent does not know or have reason to believe that the relevant statement is false
- SPO may require the respondent or any other individual or entity to stop publishing the relevant statement, or a similar statement, by a specified time

Orders relating to False Statements

(II) Section 15B: Correction Order

- Court may make a correction order (*SPO*) against any individual or entity (the respondent) if:
 - Satisfied on a balance of probabilities that the respondent published the relevant statement;
 - Satisfied on a balance of probabilities that the relevant statement is a false statement of fact; and
 - It is just and equitable to do so.
- CO may be made even if the respondent does not know or have reason to believe that the relevant statement is false
- CO may require the respondent to publish in Singapore a correction notice (see Act for details)

Orders relating to False Statements

(III) Section 15C: Disabling Order

- Court may make a correction order (*DO*) against an internet intermediary (the respondent) if:
 - Satisfied on a balance of probabilities any material consisting of or containing the relevant statement has been or is being published by means of an internet intermediary service provided by the respondent;
 - Satisfied on a balance of probabilities that the relevant statement is a false statement of fact; and
 - It is just and equitable to do so.
- DO may require the respondent to disable access by end-users of the internet intermediary service provided by the respondent in Singapore (see Act for details)
- See also Targeted Correction Order under section 15D and general correction order under section 15E

Part 4: Subsidiary Legislation

Subsidiary Legislation

Protection from Harassment (Exempt Class of Persons) Order 2014

- Refer to Order for list of persons against whom no protection order may be made

Subsidiary Legislation

Protection from Harassment (Prescribed Internet Intermediaries and Others) Regulations 2020

- Refer to Regulations for list of persons against whom a disabling order, targeted correction order or general correction order may be made

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Protection from Online Falsehoods and Manipulation Act 2014

POFMA

- Note similarities with POHA:
 - Offence for communication of false statements of fact in Singapore
 - Directions including:
 - Correction direction
 - Stop communication direction
 - Access blocking order
 - Directions to internet intermediaries (targeted correction direction, disabling direction, general correction direction, access blocking order)
 - Prescribed internet intermediaries (under the POHA Regulations)
- Declaration of online locations
- Directions to counteract inauthentic online accounts and coordinated inauthentic behaviour



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