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ONLINE CRIMINAL HARMS ACT 2023

ONLINE CRIMINAL HARMS (REVIEWING TRIBUNALS) RULES 2024

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In exercise of the powers conferred by section 44 of the Online Criminal Harms Act 2023, the Minister for Home Affairs makes the following Rules:

PART 1

PRELIMINARY

Citation and commencement

1. These Rules are the Online Criminal Harms (Reviewing Tribunals) Rules 2024 and come into operation on 1 February 2024.

Definitions

2.—(1) In these Rules —

“appeal” means an appeal to a Reviewing Tribunal made under —

(a) section 18(1) of the Act against a Part 2 direction; or

(b) section 37(1) of the Act against a Part 6 order;

“appeal proceedings” means proceedings before a Reviewing Tribunal regarding an appeal contained in a notice of appeal;

“appealable decision” means —

(a) the designated officer’s decision under section 17(1) of the Act to affirm or substitute a Part 2 direction; or

(b) the competent authority’s decision under section 36(1) of the Act to affirm or substitute a Part 6 order;

“appellant” means a person who brings an appeal under section 18(1) or 37(1) of the Act;

“authorised representative”, for any person, means an individual who is allowed under rule 11 to represent the person in an appeal proceedings, whether or not the individual is an advocate and solicitor;

“contact address”, for any person, means any of the following nominated by the person for the receiving of documents under these Rules:

(a) the person’s residential address, if an individual;

(b) the address of the person’s place of business;

(c) an email address;

(d) the person’s chosen means of notification and chosen means of access to access those documents;

“defence” means a defence to a notice of appeal under rule 18;

“identity particulars” means —

(a) for an individual —

(i) the full name, and the number of the passport or other identity document, of the individual; and

(ii) the nationality of the individual; or

(b) for an entity —

(i) the full name of the entity;

(ii) the place the entity was incorporated or otherwise formed; and

(iii) the Unique Entity Number (UEN) of the entity, if any;

“notice of appeal” has the meaning given by rule 13;

“parties”, in relation to any appeal proceedings about an appeal, means —

(a) the appellant in the appeal; and

(b) the reconsideration authority in relation to the appeal,

and “party” means either of them;

“reconsideration authority” means —

(a) in relation to an appeal under section 18(1) of the Act against a Part 2 direction — the designated officer who gave notice of the decision under section 17(1) of the Act concerning the Part 2 direction; or

(b) in relation to an appeal under section 37(1) of the Act against a Part 6 order — the competent authority;

“Secretary” means the Secretary to the Reviewing Tribunals appointed under section 40(2) of the Act;

“working day” means any day except a Saturday, Sunday or public holiday.

(2) Where (under powers delegated by the competent authority under section 5 of the Act) an authorised officer makes an appealable decision in relation to a Part 6 order, references in these Rules to the competent authority in relation to an appeal against the appealable decision are taken to be references to that authorised officer.

(3) Unless the context otherwise requires, a reference to a Reviewing Tribunal in relation to any part of any appeal proceedings is a reference to the Reviewing Tribunal who has cognizance of the appeal which is the subject of the appeal proceedings.

(4) An appeal is decided by a Reviewing Tribunal without an in-person hearing if it is decided on written material and submissions without parties to the appeal proceedings attending in person before the Reviewing Tribunal.

Address for service on Reviewing Tribunal

3. Any appeal or other document to be lodged with, given to or served on a Reviewing Tribunal under these Rules must be addressed to the “Secretary to the Reviewing Tribunals” and sent by email to secretary@ochatribunal.gov.sg.

Appropriate form

4.—(1) In these Rules, “appropriate form”, in relation to any purpose for which a specific form is required to be used, means the relevant form that is set out on the website at <https://go.gov.sg/ocha-reviewing-tribunal>.

(2) A requirement in these Rules that a document be in an appropriate form includes a requirement that the document be completed in the English language and in accordance with any directions that may be specified in the appropriate form.

(3) However, where strict compliance with an appropriate form is not possible, the Secretary may allow for the necessary modifications to be made to that form, or for the requirements of that form to be complied with in any other manner that the Secretary thinks fit.

Secretary to Reviewing Tribunals

5.—(1) The duty of the Secretary is —

- (a) to provide administrative and secretarial support to each Reviewing Tribunal in relation to every appeal the Reviewing Tribunal has cognizance of under these Rules; and
- (b) to perform any other duties that are prescribed in these Rules.

(2) The Secretary has to attend at every hearing by a Reviewing Tribunal of an appeal referred to the Reviewing Tribunal under rule 20.

PART 2

EXERCISE OF JURISDICTION

Inquisitorial function

6.—(1) Where a Reviewing Tribunal considers an appeal made to it against an appealable decision, it is the duty of the Reviewing Tribunal —

- (a) to investigate the case; and
- (b) in relation to the Reviewing Tribunal's findings from its investigations — to determine the appeal by applying the same principles as would be applied by a civil court, including principles on an application for judicial review.

(2) To avoid doubt, a Reviewing Tribunal is not under any duty to hear, consider or determine any appeal if it determines the appeal to be an appeal to which section 43(2) of the Act applies.

Non-disclosure if prejudicial to national security, etc.

7.—(1) A Reviewing Tribunal must carry out its functions in such a way as to secure that information is not disclosed to an extent, or in a manner, that is prejudicial to —

- (a) Singapore's national security;
- (b) the prevention or detection of serious crime;
- (c) the economic wellbeing of Singapore; or
- (d) the continued discharge of the functions of any of the intelligence services of Singapore.

(2) A Reviewing Tribunal is not to order any person to disclose any information or document which the Reviewing Tribunal itself would be prohibited from disclosing by virtue of this rule, had the information or document been disclosed or provided to the Reviewing Tribunal by that person.

(3) A Reviewing Tribunal's proceedings, including any in-person hearings, must be conducted in private.

Manner of hearings and consideration

8.—(1) A Reviewing Tribunal is under no duty to hold in-person hearings, and may decide an appeal without an in-person hearing.

(2) A Reviewing Tribunal may hold, at any stage of its consideration, in-person hearings at which a party to the appeal proceedings may make representations, give evidence or call witnesses.

(3) Every in-person hearing by a Reviewing Tribunal must be in accordance with these Rules.

(4) A Reviewing Tribunal may require all or any of the following individuals to attend an in-person hearing:

- (a) the reconsideration authority in relation to the appeal;
- (b) the appellant if an individual, together with his or her authorised representative, if any;
- (c) the appellant's authorised representative, if the appellant is not an individual;
- (d) an individual who is a witness or may be required to attend as a witness in an appeal proceeding, together with his or her authorised representative, if any.

(5) Within a period notified by the Reviewing Tribunal for the purpose of this rule, the reconsideration authority, the appellant or the appellant's authorised representative must inform the Reviewing Tribunal of any witnesses the reconsideration authority, the appellant or authorised representative (as the case may be) intends to call.

(6) No other witnesses may be called without the permission of the Reviewing Tribunal.

Separate hearings, witnesses, etc.

9.—(1) A request for a separate in-person hearing in connection with any appeal proceedings —

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- (a) may be made in writing by any of the following:
- (i) the appellant;
 - (ii) the reconsideration authority in relation to the appeal;
 - (iii) any other individual who is a witness or may be required to attend as a witness in the appeal proceedings; and
- (b) must —
- (i) be made no later than 5 working days before the separate in-person hearing sought; and
 - (ii) contain the reasons for the request.
- (2) Subject to paragraph (3) and rule 7, a Reviewing Tribunal and the Secretary must not disclose to an appellant or to any other person —
- (a) the fact that the Reviewing Tribunal has held, or proposes to hold, a separate in-person hearing under these Rules;
 - (b) any information or document disclosed or provided to the Reviewing Tribunal in the course of that hearing, or the identity of any witness at that hearing; or
 - (c) the fact that any information, document, identity or opinion has been disclosed or provided in the circumstances mentioned in sub-paragraph (b).
- (3) Subject to rule 7, the Reviewing Tribunal concerned may disclose anything described in paragraph (2) with the consent of —
- (a) in the case of paragraph (2)(a) — the individual required to attend the separate in-person hearing; or
 - (b) in the case of paragraph (2)(b) or (c) — the witness in question or the person who disclosed or provided the information or document.

Evidence

10.—(1) A Reviewing Tribunal may receive evidence in any form, and may receive evidence that would not be admissible in a court of law.

(2) A Reviewing Tribunal may give directions as to —

- (a) the issues on which it requires evidence;
- (b) the nature of the evidence which it requires to decide the appeal before it; and
- (c) the manner in which the evidence is to be placed before the Reviewing Tribunal.

(3) Without limiting paragraph (2), a Reviewing Tribunal may require a witness to give evidence —

- (a) on oath or affirmation at an in-person hearing; or
- (b) by way of affidavit or statutory declaration,

but not by means of a telephone communication, live video or live video or audio link.

(4) Subject to rule 7, a Reviewing Tribunal may do all or any of the following in connection with any appeal proceedings relating to an appeal it has cognizance of:

- (a) summon any party or a party's authorised representative, or any person who is not a party, in Singapore to attend to do one or both of the following:
 - (i) give evidence to the Reviewing Tribunal;
 - (ii) produce to the Reviewing Tribunal any document, record or other thing in the custody or under the control of that party or person;
- (b) put questions to the parties, their authorised representatives and their witnesses or other person summoned under sub-paragraph (a);
- (c) procure and receive all the evidence, written or oral, as the Reviewing Tribunal considers necessary or desirable to procure.

Representation

11.—(1) An appellant or an individual mentioned in rule 8(4) may be represented by an authorised representative at appeal proceedings.

(2) The permission of the Reviewing Tribunal concerned is required for anyone to represent an appellant or an individual mentioned in rule 8(4) as an authorised representative in connection with appeal proceedings, unless all of the following are first given to the Secretary or given within the time directed by the Reviewing Tribunal concerned:

- (a) the identity particulars and a contact address in Singapore of the authorised representative;
- (b) evidence of a valid authorisation by the appellant or the individual mentioned in rule 8(4) (as the case may be) for the person to act as an authorised representative of that appellant or individual in connection with appeal proceedings.

PART 3

STARTING APPEAL

How to start appeal

12. An appeal against an appealable decision must be made to a Reviewing Tribunal by —

- (a) lodging a notice of appeal in accordance with rule 13; and
- (b) paying an administrative fee prescribed under regulation 9(1) of the Online Criminal Harms (Reconsideration Application and Appeal Fee) Regulations 2024 (G.N. No. S 44/2024) to the Secretary.

Notice of appeal**13.—(1) Every notice of appeal —**

- (a) must state —
 - (i) the identity particulars, address and contact number of the appellant making the appeal;
 - (ii) if the appellant has an authorised representative — the identity particulars, address and contact number of the authorised representative; and
 - (iii) a contact address for the service of documents on the appellant in connection with appeal proceedings before the Reviewing Tribunal;
- (b) must contain —
 - (i) a concise statement of the circumstances under which that appeal arises, the facts and the issues in the appeal;
 - (ii) a statement of whether the whole or part of the Part 2 direction or Part 6 order is appealed against, and (if applicable) the part that is appealed against;
 - (iii) a summary of the grounds of appeal against the appealable decision; and
 - (iv) a succinct presentation of the arguments supporting each ground of appeal;
- (c) must be in the appropriate form;
- (d) must be signed and dated by the appellant, or on the appellant's behalf by the authorised representative; and
- (e) must be accompanied by —
 - (i) a copy of the notice of the appealable decision; and
 - (ii) any documents supporting the arguments.

(2) An appellant cannot raise or rely on any ground of appeal which is not stated in the notice of appeal during any hearing of the appeal by the Reviewing Tribunal, unless the appellant has permission under

rule 16 to amend the appellant's notice of appeal to include that ground.

Appeal number

14.—(1) Upon the Secretary receiving a notice of appeal, the Secretary must do all of the following no later than 7 working days after the day of that receipt:

- (a) affix to the notice of appeal an official stamp showing the date on which the notice was received;
- (b) assign a number to the notice of appeal and enter it in a list;
- (c) inform the appellant of the number assigned under sub-paragraph (b).

(2) After affixing the official stamp and assigning a number to the notice of appeal, the Secretary must also without delay —

- (a) refer the notice of appeal to a Reviewing Tribunal in accordance with rule 20; and
- (b) subject to rules 15, 16 and 17, forward a copy of the notice of appeal to the reconsideration authority.

Defective notices of appeal

15. If the Reviewing Tribunal having cognizance of an appeal considers that the notice of appeal —

- (a) is not lodged in accordance with rule 13; or
- (b) is materially incomplete, unduly prolix or lacking in clarity,

the Reviewing Tribunal may, without affecting section 43(2) of the Act, give any directions to the appellant that are necessary to remedy the notice of appeal.

Amendment of notice of appeal

16.—(1) An appellant may, with the permission of the Reviewing Tribunal having cognizance of the appellant's appeal, amend the appellant's notice of appeal.

(2) Where the Reviewing Tribunal grants permission under paragraph (1) —

(a) the Reviewing Tribunal may do so —

(i) on any terms or conditions that the Reviewing Tribunal considers fit to impose; and

(ii) with any further or consequential directions that the Reviewing Tribunal considers necessary; and

(b) rule 14(2)(b) applies to the amended notice of appeal accordingly.

(3) Permission to amend a notice of appeal against an appealable decision in order to add a new ground of appeal must not be granted unless the Reviewing Tribunal is satisfied that —

(a) the ground is based on any matter of fact or law which came to light after the notice of appeal was lodged;

(b) it was not practicable to include the ground in the notice of appeal at the time the notice of appeal was lodged; or

(c) there are exceptional circumstances to do so.

Withdrawal of appeal

17.—(1) An appellant may, at any time and with the permission of the Reviewing Tribunal, withdraw the appellant's notice of appeal.

(2) Where a Reviewing Tribunal grants permission under paragraph (1), the Reviewing Tribunal may require the Secretary to publish a notice of the withdrawal of the appeal in any manner that will secure adequate publicity for the fact of the withdrawal.

Defence

18.—(1) The reconsideration authority must serve the defence on the Reviewing Tribunal no later than 14 working days after the date that the reconsideration authority receives the copy of the notice of appeal or amended notice of appeal, whichever is later.

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- (2) Any defence to a notice of appeal —
- (a) must cite the number assigned under rule 14(1)(b) to the notice of appeal;
 - (b) must state a contact address for the service of documents on the reconsideration authority in connection with appeal proceedings relating to the notice of appeal;
 - (c) must contain a succinct presentation of the arguments upon which the reconsideration authority will rely in responding to each ground of appeal in the notice of appeal; and
 - (d) must be signed and dated by the reconsideration authority.

No new grounds for appealable decision to be raised

19.—(1) Any defence of the reconsideration authority under rule 18 must not raise any new ground, fact or document supporting the making of the appealable decision which is the subject of the appeal, that was not contained in the grounds, facts and documents supporting the appealable decision.

(2) Where any new ground, fact or document supporting the making of the appealable decision which is the subject of the appeal is raised, the Reviewing Tribunal may disregard it in its consideration of the appeal.

PART 4

CONDUCT OF APPEAL PROCEEDINGS

Referring appeal to Reviewing Tribunal

20.—(1) The Secretary must refer every notice of appeal received to one of the Reviewing Tribunals which the Secretary is of the view is available to hear the appeal contained in the notice of appeal.

(2) In referring notices under paragraph (1), the Secretary must, as far as is practicable, ensure that notices of appeal relating to the same appealable decision are referred to the same Reviewing Tribunal to take cognizance thereof.

(3) Where the Secretary refers a notice of appeal to a Reviewing Tribunal, the Reviewing Tribunal has cognizance of the appeal to which the notice of appeal relates, without the Secretary informing every party to the appeal proceedings regarding the appeal.

Directions

21.—(1) The Reviewing Tribunal may at any time, on the request of a party or of its own initiative, give directions for a case management conference to be held.

(2) The Reviewing Tribunal may at any time, whether at a case management conference or otherwise, on the request of a party or of its own initiative, give directions as it thinks fit to secure the just, expeditious and economical conduct of the appeal proceedings.

Place and time of in-person hearing

22.—(1) Each in-person hearing is to be held at the time and place appointed by the Reviewing Tribunal.

(2) The Secretary must cause adequate notice of each in-person hearing to be given to every person required to attend the hearing.

Consolidation of appeal proceedings

23. Where 2 or more appeal proceedings under these Rules are pending in relation to the same appealable decision —

- (a) the Reviewing Tribunal having cognizance of the appeals in those appeal proceedings; or
- (b) any of the Reviewing Tribunals having cognizance of any of the appeals in those appeal proceedings,

may, on the request of a party or on its own initiative, direct that the appeal proceedings be consolidated and dealt with by the Reviewing Tribunal together.

Adjournment

24.—(1) A Reviewing Tribunal may adjourn any hearing of an appeal on any ground and may fix a date for a further hearing.

(2) A Reviewing Tribunal may, on the conclusion of a hearing of an appeal, adjourn for any period of time for the purpose of deliberating and considering its decision.

Failure to comply with directions or time limits

25. In considering any appeal, a Reviewing Tribunal may disregard any notice, defence or other submission or document served on the Reviewing Tribunal after the expiry of the time limit for the service of the notice, defence, submission or document imposed by any provision of these Rules or any direction of the Reviewing Tribunal.

Non-attendance of parties

26.—(1) If, at the time appointed for the hearing of persons by a Reviewing Tribunal with regard to an appeal, any party to the appeal proceedings connected with the appeal does not appear, the Reviewing Tribunal may, if satisfied that the party has been duly notified of the hearing, proceed with the hearing and make any decision that it thinks fit for the purposes of section 41(1) of the Act.

(2) This rule does not affect section 43(1) and (2) of the Act.

Decision of Reviewing Tribunal to be notified, etc.

27. When a Reviewing Tribunal has made a decision regarding an appeal referred to it, the Secretary must, within 7 working days, notify the parties in writing, of the Reviewing Tribunal's decision in respect of the appeal.

PART 5

CONFIDENTIAL MATTERS

Requests for confidential treatment of documentary evidence

28.—(1) A request for the confidential treatment of a document or part of a document, filed or provided in connection with any appeal proceedings started by an appellant —

- (a) must be made in writing by the person who submitted or provided the document, no later than 2 working days after

the submission or provision of the document to a Reviewing Tribunal;

- (b) must, where the request relates to part of the document, state the relevant words, figures or passages for which confidentiality is claimed; and
- (c) must contain the reasons for the request and, where the request relates to part of the document, the reasons specific to each part of the document.

(2) The person making the request for the confidential treatment of a document or part of a document filed or provided in connection with any appeal proceedings before a Reviewing Tribunal, must also file with the Reviewing Tribunal, if the person considers it possible to summarise or redact the material in the document, a non-confidential version of the document in a form which can be served on any party to those appeal proceedings.

(3) No request for confidential treatment will be considered by a Reviewing Tribunal if the request does not comply with paragraphs (1) and (2).

(4) Upon a request under paragraph (1) for the confidential treatment of a document, the Reviewing Tribunal concerned may grant confidential treatment in relation to any document or part thereof, on any terms and conditions that the Reviewing Tribunal considers fit (including changes to the summary or redacting of material in any non-confidential version filed under paragraph (2)), if the Reviewing Tribunal is satisfied that the document or part of the document contains —

- (a) information the disclosure of which would, in its opinion, be prejudicial to —
 - (i) Singapore's national security;
 - (ii) the prevention or detection of serious crime;
 - (iii) the economic wellbeing of Singapore; or
 - (iv) the continued discharge of the functions of any of the intelligence services of Singapore;

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- (b) information relating to the private affairs of an individual the disclosure of which, in the Reviewing Tribunal's opinion, would or may significantly harm the interests of the individual; or
 - (c) commercial information the disclosure of which, in the Reviewing Tribunal's opinion, would or may significantly harm the legitimate business interests of the undertaking to which it relates.

(5) Despite paragraph (4), the Reviewing Tribunal concerned must grant confidential treatment in relation to any document or part of a document upon a request under paragraph (1) for the confidential treatment of the document (or part of the document) made by or on behalf of the reconsideration authority.

(6) When a Reviewing Tribunal grants under paragraph (4) or (5) confidential treatment in relation to any document or part of a document in connection with any appeal proceedings, the party making the request for the confidential treatment must —

- (a) in the case where the grant under paragraph (4) is subject to changes to the summary or redacting of material in any non-confidential version of that document filed under paragraph (2) —
 - (i) accordingly change the non-confidential version of that document filed;
 - (ii) file the revised non-confidential version with the Reviewing Tribunal; and
 - (iii) where directed by the Reviewing Tribunal, send to the other party to the appeal proceedings the revised non-confidential version, notifying the other party that it has been redacted or summarised; or
- (b) in any other case, and where directed by the Reviewing Tribunal, send to the other party to the appeal proceedings the non-confidential version filed under paragraph (2) (if any), notifying the other party that it has been redacted or summarised.

(7) When a Reviewing Tribunal grants under paragraph (5) confidential treatment in relation to any document or part of a document in connection with any appeal proceedings, the document or part of the document, and the existence of the document or part of the document, must not be disclosed to any person except to the Reviewing Tribunal.

Reliance on confidential material

29. A Reviewing Tribunal may rely on any document or part of a document to which confidential treatment has been granted, for the purposes of —

- (a) considering the notice of appeal against an appealable decision; and
- (b) making a decision under section 41(3) of the Act in relation to the appealable decision.

Made on 29 January 2024.

PANG KIN KEONG
*Permanent Secretary,
Ministry of Home Affairs,
Singapore.*

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(To be presented to Parliament under section 44(3) of the Online Criminal Harms Act 2023).