



8 November 2015

AWARE's submission to the Women's Charter consultation

The Association of Women for Action and Research (AWARE) would like to give the following comments on proposed amendments, as drafted in the Women's Charter (Amendment) Bill 2016. As stated in the Consultation Paper of the Ministry for Social and Family Development (MSF), the proposed changes are:

- I. Putting the child's interest first in divorce through a mandatory parenting programme for divorcing parents
- II. Allowing maintenance for incapacitated men who cannot work
- III. Enhancing protection for women, girls, residents at places of safety and professionals engaged in protection work; and,
- IV. Voiding a marriage that is a marriage of convenience under section 57C of the Immigration Act

Our comments on Proposed Amendment I are as follows:

1. While we agree with putting the child's interest first in divorce, we hope that the mandatory parenting programme for divorcing parents should neither block nor unduly prolong the divorce process. We are concerned about this because a difficult and prolonged divorce process brought about by the mandatory parenting programme will not be in the interest of the child. We urge the Ministry to give more clarity as to the intended duration, format and content of any such programme, so that it is possible for us and the public to give more meaningful feedback. At the moment, few such details have been given, and without clear definitions, there is the danger that an initially reasonable or helpful programme may, at a later stage, evolve to become an onerous roadblock.
2. Spouses in situations where there has been domestic violence should not be required to go through this mandatory parenting programme. The proposed amendment makes no mention of such situations. We are concerned about this omission because "the proposed amendment will require divorcing parents with children below 21 years old to attend a mandatory parenting programme before they file for a divorce, unless they agree on the divorce and all ancillary matters." AWARE's experience of cases of domestic violence is that the abused spouse is usually the one who wants the divorce whereas the abusive spouse may resist. In this situation, since the couple would not have agreed on divorce and all ancillary matters, according to the proposed amendment, they would have to go through mandatory parenting programme. We are concerned that if the abusive spouse does not consent to go through the mandatory parenting programme, the abused spouse could end up being trapped in a legally perpetuated situation of domestic violence. This will not be in the interest of the child as, in addition to spousal abuse, there may also be child abuse in such a situation. We also urge that

there should be no joint attendance of programmes or sessions in domestic violence situations as this can be unsafe as well as psychologically onerous for abused spouses.

3. The proposed amendment states: ‘Parties may be ordered to attend any “family support programme or activity” at any stage of the divorce process in addition to the current mediation and counselling conducted by the courts if the court considers that it is in the interest of the parties or their children to do so.’ However, it is unclear what would happen to the divorce process should one of the spouses refuse to abide by the order. Even if the uncooperative spouse were to be penalised (for example, by imprisonment), would the divorce process still move forward after he or she has been penalised?
4. We draw your attention to the substantial barriers that already exist for abused spouses wishing to leave a violent marriage. Currently under Section 94 of the Women’s Charter, married couples are allowed to apply for divorce only after three years of marriage.¹ This is usually justified by the aim of protecting the family. Applications for divorce are considered only when there is proof of “exceptional hardship suffered by the plaintiff or of exceptional depravity on the part of the defendant”.² However, domestic violence is not consistently recognised as meeting this requirement. We recommend changes in this area to allow abused spouses to apply for divorce before the time bar of three years and *without* having to go through the mandatory parenting programme, as discussed above.

Our comments on Proposed Amendment II are as follows:

1. It is a step in the right direction for maintenance to be granted to incapacitated men who cannot work.
2. However, AWARE asserts that maintenance should be based on fairness, not gender. Based on this principle, maintenance should also be available to men in other appropriate cases, such as where men make economic sacrifices to take a primary role in household labour and caregiving. We call for more research on this to uncover such cases. We recognise that these cases would currently be relatively few, but it is unjust to exclude them from consideration. At the same time, we would urge judges to be mindful not to overvalue any given amount of male participation in household labour and caregiving (there may be a danger of doing this due to unconscious biases and low expectations for men in the household sphere).

Our comments on Proposed Amendment III are as follows:

1. We agree about the need to ‘prohibit the publication of information (i) relating to places of safety to enhance the safety of victims, staff and professionals working with victims; and (ii) on proceedings in camera in certain cases.’
2. We also agree about the need to ‘provide other care options for women and girls in need of protection apart from placing them in places of safety or children’s homes.’ In relation to this, we urge **a thorough review of the Director of Social Welfare’s power** to detain women or girls. Under Section 160 of the Women’s Charter, women or girls can be brought into detention by the Director of Social Welfare under four conditions:
 - a. If her lawful guardian requests the Director to detain her
 - b. If the Director considers her to be in need of protection and whose lawful guardian cannot be found

¹ Women’s Charter, s 94(2)

² Ibid

- c. If the Director believes her to have been ill-treated, and
- d. If the Director considers her to be in moral danger.³

However, there is no clarification of the conditions whereby women and girls may be detained, resulting in these being overly vague, broad and open-ended. The Director is left to construct his / her own interpretations of such terms as ‘in need of protection’, ‘ill-treated’ and ‘in moral danger’ – resulting in inconsistency, lack of transparency as well as lack of accountability to the woman or girl detained.

There is also no definition of the ‘place of safety’ where the woman or girl is to be detained. This too is up to the Director to define. Similarly, there is no limitation as to how long this detention is to be; it is “for such period as he [the Director] may determine.” The lack of explicit guidelines is of direct relevance to the proposed amendment. **What are the guidelines for providing other care options for women and girls to ensure that these places are fit for purpose?**

We are also concerned that a woman or girl whose lawful guardian requests the Director to detain her may do so without reference to her needs or wishes. This assumes that a woman’s or girl’s guardian always acts in her best interests and in accordance with the woman’s or girl’s own wishes. However, it is strange why a woman who has attained the age of majority is deemed to have a guardian.

Although Section 160 does require the Director to undertake “an inquiry as to the circumstances” of each case and to do so “within a period of one month from the date of the woman’s or girl’s admission into the place of safety”, there is no stipulation about where the results of the inquiry are to be submitted. No court review or court order is mentioned.

Furthermore, Section 160 allows a woman or girl to continue to be detained if the Director considers her to be in moral danger, to the extent of allowing the Director to override the wishes of her lawful guardian for as long as the Director considers necessary, even if her lawful guardian has requested her early release.⁴

AWARE understands that the purpose of Section 160 is to protect victims of abuse, especially minors, in conjunction with the other provisions of the Women’s Charter. However, it is questionable whether Section 160 serves this purpose adequately. In this regard, it is useful to draw lessons from other legislation in Singapore, as well as legislation from other jurisdictions.

In Singapore, in addition to the Women’s Charter, there is a Children and Young Persons Act, which covers children, defined as those aged below 14 years of age, and young persons, defined as those aged from 14 to 16 years of age. This implies that Section 160 of the Women’s Charter applies to minors aged above 16 but below 21, as well as women who have attained the age of majority. However, Section 160 does not make its scope of jurisdiction explicit. The potential inclusion of all women and girls under its jurisdiction is problematic.

The Children and Young Persons Act spells out the conditions under which a child or young person would need protection. Significantly, domestic violence is not mentioned as one of these conditions. In contrast, the British Columbia Child, Family and Community Service Act explicitly mentions domestic violence as a condition under which a child would need State

³ Women’s Charter, s 160(1)

⁴ Women’s Charter, s 160(4)

protection.⁵ Despite the omission of domestic violence as a condition for protecting a minor, in Singapore, the Child Protection Service (CPS) in the current Ministry of Social and Family Development recognises the impact of domestic violence on children and young persons. The CPS reported the following figures for the years 2000 – 2004:⁶

- Physical abuse: 55% of the total number of child abuse cases
- Sexual abuse: 29%
- Emotional abuse: 5%

Both the Women's Charter and the Children and Young Persons Act are inadequate in provisions needed to address this reality. As Singapore is a signatory to the Convention on the Rights of the Child (CRC), it is vital that legal reform be undertaken to ensure that all children, young persons, as well as girls aged 16 and above, up to the age of majority, be safe from domestic violence. As stated in Article 19 of the CRC:

- a. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
- b. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

⁵ Under the British Columbia Child, Family and Community Service Act, the conditions under which a child would need protection are:

- a) if the child has been, or is likely to be, physically harmed by the child's parent; if the child has been, or is likely to be, sexually abused or exploited by the child's parent;
- b) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;
- c) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;
- d) if the child is emotionally harmed by the parent's conduct, or living in a situation where there is domestic violence by or towards a person with whom the child resides;
- e) if the child is deprived of necessary health care;
- f) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;
- g) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- h) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;
- i) if the child's parent is dead and adequate provision has not been made for the child's care;
- j) if the child has been abandoned and adequate provision has not been made for the child's care;
- k) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

See http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96046_01#section13

⁶ *Protecting children in Singapore*, October 2005, [former] Ministry of Community Development, Youth and Sports [currently Ministry of Social and Family Development], Rehabilitation and Protection Division, http://app.msf.gov.sg/portals/0/Summary/research/Materials_Protect_Children_in_Spore.pdf

In view of these concerns, AWARE thus recommends the following:

- a. Review Section 160 of the Women's Charter in conjunction with the Children and Young Persons Act to ensure that both have adequate legal provisions for protecting minors from domestic violence.
 - b. Remove the anomaly of stipulating a guardian for a woman who has attained the age of majority.
 - c. Review all cases where women and girls have been detained under Section 160 of the Women's Charter to ascertain whether the detention is in accordance with their own stated needs and wishes.
 - d. Provide explicit definitions of the conditions under which minors may be placed in protective shelters, including domestic violence as one of these conditions.
 - e. Require the results of the inquiry undertaken by the Director of Social Welfare to be submitted to the Family Court and require a court review and a court order for continuation of protective shelter to the woman or girl at risk, with the duration of the stay stipulated. At the end of the period of stay, the case should be reviewed by the court.
3. We agree about the need to 'protect professionals against lawsuits or other legal proceedings in personal capacity for actions taken in good faith when carrying out court orders or statutory responsibilities under Part VII and XI of the Act.'
 4. We also support the amendment to 'empower married or previously married persons below the age of 21 years to apply for a protection order and expedited order for themselves and specific dependants'. Although this is a step in the right direction, we wonder why it is limited only to 'married or previously married persons below the age of 21 years'. We recommend that **all** minors be empowered to apply for protection from domestic violence, that the need for parental consent be removed in such cases, and that the application for protection can be against anyone in their household.
 5. We also support the call made by PAVE to empower individuals to apply for PPOs against unmarried intimate partners. However, AWARE would include all intimate partners and would not distinguish on the grounds of sexual orientation. We recognise that defining intimate relationships may result in ambiguity when it applies beyond cases of co-habitees or co-parents. A possible alternative is to amend the Protection from Harassment Act so that breaches of Protection Orders under that Act are (like breaches of Personal Protection Orders) treated as seizeable offences. This will provide victims of intimate partner violence with protection, while avoiding the definitional challenges involved in determining whether a given relationship amounts to that of 'intimate partners'.

Our comments on Proposed Amendment IV are as follows:

1. About 'voiding a marriage that is a marriage of convenience under Section 57C of the Immigration Act', we would like to know the proposed definition of 'marriage of convenience'. This is not mentioned at all.
2. We have no objection to allowing the Registry of Marriages to maintain an electronic register.
3. Concerning the proposed amendment that 'a child who is the subject of a care and control order cannot be taken out of Singapore without the consent of both parents or the permission of the court', we wonder if an exception should be made for parents who are posted abroad for work purposes, with conditions for return, such as a guarantee by the employer.

4. Concerning the proposed amendment that ‘the Family Justice Rules would prescribe which provisions of the CPC [Criminal Procedure Code] and other written laws would apply for proceedings under Parts VII and VIII’, we hope that this will not water down the rigour for pursuing proceedings under Part VII for protection orders and under Part VIII for maintenance orders are governed by the Criminal Procedure Code (CPC).
5. Concerning the proposed amendment that ‘extending the mandatory Marriage Preparation Programme to marriages where at least one party is a minor’, we ask for more information about the monitoring and evaluation of current provisions for the Marriage Preparation Programme to ascertain their appropriateness and effectiveness.

In addition to our comments above on the proposed draft of the Women’s Charter (Amendment) Bill 2016, please also refer to *AWARE’s recommendations on improving the Women’s Charter in relation to the issue of domestic violence* (dated 17 January 2015). We had earlier sent this to the Office for Women’s Development, Ministry for Social and Family Development on 23 April 2015.

About AWARE

AWARE is Singapore’s leading gender equality advocacy group. We believe in the rights of women and men to make informed and responsible choices about their lives and to have equal opportunities in education, marriage and employment, and in the right of women to control their own bodies, particularly with regard to sexual and reproductive rights.

AWARE is dedicated to removing gender-based barriers and works to identify and eliminate these barriers through research and advocacy, education and training and support services.