

aware 

Beyond Fairness

A legal framework for
anti-discrimination
in the workplace

2023

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1. Introduction

At the 2021 National Day Rally, Prime Minister Lee Hsien Loong announced that the Government would enact a new legislation to prohibit workplace discrimination based on sex, age, race, religion, disability and nationality.¹ In view of this historic announcement, the Association of Women for Action and Research (AWARE) is proud to present this position paper on the forthcoming legislation.

While we are heartened by enhanced support from the Government for women in the workplace, as detailed in the White Paper on Singapore Women's Development,² we are concerned that the forthcoming legislation will enshrine the Tripartite Guidelines on Fair Employment Practices (TGFE) in law without any significant revision.³ While the TGFE have been helpful, there remain significant gaps in coverage and implementation. The legislation must go further to meaningfully address the myriad forms of discrimination faced by women, persons with disabilities and lesbian, gay, bisexual, transgender and queer (LGBTQ+) people. This paper consolidates our recommendations on what the legislation should include to meaningfully protect everyone from discrimination at the workplace, regardless of their personal characteristics.

Our recommendations represent a culmination of our research and advocacy on workplace discrimination and harassment over the years. They adopt an explicitly intersectional approach to highlight the ways by which workers may face gendered and other forms of intersecting barriers.

By issuing our position paper before the official start of public consultations on the draft legislation, we hope to afford the Tripartite Committee on Workplace Fairness⁴—set up in July 2021 to review the framework for workplace fairness and consult stakeholders on policy options to tackle workplace discrimination—sufficient time to incorporate the below into its recommendations to the Government.⁵

¹ Lee Hsien Loong, "National Day Rally 2021", Prime Minister's Office (Alvin Chong, 31 August 2021), <https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2021-English>

² This includes the requirement that employers put in place grievance handling procedures, the protection of the identity of persons who report workplace discrimination and harassment, and the prohibition against retaliation against employees who report workplace discrimination and harassment. *White Paper on Singapore Women's Development*, 28 March 2022, <https://www.scwo.org.sg/wp-content/uploads/2022/03/White-Paper-on-Singapore-Womens-Development.pdf>

³ Yuen-C Tham, "Planned Anti-Discrimination Law Not Seeking to Change Standards, Dialogue Participants Told", *The Straits Times*, 24 November 2021, <https://www.straitstimes.com/singapore/politics/spores-planned-anti-discrimination-law-not-seeking-to-change-standards-of>

⁴ "Formation of Tripartite Committee on Workplace Fairness", Ministry of Manpower, Government of Singapore, 27 July 2021, <https://www.mom.gov.sg/newsroom/press-releases/2021/0727-tripartite-committee-on-workplace-fairness>

⁵ Cindy Co, "Tripartite Committee to Complete Recommendations for Workplace Anti-Discrimination Law in 2022", *Channel NewsAsia*, 14 September 2021, <https://www.channelnewsasia.com/singapore/tafep-workplace-anti-discrimination-2022-2175826>

a. Our Advocacy for the Workplace Anti-Discrimination Law

Informed by our mission—to remove gender-based barriers to allow all individuals in Singapore to develop their potential to the fullest and realise their personal visions and hopes—AWARE has campaigned for the enactment of a Workplace Equality Act over the years.⁶ Drawing on our experience working with victim-survivors of workplace discrimination and harassment through the Workplace Harassment and Discrimination Advisory (WHDA), AWARE has highlighted limitations in the current framework and the TGFEPA that should be addressed in the new legislation.⁷

In August 2022, AWARE collaborated with Milieu Insight to survey a nationally representative sample of 1,000 respondents on their experiences with workplace discrimination.⁸ The survey found that more than half of the respondents (55.4%) had experienced workplace discrimination in the previous five years.

In July 2021, AWARE’s “Omnibus on Gender Equality” included recommendations on maternity discrimination, discrimination against disabled women and discrimination against LGBTQ+ people.⁹ Overall, AWARE called for (i) the enactment of a comprehensive anti-discrimination legislation that forbids discrimination based on (among others) gender, race or ethnicity, religion, disability, age, marital status, sexual orientation and family or caregiving responsibilities; and (ii) the establishment of an independent body to monitor and enforce compliance with the legislation.

AWARE has also conducted research and advocacy on discrimination based on age, maternity and pregnancy.¹⁰

⁶ Mamta Melwani, “Workplace Discrimination: Laws Needed to Hold Errant Employers to Account”, *TODAY Online*, 7 December 2020,

<https://www.todayonline.com/voices/workplace-discrimination-laws-needed-hold-errant-employers-account>; Mamta Melwani, “Forum: New Law Needed to Tackle Discrimination, Wrongful Dismissal”, *The Straits Times*, 29 September 2020,

<https://www.straitstimes.com/forum/new-law-needed-to-tackle-discrimination-wrongful-dismissal>

⁷ Apoorva Shukla, “Forum: Ensure Pregnant Women Are Considered Fairly in Job Recruitment”, *The Straits Times*, 3 June 2022,

<https://www.straitstimes.com/opinion/forum/forum-ensure-pregnant-women-are-considered-fairly-in-job-recruitment>; Apoorva Shukla, “Forum: Anti-Discrimination Legislation Should Be Comprehensive”, *The Straits Times*, 19 November 2021,

<https://www.straitstimes.com/opinion/forum/forum-anti-discrimination-legislation-should-be-comprehensive>; Margaret Thomas, “Forum: Take into Account Employees’ Perspective When Drafting Law on Workplace Discrimination”, *The Straits Times*, 17 September 2021,

<https://www.straitstimes.com/opinion/forum/forum-take-into-account-employees-perspective-when-drafting-law-on-workplace>

⁸ “1 in 2 experienced workplace discrimination in Singapore over the past five years, with race, age and gender discrimination most common”, AWARE, AWARE, 20 September 2022, <https://www.aware.org.sg/2022/09/1-in-2-experienced-workplace-discrimination-aware-milieu-survey/>

⁹ AWARE Singapore, “An Omnibus on Gender Equality: AWARE’s Recommendations for Singapore’s 2020-2021 Gender Equality Review”, July 2021, <https://www.aware.org.sg/wp-content/uploads/AWARE-Report-July-2021-An-Omnibus-on-Gender-Equality.pdf>

¹⁰ Ning Qian Chong, “Forum: Limited Protection against Ageism at Workplace”, *The Straits Times*, 19 February 2020,

<https://www.straitstimes.com/forum/forum-limited-protection-against-ageism-at-workplace>; Shailey Hingorani, “Commentary: If Mums Are Amazing, Why Do Some Workplaces Discriminate against Pregnant Women?”, *Channel NewsAsia*, 15 May 2020,

b. Structure of this Paper

This paper takes stock of Singapore's progress in realising equality and meritocracy at the workplace over the years, and sets out our recommendations on how we can move forward as a society to eliminate employment discrimination with the enactment of new legislation.

Section 2 sets out the current legal and policy framework to address workplace discrimination, including Singapore's constitutional and statutory regimes, as well as its obligations under international human rights law. Based on our experience working with victim-survivors of workplace discrimination and harassment, in Section 3 we discuss some key lessons and areas for improvement that should be addressed in putting together the new legislation.

Section 4 sets out our substantive recommendations on what the new legislation should include. This ranges from the coverage of the legislation, in terms of definitions of "employer" and "employee", to the types of prohibited conduct and protected characteristics. Section 5 covers our recommendations on the administration and enforcement of the new legislation by a new Commission for Workplace Discrimination and Harassment, while Section 6 discusses how the new legislation should be structured to allow victim-survivors to seek recourse against perpetrators.

We conclude the paper in Section 7 by highlighting that discrimination is not limited to the workplace, and that the enactment of the new legislation should be celebrated as the first step towards a more equal and inclusive Singapore. In addition to this workplace discrimination legislation, we hope that the Government will also consider enacting a comprehensive anti-discrimination legislation that addresses discrimination in other spheres of life, including but not limited to: housing, healthcare, education and access to services and premises (also known as public accommodations).

2. Singapore's Progressive Journey towards an Inclusive Workforce

The enactment of a workplace discrimination legislation in Singapore is a long time coming, given that equality, meritocracy and non-discrimination are founding values of this country.¹¹ As former deputy prime minister S Rajaratnam once observed in 1969, "if we in Singapore are to get the required talents out of two million people then it is important that irrelevant considerations like family ties, race and religion should not act as barriers to recruitment".¹²

More recently, President of Singapore Halimah Yacob wrote in a 2019 Facebook post: "Discrimination of any form and against anyone has no place at all in our society and, most

<https://www.channelnewsasia.com/commentary/commentary-if-mums-are-amazing-why-do-some-workplaces-discriminate-against-pregnant-women-938331>; Shailey Hingorani, "Why Are Mothers Penalised at Work?", *TODAYonline*, 15 May 2019,

<https://www.todayonline.com/commentary/why-do-mothers-get-penalised-work>

¹¹ R. Quinn Moore, "Multiracialism and Meritocracy: Singapore's Approach to Race and Inequality", *Review of Social Economy* 58, no. 3 (2000): 339–60.

¹² S Rajaratnam, "Speech by the Minister for Foreign Affairs and Labour, Mr S Rajaratnam at the National Employers' Council Annual Dinner" (Chinese Chamber of Commerce Auditorium, 6 July 1969), <https://www.nas.gov.sg/archivesonline/data/pdfdoc/PressR19690706.pdf>

certainly, not at the workplace. People should be assessed solely on their merits and their ability to do a job and nothing else. Discrimination at the workplace is particularly disturbing because it deprives the person affected from earning a living.”¹³

Tackling workplace discrimination not only protects and upholds the dignity of workers, particularly those from marginalised communities, but is also beneficial to the economy by increasing labour participation and promoting innovation. A 2016 study on workplace discrimination in France suggested that effectively addressing the problem and increasing the representation of women and racial minorities could result in a 14.1% increase in the country’s GDP.¹⁴ Similarly, other research suggests that bias against older workers in the United States cost the American economy an estimated US\$850 billion in 2018.¹⁵ Studies have also found that laws and company policies prohibiting discrimination based on sexual orientation and gender identity can spur innovation.¹⁶

With the enactment of the new legislation, Singapore will take a significant step towards realising the societal values of equality, meritocracy and non-discrimination, and join the majority of countries that already have such laws in place.¹⁷ This will also be in line with Singapore’s international law obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹⁸

This section briefly traces Singapore’s journey towards eliminating workplace discrimination. Drawing upon our understanding of these frameworks, the next section discusses key takeaways and policy gaps that should be addressed in the new legislation.

¹³ Jessie Lim, “Discrimination Has No Place in Singapore Society: President Halimah”, *The Straits Times*, 20 August 2020, <https://www.straitstimes.com/singapore/discrimination-has-no-place-in-singapore-society-president-halimah>

¹⁴ Richard Venturi, “The Economic Cost of Workplace Discrimination in France - Billions of euros in lost potential”, accessed 8 August 2022, <https://www.strategie.gouv.fr/english-articles/economic-cost-workplace-discrimination-france-billions-euros-lost-potential>

¹⁵ Joo Yeoun Suh, “Age Discrimination in the Workplace Hurts Us All”, *Nature Aging* 1, no. 2 (February 2021): 147–147, <https://doi.org/10.1038/s43587-020-00023-1>.

¹⁶ Huasheng Gao and Wei Zhang, “Employment Nondiscrimination Acts and Corporate Innovation”, *Management Science* 63, no. 9 (September 2017): 2982–99, <https://doi.org/10.1287/mnsc.2016.2457>; Mohammed Hossain et al., “Do LGBT Workplace Diversity Policies Create Value for Firms?”, *Journal of Business Ethics* 167, no. 4 (1 December 2020): 775–91, <https://doi.org/10.1007/s10551-019-04158-z>

¹⁷ According to a 2020 study, 89% of all countries prohibit workplace discrimination based on gender while around three-quarters of all countries protect against discrimination at the workplace based on disability (79%), religion (77%) and race/ethnicity (76%). See Jody Heymann et al., “Legislative Approaches to Nondiscrimination at Work: A Comparative Analysis across 13 Groups in 193 Countries”, *Equality, Diversity and Inclusion: An International Journal* 40, no. 3 (1 January 2020): 225–41, <https://doi.org/10.1108/EDI-10-2019-0259>

¹⁸ Singapore ratified CEDAW in 1993, the CRPD in 2013 and the CERD in 2017.

a. The Constitutional Guarantee of Equality

Article 12 of the Constitution of the Republic of Singapore (Constitution) recognises that all persons are equal before the law and entitled to the equal protection of the law. In its submissions to the CEDAW and CRPD Committees, the Singapore Government has suggested that Article 12 enshrines the principle of equality regardless of gender and disability notwithstanding that neither term appears expressly in the language of that provision.¹⁹ The Singapore Court of Appeal has however clarified in *Lim Meng Suang v Attorney-General*²⁰ that there are only four constitutionally prohibited grounds of discrimination—namely race, religion, place of birth and descent—and any discrimination based on gender or disability would be unconstitutional only if it fails to pass the reasonable classification test.²¹

In any case, regardless of whether Article 12 of the Constitution does prohibit discrimination on the basis of gender or disability, it only proscribes discrimination committed by the Government (e.g. in relation to its legislative enactments and/or executive action) and not by private actors (such as individual persons or corporate entities).²² Indeed, it was on this basis that a gay man's application in 2013 for a declaration from the courts that Article 12 of the Constitution prohibited workplace discrimination on the ground of sexual orientation was struck out and subsequently withdrawn.²³ To this end, it is necessary for the Government to either enact law or implement policy to regulate or prohibit discrimination at the workplace to govern the private relationships between employers and employees.

b. International Commitment to Equality and Non-Discrimination

As noted earlier, Singapore has ratified a growing number of UN human rights treaties over the years, which impose obligations as a matter of international law on the Singapore Government to take steps to eliminate discrimination on the basis of race, gender and disability. The enactment of the new workplace discrimination legislation would be a significant step towards realising Singapore's obligations under these treaties.

Singapore ratified CEDAW in 1993. Article 11(2) of CEDAW obliges Singapore to take all appropriate measures to eliminate discrimination against women in the field of employment

¹⁹ Ministry of Social and Family Development, Fifth periodic report of Singapore (Singapore: Ministry of Social and Family Development, 2015), <https://www.msf.gov.sg/policies/Women-Celebrating-Women/International-Obligations/Documents/Singapore%27s%20Fifth%20CEDAW%20Periodic%20Report.pdf> ; Ministry of Social and Family Development, Initial report submitted by Singapore under article 35 of the Convention (Singapore: Ministry of Social and Family Development, 2015).

²⁰ [2015] 1 SLR 26; [2014] SGCA 54.

²¹ *Ibid* at [187].

²² *cf.* Sue-Ann Tan, "More to Be Done to Change Mindsets and Improve Gender Equality Here: Shanmugam", *The Straits Times*, 8 March 2021, <https://www.straitstimes.com/singapore/community/more-to-be-done-to-change-mindsets-and-improve-gender-equality-here-shanmugam>

²³ Attorney-General's Chambers, *Appeal and Intervention Applications Withdrawn Wee Kim San Lawrence Bernard v Attorney-General Originating Summons No 763 of 2013 (Registrar's Appeal No 402 of 2013)* (Singapore: Attorney-General's Chambers, 2014), https://www.agc.gov.sg/docs/default-source/newsroom-documents/media-releases/2014/agc-media-statement_lawrence-wee-v-ag_withdrawal-of-appeal-and-intervention-applications_22-april-2014.pdf

in order to ensure, on a basis of equality of men and women, the same rights, including *inter alia*: (i) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; and (ii) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work. In this regard, in view of Article 1 of CEDAW,²⁴ the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) has expressed its concern about the absence of a specific definition of discrimination against women in Singapore's legislation.²⁵

Singapore ratified the CRPD in 2013. Article 27(1) of the CRPD obliges Singapore to take appropriate steps, including through legislation, to, *inter alia*, (a) prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; and (i) ensure that reasonable accommodation is provided to persons with disabilities in the workplace.

In September 2022, in relation to Article 27, the Committee on the Rights of Persons with Disabilities (CRPD Committee) urged the Singapore Government to "adopt legislation and time-bound policies and benchmarks to ensure that persons with disabilities have access to work and employment in the open labour market".²⁶ It also recommended that a comprehensive review of TAFEP and the TGFEP be undertaken, and that the new legislation should "prohibit direct and indirect discrimination and recognize the denial of reasonable accommodation as a form of prohibited discrimination, and establish an effective implementation and monitoring mechanism providing redress in case of non-compliance".²⁷

Notably, the CRPD Committee has issued General Comment No. 6 on equality and non-discrimination, which demands that governments "expressly recognise the denial of reasonable accommodation as discrimination and prohibit multiple and intersectional discrimination, and harassment".²⁸ The CRPD Committee also makes clear that governments have "positive obligations to protect persons with disabilities from discrimination, with an obligation to enact specific and comprehensive anti-discrimination legislation".²⁹

Singapore ratified the CERD in 2017. Article 5(e)(i) of CERD obliges Singapore to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights to work, to free choice of employment, to just and

²⁴ Article 1 of CEDAW states that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

²⁵ United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the fifth periodic report of Singapore* (Geneva: United Nations CEDAW Committee, 2017), page number.

²⁶ CRPD/C/SGP/CO/1 at para. 52(a)

²⁷ CRPD/C/SGP/CO/1 at para. 52(b)

²⁸ CRPD/C/GC/6 at para. 67(d)

²⁹ CRPD/C/GC/6 at para. 22

favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration. The Committee on the Elimination of Racial Discrimination (CERD Committee) has observed that “a low number of complaints [as to racial discrimination in Singapore] does not signify the absence of racial discrimination... but may rather signify that barriers exist with regard to invoking the rights under the Convention before the domestic courts, including lack of public awareness of those rights and of the methods available for seeking judicial remedies”.³⁰

In Singapore’s most recent appearance before the United Nations Human Rights Council for the 3rd Cycle of the Universal Periodic Review, Singapore supported the recommendation from Trinidad and Tobago to consider ratifying the International Labour Organisation’s Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ILO C111).³¹ However, in July 2021, Minister of Manpower Dr. Tan See Leng did not commit to doing so in response to a parliamentary question. While he asserted that the Singapore Government “agree[s] with the intent of [ILO C111]”, he went on to state that Singapore will “only consider ratifying an ILO Convention if we can fully comply with it in law and in practice”.³² With the enactment of this new workplace discrimination legislation, it is hoped that the Singapore Government will take concrete steps to ratify ILO C111 as well.

c. Employment Act

Two forms of discriminatory employment practices are regulated under the Employment Act 1968: wrongful dismissal based on discrimination as well as pregnancy and maternity discrimination.

i. *Wrongful Dismissal*

Section 14 of the Employment Act prohibits an employer from dismissing an employee “without just cause or excuse”. According to the Tripartite Guidelines on Wrongful Dismissal, discrimination constitutes a wrongful reason for dismissal.³³ An aggrieved employee may file a claim under the Employment Claims Act 2016 to seek either reinstatement in their former employment or compensation.

In 2019, the Employment Act was amended to extend the definition of “dismiss” to cover instances of involuntary resignation of an employee. This is also known as constructive dismissal, which covers situations where an employee is harassed or bullied to the extent that they are forced to leave. The Singapore courts have also recognised that constructive dismissal is prohibited under common law because it refers to a situation where the

³⁰ CERD/C/SGP/CO/1 at para. 28

³¹ Report of the Working Group on the Universal Periodic Review, A/HRC/48/16 at para. 59.38.

³² “Written Answer by Minister for Manpower, Dr Tan See Leng, to PQ on Ractification of International Labour Organization Discrimination Convention”, Ministry of Manpower, Government of Singapore, 26 July 2021,

<https://www.mom.gov.sg/newsroom/parliament-questions-and-replies/2021/0726-written-answer-by-minister-for-manpower-to-pq-on-ractification-of-ilo-discrimination-convention>

³³ Ministry of Manpower, “Tripartite Guidelines on Wrongful Dismissal”, 26 April 2022, <https://www.mom.gov.sg/~media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-wrongful-dismissal.pdf>

employer's repudiatory breach entitles the employee to treat himself as discharged from the employment contract.³⁴

ii. *Pregnancy and Maternity Discrimination*

Section 81 of the Employment Act prohibits employers from dismissing female employees while they are on maternity leave if they have worked for their employers for at least three months. Pursuant to section 87(1), an employer who acts in contravention of section 81 is guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding six months, or to both. In addition, section 84 states that a pregnant employee who is dismissed without sufficient cause at any time during her pregnancy is still entitled to the maternity benefits for which she would have been eligible.³⁵

An aggrieved employee may file a wrongful dismissal claim at the Tripartite Alliance for Dispute Management (TADM) within one month after the last day of employment and within two months of the birth of the child.

d. Retirement and Re-Employment Act

As of 1 July 2022, the Retirement and Re-Employment Act 1993 (RRA) prohibits employers from dismissing employees who are below 63 years of age, or the prescribed minimum retirement age, on the ground of age. In 2019, the Government accepted the Tripartite Workgroup on Older Workers' recommendations to raise the retirement age to 65 by 2030. Pursuant to Section 4, such dismissal is unlawful and attracts penalties of a fine not exceeding \$5,000, or to imprisonment for a term not exceeding six months, or to both.

Section 8 of the RRA allows an aggrieved employee to make representations to the Minister to be reinstated in their former employment. The Minister may also direct the employer to pay such an amount of salary as compensation as they consider just and equitable having regard to all the circumstances of the case.

e. Establishment of TAFEP

In 2006, the Tripartite Alliance for Fair Employment Practices (TAFEP) was set up to develop guidelines on "fair employment practices" after such an initiative was first proposed by a parliamentary committee to address age discrimination.³⁶ This followed earlier tripartite efforts to address racially discriminatory job advertisements such as the 1999 Tripartite Guidelines on Non-Discriminatory Job Advertisements.³⁷

³⁴ "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct." *Ramzi Toufic Fares v Aidec Management Company Pte Ltd* [1998] SGHC 208

³⁵ The dismissal of a pregnant employee without sufficient cause would also constitute wrongful dismissal.

³⁶ Sue-Ann Chia, "Alliance set up to stamp out job discrimination", *The Straits Times*, May 30, 2006 (last visited Jul 11, 2021)

³⁷ Audrey Chia and Angeline Lim, "Singapore: Equality, Harmony and Fair Employment", in *International Handbook on Diversity Management at Work Country Perspectives on Diversity and Equal Treatment*, ed. Alain Klarsfeld (Edward Elgar Publishing, 2010), 1999

In addition to the TGFEP, which were issued in 2007, TAFEP launched other initiatives such as the Employers' Pledge of Fair Employment Practices—which signals the commitment of employers to be fair and adopt the TGFEP—and the Tripartite Centre for Fair Employment, which receives public feedback and advises workers and employers on the implementation of the guidelines.³⁸ According to its first progress report in 2010, TAFEP reported reducing the percentage of print job advertisements that specified race, age or gender requirements from 19.7% in 2006 to 1% in 2010. TAFEP's general manager also touted the organisation's success based on the stable number of complaints that it received over the years.³⁹

Subsequently, after the Protection from Harassment Act 2014 (POHA) was passed in 2014, the tripartite partners also issued the Tripartite Advisory on Managing Workplace Harassment (TAMWH) to help employers and employees prevent and manage workplace harassment.⁴⁰

f. The Fair Consideration Framework

In September 2013, the Ministry of Manpower (MOM) announced the Fair Consideration Framework (FCF), requiring employers to consider Singaporean applicants first before recruiting foreign candidates. Specifically, employers with 25 or more employees must comply with the TGFEP and advertise job vacancies paying a fixed monthly salary of \$12,000 or less in a new online career portal administered by the Workforce and Development Agency (WDA) for at least 14 days before opening the vacancy to non-Singaporeans.⁴¹

Failure to do so is characterised as a “discriminatory” hiring practice that may result in additional scrutiny and the curtailment of the company's work pass privileges.⁴² Other forms of discriminatory employment practices based on age, gender and race that are inconsistent

³⁸ Ken Kwek, “New guidelines to fight workplace discrimination”, *The Straits Times*, March 9, 2007 (last visited Feb 22, 2022)

³⁹ Rachel Chang, “Discriminatory job ads decline: Report”, *The Straits Times*, January 21, 2010 (last visited Feb 22, 2022)

⁴⁰ Ministry of Manpower, “Tripartite Advisory on Managing Workplace Harassment”, 23 December 2015,

<https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-advisory-on-managing-workplace-harassment.pdf>; Ministry of Manpower, “Tripartite Advisory on Managing Workplace Harassment”, Ministry of Manpower Singapore, 23 December 2015, <https://www.mom.gov.sg/newsroom/press-releases/2015/1223-tripartite-advisory-on-managing-workplace-harassment>

⁴¹ Ministry of Manpower, “Firms to Consider Singaporeans Fairly for Jobs”, Ministry of Manpower Singapore, 23 September 2013, <https://www.mom.gov.sg/newsroom/press-releases/2013/firms-to-consider-singaporeans-fairly-for-jobs>

⁴² In 2013, the Ministry of Manpower demanded that companies found to have engaged in discriminatory hiring practices based on nationality, age and gender put up online public apologies for 30 days. MOM barred these companies from hiring new foreign workers for six months following the publication of these apologies. It also published the list of companies online to deter other companies from engaging in similar practices. See Ministry of Manpower, “MOM Takes Action against 10 More Companies for Discriminatory Job Advertisements”, Ministry of Manpower Singapore, 25 September 2013, <https://www.mom.gov.sg/newsroom/press-releases/2013/mom-takes-action-against-10-more-companies-for-discriminatory-job-advertisements>

with the TGFEF may also attract similar administrative penalties. Subsequently, in January 2020, the penalties imposed on errant companies that acted in contravention of the Fair Consideration Framework or the TGFEF were doubled: from a minimum period of six months' debarment from work pass applications and renewals, to 12 months. Egregious cases of discrimination may result in up to 24 months' debarment.⁴³

3. Lessons Learnt and Key Areas for Improvement

Notwithstanding the laudable steps that the Government has taken over the years, we believe much more can be done to stamp out discrimination at the workplace in Singapore. Drawing on our research and experiences, we have identified five issues that should be carefully considered in the development of the new legislation. We urge the Government to incorporate our recommendations, on policy gaps and areas where existing policy can be improved, into the new legislation.

a. Limitations of the business-case approach

Before the Prime Minister's announcement in August 2021 about the new legislation, the Singapore Government relied on the "business-case" approach to workplace discrimination, as opposed to the use of legislation to deter discriminatory behaviour.⁴⁴

The business-case approach is aimed at encouraging—rather than mandating—employers to adopt fair employment practices through education and moral suasion.⁴⁵ Specifically, it highlights the benefits of fair employment practices to businesses. As former Minister for Manpower Dr Lee Boon Yang explained in 1999:

*"[I]n labour-scarce Singapore, it is in the interests of employers to reach out to all Singaporeans who can do the work and help the company to compete. This is the basis of our meritocratic approach which has served Singapore well. By adopting discriminatory practices, an employer is only short-changing himself."*⁴⁶

However, the effectiveness of this business-case approach has been put in doubt over the years in favour of legal intervention to regulate and deter discriminatory workplace practices.⁴⁷ In 2010, two scholars from NUS Business School questioned if the business-case approach would be "effective enough in bringing about the desired adoption

⁴³ Ministry of Manpower, "FCF Job Advertising Requirement", Ministry of Manpower Singapore, accessed 29 April 2022, <https://www.mom.gov.sg/employment-practices/fair-consideration-framework#fcf-job-advertising-requirement>

⁴⁴ The government has clarified that it does not agree with our characterisation of Singapore as having a "business-case" approach, as employers who fail to adhere to the TGFEF will be subject to enforcement action.

⁴⁵ Chia and Lim, "Singapore: Equality, Harmony and Fair Employment"

⁴⁶ "Discrimination in hiring and other employment matters", *Singapore Parliamentary Debates, Official Report* (11 February 1999) vol 69 col 2165 (Dr Lee Boon Yang, Minister for Manpower)

⁴⁷ Jamillah Bowman Williams, "Breaking down Bias: Legal Mandates vs. Corporate Interests", *Washington Law Review* 92, no. 3 (2017): 1473–1514

of fair and non-discriminatory employment practices in Singaporean workplaces”.⁴⁸ A paper published in the *Journal of Business Ethics* also noted that the business-case approach downplays systemic discrimination, making it less likely that employers would initiate structural remedies needed for real change.⁴⁹ Some studies have found that the business-case approach may backfire and have negative effects on employees from under-represented groups or marginalised backgrounds.⁵⁰

The ineffectiveness of Singapore’s non-legislative approach to eliminating workplace discrimination can be gleaned from national surveys on the issue over the years. According to an AWARE-Milieu survey conducted in 2022, more than half of 1,000 (55.4%) survey respondents had experienced workplace discrimination in the last five years.⁵¹ Over two in five (41%) had experienced discrimination on the basis of their race, while more than a third (35%) had experienced discrimination based on their age. About one-quarter (23%) experienced discrimination based on gender and around one in five (18%) reported discrimination based on family responsibilities. These findings are consistent with an earlier survey conducted by Blackbox Research, which similarly found that over half of 1,000 respondents (51.4%) had experienced discrimination at the workplace.⁵²

Singapore’s approach has shifted towards greater regulation, presumably because the business-case approach alone has not been successful at eradicating discriminatory workplace practices. The enactment of the new legislation marks a new milestone towards the use of not only carrots (the business-case approach) but also sticks (statutory and administrative penalties against errant employers and civil remedies for victim-survivors of workplace discrimination).

Our recommendation

Building on this momentum, we urge the Government to move beyond the issuance of non-binding guidelines and enshrine in law a positive duty on employers to provide reasonable accommodations, including flexible work arrangements, job redesign and the provision of auxiliary aid devices (see section 4(c)(i)(D) below).

⁴⁸ Audrey Chia and Angeline Lim, “Singapore: Equality, Harmony and Fair Employment”, in *International Handbook on Diversity Management at Work Country Perspectives on Diversity and Equal Treatment*, ed. Alain Klarsfeld (Edward Elgar Publishing, 2010), 201

⁴⁹ Susan Margaret Hart, “Self-Regulation, Corporate Social Responsibility, and the Business Case: Do They Work in Achieving Workplace Equality and Safety?”, *Journal of Business Ethics* 92, no. 4 (1 April 2010): 585–600, <https://doi.org/10.1007/s10551-009-0174-1>. See also Linda Dickens, “The Business Case for Women’s Equality: Is the Carrot Better than the Stick?”, *Employee Relations* 16, no. 8 (1 January 1994): 5–18, <https://doi.org/10.1108/01425459410073915>

⁵⁰ Oriane A. M. Georgeac and Aneeta Rattan, “The Business Case for Diversity Backfires: Detrimental Effects of Organizations’ Instrumental Diversity Rhetoric for Underrepresented Group Members’ Sense of Belonging”, *Journal of Personality and Social Psychology*, 9 June 2022, <https://doi.org/10.1037/pspi0000394>; Linda Perriton, “‘We Don’t Want Complaining Women!’ A Critical Analysis of the Business Case for Diversity”, *Management Communication Quarterly* 23, no. 2 (1 November 2009): 218–43, <https://doi.org/10.1177/0893318909343122>.

⁵¹ “1 in 2 experienced workplace discrimination”

⁵² “Workplace Discrimination: How Harmonious Are We?”, Blackbox Research, 8 July 2022, <https://blackbox.com.sg/everyone/discrimination-in-singapore-how-harmonious-are-we>

In this context, we note that the White Paper on Singapore's Women Development states that the Government intends to entrench flexible work arrangements as a workplace norm through the enactment of new Tripartite Guidelines on this issue by 2024. We urge the Government to take the opportunity to go beyond the use of guidelines and legislatively enshrine flexible work arrangements and other reasonable accommodations in the new legislation.

Another example of the business-case approach is the Open Door Programme (OPD). Administered by SG Enable to encourage the employment of persons with disabilities, the OPD provides funding support for companies that employ persons with disabilities.⁵³ While such incentives are important to help companies defray the costs of accommodating the needs of persons with disabilities, they are insufficient to address the serious problem of disability discrimination at the workplace. Further, given Singapore's ratification of the CRPD, reasonable accommodations should be afforded to workers with disabilities as a matter of right rather than of goodwill.

b. Definition of discrimination

While the TGFEP sets out five principles of fair employment practices, there is no explicit definition of discrimination. Instead, the TGFEP presently sets out an assorted list of dos-and-don'ts. While this is helpful in advising employers on how to implement employment policies and practices, it offers limited guidance when employers encounter new factual situations that are not addressed in the TGFEP. For example, while the guidelines on performance management state that employers should "communicate posting and training opportunities to all eligible employees", it is not entirely clear how such eligibility is to be determined, and when the eligibility criteria may itself fall foul of the prohibition against discrimination.

Further, though the TGFEP states at numerous instances that employers should "avoid asking discriminatory questions" in job interviews and "review your [job performance] criteria regularly to check against discrimination", the lack of a clear and explicit definition of discrimination seriously limits the usefulness of these guidelines. It may also lead to unnecessary and protracted employment disputes, as the employer and employee may have different understandings of what is considered to be discriminatory.

Worse, it may lead employees to not file reports after experiencing discrimination because they are unsure if what they have faced constitutes proscribed conduct under the TGFEP. AWARE's WHDA has assisted clients who experienced forms of discrimination not explicitly mentioned in the TGFEP and who were therefore unsure whether what they had experienced constituted discrimination under the guidelines. For instance, while marital status and family responsibilities are stated as "irrelevant criteria in employment", pregnancy is not explicitly stated as a ground upon which discrimination can occur. Multiple WHDA clients had job offers rescinded after they informed potential employers of their pregnancy status, but expressed doubt as to whether this was considered discriminatory.

⁵³ Ministry of Social and Family Development, *Enabling Masterplan 2030* (Singapore: Ministry of Social and Family Development, 2022), 10, https://drive.google.com/file/d/1D_2Qs0Z2KL8KTh2PTWKGD_WeF1Vv8_qQ/view

We urge the Government not to directly transpose the TGFEF and its case-specific approach into the new legislation, and to instead adopt a more general definition that can accommodate a broader range of possible scenarios and contexts. A general definition of discrimination can also prevent errant employers from taking advantage of the law by adhering to the letter but not the spirit of the law. For example, AWARE's WHDA has observed a troubling number of cases where employers offer contracts for around 88 days to female workers, and thereby avoid the prohibition against dismissing pregnant workers who have been employed for at least 90 days (under section 81 of the Employment Act).

Our recommendation

Given that discrimination can occur in ways that may not have been contemplated in the TGFEF, we recommend that the new legislation articulate a general definition of discrimination to protect workers from *all* forms of discrimination at the workplace.

This is in line with the approach adopted in the International Labour Organisation's Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Under the ILO Convention, the term "discrimination" is defined as such distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. UN human rights treaties—including CEDAW, CRPD and CERD—adopt similar definitions of discrimination.⁵⁴ Notably, the CRPD explicitly states that discrimination includes the denial of reasonable accommodation.⁵⁵

In September 2022, the CRPD Committee specifically urged the Singapore Government to "adopt a comprehensive definition of discrimination on the ground of disability, including multiple and intersectional disability encompassing age, race, gender, ethnicity, religion, language, sexual orientation, nationality and migration status, or any other status, and ensure that persons with disabilities are comprehensively protected from discrimination".⁵⁶ It also called on the Singapore Government to "adopt legal provisions and create a practice recognizing the denial of reasonable accommodation as a form of discrimination in all areas of life, and include an express definition of reasonable accommodation consistent with" the CRPD.⁵⁷

Though discrimination is more commonly understood in terms of formal equality (also known as the equality of treatment), the new legislation should also aim to achieve substantive equality, which includes the equality of opportunity.⁵⁸ This requires that the law go beyond

⁵⁴ See W. A. McKean, *Equality and Discrimination under International Law* (Oxford: Clarendon Press, 1983); Wouter Vandenhoe, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia nv, 2005).

⁵⁵ Article 2 of the CRPD states that "discrimination on the basis of disability" includes "all forms of discrimination, including denial of reasonable accommodation".

⁵⁶ CRPD/C/SGP/CO/1 at para. 10(a).

⁵⁷ CRPD/C/SGP/CO/1 at para. 10(b).

⁵⁸ Drawing on comparative equality jurisprudence, Professor Sandra Feldman identifies four aims of substantive equality: (i) to redress disadvantage; (ii) counter prejudice, stigma, stereotyping, humiliation and violence based on a protected characteristic; (iii) enhance voice and participation, countering both political and social exclusion; and (iv) accommodate difference and achieve structural change. See Sandra Fredman, "Substantive Equality Revisited", *International Journal of Constitutional Law* 14, no. 3 (1 July 2016): 712–38, <https://doi.org/10.1093/icon/mow043>

legislating against *direct* discrimination, which is concerned with the less favourable treatment of a person because of their protected characteristic. Instead, it should also address *indirect* discrimination, the denial of reasonable accommodation as well as workplace harassment—in particular workplace sexual harassment—and victimisation. This is important given that the AWARE-Milieu survey found that the most common form of discrimination is indirect discrimination (18%) where company policies and practices resulted in a particular disadvantage suffered by workers because of their personal attributes (e.g. age, race, gender, etc).⁵⁹ These concepts are discussed in greater detail in section 4(c) below.

Given the Government's commitment to increase the employment rate of persons with disabilities,⁶⁰ one important aspect of the new legislation should be the enshrinement of a right to reasonable accommodations. According to the AWARE-Milieu survey, almost 8 in 10 disabled respondents (78%) have experienced discrimination at the workplace.⁶¹ Giving disabled workers the right to request reasonable accommodations is not only required as a matter of Singapore's obligations under the CRPD, but is also an important way to ensure that they can enjoy equal employment opportunities.⁶²

c. Prohibited grounds of discrimination

We note that the new legislation will prohibit discrimination based on sex, age, race, religion, disability and nationality.⁶³ We are concerned that these grounds will not comprehensively protect all workers from discrimination at the workplace.

A 2021 research study found that the awareness that discrimination is unlawful not only led people to believe that an employer was more likely to face punishment for discriminatory behaviour, but led some to report less prejudicial attitudes and greater feelings of interpersonal warmth toward persons with a protected characteristic.⁶⁴ Conversely, when people are led to believe that discrimination against a particular group is tolerated, it can licence more prejudicial attitudes.⁶⁵

⁵⁹ "1 in 2 experienced workplace discrimination"

⁶⁰ Yan Han Goh and Shermaine Ang, "Singapore Aims to Have 40% of Working-Age Persons with Disabilities Employed by 2030", *The Straits Times*, 17 August 2022, <https://www.straitstimes.com/singapore/singapore-aims-to-have-40-per-cent-of-working-age-persons-with-disabilities-employed-by-2030>

⁶¹ "1 in 2 experienced workplace discrimination"

⁶² Janet E. Lord and Rebecca Brown, "The Role Of Reasonable Accommodation In Securing Substantive Equality For Persons With Disabilities: The UN Convention On The Rights Of Persons With Disabilities", in *Critical Perspectives on Human Rights and Disability Law*, ed. Marcia. H Rioux, Lee Ann Basser, and Melinda Jones (Brill Nijhoff, 2010), 273–307

⁶³ "We will not hesitate to take action against any employer who discriminates on the basis of nationality or other factors, namely, age, sex, disability, race and religion." Lawrence Wong, "In Full: DPM Lawrence Wong's Speech at the Launch of the Forward Singapore Exercise", *Channel NewsAsia*, 28 June 2022, <https://www.channelnewsasia.com/singapore/full-lawrence-wong-speech-forward-singapore-2774651>

⁶⁴ Sara Emily Burke, and Roseanna Sommers. "Reducing Prejudice Through Law: Evidence from Experimental Psychology." *University of Chicago Law Review* 89, no. 6 (2022), https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/01_Sommers_Burke_ART.pdf

⁶⁵ *Ibid*

To send a strong signal that discrimination based on any personal attribute of a worker is unacceptable in Singapore, we recommend that the new legislation should adopt a non-exhaustive definition of protected characteristics that includes pregnancy, family status and sexual orientation (see section 4(b) below). This is important given that the AWARE-Milieu survey found that a sizeable proportion of respondents had experienced discrimination based on family responsibilities (18%), marital status (11%) and sexual orientation (7%).⁶⁶

In addition, it is unclear how some of these grounds will be defined. For example, if the new legislation relies on the current definition of disability under the Enabling Masterplan, it may exclude persons with mental health conditions. Drawing on our analysis of other countries' legislations, this position paper sets out our recommendations for the definitions of the various protected characteristics that should be enshrined in law.

d. Remedies and penalties

As noted above, discriminatory employers currently face statutory penalties for pregnancy and age discrimination, and administrative penalties for other forms of discrimination under the Fair Consideration Framework.

However, administrative penalties in terms of an employer's ability to apply for or renew work passes for its foreign employees are not adequate to deter discriminatory employment practices.

Similarly, current statutory penalties may also be insufficient. Under both the Employment Act and the Retirement and Re-Employment Act, the maximum penalties comprise a fine not exceeding \$5,000 and imprisonment for a term not exceeding six months; the penalties are doubled for repeat offenders.

In terms of civil remedies, an employee who has been wrongfully dismissed because of discrimination is able to seek reinstatement or compensation of up to \$30,000. The Second Schedule of the Employment Claims Regulations 2017 sets out a framework for calculating the amount of compensation to which a claimant may be entitled. This is based on several factors, including the claimant's loss of income, the harm caused to the claimant and aggravating and mitigating factors in terms of the parties' conduct. Notably, the amount of compensation for harm caused to claimant is capped at two months of the claimant's gross rate of pay on the date of the wrongful dismissal. This may be increased or decreased based on the existence of aggravating and mitigating factors.

However, the current cap on the maximum amount of compensation that a claimant can obtain may not be sufficiently high to deter discriminatory employment practices. Furthermore, it may fail to fully account for the harm suffered by victim-survivors due to the discrimination they experienced. For example, AWARE's WHDA has come across many cases in which pregnant women faced prolonged delay re-entering the workforce (often up to a year) after being dismissed during pregnancy—a delay likely caused by employers' reluctance to hire visibly pregnant women.

⁶⁶ "1 in 2 experienced workplace discrimination"

Our recommendation

We recommend that the statutory penalties—in the form of fines against errant employers—be sufficiently hefty to send an unequivocal signal to employers and society at large that workplace discrimination and harassment will not be tolerated in Singapore (see section 5(d)). In terms of civil remedies (i.e. compensation to victim-survivors of workplace discrimination and harassment), we recommend excluding discrimination and harassment claims from the ECT’s claim limit and adopting a more objective framework that focuses not only on the victim-survivor’s loss of salary but also the offender’s conduct and the severity of the offence (see section 6[b]). In addition, the new legislation should provide for punitive damages, in cases where the discriminatory conduct or circumstances are particularly egregious, and equitable remedies, such as injunctions.

e. Dispute resolution process

At present, there are multiple ways by which a victim-survivor of workplace discrimination or harassment can seek recourse.

- i. A victim of wrongful dismissal under the Employment Act can either pursue a civil suit against their employer in court or attempt mediation at TADM.⁶⁷ If mediation is unsuccessful, they may proceed to adjudication before the Employment Claims Tribunal (ECT) in accordance with the Employment Claims Act 2016.
- ii. Under the Retirement and Re-Employment Act, a victim-survivor of age-related dismissal can make representations to the Minister to be reinstated in their former employment.
- iii. A victim-survivor of other forms of discrimination can file a report with TAFEP, which will work with the employer to improve its employment practices. Where the employer is recalcitrant or unresponsive, TAFEP will refer the case to MOM for further investigation. Based on our understanding, MOM will then assess whether the employer has policies and procedures for filing a report. Employers found to not have these in place will be given the opportunity to rectify their actions. If an employer continues to engage in discriminatory employment practices thereafter, MOM may impose administrative penalties in accordance with the Fair Consideration Framework. The victim does not appear to be entitled to any remedies if the complaint is substantiated, except if they have been wrongfully dismissed or have had their salaries withheld.

According to the AWARE-Milieu survey, more than half of the respondents who had experienced workplace discrimination (54%) did not report it to anyone.⁶⁸ It is troubling that about a third of those who did not report (30%) said that they did not trust the internal and/or external authorities to act on their reports. Around 3 in 10 (29%) thought that they did not have enough evidence while more than 1 in 3 (36%) thought that the discrimination that they had experienced was not “severe” enough.

⁶⁷ In relation to bringing a civil suit against an employer, many workers are unaware of their right to sue their employer and in any case unable to afford to hire a lawyer and pay legal fees.

⁶⁸ “1 in 2 experienced workplace discrimination”

Of those who did report (46%), most only did so internally to their managers or other senior persons within their department (22%) or the human resource department (15%). Only a minority made reports to TAFEP (5%) or MOM (6%). This suggests that more needs to be done to encourage victim-survivors to report discriminatory workplace practices to official channels. A robust reporting and enforcement mechanism is critical to ensure compliance with the new law and deter errant employers.

These issues should be addressed in the new legislation to empower victim-survivors to take action and seek redress. A robust complaint and enforcement mechanism is also crucial given that about a third of those who experienced discrimination ended up quitting their jobs whether they reported it or not.⁶⁹

Our recommendation

Based on experiences of workers who have sought recourse through these existing channels, we recommend that the dispute resolution process under the new legislation be victim-centric and give the aggrieved employee the autonomy to decide the best course of action for themselves (see section 6 below). Specifically, while mediation may be helpful in some cases, it should not be made strictly mandatory before an employee can file a claim for adjudication, as it may not be appropriate for cases involving discrimination and harassment. Many WHDA clients have shared that they feel psychologically distressed after experiencing workplace discrimination, and do not wish to face their employers after their ordeal. Clients also report feeling retraumatised, distressed and humiliated after their mediation sessions. In multiple cases, clients have been verbally abused and threatened with defamation suits by their former employers during the mediation sessions. In one case, the client was heavily pregnant and had to sit through her employer yelling at her and accusing her of lying, which was very distressing.

Employers may also be uncooperative and refuse to attend mediation sessions, extending an already tedious process for the clients. They may also have an unfair advantage over the claimants. Despite TADM not allowing lawyers to represent either party, WHDA has seen cases where the client's former employer found a loophole by using a legally trained representative who was not a practising lawyer at the time.

- To this end, we recommend that certain claims under the new legislation brought before the ECT be exempted from the requirement for a claimant to attempt mediation before filing a claim with the ECT.

We also recommend that TAFEP be restructured as the new Commission on Workplace Discrimination and Harassment (CWDH) and given statutory powers to receive and investigate complaints and prosecute recalcitrant employers (see section 5 below). Similar to TAFEP's current functions, the CWDH should provide emotional support and provide technical advice to victim-survivors on their options in pursuing claims against errant employers. In addition, the CWDH should offer assistance to small and medium enterprises

⁶⁹ "1 in 2 experienced workplace discrimination"

that may face difficulties or require additional support in complying with their obligations under the new legislation.

4. Elements of an Effective Anti-Discrimination Legislation

This section sets out our recommendations that the Government should incorporate into the legislation to ensure that it will:

- i. protect every worker against all forms of discrimination;
- ii. provide victims of discrimination fair and timely recourse and remedies against their employers; and
- iii. prevent workplace discrimination through preventive and deterrent measures.

In developing these recommendations, we studied the experiences of other countries with workplace discrimination laws, including but not limited to Hong Kong,⁷⁰ the United Kingdom,⁷¹ Ireland,⁷² Australia,⁷³ New Zealand⁷⁴ and the United States.⁷⁵ The recommendations are also informed by the findings from the 2022 AWARE-Milieu workplace discrimination survey, as well as our past experiences working with victims of workplace discrimination. Our recommendations have also sought to strike a balance between competing considerations such as the protection of workers from discrimination and business necessity.

⁷⁰ Sex Discrimination Ordinance 1995; Disability Discrimination Ordinance 1995; Family Status Discrimination Ordinance 1997; Race Discrimination Ordinance 2008

⁷¹ Equality Act 2010

⁷² Employment Equality Acts 1995 – 2015

⁷³ Racial Discrimination Act 1975; Sex Discrimination Act 1984; Disability Discrimination Act 1992; Age Discrimination Act 2004

⁷⁴ Human Rights Act 1993

⁷⁵ Title VII of the Civil Rights Act 1964; Pregnancy Discrimination Act; Equal Pay Act 1963; Age Discrimination in Employment Act 1967; Title I of the Americans with Disabilities Act

a. Coverage of the legislation

i. Employer

Recommendation 1.1 Insert the following definition of “employer” in the legislation:
“Employer” means any person who employs another person under a contract of service or a contract for service and includes:

- i. the Government,*
- ii. any statutory authority,*
- iii. the duly authorised agent or manager of the employer, and*
- iv. the person who owns or is carrying on or for the time being responsible for the management of the profession, business, trade or work in which the employee is engaged,*

and includes a principal (A) for whom a contract worker (B) does work pursuant to a contract between A and B’s employer (C) whether or not B is party to that contract.

The new legislation should largely adopt the definition of “employer” in section 2 of the Employment Act.⁷⁶ In addition, we recommend that the definition of “employer” under the new legislation should cover:

- (1) all officers and employees of the Government;
- (2) a person who employs another person under a contract for services; and
- (3) a principal who does not employ a worker directly but for whom a person does work through a contractor or sub-contractor.

This expansive definition would extend protection to all officers and employees of the Government, gig workers, independent contractors and contract workers who should be protected from workplace discrimination as much as employees.

While some countries exclude from workplace discrimination legislation companies that employ fewer than a prescribed number of employees, we do not recommend having such exclusions in the new legislation.⁷⁷ This is because more than two-thirds of workers in Singapore are employed by small and mid-sized enterprises (SMEs).⁷⁸ Such an exclusion would leave a significant proportion of workers unprotected by the law. SMEs however may require additional support and flexibility to comply with the legislation. In this regard, please see our recommendations in section 5(h) below.

⁷⁶ Section 2 of the Employment Act defines an “employer” as any person who employs another person under a contract of service and includes

- (a) the Government in respect of such categories, classes or descriptions of officers or employees of the Government as are declared by the President to be employees for the purposes of this Act;
- (b) any statutory authority;
- (c) the duly authorised agent or manager of the employer; and
- (d) the person who owns or is carrying on or for the time being responsible for the management of the profession, business, trade or work in which the employee is engaged.

⁷⁷ This approach is consistent with the Government’s position on the importance of data protection under the Personal Data Protection Act 2012, which does not exempt SMEs either.

⁷⁸ According to official statistics, 71% of the labour force is employed by small and medium-sized enterprises. See Department of Statistics, “Singapore Economy” (2021), https://www.singstat.gov.sg/modules/infographics/-/media/Files/visualising_data/infographics/Economy/singapore-economy30052022.pdf

ii. Employee

Recommendation 1.2 Insert the following definitions in the legislation:

“Employee” means a person who has entered into or works under a contract of service or a contract for service with an employer, and includes a contract worker.

“Contract worker” means a person (A) who does work for a principal (B) pursuant to a contract between A’s employer (C) and B whether or not A is party to that contract.

The new legislation should adopt an expansive definition of employee that includes both those who entered into or are working under a contract of service as well as a contract for service. While domestic workers and seafarers are excluded from the definition of “employee” under the Employment Act, we recommend that they should be included in the definition of “employee” because all workers deserve protection from workplace discrimination under this legislation.

This definition would protect independent contractors such as gig workers and contract workers from workplace discrimination. Notably, gig workers occupy a sizable portion of our resident workforce.⁷⁹ As gig workers are considered independent contractors under existing laws, they are not covered by statutory protections and benefits under the Employment Act.⁸⁰ AWARE has highlighted previously that those who are dependent on gig industry platforms for a living remain vulnerable if they are left without protection under the new legislation.⁸¹ The principle of extending the Workplace Injury and Compensation Act coverage to gig workers should apply similarly to protecting them from workplace discrimination and harassment under the new legislation.⁸²

Contract workers who do work for a person with whom they have no direct contractual relationship should also be protected. For example, a janitor who is employed by a cleaning company should be protected from discrimination by clients of the cleaning company who could discriminate against them. Clients of the cleaning company could, for instance, request janitors of a different race or religion. The new legislation should ensure that contract workers are adequately protected against such discriminatory behaviours from principals who do not directly employ them.

⁷⁹ In November 2021, MOM estimated that this amounted to about 3% or around 79,000 persons. Yuen-C Tham, “Advisory Committee on Gig Workers Does Not Rule out Laws to Protect Workers”, *The Straits Times*, 15 September 2021, <https://www.straitstimes.com/singapore/politics/advisory-committee-on-gig-workers-meets-for-first-time-does-not-rule-out>

⁸⁰ Ministry of Manpower, “Public Consultation on Platform Workers”, Ministry of Manpower Singapore, accessed 9 August 2022, <https://www.mom.gov.sg/newsroom/press-releases/2021/1116-public-consultation-on-platform-workers>

⁸¹ Kimberly Wong, “Forum: Time to Develop Framework on Gig Workers’ Rights and Benefits”, *The Straits Times*, 11 May 2022, <https://www.straitstimes.com/opinion/forum/forum-time-to-develop-framework-on-gig-workers-rights-and-benefits>

⁸² Kok Yufeng, “Work Injury Compensation Act May Be Applied to ‘employee-like’ Gig Workers: Koh Poh Koon”, *The Straits Times*, 5 July 2022, <https://www.straitstimes.com/singapore/politics/work-injury-compensation-act-may-be-applied-to-employee-like-gig-workers-koh-poh-koon>

b. Protected Characteristics

Recommendation 2 Insert the following definition of “protected characteristic” in the legislation:

“Protected characteristic” refers to:

- i. Disability;*
- ii. Gender;*
- iii. Pregnancy;*
- iv. Family status;*
- v. Sexual orientation;*
- vi. Race;*
- vii. Religion;*
- viii. Age; or*
- ix. Nationality.*

We note that the Government has indicated that the new legislation will prohibit discrimination on the grounds of sex, age, race, religion, disability and nationality.⁸³ However, we are concerned that the scope of protected characteristics is too narrow and will leave many workers exposed to discrimination. There is also some ambiguity over the meaning of “disability”, which should be expansively defined under the legislation, to include mental health conditions, HIV/AIDS and a person’s health status generally.

Further, to ensure that the legislation is comprehensive and protects all workers from discrimination based on their personal characteristics, we recommend that the definition of “protected characteristics” include the above-mentioned characteristics. Specifically, the legislation should explicitly recognise the following protected characteristics: gender, pregnancy, family status and sexual orientation. In particular, the definition of “gender” should include gender identity and intersex status. This will send a clear signal to employers and society at large that discrimination on these grounds is not acceptable.

For consistency, we recommend that the current limited prohibition against the dismissal of (i) older workers under the Retirement and Re-Employment Act, as well as (ii) pregnant employees during their pregnancy and while on maternity leave under the Employment Act, should be repealed in conjunction with the enactment of the workplace discrimination legislation so that all discrimination-related provisions are consolidated in the new legislation.

⁸³ Lee Hsien Loong, “National Day Rally 2021”, Prime Minister’s Office (Alvin Chong, 31 August 2021), <https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2021-English>. See also Wong, “In Full”

i. Disability

Recommendation 2.1 Insert the following definition of “disability” in the legislation:
“Disability” means a physical, mental, intellectual or sensory impairment which hinders a person’s full and effective participation in society and substantially limits one or more major life activity, and includes:

- (a) *the total or partial loss of the person’s bodily or mental functions;*
- (b) *the total or partial loss of a part of the body;*
- (c) *the reliance on an assistance dog, wheelchair or other remedial means;*
- (d) *the presence in the body of organisms causing or capable of causing disease or illness, including the human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS);*
- (e) *the malfunction, malformation or disfigurement of a part of the person’s body;*
- (f) *a disorder or malfunction that results in the person learning or processing information differently from a person without the disorder or malfunction; or*
- (g) *a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour;*

and includes a disability that may exist in the future (including because of a genetic predisposition to that disability).

“Major life activities” include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

Though the average resident employment rate for persons with disabilities aged 15 to 64 rose from 28.2% for the period of 2018 to 2019, to 30.1% for 2020 to 2021,⁸⁴ it remains disproportionately low: While the unemployment rate of the general population was 2.7% in 2021, it was five times higher among persons with disabilities, at 11.3%.⁸⁵ Around two-third (66.3%) of persons with disabilities in Singapore are also outside the labour force, compared to 29.5% among the general population.⁸⁶

In 2018, DPA published a research report in collaboration with the Institute of Policy Studies on the discrimination faced by persons with disabilities at the workplace in Singapore.⁸⁷ The report was based on insights from 46 persons with disabilities who had experienced workplace discrimination, and six social service professionals who worked in job matching with persons with disabilities. The report documented the many ways by which persons with disabilities are discriminated against in finding work and staying employed.

⁸⁴ “Median Income and Employment Rate for Persons with Disabilities over Last 10 Years”, Parliament of Singapore, 5 July 2022, <https://sprs.parl.gov.sg/search/sprs3topic?reportid=written-answer-10862>

⁸⁵ Ministry of Manpower, “% by Labour Force Status of PwDS”, https://stats.mom.gov.sg/iMAS_Infographics/mrsd-infographic-Employment-Outcomes-of-Persons-with-Disabilities-2020-2021.pdf cf. Ministry of Manpower, “Summary Table: Unemployment”, <https://stats.mom.gov.sg/Pages/Unemployment-Summary-Table.aspx>

⁸⁶ Ministry of Manpower, “% by Labour Force Status of PwDS”, https://stats.mom.gov.sg/iMAS_Infographics/mrsd-infographic-Employment-Outcomes-of-Persons-with-Disabilities-2020-2021.pdf cf. Ministry of Manpower, “Summary Table: Labour Force”, <https://stats.mom.gov.sg/Pages/Labour-Force-Summary-Table.aspx>

⁸⁷ Disabled People’s Association and Institute of Policy Studies, “Discrimination Faced by People With Disabilities in the Workplace”, July 2018, <https://www.dpa.org.sg/wp-content/uploads/2018/07/Discrimination-Faced-by-People-with-Disabilities-at-the-Workplace-Study-1.pdf>

Currently, a person with disability is defined under the Enabling Masterplan as someone “whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory and intellectual disabilities as well as autism”.⁸⁸ In particular, mental health conditions are excluded from the Enabling Masterplan’s definition of disability.

This definition however only recognises a narrow subset of disabilities. It may also not be entirely congruent with Singapore’s obligations under the CRPD because it is based on the notion that a person with disability’s difficulties with employment are the “result of” their disability, rather than the result of social and environmental barriers. For example, a blind person is not impeded by their blindness to work as a copywriter insofar as they are able to perform their role using auxiliary aid devices such as a screen reader. The difficulties that the blind person faces in seeking employment therefore is not because of their disability but because of the lack of accommodations provided to enable them to perform their duties.

In September 2022, the CRPD Committee urged the Singapore Government to “include a comprehensive definition of disability” in its workplace discrimination legislation.⁸⁹ Specifically, it called on Singapore to “harmonise the legal definition of disability... to protect the human rights of all persons with disabilities, including persons with psychosocial disabilities, persons with intellectual disabilities, and autistic persons” and also to “remove all vestiges of a medical model of disability from [all legislation and policies], and base [them] on the human rights model of disability”.⁹⁰

While it is encouraging that the Government intends to increase the percentage of working-age persons with disabilities employed from 30% in 2021 to 40% in 2030 (as set out in the Enabling Masterplan 2030),⁹¹ the proposals therein do not address disability discrimination as a factor for the un(der)-employment of persons with disabilities.⁹² This is despite the fact that disability discrimination is prevalent, according to the recent AWARE-Milieu survey which found that almost 8 in 10 disabled respondents (78%) had experienced discrimination at the workplace over the past five years.⁹³ In particular, there is no mention in the Enabling Masterplan 2030 of the importance of recognising a *right* to reasonable accommodations for persons with disabilities to enable them to perform their roles (which is discussed further below at 4(c)(i)(D)). As discussed above at section 3(a), it is

⁸⁸ “Information on Disability in Singapore”, SG Enable, accessed 30 June 2022, <https://www.sgenable.sg/about-us/our-impact/disability-in-singapore>; Desmond Lee, “Definition of ‘Disability’ for Social Policies”, Ministry of Social and Family Development, 8 July 2019, <https://www.msf.gov.sg/media-room/Pages/Definition-of-%27Disability%27-for-Social-Policies.aspx>

⁸⁹ CRPD/C/SGP/CO/1 at para. 52(a).

⁹⁰ CRPD/C/SGP/CO/1 at paras. 6(a) and (c).

⁹¹ Goh and Ang, “Singapore Aims to Have 40% of Working-Age Persons with Disabilities Employed by 2030”

⁹² The two recommendations set out in Enabling Masterplan 2030 are: (1) Recommendation 7: Continue to grow the number of inclusive employers and expand the range of alternative and supported employment models, to enable more persons with disabilities to enter the workforce and sustain employment; and (2) Recommendation 8: Review existing employment models for persons with disabilities so that they remain relevant for the future.

MSF, Enabling Masterplan 2030, 88–94.

⁹³ “1 in 2 experienced workplace discrimination”

important to move beyond the business-case approach to address discriminatory workplace practices that restrict and deny equal employment opportunity to persons with disabilities in Singapore.

Our recommendation

- Functional approach to disability.

Similar to the approach in other model jurisdictions, we have proposed a definition of disability that adopts a functional approach in terms of the impact of the disability on a person's ability to perform major life activities. Under the Americans with Disabilities Act, "disability" is defined as "a physical or mental impairment that substantially limits one or more major life [activities]".⁹⁴ The UK Equality Act 2010 states that a person has a "disability" if "(a) they have a physical or mental impairment and (b) the impairment has a substantial... effect on the person's ability to carry out normal day-to-day activities".⁹⁵

- Non-inclusive list of types of disability.

The Australian Disability Discrimination Act and New Zealand Human Rights Act adopt a different approach by setting out a non-inclusive list of disabilities.⁹⁶ We recommend including a similar list in addition to the functional definition, for two reasons. First, such a definition makes clear that persons with mental health conditions, learning disabilities and medical conditions such as HIV/AIDS that substantially limit their ability to perform major life activities are protected from discrimination at the workplace based on those disabilities. Second, in line with the spirit of the CRPD, this non-exhaustive list sends a signal to employers and society at large that disability is a dynamic concept that can manifest in a diverse number of ways.

⁹⁴ "What is the definition of disability under the ADA?", ADA National Network, accessed on 13 October 2022, <https://adata.org/faq/what-definition-disability-under-ada>

⁹⁵ Part 2, Chapter 1, Section 6 of Equality Act 2010

⁹⁶ For example, the New Zealand Human Rights Act defines disability as meaning (i) physical disability or impairment; (ii) physical illness; (iii) psychiatric illness; (iv) intellectual or psychological disability or impairment; (v) any other loss or abnormality of psychological, physiological or anatomical structure or function; (vi) reliance on a disability assist dog, wheelchair or other remedial means; (vii) the presence in the body of organisms capable of causing illness.

Genetic discrimination.

Consistent with the Singapore government's moratorium on genetic testing and insurance to prohibit genetic discrimination in the provision of life insurance,⁹⁷ we recommend that the new legislation prohibit discrimination on the basis of disability where a disability does not currently exist but may exist in the future, including because of a genetic predisposition to that disability.

For example, the legislation should make it illegal for an employer to refuse to hire an applicant after she discloses during a pre-employment medication examination that her grandmother has breast cancer, because the employer is concerned that the applicant may subsequently be diagnosed with breast cancer and cause the employer's health insurance costs to increase. Alternatively, an employer should not be permitted to require an applicant or employee to undergo genetic testing for purposes of being hired or retained.⁹⁸

A. Mental Health Conditions

Recommendation 2.1.1 Should the Government prefer to exclude mental health conditions as a form of disability, enshrine mental health conditions as a separate and distinct protected characteristic and insert the following definition of "mental health condition" in the legislation:

"Mental health condition" means a long-term mental impairment which hinders a person's full and effective participation in society and substantially limits one or more major life activities.

As noted above, the current definition of disability under the Enabling Masterplan excludes persons with mental health conditions. According to the then-Minister for Social and Family Development, this is because "the Government's support for this group is focused on their recovery and reintegration into society".⁹⁹ While this definition is helpful in policy-making and implementation, it may not be suitable in the context of the workplace discrimination legislation. Instead, we recommend a comprehensive definition of disability that includes mental health conditions that limit a person's ability to perform major life activities.

Our recommendation

Alternatively, if the Government prefers to adopt a definition of disability that *excludes* mental health conditions, then it should adopt our recommendation to explicitly enshrine mental health conditions as a protected characteristic under the workplace discrimination legislation. This is in line with TAFEP's commitment to protecting persons with mental health conditions from discrimination in the job-seeking process, and the National Council of Social Services'

⁹⁷ "Moratorium on Genetic Testing and Insurance", Ministry of Health, Ministry of Health, accessed on 13 October 2022,

<https://www.moh.gov.sg/resources-statistics/moratorium-on-genetic-testing-and-insurance>

⁹⁸ See for example, cases documented in Australia where candidates were informed that they must test negative for certain genetic mutations before they can be hired in K Barlow-Stewart and D Keays, 'Genetic Discrimination in Australia' (2001) 8 Journal of Law and Medicine 250.

⁹⁹ Lee, "Definition of 'Disability' for Social Policies"

campaign for companies to adopt more inclusive hiring practices and put in place workplace accommodations for persons with mental health conditions.¹⁰⁰

B. Learning Disabilities

It is important to protect persons with learning disabilities from discrimination at the workplace, as they may face challenges performing job duties without the necessary accommodations.¹⁰¹ Under our proposed definition, discrimination against persons with learning disabilities will also be prohibited. Learning disabilities fall under limb (e): “a disorder or malfunction that results in the person learning or processing information differently from a person without the disorder or malfunction”.

C. Health status, HIV/AIDS and other medical conditions

As of the end of 2021, there were a total of 9,129 Singapore residents living with HIV. Of the 250 new cases in 2021, about 62% have late-stage HIV infection when diagnosed.¹⁰² Persons living with HIV/AIDS face significant stigma and discrimination at the workplace.¹⁰³ In response to media queries in 2019, MOM and TAFEP both confirmed that this vulnerable group should not be discriminated against based on their HIV status.¹⁰⁴ This stance should be enshrined in the workplace discrimination legislation.

Following the announcement that a new workplace discrimination legislation would be introduced in Singapore, Action for AIDS Singapore (AfA) issued a position statement calling for the new legislation to be “inclusive of HIV, other health conditions, disabilities, and stigmatised persons, particularly where they neither impact the individual’s ability to work, nor do they affect the wellbeing and health of the workplace and other workers”.¹⁰⁵

¹⁰⁰ Tee Zhuo, “Mental Health Declaration for Job Applicants Discriminatory”, *The Straits Times*, 20 January 2020,

<https://www.straitstimes.com/singapore/manpower/mental-health-declaration-for-job-applicants-discriminatory>; “Fight Stigma Against Mental Illness & Conditions”, National Council for Social Services, accessed 1 July 2022,

<https://www.ncss.gov.sg/our-initiatives/beyond-the-label/what-we-can-do-to-address-stigma>

¹⁰¹ Dale S Brown, “Job Accommodations for People with Learning Disabilities”, LD Online, 2008, <https://www.ldonline.org/ld-topics/transition-school-work/job-accommodations-people-learning-disabilities>

¹⁰² “Updates on the HIV/AIDS Situation in Singapore 2021 (June 2022)”, Ministry of Health, Ministry of Health, accessed on 13 October 2022, [https://www.moh.gov.sg/resources-statistics/infectious-disease-statistics/hiv-stats/update-on-the-hiv-aids-situation-in-singapore-2021-\(june-2022\)](https://www.moh.gov.sg/resources-statistics/infectious-disease-statistics/hiv-stats/update-on-the-hiv-aids-situation-in-singapore-2021-(june-2022))

¹⁰³ Si Ying Tan et al., “Securing and Sustaining Employment: Concerns of HIV Patients in Singapore”, *Social Work in Health Care* 52, no. 10 (1 November 2013): 881–98, <https://doi.org/10.1080/00981389.2013.827148>

¹⁰⁴ Janice Lim and Daryl Choo, “HIV-Positive Individuals Still Face Discrimination despite Employment Laws to Protect Them”, *TODAY Online*, 1 February 2019, <https://www.todayonline.com/singapore/hiv-positive-individuals-still-face-discrimination-despite-employment-laws-protect-them>

¹⁰⁵ “AfA’s Position Statement on Anti-Discrimination in the Workplace”, Action for Aids, Action for Aids, 1 December 2021, <https://afa.org.sg/afas-position-statement-on-anti-discrimination-in-the-workplace>

Our recommendation

Under our proposed definition, medical conditions like HIV/AIDS which are caused by the presence of organisms (such as bacteria or viruses) in the body are recognised as disabilities under limb (d): “*the presence in the body of organisms causing or capable of causing disease or illness*”. This definition is also sufficiently broad to protect both people living with HIV where the virus has not progressed into AIDS but is “capable of causing disease or illness”, as well as people diagnosed with AIDS where the virus is “causing disease or illness”.

Other medical conditions that may be covered under this limb include cancer, tuberculosis and “long COVID”, which is defined by the US Center for Disease Control and Prevention (CDC) as “a range of new or ongoing symptoms that can last weeks or months after they are infected with the virus that causes COVID-19 and that can worsen with physical or mental activity”.¹⁰⁶ This is also in line with the Singapore Government’s previous assurance that employees with medical conditions should not be discriminated against because employers should use only relevant and objective criteria in their employment practices.¹⁰⁷

If the Government prefers to adopt a narrower definition of disability that excludes medical conditions such as HIV/AIDS, then we would recommend that it consider explicitly recognising a separate and distinct protected characteristic: “health status”. In this regard, we note that some scholars have suggested that recognising “health status” discrimination as separate and distinct from disability discrimination may be preferable because health status discrimination covers a broader range of health-related traits (such as medical conditions) and health-related behaviours than disability discrimination.¹⁰⁸

However, as this has not yet been implemented in most other jurisdictions, we would recommend that the Government adopt our proposed definition, which would encompass most medical conditions under the protected characteristic of disability. In the meantime, the Government should monitor the implementation of the new legislation and consider updating the law to explicitly recognise health status as a protected characteristic in the future, if necessary.

D. Addiction Disorders

Some jurisdictions recognise addiction disorders—such as drug or alcohol addiction—as disabilities for the purposes of discrimination or disability law.¹⁰⁹ Under our recommended

¹⁰⁶ “Guidance on ‘Long COVID’ as a Disability Under the ADA, Section 504, and Section 1557”, Department of Health and Human Services, 26 July 2021, <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>

¹⁰⁷ Sin Yuen, “Parliament: Low Incidence of Workplace Discrimination Based on Medical Conditions”, *The Straits Times*, 9 January 2018, <https://www.straitstimes.com/politics/parliament-low-incidence-of-workplace-discrimination-based-on-medical-conditions>

¹⁰⁸ See generally, Jessica L. Roberts and Elizabeth Weeks, *Healthism: Health-Status Discrimination and the Law*, 1st ed. (Cambridge University Press, 2018), <https://doi.org/10.1017/9781316675601>

¹⁰⁹ For example, the US Justice Department issued a guidance in April 2022 that explains how the Americans with Disabilities protects people with opioid use disorder from discrimination. Similarly,

definition, addiction disorders may fall under limb (f): “a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgement or that results in disturbed behaviour”.

However, we note that there remains some debate as to whether addiction disorders should be recognised as disabilities under the law due to competing policy considerations and the criminalisation of drug use.¹¹⁰ Alternatively, as noted in the sub-section above, addiction disorders may fall under the protected characteristic of “health status”.¹¹¹ We urge the Government to conduct further research and consultation on this matter with the relevant stakeholders, including recovering and former substance users through groups like the National Addictions Management Service and Greenhouse SG.

ii. Gender

Recommendation 2.2 Insert the following definition of “gender” in the legislation:

“Gender” includes actual or perceived sex, gender identity and gender expression, including a person’s actual or perceived gender-related self-image, appearance, behaviour, expression or other gender-related characteristic (whether by way of medical intervention or not), regardless of the sex assigned to that person at birth, and includes intersex status.

“Gender identity” includes male, female, neither or both.

“Intersex status” means the status of having physical, hormonal or genetic features that are:

- (a) *neither wholly female nor wholly male; or*
- (b) *a combination of female and male; or*
- (c) *neither female nor male.*

Women in Singapore continue to face discrimination at the workplace. A 2021 study by the Singapore Chinese Chamber of Commerce and Industry found that 40% of women had experienced gender discrimination at the workplace. In contrast, only 10% of men reported having experienced gender discrimination.¹¹² A 2016 survey by JobStreet also found that

Ontario recognises substance-use addiction as a disability under state discrimination law. See “Justice Department Issues Guidance on Protections for People with Opioid Use Disorder under the Americans with Disabilities Act”, US Department of Justice, 5 April 2022, <https://www.justice.gov/opa/pr/justice-department-issues-guidance-protections-people-opioid-use-disorder-under-americans>; Ontario Human Rights Commission, “4. Recognizing Mental Health Disabilities and Addictions | Ontario Human Rights Commission”, Policy on preventing discrimination based on mental health disabilities and addictions, 18 June 2014, <https://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/4-recognizing-mental-health-disabilities-and-addictions>

¹¹⁰ Rebecca Bunn, “Conceptualizing Addiction as Disability in Discrimination Law: A Situated Comparison”, *Contemporary Drug Problems* 46, no. 1 (March 2019): 58–77, <https://doi.org/10.1177/0091450918819519>

¹¹¹ Jessica L. Roberts, “Healthism and the Law of Employment Discrimination”, *Iowa Law Review* 99 (2014): 571

¹¹² Yan Han Goh, “4 in 10 Women in S’pore Face Sex Discrimination at Work Compared with 1 in 10 Men: SCCCI Survey”, *The Straits Times*, 30 March 2021,

two-third of women have experienced less favourable treatment in their career progression.¹¹³ Legislative prohibition of gender discrimination is an important step towards gender equality at the workplace.

The use of “gender” instead of “sex” here is important because this recognises the role of gender stereotypes in perpetuating gender-based discrimination. The concept of “gender” recognises that it is a socially constructed category based on meanings that we attach to persons owing to biological characteristics they possess or how they behave.¹¹⁴ In contrast, “sex” is generally understood to refer to a person’s biological characteristics at birth, which by themselves may not result in differential or discriminatory treatment.¹¹⁵

A broad definition of gender that includes gender identity is important to protect transgender persons who continue to face significant challenges in employment. A 2020 survey conducted by Transgender SG, with support from the Asia Pacific Transgender Network (APTN) and the Transgender Health Research Lab at the University of Waikato, found that transphobia and discrimination were significant barriers for transgender persons to find employment in Singapore.¹¹⁶

A 2018 study by the Asia Pacific Transgender Network and the UN Development Program, in collaboration with Curtin University, also found that transgender workers are discriminated against when seeking employment.¹¹⁷ The study sent out pairs of resumes in response to entry-level job advertisements to examine how signals of gender identity affect the likelihood of receiving a positive response to a job application. Resumes that signalled the applicant was transgender were less likely to receive a positive response even though the applicants were similarly qualified and experienced. In 2018, a transgender communications professional revealed that she was dismissed from her workplace after her supervisors discovered that she had been on hormone replacement therapy.¹¹⁸

<https://www.straitstimes.com/singapore/4-in-10-women-encounter-gender-discrimination-at-work-compared-to-1-in-10-men-sccci-survey>

¹¹³ “JobStreet.Com Survey Reveals Working Mothers Spend Less than Two Hours with Their Children on a Work Day”, SG (blog), 10 March 2022, <https://www.jobstreet.com.sg/career-resources/work-life-wellbeing/jobstreet-com-survey-reveals-working-mothers-spend-less-two-hours-children-work-day>

¹¹⁴ This is affirmed by expert scientific consensus from the international research and medical community which understands “sex as more complex than male and female, and gender as a spectrum that includes transgender people and those who identify as neither male nor female”. “US Proposal for Defining Gender Has No Basis in Science”, *Nature* 563, no. 7729 (30 October 2018): 5–5, <https://doi.org/10.1038/d41586-018-07238-8>

¹¹⁵ “[B]iology operates as the excuse or cover for social practices that hierarchize individual members of the social category ‘man’ over individual members of the social category ‘woman’.” Katherine M. Franke, “Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender”, *University of Pennsylvania Law Review* 144, no. 1 (1996 1995): 1–100

¹¹⁶ TransgenderSG, “Challenges Facing Singapore’s Transgender Community: A Quantitative Review” (TransgenderSG, 25 July 2021), <https://transgendersonline.com/singapore-transgender-survey.pdf>

¹¹⁷ Sam Winter et al., “Denied Work – An Audit of Employment Discrimination on the Basis of Gender Identity in South-East Asia” (Asia Pacific Transgender Network and United Nations Development Program, 2018), <https://www.undp.org/asia-pacific/publications/denied-work-%E2%80%93-audit-employment-discrimination-basis-gender-identity-south-east-asia>

¹¹⁸ Clara Tan, “In Singapore, You Can Still Lose Your Job Just for Being Trans”, *Rice Media* (blog), 24 November 2018, <https://www.ricemedia.co/current-affairs-features-singapore-trans-discrimination>

Our recommendation

While the law in other jurisdictions has recognised that the ground of “sex” or “gender” can include pregnancy, breastfeeding and childbirth,¹¹⁹ we propose explicitly recognising those grounds as separate grounds, for the avoidance of doubt. We also propose explicitly recognising “sexual orientation” and “gender identity” as separate grounds to make clear that discrimination on the basis of sexual orientation or gender identity is not acceptable in Singapore.¹²⁰

Our proposed definition adopts a broad understanding of gender identity to include a person’s gender-related identity, appearance, mannerisms and other gender-related characteristics. The definition also includes a person’s intersex status, which refers to a group of conditions where a person is born with, or develops naturally in puberty, biological sex characteristics which are not typically male or female.

This broad definition protects a person who is discriminated against at work because they do not conform to gender stereotypes about how they should dress or behave. For example, a female professional is dismissed for wearing pants instead of a skirt to work. This would constitute discrimination based on her gender identity, specifically her gender-related appearance.

iii. *Pregnancy*

Recommendation 2.3 Insert the following definition of “pregnancy” in the legislation:
“Pregnancy” includes potential pregnancy, any illness suffered by a pregnant person because of pregnancy, childbirth, miscarriage, breastfeeding and maternity leave.

Under the Employment Act, pregnancy discrimination remains prevalent in Singapore.¹²¹ AWARE’s WHDA has seen cases where women were employed under contracts of less than three months because their employer wanted to avoid liability under Part 9 of the Employment Act. In addition, some workers were pressured to leave, or made redundant, after they became pregnant.¹²² These loopholes should be closed in the new legislation to prevent employers from taking advantage of them.

In 2021, AWARE’s WHDA saw 88 cases of workplace discrimination, of which 71 (81%) were maternity-related cases. Of the 14 WHDA clients who experienced maternity-related discrimination resulting in wrongful dismissals, only three approached the TADM and one was referred to TAFEP.¹²³ There have also been instances where employers rescind job offers or reduce the candidate’s job scope and salary on the basis of concern about the

¹¹⁹ For example, the New Zealand Human Rights Act states that “sex” as a prohibited ground of discrimination includes pregnancy and childbirth.

¹²⁰ See section 4(b)(v) below.

¹²¹ Deon Loke, Soon En-Rei, and Soh Pei Xuan, “Pregnant Women Still Facing Discrimination at Workplace despite Anti-Discrimination Laws”, *The Straits Times*, 27 June 2022, <https://www.straitstimes.com/singapore/jobs/pregnant-women-still-facing-discrimination-at-workplace-despite-anti-discrimination-laws>

¹²² Hingorani, “Commentary”

¹²³ AWARE Singapore, “An Omnibus on Gender Equality: AWARE’s Recommendations for Singapore’s 2020-2021 Gender Equality Review”, 44

pregnant candidate's health. In other cases, women were not given reasonable accommodation while they were pregnant to take care of sickness or relevant symptoms.¹²⁴ Many of these cases—which would have likely amounted to constructive dismissal¹²⁵—were unreported due to fear of employer retaliation.

Currently, under Part 9 of the Employment Act, a pregnant worker is statutorily entitled to absent herself from work for a period of 12 weeks. Where the child is a Singapore citizen, she is entitled to 16 weeks of government-paid maternity leave in accordance with the Child Development Co-Savings Act. Dismissal of a worker during the duration of her maternity leave is prohibited under section 81 of the Employment Act.

However, during AWARE's community discussions in 2021 with workers who experienced workplace discrimination,¹²⁶ some participants shared that they faced discrimination after returning to work from their pregnancies. Such discrimination took the form of (i) poor performance evaluations, (ii) increased workload and even (iii) being made redundant. Some were also demoted upon returning from maternity leave.¹²⁷

Our recommendation

The new legislation should ensure that persons returning from maternity leave have the right to return to the same job at the same salary, because no worker should be penalised for their pregnancy. It should also ensure that there is legal protection or recourse for pregnant women who experience discrimination at the workplace that does not amount to wrongful dismissal, including poor performance evaluations and increased workload.

A. Potential pregnancy

Recommendation 2.3.1 Insert the following definition of “potential pregnancy” in the legislation:

“Potential pregnancy” includes the ability to bear children or the desire to become pregnant.

We note that pregnancy discrimination may occur to those who might wish to be pregnant. In this regard, we recommend that the new legislation explicitly proscribe discrimination on the grounds of potential pregnancy. The new legislation could take reference from section 7 of Australia's Sex Discrimination Act, which makes it unlawful to discriminate on the ground of potential pregnancy in addition to the ground of pregnancy. Our proposed definition is also adopted from the same legislation.

¹²⁴ “Pregnant Women Still Facing Discrimination at Workplace Despite Anti-Discrimination Laws” <https://www.straitstimes.com/singapore/jobs/pregnant-women-still-facing-discrimination-at-workplace-despite-anti-discrimination-laws>

¹²⁵ Constructive dismissal refers to a situation where the employer breached the employment agreement with the employee in a manner that would mean the employment agreement can no longer function effectively.

¹²⁶ AWARE Singapore, “Reimagining Equality: End All Forms of Discrimination in the Workplace” (AWARE Singapore, July 2021), <https://www.aware.org.sg/wp-content/uploads/AWARE-Reimagining-Equality-2021-Community-Policy-Wishlist-Workplace-Discrimination.pdf>

¹²⁷ AWARE Singapore, “An Omnibus on Gender Equality: AWARE's Recommendations for Singapore's 2020-2021 Gender Equality Review”, 44

B. Breastfeeding

Recommendation 2.3.2 Insert the following definition of “breastfeeding” in the legislation:
“Breastfeeding” includes the act of breastfeeding, the act of expressing milk and breastfeeding over a period of time.

During AWARE’s 2021 community discussions, some women talked about challenges they faced in relation to breastfeeding after returning to work from their pregnancy.¹²⁸ Discrimination based on breastfeeding should be prohibited. One participant recounted how she had to pump in the office bathroom, which was unpleasant and unhygienic, because there was no designated private space to do so.

Section 7AA of Australia’s Sex Discrimination Act prohibits discrimination on the ground of breastfeeding. In the UK, the Health and Safety Executive has also made it mandatory for employers to provide more frequent rest breaks and a hygienic and private area to express milk should workers choose to.¹²⁹

Our recommendation

A similar prohibition against discrimination based on breastfeeding should be adopted in the new legislation in Singapore. In particular, the new legislation should require employers to provide reasonable accommodations for breastfeeding mothers, including designated clean, private areas and scheduled times to express milk during the workday.¹³⁰

iv. Family Status

Recommendation 2.4 Insert the following definition of “family status” in the legislation:
“Family status” means having the responsibility for part-time care or full-time care of children or other dependents and includes a person’s marital status.
“Dependent person” means a person who is wholly or substantially dependent on others.
“Marital status” means being married to, or being in a civil union or de facto relationship with, a particular person, whether or not that marriage or civil union is solemnised or recognised under Singapore law.

We note that TAFEP guidelines cover discrimination based on a person’s family status. This is in line with the Government’s commitment, stated in the White Paper on Singapore Women’s Development, to take care of caregivers, and would protect parents and caregivers of persons with disabilities or elderly parents from discrimination at the workplace.¹³¹

¹²⁸ AWARE Singapore, “Reimagining Equality: End All Forms of Discrimination in the Workplace” (AWARE Singapore, July 2021), <https://www.aware.org.sg/wp-content/uploads/AWARE-Reimagining-Equality-2021-Community-Policy-Wishlist-Workplace-Discrimination.pdf>

¹²⁹ Health and Safety Executive, “Protecting Pregnant Workers and New Mothers”, <https://www.hse.gov.uk/mothers/employer/rest-breastfeeding-at-work.htm>

¹³⁰ Amelia Teng, “Provide More Lactation Rooms and Paid Nursing Breaks for Working Mothers: Louis Ng”, *The Straits Times*, 2 August 2022, <https://www.straitstimes.com/singapore/politics/provide-more-lactation-rooms-and-paid-nursing-breaks-for-working-mothers-says-louis-ng>

¹³¹ “White Paper on Singapore Women’s Development”

Other jurisdictions adopt a range of approaches towards the prohibition of family status discrimination:

- (a) Hong Kong. The Family Status Discrimination Ordinance defines family status as referring to responsibility for the care of an immediate family member, who is defined as a person who is related to the person by blood, marriage, adoption or affinity.
- (b) Australia. Section 4 of the Sex Discrimination Act defines family responsibilities as responsibilities of the person to care for or support (i) a dependent child of the person; or (ii) any other immediate family member who is in need of care and support.
- (c) New Zealand. Section 21 of the Human Rights Act defines family status as (i) having the responsibility for part-time care or full-time care of children or other dependants; or (ii) having no responsibility for the care of children or other dependants; or (iii) being married to, or being in a civil union or de facto relationship with, a particular person; or (iv) being a relative of a particular person.

Our recommendation

Individuals—especially women—should not be denied employment or be forced to give up their careers because of their caregiving responsibilities for others.¹³² Enshrining family responsibilities as a protected characteristic also means that caregivers can seek reasonable accommodations, such as a flexible or modified work schedule, to accommodate their family responsibilities.

We propose an expansive definition of family status that includes both full-time and part-time care of a dependent person, as well as a person's marital status. The proposed definition of a dependent person is also broad and includes children as well as any other person who depends on others to meet their needs. This broad definition is important so that it can protect those with family responsibilities for the care of an elderly person or a disabled person.

v. *Sexual Orientation*

Recommendation 2.5 Insert the following definition of “sexual orientation” in the legislation:

“Sexual orientation” includes heterosexuality, homosexuality, bisexuality and asexuality.

Discrimination and harassment of LGBTQ+ people in Singapore is well-documented. The AWARE-Milieu survey found that around 7 in 10 LGBTQ+ respondents had experienced

¹³² Marina Lopes, “As Singapore Ages, Single Women Pay the Price of Caring for Elderly Parents”, *Washington Post*, 12 April 2021, https://www.washingtonpost.com/world/asia_pacific/women-asia-singapore-parents-ageing/2021/04/12/1479ef98-95da-11eb-8f0a-3384cf4fb399_story.html; Lianne Chia, “She Put Her Life on Hold to Care for Mum. Despite Loneliness and Depression, She Isn’t Giving Up”, *Channel NewsAsia*, 6 March 2022, <https://www.channelnewsasia.com/cna-insider/full-time-caregiver-depression-burnout-maid-dementia-2519056>

some form of workplace discrimination over the past five years.¹³³ A 2018 study by Sayoni found that LBTQ women experience a range of discriminatory behaviours at the workplace, from discriminatory hiring practices to unfair dismissals and limited career opportunities.¹³⁴ Former educators have also reported facing discrimination after disclosing their LGBTQ+ identity. Most continue to hide their sexual orientation and/or gender identity out of fear they may be penalised for them.¹³⁵

Explicitly recognising sexual orientation will ensure that LGBTQ+ people are not harassed or discriminated against in Singapore.¹³⁶ Prohibiting discrimination based on sexual orientation ensures that LGBTQ+ Singaporeans are able to “work in all sectors, all over the economy” as PM Lee acknowledged in Parliament in 2007.¹³⁷ This builds on the Government’s laudable commitment to LGBTQ+ inclusion in 2003, when former Prime Minister Goh Chok Tong removed a ban on the hiring of gay public servants.¹³⁸

This is also consistent with PM Lee’s recognition at the National Day Rally 2022 that LGBTQ+ people deserve to “participate in our community, and contribute fully to Singapore”.¹³⁹ Legislating against workplace discrimination based on a person’s sexual orientation would also reinforce PM Lee’s recognition that gay people “are our colleagues... [who] want to... participate in our community and contribute fully to Singapore”.¹⁴⁰ Moreover, as the chief human resources officer for the Government’s Public Service Division, Ms Low Peck Kem, put it, discrimination against LGBTQ+ persons is “stupid”,¹⁴¹ and should therefore be expressly prohibited in the new legislation.

Given the Government’s recent repeal of Section 377A and the criminalisation of incitement to violence against LGBTQ+ persons in the Maintenance of Religious Harmony (Amendment) Act, an omission to enshrine these two grounds in the new legislation may

¹³³ “1 in 2 experienced workplace discrimination”

¹³⁴ Sayoni 2018 Chapter 9 Employment in “Violence and Discrimination Against LBTQ Women in Singapore: Documentation of Human Rights Violations”

¹³⁵ William Hoo, “The First Singaporean Teacher To Come Out Did So in 2007. Have Things Changed Since Then?”, *Rice Media* (blog), 10 July 2019,

<https://www.ricemedia.co/current-affairs-features-singapore-queer-teachers-have-things-changed>

¹³⁶ Wong Siew Ying, “Singapore Not Ready for Same-Sex Marriage as Society Is Still Conservative: PM Lee”, *The Straits Times*, 5 June 2015,

<https://www.straitstimes.com/singapore/singapore-not-ready-for-same-sex-marriage-as-society-is-still-conservative-pm-lee>; Faris Mokhtar and Victor Loh, “No Discrimination against LGBTQ Community at Work, in Housing and Education Here: Ong Ye Kung - TODAY”, *TODAY Online*, 14 September 2018, <https://www.todayonline.com/singapore/no-discrimination-against-lgbtq-community-singapore-ong-ye-kung>

¹³⁷ Lee Hsien Loong, “Full Parliamentary Speech by PM Lee Hsien Loong in 2007 on Section 377A”, *The Straits Times*, 24 October 2007,

<https://www.straitstimes.com/politics/full-parliamentary-speech-by-pm-lee-hsien-loong-in-2007-on-section-377a>

¹³⁸ Wayne Arnold and International Herald Tribune, “Quietly, Singapore Lifts Its Ban on Hiring Gays”, *The New York Times*, 5 July 2003, sec. World,

<https://www.nytimes.com/2003/07/05/news/quietly-singapore-lifts-its-ban-on-hiring-gays.html>

¹³⁹ <https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2022-English>

¹⁴⁰ “National Day Rally 2022”, Prime Minister’s Office Singapore, Government of Singapore, 21 August 2022, <https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2022-English>

¹⁴¹

<https://www.todayonline.com/singapore/policies-targeting-lgbtq-employees-are-stupid-workplace-discrimination-makes-it-harder-fill-jobs-amid-ageing-workforce-says-hr-veteran-2088091>

send a conflicting message that the Government condones discrimination at the workplace against LGBTQ+ persons.¹⁴² Furthermore, the exclusion of sexual orientation from the new workplace discrimination legislation may undermine the Government's efforts to attract global talent to work in Singapore.¹⁴³

Finally, legislating against workplace discrimination against LGBTQ+ persons would also be in line with Singapore's obligations under CEDAW to ensure that lesbian, bisexual, transgender and intersex women are protected from all forms of discrimination in law and in practice.¹⁴⁴

vi. *Nationality*

In light of the enactment of the new legislation, we note that the CERD Committee has expressed concern that employment in the services sector, unlike in the construction, marine shipyard or process sectors, is permitted only to migrant workers of certain nationalities.¹⁴⁵ It also highlighted that there have been insufficient measures to reduce wage discrimination based on nationality.¹⁴⁶ For example, the Progressive Wage Model only covers Singapore citizens and permanent residents.¹⁴⁷ In this regard, CERD Committee has urged the Singapore government to take necessary measures to ensure that the existing employment restrictions on "source countries or regions" with regard to the services sector do not amount to discrimination based on nationality, and to intensify its efforts to eliminate wage discrimination based on nationality.¹⁴⁸

We are also concerned that existing policies aimed at developing the "Singapore core" may be incompatible with the new workplace discrimination legislation. In particular, an employer that fails to comply with the Fair Consideration Framework is regarded as having been discriminatory against Singaporean workers. However, this is conceptually incorrect because the Fair Consideration Framework requires that Singaporean workers be considered *first*

¹⁴² Even if Section 377A were not repealed, it should be noted that other countries such as Botswana, Kiribati and St. Lucia—which also criminalise same-sex sexual intimacy—have nonetheless gone on to enact anti-discrimination laws that prohibit discrimination based on sexual orientation. See Lucas Ramon Mendos, "State-Sponsored Homophobia" (International Lesbian, Gay, Bisexual, Trans and Intersex Association, May 2019), <https://ilga.org/state-sponsored-homophobia-report-2019>.

¹⁴³ Tian Wen Tay, "Is Singapore's Struggle with LGBTQ Acceptance Hampering Its Tech Ambitions?", *Tech in Asia*, 30 June 2021, <https://www.techinasia.com/singapores-struggle-lgbtq-acceptance-clouding-tech-ambitions>; "Singapore Ups Ante for Top Global Talent, to Repeal Male-Sex Law", *Bloomberg.Com*, 21 August 2022, <https://www.bloomberg.com/news/articles/2022-08-21/singapore-wants-top-foreign-talent-to-avoid-being-left-behind>; "LGBT-Friendly Work Policies Help Retain Top Talent: Study", *The Straits Times*, 19 November 2019, <https://www.straitstimes.com/business/economy/lgbt-friendly-work-policies-help-retain-top-talent-study>

¹⁴⁴ Committee on the Elimination of Discrimination against Women, "Concluding Observations on the Fifth Periodic Report of Singapore", CEDAW/C/SGP/CO/5, 21 November 2017, <https://www.ohchr.org/en/documents/concluding-observations/cedawcsgpco5-concluding-observations-fifth-periodic-report>

¹⁴⁵ CERD/C/SGP/CO/1 at para. 23(h)

¹⁴⁶ CERD/C/SGP/CO/1 at para. 23(i)

¹⁴⁷ "What is the Progressive Wage Model", Ministry of Manpower, Government of Singapore, accessed on 16 October 2022,

<https://www.mom.gov.sg/employment-practices/progressive-wage-model/what-is-pwm>

¹⁴⁸ CERD/C/SGP/CO/1 at para. 24(h) and (i)

based on their nationality.¹⁴⁹ Failure to comply with this policy therefore is not “discrimination” in the technical sense of the word; in fact, the Fair Consideration Framework itself requires that job candidates be treated *differently* based on their nationality. While such a policy may be regarded as “fair”,¹⁵⁰ it should not be conflated with the legal concepts of equality or non-discrimination (as discussed below in section 3(vii)(G)). We therefore do not recommend that failure to comply with the Fair Consideration Framework be made a statutory offence under the new workplace discrimination legislation. Instead, given that this is an issue relating to the application for work passes for non-Singaporean workers, it should more appropriately be addressed under the Employment of Foreign Manpower Act.

c. Types of Prohibited Conduct

Recommendation 3 Insert a section specifying the types of conduct that are prohibited under the new legislation, namely:

- (i) *direct discrimination, including discrimination by imputation and discrimination by association;*
- (ii) *indirect discrimination;*
- (iii) *combined discrimination;*
- (iv) *the denial of reasonable accommodation;*
- (v) *harassment; and*
- (vi) *victimisation*

save that positive actions to uplift marginalised and under-represented groups based on their protected characteristics are not prohibited under the new legislation.

Workplace discrimination is objectionable because, in President Halimah Yacob’s words, discriminatory practices “deprive the person affected from earning a living”.¹⁵¹ In this regard, we recommend that the new legislation adopt an expansive approach to the types of conduct that should be prohibited so that everyone is able to enjoy equal employment opportunities and make a living to support themselves and their families, regardless of who they are.

First, in addition to proscribing intentional forms of discrimination where the employer is prejudiced against a worker because the worker has a protected characteristic (also known as **direct discrimination**), the new legislation should forbid non-intentional discrimination as well that arises as a result of disadvantages faced by those with protected characteristics. This includes **indirect discrimination** and the **denial of reasonable accommodation**, where a worker may face difficulties at the workplace even though they are not being actively targeted by their employer. An expansive approach to discrimination ensures that

¹⁴⁹ Daryl Yang, “Will Singapore’s New Workplace Discrimination Law Be a Win for Equality?”, *Jom*, 19 August 2022,

<https://www.jom.media/will-singapores-new-workplace-discrimination-law-be-a-win-for-equality>

¹⁵⁰ “Differential fairness refers to a moral justification that fairness is based on differences in rights and entitlements between natives and migrants. The concept is derived from our in-depth interviews with natives. We find that many native interviewees’ perception of fairness is not based on the equality of rights, a principle emphasized in Western liberal democracies, but on the differentiated rights and entitlements between themselves and migrants.” Shaohua Zhan, Lingli Huang and Min Zhou, “Differentiation from above and below: Evolving Immigration Policy and the Integration Dilemma in Singapore”, *Asian and Pacific Migration Journal* 31, no. 1 (March 2022): 3–25, <https://doi.org/10.1177/01171968221083703>

¹⁵¹ Lim, “Discrimination Has No Place in Singapore Society: President Halimah”

the new legislation will achieve not only *formal* equality (equality of treatment) but also *substantive* equality (equality of opportunity).

Second, though the new legislation is primarily focused on addressing workplace discrimination, it should also prohibit **harassment** at the workplace. This is because those with protected characteristics are also more likely to be victims of harassment. In particular, as discussed in greater detail below, women are disproportionately affected by workplace sexual harassment, which can seriously affect their personal and professional lives.

Third, echoing the White Paper on Singapore Women's Development, the new legislation should outlaw **victimisation** (also known as retaliation). This is important to ensure that victim-survivors feel safe and empowered to report employers who have discriminated against or harassed them.

Finally, the new legislation should enact a provision making clear that **positive actions** aimed to increase the representation of or provide support to those from marginalised and under-represented groups would not fall foul of the legislation's prohibition against discrimination.

i. Discrimination

Recommendation 3.1(a) Insert the following definition of "discrimination" in the legislation:

"Discrimination" means direct or indirect discrimination and includes

- (i) combined discrimination; and*
- (ii) the denial of reasonable accommodation.*

Recommendation 3.1(b) Insert the following provision in the legislation:

Prohibited conduct: Discrimination

- (i) An employer (A) must not discriminate against a person (B):*
 - 1. in the arrangements A makes for deciding whom to offer employment;*
 - 2. as to the terms on which A offers B employment; or*
 - 3. by not offering B employment.*
- (ii) An employer (A) must not discriminate against an employee of A's (B):*
 - 1. as to B's terms of employment;*
 - 2. in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit associated with employment;*
 - 3. by dismissing B; or*
 - 4. by subjecting B to any other detriment.*

The new legislation should adopt a comprehensive definition of discrimination to ensure that all forms of discriminatory employment practices and conduct are unlawful. We recommend that the new legislation should have a clear definition of "discrimination". It should mean both direct discrimination and indirect discrimination and include combined discrimination as well as the denial of reasonable accommodation.

The legislation should also make clear that discrimination at all stages of employment is prohibited against both candidates and employees, in line with discrimination-related legislations in the UK, Hong Kong, Australia and New Zealand.¹⁵²

A. Direct Discrimination

Recommendation 3.1.1 Insert the following definition of “direct discrimination” in the legislation:

“Direct discrimination” occurs when a person (A) treats another person (B) less favourably than A treats or would treat others because of a protected characteristic that:

- (i) B has;*
- (ii) B had but no longer does;*
- (iii) is generally imputed to persons with that protected characteristic or specifically imputed by A to B; or*
- (iv) a person with whom B is associated (C) has or had but no longer does*

but does not include A’s application of a requirement to have a particular protected characteristic if A can prove that, having regard to the nature or context of the work,

- (i) The particular protected characteristic is an occupational requirement,*
- (ii) the application of the requirement is a proportionate means of achieving a legitimate aim, and*
- (iii) B does not meet it (or A has reasonable grounds for not being satisfied that B meets it).*

A person is “associated” with another person if they are:

- (i) the person’s spouse,*
- (ii) relative,*
- (iii) caregiver or dependent,*
- (iv) a person who is living with them; or*
- (v) a person who is in a business, sporting or recreational relationship with them.*

Direct discrimination is based on the principle that “like should be treated alike” and is concerned with a difference in treatment compared with another person. Direct discrimination occurs when a person treats another person less favourably because of a protected characteristic. This protected characteristic can be something that the victim-survivor currently possesses or previously had but no longer does (e.g. disability).¹⁵³ Direct discrimination can also occur by imputation or by association, as the following sub-sections discuss further.

¹⁵² See for example, Part 5 of the UK Equality Act 2010, Part 3 of the Hong Kong Disability Discrimination Ordinance, Part II Division 1 of the Australia Sex Discrimination Act and sections 22 and 23 of the New Zealand Human Rights Act.

¹⁵³ For example, section 2 of the Hong Kong Disability Discrimination Ordinance recognises that disability discrimination can include a disability that “previously existed but no longer exists”. Similarly, section 12102 of the Americans with Disabilities Act defines disability to include having “a record of” that disability.

We recommend that the new legislation adopt a definition of direct discrimination which covers the circumstances above. The proposed language in our recommendation as to the meaning of direct discrimination adopts section 13(1) of the UK Equality Act 2010.¹⁵⁴

(1) Discrimination by Imputation

“Discrimination by imputation” occurs when a person is discriminated against not because of a protected characteristic that they possess or did possess, but because of a protected characteristic that is imputed to them. Examples of discrimination by imputation include situations when an employer dismisses an employee based on the belief that the employee is pregnant or has a mental health condition, even though the employee does not have such conditions.¹⁵⁵

Jurisdictions that protect persons from discrimination by imputation include:

- (a) Australia. Section 5 of the Australia Sex Discrimination Act prohibits sex discrimination against a person by reason of a characteristic that is generally imputed to persons of the sex of that person.
- (b) Ireland. Section 6 of the Irish Employment Equality Act 2010s 1998 - 2015 prohibits discrimination against another person based on a protected characteristic that is “imputed to the person concerned”.
- (c) New Zealand. Section 21 of the New Zealand Human Rights Act prohibits discrimination based on a protected characteristic that is “suspected or assumed or believed to exist or to have existed by the person alleged to have discriminated”.
- (d) Hong Kong. Section 8(1)(b) of the Race Discrimination Ordinance states that an act done on the ground of the race of a person includes an act done on the ground of the race, colour, descent or national or ethnic origin that is imputed to the person.
- (e) United States. Section 12102(3) of the Americans with Disabilities Act recognises that a person may be discriminated against on the basis of disability “because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity”.

We recommend that the new legislation adopt a definition of discrimination by imputation which covers the elements above. The proposed language is adapted from the approaches adopted in these jurisdictions.

(2) Discrimination by Association

Discrimination by association occurs where a person is discriminated against not because of a protected characteristic that they possess but because of a protected characteristic of a

¹⁵⁴ Section 13(1) of the UK Equality Act 2010 states that “a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”.

¹⁵⁵ This would not strictly constitute direct discrimination since the employee was not discriminated against because of a protected characteristic that they possess, i.e. pregnancy.

person with whom they are associated. Examples of discrimination by association include situations when:

- (a) An employer who dismisses an employee because they are associated with someone who is LGBTQ+, or of another race or religion;
- (b) An employer refusing to hire a parent who has a child with disability as the parent is associated with a child with disability and assumed to be absent from work frequently to care for the child.

Jurisdictions that protect persons against discrimination by association include:

- (a) USA. Section 12112(b)(4) of the Americans with Disabilities Act states that it is unlawful to exclude or deny jobs or benefits to a person because of the known disability of an individual with whom that person is known to have a relationship or association;
- (b) Hong Kong. Section 2 of Racial Discrimination Ordinance prohibits discrimination on the ground of the race of a person's associate. Section 2 of the Ordinance defines an "associate" as including the person's spouse, relative, carer as well as a person who is living with the person on a genuine domestic basis and a person who is in a business, sporting or recreational relationship with them.

We recommend that the new legislation adopt a definition of discrimination by association that covers the elements above. The proposed language is adapted from the approaches adopted in these jurisdictions.

(3) Narrow Exception where Protected Characteristic is Occupational Requirement

The legislation should recognise a narrow exception to direct discrimination where an employer is able to prove that the requirement for its employee(s) to have a particular protected characteristic is an occupational requirement, and that the application of the requirement is a proportionate means of achieving a legitimate aim.

This is similar to the language of section 1 of Schedule 9 to the UK Equality Act 2010 and is based on the idea that there may be exceptional situations where an employer may be required to hire a person based on their possession of a particular protected characteristic. It is also consistent with the current approach adopted under the guidelines on job advertisements in the TGFEF, which discourage employers from using protected characteristics as a selection criterion unless practical requirements are involved.¹⁵⁶

Other jurisdictions that recognise a limited narrow exception to direct discrimination on the basis of occupational requirements include:

- (a) USA. Title VII of the Civil Rights Act 1964 provides an exemption to unlawful employment practices on the basis of religion, sex or national origin where those

¹⁵⁶ Tripartite Alliance for Fair and Progressive Employment Practices, *Guide to Writing Fair Job Posts & Advertisements* (Singapore: Tripartite Alliance for Fair and Progressive Employment Practices, 2017), <https://www.tal.sg/tafep/employment-practices/recruitment/job-advertisements>.

protected characteristics are a “bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise”.¹⁵⁷

- (b) Hong Kong. The anti-discrimination ordinances recognise an exception for genuine occupational qualifications. For example, under the Race Discrimination Ordinance, being of a particular racial group may be a genuine occupational qualification where the holder of the job provides persons of that racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.¹⁵⁸ Similarly, under the Sex Discrimination Ordinance, being a man may be a genuine occupational qualification for a job where the job needs to be held by a man to preserve decency or privacy, because it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman.¹⁵⁹
- (c) New Zealand. The Human Rights Act provides an exception to direct age discrimination where being of a particular age or in a particular age group is a genuine occupational qualification for that position or employment, whether for reasons of safety or for any other reason.¹⁶⁰

This narrow exception is necessary to balance the norms of equality and non-discrimination against genuine business needs in the limited circumstances where persons with a particular protected characteristic are uniquely or better placed to perform certain roles or functions at the workplace. For example, while it is generally a form of direct discrimination for an employer to specify that it is only hiring women, an employer would be able to rely on this narrow exception to specifically hire women to provide massage services in a womens-only spa. However, the same employer would be discriminating on the basis of gender if it applied the same requirement to a job advertisement for an administrative position, because gender would not be an occupational requirement in that case.

What is an occupational requirement is an evolving concept, which would change over time as social and cultural attitudes change.¹⁶¹ In this regard, we do not recommend following Hong Kong’s approach of providing a closed list of situations where a particular protected characteristic may be a genuine occupational qualification. Instead, the UK’s approach of a general test would allow the law to develop over time and address new developments.

Ultimately, this exception is intended to operate only in “very limited circumstances” and must not become a loophole for errant employers to avoid legal liability.¹⁶² We elaborate on its operation in two specific scenarios below: (i) customer preferences and (ii) religious organisations.

¹⁵⁷ 42 U.S.C. § 2000e-2(e).

¹⁵⁸ Section 11(2)(d) of the Hong Kong Race Discrimination Ordinance.

¹⁵⁹ Section 12(2)(b)(i) of the Hong Kong Sex Discrimination Ordinance.

¹⁶⁰ Section 30(1) of the New Zealand Human Rights Act 1993.

¹⁶¹ Justyna Maliszewska-Nienartowicz. "Genuine and Determining Occupational Requirement as an Exception to the Prohibition of Discrimination in EU Law." In *The European Union as Protector and Promoter of Equality*, pp. 199-217. Springer, Cham, 2020.

¹⁶² See for example, Recital 18 of the Preamble to the EU Race Equality Directive 2000/43/EC and Recital 23 of the Preamble to the Equality Framework Directive 2002/21/EC.

First, an employer may not cite customer preferences to justify an alleged occupational requirement unless the failure to take into account such customer preferences would result in the employer's failure to perform its primary function or service. This rule was first established in *Diaz v. Pan American World Airways*,¹⁶³ where the US Fifth Circuit held that "it would be totally anomalous if we were to allow the preferences and prejudices of the customers to determine whether the... discrimination was valid... customer preference may be taken into account only when it is based on the company's inability to perform the primary function or service it offers".

Hence, a retail store cannot terminate the employment of an LGBTQ+ employee after discovering their sexual orientation or gender identity on the basis that customers would avoid patronising the store if they found out that the employee is LGBTQ+. Instead, the employer may only rely on the narrow exception if it is able to prove that (i) being heterosexual and/or cisgender is an occupational requirement and the LGBTQ+ employee cannot perform their duties because they are not heterosexual and/or cisgender; or (ii) hiring an LGBTQ+ person would cause the retail store to be unable to perform the primary service it offers.

Second, organisations that fall within the meaning of "institutions for religious or charitable purposes" under Article 15(3)(b) of the Constitution would be exempted from the prohibition against direct discrimination only insofar as they are able to demonstrate that it is an occupational requirement for them to employ persons of the same religion so as to establish and maintain such institutions.¹⁶⁴

For example, a Christian charity that conducts fundraising campaigns in Singapore to support its international development projects in other countries would fall within the meaning of an "institution for religious or charitable purposes". It may therefore rely on this narrow exception to employ only persons who profess the Christian faith on the basis that it is an occupational requirement for all employees to be of the Christian faith to adequately carry out the organisation's religious and/or charitable purposes.

However, this narrow exception would not allow a religious or charitable organisation to engage in discriminatory employment practices on the basis of any other protected characteristic by claiming that compliance with the doctrines of the religion *generally* is an occupational requirement. Instead, the burden lies with the employer to explain why compliance with the doctrines of the religion is an occupational requirement in relation to the particular job position.

- An employer cannot discriminate against a female employee who becomes pregnant outside of marriage by terminating her employment merely on the basis that her pregnancy is contrary to some religious doctrine to which the employer adheres. Instead, the employer must prove that compliance with such a religious doctrine is an occupational requirement (e.g. the employee in question is responsible for providing faith-based marriage counselling in the organisation).

¹⁶³ 442 F.2d 385 (1971).

¹⁶⁴ This is consistent with the approach in other jurisdictions. See, for example, section 3 of Schedule 9 to the UK Equality Act, section 702 of Title VII of the US Civil Rights Act and section 28 of the New Zealand Human Rights Act.

- An employer cannot refuse to hire an LGBTQ+ applicant merely on the basis that the applicant's sexual orientation or gender identity is contrary to some religious doctrine to which the employer adheres. Instead, the employer must prove that compliance with such a religious doctrine is an occupational requirement (e.g. the job opening is for a pastoral or leadership role that requires strict compliance with the doctrines of the religion).

B. Indirect Discrimination

Recommendation 3.1.2 Insert the following definition of “indirect discrimination” in the legislation:

“Indirect discrimination” occurs when a person (A) applies to another person B a provision, criterion or practice which is discriminatory in relation to B’s protected characteristic.

A provision, criterion or practice is discriminatory in relation to a person’s protected characteristic if it:

- (i) *is facially neutral in that it applies or would be applied to persons who do not share B’s characteristic;*
- (ii) *puts or would put B and people with whom B shares the characteristic at a particular disadvantage when compared with persons who do not share that characteristic; and*
- (iii) *cannot be justified as a proportionate means of achieving a legitimate aim.*

First developed by the US Supreme Court in *Griggs v. Duke Power Co.*,¹⁶⁵ indirect discrimination targets “practices that are fair in form, but discriminatory in operation”.¹⁶⁶ Also known as disparate impact under American law, indirect discrimination is based on the principle that equal treatment may lead to unequal results. However, a policy that constitutes indirect discrimination may be permitted if it can be justified as a proportionate means of achieving a legitimate aim.¹⁶⁷

Currently, the TGFEP features a rudimentary rule against indirect discrimination, where employers should consider disabled applicants “as long as they are able to perform the requirements of the job”. This however may be overly permissive, and employers should be required to justify indirectly discriminatory job advertisements by proving that those requirements are essential functions of the job.¹⁶⁸ This is because only essential job requirements can qualify as a “proportionate means of achieving a legitimate aim”.

Given the Singapore High Court’s recent recognition that indirect discrimination may be prohibited under Article 12 of the Constitution of the Republic of Singapore,¹⁶⁹ it is timely for

¹⁶⁵ 401 U.S. 424 (1971)

¹⁶⁶ Ibid at 431

¹⁶⁷ Pure cost considerations should not be recognised as a legitimate aim in and of itself because this may allow businesses to escape liability based on its balance sheet; as the UK Supreme Court noted, “discrimination is wrong whether... the employer... is rich or poor”. *Ministry of Justice v O’Brien* [2013] UKSC 6

¹⁶⁸ See for example, the definition of a “qualified individual” under the Americans with Disabilities Act.

¹⁶⁹ *Syed Suhail and others v Attorney-General* [2021] SGHC 274 at [61] (“...the wording of Art 12(1) is broad enough to prohibit both direct discrimination and indirect discrimination.”)

the new legislation to enshrine a prohibition against indirect discrimination at the workplace. Our proposed definition above draws from section 19 of the UK Equality Act 2010, where the respective elements have received significant judicial treatment.¹⁷⁰

Further, in the event that the Government does not adopt our recommendation to enshrine a right to reasonable accommodation (see section 4(c)(D) below), the absence of a company policy for providing reasonable accommodations would nevertheless constitute indirect discrimination to groups requiring such accommodations to enjoy equal employment opportunities. Hence, for example, if a group of employees—which includes a person with disability—were assigned a project with the aim of assessing their leadership or promotion potential, and the employer refused to grant reasonable accommodations so as to treat everyone “equally”, this may constitute indirect discrimination insofar as the absence of such accommodations put the person with disability at a particular disadvantage. However, for practical and conceptual clarity, we recommend that the denial of reasonable accommodations should be recognised as a separate and distinct type of prohibited conduct.

C. Combined Discrimination

Recommendation 3.1.3 Insert the following definition of “combined discrimination” in the legislation:

“Combined discrimination” occurs when a person (A) directly or indirectly discriminates against another person (B) because of a combination of more than one of B’s protected characteristics. To prove combined discrimination, B need not show that the discrimination is because of each of the characteristics in the combination (taken separately).

Combined discrimination occurs when a person is discriminated against because of a combination of two or more protected characteristics. This concept is based on the understanding that people with multiple marginalised identities do not necessarily experience discrimination based on each protected characteristic separately. Instead, they may experience what Professor Kimberlé Crenshaw coined “intersectional” discrimination, which refers to discrimination that results from all those protected characteristics together.¹⁷¹

This rationale for recognising combined discrimination was summarised by the US Ninth Circuit in *Lam v University of Hawaii*:¹⁷² “Where two bases for discrimination exist, they cannot be neatly reduced to distinct components... Rather than aiding the decisional process, the attempt to bisect a person’s identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences.”¹⁷³

An example of combined direct discrimination is when a pre-school refuses to hire gay men, but does hire other men and lesbian women, based on the belief that gay men are sexual

¹⁷⁰ Anna Beale, “Core Rights and Duties”, in *Blackstone’s Guide to the Equality Act 2010*, 4th ed. (Oxford: Oxford University Press, 2021), <https://doi.org/10.1093/oso/9780198870876.003.0003>

¹⁷¹ Kimberle Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”, *University of Chicago Legal Forum* 1989 (1989): 139–68

¹⁷² 40 F 3d 1551 (9th Cir 1994)

¹⁷³ *Ibid* at 1562

predators. A gay man who was rejected on this basis may not be able to prove direct discrimination because he was not discriminated against based on either sexual orientation or gender alone. It is therefore important to prohibit combined discrimination under the new legislation to account for cases where the discrimination is based on a combination of two or more protected characteristics.

An example of combined indirect discrimination is a company uniform policy that prohibits the wearing of religious headdress. While this policy applies to all employees, Muslim women who wear the hijab are put at a particular disadvantage by it because they must choose between their religious faith and their job. However, a Muslim woman who challenges this policy may not succeed in proving indirect discrimination based on religion or gender alone.

Given the higher vulnerability of those with multiple marginalised identities, it is important that combined discrimination be prohibited as a matter of law under the new legislation.

Our recommendation

We recommend that the new legislation adopt a definition of discrimination by association that covers the elements above. The proposed language is adopted from section 14 of the UK Equality Act 2010. Other jurisdictions that prohibit combined discrimination include:

- (i) Canada. Section 3.1 of the Canadian Human Rights Act states that “a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds”.
- (ii) South Africa. Section 6 of South Africa Employment Equity Act states that a person may not unfairly discriminate against an employee on “one or more grounds” or a “combination of grounds”.

D. Denial of Reasonable Accommodation

Recommendation 3.1.4 Insert the following definitions in the legislation:

“Denial of reasonable accommodation” occurs when an employer fails, neglects and/or refuses to offer, to an employee or job applicant with a protected characteristic, reasonable accommodations that would enable the person to be considered for a job opening or perform the essential functions of a job, including opportunities for training or advancement.

“Reasonable accommodation” means any change to the application or hiring process, to the job, to the way the job is done or to the work environment that enables a person with a protected characteristic to enjoy equal employment opportunities. An accommodation is reasonable if, having regard to all the circumstances of the case, it does not fundamentally alter the nature or operation of the business or require significant difficulty or expense.

A reasonable accommodation refers to an adjustment at the workplace that enables a person with a protected characteristic to enjoy equal employment opportunities. This can include:

- (i) making existing facilities accessible to and usable by a person with disability;
- (ii) job restructuring;
- (iii) part-time, modified or flexible work schedules;
- (iv) reassignment to another position in the company;
- (v) the acquisition or modification of equipment or devices such as auxiliary aid devices;
- (vi) the provision of qualified readers or interpreters; and
- (vii) the adjustment or modifications of examinations, training materials or policies.

The denial of reasonable accommodation should be recognised as a form of discrimination under the new legislation.¹⁷⁴ This occurs when an employer fails, neglects and/or refuses to offer, to an employee or job applicant with a protected characteristic, reasonable accommodations that would enable the person to be considered for a job opening or perform the essential functions of a job.

Underpinning the concept of reasonable accommodations is a substantive concept of equality that recognises the limitations of formal equality. As the Canadian Supreme Court has held, substantive equality entails a duty to accommodate difference because the identical treatment of people who are different from each other can still result in inequality.¹⁷⁵ Singapore has also ratified the CRPD, which requires that appropriate steps be taken, including through legislation, to ensure that reasonable accommodation is provided to persons with disabilities in the workplace.¹⁷⁶ As noted above, the CRPD Committee has urged the Singapore Government to “[recognise] the denial of reasonable accommodation as a form of prohibited discrimination, and establish an effective implementation and monitoring mechanism providing redress in case of non-compliance”.¹⁷⁷ This is in line with the CRPD Committee’s General Comment No. 6 on equality and non-discrimination, which requires governments to “expressly recognise the denial of reasonable accommodation as discrimination”.¹⁷⁸

While reasonable accommodations are commonly associated with persons with disability, persons with other protected characteristics may also require reasonable accommodations. In fact, the term “reasonable accommodation” was first employed in the US Civil Rights Act of 1968 in relation to discrimination on the ground of religious practice. Hence, for example, a Muslim shift worker may request to be scheduled on days other than Friday so that they can perform Friday prayers at the mosque. A breastfeeding parent may also request for

¹⁷⁴ In its 2022 CRPD Parallel Report, DPA highlighted the importance of ensuring that accommodations and accessibility at all the stages of employment are codified. See Disabled People’s Association, “2022 CRPD Parallel Report”, July 2022, https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/SGP/INT_CRPD_CSS_SGP_49477_O.pdf

¹⁷⁵ *Andrews v Law Society of British Columbia* [1989] 1 SCR 143 at 165 and 169

¹⁷⁶ See Article 27(1)(j) of the CRPD. See also Lord and Brown, “The Role Of Reasonable Accommodation In Securing Substantive Equality For Persons With Disabilities: The UN Convention On The Rights Of Persons With Disabilities”

¹⁷⁷ CRPD/C/SGP/CO/1 at para. 52(b)

¹⁷⁸ CRPD/C/GC/6 at para. 67(d)

accommodations such as break time to express milk and a private space that is not a bathroom to do so.

An accommodation should be considered “reasonable” if it does not fundamentally alter the nature or operation of the business or require significant difficulty or expense. This should be determined on a case-by-case basis by a tribunal or judge depending on a wide range of factors, including the nature and cost of the accommodation required, the company’s size, type of operations, financial resources, etc.¹⁷⁹

To ensure that an employee is not unduly deprived of a reasonable accommodation between the time that they request an accommodation and the time that employer decides to provide said accommodation, the Government should enact regulations stipulating the timeframe within which an employer should approve or deny a request for reasonable accommodation. The regulations should also state that the employer must provide reasons to the employee as to why the request is denied, and the employer should engage the employee in finding a workable solution if it is unable to accede fully to the employee’s request. This is also known as the interactive process under the Americans With Disabilities, where the employer should work with the employee to explore and agree on a reasonable accommodation that can meet both parties’ needs. Further, the employee should be entitled to challenge the employer’s denial of their request by bringing a claim against the employer under the Act.

ii. Harassment

Recommendation 3.2(a) Insert the following definitions of “harassment” and “harassment of a sexual nature” in the legislation:

“Harassment” occurs when a person (A) engages in, in relation to another person (B), unwanted conduct that creates an intimidating, hostile, degrading, humiliating or offensive environment for B, and includes harassment of a sexual nature.

“Harassment of a sexual nature” means:

- (i) an unwelcome sexual advance or unwelcome request for sexual intercourse, sexual contact or other form of sexual activity by a person (A) towards another person (B) that creates an intimidating, hostile, degrading, humiliating or offensive environment for B; or*
- (ii) the use of language (whether written or spoken) of a sexual nature, visual material of a sexual nature or physical behaviour of a sexual nature, by a person (A) to subject another person (B) to behaviour that:*
 - (1) creates an intimidating, hostile, degrading, humiliating or offensive environment for B; and*
 - (2) is either repeated, or of such a significant nature, that it has a detrimental effect on B’s employment, job performance or job satisfaction.*

¹⁷⁹ For example, while it may not be reasonable to expect an SME to accommodate a blind employee’s disability by purchasing an expensive screen reader computer programme (even after taking into account the subsidies available under the Open Door Programme) because it would constitute a significant cost to the company’s expenses, a multinational conglomerate may be required to do so because the cost would be insignificant in comparison to its annual technology budget.

Recommendation 3.2(b) Insert the following provision in the legislation:

Prohibited conduct: Harassment

- (i) *An employer (A) must not, in relation to employment by A, harass a person (B)*
 - (1) *who is an employee of A's;*
 - (2) *who has applied to A for employment.*
- (ii) *In determining whether A's impugned conduct amounts to harassment, each of the following must be taken into account:*
 - (1) *the perception of B;*
 - (2) *the other circumstances of the case; and*
 - (3) *whether it is reasonable for the conduct to have that effect.*

Harassment at the workplace negatively impacts work productivity and workplace collegiality and has negative career and financial impacts on victim-survivors. It also creates hostile workplace environments, which can result in extended periods of low productivity and other career disruptions.

Harassment should be prohibited in the new workplace discrimination legislation as well, for two reasons. First, though it is commonly considered a different type of unacceptable behaviour at the workplace, harassment is recognised as a form of discrimination in many anti-discrimination legislations around the world. Second, women and individuals from racial and sexual minorities are often disproportionately victims of such behaviour at the workplace and experience harassment because of their protected characteristics.¹⁸⁰

Currently, the TAMWH defines workplace harassment as behaviour that causes or is likely to cause harassment, alarm or distress to another party.¹⁸¹ Such behaviour can violate a person's dignity or create an unfavourable work environment for him/her, which poses a risk to the person's safety and health. In addition, the TAMWH strongly encourages employers to develop a harassment prevention policy, provide information and training on workplace harassment and implement reporting and response procedures. However, due to the non-binding nature of the TAMWH, these are not legally enforceable.

¹⁸⁰For example, the AWARE-Milieu survey found that more women (18%), non-Chinese (24%) and LGBTQ+ (22%) respondents experienced workplace harassment than men (13%), Chinese (13%) and non-LGBTQ (15%) respondents. Similar trends have been reported in other jurisdictions, see for example: Diana Ellsworth, Ana Mendy & Gavin Sullivan, *How the LGBTQ+ community fares in the workplace* (New York: McKinsey & Company, 2020), page number, <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Diversity%20and%20Inclusion/How%20the%20LGBTQ%20plus%20community%20fares%20in%20the%20workplace/How-the-LGBTQ-community-fares-in-the-workplace-v4.pdf>;

Hyun-ju Ock, "9 in 10 workplace sexual harassment victims experience retaliation: study", *The Korean Herald*, 1 February 2021, <https://www.koreaherald.com/view.php?ud=20210201000913>; "In 2020, one in four women and one in six men reported having experienced inappropriate sexualized behaviours at work in the previous year", Statistics Canada, Publishing Organisation, 12 August 2021, <https://www150.statcan.gc.ca/n1/daily-quotidien/210812/dq210812b-eng.htm>; "Sexual Harassment Statistics", Women's Aid Organisation, Women's Aid Organisation, accessed on 17 January 2023, <https://wao.org.my/sexual-harassment-statistics>.

¹⁸¹ Ministry of Manpower, "Tripartite Advisory on Managing Workplace Harassment", 23 December 2015

In terms of legal prohibitions, Section 4 of Protection from Harassment Act 2014 (POHA) prohibits two specific behaviours that causes harassment, alarm or distress:

- (a) the use of any threatening, abusive or insulting words or behaviour; or
- (b) the making of any threatening, abusive or insulting communication.

However, not all forms of workplace harassment come in either of those two forms of behaviour.¹⁸² POHA does not specifically address harassment that (i) is related to a person's protected characteristic or (ii) occurs at a workplace. It also does not impose legal duties on the employer to prevent and manage workplace harassment.

The forthcoming section 17E of the Maintenance of Religious Harmony Act 2019, which has not yet come into force, will make it an offence to urge violence on the ground of religion against any target person or group based on any characteristic, including religion, ethnicity, descent, nationality, language, political opinion as well as sexual orientation.¹⁸³ However, this does not explicitly cover broader kinds of harassment at the workplace that do not amount to the incitement of violence against a person, or that are not religiously motivated.

In cases that do not meet the legal threshold for criminal investigation or civil recourse under POHA, TAFEP requires the employer to provide an investigation report of the workplace harassment complaint in accordance with the TAMWH and take clear steps to prevent and manage workplace harassment in future.¹⁸⁴ While TAFEP also works with the affected individual and the employer to adjust work arrangements and provide closure where relevant, victim-survivors in such cases cannot seek any legal remedies despite the potentially serious impact that harassment may have on their personal and professional lives.

Given the lacuna in the existing legal framework, it is timely for harassment to be enshrined as a form of prohibited conduct in the new legislation. This sends a clear and unequivocal signal that such behaviour is unacceptable and is a form of discrimination that disproportionately affects women and minority groups. This is also in line with regional developments; for example, China amended its Women's Protection Law in October 2022 to give women stronger protection against sexual harassment,¹⁸⁵ Malaysia recently passed the

¹⁸² In a parliamentary reply, Manpower Minister Tan See Leng noted that some cases may not meet the legal threshold for criminal investigations or civil recourse under POHA, but nonetheless result in distresses at the workplace.

"Written Answer to PQ on Cases of Workplace Sexual Harassment and Actions Taken", Ministry of Manpower, Government of Singapore, 15 February 2022, <https://www.mom.gov.sg/newsroom/parliament-questions-and-replies/2022/0214-written-answer-to-pq-on-cases-of-workplace-sexual-harassment-and-actions-taken>

¹⁸³ Navene Elangovan, "New Legislation Protects LGBTQ Community from Religiously Motivated Violence but Law Is 'Same for All'", *TODAY Online*, 14 October 2019, <https://www.todayonline.com/singapore/new-legislation-protects-lgbtq-community-religiously-motivated-violence-law-same-all>

¹⁸⁴ "Written Answer to PQ on Cases of Workplace Sexual Harassment"

¹⁸⁵ Giulia Interesse and Qian Zhou, "China Passes New Women's Protection Law: Key Takeaways for Employers", *China Briefing*, 8 November 2022, <https://www.china-briefing.com/news/china-passes-new-womens-protection-law-key-takeaways-for-employers>.

Anti-Sexual Harassment Act in August 2022;¹⁸⁶ and Japan passed the Comprehensive Labor Policy Promotion Act (CLPPA) (No. 24 of 2019 (Reiwa)) in 2021, which obliges employers to put in place anti-harassment policies in the workplace.¹⁸⁷

A. Workplace sexual harassment

Workplace sexual harassment (WSH) refers to unwelcome and unwarranted behaviour of a sexual nature by an individual, which discomfits or exploits another individual or creates a hostile environment for survivors. This could occur as an isolated incident or a series of accidents that occur simultaneously or over time.

In 2021, AWARE and Ipsos conducted a nationally representative survey on WSH.¹⁸⁸ The survey found that 2 in 5 workers in Singapore had been sexually harassed at the workplace in the previous five years. The kinds of sexual harassment faced include but are not limited to:

- (1) Receiving a crude and distressing remark, joke or gesture of a sexual or sexist nature that made one feel alarmed, distressed or harassed;
- (2) Receiving jokes, texts or gestures of a sexual or sexist nature through digital communications that are unwelcome, alarming or distressing;
- (3) Having an offensive/alarming remark made, or questions asked, about one's appearance, body or sexual activities; and
- (4) Being physically touched in a way that is unwelcome, alarming and distressing.

WSH can seriously affect a person's well-being and job performance and should not be tolerated at the workplace.

The survey also found that about 50% of the sexual harassment experienced was at the hands of peers or seniors in respondents' organisations. In terms of reporting, only 3 in 10 victim-survivors reported the incident to an official authority and about half of them indicated that they received a negative response.¹⁸⁹ These findings are consistent with AWARE's 2021 qualitative study of 39 female-identifying individuals who experienced WSH; the study found that over half of the respondents did not file their cases with official channels for reporting.¹⁹⁰

¹⁸⁶ "Anti-Sexual Harassment Bill to be enforced in phases, says minister", *Malay Mail*, 11 August 2022, <https://www.malaymail.com/news/malaysia/2022/08/11/anti-sexual-harassment-bill-to-be-enforced-in-phases-says-minister/22383>

¹⁸⁷ "Japan, new law to deal with harassment and abuse of power at work", *Industrial Relations and Labour Law*, March 2021, <https://ioewec.newsletter.ioe-emp.org/industrial-relations-and-labour-law-march-2021/news/article/japan-new-law-to-deal-with-harassment-and-abuse-of-power-at-work>

¹⁸⁸ AWARE and Ipsos, *Workplace Sexual Harassment in Singapore* (Singapore: Ipsos, 2021), 8, https://www.aware.org.sg/wp-content/uploads/Workplace-Sexual-Harassment_AWARE-Singapore_Report-14-Jan-2021.pdf

¹⁸⁹ This is consistent with findings from AWARE's experience working with survivors from AWARE's Sexual Assault Care Centre (SACC), where 7 in 10 survivors do not file official reports.

¹⁹⁰ AWARE, *'I Quit': Career and Financial Effects of Workplace Sexual Harassment on Women in Singapore* (Singapore: AWARE, 2021), 26, <https://www.aware.org.sg/wp-content/uploads/I-Quit-Career-and-Financial-Effects-of-Workplace-Sexual-Harassment-AWARE-Report-Corrected.pdf>

Our recommendation

We recommend that the new legislation adopt a broad definition of workplace harassment that focuses on its effects rather than the type of unwanted conduct.¹⁹¹ The proposed language draws from section 28A of Australia's Sex Discrimination Act and Section 108 of New Zealand's Employment Relations Act. This is important because all forms of workplace harassment have long-lasting effects in victim-survivors' lives. A comprehensive definition will ensure that there is clarity on what workplace harassment and WSH are, so that victim-survivors can accurately identify them when they encounter those behaviours.

iii. Victimisation

Recommendation 3.3(a) Insert the following definition of "victimisation" in the legislation:
"Victimisation" occurs when a person (A) subjects another person (B) to a detriment because

- (i) *B or another person does a protected act; or*
- (ii) *A believes B or another person has done, or may do, a protected act.*

"Protected act" means

- (i) *making, or proposing to make, a complaint under this Act;*
- (ii) *bringing, or proposing to bring, proceedings under this Act;*
- (iii) *giving, or proposing to give, evidence or information in connection with proceedings under this Act;*
- (iv) *doing any other thing for the purposes of or in connection with this Act;*
- (v) *making an allegation (express or not) that A or another person has contravened this Act,*

but does not include the giving of false evidence or information, or making a false allegation.

Recommendation 3.3(b) Insert the following provision in the legislation:

Prohibited conduct: Victimisation

- (i) *An employer (A) must not victimise a person (B):*
 - (1) *in the arrangements A makes for deciding to whom to offer employment;*
 - (2) *as to the terms on which A offers B employment; or*
 - (3) *by not offering B employment.*
- (ii) *An employer (A) must not victimise against an employee of A's (B):*
 - (1) *as to B's terms of employment;*
 - (2) *in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit associated with employment;*
 - (3) *by dismissing B; or*
 - (4) *by subjecting B to any other detriment.*

¹⁹¹ The proposed definition does not require that the harassment be because of the victim's protected characteristic. Further, those who are not directly affected by the harassing conduct can still file a complaint.

Often, victim-survivors of discrimination and harassment fear retaliation because the perpetrator is someone more senior than them or could gravely affect their reputation, work environment and career progression.¹⁹² Where victim-survivors do report discrimination and harassment, they may receive admonishment from supervisors or managers or experience the work environment becoming hostile.

Fears of such repercussions do affect victim-survivors' reporting behaviour. In AWARE's 2021 qualitative study on WSH, the most common reasons that victim-survivors cited for not reporting their experiences were the fear of retaliation and the fear of not being believed. The AWARE-Milieu survey also found that 1 in 3 who did not report the workplace discrimination that they had experienced (28%) said they did not do so because they feared professional retaliation, damage to their own reputation or negative testimonials from their company.¹⁹³

In this regard, we are heartened by the Government's announcement in the White Paper on Singapore Women's Development that the new legislation will prohibit retaliation against workers who come forward to report discrimination.¹⁹⁴ This will help workers feel safe and empowered to do so.

Our recommendation

We recommend that the new legislation adopt a definition of victimisation to protect employees against retaliation for exercising their rights under the new legislation. The proposed definition above draws from section 27 of the UK Equality Act 2010 and section 94 of the Australia Sex Discrimination Act. This definition places more emphasis on the detriment suffered by the victim-survivor and will not require the victim-survivor to prove that they were subject to less favourable treatment or were threatened with less favourable treatment by their employer.¹⁹⁵

iv. Positive Actions

Recommendation 3.4 Insert the following provision in the legislation:

Positive actions

This section applies if an employer reasonably thinks that—

- (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,*
- (b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or*

¹⁹² AWARE, 'I Quit', 28.

¹⁹³ "1 in 2 experienced workplace discrimination"

¹⁹⁴ "White Paper on Singapore Women's Development"

¹⁹⁵ This contrasts with the approach in Hong Kong's discrimination ordinances and section 66 of New Zealand's Human Rights Act, where the victim-survivor must show that they were treated less favourably or were threatened with less favourable treatment. This means that they must show that the employer did treat or would have treated another person without the same protected characteristic more favourably.

- (c) *participation in an activity by persons who share a protected characteristic is disproportionately low.*

This Act does not prohibit the employer from taking any action that is a proportionate means of achieving the aim of—

- (a) *enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,*
(b) *meeting those needs, or*
(c) *enabling or encouraging persons who share the protected characteristic to participate in that activity.*

We should encourage and support employers to take measures to help those with a protected characteristic, who are under-represented or vulnerable, overcome disadvantages in a workplace setting. This includes encouraging employees from disadvantaged groups to apply for certain positions or take up certain mentorship schemes, or the setting up of workplace networks or support groups.

Such programmes and practices should not fall foul of the prohibition against discrimination under the new legislation because they are necessary to achieve substantive equality, by providing additional support to those who face systemic challenges at the workplace so that every worker can have equal employment opportunities.¹⁹⁶ Substantive equality differs from the basic concept of formal equality, which dictates that like be treated alike—simply affording the same treatment to different people without consideration of larger context and circumstances can reinforce existing inequalities, as not everyone starts from the same position.¹⁹⁷

Research has shown that such identity-conscious practices result in better employment outcomes for women and minorities in both the public and the private sectors.¹⁹⁸ For example, a survey of public and private organisations found that in organisations that implemented a greater proportion of identity-conscious practices, women tended to achieve higher rank, and racial minorities were more represented in management.¹⁹⁹ Another study also found that targeted development programmes, such as internships and career tracks for racial minorities, in large companies were associated with greater racial diversity in those companies.²⁰⁰

¹⁹⁶ “A more substantive approach to equality of opportunity would require a range of other special measures, usually referred to as ‘positive action’, to compensate for disadvantage.” Catherine Barnard and Bob Hepple, “Substantive Equality”, *The Cambridge Law Journal* 59, no. 3 (2000): 562–85

¹⁹⁷ Rachel Crasnow QC, “Redressing the Balance: Positive Action, Quotas, Political Shortlists, and Associations”, 23 February 2021, <https://doi.org/10.1093/oso/9780198870876.003.0012>

¹⁹⁸ Quinetta Roberson, Eden King, and Mikki Hebl, “Designing More Effective Practices for Reducing Workplace Inequality”, *Behavioral Science & Policy* 6, no. 1 (2020): 39–49, <https://doi.org/10.1353/bsp.2020.0003>

¹⁹⁹ Alison M. Konrad and Frank Linnehan, “Formalized HRM Structures: Coordinating Equal Employment Opportunity or Concealing Organizational Practices?”, *The Academy of Management Journal* 38, no. 3 (1995): 787–820, <https://doi.org/10.2307/256746>

²⁰⁰ Orlando C. Richard, Hyuntak Roh, and Jenna R. Pieper, “The Link Between Diversity and Equality Management Practice Bundles and Racial Diversity in the Managerial Ranks: Does Firm Size Matter?”, *Human Resource Management* 52, no. 2 (2013): 215–42, <https://doi.org/10.1002/hrm.21528>

Under international law, positive actions are known as special measures and are a recognised exception to the general prohibition against discrimination.²⁰¹

- (i) Article 1(4) of CERD states that special measures shall not be deemed racial discrimination when they are taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms.
- (ii) Article 4(1) of CEDAW similarly states that temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention.

Jurisdictions that explicitly state that identity-conscious positive actions targeted at marginalised and under-represented groups do not constitute discrimination include:

- (i) Australia. Federal law similarly allows employers to introduce “special measures” that improve equality of opportunity for people based on a range of protected characteristics. For example, Section 33 of the Age Discrimination Act 2004 states that it is “not against the law to provide a genuine benefit to people of a particular age group or to do something that helps meet an identified need for people of a certain age group or is intended to reduce a disadvantage experienced by persons of a particular age”.
- (ii) Hong Kong. The discrimination ordinances include a provision that exempts any act reasonably intended to (i) ensure that persons with a protected characteristic have equal opportunities with other persons in circumstances in relation to which a provision is made by those ordinances; (ii) afford persons with protected characteristics goods or access to services, facilities or opportunities to meet their special needs in relation to employment; and (iii) afford persons with protected characteristics grants, benefits or programmes, whether direct or indirect, to meet their special needs in relation to employment.²⁰²
- (iii) United Kingdom. Section 158 of the Equality Act 2010 states that the Equality Act 2010 does not prohibit an employer from taking any action which is a proportionate means of achieving the aim of (i) enabling or encouraging persons who share a protected characteristic to overcome or minimise a disadvantage connected to that characteristic; (ii) meeting needs that are different from the needs of people who do not share that characteristic; or (iii) enabling or encouraging persons who share a protected characteristic and are disproportionately under-represented to participate in the organisation or the industry.

²⁰¹ Some scholars have suggested that such special measures are not an exception per se to the norm of equality but are required to achieve substantive equality. See for example Adeno Addis, “Special Temporary Measures and the Norm of Equality”, *Netherlands Yearbook of International Law* 45 (December 2014): 311–30, https://doi.org/10.1007/978-94-6265-060-2_12

²⁰² See for example, section 49 of the Race Discrimination Ordinance and section 50 of the Disability Discrimination Ordinance.

Our recommendation

We recommend that the new legislation make clear that positive actions are not prohibited if they are taken by an employer to compensate for disadvantages that it reasonably believes are faced by persons who share a particular protected characteristic.

Our proposed definition draws from section 158 of the UK Equality Act 2010, which makes clear that the legislation does not prohibit positive actions aimed at uplifting those from marginalised or under-represented groups.

d. Employer Duty to Ensure a Safe and Inclusive Work Environment

Recommendation 4(a) Insert the following provision to impose positive obligations on employers to ensure a safe and inclusive work environment for all workers, particularly those with protected characteristics:

Duties of employers

- (i) *It is the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure a safe and inclusive work environment by preventing and addressing discrimination and harassment in the workplace.*
- (ii) *For the purposes of subsection (a), the measures necessary to prevent and address discrimination and harassment in the workplace include:*
 - (1) *The enactment of a well-defined anti-discrimination and harassment policy that provides clear examples of behaviours and actions that constitute discrimination and sexual harassment in the workplace;*
 - (2) *The development and implementation of procedures for workers to report cases of workplace discrimination and harassment, which:*
 - *State clearly the steps individuals should take to report such cases;*
 - *Protect the confidentiality of the victim-survivor and other persons involved in making the report, and prohibit any victimisation against the victim-survivor and such other persons involved;*
 - *Designate a department, team or one or more employees responsible for investigating and managing such reports;*
 - *Set out a clear, objective and impartial process for investigating such reports; and*
 - *Provide for the implementation of protection measures and steps for remediation;*
 - (3) *Regular communication to employees and other persons at the workplace about the employer's policies, procedures and other measures to ensure a safe and inclusive work environment;*
 - (4) *The designation of a one or more employees responsible for ensuring that the organisation complies with the new legislation;*
 - (5) *The provision of annual anti-discrimination and harassment training in the workplace for all employees, contractors, interns and volunteers, with additional training provided to those with supervisory responsibilities; and*

- (6) *The development and implementation of measures to ensure that persons at work have adequate instruction, information, training and support of the above measures as is necessary.*
- (iii) *An employer must report in its annual returns the number of reports of discrimination and harassment it has received, investigated and substantiated, disaggregated by the type of prohibited conduct and protected characteristic as well as the protection measures and remediation steps taken in those cases of discrimination and harassment which were substantiated.*
- (iv) *An employer must cause to be kept in the workplace every document, correspondence and any other documentary record in relation to any report by a person regarding discrimination or harassment in the workplace, investigation or any other action taken in relation to any such report, for at least five years from the date the records were made; and produce and make available to an inspector for inspection a copy of those reports whenever required to do so within that period.*
- (v) *An employer must not:*
- (1) *deduct, or allow to be deducted, from the sum contracted to be paid by the employer to any of the employer's employees; or*
 - (2) *receive, or allow any agent of the employer to receive, any payment from any employee of the employer,*
- in respect of anything to be done or provided by the employer in accordance with the new legislation in order to ensure a safe and inclusive environment for all.*

Recommendation 4(b) Insert the following provision in the new legislation to impose liability on employers for the act done by an employee in the course of their employment:

Liability of employers

- (i) *Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.*
- (ii) *In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment, it is a defence for B to show that B took all reasonable steps to prevent A –*
 - (1) *from doing that thing, or*
 - (2) *from doing anything of that description.*

While the above section sets out the types of conduct that should be prohibited under the new legislation, this section sets out *positive* obligations that employers should comply with to foster a safe and inclusive work environment for their employees. It is not enough to simply punish errant employers or managers who engage in the prohibited conduct under the new legislation. Legislation should also ensure that employers proactively take steps to prevent and tackle discrimination and harassment, by enacting clear and well-defined policies and grievance-handling procedures and educating their employees on these policies and procedures.

The imposition of positive obligations is not novel; for example, under Part 4 of the Workplace Safety and Health Act 2006 (WSHA), employers, principals and employees owe statutory duties to take reasonable measures to ensure the safety and health of workers. Similarly, Part 3 of the Personal Data Protection Act (PDPA) imposes certain duties and obligations on organisations to comply with the PDPA.

Other jurisdictions that impose positive statutory obligations on employers to prevent and tackle discrimination and harassment at the workplace include:

- (a) South Korea. Article 13 of the Equal Employment Opportunity and Work-Family Balance Assistance Act requires employers to conduct preventive education of sexual harassment on the job and to create the given conditions whereunder their workers may enjoy a safe working environment.
- (b) Japan. Article 30-2.1 of the Labour Policy Comprehensive Promotion Act requires employers to (i) establish a corporate policy to prevent workplace power harassment and to internally announce such policy and train employees on power harassment prevention; (ii) establish a governance system to handle power harassment cases; (iii) deal with reports in an immediate and appropriate manner and implement measures to prevent the reoccurrence of the harassment.
- (c) Norway. Chapter 2A of the Working Environment Act requires employers with at least five employees to enact a procedure for employees to report “censurable conditions”, which includes sexual harassment, discrimination and bullying, to the employer. The employer is also obliged to ensure that such reports are adequately investigated within a reasonable time. In addition, the Equality and Anti-Discrimination Act requires employers to (i) make active, targeted and systematic efforts to promote equality, prevent discrimination; (ii) implement measures suited to counteract discrimination and promote greater equality and diversity; and (iii) publish in their annual report or other publicly available document the actual status of gender equality and the measures taken in accordance with their obligations under (i) and (ii).
- (d) Ontario, Canada. The Accessibility for Ontarians with Disabilities Act requires employers to develop, implement and maintain policies governing how the organisation achieves or will achieve accessibility, and must make the documents describing the policies publicly available and provide them in an accessible format, on request.
- (e) California, United States. Section 12950.1 of the California Government Code requires employers with at least five workers to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or

other effective interactive training and education regarding sexual harassment to all nonsupervisory employees within six months of their assumption of a position.

Our recommendation

The new legislation should statutorily enshrine positive obligations on the employer to take reasonable measures as are necessary to foster a safe and inclusive work environment for all workers. We propose imposing a general duty to prevent and address discrimination and harassment in the workplace, which is supplemented by a non-exhaustive list of measures that employers should implement. An employer that breaches its statutory duty to ensure a safe and inclusive work environment should be liable for financial penalties, which are discussed in greater detail at section 5(d).

This non-exhaustive list of measures—which employers should rely on as a baseline and be encouraged to go beyond—sets out best practices, some of which are already recommended in existing tripartite guidelines. For example, the TGFEP recommend that employers set up mechanisms to deal with complaints of discrimination and clearly communicate these procedures to employees.²⁰³ The TAFEP Grievance Handling Handbook sets out further best practices that employers should be required to implement pursuant to this new statutory duty.²⁰⁴ The TAMWH similarly provides a sample harassment prevention policy that employers should adopt.²⁰⁵ It also recommends that employers provide information and training on workplace harassment.

A proper grievance management procedure helps victim-survivors develop trust in the process, which can increase the probability of reporting and increase staff retention. Mandating the development and implementation of a well-defined workplace sexual harassment policy, and clearly and regularly communicating it to all employees, would also ensure a sustained level of awareness amongst all employees on the importance of maintaining a safe working environment. To promote transparency and accountability, we also recommend that employers be required to provide annual updates on the number of reports that they have received, investigated and substantiated.

An employer that has failed to implement adequate measures to prevent and address discrimination and harassment at the workplace should be held vicariously liable for any prohibited conduct committed by an employee against another person at the workplace.²⁰⁶ Drawing from section 109 of the UK Equality Act 2010, we recommend a provision that makes clear that an employer is liable for its employees engaging in prohibited conduct

²⁰³ Tripartite Alliance for Fair and Progressive Employment Practices, *Tripartite Guidelines On Fair Employment Practices* (Singapore: Tripartite Alliance for Fair and Progressive Employment Practices, 2017), <https://www.tal.sg/tafep/-/media/tal/tafep/getting-started/files/tripartite-guidelines.ashx>

²⁰⁴ Tripartite Alliance for Fair and Progressive Employment Practices, *Grievance Handling Handbook* (Singapore: Tripartite Alliance for Fair and Progressive Employment Practices, 2018), https://www.tal.sg/tafep/-/media/TAL/Tafep/Employment-Practices/Files/Grievance-Handling-Handbook_2018.pdf

²⁰⁵ Ministry of Manpower, “Tripartite Advisory on Managing Workplace Harassment”, 23 December 2015

²⁰⁶ Hannah Field, “Sexual Harassment In The Workplace, Part 1 – The Equality Act 2010, What Does It Cover And How Does It Work? (UK)”, *The National Law Review XI*, no. 160 (2021), <https://www.natlawreview.com/article/sexual-harassment-workplace-part-1-equality-act-2010-what-does-it-cover-and-how-does>

unless the employer has discharged its statutory duty to take all reasonable measures as necessary to prevent such conduct from occurring in the workplace.

5. Establishment of Commission for Workplace Discrimination and Harassment

To eliminate discrimination and reduce inequality at workplaces, we recommend that a new Commission for Workplace Discrimination and Harassment (CWDH) be set up to administer the new legislation. The Commission should be legislatively established as a statutory body under MOM so that it can be given the necessary powers to enforce the new legislation by receiving complaints, conducting investigations and working with employers to comply with the new legislation through the issuance of orders, education and research. Given that TAFEP and TADM's current mandate are largely similar with the proposed functions of the CWDH, we recommend that the two be jointly restructured as the CWDH upon the enactment of the new legislation.

The Commission should be informed by a victim-centric approach toward workplace discrimination and harassment.²⁰⁷ Drawing on the United Nation's best practices, it should focus on the safety and well-being of victim-survivors, prioritise listening and the avoidance of re-traumatisation, and give back as much control to victim-survivors as possible.²⁰⁸

²⁰⁷ Some scholars have argued that workplace discrimination should not only be criminalised but also recognised as a statutory tort that allows victim-survivors to seek compensation against their employers. See for example, Donna M. Gitter, "French Criminalization of Racial Employment Discrimination Compared to the Imposition of Civil Penalties in the United States Comment", *Comparative Labor Law Journal* 15, no. 4 (1994 1993): 488–526

²⁰⁸ United Nations High Commissioner for Refugees, *Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct* (Geneva: United Nations High Commissioner for Refugees, 2020), <https://www.unhcr.org/5fdb345e7>

Similar bodies have been conferred statutory powers under the discrimination laws of other jurisdictions to perform a range of functions, as summarised in the table below:

Jurisdiction	Statutory Body	Description
United Kingdom	Equality and Human Rights Commission (EHRC)	The EHRC is the regulatory body responsible for enforcing the Equality Act 2010 and has the power to provide advice and guidance to employers, publishing information and undertaking research. ²⁰⁹ Its enforcement powers include the power to investigate employers and enter into an agreement with employers not to flout the Equality Act 2010 and put in place an action plan to comply with the law.
Hong Kong	Equal Opportunity Commission (HKEOC)	The HKEOC is a statutory body responsible for implementing the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance in Hong Kong. ²¹⁰ The EOC works towards the elimination of discrimination on the basis of the above protected characteristics and has the power to: <ul style="list-style-type: none"> (a) conduct investigation into complaints lodged under the legislations and encourage conciliation between the parties in dispute; (b) undertake self-initiated investigation into situations and issues giving rise to discrimination concerns under the legislations; (c) develop and issue codes of practice under the legislations; (d) keep under review the workings of the legislations and when necessary, draw up proposals for amendments; and (e) conduct research on issues relevant to discrimination and equal opportunities.
South Korea	National Human Rights Commission (NHRCK)	The NHRCK is statutorily empowered to receive petitions from persons who have been discriminated against and any other person or organisation that is aware of such discrimination. ²¹¹ Upon receiving such petitions, the NHRCK will conduct a factual investigation before making a decision, which can include making recommendations of

²⁰⁹ "Our Powers", Equality Human Rights Commission, Equality Human Rights Commission, 12 November 2019, <https://www.equalityhumanrights.com/en/our-legal-action/our-powers>

²¹⁰ "OUR FUNCTIONS & POWERS", Equal Opportunities Commission, Equal Opportunities Commission, accessed on 16 October 2022, <https://www.eoc.org.hk/en/about-the-eoc/our-functions-and-powers>

²¹¹ "Complaint Handling Process", National Human Rights Commission of Korea, National Human Rights Commission of Korea, accessed on 16 October 2022, <https://www.humanrights.go.kr/site/homepage/menu/viewMenu?menuid=002004002001>

		remedial measures to the person or organisation alleged to have committed such discrimination.
United States	Equal Employment Opportunity Commission (EEOC)	<p>The EEOC is responsible for enforcing federal laws that prohibit workplace discrimination and promulgating regulations that implement those federal laws.²¹² The EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. If discrimination has occurred, the EEOC will try to settle the charge through mediation. If mediation is unsuccessful, the EEOC also has the authority to file a lawsuit to protect the rights of individuals and the interests of the public and litigate a small percentage of these cases.</p> <p>The EEOC also conducts no-cost outreach programmes that provide general information about the EEOC, its mission, the employment discrimination laws enforced by EEOC and the charge/complaint process.²¹³</p>
Canada	Canadian Human Rights Commission (CHRC)	<p>The Commission receives discrimination complaints and works with both the complainant and respondent to resolve the issues through mediation.²¹⁴ When a complaint cannot be settled, or when the Commission determines that further examination is warranted, it may refer the complaint to the Canadian Human Rights Tribunal.</p> <p>The Commission also works with federally regulated employers to ensure compliance with the Accessible Canada Act, the Employment Equity Act and the Pay Equity Act. This contributes to the elimination of barriers for women, Indigenous peoples, persons with disabilities and racialised groups</p>
Australia	Australian Human Rights Commission (AHRC)	<p>The AHRC investigates and conciliates discrimination and human rights complaints. Its complaints process is free and confidential, and allows individuals to resolve disputes quickly and effectively.²¹⁵ The AHRC also produces guidelines for employers, and provides training and resources to assist organisations in embedding and supporting diversity and inclusion.</p>

²¹² "Overview", U.S. Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, accessed on 16 October 2022, <https://www.eeoc.gov/overview>

²¹³ "No-Cost Outreach Programs", U.S. Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, accessed on 16 October 2022, <https://www.eeoc.gov/no-cost-outreach-programs>

²¹⁴ "Our Work", Canadian Human Rights Commission, Canadian Human Rights Commission, 2 September 2022, <https://www.chrc-ccdp.gc.ca/en/our-work>

²¹⁵ "About", Australian Human Rights Commission, Australian Human Rights Commission, accessed on 16 October 2022, <https://humanrights.gov.au/about>

New Zealand	New Zealand Human Rights Commission (NZHRC)	The NZHRC provides two free and confidential services for the public: (a) human rights information and support and (b) dispute resolution. ²¹⁶ The office of human rights proceedings (OHRP) is an independent part of the NZHRC that can provide free legal representation to victims of discrimination who have complained to the NZHRC and wish to take their case to the Human Rights Review Tribunal. ²¹⁷
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This section sets out our detailed recommendations on how the CWDH should be set up under the new legislation in terms of (a) its composition and the appointment of members; (b) the statutory powers to receive and investigate complaints; (c) support for and protection of victim-survivors; (d) the statutory penalties that should be imposed on errant employers; (e) the research and education functions of the CWDH as well as (f) the support that CWDH should provide to SMEs.

a. Composition of Commission

Recommendation 4.1 Ensure that the CWDH comprises representatives from the tripartite partners and diverse representatives with lived experience of one or more protected characteristics.

- (i) The legislation should specify that the CWDH be made up of two members representing each of the tripartite partners as well as a fixed number of members appointed by the CWDH President who have lived experience of one or more protected characteristics.
- (ii) In deciding the appointment of those with lived experiences of one or more protected characteristic, the CWDH President should invite nominations from the public and adopt a transparent appointment process to build public trust and confidence in the CWDH.

Currently, TAFEP’s board is made up of eight representatives from the tripartite partners.²¹⁸ The current co-chairpersons are Mr Douglas Foo from the Singapore National Employers Federation (SNEF) and Ms Cham Hui Fong from the National Trade Unions Congress (NTUC). Notably, the TAFEP board currently only includes one member who is not Chinese, and two women.

While the CWDH should comprise representatives from the tripartite partners, it should also include members of the public from diverse backgrounds to ensure that the CWDH not only takes into consideration the perspective of the government, employers and employees but also workers with lived experiences of one or more protected characteristics.

²¹⁶ “How we can help”, Human Rights Commission, Human Rights Commission, accessed on 16 October 2022, <https://www.hrc.co.nz/how-we-can-help/>

²¹⁷ “About”, The Office of Human Rights Proceedings, Human Rights Commission, accessed on 16 October 2022, <https://www.hrc.co.nz/ohrp/about/#who-we-are>

²¹⁸ “About Us”, Tripartite Alliance for Fair and Progressive Employment Practices, Tripartite Alliance for Fair and Progressive Employment Practices, accessed on 16 October 2022, <https://www.tal.sg/tafep/about-us>

For example, the HKEOC's board is made up of members who represent a balance of background and expertise, including women, persons with disabilities, ethnic minorities, employment groups, the social service sector and the community at large. Similarly, the Constitution of the UKEHRC states that the appointment of commissioners is to be based on their experience or knowledge relating to discrimination based on the protected characteristics. The AHRC also comprises commissioners who specialise in race discrimination, sex discrimination, age discrimination and disability discrimination respectively.²¹⁹

Our recommendation

The importance of diversity should be emphasised and guaranteed by a requirement, enshrined in the new legislation, that the CWDH explicitly consider diversity in appointing its members. Ideally, the composition of the CWDH should reflect the diversity in Singapore society: Half of the CWDH should be made up of women, and at least a third should be racial minorities. There should also be at least one representative with a disability and one representative from the LGBTQ+ community.

To build public trust in the CWDH, the appointment process for CWDH members should be transparent. Members of the public should be invited to nominate individuals for the role, and civil society organisations should also be proactively consulted. This process can be modelled after the Nominated Members of Parliament scheme.

b. Power to Receive and Investigate Complaints

Recommendation 4.2 Confer on the CWDH the necessary statutory powers to receive and investigate complaints as well as to issue orders to employers.

- (i) The CWDH should be conferred the power to appoint inspectors to assist in the administration of the new legislation, including the investigation of complaints that an employer has engaged in prohibited conduct or breached its statutory duty to ensure a safe and inclusive work environment.
- (ii) The CWDH should be conferred the power to issue orders to employers or other persons to do or refrain from doing any act that contravenes or is likely to contravene the new legislation. The failure to comply with the CWDH's order should be made an offence.

Presently, a person can file a report on discrimination or workplace harassment via an online form on the TAFEP website, via telephone or in person. In addition to providing advice to the person, TAFEP may contact their employer and work with the employer to improve its employment practices. Where the employer is recalcitrant or unresponsive, TAFEP may then refer the case to MOM for further investigation. Upon referral, MOM will conduct further investigation and give the company another opportunity to rectify its actions. Where the employer has continued to engage in discriminatory employment practices, MOM may then curtail their work pass privileges in accordance with the Fair Consideration Framework.

²¹⁹ "Commissioners and Executive", Australian Human Rights Commission, Australian Human Rights Commission, 2 November 2020, <https://humanrights.gov.au/about/commissioners>

MOM's current investigative and enforcement role should be similar to that of employment discrimination commissions in other jurisdictions. For example, under the Hong Kong discrimination ordinances, the HKEOC has the power to conduct formal investigations,²²⁰ obtain information,²²¹ issue enforcement notices to errant employers to refrain from prohibited conduct²²² and bring proceedings against recalcitrant employers.²²³ With the enactment of the new legislation, the new CWDH should be set up as a specialised unit under MOM with statutory powers to receive complaints, conduct investigations, issue orders against and prosecute errant employers in breach of their obligations under the new legislation.

Our recommendation

We recommend that CWDH's role be similar to the powers of the Commissioner of Workplace Safety and Health (CWSH) under the WSHA. The new legislation should provide the CWDH with the power to appoint inspectors responsible for conducting investigations into complaints of workplace discrimination and harassment. These inspectors should be conferred the necessary powers to carry out such investigations, similar to the powers of inspectors under Part 9 of the WSHA. It should also be made an offence if an errant employer refuses to cooperate with, obstructs or delays the inspector's investigations.

The CWDH should also be given the statutory power to issue orders to errant employers found to have engaged in any prohibited conduct to refrain from engaging in or continuing to engage in such conduct. It should also be able to order an employer or other persons to perform any act or do anything to comply with the new legislation. This is similar to the powers of the CWSH under Part 5 of the WSHA and the powers of the HKEOC under section 77 of the Sex Discrimination Ordinance. Finally, it should be made an offence if an employer fails, neglects or refuses to comply with the CWDH's order. The CWDH should also be conferred the power to bring proceedings against such an employer for breaching its orders.

c. Supporting and Empowering Victim-Survivors

Recommendation 5.2(a) Provide free and confidential services offering information and support to victim-survivors of workplace discrimination and harassment.

- (i) The CWDH should be tasked with providing information and support to victim-survivors of workplace discrimination and harassment through the establishment of telephone, email and messaging helplines, websites, guidebooks and other means.
- (ii) These services should be funded by the Government and provided at no cost to members of the public to increase public awareness and knowledge of the new legislation and the rights of workers thereunder.

²²⁰ See, for example, section 70 of the Sex Discrimination Ordinance.

²²¹ See, for example, section 73 of the Sex Discrimination Ordinance.

²²² See, for example, sections 77 to 80 of the Sex Discrimination Ordinance.

²²³ See, for example, section 81 and 82 of the Hong Kong Sex Discrimination Ordinance.

Recommendation 5.2(b) Protect the confidentiality of victim-survivors by inserting the following provision in the new legislation:

Persons not to reveal protected information

- (i) *Any person who obtains information in connection with a complaint or investigation of workplace discrimination or harassment, whether in exercising any function as an inspector or otherwise, must not disclose such information to any other person unless the disclosure is:*
 - (1) *made with the written consent of the complainant;*
 - (2) *for the purpose of the administration or enforcement of the legislation; or*
 - (3) *in compliance with the requirement of any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions.*

- (ii) *The unauthorised disclosure of information about a complaint of workplace discrimination or harassment should be made an offence.*

Currently, TADM offers several ways by which a member of the public or an aggrieved employee can seek information or advice in relation to their employment rights and other employment-related matters. In particular, it offers advisory services for employees and self-employed persons, whereby a TADM staff explains the options available for managing an employment dispute and recommends other partners who can offer further assistance.²²⁴ We recommend that the CWDH take over this role and continue to provide free, confidential information and support to members of the public and workers, particularly as it relates to their rights under the new legislation. This is similar to the Equality Advisory and Support Service (EASS) in the United Kingdom,²²⁵ the NZHRC's human rights information and support helpline,²²⁶ Ontario's Human Rights Legal Support Centre²²⁷ and the HKEOC's enquiry service.²²⁸

In addition, considering the statutory powers granted inspectors to effectively investigate reports of workplace discrimination and harassment,²²⁹ the new legislation should protect the confidentiality of victim-survivors by making it an offence to disclose any information relating to the affairs of the complainant to any other person.²³⁰ Such disclosure should only be permitted in specific circumstances, as set out in our recommendation. This is in line with the government's commitment, as stated in the White Paper on Singapore Women's

²²⁴ "About Us"

²²⁵ "Equality Advisory and Support Service", Equality and Human Rights Commission, Equality and Human Rights Commission, 11 September 2019, <https://www.equalityhumanrights.com/en/contact-us/equality-advisory-and-support-service>

²²⁶ "How we can help"

²²⁷ "Human Rights Legal Support Centre", Human Rights Legal Support Centre, Human Rights Legal Support Centre, accessed on 16 October 2022, <http://www.hrlsc.on.ca/en/welcome>

²²⁸ "ENQUIRIES", Equal Opportunities Commission, Equal Opportunities Commission, accessed on 16 October 2022, <https://www.eoc.org.hk/en/enquiries-and-complaints/enquiries>

²²⁹ These powers should be materially similar to those set out at Part 9 of the Workplace Safety and Health Act.

²³⁰ Our recommendation is similar to section 74 of Hong Kong's Sex Discrimination Ordinance, where a person who unlawfully discloses such information is liable to a fine of up to HKD \$25,000.

Development, to protecting the identity of those who report workplace discrimination and harassment.²³¹

d. Punishment of Errant Employers

Recommendation 5.4 Impose adequate and proportionate statutory penalties to punish and deter errant employers

- (i) Impose statutory penalties against employers that are found to have discriminated against or harassed their workers in contravention of the law.
- (ii) The measure of the statutory penalties should be commensurate with the general penalties under the Workplace Safety and Health Act 2006.
- (iii) The CWDH should be empowered to prosecute errant employers under the new legislation.

To send a clear and unequivocal signal that workplace discrimination and harassment will not be tolerated in Singapore, sufficiently harsh penalties should be imposed for two reasons. First, the penalties must be harsh enough to have a strong deterrent effect.²³² Second, the penalties should reflect the serious social harm of discriminatory workplace practices, which could stir up negative feelings between different groups in society and undermine social harmony.²³³ This is also in line with the Government's main objective for legislating against workplace discrimination: to give TAFEP "more teeth" in dealing with errant employers.

As discussed in section 2(e) above, MOM currently may impose administrative penalties in relation to the suspension or disbarment of work passes against errant employers. However, this may not be effective in addressing discrimination at the workplace that is not based on nationality.²³⁴

Other jurisdictions that impose statutory penalties on errant employers include:

- (a) France. Article 225-2 of the Criminal Code provides that discrimination in refusing to hire, sanctioning or dismissing a person may be punished by three years' imprisonment and a fine of €45,000.

²³¹ "White Paper on Singapore Women's Development"

²³² Research on workplace penalty policies suggests that the statutory fine must be sufficiently hefty to take into account the employer's internal cost of compliance and the probability of enforcement. See generally, Morris M. Kleiner and David Weil, "Evaluating the Effectiveness of National Labor Relations Act Remedies: Analysis and Comparison with Other Workplace Penalty Policies", *Research Handbook on the Economics of Labor and Employment Law*, 28 December 2012, 209–47

²³³ See generally, Samuel Issacharoff and Erin Scharff, "Antidiscrimination in Employment: The Simple, the Complex, and the Paradoxical", *Research Handbook on the Economics of Labor and Employment Law*, 28 December 2012, 385–408

²³⁴ For example, Nee Soon MP Louis Ng noted in a 2020 parliamentary exchange with the then Manpower Minister that "[i]f you discriminate against Singaporeans and hire foreigners, we will restrict or curtail your work pass privileges; we do not allow you to hire foreigners. That sort of makes sense. But if you discriminate against women and mothers, and the penalty is that you cannot hire foreigners, then I hope the Minister agrees with me that that does not really make sense."

"DEVELOPMENTS ON FAIR CONSIDERATION FRAMEWORK AND MEASURES ON DISCRIMINATORY HIRING PRACTICES", Singapore Parliament, Government of Singapore, 4 September 2020, <https://sprs.parl.gov.sg/search/sprs3topic?reportid=oral-answer-2267>

- (b) Taiwan. An employer found to have discriminated against a worker may be fined between NT \$300,000 and NT \$1,500,000 in accordance with Article 65 of the Employment Services Act.
- (c) South Africa. Schedule 1 of the Employment Equity Act allows the Labour Court to impose a fine of up to R1.5 million or 2% of an employer's turnover, whichever is greater, for a first-time offence by an employer failing to comply with its statutory obligations to prepare and implement an employment equity plan, submit annual reports on its employment equity plan or implement recommendations given by the Director-General of the Department of Labour on its employment equity plan.

Our recommendation

We recommend adopting the same penalties imposed under section 50 of the WSHA. An employer—which can include a natural person (such as a manager or business owner) or a body corporate—should be liable on conviction for non-compliance with the new legislation, as set out in section 4 above, to:

- (1) in the case of a natural person, a fine not exceeding \$200,000 or imprisonment for a term not exceeding two years, or both; and
- (2) in the case of a body corporate, a fine not exceeding \$500,000.

Repeat offenders should be punished more harshly to reflect their egregious disregard for the law. Like section 51 of the WSHA, such an offender should be subject to a fine not exceeding \$400,000 in the case of a natural person and a fine not exceeding \$1 million in the case of a body corporate.

Similar to the CWSH, the CWDH should have the discretion to compound the fine to a sum not more than half the maximum fine prescribed for the offence, or \$5,000, whichever is lower.²³⁵ In addition, the CWDH should be empowered to bring proceedings against errant employers in two circumstances: (i) on behalf of victim-survivors who have been subject to any of the prohibited conduct set out in section 4(b) above; and (ii) for breach of the statutory duties as set out in section 4(d) above.

e. Research and Education Functions

Recommendation 5.5(a) Require CWDH to collect and provide annual updates on workplace discrimination and harassment statistics.

- (i) The CWDH should collect and publish annual updates on the number of complaints, investigations and orders made against errant employers, disaggregated by: the type of protected characteristic, type of prohibited conduct, type of industry and company size, and the type of order made.

²³⁵ “WSH Act: liabilities and penalties”, Ministry of Manpower, Government of Singapore, accessed on 16 October 2022, <https://www.mom.gov.sg/workplace-safety-and-health/workplace-safety-and-health-act/liabilities-and-penalties>

Recommendation 5.5(b) Confer on the CWDH the power to undertake or assist in research and educational activities in furtherance of the new legislation, including issuing codes of conduct containing practical guidance to employers on compliance with the legislation.

- (i) The CWDH should be conferred the power to undertake or assist (financially or otherwise) the undertaking by other persons of any research and any educational activities in furtherance of the new legislation.
- (ii) Specifically, the CWDH should issue codes of practices to provide practical guidance with respect to the requirements of the new legislation.

In addition to its investigative and enforcement functions, the CWDH should be given the powers to conduct research and educational activities in furtherance of the objectives of the new legislation. This includes collecting and publishing annual updates on workplace discrimination and harassment statistics, which can help to inform further policy reform and educate the public on the prevalence of prohibited conduct at the workplace.

The CWDH should also conduct research into workplace discrimination and harassment, including by partnering or supporting civil society organisations to understand the challenges faced by minority and marginalised groups. Such research can shed light on how the legislation and processes can be improved to reduce, and eventually eliminate, workplace discrimination and harassment in Singapore.

Finally, as an administrative body, the CWDH should be empowered to issue codes of practices with specific examples and practical advice on the types of prohibited conduct in different industries and contexts. The codes of practices that the CWDH issues should be similar in substance to the existing TGFEF, which help employers understand their obligations under the new legislation as well as how they can implement fair employment practices in compliance with the legislation.

These proposed statutory functions are informed by those of the HKEOC, the US EEOC and the UK EHRC. For example, the HKEOC regularly publishes research reports on workplace discrimination and sexual harassment.²³⁶ It also publishes policy frameworks and guidelines to assist employers in complying with the discrimination legislations.²³⁷ The US EEOC also publishes technical assistance and guidance documents that explain how the laws and

²³⁶ Equal Opportunities Commission, *Study on Discrimination in the Hong Kong Workplace* (Hong Kong: Equal Opportunities Commission, 2014), <https://www.eoc.org.hk/EOC/Upload/ResearchReport/WorkplaceDiscrimination/eReport.pdf> ; Equal Opportunities Commission, *Sexual Harassment and Discrimination in Employment – Questionnaire Survey for Workers of Service Industries* (Hong Kong: Equal Opportunities Commission, 2014), <https://www.eoc.org.hk/eoc/upload/ResearchReport/201452393149493382.pdf> ; Equal Opportunities Commission, *Study on Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises* (Hong Kong: Equal Opportunities Commission, 2016), <https://www.eoc.org.hk/eoc/upload/ResearchReport/20169281137202878231.pdf> ; Center for Chinese Family Studies, *A Study on Family Status Discrimination in the Workplace in Hong Kong* (Hong Kong: Center for Chinese Family Studies, 2018), <https://www.eoc.org.hk/eoc/upload/ResearchReport/20188211629521937156.pdf>

²³⁷ “POLICY FRAMEWORKS & GUIDELINES”, Equal Opportunities Commission, Equal Opportunities Commission, accessed on 16 October 2022, <https://www.eoc.org.hk/en/policy-advocacy-and-research/policy-frameworks-and-guidelines>

regulations apply to specific workplace situations.²³⁸ The UK EHRC issues the Statutory Code of Practice on Employment, which provides detailed guidance to employers and workers about what the Equality Act means, and which courts and tribunals must take into account.²³⁹

f. Support for Small and Medium-sized Enterprises

Given that compliance with the new legislation may pose some difficulties to SMEs due to the additional administrative costs associated with the implementation of the measures discussed at section 4(d), we recommend that the CWDH provide support to SMEs to alleviate the burden imposed by the new legislation.

First, similar to what TAFEP currently does, the CWDH should provide guidelines, frameworks and sample policies (such as TAMWH’s sample harassment prevention policy) that SMEs can easily adapt and implement in their organisations.

Second, drawing from the Personal Data Protection Act (PDPA) Legal Advice Scheme, the CWDH should work with the Law Society of Singapore to provide legal advice, at a fixed charge, to SMEs regarding their compliance with the new legislation.²⁴⁰ Under this proposed scheme, SMEs can seek basic legal advice (during one-hour consultations with lawyers assigned by the Law Society) about their compliance with their duty to ensure a safe and inclusive work environment under the new legislation. This proposed programme builds on the Employer Advisory Service currently offered by TAFEP to engage employers to create fair, responsible and progressive workplaces in Singapore and to raise employment standards through practical guidance on scenario-specific application of employment-related legislations and guidelines.²⁴¹

Finally, CWDH should also work with the WDA to develop and provide accredited and subsidised training programmes on compliance with the new legislation. This is similar to existing courses available for compliance with the PDPA, such as the Personal Data Protection Commission’s Practitioner Certificate in Personal Data Protection Course and other training programmes set out in the Data Protection Officer Training Roadmap.²⁴²

²³⁸ “Laws & Guidance”, U.S. Equal Employment Opportunity Commission, U.S. Equal Employment Opportunity Commission, accessed on 16 October 2022, <https://www.eeoc.gov/laws-guidance>

²³⁹ “Employment: Statutory Code of Practice”, Equality and Human Rights Commission, Equality and Human Rights Commission, 4 September 2015, <https://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice>

²⁴⁰ Personal Data Protection Commission, *FACT SHEET Personal Data Protection Act Legal Advice Scheme for SMEs* (Singapore: Personal Data Protection Commission, 2015), <https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Press-Room/2015/annex-a---factsheet-on-legal-advice-scheme.pdf?la=en>

²⁴¹ “Starting Out”, Tripartite Alliance for Fair and Progressive Employment Practices, Tripartite Alliance for Fair and Progressive Employment Practices, accessed on 16 October 2022, <https://www.tal.sg/tafep/getting-started/starting-out/employer-advisory-service>

²⁴² “DPO Competency Framework and Training Roadmap”, Personal Data Protection Commission, Government of Singapore, accessed on 16 October 2022, <https://www.pdpc.gov.sg/help-and-resources/2019/04/practitioner-certificate-in-personal-data-protection-course-singapore-2020-wsq>; “Practitioner Certificate in Personal Data Protection Course (Singapore) 2020 (WSQ)”, Personal Data Protection Commission, Government of Singapore, accessed on 16 October 2022, <https://www.pdpc.gov.sg/help-and-resources/2019/04/practitioner-certificate-in-personal-data-protection-course-singapore-2020-wsq>

6. Private Enforcement by Victim-Survivors

In addition to filing a complaint with the CWDH, victim-survivors of workplace discrimination and harassment should be entitled to seek recourse against their employers, or persons who have committed prohibited conduct against them. Giving victim-survivors a private right of enforcement emphasises their agency and empowers them to seek justice against perpetrators. Respecting the autonomy of victim-survivors also means giving them a choice as to whether to pursue mediation.

This section sets out our recommendations on how the new legislation should be drafted so as to be victim-centric and provide an affordable and expeditious way for victim-survivors to seek recourse against perpetrators for the harms that they have suffered. It aims to balance between competing considerations, such as efficiency, procedural and substantive fairness, costs, accessibility to laypersons and scarcity of court resources.

a. Exemption of discrimination and harassment claims from procedural requirements under the Employment Claims Act

Recommendation 6.1 Exempt discrimination and harassment claims from certain procedural requirements under the Employment Claims Act.

- (i) Mediation should not be made strictly mandatory, and victim-survivors should have the right to opt out of pursuing mediation prior to or in the course of proceedings against their perpetrators.
- (ii) All claims brought under the new legislation should be heard at the first instance by the ECT, which will be judge-led and prohibit legal representation.
- (iii) The composition of the ECT should be intentionally diverse, and tribunal members should be provided with the appropriate training to understand the structural and systemic challenges faced by those from under-represented groups and vulnerable communities.
- (iv) Discrimination and harassment claims brought before the ECT should not be subject to the claim limit stipulated in the Employment Claims Act.
- (v) The limitation period for discrimination and harassment claims should be extended to six months if the victim-survivor is still employed, or one year if they have left employment, so that they can seek the support and advice necessary to pursue their claims.

We note that claims under the new legislation are proposed to be modelled after the approach for existing employment claims.²⁴³ Currently, section 3 of the Employment Claims Act states that a claimant must submit a mediation request relating to the employment dispute, for which the claim will be lodged *before* they may lodge a claim against the alleged perpetrator.

²⁴³ “We will model our approach on how we deal with another class of disputes: those over salaries or wrongful dismissal. In such disputes, conciliation and mediation are tried first. Only when those fail, does the matter go before an Employment Claims Tribunal, which will arbitrate and decide the case. We will create a similar Tribunal to deal with workplace discrimination.” Lee Hsien Loong, “National Day Rally 2021”

While this may be an appropriate dispute resolution regime for salary claims, we do not think that it is always suitable for discrimination and harassment claims because (i) mediation's cooperative nature and focus on compromise may be incongruent with the victim-survivor's objective of righting the wrong that was done against them, and (ii) it assumes that the perpetrator will bargain in good faith.²⁴⁴

As noted earlier, regulation 17 of the Employment Claims Regulation states that the maximum claim amount is \$20,000 for non-union members and \$30,000 for claimants who have gone through the Tripartite Mediation Framework or mediations assisted by unions recognised under the Industrial Relations Act. While this claim limit may be suitable for salary-related or wrongful dismissal claims, where the loss suffered by the claimant may be quantified mainly with reference to their salary, we do not recommend imposing a claim limit for discrimination and harassment claims generally, for two reasons:

- (1) It artificially limits the amount of compensation that a victim-survivor may obtain based on whether they are able to afford pursuing their claim through the courts instead. Lower-income victim-survivors should not be disadvantaged and forced to accept an artificially imposed limit on the amount of compensation they can obtain simply because they are unable to afford bringing proceedings against perpetrators in the courts.
- (2) The imposition of a claim limit may deter aggrieved victim-survivors from seeking justice for themselves as the amount of time and effort involved in doing so may outweigh the amount of compensation that they can expect to receive.²⁴⁵

In terms of the limitation period for bringing a claim, a claimant must file a wrongful dismissal claim within one month after the last day of employment, or two months of the birth of the child in relation to a wrongful dismissal during pregnancy. In contrast, a salary-related claim must be filed within one year after the dispute arose if the claimant is still in employment, or within six months from the last day of employment if the claimant is no longer employed. A victim-survivor should be given enough time to process what has happened to them and then to seek the necessary support and advice before they proceed to file their claim.

Our recommendation

The new legislation should amend the Employment Claims Act such that discrimination and harassment claims should not strictly require claimants to have attempted mediation before filing a claim. Instead, it should give the ECT the discretion to exempt a victim-survivor from having to attempt mediation where the circumstances justify such an exemption. A victim-survivor should be able to apply for such an exemption and be given the opportunity to appear before the ECT to explain why they should not be forced to attempt mediation with an alleged perpetrator. Guidelines should be developed in consultation with diverse stakeholders, including civil society and, in particular, groups representing minority and marginalised groups, to guide the ECT in exercising its discretion to exempt a claimant from

²⁴⁴ Nicole Duke, "Expose Your Pig: The Procedural Failures of Sexual Harassment Mediation and Danger to Abuse Victims", *American Journal of Mediation* 11 (2018): 37–58

²⁴⁵ See also, Vanessa Ruggles, "The Ineffectiveness of Capped Damages in Cases of Employment Discrimination: Solutions toward Deterrence Notes and Comments", *Connecticut Public Interest Law Journal* 6, no. 1 (2007 2006): 143–64

attempting mediation, such as in cases where the claimant has suffered emotional distress or was sexually harassed.

All claims arising under the new legislation should be commenced in the ECT, where prospective tribunal members should undergo specialised training to understand the structural and systemic challenges faced by those from under-represented groups and vulnerable communities.²⁴⁶ ECT members should also be intentionally diverse, with representatives from those aforementioned groups and communities.²⁴⁷ This ensures that ECT tribunal members are equipped to address complex issues of stigma, discrimination and prejudice, which will result in a fairer, more effective and objective fact-finding process.

Where a victim-survivor succeeds in their claim, the ECT should be conferred the power to grant such remedies that can be granted in tort. The new legislation should specify that the limit for claims before the ECT will not apply to discrimination and harassment claims.

A tortious measure of damage affords courts and tribunals the flexibility to fashion appropriate remedies, including the imposition of not only compensatory but also punitive damages.²⁴⁸ This builds on the approach under the Employment Claims Regulations 2017, which allows the ECT to determine the amount of compensation based on the claimant's loss of income and the *harm caused to the claimant*.²⁴⁹ In particular, our proposal draws inspiration from section 119(4) of the UK Equality Act 2010, which states that an award of damages can include compensation for injured feelings. This is important because “the feelings of hurt and humiliation at losing a job in such demeaning circumstances should not be downplayed”²⁵⁰ and “although... incapable of objective proof or measurement in monetary terms, hurt feelings are nonetheless real in human terms”.²⁵¹

²⁴⁶ T. Brettel Dawson, “Judicial Education on Social Context and Gender in Canada: Principles, Process and Lessons Learned”, *International Journal of the Legal Profession* 21, no. 3 (2 September 2014): 259–80, <https://doi.org/10.1080/09695958.2015.1029487>; Kayo Minamino, “Introducing Gender Training in Judicial Education in Japan to Support the Judiciary”, *International Journal of the Legal Profession* 21, no. 3 (2 September 2014): 297–306, <https://doi.org/10.1080/09695958.2015.1036869>

²⁴⁷ Rosemary Hunter, “More than Just a Different Face? Judicial Diversity and Decision-Making”, *Current Legal Problems* 68, no. 1 (1 January 2015): 119–41, <https://doi.org/10.1093/clp/cuv001>; Pat K. Chew, “Judges’ Gender and Employment Discrimination Cases: Emerging Evidence-Based Empirical Conclusions”, *Journal of Gender, Race & Justice* 14, no. 2 (2011 2010): 359–74; Erika Rackley, “What a Difference Difference Makes: Gendered Harms and Judicial Diversity”, *International Journal of the Legal Profession* 15, no. 1–2 (July 2008): 37–56, <https://doi.org/10.1080/09695950802439783>

²⁴⁸ In this regard, the Singapore Court of Appeal has acknowledged that the award of punitive damages “has a distinct and important role to play in the context of private law by filling that important interstitial space that exists between those cases where the demands of justice are served purely by the award of a compensatory sum, and those cases which properly attract criminal sanction. Among other things, it permits the private enforcement of important interests (particularly personality interests) without the need for individuals to bring a private prosecution (which is rarely done in practice, outside of cases involving intellectual property violations) and it allows for punishment to be effected without the corresponding stigma of a criminal sanction, which is not always appropriate in all cases of wrongdoing.” See *ACB v Thomson Medical Pte Ltd and others* [2017] SGCA 20 at [173]. See also Klaus M. Alenfelder, “Damages in Discrimination Cases”, *ERA Forum* 13, no. 2 (1 August 2012): 257–73, <https://doi.org/10.1007/s12027-012-0259-7>

²⁴⁹ See the Second Schedule to the Employment Claims Regulations 2017

²⁵⁰ *AA Solicitors Limited v Majid* [2016] UKEAT/0217/15/JOJ at [31]

²⁵¹ *Vento v Chief Constable of West Yorkshire Police* [2002] EWCA Civ 1871 at [51]

In terms of the limitation period, we recommend that it should be consistent with the existing limitation period for salary-related claims. This means that a victim-survivor who is still employed should file their claim within six months from the date of the incident of discrimination or harassment, or if there was a course of conduct, then the date of the *most recent* incident of discrimination or harassment. A victim-survivor who has left the employment should be given more time (one year) to file their claim, as the discrimination or harassment they faced may have been so serious such that they had to leave their employment. However, if the Government considers this proposed limitation period too long, we recommend that it should minimally be extended to three months so that the victim-survivor has sufficient time to process the incident before filing their claim.²⁵²

b. Burden of proof

Recommendation 6.2 Insert the following provision in the new legislation:

Matters relating to proof

- (i) *Wherein any proceedings facts are established by or on behalf of a person (A) from which it may be presumed that another person (B) contravened a provision of this Act, it is for B to prove the contrary.*
- (ii) *If there are facts from which the court could decide, in the absence of any other explanation, that B contravened the provision concerned, the court must hold that the contravention occurred.*
- (iii) *If an act is done for two or more reasons and one of the reasons is the protected characteristic of a person (whether or not it is the dominant reason or a substantial reason for doing the act), then the act is taken to be done for the reason of the protected characteristic of the person.*

Often, workers who experience discrimination and/or harassment experience a sense of grievance; in particular, sexual harassment can be traumatic. In this regard, the law should be victim-centric and not make it unduly difficult for employees to prove that they had been discriminated against.²⁵³ Furthermore, as a matter of evidence, it may be difficult for a victim-survivor to prove that the unfavourable treatment they experienced occurred because of their protected characteristic.²⁵⁴

According to the AWARE-Milieu report, 1 in 3 respondents who did not report the workplace discrimination they had experienced said that they did not do so because they did not think they had enough evidence.²⁵⁵ It is important that the new legislation send a clear and strong

²⁵² AWARE Singapore, “An Omnibus on Gender Equality: AWARE’s Recommendations for Singapore’s 2020-2021 Gender Equality Review”, 46

²⁵³ For example, while the Retirement and Re-Employment Act prohibits the dismissal of employees below 62 years of age on the ground of age, an employee who has been dismissed may not be able to prove that their dismissal was “on the ground of age” and not some other reason.

²⁵⁴ “Claims brought under [legislation prohibiting sex and race discrimination] present special problems of proof for complainants since those who discriminate on the grounds of race or gender do not in general advertise their prejudices: indeed, they may not even be aware of them.” Lord Browne-Wilkinson stated in *Glasgow City Council v Zafar* [1997] 1 WLR 1659 at 1664.

²⁵⁵ “1 in 2 experienced workplace discrimination”

signal to victim-survivors that they should not avoid seeking recourse based on the perception that they lack sufficient proof.

Our recommendation

Under the new legislation, a victim-survivor should only be required to prove a prima facie case of discrimination. Drawing from section 85A of the Irish Employment Equity Acts 1998 to 2015, we recommend that a victim-survivor need only establish (i) the primary facts upon which they rely and (ii) that those facts are of sufficient significance to raise an inference of discrimination. Upon making out this prima facie case, the burden shifts to the alleged perpetrator to rebut the presumption of discrimination.

In addition, the new legislation should include a clause similar to section 136(2) of the UK Equality Act 2010, which states that if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred. The effect of this provision is that once the claimant has established the prima facie case of discrimination, the employer will be found liable for discrimination *unless* it is able to provide an alternative explanation for its actions.²⁵⁶ This strikes a “measure of balance” between the victim’s ability to claim his right to equal treatment and the prevention of proceedings brought against the employer solely on the basis of the victim’s assertions.²⁵⁷

Our proposed approach is also consistent with the current position under the Tripartite Guidelines on Wrongful Dismissal. For example, illustration 5 states that a dismissal may be wrongful even though no reason was given because the employer had made numerous discriminatory remarks about the employee’s race, stating that he preferred to hire someone of another race. Under the existing guidelines, the facts support the conclusion that the employer dismissed the employee due to discrimination.

Finally, the legislation should clarify that where an act is done for more than one reason, and one of the reasons is a person’s protected characteristic (whether or not it was the dominant or substantial reason for doing the act), then the act is taken to be done because of the person’s protected characteristic for the purposes of proving a discrimination claim.²⁵⁸

²⁵⁶ See *Royal Mail Group Ltd v Efofi* [2021] UKSC 33 at [24] to [26]

²⁵⁷ Ibid at [15] citing *Meister v Speech Design Carrier Systems GmbH* (Case C-415/10) [2012] ICR 1006

²⁵⁸ See for example, section 3 of Hong Kong’s Disability Discrimination Ordinance and section 9 of Hong Kong’s Racial Discrimination Ordinance.

c. Invalidity of Contractual Terms Contrary to Legislation

Recommendation 6.3 Insert the following provision in the new legislation:

No contracting out

Any contract or agreement by which an employee relinquishes any right to bring proceedings or seek relief under this Act against the employer for discrimination and harassment is void insofar as it purports to remove or reduce the liability of any person under this Act.

Consistent with section 86 of the Employment Act and section 23 of the Workplace Injury Compensation Act 2019, we recommend that the new legislation include a provision making clear that any provision in an employment agreement that has the effect of excluding or limiting the employer's liability under the new legislation, or which prevents an employee from bringing proceedings under the new legislation, will be void. What this means is that employment agreements that force employees to arbitrate disputes with their employers will also be void insofar as they relate to claims made under the new legislation. Mandatory arbitration generally has been found to deter the filing of claims and may particularly affect the ability of more vulnerable and disempowered workers to do so.²⁵⁹ In addition, mandatory arbitration has been found to be a key enabler of sexual harassment at the workplace, following the rise of the #MeToo movement in the US.²⁶⁰

Another type of provision that should be voided under the new legislation is any provision to the effect that the employee consents to a particular practice or policy that is discriminatory. For example, before October 2022, Singapore Airlines included a clause in its employment agreements for air stewardesses that would require them to voluntarily resign after they become pregnant.²⁶¹ Just as a provision whereby a female employee relinquishes any right to maternity benefit under the Employment Act is void insofar as it purports to deprive her of that right, or to remove or reduce the liability of any employer to make any payment, clauses that purport to exclude an employment relationship from the new legislation should no longer be permitted.

²⁵⁹ Jean R. Sternlight, "Mandatory Arbitration Stymies Progress towards Justice in Employment Law: Where to, #MeToo?", *Harvard Civil Rights-Civil Liberties Law Review* 54, no. 1 (2019): 155–210; Harry T. Edwards, "Where Are We Heading with Mandatory Arbitration of Statutory Claims in Employment", *Georgia State University Law Review* 16, no. 2 (2000 1999): 293–310

²⁶⁰ Kathleen McCullough, "Mandatory Arbitration and Sexual Harassment Claims: #MeToo- and Time's up-Inspired Action against the Federal Arbitration Act Notes", *Fordham Law Review* 87, no. 6 (2019 2018): 2653–92; Marsha Levinson, "Mandatory Arbitration: How the Current System Perpetuates Sexual Harassment Cultures in the Workplace", *Santa Clara Law Review* 59, no. 2 (2020 2019): 485–524; Meagan Glynn, "#TimesUp for Confidential Employment Arbitration of Sexual Harassment Claims Note", *George Washington Law Review* 88, no. 4 (2020): 1042–70

²⁶¹ Jeanette Tan, "SIA's policy of firing its pregnant cabin crew offers food for thought in employment contract clauses", *Business Times*, SPH Media Trust, 24 October 2022, <https://www.businesstimes.com.sg/leadership-management/mobile-spotlight/sias-policy-of-firing-its-pregnant-cabin-crew-offers-food-for> ; see also "AWARE questions SIA practice", *AWARE*, *AWARE*, 17 September 2010, <https://www.aware.org.sg/2010/09/aware-questions-sia-practice/>.

7. Recommendations on the Effective Implementation of the New Legislation

The success of the new workplace discrimination legislation will depend not only on the enactment of a comprehensive legislation that includes our recommendations set out in the sections above, but also on its implementation. Effective implementation of the new legislation will ensure that there is strong public awareness of the law and community diffusion of the legislation's underlying principles of equality and non-discrimination.

As a first step, in developing the draft legislation, active public consultation is key to promote buy-in and socialise the public to the importance and benefits of enacting an anti-discrimination legislation in the workplace. In addition to the Tripartite Committee on Workplace Fairness' consultations, the Government should engage with individual citizens through the ongoing Forward SG conversations to raise public consciousness about the forthcoming legislation. There should also be sufficient time during the public consultation on the new legislation for community groups and the public to share their views with the Ministry of Manpower, and for the Ministry to take into account the feedback received before tabling the Bill in Parliament.

Secondly, through the newly established CWDH and other channels (including social media), we urge the Government to (i) engage with the public on the implementation of this new legislation and (ii) educate the public on the legislation's key aspects, and how one may seek recourse if they experience any prohibited conduct at the workplace. In addition, the Government should work closely with community organisations that serve and/or represent minority and marginalised groups that are particularly vulnerable to workplace discrimination and harassment, to raise awareness among these groups about the new legislation.

Finally, after the legislation has been enacted, the Government should provide training workshops to employers to help them understand their obligations under the new legislation and the practical steps they can take to prevent and address discrimination and harassment at their workplaces. To demonstrate support from employers for the new legislation, the Government can collaborate with employers that have previously signed the TAFEP Pledge of Fair Employment Practices for these initial training programmes. The Government should work with professional organisations such as the Law Society, the Singapore Corporate Counsel Association, the Institute for Human Resource Professionals and the Singapore Human Resource Institute to provide resources and training to human resource professionals and in-house counsel on the new legislation.

8. Conclusion

Prime Minister Lee Hsien Loong's announcement on the enactment of a new workplace discrimination legislation marked a new chapter in the Singapore story. For the first time in Singapore's history, individuals who have been subject to discrimination at the workplace will be empowered to take action against their perpetrators. The introduction of statutory penalties will also send a clear and unequivocal signal that discrimination is unacceptable and contrary to the values of equality and meritocracy that underpin our country's progress. We call on the Government to adopt our recommendations to ensure that the new legislation will be sufficiently robust and ensure that all workers can enjoy equal employment opportunities in Singapore.

At the same time, discrimination does not occur only at the workplace. Indeed, over the past few years, racial minorities have come forward to call out the discrimination and prejudice that they have experienced in Singapore, ranging from blatant racism in the rental market²⁶² to anti-miscegenation sentiments.²⁶³ Despite Singapore's ratification of the CRPD, there is no legal right to accessibility or reasonable accommodation that persons with disabilities can enforce.²⁶⁴ Instead, they remain dependent on the goodwill of others to provide them access: For example, guide dog users continue to face challenges entering buildings or accessing private hire transport.²⁶⁵ Breastfeeding mothers also face difficulties not just at the workplace but outside of it, too.²⁶⁶

Following the enactment of the new workplace discrimination legislation, we call on the Singapore Government to consider enacting a comprehensive anti-discrimination legislation that will guarantee every person the right to equality in all spheres of life. No one should be subject to discrimination, whether at work or outside of it. In particular, this comprehensive

²⁶² Vanessa Lim, "Most Landlords Prefer to Rent to Tenants of the Same Race: CNA-IPS Survey - CNA", *Channel NewsAsia*, 2 April 2022,

<https://www.channelnewsasia.com/singapore/rental-housing-racism-discrimination-tenants-minority-survey-2601326>; Nyshka Chandran Loh Michelle, "Even in Weak Market, Racial Bias Trumps Profit for Many Singapore Landlords", *CNBC*, 3 March 2017, <https://www.cnbc.com/2017/03/02/singapore-rental-racism-prc-and-indian-tenants-often-deemed-undesirable.html>; Helier Cheung, "'No Indians No PRCs': Singapore's Rental Discrimination Problem", *BBC News*, 1 May 2014, sec. Asia, <https://www.bbc.com/news/world-asia-26832115>

²⁶³ Ian Cheng, "Former Ngee Ann Polytechnic Lecturer Apologises for Racist Remarks He Made to an Interracial Couple", *Channel NewsAsia*, 9 July 2021, <https://www.channelnewsasia.com/singapore/ngee-ann-polytechnic-staff-member-apologises-remarks-viral-video-1981651>

²⁶⁴ Alvan Yap, "Why S'pore Needs Disability Legislation", *TODAY*, 3 December 2013, <https://www.todayonline.com/singapore/why-spore-needs-disability-legislation>

²⁶⁵ Lam Min Lee, "Singapore Swimmer with Guide Dog Turned Away by Subway Staff at Kallang Wave Mall", *AsiaOne*, 14 August 2020, <https://www.asiaone.com/singapore/singapore-swimmer-guide-dog-turned-away-subway-staff-kallang-wave-mall>; Cassandra Chiu, "S'pore's First Woman Guide Dog Handler: I Faced Discrimination, People Would Scream & Run Away", 12 October 2019, <https://motherhip.sg/2019/10/cassandra-chiu-guide-dog-singapore>; Alvan Yap, "Allowing Guide Dogs with the Blind Is a Right, Not a Privilege", *TODAY*, 13 September 2013, <https://www.todayonline.com/voices/allowing-guide-dogs-blind-right-not-privilege>

²⁶⁶ Marianne Wee-Slater, "Why Is Singapore Still Uncomfortable with Breastfeeding?", *TODAY*, 1 August 2016, <https://www.todayonline.com/lifestyle/why-singapore-still-uncomfortable-breastfeeding>; Tammy Lim, "How Do We Make Singapore More Inclusive for Nursing Mothers?", *AWARE (blog)*, 28 March 2016, <https://www.aware.org.sg/2016/03/is-singapore-breastfeeding-friendly-an-aware-x-bffsg-roundtable>

legislation should cover housing discrimination, education discrimination, discrimination in access to public accommodations and healthcare discrimination. This will mark the next step in the Singapore story as we progress towards a truly multiracial and inclusive society for everyone, regardless of not only race, language, religion but also all other aspects of human diversity.