



Association of Women for Action and Research

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AWARE's Submission in Response to Ministry of Manpower's Consultation Paper on Resolving Workplace Fairness Disputes under the Workplace Fairness Act (WFA)

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Introduction

We attended the earlier consultation on 15 September 2025 and found it extremely useful. Thank you for organising that meeting. Some of the points below were already raised then, but here we present a consolidated and expanded list.

Increasing the jurisdiction of the Employment Claims Tribunal (ECT) is a very significant move. It effectively means that almost all workplace fairness claims will be heard at the ECT. We agree with this shift, as the full legal process with lawyers involved is often daunting, onerous, and costly for most claimants. However, while this move improves accessibility, it also brings disadvantages that risk undermining fairness if not addressed.

Key Concerns

1. *Power Imbalance Between Employers and Employees*

- Employers have significant advantages: access to HR, in-house legal expertise, resources, and data (emails, correspondence, policies). Employees, by contrast, often lack knowledge, resources, and representation.
- This imbalance is far greater than in small claims or family court contexts.

2. *Union Representation Too Narrow*

- The proposal to allow union representation is welcome but too narrow, since it applies only to employees in unionised companies (less than 30% of the workforce).
- This creates inequity: one group of employees gets representation, while the majority remain unsupported.

3. *Fairness and Transparency of Proceedings*

- Hearings are to be held behind closed doors, with no public or media attendance. While we understand the reasons, this makes it difficult to assess whether the system is fair in practice.

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- Without transparency, claimants and the public may lose confidence in the fairness of the system.

4. Basis for Damages

- The basis for how damages will be assessed is unclear. Will it follow common law principles or a different standard? Without clarity, outcomes risk inconsistency and unpredictability, which undermines trust.

5. Stressful and Daunting Process

- For employees, especially those still employed by the respondent, hearings are intimidating and stressful. Power dynamics make this worse.
- Navigating the administrative and evidentiary requirements is extremely difficult for laypersons.

6. Dependence on Judges

- Since proceedings will be judge-led, outcomes will heavily depend on the judge's orientation and expertise.
 - If judges lack sensitivity to workplace power dynamics, or are not trauma-informed, employees may be unfairly disadvantaged.
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Recommendations and Solutions

A. Level the Playing Field

- Representation should not be limited to unions. Other accredited groups — such as NGOs, pro-bono organisations, or professional associations — should also be allowed to represent employees.
- These representatives can advise on rights, speak on behalf of workers at mediation/hearings, and provide expertise in non-unionised settings.

B. Support Persons and Advisory Services

- Employees should be allowed to have trained support persons accompany them to provide emotional support and guidance.
- MOM should enable collaboration with NGOs, unions, and professional bodies to train and provide such support persons.
- Advisory services and resources should be made available to help employees prepare for hearings.

C. Practical Assistance for Employees

- Provide staff at the tribunal to answer administrative queries.
- Provide staff to assist employees in collating evidence.
- Provide access to pro-bono legal advice to help employees articulate their claims, quantify damages, and understand burdens of proof.
- If MOM cannot directly provide these services, it should partner with NGOs, unions, and the pro-bono community to ensure coverage.



D. Judicial Training

- Judges should be trained to be trauma-informed, sensitive to workplace dynamics, and skilled in addressing power imbalances.
- They should also understand workplace processes (HR practices, internal reporting structures) to fairly evaluate evidence and testimony.

E. Transparency and Accountability

- While hearings may remain private, data should be systematically collected, analysed, and published regularly on:
 - Types of claims
 - Resolution methods (mediation, ECT, High Court, Court of Appeal)
 - Outcomes
- Researchers, academics, and civil society organisations should have access to anonymised data.

F. Clear Guidelines on Damages

- The Government should publish clear guidelines on how damages will be assessed.
- These should specify whether the standard is common law or another framework, and ensure consistency, predictability, and fairness.
- As AWARE highlighted in our earlier 2023 position paper *Beyond Fairness: A Legal Framework for Anti-Discrimination in the Workplace*, civil remedies should go beyond salary loss to include **damages for harm, punitive damages, and equitable remedies such as injunctions**. This broader framework is essential to ensure meaningful redress and deterrence.
- Damages should also consider:
 - Whether the employer had proper grievance procedures in place, as required under the Workplace Fairness Act.
 - Whether the employer provided anti-discrimination and harassment training.
 - The behaviour of the employer — for example, whether they covered up incidents, abused power, or retaliated against complainants.
- The absence of grievance procedures or training should be an aggravating factor in awarding damages, ensuring that employers face real consequences for failing to comply with statutory obligations.

G. Expeditious Process

- Claims should be resolved expeditiously, especially if the employee is still employed by the respondent. Protracted proceedings increase stress, risk further victimisation, and may pressure employees into withdrawing claims.



H. One-Stop Shop for Workplace Fairness

- There should be a **one-stop shop, both online and physical**, where companies and complainants can seek guidance on rights, responsibilities, and processes.
 - This would provide a centralised, accessible hub for information, advice, and referrals to support services, ensuring consistency and reducing confusion for all parties.
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Conclusion

We support the increased jurisdiction of the ECT as an important step to improve accessibility to justice under the Workplace Fairness Act. However, significant risks of unfairness remain if the inherent power imbalance between employers and employees is not addressed. The recommendations above—broadening representation, support persons, advisory services, practical assistance, greater transparency, judicial training, expeditious resolution of claims, a one-stop shop for information and support, and robust civil remedies including clear damages guidelines—are essential to ensure a fair, effective, and trusted dispute resolution process.