

Submission to the Ministry of Social
and Family Development's
Consultation Paper: How to Better
Support Children and Divorcees,
and Reduce Acrimony in Divorce

MAY 2021

INTRODUCTION

The Association of Women for Action and Research (AWARE) submits the following comments on the proposal by the Ministry of Social and Family Development (MSF) to better support children and divorcees, and reduce acrimony in divorce. As stated in the Consultation Paper, one major suggestion is the introduction of an “amicable divorce” option for those who mutually consent to divorce, so that parties need not identify as a Plaintiff or as a Defendant. Under this recommendation, divorcing parties would not need to prove one (or more) of the five facts if they both agree that the marriage has irretrievably broken down.

Drawing on first-hand experiences from our Women’s Care Centre (WCC) and Sexual Assault Care Centre (SACC), as well as the professional expertise of our family lawyer volunteers, this report will address the above proposed amendment, as well as other divorce-related issues, such as maintenance.

AWARE'S COMMENTS

A. DIVORCE PROCEEDINGS AND ENFORCEMENT OF MAINTENANCE

1.1 INTRODUCE “AMICABLE DIVORCE”

Under Singapore's current divorce laws for non-Muslims, the only legally recognised ground for divorce is an “irretrievable breakdown of marriage”. There are five ways, or five “facts”, by which a spouse seeking a divorce can “prove” that the marriage has irretrievably broken down.

In the current approach, three of the five facts are “fault-based” (i.e. adultery, behaviour, desertion), while the other two are not. (They relate to periods of separation: three years if both parties agree to the divorce, and four years if the parties do not.) Such an approach inadvertently incentivises the use of fault-based facts, as parties are able to attain their divorce more quickly than if they were to go down the separation route.¹

In this regard, a report on marriage and divorce statistics by Singapore's National Statistical Office stated that as of 2019, couples who were married for five to nine years accounted for the largest share of civil divorces, at 29.6%. This was followed by those who had been married for 10 to 14 years (18.8%) and others who had been married for less than five years (15.8%).²

Several divorce practitioners and social workers have expressed concern that a fault-based system could trap parties in marriages that have clearly broken down, with legal barriers preventing them from moving on.

Where children are involved, a fault-based approach could exacerbate conflict between parties, which may adversely impact the children. A landmark research study was conducted by the UK-based Nuffield Foundation to explore how a fault-based approach to divorce proceedings operated in practice.³ The study included data collected from a national opinion survey of 2,845 adults in England and Wales on divorce law, including a boost of 1,336 divorcees, as well as qualitative interviews with people going through divorce.⁴ According to the findings, 62% of petitioners and 78% of respondents said that the fault-based approach had made the process more bitter, while 21% of fault-respondents said fault had made it harder to sort out arrangements for children. Furthermore, 31% of respondents believed that the fault-based approach made sorting out finances harder. Those who were interviewed also gave examples of how the use of fault, mainly in terms of negative behaviour, had a detrimental impact on contact arrangements, including fueling litigation over children. In some cases, one party had threatened to show their children the petition in order to negatively influence their perception of the parent “at fault”. Naturally, this further exacerbated acrimony between the divorcing parties.

¹ Chan, W. C. (2020, July 9) “Consider allowing no-fault divorce to remove blame game when couples split”. *The Straits Times*, p. A33

² *Department of Statistics, Statistics on Marriages and Divorces, 2019* (2019). Department of Statistics, Singapore. <https://www.singstat.gov.sg/-/media/files/publications/population/smd2019.pdf> (accessed 26 May 2021)

³ Trinder, L., Braybrook, D., Bryson, C., Coleman, L., Houlston, C., & Sefton, M. (2017) (rep.) *Finding Fault? Divorce Law and Practice in England and Wales*. Nuffield Foundation. Retrieved from https://www.nuffieldfoundation.org/sites/default/files/files/Finding_Fault_full_report_v_FINAL.pdf (accessed 30 April 2021)

⁴ A total of 110 interviews from 81 participants, including 57 petitioners, 22 respondents and two at the pre-petition stage

In 2020, the Law Society of England and Wales, supporting calls for the introduction of no-fault divorce in the UK, highlighted that the current fault-based legal requirements for divorce exacerbate conflict between separating couples. These requirements not only result in protracted proceedings, but also shift the focus away from the needs of their children when making child arrangements.⁵ As the courts prioritise the welfare of children in divorce proceedings, the introduction of no-fault divorce removes the need to allocate blame, thus reducing animosity while offering divorcing couples a better platform to reach an amicable and positive resolution.

In addition, prolonged proceedings may prove to be both financially and emotionally costly for the parties concerned. With the fees for contested divorces ranging between an estimated S\$10,000 and S\$35,000,⁶ introducing a no-fault option could allow for more efficient finalisation of divorces and lower legal costs.

The move towards no-fault divorce would be consistent with international trends. For instance, Spain, Sweden and Finland do not require the parties to provide a ground for divorce, while in Germany, California and Colorado, an application for divorce by one of the spouses is seen effectively as conclusive evidence of the breakdown of the marriage.⁷ Several Commonwealth countries, such as Australia and New Zealand, also have no-fault divorce laws. Divorce in Australia has been on a no-fault basis since the introduction of the Family Law Act in 1975. The approach adopted in these jurisdictions is further evidence of widespread recognition that the state need not and should not be the arbiter of whether a marriage should be dissolved. Instead, there should be a shift towards recognising the decision-making autonomy of the parties to the marriage.

In June 2020, the Divorce, Dissolution and Separation Act 2020 was passed in the UK. While it still retains the irretrievable breakdown of the marriage as a requirement, the new Act abolishes the need to show one of the five fault-based facts; instead, a statement of irretrievable breakdown from the divorcing parties suffices.⁸

Proponents also noted that the reform would not only allow parties to a divorce to save costs, but also assist the parties and their children in bringing about a dignified end to the marriage.⁹ Additionally, it would help preserve an amicable relationship between parents as they transition to separated parenting, without having to resort to playing “the blame game”, which promotes conflict and acrimony.

There appears to be some movement on this issue in Singapore. In a Facebook post, Minister of State Sun Xueling noted, based on discussions with divorced parents and social service professionals working with divorcees, that the current fault-based

⁵ *No-fault divorce*. The Law Society of England and Wales (2020, June 30)

<https://www.lawsociety.org.uk/en/topics/family-and-children/no-fault-divorce> (accessed 2 May 2021)

⁶ *Comprehensive Guide to Divorce Fees in Singapore*. Singapore Legal Advice (2019, October 21) <https://singaporelegaladvice.com/law-articles/divorce-fee-guide-singapore> (accessed 2 May 2021)

⁷ Scherpe, J. M., & Trinder, L (2019) (rep.) *Reforming the Ground for Divorce: Experiences from Other Jurisdictions*. Nuffield Foundation. Retrieved from <https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2019/03/Trinder-Reforming-the-Ground-for-Divorce-Mar-191.pdf> (accessed 2 May 2021)

⁸ Posnansky, C. (2021, January 22) “The end of the blame game - introduction of no-fault divorce”. <https://blog.charlesrussellspeechlys.com/post/102goy7/the-end-of-the-blame-game-introduction-of-no-fault-divorce> (accessed 30 April 2021)

⁹ Ibid

approach “forces” one of the parties to take blame.¹⁰ The requirement to provide details of the fault can be especially painful for couples to revisit. Having to file their papers as either “plaintiff” or “defendant” also forces them into an adversarial relationship during the proceedings. MSF’s recent announcement that it would be seeking public feedback on the introduction of the option for an amicable divorce marks a significant step towards the introduction of no-fault divorce.

Recommendation

AWARE agrees with the Government’s proposal for an “amicable divorce” option. This will be in line with the family justice system’s “move from an adversarial approach where each litigant pursues his or her own interests single-mindedly towards a therapeutic justice system where the parties involved adopt a problem-solving mindset that facilitates healing”.¹¹

It must be stressed that the introduction of no-fault divorce differs from divorces on the “simplified track”, whereby both parties come to a private and amicable agreement on all issues, including ancillary matters like child custody and maintenance. Under the “simplified track”, the parties are still required to cite one of the five facts to prove the marriage has broken down irretrievably; one party must still be the plaintiff and the other, the defendant. No-fault divorce, on the other hand, would see the parties jointly filing for divorce without the need for one to be the plaintiff and the other the defendant. It also does away with the need to cite fault in the divorce papers.

1.2 REDUCE THE THREE-YEAR TIME BAR ON COMMENCING DIVORCE PROCEEDINGS

The Women’s Charter currently prohibits divorce proceedings from being commenced in the first three years of marriage, save in certain exceptional situations: where the party filing for the divorce is suffering from exceptional hardship, or if the other party to the divorce has engaged in exceptional depravity.

The proposed introduction of the option to allow couples seeking divorce to file for an amicable divorce (see Section 1.1 above) would still retain the three-year time bar.¹² This is meant to ensure that the institution of marriage is not undermined and divorce not made overly easy.

From a comparative perspective, the requirement for a minimum duration of marriage is relatively unusual. However, there are functional equivalents in the form of mandatory separation periods in other jurisdictions.

¹⁰ Sun, X. (2021, March 23) <https://www.facebook.com/helloxueling/posts/5163150240425926> (accessed 2 May 2021)

¹¹ Hing, A. (2020, August 28) “Making divorces in Singapore less acrimonious.” *TODAY Online*. <https://www.todayonline.com/commentary/amicable-divorce-family-justice-courts-marriage-children> (accessed 30 April 2021).

¹² Ng, J. S., & Awang, N. (2021, May 5) “The ‘amicable divorce’ option: Lawyers split over whether it can resolve messy divorces and if it erodes sanctity of marriage” <https://www.todayonline.com/singapore/amicable-divorce-option-lawyers-split-over-whether-it-can-resolve-messy-divorces-and-if-it> (accessed 26 May 2021)

For instance, Hong Kong reformed its system to reduce the time bar to a one-year period.¹³ Time restrictions are also shorter in Australia and New Zealand. In Australia, couples need only be married for at least two years and separated for at least a year, while in New Zealand, the required separation period is two years in order to file for a no-fault divorce. Should couples in Australia wish to file for no-fault divorce before the two-year mark, they will need to attend conciliation counselling, and the parties will need to file a counselling certificate as proof. Canada is another jurisdiction with few barriers to seeking no-fault divorce early in the marriage, requiring only a minimum of a one-year separation.

In 2003, the Honourable Justice Debbie Ong, then a legal academic, similarly recommended that the time restriction on divorce in Singapore be shortened to one year in the best interests of the affected parties.¹⁴ This is in line with the approach adopted in other countries such as the UK, where the three-year time bar (with certain exceptions) had previously been the prevailing legal position. Following a recommendation by the Law Commission in 1984, the duration of the time bar was then reduced to one year and the exceptions (i.e. exceptional hardship and depravity) for divorces before a certain duration of marriage were removed.

Furthermore, the Law Commission argued for a shift in focus: from the law enforcing permanent marriage unions by ensuring that divorce is not too easily available to couples, to the law being used to strengthen marriages. This can be done by supporting the positive legal obligations of spouses through the establishment of strong, extra-judicial marriage support services, which may be a far more viable longer-term option to preserving marriages.

From a broader policy perspective, reducing the three-year time bar would also allow parties the opportunity to re-marry and start a family sooner. With the median age at first marriage increasing in recent years, the median age of divorce has also risen: The median age for men getting divorced is 43.4 years, and for women it is 39.3 years.¹⁵ Thus, both spouses have less time and less opportunity to re-marry and start a family. A shorter time bar would grant them the ability to move on to more fulfilling family lives.

Recommendation

AWARE suggests the Government reconsider their suggestion to keep the three-year time bar.

While we recognise the need to protect the sanctity of marriage, we are concerned that Singaporeans will have fewer opportunities to start a family as the median ages at first marriage and first divorce rise. Thus, AWARE recommends that the three-year time bar be reduced to either a one- or, at most, two-year period before divorce proceedings can commence to encourage Singaporeans to lead more satisfying family lives. This would be in line with the approach adopted in other jurisdictions,

¹³ The Law Reform Commission of Hong Kong. (1992) (rep.) *FOUNDATIONS FOR DIVORCE AND THE TIME RESTRICTION ON PETITIONS FOR DIVORCE WITHIN THREE YEARS OF MARRIAGE (TOPIC 29)*. Retrieved from <https://www.hkreform.gov.hk/en/docs/divorce-e.pdf> (accessed 30 April 2021)

¹⁴ Ong, D. (2003) "Time Restriction on Divorce in Singapore". *Singapore Journal of Legal Studies*, 418–443. <https://www.jstor.org/stable/i24868469>

¹⁵ "Fewer marriages, more divorces in Singapore last year". (2020, July 28) *ChannelNewsAsia*. <https://www.channelnewsasia.com/news/singapore/fewer-marriages-more-divorces-2019-singapore-singstat-12968970> (accessed 30 April 2021)

such as Australia, New Zealand and Canada, where no-fault divorce is available to couples who wish to exit their marriage after one or two years of living apart.

1.3 DISTIL CLEAR PRINCIPLES FOR MAINTENANCE CLAIMS

After the reason for the breakdown of the marriage is established in the first stage of divorce proceedings, the two divorcing parties will then discuss ancillary matters concerning their children and assets in the second stage. At this point, the amount of maintenance and the person to whom maintenance will be paid will also be determined.

It is during this phase that the divorcing parties may use the opportunity to air any frustrations they have with each other and strongly contest ancillary matters.¹⁶ In some cases, they end up taking years to resolve these, filing unnecessary applications in court to be heard or to aggravate the other party, leading to further strain on their relationship.

A review of relevant case law from 2018 to 2021 highlights that the courts have tended to cite the following as the general, applicable legal principles governing maintenance claims:

- (a) Section 114(1) of the Women's Charter sets out a non-exhaustive list of factors to be considered when determining maintenance orders.
- (b) The guiding principle behind the grant of maintenance is that of financial preservation.
- (c) Assessment for the award of maintenance is a multi-factorial inquiry; there is no automatic order of maintenance, and the court is required under Section 114(1) of the Women's Charter to have regard to all the circumstances of the case, and the list of factors set out under Section 114(1).

While the formulation of the legal principles appears to be theoretical or normative in nature, the application of these legal principles to the particular facts of the cases suggests more practical or empirical considerations. The Singapore courts have affirmed the philosophy of marriage as an "equal partnership", and this has informed much of the judicial approach towards the division of matrimonial assets and awards of maintenance.

However, there is a need for greater clarity moving forward with regard to the award of maintenance, particularly for husbands and non-working spouses, to account for evolving societal trends. Currently, the provisions of the Women's Charter appear to impose an *unequal duty* of maintenance between spouses. This runs counter to what is arguably one of the core principles of marriage underlying the Charter: that both spouses are regarded as *equal beings* capable of cooperating with each other to promote the interests of the marriage. The prevailing restriction on the payment of maintenance by a wife to her husband or former husband only if he is incapacitated does not reflect the changes in Singapore's socioeconomic landscape, and indeed undermines the intent of the Charter as a progressive piece of legislation.

¹⁶ Hariram, S. (2021) "How to make divorces less acrimonious". *TODAY Online*. Retrieved from <https://www.todayonline.com/commentary/how-make-divorces-less-acrimonious> (accessed 1 June 2021)

For maintenance claims by non-working spouses, while it is acknowledged that divorce proceedings are fact- and context-dependent, clarity is welcome when it comes to distilling the general principles behind the recognition of indirect contributions (e.g. by a non-working spouse in the form of unpaid care work of children and/or elderly dependents).

Specifically, there is no set formula for determining the payment of maintenance. General principles can only be distilled from case law, which is primarily fact-dependent and variable. In contrast, in jurisdictions like New York, worksheets to calculate guideline amounts for maintenance, as well as calculator tools, are made available to parties to give them a better sense of what they can expect to receive. Since 2010, New York law requires that courts use a fixed statutory formula to calculate temporary spousal maintenance awards, to ensure uniformity, consistency, and transparency. When calculating post-divorce maintenance, the same calculator and formula are utilised as a starting point, although judges have the discretion to amend the quantum depending on the circumstances of the case.

A similar, principled approach could be adopted in Singapore, whereby illustrative examples or a formula are provided to help parties manage their expectations around their maintenance claims. An estimated figure would assist parties and their lawyers and help expedite the process, as proceedings would not need to be extended to contest maintenance awards.

Recommendation

AWARE recommends that the Singapore courts publicly set out clear principles or develop a “Guide to Maintenance Awards” to accord clarity to parties during divorce proceedings, with a particular focus on setting out a formula for the calculation of maintenance claims.

AWARE further proposes that maintenance claims be made gender-neutral and strictly based on need. In other words, male spouses should have equal rights to claim maintenance. This can be reflected by the use of the general term “spouse” and the removal of the need for the husband to be “incapacitated” so that both husbands and wives can make a claim for maintenance.

1.4 STRENGTHEN THE MAINTENANCE ENFORCEMENT REGIME AND INTRODUCE MORE PROACTIVE ENFORCEMENT MEASURES

In the event of non-compliance with maintenance arrangements, the payee parent will often have to chase the defaulting parent for maintenance and, sometimes, resort to going to court to enforce the order. Some even choose to entirely forgo receiving maintenance as court proceedings to enforce it are typically time-consuming, stressful and expensive. This ends up hurting not only the relationship between parents, but also the well-being of children, as the parent with care and control becomes less able to fund their essentials.

Findings from a 2020 UK survey revealed that for about 80% of respondents, the system has enabled financial control and abuse from their ex-partners.

AWARE notes that efforts have been undertaken to strengthen the maintenance enforcement regime, which has remained a perennial challenge under the current system. In this regard, AWARE is heartened by the ongoing plans by the Family

Justice Courts, together with MSF, to simplify the process of serving summonses on the defaulting spouse, amongst other measures.

Amendments to the Women's Charter in 2011 have allowed the courts to impose additional sanctions beyond fines and imprisonment, such as directing an employer to pay the maintenance from the defaulter's wages to the person owed.

The establishment of the Maintenance Support Central, run by the Singapore Council of Women's Organisations, is another laudable effort to provide support to clients who face difficulty receiving spousal and/or child maintenance.

However, there is room to increase the number of remedies available to the courts to deal with defaulters, through more proactive enforcement measures.

In 2021, AWARE surveyed family lawyers to better understand their views on Women's Charter-related issues. Nearly 3 in 4 respondents indicated that their clients had to deal with continued non-compliance by their ex-partners even after court orders were enforced.

AWARE has also previously outlined the need for better enforcement of court orders, citing cases of divorced mothers who had trouble securing alternative housing because their ex-husbands did not comply with court orders to sell the matrimonial flats. Without first selling the matrimonial flat, neither party can buy nor rent public housing from the Housing & Development Board (HDB). Single parents are thus left with the option of either seeking housing from the private market—which is often costly and economically unsustainable—or living with friends and family, which can result in strained relations. It was revealed in Parliament that the enforcement of such court orders is not tracked. The lack of an adequate system to oversee the enforcement of such orders fails those who are owed maintenance and/or their share of matrimonial flat and often left in a vulnerable position with limited avenues for recourse.

An example of an independent, central body that oversees the enforcement of maintenance is the Social Insurance Institution of Finland, which provides social security coverage for Finnish residents and Finnish citizens abroad. The Institution pays child support to parents receiving maintenance if their former spouse is unable to pay or can only afford partial payment. It is financed by statutory health insurance contributions from insured citizens and employers, supplemented with funding from the public sector.

Other jurisdictions have also put in place myriad measures to lower the incidence of non-payment. For example, in Britain, defaulters may have their driving license suspended or revoked.

In Australia, the Family Court may order a property to be temporarily placed in a sequestrator's hands. The sequestrator can collect rent, takings or profits of a business, or prevent persons from entering the property, and pay amounts owed to the spouse receiving the maintenance.

British Columbia's Family Maintenance Enforcement Program is also authorised to take a number of actions against defaulters. These include registering a maintenance lien against the defaulter's personal property (such as a motor vehicle); notifying the federal government to suspend or refuse to issue the defaulter's passport; or refusing to issue or renew the annual license for a motor vehicle owned by the defaulter.

Recommendation

AWARE strongly urges the Government to consider granting enforcement powers to the Maintenance Support Central to facilitate the enforcement of maintenance orders and handle other related matters, in line with the approach adopted in other jurisdictions. This includes empowering the body to undertake stronger and more proactive enforcement measures to secure maintenance payments from defaulters.

1.5 ADDRESS PROCEDURAL HURDLES FOR MIGRANT SPOUSES IN DIVORCE PROCEEDINGS

Between 2018 and 2020, AWARE's legal clinic saw 57 clients who were migrant spouses married to Singaporean men; 34 of them had children. Of the 57 clients, 39 (68.4%) experienced challenges during their divorce proceedings due to their citizenship status.

Anecdotal evidence from the legal clinics reveal that migrant spouses face a number of unique challenges and legal procedural hurdles when they are subject to divorce proceedings in Singapore. AWARE's *Migrant Wives in Distress* report, published in 2020, highlighted several of these issues.¹⁷ They include:

(a) Limited access to legal aid and lack of understanding of legal processes

Many migrant spouses have asked for resources for legal aid, stating that they have been denied legal aid elsewhere because of their citizenship status.

Low-income migrant spouses face an additional barrier when they cannot afford the legal fees to engage a private lawyer for legal advice and/or representation. This places them at a considerable disadvantage in divorce proceedings.

The report also shared the findings of a study that observed that divorces between Singaporean men and non-resident wives usually went uncontested due to the parties' unequal bargaining power, lack of legal representation and the general difficulties faced by the migrant spouse in navigating the system. These ultimately have an impact on their ability to gain custody or care and control of their children. In fact, AWARE previously highlighted a local study which found that from 2011 to 2015, as many as 49% of the divorce cases between citizens and non-residents resulted in sole custody orders, with almost half awarded to Singaporean fathers.¹⁸ In contrast, joint custody was awarded to 76% of divorce cases between Singaporeans during the same period.

(b) Language barriers

For some migrant spouses who come from countries where English is not widely spoken, communication barriers can further exacerbate their challenges navigating Singapore's judicial system. They are unable to fully understand the processes

¹⁷ AWARE (2020) (rep.) *Migrant Wives in Distress: Issues facing non-resident women married to Singaporean men*. Retrieved from <https://www.aware.org.sg/wp-content/uploads/AWARE-Report-1-June-2020-Migrant-Wives-in-Distress.pdf> (accessed 30 April 2021)

¹⁸ Chong, N. Q. (2021, January 27) "Forum: Do more to help migrant spouses in divorce cases". *The Straits Times* <https://www.straitstimes.com/opinion/forum/forum-do-more-to-help-migrant-spouses-in-divorce-cases> (accessed 26 May 2021)

involved and the implications of divorce proceedings in Singapore. Moreover, they may not be able to communicate their needs or seek assistance.

(c) Right to stay in Singapore in the midst of divorce proceedings

On top of being forced from their homes by their husbands or in-laws, several clients expressed fears that their Dependent's Passes might be revoked if they were subject to divorce proceedings. Some of their partners also threatened to cancel their Long-Term Visit Passes (LTVP), resulting in significant confusion and anxiety.

Additionally, in AWARE's 2021 survey with family lawyers, several respondents identified limited accommodation options and high cost of living as challenges that migrant spouses are likely to face during the proceedings.

(d) Securing child custody

For migrant spouses, securing custody of their Singaporean children is challenging if they are unable to secure long-term residency. AWARE's 2020 report noted that a study of trends from cases filed in the Family Courts revealed that non-resident mothers were less likely than Singaporean mothers to obtain joint or sole custody of their Singaporean children. This was despite the fact that the majority of family lawyers we surveyed (88%) identified the best interest of the child as the main consideration in determining custody, which suggests that a joint custody arrangement would be ideal. Studies have shown that having both parents actively involved in a child's life can provide significant social, psychological, and health benefits to the child.

In addition, non-resident mothers were less likely to obtain care and control orders for their citizen children. Between 2011 and 2015, an analysis of cases with a joint custody arrangement revealed that 73.1% of divorce cases between Singaporeans resulted in the mother having sole care and control. This number drops to 58.2% in divorce cases between Singaporeans and non-residents.¹⁹

There is therefore a need for clarity and guidance afforded to migrant spouses during an especially difficult period of their lives. AWARE has recommended the publication of a one-stop information page or resource portal for migrant spouses and transnational couples, covering areas such as:²⁰

- Their legal rights;
- The types of passes or visas they can apply for;
- The qualifying criteria, conditions, benefits and rights that come with each type of pass or visa;
- Immigration status and divorce;
- Avenues for assistance.

¹⁹ Low, J., Lee, M. C., & Cha, Y. J. (2019) "International Divorces in Singapore: A Study of Trends from Cases Filed in the Family Courts". *The SAL Practitioner*.
<https://journalsonline.academypublishing.org.sg/Journals/SAL-Practitioner/Family-and-Personal-Law/ct/eFirstSALPDFJournalView/mid/594/ArticleId/1481/Citation/JournalsOnlinePDF> (accessed 30 April 2021)

²⁰ Chong, N. Q. (2021, February 16) "Creating a one-stop information page for migrant spouses". AWARE
<https://www.aware.org.sg/2021/02/creating-a-one-stop-information-page-for-migrant-spouses/> (accessed 30 April 2021)

These resource pages could be translated into different languages spoken by migrant spouses. This would help allay any confusion and anxiety over their rights during divorce proceedings.

Recommendations

As part of the ongoing consultation on amicable divorces, AWARE recommends that the Government consider the unique challenges migrant spouses face and accord greater protection to them, particularly migrant spouses with citizen children and those experiencing family violence. We reiterate our recommendations as follows:

- Publish a one-stop information page and/or resource portal for migrant spouses and transnational couples
- Provide special accommodation for abused migrant spouses to renew their LTVPs independently of their citizen spouses. This is done in a number of jurisdictions: For example, in the United States, the Immigration Reform Act of 1990 created a waiver to allow victims of domestic violence who obtained conditional permanent residency (based on their marriage to a US citizen) to file an application to remove that conditionality without the assistance of their spouse if said spouse was abusive. Similarly, the Violence Against Women Act (VAWA) of 1994 permitted non-citizen victims of domestic violence (the survivor spouse as well as their children) to obtain immigration relief without the consent or participation of the abusive spouse or parent, through a process called “self-petitioning”.²¹
- Grant LTVPs to all migrant spouses of Singaporean citizens
- In the context of divorce proceedings between a citizen and migrant spouse, make clear to all migrant spouses that visit passes cannot be cancelled unilaterally
- Provide migrant spouses who are awaiting the start of or are in the middle of their divorce proceedings with transitional housing, such as shelters
- Allow migrant spouses to access existing pro/low bono legal services available to citizens and set up free helplines to specifically support preliminary and basic procedural issues pertaining to family law. These helplines should offer basic information on spouses’ rights, important steps to consider before taking legal action, and options for resolution.
- Ensure that all migrant spouses are informed of their rights and avenues of support by providing a compulsory information session covering areas such as their legal rights; the types of passes or visas they can apply for and the relevant qualifying criteria, conditions, benefits and rights; immigration status and divorce; and available avenues for support and help
- Grant Permanent Residency (PR) status to migrant spouses upon (i) having a citizen child; (ii) the death of the citizen spouse; or (iii) at the latest, after three years on the LTVP unless there are specific circumstances to reject the application. Citizenship should also be made available to all PRs after a clearly defined and transparently published period.

²¹ American Immigration Council (2019, November 23). *Violence Against Women Act (VAWA) Provides Protections for Immigrant Women and Victims of Crime*. American Immigration Council. <https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-immigration> (accessed 26 May 2021)

Taken together, these recommendations would help address the challenges faced by migrant spouses in transnational divorce cases. Their rights to retain residency in Singapore and access housing should be ensured, to alleviate the difficulties they currently face in securing custody or care and control of their citizen children.

2. SUMMARY OF RECOMMENDATIONS

To summarise, AWARE has made the following recommendations in this submission:

- (a) Introduction of “amicable divorce”, alongside a new requirement to provide a statement of irretrievable breakdown of the marriage, in place of the current approach of proving any of the five facts
- (b) Reduction of the current three-year time bar before divorce proceedings can be commenced to either a one- or, at most, a two-year period
- (c) Publication by the Singapore courts of clear principles or a “Guide to Maintenance Awards” to accord clarity to parties to divorce proceedings, with a particular focus on setting out a formula for the calculation of maintenance claims to promote consistency and transparency
- (d) Clarification that maintenance claims are gender-neutral and strictly based on need; in other words, male spouses should have equal rights to claim maintenance. This can be reflected by the use of the general term “spouse” and the removal of the need for the husband to be “incapacitated” so that both husbands and wives can make a claim for maintenance.
- (e) Considering the granting of enforcement powers to the Maintenance Support Central to facilitate the enforcement of maintenance orders and handle other related matters. This includes empowering the body to undertake stronger and more proactive enforcement measures to secure maintenance payments from defaulters.
- (f) Accordance of greater protection to migrant spouses of citizens, particularly migrant spouses with citizen children and those experiencing family violence, in the following ways:
 - Publish a one-stop information page and/or resource portal for migrant spouses and transnational couples
 - Provide special accommodation for abused migrant spouses to renew their LTVPs independently of their citizen spouses
 - Grant LTVPs to all migrant spouses of citizens
 - In the context of divorce proceedings between a citizen and migrant spouse, make clear to all migrant spouses that visit passes cannot be cancelled unilaterally
 - Provide migrant spouses who are awaiting the start of or are in the middle of their divorce proceedings with transitional housing, such as shelters
 - Allow migrant spouses to access existing pro/low bono legal services available to citizens and set up free helplines to specifically support preliminary and basic procedural issues pertaining to family law. These helplines should include basic information on spouses’ rights, important steps to consider before taking legal action, and options for resolution.
 - Ensure that all migrant spouses are informed of their rights and avenues of support by providing a compulsory information session covering areas such as their legal rights; the types of passes or visas they can apply for and the relevant qualifying criteria, conditions, benefits and rights; immigration status and divorce; and available avenues for support and help

- Grant Permanent Residency (PR) status to migrant spouses upon (i) having a citizen child; (ii) the death of the citizen spouse; or (iii) at the latest, after three years on the LTVP unless there are specific circumstances to reject the application. Citizenship should also be made available to all PRs after a clearly defined and transparently published period.