AWARE and Disabled People's Association
Joint Submission on the Employment Act

14 February 2018

1. AWARE and Disabled People's Association (DPA) welcome this public consultation on the Employment Act (the "EA"). In the 2013 EA review, AWARE called for greater pregnancy and maternity protection, and for zero tolerance toward workplace sexual harassment (AWARE 2013). We applaud the positive changes enacted since then, including the extension of full maternity leave to pregnant employees regardless of marital status, and the issuance of the Tripartite Advisory for Managing Workplace Harassment (the "Harassment Advisory"). However, there remain significant gaps in the EA, some of which were also highlighted in a study done by DPA (in conjunction with the Institute of Policy Studies, NUS) where employees with disabilities shared their experience of discrimination in the workplace throughout the employment journey - from recruitment, to retirement/ retrenchment. These gaps in the EA leave room for employment-based discrimination against vulnerable employees and workers, including women, women and other employees with disabilities as well as those with caregiving responsibilities.

2. The Ministry of Manpower should, as a first step, ensure that all workers, regardless of position, type of contract, or salary earned, are protected under the EA. Furthermore, provisions under the EA should be informed by the principle of non-discrimination, with attention paid to the ways in which certain groups are disadvantaged or inadequately protected by existing legislation. Below, we highlight the experiences of women and other vulnerable workers and make recommendations for a more inclusive and comprehensive EA:
    - Extend EA coverage to all workers and employees in Singapore, including domestic workers
    - Prohibit employers to discriminate on the basis of gender, race or ethnicity, religion, congenital or acquired disability, age, marital status, sexual orientation and family or caregiving responsibilities
    - Require employers to address workplace sexual harassment and gender pay gap
    - Provide clear definitions and remedies for 'unfair dismissals'
    - Set up an independent body to look into all employment-related disputes, including unfair dismissal and workplace harassment complaints
    - Entitle all parents, regardless of citizenship status of their child, to the maximum quantum of childcare leave as available to parents of Singaporean children
    - Enhance maternity protection, including against dismissal upon return from maternity leave
    - Allow all employees to take paid eldercare or family care leave
    - Require employers to provide reasonable job accommodations for employees who acquire disabilities in the course of their employment

- Give all employees the right to request flexible-work arrangements to care for their child and/or elderly, and disabled family members. The employer is obliged to give the request serious consideration and must have a good business reason for declining any such request.
- Prohibit employers from penalising employees who take time-off to give care
- Prohibit employers from misrepresenting employment as independent contracting arrangement and dismissing employees to engage them as independent contractors.

Areas of Review

A. Core provisions

3. **Extending EA coverage:** All workers and employees in Singapore, regardless of position and salary earned, should be covered by the EA. Currently, it does not cover seafarers, domestic workers, managers or executives with monthly basic salary of more than $4,500, statutory board employees and civil servants. This adds up to a significant proportion of the local labour force. In 2016, 55.1% of Singapore residents were in PMET jobs and there were 243,000 domestic workers (Ministry of Manpower, 2017); civil servants form 4% of the labour force (The Straits Times, 2015).

4. The Ministry said that foreign domestics are not covered under the EA because it is "not practical to regulate specific aspects of domestic work, such as hours of work and work on public holidays." (MOM 2017) However, work permit conditions already purport to regulate matters such as living conditions and rest days; there is no convincing distinction between those regulations and the basic employment rights set out in the EA such as limits on working hours. The difference is merely in degree (domestic workers have less protection of their rights) rather than in kind (domestic work is not completely unregulated). This unequal treatment ultimately rests on - and reinforces - the devaluation of domestic work, the sense that it is not 'real' work, which in turn encourages disrespect of those who perform it.

5. The exclusion of domestic workers from the EA is also contrary to Singapore's commitment under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee, in its 2017 Concluding Observations, recommended that Singapore extend the EA to domestic workers to ensure that they are guaranteed the same level of protection and benefits as other workers, particularly with regard to public holidays, maximum weekly working hours, regular days of rest (CEDAW, 2017).

   Recommendation: Include all workers and employees in Singapore, including domestic workers, under the EA.

6. **Anti-discrimination legislation:** Workplace gender discrimination and attitudinal bias are present at all levels: hiring, promotion and firing.
    - A 2016 survey found that 66% of women in Singapore report experiencing unfair treatment in terms of career progression opportunities, remuneration, performance appraisal, and recruitment because of their gender (*JobStreet,* 2016).

    Marginalised groups (e.g. pregnant women, mothers, women wearing the hijab/tudung, ethnic minority women, lesbian/bisexual/transgender women, disabled women, older women) face additional forms of discrimination.
    - In a study (soon to be published) on workplace discrimination faced by people with disabilities, a job placement officer highlighted how companies and HR managers found loopholes to ensure they were not accused of discrimination. For example, companies who were not keen to hire persons with disabilities simply used the excuse of a mismatch in company culture (Disabled People's Association 2018).
    - A 2015 study found that transgender women often experience discrimination and stigma at hiring or during employment, limiting their opportunities to be hired and from succeeding at their work (Project X 2015).
    - From 2014 to 2017, we received at least 36 Helpline calls from women regarding pregnancy-related discrimination. Their experiences ranged from being harassed by co-workers to being terminated because of pregnancy.

7. There is no clear right to recourse for workers facing discrimination, and no legal duty for employers to avoid it. If complaints are made to the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP), it may mediate but in cases where mediation does not resolve the dispute, it cannot take enforcement measures such as reinstatement, compensation or punishment. S14 of the EA makes provisions for complaints to the Minister of Manpower in cases of unfair dismissals, but does not define unfairness or provide legal rights to a remedy (limitations of S14 are further discussed in paragraphs 22 and 23).

8. Having ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2013, the Singapore government is committed to ensuring that discrimination on the basis of disability is prohibited. In particular, Article 27 of the CRPD mandates that the Government should take appropriate steps to prohibit discrimination on the basis of disability throughout recruitment, hiring, career advancement and redress of grievances. The current mandate of TAFEP does not allow it to properly address the commitments set forth in Article 27.

    Recommendation: Forbid employers to discriminate on the basis of gender, race or ethnicity, religion, congenital or acquired disability, age, marital status, sexual orientation

and family or caregiving responsibilities. An administrative body should monitor and enforce compliance. Provide legal remedies for discrimination.

9. **Workplace sexual harassment (WSH):** The Protection from Harassment Act (POHA) was enacted in recognition that the prevailing law did not adequately deal with workplace harassment, including sexual harassment. In the second reading of the POHA Bill, the Minister of Law described an instance of WSH and stated that "women who are sexually harassed at the workplace or outside will now have a clear remedy" (Shanmugam, 2014). WSH is thus recognised as a legal wrong and problem requiring remedy. However, the remedies provided under POHA are limited in scope and access - the process to obtaining a Protection Order (PO) is expensive and complex, and breach of a PO is a non-seizable offence, meaning that police have no obligation to investigate or initiate charges (AWARE, 2014).

10. Mandating employers to have WSH policies instead of relying only on the PO/civil suit regime has several key advantages:

    - It is better at preventing WSH from occurring. Legal remedies often seem remote. Employer policies pro-actively integrated into organisations will be much more effective in fostering an atmosphere of zero tolerance for WSH.
    - It offers a more effective way of addressing WSH. Perpetrators are often in more senior positions than victims, who hesitate to use the law without explicit assurance from employers that they will not be victimised for it (e.g. terminated). Police action in response to a PO breach is cumbersome, where a company can take swift, straightforward measures.
    - It is better for businesses. Victims who feel unsupported by employers often simply leave, affecting staff retention. Moreover, staff relations may be unnecessarily damaged by employees seeking POs and lawsuits, rather than resolving complaints through less polarising internal grievance processes.

11. Yet, employers are still not required to institute policies against WSH (a concern also highlighted by the UN CEDAW Committee in 2017). The Government also does not monitor how many employers have implemented the Harassment Advisory. According to the Ministry, fewer than 5 complaints lodged with TAFEP between 2015-2017 involved workplace harassment (Lim, 2017). In contrast, the Sexual Assault Care Centre saw 108 cases of workplace sexual harassment last year. Many of SACC's clients have raised no formal complaint with their employers or any other authorities. Some victims only have the confidence to come forward in response to a proactive assurance that they will be taken seriously; yet such assurance is lacking at the moment. SACC has supported at least two women who lost their jobs after making a report (one to her boss and one to her HR) against their harassers.The low figures from TAFEP are therefore not an indication that there are few WSH cases, but rather that structures which encourage

reporting and appropriate handling of complaints are lacking in many workplaces, as well as in society at large.

12. Jurisdictions with anti-discrimination legislation define sexual harassment as a form of discrimination against women, and employers have a legal duty to prevent workplace sexual harassment (e.g. Australia and Ontario). Singapore is also obliged under its commitment to CEDAW and CRPD to ensure that employers do the same.

13. Article 27, Section (b) of the CRPD highlights that State Parties shall "Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, **including protection from harassment**, and the redress of grievances". In line with this, it is important to ensure that workplace policies regarding sexual harassment be communicated to all staff and employees in a manner that they can understand. This includes accessible formats such as Easy Read Versions so that all employees can understand the process, and how to assert their rights.

14. Women with disabilities tend to be more vulnerable to sexual harassment, and understanding their rights through accessible texts would benefit them, as well as women with lower educational qualifications, and women returning back to the workplace after an extended time away. This is also in accordance to Article 9 of the CRPD that ensures that "States Parties shall take appropriate measures to ensure to persons with disabilities access, on and equal basis with others to...information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public...".

    Recommendation: Require employers to take all necessary and reasonable steps (e.g. having written policies and relevant, appropriate training for staff) to prevent and deal with workplace sexual harassment, including by implementing the Tripartite Advisory. Ensure that workplace policies regarding sexual harassment be communicated to all staff and employees in a manner that they can understand.

15. **Gender pay gap:** As a signatory to the International Labour Organisation's C100 - Equal Remuneration Convention, 1951 (No. 100), Singapore is obliged to adhere to the principle of equal remuneration for men and women workers for work of equal value. In 2016, women earned less than men (usually over 10%) in all occupational categories except clerical support (MOM, 2016). Company directors face a 43% gender wage gap (*The Business Times,* 2017). The gender wage gap has not changed much since 10 years ago, and stood at 18% in 2017 (*The Straits Times,* 2017). Even in industries that are traditionally associated with women, the gap is more than the 18% average (e.g. 29% in health & social services, 20% in public administration & education), suggesting that women's labour in general is devalued, in comparison to men's.

16. Many employers, including in the public (and non-profit) sectors, offer higher salaries for men because they performed two years of compulsory military National Service (NS), from which women are exempt. However, compensation for NS should be appropriate pay and benefits during NS, not a lifelong wage differential, which clearly goes against the principle of equal pay for work of equal value. If men are consistently paid more than women for the same labour, even if NS contributions are the underlying rationale, it promotes the idea that men's work and efforts are inherently worth more than women's.

17. The gender pay gap is also attributable to horizontal and vertical segregation: women tend to be overrepresented in lower-paying jobs and lower-paying positions across sectors. Higher-income women experience wider pay gaps - company directors face a 43.2% pay gap (*The Business Times,* 2017). The CEDAW Committee has recommended that Singapore reduce the gender wage gap by regularly reviewing wages in sectors in which women are concentrated, and establishing effective monitoring and regulatory mechanisms for employment and recruitment practices to ensure that the principle of equal pay for equal value is adhered to in all sectors (CEDAW, 2017).

18. One example Singapore could consider would be Quebec's Pay Equity Act (1996). The Act requires employers to redress differences in compensation suffered by people who occupy positions in the predominantly female job classes (International Labour Office, Geneva 2016). It identifies wage discrimination through a comparison between female-dominated and male-dominated jobs for the same employer or the same establishment, an evaluation of these jobs using a non-discriminatory method of analytical job evaluation, and an estimate of the pay gap between these jobs (International Labour Office, Geneva, 2016). It then assigns responsibility for the employer to ensure gender pay equity which increases with the size of the company (International Labour Office, Geneva, 2016). Therefore, this Act requires employers to address both horizontal and vertical segregation within their domain, going beyond the principle of equal pay for equal work.

19. Pay secrecy contributes to unequal pay. A recent letter to the Straits Times forum (2018) expressed concerns that some companies keep pay information secret through non-disclosure agreements, and that this secrecy makes it easier for employers to hide income disparity since employees do not have the necessary information to negotiate for better pay. On the other hand, making pay information public, or allowing employees the right to information would mean that employers have to justify differences in pay, making it more difficult for justifications based on discriminatory reasons. Further requirements for pay audits or assessments could then be a next step towards correcting pay gaps. According to The Workplace Gender Equality Agency (Australia), the pay gap is largest when pay is secret (20.6%) and almost non-existent when made public (*The Conversation,* 2016).

Recommendation: Require employers to publish gender and disability-disaggregated salary and bonus data, and carry out evaluations assessing if pay gaps are due to gender or other forms of discrimination. Compensate those who perform NS through NS pay and benefits; remove wage differentials in non-NS positions that are presently justified by reference to NS.

20. **S14 [Dismissal]:** AWARE has received calls from women who are unsure about their rights when it comes to discriminatory dismissals. Several women who called the AWARE Helpline said that they were terminated or forced to resign after their employers knew that they were pregnant, which is against the law (dismissal because of pregnancy is prohibited). Some have called MOM or gone to TAFEP for help but we are not aware if any of them received compensation or any kind of remedy.

21. In other situations, the legality of the dismissal is less clear. For example, one mother was allegedly told to leave when she returned from her maternity leave as the company had carried out a retrenchment exercise while she was away. However, she also reported being “nitpicked” and “mentally abused” by her superior while she was pregnant, and strongly suspected that the superior took the retrenchment exercise as a chance to “get rid” of her. Maternity protection ends when the mother returns from maternity leave, yet there is still a case to be made as to whether this dismissal was fair since her experiences suggests that her performance was assessed based on her pregnancy and motherhood, which is a form of discrimination against women.

22. However, the current provisions on dismissal in the EA does not seem to generally allow for a dismissal to be disputed based on discrimination. This is because S14 does not actually define what ‘unfair’ dismissal is, leaving room for ambiguities and misunderstandings. This is especially a problem for individuals with disabilities. For example, a stroke survivor with mobility issues who had successfully navigated an interview and signed the letter of employment, was let go from the job with immediate effect (and without being given a valid reason) after a colleague had reported witnessing the individual slipping and falling on the way to the toilet. Hence, it should be required for employers to explain to staff members why they are being dismissed, in a way that they can understand. This may include requiring employers to communicate reasons for dismissal using simple language, and Easy Read text or other accessible formats.

    In Australia, an employee has been unfairly dismissed if the Fair Work Commission is satisfied that:

    a. The person has been dismissed; and
    b. the dismissal was harsh, unjust or unreasonable; and
    c. the dismissal was not consistent with the Small Business Fair Dismissal Code; and
    d. the dismissal was not a case of genuine redundancy.

Section 387 of the Act sets out the criteria for considering harshness etc, including whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); whether the person was notified of that reason; whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person etc (Australian Government, 2009).

23. Furthermore, there is no clear legal remedy provided under S14 of the EA in cases of unfair or wrongful dismissals. The current provision for an employee to make representations in writing to the Minister to be reinstated in their former employment is an appeal to administrative discretion, and does not constitute a legal remedy. It is also inappropriate for such legal rights to be adjudicated upon by the executive. Such matters should come under the purview of the Court or other judicial body that is independent of the executive Government.

24. This could be in the form of an employment tribunal, as in the case of the United Kingdom, where the tribunal can order a range of actions for the employer including paying compensation, paying witness expenses for the complainant, improving the complainant's working conditions, and reinstatement (*GOV.UK* 2017) . In Australia, claims are handled by the Fair Work Commission. The Fair Work Act states a number of criteria to determine the amount for compensation e.g. the length of service with employer; the remuneration that the person would have received, or would have been likely to receive, if the person had not been dismissed; the efforts of the person (if any) to mitigate the loss suffered by the person because of the dismissal (Australian Government, 2009).

    Recommendation: Provide clear definitions under S14 of what constitutes 'unfair dismissal'. This definition should specifically include various forms of discrimination. Set out legal remedies for unfair dismissals. Set up an independent body to look into all employment-related disputes, including unfair dismissal claims.

25. **Part IX [Maternity Protection and Benefits and Childcare Leave for parents]:** All parents, regardless of gender, should be protected in the exercise of their right to care for their children, without being penalised in the workplace. Enshrining the right of fathers to take paternity leave under the EA strengthens the message that fathers have a role to play in childcare. Part IX of the EA should therefore be expanded to include paternity protection and other relevant provisions under the Child Development Co-Savings Act (CDCA).

26. Provisions for childcare-related leave (maternity, paternity leave etc) under the CDCA and EA discriminate between parents of Singaporean children and those of non-Singaporean children. Parents of non-Singaporean children have fewer

childcare-related leave days than parents of Singaporean children. However, the nationality of the child is irrelevant to the amount of care they need from their parents, or the parents' right to a family life. Under Article 18 of the Convention of the Rights of the Child (CRC), state parties are obliged to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities"; while Article 2 sets out the principle of non-discrimination, including on the basis of parents' nationality, in respecting and ensuring the rights of the child. Giving parents of non-Singaporean children a shorter quantum of childcare-related leave limits their time and ability to care for their children.

Recommendation: Remove requirement for child to be a Singaporean citizen for provisions under Section III [Maternity protection and benefits…]; S12(H) to S12(J) [Paternity leave]; S12(D) [Unpaid infant care leave] and S12(E) to S12(G) [Shared parental care leave] of the CDCA. Include these provisions under the EA. Amend S87A of the EA to allow all parents, regardless of citizenship status of their child, to be entitled to the maximum quantum of childcare leave as available to parents of Singaporean children.

27. **Adoption leave**
    Recommendation: Include in the EA the right to take adoption leave, as provided for under CDCA S12(A)(A) to S12(A)(D). Adoptive fathers should be entitled to same length of adoption leave as mothers since considerations like breastfeeding and post-partum recovery are not applicable here.

28. **Unpaid infant care leave**
    Recommendation: Amend S12(D) of CDCA to provide for six days of government-paid infant care leave. Employees who take additional unpaid infant care leave should not be penalised.

29. **Protection against dismissal after maternity leave:** There is no job protection after a mother returns from maternity leave. AWARE has encountered a case where an employee returned to work from her maternity leave to find a letter of termination on her desk. As mentioned earlier in paragraphs 6 and 20 , we have also received complaints from mothers who reported being "nitpicked", "harassed" or "bullied" at work while pregnant or upon returning from maternity leave, with at least one mother subsequently dismissed after returning from maternity leave.

30. There should be protections for mothers to return to their jobs upon returning from maternity leave. In the United Kingdom, it is unfair dismissal and maternity discrimination if the employer does not let a mother return to work after maternity leave, or if they offer her a different job without a strong reason. Employers cannot offer mothers a different job if:
    - Their job still exists - for example if they've given it to someone else

- Their job would still exist if you hadn't gone on maternity leave
- The new job isn't something they could do
- The new job has worse conditions or pay than the previous one (Citizens Advice, UK 2018)

Recommendation: Prohibit any termination during an employee's pregnancy, maternity leave as well as three months after returning to work from her maternity.

B. Additional protection for more vulnerable employees

31. **Recognising other forms of vulnerabilities:** Aside from protecting low-income and lower-skilled workers, attention also needs to be paid to other forms of vulnerability. As explained earlier, workers tend to be discriminated against on the basis of certain traits like gender, race/ethnicity, religion, disability, age, marital status, sexual orientation and family or carer's responsibilities. We therefore repeat our call to enact comprehensive anti-discrimination legislation that would protect the rights of these vulnerable workers.

32. Furthermore, we call for employees with caregiving responsibilities to be recognised as vulnerable employees. Employees with caregiving responsibilities, majority women, are often forced to choose between work and care. To foster a truly family-friendly and inclusive society, work should accommodate care needs, not the other way around.

33. Preliminary findings from our ongoing research into the work and caregiving experiences of low-income women show that those who take time off to give care are penalised by their employers. Employers have expressed displeasure when a mother had to take time off to care for her children, or dismissed a mother for taking leave to care for her sick children. For example, one mother had to be away from work for two weeks as her child contracted Hand, Foot, Mouth disease and could not be left in the childcare centre. Her employer did not appreciate this and dismissed her. Dependents with disabilities would also require additional time off to schedule doctor appointments, therapy sessions, and other caregiving needs. This may also apply to parents who have dependents with disabilities at home. Other respondents reported that during interviews, employers expressed skepticism about their ability to juggle work and caregiving, and did not manage to get the job as a result.

34. **Eldercare or family care leave:** As the population ages, the care demands on working adults will only grow. Most employees in Singapore are not entitled to paid parental care leave. The Ministry of Manpower (2016) reported that only 19.5% of employers they surveyed offered such leave. Other employees who do not enjoy such leave entitlements would have to forgo income to care for their elderly family members. For more information on lessons Singapore could draw from countries with legislated eldercare leave, please refer to AWARE's recommendations to the 2018 national Budget.

Recommendation: Allow all employees to take paid eldercare leave. The Government should consider at least partially reimbursing employers for such leave. Alternatively, the six days of childcare leave offered to parents can be converted to family leave for all employees, so they can take paid care leave to care for their children or parents. To reduce the burden on employers, the Government should consider at least partially reimbursing employers for such leave.

35. **Accommodations for acquired disabilities:** Employees acquiring a disability while working for the company is a reality for employers. Currently, there is no requirement for the company to provide accommodations for these employees, such as redesigning a job, holding a position until an individual is ready to come back to work, or offering an alternative role that is equivalent to their current role in terms of pay grade, and level of position. For example, an individual who was a registered nurse and who acquired a disability had the doctor's endorsement to be given a more structured working schedule in order to accommodate her medication needs in view of her diagnosis. Although she offered to take a demotion to facilitate this, she was not given permission and was instead given an unfavourable appraisal subsequently. Nor was she offered any accommodations for her disability. Upset and demoralised, she eventually resigned (Disabled People's Association, 2018).

36. Acquired disabilities such as mobility issues and sensory impairments, within an aging workforce will increasingly become a challenge that needs to be dealt with. A possible solution would be to make job accommodations as is in the case of India, where it is stated within The Rights of Persons with Disabilities Act, 2016, Chapter IV, Section 20 (4) that "Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits: Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier."

    Recommendation: Employers should provide reasonable job accommodations for employees who acquire disabilities in the course of their employment so that they may continue in their current role, if possible.

37. **Right to ask for flexible work arrangements (FWA):** Mothers we interviewed said that having an employer who understands the challenges of working mothers and flexible working hours and working hours that fit childcare centre opening hours are crucial to being able to keep their jobs. For example, a mother who had a flexible employer was able to bring her son to work if needed. Another was working in a beauty salon where the timing was very flexible as she could schedule her own appointments to accommodate her caregiving needs. In contrast, one mother had to quit her F&B job because she could not commit to the hours requested, which included working on weekends as there was nobody else to take care of her children.

38. There are signs that more employers are introducing FWA to better enable employees to juggle family responsibilities. However, take-up rate does not seem high (*Human Resources Director Asia,* 2017), and a vast number of women remain outside the labour force despite such provisions. There is a need to find out what the barriers are to utilising FWA and let employees have the right to request for FWA. However, we also understand from speaking with an organisation working with low-income women that flexi-time often ends up with women having to work late-night shifts. In implementing the FWA, it is important the employees - not employers - have the right to decide what hours they want to work. While it may not always be practicable for employers, they should at least be obliged to consider and explore the feasibility of the request rather than dismissing it out of hand.

39. In the UK, all employees who have worked for their employer continuously for 26 weeks has the statutory right to request for FWA. Previously, the right to request for FWA was only available to those with caregiving responsibilities (*The Guardian* 2014).

    Recommendation: As a first step, give all employees the right to request flexi-time (where employees decide what hours to work) or other FWA to care for their child and/or elderly, and disabled family members. The employer is obliged to give the request serious consideration and must have a good business reason for declining any such request.

C. Enhance dispute resolution services

40. The current dispute resolution services are insufficient. The Tripartite Alliance for Dispute Management and The Employment Claims Tribunals only handle salary-related disputes; while unfair dismissal claims are processed by the Minister for Manpower. As explained earlier, it is inappropriate for a Minister to handle such complaints and appeals. Other disputes, such as workplace harassment, cannot be resolved through these channels.

    Recommendation: We repeat our call for an independent body to be set up to look into all employment-related disputes, including unfair dismissal and workplace harassment complaints.

D. Others - Protection for all workers in Singapore

41. **Misrepresentation of employment relationship:** The EA primarily protects employees i.e. those who have entered into a contract of service with their employer. Workers under contracts for services are not covered under the EA. Many women employees with disabilities may be employees under a “Contract For Services”, thus allowing their employer to avoid providing benefits. These, employers may disguise an employment

relationship as one of a client-contractor type instead of engaging the worker as an employee, to avoid giving them traditional employment benefits (e.g. annual leave, CPF contributions) as a result. Often, employees with disabilities are employed under temporary contract due to perceived issues of acquiring insurance for them, however are tasked with working the hours of full time staff without the benefits. While a court may in theory find that a contract purporting to be a “contract for services” is in substance a “contract of service”, bringing a legal challenge may be burdensome. The EA itself does not provide for any remedies should a worker find themselves in such arrangements.

42. In Australia, Sections 357 and 358 of the Fair Work Act (2009) prohibits employers from misrepresenting employment as independent contracting arrangement and dismissing employees to engage them as independent contractors. Fair Work Inspectors (government officials appointed by the Fair Work Ombudsman under the Fair Work Act 2009) can seek the imposition of penalties for contraventions under these Sections. They may also apply to the courts to grant an injunction or an interim injunction if an employer threatens to dismiss an employee for the purpose of engaging them as an independent contractor (Australian Government, 2009). The purpose of the injunction would be to prevent the dismissal from occurring, or otherwise remedy the effects (Australian Government, 2009). Courts can also make other orders to have the employee reinstated or compensated (Australian Government, 2009).

    Recommendation: Prohibit employers from misrepresenting employment as independent contracting arrangement and dismissing employees to engage them as independent contractors. Empower an independent body (as recommended in Paragraph 41) to investigate claims regarding the misrepresentation of employment.

43. As Singapore shifts away from formal employment towards an informal economy, more workers will become self-employed; work on more temporary forms of contracts or work in the informal economy, and fall outside the EA. Fewer people would be able to enjoy social security benefits (e.g. Employer CPF contributions, medical benefits, paid leave) that formal employment offers. More thinking needs to go into how to protect the employment rights of such workers. This could include the enactment of a comprehensive anti-discrimination act which would apply beyond the context of employment and cover the situations of self-employed and other informal workers. In our submissions to the public consultation on the top challenges of self-employed persons, AWARE (2017) made further recommendations to safeguard the well-being of non-employee workers, particularly with regards to their financial security and access to social security benefits.

References

Association of Women for Action and Research (AWARE)

(2013). *Employment Act must step up to protect women at work.* Retrieved from: http://www.aware.org.sg/2013/02/employment-act-must-step-up-to-protect-women-at-work/ [Accessed 13 February 2018].

(2014). *Recommendations for the Harassment Bill.* Retrieved from: http://www.aware.org.sg/2014/03/awares-recommendations-on-the-protection-from-harassment-bill/ [Accessed 13 February 2018].

(2017). *AWARE Submission - Consultation on SEPs' Top Concerns for the Future Economy.* Retrieved from: http://www.aware.org.sg/2017/12/aware-submission-consultation-on-seps-top-concerns-for-the-future-economy/ [Accessed 13 February 2018].

(2018). *Budgeting for Gender Equality: AWARE's submissions to the 2018 National Budget.* Retrieved from: http://d2t1lspzrjtif2.cloudfront.net/wp-content/uploads/Budget-for-gender-equality-AWARES-Budget-recommendations-2018-1.pdf [Accessed 13 February 2018].

Australian Government

(2009). *Fair Work Act 2009.* Retrieved from: https://www.legislation.gov.au/Details/C2017C00323 [Accessed 13 February 2018].

(2009). "Independent contractors and employees". Retrieved from: https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/independent-contractors-and-employees [Accessed 13 February 2018].

Citizens Advice, UK (2018). "Maternity Leave - your options when it ends". Retrieved from: https://www.citizensadvice.org.uk/work/rights-at-work/parental-rights/maternity-leave-your-options-when-it-ends/ [Accessed 13 February 2018].

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (2017). *Concluding observations on the fifth periodic report of Singapore.* Retrieved from: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskcAJS%2fU4wb%2bdIVicvG05RwNu4B3gFsGLGnHHPdDbcdListPjSxtjh3CsjiKCSARvfmpojkjKAQHbP8QyZctE4gtnnv6T%2bHBYLKwZJ7kJ3NW

Disabled People's Association (2018). *Discrimination Faced by People with Disabilities at the Workplace: A Qualitative Study by Disabled People's Association (DPA) and Institute of Policy Studies (IPS)*.

GOV.UK (2017). “Being taken to an employment tribunal” Retrieved from: https://www.gov.uk/being-taken-to-employment-tribunal-by-employee/lose-the-case [Accessed 13 February 2018]

Human Resources Director Asia (2017). “How many SG employees are in flexible working arrangements?” Retrieved from: https://www.hrdmag.com.sg/news/how-many-sg-employees-are-in-flexible-working-arrangements-234984.aspx [Accessed 13 February 2018].

International Labour Office, Geneva (2016). *CLOSING THE GENDER PAY GAP: A REVIEW OF THE ISSUES, POLICY MECHANISMS AND INTERNATIONAL EVIDENCE.* Retrieved from: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_540889.pdf

JobStreet (2016). “JobStreet.com Survey Reveals Working Mothers Spend Less than Two hours with Their Children on a Work Day.” Retrieved from: https://www.jobstreet.com.sg/career-resources/jobstreet-com-survey-reveals-working-mothers-spend-less-two-hours-children-work-day/#.WoEtSdup3OR [Accessed 13 February 2018].

K, Shanmugam. (2014). *Second Reading Speech by Minister for Law, K Shanmugam, on the Protection from Harassment Bill,* 13 Mar. Retrieved from: https://www.mlaw.gov.sg/news/parliamentary-speeches-and-responses/2R-by-minister-on-protection-from-harassment-act.html [Accessed 13 February 2018].

Lim, Swee Say. (2017). *Written Answer by Mr Lim Swee Say, Minister for Manpower, to Parliamentary Question on Tripartite Advisory on Managing Workplace Harassment,* 6 Nov. Retrieved from: http://www.mom.gov.sg/newsroom/parliament-questions-and-replies/2017/1106-written-answer-by-mr-lim-swee-say-minister-for-manpower-to-parliamentary-question-on-tripartite-advisory-for-managing-workplace-harassment [Accessed 13 February 2018].

Ministry of Manpower

(2016). *Conditions of Employment 2016* Retrieved from: http://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd_coe-2016.pdf#page=16

(2016). *Labour Force in Singapore 2016.* Retrieved from: http://stats.mom.gov.sg/Pages/Labour-Force-In-Singapore-2016.aspx

(2017). *Foreign Workforce Numbers.* Retrieved from: http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers

(2017). *Contracts and safety agreement for foreign domestic worker.* Retrieved from: http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/contracts-and-safety-agreement

Project X (2015). *They only do this to transgender girls: Abuses of transgender sex workers in Singapore.* Retrieved from: http://theprojectx.org/wp-content/uploads/2015/11/They-Only-Do-This-to-Transgender-Girls-Singapore-Report-Final.pdf

The Business Times (2017). "Female directors on SGX listcos paid substantially less than male counterparts: NUS study." Retrieved from: http://www.businesstimes.com.sg/companies-markets/female-directors-on-sgx-listcos-paid-substantially-less-than-male-counterparts-nus [Accessed 13 February 2018].

The Conversation (2016). "To close the gender pay gap we need to end pay secrecy." Retrieved from: http://theconversation.com/to-close-the-gender-pay-gap-we-need-to-end-pay-secrecy-31626 [Accessed 13 February 2018].

The Guardian (2014). "Flexible working extended to all employees in UK". Retrieved from: https://www.theguardian.com/law/2014/jun/30/flexible-working-extended-all-employees-uk [Accessed 13 February 2018].

The Straits Times

(2015). "Parliament: Singapore's public sector expected to grow 2.5% a year." Retrieved from: http://www.straitstimes.com/singapore/parliament-singapores-public-sector-workforce-expected-to-grow-25-a-year [Accessed 13 February 2018].

(2017). "Mindsets need to change to bridge gender pay gap: Ong Ye Kung." Retrieved from: http://www.straitstimes.com/singapore/mindsets-need-to-change-to-bridge-gender-pay-gap-ong-ye-kung [Accessed 13 February 2018].

(2018). "Reveal salaries to fight pay disparity". Retrieved from: http://www.straitstimes.com/forum/letters-in-print/reveal-salaries-to-fight-pay-disparity [Accessed 13 February 2018].