

LEGISLATING FAIRNESS

Singapore's Workplace Fairness Legislation

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On 8 January 2025, Singapore's Parliament passed the Workplace Fairness Bill, a landmark piece of legislation within Singapore's employment law landscape. The Bill prohibits specific discriminatory practices in the workplace, while formally incorporating the Ministry of Manpower's Fair Consideration Framework into the legislative regime. This article offers a detailed examination of the Bill's provisions, and explores the Bill's potential impact on public discourse as well as its role in fostering a fairer and more equitable workplace environment in Singapore.

LIM Fang-Zhou, Noah¹

LLB (First Class Honours) (National University of Singapore);

Advocate and Solicitor (Singapore);

Trainee Associate, Clifford Chance Pte Ltd.

I. Introduction

1 On 12 November 2024, the Ministry of Manpower (“MOM”) introduced the Workplace Fairness Bill,² which was subsequently passed on 8 January 2025 (the “WFL”). Having first been announced by then-Prime Minister Lee Hsien Loong in

1 This article was written in the author's personal capacity. All opinions expressed herein are entirely the author's own, and all errors and mistakes remain the author's alone.

2 Bill No 50/2024. Abigail Ng, “Proposed Law on Workplace Fairness Tabled in Parliament to Protect Workers From Discrimination”, CNA (12 November 2024) <<https://www.channelnewsasia.com/singapore/workplace-fairness-bill-law-discrimination-manpower-ministry-4740771>> (accessed 19 March 2025).

his National Day Rally 2021 speech,³ the WFL has been described as a “strong national signal against various forms of workplace discrimination”,⁴ and will come into effect sometime in 2026 or 2027.⁵

2 This article provides an overview of the WFL, examining its key provisions and providing critical observations and reflections. It argues that while the Bill represents a significant milestone in Singapore’s labour law framework, it is inherently a work in progress, with room for future amendments to enhance its efficacy.

II. Background and context

3 The Government has long been clear that all forms of workplace discrimination are not tolerated.⁶ However, the reality is that discrimination continues to exist in Singapore workplaces. For example, between 2014 and the first half of 2021, the Tripartite Alliance for Fair and Progressive Employment Practices (“TAFEP”) received an average of 379 workplace discrimination complaints a year.⁷

4 To be clear, this figure fell to approximately 315 complaints a year over the last five years, as at July 2023.⁸ The Government has, on its part, also stated that the majority of employees in Singapore feel that they are fairly treated in their organisations, with close to 80% of the respondents to a 2018

3 Lee Hsien Loong, Prime Minister, National Day Rally 2021 speech (29 August 2021) <<https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2021-English>> (accessed 19 March 2025).

4 Singapore Parl Debates; Vol 95, Sitting No 125; [27 February 2024] (Heng Chee How, Senior Minister of State for Defence).

5 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 40 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

6 Singapore Parl Debates; Vol 95, Sitting No 101; [21 April 2023] (Dr Tan See Leng, Minister for Manpower).

7 Singapore Parl Debates; Vol 95, Sitting No 38; [14 September 2021] (Dr Tan See Leng, Minister for Manpower).

8 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

survey conducted by MOM stating that they did not perceive any kind of discrimination in finding work.⁹ Nevertheless, any discrimination in the workplace is unacceptable, and it is hoped that the WFL will meaningfully contribute towards improving upon these figures.

5 The WFL is expected to become operational sometime in 2026 or 2027.¹⁰ Meanwhile, all workplace discrimination complaints remain covered under the Tripartite Guidelines on Fair Employment Practices (“Tripartite Guidelines”), and through TAFEP. The Tripartite Guidelines “[set] out fair employment practices for adoption by employers”,¹¹ and provide that “[e]mployers are expected to abide by the principles of fair employment and adopt the recommended good practices”.¹² In particular, the Tripartite Guidelines cover various aspects of fair employment practices, including: (a) recruiting and selecting employees on the basis of merit; (b) treating employees fairly and with respect; (c) providing employees with equal opportunity to be considered for training and development; and (d) rewarding employees fairly based on their ability, performance and contribution. The Tripartite Guidelines further stipulate various traits which should not be used as a requirement for employment, including age, race, and gender, providing guidance on limited instances where these traits may legitimately be used as a criterion for employment. Breaches of the Tripartite Guidelines are punishable with administrative penalties under the MOM Fair Consideration Framework, with errant employers being debarred from hiring new foreign workers or renewing the work passes of existing foreign employees for a period of time.

9 Singapore Parl Debates; Vol 94, Sitting No 116; [3 February 2020] (Zaqy Mohamad, Minister of State for Manpower).

10 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 40 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

11 Tripartite Guidelines on Fair Employment Practice (reprinted August 2024) at p 1 <<https://www.tal.sg/tafep/-/media/tal/tafep/getting-started/files/tripartite-guidelines>> (accessed 19 March 2025).

12 Tripartite Guidelines on Fair Employment Practice (reprinted August 2024) at p 1 <<https://www.tal.sg/tafep/-/media/tal/tafep/getting-started/files/tripartite-guidelines>> (accessed 19 March 2025).

6 While the Tripartite Guidelines demonstrate Singapore’s desire to eliminate workplace discrimination, they may lack the robustness needed to ensure comprehensive protection against discrimination in the workplace. Indeed, the Tripartite Guidelines have been criticised as “a weak deterrence [that was] routinely flouted”, with the penalties “neither appropriate nor sufficient”.¹³ In Parliament, it was also observed that this regime is “ambiguous”, resulting in some employers taking advantage of loopholes or feigning ignorance.¹⁴

7 To this end, the WFL has been described as a “significant step forward in enhancing protection for workers from workplace discrimination, as well as strengthening fair employment practices and outcomes”.¹⁵ As a product of “close cooperation amongst [the] tripartite partners – the Government, National Trades Union Congress (NTUC), and Singapore National Employers Federation (SNEF)”,¹⁶ the WFL is intended to strengthen Singapore’s framework for workplace fairness,¹⁷ giving the existing regime more “teeth and bite” by legislating expanded powers of investigation, enforcement and punishment against companies, employers and even individuals who discriminate in an employment context.¹⁸ In various parliamentary sessions, it has been described as (a) a means of ensuring that TAFEP is “given more resources and the powers to wield a bigger stick”;¹⁹ and (b) a means of empowering Singapore’s workplace fairness

13 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Louis Ng Kok Kwang, Member of Parliament for Nee Soon).

14 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Saktiandi Supaat, Member of Parliament for Bishan–Toa Payoh).

15 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

16 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 3 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

17 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

18 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Patrick Tay Teck Guan, Member of Parliament for Pioneer).

19 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Saktiandi Supaat, Member of Parliament for Bishan–Toa Payoh).

regime to be “more assertive”²⁰ and to “act with more punch”²¹ against discrimination.

III. Overview of the WFL

A. Protections under the WFL

8 The protections under the WFL are intended to cover all “employees” – any individual who has entered into or works under a contract of service with an employer, except for (a) any seafarer within the meaning of s 2(1) of the Employment Act 1968;²² (b) any domestic worker within the meaning given by s 2(1) of the Employment Act 1968; and (c) any employee in any prescribed category, class or description of employees.²³ However, small companies with 25 or fewer employees are currently exempted from the obligations under the WFL (bar the Fair Consideration Framework under cl 26 of the WFL).²⁴

9 In turn, the WFL protects employees from discrimination on the basis of eleven “protected characteristics” – these are (a) age; (b) nationality; (c) sex; (d) marital status; (e) pregnancy; (f) caregiving responsibilities; (g) race; (h) religion; (i) language ability; (j) disability; and (k) mental health condition²⁵ – the precise scope of some of these characteristics are further defined within the WFL.²⁶

(1) Scope of prohibition against discrimination

10 Pursuant to cl 17(1) of the WFL, employers are prohibited from making an adverse employment decision in relation to an individual on the ground of a protected characteristic.²⁷

20 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Saktiandi Supaat, Member of Parliament for Bishan–Toa Payoh).

21 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Saktiandi Supaat, Member of Parliament for Bishan–Toa Payoh).

22 2020 Rev Ed.

23 Workplace Fairness Bill (Bill No 50/2024) cl 2.

24 Workplace Fairness Bill (Bill No 50/2024) cl 4.

25 Workplace Fairness Bill (Bill No 50/2024) cl 8.

26 Workplace Fairness Bill (Bill No 50/2024) cl 9–16.

27 Workplace Fairness Bill (Bill No 50/2024) cl 17(1).

Clauses 5 to 7 of the WFL clarify the ambit of what constitutes an “employment decision” across the life cycle of an employment relationship, which includes the making of a decision to hire or not hire an individual, the making of decisions as to an employee’s performance appraisal, promotion and training opportunities, and the making of a decision to dismiss, retrench or terminate the contract of service of an employee.²⁸

11 Various aspects of cl 17 merit further consideration. First, cl 17(1) makes clear that discrimination is made out where an adverse employment decision is made either (a) on the ground of a protected characteristic of the individual; or (b) on the ground of two or more reasons, one of which is a protected characteristic of the individual.²⁹ The fact that the protected characteristic is one of the grounds on which an employment decision was made would thus suffice for the purposes of establishing discrimination.

12 In so doing, this provision attempts to guard against discriminatory biases.³⁰ To illustrate this, where an employer knows that an individual is of a certain age, and thereafter decides not to employ the individual based on age alone, this would clearly constitute discrimination under cl 17(1) of the WFL. However, take a slightly different example, where an employer interviews an older individual for a manual job requiring physical strength, and assumes that by virtue of the individual’s age, they may not be able to perform as well as a young person. The employer subsequently decides not to hire the interviewee on this basis. The employer’s assumption here may relate to his assumption that the physical characteristic of strength is linked to age (which the younger candidate is assumed to possess more of than the older candidate), which is not *itself* a protected characteristic. Nevertheless, by virtue of the employer’s assumption linking the individual’s age with his strength, the protected characteristic of age would be one of the grounds on which the employer’s adverse

28 Workplace Fairness Bill (Bill No 50/2024) cll 5–7.

29 Workplace Fairness Bill (Bill No 50/2024) cl 17(1).

30 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 19 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

employment decision was made, and this would accordingly be caught within the ambit of cl 17(1) of the WFL. The result could be different if the employer administered physical strength tests for both the older and younger employees, and made the decision based on the test results (and not age).

13 It bears iterating that the wording of the provision, and the scope of protection conferred by cl 17(1), ultimately hinges on the interpretation of the phrase “on the ground of”. While this article interprets the meaning of this phrase in accordance with the expressed parliamentary intention that the WFL captures discriminatory biases, it is also recognised that the existing wording of the provisions could benefit from further clarification. For this purpose, it is respectfully suggested that any future iteration of the WFL include an express provision clarifying that:

Where an employment decision is made by reason of:

- (a) a characteristic that appertains generally to the protected characteristic of the individual; or
- (b) a characteristic that is generally imputed to persons with the same protected characteristic of the individual,

the employment decision is deemed to have been made on the ground of that protected characteristic.

14 Second, cl 17(2) of the WFL provides that it is not necessary to prove that the individual was treated or affected differently compared to any other individual. In practice, this provision goes some way in mitigating the difficulties that an aggrieved individual might otherwise face either in proving that they were treated differently, or in finding a similarly-placed comparator for the purposes of demonstrating that they were discriminated against.

15 Third, cl 17(3) provides that an employment decision made only on the ground of a protected characteristic of a relative or an associate of the individual is not discrimination. It is perplexing why this carve out against discrimination by association needed to be made. While the explanation provided was that “[i]t is difficult

to draw the line where discrimination by association starts and ends”, and that legislating for this could have “an untoward effect of creating a culture of suspicion and distrust between employers and employees”,³¹ it is suggested that the need to eradicate discrimination of all forms within the workplace merits the inclusion of such a prohibition. The mere difficulty in proof does not justify the inclusion of this carve out, since frivolous and vexatious claims can, and indeed are routinely, filtered out through the standard of proof (*ie*, whether the evidence adduced is sufficient to establish a claim on the balance of probabilities).

16 While concerns about litigiousness within the workplace are valid, it is equally important to note that in such cases, the scales of power generally incline in favour of the employer. If allowing aggrieved employees with the ability to vindicate their substantive rights comes at the cost of marginally increased litigiousness within the Singapore workplace, then this may arguably be a price worth paying. In any case, the mediation-centred approach adopted by TAFEP, coupled with the acknowledged lack of any TAFEP cases to date dealing with cases of discrimination by association,³² suggests that concerns over litigiousness may well be overstated.

17 Lastly, cl 17(4) of the WFL clarifies that a protected characteristic means the protected characteristic as it exists at the relevant time, or as it is suspected, assumed or believed by the person making the employment decision at the relevant time. This ensures that discriminatory practices based on an employer’s suspicion, assumption or belief as to the existence of a protected characteristic would suffice for the purposes of establishing discrimination, even if it were to transpire that the relevant individual does not in fact have such a protected characteristic. To illustrate this, where an employer assumes

31 Dr Tan See Leng, Minister for Manpower, Round Up Speech at Workplace Fairness Bill (8 January 2025) at para 20 <<https://www.mom.gov.sg/newsroom/speeches/2025/0108-round-up-speech-for-the-workplace-fairness-bill>> (accessed 19 March 2025).

32 Dr Tan See Leng, Minister for Manpower, Round Up Speech at Workplace Fairness Bill (8 January 2025) at para 20 <<https://www.mom.gov.sg/newsroom/speeches/2025/0108-round-up-speech-for-the-workplace-fairness-bill>> (accessed 19 March 2025).

that because of an interviewee's skin colour, they are of a certain race, and thereafter decides not to employ the individual, this would constitute discrimination under cl 17(1) read with cl 17(4) of the WFL, *regardless* of whether or not the interviewee is in fact of that particular race.

18 The WFL further prohibits discrimination by an employer's issuance of a direction, instruction or policy,³³ and discrimination by an employer's advertisement or job description.³⁴

(2) *Omissions from the WFL*

19 To be clear, there are other characteristics which may warrant protection, and this point was made multiple times over the course of the parliamentary debate during the Second Reading of the Bill. The current list of protected characteristics under the WFL appears to represent a pragmatic approach by Parliament by capturing the bulk of existing cases at first instance. In this connection, it has been observed that the scope of the existing list of protected characteristics covers more than 95% of the discrimination cases reported to TAFEP,³⁵ with the Fair Employment Practices 2023 report noting that age discrimination was the most common form of discrimination in the Singapore workplace, followed by race and nationality.³⁶

20 As stated by the Minister for Manpower, the intention underlying the WFL is for it to “[start] on a more scoped and surer footing to ensure we can preserve the precious workplace and social harmony that we enjoy today, while remaining open to future updates to the list of protected characteristics”.³⁷ It has

33 Workplace Fairness Bill (Bill No 50/2024) cl 18.

34 Workplace Fairness Bill (Bill No 50/2024) cl 19.

35 Singapore Parl Debates; Vol 95, Sitting No 114; [4 October 2023] (Dr Tan See Leng, Minister for Manpower).

36 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 2.1.2 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

37 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 26 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

further been clarified that the Tripartite Guidelines will continue to enable TAFEP and the MOM to tackle workplace discrimination on all other characteristics,³⁸ yet, at the same time, it is clear that the standard of protection afforded under this regime pales in comparison to that available under the WFL. The longer the Government takes to decide whether a particular characteristic ought to merit protection under the WFL, the longer persons with these traits remain vulnerable to discrimination, with a recent *The Straits Times* commentary suggesting that some seven in ten LGBTQ+ Singaporeans face work-related discrimination.³⁹

21 Also excluded from the text of the WFL are provisions relating to indirect discrimination, and the requirement for employers to provide reasonable accommodation for employees, in particular those with disabilities. There appear to be three reasons for this, the first being that such issues currently form a small proportion of cases dealt with by TAFEP. Indeed, between 2019 and 2023, TAFEP only received eight complaints of indirect discrimination, and no complaints on the denial of reasonable accommodation,⁴⁰ though it could be argued that these low numbers may be attributable in part to employees' lack of knowledge regarding their ability to request reasonable accommodations in the first place.

22 Second, the Government's position is that there is difficulty in clearly defining reasonable accommodation, and that this could both result in heavy litigation and result in an overly rigid approach that deters employers from hiring employees in need of such accommodation.⁴¹ The potential for legal uncertainty, and the wide legal obligations that such provisions would

38 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 26 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

39 Clement Tan, "Forum: LGBTQ+ Workers Left Behind Again in New Legislation", *The Straits Times* (15 January 2025) <<https://www.straitstimes.com/opinion/forum/forum-lgbtq-workers-left-behind-again-in-new-legislation>> (accessed 19 March 2025).

40 Singapore Parl Debates; Vol 95, Sitting No 135; [7 May 2024] (Dr Tan See Leng, Minister for Manpower).

41 Singapore Parl Debates; Vol 95, Sitting No 135; [7 May 2024] (Dr Tan See Leng, Minister for Manpower).

impose on an employer, were thus factors that the Government felt militated against the introduction of a prohibition against indirect discrimination, as well as a positive duty to provide reasonable accommodation.

23 Finally, the Government has suggested that there is nevertheless protection for those who face indirect discrimination or the denial of reasonable accommodation under the Tripartite Guidelines,⁴² with plans for a Tripartite Advisory for Reasonable Accommodations to be rolled out as part of efforts to increase awareness and provide guidance for employers.⁴³ However, as previously discussed, the WFL was enacted precisely because the existing regime lacked sufficiently robust enforcement mechanisms. Moreover, it has been confirmed by the Government that any guidance made available through the tripartite advisories is merely intended to “complement” the new law, and the contents of these advisories will not be a part of the WFL.⁴⁴ Seen in this light, while the Tripartite Guidelines may indeed “cover all other forms of workplace discrimination”, the *extent* of the protections available under this regime is markedly lower as compared to the protections enshrined within the WFL.

B. Exceptions under the WFL

24 Several exceptions have also been built into the WFL. These exceptions each appear to be premised on a different underlying intention, and this article will briefly cover each of these exceptions. Clause 20(1) of the WFL provides that it is not discrimination for an employer to do any act that would otherwise constitute discrimination under the WFL⁴⁵ if the relevant protected

42 Singapore Parl Debates; Vol 95, Sitting No 135; [7 May 2024] (Dr Tan See Leng, Minister for Manpower).

43 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 22 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025); Singapore Parl Debates; Vol 95, Sitting No 135; [7 May 2024] (Dr Tan See Leng, Minister for Manpower).

44 Singapore Parl Debates; Vol 95, Sitting No 135; [7 May 2024] (Dr Tan See Leng, Minister for Manpower).

45 Workplace Fairness Bill (Bill No 50/2024) cll 17–19.

characteristic is a genuine requirement of a job. This provision is intended to provide additional flexibility to employers, where protected characteristics are taken into account for the purposes of genuine business needs by the employer.⁴⁶ Under cl 20(2), a protected characteristic is a genuine requirement of a job if:⁴⁷

- (a) having regard to the nature of the job, the job cannot be reasonably performed by an individual unless the individual has (or does not have) the protected characteristic;
- (b) the job needs to be performed by an individual who has (or does not have) the protected characteristic to preserve the health or safety of the individual or any other individual;
- (c) the job needs to be performed by an individual who has (or does not have) the protected characteristic to preserve standards of privacy (whether reasonable or not) of the individual or any other individual; or
- (d) the job must, under any written law or by any requirement imposed under any written law, be performed by an individual who has (or does not have) the protected characteristic.

25 Clause 21 of the WFL provides that it is not discrimination to do any act that would otherwise constitute discrimination under the WFL because the individual is younger than the prescribed age. This provision introduces safeguards in relation to the employment of young persons and children.

26 Clause 22 of the WFL provides that it is not discrimination to do any act that would otherwise constitute discrimination under the WFL because the individual is neither a citizen of Singapore nor a permanent resident of Singapore. As acknowledged by the Government, this exception is intended to be responsive to “concerns of Singaporeans about whether foreigners are taking over their jobs”,⁴⁸ and seeks to grant employers the ability to strengthen their local workforce without being hindered by the

46 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at paras 27–28 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

47 Workplace Fairness Bill (Bill No 50/2024) cl 20(2).

48 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 14 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (cont'd on the next page)

provisions of the WFL. In this connection, cl 26 of the WFL codifies into law the existing Fair Consideration Framework,⁴⁹ which requires employers in Singapore to fairly consider the Singapore workforce for job opportunities. This codification expands the MOM's powers of enforcement by granting it the power to issue administrative penalties against errant employers.

27 Clause 23 of the WFL provides that it is not discrimination for any religious group that employs, or seeks to employ, an individual for any office or employment connected with the affairs of the religion, to restrict such office or employment to persons professing that religion. This exception is intended to grant religious groups with greater flexibility for roles that are religious in nature, while preserving common space for secular jobs, and seeks to strike a balance between these two considerations given Singapore's multi-religious social fabric.⁵⁰

28 Lastly, cl 24 of the WFL provides that it is not discrimination for an employer to decide not to hire an individual because the individual does not have a disability. The stated intention behind this exception is to "facilitate greater employment opportunities for [persons with disabilities] by allowing employers to favour persons with disabilities in their hiring decisions".⁵¹ To date, the Government's longstanding policy has been based on "the principles of equal opportunities and meritocracy, [emphasising] equal opportunities for all, and a reward system based on performance".⁵² However, to promote equality in the face of antecedent structural inequality is to entrench inequality within

mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill (accessed 19 March 2025).

49 "Fair Consideration Framework (FCF)", *Ministry of Manpower* <<https://www.mom.gov.sg/employment-practices/fair-consideration-framework>> (accessed 19 March 2025).

50 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 20 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

51 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 21 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

52 Singapore Parl Debates; Vol 95, Sitting No 135; Col 432; [7 May 2024] (Dr Tan See Leng, Minister for Manpower).

society⁵³ – Anatole France’s “The Red Lily” is famous for its ironic aphorism that “[t]he law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread”.

29 The Government appears to recognise the need to help persons with disabilities overcome the existing structural barriers and inequalities that they may face within the workplace. In line with the Government’s Enabling Masterplan 2030,⁵⁴ cl 24 arguably represents an attempt by the Government to promote *substantive* equality in relation to the protected characteristic of disability, as opposed to mere *formal* equality. Within existing anti-discrimination law literature, such an approach has much to commend it, with Fredman arguing that the inherent asymmetry of such an approach means that it is possible to reconcile affirmative action with the right to equality – while apparently breaching the principle of equal treatment, such an approach “in reality advances substantive equality by taking steps to redress the disadvantage”.⁵⁵

C. Requirement for grievance handling processes

30 Another key development stemming from the WFL is that under cl 27(1) of the WFL, employers are required to develop a process, under which the employer commits, in writing, to inquiring into grievances raised by their employees, as well as reviewing them and informing the aggrieved employees of the result of the inquiries.⁵⁶ An employer is also required to keep a written record of every inquiry and review, and must not

53 Sandra Fredman, “Substantive Equality Revisited” (2016) 14(3) *International Journal of Constitutional Law* 712 at 718.

54 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 21 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>>(accessed 19 March 2025); “Enabling Masterplan 2030”, *Ministry of Social and Family Development* <<https://www.msf.gov.sg/what-we-do/enabling-masterplans/emp2030>> (accessed 19 March 2025).

55 Sandra Fredman, “Substantive Equality Revisited” (2016) 14(3) *International Journal of Constitutional Law* 712 at 729.

56 Workplace Fairness Bill (Bill No 50/2024) cll 27(1)(a)–27(1)(c).

disclose the identity of the aggrieved employee or any information relating to the inquiry or review.⁵⁷

31 Such a requirement is a positive development, given the existence of studies indicating that the existence of formal procedures to manage discrimination had a statistically significant effect in reducing the likelihood of discrimination across most forms of discrimination.⁵⁸ In 2023, 63.2% of resident employees worked in firms with formal procedures to manage workplace discrimination, up from 49.6% in 2018,⁵⁹ but given the benefits of such formal systems and procedures, the Government appears to have recognised that more needs to be done to ensure that such systems are put in place across the workplace.

32 The Government has, on its part, stressed that this provision was drafted with an intention to “[refrain] from being overly prescriptive on the detailed requirements ... given the diversity of firms in [Singapore’s] economy”,⁶⁰ so as not to impose onerous obligations on employers. Instead, guidance for employers is provided through more informal channels, with TAFEP producing various resources for employers to refer to in developing and implementing a grievance handling process,⁶¹ and plans to produce further guidance for employers.⁶²

57 Workplace Fairness Bill (Bill No 50/2024) cl 27(1)(d)–27(1)(e).

58 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 3.2 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

59 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 3.1 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

60 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 33 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

61 “Grievance Handling”, *Tripartite Alliance for Fair and Progressive Employment Practices* <<https://www.tal.sg/tafep/employment-practices/grievance-handling>> (accessed 19 March 2025).

62 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 34 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

D. Protections against retaliation

33 Related to the establishing of formal grievance handling procedures is the need to enhance employees' trust in such systems. In this vein, it has also been observed that those subject to discrimination may be hesitant to step forward to report instances of discrimination.⁶³ For example, in 2023, 29.3% of employees who faced discrimination at work sought help, down from 35.3% the year before.⁶⁴ Some of the key reasons for this reluctance to come forward include (a) the fear of being marginalised at work; (b) the possibility of a detrimental impact on their career; and (c) the fear that the management would not handle the case impartially.⁶⁵

34 In response, the Government has made clear that their intention is to encourage people to come forward by “put[ting] in place safeguards against retaliation”.⁶⁶ Indeed, it was stated in Parliament that:⁶⁷

It is beneficial for those who experienced workplace discrimination or harassment to come forward so that problems can be resolved and positive norms can be established.

We will therefore need to incorporate legal protections to promote transparency and fairness by safeguarding employees' confidentiality and preventing retaliation by the employer. In this aspect, *I hope that policies can be put in place to mandate that employers set up formal grievance handling processes that are communicated clearly to employees. Equally important in the process, is to ensure confidentiality of the whistle-blowers and prohibit*

63 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Seah Kian Peng, Member of Parliament for Marine Parade).

64 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 4.1 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

65 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 4.2 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

66 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

67 Singapore Parl Debates; Vol 95, Sitting No 51; [1 March 2022] (Patrick Tay Teck Guan, Member of Parliament for Pioneer).

retaliation against employees, ex-employees and potential employees, who report discrimination or harassment.

[emphasis added]

35 To this end, cl 28 of the WFL prohibits an employer from doing any retaliatory act in relation to an employee who raises valid grievances or to an employee who brings, or provides evidence/information in relation to, proceedings against the employer or a fellow employee under the WFL.⁶⁸ The definition of a retaliatory act is also framed broadly under cl 28(2) to include “any other detriment in relation to the employee’s employment”,⁶⁹ thus expanding the scope of protection for employees against retaliation from their employer.

E. Dispute resolution mechanisms

36 The WFL is the first of two pieces of legislation dealing with discrimination, with the second Bill dealing specifically with the resolution of claims in relation to workplace discrimination.⁷⁰ Nevertheless, the Government has provided a broad overview of the likely approach that will be adopted in the second Bill, stating that the focus is on “resolving disputes at the source as much as possible and emphasising mediation rather than litigation”,⁷¹ with plans to empower the Employment Claims Tribunals (“ECT”) to hear workplace discrimination claims.⁷² As elaborated on in Parliament, where cases cannot be resolved through the firms’ internal grievance handling process, parties will go through mediation, with adjudication as a last resort.⁷³

68 Workplace Fairness Bill (Bill No 50/2024) cl 28(1).

69 Workplace Fairness Bill (Bill No 50/2024) cl 28(2)(f).

70 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 40 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

71 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

72 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 43 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

73 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 42 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (cont’d on the next page)

The emphasis here is on preserving a non-litigious culture, and fostering open communication and trust between the parties.⁷⁴

37 Indeed, workplace harmony has been described as an “invaluable hallmark of Singapore’s employment landscape”,⁷⁵ with the Government consistently stressing the need to maintain a workplace culture that is “harmonious and not litigious”.⁷⁶ It is a constant refrain that legislating in a heavy-handed way could result in a legal framework that is “overly onerous and [could] inadvertently deter employers from setting up shop here and hiring the very groups that we seek to protect”.⁷⁷ An overly rigid framework, accordingly, could potentially end up hurting all parties involved, and the employer-employee relationship could suffer if the workplace becomes increasingly cautious and litigious.⁷⁸

38 Be that as it may, it is suggested that further safeguards may need to be put in place to protect the rights of employees, given that they are generally in a weaker bargaining position and do not have deep pockets.⁷⁹ Placing the onus on an aggrieved employee to pursue the existing avenues for recourse ultimately imposes a significant burden on the employee, who would not only have to contend with the financial cost of pursuing such claims, but also the inherent fear of retaliation by the employer. It remains to be seen how this delicate balance is struck within the provisions of the second Bill.

www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill (accessed 19 March 2025).

74 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 42 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

75 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

76 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

77 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Dr Tan See Leng, Minister for Manpower).

78 Singapore Parl Debates; Vol 95, Sitting No 114; [4 October 2023] (Dr Tan See Leng, Minister for Manpower).

79 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Patrick Tay Teck Guan, Member of Parliament for Pioneer).

IV. Concluding reflections

39 Given the recent passage of the WFL into law, and at this relatively nascent juncture, there are two points which bear emphasis. The first is that in eliminating discrimination from the workplace, Singapore cannot afford to rest on its laurels, and must continue to adapt and adjust its approach according to the changing social context. The WFL certainly represents commendable progress in this regard, and the Government has sought to strike the delicate balance between ensuring equitable treatment for individuals/employees on the one hand, and supporting business needs on the other.

40 Be that as it may, there remain various aspects of the WFL which ought to be further strengthened. In addition to the points highlighted in the preceding discussion, there have been suggestions that any written decisions made by the ECT in respect of workplace discrimination claims should be published by default. While the Government have stated that they “will consider this as part of the workplace fairness legislation review”,⁸⁰ it is suggested that this should be adopted as a priority. This is because over and above its substantive function (*ie*, the prescribing and limiting of substantive rights) and its procedural function (*ie*, the defining of relevant processes through which rights may be vindicated), the law also plays a vital expressive/signalling function, with the power to either clarify the existing position at law, or to “reconstruct existing norms and to change the social meaning of action through a legal expression or statement about appropriate behaviour”.⁸¹

41 To be sure, the mere existence of the WFL signals the importance placed on workplace equality, and sends a loud and clear message against various forms of workplace discrimination.⁸²

80 Singapore Parl Debates; Vol 95, Sitting No 107; [5 July 2023] (Dr Tan See Leng, Minister for Manpower).

81 Cass R Sunstein, “On the Expressive Function of Law” (1996) 144 *University of Pennsylvania Law Review* 2021 at 2031.

82 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Patrick Tay Teck Guan, Member of Parliament for Pioneer); Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Louis Ng Kok Kwang, Member of Parliament
(*cont'd on the next page*)

However, allowing the ECT's written decisions to be published by default would go further in providing clear guidance to both employers and employees alike on the permissible boundaries of the employment relationship, thereby introducing greater clarity as Singapore's employment law regime undergoes this period of development and change. Pertinently, it would also enable knowledge about employees' rights to become more widespread, engendering greater transparency and accountability within this process. As noted in the MOM's Fair Employment Practices 2023 report:⁸³

Greater transparency in data pertaining to the prevalence of workplace discrimination, firmer stances on discriminatory practices and action against errant employers are some of the ways which confidence and trust can be built towards formal channels.

42 In this connection, the Government appears to acknowledge that the existing position under the WFL is merely intended to serve as a temporary solution; starting on a "more scoped and surer footing to ensure [that Singapore] can preserve the precious workplace and social harmony that [it] enjoy[s] today, while remaining open to future updates".⁸⁴ For example, the WFL exempts small companies with 25 or fewer employees from the obligations under the WFL (bar the Fair Consideration Framework under cl 26 of the WFL),⁸⁵ on the basis that they may have "limited capabilities and resources and that this can make full compliance from day one difficult".⁸⁶ However, these

for Nee Soon); Singapore Parl Debates; Vol 95, Sitting No 125; [27 February 2024] (Heng Chee How, Senior Minister of State for Defence).

83 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 4.2 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

84 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 26 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

85 Workplace Fairness Bill (Bill No 50/2024) cl 4.

86 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 47 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

small companies remain subject to the Tripartite Guidelines,⁸⁷ and in any case, this exemption from the WFL is not intended to be indefinite, with a review to be carried out in five years after the implementation of the WFL.⁸⁸ The commendable progress that the WFL represents should therefore not detract from the significant work that remains outstanding in developing an anti-discrimination regime that is truly responsive to Singapore's needs.

43 Relatedly, the second point is that addressing discrimination is a complex process that takes time, and requires a whole-of-society effort that the law alone cannot replace. This was a point frequently emphasised over the course of parliamentary debates, namely, that laws do not necessarily guarantee better employment outcomes, and that legislation is neither a “panacea” nor a “silver bullet”.⁸⁹

44 There is a need to consider the full spread of options in determining what would work best in the Singaporean context,⁹⁰ including the need to educate and develop mindsets in relation to workplace equality. To the extent that the WFL exists and represents a step forward in attaining workplace equality, much credit must be given to the Government for the evolution of its own mindset over the years. In the context of the gender pay gap, for example, the Government previously denied that there was inequality or discrimination in the workplace, stating in the past that “while differences in wages still exist, ... [these are] not the result of discrimination at work”,⁹¹ and that any

87 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

88 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at para 47 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

89 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill (7 January 2025) at paras 6 and 49 <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

90 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Dr Tan See Leng, Minister for Manpower).

91 Singapore Parl Debates; Vol 75, Sitting No 4; Col 431; [22 July 2002] (Dr Lee Boon Yang, Minister for Manpower).

differences in wages between men and women were a result of “legitimate work-related reasons such as working experience, years of service, types of jobs held and skills”.⁹² It was further stated that any differences in wages between men and women were because “[women] are not doing the same job ... if you are doing the same job, you will be getting the same reward”.⁹³

45 While the differences in wages in the past might indeed have been attributable in part to “legitimate work-related reasons”, such a perspective is liable to mislead, in so far as it fails to account for the structural inequalities that may persist in the workplace, which must undoubtedly be addressed. It is thus heartening to note the Government’s increasing engagement with such issues, with growing recognition of the gender wage gap. For example, it was observed in Parliament that as of 2021, women earned a median salary of \$342 less than a male comparator, and had a significantly lower labour force participation rate.⁹⁴

46 The Government has in recent times emphasised a “promotional and capability-building approach” towards addressing employment discrimination.⁹⁵ It has also acknowledged that rooting out discrimination is a “whole-of-society effort”,⁹⁶ requiring knowledge, understanding and ownership by employers, and the support from employees. Indeed, it is only through this multi-pronged approach of meaningful legislation and robust public engagement that workplace equality can represent a goal to work towards, rather than a mere theoretical pipe dream.

47 In 2023, all forms of discrimination declined compared to 2022, except for age and nationality discrimination which

92 Singapore Parl Debates; Vol 75, Sitting No 4; Col 431; [22 July 2002] (Dr Lee Boon Yang, Minister for Manpower).

93 Singapore Parl Debates; Vol 75, Sitting No 4; Col 445; [2 July 2002] (Dr Lee Boon Yang, Minister for Manpower).

94 Singapore Parl Debates; Vol 95, Sitting No 33; [26 July 2021] (Louis Ng Kok Kwang, Member of Parliament for Nee Soon).

95 Singapore Parl Debates; Vol 94, Sitting No 21; [11 July 2016] (Grace Fu Hai Yien, Minister for Culture, Community and Youth).

96 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

saw a rise after a steady decline over the years.⁹⁷ The passing into law of the WFL, which will come into effect sometime in 2026 or 2027,⁹⁸ thus comes at a critical juncture in Singapore’s journey towards eliminating discrimination in the workplace. The WFL is intended to represent a “measured first step”,⁹⁹ with further calibration down the line when the need arises. Through measured and thoughtful policy-making and legislation, it is hoped that Singapore can continue to strive towards a fairer and more harmonious workplace.¹⁰⁰

97 Manpower Research and Statistics Department, Ministry of Manpower, *Fair Employment Practices 2023* (September 2024) at para 2.2.3 <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2024/fair-employment-practices-report-2023.pdf>> (accessed 19 March 2025).

98 Dr Tan See Leng, Minister for Manpower, Second Reading Speech at Workplace Fairness Legislation Bill at para 40 (7 January 2025) <<https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>> (accessed 19 March 2025).

99 Singapore Parl Debates; Vol 95, Sitting No 105; [3 July 2023] (Dr Koh Poh Koon, Senior Minister of State for Manpower).

100 Dr Tan See Leng, Minister for Manpower, Round Up Speech at Workplace Fairness Bill (8 January 2025) at para 42 <<https://www.mom.gov.sg/newsroom/speeches/2025/0108-round-up-speech-for-the-workplace-fairness-bill>> (accessed 19 March 2025).