



# BUILDING FAIRER & MORE HARMONIOUS WORKPLACES

Tripartite Committee on  
Workplace Fairness Final Report





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## PREFACE

The Tripartite Committee on Workplace Fairness (the “Committee”) was formed in July 2021 to study policy options to strengthen workplace fairness. In February 2023, the Committee published an Interim Report on key aspects of the proposed legislative framework for public feedback. The Committee has reviewed the feedback received and updated some of its recommendations to take the feedback into consideration. This report sets out the Committee’s final recommendations.



# EXECUTIVE SUMMARY

## STATE OF WORKPLACE FAIRNESS

1. In multi-racial multi-religious Singapore, our workplaces must adopt fair and merit-based practices, so that all employees have the opportunity to develop their potential, gain the right skills, and progress in their careers.
2. The tripartite partners' journey towards upholding workplace fairness began more than two decades ago. Early efforts focused on education and shaping mindsets. As awareness and understanding of workplace fairness improved, we began coupling education with enforcement against discriminatory acts by employers. Singapore has made progress under this approach.
3. The latest Ministry of Manpower (MOM) Fair Employment Practices Survey (2022) found that the proportion of resident job applicants who said that they experienced discrimination during their job search had fallen from 43% in 2018 to 24% in 2022. The proportion of resident employees who said that they had experienced discrimination at work was 8% in 2022<sup>1</sup>, lower than the European Union average of 11%.<sup>2</sup>
4. Nevertheless, workplace discrimination remains a concern amongst some jobseekers and employees in Singapore today. We can do more to ensure that we have a strong and robust system in place to uphold workplace fairness.
5. The Tripartite Committee on Workplace Fairness (the "Committee") was formed in July 2021 to review the options to strengthen workplace fairness. The Committee agreed that legislation can enhance the current framework in the following ways:
  - a. **Strengthen the overall framework for workplace fairness.** Enacting legislation provides legal protection against workplace discrimination.
  - b. **Formalise mediation as the preferred approach to resolving disputes relating to workplace discrimination.** Singapore's framework for resolving workplace disputes centres on mediation rather than litigation. This approach should continue to be adopted for workplace discrimination claims under the new legislation.
  - c. **Provide remedies for harm done.** Legislation can provide individuals an additional avenue to seek redress for harm done due to workplace discrimination, apart from the existing remedies for wrongful dismissal.
  - d. **Provide appropriate enforcement levers against discriminatory acts by a small group of errant employers.** The enforcement lever used currently is the curtailment of work pass privileges. With legislation, a wider range of enforcement levers is available, so that more calibrated action can be taken against those responsible for breaches of the legislation.

<sup>1</sup> Source: Fair Employment Practices Survey, Manpower Research and Statistics Department (MRSD), Ministry of Manpower, 2022.

<sup>2</sup> Source: European Working Conditions Telephone Survey, Eurofound, 2021.

6. The proposed legislation will benefit employers, employees and society at large:
  - a. For employers – By implementing fair employment practices, employers will benefit from a more productive and engaged workforce, a more harmonious workplace, and be better able to attract and retain talent, contributing to stronger business outcomes.
  - b. For employees – The legislation will strengthen protections against discrimination and help ensure that workers are fairly considered for job opportunities. The legislation will also give more assurance to workers that they can report workplace discrimination or harassment without fear of retaliation.
  - c. For society – Social cohesion is strengthened when unfair treatment is addressed. This is especially important in a multi-racial, multi-religious society, and a diverse workforce.

## **APPROACH TAKEN TO DEVELOP RECOMMENDATIONS**

7. The Committee drew on Singapore's experience implementing the Tripartite Guidelines on Fair Employment Practices (TGFEP), and also examined workplace anti-discrimination legislation internationally. To better understand the needs and views of different segments of society, the Committee also consulted widely with a diverse group of stakeholders including employee groups, employers, trade association and chambers, union leaders, human resource and legal professionals, grassroots, as well as non-governmental and community organisations.
8. In February 2023, the Committee released an Interim Report on key aspects of the proposed legislative framework, for public feedback. Overall, there was broad support for the interim recommendations, with feedback to expand the scope of legislation in specific areas. The Committee has reviewed the feedback received and addressed them in the final recommendations.
9. The recommendations of the Committee are guided by the following principles:
  - a. Introduce workplace fairness legislation to complement the TGFEP and not replace it. The TGFEP remain an important part of our workplace fairness framework that set out the positive principles of fairness for employers.
  - b. Scope legislation appropriately to foster strong employer ownership and support fair and just workplace outcomes for employees.
  - c. Give more assurance to workers that they can report workplace discrimination or harassment without fear of retaliation.
  - d. Support national objectives and permit genuine occupational needs to be considered in employment decisions.
  - e. Preserve workplace harmony and maintain a non-litigious workplace culture, with mediation as the preferred approach to resolve disputes.
  - f. Ensure that discriminatory employers face appropriate enforcement action, and provide redress to individuals who have been discriminated against.

## RECOMMENDATIONS

### Key Thrust A: Strengthen protection against workplace discrimination

10. Recommendation 1: Define discrimination as making an adverse employment decision because of any protected characteristic.
11. Recommendation 2: Prohibit workplace discrimination in respect of the following characteristics: (i) age, (ii) nationality, (iii) sex, marital status, pregnancy status, caregiving responsibilities, (iv) race, religion, language; (v) disability and mental health conditions ("protected characteristics").
12. Recommendation 3: Retain and enhance the TGFEP to work in concert with legislation. The TGFEP will continue to uphold overarching principles of fair and merit-based employment and provide protection against all forms of workplace discrimination.
13. Recommendation 4: Cover all stages of employment i.e. the pre-employment (recruitment), in-employment (e.g. promotion, performance appraisal, training selection) and end-employment (e.g. dismissal) stages ("employment decisions").
14. Recommendation 5: Prohibit the use of words or phrases in job advertisements that indicate a preference for a protected characteristic.
15. Recommendation 6: Legislate the job advertisement requirement for submission of Employment Pass and S Pass applications under the existing Fair Consideration Framework.
16. Recommendation 7: Prohibit retaliation against those who report cases of workplace discrimination or harassment.
17. Recommendation 8: Update the TGFEP to clarify that service buyers (e.g. property management companies) and intermediaries (e.g. platform companies providing matching services) should not discriminate by selecting candidates based on characteristics that are not related to the job.

### **Key Thrust B: Provisions to support business/organisational needs and national objectives**

18. Recommendation 9: Allow employers to consider a protected characteristic in employment decisions if it is a genuine and reasonable job requirement.<sup>3</sup>
19. Recommendation 10: Exempt small firms (<25 employees) from the legislation for a start, to be reviewed in five years.
20. Recommendation 11: Allow religious organisations to make employment decisions based on religion and appropriate religious requirements (i.e. conformity with religious beliefs and practices).
21. Recommendation 12: Support employers in hiring persons with disabilities and seniors (≥55 years).
22. Recommendation 13: Issue Tripartite Advisory on providing reasonable accommodations to persons with disabilities.

### **Key Thrust C: Processes for resolving grievances and disputes while preserving workplace harmony**

23. Recommendation 14: Require employers to put in place grievance handling processes. Employers should also protect the confidentiality of the identity of persons who report workplace discrimination and harassment, where possible.
24. Recommendation 15: TAFEP continues to serve as the first port of call outside the firm for workers who experience discrimination.
25. Recommendation 16: Require compulsory mediation for workplace discrimination claims at the Tripartite Alliance for Dispute Management (TADM) first, with adjudication at the Employment Claims Tribunals (ECT) as a last resort.
26. Recommendation 17: Unions to continue to play a constructive role in dispute resolution for workplace fairness. Allow unions to support their members in the claims process similar to other employment claims today.

<sup>3</sup> See more illustrations of what are considered genuine and reasonable job requirements at <https://www.tal.sg/tafep/employment-practices/recruitment/job-advertisements>.



### Key Thrust D: Ensuring fair outcomes through redress for victims of workplace discrimination, and appropriate penalties for breaches

27. Recommendation 18: At TADM mediation, the focus should be on educating employers on correct practices and mending the employment relationship where practicable, and not primarily monetary compensation.
28. Recommendation 19: Provide for monetary compensation of up to \$5,000 for pre-employment claims; and, up to \$20,000 for non-union members and \$30,000 for union-assisted claims, for in-employment and end-employment claims, as with other employment claims today.
29. Recommendation 20: Empower the ECT to strike out frivolous or vexatious claims, and/or award costs against such claimants.
30. Recommendation 21: Where the claim involves a suspected serious breach of the workplace fairness legislation, allow the State to concurrently conduct investigations with a view to taking enforcement action.
31. Recommendation 22: Provide a range of penalties including corrective orders, work pass curtailment and financial penalties that can be imposed against firms and/or culpable persons, depending on the severity of breach.

## CONCLUSION

The Committee's recommendations aim to entrench the fair employment standards that we have built up over the years, and strengthen key areas in our framework. This legislation complements the existing TGFEP and will be a significant step in enhancing our workplace fairness framework. However, it is not a panacea. Employers, workers, unions and the Government must continue to work hand in hand to shape and uphold fair and progressive employment practices in Singapore.



MOS Gan at a dialogue with disability social service agencies held on 17 March 2023.

# TRIPARTITE COMMITTEE ON WORKPLACE FAIRNESS – FINAL REPORT ON RECOMMENDATIONS

## INTRODUCTION

### I. STATE OF WORKPLACE FAIRNESS

1. In multi-racial, multi-religious Singapore, our workplaces must adopt fair and merit-based practices, so that all employees have the opportunity to develop their potential, gain the right skills, and progress in their careers. A harmonious workplace is important for social cohesion, and for Singapore to remain an open economy. There is no place for workplace discrimination in Singapore.
2. The journey to cultivate fair workplace norms and values has been a tripartite effort that started with the introduction of the Tripartite Guidelines on Non-Discriminatory Job Advertisements in 1999. Later, the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) was set up in 2006 and the Tripartite Guidelines on Fair Employment Practices (TGFEP) was introduced in 2007 to set out the principles of fair and merit-based treatment and stand against all forms of discrimination at the workplace. An important plank of Singapore's early efforts was about education to shape mindsets and promote practices that enable a fair, responsible, and progressive workplace culture.
3. In consultation with its tripartite partners – National Trades Union Congress (NTUC) and Singapore National Employers Federation (SNEF) – the Ministry for Manpower (MOM) began taking action in 2013 against employers for breaching the TGFEP, by suspending their work pass privileges. The Fair Consideration Framework (FCF) was introduced in 2014. Under the FCF, employers submitting Employment Pass applications must first advertise the job vacancy on MyCareersFuture and fairly consider all candidates that apply. In 2020, the FCF job advertising requirement was extended to S Pass applications. Penalties for breaching the TGFEP and FCF were also further enhanced, to send a stronger signal against workplace discrimination.
4. This approach has enabled Singapore to make progress in addressing workplace discrimination. MOM's Fair Employment Practices Survey (2022) showed a decline in the proportion of resident job applicants who said that they experienced discrimination during their job search between 2018 (43%) and 2022 (24%). The proportion of resident employees who said that they had experienced discrimination at work was 8% in 2022, lower than the European Union average of 11%.<sup>4</sup>

<sup>4</sup> Source: Fair Employment Practices Survey, Manpower Research and Statistics Department (MRSD), Ministry of Manpower, 2022. European Working Conditions Telephone Survey, Eurofound, 2021.

5. Nonetheless, workplace discrimination remains a concern amongst some jobseekers and employees in Singapore today. In 2022, TAFEP received 264 complaints of discrimination, with the most common grounds of discrimination being: (i) nationality, (ii) age, (iii) sex, marital status, pregnancy status, caregiving responsibilities, (iv) race, religion, language, and (v) disability, mental health conditions. We take each case of discrimination seriously. We can do more to ensure a strong and robust system is in place to promote and uphold workplace fairness.

## II. FORMATION OF TRIPARTITE COMMITTEE ON WORKPLACE FAIRNESS

6. The Tripartite Committee on Workplace Fairness (the “Committee”), co-chaired by Minister for Manpower Dr Tan See Leng, NTUC Secretary-General Mr Ng Chee Meng, and SNEF President Dr Robert Yap, was formed in July 2021 to study policy options to strengthen workplace fairness. The Committee comprises employers, unions, the human resource community and senior government representatives (see **Annex A** for list of Committee members).
7. The Committee’s Terms of Reference are to:
  - a. Decide if legislation is the best policy option to enhance workplace fairness.
  - b. Review the scope of requirements for employers.
  - c. Develop the regulatory and claims regime, including process, penalties and remedies.
  - d. Carry out engagements to gather feedback and understand concerns .

## III. AREAS TO STRENGTHEN WITH LEGISLATION

8. The Committee is of the view that legislation will enhance the current framework in the following ways:
  - a. **Strengthen the overall framework for workplace fairness.** Enacting legislation provides legal protection against workplace discrimination. This also reinforces our stance that there is no place for workplace discrimination in Singapore with a multi-racial, multi-religious and diverse workforce.
  - b. **Formalise mediation as the preferred approach to resolving disputes relating to workplace discrimination.** Singapore’s framework for resolving workplace disputes has centred on mediation rather than litigation. This approach has worked well for employment disputes today. We can adopt and formalise this approach for the legislation – workplace discrimination claims under the new legislation will undergo compulsory mediation first, with adjudication at the Employment Claims Tribunals (ECT) as a last resort. This will facilitate timely resolution of disputes and maintain a non-litigious workplace culture, even as we enshrine more worker protection in legislation.

- c. **Provide remedies for harm done.** Under the Employment Act today, individuals who have been wrongfully dismissed, including on the grounds of discrimination, can seek compensation or reinstatement. The proposed legislation can provide individuals an additional avenue to seek redress for other types of harm done due to workplace discrimination, apart from wrongful dismissal. **Legislation can provide non-monetary and monetary remedies to claimants.**
- d. **Provide appropriate enforcement against discriminatory acts.** Enforcement against breaches of the TGFEPA and the FCF job advertisement requirement is currently done via the suspension of the discriminatory employer's work pass privileges for 12 to 24 months. In some cases, this could be very punitive for employers where the breach is not egregious, such as due to a lapse by an employee who posted a discriminatory advertisement without authorisation from the employer. At the same time, suspension of work pass privileges is not an effective deterrent against employers that do not need to hire foreign workers, or may be insufficient in very serious cases where stronger sanctions are warranted. **Legislation can provide a range of enforcement levers that are calibrated to the severity of the discriminatory behaviour, and be an effective deterrent against discriminatory employers.**

#### IV. BENEFITS OF LEGISLATION

9. The Committee is of the view that the proposed legislation will benefit employers, employees and society at large:
  - a. For employers – By implementing fair employment practices, employers will benefit from a more productive and engaged workforce, a more harmonious workplace, and be better able to attract and retain talent, contributing to stronger business outcomes.
  - b. For employees – The legislation will strengthen protections against discrimination and help ensure that workers are fairly considered for job opportunities. The legislation will also better assure workers that they can report workplace discrimination or harassment without fear of retaliation.
  - c. For society – Social cohesion is strengthened when unfair treatment is addressed. This is especially important in a multi-racial, multi-religious society, and a diverse workforce.



SMS Koh at the PA Kopi Talk dialogue on Workplace Fairness held on 21 March 2023.

# APPROACH TAKEN TO DEVELOP RECOMMENDATIONS

10. In developing its recommendations, the Committee drew on Singapore's experience in implementing the TGFEP. The TGFEP were developed based on tripartite consensus and have served as a common reference for both employers and employees on workplace fairness standards expected in Singapore's context since 2007.
11. The Committee has also looked at workplace anti-discrimination legislation in Asia and internationally.
  - a. In a tripartite study trip to the United Kingdom (UK), the Committee learned of the UK Equality Act's positive impact on workplaces. Employment practices are positively shaped by the legislation. Workers are attracted to join organisations that operate fairly and where all workers are treated with respect. Having fair and progressive workplaces makes business sense and is the right thing to do.
  - b. Anti-discrimination laws can be very complex. Legislative provisions need to be sufficiently clear and not overly broad to avoid creating uncertainties about workers' protections and employers' obligations. A carefully calibrated approach needs to be taken to balance expectations on both sides. Implementing effective legislation will take time and the legislation itself will continue to be a work in progress. The provisions in the UK Equality Act, for example, were not introduced in one single step per se but were decades in the making, building on the UK's experiences over the years with various pieces of legislation tackling different aspects of discrimination. The Equality Act continues to be reviewed and updated today.
  - c. It is clear that there is no one-size-fits-all approach across different countries. Each country's legislation is tailored to its societal context, social norms, and state of industrial relations. While we can learn from the experience of others, we must be mindful of the applicability of their framework to our local context. We need to design a framework that best suits our needs.
12. Given the far-reaching impact of the legislation on different segments of society, the Committee has consulted widely. Since September 2021, the Committee has reached out to a diverse group of stakeholders to gather feedback on its recommendations. This included employee groups, employers, trade associations and chambers, union leaders, human resource and legal professionals, grassroots, as well as other non-governmental and community organisations.
13. The engagement channels spanned dialogues, focus group discussions, surveys, and a public feedback exercise via FormSG, with the aim of gaining insights into the state of workplace fairness and sentiments towards the proposed legislation. Many also shared their expectations of the workplace fairness legislation. A summary of the engagements is at **Annex B**.



The Committee members at the dialogue on Workplace Fairness held on 23 March 2023.

14. In February 2023, the Committee released an Interim Report on key aspects of the proposed legislative framework, for public feedback. Overall, there was broad support for the interim recommendations. However, employers and employees sought greater clarity on what constituted discrimination, how the legislation will be enforced, and the burden of proof required to lodge discrimination claims. There were also calls to expand the scope of the legislation in various aspects. The Committee has reviewed the feedback received and addressed them in the final recommendations (see **Annex C** for a summary of feedback received and the Committee's responses).

## I. GUIDING PRINCIPLES

15. Taking into consideration the state of workplace fairness, areas to strengthen, and findings from engagements and consultations, the Committee was guided by the following principles as it formulated its recommendations:
- a. **Legislation should complement and not replace the TGFEP.** The TGFEP have worked well and hold up desirable and overarching principles of workplace fairness for employers. Legislation is more suited to proscribing unacceptable behaviour and can complement the TGFEP by drawing a clear line at unacceptable discriminatory acts.

- b. **Legislation should be scoped appropriately to foster strong employer ownership and deliver fair and just workplace outcomes for employees.** In our consultations, we heard concerns that legislation that is too wide would have a negative impact on employer-employee relationships. Employment is both a relationship and a set of legal responsibilities. If the workplace becomes too cautious and litigious, relationships could suffer and this is not in the long-term interest of employers and employees. At the same time, to achieve good workplace fairness outcomes, we need to go beyond legislation and foster greater knowledge and ownership among employers so that they do not merely undertake a check-box compliance exercise.
- c. **Give more assurance to workers that they can report workplace discrimination or harassment without fear of retaliation.** Some individuals may not report workplace discrimination or harassment because they feel they would face negative consequences if they did so. We want individuals who have genuine experiences of discrimination or harassment to come forward to make a complaint without fear of retaliation from the employer. Legislation can afford protection to complainants and give them the needed assurance.
- d. **Support national objectives and permit genuine occupational needs to be considered in employment decisions.** For example, many employers may wish to actively support the employment of more vulnerable groups such as persons with disabilities. There may also be situations where the sex of the worker is a legitimate job requirement. The workplace fairness legislation should allow for such considerations.
- e. **Preserve workplace harmony and maintain a non-litigious workplace culture.** A hallmark of Singapore's employment landscape is our harmonious and non-litigious workplace culture. We have progressively strengthened employment laws over the years, and have always centred our dispute resolution framework on mediation rather than litigation. This facilitates timely resolution of disputes and maintains a non-litigious workplace culture even as we enshrine more worker protections in legislation. Today, the majority of workplace disputes are resolved amicably through internal grievance-handling at the firm level, and in some cases, through mediation at the Tripartite Alliance for Dispute Management (TADM). The workplace fairness legislation should continue to preserve these important strengths of Singapore's employment landscape, including the importance of unions' continued involvement in representing workers.
- f. **Ensure that discriminatory employers face appropriate enforcement action, and provide redress to individuals who have been discriminated against.** The workplace fairness legislation will provide a range of enforcement levers so that the penalties are appropriate to the severity of the breach. Beyond penalties, the new enforcement regime should allow for avenues to educate employers and get them to rectify any wrong practices. The overall enforcement and remedy framework should allow for appropriate redress for victims for the harm done due to workplace discrimination and appropriate sanctions on employers calibrated to the severity of the breach.

# RECOMMENDATIONS

## KEY THRUST A: STRENGTHEN PROTECTIONS AGAINST WORKPLACE DISCRIMINATION

1. First issued in 2007, the Tripartite Guidelines on Fair Employment Practices (TGFEP) set out the overarching principle of treating jobseekers and employees fairly and based on merit that all employers in Singapore are expected to adhere to. It is well accepted and understood by employers and employees in Singapore.
2. **The Committee recommends prohibiting specified forms of discrimination in legislation, while retaining the overarching principles of fair employment in the TGFEP for all employers' adherence.** The TGFEP will continue to cover all forms of workplace fairness and discrimination beyond the areas covered by legislation. It will also provide guidance on complying with the legislative requirements, while capturing other important tripartite guidelines on fair employment.

### I. LEGISLATE PROTECTIONS AGAINST WORKPLACE DISCRIMINATION

3. Recommendation 1: The Committee received feedback that the definition of discrimination should be made clear. This will benefit both employers and workers. While legal drafting will commence after the final report, the Committee's view is that the legislation will cover direct discrimination<sup>5</sup>, which can be defined as **making an adverse employment decision<sup>6</sup> because of any protected characteristic**.
4. The Committee received suggestions that indirect discrimination should be covered under the legislation, but does not recommend doing so. Indirect discrimination typically involves an apparently neutral company practice that has the effect of putting persons with a particular protected characteristic at a disadvantage. Prohibiting indirect discrimination in the legislation imposes very wide legal obligations on employers, resulting in uncertainty for both employers and employees. The employee-employer relationship may become more legalistic as a result. The Tripartite Alliance for Fair Employment Practices (TAFEP) will assess such cases, and where necessary, help both parties find a reasonable approach to resolve the dispute.

<sup>5</sup> It would also be a breach of the legislation for employers to have discriminatory policies, even if a discriminatory decision has yet to be made.

<sup>6</sup> See Recommendation 4 for scope of employment decisions covered.



## Illustration

*As part of the selection process, an employer requires all jobseekers to take and pass a numeracy test as numeracy was a relevant skill for the job (e.g. a finance role). It was found that older workers performed poorer on this test than younger workers. Even though the employer did not intend to discriminate against older workers and has a reasonable basis to require the numeracy test, such workers may take the view that the disparity in test results may mean that the numeracy test is a form of indirect discrimination, since the test puts older workers at a disadvantage. If indirect discrimination was included in legislation such grey situations could be frequently litigated and lead to considerable uncertainty for employers and employees. In excluding indirect discrimination for legislation, TAFEP will assess and take up such cases where appropriate, guiding the parties to a reasonable resolution.*

5. Recommendation 2: The Committee recommends **prohibiting workplace discrimination in respect of the following characteristics: (i) nationality, (ii) age, (iii) sex, marital status, pregnancy status, caregiving responsibilities, (iv) race, religion, language, (v) disability, mental health conditions (“protected characteristics”).**
- a. Stronger protection against discrimination on these grounds supports Singapore's key social and economic objectives :
- i. Nationality. Protection against workplace discrimination because of nationality helps ensure that the workforce in Singapore is fairly considered for job opportunities, while foreigners play a valuable role in complementing our local workforce.

## Illustration

*A Singaporean job seeker applies for a senior role in a firm, and fully meets the job requirements, including the required technical expertise and years of relevant work experience. However, the interview records show that the hiring manager did not consider the Singaporean candidate fairly and offered the job to a foreigner only because the foreigner is of the same nationality as the hiring manager. This could amount to discrimination.*

- ii. Age. As an ageing society, supporting the employment of senior workers is critical.

**Illustration**

*A jobseeker applies to be a facilitator for children's workshops. During the interview process, the employer asks about the jobseeker's age. After the jobseeker replies that she is 50 years old, the employer says that she is not suitable for the role, as they prefer a younger person who would be more energetic. This could amount to discrimination.*

- iii. Sex, marital status, pregnancy status, caregiving responsibilities. Prohibiting workplace discrimination in these areas is important to increasing women's participation in the workforce, promoting marriage and parenthood aspirations and supporting caregivers.

**Illustration**

*A jobseeker is offered a role as a finance officer. When undergoing a pre-employment medical check-up, she is found to be pregnant. The company subsequently retracts the offer, citing that the nature of the job is not suitable for a pregnant employee, even though it is a desk-bound role. This could amount to discrimination.*

For the definition of 'pregnancy', the Committee recommends that it covers women during pregnancy, including the period of statutory maternity leave, and those who are breastfeeding. The protection also applies to women who express a desire to bear children.

**Illustration**

*An employee applying for her company's talent development scheme is asked in an interview for the scheme if she plans to start a family, to which she replies that she is keen to do so soon. She is not enrolled in the scheme, and her employer says this is because the interview panel felt that she would not be suitable for the high demands of the scheme due to her family plans. This could amount to discrimination.*

For the definition of 'caregiving responsibilities', the Committee recommends that it covers individuals who provide care for a family member in need, including but not limited to parents and in-laws, a spouse, biological and step-children. It does not matter what the caregiver's sex is, or whether he or she is caring for someone living in the same household.

#### Illustration

*A male employee is the primary caregiver for his father. With the agreement of his supervisor, the employee has been taking time off work to accompany his father for medical treatments several days a week, but has continued to meet his work requirements and maintain performance standards. His supervisor subsequently tells him that the company has decided to let him go so that he can concentrate on his caregiving responsibilities. This could amount to discrimination.*

- iv. Race, religion, language. In multi-racial and multi-religious Singapore, protecting against workplace discrimination on the grounds of 'race', 'religion' and 'language' is fundamental.

#### Illustration

*A hiring manager conducts a panel interview with two candidates for a job role. Candidate A is of the same race as the hiring manager and Candidate B is of a different race. The interview panel assesses and documents in its interview records that Candidate B is more qualified for the role. However, the hiring manager offers the job to Candidate A as he feels more comfortable working with someone of the same race. This could amount to discrimination.*

- v. Disability and mental health conditions. Protecting against workplace discrimination on the grounds of 'disability' supports the national effort to help more persons with disabilities join and remain in the workforce. Protecting against workplace discrimination based on 'mental health conditions' is also important to our objective of strengthening the employment and employability of persons with mental health conditions, in line with national initiatives to support the mental health and well-being of Singaporeans.

**Illustration**

*A new hire's colleagues observe episodes where his mood seems particularly down, although his work performance is unaffected. During a routine check-in, the new hire's manager asks if he has any mental health conditions. The new hire replies that he has depression, but the condition is being managed with psychiatric help. The new hire is dismissed with notice a week after that conversation. This dismissal could amount to discrimination.*

For the definition of disability, the Committee recommends that it be aligned to that of the Enabling Masterplan, which covers autism or any intellectual, physical, or sensory disability or any combination of any such disabilities with substantial impact on an individual's ability to carry out day to day activities.

For the definition of 'mental health conditions', the Committee recommends that it covers more serious forms of diagnosed mental disorders usually associated with distress or impairment in important areas of functioning. The coverage should be discussed with relevant experts, and details made available when the legislation is introduced.

- b. These characteristics are also the most commonly reported forms of workplace discrimination. Together, they account for more than 95% of discrimination complaints received by the TAFEP and the Ministry of Manpower (MOM) from 2018 to 2022.

### Number of Complaints by TAFEP/MOM

Type of Discrimination	Annual Average (2018 – 2022)
Nationality	176
Age	77
Sex	49
Race/Language	34
Family Status	13
Religion	8
Disability and mental health conditions	4
Others	9
Total	315

Source: TAFEP

#### Notes:

1. Disability does not include physical health conditions, which is under "Others".
2. "Others" includes areas such as medical condition, physical attributes and criminal record.
3. The number of complaints under each type of discrimination will not add up to the total number of complaints received as one complaint may involve multiple types of discrimination. For example, a complaint involving discrimination due to age and religion will be counted twice (i.e. once in the age and once in the religion category) under the breakdown by types of discrimination.

- c. The Committee received feedback to expand the scope of protected characteristics in the legislation to include characteristics such as sexual orientation and gender identity, and criminal history. The Committee agrees that workplace discrimination of any form should not be tolerated, but is of the view that legislation and the TGFEP can work in concert to stand against workplace discrimination. As the legislation is a significant step, the Committee recommends keeping it tightly scoped to protect against the more common and familiar forms of discrimination, which support our key social and economic objectives. The TGFEP will be retained and continue to protect against all other forms of workplace discrimination, and TAFEP will assist anyone who has experienced discrimination for any reason.

6. Recommendation 3: The Committee recommends that the **TGFEP be retained and enhanced rather than replaced by the new workplace fairness legislation. The TGFEP continue to be relevant in upholding workplace fairness, and will work in concert with the legislation to provide protection against all forms of workplace discrimination**, including those not covered by the legislation.
7. While the new legislation will define prohibited discriminatory acts in respect of the protected characteristics, the TGFEP will continue to uphold overarching principles of fair and merit-based employment and stand against all forms of discrimination. It is better to retain the TGFEP and set down expectations for employers to achieve these broad principles of fairness rather than simply require them to comply with what is specifically prescribed or proscribed in the law.
8. The Committee notes feedback that the levers under the TGFEP should be strengthened, as the current lever of suspension of work pass privileges may not be a sufficient deterrent to employers that do not hire foreign workers, or may be insufficient in very serious cases where stronger sanctions are warranted. In TAFEP's experience, the employers it engages on workplace discrimination matters are generally cooperative and will abide by TAFEP's instructions to correct errant practices. Nonetheless, we will find new ways to take stronger enforcement action against the small minority of non-cooperative employers. Apart from suspension of work pass privileges, on a case-by-case basis, MOM may apply additional measures such as publicly naming employers involved in egregious cases.
9. Recommendation 4: The Committee recommends that **legislation prohibit discrimination based on the protected characteristics for all the stages of employment**, i.e. the pre-employment (e.g. recruitment), in-employment (e.g. promotion, performance appraisal, training) and end-employment (e.g. dismissal) stages ("employment decisions").
10. Provision of employee benefits will not be covered under the legislation. This is to give employers the flexibility to continue to implement progressive practices such as providing additional leave or healthcare benefits for employees who need them more. The Committee's proposal gives employers the space to design competitive and fair benefits package that take into account both their employees' and business' needs. For the same reasons, provision of flexible work arrangements will also not be covered under the legislation.

#### Illustration

*An employer offers additional non-statutory maternity leave and childcare leave as an employee benefit. A single, male employee alleges that this is a form of discrimination against employees who are not mothers, and employees who do not have children. As benefits are excluded from the legislation, this would not amount to discrimination under the legislation.*

11. The Committee received feedback on the importance of addressing workplace harassment. There were suggestions to prohibit harassment under the workplace fairness legislation, and to impose duties on employers to keep the workplace safe from harassment. The Committee agrees that workplaces should be safe and free from harassment so that employees can carry out their work productively. Various measures and protections have been put in place.
12. There are existing legal protections against harassment, whether at the workplace or otherwise, for example, under the Protection from Harassment Act and the Penal Code. Where criminal offences are believed to have been committed under the relevant legislation, affected individuals may make a Police report. Tripartite partners have developed the Tripartite Advisory on Managing Workplace Harassment that guides employers to proactively identify, evaluate and control the risk of harassment at the workplace to ensure a safe, healthy and harmonious workplace. TAFEP has been assisting individuals who encounter workplace harassment. When it receives a complaint that requires follow-up with the employer, TAFEP will ask the employer to carry out a proper, independent investigation (e.g. interviews with affected parties and witnesses, review of documented evidence) into the harassment incident(s), if the employer has not done so. TAFEP will also require the employer to provide an update on the disciplinary actions taken against the harasser if the report was found to be true, and to address the concerns raised by the affected individual. To prevent future incidents of workplace harassment, TAFEP will also work with the employer to put in place proper harassment prevention policies and procedures that are aligned with the Tripartite Advisory. For employers that are not cooperative, TAFEP can recommend to MOM to administer sanctions. MOM and tripartite partners will continue to review the measures and framework to combat workplace harassment and assess the need to strengthen.

## II. REQUIRE FIRMS TO IMPLEMENT FAIR RECRUITMENT PRACTICES

13. Based on the reports received by TAFEP, the recruitment phase is when most instances of workplace discrimination take place. Hence, the Committee recommends legislating specific requirements to provide clear guidance to employers on practices that are prohibited. These requirements are based on existing TGFEP principles and requirements.
14. Recommendation 5: The Committee recommends **prohibiting prospective employers from using words or phrases that indicate a preference based on any protected characteristic in job advertisements** (e.g. "Chinese/Malay preferred", "Youthful working environment"). This is so that job advertisements remain focused on job requirements.
15. The Committee however recognises that there are jobs where a preference for a protected characteristic can be a reasonable job requirement. For example, language teachers should be proficient in the language that they are teaching and the employer can state language proficiency as a job requirement in advertisements. However, the employer must state the job requirement (e.g. "Tamil-speaking") instead of the protected characteristic that is not the job requirement (e.g. "Indian teacher"). This ensures that the job advertisement avoids the perception of discrimination, and enables employers to reach the widest pool of qualified candidates.

### III. ENSURE FAIR ACCESS TO OPPORTUNITIES FOR THE LOCAL WORKFORCE

16. Singapore Citizens and Permanent Residents have a long-term stake in Singapore's progress and remain the core of our workforce. It is in the employers' interest to make reasonable efforts to attract and consider locals for job positions based on merit, and to train and develop their potential and careers. Employers may also prefer to hire Singapore Citizens and Permanent Residents because of various genuine business and occupational considerations. This will continue to be allowed under the new legislation.
17. At the same time, staying open and connected to the world is fundamental to Singapore's economic success and its ability to create good jobs for locals. Foreigners play a valuable role in complementing our workforce. Foreigners with relevant qualifications and experience help to fill gaps in skills and expertise, but employers must give fair consideration to locals. The legislation will prohibit discrimination based on nationality. TAFEP receives a number of complaints each year that locals have been discriminated against. While MOM has taken action against employers for breaches of the TGFEP and FCF, such an act of discrimination will now also be a breach of the new legislation and a greater range of remedies and sanctions can be applied.
18. Recommendation 6: The existing FCF sets out requirements for all employers in Singapore to consider the workforce in Singapore fairly for job opportunities. To continue to promote fair hiring and improve labour market transparency, the Committee recommends **legislating the FCF job advertising requirement. Unless exempted, employers submitting Employment Pass and S Pass applications will need to first advertise the job vacancy on MyCareersFuture for a specified period and fairly consider all candidates that apply.**





#### IV. PROTECT WORKERS FROM RETALIATORY ACTIONS BY EMPLOYERS FOR REPORTING WORKPLACE DISCRIMINATION AND HARASSMENT

19. Some employees may hesitate to come forward to report workplace discrimination or harassment within the company or to MOM/TAFEP, out of fear of subsequently being disadvantaged in the workplace. This sentiment was raised by participants during the 2020-2021 Conversations on Singapore Women's Development. In addition, the MOM Fair Employment Practices Survey (2022) showed that only one in three employees who experienced workplace discrimination sought help.
20. It is important for individuals who experience workplace discrimination or harassment to come forward so that we can better address problems and shape positive workplace behaviours.
21. Recommendation 7: The Committee recommends **prohibiting employers from retaliating against those who report such cases**, to provide assurance to those who face workplace discrimination or harassment.
22. For clarity on what constitutes workplace retaliation, the legislation would **specify in law the retaliatory actions that would constitute a breach**. This approach helps to assure employees that they are protected from retaliation and also protects employers from frivolous or vexatious reports of retaliation.
23. The Committee recommends prohibiting the following retaliatory behaviours:
  - a. Wrongful dismissal
  - b. Unreasonable denial of re-employment
  - c. Unauthorised salary deduction
  - d. Deprivation of contractual benefits
  - e. Harassment
  - f. Any other act done to victimise the individual who made the report (i.e. single out the individual for unjust treatment)
24. Employers who retaliate against individuals who report workplace discrimination and harassment should face enforcement action.

## V. ENHANCE THE TGFEP TO COVER MORE WORKERS

25. The Committee acknowledges the feedback it received advocating that workplace fairness legislation be extended to protecting workers other than employees (e.g. self-employed persons), but recommends that the legislation be scoped to protect employees. In other relationships such as those of a business nature, parties such as self-employed persons are not under the control of employers and are in a position to decide whether or not to take on the work, based on their own interests. Such business contracting relationships would be more complex than employment relationships. Self-employed persons also do not come under the ambit of the Employment Act. Expansions in the scope of the legislation can be considered after protection for employees have been effectively implemented.
26. Recommendation 8: In the meantime, the Committee recommends including additional guidelines in the TGFEP to **provide greater clarity that corporate service buyers (e.g. property management companies) and intermediaries such as platform operators should not discriminate based on characteristics that are not related to the job**. Work opportunities should be fair and merit-based. For example, buyers of security services should not specify discriminatory requirements in their tenders (e.g. security guards younger than a certain age), and platform operators should not discriminate when allocating work to platform workers.

## KEY THRUST B: PROVISIONS TO SUPPORT BUSINESS/ORGANISATIONAL NEEDS AND NATIONAL OBJECTIVES

27. The Committee's recommendations so far are aimed at upholding the standards for workplace fairness. However, there may be other practical needs and national objectives to be considered in some contexts.
28. As such, in line with the key considerations, the Committee recommends that the legislation allows **for practical business/organisational needs, and other national objectives**.

### I. ALLOW EMPLOYMENT DECISIONS TO BE MADE BASED ON GENUINE OCCUPATIONAL REQUIREMENTS

29. Recommendation 9: The Committee recommends **allowing employers to consider a protected characteristic in employment decisions if the protected characteristic is a genuine and reasonable job requirement**. This has been a well-established principle in the TGFEP.

#### Illustration 1

*A wellness establishment hires female therapists, as their job is to carry out personal body massages and spa treatments for female customers. Being female is a genuine and reasonable job requirement in this case.*

#### Illustration 2

*A company offers a role for an audio production manager to a candidate. Candidates must pass a pre-employment health check-up, which includes a test of the candidate's hearing. However, the candidate does not pass the hearing test and the company does not proceed with the job offer. This would not be a breach of the legislation, as passing a hearing test is a genuine occupational requirement.*

## II. ALLOW MORE TIME FOR SMALL FIRMS TO DEVELOP THEIR CAPABILITIES

30. Recommendation 10: The Committee also recommends **exempting small firms with fewer than 25 employees from the legislation for a start, to be reviewed in five years**. This approach recognises that smaller firms may not have the expertise and resources to fully implement the legislated requirements at the start. With this exemption, the legislation will still cover 75% of employees.
31. The Committee recognises the concern that this exemption may inadvertently lead to small firms prioritising other matters and failing to improve their HR practices and stamp out discriminatory behaviours. TAFEP and its partners, including SNEF, the Institute for Human Resource Professionals (IHRP), Singapore Human Resource Institute, and the Association of Small and Medium Enterprises will work together to support small firms in their journey to ramp up capabilities so that they are able to implement the legislated requirements in time to come. These measures may include:
- a. TGFEP and workplace fairness legislation modules in the Fair and Progressive Employment Index for employers to check if their employment practices are in line with the TGFEP and legislation respectively. Employers will receive actionable insights as well as recommended resources, training and assistance that would be relevant to them.
  - b. A new one-stop resource page on TAFEP's website to house all legislation-related resources to guide employers, employees and HR.
  - c. Briefings, clinics and webinars, including those catered specifically to small and medium enterprises (SMEs), to build understanding of the TGFEP and upcoming legislated requirements and their applications for organisations, as well as to share best practices.
  - d. New training resources for companies and HR to incorporate into their own in-house corporate training for their business leaders and line managers .
  - e. A new Community of Practice led by IHRP-certified HR professionals to provide advisory support and share best practice for SME employers on fair employment issues.
32. Exempted firms will still be subject to the TGFEP and existing statutory protections on wrongful dismissal, as is the case today. Anyone who has faced any form of workplace discrimination can approach TAFEP for advice and assistance. Where there is a breach of the TGFEP, TAFEP will report the case to MOM for enforcement action. Tripartite partners will monitor the situation after the legislation is introduced, and review the exemption in five years.

### III. RECOGNISE THE NEEDS OF RELIGIOUS ORGANISATIONS

33. In the Committee's engagements, religious organisations have shared that it is necessary for their employees to share common values and a common conviction to fulfil the organisation's mission. In addition, religious organisations need the discretion to make employment decisions that conform to religious practices and beliefs, which may include requirements pertaining to the protected characteristics (e.g. only males for priests and imams).
34. Given the purpose and character of religious organisations, the Committee agreed, in consultation with relevant government agencies, that it is reasonable for religious organisations to make employment decisions based on religion and appropriate religious requirements (i.e. conformity with their religious beliefs and practices).
35. Recommendation 11: To address the needs of religious organisations while preserving common space in society, the Committee recommends **allowing religious organisations – i.e. places of worship (e.g. church, mosque, temple) and religious entities with solely religious purpose/function (e.g. bodies that organise, administer, or provide training on, religion and religious affairs) – the discretion to make recruitment and employment decisions based on religion and appropriate religious requirements (i.e. conformity with religious beliefs and practices)**. The Committee agreed that religious organisations should not be allowed to discriminate based on other protected characteristics where there is no religious basis to do so.

#### Illustration

*A mosque is hiring an administrative assistant, and states that applicants should be Muslim. As religious organisations are permitted to make employment decisions based on religion and appropriate religious requirements, this would not be a breach of the legislation.*

36. This discretion will only be granted to the tightly scoped group of religious organisations set out above, and they should exercise this discretion responsibly. All other religion-affiliated entities that have a secular purpose/function or serve the general public (e.g. religion-affiliated charities, hospitals, schools, childcare centres) will continue to be allowed to make employment decisions based on religion only if it is a genuine and reasonable job requirement.

#### IV. ENABLE EMPLOYERS TO SUPPORT THE HIRING OF PERSONS WITH DISABILITIES AND SENIORS

37. The Committee is mindful that the pursuit of workplace fairness should not be at the expense of promoting employment opportunities for vulnerable groups that need more support. The Committee also recognises feedback that more can be done to promote employment opportunities for these groups.
38. Recommendation 12: The Committee recommends supporting employers that wish to hire persons with disabilities or seniors (≥55 years). This is in line with the ongoing tripartite agenda to promote and facilitate employment opportunities for these groups. An inclusive workforce can bring benefits to an organisation, for example in terms of workplace culture and improved understanding of customers. Existing efforts to support fair representation in the workplace such as through ensuring access to education, upskilling and job opportunities will continue to support these groups.

##### Illustration

*A company interviews two candidates for a website designer role. Both candidates score well on their test and interview. One of the candidates has a disability and requires the use of a wheelchair, while the other does not have a disability and has slightly more years of experience. If the company selects the candidate with a disability for the role, it would not be a breach of the legislation, as employers should be supported if they wish to hire persons with disabilities.*

39. The Committee is supportive of policies that seek to make firms more inclusive. For example, some companies may have policies to address the under-representation of women in management roles. Such policies are acceptable so long as jobseekers and employees are treated fairly and objectively, and recruitment and promotion decisions are still merit-based. Employers can expand recruitment efforts to attract more female applicants, but cannot select a woman over a more qualified man for a position. Employers may also consider the unique strengths of each candidate, and the value of the diverse perspectives and experiences that they may bring to the team.

40. Recommendation 13: In addition to prohibiting workplace discrimination on the basis of disability, the Committee recommends **issuing a Tripartite Advisory on providing reasonable accommodations to persons with disabilities**. Reasonable accommodations are adjustments to the job or work environment that make it possible for employees with disabilities to perform their jobs, such as providing a hearing loop system for hard-of-hearing employees, and installing ramps for employees needing wheelchairs. They are 'reasonable' when they help persons with disability perform essential job functions, do not impose undue burden to the employer, and do not change the fundamental nature of the business.
41. Encouraging employers to provide reasonable accommodations complements existing efforts to support employment opportunities for persons with disabilities under the Enabling Masterplan. Employers may tap on existing grants such as the Job Redesign Grant to defray the cost of reasonable accommodations.
42. While we received feedback calling for the provision of reasonable accommodations to be required by law, the Committee's view is that this may result in an overly rigid approach that risks creating a more litigious workplace, and could inadvertently affect the employability of those we seek to support. In other jurisdictions, disability discrimination and reasonable accommodations are heavily litigated areas. What is a reasonable accommodation can be difficult to define clearly, and better outcomes could be better achieved for employees with disabilities and their employers through TAFEP's assistance in facilitating both parties coming to an agreement, rather than litigation.



## KEY THRUST C: PROCESSES FOR RESOLVING GRIEVANCES AND DISPUTES WHILE PRESERVING WORKPLACE HARMONY

43. The Committee **affirms the importance of preserving workplace harmony and promoting the amicable resolution of disputes**. This will benefit both employees and employers. Based on MOM's Fair Employment Practices Survey (2022), about 75% of employees who sought help for discrimination did so within the firm or through their union, indicating that many employees rely on dispute resolution at the firm level or through their unions.

### I. REQUIRE EMPLOYERS TO PUT IN PLACE GRIEVANCE HANDLING PROCESSES

44. Recommendation 14: The Committee recommends **requiring employers to put in place proper grievance handling processes**, so that aggrieved employees and their employers can try to resolve disputes amicably within the firm in the first instance. Based on TAFEP's experience, some grievances are due to miscommunication and can be resolved with more open communication and clarification. Resolving disputes early on would help maintain the employment relationship and avoid unnecessary disruption to both the employee and employer. Having proper grievance handling processes at the firm level also prevents unnecessary escalation, in line the guiding principle to maintain a non-litigious workplace culture.
45. The proposed grievance handling requirements to be legislated include:
- a. Putting in place a proper inquiry and documentation process
  - b. Informing employees of the firm's grievance handling procedures
  - c. Communicating the outcome of the inquiry to the affected employee
  - d. Protecting the confidentiality of the identity of persons who report workplace discrimination and harassment, where possible
46. Today, the TGFEP already require employers to put in place proper grievance handling processes, and employers are encouraged to adopt and apply the Tripartite Standard on Grievance Handling. TAFEP has a wide range of resources and workshops to help employers set up grievance handling processes (e.g. grievance handling implementation guides and fair employment workshops) and will continue to scale up such help for employers to prepare for the legislation.



## II. TAFEP, TADM AND UNIONS SHOULD CONTINUE TO PLAY IMPORTANT ROLES IN ADDRESSING GRIEVANCES, DISPUTES AND CLAIMS

47. Recommendation 15: The Committee recommends that **TAFEP continues to serve as the first port of call outside the firm for workers who experience discrimination**. Employees are encouraged to seek assistance within the firm through the firm's internal grievance handling processes first before approaching TAFEP so that most cases can be addressed amicably within the firm. TAFEP will continue to play its role to provide advice and assistance to workers who experience discrimination, and educate employers on improving employment practices and adopting fair employment practices. Based on the worker's account, TAFEP will provide an initial assessment and advise the worker on the options available.
48. The Committee's view is that there is a need to strike the right balance between facilitating employees' access to redress and preventing frivolous claims. To lodge a workplace fairness claim, as with most other employment disputes, the claimant should provide prima facie evidence to support the claim that discrimination has occurred:
- The claimant should clearly cite the incident(s) that led him/her to believe that he/she suffered an adverse employment outcome because of a protected characteristic; and
  - The cited incident(s) should show how the consideration of the protected characteristic led to the adverse employment outcome.

Documentary evidence (e.g. emails, mobile phone messages) or oral testimonies (i.e. signed statements of verbal accounts from witnesses) will help to strengthen the claim.

### Illustration 1

*A former employee approaches TAFEP and says that he was dismissed due to his age, even though he was still meeting his performance targets. He shows TAFEP two emails from his new supervisor. The first email said that the supervisor was looking to build a young team to manage the fast-paced work. The second email showed the supervisor's comments to another colleague saying, "I think he is too old to be in my team. I will just let him go."*

*TAFEP assesses this case as having clear and relevant evidence of age discrimination.*

## Illustration 2

*A jobseeker approaches TAFEP saying that he did not get a particular job because his race was different from the hiring manager's. TAFEP asks the jobseeker if the company said or did anything during the selection process to lead him to think that there was race discrimination; the jobseeker says no, and that it is just his gut feel.*

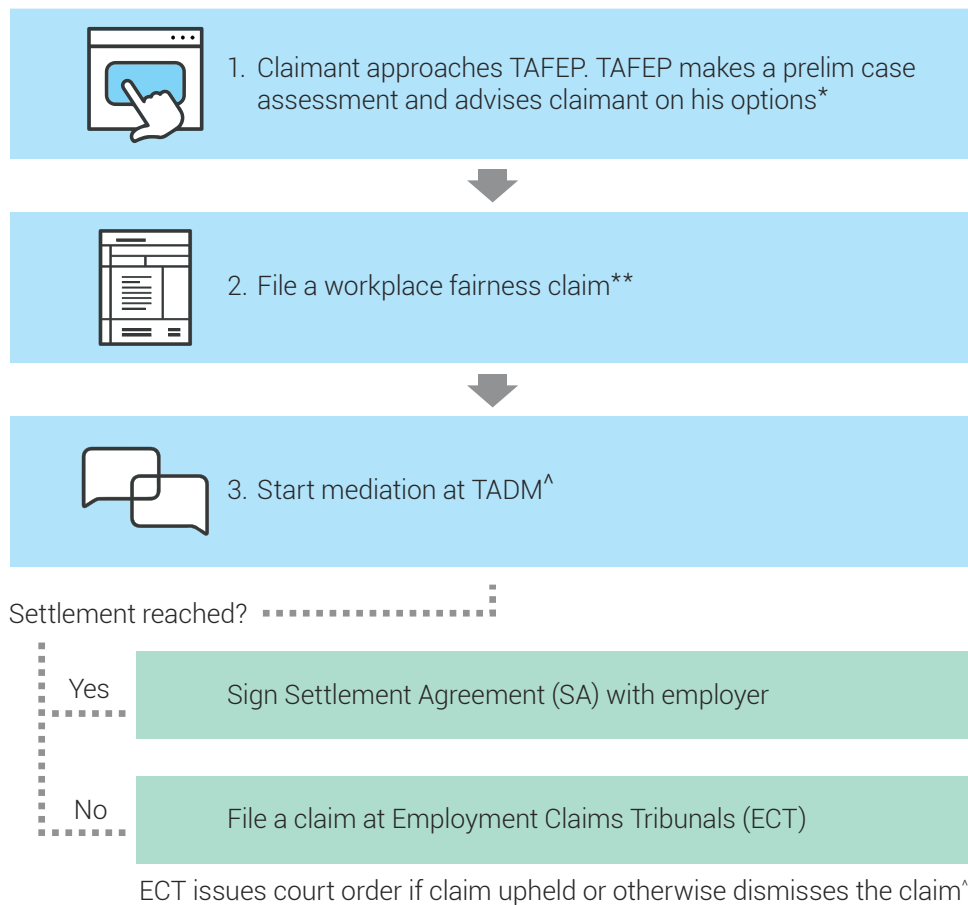
*TAFEP assesses that the observation alone is not enough to suggest discrimination and that he is unlikely to have a basis for a claim.*

### III. REQUIRE COMPULSORY MEDIATION<sup>7</sup> FOR DISCRIMINATION CLAIMS, WITH ADJUDICATION AS A LAST RESORT

49. Today, the Tripartite Alliance for Dispute Management (TADM) mediates employment disputes, aiming to help the employee and employer reach mutually agreed settlements. If mediation fails, the claim is referred to the Employment Claims Tribunals (ECT) for adjudication. This is an expeditious and low-cost dispute resolution process.
50. Recommendation 16: The Committee recommends that under the new legislation, claims of workplace discrimination in respect of the protected characteristics will undergo compulsory mediation at TADM first, with adjudication at the ECT as a last resort. Such cases could be challenging to mediate, but the aim is still to resolve most cases at mediation, in line with the guiding principle to maintain a non-litigious workplace culture. In addition, seeking an amicable settlement supports the preservation of the employment relationship where it is still practicable.

<sup>7</sup> If there is no evidence to suggest that discrimination had taken place, TADM will contact the company to provide the option to attend mediation or 'fast track' the case to ECT for a more expeditious resolution of the case. See Recommendation 20.

### Illustration of Claims Process at TAFEP/TADM/ECT



\* This process is similar to that of salary and wrongful dismissal claims. The options could include filing a claim or not proceeding with the claim.

\*\* At any point in time in the claims process, where there is a suspected serious breach of the Workplace Fairness legislation, the State will concurrently commence investigations for enforcement if warranted.

^ If there is no evidence to suggest that discrimination had taken place, TADM will contact the company to provide the option to attend mediation or 'fast track' the case to ECT for a more expeditious resolution of the case – see Recommendation 20.

^^ ECT may award costs in favour of the employer if the claim is found to be frivolous or vexatious.

51. Recommendation 17: Unions also play an important role in the dispute resolution process. Today, unions assist their members to resolve grievances with their employers, file employment claims at TADM and represent them at the mediation process to facilitate a settlement. The Committee recommends that **unions continue to play a constructive role in dispute resolution for workplace fairness**. Union members facing discrimination may obtain advice from NTUC or their respective unions and associations. NTUC and its affiliated unions and associations can reach out to firms to help members resolve their cases at the earliest possible stage. Where cases remain unresolved, NTUC and its affiliated unions and associations can support members through the dispute resolution process. As with other employment claims today, union members' claims will also have a higher claims limit for in-employment and end-employment claims.

<sup>9</sup> See Recommendation 21.

## KEY THRUST D: REDRESS FOR VICTIMS OF WORKPLACE DISCRIMINATION AND APPROPRIATE PENALTIES FOR BREACHES

52. The Committee recommends that there should be **appropriate redress for victims of workplace discrimination covered by the new legislation and appropriate enforcement action against errant employers**. The emphasis should be on mending the employment relationship where practicable and on educating employers to do the right thing for less severe breaches while meting out penalties to errant employers for more severe breaches.

### I. PROVIDE A RANGE OF MONETARY AND NON-MONETARY REMEDIES FOR CLAIMANTS

53. Recommendation 18: The Committee recommends that **at mediation at TADM, the focus should be on educating employers on correct practices and mending the employment relationship where practicable, and not primarily monetary compensation**. Parties could explore non-monetary remedies, such as the employer reinstating an employment offer, the employer providing an apology and the employer committing to reconsider the employee for another job. Monetary compensation may be appropriate in some instances.
54. Recommendation 19: At the ECT, remedies will be limited to monetary compensation, and reinstatement to the job for end-of-employment claims.<sup>9</sup> The Committee recommends that the **ECT be allowed to order a compensation amount up to:**
- a. \$5,000 for pre-employment (recruitment) claims. This compensation amount takes into account the discrimination act affecting the applicant, while acknowledging that there is no employment relationship yet.
  - b. \$20,000 for non-union members and \$30,000 for union-assisted claims in recognition of the role of unions in the claims process, for in-employment (e.g. promotion) and end-of-employment (e.g. dismissal) claims. These mirror the ECT's limits for wrongful dismissal claims.

<sup>9</sup> These are the existing remedies made available to claimants for wrongful dismissal claims, which include those on grounds of discrimination.

## II. SAFEGUARD AGAINST FRIVOLOUS OR VEXATIOUS CLAIMS

55. Recommendation 20: To address the issue of frivolous and vexatious claims (e.g. where a claimant wilfully persists with a claim despite having no evidence of discrimination), the Committee recommends **empowering the ECT to (a) strike out frivolous or vexatious claims and (b) award costs of up to \$5,000 to be paid by the claimant whose claim was struck out to the respondent in these situations**. If there is no evidence to suggest that discrimination had taken place, TADM will inform the employer that he may attend mediation or opt to 'fast track' the case to the ECT for a more expeditious resolution of the case.
56. Awarding of costs would be on a case-by-case basis as determined by the ECT (with or without a request from the employer), and with due consideration to not deter workplace fairness claims in general.
57. Employers may take appropriate disciplinary action against claimants where the ECT has struck out the claim or awarded costs to the respondent on the basis that the claim is frivolous or vexatious.

## III. TAKING APPROPRIATE ENFORCEMENT ACTION AGAINST WORKPLACE FAIRNESS BREACHES

58. Recommendation 21: The Committee recommends that, **where the claim involves a suspected serious breach of the workplace fairness legislation, the State may also concurrently conduct investigations with a view to taking enforcement action**. This means that errant firms are liable for discrimination claims by individuals who seek redress, and additionally for enforcement action by the State to penalise errant employers and deter others from similar breaches.
59. Recommendation 22: The Committee recommends **providing a set of enforcement levers that can be calibrated based on the severity of breach**. The Committee also recommends that these **enforcement levers be applicable to the firm and/or the person responsible for the discriminatory decision (i.e. the decision-maker) resulting in a breach of the workplace fairness legislation**.

60. The Committee recommends the following enforcement levers, in order of increasing severity of the breach:

- a. **Low severity: Corrective Orders issued by the Ministry of Manpower (MOM)** requiring, for example, firms to review their hiring processes, and individual employees to attend corrective workshops. Such breaches are likely the result of individual actions and indicative of potential gaps in human resource processes.

#### Illustration

*A firm posts a job advertisement on MyCareersFuture for a sales role indicating a preference for females, as they feel that females can perform better in a sales role.*

*MOM assesses that the firm breached the legislation by posting a discriminatory job advertisement. As this is the firm's first such breach, MOM issues a Corrective Order for the firm to review its hiring processes and attend corrective workshops.*

- b. **Moderate severity\*: Administrative Penalties (APs) imposed by MOM**, of up to a few thousand dollars. APs will generally be imposed for repeat breaches that indicate a lack of attention/care by both the firm and individuals on rectification of errant practices.
- c. **High severity\*<sup>10</sup>: Civil Penalties – For the most serious cases where a firm or decision maker shows clear intent to discriminate in a systemic manner, MOM may bring an action**, against the firm/decision-maker in the Courts, where larger financial penalties may be imposed.

#### Illustration

*After investigation, MOM finds a firm to be discriminatory as one of its departments has been intentionally promoting employees of a certain nationality, despite having candidates of other nationalities who performed better. In addition, the firm dismissed an employee after he filed a discrimination complaint against the firm.*

*Systemic discrimination with clear intent is an egregious breach. MOM will seek civil penalty against the firm and decision-maker(s) in the Courts and curtail the firm's work pass privileges. MOM will also take action against the firm for retaliating against the employee who filed the complaint.*

<sup>10\*</sup> Work pass curtailment may also be applied.

# CONCLUSION

61. Fairer workplaces benefit employers, employees and society at large. We have made significant progress in upholding workplace fairness over the past few decades. Fair employment standards have improved. Nonetheless, workplace discrimination remains a concern for some jobseekers and employees.
62. The Committee's recommendations are aimed at entrenching the fair employment standards that we have built up over the years and strengthening key areas in our framework. The TGFEP will also be retained and enhanced to work in concert with legislation.
63. At the same time, the Committee has kept an eye on maintaining a workplace culture that is harmonious and not litigious, to preserve and protect an invaluable hallmark of Singapore's employment landscape. This is why we have scoped the legislation more tightly as a first step, to the more common and familiar forms of discrimination. It is better to take a measured first step and let stakeholders adjust to the new rules, before reviewing if more needs to be done. We will also strengthen education efforts, to support firms in their journey to ramp up capabilities.
64. This legislation will be an important milestone in enhancing our workplace fairness framework, but it is not a panacea. To strengthen workplace fairness, a co-ordinated and sustained effort by employers, employees, unions and the Government is required. Continued education of all employers and workers is also important. The Committee is confident that this new legislation, coupled with other enforcement measures and continued education efforts, will help to advance fair and progressive employment practices in Singapore.



Dialogue session held with Grassroot Leaders and community partners on 21 March 2023.

## Annex A – Tripartite Committee on Workplace Fairness Members

### Co-Chairs

#### Mr Ng Chee Meng

Secretary-General,  
National Trades Union  
Congress (NTUC)

#### Dr Tan See Leng

Minister for Manpower &  
Second Minister for Trade  
and Industry

#### Dr Robert Yap

President,  
Singapore National  
Employers Federation (SNEF)

### Union Representatives

#### Mr Arasu Duraisamy

Secretary for Financial Affairs,  
NTUC

#### Ms Cham Hui Fong

Deputy Secretary-General,  
NTUC

#### Mr Patrick Tay

Assistant Secretary-General,  
NTUC

### Members

#### Mr Edwin Tong

Minister for Culture, Community and  
Youth & Second Minister for Law

#### Dr Koh Poh Koon

Senior Minister of State for Manpower,  
and Sustainability and the Environment

#### Mr Zaqy Mohamad

Senior Minister of State for  
Manpower and Defence

#### Ms Gan Siow Huang

Minister of State for  
Manpower and Education

### Government Representatives

#### Mr Chia Der Jiun

Permanent Secretary (Development),  
Ministry of Manpower

#### Mr Aubeck Kam

(Until 1 April 2022)  
Permanent Secretary,  
Ministry of Manpower

#### Mr Gabriel Lim

Permanent Secretary,  
Ministry of Trade and Industry

#### Mr Ravi Menon

Managing Director,  
Monetary Authority of Singapore

#### Mr Kok Jwee Foo

Chief of Government Communications

#### Mr Janadas Devan

(Until March 2023)  
Chief of Government Communications

#### Ms Jeanne Lee

Chief Legislative Counsel,  
Attorney-General's Chambers

### Employer Representatives

#### Mr Edwin Ng

Honorary Secretary,  
SNEF

#### Ms Kohe Hasan

Council Member,  
SNEF

#### Ms Chew Lee Ching

Vice-President, Association of  
Small & Medium Enterprises

### Human Resource Representatives

#### Mr D N Prasad

President, Singapore Human  
Resources Institute

#### Ms Low Peck Kem

(Until March 2023)  
President, Singapore Human  
Resources Institute

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## Annex B – Tripartite Committee on Workplace Fairness Engagements

Stakeholder Group	Engagement
<b>Employees</b>	<ul style="list-style-type: none"> <li>• Survey, Focus Group Discussions, and Dialogues with Local Employees on their views towards Workplace Fairness Legislation</li> </ul>
<b>Unions</b>	<ul style="list-style-type: none"> <li>• Dialogues with NTUC and Union Leaders</li> </ul>
<b>Employers</b>	<ul style="list-style-type: none"> <li>• Survey and Focus Group Discussions with Employers on their views towards Workplace Fairness Legislation</li> <li>• Dialogues with Leaders of Trade Associations and Chambers (TACs)</li> <li>• Dialogue with Financial Sector Tripartite Committee</li> </ul>
<b>Human Resource (HR)/ Legal Professionals</b>	<ul style="list-style-type: none"> <li>• Surveys and Dialogues with Human Resource Professionals in partnership with the Institute for HR Professionals and the Singapore Human Resources Institute</li> <li>• Dialogue with Members of the Human Resource Management Congress 2022</li> <li>• Dialogues with Members of the Law Society of Singapore and the Singapore Corporate Counsel Association Dialogue</li> <li>• Dialogue with the Legal Community at International Employment Lawyer's Asia Pacific Employment Summit 2023</li> </ul>
<b>Grassroots</b>	<ul style="list-style-type: none"> <li>• Dialogue with Members of the Public organised in partnership with REACH, Community Development Councils, and People's Association</li> </ul>
<b>Non-Governmental/ Community Organisations</b>	<ul style="list-style-type: none"> <li>• Dialogue with Leaders of Self-Help Groups and OnePeople.SG.</li> <li>• Dialogue with Community Leaders, Leaders of Religious Organisations, and Members of the Public at OnePeople.SG – Institute of Policy Studies Community Leaders' Conference 2022</li> <li>• Dialogues with Groups and NGOs representing specific issues and communities: <ul style="list-style-type: none"> <li>- Seniors</li> <li>- Women</li> <li>- Persons with Disabilities</li> <li>- LGBTQ+</li> </ul> </li> </ul>

### **Annex C – Summary of feedback from Interim Report**

1. Members of the public that the Committee consulted broadly supported the proposed recommendations for the legislation. The majority shared that the proposed legislation would improve workplace fairness and agreed with the characteristics to be protected under the legislation and the retention of TGFEF so that all forms of discrimination would be addressed. There was a commonly held view that eliminating workplace discrimination required a change in mindset which could not be legislated. Many sought greater clarity on the definition of discrimination and evidence required for lodging discrimination claims. Some expressed their hopes for adequate safeguards against retaliation, but were concerned about whether complainants could provide sufficient proof of retaliation.
2. The unions were supportive of the recommendations and agreed that mediation should remain the first course of action to avoid a litigious workplace culture. The unions were also willing to continue to play a constructive role in dispute resolution. However, they were concerned that the exemption for small firms could result in disparity in the treatment of employees in small firms and big firms. They also suggested to expand the coverage of the legislation to include workers such as security guards who may be subject to discrimination by service buyers. .
3. On the employer front, business leaders consulted agreed that the legislation was a positive move. Employers were generally supportive of the scope of the legislation and the characteristics that would be protected. While there remained concerns about potential frivolous claims, majority of employers felt reassured by the mediation-first approach with legal means as a last resort. TACs representing SMEs requested for more time to build their corporate HR capabilities and put in place proper grievance handling procedures.
4. Majority of HR professionals engaged by the Committee were hopeful that the proposed recommendations for the legislation would promote greater workplace fairness in Singapore. Some expressed concerns about prospective candidates making frivolous claims of discrimination at the pre-employment stage. There were also calls for training to help HR professionals familiarise themselves with the legislation and be equipped with the necessary mediation skills during dispute resolution.

5. Legal practitioners consulted generally felt that the recommendations were positive and would go some way in reducing discrimination at the workplace. They highlighted the need to strike the right balance between facilitating employees' access to redress and preventing frivolous claims for employers. They suggested useful measures that could be implemented to reduce the number of frivolous claims that might be filed and also provided feedback in relation to the proposed remedies for claimants. Legal practitioners were supportive of the continued use of mediation to avoid litigious workplaces, and highlighted the importance of mediator training to help resolve employment disputes speedily and amicably.
6. NGOs and groups representing specific issues and communities generally felt that the proposed recommendations would help promote workplace fairness and provide greater assurance for employees. There were calls for greater clarity on the definitions of discrimination and protected characteristics to help stakeholders better understand the proposed recommendations. The Committee also received feedback to expand the scope of the legislation. In particular, there were suggestions for the legislation to cover indirect discrimination and also to make the provision of reasonable accommodations for persons with disabilities a legislated requirement. Other suggestions included the expansion of the scope of protected characteristics to include sexual orientation, gender identity, criminal history, and other characteristics; for workplace harassment to be covered under the legislation; and for small firms not to be exempted.

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