



AWARE's response to the Tripartite Committee on Workplace Fairness Interim Report 7 March 2023

The Association of Women for Action and Research (AWARE) welcomes the [Tripartite Committee on Workplace Fairness' interim report](#) on the upcoming workplace fairness legislation.

We are glad that some of the Committee's recommendations take into account concerns that we have previously raised, including protection against discrimination at all employment stages, prohibition of retaliation from employers and protection of reporting parties' confidentiality, where possible. It is also heartening to see the strengthening of enforcement against errant employers, particularly in cases where a serious breach of the workplace fairness legislation is suspected.

However, the report leaves many questions and concerns unanswered. Firstly, the use of a "fairness" framework rather than an "anti-discrimination" framework is puzzling given that anti-discrimination appeared to be at the forefront of Prime Minister Lee Hsien Loong's 2021 National Day Rally announcement. We believe the latter captures discriminatory experiences more comprehensively, and acknowledges that certain groups are more vulnerable to discrimination than others. Other major developed countries have acts that centre discriminatory experiences, such as Australia's Disability Discrimination Act 1992, and the United Kingdom's Sex Discrimination Act 1975.

In addition, the Committee's report does not clearly define "discrimination". A precise definition of discrimination is important not just for victim-survivors, but also employers, in order for them to be more familiar with what employment practices may constitute discrimination.¹ The different types of discrimination—direct and indirect discrimination, discriminatory harassment and denial of reasonable accommodation—are neither included nor defined in the report. Capturing these nuances of workplace discrimination is crucial as discrimination does not always look the same across vulnerable groups.

Our comments and recommendations can be found in the table below. These are detailed further in our position paper ["Beyond Fairness: A legal framework for anti-discrimination in the workplace"](#). We keenly await the launch of the Tripartite Committee's full report and look forward to further dialogue and consultation on this critical piece of legislation to tackle workplace discrimination in Singapore.

¹ Justin Ong, "Proposed workplace discrimination laws: Bosses cite concerns on definition, implementation; HR experts say power balance still with employers", *TODAY*, Mediacorp Pte Ltd., 14 February 2023, <https://www.todayonline.com/singapore/workplace-law-definition-discrimination-bosses-interview-safeguards-2107056>

Page no.	Recommendation	AWARE's comments and recommendations
11	<p>Recommendation 1: The Committee recommends prohibiting 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, mental health conditions (“protected characteristics”).</p>	<p>We are glad that the Committee has a proposed list of protected characteristics that clearly indicates the various groups who will be protected under the upcoming legislation.</p> <p>However, we hope to see greater clarity on how “disability” as well as “mental health conditions” will be defined under this legislation. As noted in our position paper, we propose the following definitions:</p> <ul style="list-style-type: none"> • “Disability” means a physical, mental, intellectual or sensory impairment which hinders a person’s full and effective participation in society and substantially limits one or more major life activities. • “Mental health condition” means a long-term mental impairment which hinders a person’s full and effective participation in society and substantially limits one or more major life activities. <p>Additionally, it is disappointing that the proposed list of protected characteristics excludes sexual orientation, gender identity and gender expression (SOGIE). Numerous surveys conducted both globally and locally have shown that individuals who identify as lesbian, gay, bisexual, transgender and queer (LGBTQ+) are particularly vulnerable to discrimination, including in the workplace. A 2022 survey conducted by AWARE and Milieu Insight found that 68% of LGBTQ+ persons faced workplace discrimination in the previous five years, compared to 56% of those who did not identify as LGBTQ+.² Based on recommendation 2 in the Committee’s report, LGBTQ+ persons will presumably be covered under the Tripartite Guidelines on Fair Employment Practices (TGFEF), yet there are significant differences between the extent of protection accorded under the TGFEF and legislation.</p> <p>Moreover, the exclusion of SOGIE from the list of protected characteristics contradicts Prime Minister Lee’s recognition at the National Day Rally 2022 that LGBTQ+ people deserve to</p>

² “1 in 2 experienced workplace discrimination in Singapore over the past five years, with race, age and gender discrimination most common”, AWARE, AWARE, 20 September 2022, <https://www.aware.org.sg/2022/09/1-in-2-experienced-workplace-discrimination-aware-milieu-survey>



		<p>“participate in our community, and contribute fully to Singapore”.³ Such an exclusion from the upcoming legislation will only serve to reinforce the marginalised position that LGBTQ+ individuals currently occupy.</p> <p>Given the vulnerability of LGBTQ+ individuals to workplace discrimination, we recommend adding SOGIE to the list of protected characteristics.</p>
14	<p>Recommendation 6: The Committee recommends prohibiting employers from retaliating against those who report such cases, to provide assurance to those who face workplace discrimination or harassment.</p>	<p>This recommendation is greatly welcome as the possibility of facing retaliation from employers deters many victim-survivors of discrimination and harassment from reporting their experience: According to the 2022 AWARE-Milieu survey, 28% of those who did not report their experiences of workplace discrimination cited fear of professional retaliation as their reason for not doing so.⁴</p> <p>However, in addition to the examples of prohibited retaliatory listed, we hope that retaliation will be defined in the upcoming legislation. Our proposed definition of retaliation (or “victimisation”), which draws upon the UK Equality Act 2010 and the Australia Sex Discrimination Act, can be found in our position paper.</p>
15	<p>Recommendation 7: The Committee also recommends including additional guidelines in the TGFEP to provide greater clarity to the existing position that service buyers and intermediaries should not discriminate by selecting candidates based on characteristics that are not related to the job.</p>	<p>While contracted workers, including platform workers, will be covered under the TGFEP, the guidelines’ lack of legal enforceability may still leave such workers vulnerable to workplace discrimination. In line with recent efforts by the Advisory Committee on Platform Workers to strengthen protections for these workers, we recommend that the upcoming legislation cover all employees, gig workers, independent contractors and contract workers.</p>
18	<p>Recommendation 12: The Committee recommends requiring employers to put in place proper grievance handling processes, so that aggrieved employees can choose to try to resolve disputes amicably within the firm in the first instance.</p>	<p>It is heartening that the Committee recommends requiring employers to implement grievance handling procedures. In our 2022 survey, some of the reasons that victim-survivors did not report experiences of workplace discrimination were: that their companies did not have any official reporting procedures or workplace anti-discrimination policies under which they could report (15% of all victim-survivors who did not report), and that they were not aware of reporting procedures or policies in their</p>

³ “National Day Rally 2022”, Prime Minister’s Office, Government of Singapore, 21 August 2022, <https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2022-English>

⁴ “1 in 2 experienced workplace discrimination”

	<p>The proposed grievance handling requirements to be legislated include:</p> <ul style="list-style-type: none"> 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 	<p>companies (13%). Protecting the confidentiality of the reporting party would also offer them some assurance that they would be protected against retaliation from their employers.</p> <p>In addition to the proposed requirements, we recommend implementing the following measures to create a more victim-centric grievance handling process:</p> <ol style="list-style-type: none"> 1. Specify time limits for each stage of the grievance handling process and communicate this to all employees, such that they are aware of what to expect once a report has been filed. 2. Provide clarity on how the victim-survivor can appeal the inquiry outcome. 3. Allow employees to be accompanied in any meetings (with the employer or inquiry committee) by a colleague or union representative. <p>We further propose that employers be required to train relevant staff to ensure that they handle such reports in a sensitive, trauma-informed manner. This would be essential in ensuring that victim-survivors are not inadvertently exposed to further trauma throughout the reporting and inquiry process. We also hope that employers will be required to keep the victim-survivors (or other reporting parties) informed throughout the inquiry, and not merely notified of the outcome when the inquiry concludes.</p>
19	<p>Recommendation 13: The Committee recommends adopting this process for workplace discrimination claims under the new legislation, i.e. 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</p>	<p>We understand that this recommendation is guided by the Committee’s aim of preserving a non-litigious workplace culture, and we acknowledge that mediation may be helpful in some cases. However, in our experience working with clients at our Workplace Harassment and Discrimination Advisory (WHDA), we have observed that mediation may not be appropriate for all cases involving discrimination and harassment.</p> <p>Due to the distress caused by facing discrimination, many WHDA clients express that they do not subsequently wish to face their employers. Some clients also report feeling retraumatised, distressed and humiliated after their mediation sessions. In view of this, we recommend that certain claims under the new legislation, including those of workplace discrimination and harassment, be exempted from the requirement for a claimant to attempt mediation before filing a claim with the ECT.</p>
21	<p>Recommendation 18: To address the issue of frivolous or vexatious claims (e.g. where a claimant</p>	<p>We recognise that the Government does not want employees to potentially misuse the legislation by making false allegations or claims.</p>

	<p>wilfully persists with a claim despite having no evidence of discrimination), the Committee recommends empowering the ECT to strike out frivolous or vexatious claims or to award costs of up to \$5,000 to be paid by the unsuccessful claimant to the respondent in these situations.</p>	<p>However, a lack of evidence does not mean that discrimination did not occur. Discrimination often occurs in subtle ways that are difficult to document, such as through verbal or physical acts. Our 2022 survey found that 1 in 3 respondents did not report their experience of discrimination due to the belief that they did not have enough evidence. The new legislation should send a clear and strong signal to victim-survivors that they should not avoid seeking recourse based on the perception that they lack sufficient proof.</p> <p>Victim-survivors should only need to prove a prima facie case of discrimination, such that the burden of proof is shifted to the employer to rebut the assumption of discrimination. Unless the employer is able to provide an alternative explanation for its actions, they should be found liable of discriminatory behaviour. This framework is in line with that of other countries, as well as the Tripartite Guidelines on Wrongful Dismissal.</p> <p>If the legislation requires victim-survivors to present evidence of their claim, we recommend that a wide variety of evidence (e.g. text messages, emails, official documents, audio/video recordings, witness testimonies) be admissible.</p>
<p>Additional comments</p>		
<p>-</p>	<p>Protection against harassment</p>	<p>It is encouraging that the interim report makes mention of protecting victim-survivors of discrimination and harassment from retaliation when they report their experiences.</p> <p>To further strengthen protection against harassment, we propose that the definition of “discrimination” under the upcoming legislation encompass harassment and bullying. Similar to discrimination, harassment negatively impacts individual workers and companies, and such behaviour should not be tolerated. While the Protection from Harassment Act is currently in place, it does not specifically address harassment that (i) is related to a person’s protected characteristic or (ii) occurs at a workplace. Thus, having an expansive definition of “discrimination” that encompasses harassment would grant greater protections to victim-survivors. .</p> <p>In addition, we recommend that the legislation impose positive obligations on employers to ensure a safe and inclusive work environment for all workers. Efforts should also be made by the Government to educate all employees on these policies. An</p>



		<p>employer that has failed to implement adequate measures to prevent and address discrimination and harassment at the workplace should be held vicariously liable for any prohibited conduct committed by an employee against another person at the workplace. In the event that they fail to take such steps, the employer—who may be a natural person (such as a manager or business owner) or a body corporate—should be liable on conviction for non-compliance:</p> <ul style="list-style-type: none">(a) in the case of a natural person, a fine not exceeding \$200,000 or imprisonment for a term not exceeding two years, or both; and(b) in the case of a body corporate, a fine not exceeding \$500,000. <p>Victim-survivors should also be allowed to seek monetary compensation for the harm suffered as a result of harassment that the employer failed to prevent and/or address, due to its lack of adequate measures to tackle such conduct.</p>
-	TAFEP case management	<p>The results of our 2022 survey show that workplace discrimination is severely under-reported at the moment, with only 1 in 2 respondents reporting their experiences, and an even smaller number reporting to authorities such as MOM, TAFEP and TADM. Given that the upcoming legislation will at least partially address the reasons for under-reporting, it is likely that TAFEP can expect an increase in the number of cases they receive.</p> <p>We look forward to hearing more details on TAFEP's plans to handle this increase in caseload, for instance through recruitment and training of new officers, in future announcements and/or the Tripartite Committee's full report.</p>
-	Effective implementation of the new legislation	<p>We agree with the Committee that simply enacting a new legislation is not a panacea. We hope to see public awareness campaigns being initiated to educate the public on the legislation's key aspects, and how an individual may seek recourse if they experience any prohibited conduct at the workplace. Training workshops should also be provided to employers to help them understand their obligations under the new legislation, and the practical steps they can take to prevent and address discrimination and harassment at workplaces.</p>