Public Consultation

Approach for Resolving Workplace Fairness Disputes and Procedures for Making Workplace Fairness Claims

Submission by **Cultivate SG**

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I. Introduction

1. Cultivate SG is a non-profit organisation which wants to see families and our society thrive for generations. We call this 'social sustainability'. This involves individual rights and responsibilities, stable marriages, strong families, a cultural climate that supports personal and family growth, and social harmony. We believe that culture – as the sum total of values, beliefs and practices of people in society – is not a battle to be fought, but a garden to be cultivated.

2. We had previously written on the topic of discrimination against parents, recognising both the value and limits of the Workplace Fairness Act in tackling discrimination.[1] We had also given private feedback to the Ministry of Manpower concerning the Act.

3. We write in response to the public consultation paper on the approach for resolving workplace fairness disputes and procedures for making workplace fairness claims (the "Consultation Paper").[2]

II. Feedback on Procedures for Workplace Fairness Disputes

4. We agree in principle that employment should be fair and merit-based, and the approach for workplace fairness disputes should preserve workplace and social harmony. However, we have some reservations about one aspect of the proposed dispute resolution process, namely, the proposed judicial forum.

5. In this section, we will address the three matters raised in the Consultation Paper, namely:

   A. Approach for amicable and expeditious resolution of workplace fairness disputes;

   B. Judicial forum to hear workplace fairness claims;

   C. Representation of parties by unions for workplace fairness claims.

[1] Darius Lee, "Can parents enjoy extra leave without irritating their employers?" (2 October 2024): https://www.straitstimes.com/opinion/can-parents-enjoy-extra-leave-without-irritating-their-employers. Consistent with our emphasis on social sustainability, we wrote in this piece that "parents fulfil an important social function in nurturing the next generation of Singaporeans. It is essential to the long-term sustainability of not only the workforce, but also our national security and the entire country."

[2] Ministry of Manpower, "Public Consultation on Approach for Resolving Workplace Fairness Disputes and Procedures for Making Workplace Fairness Claims" (26 August 2025): https://www.reach.gov.sg/latest-happenings/public-consultation-pages/2025/public-consultation-on-approach-for-resolving-workplace-fairness-disputes-and-procedures-for-making-workplace-fairness-claims ("Consultation Paper").

A. Approach for Resolution of Workplace Fairness Disputes

6. We note that the proposed approach in the Consultation Paper is structured in progressive stages, aiming to preserve the employment relationship:

   (a) At first instance, disputes should be resolved through the firm's internal grievance handling processes;

   (b) If the dispute is not resolved within the firm, and the employee wishes to make a private claim against the employer, the parties must go through mandatory mediation;

   (c) If mediation is unsuccessful in resolving the dispute, the claim may be filed for adjudication. Even so, parties will be subject to a duty to consider amicable resolution in order to encourage the expeditious settlement of the dispute. In awarding costs, courts may take into account whether parties had made efforts at amicable resolution.[3]

7. We agree with this general approach.

8. Nevertheless, bearing in mind that employees and employers may potentially be unfamiliar with such processes (and, in many cases, may not be represented by lawyers), we recommend a degree of flexibility with procedural rules. Unlike some court procedures,[4] non-compliance with procedural rules should not automatically be fatal to a claim.

9. Instead, disputes should be judge-led. If there has been non-compliance with any procedural step in dispute resolution, the judge should have the power to stay (or pause) the proceedings and direct compliance with the procedure. Once the steps have been complied with, the judge can then allow the dispute resolution proceedings to resume. The matter should only be dismissed after repeated failures of the claimant to comply with directions without reasonable excuse, so as to ensure fairness to all parties.

[3] Consultation Paper at paras. 5 to 9.

[4] For example, in legal proceedings, non-compliance with the terms of a tiered dispute resolution clause (e.g. requiring mediation first, before proceeding to other forms of dispute resolution) could be fatal to the entire claim and deprive a tribunal of jurisdiction. See, for example, *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2014] 1 SLR 130.

10. The following illustration sets out how non-compliance with procedure can be addressed, in our view:

> **Illustration: Non-compliance with procedure**
>
> A claimant ("**C**") applies to the Employment Claims Tribunal ("**ECT**"), alleging a breach of the Workplace Fairness Act by his employer firm ("**F**"). While he has raised the matter internally through F's internal grievance procedure, C did not proceed for mandatory mediation before filing his claim in the ECT.
>
> Rather than dismissing C's claim due to his non-compliance, the ECT judge stays (or pauses) the proceedings, and directs C to proceed for mandatory mediation with F.
>
> However, despite repeated reminders and directions from the ECT, C repeatedly fails to proceed for mandatory mediation with F, giving frivolous reasons for the repeated delays. As a result, the ECT dismisses C's claim.

B. Judicial Forum to Hear Workplace Fairness Claims

11. The Consultation Paper proposes the following in relation to the judicial forum:

(a) To have "different judicial forums hear workplace fairness claims depending on the claim amount":

(i) Claims up to and including $250,000: To be heard in the Employment Claims Tribunal ("ECT"). Parties will not be allowed representation by lawyers. They will not be bound by the civil courts' strict rules of evidence, and adopt a judge-led approach, where judges take a more proactive role in the proceedings.

(ii) Claims above $250,000: To be heard in the General Division of the High Court ("GDHC"), since "higher-value claims are generally more complex". Parties will be allowed representation by lawyers. While the GDHC will also adopt a judge-led approach, strict rules of evidence and procedures will apply, which is consistent with the GDHC's practice today.

(b) All workplace fairness claims to be heard in private. Proceedings will not be open to other individuals, such as the public and the media.[5]

12. Respectfully, we do not share the same views as the Consultation Paper on the judicial forum. A consistent set of processes is preferable, whereas absolute privacy in such disputes does not necessarily serve the public interest.

[5] Consultation Paper at paras. 10 to 17.

1) Consistency Preferred in Judicial Forums

13. We are not in favour of the Consultation Paper's proposal regarding the judicial forums, as a consistent set of processes is preferable.

14. Here are a number of concerns:

(a) A consistent approach preferred. The Consultation Paper proposes two different forms of procedures and rules within the ECT (no legal representation, no strict rules of evidence) and GDHC (legal representation permitted, strict rules of evidence), even though both are judge-led. We would prefer a single set of consistent rules applicable across all disputes arising out of the Workplace Fairness Act.

(b) Value of claim not necessarily an indication of complexity. Complexity may arise in law or fact or both. In the context of employment discrimination, the value of a claim may not necessarily indicate complexity. For example, a high-earning CEO who claims more than $250,000 in lost earnings and other benefits under the Workplace Fairness Act may have a simpler claim than a lower-earning employee in a dispute with an employer about whether or not one or more permitted exceptions to discrimination under the Act apply.

(c) Right of appeal or judicial supervision is unclear. It is trite law that all legal powers have legal limits, and the courts are entrusted with the task of ensuring that any exercise of state power is done within legal limits.[6] The Consultation Paper is unclear as to whether there are any avenues of appeal if a party is dissatisfied with the decision of the ECT or GDHC. Presumably, an appeal to the Court of Appeal exists from the GDHC, as per existing law.[7] However, the position is far less clear for appeals (if any) or judicial review of the ECT's decisions.

2) Absolute Privacy Not Necessarily in the Public Interest

15. Absolute privacy is not necessarily in the public interest, even in the context of racial or religious discrimination. Instead, a more balanced approach is preferred.

16. The Consultation Paper has explained the rationale for its proposal on privacy as follows:

"To ensure amicable resolution of workplace fairness disputes regardless of the judicial forum, we intend for all workplace fairness claims to be heard in private. Proceedings will not be open to other individuals, such as the public and the media.

[6] *Tan Seet Eng v Attorney-General and another matter* [2015] SGCA 59 at para. 1.
[7] Section 35, Supreme Court of Judicature Act 1969.

Given that discrimination disputes can be complex and socially divisive, especially where race or religion is involved, managing such disputes in a private forum would help to:

a. Minimise publicity and the politicisation of such issues;

b. Protect the privacy of parties; and

c. Minimise the involvement of third parties who may misrepresent the dispute."[8]

(Emphasis in original)

17. We do not share the same views on the need for absolute privacy or the proposed rationale thereto:

(a) Inconsistent with approach to offences against racial or religious harmony. Offences against racial or religious harmony are currently heard in open court, with coverage by the press, and the offenders are clearly identified by name.[9] The police have also identified offenders by name in press releases.[10] The stated rationale for privacy – that "discrimination disputes can be complex and socially divisive, especially where race or religion is involved"[11] – is inconsistent with these approaches. Indeed, the opposite may be true, where public interest may require racial, religious or other forms of discrimination to be *publicly denounced*.

(b) **Contradicts the principle of "open justice"**. The principle of open justice is a "hallowed" rule that is fundamental to the integrity of the justice system in Singapore.[12] The Supreme Court of Judicature Act ("SCJA") provides that the court is "deemed an open and public court to which the public generally may have access", and private hearings are only allowed to the extent that it is "in the interests of justice, public safety, public security or propriety, the national interest or national security of Singapore, or for other sufficient reason to do so".[13] To the extent that the Consultation Paper proposes for the GDHC to hear matters in private, this potentially departs from the established rule in the Singapore courts regarding "open justice".

[8] Consultation Paper at paras. 16 to 17.

[9] See, for example, *Subhas Govin Prabhakar Nair v Public Prosecutor* [2025] SGHC 18; "Rapper Subhas Nair's appeal dismissed, starts jail term for trying to promote ill will between groups" *The Straits Times* (5 February 2025): https://www.straitstimes.com/singapore/courts-crime/rapper-starts-jail-term-for-trying-to-promote-ill-will-between-groups-after-appeal-dismissed.

[10] Singapore Police Force, "Man to be charged for attempts to promote feelings of ill-will between different groups on grounds of religion and race" (28 October 2021): https://www.police.gov.sg/media-room/news/20211028_man_to_be_chrg_fr_attmpt_to_prmte_feelngs_of_illwill_btwn_diff_grp_on_grnd_of_relgion_n_rce.

[11] Consultation Paper at para. 17.

[12] *Re Pulara Devminie Somachandra* [2025] SGHC 155. The principle of open justice is based on the fundamental principle that "justice must not only be done but must also be seen to be done". Two key reasons for this are: Firstly, the public administration of justice promotes transparency and provides a safeguard against judicial arbitrariness or idiosyncrasy. Secondly, by enabling the public to witness the operation of the rule of law, open court proceedings safeguard public confidence in the judicial system and dampen the desire for recourse to vigilante justice. (*Chua Yi Jin Colin v Public Prosecutor* [2021] SGHC 290 at para. 34)

[13] Section 8(1) and (2), Supreme Court of Judicature Act 1969.

(c) Existing rules protect the integrity of the justice system. There are established rules in the Administration of Justice (Protection) Act 2016 to protect the integrity of the justice system, which would help to minimise publicity and politicisation, as well as the involvement of third parties who may misrepresent the dispute. Thus, it is not necessary to impose a blanket rule on privacy that extends even to court proceedings.

18. Instead, we are of the view that a more appropriate justification for privacy in such disputes – and to the extent applicable – is *the amicable and expeditious resolution of workplace fairness disputes*. Conversely, privacy may not serve the public interest if amicable and expeditious resolution is not likely or possible (e.g. a recalcitrant employer which discriminates against individuals on the basis of race).

19. As a result, we are of the view that a more balanced approach to privacy and publicity may be appropriate, as per our proposed dispute resolution framework below.

3) Our Proposed Dispute Resolution Framework

20. Instead of the proposed framework under the Consultation Paper, we would recommend the adoption of a different framework, as described below.

(a) All workplace fairness claims to be heard in the ECT at first instance. We propose that all workplace fairness claims should be heard in the ECT at first instance, regardless of claim amount.

(b) ECT proceedings to be judge-led, with legal representation and/or *amicus curiae* permitted in exceptional circumstances. While we agree with the Consultation Paper that the proceedings should be judge-led, we are of the view that the ECT may allow legal representation and/or *amicus curiae* (i.e. friends of the court) in exceptional circumstances, regardless of claim amount. Such exceptional circumstances may include complex questions of law or matters affecting the public interest. In these circumstances, the scope of legal representation or *amicus* can be carefully circumscribed to only address certain limited legal questions. (See also our views on unions below.)

(c) ECT proceedings to be heard in private, with an ongoing duty to consider amicable resolution. In the interests of amicable and expeditious resolution of workplace fairness disputes, it would be helpful for these disputes to be heard privately, and not be open to other individuals, such as the public and the media.

(d) Guidance or advisories based on principles in ECT decisions to be published publicly. In the public interest, it would be important for principles derived from ECT decisions to be published publicly as interpretive guidance or advisories, so as to educate the public about their rights and responsibilities under the law.

(e) Right of appeal to GDHC. Should parties be dissatisfied with any decision of the ECT, there should be a right of appeal to the GDHC. Such appeals will be heard according to the GDHC's regular procedures.

(f) Further appeal to Court of Appeal, with permission. Further permission can be granted to appeal to the Court of Appeal – Singapore's apex court – if the relevant legal threshold is met under the usual rules contained in the SCJA.

(g) Power of the courts to issue gag orders, if necessary. Consistent with the existing position under the SCJA, all court hearings are subject to the principle of "open justice", and gag orders can be issued in exceptional circumstances if necessary (e.g. workplace fairness claims which involve allegations of sexual misconduct).[14]

C. Representation of Parties by Unions for Workplace Fairness Claims

21. The Consultation Paper proposes to allow the involvement of unions as follows:

(a) Allow workers to be represented by their union for workplace fairness claims if they are employed in unionised companies;

(b) Allow employers to be represented by their union at the mediation sessions and the hearing of workplace fairness claims if the claim value is between $30,000 and $250,000 and the worker filing the claim can be represented by their worker union.[15]

22. We have no objections to the proposal for workers and/or employers to be represented by their unions.

23. However, in light of our suggestions above regarding the judicial forum, we are of the view that:

(a) Union representation of workers. We agree that workers can be represented by their union for workplace fairness claims if they are employed in unionised companies.

(b) Union representation of employers. Employers can be represented by their union at the mediation sessions and the hearing of workplace fairness claims if the claim value is $30,000 and upwards, and the worker filing the claim can be represented by their worker union.

(c) Additionally, unions can be invited to express their views in exceptional circumstances. Apart from the circumstances laid out above, we suggest that the ECT may allow unions to express their views in exceptional circumstances, regardless of claim amount. Such exceptional circumstances may include complex questions of law, factual issues concerning industry practices or matters affecting the public interest. In these circumstances, the scope of union

[14] See, for example, *Chua Yi Jin Colin v Public Prosecutor* [2021] SGHC 290.
[15] Consultation Paper at paras. 18 to 22.

involvement can be carefully circumscribed to only address certain limited legal or factual questions.

(d) Equality of treatment between unionised and non-unionised parties. The involvement of unions or otherwise should not affect the access to justice for either employers or employees, and there should be equal treatment of parties regardless of the involvement of unions.

III. Conclusion

24. In workplace fairness disputes, we at Cultivate SG recognise that employees, employers and various other stakeholders (e.g. unions) are part of the same wider ecosystem. All must find workable rules and processes to resolve their disagreements, so as to find a socially sustainable way forward.

25. Laws can help to lay down clear and accessible rules to help parties to shape their behaviours, resolve their disputes and avoid future differences. At the same time, we recognise that laws alone are not enough. A deeper change needs to occur in people's hearts and minds.