Family Law Practice Committee's Position Paper on the Proposed Amendments to the Adoption of Children Act by the Ministry of Social and Family Development

A. OVERVIEW

1. This is the Family Law Practice Committee ("**Committee**") of the Law Society of Singapore's response to the Ministry of Social and Family Development's ("**MSF**") invitation to the public for feedback on the adoption of children in Singapore and on the MSF's proposals for amendments to the Adoption of Children's Act (Cap 4, 2012 Rev Ed) ("**ACA**").

2. In putting up this Position Paper ("**Paper"**), the Committee has kept in view the MSF's driving force behind the proposed amendments to ACA, that is, *"To keep pace with international developments and for Singapore to continue to be a good place to raise children."*[1]

3. Before stating the Committee's observations, views, and recommendations, it is apposite to note that the ACA sets out the requirements to be fulfilled for adoption of children, and crucially that the final arbiter in deciding whether to grant the adoption vests with our courts.

Objectives of the proposed amendments

4. To achieve its objectives as set out in paragraph 2 above, the MSF has proposed twelve amendments to the ACA, categorised under three main purposes: "eliminating unethical behaviour in the adoption sector", "finding a good home for every child put up for adoption", and "breaking cycles of abuse and neglect".

5. Significant proposed changes of concern departing from present procedure include requiring the applicants to obtain a favourable 'Adoption Readiness Assessment' from an authorised adoption agency before they are able to submit an adoption application to the Court (with applicants to appeal to the Guardian-in-Adoption ("**GIA**") and thereafter the Minister whose decision on an appeal will be final), as well as broad expansions to the threshold for dispensation of parental consent.

Query on targeted demographics of the proposed amendments

6. It is unclear what is the demographic which the proposed amendments to the ACA target, and the prospective number of past adoption applications which would have been otherwise allowed (or disallowed). It was reported that, until 2018, the MSF looked into an average of 360 adoption applications a year, and applications by sole applicants formed less than ten percent of these applications.[2] Between 2008 and 2018, the MSF also oversaw fourteen applications (and supported ten thereof) involving surrogacy.[3] In another report, it was stated that 432 adoption cases were processed in 2018, and about twenty applications a year involved sole applicants.[4]

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[1] Public Consultation on the Adoption of Children in Singapore, *Reach* (22 February 2021 – 21 March 2021) <https://www.reach.gov.sg/participate/public-consultation/ministry-of-social-and-family-development/public-consultation-on-the-adoption-of-children-in-singapore> (accessed 26 March 2021) ("MSF's Public Consultation").

[2] "High Court grants gay man's bid to adopt biological son born via surrogate mother" *Today* (18 December 2018) <https://www.todayonline.com/singapore/high-court-grants-gay-mans-bid-adopt-biological-son-born-surrogate-mother> (accessed 24 March 2021).

[3] Alfred Chua, "MSF has backed adoption bids that involved surrogacy; High Court and lawyers say it's time to study the issue" *Today* (18 December 2018) <https://www.todayonline.com/singapore/msf-has-backed-adoption-bids-involved-surrogacy-high-court-and-lawyers-say-its-time-study?cid=h3_referral_inarticlelinks_03092019_todayonline> (accessed 24 March 2021).

[4] Theresa Tan, "More in Singapore turning to adoption" *The Straits Times* (10 February 2019) <https://www.straitstimes.com/singapore/more-in-spore-turning-to-adoption> (accessed 24 March 2021). According to Adoption Statistics on MSF's website, MSF processed 453 adoption applications in 2019, the demographics of which are not provided. Ministry of Social and Family Development website <https://www.msf.gov.sg/Adoption/Pages/Adoption-Statistics.aspx> (accessed on 24 March 2021).

Query on scope of the proposed amendments

7. It is unclear what are the "international developments" which the proposed amendments to the ACA address. It is noted, however, that the proposed amendments do not address at all the MSF's affirmation to consider reform to the ACA stemming from the case of *UKM v Attorney-General* [2019] 3 SLR 874 ("***UKM***"), to reflect public policies and realities relating to adoptions within same-sex family units and adoptions involving surrogacy.[5]

8. The Committee's feedback on selected proposed amendments,[6] reorganised thematically, is as follows.

B. FEEDBACK ON PROPOSED AMENDMENTS RELATING TO THE REQUIREMENT TO OBTAIN AN 'ADOPTION READINESS ASSESSMENT' PRIOR TO ADOPTION APPLICATION TO COURT

(1) Legislate the title of Guardian-in-Adoption

The following proposals were made by the MSF to legislate the title of GIA:

(i) Create a new departmental/ statutory title of GIA, who shall be responsible for safeguarding the interests of children to be adopted and the administration and enforcement of the ACA.

(ii) Empower the GIA to delegate her functions to any public officer, or such other person with the approval of Minister.

(iii) Repeal Section 10(3) of the ACA, which imposes a duty on the Court to appoint a person/body to act as a GIA, so as to reduce administrative processes.

(2) Require all applicants to undergo an 'Adoption Readiness Assessment'

The following proposals were made by the MSF to help applicants better understand their own readiness to manage the challenges of the adoption journey and the possible support that they may require, and ensure that the Child is placed in a safe and suitable environment:

(i) Strictly require all prospective adopters to obtain a favourable "Adoption Readiness Assessment" before they are able to submit an adoption application to the Court. This requirement will not be waived.

(ii) Require applicants to be physically present in Singapore for at least one year immediately preceding the date of the pre-adoption assessment application.

(iii) Empower the GIA and authorised adoption agencies to vary/revoke the Adoption Readiness Assessment if there has been a material change in the applicants' circumstances after the assessment was issued (e.g. change in job circumstances for one or both applicants, or change in plans for care arrangements) or if the GIA disagrees with the authorised adoption agency's assessment.

(iv) Allow applicants to appeal to the GIA and thereafter the Minister against the outcome of the assessment, or the decision to vary/revoke assessment, to ensure that their views are heard. Minister's decision on an appeal will be final.

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[5] Ministry of Social and Family Development website <https://www.msf.gov.sg/media-room/Pages/Ruling-to-award-adoption-to-single-man-in-same-sex-relationship.aspx> (accessed on 24 March 2021): *"Following the court's judgment, MSF is reviewing our adoption laws and practices to see how they should be strengthened to better reflect public policy [against the formation of same-sex family units], which in turn is a reflection of the values of our broad society today... We are also studying the issue of surrogacy carefully.."*; "MSF to mull if changes to adoption law needed following gay Singaporean's successful High Court appeal" *Yahoo News* (17 December 2018) <https://sg.news.yahoo.com/msf-consider-changes-adoption-law-following-gay-singaporeans-successful-high-court-appeal-132710043.html> (accessed 24 March 2021); "MSF has backed adoption bids that involved surrogacy; High Court and lawyers say it's time to study the issue" *Today* (18 December 2018) <https://www.todayonline.com/singapore/msf-has-backed-adoption-bids-involved-surrogacy-high-court-and-lawyers-say-its-time-study?cid=h3_referral_inarticlelinks_03092019_todayonline> (accessed 24 March 2021).

[6] Feedback on the proposed changes to "Identify parties undertaking adoption duties", to "Replace the term "infant" with "child"', and to "Ensure the child is cared for if the adoption placement breaks down during proceedings, or an adoption order is not made", were omitted.

Departure from present procedure of the Court having scrutiny over both favourable as well as unfavourable social welfare reports

9. The present procedure is that when the prospective adopters have identified a child to adopt, they will apply to the Court for the adoption, whereupon the Court will appoint the Director-General of Social Welfare, MSF as GIA pursuant to Section 10(3) of the ACA, and direct the MSF to conduct the social investigation to be adduced by Affidavit before determining whether to grant the Adoption Order. Additionally, prospective adopters wishing to adopt a foreign-born child or a child from the MSF Fostering Scheme must first obtain a 'Home Study Report' conducted by a voluntary welfare organisation accredited by the MSF before starting to look for a suitable child to adopt.[7] By repealing Section 10(3) and requiring a favourable 'Adoption Readiness Report' ("**AR Report**") to be procured before the adoption application can be made to Court, the proposed amendments appear to have effectively removed the Court's scrutiny over the MSF's unfavourable reports,[8] and the Court is thereby precluded from allowing an adoption even if it is in the best interests of the child notwithstanding the MSF's unfavourable report, as in *UKM*.[9] The Committee feels that it is imperative to state that, in any proposed amendments, whether to the ACA or any other legislation, it is important to uphold the inviolable rule of law.[10]

Due process for unfavourable AR Reports

10. The proposed amendments provide for the applicants with an unfavourable AR Report issued by an "authorised adoption agency" (an agency authorised by the MSF to perform specified functions related to adoptions) to appeal to the GIA and thereafter the Minister, and the Minister's decision on an appeal will be final. For comparison, prospective adopters in the United Kingdom may challenge adoption assessment reports by making representations to the adoption agencies or applying to an Independent Review Panel. [11] The proposed changes therefore deprive such dissatisfied applicants of an independent and separate forum to challenge and appeal against unfavourable reports (outside of the MSF, under which auspices the report was generated), as well as the transparency and due process afforded in Court proceedings and reasoned decisions.

Robustness of AR Reports

11. This is compounded by the fact that there is no standardised format for or clear list of prescribed criteria and factors to be considered for the assessment of the suitability for adoption in the existing

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[7] Ministry of Social and Family Development website https://www.msf.gov.sg/Adoption/Pages/How-to-adopt-a-citizen-or-PR.aspx>, https://www.msf.gov.sg/Adoption/Pages/Apply-for-Home-Study-Report.aspx> (accessed 24 March 2021).

[8] It is noted that the proposed amendments are silent on whether there will be a separate procedure for recipients of unfavourable AR Reports to challenge such reports before an independent panel.

[9] There appears to have been other unreported cases (such as OSA 60/2013) where the Court has granted an adoption order notwithstanding the MSF's unfavourable report.

[10] In this regard, the Committee quotes the Court of Appeal in the seminal case of *Chng Suan Tze v Minister for Home Affairs* [1988] 2 SLR(R) 525 at [86]: "*In our view, the notion of a subjective or unfettered discretion is contrary to the rule of law. All power has legal limits and the rule of law demands that the court should be able to examine the exercise of discretionary power.*"

[11] Section 45 of the United Kingdom's Adoption and Children Act 2002 read with Regulation 30B(5) of The Adoption Agencies (Miscellaneous Amendments) Regulations 2013, which provides that "*Where the adoption agency considers that the prospective adopter is not suitable to adopt a child, it must—*

(a) notify the prospective adopter in writing that it proposes not to approve the prospective adopter as suitable to adopt a child ("qualifying determination");

(b) send with that notification its reasons together with a copy of the recommendation of the adoption panel if that recommendation is different; and

(c) advise the prospective adopter that within 40 working days beginning with the date on which the notification was sent the prospective adopter may—

(i) submit any representations the prospective adopter wishes to make to the agency; or

(ii) apply to the Secretary of State for a review by an independent review panel of the qualifying determination."

social welfare reports (compared to, for example, as legislatively mandated in New South Wales[12]). Even at present, there are concerns that the robustness of social welfare reports turns on the competence and experience of the individuals assigned, and the extent of their availability and efforts if impacted by high caseload and turnover. Legislating the factors to be considered in assessing the suitability of prospective adopters to adopt would allay any concerns of elements of subjectivity in putting up the AR Reports.

C. FEEDBACK ON PROPOSED AMENDMENTS RELATING TO EXPANSIONS TO THE THRESHOLD FOR DISPENSATION OF PARENTAL CONSENT

(3) No requirement of consent of some birth parents to the adoption

The following proposals were made by the MSF to clarify the threshold for dispensation of parental consent by the Court:

(i) Include a requirement that an adoption order cannot be made unless the applicant serves a copy of the application on every parent or guardian whose consent is required for the adoption. The Court may dispense with service on any person.

(ii) Allow the Court to decide whether to dispense with consent if the parent or guardian whose consent is required for the adoption:
   (a) Has abandoned the child or cannot be found;
   (b) Has neglected or ill-treated the child, and has not adequately resolved the conditions that pose a risk of harm to the child within a specified period (one year for a child under three years old, and two years for a child above three years old);
   (c) Has failed, without reasonable excuse, to care for the child independently or to fulfil the responsibilities of a parent/guardian for the specified period;
   (d) Has been institutionalized (including imprisonment), for a period of time that would make it highly unlikely for the person to care for the child;
   (e) Is a chronic drug abuser, or has displayed a continuous pattern of recalcitrant offending;
   (f) Has been assessed by a qualified assessor (1) to be unable to have care and control of the child at the material time of the assessment, due to physical or mental incapacity; and (2) that the person is unlikely to be able to resume care and control of the child within a reasonable period of time;
   (g) Ought to have his/her consent dispensed with, in the opinion of the Court and in all the circumstances of the case.

(iii) Empower the GIA to require any person whose consent is required for an adoption to be assessed by a qualified assessor, as there are some parents or guardians who refuse to be assessed on their capacity to care for the child.

12. The Committee is particularly concerned about the impact of the proposed amendments here. Whilst the Committee accepts that there are cases where the courts make adoption orders in the best interests of children notwithstanding their birth parents' opposition to the adoption, the Committee is of the view that all steps must be taken (and be seen to be taken) to safeguard the sacrosanct right of a child to be brought up by his/her birth parent, and conversely also his/her birth parents' right to parent.

Departure from present procedure of the Court having to be satisfied that "reasonable notice of the application for an adoption order has been given to the parent or guardian" before applying for the dispensation of the latter's consent to the adoption

[12] See Section 45F of the New South Wales' Adoption Act read with Clause 59 of the Adoption Regulations 2015; See also the factors listed in Section 45 of the United Kingdom's Adoption and Children Act 2002 read with Regulations 25-27 of The Adoption Agencies (Miscellaneous Amendments) Regulations 2013; as well as the factors listed in Recommendation No. 7.4.3 under Guide No. 1 to Good Practice for the Implementation and Operation of the 1993 Hague Intercountry Adoption Convention.

13. The current Section 4(4) of the ACA is worded such that the Court has to be satisfied that reasonable notice of the adoption application has been given to birth parents before the applicants apply for the dispensation of the birth parents' consent.[13] The proposed amendments are ambiguous as to whether the applications for the dispensation of service as well as for the dispensation of the birth parents' consent can be made and heard concurrently instead of sequentially. If the proposed amendments to the ACA allow for the application for dispensation of service on the birth parents to be heard concurrent with that for dispensation of consent, this could result in ease in securing an order for dispensation of consent, thereby resulting in the undesired effect of summarily stripping birth parents of their parental rights. We note that although it was stated that, "*MSF intends to amend the legislation to make clear that applicants must inform the parents and guardians of their adoption applicants*",[14] this is not apparent from the proposed changes.

14. For comparison, the equivalent phraseology of Section 4(4) of the ACA is used in Section 72 of New South Wales' Adoption Act, which provides that "*The Court must not make a consent order on the application of any person unless notice of the application has been given to the person whose consent is sought to be dispensed with at least 14 days before the order is made."* This is also in line with Article 9 of the United Nation's Convention on the Rights of the Child, of which Singapore is a signatory, and which provides that "*all interested parties shall be given an opportunity to participate in the proceedings and make their views known"* in proceedings where judicial review is conducted to determine whether a child should be separated from his or her parents against their will.[15]

Broad expansion of the specified situations in which the consent of the birth parents can be dispensed with

15. The above, coupled with the proposed expansion of the threshold for the dispensation of parental consent to seven rather broadly-scoped situations, lends concern that the prospective adopters would find it easier to succeed in applications to dispense with parental consent to the adoption. To give a flavour as to how the situations in which parental consent can be dispensed with have been expanded: -
    (a) The existing Section 4(4) requires the birth parent to have "neglected" or "persistently ill-treated" the child, whilst the proposed amendments merely require neglect or ill-treatment

[13] Section 4(4) of the ACA provides that: *"An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant; but the court may dispense with any consent required by this subsection if the court is satisfied that the person whose consent is to be dispensed with —*

(a) has abandoned, neglected, persistently ill-treated the infant or cannot be found and that reasonable notice of the application for an adoption order has been given to the parent or guardian where the parent or guardian can be found;

(b) is unfit by reason of any physical or mental incapacity to have the care and control of the infant, that the unfitness is likely to continue indefinitely and that reasonable notice of the application for an adoption order has been given to the parent or guardian; or

(c) ought, in the opinion of the court and in all the circumstances of the case to be dispensed with, notwithstanding that such person may have made suitable initial arrangements for the infant by placing the infant under the care of the authorities of a home for children and young persons, the protector under the Children and Young Persons Act (Cap. 38) or some other person."

[14] Paragraph 16 of the MSF's Public Consultation.

[15] Article 9 of the United Nations Convention on the Rights of the Child provides that:

"*1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known."

with the birth parent not having "resolved the conditions that pose a risk of harm" within the specified period of one or two years, as the case may be;

(b) The existing Section 4(4) does not have an ambiguously-phrased category for the dispensation of the consent of the birth parent who "has failed, without reasonable excuse, to care for the child independently or to fulfil the responsibilities of a parent/guardian for the specified period";[16]

(c) The existing Section 4(4) does not have specific categories allowing for the dispensation of consent of birth parents who have been "institutionalized (including imprisonment), for a period of time that would make it highly unlikely for the person to care for the child" or is a "chronic drug abuser, or has displayed a continuous pattern of recalcitrant offending";

(d) The existing Section 4(4) requires the birth parent's physical or mental incapacity to "*continue indefinitely*", whilst the proposed amendments merely require an assessment by a 'qualified assessor' that the person is unlikely to be able to resume care and control of the child within a reasonable period of time. The Committee raises several concerns here: Who is this 'qualified assessor' and what is his/her expertise; Under what circumstances would the GIA be empowered to require the birth parent to undergo such assessments; What would the consequences be on a birth parent refusing to undergo the assessment; What is the "reasonable period of time".

16. Whilst the existing Section 4(4) does not set out such categories with such specificity, the Court has nonetheless robustly determined on a case-by-case basis whether such a parent's consent ought to be dispensed with after reasonable notice had been given to him/her of the adoption application.[17] The proposed changes, particularly with accompanying powers to, for instance, a 'qualified assessor' to assess a parent to be incapacitated and thus service on whom, and whose consent, are dispensed with, are potentially far-reaching, and in some circumstances, the consequences irreversible and grave. The proposed changes, if adopted, should be crafted to provide that such powers are checked by and left to the Court, and not to the applicants or the GIA in support of the adoption application.

Consent of birth parents should not be dispensed with lightly against the grain of prevailing case law

17. The detailed reasoning given by judges in cases where consent of the birth parents had been dispensed with do set out the clear considerations that weigh heavily in judges' minds as they consider if they should exercise their discretion to do so.[18] Moreover, it would appear to run contrary to prevailing case law where a long-term caregiver is precluded from applying to be appointed as the "guardian" of the child under the Guardianship of Infants Act, but would now find

[16] Arguably, such an expanded category may result in a different outcome in, for instance, *Re Wan Yijun* [1990] 2 SLR (R) 157, where the Court declined to dispense with the birth mother's consent in the application by the birth father and the step-mother to adopt twin girls, despite accusations that the birth mother was a compulsive gambler, was suicidal, and did not have a good family background. In doing so, the Court considered that the birth mother had custody of the twins, and that there was nothing in her conduct which questioned her ability and capacity to be a good mother.

[17] As the Court has done for instance, in *Re BJU to be called B* [2013] SGHC 138, wherein the Court dispensed with the birth father's consent because, among other things, he was in prison at the time, and would be released only when the child reaches the age of 17.

[18] For instance, in *Re B* [2020] SGFC 46, the Court dispensed with the birth parents' consent based on the absence of the birth father from the child's life, the long road to recovery in drug rehabilitation for the birth mother, and how the interests of the child would be served in the adoptive home. In *THS v THT* [2015] SGFC 139, the Court dispensed with the birth mother's consent based on her constant abuse of the child, the bond between the prospective adopters and the child, and the possibility of access of the birth parents to the child post-adoption.

it easier to apply to dispense with the consent of the birth parent and to be the "adoptive parent" of the child under the ACA instead.[19]

(4) Facilitate adoption of children in state care who are unlikely to be reunified with their birth families

The following proposals were made by the MSF to facilitate adoption of children in state care, who are unlikely to be reunified with their birth families:

(i) Allow the Court to decide to dispense with parental consent, if the adoption application relates to a child who is the subject of an Enhanced Care and Protection Order ("**ECPO**") granted under Section 49B of the Children and Young Persons Act ("**CYPA**").

(ii) Allow the Director-General of Social Welfare ("**DGSW**") or a protector (who is a person authorised by the DGSW to perform functions under the CYPA) to intervene in adoption proceedings if the child to be adopted is under a Court order for care or protection issues. This is to allow the DGSW or the protector to make a case to the Court on why parental consent may be dispensed with.

The fact that the child is the subject of an ECPO should not automatically entail that the birth parents' consent is dispensed with, with no recourse

18. Pursuant to the new legislative amendments made to the CYPA in July 2020, the DGSW or a protector may apply to the Youth Court for a child who had been committed to temporary foster care (whether pursuant to Section 49 or Section 49C of the CYPA) for the "specified period" of one or two years or longer, as the case may be,[20] to be made subject to an ECPO for him to be committed to long-term foster care until he turns 21 if the parents are not fit to provide care and it is not appropriate to return the child to the care of his parents.[21] The proposed changes to the ACA appear to bring this a step further in severing the parent-child relationship in allowing the Court to decide to dispense with parental consent if there is an adoption application relating to a child who is subject to an ECPO.

19. The concerns raised above that the consent of the birth parents should not be dispensed with lightly holds notwithstanding that the child is the subject of an ECPO. Given the short time frame of one or two years being the "specified period", the birth parents are afforded precious little time for reunification efforts by the MSF before the MSF is empowered to commence permanency planning for long term foster care and adoption of the child. It appears to be incongruous that the proposed changes seek to dispense with the consent of birth parents to the intended adoption merely because the child is the subject of an ECPO, thereby relinquishing all their parental rights over the child and extinguishing their recourse under the CYPA that they may apply to the Youth Court "at any time" for the ECPO to be varied or discharged.[22] Further, one should not be hasty to put children up for adoption without first considering placing them with their birth family members. This would be in line with Article 8(1) of the United Nations Convention on the Rights of the Child, which provides that "*State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by the law without unlawful interference"*.[23]

[19] In the High Court case of *UMF v UMG* [2018] SGHCF 20, Justice Debbie Ong explained that a grand-aunt (who had cared for a 4-year-old boy since he was 7 days old) has no *locus standi* to bring an application under s 5 of the GIA. Justice Debbie Ong explained that the rationale of limiting the persons who can apply for orders in respect of the child is because the parent is at the "apex" in his relationship with the child, and that "parents" are the only adults who have parental rights and responsibilities without any court order.

[20] See Section 49B(12) of the CYPA.

[21] See Sections 49B(1)-49B(4) of the CYPA.

[22] See Sections 49B(10) and 49B(11) of the CYPA.

[23] The phrase '*family relations as recognised by the law*' "does recognize an important principle, which is that a child's identity means more than just knowing who one's parents are" and can extend to "siblings, grandparents and other relatives". While "most

D. FEEDBACK ON PROPOSED AMENDMENT RELATING TO REQUIREMENTS OF THE PROSPECTIVE ADOPTERS

(5) Give priority to applicants with strong ties to Singapore

The following proposals were made by the MSF to prioritise adopters with ties to Singapore:

(i) Impose residency requirements for prospective adopters:
  (a) Must be habitually resident in Singapore AND
  (b) One or both applicants must be Singapore Citizens or both applicants must be Permanent Residents.

(ii) Allow residency requirements to be relaxed if there are exceptional circumstances, but only if the adoption improves the welfare of the child.

Queries about practical effect of the increased restrictive residency requirements

20. The present procedure merely requires that the adopters (whether singly or jointly within marriage) be resident in Singapore, whether as Singapore citizens, permanent residents, employment or dependant's pass holders.[24] The proposed new amendments would limit the pool of adopters to be one or both Singapore citizens or both permanent residents (therefore, foreigners here who are permanent residents cannot adopt singly and would necessarily have to adopt jointly within marriage) who must also be habitually resident in Singapore (presumably for at least a year in accordance with paragraph B(2)(ii) above).[25]

21. In light of the fact that there is no standardised format for or clear list of prescribed criteria and factors to be considered for the assessment of the suitability for adoption in the existing social welfare reports,[26] it is unclear as to why employment pass holders are unable to adopt (no matter how long they have resided in Singapore), why permanent residents can only adopt jointly within marriage, and why Singaporeans need to have been resident in Singapore for at least a year to adopt, and how many of the past cases processed by the MSF would have been affected by these proposed changes.[27] In any case, it is noted that these persons (particularly, employment pass holders who are not seeking for the adopted child to have legitimization entitlements as a Singapore citizen or a permanent resident) are not precluded from adopting abroad and bringing the adopted child into Singapore.

(6) Scrutinise applications where applicants were convicted of serious crimes

The following proposals were made by the MSF to implement safeguards where applicants were convicted of serious crimes and ensure that the Child is placed in a safe environment:

(i) For the Court to consider and be satisfied that the applicant has the appropriate character and fitness to adopt.

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domestic legal instruments governing, for example, adoption, fostering or divorce arrangements" give children "legal rights to discover who their biological parents are" those rights rarely "extend to cover other members of the child's biological family": Article 8 of the United Nations Convention on the Rights of the Child.

[24] Ministry of Social and Family Development website <https://www.msf.gov.sg/Adoption/Pages/Who-can-Adopt.aspx> (accessed 24 March 2021); See also Section 4(6) of the ACA, which provides that: "*An adoption order shall not be made in favour of any applicant who is not resident in Singapore or in respect of any infant who is not so resident.*"

[25] For comparison, see Section 59 of the United Kingdom's Adoption and Children Act 2002, which provides that "at least one of the couple (in the case of an application under Section 50) or the applicant (in the case of an application under Section 51) [must be] domiciled in a part of the British Islands" or "both of the couple (in the case of an application under Section 50) or the applicant (in the case of an application under Section 51) [must] have been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application."; See also Section 55 of New South Wales' Adoption Act, which provides that an application by an authorised carer to adopt a child must be accompanied by, among other things, "*proof that the authorised carer is resident or domiciled in New South Wales*".

[26] See the discussion in paragraph 11 above on the robustness of the AR Reports.

[27] See the discussion in paragraph 6 above on the query on the targeted demographics of the proposed amendments.

(ii) To prohibit applicants convicted of the following serious offences (to be prescribed in subsidiary legislation) from adopting:
  (a) Sexual offences;
  (b) Offences involving violence, abuse, and neglect (e.g. ill-treatment of children, causing hurt to vulnerable persons);
  (c) Offences affecting life (e.g. causing death by rash acts, attempt to murder);
  (d) Trafficking offences;
  (e) Kidnapping, abduction, and slavery offences; and
  (f) Drug offences.

(iii) Allow exceptions to be made if applicants are able to show the Court that there are exceptional circumstances (e.g. the applicant committed the offence decades ago and has since turned over a new leaf). The Court must also give weight to whether the GIA is supportive.

Queries about the burden placed on applicants who are ex-offenders

22. The proposed amendments seek to presume that applicants who were convicted of "serious crimes" should not be allowed to apply to adopt; and that exceptions may be allowed by the Court in exceptional circumstances, and the Court must also give weight to whether the GIA is supportive. Assuming that the AR Report generated by the authorised adoption agency and the GIA are unfavourable from the outset, and an adoption application cannot be made without a favourable AR Report,[28] it appears to be presumed that the ex-offender's application would be set to fail anyway. With this in mind, the definition of "serious offences" should be carefully limited so as not to preclude those who had been convicted of offences that are not indicative of one's ability to provide care from adopting.[29]

E. FEEDBACK ON PROPOSED AMENDMENTS RELATING TO THE MSF'S EXPANDED PURVIEW

(7) Eliminate unethical behaviour in the adoption sector

The following proposals were made by the MSF to deter unethical behaviour in the adoption sector:

(i) Introduce new offences related to undesirable and unethical adoption practices in the ACA;

(ii) Impose penalties for persons found guilty of these offences; and

(iii) Require those involved in the adoption process to take reasonable steps to ensure the welfare of children

(8) Deter withholding of information

The following proposals were made by the MSF to deter the withholding of information:

(i) Empower the GIA and authorised adoption agencies to require applicants or other relevant persons (e.g. family members living in the same house) to undergo medical, psychiatric or psychological assessments, or any other assessments that the GIA deems fit, or provide such information as may be necessary.

(ii) Require applicants to notify the GIA if there has been a material change in their circumstances which may affect their suitability to provide a safe and stable family for the child. Examples of what constitutes a material change in circumstances (e.g. applicants are undergoing a divorce, diagnosis of a terminal illness) will be set out in subsidiary legislation.

(iii) Empower the Court to strike out the application or make other orders as the Court thinks fit if applicants do not comply with the above.

[28] See the discussion in paragraph 9 above on the departure from present procedure with the Court having scrutiny over both favourable as well as unfavourable social welfare reports.

[29] Take for example a prospective adopter who had been convicted of causing death by driving without due care or reasonable consideration pursuant to Section 65 of the Road Traffic Act (Cap 276, 2004 Rev Ed). While the offence would be one affecting life, the fact that the prospective adopter had been convicted of the offence would not necessarily mean that he or she is incapable of providing care and should be deprived of the opportunity to adopt.

(9) Protect parties performing adoption duties under the Act from personal liability

The following proposal was made by the MSF to protect partners performing adoption duties under the ACA from personal liability: To accord protection from personal liability to staff in authorised adoption agencies and MSF officers involved in adoption cases if they have acted (or omitted to act) in good faith and with reasonable care.

Query on scope of disclosure obligations required of applicants, adoption agencies, MSF partners and staff, and those involved in the adoption process

23. It is suggested that a comprehensive set of disclosure obligations be put in place for applicants, adoption agencies, MSF partners and staff and all those involved in the adoption process, so as to give teeth to the MSF's purview and oversight over the same. Such specific disclosure obligations may include all relevant parties to the adoption process having to disclose any personal relationships with the birth parents, prospective adopters, or the child to the MSF; prospective adopters having to declare not just their medical, psychiatric and psychological conditions but also other relevant information such as bankruptcy orders made against them; and all parties not withholding any information that they may possess about the whereabouts of the child's birth parents.

F. CONCLUSION

Expansion of consideration of the scope for reform

24. We note that there are significant international developments relating to adoptions against the larger picture of shifting global and local perspectives and rights surrounding the evolving concepts of families and children, which are not the call for feedback and the subject-matter of this Paper. It is hoped that the MSF, in keeping with its laudable objective to keep pace with international developments, will broaden the scope for consideration and reform in its determination of the proposed amendments to be made to the ACA. In addition to the significant matters raised in Section A above, the issues raised of open adoptions and the disclosure of adoptive status to the adopted child (for which there appears to be a global shift towards),[30] as well as mandatory post-adoption support for adoptive families,[31] are both worthy of further consideration, and the Committee would welcome the opportunity to separately give feedback on the latter.[32]

[30] For instance, the United Kingdom allows adopted persons to access their original birth certificates if they are over 18: United Kingdom's Government website <https://www.gov.uk/adoption-records> (accessed 26 March 2021); New South Wales also maintains a Registry for the Adoption Community, which allows adopted persons to request for, among other things, a pre-adoptive certificate including information provided by birth parents at the time of birth, and birth parents' birth and death records: New South Wales' Government website <https://www.nsw.gov.au/topics/births/certificates-and-searches-for-an-adoption> (accessed 26 March 2021); The California Department of Social Services ("CDSS") also provides information about birth parents (including general facts and their medical history) to adopted persons whose adoptions were finalized in California: California Department of Social Services website <https://www.cdss.ca.gov/adoption-services/adoptee-information/adoptee-background> (accessed 26 March 2021).

[31] For instance, In the United Kingdom, "*adoptive families have a legal right to an assessment of adoption support needs from the local authority responsible for their post-adoption support*.": United Kingdom's NHS website <https://www.nhs.uk/live-well/healthy-body/after-adoption-what-help-can-we-get/> (accessed 26 March 2021); In California, In California, the state-created Adoption Assistance Program provides eligible children with benefits such as medical coverage, reimbursement of non-recurring adoption expenses, and monthly negotiated payments "*to assist parents with their child's lifelong needs*": California Department of Social Services website <https://www.cdss.ca.gov/adoptions-assistance> (accessed 26 March 2021). We note that this is also in keeping with Article 8(2) of the United Nations Convention on the Rights of the Child, which provides that "*Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity*."

[32] Paragraph 14 of the MSF's Public Consultation.