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Background

During the parliamentary session on Monday, 22nd November 2010, the Minister for Community Development, Youth and Sports introduced the Children and Young Persons (Amendment) Bill (Bill No. 35/2010). The Explanatory Statement indicates that the Bill seeks to amend the Children and Young Persons Act for the following main purposes:

(a) to establish a licensing scheme for homes for children and young persons;
(b) to enhance the penalties for certain offences under the Act;
(c) to establish a new Review Board which would replace advisory boards and board of visitors in exercising supervision over homes for children and young persons;
(d) to clarify the procedure in respect of proceedings relating to the care or protection of a child or young person under sections 49 and 50;
(e) to enhance the powers of the Juvenile Court in dealing with cases involving children and young persons in need of care, protection or rehabilitation;
(f) to elaborate on the powers of the Director of Social Welfare (the Director) under the Act; and
(g) to make some changes in nomenclature.

Prior to this, the Ministry of Community Development, Youth and Sports conducted a public consultation on the draft amendment bill via the REACH website for three weeks from 29th September to 15th October 2010. We came to know of this consultation exercise when it was publicised in The Straits Times on Monday, 11th October 2010, less than a week from the end of the consultation period.

We managed to study the proposed amendments with the limited time we had and chose to restrict our submission to some key points and views via the REACH website on 15th October 2010 (a copy of which is attached).

Prior to this, having been invited, we participated in a focus group discussion on Tuesday, 6th July 2010 as part of a Review of the Child Protection Service and Child Protection System in Singapore. With respect to this, the Straits Times on Thursday, 25th November 2010 reported that in answer to Member of Parliament Mdm Halimah Yacob's question in Parliament on 24th November 2010, the Minister for Community Development, Youth and Sports disclosed that "some weaknesses in the child protection system" were "being affirmed in the preliminary findings of an ongoing government review," and that the review, "to ensure the Children and Young Persons Act remains relevant, will be completed in March next year."

Feedback incorporated into the Amendment Bill

A. We have had a look at the Children and Young Persons (Amendment) Bill read the first time in Parliament on 22nd November 2010, and are heartened to see that some of our feedback was considered and incorporated into the Bill presented in Parliament, the important ones in our view being:

Addition of a Section on Principles

1. The proposed addition of a section on the Principles that apply for the purposes of the Act, which somewhat follow the wording of the United Nations Convention on the Rights of the Child (UNCRC), that:

> (a) the parents or guardian of a child or young person are primarily responsible for the care and welfare of the child or young person and they should discharge their responsibilities to promote the welfare of the child or young persons; and
> (b) in all matters relating to the administration or application of this Act, the welfare and best interests of the child or young person shall be the first and paramount consideration.

This is a good start. What would be better is for the Act to also state the *corollary* to recognising parental responsibility in the care and welfare of children, that the government "shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children" (Article 18 of the UN Convention – quoted on page 2 of our REACH submission).

For parents or guardians who are struggling, recognising their primary responsibility for the care and welfare of their children means appropriate assistance must be rendered to them to fulfil their responsibility. In the state's efforts to promote the welfare of children in these circumstances, expecting struggling parents or guardians to provide what is deemed as adequate care and welfare is unrealistic without appropriate assistance. This may well be setting them up for failure.

In this respect, we are not advocating a welfare state. The state can ensure appropriate assistance to parents and guardians and the development of institutions, facilities and services through the Many Helping Hands approach.

Reasonable grounds required before exercising investigative powers

2. The Amendment Bill proposes that Section 8(1) of the Act state that:

> (1) Where a protector –
> (a) has reasonable grounds to believe that a relevant offence has been, or is being or will be committed against any child or young person or that any child or young person is in need of care or protection; and

(b) has reason to believe that any person can –

(i) furnish any information regarding the commission of any relevant offence in respect of a child or young person; or

(ii) furnish any information which will assist him in ascertaining whether a child or young person is in need of care or protection,

the protector may exercise the powers conferred under subsection (1A).

With these powers to obtain information only being exercised when there are *reasonable grounds* (currently there need only be "reason to believe") that a child or young person is in need of care or protection, this should decrease the number of children that are falsely identified to be in need of care or protection. This safeguards families from intrusive investigations without sufficient grounds.

Jail term as a penalty for breaching bond removed

3. We previously pointed out how a jail term, for the parent or guardian, as punishment for breaching a court-ordered bond to exercise proper care and guardianship of a child or young person in the draft amendment bill's new section 49(11) was counter-productive in promoting the welfare of children (page 6 of our REACH submission). We are glad that this penalty has been removed and the Amendment Bill only makes such parents liable to a fine, though we would question the need to make the breach of such a bond a criminal offence in the first place as the use of coercion in the promotion of parental responsibility may not be realistic or even advisable, for reasons akin to the thinking in the recent amendments to the Maintenance of Parents Act, where Parliament was clear that it was not desirable to legislatively mandate the moral value of filial piety or to criminally penalise children who do not maintain their parents in need.

Remand for cases breaching BPC and Care or Protection orders removed

4. The draft amendment bill proposed in a new section 54(2A), a process which sent children in breach of care or protection or beyond parental control orders into remand along with juvenile arrest cases. This proposed new section has not been included in the Amendment Bill in Parliament, protecting these children from undesirable association. We are thankful that the Ministry reconsidered this, and are treating children or young persons in need of care or protection or beyond parental control as distinct from Juvenile offenders.

Feedback not incorporated into the Amendment Bill

B. There were a couple of concerns on the draft amendment bill we included in our REACH submission which have not resulted in any changes.

Section 9 powers should be safeguarded

1. It is good that the Amendment Bill, in amending section 4, proposes to clarify that a child or young person may be in need of care or protection where his parent or guardian is unable or has neglected to provide adequate necessities of life for him, even when such neglect is not wilful or deliberate. However, without adding the principle that families be rendered appropriate assistance, the only response the Act has in dealing with children in need of care or protection is the power of removal under section 9.

In the right circumstances, having this power is absolutely necessary. The domains of a child in need of care or protection, however, are so broad that in many cases, a section 9 response is too drastic, especially as the Act does not give any guidance as to when this power of removal is properly exercised. As highlighted by High Court Judge Justice V. K. Rajah, in overturning the decision of the Juvenile Court in *ABV and Another v Child Protector* [2009] SGJC 4, "the removal of a child from the parents is a very drastic remedy that should be resorted to only when there is a real fear of imminent physical or psychological danger." Justice V. K. Rajah further indicated that instead of using the "blunt instrument" of removing a child, parties should work together to ensure the child's welfare (as reported in The Straits Times Tuesday, October 6, 2009 Page A3).

As we had previously suggested in our REACH submission, this case clearly shows that it is needful for the law to prescribe boundaries or guidelines as to when this blunt instrument of removing a child can be properly exercised. This can be done in the terms of Justice V. K. Rajah or as in the UK where a removal is allowed only where "there is reasonable cause to suspect that a child is suffering, or is like to suffer, *significant harm*" (our *italics*, page 5 of our REACH submission).

Section 27A should not be an obstacle to helping professionals

2. The Amendment Bill introduces a new section to restrict the publication of information leading to the identification of a child or young person who is the subject of any investigation, has been taken into care or custody, or is the subject of any order under the Act. While we understand the need to keep the identities of children and young persons confidential to prevent their stigmatisation, and we support measures to this end, such measures should not become an obstacle to professionals and others rendering help and assistance to these children and young persons and their families. We trust that the Director (who is the only one that can give the approval to reveal information) will be clear and reasonable in giving the appropriate approvals so that professionals and other helping partners are still able to operate and collaborate in the best interests of the child.

Feedback to new additions in the Amendment Bill

C. There are two issues we would like to highlight, arising from fresh additions to the Amendment Bill in Parliament (and hence issues which the public has not had the opportunity to be consulted upon, not being in the draft amendment bill) which we view to be of significant and fundamental concern and which deserve careful consideration and debate.

"Voluntary Care Agreements" legitimised

1. The process or system of "voluntary care agreements" introduced by the Amendment Bill gives rise to grave concerns about legitimising the current practice of "voluntary" care arrangements. In our REACH submission, we reiterated the importance of the safeguard of judicial oversight with regard to the removal of children identified to be in need of care or protection in line with Article 9 of the UNCRC (quoted on page 3 of our REACH submission). We also suggested that the current practice of the Child Protection Service facilitating the family giving a signed "voluntary" consent for their child to be placed in alternative care should be discontinued as this would in effect be removing or separating children from their parents or guardians without judicial oversight or any other independent review.

The Amendment Bill introduced in Parliament, however, proposes a new system of "voluntary care agreements" which legitimises the current practice of "voluntary" placements of children in alternative care, separating children from their families without judicial oversight. We believe that this is a very crucial matter of concern, a practice that goes against Article 9 of the UNCRC and the public has not been given the opportunity to be consulted on it.

> 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. (Article 9 of the UNCRC)

Purpose of Voluntary Care Agreements

The Amendment Bill proposes that section 2 of the Act be amended to include the following definition:

> "voluntary care agreement" means a care agreement entered into between the Director and the parent or guardian of a child or young person to secure the safety and welfare of the child or young person.

A new section 48A is to be included on voluntary care agreements:

> 48A. Where the Director is of the view that a voluntary care agreement will promote the welfare of a child or young person and it is practicable to enter into such voluntary care agreement with the parent or guardian of the child or young person, the Director may enter into such voluntary care agreement subject to such conditions and requirements as may be prescribed.

As worded in the proposed definition, the purpose of these care agreements is to "secure the safety and welfare" of the child or young person. If the child's safety is at stake, then this is clearly a matter of a child in need of care or protection and the definition should reflect this. Furthermore, if a child is truly in need of protection, why is there a need for alternative powers being given to the Director when the Act already provides a process for protecting children's safety? A key component is judicial oversight of the removal process, providing effective checks and balances to the determination that a child truly is in need of care or protection. In such a sensitive area of care or protection, it is prudent that all such decisions are reviewed by an independent body.

If our reading of the definition of "voluntary care agreement", together with the new section 48A which specifies when this power can be exercised, is not as above, and that the Director may enter into such agreements merely to promote the *welfare* of a child or young person who is *not* in need of care or protection, there is a need to clarify what welfare means and how the state should respond to it.

The law should be clear about what is good enough care and not subject families to an undefined, ambiguous standard of what constitutes "welfare". A very real danger is that middle class culture, standards and values will be imposed on a range of families with multiple challenges, including poverty, chronic illness, mental health concerns and physical and intellectual disability. Crucially, such decisions should not be within the sole purview of the Director and should have appropriate safeguards. Without clear and objective standards of welfare, this might give rise to competition between parents, foster families, and institutions over who can better take care of the children.

Fundamentally, this approach to child welfare is outside the ambit of the Act, and would go against the principle of non-discrimination and the best interests of the child. The proposed amendment of the long title of the Act states that the purview of the Children and Young Persons Act is to "provide for the welfare, care, protection and rehabilitation of children and young persons *who are in need of such care, protection* or rehabilitation, to regulate homes for children and young persons and to consolidate the law relating to children and young persons". The welfare of children and young persons who are *not* in need of care or protection does *not* fall within the purview of this Act. As such, we again question the necessity for this alternative power of the Director.

Whether it is merely promoting a child's welfare, or attending to children in need of care where neglect is not wilful or deliberate, the state must take into account promoting the welfare of children within their families and render or ensure appropriate assistance and support are provided to these families to better care

for their children. This is corollary to the principle of parents having the primary responsibility for the upbringing and development of their children (UNCRC Article 18, quoted at page 2 of our REACH submission).

At the moment, the Act only has the response of the blunt instrument of removing children and young persons in need of care or protection, and whilst it would be good to introduce more and less drastic graduated measures to see to the needs and protection of children and young persons in need of care or protection, such measures must be in the best interest of children. Where children's safety is not at risk, we would like to see Parliament stating unambiguously in the Act that the family of such children be rendered the appropriate assistance and support so that it is able to properly discharge its child-rearing responsibilities (in line with Article 18 of the UNCRC, as mentioned above in section A1 at page 2 of this paper), and the children can remain within their family rather than being separated from their family, which as the preamble to the UNCRC says, is "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children," and hence "should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community."

<u>Voluntariness, an existing power differential, and the need for checks and balances</u>

Another incongruous element is the concept of *voluntariness*. Currently, caregivers who are struggling with and feel they are unable to care for their children can make care arrangements for themselves, and even admit their children into homes. Why then must the law set out powers to make voluntary care arrangements, especially when the children or young persons are not in need of care or protection? Furthermore, why must they be subject to the Director's views of promoting welfare, and other regulations stipulating the effect, validity period and termination requirements when voluntary means free choice without compulsion or legal obligation?

Section 88 is being amended to include the power of the Minister to make regulations on the following matters:

> (f) the consideration, conditions and requirements subject to which a voluntary care agreement may be made;
> (g) the effect of a voluntary care agreement and the validity period of such voluntary care agreement;
> (h) the implementation, variation and termination of a voluntary care agreement.

A voluntary care agreement should be a collaboratively derived arrangement with a mutual acknowledgement of the child's welfare concerns and how best to meet them. Any such agreement, if respectful of the parent's primary responsibility to care for their children, will need to be flexible and consensus-driven even when it comes to decisions regarding how and when the arrangement should be varied or terminated. A good example of how this process can be achieved is the New Zealand model of Family Group Conferencing.

As it stands, there is great potential for misuse or inappropriate use of such statutory power to enter voluntary care agreements. There is a very real power differential between Child Protection Officers and struggling and over-stressed parents. If parents are unable to afford adequate care for their children in the Director's view, such parents are easily browbeaten into a "voluntary" arrangement. It is easy to suggest that, in the absence of the parent's cooperation in entering such agreements, their child could be declared in need of care or protection under section 4, and that section 9 powers of removal will be invoked. This would then happen without the necessary judicial oversight given to children removed on the grounds of their being deemed in need of care or protection.

Even in situations when the child is clearly not in need of protection and are not being ill-treated, struggling parents can easily be persuaded of the benefits of alternative care for their children, simply because they love their children and want what is best for them. Is it the intention of the state to assume responsibility for the children in all these cases? Is it the case that parents that are impoverished, have intellectual disabilities, chronic illnesses, mental illnesses or other challenges are less able and less worthy to have a family? The approach to informally or formally made care agreements should empower these families, with appropriate support, instead of marginalising them.

To all purposes and intents, the power to enter voluntary care agreements is the power to remove or separate children from their families without the safeguard of judicial oversight. In reality, this practice already exists and in light of the suffering that we see it causes, we would ask that Parliament carefully debate this issue.

Any additional powers for alternative care placements for children in need of care or protection should not be given lightly without comprehensive consideration, debate and wide public consultation. Also, we wonder as to the timing of introducing such substantive legislative changes to the child protection system when the current Review of the Child Protection Service and System will be completed in March next year, a matter of just a few months' time. Would it not make sense to conclude the review before considering legislative change, especially when such changes include new statutory powers, the exercise of which are not immediately subject to judicial oversight or other independent review?

Parents should be able to apply directly to court to review care or protection orders

2. The proposed amendment of section 49 to add a new subsection 9:

> 49(9) The Juvenile Court may, at any time, before the expiry of an order made under subsection (1) and on the application of the Director or a protector, vary or discharge the order if the Court is satisfied that it would be in the best interests of the person in respect of whom the order was made.

Unlike Beyond Parental Control Orders, where an application to vary or discharge the order can be made by the Director, a protector, *or the parent or guardian* of the child (section 50(3) of the Act), this proposed new subsection does not allow parents or guardians the avenue to apply for a variation or discharge of a Care or Protection Order.

Denying parents this power effectively stifles their ability to participate effectively in decisions made in respect of their own children. Family circumstances change, and parents should have the right to apply directly to the court to review Care or Protection Orders. Having to appeal to the Director or protector to make such an application to court puts an unnecessary bureaucratic obstacle in the way. In any case, the decision-making powers lie in the Court rather than the Director or protector, and parents and guardians must have unfettered access to the Court.

Where a determination is being made for a child to be separated from his or her parents in the best interests of the child, surely, as in accord with Article 9 of the UNCRC, all interested parties – certainly the parents – "shall be given an opportunity to participate in the proceedings and make their views known." Article 12 of the UNCRC also enunciates the principle that the child "shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child," the views "being given due weight in accordance with the age and maturity of the child."

The Children and Young Persons Act, at the moment does not explicitly provide for children the *right* to participate and make their views known in judicial proceedings with respect to their care or protection or in Beyond Parental Control proceedings. The right of children to be heard and participate in decisions being made in their best interests is something that Parliament should also look into, and legislate accordingly.

Review Implementation of UNCRC

D. In February next year, Singapore's government representatives will meet with the United Nations Committee on the Rights of the Child to review the progress of implementation of the United Nations Convention on the Rights of the Child within Singapore.

The government have the responsibility of realising the fundamental freedoms and inherent rights of children within Singapore, including where necessary, legislative enactments.

Amongst the more pertinent areas which still need addressing, is the question of extending the jurisdiction of the Juvenile Court under the Children and Young Persons Act to cover all children and young persons under the age of 18 years (the current reach is for children and young persons under 16 years of age) in line with the UNCRC, as noted in our REACH submission (page 1), and which was also stressed in the feedback from the Law Society's Criminal Practice Committee.

It is perhaps time for Parliament to be updated on the progress of the government in implementing the UNCRC, and in view of the review early next year, we wonder if it would not be more appropriate to allow that review to be completed before introducing legislative amendments to the Children and Young Persons Act, in case there are other issues that may come up requiring legislative change to implement.

Summary

E. We would like to thank the ministry for taking our feedback into account in the Children and Young Persons (Amendment) Bill (Bill No. 35/2010). We feel there have been substantial steps in the right direction to enhance the care or protection of children and young persons while being respectful to their families.

We feel that a more measured approach is necessary in dealing with matters of child welfare and protection. To avoid the pitfalls of passing judgement on the unfortunate or marginalising the weak, we must work to empower families to keep their children safe and well cared for where possible. Removals should be reserved as a last resort and only when there is a risk of significant harm. Separation of the family should always be under judicial oversight, with its focus on reintegration and restoration.

Many of the weaknesses in our existing systems of child welfare and protection lie in the inability of the state, the families, the communities and voluntary work organisations to coordinate our efforts towards a clear and mutual vision. It is crucial for the law to provide this clarity. The need we see is to lucidly differentiate issues of welfare, protection and various aspects of a child's care needs in order for us to respond commensurately with a holistic view of what is in the best interests of the child. The need is to de-emphasize over reliance on care systems for vulnerable children based on separation and institutionalisation and move towards a range of integrated family and community based care services for those children without appropriate parental care. The need is to remain in dialogue, working in cooperation with each other and especially with the child and family involved.