



Public Consultation on the Draft Children and Young Persons (Amendment) Bill

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General comments on the law

We appreciate the government regularly reviewing its laws with regards to the licensing of homes and child protection legislature. We also know that the government is currently, or has recently, conducted a review of the child protection service and the child protection system. If this review has been completed, we are wondering if the recommendations have been incorporated into the proposed amendments to the Children and Young Persons Act. If the review is still ongoing, perhaps it would be prudent to amend the provisions relating to the protection of children after the recommendations of the review have been finalised and made public.

It appears that one of the major reasons for the proposed amendments is to introduce a licensing framework for all homes for children and young persons. If it is crucial to legislate on this now, this could be done by promulgating a new act rather than incorporating this into the Children and Young Persons Act.

Importantly, to be in line with the United Nations Convention of the Rights of the Child, the Children and Young Persons Act should apply to all persons up to the age of 18 years. In particular, the jurisdiction of the Juvenile Court should accordingly be extended to cover persons up to the age of 18 years.

We have the following feedback with respect to the proposed amendments to the Children and Young Persons Act:

Amendment of section 4(c)

4(c) the parent of guardian of child or young person –

- (i) is unable or has neglected to provide adequate food, clothing, medical aid, lodging, care, education or other necessities of life for the child or young person; or

This amendment clearly clarifies that a child or young person may be considered in need of care and protection where his parent or guardian is unable or has neglected to provide adequate necessities of life for him notwithstanding that such neglect is not wilful or deliberate. Given that these are issues of child welfare and that the amended long title states that the 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...” the act should provide a framework to help families in their child-rearing responsibilities and not just give powers to the state to remove children in unsafe circumstances.

This would be consistent with the United Nations Convention on the Rights of the Child (UNCRC) to which Singapore has acceded. Relevant UNCRC articles states:

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties 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.

We feel that a review of this Act is an opportune time for Parliament to review whether all appropriate legislative, administrative, and other measures for the implementation of the UNCRC have been undertaken.

With respect to the welfare of children, the law must make provision for adequate support and services, wherever practicable, to families with children in need of care and protection to enable the children to be cared for and protected within his or her own family.

An international example for consideration is the United Kingdom Children Act 1989 which in sections 17 which directs local authorities to do all they can in terms of monetary or non-monetary services first to safeguard and promote the welfare of children who are in need, and as far as possible to promote the upbringing of children within their families.

We would like to see the law setting down the guiding principles when it comes to the care, protection and welfare of children. This is done in the New Zealand’s Children, Young Persons, and Their Families Act 1989 Part 2. There is precedent for this in Singapore in the recent Mental Capacity Act (Chapter 177A).

These responses to the identification of a child in need are more commensurate with the situation when family circumstances render them unable to discharge their parental responsibility adequately.

Amendment to section 8(1)(b)

- (1) Where a protector has reason to believe that any person can – (b) furnish him with information which will assist him in ascertaining whether a child or young person is in need of care and protection

First of all, this amendment is inconsistent with section 8(2) which refers to furnishing information to some “offence”.

Secondly, obtaining information of the commission of an offence in respect of a child and ascertaining whether a child or young person is in need of care and protection are two very different subjects. It would be better to have separate provisions for these two issues to avoid confusion. Given the broad and sensitive nature of the concerns that deal with a child’s care needs, health and development; these powers are not safeguarded appropriately and have the potential to be abused.

Further, in view of the very different methodologies and interventions required, we question the wisdom of a protector having the dual role of investigating the commission of ill-treatment and at the same time ascertaining whether a child or young person is in need of care and protection.

Thirdly, without appropriate safeguards, any form of whistleblowing would result in a high number of false positives. As reported by NMP Paulin Straughan in the Straits Times, the increased responsiveness and earlier investigation powers works well in swifter intervention of genuine abuse, but an “over-reactive system will inadvertently cause unnecessary stress and damage to parent-child relations” and has a potential for misuse or abuse “especially in cases involving very young children who may not be able to articulate the facts”. There is also the potential for false positives when parties involved have differing opinions on child-rearing methods.

If such powers are given, then all children identified to be in need of care and protection, and requiring to be removed must always be brought before the court as a check and balance against falsely identified cases. 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.

When you try to ascertain whether or not a child is in need of care and protection and in deciding what intervention are best for the welfare of this child, we feel that all stakeholders should participate fully in the decision-making process. This is in keeping with the UNCRC:

Article 9

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.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Therefore, it would be good for this Act to ensure that the views of children, and their parents are obtained and considered in decisions determining that the child should be separated from his or her parents for the best interest of that child, and in all judicial and administrative proceedings affecting the child.

New section 8A.

8A. Where the Director, a protector or a police officer not below the rank of sergeant is satisfied on reasonable grounds that a child or young person is in need of care and protection, the Director, protector or police officer may by notice in writing order any person to –

The amendment gives additional powers to the executive, and for similar reasons as above we question its wisdom. Further, the law needs to define that this cannot be demanded of just “any person” but a person that is in custody of the child.

Section 9 (amended)

9(1) Where the Director, a protector or a police officer not below the rank of sergeant (referred to as the police officer) is satisfied on reasonable grounds that a child or young person is in need of care and protection, the Director, protector or police officer may without warrant and with such assistance and by such force as is necessary, by day or by night enter any place in which the child or young person is to be found and –

(a) remove the child or young person and commit him to a place of temporary care and protection or to the care of a fit person until the child or young person can be brought before a Juvenile Court to be dealt with under section 49;

(b) remove the child or young person and, before committing him to a place of temporary care and protection or to the care of a fit person under paragraph (a), present the child or young person before a registered medical practitioner, a psychologist or an approved welfare officer for an assessment or for any medical or other treatment as may appear to be necessary.

The classification of a child in need of care and protection is very broad and not all children who are in need of care and protection need to be removed. The law should provide greater guidance or set out the principles upon which removals are appropriate. As mentioned 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.” He also said 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).

We suggest that the law should be amended to reflect this. This is done in other jurisdictions. For example, in the UK Children Act 1989, emergency protection orders can only be made if the court is satisfied that “there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm.”

New section 9A “Assessment, examination and treatment of child or young person, etc.”

In the current Act, section 9(2) empowers a registered medical practitioner to administer diagnostic procedures and tests and provide medical treatment. The new amendment empowers psychologists and approved welfare officers to do this in addition to the registered medical practitioners. Are they actually qualified to do so?

New section 27A(1)(b)

(1) No person shall without the Director’s approval, publish or broadcast any information that identifies, or is likely to lead to the identification of any child or young person as a child or young person (b) who has been taken into care and custody by the Director, a protector or a police officer under this Act; or

This new section applies the restriction of publication of information to children in need of care and protection and cases of Beyond Parental Control. Because the definition of “publish” in section 35(5) means to bring the information or picture to the notice of the public or a section of the public by any means, section 27 makes it very difficult for helping professionals, who are already bound by their own ethical codes of confidentiality, to work together to coordinate support and provide care for the needs of the child. Additionally, would the parents or the child, in seeking for help, get into trouble for “publishing” such information without the Director’s approval?

New section 49(11) stipulates that if the parent does not enter the bond in a timely fashion or is unable to meet any of the conditions of the bond, they will be liable to a fine or jail term.

For the disadvantaged, multiply challenged families who are overstressed and under-supported, such punitive measures are not supportive of parent's efforts to care for and protect their children. Furthermore, it may pile on greater stress with conditions they cannot meet without adequate support, fines which they cannot pay, and ultimately a jail term which means they definitely cannot care for their children.

Amendment of section 50(1)(iii)

50(1)(iii) to be placed on supervision under the supervision of an approved welfare officer or of some other person appointed for the purpose by the Court for a period 3 years and, in addition, to reside in either a licensed home for children and young persons or a place of safety for such period not exceeding the period of supervision ordered by the Court

We take it that there is a typographical error in the amendment as printed with respect to section 50(1)(iii), and that the provision should read "not exceeding 3 years".

New Part IIIA "Fee for and duration of license"

52C. –(1) On the issue or renewal of a licence, the licensee shall pay a fee of such amount as may be prescribed.

Children and Young Persons (CYP) Homes are run by Voluntary Welfare agencies, of which there are currently 19 of such homes. As part of the "Many helping Hands approach" that helps the disadvantaged in Singapore, we wonder why Voluntary Welfare Organisations (VWOs) are being charged a fee for licensing.

New Part IIIA "Inspection of homes for children and young persons"

52F –(1) The Director and any officer authorized by him may –

- (a) at any time, enter and inspect –
 - (i) any licensed home for children and young persons; or
 - (ii) any premise which he has reason to suspect are used for the purposes of a home for children and young persons without a license;

and,

New Part IIIA "Review Board"

52G –(4) Every member of the Review Board appointed under subsection (1) may enter at any time any licensed home for children and young persons and make such inquiries or examination therein as appear to him necessary and shall also make such reports as may be required by the Minister.

As in the current law for Board of Visitors, and as in the commentary clause 24 of this amendment bill, “The Review Board established under the new section 52G may also inspect licensed homes for children and young persons at **all reasonable times...**”, we assume that the power of the Director and the Review Board should be to enter at **all reasonable times**.

New Part IIIA “Exemption”

52P – (1) Subject to subsection (2), this Part shall not apply to –

- (a) any home for children and young persons under the management or control of the management or control of the Government;

We are of the view that homes run by the government should be subject to the same regulations and standards with respect to the licensed homes for children and young persons. Although government homes are subject to inspection and review by the Director and Review Board, the Act should provide for further safeguards to ensure that government-operated homes are managed satisfactorily, the welfare of the children and young persons residing in the government homes are properly safeguarded and promoted, and that remedial measures are taken promptly when the Director or the Review board identify unsatisfactory conditions.

Amendment of Section 54

(2A) Where –

- (a) an order made by the Juvenile Court under section 49(1) or 50(1) has been breached; and
- (b) it is necessary in the interest of the child or young person to remove him from association with any undesirable person,

The Juvenile Court may order that the child or young person be remanded in a remand home pending any further order by the Court on how the child or young person is to be dealt with.

The purpose of remand homes as set out section 53 is to securely hold children and youths who have been arrested and are not released on bail. Clearly, it is for Juvenile arrest cases. We question the wisdom of placing children or young persons in need of care and protection (which includes those under care and protection orders [section 49(1)])

and Beyond Parental Control orders [section 50(1)]) together with Juvenile arrest cases in remand.

If a child needs to be protected from association with any undesirable person, a place of temporary care and protection would be more appropriate. Placing a child in remand is akin to treating a child or young person in need of care and protection as a Juvenile offender