

## Public Consultation on the Amendments to the Maintenance of Parents Act - Key Amendments

### **Amendment 1: Require parents with records of abuse, neglect or abandonment against their child to first seek Tribunal's permission before they may proceed with conciliation at CMP**

#### *Current State of MPA and Rationale for Change*

1. About 1 in 4 cases at CMP and 1 in 3 cases at the Tribunal involved persons who alleged abuse, neglect or abandonment ("abuse") by their parent when they were young. Section 5(4) of the MPA provides for the Tribunal to dismiss any claim for maintenance or order a lower amount if it is satisfied, upon due proof, that the parent had abused the child but onus of proof is on the person alleging abuse.
2. In many of the cases, it was observed that the persons who were abused as children, consistent with research findings<sup>1</sup>, showed signs of distress during the MPA proceedings when they had to face the abusive parents after years of avoidance and recount the abuse that they had suffered. For such cases that eventually came before the Tribunal for hearing, it was often found that severe abuse had occurred, and majority were dismissed as it was not just and equitable for maintenance to be granted. However, having to go through multiple stages may have already caused significant distress and re-traumatisation to a person whose parent had abused them. Some might have agreed to pay the maintenance requested to avoid further distress.

#### **Case Example 1:**

##### ***Daughter who "caved in" and consented to paying maintenance during mediation, despite history of abuse, neglect or abandonment***

Betty (not her real name), in her late 30s and working in an admin job, was subject to a maintenance claim by her mother. She had suffered from physical and emotional abuse from her mother and her mother's partner. Betty left home due to the abuse when she was just 17. Even after that, she continued to receive verbal and emotional abuse, including a death threat by her mother at her workplace.

In her reply to the maintenance claim, Betty wrote that having to go through the maintenance claim process had caused her to be on the brink of a mental breakdown, that reliving her past abuse was causing her immense distress as she was reminded again of her past abuse experiences, and that she did not want to be involved or reminded of her mother again. These incidents have also affected her husband and children. Betty signed an agreement with her mother for her to pay a monthly maintenance during mediation at the Tribunal. This put the case to an early close, without need for a hearing.

#### *Proposal*

3. To better protect such child abuse victims as well as prevent any misuse of the MPA by parents who have previously abused, neglected or abandoned their child, this amendment will require parents ("applicants") found with official records of child abuse or neglect to first obtain the Tribunal's leave

<sup>1</sup> The experience of abuse, neglect or abandonment of a child by his or her parent has a serious impact on the child's life. Research on adverse childhood experiences show that even decades later, exposure to reminders of the original event can trigger severe reactions, and adult survivors of child abuse may relive their trauma almost as if the incidents were occurring again or feel extremely distressed.

before they may proceed with conciliation at CMP. If the Tribunal, after hearing the applicant, is satisfied that he/she had abused the child to the degree that it will not be just or equitable for him/her to claim maintenance against that child, it would refuse leave and not notify that child of the claim, thus protect the abuse victims from any further distress. Specifically, this amendment would enable:

- (a) the Commissioner and Tribunal to conduct a search for records of child abuse in official databases such as criminal records, personal protection orders, care & protection orders, and records from MSF's Child and Adult Protective Services;
- (b) the Tribunal to require the applicant to appear before it for a leave hearing, and deny leave if the applicant is unable to prove that there is a good arguable case that:
  - (i) he/she had not abandoned, abused or neglected the child being claimed against; or
  - (ii) despite having abandoned, abused or neglected the child, it may nevertheless be just and equitable for leave to be granted; and
- (c) to ensure that applicants are not overly inconvenienced, the Tribunal President or Deputy President to grant leave for the applicant to proceed and continue with conciliation under CMP, if there is no clear evidence of abuse against the child in the records.

**Amendment 2:**

- (a) Empower Tribunal to dismiss frivolous or vexatious applications without requiring the children to respond; and**
- (b) Allow variation applications deemed frivolous or vexatious to be dismissed by President or a Deputy President of the Tribunal, instead of by the Tribunal of which three members are required to form a quorum**

*Current State of MPA and Rationale for Change*

4. Presently, the Tribunal President and Deputy President are given broad powers under Section 3(7) to dismiss frivolous or vexatious claims. However, per Section 14(7)(a), the dismissal must be based on affidavits and other documentary evidence, which means that the children ("respondents") must be called on to respond to the application. This not only can cause inconvenience, but it can also be stressful and distressing to the respondents, especially for those with a family history of family violence or deep-seated issues.

**Case Example 2:**

***Frivolous and vexatious applications causing pain and fear in the respondent children***

Mr Tay (not his real name) was convicted of criminal offences due to incidents of severe family violence. The Tribunal dismissed his claim for maintenance against his children as it would not have been fair and equitable for his children to be made to maintain him. Despite this, Mr Tay repeatedly filed claims against them on three separate instances. While none were successful, the children had to endure significant pain and fear in defending themselves in each of the three claims. The children shared that they started and continue to be haunted by images of past incidents of how their mother was abused.

5. Currently, a quorum of three members of the Tribunal must be convened before frivolous or vexatious applications filed by the applicant or any respondent to vary an existing order ("variation

application”) may be dismissed - even in cases where the application had been previously heard and dismissed by the Tribunal. Similarly, this could cause inefficiencies and longer processing times which may result in inconvenience for the parties.

*Proposal*

6. The MPA be amended to allow for:
- (a) Frivolous or vexatious applications to be dismissed by the Tribunal President or a Deputy President, if satisfied by the available evidence, without having to call for a response from the respondents. This would prevent them from being unnecessarily inconvenienced or disrupted in such applications. Instances where the Tribunal may deem an application as frivolous or vexatious include cases where:
    - (i) the applicant’s previous claim was dismissed by the Tribunal, and he/she has not provided any further information to show that there has been a misrepresentation or mistake of fact or a material change in the circumstances of the applicant or respondents that require the Tribunal to review its decision;
    - (ii) the applicant is clearly financially able to maintain himself/herself; or
    - (iii) the respondent is clearly not in a position where he/she is able to financially maintain the applicant, e.g. he/she is bedridden and has not been able to work.
  - (b) Variation applications to be dismissed by the Tribunal President or a Deputy President, if he is of the opinion that the application is frivolous or vexatious.

**Amendment 3: Empower Commissioner to locate the children of destitute parents for mandatory conciliation, without need for the parent to put in a formal application**

*Current State of MPA and Rationale for Change*

7. The Commissioner presently has powers under Section 14A to obtain information to identify, locate and summon the child of a maintenance applicant for conciliation, but he may only do so after the application has been filed.

8. Under the Destitute Persons Act (“DPA”), destitute persons can be admitted into Welfare Homes, if they are unable to support themselves and lack family support. Before admission, family members are engaged and encouraged to care for the destitute person. However, the Homes have reported a small group of destitute parents who have children with the means to maintain them but do not do so or even refuse contact with them. Although MPA empowers such needy parents to claim maintenance from their children, they often choose not to due to fear of further straining relationships. In some cases, parents have lost contact with the children and the Homes are unable to locate them. Despite repeated attempts of persuasion, the Homes are often unable to get the children to give maintenance nor the parent to apply under MPA. In such cases, there is nothing the Homes nor authorities could do to get the children to fulfill their obligations to the parent who had raised and cared for them. As a result, such children effectively leave their parents to the care of the State even if they can afford to maintain them.

**Case Example 3:**

***Destitute father in a welfare home when his financially able children chose not to maintain him***

Mr Tan (not his real name) has several children but their whereabouts were unknown except for one. This son, who held a management position and receiving rent from his HDB flat, refused to maintain his father, even after extensive discussions with the Home, citing work and financial commitments. The elder Mr Tan was also averse to filing, for fear of jeopardising his relationship with his son, and the chance of seeing the rest of his children.

*Initial Proposal*

9. The Workgroup, in consultation with AFAM, saw a need to continue sending a clear signal in society that financially able children should support their parents who had cared for them responsibly when they were young. It initially intended to empower the Commissioner to apply to the Tribunal for a maintenance order for the destitute parent, even if the parent did not give consent. This would allow the State to require financially able children to fulfill their obligation to maintain their parents. However, the MPA survey showed mixed reactions, with one-third of over 1,000 respondents being of the view that the parent's wishes should be respected. The FGDs also revealed significant concern over the emotional distress that might be caused to the elderly parent if the Commissioner acted against his wishes.

*Revised proposal*

10. Accordingly, the proposal has been moderated to take a supportive approach, i.e. to only empower the Commissioner, on his own motion and without need for the parent to initiate a claim, to locate the children of destitute parents and require them to attend conciliation. This will allow the Commissioner to hear the children's side of the story, better understand the family circumstances and support the family in conciliation where appropriate. This moderated proposal will still uphold the principle that such children should support their parents.

11. To ensure that this power is exercised only where the parent is deserving of maintenance, the Commissioner will only exercise this power if he has no reason to believe that:

- (a) the parent had abused, neglected or abandoned his children in the past; and
- (b) the child is unable to afford maintenance.

12. If there is successful conciliation, the child will then sign a memorandum of agreement for payments to be made for the benefit of the parent.

13. This amendment will only apply to the children of persons under assessment for admission into, or already residing in, a Welfare Home under the DPA.

**Amendment 4: Empower Tribunal to make non-monetary orders (e.g. gambling addiction counselling orders) on one or more parties, if in the interest of the parent***Current State of MPA and Rationale for Change*

14. The Tribunal is only empowered to make orders on maintenance payments. However, it has seen multiple cases where non-monetary orders could be helpful to address fundamental issues in the family which could affect the respondent's compliance with the maintenance order. For example, problem gambling accounts for 7% of Tribunal's cases. The children in these cases are often reluctant to pay maintenance as they are concerned that their parent would gamble the money away. In such

cases, it would be useful for the Tribunal to be able to make an order requiring the parent to attend counselling for problem gambling.

*Proposal*

15. This amendment will give the Tribunal the discretion to make non-monetary orders. To ensure compliance, it would be empowered to order that the payment of maintenance, where it deems appropriate, be conditional on the applicant's compliance with the non-monetary order or on other conditions specified by the Tribunal. If the applicant does not comply with the non-monetary order, the obligation of the respondent to pay maintenance does not arise.

**Case Example 4:**

**Son did not want to fund mother's gambling habits**

Mdm Lim (not her real name) filed for maintenance against her son as she had insufficient income to pay for medical expenses and her debts. Her son objected to the application as he did not want to fund her gambling habits. He had, in the past, helped to service her gambling debts. He would like her to attend counselling to deal with her gambling habits. The Tribunal dismissed the application and instead, encouraged Mdm Lim to attend counselling for this as well as to mend her relationship with her son. Although the Tribunal referred her to the relevant services, she attended only one session and did not continue despite multiple reminders.