Singapore Journal of Legal Studies
[2026] 157–170

THE PROMISE AND PITFALLS OF THE WORKPLACE FAIRNESS ACT 2025

Selene **Tanne**[*]

On 8 February 2025, the Singapore Parliament enacted the Workplace Fairness Act 2025, which is the first legal framework against workplace discrimination in Singapore. This comment builds on existing scholarship by focusing on the social implications that might result from three legal characteristics of the WFA: (a) the lack of provisions against conduct that would amount to indirect discrimination in other jurisdictions; (b) that sexual orientation and gender identity are not listed as protected characteristics; and (c) the explicit legalisation of discrimination against relatives and associates. Overall, I argue that while the WFA is a valuable addition to the employment law regime in Singapore, the law needs to be more sensitive to the socio-political consequences that could result from its legal operation.

I. Introduction

On 8 February 2025, Parliament enacted the Workplace Fairness Act 2025 ("WFA") in a bid to combat discrimination against certain protected characteristics[1] of individuals in employment contexts. The WFA is an important legal instrument to analyse because it establishes the first legal framework against workplace discrimination in Singapore, as well as the substantive rights that such a framework is designed to protect. Implementation of the WFA is expected to begin in 2026 or 2027,[2] and the WFA should be read together with the Workplace Fairness (Dispute Resolution) Bill that Parliament passed on 4 November 2025,[3] which lays out the procedural frameworks and rules for resolving workplace discrimination disputes.

Discrimination is ordinarily defined as the "[unjust] or prejudicial treatment of a person or group, esp. on the grounds of race, gender, sexual orientation,

---

[*] Sheridan Fellow at the National University of Singapore, Faculty of Law (NUS Law). I am grateful to all my colleagues who had shared their thoughts on this project with me, including Kevin Tan, Jaclyn Neo, Marcus Teo, Justin Lim, Mark Ortega, and all attendees of the internal research workshop run by the NUS Law Centre for Asian Legal Studies. I would also like to thank the anonymous reviewer for their helpful comments.

1 Workplace Fairness Act 2025 (No. 8 of 2025) at s 3(a) [WFA].

2 Tan See Leng, "Second Reading Speech at Workplace Fairness Legislation Bill" (7 January 2025) <https://www.mom.gov.sg/newsroom/speeches/2025/0107-second-reading-speech-for-workplace-fairness-legislation-bill>.

3 Ministry of Manpower, "Workplace Fairness (Dispute Resolution) Bill Provides Framework For Resolving Workplace Discrimination Disputes Amicably And Expeditiously" (4 November 2025) <https://www.mom.gov.sg/newsroom/press-releases/2025/workplace-fairness--dispute-resolution----bill-press-release>.

etc"[4] and can also refer to "favourable treatment of a person or group, in order to compensate for disadvantage or lack of privilege."[5] Legally, "discrimination" has been articulated in narrower and more measurable ways, such as by requiring unfavourable treatment in comparison to a similarly situated individual without the protected characteristic.[6] In Singapore, the WFA presents a concept of discrimination that is exclusively applicable to employment law matters.[7] The WFA was designed to be complemented by existing policy instruments against workplace discrimination, which include guidance and enforcement from the Ministry of Manpower ("MOM") and the Tripartite Alliance for Fair and Progressive Employment Practices ("TAFEP").[8]

This paper builds on existing scholarship[9] by focusing on the social implications that might result from the following legal characteristics of the WFA: (a) the lack of provisions against conduct that would amount to indirect discrimination in other jurisdictions; (b) that sexual orientation and gender identity are not listed as protected characteristics; and (c) the explicit legalisation of discrimination against relatives and associates. Overall, I argue that while the WFA is a valuable addition to the employment law regime in Singapore, the law needs to be more sensitive to the socio-political consequences that could result from its legal operation.

II. Key Elements of the Workplace Fairness Act

A. *Legislative Purpose*

Unlike discrimination laws in other jurisdictions,[10] the WFA is specifically engineered to be a piece of employment law, meaning that it was never meant to curb discrimination at a societal level but only intended to legally affect employment relationships. Section 3 of the WFA clearly spells out that:

> **3.** The purposes of this Act are —
>
> (*a*) to protect individuals from discrimination by employers on the ground of protected characteristics;
>
> (*b*) to establish fair employment practices;

---

4 Oxford English Dictionary, "Discrimination" (United Kingdom: Oxford University Press, 2025) <https://doi.org/10.1093/OED/9103189675>.

5 *Ibid*.

6 Equality Act 2010 (c 15) (UK) at s 13 [EA 2010].

7 "Discrimination" is also a concept that is frequently discussed in Singaporean constitutional law, in relation to Article 12 of the Constitution of the Republic of Singapore (2020 Rev Ed) ("the Constitution"). However, given that the Constitution does not apply horizontally between individuals, it is reasonable to assume that the definition of discrimination in constitutional law is distinct, with no application to employment contexts.

8 For a detailed analysis of the provisions of the WFA and how they fit into the pre-existing policy regime against workplace discrimination, see Ravi Chandran and Damien Xing, "Workplace Fairness" (2025) 37 SAcLJ 342.

9 For a comprehensive description of the WFA, see Lim Fang-Zhou, Noah, "Legislating Fairness – Singapore's Workplace Fairness Legislation" [2025] SAL Prac 8.

10 The EA 2010 is an example from the UK of legislation that is designed to address discrimination at multiple levels, including public sector decision-making and the provision of services.

(*c*) to ensure that citizens of Singapore and permanent residents of Singapore are fairly considered for employment opportunities and continue to form the core of the workforce in Singapore, with foreigners as a complement; and

(*d*) to preserve harmonious workplace relations in Singapore.

Sections 5 to 7 of the WFA further define three types of employment decisions that are subject to the anti-discrimination effects of the WFA. This constrains the legal effects of the WFA to the employment life cycle, which comprises the hiring process;[11] the duration of employment;[12] and dismissal, retrenchment, or termination.[13] Of the three sections, the legal effect of section 5 of the WFA is particularly novel in Singapore employment law. Section 5 makes it possible for an employer to be held liable for whether they decide to hire an individual (which includes offering employment or taking any step to offering employment even if no employment offer is eventually made)[14] or not.[15] Outside of these situations, however, the WFA bears no consequence on discriminatory behaviour.

B. *Protected Characteristics*

Protected characteristics are listed in section 8 of the WFA and defined from sections 9 to 16. As of June 2025, the WFA protects 11 characteristics: age; nationality; sex; marital status; pregnancy; caregiving responsibilities; race; religion; language ability; disability; and mental health condition. Sections 9 to 16 of the WFA provide specific details as to what constitutes nationality;[16] sex;[17] marital status;[18] pregnancy;[19] caregiving responsibilities;[20] language ability;[21] disability;[22] and mental health condition[23] respectively; while age, race, and religion remain undefined. These provisions, combined with the following provisions on discrimination, give shape to the substantive rights afforded by the WFA.

C. *Discrimination*

Conceptually, the WFA distinguishes between discriminatory behaviour and acts of discrimination. Only "certain discriminatory behaviour"[24] is prohibited and,

---

11 WFA, supra note 1 at s 5.
12 *Ibid* at s 6.
13 *Ibid* at s 7.
14 *Ibid* at s 5(2)(*b*).
15 *Ibid* at s 5(1).
16 *Ibid* at s 9.
17 *Ibid* at s 10.
18 *Ibid* at s 11.
19 *Ibid* at s 12.
20 *Ibid* at s 13.
21 *Ibid* at s 14.
22 *Ibid* at s 15.
23 *Ibid* at s 16.
24 *Ibid* at preamble.

therefore, considered to amount to discrimination under the WFA. Discriminatory behaviour that would ordinarily count as discrimination could also be exempted from the definition of the latter if it qualifies as an exception under sections 20 to 24 of the WFA. Simply put, while all acts of discrimination are discriminatory, not all discriminatory behaviour amounts to (the legal definition of) discrimination.

Under sections 17 to 19 of the WFA, there are three types of discriminatory behaviour that could legally amount to discrimination: (1) discrimination against individuals;[25] (2) discrimination by direction, instruction or policy;[26] and (3) discrimination by advertisement or description.[27] These definitions, read together with statutory definitions of employment decisions, constrain the application of the WFA solely to employment contexts in Singapore. They also indicate that the essence of liability for workplace discrimination in Singapore lies in having any protected characteristic factor into the employment decision-making process, even if only to some degree.

D. *Penalties*

Importantly, the WFA lays out a variety of legal penalties that can be imposed upon errant employers. Civil contraventions are listed under s 29 of the WFA and include any of the three types of discrimination prohibited under ss 17(1), 18(1), and 19(1) of the WFA;[28] as well as failing to develop[29] or notify[30] all employees of the compulsory internal grievance process. Serious civil contraventions include repeated civil contraventions under certain conditions;[31] discrimination against an individual (*ie*, s 17 of the WFA) done because of a "direction, instruction or policy" ("DIP") that is discriminatory under s 18(1);[32] and retaliating against an employee by dismissing[33] the employee or denying the employee a re-employment offer or employment assistance payment.[34] The certainty and the severity of these legal penalties give the WFA a coercive force that TAFEP lacks, setting the WFA apart from the pre-existing workplace discrimination policy regime and justifying the use of a legal response to the workplace discrimination problem.

---

[25] *Ibid* at s 17.
[26] *Ibid* at s 18.
[27] *Ibid* at s 19.
[28] *Ibid* at s 29(*a*)–(*c*).
[29] *Ibid* at s 29(*e*).
[30] *Ibid* at s 29(*f*).
[31] *Ibid* at s 30(*a*).
[32] *Ibid* at s 30(*b*).
[33] *Ibid* at s 30(*c*)(i).
[34] *Ibid* at s 30(*c*)(ii).

III. Three Gaps in the Workplace Fairness Act

A. *The Lack of Indirect Discrimination Provisions*

The first gap is that the WFA does not expressly prohibit indirect discrimination, which was a deliberate decision by Singaporean legislators.[35] The concept of indirect discrimination first originated in the US before spreading to jurisdictions including the UK, the European Union ("EU"), and Australia. As scholars have pointed out, however, the definition of indirect discrimination varies across the jurisdictions.[36] Nonetheless, indirect discrimination can be broadly defined as "an apparently neutral practice or policy which puts members of a protected group… at a disproportionate disadvantage compared with members of a cognate group… and which fails to satisfy a means–end justification test".[37] This means that indirect discrimination cases do not involve any references to protected characteristics. It is the disadvantageous *effect* of a practice or policy on a group of people with the protected characteristic, rather than the identification of a protected characteristic, that is the cause for legal liability.

It has been said in Parliament that the WFA does "make reference to some forms of indirect discrimination",[38] and the example cited was that s 14 protects language ability, which is often a proxy for race.[39] This is true if we understand it to mean that the WFA protects the same group of people that had to rely on indirect discrimination to challenge policies that would have impeded them on the basis of their race. However, it was also said in Parliament that "a Court is not prevented from finding, as a fact, that a particular requirement may amount to discrimination under one of the protected characteristics." If this was intended as a representation about how the WFA does already offer protection for characteristics that would have to be protected through indirect discrimination claims in other jurisdictions, it is not entirely accurate; therefore, it needs to be qualified.

Of the three types of discrimination, discrimination of individuals under s 17 (discrimination of individuals) is most obviously similar to the concept of direct discrimination because liability turns on whether an employment decision was or could have been made "on the ground"[40] of a protected characteristic. As such, s 17 coincides with some forms of indirect discrimination in another jurisdiction only to the extent that the WFA-protected characteristic in question is protected in the other jurisdiction through the concept of indirect discrimination.

---

35 *Singapore Parliamentary Debates, Official Report* (7 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=7-1-2025> (Tan See Leng, Minister for Manpower).

36 Tarunabh Khaitan, "Indirect discrimination" in Kasper Lippert-Rasmussen, ed. *The Routledge Handbook of the Ethics of Discrimination*, 1st ed (United Kingdom: Routledge, 2020) 30 at 32.

37 *Ibid* at 31.

38 *Singapore Parliamentary Debates, Official Report* (8 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=8-1-2025> (Vikram Nair and Tan See Leng, Minister for Manpower).

39 Nair seemed to be referring to equality law jurisprudence in the UK, where language ability is not protected and so claimants have had to rely on the concept of indirect discrimination of nationality and/or ethnicity to challenge language ability requirements.

40 WFA, supra note 1 at s 17(1).

On its face, s 18 of the WFA, which prohibits discrimination "by direction, instruction or policy", seems to allude to the concept of indirect discrimination, at least to some extent. Section 18(1) states that "[i]t is discrimination for an employer to issue, communicate or publish any discriminatory direction, instruction or policy, in writing, unless any of the exceptions in sections 20 to 24 applies in relation to that employer". Section 18 does not define what counts as a DIP, but s 18(2) does stipulate that a DIP "is discriminatory if it directs, instructs or influences any officer, member, partner, employee or agent of the employer to make, on behalf of the employer, any employment decision that adversely affects an individual, or such employment decisions generally, on the ground of any protected characteristic." Under s 18(3), an employer commits this offence even if no employment decision is made on the ground of a protected characteristic.

However, upon closer analysis, s 18 does not encompass the essence of indirect discrimination because DIPs are only caught by the WFA if they are in relation to employment decisions that have been made "on the ground of any protected characteristic".[41] This bears little resemblance to the crux of indirect discrimination, which is characterised by its focus on behaviours that apparently have nothing to do with protected characteristics. Take, for example, a company that has a policy of favouring graduates who majored in physics for positions in the human resources department; if 90 per cent of physics majors in the job market are men, this policy would be considered discriminatory on most accounts[42] of indirect discrimination. However, according to s 18, it is not. On this view, s 18 is of no use where a DIP does not refer to a protected characteristic but has the effect of disadvantaging people with said protected characteristic.

Section 19 of the WFA also appears to address some elements of indirect discrimination. Section 19(1) prohibits discriminatory job advertisements or descriptions, which means that they "[mention] (expressly or by implication) a protected characteristic as a condition, criterion, requirement, advantage, disadvantage or disqualification for employment".[43] Tweak the above example of hiring Physics majors for HR jobs to make it a job advertisement, rather than a hiring policy, that is in question. If the logic of s 19 is like that of s 18, then it is highly likely that such an advertisement would not be deemed discriminatory. However, because s 19(1) is worded to capture *implicit* mentions of protected characteristics as well, which is not a feature of s 18, another question arises: would the disadvantageous effect of an advertisement on people with the protected characteristic in question have any role in determining whether that protected characteristic has been implicitly mentioned in an advertisement? If the courts agree with this conclusion in their interpretation of s 19, then it may be said that s 19 has some element of indirect discrimination. Otherwise, the degree to which indirect discrimination features in the WFA is minimal to none.

---

41 *Ibid* at s 18(2).

42 For example, EA 2010, *supra* note 5 at s 19.

43 WFA, *supra* note 1 at s 19(1).

B. *Sexual orientation and Gender identity: Unprotected Characteristics*

The second issue is that gender identity and sexual orientation are not included in the list of protected characteristics. During parliamentary debates, several Members of Parliament[44] ("MPs") highlighted how the exclusion of gender identity and sexual orientation from the WFA leaves the LGBTQ+ community vulnerable to workplace discrimination. Concern about this also arose from civil society about how "the new Workplace Fairness Legislation… conspicuously and explicitly excludes sexual orientation and gender identity (SOGI) from its language".[45]

Under Part 3 of the WFA, which lists and defines protected characteristics, section 10(2) states:

> (2) The protected characteristic of sex, in relation to an individual, does not include the following characteristics of the individual:
>
> (*a*) sexual orientation;
> (*b*) gender identity.

While it is true that s 10(2) expressly excludes gender identity and sexual orientation, it is equally important to note that this exclusion is only in relation to the definition of the protected characteristic, sex. It is, therefore, not necessarily accurate as a matter of law to claim that people who face workplace discrimination because of their sexual orientation or gender identity are completely excluded from legal protection under the WFA.

1. *Sexual Orientation*

Sexual orientation generally refers to an individual's "enduring pattern of emotional, romantic, and/or sexual attractions" and their "sense of identity based on those attractions, related behaviours, and membership in a community of others who share those attractions".[46] In comparison, sex is ordinarily defined as "[the] sum of the characteristics concerned with sexual reproduction and the raising of young, by which males, females, and hermaphrodites may be distinguished."[47] Thus, the conceptual focus of sex is on issues of one's biology, not the gender to which one feels sexually attracted to. Sexual orientation and sex are, therefore, conceptually distinct. Had legislators omitted s 10(2)(*a*), which expressly excludes sexual orientation from the meaning of sex, it would still be unlikely that claimants would succeed in classifying sexual orientation as a component of sex.

---

[44] *Singapore Parliamentary Debates, Official Report* (7–8 January 2025) vol 95 (He Ting Ru, Pritam Singh, Louis Ng).

[45] pinkdot.sg, "Workplace Fairness? Not for LGBTQ+ Workers" (8 January 2025) <https://pinkdot.sg/2025/01/workplace-fairness-not-for-lgbtq-workers/>.

[46] American Psychological Association, "Understanding sexual orientation and homosexuality" (29 October 2008) <https://www.apa.org/topics/lgbtq/orientation>.

[47] Oxford Reference, "Overview: sex (from A Dictionary of Ecology)" (2010) <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100457601>.

It is true that in other jurisdictions, the protected characteristic of sex has been legally defined to include sexual orientation. A prominent example is the American case of *Bostock v. Clayton County, Georgia*[48]: the Supreme Court held that the concept of sex discrimination, as prohibited under the Civil Rights Act of 1964, Title VII, 42 USC § 2000e (US), included discriminating against a person because of their sexual orientation. While the Court "[agreed] that homosexuality and transgender status are distinct concepts from sex",[49] they stretched the concept of the latter to include the former concepts on the basis that "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second".[50] The logic is that, for example, if a man and a woman are both attracted to men, the man in this situation is considered gay and, therefore, firing him for being gay is discriminating against him for being a man since the woman is not fired for her attraction to men. While celebrated as a progressive approach by some,[51] this approach has been criticised, such as in the dissenting judgments,[52] as an instance of judicial legislating in effect.

Closer to home, in Australia (one of the jurisdictions that was cited in Parliament as a point of reference for the WFA)[53], we see that sexual orientation is protected against discrimination under section 5A of the Sex Discrimination Act 1984[54] ("SDA"). At first blush, this seems to support the conclusion that sexual orientation can (and should) be treated as forming part of the legal definition of sex. Crucially, however, in the SDA, Australian legislators distinguished sex[55] from sexual orientation by defining them separately; the same goes for gender identity[56] and intersex status.[57] This demonstrates that the statutory definition of sex in Australia is narrowly confined to biological sex.

These examples demonstrate the difficulty of justifying an interpretation of sex to include sexual orientation. In other words, the dominant view is that sexual orientation is not included in the ordinary meaning of sex. Considering these points

---

48 590 US 644 (2020) [*Bostock*].

49 *Ibid* at 669.

50 *Ibid* at 669.

51 See, for example, Nina Totenberg, "Supreme Court Delivers Major Victory To LGBTQ Employees", *NPR* (15 June 2020) <https://www.npr.org/2020/06/15/863498848/supreme-court-delivers-major-victory-to-lgbtq-employees>; A Lazarus Orr, "Supreme Court Victory! Federal Law Protects Transgender Workers" (15 June 2020) <https://transequality.org/news/supreme-court-victory-federal-law-protects-transgender-workers>; Ian Millhiser, "The Supreme Court's landmark LGBTQ rights decision, explained in 5 simple sentences", *Vox* (16 June 2020) <https://www.vox.com/2020/6/15/21291515/supreme-court-bostock-clayton-county-lgbtq-neil-gorsuch>; GLGBTQ Legal Advocates & Defenders, "A Landmark Supreme Court Case Affirms LGBTQ Workers Nationwide" (6 August 2020) <https://www.gladlaw.org/a-landmark-supreme-court-case-affirms-lgbtq-workers-nationwide/>; Jon W Davidson, "How the Impact of Bostock v. Clayton County on LGBTQ Rights Continues to Expand" (15 June 2022) <https://www.aclu.org/news/civil-liberties/how-the-impact-of-bostock-v-clayton-county-on-lgbtq-rights-continues-to-expand>.

52 See the dissenting opinions of Alito J (joined by Thomas J) and Kavanaugh J in *Bostock*, *supra* note 48.

53 *Singapore Parliamentary Debates, Official Report* (8 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=8-1-2025> (Tan See Leng, Minister for Manpower).

54 (Australia).

55 *Ibid* at s 5.

56 *Ibid* at ss 4 and 5B.

57 *Ibid* at s 5C.

and the fact that the Singapore judiciary tends to take a conservative approach[58] to statutory interpretation, it is highly unlikely that "sex" in the WFA can ever be interpreted to include sexual orientation. On this analysis, if the goal of legislators was to hold off claims made on the basis of sexual orientation, which still proves to be a contentious socio-political issue in Singapore,[59] the inclusion of section 10(2)(*a*) was an unnecessary overcompensation. Weighing the socio-political pushback of inserting this into the WFA against the legal necessity of it, perhaps omitting section 10(2)(*a*) would have been a more palatable means to the same end.

Regardless of what s 10 stipulates about the definition of sex, there is another legal hook that individuals who feel discriminated against because of their sexuality might explore. Based on the wording of s 11 of the WFA, it is theoretically possible for, as an example, a gay man who is cohabiting with his male partner to argue that denying him employment (because of his relationship) is an act of discrimination. His situation could be brought under the protected characteristic of marital status by framing it as being "not married but living together with another individual who is not their spouse". This closely resembles the phrasing of s 11(*e*) of the WFA, which protects any individual who is "married but is living separately from the individual's spouse".

Section 11(*e*) arguably opens the door to such claims. One's marital status is primarily determined by whether that person is legally married or not.[60] The romantic-sexual attractions that an individual experiences are irrelevant to the determination of the conjugal status of an individual. The same can usually be said of couples' living arrangements; since married couples in Singapore have a legal right (as opposed to an obligation) to live together,[61] the couple's living arrangements do not automatically determine their conjugal status. As such, but for s 11(*e*) of the WFA, an individual's living arrangements would not factor into the determination of one's marital status. Thus, precisely because s 11(*e*) refers to individuals' living arrangements in conjunction with their conjugal status for the purposes of defining the protected characteristic of marital status, it is not unreasonable in theory for an unmarried individual who is cohabiting with another person to attempt leveraging on s 11 to protect relevant parts of his domestic life from workplace discrimination.

However, if this argument proves true, then inconsistencies would result because the WFA does not afford comprehensive protection to individuals who are single and not cohabiting with a partner, even though both types of people risk facing discrimination because of their sexual orientation. This is because sexual orientation

---

58 See, for example, *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850; [2017] SGCA 50.

59 Jean Iau, "In Singapore, a cancelled talk on sex and gender spotlights divide on LGBTQ issues", *South China Morning Post* (6 June 2024) <https://www.scmp.com/week-asia/people/article/3265535/singapore-cancelled-talk-sex-and-gender-spotlights-divide-lgbtq-issues>; Adelin Tan Geok Lin, "Forum: Including sexual orientation in new workplace law would have wide-ranging implications", *Straits Times* (17 January 2025) <https://www.straitstimes.com/opinion/forum/forum-including-sexual-orientation-in-new-workplace-law-may-have-wide-ranging-implications>.

60 Singapore Department of Statistics, "Singapore Standard Classification of Marital Status" (August 2011) <https://www.singstat.gov.sg/-/media/files/standards_and_classifications/scms.ashx>.

61 While not determinative of marital status, separation for a period of time is one of the legal facts that couples can rely on when filing for divorce; see SG Courts, "Understand the requirements for getting a divorce" <https://www.judiciary.gov.sg/family/understand-requirements-getting-divorce>.

per se is not directly protected by the WFA. Imagine a single woman who is denied employment because her employer found out that she experiences sexual attraction to other women. The facts of her case do not lend themselves to framing her situation as one of "not married but still cohabiting". It is, therefore, unlikely that the woman in this example can rely on marital status to protect this aspect of her life from workplace discrimination. If, on the other hand, the above argument does not hold, then it is true that the WFA entirely fails to protect people who are at risk of suffering sexual orientation discrimination.

It is true that the issue of sexual orientation is a sensitive socio-political topic because what had been the norm (*ie*, heterosexuality) is becoming increasingly contested.[62] Be that as it may, the normativity of one's sexual choices is distinct from whether that person should be given a fair opportunity to work. Protecting the gay man from employment discrimination is not the same as condoning or encouraging his lifestyle; it is protecting his ability to find and contribute to work despite the differences between his personal choices and the normative standards of some part of society. Moreover, there are some protected characteristics that do often involve some (substantial) degree of productivity reduction, such as caregiving duties or pregnancy – if those characteristics are protected, why not a characteristic that is even more removed from one's productivity? Conceived of this way, the WFA becomes a clear expression that whatever happens in a person's personal life stays in their personal life, insofar as it does not unduly impinge on their job obligations.

Considering the expressive function[63] of the WFA, it is not a statement about the government's position on, for instance, identity politics. It is a legal imperative to compartmentalise work as work and personal matters as personal matters. On a societal level, this buys the community time in terms of ensuring that life goes on, at least economically, while it considers and reconsiders what the national position on various socio-political issues should be. On an individual level, this legal separation between work and life protects individuals' economic dignity and gives them the freedom to navigate their personal lives at their own pace without the threat of occupational penalisation. Thus, it is not a manifestly absurd or unreasonable result, regarding the interpretation and effect of "marital status", to preclude most aspects of an individual's romantic and/or sexual life from affecting how they are regarded in the workplace.

2. *Gender Identity*

Gender identity has been defined as "a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behaviour, clothing, hairstyles, voice or body characteristics." This concept presupposes that one's gender identity can be separated and distinguished from one's biological sex. Unlike sexual orientation, there is

---

[62] For example, see Shermaine Ang, "Many Singaporeans on the fence about LGBTQ issues, Ipsos survey finds", *Straits Times* (11 June 2024) <https://www.straitstimes.com/singapore/many-singaporeans-on-the-fence-about-lgbtq-issues-ipsos-survey-finds>.

[63] Lim Fang-Zhou, Noah, *supra* note 9 at [40].

substantial conceptual overlap between gender identity and sex,[64] so omitting any mention of it would not suffice to prevent claims being brought on such grounds, if that had been the aim.

The main goal of proponents who advocate for the inclusion of gender identity as a protected characteristic is to legally protect transgender individuals (*ie*, whose gender identity does not correspond to their biological sex), who have been vulnerable to workplace discrimination. This is commendably compassionate, especially since many transgender people have suffered deplorable and undignified treatment (*eg*, disrespect and discrimination),[65] which goes beyond mere disagreement.

Despite s 10(2)(*b*) of the WFA, there is a way for (some) individuals who are struggling with their gender identity to protect themselves from workplace discrimination: obtain a gender dysphoria diagnosis from a medical practitioner who is registered under the Medical Registration Act 1997,[66] which qualifies as a mental health condition that is protected under s 16 of the WFA.[67] This, however, leads to another difficulty: should the law treat a person whose gender identity diverges from their biological sex as having a mental health condition?[68]

It has been suggested that calling transgenderism a mental health condition is deeply insulting to those who experience it. This is an understandable response, especially because of how stigmatised and poorly treated people with mental conditions,[69] including those who were labelled as such for being transgender,[70] have been throughout history.[71] There are, however, uncomfortable questions to ponder. Is this resistance underpinned by the belief that a mental health diagnosis degrades a person? This belief does not quite cohere with contemporary ideas that mental health must be de-stigmatised and taken seriously; in other words, a mental illness is just like any other physiological illness, not a character flaw or something that reduces the human dignity of the affected person. On this view, past treatment of transgender individuals should be regarded as a symptom of a deeper problem: that

---

64 Zuri White-Gibson and Jamie Smith, "Sex and Gender: What's the Difference?" (12 May 2022) <https://psychcentral.com/health/sex-vs-gender>.

65 Clara Tan, "In Singapore, You Can Still Lose Your Job Just for Being Trans" *Rice Media* (24 November 2018) <https://www.ricemedia.co/current-affairs-features-singapore-trans-discrimination/>.

66 (2020 Rev Ed).

67 Chandran and Xing, *supra* note 8 are also of this opinion (at [33]).

68 In this paper, the terms "mental disorder", "mental health conditions", and "mental illnesses" are used interchangeably.

69 For more information, see American Psychiatric Association, "Stigma, Prejudice and Discrimination Against People with Mental Illness" <https://www.psychiatry.org/patients-families/stigma-and-discrimination>; Hipes, Lucas, Phelan, and White, "The Stigma of Mental Illness in the Labor Market" (2016) Social Science Research 56 at 16.

70 See, for example, Oliver Holmes, "Transgenderism is a mental disorder, says Indonesian psychiatric body", *The Guardian* (22 February 2016) <https://www.theguardian.com/society/2016/feb/22/transgenderism-mental-health-disorder-says-indonesian-psychiatric-association-lgbt>.

71 See, for example, Michael Goodier, "Hate crimes against transgender people hit record high in England and Wales", *The Guardian* (5 October 2023) <https://www.theguardian.com/society/2023/oct/05/record-rise-hate-crimes-transgender-people-reported-england-and-wales>; Ryan Thoreson, "'I Just Try to Make It Home Safe'" (18 November 2021) <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united>.

society has often failed to give people who have identifiable differences or conditions the respect and dignity that they deserve.

Nonetheless, transgenderism is no longer considered a mental condition by the World Health Organisation ("WHO") in its *International Classification of Diseases*,[72] which is a global health reporting standard that is designed to be a framework for the categorisation and definition of all medical diagnoses, both physical and mental. On the other hand, gender dysphoria (*ie*, substantial distress resulting from gender incongruence) is still recognised as a mental condition under the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5"),[73] which is an American-based, internationally influential diagnostic manual focusing specifically on mental disorders. In Singapore, the DSM-5 is used as a training standard for psychiatrists.[74] Accordingly, an individual presents with gender dysphoria when the misalignment of their gender identity and physical gender causes them "clinically significant distress or impairment in social, occupational, or other important areas of functioning".[75] If this is the conceptual position to adopt, then individuals who identify as transgender, but are unwilling or unable to obtain a gender dysphoria diagnosis required by s 16 of the WFA, have no legal protection *vis-à-vis* this characteristic.

C. *The Legalisation of Discrimination Against Relatives and Associates*

If an employer behaves discriminatorily against Person A because of Person B's protected characteristic, that qualifies as "associative discrimination" in jurisdictions including the UK. Though this term is not used in the WFA, s 17(3) expressly states that "[a]n employment decision made only on the ground of a protected characteristic of a relative or an associate of the individual is not discrimination." The Explanatory Notes in the *Workplace Fairness Bill* illustrate how this law is intended to work in practice: "an employer does not discriminate against A if the employer dismisses A on the ground of the race of A's husband".[76]

So understood, s 17(3) of the WFA presents two difficulties. The first difficulty is normative. Most people would deem the employer's behaviour in the cited example to be discriminatory,[77] which indicates thats 17(3) opposes contemporary sensibilities. Since the government intended for the WFA to be a strong statement against workplace discrimination,[78] why does such a contradictory provision exist within

---

[72] BBC, "Transgender no longer recognised as 'disorder' by WHO", *BBC* (29 May 2019) <https://www.bbc.com/news/health-48448804>.

[73] American Psychiatric Association, "What is Gender Dysphoria" <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

[74] Specialist Accreditation Board, "Examination content" (24 April 2025) <https://sab.healthprofessionals.gov.sg/specialist-examination/psychiatry-abms-s-mcq-examination-2025/examination-content>.

[75] American Psychiatric Association, "Gender Dysphoria Diagnosis" <https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis#section_1>.

[76] Workplace Fairness Bill (Bill No. 50/2024) at cl 43.

[77] See, for example, *Singapore Parliamentary Debates, Official Report* (7 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=7-1-2025> (Pritam Singh).

[78] Prime Minister's Office Singapore, "National Day Rally 2021" (29 August 2021) <https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2021-English>.

the WFA? If, according to the WFA and the pre-existing policies of TAFEP, workplace discrimination is antithetical to fair employment practices, then why is this discriminatory behaviour explicitly permitted by the very statute that was created to establish fair employment practices in Singapore? Is it not even more unfair than discrimination against an individual that an employer is free to make adverse employment decisions based only on the protected characteristics of the individual's relative or associate, who is a third party outside of – and is therefore prima facie irrelevant to – the job?

The broader policy reason for enacting s 17(3), which bars associative discrimination claims, was to prevent the WFA from being used to incite a litigious workplace culture.[79] This brings us to the second problem, which is that section 17(3) was legally unnecessary to achieve the policy goal. Section 17(1) of the WFA clearly states:

> 17.—(1) It is discrimination for an employer to make an employment decision that adversely affects an individual —
>
> (*a*) on the ground of a protected characteristic *of the individual*;[80] or
> (*b*) on the ground of 2 or more reasons, one of which is a protected characteristic *of the individual*,[81]

The wording of s 17(1) makes clear that a claim for discrimination against individuals can only be brought if the employer had made an adverse employment decision about the individual because of a protected characteristic that belongs to that individual. Section 17(1) claims are clearly confined to being between the employer and the affected individual in question.[82] There is simply no way that s 17(1) can be properly construed to include situations wherein a person who does not have the protected characteristic, and was therefore not directly discriminated against, can be a claimant.

On top of its redundancy, s 17(3) creates possibilities for confusion and contradictions in practice. When the WFA was debated as a bill in Parliament, the Minister of Manpower emphatically stated that all forms of discrimination are not tolerated.[83] Now, imagine that Person A in the earlier example reports her employer to TAFEP for being dismissed from work because of her husband's race. What follows is an odd situation wherein the employer has committed (what most people would consider to be) an unfair employment practice against the woman; crucially, however, he has not broken the law. In fact, the employer has done precisely what he is legally permitted to do and, according to the law on workplace fairness, has not acted unfairly in this respect. Thus, apart from the fact that Person A has no recourse

---

79 *Singapore Parliamentary Debates, Official Report* (7 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=7-1-2025> (Tan See Leng, Minister for Manpower).

80 Emphasis added.

81 Emphasis added.

82 This is unlike the state of the law in the UK, wherein the courts have interpreted the definition of direct discrimination (EA 2010, *supra* note 5 at s 13) to encompass conduct that involves a protected characteristic belonging to any person, not just the claimant.

83 *Singapore Parliamentary Debates, Official Report* (8 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=8-1-2025> (Tan See Leng, Minister for Manpower).

to legal action since the employer did not contravene the WFA, a pressing question to ask is: how should TAFEP be expected to justify discouraging employers from committing such behaviour?

It is one thing for the WFA to omit any mention of associative discrimination, but it is another thing for the WFA to expressly permit behaviour of this sort. Given that the government desires a workplace discrimination regime comprising both law and policy levers,[84] it is crucial for potential contradictions between law and policy to be anticipated and addressed such that the WFA is not undermined. With regard to s 17, the quickest solution out of this quandary would be to repeal section 17(3).

IV. Conclusion

While enacting workplace discrimination law is a promising first for Singapore, there are still areas for improvement and clarification in the WFA. Three of such areas were identified in this paper: (a) the lack of provisions against conduct that would, in other jurisdictions, amount to indirect discrimination; (b) that sexual orientation and gender identity are not legally protected characteristics; and (c) the explicit legalisation of discrimination against relatives and associates. No doubt, the WFA is a valuable addition to the employment law regime in Singapore, but there is need for greater attention to be paid to the socio-political consequences that could result from the legal effects of the WFA. While statutory interpretation may help to navigate or partially cross some of the gaps arising from these issues, the reality is that these problems can only be fully addressed by Parliament through legislative amendments.

[84] *Singapore Parliamentary Debates, Official Report* (7 January 2025) vol 95 <https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=7-1-2025> (Tan See Leng, Minister for Manpower).