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Our Ref: LS/11/CLO.Gen/10-01/AC  
Your Ref:

15 October 2010

Ministry of Community Development, Youth and Sports  
MCYS Building  
512 Thomson Road  
Singapore 298136

Dear Sirs

**FEEDBACK ON THE PUBLIC CONSULTATION ON THE DRAFT CHILDREN AND YOUNG PERSONS (AMENDMENT) BILL**

I refer to the e-mail dated 29 September 2010 from Ms Melissa Goh of the Ministry of Community Development, Youth and Sports ("MCYS") seeking the Law Society's views on the above-mentioned public consultation.

On behalf of Mr Wendell Wong, the Chairman of the Law Society's Criminal Practice Committee, I enclose a copy of the feedback from the Law Society's Criminal Practice Committee for your attention.

We look forward to your reply and thank you for giving the Society the opportunity to give our views on the matter.

Yours faithfully



Alvin Chen  
Chief Legal Officer  
Director, Representation and Law Reform

Encs.



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DATE: 15 October 2010

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~ THE LAW SOCIETY OF SINGAPORE ~

**FEEDBACK ON THE PUBLIC CONSULTATION ON THE DRAFT  
CHILDREN AND YOUNG PERSONS (AMENDMENT) BILL**

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THE LAW SOCIETY  
OF SINGAPORE

## FEEDBACK ON THE PUBLIC CONSULTATION ON THE DRAFT CHILDREN AND YOUNG PERSONS (AMENDMENT) BILL

1. This paper represents the views of the Criminal Law Practice Committee of the Law Society.
2. We applaud and support the Bill, which aims to enhance the protection and rehabilitation of children and young persons ("CYP") in Singapore. By, among other things, introducing a regulatory licensing framework for 19 CYP Homes, establishing a new Review Board to ensure the quality and care of CYP Homes, and enhancing penalties for crimes such as sexual exploitation of a child, the Bill proposes timely amendments to the CYPA.
3. The Bill comports with similar legislation in other countries. In Ontario, Canada, for example, 53 corporate Children's Aid Societies (CAS) are obliged to "investigate reports or evidence of abuse or neglect of children under the age of 16 or in the society's care or supervision and, where necessary, take steps to protect the children, to care for and supervise children who come under their care or supervision, counsel and support families for the protection of children or to prevent circumstances requiring the protection of children and to place children for adoption."<sup>1</sup> Canada's counterpart to the MCYS, the Ministry of Community and Social Services can license an individual or organization for "the purposes of recruiting, approving, and managing foster homes." The Ministry has established uniform regulations and guidelines governing the delivery of service and management of foster homes.<sup>2</sup>
4. Similarly, the Department of Children and Families (DCF) in Wisconsin, USA is responsible for licensing and monitoring group foster homes for children, residential care centres for children and youth, and shelter care facilities. The purpose of the licensing regulatory framework is to ensure licensing requirements are met through on-going inspections of programs and that the safety and protection of children are promoted.<sup>3</sup>
5. With this Bill, the CYPA will not only be able to ensure that restorative justice or rehabilitative processes are available for CYPs, but that those who harm them, or fail to adequately care for them, are effectively held accountable and meted criminal penalties.
6. We have, however identified five (5) key points which the MCYS may wish to consider.
7. **First**, the Bill should deter child sex abuse, which is a grave crime that can significantly hamper a child's long-term development and psychological and emotional well-being. The MCYS may wish to consider imposing a maximum penalty not exceeding 14 years sexual exploitation of a CYP under section 7 CYPA, instead of 7 years as envisioned by Clause 6 of the Bill. Our courts should be left to calibrate the precise sentencing tariffs and range of offences, rather than being limited to imposing a 5 year penalty for a first-time offender and 7 years for a recidivist. A 14-year maximum penalty for child sex abuse is not unprecedented. In fact, under section 9 of the UK Sexual Offences Act of 2003, any person who engages in sexual

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<sup>1</sup> See: <http://www.children.gov.on.ca/htdocs/English/topics/childrensaid/childrensandsocieties/index.aspx>

<sup>2</sup> Please refer to: <http://www.hrsdc.gc.ca/eng/cs/sp/sdc/socpol/publications/reports/2000-000033/page09.shtml>

<sup>3</sup> Please refer to: <http://dcf.wisconsin.gov/childrenresidential/>

activity with a child may, on conviction on indictment, be imprisoned for a term not exceeding 14 years.<sup>4</sup>

8. **Second**, just as child sex abuse or exploitation is a grave offence, so too is the damage to the reputation and integrity of an innocent person who is falsely implicated for committing it. Even if he or she is acquitted by a court, a person who has been charged with and publicly tried for sexual misconduct will not be easily accepted by or integrated into Singaporean society: a stigma which is likely to be all the more apparent in cases where the alleged complainant/victim is a child.<sup>5</sup> The MCYS may thus wish to include a sentence in the relevant provisions, such as new sections 8A, 9 and 9A, that while the relevant authority or expert (i.e. the Director, or protector or police officer, approved welfare officer or psychologist) should be attentive to the CYP's complaint, they must be mindful of and to seek to verify the veracity of the complaint.
9. **Third**, in keeping with the current review's stated "overall objective" of seeking to ensure that "the Act remains relevant", the Bill should extend the reach of the CYPA to persons below the age of 18 years<sup>6</sup>. Such an amendment would ensure that the CYPA is in accordance with a widely accepted rule of international law codified in the United Nations Convention on the Rights of the Child ("ROC"). The ROC has been ratified by 192 States, including Singapore.<sup>7</sup> Article 1 of the ROC states that a "child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". The age of majority in Singapore is 21 years. There is therefore no legal basis for the application of the CYPA to be limited to those below 16 years. Persons between the age of 16 years and 18 years should have every right to be entitled to the welfare, protection and rehabilitation afforded by the CYPA.<sup>8</sup>
10. **Fourth**, the Juvenile Court currently only hears cases where the CYP offender is under 16 years at the commencement of the hearing (section 33(6) CYPA). We believe section 33(6) should be amended such that the Juvenile Court is permitted to deal with cases where the CYP offender is under 16 years at the date of the offence, but is above 16 years at the date of the hearing. Given that the delay between the commission of the offence and the hearing may not be caused by the CYP offender, this amendment will serve the interests of justice and permit him/her to be heard by the Juvenile Court and be entitled to the CYPA's restorative or rehabilitative framework (see point 3 above).<sup>9</sup>
11. **Fifth**, for the sake of consistency between the CYPA and other provisions, we suggest that Clause 15 of the Bill, which seeks to amend section 30 of the CYPA, should be amended. Clause 15 states that the officer making the arrest of the CYP shall send the CYP arrestee before a Magistrate "without unnecessary delay", which is somewhat vague. In accordance with section 36 of the Criminal Procedure Code (CPC), and Article 9(4) of the Singapore Constitution, Clause 15 should be amended to state that the CYP arrestee must be produced before a magistrate "within 48 hours

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<sup>4</sup> See <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=820904>

<sup>5</sup> See <http://www.cancoc.ca/NewsStand/LondonFreePress/News/2004/01/04/303506.html>

<sup>6</sup> The CYPA only protects CYPS. Section 2 CYPA defines a "child" as a person below the age of 14 years and "young person" as a person below the age of 16 years.

<sup>7</sup> Article 1 ROC states that a "child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". The age of majority in Singapore is 21 years. There is therefore no legal basis for the application of the CYPA to be limited to those below 16 years.

<sup>8</sup> We are grateful to Associate Professor and Amaladass Fellow Chan Wing Cheong, National University of Singapore, Law Faculty, who brought this matter to our attention. Prof. Chan is an expert on child law and policy.

<sup>9</sup> Ibid.

of his detention and not be further detained in custody without the magistrate's authority".<sup>10</sup>

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<sup>10</sup> Please refer to: [http://statutes.agc.gov.sg/non\\_version/cgi-bin/cgi\\_retrieve.pl?&actno=Reved-68&date=latest&method=part](http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?&actno=Reved-68&date=latest&method=part)