

# **PUBLIC CONSULTATION ON MENTAL CAPACITY ACT AMENDMENTS**

**7 December – 28 December 2015**

## **SUMMARY OF FEEDBACK**

### *Introduction*

1. The Ministry of Social and Family Development (MSF) sought feedback from the public on the proposed amendments to the Mental Capacity Act from 7 December to 28 December 2015. We received 24 feedback inputs from various individuals and organisations, including the Association of Banks in Singapore, the Law Society of Singapore and Life Insurance Association Singapore. MSF would like to thank everyone who had taken the time to send in their views.

2. There was general support for the proposed amendments, with several calling the changes timely and appropriate in enhancing protection of mentally incapacitated persons. The main issues raised in the public consultation and our responses are detailed below.

### ***Introduce professional donees and professional deputies***

3. There was support for introducing professional donees and professional deputies in view of rising singlehood and increased numbers of elderly living alone. Contributors however emphasised that family should remain as the first line of support and care, with the professionals coming in only if family members were unwilling, unable or unavailable.

4. Some contributors questioned if professional donees and deputies may cause financial strain on the person without mental capacity. They suggested safeguards, such as a stipulated fee structure or required appointment of at least two professional donees or deputies. One contributor suggested allowing only persons with integrity or with necessary training to be registered as professional deputies. MSF agrees that safeguards are needed to protect the interests of people without mental capacity. As with all deputies today, the Family Justice Courts will appoint the professional deputies on terms as the Court deems fit for each case. Once appointed by the Court, the professional deputy will be supervised by the Office of Public Guardian (OPG). We will monitor the professional doneeship and deputyship sector to assess the need for additional regulations, and look into developing non-profit options for those who cannot afford such services.

5. There was support for the suggestion that donees and deputies who are family members should act without remuneration. At the same time, it was also asked if family members who give up their jobs to care for their loved ones and assume the role of deputy should be allowed to seek remuneration to cover their living expenses. The Government recognises the challenges caregivers face and has put in place various caregiver support schemes. These include financial support through the Foreign Domestic Worker Grant and Pioneer Generation Disability Assistance Scheme. Family members can also seek reimbursement for expenses incurred, such as transport and medical expenses.

6. There was a suggestion to allow nursing homes and other Voluntary Welfare Organisations (VWOs) to act as professional deputies for their clients, as they would often

already be familiar with the needs and preferences of the person without mental capacity. The contributor also suggested that these organisations be allowed to act as professional deputies in both property and affairs (PA) matters and personal welfare (PW) matters. MSF agrees that these organisations should be allowed to act as professional deputies for PA matters, so long as they meet the registration requirements and are successfully appointed by the Court to act for their client. However, as PW decisions are often highly personal, it might not be appropriate for organisations (as opposed to individuals) to make such decisions. Nonetheless, staff of the organisation are considered individuals and can register themselves to be professional deputies and apply to act as PW deputy. This arrangement is possible under the proposed amendments.

***Revise the grounds in which an LPA or deputyship order can be revoked by the Court and allow the Court to temporarily suspend a donee's or deputy's powers in the absence of a pending Court application***

7. Contributors supported the proposed amendments. Some banks and insurance companies made operational suggestions such as having clear and timely notification of a suspension or revocation of a donee's or deputy's powers. MSF will take these operational concerns into consideration.

***Other Feedback***

*i. Enhanced protection for mentally incapacitated persons*

8. Some contributors suggested imposing more conditions, such as restricting certificate issuers to specialists from the Institute of Mental Health (IMH) as well as donees to only Singaporeans and those related to the donor, when making a Lasting Power of Attorney (LPA) to prevent any undue influence. MSF is mindful of the need to strike a balance between having adequate safeguards and keeping the LPA accessible while allowing people with mental capacity to appoint a donee of his choice. Having additional conditions may increase costs and limit the choice of donees for some donors. Nonetheless, the Office of the Public Guardian (OPG) is stepping up on its public education efforts to encourage individuals to choose their donees wisely.

*ii. Support for families caring for mentally incapacitated individuals*

9. Some contributors queried if the deputyship application process could be made easier and less costly for families caring for mentally incapacitated persons. This is particularly so when family members are in agreement on whom should be appointed deputy. There were also suggestions for the Mental Capacity Act to be amended to allow the parent(s) of adult children with severe intellectual disabilities to be appointed as natural deputies without going through the Court process, or by removing the requirement for a medical report. MSF has considered this suggestion. As deputyship is a very significant decision, a judiciary body (i.e. the Family Justice Courts) must evaluate if the proposed deputy is suitable to act in the long-term, even if it is the parent. To make the Court process simpler for straightforward cases, we are working with the Family Justice Courts to simplify the application forms and have user-

friendly online services. We are also working with the Courts and the Movement for the Intellectually Disabled in Singapore (MINDS) to help parents of MINDS students apply for deputyship on their own at a lower cost.