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Law Reform Commission
4/F, East Wing, Justice Place,
18 Lower Albert Road,
Central, Hong Kong

Written Submission

to

**The Causing or Allowing the Death of a Child or Vulnerable Adult
Sub-committee of the Law Reform Commission**

regarding

**Consultation paper on Causing or Allowing the Death or Serious Harm of a
Child or Vulnerable Adult**

Submitted on 16 August 2019

1. About PathFinders and purpose of this submission

- 1.1.** PathFinders is a Hong Kong-registered charity with tax-exempt status that assists pregnant, migrant workers, mainly current or former foreign domestic workers, and their children born in Hong Kong. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be anticipated and provided for that some will reproduce while employed here.
- 1.2.** The focus and purpose of PathFinders' submission today is to give a voice to the babies and children born in Hong Kong to these women. PathFinders' cases include those where the child has been abused and neglected, is living in a brothel and left to roam the streets alone; where the drug abusing mother of siblings is in a coma and the father serving a long prison sentence; and where a newborn baby has been left at a hospital and the mother and father are nowhere to be found. In each case, these children are utterly poor in every sense of the word. Some of them remain in the care of their parents, whilst some are taken to institutional care pending Social Welfare Department's decision on what long term plan to put in place. These children are some of the most vulnerable children in Hong Kong.
- 1.3.** Since inception in 2007, PathFinders has helped over 2,100 newborns and toddlers up to 2 years' age of whom over 185 were in such a vulnerable, abandoned and/or otherwise isolated predicament that they would, but for PathFinders, have been at significant risk of abuse, neglect and/or trafficking.

2. PathFinders' comments on the Consultation Paper

- 2.1.** PathFinders supports the proposed introduction of the offence of failure to protect a child or vulnerable person where the death or serious harm of the child or vulnerable person results from an unlawful act or neglect.
- 2.2.** In particular, PathFinders believes the proposed offence could complement the existing child ill-treatment and neglect offence under section 27 of the Offences Against Persons Ordinance ("OAPO") by:
 - 2.2.1.** Expanding the categories of people who could be held criminally liable for the death or serious harm of children and vulnerable persons to those who have a duty to protect the victim, or those who are members of the household and have frequent contact with the victim; and
 - 2.2.2.** Expanding the act for which a person could be held criminally liable to not merely an act of abuse or neglect. Instead, the offence focuses on whether the person was aware or ought to have been aware of the risks of serious harm to the victim and, where the person failed to act in response to the risk, whether that failure is so serious to warrant criminal warranty.
- 2.3.** However, more clarity and explanation is needed regarding certain aspects of the proposed offence. This includes:

the Convention on the Rights of the Child”¹, this significant legislative change would be an important step to ensure all children are respected and protected.

3. Summary

- 2.7. PathFinders believes that the proposed offence has the potential to provide a strong incentive to those living with and/or caring for children and vulnerable adults to ensure they are adequately protected if they are at risk of harm. However, further clarity on the scope and elements of the offence, detailed guidance on its actual policing, and accompanying policy change on child protection system are necessary to ensure all children in Hong Kong are protected from harm.

Thank you for taking the time to consider PathFinders’ submission.



Catherine Gurtin
CEO, PathFinders

¹https://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/human/upr_3rd/addendum_report_working_group_upr_3rd_e.pdf