

**PathFinders Limited: Oral Submission to The Hong Kong SAR's
Legislative Council's Subcommittee on Children's Rights
Reform of Child Protection Legislation
Wednesday, 4 April 2018
4:30 pm to 5:30 pm
Con. Rm 1, LegCo. Complex**

Good afternoon, Chairman and Committee Members

My name is Victoria Street and I represent PathFinders. PathFinders' experience over the last nearly 10 years supporting over 5,300 of Hong Kong's most vulnerable children and their migrant mothers has given us a unique perspective into the gaps in our laws as they impact children. We very much welcome today's meeting and the proposed reform of child protection legislation.

Our recommendations today are necessarily a distillation of our previous submissions and writings relating to child protection and legislation this topic. Our previous public submissions are on our website. The law chapter we wrote about the gaps in access to justice for the children we help is publicly available.

Our 8 headline recommendations are as follows:

1. **It is imperative that Hong Kong's legal protections for children be reviewed, updated and consolidated into one Children's Ordinance.** The existing, patchwork nature of our legislation does not protect the very people it should protect;
2. **Protect all children in Hong Kong and specifically those outside the mainstream.** The Children's Ordinance and Children's Commission must represent not only the general population under 18, but also those too young to speak, those in care or with special needs and those whose parents are migrants, asylum seekers and those in prison, in hospital or otherwise absent from the mainstream. Any and all laws, policies and measures regarding the welfare of children in Hong Kong should be applied universally and should not be dependant on the visa status of a parent or parents;
3. **The Children's Ordinance and promised Children's Commission must function symbiotically and always in the child's best interests.** The rights of all children in Hong Kong must be protected and respected. That should specifically include the children PathFinders helps who fall outside the usual legal and welfare protections;
4. **The Children's Ordinance must specifically include detailed and specific provisions and protections for the 'public' child.** Provision must be made for representation of these children by third parties. Absent this, no person or institution currently openly bears rights and responsibilities towards the public child. The legislation must recognize, and make provision for, cases where no parent is willing, available or capable of taking responsibility. For PathFinders' children, there are often no family members who will, or are able, to work in the child's best interests. We recommend that other interested parties, including NGOs, be permitted to represent the child, regardless of whether the child lives with, or is cared for by that party.
5. **The Children's Ordinance should introduce clear legislation about the suspension and termination of parental rights when necessary,** e.g. in situations of long term imprisonment, abandonment, inadequate parenting, child abuse and neglect; also determining under what circumstances personal data and privacy requirements should be lifted for the parties to work collaboratively in the best interests of a child. The UN Convention Committee on the Rights of the

Child has also raised concerns about Hong Kong's "lack of legislation on the termination of parental rights when necessary";

6. **As part of the introduction of the Children's Ordinance, that the courts and judiciary be trained and monitored to ensure:**
 - a. That they work collaboratively across all child protection sectors when executing their functions when dealing with children;
 - b. That the Official Solicitor's powers to represent children in child protection cases is enhanced, communicated, resourced and properly engaged; and
 - c. That the legislation or practice direction, as appropriate, should include specific guidance and training to the court and judiciary regarding their role and jurisdiction in relation to wardship proceedings for unrepresented minors and 'public' children. These provisions should articulate clearly that the court's jurisdiction is as quasi-parent and is not adversarial but inquisitorial;
7. **The Children's Ordinance should mandate sexual conviction and other criminal conviction record checks and tracking for everyone working with children as a non-negotiable prerequisite** whether they be employed as staff, an independent contractor, a volunteer or a private tutor. Hong Kong's safeguarding culture needs to be significantly enhanced; and
8. **Specifically the Children's Ordinance should catalyse significantly enhancement to the abysmal Prison Rules that apply to children living in prison.** Currently the Prison Rules only provide for clothing. They are silent on all other typically required supplies and support from newborn to 3 years of age including educational and social stimulation in the best interests of the child as well as immunisation and other medical support.

Thank you.