

**Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China
Panel on Welfare Services:**

**Special Meeting to discuss the proposed legislation to implement the LRC Report on Child Custody and Access
22 February 2016: Oral Intervention: 3 minutes**

Introduction:

My name is Jenny McAlpine. I represent PathFinders, a Hong Kong charity that assists pregnant, migrant women, mainly foreign domestic workers (FDWs), and their Hong Kong-born children. Given that 1 in 7 women of reproductive age in Hong Kong is employed as a foreign domestic worker, it should be anticipated that some will reproduce. 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 has, to date, helped over 1,000 newborns and toddlers up to 2 years' age of whom 91 were in such a vulnerable, abandoned and/or otherwise isolated state that they would, but for PathFinders, have been at significant risk of abuse, neglect and/or trafficking. There is no other NGO serving these children and PathFinders receives no government funding.

PathFinders' cases include those where the child has been abandoned, abused and neglected; where the child is living in a brothel and left to roam the streets alone; where the mother is in a coma and the father serving a long prison sentence; and where a newborn baby has been left at the hospital and the mother and father are now nowhere to be found. In each case, these children are utterly poor, in every sense of the word. No child should have to exist like this.

Typically, one or both biological parents are no longer around and/or no longer capable of being an adequate parent, be that for health, financial or lifestyle reasons. PathFinders acts as the voice of these exceptionally vulnerable children to ensure each has shelter and care, an identity and, once the child is stabilised, a viable permanency plan. Pathfinders' case managers sometimes act as the children's Next Friend in wardship proceedings to ensure that the voice of the child is represented and that the child's best interests are prioritized when the court exercises its wardship jurisdiction. Unlike many other jurisdictions, Hong Kong has no public guardian whose responsibility it is to act in the best interests of these children.

While PathFinders welcomes the underlying intentions of the proposed Children's Bill, we are concerned that despite the umbrella nature of its title, it is almost entirely silent in relation to protecting and providing for the 'public' child – that is, the child who is not caught between divorcing parents but instead is alone or abandoned, unrepresented and voiceless. PathFinders wants to ensure that all other children in Hong Kong, do have rights, time-bound protections and are properly represented and advocated for in their best interests until adulthood.

Our five Recommendations to this Panel are:

1. That the legislation specifically include protections for the 'public' child we mention above;
2. That the legislation specifically provide for representation by third parties of the 'public' child mentioned above. We refer in particular to Recommendation 43 and Section 62 of the draft bill. For PathFinders' children, there are often no family members who will, or are able, to work in the child's best interests. We recommend ask 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;
3. That the legislation or practice direction, as appropriate, include within any Child Arrangement Orders, a provision requiring a permanency plan to be developed within a certain timeframe and approved and monitored by the court. We refer in particular to s8 of the proposed bill. Currently the draft legislation is silent on permanency plans which is neither acceptable nor in any child's best interests. Ideally also providing for appointment of a qualified public guardian to advocate for the 'public' child and other vulnerable children PathFinders works to protect;
4. That the legislation or practice direction, as appropriate, include specific guidance and training to the court and judiciary regarding their role and jurisdiction in relation to wardship proceedings specifically and unrepresented minors in the public law realm generally. These provisions to articulate clearly that the court's jurisdiction is as quasi-parent and is not adversarial but inquisitorial as; and
5. Finally, PathFinders welcomes the range of support services to be introduced alongside implementation of the Bill. We request that these services be designed to cater for the children born to Hong Kong's migrant population as well as the wider and ethnic minority community by being culturally sensitive and language appropriate.