

8 April 2017

Clerk to Subcommittee on Children's Rights
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, HK

[By Email: sc_hs101_16@legco.gov.hk]

Dear Sir/Madam,

Re: The Establishment of a Commission on Children

The Hong Kong Family Law Association welcomes the opportunity provided by the Subcommittee on Children's Rights to be heard on the proposal for the establishment of a commission on children. We also welcome the Chief Executive-elect's manifesto pledge to establish such a commission.

While our society places great value on children, the reality is that they are particularly vulnerable to exploitation, ill-treatment and neglect. They are often unable to speak for themselves and depend on others to voice their views and protect their rights.

As part of our goal of promoting the improvement of family law, the HKFLA has long advocated for the establishment of a children's commissioner with the statutory duty to zealously protect the rights of all children in Hong Kong, and ensure their voices are heard. Children's interests should be properly represented through an independent statutory body. It should not be vested with any third party interests, in order to ensure that its duties are performed without undue influence. There has long been a need for such a body.

Our views below are directed at the key features of a children's commission. We hope that they will assist both the Government and the Legislative Council in their efforts to make the commission a reality.

The Features of a Children's Commission

We urge that a Children's Commission should reflect the best practice included in CRC's General Comment No.2 (2002) on 'the role of independent national human rights institutions in the promotion and protection of the rights of the child', including:

1. It should be an independent body mandated and governed by legislation;

2. It's mandate should cover a broad scope for promoting and protecting children's rights (including the UN Convention on the Rights of the Child);
3. It should be responsible to: investigate violations of children's rights, take legal proceedings to safeguard children's rights, conduct inquiries, prepare recommendations and reports, review the adequacy and impact of laws, ensure the views of children are heard, and ensure that children's rights are taken into account by policymakers;
4. It should have sufficient infrastructure, budget, staff, and premises to carry out its duties;
5. It should have sufficient powers to discharge its duties (including the powers to: consider individual complaints, carry out investigations, compel and question witnesses, access relevant documents and places of detention);
6. It should have the duty to ensure children have effective remedies (including independent advice and advocacy for breaches of their rights);
7. It should have the power to take cases concerning children to court in its own name, and to intervene in court cases where children's rights issues are involved;
8. It should be accessible to all children (including children in poverty, migrant and refugee children, and children with special needs);
9. It should have the right to access (in conditions of privacy) children in residential care homes or other institutions; and
10. It should have the right to report directly on the state of children's rights to the public and the Legislative Council.

The framers of a children's commission may also take account of best practice adopted by established children's commissioners of other jurisdictions, such in the UK, Australia, New Zealand, Norway and others.

Yours sincerely,

The Hong Kong Family Law Association