

立法會
Legislative Council

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LegCo Panel on Administration of Justice and Legal Services
Review of provision of legal aid services

Background

At the meeting on 7 December 2001, the Panel agreed to form a working group to examine issues relating to the provision of legal aid services. The Working Group has agreed that it should not involve itself in a detailed review of the legislation which is a matter for the Administration. The task of the Working Group is to identify potential issues for review by the Administration.

2. The Working Group held meetings on 7 December 2001 and 15 January 2002. The Working Group made a report to the Panel on 25 February 2002. The Preliminary List of Issues for Review for the purpose of consultation with the relevant parties was endorsed by the Panel (**Appendix I**).

3. The Panel received written submissions from the following deputations -

- (a) Hong Kong Bar Association (LC Paper No. CB(2)1692/01-02(01));
- (b) Hong Kong Family Welfare Society (LC Paper No. CB(2)1692/01-02(02));
- (c) Hong Kong Press Council (LC Paper No. CB(2)1692/01-02(03));
- (d) Hong Kong Council of Social Service (LC Paper No. CB(2)1692/01-02(04));
- (e) Law Society of Hong Kong (LC Paper No. CB(2)1692/01-02(06));
- (f) Hong Kong Journalists Association (LC Paper No. CB(2)1692/01-02(07));
- (g) Mr YEUNG Wai-sing, Eastern District Council member (LC Paper No. CB(2)1726/01-02(01));
- (h) 1st Step Association (LC Papers Nos. CB(2)1692/01-02(05) and CB(2)1741/01-02(01));
- (i) Association of the Rights of Industrial Accident Victims (LC Paper No. CB(2)1741/01-02(02));

- (j) Hong Kong Confederation of Trade Unions (LC Paper No. CB(2)1741/01-02(03)); and
- (k) Hong Kong Federation of Women's Centres - Lai Kok Centre (LC Paper No. CB(2)1776/01-02(01)).

The Panel held a special meeting on 25 April 2002 to meet with the above deputations (except (g), (j) and (k)).

Advice sought

- 4. The following papers are attached for members' consideration -
 - (a) **Appendix II** - A summary of comments made by the deputations on the issues contained in the Preliminary List; and
 - (b) **Appendix III** - A summary of comments made by the deputations on issues not covered in the Preliminary List.
- 5. Members are invited to consider whether -
 - (a) the issues in the Preliminary List should be amended to reflect the comments made by deputations as summarized in Appendix II; and
 - (b) any of the new issues in Appendix III should be included in the final list.
- 6. Subject to members' views, the final list will be forwarded to the Administration for response.

Council Business Division 2
Legislative Council Secretariat
10 July 2002

**Working Group on Legislation concerning
the Provision of Legal Aid Services**

Preliminary list of issues for review

Existing legal aid regime - time for review

Legal aid is provided by the Legal Aid Department under the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal aid Scheme (SLAS). The Legal Aid Ordinance (LAO) was originally enacted in 1967 "to make provision for the granting of legal aid in civil actions to persons of limited means." SLAS, a self-financing scheme, was established in 1984 to provide civil legal aid for certain proceedings for the "sandwich class" whose financial resources exceed the ceiling set for the OLAS.

2. Since then, social conditions and expectations in Hong Kong have advanced. The Hong Kong Bill of Rights Ordinance came into force in 1992 and the Basic Law enshrining fundamental rights came into effect in 1997. The procedure and costs of litigation have developed to put access to the courts beyond not only "persons of limited means" but most ordinary citizens. Furthermore, consideration should be given to restructuring the legal aid scheme to tie in with the civil justice reform which is underway. Piecemeal up-date of LAO is no longer adequate. Time is ripe for an overall review.

3. *The Administration should* conduct a comprehensive review on the objective, adequacy and effectiveness of the existing legal aid regime with a view to enhancing the accessibility of legal services to persons who may otherwise have no means of enforcing their legal rights.

4. In conducting the review, *the Administration should* also address the specific issues raised by Members in the following areas -

- (a) the scope of legal aid;
- (b) the financial eligibility limits for legal aid schemes;
- (c) Discretion of the Director of Legal Aid (DLA) to waive the means test;
- (d) Assessment of financial resources;
- (e) Costs and contributions;
- (f) Legal aid for alternative means of dispute resolution;

- (g) Appeal from decision of DLA; and
- (h) Fees and costs payable to counsel and solicitors.

Scope of legal aid

Defamation actions

5. *The Administration should* consider whether legal aid should be granted for defamation actions, particularly those involving freedom of speech as an issue. Consideration should also be given to grant legal aid, without means testing, in deserving cases. Members note that many defamation actions in Hong Kong do not involve corporations, but individuals such as columnists or journalists who may have limited means to pursue litigation privately.

Other proceedings

6. *The Administration should* consider whether the scope of legal aid should be expanded to include the following excepted proceedings -

- (a) disputes between limited companies and their shareholders;
- (b) disputes over partnerships;
- (c) money claims in derivatives of securities, currency futures or other futures contracts;
- (d) election petitions arising from the Legislative Council and District Council elections; and
- (e) uncontested cases such as those relating to bankruptcies and liquidations.

The Administration should examine the possibility of expanding the SLAS or establishing other self-financing legal aid schemes to deal with some of these proceedings. Members note that the SLAS, a self-financing scheme, is operating with a surplus.

Financial eligibility limits for legal aid schemes

Civil cases

7. Legal aid for civil proceedings is provided under LAO through the OLAS and the SLAS. The upper financial eligibility limit under the OLAS is \$169,700. For cases involving personal injuries and professional negligence, an applicant

whose financial resources exceed \$169,700, but do not exceed \$471,600 may apply for legal aid under the SLAS. The upper limits for both schemes are considered to be too low.

8. Having regard to the objective of legal aid, in particular the objective of the SLAS, *the Administration should* conduct a comprehensive review of the basis and criteria adopted for assessing the financial resources of applicants and the upper financial eligibility limits under the OLAS and the SLAS.

Criminal cases

9. *The Administration should* review the upper financial eligibility limit for legal aid in criminal cases with a view to adjusting it upward. To adopt the same financial resources criteria for both criminal and civil cases may be inappropriate, having regard to the differences between criminal and civil offences.

Discretion of DLA to waive means test

10. DLA may, under section 5AA of LAO, waive the upper limit of means test in respect of proceedings in which a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is an issue. *The Administration should* consider whether DLA should be empowered to exercise the same discretion in respect of the following proceedings -

- (a) Employees in appeals brought by employers against judgments of the Labour Tribunal (LT)

These types of actions involve employees applying for legal aid to defend appeals brought by employers to the Court of First Instance against judgments of the LT. Employees who received a LT judgment in favour of them might be deterred from further pursuing their claims for fear that they cannot afford the costs of the appeal proceedings, if the appeal is allowed.

- (b) Actions involving the Basic Law, the Personal Data (Privacy) Ordinance and anti-discrimination legislation

Cases where contravention of the Basic Law, the Personal Data (Privacy) Ordinance or anti-discrimination legislation is an issue are often of great general or public importance and have wide implications.

(c) Employees in insolvency cases

It may be justified to grant legal aid without means testing for cases of employees applying for legal aid to recover compensation due to them in employers' insolvency cases. The issue could be reviewed in conjunction with the relief mechanism under the Protection of Wages on Insolvency Ordinance such as the provisions relating to application for winding up of employers by the employees.

Assessment of financial resources

Calculation of disposable income

11. The existing method of calculation (i.e. by multiplying the applicant's monthly disposable income by 12 and adding his disposable capital to that sum) is unreasonable, as it assumes that the person will have a fixed income over the next 12 months. *The Administration should* review the formula so that any loss or reduction of future income can be taken into account in calculating the disposable income of an applicant.

12. *The Administration should* consider the proposal of using the median monthly household expenditure, rather than the "35-percentile household expenditure", as the index of personal allowance deductible for calculating the disposable income of applicants under the OLAS. The Administration's advice that the percentage of households financially eligible for legal aid has been increased from 48% to 58%, following the introduction of the latter benchmark since July 2001, is not considered a sufficient reason for not pursuing the proposal.

Requirements under Legal Aid (Assessment of Resources and Contributions) Regulations

13. *The Administration should* review the following provisions of the Legal Aid (Assessment of Resources and Contributions) Regulations -

(a) Regulation 6 - Application in representative or fiduciary capacity

The provision that the financial resources of any persons who might benefit from the outcome of the proceedings should be taken into account in determining the financial capacity of an applicant in a representative or fiduciary capacity may be unfair and should be reviewed.

(b) Regulation 7 (1) - Resources of a spouse

The provision that the resources of a spouse of a legal aid applicant should be treated as the resources of the applicant in assessing the applicant's financial eligibility should be reviewed. According to general rules of litigation, "husband" and "wife" are treated as separate and independent entities.

(c) Regulation 8 - Resources of an applicant who is an infant

It is noted that Report No. 37 of the Director of Audit's Report on Provision of Legal Aid Services has made reference to a case involving an infant applicant. The case illustrates an anomaly that public money is spent in providing legal aid to the infants of financially well-off parents who are willing and can afford to conduct litigation on a private basis. The method of assessing the means of an infant applicant should be reviewed with a view to removing the anomaly.

Costs and contributions

Contribution in cases involving human rights issues

14. Part I of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations sets out, inter alia, the contribution of an aided person in proceedings involving a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights. ***The Administration should*** consider -

- (a) reviewing the maximum rate of contribution from a successful litigant in such proceedings (i.e. over 60% of the person's financial resources); or
- (b) exempting aided persons from making contributions. The use of public money to provide legal aid for cases involving matters of principle and significant public interest may be justified.

Contribution under the OLAS

15. An aided person whose financial resources exceed \$144,000, but do not exceed \$169,700, is required to pay the maximum contribution rate of 25%. As the upper financial eligibility limit under the OLAS is comparatively low, a large number of aided persons would be required to pay the maximum contribution. ***The Administration should*** review the maximum contribution rate.

Contribution under the SLAS

16. The contribution rate under the SLAS was reduced from 15% to 12% since July 2000. The use of a sliding scale of contribution, instead of at the rate of 12% across the board, is considered to have the advantage of being more flexible. ***The Administration should*** conduct a review on the impact of the new contribution rate on the SLAS Fund, for determining whether a sliding scale should be adopted, when more data from new cases handled are available.

17. Under Part III of Schedule 3 to the Legal Aid (Assessment of Resources and Contributions) Regulations, the rate of contribution is 12% when a claim proceeds to judgment. The rate shall be reduced to 6% when a claim is settled prior to delivery of a brief to Counsel. ***The Administration should*** consider whether appropriate steps should be taken to ensure that the relevant provisions are fully explained to an applicant in advance of the delivery of the Counsel's brief, so as to facilitate the applicant to make a decision in his best interests.

Interest accrued on DLA's first charge

18. Section 18A(3B)(b) of LAO provides that interest at the rate of 10% per annum or at a prescribed rate shall accrue on DLA's first charge on property recovered or preserved. Although section 18A(3B)(c) provides that DLA has the discretion to waive, either in whole or in part, the payment of all or any of the interest so accrued, it is reported that DLA has seldom exercised such discretion.

19. ***The Administration should*** review the situation in order to lessen the burden of the aided persons with genuine hardship, in particular those who cannot sell the property for valid reasons.

Interest accrued on monies due to aided persons

20. Section 19A of LAO requires that all sums which may become payable to an aided person are paid to DLA before payment is made to the aided person. ***The Administration should*** consider whether the interest accrued on any such sums held by DLA should be payable to the aided persons.

Payment of costs by DLA on behalf of an aided defendant or respondent

21. A Justice of Appeal of the Court of Appeal, in ruling on a recent case, has expressed the view that the present statutory requirement (section 16C(1)(b)(ii) of LAO) that neither DLA nor an aided person should be liable for costs may cause injustice to the winning party not in receipt of legal aid. ***The Administration should*** review the relevant provisions.

Legal aid for alternative schemes

"Unbundled legal assistance"

22. The concept of "unbundled legal assistance", i.e. with private lawyers providing (and charging for) advice and assistance at key points in the proceedings, designed to help the litigant represent himself, is highlighted in the Interim Report and Consultative Paper on Civil Justice Reform released on 29 November 2001. The Working Party on Civil Justice Reform hopes that in ongoing reviews of the scope of legal aid, notice should be taken of the growing phenomenon of unrepresented litigants, prompting consideration of broader public funding of meritorious claims by such litigants. Legal aid should also be considered as a funding source for "unbundled legal assistance".

23. Members consider that "unbundled legal assistance" may be a useful scheme to help litigants represent themselves, if it is not possible to provide full representation for all aspects of the proceedings through publicly funded legal aid. It is of particular importance to litigants that they are provided with professional legal advice at the very early stages of the proceedings to enable them to make a well-informed decision as to whether it is in their best interests to proceed further with the litigation. *The Administration should* consider whether the legal aid regime should be restructured in such a way as to provide for "unbundled legal assistance".

Alternative dispute resolution (ADR) schemes

24. As mentioned in the Interim Report and Consultative Paper on Civil Justice Reform, ADR can be used in appropriate cases as an alternative or adjunct to civil proceedings. The Consultative Paper has examined the different approaches adopted in overseas jurisdictions as to whether and to what extent the parties should be compelled by the court to resort to ADR, and made a number of proposals for consultation. One of the proposals is the desirability of legislation giving the DLA power to make resort to ADR a condition of granting legal aid in appropriate cases. The power could be a power to limit legal aid in the first place to the mediation, or a power to make participation in mediation a condition of any subsequent legal aid funding of the proceedings.

25. Under Part I of Schedule 2 to LAO, legal aid is available for civil proceedings such as negotiations prior to the issue of legal proceedings including mediation. As this suggests that legal aid can only be granted for mediation in the course of litigation, *the Administration should* consider whether LAO should be amended to the effect that legal aid can be granted for mediation.

Appeal from decision of DLA

26. Measures to further improve transparency in the mechanism for handling appeals against DLA's decision to refuse legal aid are considered necessary. For instance, the Administration should consider the need to draw up and make public a code of practice setting out the detailed procedures for appeal. In cases where information is sought by the Registrar of the High Court arising from an appeal against DLA's decision, or where the Registrar has requested DLA to reconsider an application, the code of practice should indicate the timeframe within which DLA should respond.

27. It has been reported that at present, most applications for legal aid to appeal in criminal cases are refused by DLA, hence rendering it extremely difficult for the applicants to seek further legal recourse. While Rule 12(3) of the Legal Aid in Criminal Cases Rules provides that the judge or Court of Appeal may grant an appeal aid certificate notwithstanding DLA's refusal, it is unlikely for an applicant to incur costs to further pursue the appeal in the absence of legal aid.

28. *The Administration should* examine the above issues with a view to putting in place a more effective appeal mechanism.

Fees and costs payable to counsel and solicitors

29. It has been reported that in some instances, counsel has failed to receive fees for work undertaken in relation to a case referred from a solicitor instructed by DLA where the item has been disallowed on taxation. Under Regulation 4 of the Legal Aid (Scale of Fees) Regulation, the fees payable to counsel acting for an aided person shall be such as may be allowed on taxation or, in default of taxation, as may be fixed by DLA, not exceeding such amount as in the opinion of DLA would have been allowed if there had been taxation.

30. *The Administration should* review the relevant provisions with a view to improving the clarity.

A Summary of Comments of Deputations on the Preliminary List of Issues for Review

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(1) The Administration should conduct a comprehensive review on the objective, adequacy and effectiveness of the existing legal aid regime (para. 3)	--	Support	Support	Support in principle (HKFWS)	Support (HKCSS)	--	--
(2) The Administration should consider whether legal aid should be granted for defamation actions, particularly those involving freedom of speech as an issue (para. 5)	--	--	It may not be a wise use of limited fund to grant legal aid for defamation actions	Support (HKFWS)	--	Support the granting of legal aid for defamation actions (HKJA) (a DC member) Has reservations about extending legal aid for defamation cases. If the proposal is implemented, DLA should be empowered to exercise his discretion in favour of applicants sparingly to prevent abuse of the system (HKPC)	Panel to consider

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
<p>(3) The Administration should examine the possibility of expanding the SLAS or establishing other self-financing legal aid schemes to deal with some of the following excepted proceedings -</p> <ul style="list-style-type: none"> • disputes between limited companies and their shareholders; • disputes over partnerships; • money claims in derivatives of securities, currency futures or other futures contracts; • election petitions arising from the Legislative Council and District Council elections; and • uncontested cases such as those relating to bankruptcies and liquidations <p>(para. 6)</p>	<p>--</p>	<p>The scope of SLAS should be expanded to cover other types of cases such as -</p> <p>(a) cases where the individual damage might not be high but the damage to many could be considerable e.g. consumer and product liability and environmental damage cases,</p> <p>(b) class or group litigation which involved monetary claims and which had a reasonably good chance of success e.g. disasters, insolvency of a corporate employer and</p>	<p>It may not be a wise use of limited fund to extend the scope of SLAS to cover these proceedings</p>	<p>Support to extend legal aid to bankruptcy proceedings (HKFWS)</p>	<p>--</p>	<p>--</p>	<p>Panel to consider</p>

Issues in Preliminary List for Review	1st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
		<p>Building Management Ordinance type cases, and</p> <p>(c) cases with reasonable prospects of recovering damages and the costs so that there was relatively little risk to SLAS of an unsatisfied judgment or orders for costs e.g. claims by flat buyers against property developers in relation to defective workmanship in premises and claims against insurance companies</p>					

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(4) The Administration should conduct a comprehensive review of the basis and criteria adopted for assessing the financial resources of applicants and the upper financial eligibility limits under the OLAS and the SLAS (para. 8)	Insurance monies for accidents at work received by an applicant involving in a personal injury claim should not be regarded as the capital in assessing his financial resources under SLAS (1 st Step Asso)	Support. The upper limit of SLAS should be adjusted upward to at least \$1 million	The upper financial eligibility limits for OLAS and SLAS are grossly out of step with present day circumstances and should be received	Support in principle (HKFWS)	Support (HKCSS/ HKCTU)	--	Panel to consider
(5) The Administration should review the upper financial eligibility limit for legal aid in criminal cases with a view to adjusting it upward (para. 10)	Support (ARIAV)	--	--	Support in principle (HKFWS)	--	--	--
(6) The Administration should consider whether DLA should be empowered to exercise discretion to waive means test in actions involving - (a) employees in appeals brought by employers against judgements of the Labour Tribunal	DLA should exercise discretion to waive means test in cases involving victims of industrial accidents or family members of deceased workers in the pursuit for	--	There might be grounds for empowering DLA to waive means test in respect of these cases. However, it is still debatable whether the proposal should be taken forward, given these are not	Support in principle (HKFWS)	Support (a) (HKCTU)	Support (a) (a DC member)	Panel to consider

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
<p>(para. 10(a))</p> <p>(b) the Basic Law, the Personal Data (Privacy) Ordinance and anti-discrimination legislation (para. 10(b))</p> <p>(c) employees in insolvency cases (para. 10(c))</p>	employees' compensation (ARIAV)		the type of proceedings for which legal aid should be granted at a time when funds are in short supply and other members of the community are denied the chance to bring proceedings for actions more essential to their benefit		<p>Support (b) (HKCSS)</p> <p>Support (c) (HKCTU)</p>		
(7) The Administration should review the formula for calculation of disposable income of an applicant (para. 11)	--	--	--	<p>Support (HKFWS)</p> <p>The existing method of calculation is unreasonable as borrowed money and cash in bank are taken into account in calculating disposable income and disposable capital respectively (HKFWC)</p>	Support (HKCSS)	--	--

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(8) The Administration should consider the proposal of using the median monthly household expenditure, rather than the "35-percentile household expenditure", as the index of personal allowance deductible for calculating the disposable income of applicants under the OLAS (para. 12)	--	--	--	Support (HKFWS)	Support (HKCTU)	--	--
(9) The Administration should review whether - (a) the financial resources of any persons who might benefit from the outcome of the proceedings should be taken into account in determining the financial capacity of an applicant in a representative or fiduciary capacity (para. 13(a))	--	--	--	(a) should be reviewed (HKFWS)	--	--	--

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(b) the resources of a spouse should be treated as the resources of the applicant (para. 13(b))	--	--	--	On (b), the principle that every individual should have the right to access to justice should be observed (HKFWS)	On (b), the resources of a spouse should not be regarded as the resources of the applicant (HKCSS)	--	--
(c) the resources of an infant's parents should be disregarded in assessing the means of an infant applicant (para. 13(c))	--	On (c), the protection afforded to an infant as a minor under ICCPR and BOR should be observed The practice of disregarding the resources of an infants' parents in assessing the financial resources of the infant applicant should continue	--	On (c), children should have the right to access to justice as any adult and the Government should have the role to protect their best interests (HKFWS)	--	--	(c) - Panel to consider

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(10) For contribution in cases involving human rights issues, the Administration should consider - (a) reviewing the maximum rate of contribution from a successful litigant; or (para. 14(a)) (b) exempting aided persons from making contributions (para. 14(b))	--	--	--	Support (b) (HKFWS)	--	--	--
(11) The Administration should review the maximum contribution rate of 25% under OLAS (para. 15)	--	--	--	Strongly support (HKFWS)	--	--	--
(12) The Administration should conduct a review of the new contribution rate of 12% under SLAS and whether a sliding scale should be adopted (para. 15)	Victims of industrial accidents or family members of deceased workers should be exempted from making a contribution under SLAS (ARIAV)	--	--	Support (HKFWS)	Victims of industrial accidents or family members of deceased workers should be exempted from making a contribution under SLAS (HKCSS)	--	Panel to consider

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(13) The Administration should consider to explain to an applicant the circumstances under which a reduced rate of contribution at 6% under SLAS will apply (para. 17)	--	--	--	Support (HKFWS)	--	--	--
(14) The Administration should review the situation that DLA seldom exercises discretion to waive the payment interest so accrued on DLA's first charge on property recovered or preserved (para. 19)	--	--	--	Support (HKFWS)	Floating interest rate should be used (HKCSS)	--	--
(15) The Administration should consider whether the interest accrued on any such sums held by DLA should be payable to the aided persons (para. 20)	--	--	To do so would involve additional administrative work disproportionate to the value of interest accruing	Interest should be paid to the aided persons (HKFWS)	Support (HKCSS)	--	--

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(16) The Administration should review the provisions on payment of costs by DLA on behalf of aided person (para. 21)	--	--	DLA should be responsible for the payment of costs of the winning party who is not in receipt of legal aid	The provisions should be reviewed to ensure justice to both aided and non-aided persons (HKFWS)	--	--	--
(17) The Administration should consider whether the legal aid regime should be restructured in such a way as to provide for "unbundled legal assistance" (para. 23)	--	--	Support on condition that there is consistency in the assistance given	Strongly support (HKFWS)	--	--	--
(18) The Administration should consider whether LAO should be amended to the effect that legal aid can be granted for mediation (para. 25)	--	--	Legal aid should be granted provided the mediation is undertaken by qualified lawyers	Strongly support (HKFWS)	Support, but aided person should not be forced to resort to mediation (HKCSS)	--	--

Issues in Preliminary List for Review	1 st Step Asso/ ARIAV	Bar Association	Law Society	HKFWS/ HKFWC	HKCSS/ HKCTU	HKJA*/ HKPC*/ Mr YEUNG Wai-sing (DC member)	Remarks
(19) The Administration should consider putting in place a more effective appeal mechanism for handling appeals against DLA's decision to refuse legal aid and to address the situation where an applicant is unlikely to pursue an appeal in the absence of legal aid (para. 28)	--	--	While measures should be introduced to further improve transparency in the mechanism for handling for appeals against DLA's decision to refuse legal aid, any major change to the procedure for appeals against the refusal of legal aid in criminal cases should be considered with caution	Support (HKFWS)	--	--	--
(20) The Administration should review the relevant provisions on fees and costs payable to counsel and solicitors under Regulation 4 of the Legal Aid (Scale of Fees) Regulation (para. 30)	--	--	--	Support (HKFWS)	--	--	--

* HKJA and HKPC are only invited to offer comments on item 2 i.e. whether legal aid should be granted for defamation actions

ARIAV - Association of the Rights of Industrial Accident Victims
BOR - Bill of Rights Ordinance
DLA - Director of Legal Aid
HKCSS - Hong Kong Council of Social Service
HKCTU - Hong Kong Confederation of Trade Unions
HKFWS - Hong Kong Family Welfare Society
HKFWC - Hong Kong Federation of Women's Centres
HKJA - Hong Kong Journalists Association
HKPC - Hong Kong Press Council
ICCPR - International Covenant of Civil and Political Rights
LAO - Legal Aid Ordinance
OLAS - Ordinary Legal Aid Scheme
SLAS - Supplementary Legal Aid Scheme

**Comments of deputations on issues not included in the
Preliminary List of Issues for Review**

I. Hong Kong Bar Association

Reform of legal aid in criminal proceedings

- (a) There has been a haphazard division of labour between LAD and the court in administration of legal aid services and time is ripe for a review. At present, the granting of legal aid in civil cases is under the Legal Aid Ordinance (LAO) (Cap. 91), whereas that for criminal cases is under the Legal Aid in Criminal Cases Rules of the Criminal Procedure Ordinance (Cap. 221);
- (b) LAD should instruct leading counsel to represent aided persons in criminal cases, as the Department of Justice (DOJ) representing the opposite party often assigns Senior Counsel or briefed Senior Counsel at the Bar in such cases;
- (c) Under the Legal Aid in Criminal Cases Rules, where an applicant is involved in murder, treason or piracy with violence and is refused legal aid by DLA, he might apply to a judge for granting of legal aid and exemption from means test and from payment of contribution. Such powers of the judge should be extended to cover cases involving very lengthy sentences of imprisonment, such as those charged with drug trafficking in large quantities of dangerous drugs or armed robbery;
- (d) Under Rule 21(2) of the Legal Aid in Criminal Cases Rules, the trial judge might certify the fee payable to a solicitor or counsel assigned under a legal aid certificate be increased, if in his opinion that the case is of exceptional length or complexity. It is not appropriate for the Judiciary to have a role in assessment of fees. The existing system has created many problems and a fundamental change to the system is necessary. The Bar Association suggests that fees should be agreed in advance. This approach is adopted by the DOJ and Registrar General, both are bodies dispensing public funds;

Reform of legal aid in civil proceedings

- (e) Section 9(d) of LAO empowers DLA to refer an application for legal aid to counsel to investigate the facts and to make a report thereon or to give an opinion thereon or on any question of law arising out of the application. DLA should make full use of the provision, not just for difficult cases and cases where independent legal advice are required.

II. Association of the Rights of Industrial Accident Victims
Hong Kong Council of Social Service
Hong Kong Family Welfare Society
Hong Kong Federation of Women's Centres - Lai Kok Centre

- (a) The procedures for legal aid services should be more transparent and user-friendly. A leaflet/booklet should be produced by LAD, containing information such as eligibility for legal aid services, application procedure, costs and contributions, system for choosing and changing a lawyer, appeal system, Service Charter, other relevant services such as mediation and counselling, and Q&A to answer some common questions;
- (b) The effectiveness of the existing mechanism to monitor services provided by LAD's in-house lawyers and private legal practitioners assigned should be improved, such as by collecting feedback from aided persons;
- (c) Provision of legal aid services should be client-based. For example, applicants should be well apprised of the services available to them and their contribution towards the cost of legal aid cases; measures should be taken to safeguard applicants' right to privacy and confidentiality; subject to the agreement of the applicants, social worker and/or their family members should be allowed to accompany them to meet with LAD staff; and LAD should strengthen liaison with agencies providing social services so that other types of support services could be provided by the latter to aided persons in need; and
- (d) LAD staff should receive training on Putonghua in order to better communicate with Mainland clients.

III. The Law Society of Hong Kong
Mr YEUNG Wai-sing, Eastern District Council member

LAD should take a more robust line with some legally aid persons to prevent the system from being abused.