

For discussion
on 25 January 2010

**Legislative Council Panel on
Administration of Justice and Legal Services**

Independent statutory legal aid authority

The Legal Aid Services Authority (LASC) has completed its study on the need for an independent legal aid authority in Hong Kong. This paper briefs members on the Administration's response.

Background

2. Pursuant to the Legal Aid Services Council Ordinance (Cap. 489), the LASC is required to advise the Government on "the feasibility and desirability of the establishment of an independent legal aid authority". Relevant extracts of Cap. 489 are attached at **Annex**.

3. In 1997, the LASC commissioned a consultancy to study the issues. The LASC then recommended in 1998 to establish an independent legal aid authority. The Government decided in 1999 not to accept the recommendations.

4. In 2007, the LASC revisited the issue of establishing an independent statutory legal aid authority and reported to the Administration in October 2009 findings of the review.

Findings of LASC's Review

5. The findings of the review are as follows –

- (a) LASC acknowledges that the institutional arrangement of the Legal Aid Department (LAD) being a government department may create a perception of lack of independence. However, it recognizes that there are already sufficient safeguards in statute and in practice to ensure that the powers of the Director of Legal Aid (DLA) are not abused. It is not convinced either that legal aid independence has been compromised under the current institutional setup.

- (b)LASC has consulted directorate officers of LAD and non-directorate officers including Legal Aid Counsel and Law Clerks, who do not support any proposal to delink LAD from the government.
- (c)LASC considers that given the checks and balances that are currently in place and the service quality of our legal aid system, the current operation is already highly independent, open and transparent. The system is working very well, even when compared with advanced jurisdictions.
- (d)LASC acknowledges that it will be ideal for a separate entity to administer legal aid independent of the government to address the perception problem about the independence of legal aid arising from LAD's institutional position as part of the government. However, in view of the very satisfactory service currently provided by the LAD, the views of the LAD staff on the matter, and having considered the present financial position of the government, LASC does not see a pressing need to disestablish LAD and substitute it by an independent authority.
- (e)LASC proposes to keep the independence issue under review, and take the opportunity to revisit the issue in late 2011/early 2012 when hopefully the finances of the government will allow a greater flexibility in proposing changes to our legal aid regime.

The Administration's Response

6. The Administration welcomes the Council's recognition of the effectiveness, independence and impartiality of the LAD in its delivery of legal aid services, even when compared with some advanced jurisdictions. We appreciate that the Council has given due regard to critical factors including views of the staff of the LAD in conducting the review.

7. As reaffirmed in the review, adequate safeguards already exist in statute and in practice to ensure that the exercise of the Director of Legal Aid's powers and functions would not be interfered. Although the LAD is dependent on Government on funding and other resources, everyday decisions are made by professional officers. The existing appeal procedure does not allow the Government to exert any undue influence upon the department in deciding whether to grant or refuse

legal aid to individual applicant ¹.

8. The Administration holds the view that legal aid services should continue to be operated in the present manner under the current institutional setup.

Home Affairs Bureau
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¹ Anyone aggrieved by any decision to refuse legal aid application is entitled to appeal under Section 26 of the Legal Aid Ordinance (Cap. 91) and Rule 12 & 13 of Legal Aid in Criminal Cases Rules (Cap 221), and the ultimate decision in a civil or criminal case is made by a member of the Judiciary.

Chapter:	489	Title	LEGAL AID SERVICES COUNCIL ORDINANCE	Gazette Number:	26 of 1999
Section:	4	Heading	Functions of the Council and relationship with the Department	Version Date:	01/07/1997

Remarks:

Adaptation amendments retroactively made - see 26 of 1999 s. 3

(1) The Council is responsible for overseeing the administration of the legal aid services provided by the Department and the Department is accountable to the Council for the provision of such services.

(2) The Council may-

- (a) subject to subsections (3) and (5), formulate policies governing the provision of services by the Department and give advice on the policy direction of the Department;
- (b) review the work of the Department from time to time and make such arrangements as are expedient and proper to ensure the efficient and economical discharge of the functions and provision of legal aid services by the Department;
- (c) keep under review the services provided by the Department and the plans for development of the Department; and
- (d) consider and advise on the estimates of expenditure of the Department.

(3) The Council shall not have the power to direct the Department on staff matters and the handling of individual cases by the Department.

(4) The Department shall, subject to subsections (3) and (5), provide such information as is reasonably requested by the Council for the purpose of this Ordinance.

(5) The Council is the Chief Executive's advisory body on the policy of the Government concerning publicly funded legal aid services provided by the Department and shall advise on-

- (a) the eligibility criteria, scope of services, mode of service delivery, future plans for improvements, funding requirements and future development of legal aid policy;
- (b) the feasibility and desirability of the establishment of an independent legal aid authority; and
- (c) any other aspect of legal aid which the Chief Executive may from time to time refer to the Council. (Amended 26 of 1999 s. 3)

(6) The Council shall not be regarded as an agent or servant of the Government.

(Enacted 1996)