

**For discussion on  
25 January 2010**

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

**Legal Aid in Criminal Cases Rules**

**Purpose**

This paper sets out the Administration's response to the proposals made by the Hong Kong Human Rights Monitor, the Legal Advisor to this Panel and the Hong Kong Bar Association to amend the Legal Aid in Criminal Cases Rules (Cap. 221D).

**The Administration's Response**

2. The Administration notes the request to clarify that legal aid would be provided for cases considered by the Court of Final Appeal (CFA) which do not involve a conviction.

3. We agree that there is a need to amend Cap. 221D to expressly provide that legal aid may be granted for the CFA cases and also the Court of Appeal (CA) cases which do not involve a conviction.

4. We also note the observations and discussion by the Legal Advisor to this Panel contained in a note dated 30 June 2009 over whether there is a deficiency in Cap. 221D in respect of the provision of legal aid which relates to appeals to CA not involving a conviction, under the following situations –

- (a) Any appeal before verdict where the defendant has been granted legal aid;
- (b) Any appeal before verdict where the defendant has not been granted legal aid;
- (c) Any appeal after the defendant who has been granted legal aid is acquitted or discharged; and
- (d) Any appeal after the defendant who has not been granted legal aid is acquitted or discharged.

5. We have considered the Advisor's opinion, and we agree that for the avoidance of doubt, express provision could be included in Cap. 221D so as to make legal aid available for appeals made to the Court of Appeal after the defendant who has not been granted legal aid is acquitted or discharged.

### **Way Forward**

6. Subject to Members' comments, we will proceed to make preparation for the amendment. We intend to invite the Criminal Procedure Rules Committee to amend Cap. 221D and subject to their making of the amendment Rules, we will seek the Legislative Council's approval within 2010.

**Home Affairs Bureau  
Legal Aid Department  
January 2010**