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FURTHER COMMENTS ON THE REPORT FROM DELOITTE

No survey of those refused Legal Aid

The Report does not include any survey of those **refused** Legal Aid. Opinions of these persons who may then have gone on to other schemes (such as the Bar's Pro-Bono Scheme, The Judiciary Scheme for Unrepresented Litigants) would be instructive.

Implementation time – Fully Independent Option (*Report, p.90 - Table 13*)

“Timeframe for a seamless launch is expected to be no less than 36 months”

- 36+ months seems a reasonable transition period for such a change – especially when viewed against the almost 30 years since this change has been advised.
- A period of transition-related disruption is inevitable **whenever** the transition occurs so any disruption cannot and should not be an overriding reason against making a change to the fully independent option.

Costs

Disestablishment Costs (Report, p.90 - Table 13)

- *“Disestablishment costs are expected to be high and estimated to range from HK\$41 million to HK\$600 million in net present value terms, depending upon the number of staff applying the LAD versus those transferring to the LAA.”*
- But see 1998 Coopers Report, F.11-12 (attached)

“The staff related costs... would be in the range of HK\$40 m to HK\$430 m in NPV (net present value) terms ... In practice, a significant proportion of staff might transfer to the new body, leading to costs significantly below the higher figure.”

Operating Costs (Report, p.90 - Table 13)

- *“Operating costs are expected to be high if the LAA no longer stays in Government complex. Rental costs, estimated to range from HK\$2.38 million to HK\$7.51 million per month, will be the biggest financial burden to the operation.”*
- But see 1998 Coopers Report, F.7 (attached)
- **“Physical relocation, if new office provided”**
(It seems that the provision of new office was **not** viewed as inevitable by Coopers.)

- “The accounting treatment of certain current costs might change, for example accommodation and personal fund costs, but this would not affect the real cost to the Government.”

Conclusion

The 1998 Coopers & Lybrand Report concluded : -

- “Institutional change is required to address the independence issues ... The current institutional arrangements are unsatisfactory and should be improved.” (p.61 - attached)
- It recommended Model 2 of 4 possible models (see p.44 - attached). “because it offers the most appropriate trade-off between impact on independence and cost. (p.62 - attached)
- Even this Model (recommended in 1998) has not yet been put in place.

Josephine Pinto

18.6.13

**Consultancy study on the feasibility and desirability of
establishing an independent legal aid authority**

Final report

31 March 1998

LAD staff-related cost projections - Model 3: LAA employer of all current LAD job-holders

The cost impact of Model 3 depends heavily on how it comes to be implemented in practice

'High wastage' case

- All Departmental grade posts are abolished
- All Departmental grade staff leave LAD and none joins either the LAA or other parts of the public service
- All Departmental grade staff receive an enhanced pension or a short service gratuity, plus an *ex gratia* payment
- All general grade staff are absorbed into other parts of the civil service

'Low wastage' case

- All Departmental grade staff transfer to the LAA
- All Departmental grade staff receive an incentive payment for doing so
- The transfer is in other respects treated as a transfer within the Government service, and no other staff-related costs arise as a result of the disestablishment of LAD (for example, premature retirement costs)

LAD staff-related cost projections - Model 3: LAA employer of all current LAD job-holders (Cont'd)

The staff-related costs of implementing Model 3 would be in the range HK\$40m to HK\$430m in NPV terms

Cost elements	'High wastage' case NPV in HK\$ millions	'Low wastage' case NPV in HK\$ millions
Pension payments up to normal retirement date	218	0
Pension enhancements	118	0
Ex gratia payments	51	0
Recruitment and induction costs (Departmental grade)	25	0
Recruitment and induction costs (General grade)	15	15
Incentive payments	0	25
Total	427	40

In practice a significant proportion of staff might transfer to the new body, leading to costs significantly below the higher figure

LAD cost projections - sources of additional, non-staff-related expenditure

Some additional, non-staff-related costs
would arise ...

- Task force to manage implementation of radical options, involving disestablishment of LAD - say, HK\$5m
- Physical relocation, if new office provided

The accounting treatment of certain current costs might change, for example accommodation and pension fund costs, but this would not affect the real cost to the Government

Institutional structure (LAA/LAD) - overview of options

We have identified a spectrum of options, from no change to a LAA with extensive powers, including employment of all staff

Key Features	Model 0 - Current arrangements continue	Model 1 - LAA has enhanced powers	Model 2 - LAA employs senior management	Model 3 - LAA employs all staff	Model 4 - LAA is a Non Government Organisation
Management of LAD, including staff matters	LAA has broad oversight and supervision roles, excluding staff matters	<i>LAA has full authority, including staff matters</i>	<i>LAA has full authority, including staff matters</i>	<i>LAA has full authority, including staff matters</i>	<i>LAA has full authority, including staff matters</i>
Individual cases	LAA has broad oversight and supervision roles, excluding handling of individual cases	<i>LAA has full authority, including handling of individual cases</i>	<i>LAA has full authority, including handling of individual cases</i>	<i>LAA has full authority, including handling of individual cases</i>	<i>LAA has full authority, including handling of individual cases</i>
Employment of senior management	Civil service employs senior management	Civil service employs senior management	<i>LAA employs senior management</i>	<i>LAA employs senior management</i>	<i>LAA employs senior management</i>
Employment of other staff	Civil service employs other staff	Civil service employs other staff	Civil service employs other staff	<i>LAA employs other staff</i>	<i>LAA employs other staff</i>
Institutional status	Statutory body (LAA) and civil service department (LAD)	Statutory body (LAA) and civil service department (LAD)	Part statutory body (LAA) and part civil service department (LAD)	<i>Statutory body</i>	<i>Non-statutory organisation</i>

Note:

New features are shown in italics

Current features are shown in normal typeface

Institutional structure (LAA/LAD) - evaluation of models (cont'd)

Institutional change is required to address the independence issues

- The current institutional arrangements are unsatisfactory and should be improved. Our fieldwork indicates, however, that there is not widespread and deep public concern about the independence of legal aid.
- Selection of an institutional model involves striking a trade-off between impact on independence and cost.
- Models 3 and 4 have the greatest impact in relation to independence, but are also by far the most costly, both financially and in terms of disruption of service during the transition. The cost of Models 3 or 4 could only be justified on independence grounds in the absence of less costly alternatives for addressing the issues.
- Model 0 does not address the issues.

.... but the financial and non-financial costs of Models 3 and 4 are disproportionate to the issues of public confidence requiring to be addressed

Institutional structure (LAA/LAD) - evaluation of models (cont'd)

We recommend Model 2 because it offers the most appropriate trade-off between impact on independence and cost

- Models 1 and 2 have significant impact in relation to independence, and the costs are comparatively modest. Specifically they eliminate the current management reporting line from the DLA to the Administration Wing - under both models the DLA reports unambiguously to the LAA - and the LAA has far greater powers in practice than the current LASC to influence the way in which LAD operates.
- We recognise that both Model 1 and Model 2 present a greater leadership and management challenge than Models 3 and 4 in that both involve civil servants accepting instructions from non-civil servants. We consider, however, that these difficulties can be overcome if high quality leadership and management is provided. Such a model operates fully effectively from a managerial standpoint in New South Wales, where civil servants work under the direction of a Legal Aid Commission.
- We recommend Model 2 rather than Model 1 because:
 - Model 1 depends on engagement of professional advisers by the LAA whose role could be seen as 'double-guessing' the senior management of LAD, whereas Model 2 should engender a greater degree of trust and co-operation between the LAA and the DLA/DDLAs
 - the settled down cost of operating Model 2 is less than that of Model 1 because no additional staff resources are required