

**For discussion on
27 November 2017**

**Legislative Council
Panel on Administration of Justice and Legal Services
Transfer of Legal Aid Portfolio**

PURPOSE

This paper briefs Members on the proposed transfer of the legal aid portfolio from the Home Affairs Bureau (“HAB”) to the Chief Secretary for Administration’s Office (“CSO”), including the consequential changes to the two offices.

BACKGROUND

2. As announced in the Chief Executive (“CE”)’s 2017 Policy Address, the Government will, as part of its restructuring initiatives, implement the Legal Aid Services Council¹ (“LASC”)’s earlier proposal to transfer the responsibilities for formulating legal aid policy and housekeeping LAD from HAB to CSO, thereby underlining the independence of the legal aid system.

3. LASC recommended, among other things, that LAD should be re-positioned and made directly accountable to the Chief Secretary for Administration (“CS”), which had been the arrangement prior to July 2007. After careful assessment of LASC’s recommendations and taking into account views from stakeholders, the Government reported to the Panel on Administration of Justice and Legal Services in June 2014 its decision to accept in principle LASC’s recommendation that the responsibilities for formulating legal aid policy and housekeeping LAD should be vested with CSO and the Director of Legal Aid (“DLA”) should report directly to CS.

¹ LASC is a statutory body set up in 1996 under the Legal Aid Services Council Ordinance (Cap. 489) to oversee the administration of legal aid services provided by LAD and advise CE on legal aid policy.

THE PROPOSAL

Transfer of Posts

4. Following the reorganisation of the Government Secretariat in 2007, the responsibilities for formulating legal aid policy and housekeeping LAD have been vested with HAB². In meeting the responsibilities, the Secretary for Home Affairs is underpinned by the Permanent Secretary for Home Affairs (“PSHA”) (D8) and a Deputy Secretary for Home Affairs (D4), who are supported by a Principal Assistant Secretary at the rank of Administrative Officer Staff Grade C (“AOSGC”) (D2) and an Assistant Secretary at the rank of Senior Administrative Officer (“SAO”). The existing organisation chart of HAB is at **Annex A**.

5. To ensure continuity and to tie in with the transfer of the legal aid portfolio, 12 civil service posts (including the AOSGC (D2) and 11 non-directorate posts³) are proposed to be transferred from HAB to CSO. After the transfer to CSO, the AOSGC will take up the post of Assistant Director of Administration (2) (“ADA(2)”) (D2) and will report to a Deputy Director of Administration (D3) who is under the Director of Administration (“D of Admin”) (D6). The existing and proposed organisation charts of the CSO are at **Annexes B and C** respectively.

Consequential Changes to Duties of Directorate Officers

6. Further to the reorganisation of the Government Secretariat in 2007, the AOSGC post transferred to HAB (designated as Principal Assistant Secretary (Civil Affairs) 2 (“PAS(CA)2”) has taken up a number of policy responsibilities in addition to the legal aid portfolio, including matters relating to the Family Council, matrimonial policy and community development policy. The existing job description of the AOSGC post is provided at **Annex D**. CSO will take the transfer opportunity to reshuffle some of the duties among the proposed ADA(2) and the Assistant Director of Administration (3) (“ADA(3)”). Upon transfer to CSO, the AOSGC post will continue to oversee policy matters

² As part of the reorganisation exercise of the Government Secretariat in 2007, the legal aid portfolio was transferred from CSO to HAB with effect from 1 July 2007.

³ The 11 non-directorate posts include one SAO post and one Personal Secretary I post to provide support to the AOSGC, one Executive Officer I (“EO I”) and four Assistant Clerical Officers (“ACO”) posts for the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures, as well as one Chief Executive Officer, one EO I, one ACO and one Personal Secretary II seconded to LASC.

relating to legal aid, as well as mutual legal assistance in civil matters involving court procedures, such as service of judicial documents, taking of evidence and enforcement of maintenance orders. The proposed job descriptions of ADA(2) and ADA(3) in CSO are at **Annexes E and F**.

7. After the responsibilities for formulating legal aid policy are transferred out of HAB in conjunction with the AOSGC post, the remaining duties on matters relating to the Family Council as well as policies on matrimonial and community development originally under the purview of the AOSGC post will be taken up by Principal Assistant Secretary (Community Care Fund) (“PAS(CCF)”) (at the rank of AOSGC) (D2). Thereafter, the CCF Division under HAB will be re-titled as Civic Affairs Division (2), and the PAS(CCF) post will be re-titled as PAS(CA)2⁴. The existing job description of PAS(CCF) and the proposed job description of the re-titled PAS(CA)2 are at **Annexes G and H** respectively. The proposed new organisation chart of HAB is at **Annex I**.

Implications on LAD, Free Legal Advice Services and Subventions

8. The proposed transfer will not affect LAD’s discharge of its statutory duties and operation. After the transfer, DLA will directly report to CS.

9. Apart from overseeing LAD, the legal aid portfolio also includes policy responsibilities on the provision of free legal advice services, including the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures and subventions for the Duty Lawyer Service and LASC. These policy responsibilities and subventions will be transferred from HAB to CSO as part and parcel of the legal aid portfolio and their duties and daily operations will not be affected.

Adjustment of Fees

10. Upon the transfer of legal aid portfolio from HAB to CSO, the adjustment of criminal legal aid fees⁵ will continue to be approved by

⁴ In the light of the changes in duties of directorate officers in HAB as a result of the proposed transfer of responsibilities, HAB will review in due course the supernumerary nature of the PAS(CCF) post, which is proposed to be retitled as PAS(CA)2, in order to ensure that matters concerning the Family Council, matrimonial and community development will continue to receive on-going and sustainable policy attention.

⁵ Fees payable to lawyers in private practice engaged to undertake litigation work in respect of criminal cases by LAD.

LegCo in accordance with the Criminal Procedures Ordinance (Cap. 221). For prosecution fees⁶ and duty lawyer fees⁷ which are currently adjusted administratively with reference to the rates of criminal legal aid fees, the adjustment will be made by D of Admin following the established mechanism.

Change in the Controlling Officer for Posts Seconded to LASC

11. Four posts (including one Chief Executive Officer, one EO I, one ACO and one Personal Secretary II) will continue to be seconded to LASC. To tie in with the transfer of the legal aid portfolio from HAB to CSO, the Controlling Officer for Head 46 General Expenses of the Civil Service *Subhead 084 Recoverable salaries and allowances (LASC)*⁸ in the General Revenue Account will change from PSHA to D of Admin.

FINANCIAL IMPLICATIONS

12. The reorganisation exercise is cost-neutral. The total notional annual mid-point salary value for seven non-directorate civil service posts⁹ to be transferred from Head 53 Government Secretariat: HAB to Head 142 Government Secretariat: Offices of the Chief Secretary for Administration and the Financial Secretary (“Offices of CS and FS”) is \$3,594,840. All the related annual provision up to \$166,472,000 under Head 53 (HAB) will be transferred to Head 142 (Offices of CS and FS) from 2018-19, assuming the transfer can be effected within 2018-19. The actual provision to be transferred from Head 53 to Head 142 would be adjusted as appropriate (if necessary) depending on the effective date of the transfer. The consequential changes in the establishment and financial arrangement arising from the transfer will be reflected in the draft Estimates of the relevant financial years.

⁶ Fees payable to lawyers in private practice engaged by the Department of Justice on a standard briefing-out basis to prosecute criminal cases on fiat.

⁷ Fees payable to duty lawyers providing legal assistance under the Duty Lawyer Service, which provides legal representation to eligible defendants who appear in Magistrates’ Courts, Juvenile Courts and the Coroners’ Court.

⁸ The salaries and allowances for the four seconded posts are provided for and recoverable under Head 46 *Subhead 084 Recoverable salaries and allowances (LASC)*.

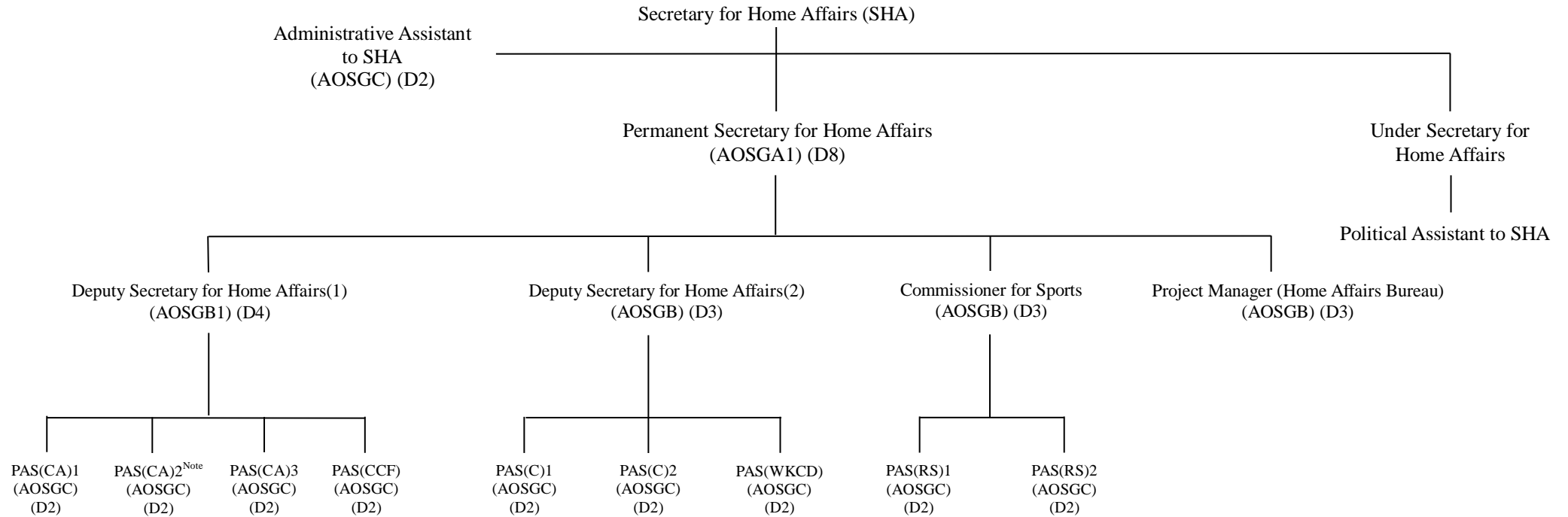
⁹ Of the 11 non-directorate civil service posts to be transferred from HAB to CSO, only seven posts comprising one SAO, one PS I, one EO I and four ACO are funded under Head 53 Government Secretariat: HAB.

ADVICE SOUGHT

13. Members are invited to comment on the proposed arrangements for the transfer as set out above.

**Chief Secretary for Administration's Office
Home Affairs Bureau
November 2017**

Existing Organisation Chart of the Home Affairs Bureau

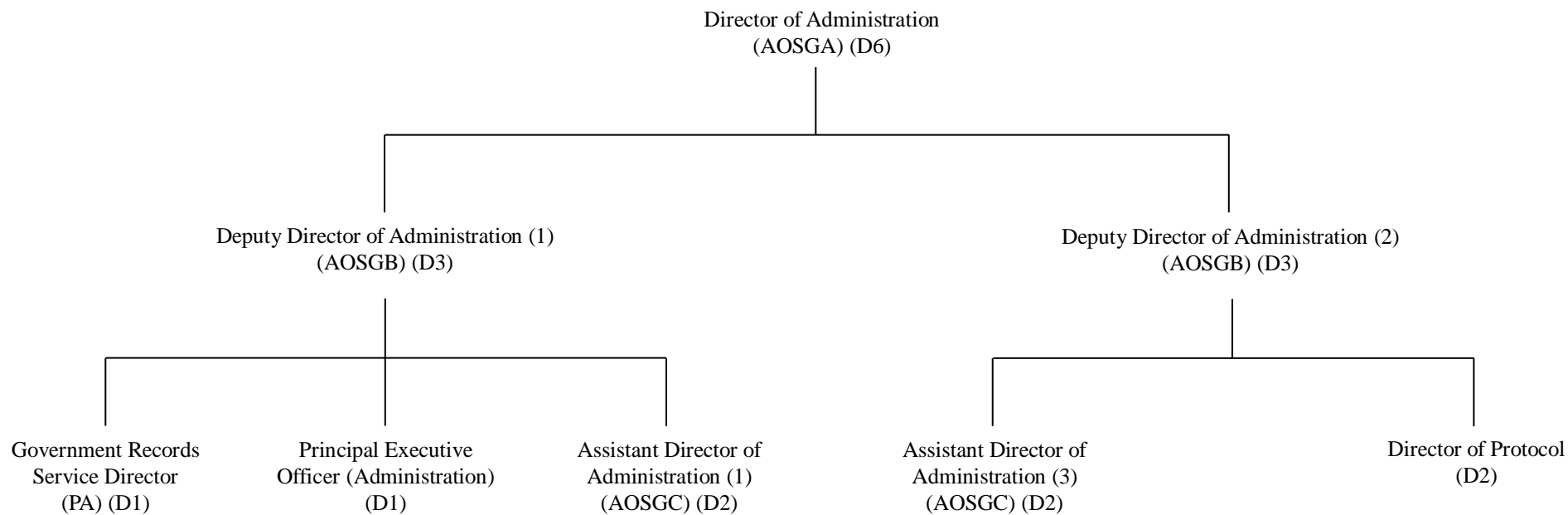


Note: The duties of PAS(CA)2 include formulating legal aid policy and housekeeping the Legal Aid Department. The post will be transferred from Home Affairs Bureau to the Chief Secretary for Administration’s Office.

Legend

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|----------|--|-----------|---|
| AOSGA1 | Administrative Officer Staff Grade A1 | PAS(C)1 | Principal Assistant Secretary(Culture)1 |
| AOSGB1 | Administrative Officer Staff Grade B1 | PAS(C)2 | Principal Assistant Secretary(Culture)2 |
| AOSGB | Administrative Officer Staff Grade B | PAS(WKCD) | Principal Assistant Secretary(West Kowloon Cultural District) |
| AOSGC | Administrative Officer Staff Grade C | PAS(RS)1 | Principal Assistant Secretary(Recreation and Sport)1 |
| PAS(CA)1 | Principal Assistant Secretary(Civic Affairs)1 | PAS(RS)2 | Principal Assistant Secretary(Recreation and Sport)2 |
| PAS(CA)2 | Principal Assistant Secretary(Civic Affairs)2 | | |
| PAS(CA)3 | Principal Assistant Secretary(Civic Affairs)3 | | |
| PAS(CCF) | Principal Assistant Secretary(Community Care Fund) | | |

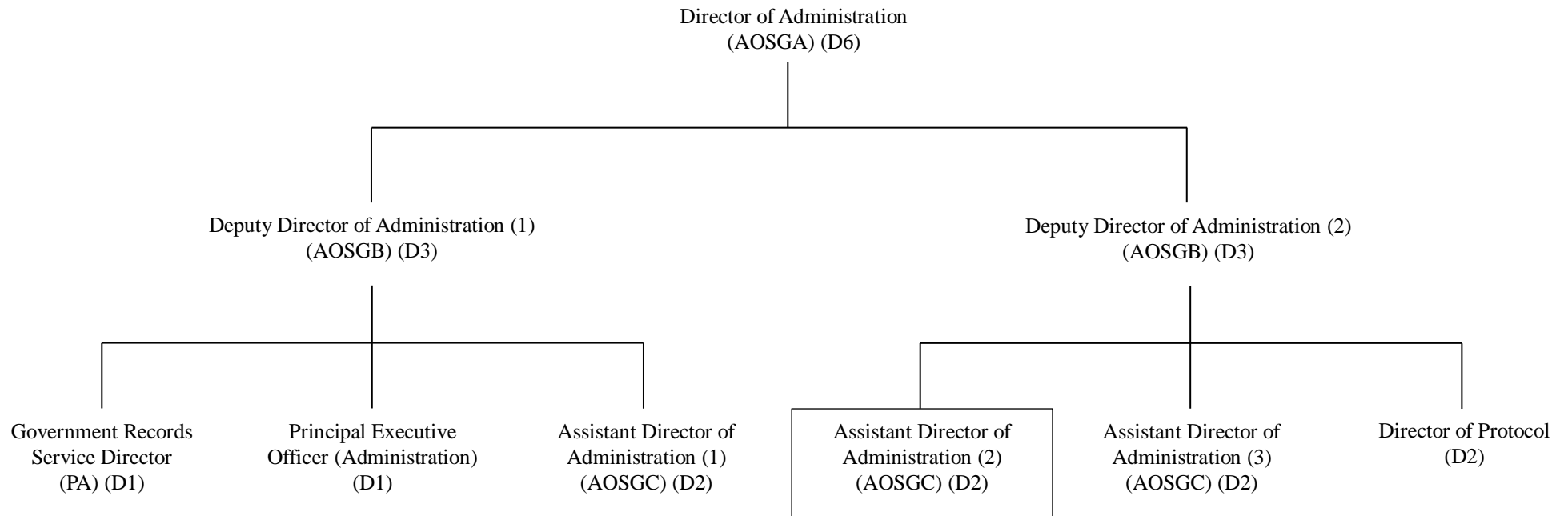
Existing Organisation Chart of the Administration Wing




Legend

- AOSGA Administrative Officer Staff Grade A
- AOSGB Administrative Officer Staff Grade B
- AOSGC Administrative Officer Staff Grade C
- PA Principal Archivist

Proposed Organisation Chart of the Administration Wing



Legend

- AOSGA Administrative Officer Staff Grade A
- AOSGB Administrative Officer Staff Grade B
- AOSGC Administrative Officer Staff Grade C
- PA Principal Archivist
-  Proposed post to be transferred from HAB

**Existing Job Description of
Principal Assistant Secretary (Civic Affairs) 2**

Rank : Administrative Officer Staff Grade C (D2)

Accountable to : Deputy Secretary for Home Affairs (1)
(Administrative Officer Staff Grade B1) (D4)

Duties :

1. To oversee the legal aid policy and housekeep the Legal Aid Department;
2. To oversee policy matters on free legal advice, including the services provided by the Duty Lawyer Service (“DLS”) and the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures;
3. To oversee the subventions of the Legal Aid Services Council and DLS and related housekeeping matters;
4. To serve as Secretary to the Family Council and oversee Family Council related matters including mandatory assessment of family implications, family-related researches and promotion of family core values; and
5. To oversee matrimonial and maintenance policies, wills, intestate, inheritance and probate legislation, and policy on community development.

**Proposed Job Description of
Assistant Director of Administration (2)**

Rank : Administrative Officer Staff Grade C (D2)

Accountable to : Deputy Director of Administration (2)
(Administrative Officer Staff Grade B) (D3)

Duties :

1. To oversee the legal aid policy and housekeep the Legal Aid Department;
2. To oversee policy matters on free legal advice, including the services provided by the Duty Lawyer Service (“DLS”) and the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures;
3. To oversee the subventions of the Legal Aid Services Council and DLS and related housekeeping matters;
4. To oversee policy matters concerning mutual legal assistance (“MLA”) in civil matters involving court procedures, particularly the establishment and implementation of reciprocal arrangements between Hong Kong and the Mainland, Macao and overseas jurisdictions; and
5. To monitor the daily handling of MLA matters, including service of judicial documents, taking of evidence and enforcement of maintenance orders.

**Proposed Job Description of
Assistant Director of Administration (3)**

Rank : Administrative Officer Staff Grade C (D2)

Accountable to : Deputy Director of Administration (2)
(Administrative Officer Staff Grade B) (D3)

Duties :

1. To co-ordinate Government's business with the Legislative Council ("LegCo"); and to provide information and give advice to Bureaux and Departments on the relevant procedural matters;
2. To co-ordinate the Government's legislative programme;
3. To deal with other LegCo-related issues, including the review of the remuneration for LegCo Members and liaison with the LegCo Secretariat;
4. To oversee policy matters concerning the Judiciary, including the annual judicial remuneration reviews, regular reviews of allowances for jurors and witnesses and fees payable to adjudicators, and other reviews relevant to the operation of the Judiciary; and legislative amendment exercises relating to the operation of the Judiciary; and
5. To liaise with and deal with other matters related to the Judiciary, including accommodation for the Judiciary and appointments to the Judicial Officer Recommendation Commission and the Standing Committee of Judicial Salaries and Conditions of Service.

**Existing Job Description of
Principal Assistant Secretary (Community Care Fund)**

Rank : Administrative Officer Staff Grade C (D2)

Accountable to : Deputy Secretary for Home Affairs (1)
(Administrative Officer Staff Grade B1) (D4)

Duties :

1. To lead the Community Care Fund (“CCF”) Secretariat to provide support to the CCF Task Force under the Commission on Poverty;
2. To liaise closely and co-ordinate efforts with relevant bureaux, departments and other organisations as well as stakeholders in the community in the planning, implementation and evaluation of the CCF initiative, and to conduct consultation to collate public views on CCF programmes;
3. To assist in overseeing the financial management and overall funding allocation of the CCF, including the formulation of investment strategy; and
4. To monitor the operation and use of the CCF and implement some assistance programmes of the CCF.

**Proposed Job Description of
Principal Assistant Secretary (Civic Affairs)2**
[Originally titled Principal Assistant Secretary (Community Care Fund)]

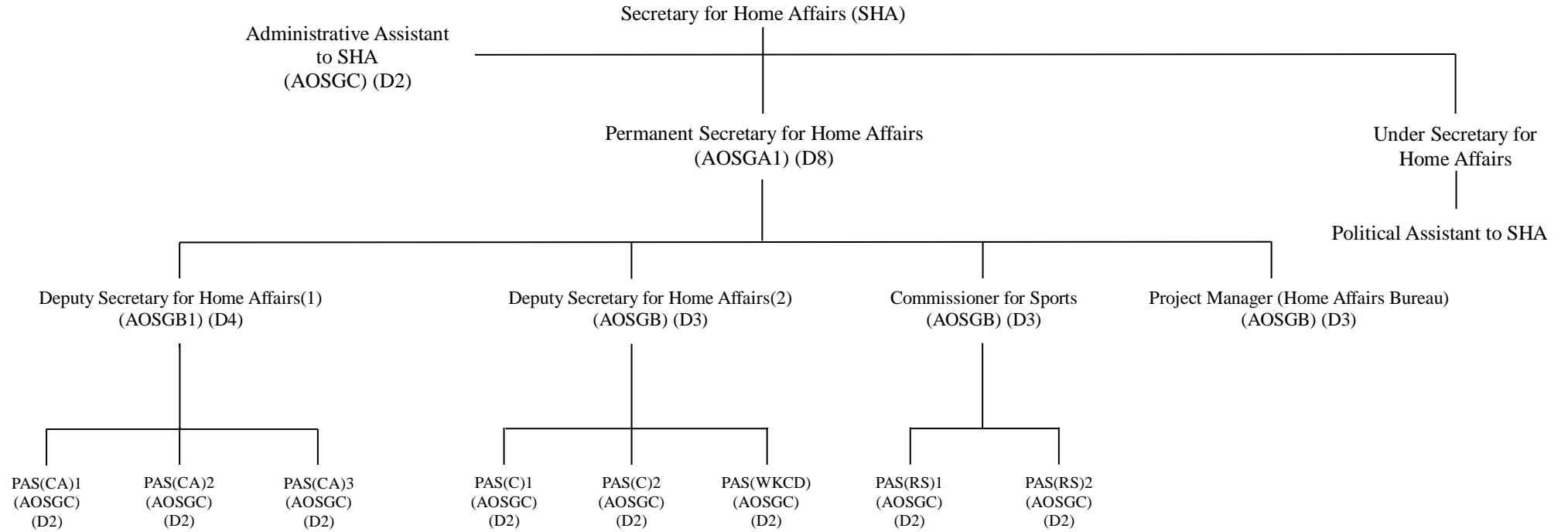
Rank : Administrative Officer Staff Grade C (D2)

Accountable to : Deputy Secretary for Home Affairs (1)
(Administrative Officer Staff Grade B1) (D4)

Duties :

1. To lead the Community Care Fund (“CCF”) Secretariat to provide support to the CCF Task Force under the Commission on Poverty;
2. To liaise closely and co-ordinate efforts with relevant bureaux, departments and other organisations as well as stakeholders in the community in the planning, implementation and evaluation of the CCF initiative, and to conduct consultation to collate public views on CCF programmes;
3. To assist in overseeing the financial management and overall funding allocation of the CCF, including the formulation of investment strategy;
4. To monitor the operation and use of the CCF and implement some assistance programmes of the CCF;
5. To serve as the Secretary to the Family Council and to oversee Family Council related matters including mandatory assessment of family implications, family-related researches and promotion of family core values; and
6. To oversee matrimonial and maintenance policies, wills, intestate, inheritance and probate legislation, and policy on community development.

Proposed Organisation Chart of the Home Affairs Bureau



Legend

- | | | | |
|----------|--|-----------|---|
| AOSGA1 | Administrative Officer Staff Grade A1 | PAS(WKCD) | Principal Assistant Secretary(West Kowloon Cultural District) |
| AOSGB1 | Administrative Officer Staff Grade B1 | PAS(RS)1 | Principal Assistant Secretary(Recreation and Sport)1 |
| AOSGB | Administrative Officer Staff Grade B | PAS(RS)2 | Principal Assistant Secretary(Recreation and Sport)2 |
| AOSGC | Administrative Officer Staff Grade C | | |
| PAS(CA)1 | Principal Assistant Secretary(Civic Affairs)1 | | |
| PAS(CA)2 | Principal Assistant Secretary(Civic Affairs)2
(to be retitled from Principal Assistant Secretary (Community Care Fund)) | | |
| PAS(CA)3 | Principal Assistant Secretary(Civic Affairs)3 | | |
| PAS(C)1 | Principal Assistant Secretary(Culture)1 | | |
| PAS(C)2 | Principal Assistant Secretary(Culture)2 | | |