

# 立法會

## Legislative Council

立法會CB(2)348/99-00號文件

檔 號：CB2/PL/AJLS

電 話：2869 9253

日 期：1999年11月10日

發文者：事務委員會秘書

受文者：吳靄儀議員(主席)  
曾鈺成議員(副主席)  
何俊仁議員  
李柱銘議員  
涂謹申議員  
劉健儀議員  
劉漢銓議員  
劉慧卿議員

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### 立法會司法及法律事務委員會

1999年11月16日舉行的會議

#### 議員法案——對《法律援助條例》的修訂(議程第III項)

隨文附上一封交由本事務委員會研究的函件(附錄I)，以供參閱。負責上述法案的議員為陳國強議員，他希望可就其擬提交的議員法案向事務委員會作出簡介。

2. 在1999年10月19日上次會議上，委員曾討論事務委員會應否討論此事；若然，應在何時進行討論。依據事務委員會的決定，陳議員已獲告知——

- (a) 其建議的議員法案所提出的事宜在《1997年法律援助政策檢討諮詢文件》中已有論述(見附錄II第39至40段)；及
- (b) 立法會已成立法案委員會，研究《1999年法律援助(修訂)條例草案》，該法案旨在實施1997年法律援助政策檢討的有關建議，而該法案委員會正在輪候展開工作。

事務委員會繼而要求陳議員考慮透過何種合適渠道，進一步跟進此事。

3. 秘書處其後接獲通知，陳議員仍希望就其擬提交的議員法案向事務委員會作出簡介。

4. 謹請帶同本文件出席會議。

事務委員會秘書

(馬朱雪履女士)

連附件

副本致：李華明議員(非委員的議員)  
馬逢國議員(非委員的議員)  
陸恭蕙議員(非委員的議員)  
劉千石議員(非委員的議員)  
法律顧問

**立法會**  
**Legislative Council**

LC Paper No. CB(2)348/99-00

Ref : CB2/PL/AJLS  
Tel : 2869 9253  
Date : 10 November 1999  
From : Clerk to Panel  
To : Hon Margaret NG (Chairman)  
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon Martin LEE Chu-ming, SC, JP  
Hon James TO Kun-sun  
Hon Mrs Miriam LAU Kin-yee, JP  
Hon Ambrose LAU Hon-chuen, JP  
Hon Emily LAU Wai-hing, JP

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

**Meeting on 16 November 1999**

**Member's Bill - Amendments to Legal Aid Ordinance (Agenda item III)**

I refer to the attached letter which has been referred to this Panel for consideration (**Appendix I**). Hon CHAN Kwok-keung, the Member in charge, would like to brief the Panel on the proposed Member's Bill.

2. At the last meeting on 19 October 1999, members discussed whether and if so when the matter should be discussed by the Panel. Pursuant to the decision of the Panel, the Member has been advised that -

- (a) the matter raised in the proposed Member's Bill has been addressed in the Consultation Paper on Legal Aid Policy Review 1997 (paragraphs 39 - 40 in **Appendix II** refer); and
- (b) a Bills Committee has been formed to study the Legal Aid (Amendment) Bill 1999 which seeks to implement the recommendations arising from the Legal Aid Policy Review 1997 and is currently on the waiting list.

The Member has been requested to consider the appropriate channel for further pursuing the matter.

3. The Secretariat has been advised that the Member would still like to brief the Panel on the proposed Member's Bill.
4. Please bring this paper along to the meeting.

(Mrs Percy MA)  
Clerk to Panel

**Encl**

- c.c. Hon Fred LI Wah-ming, JP (Non-Panel Member)  
Hon MA Fung-kwok (Non-Panel Member)  
Hon Christine LOH (Non-Panel Member)  
Hon LAU Chin-shek, JP (Non-Panel Member)  
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立法會議員聯合辦事處的信頭

Letterhead of Joint Office of the HKFTU's Legislative Councillors

敬啓者：

工聯會立法會議員擬向立法會提交《1999 年法律援助（修訂）條例草案》。條例草案旨在修訂《法律援助條例》，令僱員在勞資審裁處申索得直後，僱主不服從審裁處命令交付欠款，而僱員需要申請法律援助追討時，可獲省免經濟狀況審查。

由於上述條例牽涉到人力事務員會的工作範疇，固希望主席批准並代為安排於委員會上討論。

此致

立法會人力事務委員會主席  
劉千石先生

人力事務委員會委員

陳婉嫻

99 年 10 月 9 日

1997 年法律援助政策檢討諮詢文件的摘錄

III. 《法律援助條例》的實施

(a) 僱主就勞資審裁處的裁決向原訟法庭提出上訴時，涉訟僱員應繼續接受經濟狀況審查

39. 曾有建議提出，僱主就勞資審裁處的裁決向原訟法庭提出上訴時，應省免涉訟僱員的經濟狀況審查。有關的論點是，涉及這類案件的僱員如不獲提供法律援助，便可能要支付本身的法律費用，又如法官裁定僱主上訴得直並由僱員支付訟費，則僱主的法律費用亦會由僱員支付。在這種情況下，設立勞資審裁處以提供快捷、費用低廉及非正式的方法解決僱傭糾紛這個目的，便可能無法達到。

40. 鑑於 —

- (a) 在決定省免某類案件中某組別申請人的經濟狀況審查前，須先具備充分理據；
- (b) 原訟法庭審理的案件中，也有對其他審裁處（如小額錢債審裁處及小額薪酬索償仲裁處）的裁決提出上訴的類似案件；及
- (c) 大部分案件所涉及的僱員，都符合標準法律援助計劃的現行經濟限額，

工作小組認為並無充分理由證明應以不同的方法處理勞資審裁處的案件。工作小組並**建議**，僱主就勞資審裁處的裁決向原訟法庭提出上訴時，涉訟僱員須接受經濟狀況審查的做法，應維持不變。

Extract of Consultation Paper on Legal Aid Policy Review 1997

**III. Operation of the Legal Aid Ordinance**

**(a) Continuing the Means Test for Employees in Appeals to the Court of First Instance brought by Employers against Judgments of the Labour Tribunal**

39. There has been a suggestion that the means test for employees in appeals to the Court of First Instance brought by employers against judgments of the Labour Tribunal should be waived. It is argued that if an employee involved in these cases is not provided with legal aid, he may have to pay his own legal costs, and, if the appeal is allowed and costs awarded against him, the legal costs incurred by his employer. The aim of establishing the Labour Tribunal to provide a quick, inexpensive and informal method of settling employment disputes may be defeated.

40. Noting that --

- (a) full justifications are required before any decision to waive the means test for a particular group of applicants in a particular kind of case is made;
- (b) there are similar appeal cases to the Court of First Instance against judgments of other Tribunals, such as the Small Claims Tribunal and the Minor Employment Claims Adjudication Board; and
- (c) the employees involved in the majority of cases would come within the current financial eligibility limit for the standard legal aid scheme,

the Working Group considers that there are insufficient justifications to treat Labour Tribunal cases differently, and *recommends* that cases involving employees in appeals to the Court of First Instance brought by employers against judgments of the Labour Tribunal should continue to be subject to the means test.