

LEGISLATIVE COUNCIL BRIEF

LEGAL AID (AMENDMENT) BILL 1999

INTRODUCTION

A
At the meeting of the Executive Council on 13 July 1999, the Council ADVISED and the Chief Executive ORDERED that the Legal Aid (Amendment) Bill 1999, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

B
2. We issued a consultation paper on the Legal Aid Policy Review 1997 in December 1997. We have since received submissions from 13 interested parties (list at Annex B) and have also consulted this Council's Panel on Administration of Justice and Legal Services (AJLS Panel) on three occasions between September 1998 and February 1999. After considering the comments received, we have now finalised the recommendations, which are set out below.

Recommendations which received no dissenting comments

3. There are six recommendations in the consultation paper on which we received no opposing views. We will implement these recommendations as proposed. They are –

(a) *assessment of financial eligibility*

4. At present, the Legal Aid Department (LAD) uses a “financial capacity” approach to assess the means of legal aid applicants. The financial capacity refers to the aggregate of an applicant's yearly disposable income and his

disposal capital. We will maintain this current practice.

(b) *financial eligibility of “infant” applicants*

5. At present, in assessing the financial resources of an infant applicant, the resources of his parents or guardians will not be considered. We will continue with this practice.

(c) *legal aid in coroner’s inquests*

6. At present, legal aid is generally not available to proceedings before the Coroner’s Court. The Director of Legal Aid (DLA) will henceforth be empowered to provide legal assistance in the form of legal representation to persons who have already been issued legal aid certificates and who are required to attend coroner’s inquests, if the DLA is satisfied that such assistance is necessary for the proper conduct of the cases for which legal aid is given.

(d) *residency status*

7. At present, persons who have satisfied the means test and the merit test will be eligible for legal aid, regardless of their residency status or years of residence in Hong Kong. We will continue with such practice.

(e) *discretion not to discharge a legal aid certificate*

8. At present, DLA has to discharge a legal aid certificate if the financial resources of the legally-aided person become greater than the statutory eligibility limit after legal aid has been given. The DLA will be given the discretion not to discharge a legal aid certificate if he considers it is not appropriate to do so in the interests of the aided person and of the Legal Aid Fund.

(f) *interest accrued on DLA’s First Charge*

9. At present, under section 18A of the Legal Aid Ordinance, DLA is entitled to a first charge on any property which is recovered or preserved for the aided person in the proceedings for which legal aid is given. If DLA agrees to defer

enforcing the first charge, a simple interest payable by the aided person will be accrued at a rate of 10% per annum from the date on which the charge is first registered. The DLA will henceforth be given the discretion to waive or reduce the interest accrued if he is satisfied that it would cause serious hardship to the aided person, or that in the circumstances it is just and equitable to do so.

Recommendations which received dissenting views

10. We have received differing views on the remaining 11 recommendations. Where appropriate, we have modified our recommendations to take into account the views expressed. Comments received and our final recommendations are detailed below.

(a) assessment of disposable income

11. At present, the Comprehensive Social Security Assistance (CSSA) rates are used as the personal allowances deductible from the gross income of legal aid applicants in assessing their financial capacity. In the consultation paper, we propose to replace the CSSA rates with a different index so as to allow more households to become financially eligible for legal aid. Submissions asserted that the proposed allowance figures were still low and suggested that higher rates such as the median household expenditure be used instead.

12. In the light of comments received, we have decided to revise our original proposal and further increase the personal allowance figures. The objective of changing the allowance level is to reflect more realistically the expenditure level of our target group i.e. households in the lower middle class, so that more people can become financially eligible for legal aid. The objective is supported by the public. We do not consider it appropriate to adopt the median household expenditure figure since this may not be representative of the general expenditure level of our target group. We will instead use the expenditure patterns of households (of various sizes) in the 35-percentile as the benchmark. This index will on average allow 58% of the total number of households in Hong Kong to

become financially eligible for legal aid, up from 48% under the existing arrangement.

(b) *financial eligibility limit*

13. At present, a person whose financial resources do not exceed \$169,700 is financially eligible for legal aid under the standard legal aid scheme. The corresponding limit for the Supplementary Legal Aid Scheme (SLAS) is \$471,600. In the consultation paper, we propose that the present financial eligibility limits should be maintained. We received comments asserting that the present limits were too low. Some also suggested that a higher financial eligibility limit should be set for personal injury cases.

14. The revised method for assessing disposable income, as proposed in paragraph 12 above, will enable more people to be financially eligible for legal aid¹, we do not consider it necessary to also revise the current financial limits. We have decided not to set a higher limit for personal injury cases, as these cases can generally be covered by the SLAS.

(c) *review cycle*

15. At present, the financial eligibility limits are reviewed once every two years to take account of inflation. In the consultation paper, we propose to continue to review biennially the financial eligibility limits to take account of inflation, changes in litigation costs and other relevant factors. We have received comments suggesting that the reviews should take place annually.

16. We agree that reviewing the limits annually to take account of inflation will better maintain the real value of the limits, thereby bringing about a more gradual increase in the number of legal aid applications and better resource and

¹ An applicant's financial resources equal the summation of his annual disposable income and disposable capital. The disposable income is in turn arrived at by deducting allowances from the gross income. The proposal to increase the personal allowances deductible in paragraph 12 reduces the disposable income of applicants and in turn their financial resources, hence making it easier to fall within the eligibility limit.

case management. We consider a biennial review cycle more appropriate for other factors.

(d) *legal assistance for persons required to attend coroner's inquests*

17. In the consultation paper, we propose to empower the Duty Lawyer Service (DLS) to provide legal advice to persons who are likely to face a reasonable chance of criminal prosecution that would lead to a jail sentence or loss of livelihood, as a result of giving evidence at coroner's inquests. The majority of the comments concentrated on extending the scope of assistance to include other parties, such as those who have a potential civil claim or the deceased's family. The AJLS Panel further proposed that legal aid should be extended to the next of kin of the deceased in cases involving great public concern such as inquests ordered by the Secretary for Justice under section 16 of the Coroners Ordinance. We have also received submissions suggesting that the form of assistance should include legal representation.

18. On the scope of assistance, DLA currently has the discretion to provide legal assistance on an administrative basis to the next of kin of the deceased and those "in jeopardy" in coroner's inquests where it is considered to be in the public interest or otherwise expedient to do so. We will expand this arrangement to empower the DLA to grant legal aid to the next of kin of the deceased in coroner's inquests concerning cases of great public concern, regardless of whether claims for damages are involved. Legal representation for persons in jeopardy will be provided for by DLS as proposed above.

19. On the form of assistance, we will provide legal representation as a form of legal assistance in coroner's inquests. Section 31 of the Coroners Ordinance provides that a "properly interested person" or a person, whose conduct is likely to be called in question, may be represented by a counsel or solicitor. We therefore agree that to protect the interests of such persons, a lawyer would be paid by DLS to attend the whole inquest and be allowed to cross-examine other witnesses.

(e) *means test for employees*

20. At present, DLA does not have power to waive the means test for any applicant except that DLA may waive the upper limit of means test for Bill of Rights Cases. In the consultation paper, we propose to maintain the status quo. We received a number of submissions suggesting that in relation to employees applying for legal aid to defend appeals brought by employers to the Court of First Instance against judgments of the Labour Tribunal, either the means test should be waived automatically or the DLA should be given the discretion to waive the upper limit of the means test in deserving cases. The AJLS Panel has also suggested that the means test should be waived in cases where the ground of appeal was an error in law.

21. It is our long-established principle that all legal aid applicants should be subject to the means test. We do not see any strong reason for departing from this principle by treating the type of cases in question differently. Exempting one type of cases from the means test could open the floodgate for exempting other types of cases. Indeed, the inequality in the financial positions of employers and employees, which is quoted to support differential treatment, also exists in other cases such as landlords and tenants in private litigation. Experience also shows that most employees in these cases are able to satisfy the means test. Between 1 January 1997 and 31 March 1999, out of the 197 legal aid applications lodged by employees responding to these appeals, only 31 (15.7%) were refused on means ground. Based on the above, we do not see justification for making exceptions for such appeals.

(f) *basis for calculating contribution*

22. At present, the maximum contribution payable by an aided person is determined on the basis of his financial resources. In the consultation paper, we propose to continue with such practice. We have received suggestions that the amount of contribution should be linked to the amount claimed.

23. The objective of requiring a contribution is to ensure that legal aid is provided to a person who would otherwise not be able to afford the costs of private

legal representation in court. We are mindful of the need to ensure that contributions should be set at a level that will not create financial hardship for applicants. In this connection, it should be noted that a legally aided person is only required to pay a contribution based on his disposable income and disposable capital as assessed under the Legal Aid Ordinance. Under regulation 5(3) of the Legal Aid Regulations, DLA determines the actual amount of contribution payable in view of the probable cost of the legally aided proceedings. If the probable cost of the proceedings exceeds the amount of contribution assessed on the basis of an aided person's resources, the amount payable is capped by the amount assessed on the basis of the aided person's financial resources. DLA also allows aided persons to make contributions by installments to further ensure that at no time will a need to contribute constitute hardship to an aided person. It should also be noted that, the amount claimed by the legally aided person is dependent on the injury or loss suffered in a case, but not his financial capacity. As explained above, our practice ensures that the contribution payable will not cause financial hardship on the legally aided persons. Conversely, the suggestion to link the contribution amount to the claim amount may lead to a contribution so high that it is disproportionate to a legally-aided person's financial capacity. Considering the above, we will proceed with our original recommendation and maintain our current practice.

(g) *contribution under the standard legal aid scheme*

24. At present, under the standard legal aid scheme, persons with financial resources above \$86,000 are required to contribute to the legal costs to be incurred by LAD, in accordance with a sliding scale. Those with financial resources below \$86,000 are not required to contribute. In the consultation paper, we propose that all legally aided persons under the standard legal aid scheme should pay a contribution according to a revamped sliding scale of contribution, except those on CSSA who should be exempt from paying any contribution. The major objection to this recommendation is that apart from CSSA recipients, applicants with very limited financial resources are not also exempted from paying contribution.

25. While it is our principle that all aided persons with means should contribute towards the legal costs incurred on their behalf by LAD, we are aware of the hardship for individuals with little financial resources. We also note that in England and Wales, aided persons with financial resources below a certain limit are not required to contribute to the costs of the aided proceedings. We will therefore set a non-contribution level at \$20,000 (the lowest level of the revamped scale of contribution). A table showing the various contribution scales is at Annex C.

C

(h) *contribution under SLAS*

26. At present, aided persons under SLAS are not required to pay a contribution upon the grant of legal aid. Depending on the outcome of the proceedings, successful litigants are required to pay a contribution to the SLAS fund at an amount equal to the total legal costs incurred by LAD and 15% of the property recovered or preserved. Unsuccessful litigants pay no contribution to the fund, apart from the \$1,000 application fee and another \$1,000 when he accepts legal aid. In the consultation paper, we propose that legally aided persons under SLAS would be required to pay, in addition to an application fee of \$1,000, interim contribution once legal aid is granted irrespective of the outcome of the case. The contribution amount is set at the maximum amount payable under the standard scheme, i.e. \$42,425. For successful litigants, the interim contribution and application fee will be deducted from the final contribution payable. For unsuccessful litigants, the application fee and the interim contribution will not be refunded. The major objection to this recommendation is that successful aided persons should not be required to pay the legal costs and to contribute 15% of the damages recovered towards the SLAS Fund.

27. The SLAS is a self-financing scheme to help the sandwich class whose resources are in excess of the limit for the standard legal scheme but may not be sufficient to meet the costs of conducting litigation on a private basis. It is reasonable to require those who won in cases funded by the SLAS to contribute a

certain amount of the damages received to replenish the SLAS Fund, so that others in need of assistance in the future will be able to benefit under the SLAS. Nevertheless, in the light of the submissions received, and in view of the relatively healthy condition of the SLAS Fund, we will reduce the percentage contribution to 12%. We will continue to monitor the financial situation of the Fund closely to ensure the contribution level remains appropriate.

(i) *contribution in Bill of Rights cases*

28. At present, DLA is empowered to grant legal aid to a person involved in Bill of Rights cases even though his financial capacity exceeds the eligibility limit for the standard legal aid scheme. Such aided persons are required to contribute according to a sliding scale. In the consultation paper, we propose that this group of legally aided persons should continue to contribute but in accordance with a revamped sliding scale. Some of those commenting on this recommendation have argued that persons involved in Bill of Rights cases should be exempted from contribution.

29. We believe that it is reasonable to require that the aided persons in these cases pay a portion of their resources for the publicly-funded services they are receiving. It would not be a proper use of public money if relatively well-off persons are allowed to enjoy Government-subsidised legal aid at no cost simply because of the nature of the cases in question. We will therefore proceed with maintain our original recommendation.

(j) *protection of Legal Aid Fund*

30. At present, assigned solicitors are required to remit moneys recovered and received for their aided clients to DLA. In the consultation paper, we propose that to better protect the Legal Aid Fund, where the assigned solicitor fails to remit the money payable to aided person to DLA, DLA should be empowered to recover any loss to the Legal Aid Fund from the assigned lawyer. This proposal met with opposition from the legal profession. The AJLS Panel has also expressed

concern that in cases where the opposite party chose to pay directly to the aided person, it would be difficult for the lawyers of the aided person to know about it, or to prevent it from happening.

31. As a result of subsequent discussion between DLA and the Law Society, the Law Society has issued a circular reminding their members of the obligation to comply with the requirement to remit moneys received and recovered for aided persons to DLA. Given that there is the common law remedy for negligence should LAD suffer loss on account of negligence of the assigned lawyers, we have decided to drop the proposal.

(k) *cost-effectiveness of our legal aid services*

32. At present, we do not impose any ceiling on the spending on legal aid cases and we consider that this should be maintained. In the consultation paper, we called for views on how to enhance the cost-effectiveness of our legal aid services. We received submissions suggesting that this might be achieved by, say, reviewing the structure of the whole legal system. We are also aware of developments in other jurisdictions such as England and Wales where legislation is being introduced to remove legal aid for all money claims and substitute conditional fee arrangements (which is akin to the system of charging contingency fees) for such cases, and to target resources more on ordinary people's legal needs. We will bear these suggestions and overseas developments in mind for future reviews.

33. A comparison of the existing arrangement, the original recommendations and final recommendations is at Annex D.

D

Other comments

34. In addition to comments on our recommendations, we also received some comments on the other aspects of legal aid services. Most of these call for the adoption of measures that our existing legal aid regime already provides for, or that LAD has already put in place or set in motion.

THE BILL

35. Seven of the above final recommendations require legislative amendments. Three of them are reflected in the Bill. These recommendations seek to –

- (a) give DLA the discretion to reduce or not to seek interest on the DLA's charges on preserved or recovered property (Clause 5);
- (b) require legally aided persons under SLAS to pay interim contributions regardless of the outcome of the case (Clause 9); and
- (c) extend legal assistance to next of kin of deceased in coroner's inquests involving cases of great public concern (Clause 10).

THE REGULATIONS

36. The following four remaining recommendations will be implemented through amendments to the Legal Aid Regulations and Legal Aid (Assessment of Resources and Contribution) Regulations : -

- (a) to prescribe the manner and the circumstances in which contributions and allowable deductions are to be calculated or made for the purposes of grants of legal aid (para 11 and 12 refers);
- (b) to adjust the scale of contributions payable by persons granted legal aid and to provide for a variation of the resources limits for meritorious Bill of Rights cases (para 25, 27 and 28 refers);

(c) to enable the Director of Legal Aid to provide for exceptions in the determination of the financial resources of persons receiving assistance under the Comprehensive Social Security Assistance Scheme (para 24 refers); and

(d) to make it clear that the DLA need not discharge the legal aid certificate under Regulation 8 if he is satisfied that it is appropriate not to do so (para 8 refers).

37. After the Legal Aid (Amendment) Bill has been passed into law, we will present the amendment regulations for Members' approval by negative vetting.

The amendments on the Bill and Regulations, when approved, will commence on the same day.

LEGISLATIVE TIMETABLE

37. The legislative timetable is as follows –

Publication in the Gazette	30 September 1999
First Reading and commencement of Second Reading debate	13 October 1999
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

BASIC LAW IMPLICATIONS

39. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

40. The Department of Justice advises that the proposed Bill and Regulations are consistent with the human rights provisions of the Basic Law.

BINDING EFFECT

41. The amendments do not affect the binding effect of the Legal Aid Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

42. The proposals to increase the personal allowances deductible and to expand the assistance in coroner's inquests will slightly increase the number of individuals eligible for legal aid. We estimate that this would entail additional expenditure of \$10.6 million per annum in legal aid costs and duty lawyer fees. In addition, the Legal Aid Department will require five additional non-directorate posts at an annual staff cost of \$2.5 million to handle the expected increase in legal aid applications and the additional receipt of contribution. The Director of Administration has secured the necessary resources for implementation of the proposals. On the revenue side, there will be an estimated increase in revenue of about \$1 million annually with the introduction of a revised scale of contribution.

PUBLIC CONSULTATION

43. We conducted a public consultation exercise and consulted the AJLS Panel on the original recommendations and comments received during public consultation. We have also briefed and secured the endorsement of the Legal Aid Services Council of our final recommendations.

PUBLICITY

44. A press release will be issued on 30 September 1999 and a spokesman will be available for answering media enquiries.

ENQUIRIES

45. For enquiries on the brief, please contact Ms Rosanna Law, Assistant Director of Administration at 2810 2576.

Administration Wing
Chief Secretary for Administration's Office
September 1999

LEGISLATIVE COUNCIL BRIEF

LEGAL AID (AMENDMENT) BILL 1999

ANNEX A Legal Aid (Amendment) Bill 1999

ANNEX B List of parties who submitted comments

ANNEX C Table of contribution scales

ANNEX D A comparison of the existing arrangement, the original recommendations and final recommendations

LEGAL AID (AMENDMENT) BILL 1999

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A BILL

To

Amend the Legal Aid Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Legal Aid (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Director of Administration by notice in the Gazette.

2. Interpretation

Section 2(1) of the Legal Aid Ordinance (Cap. 91) is amended by repealing the definition “domestic proceedings” and substituting -

““domestic proceedings”(家事法律程序) means proceedings under the Matrimonial Proceedings and Property Ordinance (Cap. 192), the Matrimonial Causes Ordinance (Cap. 179), the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16) or the Parent and Child Ordinance (Cap. 429);”.

3. Power of the Legislative Council to make amendments

Section 7(a) (ii) is amended by repealing “income and”.

4. Endorsement of legal aid certificate

Section 13(3) is amended by repealing “(1) (b)” and substituting “(1)”.

5. Charge on property recovered

Section 18A is amended -

(a) by repealing subsection (3A) and substituting -

“(3A) Where the property recovered or preserved is land or an interest in land, a charge under subsection (1) shall vest in the Director who may register the charge under the Land Registration Ordinance (Cap. 128) and may enforce the charge in any manner which would be available to a chargee in respect of a charge given inter partes.”;

(b) in subsection (3B), by repealing paragraphs (a),

(b) and (c) and substituting -

“(a) If the Director is satisfied that the property will provide adequate security for any sum as the Director would have retained in respect of the property he may defer enforcing the charge.

(b) Subject to paragraph (c), as from the date on which the charge is first registered, simple interest on the sum

referred to in paragraph (a) payable by the aided person shall accrue for the benefit of the Director at the rate of 10% per annum or at a prescribed rate.

(c) Notwithstanding paragraph (b) -

(i) where the Director is satisfied -

(A) that it would cause serious hardship to the aided person for him to pay all or any of the interest accrued under that paragraph; or

(B) that it is in all the circumstances just and equitable to do so,

the Director may waive, either in whole or in part, the payment by the aided person of all or any of the interest so accrued;

(ii) interest payable by the aided person under that paragraph shall continue to accrue until the sum referred to in paragraph (a) is paid and the Director shall not seek to

recover interest until such payment is made; and

(iii) nothing in this subsection shall prevent an aided person from making interim payments of interest or capital in respect of any sum referred to in paragraph (a) whether such payments are made at regular intervals or not and any such payment of capital shall reduce the sum accordingly.”.

6. Prohibition against taking fees from aided person

Section 22(2) is amended by repealing “of \$50,000” and substituting “at level 5”.

7. Proceedings for misrepresentations, etc.

Section 23(1) is amended by repealing “of \$10,000” and substituting “at level 3”.

8. Regulations

Section 28(2) is amended -

(a) in paragraph (h), by adding -

“(iv) as to how the resources of a person receiving assistance under the Comprehensive Social Security Assistance Scheme administered by the Director of Social Welfare are to be treated for the purposes of determining the resources of that person;”;

(b) by adding -

“(1) in the case of a request for legal aid by the family of a deceased person in respect of an inquest into deaths under the Coroners Ordinance (Cap. 504), determine the category of person to whom legal aid may be given under section 5;”.

9. Contributions for benefit of the Fund

Section 32 is amended -

(a) by repealing subsection (1) and substituting -

“(1) Where legal aid is granted to any person under the Supplementary Legal Aid Scheme -

(a) the Director shall require the person who is offered the grant of legal aid to pay an interim contribution to the Director

for the benefit of the Fund; and

- (b) if that person is successful, either in whole or in part, in the proceedings brought by him with the assistance of such legal aid, the Director shall require him to pay to the Director a final contribution for the benefit of the Fund,

in an amount calculated in a manner, and according to such circumstances as may be prescribed.

(1A) Any interim contribution paid under subsection (1) (a) and any application fee paid under regulation 3(3) of the Legal Aid Regulations (Cap. 91 sub. leg.) shall not be liable to be refunded to the aided person where that person is not successful in the proceedings brought by him with the assistance of such legal aid:

Provided that where the sums paid or payable on his account out of the Fund and the costs incurred on his behalf before the legal aid certificate is discharged are less than the amount of interim contribution paid under

subsection (1) (a), the Director shall refund the balance of the amount remaining to the aided person.

(1B) There shall be deducted from the final contribution payable under subsection (1) (b) any interim contribution paid under subsection (1) (a) and any sums recovered under or by virtue of an order or agreement for costs made in the aided person's favour and such other sums, if any, as may be prescribed.”;

(b) in subsection (4), by adding”, (1A), (1B)” after “subsection (1)”.

10. Proceedings for which legal aid may be given under section 5

Schedule 2 is amended, in Part I, by adding -

“3. Inquests into deaths under the Coroners Ordinance (Cap. 504) where, following a request for legal aid in that behalf by the family of the deceased person concerned, the Director is of the opinion that the interests of public justice require that legal aid be given.”.

Explanatory Memorandum

This Bill makes a number of miscellaneous amendments to the Legal Aid Ordinance (Cap. 91) as follows -

- (a) clause 1 sets out the short title and provides for commencement;
- (b) clause 2 removes a now redundant reference to the repealed Affiliation Proceedings Ordinance (Cap. 183);
- (c) clause 3 corrects a reference to "income" in section 5A;
- (d) clause 4 corrects a subsection reference in section 13;
- (e) clause 5 amends section 18A s 18A to enable the Director of Legal Aid to more readily defer enforcement of any charge against the property of an aided person and to waive or reduce any interest payable as a condition of that deferment;
- (f) clause 6 amends section 22(2) so that the penalty for the offence under that section, of taking fees from an aided person, is expressed as being at level 5 (\$25,001 to \$50,000);
- (g) clause 7 amends section 23(1) so that the penalty for the offence under that section, of failing to comply with any regulations as to information to be supplied and of making false statements or false representations in the process of seeking or receiving legal aid, is expressed as being at level 3 (\$5,001 to \$10,000);

- (h) clause 8 amends section 28(2) to enable regulations to be made relating to the financial resources of persons receiving Comprehensive Social Security Assistance and to the category of person to whom legal aid may be granted for the purposes of coroners inquests;
- (i) clause 9 amends section 32 so as to require a person granted legal aid under the Supplementary Legal Aid Scheme to pay an interim contribution to the Director calculated in a manner and according to such circumstances as may be prescribed;
- (j) clause 10 amends Schedule 2 so as to add coroners inquests to the description of proceedings for which legal aid may be given to the family of the deceased person concerned.

List of Parties which submitted comments

1. The Hon. Margaret Ng
2. Association for the Rights of Industrial Accident Victims
3. Duty Lawyer Service
4. Federation of Hong Kong and Kowloon Labour Unions
5. The Frontier
6. Hong Kong Democratic Foundation
7. Hong Kong Federation of Trade Unions
8. Hong Kong Human Rights Commission
9. Law Officer (Civil Law), Department of Justice
10. Law Society of Hong Kong
11. The Hong Kong Bar Association
12. Legal Aid Services Council
13. Hong Kong Human Rights Monitor

Contribution Scales for Cases under the Standard Legal Aid Scheme**Current Scale**

Financial resources(\$)		Contribution rate(%)
Exceeding	But not exceeding	
0	86,000	0
86,000	94,300	10
94,300	104,900	15
104,900	121,400	20
121,400	129,600	25
129,600	139,100	30
139,100	147,300	34
147,300	155,600	38
155,600	163,800	41
163,800	169,700	43

Scale Proposed in the consultation paper

Financial resources (\$)		Contribution rate (%)	Nominal contribution (\$)
Exceeding	But not exceeding		
0	20,000	-	500
20,000	40,000	-	1,000
40,000	60,000	-	2,000
60,000	80,000	5	-
80,000	100,000	10	-
100,000	120,000	15	-
120,000	144,000	20	-
144,000	169,700	25	-

Revised Scale Currently Proposed

Financial resources (\$)		Contribution rate (%)	Nominal contribution (\$)
Exceeding	But not exceeding		
0	20,000	-	-
20,000	40,000	-	1,000
40,000	60,000	-	2,000
60,000	80,000	5	-
80,000	100,000	10	-
100,000	120,000	15	-
120,000	144,000	20	-
144,000	169,700	25	-

Legal Aid Policy Review 1997

Item	Existing Arrangement	Original Recommendation	Final Recommendation
1.	Financial capacity of an applicant for legal aid is assessed on the basis of the aggregate of his disposable income and disposable capital.	The current method should be maintained.	No change
2.	<p>Comprehensive Social Security Assistance (CSSA) rates are used as the personal allowances deductible from the gross income of legal aid applicants in the assessment of their financial capacity.</p> <p>The expenditure figures are revised when the CSSA rates are updated.</p>	<p>The average expenditure of the lowest 50% households in Hong Kong as revealed by the five-yearly Household Expenditure Survey (excluding rent payment) should be used as the amount of personal allowances deductible from an applicant's gross income in the assessment of his financial eligibility.</p> <p>The expenditure figure should be revised every year according to CPI(A) to account for inflation until the next survey has revealed a new expenditure figure.</p>	<p>The 35-percentile expenditure (excluding rent) should be adopted as the index of personal allowances.</p> <p>No change.</p>
3.	The financial eligibility limit for the standard legal aid scheme is \$169,700 while that for Supplementary Legal Aid Scheme (SLAS) is \$471,600.	The current financial eligibility limits should be maintained.	No change.
4.	The financial eligibility limits for the standard scheme and SLAS are reviewed once every two years to take account of	The biennial review cycle should be maintained.	The review to take account of inflation should take place every year. Every two years, the review will also take account of

	inflation (measured in terms of Hang Seng CPI), change in litigation costs and other relevant factors.		any change in litigation costs.
5.	The financial resources of an infant applicant's parents or guardians will not be treated as the infant's financial resources.	The current method of calculating the financial eligibility of "infant" applicants for legal aid should be maintained.	No change.
6.	Legal aid is generally not available to proceedings before the Coroner's Court except in very limited circumstances. Aid may also be provided to the deceased's next of kin on an administrative basis.	The Duty Lawyer Service should provide legal assistance to persons who are likely to face a reasonable chance of criminal prosecution that would lead to a jail sentence or loss of livelihood as a result of giving evidence at coroner's inquests.	Legal aid will be provided to those whose behaviour is likely to be called in question and who are likely to face a reasonable chance of criminal prosecution that would lead to a jail sentence or loss of livelihood. In addition, in coroner's inquests involving great public concern, assistance will also be provided to the deceased's next of kin.
7.	Legal aid is generally not available to proceedings before the Coroner's Court except in very limited circumstances. Aid may also be provided to the deceased's next of kin on an administrative basis.	The Legal Aid Department should be empowered to provide legal aid to persons who have been issued legal aid certificates to cover proceedings in a coroner's inquest where it appears to be necessary to do so for the proper conduct of the proceedings for which legal aid has been granted.	No change.
8.	Persons who have satisfied the means test and the merit test will be eligible for legal aid, regardless of their residency status or years of residence in Hong	The LAD should continue to provide legal assistance to eligible persons regardless of their residency status or years of residency in Hong Kong.	No change

	Kong.		
9.	Employees involved in appeals to the Court of First Instance brought by employers against judgments of the Labour Tribunal are subject to means test.	The means test for employees should continue to apply.	No change
10.	DLA has to discharge a legal aid certificate if the financial resources of an aided person have become greater than the statutory eligibility limit after legal aid has been granted.	DLA should be given the discretion not to discharge a legal aid certificate even under such circumstances.	No change.
11.	The rates of maximum contribution are determined on the basis of the amount of financial resources possessed by an aided person.	The current arrangement should maintain.	No change.
12.	Legally aided persons under the standard legal aid scheme and whose financial capacity exceeds \$86,000 are required to contribute to the legal costs to be incurred by DLA, regardless of the outcome of the cases.	Legally aided persons under the standard scheme should be required to pay contribution according to a revamped sliding scale of contribution, except those on CSSA who should be exempt from paying any contribution.	The contribution scale remains as proposed except that those with financial resources below \$20,000 will not need to contribute.
13.	Legally aided persons under SLAS are required to pay an application fee of \$1,000 and another \$1,000 when they accept legal aid. They are not required to contribute unless they succeed in the proceedings. Successful litigants are required to pay 15% of the damages	Legally aided persons under SLAS should be required to pay an application fee of \$1,000 and interim contribution irrespective of the outcome of the case, with the amount being set at the maximum amount under standard scheme. The payment of \$1,000	No change except that the contribution percentage on property recovered should be reduced from 15% to 12%.

	recovered and the legal costs incurred on their behalf.	payable when legal aid is granted should be dropped.	
14.	In Bill of Rights cases, legally aided persons are required to contribute according to a sliding scale.	In Bill of Rights cases, legally aided persons with financial capacity falling under the standard scheme should contribute according to the contribution scale under the standard scheme. If their financial capacity exceeds the limit for the standard scheme, in according with a revamped sliding scale, with bandwidths of \$100,000.	No change.
15.	An interest of 10% per annum will be charged on DLA's first charge over an aided person's property.	DLA should be given the discretion to reduce or not to seek interest on the DLA's charge on a preserved or recovered property. The requirement that an aided person must agree in writing to accruing interest and the DLA's first charge should be deleted.	No change
16.	Assigned solicitor is required to remit all moneys received by him to DLA.	Amendments to the Legal Aid Ordinance should be made to better protect the Legal Aid Fund against omission or failure on the part of assigned solicitors to protect the DLA's first charge or to comply with the provisions in the Ordinance.	DLA should be empowered to withhold payment of profits cost to the assigned solicitor should he release moneys actually received by him to the aided client instead of remitting the moneys to DLA, resulting in a loss to the Legal Aid Fund.
17.		Measures to further enhance the cost-effectiveness of our legal services should be explored.	No change.