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**Subcommittee on proposed resolution
under section 7(a) of the Legal Aid Ordinance**

Background brief prepared by Legislative Council Secretariat

Financial eligibility limits of legal aid applicants

Purpose

This paper provides background information on previous discussion of the Panel on Administration of Justice and Legal Services (AJLS Panel) on review of the financial eligibility limits of legal aid applicants.

Background

2. Following the 1992 review of legal aid services, the financial eligibility limits of legal aid applicants were subject to review once every two years in light of inflation. In addition, the Administration undertakes to review once every five years the criteria adopted for assessing the financial capacity of legal aid applicants.

3. The financial eligibility limits of legal aid applicants were last revised in 1997. The Legal Aid (Amendment) Bill 1996, which was passed by the Legislative Council on 29 January 1997, increased the financial eligibility limit for the Ordinary Legal Aid Scheme (OLAS) from \$144,000 to \$169,700, and that for the Supplementary Legal Aid Scheme (SLAS) from \$400,000 to \$471,600, to reflect the accumulated inflation rate of 17.9% for the period from June 1994 to June 1996. The adjustments took effect in May 1997.

4. In 1997, a Working Group was set up to undertake a comprehensive legal aid policy review. Among the recommendations adopted was a proposal to increase the personal allowances deductible from the disposable income of legal aid applicants. As this revised method of assessing the disposal income of legal aid applicants enabled more people to be financially eligible for legal aid, the financial eligibility limits for OLAS and SLAS were not adjusted then, and were maintained at \$169,700 and

\$471,600 respectively.

5. In the context of the same exercise, the Administration also accepted the Working Group's recommendation to revamp the review cycle of the financial eligibility limits. The limits should be reviewed annually, rather than once every two years, to take account of inflation so as to better maintain the real value of the limits. A biennial review should be conducted to take account also of changes in litigation costs. The revised review cycle was implemented in 2000.

Recent reviews

6. The Administration briefed the AJLS Panel at its meeting on 23 June 2003 on the findings of the annual review conducted in 2001. According to the findings, the cumulative decrease in Consumer Price Index (C) (CPI(C)) during the period from July 2000 to July 2001 was 1.2%. In view of this small change in consumer prices, the Administration decided then that the downward adjustment to the financial eligibility limits should be deferred, pending the result of the annual review in 2002. The review conducted in 2002 subsequently reflected a further decrease in CPI(C) of 2.7% over the period from July 2001 to July 2002.

7. Regarding the biennial review to take account of changes in litigation costs, the Administration did not see a case of adjusting the financial eligibility limits because there was no conclusive evidence to show that there had been significant changes in litigation costs during the period from July 2000 to July 2002.

8. At the meeting on 27 October 2003, the Administration further reported to the AJLS Panel on the findings of the annual review completed in 2003. The review indicated a decrease in CPI(C) of 4.5% over the period from July 2002 to July 2003. The Administration considered that in the light of the significant decrease in consumer prices, there was a case to adjust the financial limits downward. The Administration indicated that it would propose that the limit for OLAS should be revised from \$169,700 to \$155,800, and that for SLAS from \$471,600 to \$432,900, to take into account the cumulative reduction of 8.2% in consumer prices during the period from July 2000 to July 2003.

9. The Chief Secretary for Administration (CS) gave notice on 19 December 2003 to move a proposed resolution at the Council meeting of 14 January 2004 under section 7(a) of the Legal Aid Ordinance to revise the financial eligibility limits downward. At the meeting of the House Committee on 9 January 2004, Members decided to form a Subcommittee to study the proposed resolution. In view of the formation of the Subcommittee, CS subsequently withdrew the notice of the proposed resolution.

Views of members of AJLS Panel

10. Issues relating to the annual and biennial reviews of financial eligibility limits were discussed by the Panel at its meetings on 23 June and 27 October 2003 respectively. A member expressed the view that the existing mechanism for adjusting the limits in accordance with the findings of the regular reviews ought to be adhered to as far as possible, in order to avoid drastic adjustments resulting from the cumulative changes in consumer prices over a long period of time.

11. Another member, however, cautioned that frequent adjustments to reflect small consumer price changes would cause confusion and instability to the administration of legal aid.

12. A member considered that litigation costs would affect a person's ability to engage in litigation. Hence, changes in litigation costs should also be taken into account in considering whether or not the financial eligibility limits should be revised.

13. Some members pointed out that under the existing financial eligibility limits for legal aid, many applicants who could not afford the costs of private litigation had been refused legal aid on grounds of means. They doubted that the eligibility limits had been realistically set.

Follow-up discussion by AJLS Panel

14. Members may wish to note that the AJLS Panel would continue to follow up the subject of a general review on the existing legal aid regime with a view to improving the provision of legal aid services, taking account of policy and other relevant considerations. The issues being examined are multi-faceted, including, inter alia, the criteria for assessing the financial resources of legal aid applicants and how the financial eligibility limits should be appropriately set. The Panel had discussed views received from the two legal professional bodies and the Legal Aid Services Council at its last meeting on 29 January 2004. The issues will be taken forward by the Panel in its future deliberations.