

LEGAL AID SERVICES COUNCIL

INTEREST GROUP ON THE SCOPE OF SLAS

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**FURTHER REPORT ON SLAS**

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1. The Legal Aid Services Council's Interest Group on the Scope of SLAS met on a total of 9 occasions in 2009 and 2010 to consider whether it was necessary and feasible to expand the scope of the Supplementary Legal Aid Scheme (SLAS) and if so, in what way, how and when.
2. In addition to the views expressed by members of the Interest Group (IG) at the meetings, the IG considered written submissions and views, examined relevant legislation and statistics and reviewed other material.
3. A list of the members who attended and the dates of the IG's meetings is set out at the end of this report. A list of the written views, legislation, statistics and other material taken into account is also set out there.
4. An earlier Report dated 1 March 2010 was prepared for the consideration of the LASC. This report recommended that the Financial Eligibility Limit of SLAS be raised to at least \$1.3 million and that the IG continue to consider a Second-Tier SLAS.
5. The IG continued to meet thereafter, considering the increase of the scope of SLAS in general and the Bar Association's position paper on this topic dated 21 July 2010 in particular. To facilitate a full exchange of ideas, the IG invited the Vice Chairman of the Bar and 2 other members of the Bar who have been involved in compiling the Bar's position paper to join as members of the IG.

Invitation was also extended to the former Director of Legal Aid who was in charge at the time SLAS was first introduced. Additionally a current member of the Legal Aid Department (LAD) attended to assist as to statistics, practice and procedure and generally.

BACKGROUND

6. SLAS was set up to provide legal aid to a sector of the public with a financial eligibility limit (FEL) in excess of that covered by the Ordinary Legal Aid Scheme (OLAS) but below a ceiling currently \$488,400. It relies upon a \$1 million initial seed money from the Lotteries Fund, an injection of \$27 million from the general revenue in 1995 and contributions from the Aided Party's damages.
7. The scheme has been self-financing. It was described by the Working Party on a Proposed Supplementary Legal Aid Scheme (1982) as "a kind of mutual insurance fund, which would insure each aided litigant against the risk of losing his action and having to pay both his own and his successful opponent's costs out of his own pocket".
8. SLAS came into operation in 1984. It was expanded in 1991 to include employees' compensation claims and in 1995 to include civil proceedings for medical, dental and legal professional negligence. About 80 to 120 SLAS legal aid certificates are granted each year.

No. of Certificates granted and refusals made under SLAS for the years 2003-2009

Year (Oct - Sept)	No. of Legal Aid Certificate granted	Refusal on Means	Refusal on Merits
2003-2004	88	0	7
2004-2005	89	1	33
2005-2006	125	3	26
2006-2007	78	4	23
2007-2008	88	4	32
2008-2009	119	1	33

9. The majority of the cases are settled before delivery of brief to Counsel.

Number of SLAS cases settled before and after delivery of brief to counsel from 2003 to 2008

Year (Oct - Sept)	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008
Case settled before delivery of brief to Counsel	67	72	77	34	11
Case settled after delivery of brief to Counsel	2	3	1	3	1

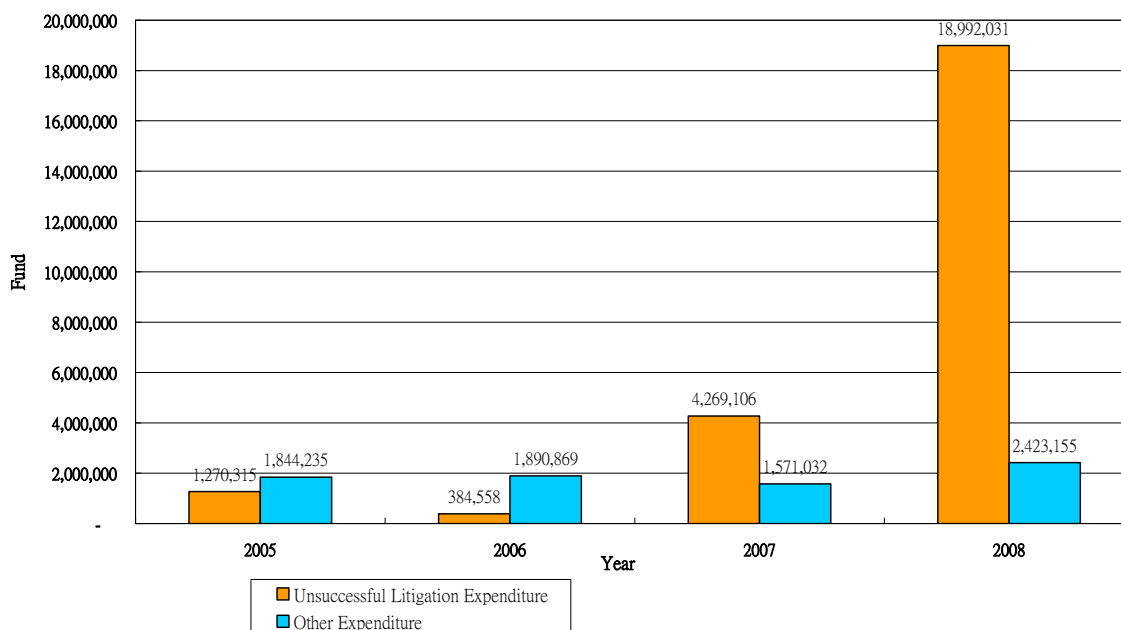
10. Financial viability depends on the choice of claims covered, the merits test, a high success rate in litigation and the recovery of legal costs spent and damages paid. Nearly all the SLAS claims were covered by insurance policies. The bulk of the SLAS cases have been personal injury cases which have a very high success rate with high compensation.

Outcome of SLAS Cases Closed from 2004 to 2008 (Jan to Dec)

Year	Judgement obtained in favour of AP's claim	Judgement not in favour/ Legal Aid Certificate discharged/revoked prior to issue of or in the course of proceedings	Total
2004	113	15	128
	88.28%	11.72%	100%
2005	86	6	92
	93.48%	6.52%	100%
2006	75	5	80
	93.75%	6.25%	100%
2007	79	12	91
	86.81%	13.19%	100%
2008	97	16	113
	85.84%	14.16%	100%
Total	450	54	504

11. The proportion of contribution from the property/damages recovered was reduced in 2000. With the reduction of the percentage contribution, the annual operating surplus has been steadily declining.

SLAS Fund Expenditure from 2005 to 2008 (as at 30 September)



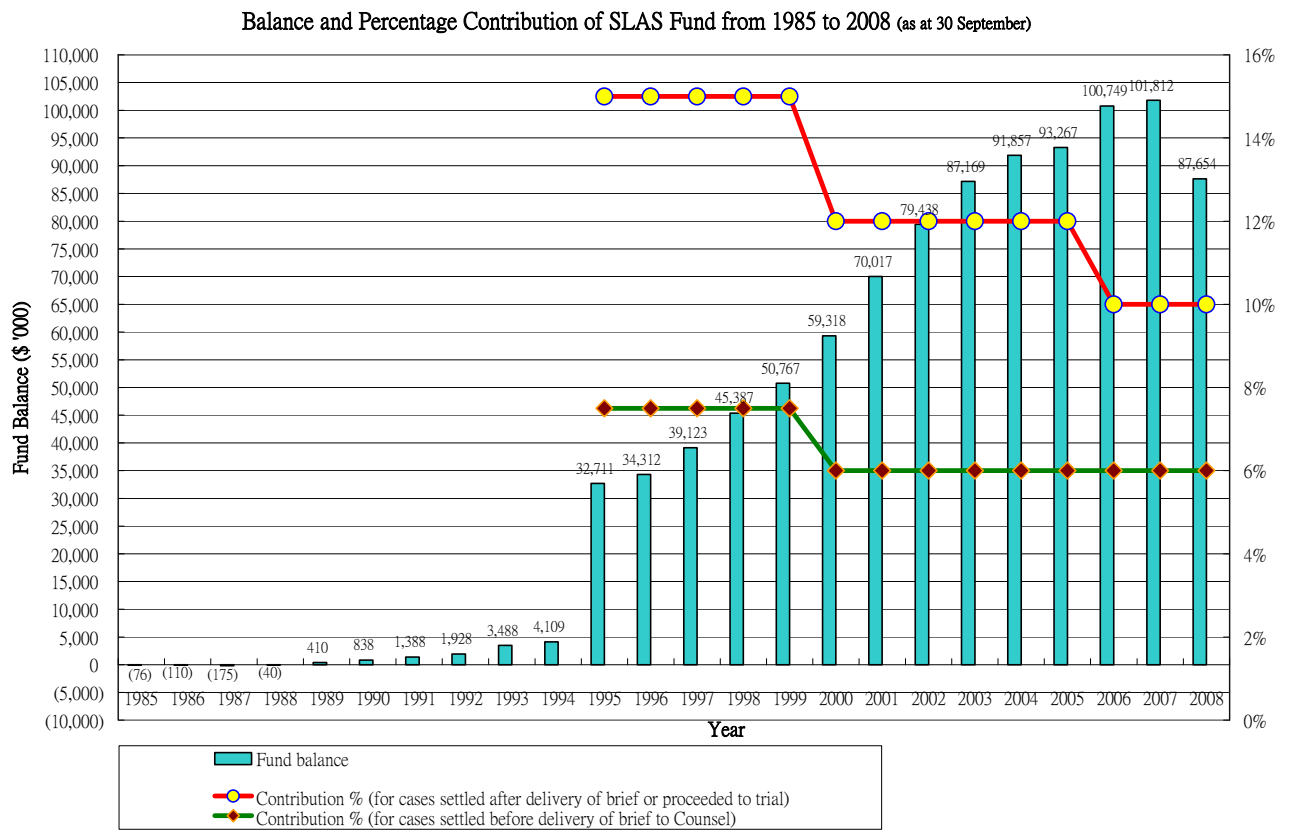
12. It is also apparent that without the gain from bank interest, there would be a net loss each year.

Net Gain/ Loss and Fund balance for SLAS for the past 5 years

Year (Oct - Sept)	Net gain/(loss) from cases (A) \$	Net gain from bank interest* (B) \$	Net gain/(loss) for the year (C) = (A) + (B) \$
2003-04	4,164,402	522,724	4,687,126
2004-05	(265,822)	1,675,852	1,410,030
2005-06	3,093,366	4,389,395	7,482,761
2006-07	(3,164,067)	4,226,936	1,062,869
2007-08	(17,409,800)	3,251,543	(14,158,257)

* : Bank interest less bank charges

13. The loss of any SLAS case impacts heavily on the SLAS Fund which bears the costs of both sides. In 2008, the loss of a SLAS funded PI claim with estimated costs of \$17m has resulted in a drastic reduction of the SLAS Fund from \$100 million to \$88 million.



14. It was against this background that in earlier meetings of the IG it was considered prudent that apart from an increase in the FEL of SLAS, there be no change in scope, but that separate funding be sought for expansion.

GENERAL

15. Statistic obtained from the Judiciary show that there is a sizable proportion of unrepresented litigants.

Statistics on Trial/Appeal involving Unrepresented Litigants in High Court (2002-2008)

Hearing nature	No. of hearings involving unrepresented litigant(s) / Total no. of hearings						
	2002	2003	2004	2005	2006	2007	2008
Trial/Appeal (All CA & CFI civils)	*482/1123 (43%)	524/1162 (45%)	437/1039 (42%)	459/1113 (41%)	378/1021 (37%)	372/985 (38%)	406/960 (42%)
Civil Appeals (Appeals to CA)	106/231 (46%)	64/203 (32%)	72/211 (34%)	90/276 (33%)	97/282 (34%)	80/264 (30%)	108/308 (35%)
Civil Appeals (Appeals to CFI)	162/211 (77%)	227/308 (74%)	176/233 (76%)	157/202 (78%)	93/163 (57%)	100/151 (66%)	124/151 (82%)
Appeal against Master's decision	82/251 (33%)	91/218 (42%)	83/210 (40%)	93/233 (40%)	67/165 (41%)	77/189 (41%)	65/141 (46%)
Civil	132/430 (31%)	142/433 (33%)	106/385 (28%)	119/402 (30%)	121/411 (29%)	115/381 (30%)	109/360 (30%)

*If CA hearings on ROA cases in 2002 are taken into account, the total figures would be 6383/7032 (91%).

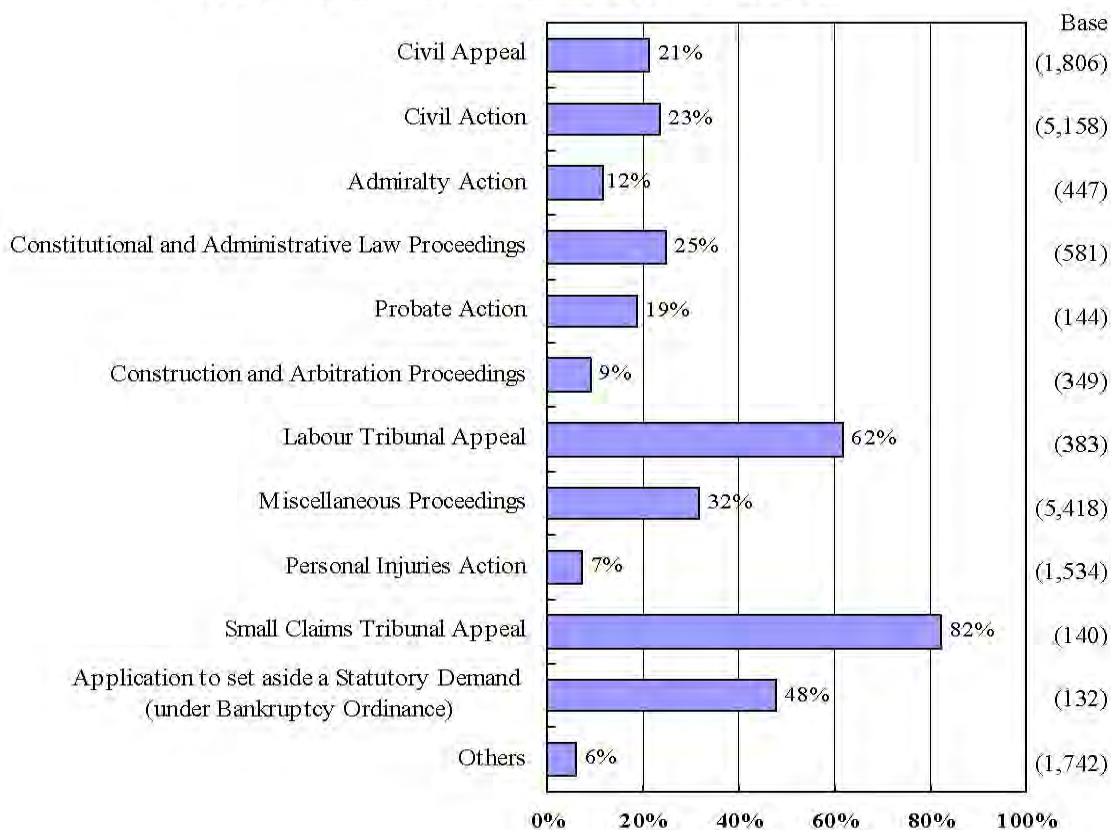
Statistics on Trial involving Unrepresented Litigants in District Court (2002-2008)

Hearing nature	No. of hearings involving unrepresented litigant(s) / Total no. of hearings						
	2002	2003	2004	2005	2006	2007	2008
Trial (All DC civils)	167/343 (49%)	162/347 (47%)	166/337 (49%)	174/324 (54%)	216/419 (52%)	193/411 (47%)	160/316 (51%)
Civil Action (non-IRD)	97/227 (43%)	111/250 (44%)	102/211 (48%)	127/217 (59%)	161/289 (56%)	98/210 (47%)	91/170 (54%)
Personal Injuries Action	15/27 (56%)	12/23 (52%)	10/36 (28%)	14/46 (30%)	18/69 (26%)	33/96 (34%)	24/76 (32%)
Miscellaneous Proceedings	2/3 (67%)	1/3 (33%)	6/8 (75%)	2/3 (67%)	4/6 (67%)	6/12 (50%)	3/8 (38%)
Other civils#	53/86 (62%)	38/71 (54%)	48/82 (59%)	31/58 (53%)	33/55 (60%)	56/93 (60%)	42/62 (68%)

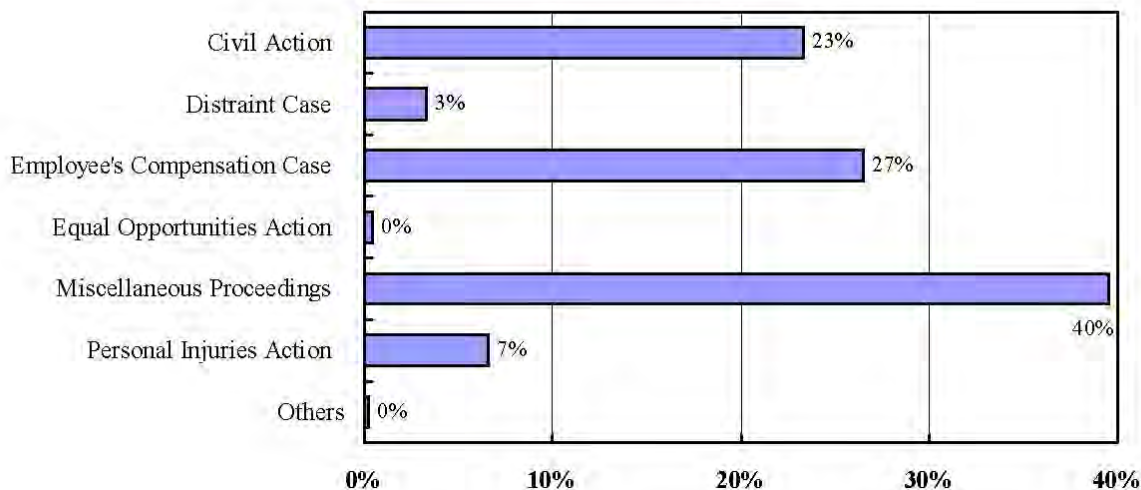
#Other civils refer to Distraint Case, Estate Agents Appeal, Employees' Compensation Case, Equal Opportunity Case, Miscellaneous Appeal, Occupational Deafness (Compensation) Appeal, Pneumoconiosis (Compensation) Appeal and Stamp Appeal.

16. A breakdown of the percentages by the type of cases highlights the problems.

Percentage of litigants in civil cases who were unrepresented in the High Court and Court of Final Appeal by type of cases



Percentage distribution of unrepresented litigants in civil cases in District Court by type of cases



17. A survey conducted in 2002 by the Steering Committee on Resource Centre for Unrepresented Litigants (which received 341 responses) revealed that “cannot afford to engage lawyers” was the reason given by 63% for not obtaining legal representation.
18. Members examined the need to address unmet demand, evidenced *inter alia* by the number of litigants in person and the activity of recovery agents. Other issues considered included:
 - (a) the as yet unknown number of potential applicants upon expansion;
 - (b) the difficulties of a quota system to address overwhelming demand;
 - (c) the manpower and resource implications;
 - (d) the provision for the services of public servants under the Scheme to be charged to the Fund and paid into general revenue;
 - (e) the increased risk factor upon expansion;
 - (f) the damages versus costs ratio of the new claims to be covered;
 - (g) recoverability and financial viability.
19. The IG supported the expansion of SLAS, both upwards and horizontally, on the basis that the scheme should be self-financing and financially viable. However Members recognised that the current SLAS scheme fulfilled an important role within its current scope, was working well and should not be jeopardised.
20. Members agreed that expansion should be introduced on an incremental basis.

Upward Expansion

21. Members noted that, in its final proposals arising from the Five-Yearly Review of the Criteria for Assessing the Financial Eligibility of Legal Aid Applicants,

the Government has, on the initial recommendation of LASC, proposed to raise the financial eligibility limit (FEL) of SLAS from \$488,400 to \$1.3 million.

22. Members considered that, provided that the scope of the existing SLAS were retained, even when its FEL was raised to the \$1.3 million as proposed by the Government, its current fund of \$88 million would probably suffice. However it was acknowledged that the viability of the fund should be monitored and if necessary, contributions be increased.
23. Some Members felt that, given the success rate of the existing SLAS, arguably there should be no financial limit or the limit should be set very much higher, say at \$5 million. This exceeds the \$3 million FEL proposed by the Bar Association.
24. No consensus could be reached as yet on the ultimate FEL, but in accordance with the accepted principle of gradual incremental expansion, and in light of the recommendations for horizontal expansion considered below, Members agreed that the desirability and feasibility of a Second-Tier SLAS with a higher FEL continue to be reviewed at or before the next Five-Yearly Review.

Horizontal Expansion

25. Members noted the announcement in the 2011-12 Policy Address namely that the Government will earmark \$100 million for injection into the SLAS Fund when necessary to expand the scheme to cover more types of cases, such as claims for damages for professional negligence in a wider range of professions and claims to recover outstanding wages and other employee benefits.

See: extract from Policy Address October 2010 (*Appendix 3*)

See also: Letter from Permanent Secretary for Home Affairs to the Chairman of the LASC dated 13 October 2010 (*Appendix 4*)

26. It was observed that the \$100 million earmarked by the Government for expansion of SLAS equated with what had been estimated at earlier meetings of the IG as required if a pilot scheme for expansion were to be set up. The Government's initiative was welcomed by all Members. It was recognised that care would have to be given to the management of the fund and appropriate legislation enacted.
27. Members considered that the \$100 million earmarked for expanding SLAS should for accounting purposes be treated as seed money for an expanded SLAS-type legal aid scheme within the general umbrella of SLAS. This scheme is referred to here as "SLAS Part II".
28. The scheme would cover those cases envisaged by the Government and some of those proposed by the Bar Association, introduced on an incremental basis. The scheme should start with the less risky cases, with the increment of other cases to be reviewed for inclusion over, say, the next 2 years.
29. In order for comparisons to be made with SLAS, Members recommend that the FEL for SLAS Part II should be the same as the current SLAS.
30. In order for the newly expanded scope to be properly monitored, Members recommend that it would be more appropriate if SLAS Part II be administered and monitored separately from the existing SLAS, albeit run parallel to SLAS. This would enable expansion without jeopardising the fund accumulated by the existing SLAS.
31. Members were concerned with the need to assess risk when considering the viability of expansion. Reference was made to the limited statistics as currently existed under OLAS for the sort of cases being considered. Concern was expressed as to the recoverability and low damages to costs ratio.

Outcome of 7 Categories of M cases closed in 2008-2009

Year of Account Finalized	2008						2009					
Outcome Nature of Case ("M" case type)	Favour	Not in Favour	Discharged/ Revoked prior to proceedings	Discharged at AP's Request during proceedings	Discharged/ Revoked during proceedings	Total	Favour	Not in Favour	Discharged/ Revoked prior to proceedings	Discharged at AP's Request during proceedings	Discharged/ Revoked during proceedings	Total
Claims against financial inst. and Ins. Co. concerning financial products / financial services	1	1				2						0
Claims against Insurance Company		1	1			2	4					4
Flat buyer's Claims against Property Developer	1					1						0
Claims against Trust Management Company						0						0
Claims arising from SOG						0	1			1	1	3
Publicly Listed Co.						0						0
Claims by shareholders against publicly listed company						0						0
Claims against Estate Agent						0	1					1
Total :	2	2	1	0	0	5	6	0	0	1	1	8
Total Damages Awarded	500,000.00						1,342,029.45					
Total Damages received by AP	0.00						1,073,729.45					
Total Damages Awarded NOT received by AP	500,000.00						268,300.00					
Total Costs (XS27)	196,330.67	1,304,224.81	149,684.00				819,780.00			144,410.00	8,364.00	
Total Amount of Costs Writen off	155,705.00						95,410.50					

Remarks :For the case vs. financial inst. and Ins. Co. with "Favour" outcome, damages awarded was received by A/S & release to AP direct.
The amount of damages has yet to be confirmed pending physical file from Tuen Mun Depot.

32. The need to collect further data with a larger sample was noted. Members recommend that any expanded scheme should be scrutinised, and statistics be kept.
33. Members accepted that as it took time for claims to go through to trial, a review in the first year may be inconclusive. Nevertheless it was considered important that the viability of the expanded scheme be closely monitored with an annual review before its scope was increased incrementally.
34. Legislation will be required to implement SLAS Part II. With LegCo and public support for expansion of SLAS, Members did not anticipate problems with enacting the required legislation within a reasonable time frame. It was noted that further increments to the FEL and scope could be done by resolution and negative vetting as s. 7, LAO provides that the Legislative Council may by resolution:
 - (a) amend the amounts of-
 - ...(ii) financial resources specified in section 5A; and
 - (b) amend Schedules .. 3 (ie scope under SLAS).
35. After discussion, Members recommend that:
 - (a) the current SLAS should continue without change, save that its FEL be raised to \$1.3 million as proposed by the Government but some Members suggested that efforts should be made to consider increasing the FEL to \$3 million;
 - (b) SLAS be extended to a parallel scheme with a wider scope;
 - (c) the parallel scheme should be administered separately from the existing SLAS which would stand as a model and for comparison purposes;

- (d) the parallel scheme should be reviewed, say on an annual basis, with statistics to be kept;
- (e) pending full review, a Second-Tier SLAS should not be introduced but consideration continue to be given to its desirability and feasibility at or before the next Five-Yearly Review.

SLAS PART I

- 36. Members agreed that as the existing SLAS was to be a model and comparison for the new scheme, it should be kept intact, save that its FEL would be raised to \$1.3 million.

Current Scope of SLAS

- 37. The current scope of SLAS is limited to claims for personal injuries or death, Employees' Compensation claims and 3 forms of professional negligence, namely medical, dental and legal professional. (Sched 3, LAO)
- 38. Members agreed that the scope of existing SLAS remain unchanged. This would safeguard the continued successful operation of the current SLAS as a self-financing scheme, not subjecting it to potential risks in connection with the proposed expanded legal aid scheme while retaining it as a model for comparison.

Administrative Fee under SLAS

- 39. Pursuant to s.29(5), Legal Aid Ord. Cap 91

“The Financial Secretary may direct that an annual administration fee to be determined by him and payable in respect of the services afforded by public servants under the Scheme shall be charged to the Fund and paid into general revenue.”

- 40. Historically the Government has charged an administrative fee from the SLAS fund annually for processing SLAS applications and monitoring out active

SLAS cases.

41. To calculate the charge,
 - ...it is necessary to determine the amount of costs of each of the costs elements including staff costs, accommodation costs, depreciation expenses, administrative overheads and departmental expenses and then apply an apportionment ratio to the total of such costs.
42. The apportionment ratio is the number of SLAS applications over the number of civil legal aid applications for the year. In the past 10 years, the fee has been assessed at between \$1.2 million and \$2.17 million.
43. It was observed therefore that the administrative fee currently covers LAD's cost of administering SLAS so that SLAS is run independently from the general revenue.
44. Members recommend that there be no change to s.29 (5), LAO, Cap 91. It was noted that going forward, the provision for an administrative fee could be applied to cover the additional costs of SLAS under an increased FEL.

Current Contribution to SLAS

45. The current contribution to SLAS is as follows:
 - (a) the application fee of \$1,000 is a non-refundable fee charged to all Applicants, regardless of whether legal aid was granted;
 - (b) the interim contribution from the Aided Person is currently a flat rate of 25% of the FEL for OLAS which is \$43,950 (\$175,800 x 25%); and
 - (c) contribution from the damages recovered by the Aided Person is set at 6%, rising to 10% when counsel had been briefed for trial.
46. Item (b) was effectively money on account for costs. Item (c) is the payment into the Fund. It was noted that when collecting under item (c), credit would be

given for surplus contribution under items (a) and (b), if any, after deduction of costs and expenses not recovered from the opposite party. The total contribution from the Aided Person would not normally exceed items (a), (b) and (c) unless the Director's First Charge for costs could not be met from the costs recovered plus items (a) and (b).

47. Members recommend that pending review, the application fee and contribution from the Aided Person remain the same. However, the state of the SLAS Fund should be kept under review so that if necessary adjustments may be made eg to the contribution percentage.

Current Funding of SLAS

48. The existing SLAS Fund has a balance of some \$88 million and may not require further injection of money even after the increase in the FEL of SLAS, given its unchanged scope. Thus the new funds of \$100 million to be made available by the Government could be used for the parallel scheme, covering new types of cases which may pose potentially higher risks in terms of financial viability.
49. In summary Members recommend that
 - (a) the scope of the existing SLAS be retained;
 - (b) the FEL of the existing SLAS be increased to \$1.3 million, pending further consideration of a Second-Tier SLAS, but some Members expressed the view that efforts should be made to consider increasing the FEL to \$3 million;
 - (c) the administrative fee payable for the services of the LAD in administering SLAS remains unchanged;
 - (d) the application fee and contributions from the Aided Person for the

existing SLAS remain unchanged pending review; and

- (e) the \$100 million earmarked for the expansion of SLAS be reserved for SLAS Part II.

SLAS PART II

- 50. Members recommend that SLAS Part II, a parallel scheme to be administered and monitored separately from SLAS Part I, should be set up to expand the scope of SLAS so as to cover new types of cases. These should nevertheless be monetary claims with a good prospect of success and recovery which would permit the scheme to be self-financing.
- 51. The performance of the scheme will be closely monitored. Its scope, contribution rates and other aspects may be modified depending on the results of the review.
- 52. If administered separately, SLAS II can be tested independently for its viability and effectiveness without impacting on and jeopardising the existing SLAS Fund. It is capable of being reviewed and fine-tuned independently of the existing SLAS.
- 53. In the long term, consideration could be given to merging the two schemes.

Scope under SLAS PART II

- 54. Members considered what additional scope should be included.

(1) Employees Claims

- 55. Employees Compensation Claims (ECC) covered by SLAS Part I are restricted to those involving bodily injury. Unlike a civil claim where there is a minimum of \$60,000 in order for it to be covered under SLAS, there is no minimum amount for an ECC claim because such claims are considered to be socially-deserving.

56. Members recommended that SLAS should be extended to Employees claims on appeal from the Labour Tribunal. Members agreed that such cases are also socially-deserving and should be covered even though they may from time to time involve empty judgments should the employer go bankrupt or insolvent.
57. It was recommended that, as in ECC claims, there be no lower limit before such a claim was covered.

(2) Professional Negligence

58. Reference was made to the 11 professions of the Joint Professional Centre and it was noted that 4 types of professional negligence claims are already covered under SLAS (barristers, dentists, doctors and lawyers).
59. Members recommended that SLAS Part II should be extended to cover a wider range of professional negligence on an incremental basis, taking into account whether the profession concerned is insured or required to be.
60. Members recommended that accountants, architects and engineers should be included in the first batch to be followed as soon as practicable by landscape architects, planners, surveyors and chartered secretaries.

(3) Claims against the Incorporated Owners of a Multi-Storey Building

61. It was noted that personal injury claims against individual owners and Incorporated Owners of a multi-storey building are already covered by SLAS, whether they are insured or otherwise.
62. Members recommend that claims against Incorporated Owners for property damage in a multi-storey building should be brought under SLAS Part II after it becomes compulsory in 2011 for Incorporated Owners to be insured.
63. However, taking into account a number of factors, including the difficulties of recovery, Members considered that it was not appropriate to extend SLAS Part II to claims against individual owners alone.

Other Potential Scope

(4) Estate Agents, Independent Financial Consultants Insurance Agents.

64. It is recommended that pending review of the recoverability implications, including their respective insurance positions, further consideration be given as to whether claims against insurance agents, estate agents and independent financial consultants should be included. However in the meantime publicity should be given to the possibility that these will be brought under the umbrella of SLAS Part II.

(5) Derivatives Claims

65. It was noted that the mis-selling of financial products may be covered under the professional negligence category but that money claims in derivatives of securities, currency futures or other futures were specifically excluded from OLAS (Schedule 2, Part II para 11(a), LAO, Cap 91).
66. Members considered that trading in derivatives is now commonplace, and recommended that the exception should now be removed from OLAS.
67. Members recommended that the extended SLAS Part II should cover such claims but that this should not take effect until the exception under OLAS was removed as it would be inconsistent not to offer legal aid to persons who would fall within the OLAS means test whilst offering such aid to those covered under SLAS Part II. Further, an anomaly may arise whereby the means of an Aided Person covered under SLAS II later falls below the OLAS FEL but he is unable to claim aid under the more advantageous OLAS terms.

(6) Claims against Developers in the Sale of New Flats etc

68. Members expressed strong concern in respect of claims arising from the sale of new flats, offices or shop premises. It was felt that SLAS Part II should be expanded in scope to cover these transactions provided that the claims would

have a monetary value which would exceed \$60,000. However it was recommended that the incremental inclusion of these claims should be considered at a later stage.

(7) Small Marine Accidents

69. It was noted that small boat accidents resulting in personal injury are already covered under SLAS.
70. Members did not recommend extension of SLAS Part II as yet to claims for property damage only from such accidents but it was agreed that further consideration be given to this at a later stage.

(8) Trusts

71. It was noted that claims in respect of Trusts would probably be covered under professional negligence.

(9) Company Disputes, Minority Shareholders

72. It was noted that a claim involving disputes between limited companies or their shareholders regarding the respective rights of the company and the shareholders is expressly excluded from OLAS by Schedule 2, Part II, para 11(c).
73. It was noted that such claims may be a problem but Members did not recommend that they be included under SLAS Part II because:
 - (a) These may not be monetary claims;
 - (b) They are excluded under OLAS;
 - (c) Currently class actions are not available.

(10) Sale of Goods and Provision of Services

74. Members did not recommend that claims arising out of the sale of goods and

the provision of services be included in SLAS Part II.

75. In addition to the professions mentioned above, Members recommended that consideration should be given to the expansion of the list of professions and categories to be included under SLAS Part II as and when appropriate.

Funding and Management under SLAS PART II

76. Members recommend that SLAS Part II be funded from the \$100 million earmarked by Government for the expansion of SLAS.
77. As the Fund is to be managed in the same way as SLAS, reliant not only on contributions but also on the bank interest accrued, given the excellent track record of the Director of Legal Aid, Members recommend that the entire sum of \$100 million be handed over to the Director at the commencement of SLAS Part II.
78. To reflect the cost of the services of public servants in managing and monitoring SLAS Part II, Members recommend that an administrative fee be charged to the SLAS Part II Fund and paid into the general revenue as is provided for SLAS, under s.29(5), LAO, Cap 91.

Contribution under SLAS PART II

79. However, given that SLAS Part II extends to a wider range of cases with potentially higher risks, provision for higher contribution rates from the Aided Person was considered appropriate.

Application Fee

80. Members recommend that a non-refundable application fee of \$5,000 be charged under SLAS Part II. The higher application fee than that charged for SLAS Part I (\$1,000) reflects the complexity of cases to be covered.

Interim Contribution

81. Members considered that the interim contribution for SLAS i.e. a flat rate of 25% of the OLAS FEL, is on the low side bearing in mind the increased SLAS FEL and the higher risks/complexity of SLAS Part II cases.
82. Members recommend that the interim contribution for SLAS Part II should be increased to 10% of the assessed financial resources of the Aided Person, but in any event not less than the maximum interim contribution under OLAS.

Contribution from Damages

83. Members recommended that the rate of contribution from damages recovered should be higher than that currently charged under SLAS to reflect the higher risks and/or complexity and to address viability. After discussion Members recommended that the rate should be 15% rising to 20% if the claim is not settled before counsel is briefed to attend trial.

SECOND-TIER SLAS

84. It was noted that earlier meetings of the IG had recommended that a Second-Tier SLAS should be introduced with no ceiling, alternatively with a \$5 million FEL. In this context, the Bar Association's recommended FEL of \$3 million was considered reasonable.
85. However, given the recommendation to expand scope horizontally, the higher risks that this may impose, the need to apply additional funding for the new scheme, members recommend that for the time being a Second-Tier SLAS should not be implemented.
86. However, it was recommended that
 - (a) the desirability and feasibility and FEL of a Second-Tier SLAS continue to be considered;
 - (b) both as to the existing SLAS (SLAS Part I) and the parallel scheme

(SLAS Part II); and

(c) the introduction of a Second-Tier SLAS be reviewed at or before the next Five-Yearly Review.

87. A summary of the recommendations in this report is set out at the end of this report.

Dated this 16th day of November 2010

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**THE LASC'S INTEREST GROUP ON SCOPE OF SLAS**

**SUMMARY of RECOMMENDATIONS**

**A General**

- 1 SLAS be extended to a parallel scheme with a wider scope (“SLAS Part II”);
- 2 the parallel scheme should be administered separately from the existing SLAS which would stand as a model and for comparison purposes;
- 3 the parallel scheme should be kept under review, say on an annual basis, with statistics to be kept;

**B SLAS Part I**

- 4 the scope of the existing SLAS be retained;
- 5 the FEL of the existing SLAS be increased to \$1.3 million, pending further consideration of a Second-Tier SLAS, but some Members expressed the view that efforts should be made to consider increasing the FEL to \$3 million;
- 6 the administrative fee payable for the services of the LAD in administering SLAS should remain unchanged;
- 7 the application fee and contributions from the Aided Person for the existing SLAS should remain unchanged pending review; and
- 8 the \$100 million earmarked for the expansion of SLAS be reserved for SLAS Part II.

**C SLAS Part II**

- 9 SLAS Part II be set up to cover monetary claims with a good prospect of success and recovery which would permit the scheme to be self-financing.
- 10 SLAS Part II be administered by the Director of Legal Aid separately from



SLAS Part I.

- 11 The performance of SLAS Part II be closely monitored so that its scope, contribution rates and other aspects may be modified depending on the results of the review.

*Funding and Management*

- 12 SLAS Part II be funded from the \$100 million earmarked by Government for the expansion of SLAS.
- 13 The entire sum of \$100 million be handed over to the Director of Legal Aid at the commencement of SLAS Part II.
- 14 An administrative fee be charged to the SLAS Part II Fund and paid into the general revenue in the same way as now charged under SLAS.

*Contribution*

- 15 A non-refundable application fee of \$5,000 be charged.
- 16 The interim contribution for SLAS Part II should be increased to 10% of the assessed financial resources of the Aided Person, but in any event not less than the maximum interim contribution under OLAS.
- 17 The contribution rate from the Aided Person should be 15% rising to 20% if the claim is not settled before counsel is briefed to attend trial.

*Scope*

- 18 Claims covered by SLAS Part II should cover:
- (a) Employees claims on appeal from the Labour Tribunal, with no limit on the size of such claim;
- (b) A wider range of professional negligence, included on an incremental basis, taking into account whether the profession concerned is insured or required to

be: accountants, architects and engineers should be included in the first batch, to be followed as soon as practicable by landscape architects, planners, surveyors and chartered secretaries;

- (c) Claims against Incorporated Owners for property damage in a multi-storey building after it becomes compulsory in 2011 for Incorporated Owners to be insured.

*Other Potential Scope*

19 Other potential scope includes:

- (a) Claims against Estate Agents, Independent Financial Consultants and Insurance Agents: Pending review of the recoverability implications (including their respective insurance positions), further consideration be given as to whether insurance agents, estate agents and independent financial consultants should be included.
- (b) Derivatives: The exception to money claims in derivatives of securities, currency futures or other futures specifically excluded from OLAS in Schedule 2, Part II, para 11, LAO Cap 91 should be removed. SLAS Part II should be extended to claims arising out of derivatives but not until the exception under OLAS was removed.
- (c) Claims against Developers: The incremental inclusion of claims against a developer in respect of the sale of a new flat, office or shop premises should be considered at a later stage.
- (d) Claims in Small Marine Accidents: Members did not recommend extension of SLAS Part II to claims for property damage in small marine accidents but proposed that further consideration be given to this at a later stage.
- (e) In addition to the professions mentioned above, consideration should be given to the expansion of the list of professions and categories to be included under

SLAS Part II as and when appropriate.

**D Second-Tier SLAS**

- 20 The desirability and feasibility and FEL of a Second-Tier SLAS should continue to be considered.
- 21 Such consideration should address both the existing SLAS (SLAS Part I) and the parallel scheme (SLAS Part II).
- 22 The introduction of a Second-Tier SLAS be reviewed at or before the next Five-Yearly Review.

Dated this 16<sup>th</sup> day of November 2010

Corinne Remedios  
Chairman, LASC Interest Group on SLAS

**THE INTEREST GROUP**

**MEMBERS**

Ms Corinne REMEDIOS Chairperson

**Legal**

Mr Patrick MOSS  
Mr KWAN Lai Hung  
Ms Christina LEE  
Mr Raymond LEUNG  
Mr Tommy LI  
Mr LO Chi Ming, Eric  
Mr LO Kwing Yu  
Ms Catherine POR  
Mr Kumar RAMANATHAN SC

**Non-Legal**

Ms Virginia CHOI  
Mr Witman HUNG  
Dr Linda LI  
Mr TSOI Yiu Cheong, Richard  
Mrs Ruth WONG  
Mr WONG Wang Tai, Ivan

Mr Raymond LAW Secretary  
Mr Victor Li Former Secretary

**IN ATTENDANCE**

Ms Vennie CHIU  
Ms Alice CHUNG Acting Deputy Director of Legal Aid (Policy & Admin)  
Ms Sherrie SIU EO/LASC  
Ms Catherine LUNG Former EO/LASC

## MEETINGS OF THE INTEREST GROUP

Minutes were kept of the total of 9 meetings of LASC's Interest Group on Scope of Legal Aid which were held on:

|                  |                   |
|------------------|-------------------|
| 21 April 2009    | 10 June 2010      |
| 2 June 2009      | 21 September 2010 |
| 17 November 2009 | 5 October 2010    |
| 25 February 2010 | 20 October 2010   |
|                  | 25 October 2010   |
| Report           | Further Report    |

## WRITTEN SUBMISSIONS and VIEWS

In addition to the views expressed during the meetings, the Interest Group received written submissions and views from the following:

A short note on "Middle Class" and "middle income" provided by Dr. Linda Li for discussion at the IG Meeting on 2 June 2009

Email of Mr. Mohan BHARWANNEY SC, dated 2 June 2009

Letter of Mr. Neville SARONY, dated 25 February 2010

Hong Kong Bar Association Submission to the Legislative Council Panel on Administration of Justice and Legal Services, *Expansion of Supplementary Legal Aid Scheme is Just and Feasible and Needed* (20 July 2010).

Hong Kong Bar Association Submission to the Legislative Council Panel on Administration of Justice and Legal Services, *A Summary Paper on Reform of Ordinary Legal Aid Scheme and Supplementary Legal Aid Scheme Based on Existing Principles* (29 September 2010).

Opinion of Legal Aid Services Council member Mr Witman Hung dated 5 October 2010.

## LEGISLATION

The IG considered inter alia the following legislation:

Legal Aid Ordinance (Cap. 91)

sections 2, 3, 5, 5AA, 5A, 7, 10(3)(a), 13, 14, 16C, 18(1)(a), 27, 28, 29, 32;  
Schedule 2, Schedule 3.

Legal Aid Regulations (Cap. 91 sub. Leg. A)

regulation 3.

Legal Aid (Assessment of Resources and Contributions) Regulations (Cap 91 sub  
leg B)

regulations 13, 14; Schedule 3.

## STATISTICS

The IG considered inter alia the following statistics

### **Legal Aid Department**

Legal Aid Department, *Number of Certificates Granted and Refusals Made under SLAS for the years 2003-2009.*

Legal Aid Department, *Success Rate for SLAS Cases Closed with Outcome in 2004-2009.*

Legal Aid Department, *Application Results of 7 Categories of Cases Closed in 2008 and 2009.*

Legal Aid Department, *Outcome of 7 Categories of M Cases Closed in 2008 and 2009.*

## **Judiciary**

Statistics on Trial/Appeal involving Unrepresented Litigants in the High Court (2002 – 2008)

Statistics on Trial/Appeal involving Unrepresented Litigants in the District Court (2002 – 2008)

Statistics as to Claims involving personal injuries or death of a person (2007 – 2009)

Statistics as to Claims involving medical, dental or legal professional negligence in the Court of Appeal

## **Other**

Survey as to Unrepresented Litigants (by the Steering Committee on Resource Centre for Unrepresented Litigants)

Percentage of Litigants in civil cases who were unrepresented in the High Court and Court of Appeal by type of cases

Percentage of distribution of unrepresented litigants in civil cases in District Court by types of cases

## **OTHER MATERIALS**

Legal Aid Department, *Calculation of Administrative Fees Chargeable to SLAS Fund*.

Law Reform Commission of Hong Kong, *Report on Conditional Fees* (July 2007).

2010-2011 Policy Address, *Enhancing Legal Aid Service*. (extract)

Letter from Permanent Secretary for Home Affairs to Chairman of Legal Aid Services Council, *Policy Initiatives on Legal Aid Services* (13 October 2010).

2010-11 Policy Address
Sharing Prosperity for a Caring Society

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## Policy Address

### Enhancing Legal Aid Service

148. To make legal aid services more accessible, the Government has recently decided to substantially increase the financial eligibility limits of the Ordinary Legal Aid Scheme and the Supplementary Legal Aid Scheme (SLAS). Moreover, the age requirement for exempting part of the savings in calculating disposable capital will be relaxed from the age of 65 to 60.

149. To complement the SLAS review soon to be completed by the Legal Aid Services Council, and to benefit more middle-class people, the Government will earmark \$100 million for injection into the SLAS Fund when necessary to expand the scheme to cover more types of cases, such as claims for damages for professional negligence in a wider range of professions, and claims to recover outstanding wages and other employee benefits.

150. In addition to legal aid services, the public can also obtain preliminary legal advice through the government-funded Free Legal Advice Scheme without any means testing. We will enhance support services for the scheme to attract more volunteer lawyers to join.

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## Appendix 4

民政事務局常任秘書長  
香港灣仔告士打道五號  
稅務大樓四十一樓



Permanent Secretary for Home Affairs  
41st Floor, Revenue Tower,  
5 Gloucester Road,  
Wan Chai,  
Hong Kong.

本局檔號 OUR REF : HAB/CR/19/1/48  
來函檔號 YOUR REF :  
電 話 TEL NO. : 2594 6688  
圖文傳真 FAXLINE : 2832 9983

**By fax and post**

13 October 2010

The Honorable Paul M P Chan  
Chairman  
Legal Aid Services Council  
Room 1601, 16/F, Top Glory Tower  
262 Gloucester Road  
Causeway Bay, Hong Kong

Dear *Paul,*

### **Policy Initiatives on Legal Aid Services**

#### ***Five-yearly review***

I write to thank you and Members of the Legal Aid Services Council (the LASC) for the invaluable advice rendered to the Government on the "Five-yearly review on the criteria for assessing the financial eligibility limits (FEL) of legal aid applicants". The Administration has considered and taken on board the advice from the LASC and other stakeholders in respect of different legal aid matters in the course of the five-yearly review. We presented our final recommendations on the five-yearly review to the Legislative Council (LegCo) Panel on the Administration of Justice and Legal Services (AJLS Panel) at its meeting on 30 September 2010. In gist, we will raise the FEL for the Ordinary Legal Aid Scheme from \$175,800 to \$260,000; and to raise the FEL for the Supplementary Legal Aid Scheme (SLAS) significantly from \$488,400 to \$1.3 million. Moreover, part of the savings of legal aid applicants who have reached the age of 60 should be

disregarded when calculating their disposable capital. We will also replace the 35-percentile household expenditure as a deductible component in calculating disposable income by the median monthly household expenditure. A copy of the paper has been distributed earlier to the LASC for information. The Government will formulate proposals to amend the legislation, with a view to putting the new measures into effect as soon as possible within the 2010-11 legislative session.

### ***Injection of \$100 million to the SLAS fund***

2. We note that the LASC has set up an interest group with wide representation from different sectors to examine the scope for expanding SLAS without undermining its financial viability. As we have made clear on various occasions, the Government is prepared to consider the expansion of SLAS to cover more types of cases, provided that the financial sustainability of the SLAS fund will not be undermined. To complement the LASC's review, and to benefit more middle-class people, the Chief Executive has, in his Policy Address delivered on 13 October 2010, announced that the Government will earmark \$100 million for injection into the SLAS fund when necessary to expand the scheme to cover more types of cases, such as claims for damages for professional negligence in a wider range of professions, and claims to recover outstanding wages and other employee benefits. This amply demonstrates the Government's sincerity in exploring further scope for expanding SLAS in response to the requests from relevant stakeholders.

3. You are aware that SLAS can be financially sustainable so far mainly because of the careful selection of cases with high chance of recovery and high success rates of certain types of cases. So far, these types of cases include mainly those where the defendants are insured or where there is assured payment of damages (i.e. claims for personal injuries or death and work-related accidents). The Government looks forward to receiving by end of this year the LASC's recommendations on the SLAS review. We will then formulate specific proposals on the expansion of SLAS for consultation with the LegCo AJLS Panel in the first half of 2011.

### ***Free Legal Advice Scheme (FLAS)***

4. The FLAS, subvented by the Government, aims to provide free preliminary legal advice to members of the public. We understand that the LASC has formed an interest group to examine areas for improvement of the FLAS. To benefit more people, you may wish to note that the Government

will enhance the support services for FLAS to attract more volunteer lawyers to join the scheme. We will work closely with relevant stakeholders and actively examine the scope for providing more extensive and comprehensive free legal advice services to the public. Measures under consideration include –

- (a) to enhance training for support staff of the FLAS under the Duty Lawyer Service;
- (b) to give commendation and recognition to volunteer lawyers for their services;
- (c) to strengthen free legal advice services at the community level;
- (d) to step up promotion and public education; and
- (e) to explore means to provide enhanced assistance to the unrepresented litigants.

5. We will report to the AJLS Panel on specific proposals on the enhancement of the FLAS early next year.

6. Last but not least, may I take the opportunity to thank the LASC again for the very useful advice rendered to the Government on legal aid. We look forward to further exchange of views with you and other Council members on relevant subjects.

Yours sincerely,



( Raymond Young )

Permanent Secretary for Home Affairs

c.c. Director of Legal Aid