

**For discussion  
on 23 November 2015**

## **Legislative Council Panel on Economic Development**

### **To take forward the outcome of the public consultation on the future development of the electricity market – Extension of two Supernumerary Posts**

#### **PURPOSE**

This paper reports on the way forward after the completion of the review of the future development of the electricity market and the related public consultation. It also seeks Members' support to the proposal to extend the following supernumerary posts for a period of three years from 10 February 2016 or with immediate effect upon approval of the Finance Committee (FC), whichever the later, in order to undertake the necessary tasks -

- (a) one Administrative Officer Staff Grade C (AOSGC) (D2) post in the Environment Bureau (ENB); and
- (b) one Assistant Principal Government Counsel (APGC) (DL1) post in the Department of Justice (DoJ).

#### **JUSTIFICATION**

##### *Need to Formulate the Future Scheme of Control Agreements*

2. In connection with the expiry of the Scheme of Control Agreements (SCAs) signed between the Government and the two power companies<sup>1</sup> in end 2018, the two concerned supernumerary posts were created for a period of two years from 10 February 2014 to head a dedicated team each in ENB and DoJ to undertake a review of the electricity market. After the review was completed, the Government launched a three-month public consultation in March 2015 on the future

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<sup>1</sup> The two power companies are CLP Power Hong Kong Limited and Castle Peak Power Company Limited (collectively referred to as CLP), and The Hongkong Electric Company, Limited (HKE).

development of the electricity market. The outcome of the public consultation is set out in a separate paper for discussion by this Panel.

3. Majority of the views received consider that the current regulatory arrangement by way of contractual agreements with the power companies is an effective tool in achieving our four energy policy objectives of safety, reliability, affordability and environmental protection. However, it is generally agreed that improvements need to be made to the current SCAs. Having regard to these views, we plan to negotiate with the two power companies a new set of SCAs with improved terms to take effect after the current SCAs expire in end 2018<sup>2</sup>.

*Areas to be Addressed in the Negotiation for a New Set of SCAs*

4. Taking into account the comments and suggestions received during the public consultation and our experience in operating the SCAs in the past few years, we envisage that some of the possible changes to the future contractual arrangement are as follows -

- (a) Permitted Rate of Return: we consider that the Permitted Rate of Return could be reduced in tandem with the latest economic situation, taking into consideration similar investments internationally;
- (b) Energy efficiency and conservation (EE&C): as noted in many submissions received in the public consultation, the power companies should play a bigger role in helping with the promotion of EE&C. The future contractual arrangement should feature a proper mechanism for power companies to contribute more in promoting EE&C;
- (c) Renewable Energy (RE): given the majority support for the promotion of RE, we would seek to build in a mechanism in the SCAs to promote distributed RE, including improving the grid access arrangements for distributed RE generators and incentivising their connection to the power grids. We will also consider how the current incentive arrangement for power companies to develop RE projects should be revamped having regard to the public views received on the relevant tariff implications;

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<sup>2</sup> The current SCAs run for a term of 10 years, with an option exercisable by the Government to extend the term for five years until 2023.

- (d) Market opening: we intend to undertake the necessary preparatory work in the next regulatory period to pave the way for introducing potential new suppliers in future. These would include joint studies with the power companies on access by new players to the existing power grids, and strengthening the interconnection between the power grids of the Mainland and Hong Kong as well as that between the existing grids in Hong Kong. We intend to set out the relevant requirements in the new SCAs ;
- (e) Incentive and penalty scheme: we plan to revamp the existing incentive and penalty scheme having regard to the performance of the power companies in respect of supply reliability, operational efficiency, customer services and emission performance; and
- (f) Information transparency: we would request the power companies to release more information to the public in a more structured manner to facilitate effective monitoring of the performance of the power companies.

Apart from the above, we will also pursue other changes to the SCAs, including those relating to the tariff approval mechanism and certain accounting practices and arrangements.

5. The proposed changes in the above areas would help better achieve the four energy policy objectives of safety, reliability, affordability and environmental protection. In respect of affordability, apart from the proposed reduction in the Rate of Return, which would have an impact on the tariff level, we will also seek to improve the current tariff approval mechanism and fuel cost arrangement to enhance the scrutiny over any tariff-related adjustments. Improving the incentive and penalty scheme will help enhance the level of services being provided by the power companies including supply reliability and safety. The proposed measures in respect of EE&C and RE should help us better reduce energy consumption and promote the adoption of cleaner energy, and assist us in achieving the target of reducing energy intensity by 40% by 2025 as compared to 2005 as set out in our Energy Saving Plan for Hong Kong's Built Environment 2015 ~ 2025+. Meanwhile, the relevant preparatory work relating to market opening will enable us to prepare for introduction of new suppliers when the requisite market

conditions are present. Properly addressing these issues in the future negotiation with the power companies is instrumental to facilitating the future development of the electricity market.

### *Need for Dedicated Teams*

6. The above improvements to be pursued would have considerable financial implications for the power companies and are likely to entail changes to some of their operation. We expect that the ensuing discussion with the power companies will be lengthy and intensive. Given the range of issues involved and their interconnectedness, the negotiation process is also expected to be complex and will call for analyses of various options from the financial, technical and regulatory perspectives. A dedicated team is necessary to ensure that Government's proposals would be pursued effectively to enhance the interest of consumers.

7. When an agreement on the terms and conditions of the new SCAs is reached, we would need to prepare a new contractual arrangement to put them into effect. Given the profound impact the new SCAs would have on electricity supply, they have to be carefully crafted to ensure that they clearly reflect the terms and conditions as agreed between the Government and the power companies. Drawing from the past experience, this would entail intensive discussion on the wording to be used in the SCAs.

8. In the negotiation with the power companies on the future regulatory arrangement, extensive legal support and advice would be required from DoJ as we need to thoroughly examine the related legal implications of various options and alternatives.

9. Taking into account the nature, scope and complexity of the tasks to be performed as set out in paragraphs 4 to 8, as well as the timeline that the Government needs to finalise the regulatory arrangement before the expiry of the current SCAs in 2018, we consider it necessary to extend the two dedicated teams in ENB and DoJ mentioned in paragraph 2 above to undertake the negotiation with the power companies and implement the outcome. This will ensure that adequate resources would be provided to undertake the highly-demanding and complicated tasks involved. The job descriptions of the proposed AOSGC and APGC posts are at **Annexes A and B** respectively.

10. It is proposed that the AOSGC in ENB would be underpinned by a team of three non-directorate posts<sup>3</sup>. The team will continue to work closely with the Financial Monitoring Division (FMD) and the Electricity Team (ET) in ENB in undertaking the necessary work. Headed respectively by an Assistant Director of Accounting Services (D2) and a Chief Electrical and Mechanical Engineer (D1), FMD and ET are responsible for monitoring the power companies from the financial and technical aspects.

11. For DoJ, it is proposed that the APGC in the Commercial Unit of the Civil Division (CD) would continue to be supported by a team of three time-limited non-directorate posts<sup>4</sup>. The team comprising the APGC and the non-directorate posts is referred to as the “CU Electricity Team”.

12. The existing and proposed organisation charts of ENB and DoJ showing the proposed posts of AOSGC and APGC are at **Annexes C and D** respectively.

## **ALTERNATIVES CONSIDERED**

13. Under the current establishment, the Energy Division (EGD) of ENB is headed by one AOSGC (D2) (designated as PAS(EG)) to oversee all energy policy matters in Hong Kong. While the work relating to the review of the future development of the electricity market has been taken up by the dedicated team created, EGD has been responsible for the formulation and implementation of a number of policy initiatives, including implementation of measures to tackle the problem of external lighting; implementation of the Buildings Energy Efficiency Ordinance (Cap. 610); implementation of the District Cooling System in the Kai Tak Development and other new development areas; review of the scope and the grading system of the Mandatory Energy Efficiency Labelling Scheme (MEELS); setting the Government’s energy saving targets and formulation of strategies for achieving the target set; promotion of renewable energy; overseeing the policies on electrical safety and gas safety; and handling issues relating to the supply of electricity, gas and oil including land matters.

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<sup>3</sup> Including the time-limited posts of one Senior Administrative Officer, one Senior Executive Officer and one Personal Secretary I which will be extended for three years.

<sup>4</sup> Including the time-limited posts of one Senior Government Counsel, one Government Counsel and one Assistant Clerical Officer which will be extended for three years.

14. Looking ahead, EGD would be heavily involved in providing support for the implementation of the Energy Saving Plan for Hong Kong's Built Environment 2015 ~ 2025+, which set an energy intensity reduction target of 40% by 2025. Among others, a dialogue platform and a series of new energy saving initiatives would have to be developed to meet the new target. EGD would also have to draw up plans to facilitate adoption of RE to address the public's aspiration in the area. On external lighting, EGD is tasked to launch a territory-wide Charter on External Lighting from 2016. This entails extensive liaison and publicity work and requires close monitoring and follow up action. In addition, the EGD has to conduct work to expand the scope of MEELS to double the number of products covered by the Scheme. The post of PAS(EG) is therefore fully stretched and cannot absorb further duties to take forward the outcome of public consultation on the future development of the electricity market.

15. We have also considered the possibility of redeploying other directorate officers in ENB to undertake the necessary tasks but found it not feasible. The FMD and ET have already been fully engaged with the ongoing tasks of monitoring the power companies in the financial and technical aspects. In addition to their regular duties, they have also been working closely with the dedicated team on the review of the future development of the electricity market, which involved a large number of financial and technical issues and studies. Negotiation with the power companies would continue to require their support and it is expected that they would be required to provide support in drawing up specific proposals to improve the current SCAs, conducting financial and engineering assessments of various proposals, and conducting related research and study. The Sustainable Development Division of ENB, headed by an AOSGC, is responsible for handling policy matters relating to sustainable development and providing secretariat support to the Council for Sustainable Development (SDC). The latter includes supporting the SDC's territory-wide public engagement process on key sustainability issues, and arranging publicity and education programmes relating to sustainable development. All these ongoing work requires full-time attention of the directorate officers in ENB, and they cannot be redeployed to undertake the negotiation for the new SCAs.

16. In the case of DoJ, advice on electricity-related matters falls within the purview of the Commercial Unit of the CD. The alternative of absorbing the workload generated from taking forward the outcome of the public consultation on the future development of the electricity

market through internal redeployment and without extension of the posts of the CU Electricity Team has been carefully examined but considered not feasible.

17. The Commercial Unit advises Government bureaux and departments on all aspects of commercial law relating to the Government's own commercial activities and the Government's regulation of certain commercial activities. On top of the drafting and interpretation of commercial contracts, and contract negotiation, it also advises on a broad range of legal matters generated by the Government's own commercial requirements, regulation of utilities, franchisees and licensees, and certain commercial services provided to the community. In addition, the Commercial Unit advises on legislative amendments to statutes governing commercial activities in the market and the exercise of statutory regulatory powers.

18. The Commercial Unit has been experiencing a consistently high level of workload with considerable and growing complexity. Apart from the CU Electricity Team, the existing directorate structure of the Commercial Unit comprises one Principal Government Counsel (PGC) (DL3), three Deputy Principal Government Counsel (DPGC) (DL2) and two APGC (DL1). They are already heavily over-committed with their existing duties in respect of the whole range of subjects including the Competition Ordinance and competition law issues, broadcasting and telecommunications matters, electronic transactions, securities and related matters, banking matters, public transport franchises, Companies Ordinance Rewrite Exercise and insolvency-related matters etc. Other non-directorate counsels are also stretched to their limit in handling other major projects and work of the Commercial Unit. It is not possible to further stretch the manpower in the Commercial Unit to absorb the additional work arising from the legal support required for taking forward the outcome of the public consultation on the future development of the electricity market without the dedicated CU Electricity Team.

## **FINANCIAL IMPLICATIONS**

19. The proposed extension of two supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$3,636,600. The additional full annual average staff cost, including salaries and staff on-cost, is \$4,953,000. For the six time-limited non-directorate civil service posts mentioned in paragraphs 10 and 11 above, the notional annual salary cost at mid-point is

\$5,116,140 and the full annual average staff cost, including salaries and staff on-cost, is \$7,315,000. Subject to the FC's approval of the above directorate posts, we will include sufficient provision in the draft Estimates of the relevant financial years to meet the cost of the proposal.

### **ADVICE SOUGHT**

20. Members are invited to comment on the proposal. Subject to Members' views, we will seek the recommendation of the Establishment Subcommittee and approval from FC for the extension of the posts.

**Environment Bureau  
Department of Justice  
November 2015**

**Job Description**  
**Principal Assistant Secretary for the Environment**  
**(Electricity Reviews)**

**Rank** : Administrative Officer Staff Grade C (D2)

**Responsible to** : Deputy Secretary for the Environment

**Main Duty and Responsibilities –**

- (a) To take forward the outcome of the public consultation on the future development of the electricity market and formulate strategy and proposals for negotiation with the power companies over the future Scheme of Control Agreements (SCAs).
- (b) To undertake negotiation with the power companies on the future SCAs.
- (c) To liaise with other divisions in overseeing the relevant financial and technical consultancy studies required to support the negotiation with the power companies.
- (d) To prepare the future SCAs in consultation with DoJ having regard to the outcome of negotiation with the power companies.
- (e) To assess and formulate potential options for the future regulatory framework for the electricity market, having regard to the financial, technical, legal and economic implications, in case an agreement on the future SCAs could not be reached in time.
- (f) To oversee the implementation of the fuel mix for power generation in Hong Kong for 2020.

**Job Description**  
**Assistant Law Officer (Civil Law) (Commercial)**

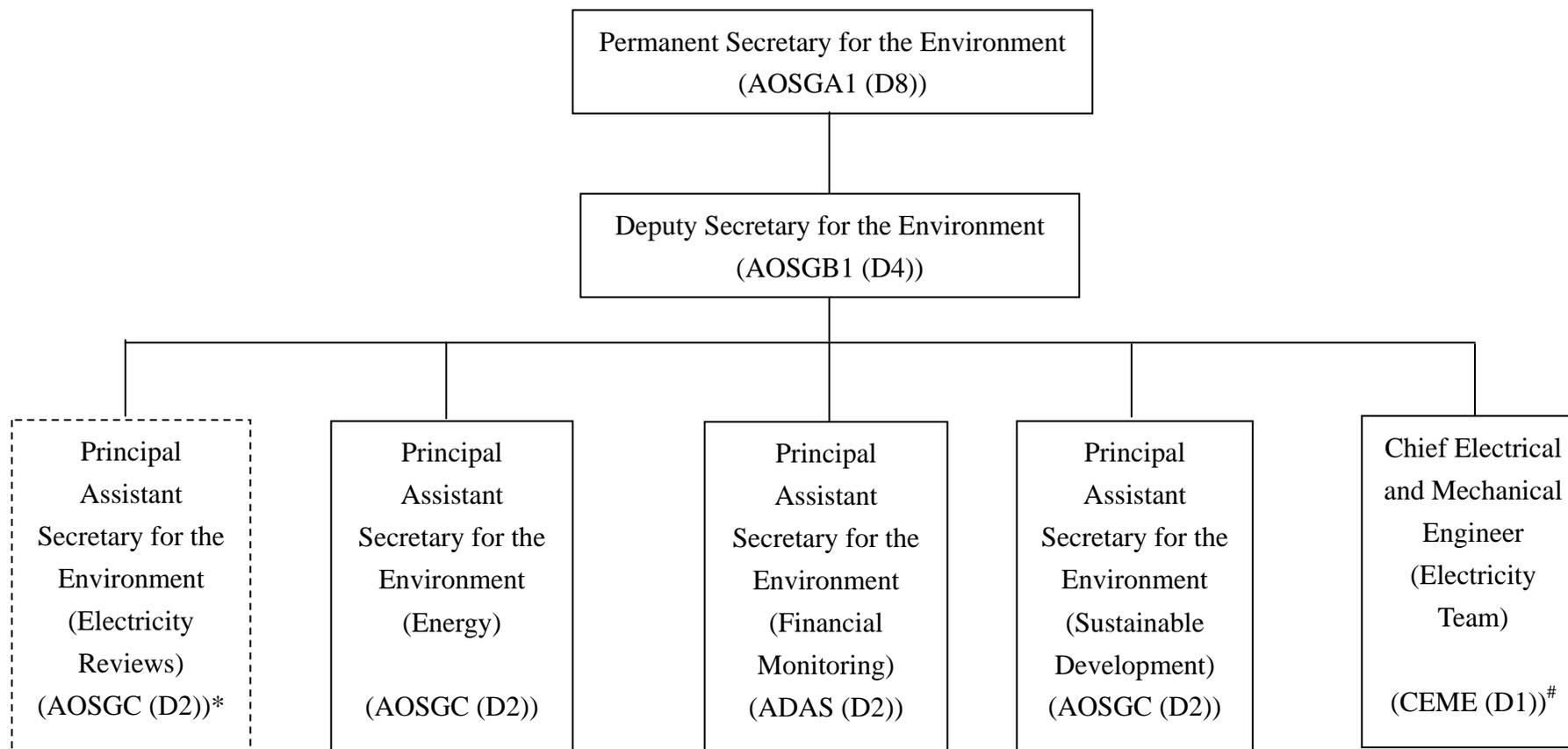
**Rank** : Assistant Principal Government Counsel (DL1)

**Responsible to** : Deputy Law Officer (Civil Law) (Commercial)

**Main Duty and Responsibilities –**

- (a) To lead and guide the dedicated team in the Commercial Unit to provide legal support for taking forward the outcome of the public consultation on the future development of the electricity market, including interpretation and review of the relevant provisions in the SCAs and drafting of the new SCAs.
- (b) To provide legal advice on more complex matters relating to the negotiation with the power companies and other related tasks, in particular on financial and commercial law issues arising from the proposed changes to the regulatory arrangement, and implementation of appropriate regulatory and other market changes.
- (c) To conduct necessary legal research on more complex issues relating to the legislation, and contractual and other regulatory arrangements adopted in other comparable jurisdictions for regulating the electricity market.
- (d) To advise on the preparation of legislative proposals that may be required.
- (e) To advise on legal issues arising from any transitional arrangements of the electricity market from the current regulatory period to the next that may need to be devised and implemented.
- (f) To draft and settle a broad range of consultancy agreements and instructions to counsel as may be necessary for taking forward the outcome of the review and public consultation.
- (g) To attend meetings and negotiations with the power companies and other stakeholders.

## Existing and Proposed Organisation chart of ENB

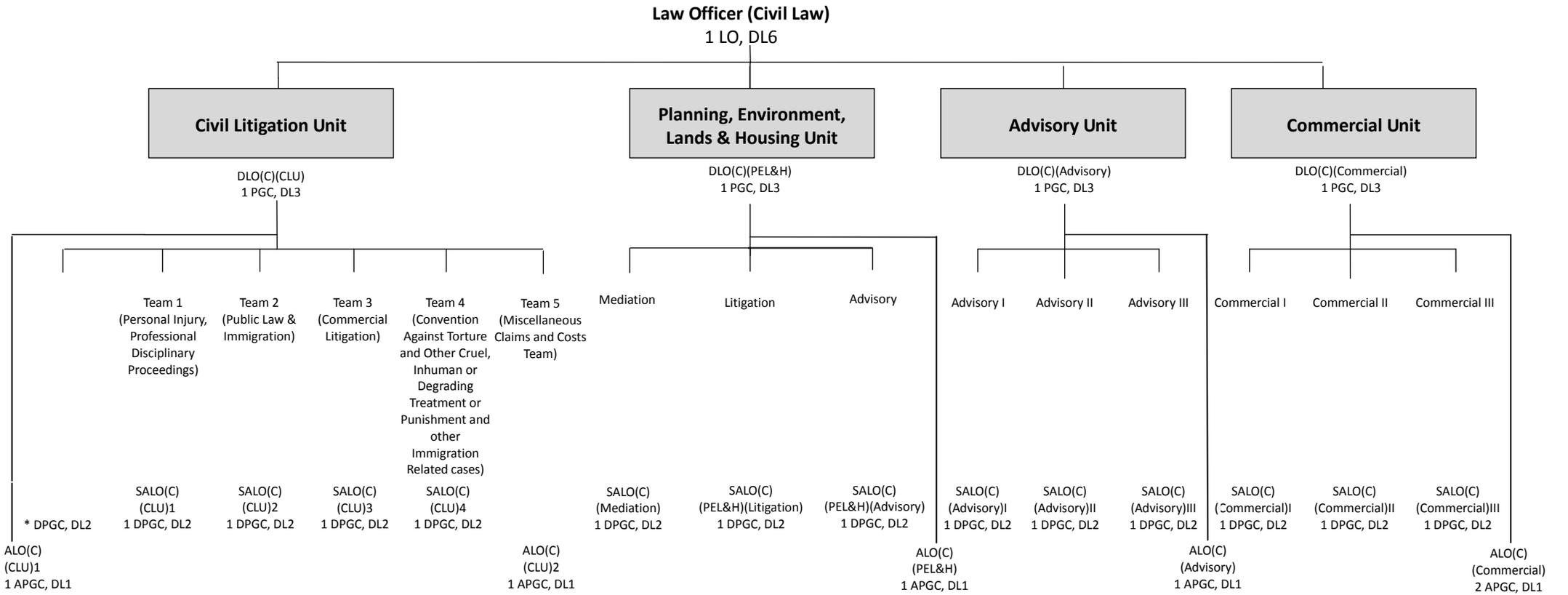


\* This supernumerary post will lapse on 10 February 2016 and is proposed to be extended.

# This post was created under Head 42 - Electrical and Mechanical Services Department.

In addition, a Principal Assistant Secretary is on loan to Environmental Protection Department.

## Organisation chart of DoJ Existing and Proposed Organisation Chart of the Civil Division



- Legend:
- LO = Law Officer (DL6)
  - PGC = Principal Government Counsel (DL3)
  - DPGC = Deputy Principal Government Counsel (DL2)
  - APGC = Assistant Principal Government Counsel (DL1)
  - DLO(C) = Deputy Law Officer (Civil Law)
  - SALO(C) = Senior Assistant Law Officer (Civil Law)
  - ALO(C) = Assistant Law Officer (Civil Law)
  - CLU = Civil Litigation Unit
  - PEL&H = Planning, Environment, Lands and Housing
  - \* = One supernumerary DPGC post created to provide legal support relating to the inquiry into lead content in drinking water supply from September 2015 to February 2016.
  - = This supernumerary post will lapse on 10 February 2016 and is proposed to be extended

ALO(C)  
(Commercial)  
1 APGC, DL1