

**For discussion on
29 October 2018**

**Legislative Council
Panel on Administration of Justice and Legal Services**

**2018 Policy Address
Policy Initiatives of the Chief Secretary for Administration's Office**

INTRODUCTION

This paper briefs Members on the policy initiatives of the Chief Secretary for Administration's Office (CSO) in relation to the Judiciary, legal aid and free legal advice services¹ in the 2018 Policy Address and Policy Agenda.

OUR VISION

2. An independent and efficient Judiciary is cardinal to Hong Kong's governance, which is founded on the rule of law. Judicial independence is the cornerstone of Hong Kong's success. We strive to render all necessary support to the Judiciary in promoting the effective, efficient and equitable administration of justice in Hong Kong.

3. Legal aid services form an integral part of the legal system in Hong Kong. We strive to ensure the accessibility of legal aid and free legal advice services to the public to contribute towards upholding the value of everyone being equal before the law.

NEW INITIATIVES

Judiciary

Proposed Extension of Statutory Retirement Ages for Judges and Judicial Officers

¹ We have implemented the initiative as announced in the Chief Executive's 2017 Policy Address to transfer the responsibilities for formulating legal aid policy and housekeeping the Legal Aid Department (LAD) from the Home Affairs Bureau (HAB) to CSO. The transfer took effect on 1 July 2018.

4. To help retain senior and experienced judicial talents and ease recruitment difficulties for the Judiciary, the Government has accepted the Judiciary's proposals to extend the statutory retirement ages for Judges and Judicial Officers² (JJOs). In gist, the statutory retirement ages for JJOs will be extended to 70 (judges at the level of the Court of First Instance of the High Court and above) and 65 (judicial officers below the High Court (HC) level). In addition, District Judges will be provided with a discretionary extension of term of office up to an aggregate of five years. Discretionary extension arrangements are now available for other levels of Court. With the support of this Panel in July 2018, the Government and the Judiciary have been actively working on the necessary legislative amendments. We hope to introduce them into the Legislative Council (LegCo) in the 2018-19 legislative session.

Legal Aid and Free Legal Advice Services

Review of Duty Lawyer Fees

5. The Government has completed a review of duty lawyer fees payable to duty lawyers providing legal assistance under the Duty Lawyer Scheme administered by the Duty Lawyer Service (DLS), which provides legal representation to eligible defendants who appear in Magistrates' Courts (MC), Juvenile Courts and the Coroners' Court. Having considered the recommendations of the Working Group on Review of Duty Lawyer Fees³ (Working Group) set up to conduct the review, the Government proposes to adjust duty lawyer fees upwards, with a view to ensuring that neither DLS nor LAD would have an unfair advantage in competing for the same pool of lawyers in the provision of their services. We also propose that, as a longer-term arrangement for reviewing duty lawyer fees, a mechanism be put in place such that future reviews of criminal legal aid fees⁴ would cover the review of duty lawyer fees in the same exercise. The Government will brief this Panel on the outcome of the duty lawyer fees review in early 2019, with a view to implementing

² "Judges" refer to officers in the grades of Chief Justice, Court of Final Appeal; Judge, Court of Final Appeal; Judge of the High Court; and Judge of the District Court. "Judicial Officers" refer to officers in the grades of Registrar, High Court; Registrar, District Court; Member, Lands Tribunal; Magistrate; Presiding Officer, Labour Tribunal; Adjudicator, Small Claims Tribunal; Coroner; and Special Magistrate. Special Magistrates are not included in the proposals as they would be gradually phased out.

³ Convened by HAB (which oversaw the legal aid portfolio before 1 July 2018), the Working Group comprised members nominated by the two legal professional bodies, DLS and relevant Government departments, namely the Department of Justice (DoJ) and LAD.

⁴ Fees payable to lawyers in private practice who undertake litigation work in respect of criminal cases by LAD.

the proposed adjustments in 2019-20⁵.

Additional Office for the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures

6. The Legal Advice Scheme for Unrepresented Litigants on Civil Procedures (Procedural Advice Scheme)⁶ provides free legal advice on civil procedural matters for unrepresented litigants who satisfy the income eligibility limit⁷ and have not engaged lawyers nor been granted legal aid. At present, the Scheme covers litigants who are parties to civil legal proceedings (including commencement of proceedings) in the Lands Tribunal, District Court (DC), Family Court (FC), Court of First Instance and the Court of Appeal of the High Court and the Court of Final Appeal. The Scheme office is located in the High Court Building.

7. During the period from 18 March 2013 to 30 September 2018, the Procedural Advice Scheme conducted a total of over 12 100 advice sessions for some 3 900 eligible litigants. Feedback from users was positive as over 98% of the survey respondents were satisfied with the service provided. As at 30 September 2018, 99 lawyers and 28 law students enrolled as community lawyers and student volunteers respectively.

8. The Government has decided to set up an additional office for the Procedural Advice Scheme in the Wan Chai Law Courts Building to meet the increasing service needs and provide more accessible service to litigants involved in DC and FC cases. The necessary preparation work for setting up the office (including fitting-out works and staff recruitment) is underway. The new office is expected to commence operation in the first quarter of 2019.

⁵ DoJ makes reference to the same fee scale as duty lawyer fees when engaging lawyers in private practice on a standard briefing out basis to prosecute criminal cases in MC in place of Court Prosecutors on fiat, with a view to ensuring that neither the Duty Lawyer Scheme nor DoJ would have any advantage in competing for the same pool of lawyers. Against the background of this established practice, in order to maintain the necessary equality of arms, DoJ will accordingly adjust its scale fees (i.e. prosecution fees) according to the corresponding upward adjustments to duty lawyer fees upon implementation. Moreover, prosecution fees will also be covered in the same review exercise for criminal legal aid fees and duty lawyer fees.

⁶ The Procedural Advice Scheme was first launched as a pilot scheme in March 2013 and became a regular Government programme in April 2016.

⁷ The income eligibility limit of the Procedural Advice Scheme is currently set at a monthly income of \$50,000 or an annual income of \$600,000.

ONGOING INITIATIVES

Judiciary

The New High Court and the New District Court

9. To address the long-term accommodation needs of the Judiciary, the Chief Executive announced in her 2017 Policy Address that a new HC will be constructed at Site 5 and the site south of Site 5 at the new Central harbourfront to relocate the existing HC Building in Admiralty. In addition, a new DC will be constructed at Caroline Hill Road to house the DC, the FC and the Lands Tribunal. A Central Steering Committee for the Development of the High Court and the District Court has been established under the Judiciary to oversee the implementation of the two projects.

10. For the HC, the Architectural Services Department (ArchSD), as the works agent, is actively examining the site conditions and the implementation issues, and has been working in close partnership with relevant departments to ensure smooth delivery of the projects, including sorting out interfacing issues with infrastructure projects in the vicinity such as the Shatin to Central Link and the North Island Line under planning. The Judiciary has also started planning work and is preparing the Project Definition Statement for the new HC.

11. For the DC, the Planning Department (PlanD) had consulted the Wan Chai District Council (WCDC) on the rezoning proposal of the Caroline Hill Road site⁸ in May 2018. Having regard to the comments received, PlanD plans to further consult WCDC in around November 2018 before gazetting the rezoning proposal by the end of 2018. Meanwhile, ArchSD is actively preparing the Technical Feasibility Statement for the project with a view to completing it within this year.

Legal Aid and Free Legal Advice Services

Review of Supplementary Legal Aid Scheme

12. The policy objective of legal aid is to ensure that all those who meet the criteria set out in the Legal Aid Ordinance (LAO) (Cap. 91) and have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice due to a lack of means. To qualify for legal aid, a person is required to satisfy both the

⁸ From “Other Specified Use” annotated “Sports and Recreation Club” and “Government, Institution or Community” to “Commercial” and “Government, Institution or Community”.

means test and merits test as provided by the LAO.

13. Subsequent to the substantial expansion of the scope of Supplementary Legal Aid Scheme (SLAS) in November 2012 following the previous review⁹, the Legal Aid Services Council (LASC) completed a further review on the scope of SLAS and submitted its recommendations to the Government in July 2016. We reported to this Panel on LASC's recommendations and the Government's position in April 2017, and briefed this Panel on the proposed legislative amendments pursuant to the review in April 2018¹⁰. With Members' support, the Government will introduce the legislative amendments into LegCo in the 2018-19 legislative session, with a view to implementing the expansion proposals in the first half of 2019.

Review of Criminal Legal Aid Fees

14. Pursuant to the report to LegCo Finance Committee in October 1992, criminal legal aid fees, prosecution fees and duty lawyer fees are subject to review on a biennial basis to take into account changes in Consumer Price Index (C) (CPI(C)) during the reference period. Following the completion of the previous biennial review for the reference period of July 2014 to July 2016, the revised fees (with an upward adjustment of 4.0%) came into effect on 3 April 2018. We have embarked on the next biennial review which covers the reference period of July 2016 to July 2018. Upon completion of the review, the Government will report the outcome to this Panel.

⁹ In addition to the pre-existing claims relating to personal injuries, employees compensation and medical, dental and legal professional negligence, the scope of SLAS was substantially expanded in November 2012 to cover a wider range of professional negligence claims, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, and representation for employees in appeals against awards made by the Labour Tribunal.

¹⁰ It is recommended by LASC and supported by this Panel that the scope of SLAS be expanded to cover civil proceedings in respect of monetary claims –

- (a) for professional negligence against financial intermediaries licensed or registered for Type 1 (dealing in securities), Type 2 (dealing in futures contracts) or Type 8 (securities margin financing) regulated activities with the meaning of the Securities and Futures Ordinance (Cap. 571); and
- (b) in respect of derivatives of securities, currency futures or other futures contracts on the basis that the person seeking legal aid was induced to deal in those derivatives, futures or contracts by fraud, deception or misrepresentation.

The Government will also take the opportunity of the current legislative amendment exercise for expanding the scope of SLAS to revise the minimum claim amount for proceedings to which SLAS applies in order to tie in with the Judiciary's increase of the jurisdictional limit of the Small Claims Tribunal to \$75,000 (with effect from 3 December 2018 subject to the completion of legislative formalities).

Review of Financial Eligibility Limits of Legal Aid Applicants

15. Pursuant to the Government's report to LegCo on the Legal Aid (Amendment) Bill 1999 in September 1999, the financial eligibility limits (FELs) under the Ordinary Legal Aid Scheme and SLAS are to be reviewed annually to take into account general price movement and biennially to take into account changes in litigation costs and other relevant factors.

16. This Panel was informed vide an information note in April 2018 that the Government has completed the annual review of the FELs of legal aid applicants for the reference period from July 2016 to July 2017 and recommended that the FELs be increased by 1.7% to reflect the accumulated change in the CPI(C) recorded during the reference period. The Government will introduce the legislative amendments into LegCo by way of subsidiary legislation in the 2018-19 legislative session to implement the revised FELs.

17. In conducting the previous biennial reviews, the Government sought assistance from the two legal professional bodies but was advised that information on private litigation costs was not available. Taking into account the views and suggestions of a LegCo subcommittee¹¹ on how to take forward the biennial review, we are exploring other possible means to gather information on litigation costs and will consult LASC and this Panel on the possible way forward in due course.

Review of Director of Legal Aid's First Charge

18. The Government has completed a review on the amounts specified in sections 18A(5) and 19B(1)(a) of the LAO relating to the Director of Legal Aid's first charge¹² and briefed this Panel in April 2018 on the outcome of the review and the way forward. As Members

¹¹ At the LegCo House Committee meeting of 30 June 2017, Members decided to form a subcommittee to scrutinise the proposed resolution to increase the FELs pursuant to the review for the reference period from July 2014 to July 2016. The subcommittee held its first meeting on 14 July 2017 to elect the Chairman and completed its work at the second meeting held on 7 November 2017.

¹² According to section 18A(5) of the LAO, if a legally-aided person is successful in recovering or preserving any money or property in the legally aided proceedings, he/she will be required to repay the Director of Legal Aid (DLA) all sums paid or payable on his/her behalf out of the money or property recovered or preserved (periodical maintenance for spouse or former spouse up to the first \$4,800 per month and periodical maintenance for children exempted). The sum that the legally-aided person has to pay DLA is called DLA's first charge. Moreover, DLA may exercise discretion to waive his first charge for an amount not exceeding \$57,400 in cases of serious hardship pursuant to section 19B(1)(a) of the LAO.

supported the proposed adjustments to the two amounts¹³ with a view to bringing them in line with inflationary changes as well as other developments, the Government will introduce the legislative amendments into LegCo by way of subsidiary legislation in the 2018-19 legislative session to implement the proposed adjustments.

Free Legal Advice Scheme

19. The Government provides subvention for DLS to implement the Free Legal Advice Scheme (FLAS) to provide free preliminary legal advice to members of the public without means testing at nine District Offices¹⁴ of the Home Affairs Department. At present, there are over 1 000 volunteer lawyers participating in FLAS, handling around 6 400 cases per year. The Government will continue to work with DLS and the two legal professional bodies to promote FLAS and encourage more lawyers to participate in FLAS.

Recognition Scheme for Provision of Pro Bono Legal Services

20. As an initiative to encourage more members of the legal profession to volunteer to provide free legal services to the public, the Government has been organising the Recognition Scheme for Provision of Pro Bono Legal Services (Recognition Scheme) on a biennial basis since 2011. For the 2016/17 Recognition Scheme, a total of 232 legal professionals¹⁵ and 32 law firms were recognised at the award presentation ceremony held on 17 April 2018. Riding on the success of the Recognition Scheme, we will launch the fourth exercise later this year to continue to give recognition to members of the legal profession providing pro bono legal services.

¹³ It was proposed that the amount specified in section 18A(5) be adjusted upward from \$4,800 to \$8,660 and the amount specified in 19B(1)(a) be adjusted upward from \$57,400 to \$103,510.

¹⁴ The nine District Offices are Central and Western, Wan Chai, Eastern, Kwun Tong, Wong Tai Sin, Yau Tsim Mong, Shatin, Tsuen Wan, and Islands District Offices.

¹⁵ The 232 legal professionals received Individual Awards for having provided pro bono legal services for not less than 30 hours between 1 January 2016 and 31 December 31 2017. Among them, 143 were presented with Special Awards as they performed pro bono legal services of not less than 50 hours within the two-year period.

ADVICE SOUGHT

21. Members are invited to note the policy initiatives in relation to the Judiciary and legal aid and free legal advice services as set out above.

**Administration Wing
Chief Secretary for Administration's Office
October 2018**