

5 法律援助政策及策略 Legal Aid Policy & Strategy

社区法律服务

Community Legal Services

在2012-13年报中，曾交代行政当局在更新社区法网时，会考虑本局对社区法律服务的意见。

社区法网是由香港大学（「港大」）在2007年成立和开始营运，是一个透过网站（<http://clic.org.hk>）发放免费双语法律资讯的平台。为增强社区法网的内容，民政事务局（「民政局」）资助港大增设与青年、长者和家庭有关的法律资讯。

在2013年4月，民政局通知本局，除了青年社区法网已于2012年4月推出外，第一个以香港长者为对象的法律资讯网站—长者社区法网亦已于2013年4月15日投入服务。青年社区法网提供逾60项关乎青少年的罪行和法律议题的资料和影片，其内容也被整理为中学的法律教材套。长者社区法网则编订及提供适用于长者的基本法律资讯。

在2013年6月，本局再获通报有关青年社区法网和长者社区法网的宣传活动，这持续进行的措施亦有在2014年1月由行政当局呈交给立法会司法及法

In the Annual Report 2012-2013, it was reported that the Administration would take into consideration the Council's recommendations on community legal services when enhancing the Community Legal Information Centre (CLIC).

The CLIC is a platform developed and run by the University of Hong Kong (HKU) since 2007 to provide bilingual free legal information through its website (<http://clic.org.hk>). To enhance the CLIC, the Home Affairs Bureau (HAB) has provided sponsorship to HKU to cover special topics relevant to the youth, elderly and families.

In April 2013, the HAB informed the Council that apart from the launch of the Youth CLIC in April 2012, the first legal information website for seniors in Hong Kong, Senior CLIC, had been launched on 15 April 2013. The Youth CLIC provides information and videos on more than 60 offences and legal issues concerning youngsters. The content of Youth CLIC is





律事务委员会，一份题为「民政事务局的政策措施」的立法会文件中报告。

在2014年3月，民政局向本局递交了一份资料文件，简报社区法网更新工作的进程，以及于2014年3月31日推出家庭社区法网。家庭社区法网免费提供19项与香港家庭常见问题相关的法律资讯，包括婚姻、资产管理、儿童及青少年问题、以及与日常生活有关的事项等，资讯内容均由法律专家撰写，深入浅出解释相关法例和法律概念。家庭社区法网旨在成为一个快捷方便的网上手册，供香港的家庭寻找相关的法律资料。家庭社区法网为社区法网提升项目中的最后一个课题。在家庭社区法网完成后，民政局会与非政府机构合作，举办专题工作坊、研讨会和推广活动，以增加公众的法律知识，并提高他们对社区法律服务的认识。

本局乐见最新的发展。

also being converted into teaching packages on legal issues for secondary schools. The Senior CLIC provides basic legal information tailored for the elderly.

In June 2013, the Council was further briefed on the publicity of the CLIC that had been provided to promote the Youth CLIC and Senior CLIC. This ongoing initiative was also reported in the Legislative Council paper on “Policy Initiatives of Home Affairs Bureau” submitted to the Panel on Administration and Legal Services (AJLS Panel) in January 2014.

In March 2014, the HAB submitted an information paper to the Council briefing members on the progress of the enhancement of the CLIC and the launching of the Family CLIC on 31 March 2014. The Family CLIC provides free legal information on 19 topics involving legal issues commonly encountered by families in Hong Kong, including matrimonial matters, properties arrangements, child and youth affairs, and daily lives legal issues, etc. The contents are written by legal experts, with the relevant laws and legal concepts being explained in plain language. The Family CLIC aims to serve as a quick and handy internet guide for family members in Hong Kong to find relevant legal information. The Family CLIC is the last topic covered in the CLIC enhancement project. Upon completion of the Family CLIC, HAB will arrange workshops, seminars and publicity events, in collaboration with non-government organisations, on thematic topics to increase the public’s legal knowledge and enhance their awareness of legal services available at the community level.

The Council is glad to see the developments.

法律援助辅助计划的检讨

Review of Supplementary Legal Aid Scheme

每年，行政当局会计及丙类消费物价指数的变动，检讨普通法律援助计划（「普通计划」）和法律援助辅助计划（「辅助计划」）的财务资格限额（「财务限额」），以维持财务限额的实际价值。任何不超越财务限额的人士，均在经济上有资格申请法律援助。

在2013年6月27日的本局会议中，民政局通知本局，立法会成立了根据《法律援助条例》（第91章）第7(a)条动议的拟议决议案小组委员会，以研究行政当局就2012年周年检讨的结果，提出修订根据普通计划和辅助计划申请法援的财务限额的建议。在该小组委员会的会议中，有委员提出以下的建议：

- (a) 在政府于2012年12月将一亿元注资辅助计划基金后，辅助计划的涵盖范围应进一步扩展至更多类别的案件；及
- (b) 部分委员提议普通计划和辅助计划应涵盖诽谤案件。

对于(a)点，本局得知由于扩大后的辅助计划是在2012年11月才开始生效，行政当局曾向立法会解释需要多些时间去评估扩大后的辅助计划对该计划基金财政自负盈亏能力的影响和运作所得的经验。行政当局会在积累多些经验后，谘询本局对

The financial eligibility limits (FELs) of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) are reviewed annually by the Administration to take into account changes in the Consumer Price Index (C) so as to maintain their real values. A person whose financial resources do not exceed the FELs is financially eligible for legal aid.

At the Council meeting held on 27 June 2013, the HAB informed the Council that at a meeting of the Subcommittee on Proposed Resolution under Section 7(a) of the Legal Aid Ordinance (Cap. 91) of Legislative Council (LegCo) which was formed to study the Administration's proposal to amend the FELs for OLAS and SLAS for the granting of legal aid to reflect the result of the 2012 annual review, members of the subcommittee had made the following suggestions -

- (a) the scope of SLAS should be further expanded to cover more types of cases, following the injection of \$100 million by the Government into the SLAS Fund in December 2012; and
- (b) some Members suggested the scope of OLAS and SLAS be expanded to cover defamatory cases.

On (a), the Council was told that as the expanded SLAS only commenced operation in November 2012, the Administration had explained to LegCo that more time was needed to assess the impact of such expansion on the financial viability of the SLAS Fund and the operational experience gained; and the Administration would consult the Council on whether the scope of SLAS should be further expanded, after acquiring more

进一步扩大辅助计划涵盖范围的意见，然后才向司法及法律事务委员会汇报。

至于(b)点，行政当局向小组委员会承诺，将其建议转达予本局考虑。

就普通计划涵盖范围，民政局通知本局除了诽谤外，有一位立法会议员建议将选举呈请亦纳入计划之内。

就本局在上述会议中所提出的要求，民政局连同法律援助署将提供资料文件，阐述其他海外司法地区的法律援助有否包括诽谤和选举呈请，以助本局进行研究。

于本局2014年1月21日的会议中，民政局正式邀请本局为辅助计划涵盖范围进行检讨，并提交新一轮的建议供行政当局参考。本局在会上同意一个由本局成员周凯灵女士任主席，并由其他三位本局成员组成的工作小组，负责有关研究。该工作小组已在2014年3月18日举行第一次会议，完成研究后会提交建议给本局大会详细考虑。

operational experience, before reporting to the AJLS Panel.

Regarding (b), the Administration conveyed the suggestion to the Council for consideration as committed to the Subcommittee.

On the scope of OLAS, apart from defamation, HAB also informed the Council that election petition was also suggested by a LegCo member to be included in the scheme.

As requested by the Council at the above-said meeting, HAB together with LAD would provide a paper setting out whether legal aid in overseas jurisdictions covered defamation and election petition to facilitate the Council to conduct the review.

At the Council meeting held on 21 January 2014, HAB formally invited the Council to conduct a review on the scope of SLAS and to submit a new round of recommendations to the Administration for consideration. The Council agreed at the meeting that the working group chaired by Council member Ms Juliana CHOW and supported by 3 other Council members would study the matter. The working group has held its first meeting on 18 March 2014. It will submit its recommendations to the full Council for deliberation in due course.

就刑事法律援助费用、检控费用及当值律师费用 每两年进行一次检讨

Biennial Review of Criminal Legal Aid Fees, Prosecution Fees and Duty Lawyer Fees

《刑事诉讼程序条例》(第221章)下《刑事案件法律援助规则》第21条订明的刑事法律援助费用，是支付予代表法援署处理刑事法援案件诉讼工作的私人执业律师。律政司参照同一收费表聘任私人执业大律师代表政府出庭处理刑事案件（即检控费用）。当值律师费用是支付予为当值律师服务提供法律援助的当值律师，该费用也是参照相同的收费表厘定。

根据立法会财务委员会于1992年10月所作的决定，行政当局会每两年检讨上述费用一次。财务委员会并于2003年6月把日后批准调整费用的权力转授予行政当局，惟调整幅度不得超逾参照期内按丙类消费物价指数计算的物价变动幅度。

行政当局已完成2012年的刑事法律援助费用、检控费用及当值律师费用的两年检讨，并在本局2013年6月的会议中通知本局检讨结果。有鉴于丙类消费物价指数在参照期内(即2010年7月至2012年7月)上升了9.3%，因此行政当局建议将该等费用相应调高9.3%。

按照惯例，待刑事诉讼程序委员会

The criminal legal aid fees prescribed in Rule 21 of the Legal Aid in Criminal Cases Rules under the Criminal Procedure Ordinance (Cap. 221) are payable to lawyers in private practice assigned by the LAD to undertake litigation work in respect of criminal legal aid cases. The Department of Justice (DoJ) draws reference to the same scale of fees to engage counsel in private practice to prosecute in criminal cases on behalf of the Government (i.e. the prosecution fees). The duty lawyer fees, which are payable to duty lawyers providing legal representation under the Duty Lawyer Service, are also determined with reference to the same scale of fees.

Pursuant to the decision of the LegCo Finance Committee in October 1992, the fees are subject to review by the Administration on a biennial basis. The Finance Committee also delegated in June 2003 the authority to approve future adjustments to the fees to the Administration, provided that the extent of adjustment is no greater than the movement of the Consumer Price Index (C) (CPI(C)) during the reference period.

The Administration completed the 2012 biennial review of the criminal legal aid fees, the prosecution fees and the duty lawyer fees, and informed the Council of its findings of the review at its meeting in June 2013. Noting that the CPI(C) for the reference period (i.e. July 2010 to July 2012) has increased by



决定后，行政当局会于立法会提出动议修订《刑事案件法律援助规则》，把刑事法律援助费用调高9.3%，以反映检讨结果。检控费用及当值律师费用虽然并无在《刑事案件法律援助规则》订明，行政当局也会因应最新厘定的刑事法律援助费用，以行政方法加以调整，以反映丙类消费物价指数上升9.3%的变动。

本局明白此动议属例行调整，行政当局会于2014年进行一次全面的刑事法律援助费用的检讨。

为回应香港大律师公会就刑事法律援助费用的意见，行政当局在2014年1月向本局提交了一份资料文件，阐明有关检讨的工作计划及刑事法律援助费用制度的原则。本局亦留意到民政局连同法律援助署已组成工作小组，并邀请了两个法律专业团体派代表加入小组开展检讨工作。刑事法律援助费用制度检讨工作小组在2014年3月26日举行了首次会议，行政当局将按工作小组的商议和讨论进度，进行立法修订，以尽快推行检讨所作的建议。民政局承诺将紧密通报本局有关进度。

9.3%，the Administration proposed to adjust the fees upward by 9.3 % accordingly.

Following the established practice, subject to the Criminal Procedure Rules Committee's decision, the Administration will move a resolution in the LegCo to amend the Legal Aid in Criminal Cases Rules to adjust the criminal legal aid fees upward by 9.3% to reflect the result of the review. The prosecution fees and the duty lawyer fees, although not specified in the Legal Aid in Criminal Cases Rules, will be adjusted administratively by drawing reference to the updated set of criminal legal aid fees to reflect the +9.3% change in CPI(C).

The Council noted that the proposal is a mechanical adjustment and the Administration would conduct a comprehensive review of the criminal legal aid fees in 2014.

In response to the submission of the Hong Kong Bar Association on the review of criminal legal aid fees, the Administration submitted an information paper to the Council in January 2014 setting out their work plan on the review and the principles of criminal legal aid fees system. It was also noted that HAB together with LAD had formed a working group and invited representatives from the two legal professional bodies to join the working group to commence the review. The Working Group on the Review of Criminal Legal Aid Fees System held its first meeting on 26 March 2014. Subject to the deliberations and progress of discussions at the Working Group, the Administration will introduce legislative amendments to implement the recommendations of the review as soon as possible. HAB agreed to keep the Council closely informed of the progress.

「申报制度」 “Declaration System”



在两个广为人知的司法复核案件经法庭作出裁决后，对于法援署处理司法复核案件时，按照法援受助人提名委派律师的安排，一直备受关注。立法会司法及法律事务委员会在其2012年1月的会议中，曾讨论司法复核案件的法律援助申请的处理和委派律师处理法援案件的安排。在该会议中，法援署获建议考虑推行一个申报制度，在委派律师前，要求申请人申报在提名律师时，没有受到兜揽生意或其他不当行为所影响。这个议题于2012年3月在特别财务委员会提问中再次带出，而行政当局回复会考虑引入「申报制度」。在2012年4月，交通事务委员会和财经事务委员会联合小组委员会在会议中，讨论了法援申请人在法律援助条例下可拣选其代表律师的权利可能是其中一个因素，导致承保的士和公共小巴的保险公司因作出了大额赔偿而出现

There have been concerns over the assignment of lawyers by the LAD in judicial review cases based on the aided persons' nomination following the court's rulings in two high profile judicial review cases. The processing of legal aid applications in respect of judicial review cases and the assignment of lawyers in legal aid cases were discussed by the AJLS Panel at its meeting held in January 2012. At that meeting, LAD was suggested to consider implementing a declaration system requiring the applicant, before the assignment, to declare that his choice of lawyer had not been affected by touting or other improper conduct on the part of the lawyer nominated. The issue was brought up again in the form of a Special Finance Committee question in March 2012, to which the Administration replied that it would consider introducing a "Declaration System". LAD also reiterated the intention to consider putting in place a "Declaration System" at a meeting of the joint sub-committee of the Panel on Transport and Panel on Financial Affairs held in April 2012, at which there was discussion that the right of an applicant for legal aid to select his own solicitor under the Legal Aid Ordinance might be a contributing factor to the losses in underwriting insurance for taxi and public light bus as a result of substantial claims being made.

In November 2012, LAD submitted to the Council its proposal of a "declaration system" that would apply to both the applicants and the panel lawyers. It aimed at ensuring an aided person's choice of lawyers would not be affected by questionable touting activity or other improper conduct on the part of the lawyer nominated.

亏损的情况。法援署在该会议中，重申有意考虑推行「申报制度」。

在2012年11月，法援署向本局提交了建议书，阐述一个适用于申请人和名册律师的「申报制度」，该制度的目的是确保受助人在提名律师时，没有因有问题的兜揽生意活动或其他不当行为而影响其拣选律师的决定。

申请人

在现行的外委律师程序中，申请人若想提名名册律师代表其在法援受助案件进行诉讼，必须填写一份提名表格。法援署认为在提名表格加入申报一栏，是一个简易方法将「申报制度」引入在申请程序之中。

名册律师

法援署建议向被提名名册律师推行一个「反证」的「申报制度」。有关申报会列为条件写入委派信件内，而不是要求获提名名册律师在正式接受委托时，签署及交回申报书予法援署。获提名名册律师在细阅有关条件后，如不想接受相关委派，则需向法援署交回所有文件。

本局得悉建议的「申报制度」旨在保障而非惩罚申请人。申请人拒绝作出建议申报或作虚假申报并不会是拒绝其法援申请的合理原因，在这个情况下，处理案件的法律援助律师会与申请人商讨，解答他们就选择律师的查询。假若申请人维持

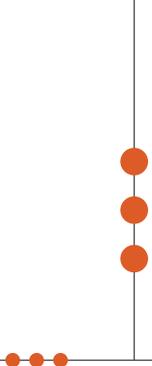
The applicants

Under the existing assignment procedures, applicants who wish to nominate panel solicitors to act in their legally aided proceedings are requested to sign a nomination form. LAD considered that it would be a convenient point in the application process to introduce the declaration by incorporating the declaration in the nomination form.

The panel lawyers

LAD proposed a “negative” “declaration system” for nominated panel lawyers. Instead of requiring the nominated panel lawyers to sign and return the declaration to LAD before they could formally take up the assignment, the declaration was incorporated into the assignment letter as a condition of assignment. The nominated panel lawyers were required to return the papers to LAD only if they wished to decline the assignment after having sight of the conditions.

The Council was explained that noting the purpose of the proposed “declaration system” was to protect instead of penalizing the applicants, the refusal of the applicant to make the proposed declaration or made a false one would not be a justifiable reason for refusing legal aid. Under such circumstances, the case handling legal aid counsel would discuss the matter with the applicants and answer their queries on the choice of lawyers. In the event that the applicant maintained his nomination but refused to make the proposed declaration without good reasons, the case would be assigned to another panel lawyer who satisfied the assignment criteria. If the applicant was aggrieved by LAD’s refusal to assign the lawyer nominated, he would be advised of his right to appeal to the Registrar against LAD’s decision as prescribed



其律师提名，但在没有合理原因下拒绝所建议的申报，其案件有可能会委派给其他符合外委准则的名册律师。如果申请人因法援署拒绝将案件委派给其提名律师而感到受屈，他可以按法律援助条例第26条，向高等法院司法常务官上诉，反对法援署决定。至于虚假申报，如果发现受助人可能与获提名律师/大律师有包揽诉讼协议而作出虚假申报，法援署会视乎所披露或掌握的资料，将个案转介给警方作刑事罪行进行调查。

本局在2012年11月8日的会议中对建议的「申报制度」作首次讨论，其后法援署向香港大律师公会和香港律师会征求意见。

在2013年6月27日本局举行的会议中，本局成员获知两个法律专业团体对建议「申报制度」的意见，以及法援署对有关意见的回应。本局知悉如果采纳一个正式「申报制度」度的方式，这有可能令公众觉得法援制度是惩罚，而不是保障受助人的利益，亦会阻止潜在申请人申请法律援助；而且，要求所有成功的申请者均作出正式申报，这会为法援署和司法机构带来很大的工作压力，以处理宣誓声明的行政工作。此外，要求获委的名册律师作声明而不是将申报加入委派文件中，有可能会延迟受助诉讼，同时会增加需缴付的法律费用，对受助人或法援基金均造成不利的财务影响。

under section 26 of the Legal Aid Ordinance. So far as false declaration was concerned, if it transpired that an aided person had made a false declaration regarding possible involvement in champertous agreement with the nominated solicitor/counsel, LAD might depend on the facts disclosed or made known to LAD referred the case to the Police for investigation of possible criminal act.

The proposed “declaration system” was first discussed at the Council meeting held on 8 November 2012. After that, the comments of Hong Kong Bar Association and the Law Society of Hong Kong were sought.

At the Council meeting held on 27 June 2013, members were briefed on the views of the two legal professional bodies on the proposed “declaration system” and the LAD’s responses to those views. The Council was given to know that if the format of a formal declaration system was adopted, it might give rise to the perception that the Legal Aid System was penalising instead of protecting the interest of the aided persons and it might also deter potential applicants from applying for legal aid. Also, requiring all successful applicants to formally making a declaration might put the LAD and the Judiciary under substantial work pressure in having to deal with the administration of the declaration under oath. In addition, requiring all assigned panel lawyers to make declaration instead of incorporating it into the assignment letter might cause delay to the aided proceedings and would also increase the amount of legal costs payable resulting in possible adverse financial implication for the aided persons or the legal aid fund.



在上述会议中，本局同时知悉法援署已推出一连串措施打击不当「兜揽生意」活动，包括停止向因提名而接获很多委派案件的名册律师外派工作、在法援通讯刊登有关索偿代理的文章、在法援署内展示宣传海报，以及制作短片提醒公众在进行金钱申索时，不要向索偿代理寻求协助。

经商议后，本局同意建议的「申报制度」，并提出建议成功申请人应确认他们的相关提名事宜，而并非要求他们作出声明。法援署接纳建议。

本局希望这些新措施有助根除妨碍受助人自由选择法律代表的行为，以保障他们寻求公义的权利。「申报制度」已于2013年9月生效。

During the above-said meeting, the Council was also given to know that the LAD had already taken a number of measures to combat improper touting activities including stopping assignment of cases to panel lawyers with substantial number of assignments due to nomination, publishing article on recovery agent in LAD News and displaying poster in LAD's premises as well as producing video documentary warning the public against seeking help from recovery agents to assist them in their monetary claims.

Upon discussion, the Council endorsed the proposed "declaration system" but made a suggestion that successful applicants should be asked to confirm instead of to declare the matters relating to their nomination. The suggestion was accepted by LAD.

It is hoped that the new measures will help eradicate conduct that prevents aided persons from freely choosing legal representatives thus safeguarding their right of access to justice. The declaration system was implemented in September 2013.