

如去年年報所載，本局於2013年4月向行政長官提交了本局就設立獨立的法律援助管理局的可行性及可取性所作的建議。應立法會司法及法律事務委員會（「委員會」）的邀請，本局參與其2013年6月25日的會議，商討有關「設立獨立的法律援助管理局」，主席李家祥博士聯同成員洪為民博士和蔡惠琴女士代表出席。香港大律師公會、香港律師會、法律援助律師會和香港工會聯合會亦派代表出席會議。

在委員會會議中，本局向委員會委員簡介了本局的建議、相關顧問研究的結果和所採用的研究方法，隨後，兩個法律專業團體和其他代表亦就該議題表達他們的意見。在眾多的意見中，兩個法律專業團體和部份代表強烈要求設立獨立的法律援助管理局，儘管他們明白這可能會令法援服務的財政預算需設定上限。考慮到法援財政預算設有上限可能帶來的後果，本局提醒委員會要認真審議有關建議，以及這是否有利於市民去尋求公義。本局同時在委員會上指出，根據海外司法管轄區的經驗，由於要制訂一份可承擔的財政預算，獨立的法援管理局可能要在法援服務方面作出犧牲。

回應香港大律師公會聲稱法援服務經費在實際上設有上限，行政當局在委員會會議中解釋法援預算從來都沒有設上限，及承諾向委員會提供更多法援開支的詳細資料。

As reported in the last report, the Council submitted to the Chief Executive in April 2013 its recommendations on the feasibility and desirability of the establishment of an independent legal aid authority. On the invitation of the Legislative Council Panel on Administration and Legal Services (AJLS Panel) for discussion of the item "Establishment of an independent legal aid authority" at its meeting held on 25 June 2013, the Council chairman Dr Eric LI, Council members Dr Witman HUNG and Ms Virginia CHOI, on behalf of the Council, attended the meeting. Representatives from Hong Kong Bar Association, the Law Society of Hong Kong, Legal Aid Counsel Association, and Hong Kong Federation of Trade Unions also attended the meeting.

At the Panel meeting, the Council was invited to brief Panel members on the Council's recommendations, and the findings and methodology used in the related consultancy study. The two legal professional bodies and other deputations were invited to express their views on the issue after the Council's briefing. Among other things, the two legal professional bodies and some deputations urged for the establishment of an independent legal aid authority though they understood that a financial cap would be put on legal aid budget. Having considered the implication of a capped budget for legal aid, the Council reminded the AJLS Panel to consider seriously the suggestion and whether it was for the benefit of members of the public in their quest for access to justice. The Council also pointed out to the Panel that an independent legal aid authority might have to make some sacrifices in the provision of services in order to work out an affordable budget with reference to the experience overseas.



在2013年9月，行政當局呈交一份文件予委員會，簡報由法援署提供的法援服務的原則和運作情況，以及提供過去五年法援服務的開支資料。文件複本亦提交予本局參閱。

在文件中，行政當局重申提供法援服務是香港司法制度不可缺少的部份。政府政策的目標，是確保所有具合理理據提出訴訟或抗辯的人，不會因缺乏經濟能力而無法尋求公義。任何人士如欲獲得法援，必須通過《法律援助條例》（第91章）規定的經濟審查及案情審查。

目前，財務資源不超過269,620元的人士，在經濟上符合資格根據普通法律援助計劃（「普通計劃」）申請法援。該計劃涵蓋在區域法院及以上法院大部分的民事訴訟程序。上述財務資格限額亦適用於《刑事訴訟程序條例》（第221D章）下的《刑事案件法律援助規則》所載的刑事法律援助。法律援助輔助計

In response to the Hong Kong Bar Association's assertion that the budget on legal aid costs was "de facto capped", the Administration explained at the Panel meeting that there was no cap on the legal aid budget and it undertook to provide the Panel with more details of the legal aid expenses.

In September 2013, the Administration forwarded a paper to the AJLS Panel briefing Panel members on the principles and operation of the legal aid services provided by the LAD and providing information relating to legal aid spending over the past five years. A copy of the paper was also provided to the Council for information.

In the paper, the Administration reiterated that the provision of legal aid is an integral part of Hong Kong's legal system. The Government's policy objective is to ensure that no one with reasonable grounds for pursuing or defending a legal action is denied access to justice because of a lack of means. To qualify for legal aid, a person is required by law to satisfy the means and merits tests as provided by the Legal Aid Ordinance (LAO) (Cap. 91).

劃（「輔助計劃」）的相應限額為1,348,100元。普通計劃和輔助計劃的財務資格限額每年、每兩年及每五年檢討一次，以分別計及丙類消費物價指數、訴訟費及法援申請人財務資格的變動。

普通計劃及刑事法援的經費由政府提供，而輔助計劃則屬財政自給的計劃，經費主要來自申請人繳付的申請費、受助人繳付的中期分擔費，以及從勝訴案件討回的損害賠償中按比例扣除的款項。

自《法律援助條例》於1967年生效以來，該條例訂明審批法援申請的唯一準則是經濟審查及案情審查，而法律援助署（「法援署」）人員在處理申請時無須顧慮署方的財政撥款情況。換言之，任何人士均能尋

At present, a person whose financial resources do not exceed \$269,620 is financially eligible for legal aid under the Ordinary Legal Aid Scheme (OLAS), which covers most civil proceedings at District Court level and above. The eligibility limit also applies to criminal legal aid under the Legal Aid in Criminal Cases Rules of the Criminal Procedure Ordinance (Cap. 221D). The corresponding limit for the Supplementary Legal Aid Scheme (SLAS) is \$1,348,100. The financial eligibility limits (FELs) of OLAS and SLAS are reviewed annually, biennially and five-yearly to take into account changes in the Consumer Price Index (C), litigation costs and the financial eligibility of legal aid applicants respectively.

Funding for OLAS and criminal legal aid is provided by the Government, while SLAS is a self-financing scheme and is mainly funded by the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage



求司法公義，不會受法援署的財政狀況影響；而任何已通過經濟審查及案情審查的法援申請，不會因法援撥款不足而被拒。

行政當局亦指出法援署在擬訂分目208「法律援助經費」的周年財政預算時，一直有全面考慮過去實際開支和預計費用，主要包括以下因素—

- (a) 上一財政年度法律援助經費的支出；
- (b) 現時仍未完結的個案數目（包括如在上訴法院敗訴後預計會由受助人承擔巨額費用的法援個案）；
- (c) 新申請／個案的預計數目；
- (d) 財務資格限額的轉變（如適用）；
- (e) 法援費用（例如律師收費及大律師收費）的轉變（如適用）；以及
- (f) 普通計劃涵蓋範圍的轉變（如適用）。

deduction of the damages recovered in successful cases.

The statutory means and merits tests have been the only criteria provided by the LAO since it came into operation in 1967 in assessing legal aid applications, and officers of the Legal Aid Department (LAD) need not be concerned with the financial provisions of the Department when processing applications. In other words, a person's access to justice would not be hindered by LAD's fiscal position, and an application for legal aid that has passed both the means and merits tests would not be refused due to insufficient legal aid funding.

The Administration also advised that, all along, LAD's annual estimates of Subhead 208 "Legal aid costs" were drawn up holistically taking into account past actual expenditure and estimated costs which mainly included the following factors –

- (a) amount of legal aid costs spent in the preceding fiscal year;
- (b) number of existing on-going cases (including cases where it was expected that significant costs might be taxed against aided persons should the aided cases were lost in the appellate courts);
- (c) estimated number of new applications / cases;
- (d) changes, if any, to the FELs;
- (e) changes, if any, to legal aid fees (e.g. solicitor costs and counsel fees); and
- (f) changes, if any, to the scope of OLAS

過去五年法律援助經費（包括普通計劃及刑事法律援助案件）的預算及實際開支詳列如下—

The estimates and actual spending in legal aid costs (covering both OLAS and criminal cases) in the past five years are as follows –

財政年度 Financial year	2008-09	2009-10	2010-11	2011-12	2012-13
	百萬元 \$ million				
核准預算 Approved estimate	528.0	516.1	519.1	545.5	538.8
修訂預算 Revised estimate	455.0	489.2	514.5	475.5	508.6
實際開支 Actual expenditure	430.1	485.8	505.3	463.2	512.8

本局亦知悉基於行政理由，行政當局會在每個財政年度開始時設定核准撥款額。由於法援申請由需求主導，難以估計申請數目，因此在特殊情況下，若然財政年度內的經費超出核准撥款，行政當局會按《公共財政條例》（第2章）的相關條文尋求增撥款項，以確保合資格的法援申請不會因缺乏經費而被拒。以上的撥款安排適用於普通計劃及刑事法律援助，亦是法援署提供法援服務的重要基礎，因為法援是按照法律規定所提供，而服務需求不由管制人員控制。政府一向以來都有在財政預算中為需求主導的服務預留充裕的撥款。

本局對法律援助獨立性的建議已交政府考慮。在等待行政當局公佈其對法援獨立性的未來路向的同時，本局已與法援署商討發布更多有用的法援資訊，冀望能提高法援署運

The Council was also given to know that, for administrative purpose, an approved funding amount is set at the beginning of each financial year. As the number of applications is difficult to estimate as legal aid applications are demand-driven, in exceptional circumstances where the costs exceed the approved provisions within a financial year, supplementary provision would be sought according to the relevant provisions of the Public Finance Ordinance (PFO) (Cap. 2) to ensure that no eligible legal aid applications would be turned down owing to a lack of funds. This financial arrangement applies to OLAS and criminal legal aid. It is a key underpinning LAD's delivery of legal aid services, as the provision of legal aid is enshrined in law and the demand is beyond the control of the controlling officer. The Government has been providing sufficient provision in the Estimates for this demand-driven service all along.

The Council's recommendations on independence of legal aid are now in the hands of and under consideration by the Government. Pending the

作的透明度。一個由本局主席連同三個本局成員及不同行業範疇的專家組成的專責小組，正檢視有關事宜。該專責小組將會參考各持份者的關注事項／批評，以及檢視在法援獨立性顧問研究所採集的統計數據和法援署現時發布的資訊，再研究法援資訊需要改善的地方和方法。當專責小組完成相關建議後，便會交本局全體成員詳細討論。

Government's position on the way forward on the issue, the Council has discussed with LAD on the dissemination of more constructive legal aid information with a view to enhancing the Department's operational transparency. A task force chaired by the Council chairman and supported by 3 other Council members as well as experts of different professions has been set up to look into the matter. It will give consideration to the concerns/criticisms made by the stakeholders, and review the statistics collected by the consultant in the study on the independence of legal aid and those currently disseminated by the LAD to see what and how enhancement could be made. The Task Force's recommendations will be deliberated by the full Council when it is available.

