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# 法律援助的独立性

## Independence of Legal Aid

### 行政当局对本局建议的立场

行政当局在2014年6月24日立法会司法及法律事务委员会的会议上，向委员会成员简介了其跟进本局有关法律援助独立性建议的立场。

经审慎评估本局的建议、持分者的意见，以及有关长远督导法律援助范畴的政策考虑因素，行政当局决定：a) 原则上接受本局提出的建议，即制定法援政策及管理法律援助署（「法援署」）的责任应归属政务司司长办公室，以及法援署署长应直接向政务司司长汇报工作，并视乎政务司司长办公室于现届政府的各项工作承诺及民政事务局（「民政局」）目前进行的多项检讨的进度，研究落实建议的时间表；b) 在维持《法律援助服务局条例》（《法援局条例》）（第489章）赋予本局监察职能的现有法律框架及法援署现有拨款安排的前提下，跟进本局有关法援署管治及运作透明度的建议。

就本局提出的其他建议，行政当局的决定如下：

### The Administration's position in taking forward the Council's recommendations

At the meeting of the Panel of Administration of Justice and Legal Services of Legislative Council held on 24 June 2014, the Administration briefed Panel members on its position in taking forward the Council's recommendations on the independence of legal aid.

After careful assessment of the Council's recommendations, views from stakeholders, as well as policy considerations on the continuity in overseeing the legal aid portfolio, the Administration decided: a) to accept in principle the Council's recommendation that the responsibilities for formulating legal aid policy and "housekeeping" the Legal Aid Department (LAD) should be vested in the Chief Secretary for Administration's Office (CSO) and the Director of Legal Aid (DLA) should report directly to the Chief Secretary for Administration (CS), with the implementation timetable be reviewed in the light of various commitments of CSO in this term of Government and the progress of various on-going reviews which the Home Affairs Bureau (HAB) is undertaking; and b) to follow-up on the Council's recommendations regarding LAD's governance and operational transparency while maintaining the existing legal framework governing the Council's oversight role under the LASC Ordinance (Cap. 489) and legal aid funding support for LAD.

As regards LASC's other recommendations, the Administration's decision is as follows –

## 法援署署长及副署长的工作表现评核与提名

行政当局不赞成顾问提出有关本局应参与任命及评核法援署署长及副署长工作表现的建议，当局认为有关建议从根本上偏离现行公务员制度。现行公务员制度的基本原则是透过公开、公平及具竞争性的程序，任命最适合有关工作的人选。在任命晋升职级人员方面，现时已设有行之有效而透明的机制处理晋升遴选工作，当中包括召开及组成晋升遴选委员会、制订晋升遴选准则、公开晋升遴选程序等，而有关机制适用于整个公务员体系。此外，由本局提名署长及副署长人选亦未必符合现行法例的规定。然而，当局认为在评核署长及副署长的工作表现时，可纳入本局主席的意见。

## 法援局对法定代表律师办事处的监督角色

法定代表律师是根据《法定代表律师条例》委任的公职人员，在诉讼中代表由于年龄或精神原因在法律上无行为能力的人士。法定代表律师办事处设有独立的办事处，并有专属职员，职能与提供法援并无关系。由于本局的职能限于监督法援署提供的法援服务，行政当局认为并无充分理据把本局的角色延伸至法援服务以外，把法定代表律师办事处纳入本局监督范围。

## Performance evaluations and nominations of DLA and DDLAs

The Administration did not agree to the consultant's recommendation on the Council's involvement in the appointment and performance appraisal of DLA and the Deputy Directors of Legal Aid (DDLAs), which would represent a fundamental deviation from the prevailing civil service mechanism that has been devised to uphold the fundamental principle of appointing the most suitable person for the job through an open, fair and competitive process. For appointment to an office at a promotion rank, there is a well-established and transparent mechanism for conducting a promotion exercise, including convening of promotion boards and their composition, formulation of selection criteria for promotion, openness of the promotion exercise, etc. Such a mechanism is applicable service-wide. The Administration also considered it not legally in order for the Council to nominate candidates for the posts of DLA and DDLAs under the existing legislation. That said, the Administration found there should be scope for the views of the Chairman of LASC be reflected in performance evaluations of DLA and DDLAs.

## LASC's oversight role to cover Official Solicitor's Office

The Official Solicitor is appointed under the Official Solicitor Ordinance and is a public officer who represents the interest of persons under disability of age or mental capacity in proceedings. The Official Solicitor's Office (OSO) is housed under a separate office with its own dedicated staff performing functions that do not relate to the provision of legal aid. As the Council's function is confined to overseeing the legal aid services provided by LAD, the Administration did not see any strong justifications for

## 法律援助局监督法律援助署根据第9条要求外委律师提供意见的权力

根据《法律援助条例》（《法律援助条例》）（第91章）第9(d)条，法律援助署署长可把法律援助申请转介予名列适当名册的大律师或律师调查有关事实，并就该等事实提供报告或意见，或就该项法律援助申请所引起的任何法律问题提供意见。因应法律援助署按《法律援助条例》第9条寻求意见时会偏好选用律师名册中倾向赞同法律援助署署长决定的律师的观感问题，行政当局会继续与本局及法律援助署研究，能否在符合《法律援助条例》第4(3)条所订明本局不得就个别案件的处理作出指示的规定下，加强本局监督法律援助署根据《法律援助条例》第9(d)条外委律师的角色。

## 法律援助局监管法律援助署拒批民事及刑事法律援助申请的权力

由于本局的主要法定职责为监督法律援助署管理其所提供的法律援助服务，行政当局将与本局研究能否在法律援助署整体处理个案方面强化本局的监督角色。

expanding the role of the Council beyond legal aid to cover OSO.

## LASC's power to oversee LAD's case assignment for obtaining Section 9 opinions

Under Section 9(d) of the Legal Aid Ordinance (Cap. 91) (LAO), DLA may refer an application to a counsel or solicitor, whose name is on the appropriate panel, to investigate the facts and make a report thereon or to give any opinion thereon or on any question of law arising out of the application. To address the perception problem that LAD has a "preferred panel" of lawyers which provides "Section 9" opinions that favor DLA's interpretation of the legal merit of the case, the Administration would work with the Council and LAD to see if there is any room to enhance the Council's oversight on LAD's case assignments under Section 9(d) of LAO without interfering with the handling of individual cases as prescribed under Section 4(3) of the LASC Ordinance.

## LASC's power to oversee LAD's decisions on refusals of civil and criminal legal aid applications

As the Council's primary statutory responsibility is to oversee the administration of legal aid services provided by LAD, the Administration will work with the Council to see if there is any room to enhance its role in overseeing LAD's overall handling of cases.



民政局在本局2015年1月27日的会议上，向本局成员简介行政长官在2015年《施政报告》有关法律援助及法律服务的政策措施。当中，民政局重申行政当局会在维持《法律援助服务局条例》（第489章）赋予本局监察职能的现有法律框架及法援署现有拨款安排的前提下，跟进本局有关法援署管治及运作透明度的建议。民政局同时提到行政当局知悉本局已成立专责小组检视法律援助资讯的传递，从而就提高法援署的运作透明度提出建议。民政局表示行政当局将继续支持本局的工作。

## 提高法援署的运作透明度

如去年年报所载，本局已成立一个由本局主席带领，并由三名本局成员和来自不同专业范畴的专家组成的专责小组，以研究改善法律援助资讯的传递，从而提高法援署的运作透明度。

过去一年，专责小组分别于2014年6月16日、8月15日、10月10日及12月22日召开了共4次会议。详细工作进度将在下一章中阐释。

At the Council meeting held on 27 January 2015, HAB briefed Council members on details of the policy commitments in respect of legal aid and legal advice services in the Chief Executive's 2015 Policy Address. Among other things, HAB recapped that the Administration had undertaken to follow-up on the Council's major recommendations on the independence of legal aid regarding LAD's governance and operational transparency while maintaining the existing legal framework governing the Council's oversight role under the LASC Ordinance (Cap. 489) and legal aid funding support for LAD. HAB also said that the Administration noted the Council's setting up of a task force to review the dissemination of legal aid information with a view to making recommendations on the enhancement of LAD's operational transparency. HAB assured that the Administration would continue to support the Council's work.

## Enhancing the operational transparency of LAD

As reported in the last annual report, a task force chaired by the Council chairman and supported by 3 other Council members as well as experts of different professions was set up to review the dissemination of legal aid information with a view to enhancing the operational transparency of LAD.

During the year, the task force met on a total of 4 occasions i.e. 16 June, 15 August, 10 October, 22 December 2014. Details of the progress of the work done by the task force are given in the next chapter.