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## 主席回顾 Chairman's Review

过去一年，我们完成了为被扣留在警署人士提供法律方面的援助及扩大法律援助辅助计划的研究。

Over the year, we have completed the study on the provision of legal assistance to detainees at police stations and the expansion of Supplementary Legal Aid Scheme.

2015-16年是令人兴奋的一年，法律援助服务局完成研究为被扣留在警署的人士提供法律方面的援助及进一步检讨法律援助辅助计划。

2015-16 was an exciting year in which the Council has completed the study of the provision of legal assistance to detainees at police stations and the further review of the Supplementary Legal Aid Scheme.

## 为被扣留在警署的人士提供法律方面的援助 Legal Assistance to Detainees at Police Stations



在香港的刑事法例下，人人在法律面前，悉属平等。所有人均被假定无罪，而举证责任在检控一方。每个人都有权得到公平公开审讯的权利，亦不会被迫作出对自己不利的证供或认罪。为确保基本人权受到保障，每个人都应有权得到保密而及时的法律意见，以及由律师代表上庭的机会。

但是，一个被扣留人士在受到审问前，他的权益能否得到适当保障备受关注。因为由其个人自由受到限制至在裁判法院出庭期间，目前并无任何公共计划协助该等人士。香港保留普通法中保持缄默的权利。根据保安局发出的程序规则规定，一个人只有在有合理理由被怀疑干犯了罪行的情况下，才会被进行警诫。这警诫是提醒每个人均有权保持缄默的第一个知会，可是一个正被执法

Under the Criminal Law in Hong Kong, all persons should be equal before the courts and tribunals. One is presumed innocent and the burden of proving guilt is on the prosecution. Everyone shall be entitled to a fair and public hearing, and not be compelled to testify against one's own interest or to confess guilt. The rights to confidential legal advice, access to timely advice by lawyers and legal representations in court are means to ensure that the basic rights are protected.

However, there are concerns whether a detainee's rights could be properly protected before he is interrogated because, at present, there is no public scheme intended to cover the period where a person's liberty is restricted and before he is brought before a Magistrate. Hong Kong has retained the common law right of silence. Only a person who is reasonably suspected to have committed an offence will be cautioned as prescribed in the procedural rules issued by the Security Bureau. The caution is the first notice to a person of his rights to silence. The exercise of that right may not be most clear to a person who is detained at a law enforcement facility.

The Council has therefore invited its Interest Group on Scope of Legal Aid to conduct a study on the provision of legal assistance to detainees who have been detained by law enforcement agencies in Hong Kong. After careful consideration of all relevant issues, the Council considers that publicly funded legal assistance should be made available to protect the legal rights of detainees.

机关扣留的人士却未必清楚可以行使这个权利。

因此，本局邀请辖下的「法律援助范围兴趣小组」，研究为被扣留在香港执法机构的人士提供法律方面的援助。在审视所有相关议题后，本局认同有需要提供一个由公帑资助的法律方面的援助予被扣留人士以保障其法律权益。

在2016年2月2日，本局向行政长官建议设立一个行政计划，提供法律方面的援助给被扣留人士，有关服务包括用电话为被扣留人士提供初步的法律意见，及/或视乎情况，律师亲到警署作面对面的咨询。本局提议先在四个有代表性的警署引入该计划作为试点，并分阶段落实。行政当局应对计划作出监察及检讨，根据检讨的结果，有关服务可被扩展至其他警署或执法机关，即入境事务处、香港海关及廉政公署。

On 2 February 2016, the Council submitted to the Chief Executive the recommendations of setting up an administrative scheme to provide legal assistance to detainees. The service should cover an initial legal advice to the detainee over the telephone, and / or where appropriate, a lawyer's attendance at the police station to give advice face-to-face. The service was proposed to be introduced on a pilot basis in 4 representative police stations, and be implemented in stages. The scheme should be kept under monitor and review. Subject to the outcome of the review, the service may be extended to other police stations and law enforcement agencies i.e. the Immigration Department, the Customs & Excise Department, and the Independent Commission Against Corruption.



## 扩大法律援助辅助计划 Expansion of Supplementary Legal Aid Scheme

应民政事务局（民政局）的邀请，本局成立了一个工作小组讨论进一步扩大法律援助辅助计划（「辅助计划」）的援助范围的必要及可行性，以及如需扩大援助范围，应新增那类案件在计划之内。

「辅助计划」按财政自给自足的基础成立，并在1984年开始运作。「辅助计划」旨在为财务资源超出普通法律援助计划（「普通计划」）的法定限额，但低于最高限额的人士提供法援。目前，「辅助计划」的财务资格限额为1,451,900元。

Upon the invitation of the Home Affairs Bureau (HAB), the Council set up a working group to study whether it is necessary and feasible to further expand the scope of Supplementary Legal Aid Scheme (SLAS) and, if so, which type(s) of cases should be added.

SLAS came into operation in 1984. It was established on the bases of self-financing and financial viability. It aims at providing legal assistance to people whose financial resources exceed the upper limit allowed under the Ordinary Legal Aid Scheme (OLAS) but are below a ceiling amount. The financial eligibility limit (FEL) for SLAS is currently set at \$1,451,900.

SLAS is funded by the initial seed money of \$1 million from the Lotteries Fund, an injection of \$27 million

「辅助计划」最初的100万元种子基金由奖券基金拨出、其余经费来自政府分别于1995年及2012年注资的2,700万元及1亿元、申请人缴付的申请费、受助人缴付的中期分担费、从胜诉案件讨回的损害赔偿中扣除的最终分担费、判与的讼费以及执行第一押记的收入等。

法律援助辅助计划基金的财务可行性受包括在「辅助计划」的申索类别选择、案情审查、诉讼成功率、可收回讼费的能力以及赔偿与诉讼费用比率所影响。「辅助计划」的案件一旦败诉，便需承担双方的讼费，这对该基金来说会是一个沉重的打击。

有见及此，当检讨「辅助计划」时，除了要考虑扩大「辅助计划」援助范围的必要及可行性外，在审视新增案件的类别时，也需思量其 i) 是否涉及金钱申索；ii) 申索成功机会是否很高；及 iii) 是否有良好的讨回讼费及赔偿的机会。

经商讨后，本局支持工作小组的建议，「辅助计划」的援助范围应可逐步扩大。针对上述情况，本局认为「辅助计划」应继续以财政自给自足的模式运作，并须密切监察法律援助辅助计划基金的运作情况。

本局建议将下列金额很可能超过60,000元的申索类别纳入「辅助计划」：

- (a) 涉及已在证券及期货事务监察委员会注册及根据要求投保的独立财务顾问的金钱申索；及
- (b) 在销售证券衍生工具、货币期货或其他期货合约时涉及诈骗、失实陈述或欺骗情况的金钱申索；

from the general revenue in 1995 and \$100 million in 2012, the application fees payable by applicants, the interim contributions from aided persons and the final contributions from a percentage deduction of the damages recovered in successful cases, costs awarded and receipts from first charge enforcement, etc.

Financial viability of the Supplementary Legal Aid Fund depends on the choice of claims covered, the merits test, the success rate in litigation, the recoverability of legal costs spent and the damages to costs ratio. The loss of any SLAS case impacts heavily on the Supplementary Legal Aid Fund as it has to bear the costs of both sides.

Therefore, in reviewing SLAS, apart from the question of whether it is necessary and feasible to expand the scope of SLAS, the matters of: i) whether monetary claims are involved; ii) whether the claims have a high success rate; and iii) whether there is a good chance of recovering costs and damages have also been taken into account when considering the type(s) of cases to be included.

After deliberation, the Council supported the working group's recommendations that the scope of SLAS should be further expanded. Against the background above-mentioned, the scheme should continue to be self-financing and financially viable. It was also agreed that the expansion might be introduced on an incremental basis and the viability of the Supplementary Legal Aid Fund should be closely monitored.

The following types of cases where the claim is likely to exceed \$60,000 were recommended to be covered by SLAS:

- (a) Claims against independent financial consultants registered under the Securities and Futures Commission and required to have insurance cover; and
- (b) Claims in derivatives of securities, currency futures or other futures when fraud, misrepresentation or deception was involved at the time of purchase

本局同时建议当集体诉讼法例完备时，行政当局应积极考虑将集体诉讼纳入「辅助计划」内，另外，法援署署长应有权酌情批准法援予合适的集体诉讼案件。

上述的建议已于2016年7月15日呈交给行政长官。本局在商讨有关提案时，尽管受人力和资源的限制，仅能与两个法律专业团体交换意见，而非听取所有相关持分者的提议，本局相信有关建议是公平而合理的。为香港的利益着想，我已恳请政府认真考虑尽快推行本局的建议。

The Council also recommended that the inclusion of class action in SLAS should be actively considered when the law governing class action was available and the Director of Legal Aid should have discretion to grant legal aid in appropriate class action cases.

The foregoing recommendations were submitted to the Chief Executive on 15 July 2016. I trust the recommendations are fair and reasonable though the Council, with limited manpower and resources, has exchanged views with only the two legal bodies instead of collecting views from all relevant stakeholders when the proposals were discussed within the Council's working group. For the benefit of Hong Kong, I have urged the government to seriously consider an early implementation of the Council's recommendations without delay.

## 检讨刑事法律援助费用 Review of Criminal Legal Aid Fees

在2014年3月，民政局成立了一个工作小组，检讨支付予大律师和律师代表法律援助署（法援署）处理诉讼工作的费用。工作小组成员包括大律师公会和香港律师会的代表，以及律政司和法援署的政府代表。

在2016年2月，民政局通知本局刑事法律援助费用将被建议上调；i) 大律师的费用上调50%；ii) 发出指示的律师的费用上调25%；及 iii) 在区域法院以讼辩人兼发出指示的律师身分行事的律师的费用上调40%，并会为享有较高级法院出庭发言权的讼辩律师增设一个新的刑事法律援助费用类别，以处理高等法院的案件。本局亦知悉民政局已在2016年6月向立法会提出动议以修改法例，一经立法会批准，将会尽快订定生效日期。本局欢迎有关的上调建议。

In March 2014, HAB set up a working group to review the rates of fees payable to counsel and solicitors undertaking criminal litigation work on behalf of the Legal Aid Department (LAD). Members of the working group include representatives from the Hong Kong Bar Association and the Law Society of Hong Kong, as well as government representatives from LAD and the Department of Justice.



过去一年，为向公众提供优质的法律援助服务，我们的持分者皆努力不倦地工作。如果没有两个法律专业团体和其他法援服务持分者的热心参与、无私贡献和宝贵意见，我们不可能完成前段所述的研究。我衷心向每一位表示感激。同时，我亦向法援署署长和该署的同事致谢，感谢他们的全力协助、尽忠职守和辛勤工作。最后，我真诚感谢本局成员。在他们的坚定支持下，本局定能继续坚守信念，确保在法律面前人人平等，即使是缺乏经济能力的人也能寻求公义。

In February 2016, HAB informed the Council that the criminal legal aid fees would be recommended to be increased by: i) 50% for counsel; ii) 25% increase for instructing solicitors; and iii) 40% for solicitors acting as both advocate and instructing solicitor in the District Court, and a new category of criminal legal aid fees for High Court cases would be introduced for solicitor advocates with higher rights of audience. It was also noted that HAB had served a notice for moving a resolution in LegCo in June 2016 to effect the legislative changes. The commencement date will be appointed as soon as possible upon LegCo's approval. The Council welcomed the proposed increase.

Over the year, our stakeholders have worked tirelessly with a view to delivering quality legal aid services to the public. We would not be able to complete the studies above-mentioned without the contributions, participation and invaluable advice of the two branches of legal profession and other legal aid stakeholders. To every one of them I am indeed very grateful. I would also like to express my gratitude to the Director and members of LAD for their whole-hearted support, dedication to duty and hard work. Last but not the least, my sincere appreciation goes to members of the Council. With their unflinching support, the Council will continue to uphold its vision of ensuring equality before the law and access to justice by people of limited means.