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主席回顧 Chairman's Review

過去一年，我們完成了為被扣留在警署人士提供法律方面的援助及擴大法律援助輔助計劃的研究。

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年是令人興奮的一年，法律援助服務局完成研究為被扣留在警署的人士提供法律方面的援助及進一步檢討法律援助輔助計劃。

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.

為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，悉屬平等。所有人均被假定無罪，而舉證責任在檢控一方。每個人都有權得到公平公開審訊的權利，亦不會被迫作出對自己不利的證供或認罪。為確保基本人權受到保障，每個人都應有權得到保密而及時的法律意見，以及由律師代表上庭的機會。

但是，一個被扣留人士在受到審問前，他的權益能否得到適當保障備受關注。因為由其個人自由受到限制至在裁判法院出庭期間，目前並無任何公共計劃協助該等人士。香港保留普通法中保持緘默的權利。根據保安局發出的程序規則規定，一個人只有在有合理理由被懷疑干犯了罪行的情況下，才會被進行警誡。這警誡是提醒每個人均有權保持緘默的第一個知會，可是一個正被執法

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.

機關扣留的人士卻未必清楚可以行使這個權利。

因此，本局邀請轄下的「法律援助範圍興趣小組」，研究為被扣留在香港執法機構的人士提供法律方面的援助。在審視所有相關議題後，本局認同有需要提供一個由公帑資助的法律方面的援助予被扣留人士以保障其法律權益。

在2016年2月2日，本局向行政長官建議設立一個行政計劃，提供法律方面的援助給被扣留人士，有關服務包括用電話為被扣留人士提供初步的法律意見，及/或視乎情況，律師親到警署作面對面的諮詢。本局提議先在四個有代表性的警署引入該計劃作為試點，並分階段落實。行政當局應對計劃作出監察及檢討，根據檢討的結果，有關服務可被擴展至其他警署或執法機關，即入境事務處、香港海關及廉政公署。

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.



擴大法律援助輔助計劃

Expansion of Supplementary Legal Aid Scheme

應民政事務局（民政局）的邀請，本局成立了一個工作小組討論進一步擴大法律援助輔助計劃（「輔助計劃」）的援助範圍的必要及可行性，以及如需擴大援助範圍，應新增那類案件在計劃之內。

「輔助計劃」按財政自給自足的基礎成立，並在1984年開始運作。「輔助計劃」旨在為財務資源超出普通法律援助計劃（「普通計劃」）的法定限額，但低於最高限額的人士提供法援。目前，「輔助計劃」的財務資格限額為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

「輔助計劃」最初的100萬元種子基金由獎券基金撥出、其餘經費來自政府分別於1995年及2012年注資的2,700萬元及1億元、申請人繳付的申請費、受助人繳付的中期分擔費、從勝訴案件討回的損害賠償中扣除的最終分擔費、判與的訟費以及執行第一押記的收入等。

法律援助輔助計劃基金的財務可行性受包括在「輔助計劃」的申索類別選擇、案情審查、訴訟成功率、可收回訟費的能力以及賠償與訴訟費用比率所影響。「輔助計劃」的案件一旦敗訴，便需承擔雙方的訟費，這對該基金來說會是一個沉重的打擊。

有見及此，當檢討「輔助計劃」時，除了要考慮擴大「輔助計劃」援助範圍的必要及可行性外，在審視新增案件的類別時，也需思量其 i) 是否涉及金錢申索；ii) 申索成功機會是否很高；及 iii) 是否有良好的討回訟費及賠償的機會。

經商討後，本局支持工作小組的建議，「輔助計劃」的援助範圍應可逐步擴大。針對上述情況，本局認為「輔助計劃」應繼續以財政自給自足的模式運作，並須密切監察法律援助輔助計劃基金的運作情況。

本局建議將下列金額很可能超過60,000元的申索類別納入「輔助計劃」：

- (a) 涉及已在證券及期貨事務監察委員會註冊及根據要求投保的獨立財務顧問的金錢申索；及
- (b) 在銷售證券衍生工具、貨幣期貨或其他期貨合約時涉及詐騙、失實陳述或欺騙情況的金錢申索；

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

本局同時建議當集體訴訟法例完備時，行政當局應積極考慮將集體訴訟納入「輔助計劃」內，另外，法援署署長應有權酌情批准法援予合適的集體訴訟案件。

上述的建議已於2016年7月15日呈交給行政長官。本局在商討有關提案時，儘管受人力和資源的限制，僅能與兩個法律專業團體交換意見，而非聽取所有相關持分者的提議，本局相信有關建議是公平而合理的。為香港的利益著想，我已懇請政府認真考慮盡快推行本局的建議。

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.

檢討刑事法律援助費用 Review of Criminal Legal Aid Fees

在2014年3月，民政局成立了一個工作小組，檢討支付予大律師和律師代表法律援助署（法援署）處理訴訟工作的費用。工作小組成員包括大律師公會和香港律師會的代表，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費用將被建議上調；i) 大律師的費用上調50%；ii) 發出指示的律師的費用上調25%；及 iii) 在區域法院以訟辯人兼發出指示的律師身分行事的律師的費用上調40%，並會為享有較高級法院出庭發言權的訟辯律師增設一個新的刑事法律援助費用類別，以處理高等法院的案件。本局亦知悉民政局已在2016年6月向立法會提出動議以修改法例，一經立法會批准，將會盡快訂定生效日期。本局歡迎有關的上調建議。

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.



過去一年，為向公眾提供優質的法律援助服務，我們的持分者皆努力不倦地工作。如果沒有兩個法律專業團體和其他法援服務持分者的熱心參與、無私貢獻和寶貴意見，我們不可能完成前段所述的研究。我衷心向每一位表示感激。同時，我亦向法援署署長和該署的同事致謝，感謝他們的全力協助、盡忠職守和辛勤工作。最後，我真誠感謝本局成員。在他們的堅定支持下，本局定能繼續堅守信念，確保在法律面前人人平等，即使是缺乏經濟能力的人也能尋求公義。

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.