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擴大法律援助輔助計劃

Expansion of
Supplementary Legal Aid Scheme



作為行政長官在關於由法援署提供的法律援助服務的政策上的諮詢機構，本局在2010年3月致函民政事務局局長，表達對就評定法律援助申請人財務資格的準則每五年進行一次的檢討所作建議的意見；本局同時在信內表示，法律援助輔助計劃（「輔助計劃」）的援助範圍應予以研究，而有關研究會由轄下的法律援助範圍興趣小組負責。

在2010年12月，本局向行政長官呈交「輔助計劃」的檢討報告。行政當局在審視本局的建議，並考慮立法會司法及法律事務委員會和相關持分者，包括法律業界的意見後，最終定下其對「輔助計劃」提案的立場，並於2011年3月和12月提交司法及法律事務委員會，及於2012年11月法例修訂後，擴大了普通法律援助計劃（「普通計劃」）及「輔助計劃」的援助範圍。

自那時起，已有立法會議員和法律業界人士呼籲更進一步擴大援助範圍。在民政事務局（民政局）的邀請下，本局成立了一個工作小組去進一步檢討「輔助計劃」的援助範圍。

The Council, being an advisory body of the Chief Executive on the policy of the legal aid services provided by Legal Aid Department (“LAD”), wrote to the Secretary for Home Affairs in March 2010 providing its views on the recommendations of the five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants. In the letter, the Council also advised that the scope of Supplementary Legal Aid Scheme (“SLAS”) was considered necessary to be studied and the study would be conducted by its Interest Group on Scope of Legal Aid.

In December 2010, the Council made a submission to the Chief Executive on the review of SLAS. Having studied the recommendations of the Council and taken into account the views of the Legislative Council (“LegCo”) Panel of Administration of Justice and Legal Services (“AJLS”) and relevant stakeholders including the legal profession, the Administration finalized its position on the proposals for SLAS and submitted it to the AJLS Panel in March and December 2011. The expanded scope of Ordinary Legal Aid Scheme (“OLAS”) and SLAS was implemented in November 2012 after legislative amendments.

Since then, there have been calls for further expansion from LegCo members and members of the legal profession. On the invitation of the Home Affairs Bureau (“HAB”), the Council set up a working group to conduct a further review of the scope of SLAS.

擴大法律援助輔助計劃工作小組 Working Group on Expansion of SLAS

擴大法律援助輔助計劃工作小組（「工作小組」）由本局成員組成，其主要工作是研究進一步擴大「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內。除了工作小組成員的意見外，小組也考慮了其他人士的提議，尤其香港大律師公會在2010

The Working Group on Expansion of SLAS (“WG”) is comprised of members of the Council. It is tasked to study whether it is necessary and feasible to further expand the scope of SLAS and, if so, which type(s) of cases should be added. In addition to the views from members of the WG, the WG has considered written submissions, the Hong Kong Bar Association’s position papers on this topic dated 20 July 2010 and 5 November 2012 in particular, examined relevant

年7月20日和2012年11月5日就此議題發出的立場書，並查看了相關的統計數據和檢閱其他有關的資料。工作小組亦慎重地商討了香港大律師公會和香港律師會分別於2015年11月18日和24日，針對工作小組的初步建議書發出的書面意見。

statistics and reviewed other materials. The WG has also deliberated the written submissions of Hong Kong Bar Association and the Law Society of Hong Kong dated 18 and 24 November 2015 respectively which were made in response to the preliminary proposal of the WG.

「輔助計劃」的進一步檢討 Further Review of SLAS

政府的法援政策目標是要確保任何具合理理據在香港法院提出訴訟或抗辯的人士，不會因缺乏經濟能力而無法尋求公義。

The Government's policy objective of legal aid is to ensure that no one with reasonable grounds for pursuing or defending a legal action in the Hong Kong courts is denied access to justice because of a lack of means.

任何人士如要獲得法律援助，須按法例要求，同時通過經濟審查及案情審查。目前，申請人的財務資源不超過290,380元，便符合資格申請「普通計劃」，而這計劃已涵蓋大部分區域法院或更高法院的法律訴訟。「輔助計劃」是提供給財務資源超出「普通計劃」規定的限額，但又不超過某一金額的人士。現時，「輔助計劃」的財務資格限額為1,451,900元。

To qualify for legal aid, a person is required by law to satisfy the means test and the merits tests. At present, a person whose financial resources do not exceed \$290,380 is financially eligible for legal aid under the OLAS, which covers most proceedings at District Court level and above. The SLAS is available to those whose financial resources exceed the upper limit allowed under OLAS, but are below a certain amount. The financial eligibility limit (FEL) for SLAS is currently set at \$1,451,900.

「輔助計劃」在1984年開始運作，最初的1百萬元種子基金由獎券基金撥出、其餘經費來自政府於1995年注資的2,700萬元、申請人繳付的申請費、受助人繳付的中期分擔費和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。

SLAS came into operation in 1984. It is funded by the initial seed money of \$1 million from the Lotteries Fund, an injection of \$27 million from the general revenue in 1995, 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.

「輔助計劃」按財政自給自足的基礎建立。一直以來，「輔助計劃」涵蓋的法律訴訟種類為：(a) 因涉及對個人而非商業機構或一個組群的市民做成重大傷害或不

SLAS is established on the bases of self-financing and financial viability. All along, the types of proceedings covered by SLAS are those: (a) which deserve priority for public funding in the sense that significant injury or injustice to the individual, as distinct from that to a commercial concern or a group of citizens, is involved;

公，而值得優先獲得公帑資助的個案；以及(b) 涉及金錢申索並有良好勝訴以及討回訟費及賠償機會的個案。

「輔助計劃」最初只適用於涉及人身傷亡的賠償申索，其後於1992年擴大至僱員補償申索，並於1995年涵蓋因醫療、牙科及法律專業疏忽而提出的申索。

在2012年11月，「輔助計劃」的涵蓋範圍大幅擴大。除了上述申索外，「輔助計劃」的涵蓋範圍擴大至包括更多類別的專業疏忽申索、關於保險人或其中介人在銷售個人保險產品時涉及疏忽的申索、就售賣已落成或未落成的一手住宅物業而向賣方提出的金錢申索，以及因應勞資審裁處所作裁決而提出上訴的個案中為僱員提供法律代表。

立法會財務委員會在2012年12月批准注資1億元，支持已擴大涵蓋範圍的「輔助計劃」的運作。截至2016年3月底，法律援助輔助計劃基金的結餘為1.915億元。

以下是「輔助計劃」的申請及獲批法律援助證書的統計數字：

and (b) which involve monetary claims and have a high success rate and a good chance of recovering costs and damages.

SLAS was limited initially to cover claims for damages for personal injuries or death. It was expanded in 1992 to include employees' compensation claims and in 1995 civil proceedings for medical, dental and legal professional negligence.

In November 2012, the scope of SLAS was significantly expanded. In addition to the above-said claims, the scope of SLAS was expanded to cover a wider range of professional negligence claims, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, monetary claims against the vendors in the sale of completed or uncompleted first-hand residential properties, and representation for employees in appeals against awards made by the Labour Tribunal.

The LegCo Finance Committee's funding approval of \$100 million was obtained in December 2012 to support the operation of the expanded SLAS. As at the end of March 2016, the balance of the Supplementary Legal Aid Fund was \$191.5 million.

Followings are the statistics on the numbers of applications and legal aid certificates granted in respect of SLAS:

「輔助計劃」的申請及獲批法律援助證書的數目
No. of Applications Received and Certificates Granted under SLAS

年度 (十月至九月) Year (Oct - Sep)	人身傷害的賠償申索 Personal Injuries Claim		專業疏忽的賠償申索 Professional Negligence Claim		其他 Others		總計 Total	
	申請 Application	證書 Certificate	申請 Application	證書 Certificate	申請 Application	證書 Certificate	申請 Application	證書 Certificate
2008-2009	165	112	15	7	-	-	180	119
2009-2010	123	97	16	7	-	-	139	104
2010-2011	148	104	16	10	-	-	164	114
2011-2012	152	112	20	8	1	1	173	121
2012-2013	191	149	21	8	3	1	215	158

「輔助計劃」申請被拒的數目 No. of Refusals under SLAS

年度 (十月至九月) Year (Oct - Sep)	未能通過經濟審查而被拒的申請 Refusal on Means	未能通過案情審查而被拒的申請 Refusal on Merits
2008-2009	1	33
2009-2010	2	24
2010-2011	-	21
2011-2012	-	22
2012-2013	4	30

自涵蓋範圍擴大後，法援署仍就新增的援助法律訴訟累積經驗，並評估它們對法律援助輔助計劃基金的影響。從下表可以看到，2012年並沒有接獲太多有關新增案件類別的申請。

Since the expansion in 2012, LAD has been gaining experience on the newly added proceedings and assessing their impact on the Supplementary Legal Aid Fund. It is noted from the table below that there are not much applications received for the cases introduced in 2012.

於2012年新增的案件類別的申請數目 No. of Applications in respect of Cases Introduced in 2012

年度 (十月至九月) Year (Oct - Sep)	8種新增專業疏忽的賠償申索 8 New Professional Negligence Claims	個人保險疏忽的賠償申索 Personal Insurance Negligence Claims	售賣一手住宅物業 Sale of First-hand Residential Properties	勞資審裁處的上訴 Employees' Labour Tribunal Appeal
2012-2013	1 [#]	-	-	1 [*]
2013-2014 (截至2014年2月28日) (up to 28 Feb 2014)	-	-	-	1 [@]

未能通過案情審查 Refused on merits

* 法律援助證書獲批 Certificate granted

@ 提供法援的建議失效 Offer lapsed

法律援助輔助計劃基金的財務可行性，取決於涵蓋在「輔助計劃」的申索類別的選擇、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的比率。現時，大部分包括在「輔助計劃」的申索均有投保，而且申請多是涉及有非常高勝訴和高賠償比率的人身傷害案件。

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. At present, most of the SLAS claims are covered by insurance policies and the bulk of the SLAS cases are personal injuries claims which have a very high success rate and high compensation ratio.

「輔助計劃」的案件一旦敗訴，雙方的訟費便需由法律援助輔助計劃基金承擔，這對該基金來說會是一個沉重的打擊。在2008年，一宗由「輔助計劃」資助，雙方的訟費涉及1,700萬元的人身傷害案件敗訴，便導致法律援助輔助計劃基金的資金由1.02億元銳減至8,800萬元。此外，如果沒有銀行利息的收益，法律援助輔助計劃基金在過去10年大部分時間都會錄得淨虧損。基於這個背景下，法援署獲額外撥款以應對上次擴大「輔助計劃」的範圍。

The loss of any SLAS case impacts heavily on the Supplementary Legal Aid Fund as it has to bear the costs of both sides. In 2008, the loss of a SLAS funded personal injuries claim with estimated costs of \$17 million led to a drastic reduction of the Supplementary Legal Aid Fund from \$102 million to \$88 million. It is also noted that without the gain from bank interest, there will be a net loss in most of the past 10 years. It was against this background that separate funding was sought for the last expansion of SLAS.

法律援助輔助計劃基金淨收益 / 虧損和基金結餘 Net Gain/Loss and Fund Balance of Supplementary Legal Aid Fund

年度 (十月至九月) Year (Oct - Sep)	個案錄得的 淨收益 / (虧損) Net Gain/(Loss) from Cases (A)	銀行利息 淨收益* Net Gain from Bank Interest* (B)	全年淨收益 / (虧損) Net Gain/(Loss) for the Year (C) = (A) + (B)	基金結餘 Fund Balance (D)
	\$	\$	\$	\$
2003-2004	4,164,402	522,724	4,687,126	91,856,625
2004-2005	(265,822)	1,675,852	1,410,030	93,266,655
2005-2006	3,093,366	4,389,395	7,482,761	100,749,416
2006-2007	(3,164,067)	4,226,936	1,062,869	101,812,285
2007-2008	(17,409,800)	3,251,543	(14,158,257)	87,654,028
2008-2009	(1,358,963)	1,554,781	195,818	87,849,846
2009-2010	(1,268,936)	557,199	(711,737)	87,138,109
2010-2011	(534,164)	992,432	458,268	87,596,377
2011-2012	(2,250,191)	1,567,579	(682,612)	86,913,765
2012-2013 (未經審計) (unaudited)	(2,324,374)	1,810,206	(514,168)	#186,399,597

* 已減去銀行費用的銀行利息 Bank interest less bank charges

包括2013年1月政府注資的1億元 Including fund of \$100 million injected by Government in Jan 2013

建議

Recommendations

當檢討「輔助計劃」時，工作小組除審議擴大「輔助計劃」涵蓋範圍的必要及可行性外，也在考慮新增案件的類別時考量 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，工作小組建議「輔助計劃」的涵蓋範圍應可循序漸進地擴大。針對上述的背景因素，「輔助計劃」應繼續以財政自給自足的形式運作，並應密切監察法律援助輔助計劃基金的財務情況。為方便未來進一步檢討「輔助計劃」的涵蓋範圍，工作小組認為有需要為新增案件類別收集統計資料，以及分析其對法律援助輔助計劃基金的影響。本局支持有關建議。

建議加入「輔助計劃」的新案件類別在隨後的段落中詳述。

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 types of cases that should be added in the scheme.

After deliberation, the WG recommended that the scope of SLAS should be further expanded on an incremental basis. Against the background above-mentioned, the Scheme should continue to be self-financing and financially viable, and the viability of the Supplementary Legal Aid Fund should be closely monitored. To facilitate future review of the scope of SLAS, it was found necessary to create and maintain statistics on the newly added types of cases, and to conduct analysis of their impact on the Supplementary Legal Aid Fund. The recommendations have the Council's support.

Detailed recommendations in respect of the types of cases that have been considered for inclusion in the SLAS are given in the ensuing paragraphs.



向多層大廈業主立案法團提出的申索

Claims against the Incorporated Owners of a Multi-Storey Building

在上次檢討時，行政當局不贊同將就財物損毀而向多層大廈業主立案法團提出的申索納入「輔助計劃」涵蓋範圍，亦表明因無強制規定業主立案法團要為第三者財物損毀購買保險，一旦涉及相關的訴訟，有關的法律費用便須由個別業主承擔。此外，行政當局認為法律援助如只涵蓋向業主立案法團提出的申索，而不是包括所有財物損毀的個案，這做法並不公平。本局理解這些要點。

在今次檢討中，由於社會非常關注大廈翻新及維修合約出現圍標的情況，工作小組特別研究應否由「輔助計劃」提供法援予個別業主，協助他們對抗業主立案法團的不當行為。例如業主立案法團未能按照既定程序或越權辦事，包括在沒有足夠通知或出席成員未達會議的法定人數的情況下召開會議，討論會嚴重損害個別業主權益的議題等。

然而，工作小組認同，類如就財物損毀所提出的申索，假若「輔助計劃」只向業主立案法團提供資助，這會令人覺得做法欠缺公平及很難明白其中不同的處理原則。再者，圍標未必涉及金錢申索，在法律援助輔助計劃基金的有限資源的前提下，任何敗訴的法律訴訟均會對其產生不良影響。同時，競爭條例已全面生效，而競爭事務委員會亦開展了「打擊圍標 全城目標」的活動，全力打擊圍標行為。在這情況下，工作小組認為暫時不應將向多層大廈業主立案法團提出的申索納入「輔助計劃」，此議題可在適當的時候再次探討。

In the last review of SLAS, the Administration did not propose to expand the scope of SLAS to cover property damage claims against the incorporated owners of a multi-storey building. It also revealed that there was no mandatory requirement for the incorporated owners to procure insurance to cover damages to property of the third party, so individual owners would be the ones who were responsible for a share of the legal costs if proceedings involving property damage claims arose. Besides, the Administration also viewed that it would be unfair if legal aid was made available only for claims against incorporated owners instead of all property damage cases. The Council took note of these points.

In the current review, since the issue of bid-rigging for building renovation and maintenance contract is a big concern of the community, the WG has focused on the study if legal aid should be provided under SLAS to help individual owners counter act against the improprieties of incorporated owners, for instance, the incorporated owners' failure to follow the established procedures or the act that is outside its authorities say not enough notice or members to make a quorum for a meeting to discuss matters that will adversely affect the benefit of individual owners, etc.

It is however recognized that as in the case of property damage claims, the inclusion of claims solely against incorporated owners under SLAS may give an impression that it is unfair and it will not be easy to explain the difference in treatment. Besides, monetary claims may not be involved in relation to the issue of bid-rigging. Any loss in the proceedings will adversely affect the Supplementary Legal Aid Fund which is limited in resources. In addition, the Competition Ordinance is in full force and the Competition Commission has kicked off its "Fighting Bid-rigging Cartels" Campaign and committed to use the full extent of its power to end bid-rigging cartels. In view of the circumstances, the WG considered that claims against the incorporated owners of a multi-storey building should not be included in SLAS for the time being and the issue might be re-visited in due course.



獨立財務顧問

Independent Financial Consultants

根據證券及期貨事務監察委員會（證監會）所示，如法團獲發牌進行第1類（證券交易）、第2類（期貨合約）或第8類（證券保證金融資）的受規管活動，必須為有關活動投購保險並將之保持有效。工作小組因此認為，向已在證監會註冊及須投保的獨立財務顧問提出金額超過60,000元的申索，可以納入「輔助計劃」。

According to the Securities and Futures Commission, if a corporation is licensed for Type 1 (dealing in securities), Type 2 (dealing in future contracts) or Type 8 (securities margin financing) regulated activities, it is required to take out and maintain insurance. The WG therefore considered that monetary claims exceeding \$60,000 against independent financial consultants registered under the Commission and required to have insurance cover could be included in SLAS.



有關金融衍生工具的申索

Derivatives Claims

由於「普通計劃」的涵蓋範圍已於2012年11月擴大至包括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，工作小組認為有關相同種類和涵蓋範圍、金額超過60,000元的金融衍生工具的申索亦應納入「輔助計劃」。

Since the OLAS was expanded in November 2012 to cover monetary claims in derivatives of securities, currency futures or other futures when fraud, misrepresentation or deception was involved at the time of purchase, the WG considered that the same types and scope of coverage of derivatives claims exceeding \$60,000 should also be included in SLAS.



小型海事意外

Small Marine Accidents

「輔助計劃」已涵蓋涉及人身傷害賠償申索的小型船隻意外。純粹因財物損毀索償的機會極小，就算發生，船主的保險人亦會保障投保客戶的利益。因此，工作小組不建議將涉及財物損毀索償的小型海事意外納入「輔助計劃」。

Small boat accidents resulting in claims for damages for personal injuries have already been covered under SLAS. The chance of claims purely for property damage is quite remote. Even if it occurs, the insurers of the boat owners will safeguard their insured clients' interest. Therefore, the WG did not recommend extension of SLAS to claims for property damage from small marine accidents.



少數份數業主就強制售賣向發展商提出的申索

Claims against Property Developers by Minority Owners in Compulsory Sales

由於少數份數業主就強制售賣向發展商提出的申索多與土地審裁處發出售賣的命令有關，而有關命令一般都不涉及金錢申索，工作小組認為這項申索不應納入「輔助計劃」。

Noting that claims against property developers by minority owners in compulsory sales are related to the Lands Tribunal's orders to sell and normally do not involve monetary claims, the WG considered that such claims should not be covered by SLAS.



信託

Trusts

一般來說，任何人均可被委任為信託的受託人，他／她不一定是一名專業人士。因此，如就涉及信託的問題向受託人提出申索，並不能確定是否能討回費用和損害賠償。即使是一名專業人士，例如律師被指派為受託人，此類涉及專業人士的申索亦已涵蓋在專業疏忽的申索範圍內，所以工作小組認為不適當／無必要擴大「輔助計劃」以涵蓋對違反信託的受託人提出的申索。

In general, any person could be appointed as trustee for a trust. He/she may not necessarily be a professional. Hence, it could not be sure whether costs and damages could be recovered if claims in respect of the trust occur. Even if a professional say solicitor is assigned as trustee, the claims against such kind of professional are already covered by professional negligence claims. Therefore, the WG considered it not appropriate/ necessary to expand SLAS to cover claims for breach of trust against trustees.



有限公司與其小股東之間的爭議

Disputes between Limited Companies and Their Minority Shareholders

由於已列明不把涉及有限公司與其股東之間有關權益爭議的申索包括在「普通計劃」內，加上這類申索不一定涉及金錢，工作小組不建議「輔助計劃」納入這類申索。

Since claims involving disputes between limited companies and their shareholders regarding their respective rights are expressly excluded from OLAS and such claims may not necessarily be related to monetary claims, the WG considered that SLAS should not be expanded to cover this type of claims.



銷售商品和提供服務 Sale of Goods and Provision of Services

由於香港海關會就《商品說明條例》採取行動，以及消費者委員會成立的消費者訴訟基金亦會涵蓋消費者的集體訴訟，工作小組建議暫時不把與銷售商品和提供服務有關的申索納入「輔助計劃」的涵蓋範圍。

The WG recommended not including claims arising out of the sale of goods and the provision of services in SLAS for the time being because action will be taken by the Customs and Excise Department under the Trade Descriptions Ordinance, and consumer class actions will be covered by the Consumer Legal Action Fund set up by the Consumer Council.



集體訴訟 Class Action

集體訴訟可以透過不同的方式構建成，可以是具名的原告人或一些具名的原告人代表一個人或機構的集體，就受到相同的傷害或損失提出申索。工作小組認為當集體訴訟法例完備時，行政當局應積極考慮將這類申索涵蓋在內。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，靈活應對不斷變化的情況。

There are different ways to structure a class action system. It could be a named plaintiff or a number of named plaintiffs to file a claim on behalf of a “class” of people or businesses who claim to have suffered from a common injury or loss. The WG considered that the inclusion of this item should be actively considered when the law governing class action is available. It also viewed that the Director of Legal Aid should have discretion to grant legal aid in appropriate class action cases to allow elasticity for evolving situation.



誹謗訴訟和選舉呈請 Defamation Proceedings and Election Petitions

民政局和法援署曾協助完成一項就海外司法管轄區有否將選舉呈請和誹謗訴訟納入法援涵蓋範圍內的調查。所得到的資料顯示，在英格蘭和威爾斯、澳洲新南威爾斯和維多利亞州、新西蘭、北愛爾蘭、加拿大安大略省、蘇格蘭和星加坡，均沒有將選舉呈請納入法援範圍。至於誹謗訴訟，除了英格蘭和威爾斯、澳洲新南威爾斯、北愛爾蘭和蘇格蘭，在特別或例外的情況下會提供法律援助外，上述大部分的海外司法管轄區皆沒有把誹謗訴訟納入法援範圍。在香港，選舉呈請和誹謗訴訟並不包括在「普通計劃」內。在考慮以上各點後，工作小組不建議「輔助計劃」的涵蓋範圍擴大至包括這兩類案件。

The HAB together with the LAD have helped conduct a research on whether election petitions and defamation proceedings are covered by legal aid in overseas jurisdictions. Available information indicates that election petitions are generally not covered by legal aid in England & Wales, New South Wales and Victoria of Australia, New Zealand, North Ireland, Ontario of Canada, Scotland and Singapore. As for defamation proceedings, it is not covered by legal aid in Ontario of Canada, Victoria of Australia and Singapore, and it is generally not covered except under special or exceptional circumstances in England & Wales, New South Wales of Australia, Northern Ireland and Scotland. In Hong Kong, legal aid is not provided for election petitions and defamation proceedings under OLAS. Having considered the above, the WG did not recommend extending SLAS to these two types of cases.



申請人的財務資格限額 Financial Eligibility Limit

經考慮本局於2010年提交與「就評定法律援助申請人財務資格的準則每五進行年一次的檢討」有關的建議後，行政當局接納把「輔助計劃」的財務資格限額調高至1,300,000元。這限額是按2008年實際進入審訊的「輔助計劃」案件的平均訴訟費，即1,297,000元而設定。「輔助計劃」的財務資格限額現時為1,451,900元。

基於相同的準則，工作小組研究了法援署在過去6年的平均訴訟費用以檢討申請人的財務資格限額，相關數字如下：

年份 Year	平均訴訟費 Average Legal Costs
2009	\$577,229
2010	\$308,026
2011	\$582,161
2012	\$766,618
2013	\$643,778
2014	\$728,869

鑑於過去幾年的平均訴訟費用均相當接近，工作小組暫時不建議調整「輔助計劃」的財務資格限額水平，但認為應要持續監察並每年作出檢討。

Following the recommendation of the Council in the five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants in 2010, the Administration adopted \$1.3 million as the level of FEL for SLAS. Such amount was based on the average legal costs (i.e. \$1.297 million) of a SLAS case that actually went to trial in 2008. The FEL for SLAS is currently set at \$1,451,900.

Using the same approach to review the FEL, the WG has studied the average legal costs of LAD in the past six years. The respective figures are:

In view that the average legal costs provided by LAD appear to be roughly the same throughout the years, the WG did not propose any change to the level of FEL for SLAS for the time being but recommended it be monitored and reviewed every year.



與年齡有關的資產審查豁免

Age Related Exemption for Assets Test

就與年齡有關的資產審查豁免以評估法律援助申請人的財務資源，本局在2011年8月3日致民政局的函件中，曾建議行政當局設定在55歲。工作小組對此提議持相同看法，認為有需要保護長者不會被訴訟耗盡所有資產，因為有關長者已差不多到達工作生涯的最後階段，難以賺回所耗款額。

Regarding the age related exemption for assets test in assessing the financial resources of legal aid applicants, the Council has proposed in its letter to HAB dated 3 August 2011 the Administration to take age 55. The WG maintained the view because it is considered necessary to protect the assets of the elderly from being “used up” in litigation as they are approaching the end of their working life and could not earn back those monies.

本局在討論計劃書時，儘管受人力和資源的限制，只能與兩個法律專業團體交換意見，而不是聽取所有相關持分者的提議，本局認為上述的建議公平而合理。本局相信相關政府政策局如有需要，在確定政府的立場前，可以先進行諮詢以廣泛收集所有持分者的意見。

本局已在2016年7月把建議提交給行政長官。為香港的利益著想，本局已促請政府認真考慮，盡快推行有關建議。

The Council considers the foregoing recommendations fair and reasonable though, with only limited manpower and resources, it has exchanged views with the two legal bodies instead of collecting views from all relevant stakeholders when the proposals were discussed. The Council also considers that, if necessary, the related government bureau could initiate a consultation which should be wide enough to involve all the stakeholders before finalizing its position.

The recommendations were submitted to the Chief Executive in July 2016. For the benefit of Hong Kong, the Council also urged the government to seriously consider an early implementation of the recommendations without delay.

