

轉移法律援助政策範疇

Transfer of Legal Aid Portfolio



《行政長官2017年施政報告》公布了政府架構改動，其中一項措施為落實早前法律援助提出的建議，將制訂法律援助政策和管理法律援助的職責，由原屬的民政事務局（「民政局」）撥歸政務司司長辦公室（「司長辦公室」），以彰顯法律援助制度的獨立性。

背景

在最近一次就成立獨立的法援管理局的可行性及可取性進行的顧問研究中，有論點指出，如果法援署直接向政務司司長負責，尤其是在處理涉及其他政府政策局或部門的個案時，法援署行事方能更為獨立。事實上，民政局雖然負責監管法援政策的工作，但該局並沒有參與法援署的日常運作。不論在法規和實際上，現時已有充分措施確保法援署獨立運作。本局及研究顧問均認同法援署目前享有並行使足夠的獨立程度，任何懷疑法援署缺乏獨立性，只偏屬觀感問題，應該可在法援行政框架中推行改善措施得到解決。因此，本局建議，除了其他主要建議外，將法援署重新定位並撥歸政務司司長直接管轄，即回復在2007年7月之前的安排。

As announced in the Chief Executive's 2017 Policy Address, the Government will, as part of its restructuring initiatives, implement the LASC's earlier proposal to transfer the responsibilities for formulating legal aid policy and housekeeping the Legal Aid Department (LAD) from the Home Affairs Bureau (HAB) to the Chief Secretary for Administration's Office (CSO), thereby underlining the independence of the legal aid system.

Background

In the most recent consultancy study on the feasibility and desirability of the establishment of an independent legal aid authority, there was an argument that if LAD was made directly accountable to the Chief Secretary for Administration (CS), it should be able to work more independently particularly in cases which involved other government bureaux/departments. In fact, while HAB oversaw policy matters on legal aid, it was not involved in the day-to-day operation of LAD. Sufficient safeguards in statute and practice were in place to ensure LAD's operational independence. Both the Council and the consultant of the study acknowledged that the degree of independence upheld and exercised by LAD was sufficient. It was considered that any suspicion about the lack of independence was more of a perception issue which could be addressed by introducing improvement measures to the legal aid administration framework. Therefore, the Council recommended, among other things, that LAD should be re-positioned and made directly accountable to CS, which had been the arrangement prior to July 2007.

政府在審慎評估本局的建議和考慮持分者的意見後，向司法及法律事務委員會（「事務委員會」）匯報，決定原則上接納本局的建議，把制訂法援政策和管理法援署的職責撥歸司長辦公室，而法律援助署署長（「法援署署長」）則應直接向政務司司長負責。

建議

為配合有關轉移法援政策範疇的工作，以及確保工作的延續性，政府建議把12個公務員職位（包括一個首長級丙級政務官（首長級薪級第2點）職位和11個非首長級職位），從民政局轉移至司長辦公室。在轉移後，該名擔任首長級丙級政務官職位的人員將會繼續負責監督法援政策，並會負責涉及法庭程序的民事事宜相互法律協助（例如送達司法文書、調取證據和強制執行贍養令）的事宜。

對法援署、免費法律諮詢服務和資助事宜的影響

建議的轉移不會影響法援署履行其法定職務和運作。在轉移後，法援署署長將直接向政務司司長負責。

除了監督法援署的工作外，法援政策範疇還包括有關提供免費法律諮詢服務（包括推行無律師代表民事程序法律諮詢計劃），以及為當值律師服務和法援局提供資助的政策責任。這些政策責任和資助事宜屬法援政策範疇的一部分，將從民政局一併轉移至司長辦公室，相關職務和日常運作均不會受到影響。

本局知悉民政局已於2017年11月27日諮詢事務委員會，且沒有收到反對建議的意見。轉移法援政策範疇將於2018年7月1日起生效。

After careful consideration of the Council's recommendations and views from stakeholders, the Government reported to the Legislative Council Panel on Administration of Justice and Legal Services (AJLS) its acceptance in principle of the Council's recommendation that the responsibilities for formulating legal aid policy and housekeeping LAD should be vested with CSO and the Director of Legal Aid (DLA) should report directly to CS.

The Proposal

To ensure continuity and to tie in with the transfer of the legal aid portfolio, it was proposed that 12 civil service posts (including 1 AOSGC post (D2) and 11 non-directorate posts) be transferred from HAB to CSO. Upon transfer to CSO, the AOSGC post will continue to oversee policy matters relating to legal aid, as well as mutual legal assistance in civil matters involving court procedures, such as service of judicial documents, taking of evidence and enforcement of maintenance orders.

Implications on LAD, Free Legal Advice Services and Subventions

The proposed transfer will not affect LAD's discharge of its statutory duties and operation. After the transfer, DLA will directly report to CS.

Apart from overseeing LAD, the legal aid portfolio also includes policy responsibilities on the provision of free legal advice services including the Legal Advice Scheme for Unrepresented Litigants on Civil Procedures, and subventions for the Duty Lawyer Service and LASC. These policy responsibilities and subventions will be transferred from HAB to CSO as part and parcel of the legal aid portfolio. Their duties and daily operations will not be affected.

The Council noted that HAB had consulted the AJLS Panel on 27 November 2017 and there was no objection to the proposed transfer. The transfer will take effect on 1 July 2018.