

主席回顧 Chairman's Review



我欣然向大家介紹2017-2018年度報告，這是我擔任法律援助服務局主席以來第六份年報。

政府將推行架構改動，其中一項措施為落實早前法援局提出的建議，將制訂法援政策和管理法律援助署（「法援署」）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，以彰顯法援制度的獨立性。本局對此感到欣喜。在轉移法援政策範疇後，法援署署長將直接向政務司司長負責。有關轉移將於2018年7月1日起生效。

法律援助服務是法律制度中不可或缺的一部分，對維護香港的法治扮演着重要

I am pleased to present the 2017-2018 Annual Report, the sixth during my tenure as Chairman of the Legal Aid Services Council.

It is glad to know that the Government will, as part of its restructuring initiatives, implement the Council'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. After the transfer, the Director of Legal Aid will directly report to the Chief Secretary for Administration. The transfer will take effect from 1 July 2018.

Legal aid services form an integral part of the legal system and play an important role in contributing towards upholding the rule of law in Hong Kong. The purpose of legal aid is to ensure that all those who have reasonable grounds for pursuing or defending a legal action in the courts of Hong Kong will not be denied access to justice because of a lack of means. Thus, to qualify for legal aid, a person is required to satisfy both the means test and merits test as provided by the Legal Aid Ordinance (LAO).

A person is financially eligible for legal aid if his financial resources do not exceed the financial eligibility limit (FEL). The FELs of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) are reviewed annually to take into account general price movement and biennially to take into account changes in litigation costs and other relevant factors. In June 2017, HAB informed the Council of

的角色。法援政策的目的是確保所有具備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。因此，任何人如欲獲得法援，必須同時通過《法律援助條例》規定的經濟審查和案情審查。

任何人擁有的財務資源只要不超過財務資格限額，在經濟上便符合申請法援的資格。政府會每年檢討一次普通法律援助計劃（「普通計劃」）和法律援助輔助計劃（「輔助計劃」）的財務資格限額以計及一般物價變動的情況，而兩年一度進行的檢討則會計及訟費變動及其他相關的因素。民政局在2017年6月向本局通報有關財務資格限額的最新檢討結果，參照2014年7月至2016年7月期間丙類消費物價指數的上升幅度，民政局建議把財務資格限額相應調高4.0%，即普通計劃和刑事法律援助的財務資格限額上調至302,000元，而輔助計劃的財務資格上限則為1,509,980元。新的財務資格限額於2018年2月9日起生效。本局歡迎有關決定。

近年，不當使用或濫用法援服務的情況引起了社會的關注。為回應立法會司法及法律事務委員會（「事務委員會」）的要求，民政局在2017年7月的會議上，向事務委員會簡報法援署為防止法援制度被不當使用而推行的措施，以及委派私人執業律師處理法援個案的準則，並於該年同月通報本局。

本局非常感謝法援署為防止法援制度被不當使用和濫用，以及增強公眾對委派律師處理法援個案的認識所作出的努力。在過去數年，被拒法援個案上訴的成功率並不高，可見批出或拒絕法援的決定是獨立公正的；與臆測相反，獲批法援進行司法覆核的個案數目其實不

the outcome of the latest annual review of FELs. Noting that the Consumer Price Index (C) for the reference period from July 2014 to July 2016 has increased by 4%, HAB proposed to adjust the FELs upward by 4% accordingly. The new FELs i.e. \$302,000 for OLAS and criminal legal aid and \$1,509,980 for SLAS came into effect from 9 February 2018. The Council welcomes the increase.

In recent years, there have been concerns over the misuse/abuse of the legal aid system of Hong Kong. In response to the requests of the Legislative Council Panel on Administration of Justice and Legal Services (AJLS), HAB briefed the Panel in July 2017 on the measures implemented by LAD to prevent the misuse of the legal aid system, and on the criteria for assigning lawyers in private practice to handle legal aid cases. The Council was informed about this in the same month of the year.

The Council appreciates the efforts taken by LAD in preventing the misuse of the legal aid system and enhancing the public understanding of the assignment of lawyers in legal aid cases. The Council noted from the information presented to the AJLS Panel that the success rates of legal aid appeals were low in the past years, which reveal that the decisions on the grant/refusal of legal aid were made independently and impartially. Also, contrary to speculations, not many legal aid applications for judicial review (JR) were approved. In 2016, only 27 legal aid certificates were granted for cases involving JR while 437 applications were received.



多，在2016年，在接獲的437宗申請中，只有27宗獲批。

本局於2016年2月就為被扣留在警署人士提供法律諮詢服務向政府提交了意見書。在收到本局的建議後，政府相關的政策局和部門已開始研究建議的可行性。在2017年7月，政府向事務委員會通報本局的建議，並表示在完成內部審議後，將再次向事務委員會報告政府建議的未來路向。

我明白政府非常關注建議的服務或會對資源和有關部門的營運造成影響，但我相信憑藉科技的協助（例如運用Skype和平板電腦提供服務），應可大大減省律師親自探訪被扣留人士所引致的法律費用，同時毋須為面談在警署另闢空間；我亦相信一個可於電子傳輸過程中加密訊息的系統應可處理在保安方面的關注。我希望政府能認真地考慮此項建議，並在切實可行的情況下儘快落實。

在2017年6月，我出席了國際法律援助組織在南非約翰尼斯堡舉行的雙年研討會，大約有80名來自不同國家的著名學者、高級官員，以及提供和管理法律援助服務的人士參加。在為期兩天半的研討會上，部分參加人士發表了有關法援的最新研究和分享選定國家的法援經驗。

我認為該研討會頗具啟發性，與其他已建立相當成熟法律援助制度的司法管轄區相比，香港的法援服務顯得有待改善，除了科技應用方面，我們的思維模式亦需作出更改，義工、法律學生和自助組織應得到更多支援，以便參予法律援助服務，尤其是為弱勢社群提供的服務。

我在研討會後向法援局呈交了一份報告。在報告中，我提出以下建議：

The Council made a submission to the Government in February 2016 on the provision of legal advice services for persons detained in police stations. After receiving the Council's recommendations, relevant government bureaux and departments have been examining the feasibility. In July 2017, the Government reported the recommendations to the AJLS Panel and informed that on completion of the internal deliberations, they would report to the Panel again on the recommended way forward.

While I appreciate the concerns of the Government about the financial and operational implications of the proposed services, I believe that, with the help of technology, by using Skype and tablet PC to provide the services for example, the legal costs for the time spent by lawyers on visiting the detainees in person could be greatly reduced. Also, no additional office space would be required for the face-to-face interviews in police stations. As regards the security concern, I believe there should be a system that could encrypt the messages during electronic transmission. I hope that the Government could seriously consider the proposed services and implement it as soon as practicable.

In June 2017, I attended a biennial conference held by the International Legal Aid Group in Johannesburg, South Africa. The conference was attended by about 80 leading academics, senior officials, and administrators and providers of legal aid services who came from different countries. The conference took two and a half days and was packed with presentations about the latest researches and sharing of experiences from selected countries.

I find the conference quite inspiring. When the legal aid services of Hong Kong are compared with those provided by the jurisdictions with highly developed systems of legal aid, it appears that the delivery of our legal aid services has room for improvement. In addition to the adoption of technology, our mindset may have to be changed. More support should be provided for the participation of volunteers, law students and self-help groups in the delivery of legal aid services, especially to the more vulnerable groups in society.

In my report to the Council after attending the conference, I

- 邀請服務香港弱勢社群（例如少數族裔、青少年、問題家庭）的非政府組織參與法援服務；
- 探討設定一個合理評估服務質素準則的可行性；及
- 由獨立的跨國認可顧問進行一項全面的服務差距分析（傾向更新於2006年進行的香港法律及相關服務的供求情況研究）

我亦建議在服務差距分析完成後，由法援局考慮最合適香港的法援服務模式和管治架構。

本局成立了一個關於改善法律援助資訊傳遞的專責小組，檢視由法援署所提供的法律援助服務統計數據及相關資訊，找出引起持分者關注的資訊差距，以及就公布資訊和統計數據方面向法援署作出建議，以提高該署的運作透明度。

made some recommendations on the legal aid services of Hong Kong including:

- to engage non-governmental agencies which are serving the most vulnerable groups in Hong Kong (e.g. ethnic minorities, youth, problem families) in the review of services;
- to explore the feasibility of setting reasonable standards to evaluate the quality of the services currently provided; and
- to undertake a comprehensive gap analysis of services (preferably to update the 2006 study on the demand for and supply of legal and related services in Hong Kong) by an independent internationally recognized consultant.

I also recommended that after the service gap analysis, the Council could consider which is the most appropriate model for delivery of legal aid services in Hong Kong and the most desired governance structure for the services.

The Task Force on Dissemination of Legal Aid Information established under the Council is tasked to review the statistics



專責小組自成立以來，已經完成研究有關委派律師處理法援個案和法援財政預算的統計數據。由於有公眾批評法援署將大多數法援個案外委給少數律師和懷疑法援預算實際上設有上限，為避免該類不必要的批評和懷疑，法援署接納專責小組的建議，將有關個別律師獲委派處理法援個案的數目，以及法援的核准預算和實際開支指數上載至該署網站。

在2017-2018年間，專責小組繼續研究有關審批法援申請的統計數據，尤其涉及向政府提出索償的法援申請。專責小組認為涉及司法覆核案件的被拒法援數字和法援上訴結果，皆可證明批准或拒絕法援的決定是獨立公正。為此，專責小組建議法援署在該署的年報內公布有關的統計數據。除了被拒法援申請和法援上訴結果的統計數字外，專責小組已著手研究法援署的衡量服務表現指標，並會考慮該等指標是否需要更新，以及那些指標值得向公眾公布。

在2017-2018年間，法援署給予本局很大的支持，我要感謝法律援助署署長及其團隊盡忠職守和努力不懈的工作態度，以及他們在討論和檢視法援服務時所提供的協助，我非常讚賞法援署的貢獻，並期待來年與他們繼續緊密合作。同時，我衷心感謝本局和負責改善法律援助資訊傳遞的專責小組成員，我深信在他們堅定的支持下，法援局定會繼續蓬勃發展，為維護及改善香港的法治積極作出貢獻。

and information on the legal aid services provided by LAD with a view to enhancing its operational transparency. The Task Force will identify the information gaps leading to the concerns raised by stakeholders on the legal aid services and make recommendations to LAD on improving the dissemination of its information and statistics.

Since its establishment, the Task Force has completed its review of the statistics relating to the assignment of legal aid cases and legal aid budget. To avoid the unnecessary criticism/suspicion that most of the legal aid cases are assigned to a small number of lawyers and the legal aid budget is de facto capped, LAD accepted the Task Force' suggestion to upload the statistics on assignment of legal aid cases to the individual lawyers and the indices on approved estimates and actual expenditure of legal aid costs onto the Department's website.

In 2017-2018, the Task Force continued to study the statistics on the granting of legal aid particularly to applicants who pursue claims against the Government. The Task Force opined that the number of refusals of legal aid and the outcomes of legal aid appeals in respect of judicial review cases could demonstrate that the decisions on the grant/refusal of legal aid were made independently and impartially. Therefore, the Task Force suggested LAD disseminate such statistics in its annual report. In addition to the statistics on the granting of legal aid, the Task Force has started the study of key performance indicators (KPIs) of LAD. It would consider whether the KPIs need to be updated and which KPIs are worth to be disseminated to the public.

Throughout 2017-2018 LAD has given the Council a great deal of support. I would like to express my gratitude to the Director of Legal Aid and members of LAD for their dedication to duty and hard work, as well as their assistance in the discussion and review of the legal aid services provided by the Department. I very much appreciate the LAD's contribution and look forward to working closely with them in the years to come. My heartfelt appreciation also goes to members of the Council and the Task Force on Dissemination of Legal Aid Information. With their unfaltering support, I am sure that the Council will continue to flourish and actively contribute to upholding and enhancing the rule of law in Hong Kong.