

## LCQ1: Free Legal Advice Scheme and Duty Lawyer Scheme

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Following is a question by Dr Hon Margaret Ng and a reply by the Secretary for Home Affairs, Mr Tsang Tak-sing, in the Legislative Council today (December 17):

Question:

Regarding the Free Legal Advice Scheme and the Duty Lawyer Service (DLS), will the Government inform this Council:

(a) among the cases heard at Magistrates' Courts (other than those involving fixed penalties) in the past three years, of the percentage of cases in which the defendants had legal representation and, among such cases, the percentage of those in which the legal representatives were duty lawyers;

(b) of the authorities' current specific policy on the provision of free legal advice service and the provision of legal representation service for defendants in Magistrates' Court cases, and the total funding allocated by the Government for the two services in this financial year; and

(c) whether the Government and the organisations concerned will review the above two services, especially the scope of DLS (including whether free legal advice should be provided for persons who are detained by the police), as well as the eligibility for the services, with a view to enabling more defendants in criminal cases to receive legal representation services, so that their legal rights can be safeguarded; if not, of the reasons for that?

Reply:

President,

In respect of the questions raised by Dr Hon Margaret Ng on the "Free Legal Advice Scheme" and the "Duty Lawyer Scheme", my response is as follows:

(a) In respect of the charge cases in Magistrates' Courts from 2005-2007, the respective percentages of legally represented cases were 77%, 80% and 83% and the Duty Lawyer Scheme covered 94%, 93% and 93% respectively in the aforesaid cases.

(b) The provision of free legal advice services by the Government aims to enable members of the public to have access to free preliminary legal advice. The Government provides the venue and referral services to enable members of the public to meet with volunteer lawyers by appointment without passing any means tests. The advice given by volunteer lawyers is of a general nature aiming to help clients understand the nature of their problems, their rights and obligations under the law and the channels available for resolution of the problems.

As regards legal representation provided to defendants in the Magistrates' Courts, which is the "Duty Lawyer Scheme", the policy intention is to ensure that defendants are not prevented from defending a legal action by lack of means. The provision of legal

representation by duty lawyers is publicly-funded. Duty lawyers provide basic legal advice to defendants at their first court appearance without any means tests. Duty lawyers also make a plea of mitigation in the case of a defendant who wishes to plead guilty. If the defendant would like to have legal representation for subsequent appearance, for example, to have a duty lawyer to conduct defence for a defendant who pleads not guilty, the defendant is only required to pass a simple means test and pay a handling charge for the service until the trial ends.

In 2008-09 financial year, the Government's subvention for the "Duty Lawyer Scheme", "Free Legal Advice Scheme" and the "Tel-law Scheme" is \$94.4 million.

(c) The Government and the relevant body will review the effectiveness of the "Duty Lawyer Scheme" and the "Free Legal Advice Scheme" from time to time and introduce improvement measures where practicable.

The scope of the service of the "Duty Lawyer Scheme" has been expanded in previous reviews. For example, it has been extended to any person who is at risk of criminal prosecution as a result of giving incriminating evidence in Coroners Inquest and persons under the age of 18 involved in care or protection proceedings. Currently, assistance under the "Duty Lawyer Scheme" is limited to defendants in the Magistrates' Court but not persons who are detained by the police.

The Government will consider and strike a balance between the relevant factors in determining the scope of service and eligibility of aided persons under the "Free Legal Advice Scheme" and "Duty Lawyer Scheme", including practical considerations such as the use of public funds and the number of participating lawyers.

The Department of Justice (DoJ) has commissioned a consultancy study on the demand for and supply of the legal services in Hong Kong. The study has been completed. I understand that the DoJ will brief the Legislative Council's Panel on Administration of Justice and Legal Services on its views on the consultancy report. We can consider the relevant services of the Duty Lawyer Service accordingly.

Thank you.

Ends/Wednesday, December 17, 2008