

**For discussion on
21 June 2021**

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Proposed Upgrading of One Permanent Directorate Post of
Principal Government Counsel to Law Officer in the
Law Reform Commission Secretariat of the Department of Justice**

PURPOSE

This paper seeks Members' views on the proposed upgrading of one permanent directorate post of Principal Government Counsel (**PGC**) (DL3) to Law Officer (**LO**) (DL6) in the Law Reform Commission (**LRC**) Secretariat of the Department of Justice (**DoJ**), with immediate effect upon approval of the Finance Committee, for strengthening the legal support at the directorate level to the Secretary for Justice (**SJ**) in her capacity as the LRC Chairman and to lead a new project of "Systematic Review of the Statutory Laws of Hong Kong".

JUSTIFICATION

The Current setup and work of the LRC Secretariat

2. The LRC Secretariat is currently headed by a PGC, designated as Secretary to the LRC (**S/LRC**). The primary role of the LRC Secretariat is to provide legal and secretariat support to the LRC and its expert Sub-committees. In broad terms, the role of counsel in the Secretariat is to carry out the extensive local and international comparative legal research and prepare consultation papers and reports to be published in the name of LRC or its Sub-committees. The LRC Secretariat also conducts public consultations on preliminary recommendations made by the Sub-committees and gauges public feedback on issues studied by the LRC, and thereafter assists relevant bureaux and departments (**B/Ds**), as need be, in the process of their consideration and implementation of the LRC's recommendations.

3. The LRC Secretariat used to be part of the Legal Policy Division (**LPD**) (which is now the Constitutional and Policy Affairs Division) headed by the Solicitor General. In December 2020, the

Secretariat was transferred from LPD to the SJ's Office to better reflect the nature of the LRC as an independent body chaired by SJ and so that the Secretariat can report directly to SJ.

4. The LRC has seven formal references at the moment, namely (1) Review of Sexual Offences; (2) Causing or Allowing the Death of a Child or Vulnerable Adult; (3) Archives Law; (4) Access to Information; (5) Periodical Payments for Future Pecuniary Loss in Personal Injury cases; (6) Cybercrime; and (7) Outcome Related Fee Structures for Arbitration. Each of these projects studies a whole array of complicated and interrelated legal issues in an area where law reform is acutely required in Hong Kong. Careful planning and close supervision by a senior directorate officer is required in order to ensure that high quality consultation papers and reports can be produced by the LRC in a timely manner. Apart from assisting on these seven projects, other ongoing work of the LRC Secretariat includes conducting background research on possible new topics to be taken up by the LRC, maintaining and enhancing the LRC website, handling media and public enquiries, and organising various LRC promotional activities, such as the annual Law Reform Essay Competition.

Need to upgrade one PGC to LO post

5. As stated on the LRC website, the LRC's vision is "*to attain and maintain a reputation for excellence in law reform, both internationally and in Hong Kong*" and one of its missions is to "*present proposals for reform which make the law in Hong Kong more effective, more accessible, and more in tune with the community's needs*". In order for the LRC to achieve its goals, it is essential that the Secretariat provides staunch support at the senior directorate level. Upon a critical examination of the set up and the nature of work of the LRC, the requisite qualities of the leadership required has to be enhanced and expanded. This is particularly so in light of the new initiatives/tasks that the LRC will undertake, namely to conduct a systematic review of statutory laws of Hong Kong regularly. The S/LRC will not only need to have a broad knowledge of the statutory laws but also the ability, experience and sensitivity to appreciate their interactions and implications, to implement the tasks demonstrating strategic leadership and planning whilst taking initiatives to perform and deliver with prioritization in mind, as well as to liaise with heads of various bureaux and departments (B/Ds) effectively to foster understanding of the needs for such review. Hence, it is proposed that the post of S/LRC be pitched at the LO rank (i.e. DL6) so as to strengthen the leadership and supervision of the LRC Secretariat and to take forward the new initiatives/tasks set out in paragraphs 6 to 18 below.

Systematic review of statutory laws of Hong Kong regularly

6. Hong Kong's status as an international financial and business centre and as a vibrant world class city is underpinned by a sound legal system based on the rule of law. The Basic Law has maintained our common law system, which is supplemented to a large extent by a vast set of statutory laws. As at 7 June 2021, there are 710 ordinances and 1616 pieces of subsidiary legislation in force in Hong Kong. For a society which aspires to the rule of law, it is important for Hong Kong to keep its laws up to date, so as to provide a clear and certain basis for businesses and individuals to plan and conduct their activities in all aspects of life.

7. The statutory laws of Hong Kong came into force at different times from different sources. The earliest are those imported from England in the 1840's¹, the bulk were enacted in the colonial era and maintained by Article 8 of the Basic Law of the Hong Kong Special Administrative Region (HKSAR)² as "laws previously in force in Hong Kong", and the rest were passed by the HKSAR legislature after 1 July 1997. Our current statute book contains legislation passed and amended at different stages in the last two centuries. It is unavoidable that some of the provisions have become outdated and obsolete. Time is now ripe for Hong Kong to launch a systematic review of its statutory laws to keep them up to date and commensurate with the status of Hong Kong as a modern society governed by the rule of law under the framework of "one country, two systems".

8. It is proposed that the new initiative be taken up by the LRC Secretariat in addition to its current portfolio to consist of work mainly in the following three areas -

- (i) Adaptation of laws;
- (ii) Consolidation of laws; and
- (iii) Repeal of obsolete laws.

Adaptation of laws

9. The adaptation of laws refers to the process of identifying and amending certain provisions or references in the ordinances and subsidiary

¹ An example of this batch is the Land Registration Ordinance (Cap. 128) which was enacted in 1844. This Ordinance has been amended from time to time since then.

² Article 8 of the Basic Law of the HKSAR provides that "[t]he laws previously in force in Hong Kong, that is, ... ordinances, subordinate legislation ... shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

legislation that were in force in Hong Kong before 1 July 1997 so that they are consistent with the Basic Law and the status of Hong Kong as a Special Administrative Region of China. Although as at today, the identified provisions or references have to a large extent in quantitative terms been adapted, certain enactments still contain some provisions or references that have not (e.g. references to “Crown” and “Her Majesty”).

10. For provisions or references that have yet to be adapted, section 2A of, and Schedule 8 to, the Interpretation and General Clauses Ordinance (Cap. 1) provide for how they are to be construed pending adaptation. However, it must be noted that even given the interpretation principles under that Ordinance, the remaining provisions requiring adaptation cannot simply be adapted by following those principles. As a starting point, section 22 of that Schedule 8 expressly provides that the interpretation principles do not apply if the context requires otherwise. In order to make textual amendments to the provisions to enhance the certainty of the provisions, the particular context of the enactments concerned must be considered from the policy perspective. Moreover, while the Interpretation and General Clauses Ordinance provides for how some prominent outdated references in the legislation are to be interpreted, some other outdated references, such as references to certain English authorities, are not covered. An example of provisions containing such a reference is section 38(1) of the High Court Ordinance (Cap. 4), which provides that “[t]he Registrar shall have and may exercise and perform... the same jurisdiction, powers and duties as **the Masters, Registrars and like officers of the Supreme Court of England and Wales**” (emphasis added). There is no straightforward substitute for the reference to the officers mentioned in that section given the differences in the respective legal system of the People’s Republic of China and the United Kingdom. For the reference to be removed from the provision, the policy intent for the provision must first be considered.

11. Moreover, the required changes to some provisions relying on English law are not only outside the coverage of the interpretation principles under the Interpretation and General Clauses Ordinance, but also likely to be so fundamental in terms of policy that they may amount to a law reform exercise. For example, section 72(2) of the Probate and Administration Ordinance (Cap. 10) provides that “[i]n all such business in respect of which no provision is made by probate rules and orders, **the practice and procedure for the time being in force in the Probate Registry in England shall be deemed to be in force** in the court and the Registry” (emphasis added). The above illustrates the kind of policy issues that must first be resolved in order for the outstanding adaptation work to be completed.

12. The outstanding adaptation work is more complicated than perhaps some may perceive. Taking section 38(1) of the High Court Ordinance (Cap. 4) referred to in paragraph 10 above as an example, in-depth legal research has to be conducted on the background and context of the provision, and in particular on the nature and extent of “jurisdiction, powers and duties that the Masters, Registrars and like officers of the Supreme Court of England and Wales” may exercise and perform as at today so that the relevant policy bureau can be properly advised to make an informed decision on whether such “jurisdiction, powers and duties” are still required for the Registrar in Hong Kong. The research of the LRC in this respect will assist in reviewing on what adaptation is required.

13. Further, many outstanding adaptation issues involve across-the-board implications that can only be properly resolved with a broad perspective of the laws holistically. More often than not, a reference that has a colonial connotation appears in a number of ordinances that fall within the purview of different B/Ds, the LRC has to liaise and consult B/Ds concerned to ascertain their policy intent in the context of each ordinance and to ensure that the adaptation recommendations it makes, while reflecting the policy intent in each individual case, will not result in inconsistencies between ordinances. The cross-bureau co-ordination by the LRC Secretariat in this regard is crucial for the completion of this outstanding task.

Consolidation of laws

14. It is a fundamental principle of the rule of law that the law should be accessible to the public. However, the piecemeal enactment of, or amendment to, legislation on the same or similar subject in response to the issues at particular points of time invariably resulted in the relevant provisions being scattered in different ordinances or subsidiary legislation, making them unnecessarily burdensome and not user-friendly. There is an acute need for review and identification of areas for consolidating scattered provisions into a single enactment and through such a process to remove minor inconsistencies and ambiguities that may have crept in over the years.³ The aim of consolidation is to make our statute laws clearer, shorter and more accessible which will greatly facilitate the general public’s access to and understanding of our statute laws. Such consolidation projects

³ Past examples include:

- (i) The legislation for the regulation of the securities and futures market, which was a patchwork of ten Ordinances written over the course of 25 years before they were rewritten, updated and consolidated into the Securities and Futures Ordinance (Cap. 571) in 2002; and
- (ii) The Companies Ordinance Re-write Project, which was conducted on the recommendation of the Standing Committee on Company Law Reform in 2000. The new Companies Ordinance (Cap. 622) was enacted in 2012.

require an overall and in-depth review of the relevant legal subjects at an initial stage and are suitable to be undertaken by specialised task force groups. With a wealth of experience in co-ordinating law reform projects and carrying out extensive legal research required to support members of the LRC and its Sub-committees, the LRC is well-equipped to take the consolidation projects forward. The LRC will listen to the views of B/Ds and Legislative Council Members in deciding on the areas of laws that need to be consolidated and their priority.

Repeal of obsolete laws

15. Law may lag behind social development. Having accumulated enactments for nearly two centuries without any systematic review and repeal, many provisions in our statute book may have become outdated or even obsolete. For example, it is an offence for any person to bring into a pleasure ground any cattle, equines, sheep, goats, pigs or poultry without authority; and an animal delivered into the custody of a police officer is taken to have been seized by the police officer (section 13 of the Pleasure Grounds Regulation (Cap. 132BC). It is also an offence for any person to place in or convey across any public place any excretal matter (i.e. “nightsoil”) except between the hours of midnight and 6 a.m. and in strong substantial buckets with closely fitting covers and of such pattern as approved by the Director of Food and Environmental Hygiene (section 5(1)(a) of the Summary Offences Ordinance (Cap. 228)). These provisions are products of a bygone era when Hong Kong was a peasant community or when there was no proper drainage. Whether such provisions should continue to exist in the legislation is an important area of study for LRC to take the lead. Under the proposed review, statutory provisions which appear to be obsolete would be identified with a view to undertaking a wide scale public consultation with the public and stakeholders so as to decide whether the identified provisions should be repealed.

New work for the LRC Secretariat

16. A review of all the 710 ordinances and 1616 pieces of subsidiary legislation is bound to be a massive exercise requiring significant coordination, deliberation, research and consultation. While, in theory, all B/Ds can be asked to review the laws within their respective purview, it will not be effective because the “mainstream” work and other day-to-day issues will prevent law review from being the priority of any bureau. It will therefore be more effective, efficient and consistent for the LRC Secretariat to coordinate the exercise by having its counsel to review the statutes in a systematic and holistic manner in consultation with B/Ds without impeding

B/Ds' progress with their policies to improve Hong Kong's economy and people's livelihood.

17. Through liaison and collaboration with B/Ds, the LRC Secretariat is generally better positioned to take up the new initiatives to "make the law in Hong Kong more effective, more accessible, and more in tune with the community's needs", which is one of the LRC's missions. Entrusting this new task to the LRC Secretariat will enable it to accumulate and pass on experience, knowledge and expertise gathered in such reviews so as to develop a sustainable way to conduct future reviews in an even more effective manner.

18. Given the massive scale and complexity of the review, we consider it appropriate and necessary for the project to be led by a senior directorate officer at DL6 level. Only officers at that level possess the requisite strategic planning, foresight and management skills to lead and oversee a project of this scale and to map out how to bring it from scratch to success from a high level and broad perspective. It can be foreseen that the LO in carrying out these new initiatives will have to formulate a plan with milestones and deliverables, develop guiding principles, direct and prioritise research, collaborate and analyse findings in consultation with B/Ds and other stakeholders, and formulate comprehensive and pragmatic recommendations. When it comes to proposals that have across-the-board implications, the LO has to closely liaise and communicate with B/Ds.

19. Taking into account the prevailing work of the LRC Secretariat and the new initiative to be added, it is apparent that the breadth, depth and complexity of the LRC Secretariat's work will go beyond the scope and level of duties and responsibilities anticipated for a DL3 officer.

20. The proposed job description of the upgraded S/LRC post and the proposed organisation chart of the LRC Secretariat after the upgrading of the PGC to LO post are at **Enclosures 1 and 2** respectively.

DIRECTORATE AND NON-DIRECTORATE SUPPORT

21. The upgraded S/LRC post will continue to be supported by the existing directorate and non-directorate officers in the LRC Secretariat, including 13 permanent posts of two Deputy Principal Government Counsel, five Senior Government Counsel, two Government Counsel, one Senior Law

Translation Officer and three Law Translation Officers as well as other supporting staff. In addition, the upgraded S/LRC post will be supported by one Senior Personal Secretary (SPS) post to be upgraded from the existing Personal Secretary I (PSI) post, and one new Motor Driver post.

ALTERNATIVES CONSIDERED

22. Other than the upgrading of the S/LRC post, no alternative staff redeployment arrangement is considered to be feasible. As explained in paragraphs 6 to 18 above, the nature and complexity of the tasks warrant dedicated leadership at DL6 level. Other LOs are already fully occupied with their respective legal portfolios as well as directorate supervision and management functions. It is not possible to further stretch the existing manpower at DL6 level to take up the new initiative in the LRC Secretariat without compromising other pressing ongoing assignments.

FINANCIAL IMPLICATIONS

23. The proposed upgrading of one PGC to LO post will bring about an additional notional annual salary cost at mid-point of \$625,200. The additional full annual average staff cost, including salary and staff on-cost, is \$1,025,000.

24. The additional notional annual salary cost at mid-point for the upgrading of one PSI to SPS post is \$150,000 and the national annual salary cost at mid-point for the creation of one Motor Driver post mentioned in paragraph 21 above is \$240,420. The additional full annual average staff cost, including salaries and staff on-cost, for the two posts is \$478,000.

25. We have earmarked sufficient provision to meet the cost of this proposal.

Department of Justice
June 2021

**Job Description of the Proposed Law Officer Post
in the Law Reform Commission Secretariat
of the Secretary for Justice's Office**

Rank : Law Officer (DL6)

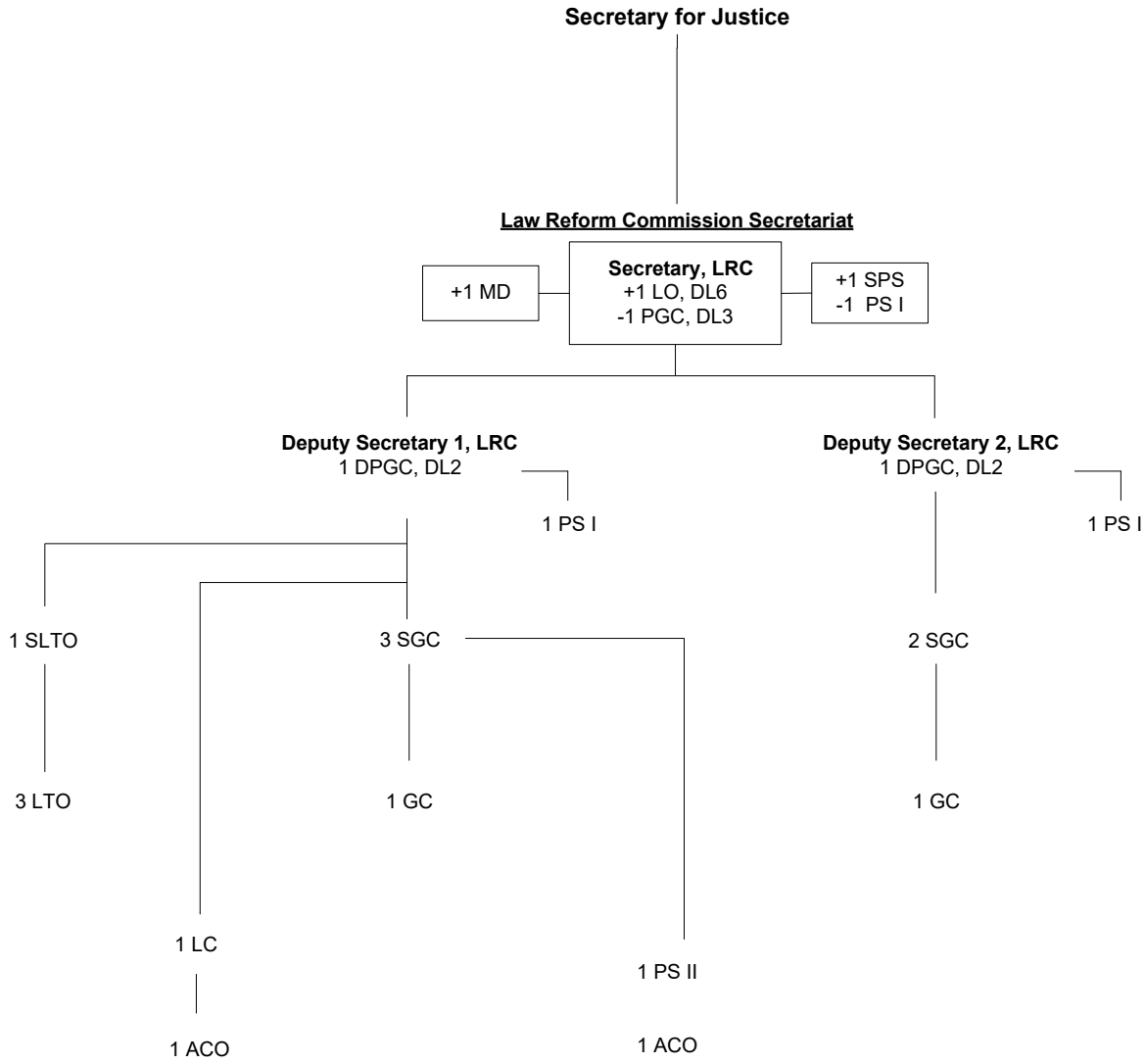
Responsible to : Secretary for Justice (SJ)

Major duties and responsibilities –

To provide direct support and report to SJ in her capacity as the Chairman of the Law Reform Commission (LRC) in leading the LRC to achieve its mission of attaining and maintaining “*a reputation for excellence in law reform, both internationally and in Hong Kong*” and its mission to “*present proposals for reform which make the law in Hong Kong more effective, more accessible, and more in tune with the community's needs*”. In particular -

- (1) To plan, organise and supervise the overall research programme for the LRC and to consider and prepare new subjects to be submitted to the SJ and the Chief Justice for reference to the LRC;
- (2) To plan, organise, liaise, co-ordinate (including cross-bureaux and cross-department liaison and co-ordination) and lead a review of all statutory laws of Hong Kong in a systematic, holistic manner regularly with a view to adapting all laws to align with Hong Kong's status under the Basic Law, consolidating laws as appropriate and repealing obsolete provisions, and in the process, formulating overall plans with milestones and deliverables;
- (3) To direct and supervise all professional and non-professional staff in the LRC Secretariat to conduct legal research, draft discussion papers, consultation papers and reports, conduct public consultation for the projects undertaken by the LRC and its Sub-committees and to publicise the LRC and its work;
- (4) To execute all decisions made by the LRC, including its directions on law reform proposals and on the content and presentation of consultation papers and reports for publication;
- (5) To liaise with the government bureaux and departments on recommendations made by the LRC on law reform and in the systematic review of statutory laws of Hong Kong, and to assist in B/Ds' consideration and implementation of those recommendations; and
- (6) To be responsible for the general administration of the LRC Secretariat and to perform such other duties as may be assigned from time to time by the SJ.

Existing and Proposed Organisation Chart of the Law Reform Commission Secretariat



- Legend:
- | | | | | | |
|------|---------------------------------------|------|----------------------------------|-------|-----------------------------|
| LO | – Law Officer | SLTO | – Senior Law Translation Officer | SPS | – Senior Personal Secretary |
| PGC | – Principal Government Counsel | LTO | – Law Translation Officer | PS I | – Personal Secretary I |
| DPGC | – Deputy Principal Government Counsel | LC | – Law Clerk | PS II | – Personal Secretary II |
| SGC | – Senior Government Counsel | ACO | – Assistant Clerical Officer | MD | – Motor Driver |
| GC | – Government Counsel | | | | |

Proposed creation / upgrade of posts