

## Head 92 — DEPARTMENT OF JUSTICE

**Controlling officer:** the Director of Administration and Development will account for expenditure under this Head.

<b>Estimate 2004–05</b> .....	<b>\$897.9m</b>
<b>Establishment ceiling 2004–05</b> (notional annual mid-point salary value) representing an estimated 1 020 non-directorate posts as at 31 March 2004 reducing by 40 posts to 980 posts as at 31 March 2005 .....	<b>\$405.5m</b>
In addition there will be an estimated 73 directorate posts as at 31 March 2004 and as at 31 March 2005.	
<b>Commitment balance</b> .....	<b>\$9.7m</b>

### Controlling Officer's Report

#### Programmes

<p><b>Programme (1) Prosecutions</b>  <b>Programme (2) Civil</b>  <b>Programme (3) Legal Policy</b>  <b>Programme (4) Law Drafting</b>  <b>Programme (5) International Law</b></p>	<p>These programmes contribute to Policy Area 11: Legal Administration (Secretary for Justice).</p>
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#### Detail

##### Programme (1): Prosecutions

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	387.5	406.6	379.5 (–6.7%)	<b>379.0</b> (–0.1%)
				(or –6.8% on 2003–04 Original)

#### Aim

**2** The aim is to advise and decide whether or not criminal proceedings should be undertaken and to prosecute cases in the courts.

#### Brief Description

**3** The Prosecutions Division advises upon and prosecutes criminal cases in all the courts of Hong Kong. Apart from the Court Specialists, whose work is primarily advocacy, and who prosecute the more serious cases, Government Counsel across the Division prosecute in trials; appear in appeals, applications for bail and asset recovery cases; and assist the coroner in inquests. Most cases in the Magistrates' Courts are prosecuted by Court Prosecutors. Some cases are briefed out to members of the bar and solicitors in private practice. The Division also advises the law enforcement agencies and other Government departments and agencies on criminal law and procedure and the effects of legislation.

**4** The advisory function of the Division is performed by Government Counsel in various sections. One section is involved in the Division's training and management matters; other sections are involved in the preparation of cases for trial; whilst specialist sections advise on areas as diverse as corruption, fraud, labour and immigration, vice, obscenity, gambling, anti-terrorism, triads and organised crime, human rights and the Basic Law, complaints against the Police, narcotics, the recovery of the proceeds of crime, customs and excise, computer crime, copyright, and market misconduct.

**5** In 2003, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

**6** The key performance measures are:

#### Indicators

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
cases conducted by Government Counsel .....	4 318	4 436	<b>4 440</b>
cases conducted by Counsel instructed to prosecute in all courts .....	980	726	<b>730</b>
average court days for court specialists .....	100	93	<b>95</b>

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	2002 (Actual)	2003 (Actual)	2004 (Estimate)
court days undertaken by Government Counsel who are not court specialists.....	4 422	4 513	<b>4 520</b>
court days undertaken by Court Prosecutors in Magistrates' Court .....	14 015	13 851	<b>13 800</b>
court days undertaken by Counsel instructed to prosecute in Magistrates' Court in place of Court Prosecutors .....	691	78	<b>100</b>
trials prepared in the Court of First Instance .....	433	337	<b>340</b>
trials prepared in the District Court.....	619	608	<b>610</b>
items of legal advice provided.....	16 579	16 820	<b>16 850</b>
appeals conducted .....	1 712	1 607	<b>1 610</b>

7 The conviction rates for 2002 and 2003 are:

	2002 (Actual)	2003 (Actual)
Magistrates' Court.....	76.9%	77.3%
District Court.....	86.2%	87.5%
Court of First Instance.....	90.2%	88.6%

It should be noted that while it is the duty of Counsel and Court Prosecutors to prosecute vigorously in courts, they have to act in a fair and objective manner. It is wrong to strive to secure a conviction at all costs. The question of guilt or innocence is a matter for the court to decide. Therefore, conviction rates in criminal cases are not and should not be taken as performance indicators. They are published regularly for reference only.

### *Matters Requiring Special Attention in 2004–05*

8 During 2004–05, the Division will:

- prepare a Code of Conduct for expert witnesses after consultation with the relevant bodies;
- devise practical steps which prosecutors can take to avoid miscarriages of justice; and
- devise measures to further improve the quality of service provided to victims of crime and witnesses.

### **Programme (2): Civil**

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	268.8	377.5	347.8 (–7.9%)	<b>326.9</b> (–6.0%)
				(or –13.4% on 2003–04 Original)

### *Aim*

9 The aim is to provide legal advice to the Government in civil matters, to undertake civil litigation and to draft contracts on commercial and other matters.

### *Brief Description*

10 The work of the Civil Division involves:

- representing the Government and various other bodies in courts and tribunals in all forms of civil litigation and dispute resolution (including non-construction arbitration and mediation);
- providing legal advice on planning, environment, housing and land law matters;
- providing legal advice on commercial law matters and drafting commercial contracts, licences and franchises; and
- providing legal advice on legislation and civil law matters.

11 In 2003, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

12 The key performance measures are:

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### *Indicators*

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
civil proceedings (including non-construction arbitration) brought by the Government .....	1 307	1 297	1 640
civil proceedings (including non-construction arbitration) brought against the Government .....	1 865#	2 049#	2 250
person days of court appearances .....	1 009	1 341	1 530
civil litigation cases current on 31 December.....	14 572	13 587	14 910
items of legal advice provided.....	16 181	16 454	16 460
commercial tenders, consultancy briefs, contracts, licences and franchises drafted/vetted .....	505	637	700

# Including 166 and one right of abode claims handled in 2002 and 2003 respectively.

### *Matters Requiring Special Attention in 2004–05*

13 During 2004–05, the Division will advise on the legal aspects of :

- proceedings involving the Government, in particular those involving civil service matters, bid challenges under the World Trade Organization, land disputes and infra-structure projects;
- the English and Chinese texts of contracts, undertakings, tender documents, public franchises, licences and other legal documents for the Government, in addition to drafting and vetting such texts;
- amendments to the Waste Disposal, Buildings and Town Planning Ordinances to effect changes to the relevant administrative and operational processes under those legislation;
- the regulation of companies, securities, insurance, information technology, electronic transactions, e-commerce (including the Certification Authority Recognition Office), transportation, television broadcasting and telecommunications (including anti-competition provisions) as well as proposals for reform;
- the implementation of the Hong Kong Disneyland project;
- privatisation, corporatisation and outsourcing of the Government's commercial activities;
- occupational retirement and provident fund schemes;
- amendments to the securities and futures legislation;
- various projects and initiatives, including the West Kowloon Cultural District Project, public private partnership and private sector involvement projects, bank mergers, deposit protection scheme and regulation of utilities under the respective schemes of control; and
- securitisation of toll receipts.

### **Programme (3): Legal Policy**

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	65.0	67.1	64.1 (–4.5%)	63.8 (–0.5%)
				(or –4.9% on 2003–04 Original)

### *Aim*

14 The aim is to advise the Government on matters raising questions of legal policy; to assist in formulating policy, particularly in relation to the legal system and the legal profession; to provide support to the Secretary for Justice in relation to the discharge of her duties; to provide advice in respect of the Basic Law, human rights and constitutional affairs as well as the law and legal developments in the Mainland; and to review chosen areas of the law and provide secretariat support for the Law Reform Commission.

### *Brief Description*

15 The work of the Secretary for Justice's Office and the Legal Policy Division includes:

- advising whether proposed legislation or policy is contrary to established principles underlying the legal system;
- providing support for the Secretary for Justice in relation to her duties as a member of the Executive Council, a designated officer attending meetings of the Legislative Council and as the principal legal adviser to the Chief Executive;

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- advising on legal issues arising out of prisoners' petitions for remission, references of cases to the Court of Appeal under the Criminal Procedure Ordinance and responses to public enquiries and complaints;
- providing specialised human rights advice to ensure the consistency of policy and legislation with the human rights requirements of the Basic Law and of international treaties extended to the Hong Kong Special Administrative Region (HKSAR);
- promoting bills related to the legal system or effecting law reform or miscellaneous amendments to various ordinances;
- providing advice and information on the laws of the Mainland and on arrangements with Mainland authorities concerning legal services, and developing working relationships with counterparts in the Mainland;
- providing advice to the Government on procedures of the Legislative Council;
- providing advice on the Basic Law and promoting knowledge of the Basic Law; and
- giving advice and providing research and secretariat support to facilitate the work of the Law Reform Commission.

16 In 2003, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

17 The key performance measures are:

### *Indicators*

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
bills promoted in each session of the Legislative Council .....	2	2	2
petitions handled .....	63	58	60
items of written advice given on general legal policy issues ...	537	476	510
items of legal advice given on human rights issues .....	680	796	700
law reform projects handled .....	14	11	12
speeches prepared (both for the Legislative Council and elsewhere) .....	113	110	110
items of legal advice given on Mainland law and related matters .....	183	201	190
items of legal advice given on the Basic Law and constitutional matters .....	1 186	1 164	1 050
Basic Law seminars conducted.....	24	11	12

### *Matters Requiring Special Attention in 2004–05*

18 During 2004–05, the Secretary for Justice's Office and the Legal Policy Division will continue to:

- take forward the comprehensive review of legal education and training;
- explore further opportunities for the legal profession to provide services in the Mainland and assist in the implementation of arrangements with Mainland authorities including the Mainland and Hong Kong Closer Economic Partnership Arrangement;
- provide legal advice in respect of the implementation of the Basic Law and the development of our new constitutional order;
- provide prompt and reliable human rights advice including advice in respect of anti-discrimination legislation;
- develop expertise in respect of legislative powers, procedures and practices in the context of the Basic Law;
- develop working relationships with counterparts in the Mainland in particular areas which call for co-operation between HKSAR and the Mainland; and
- organise talks, seminars and visits in order to develop and enhance mutual understanding of the legal systems in HKSAR and the Mainland.

### **Programme (4): Law Drafting**

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	97.5	99.3	93.9 (–5.4%)	92.3 (–1.7%)

(or –7.0% on  
2003–04 Original)

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### *Aim*

19 The aim is to draft legislation and to make the texts of legislation readily accessible.

### *Brief Description*

20 The work of the Law Drafting Division involves:

- drafting of legislation in the English and Chinese languages and steering such draft legislation through the law-making process;
- compiling the loose-leaf edition of the Laws of Hong Kong; and
- maintaining the Bilingual Laws Information System database.

21 In 2003, the aim of the programme was generally met and the overall performance under the programme was satisfactory.

22 The key performance measures are:

### *Indicators*

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
bills gazetted.....	27	41	25
subsidiary legislation gazetted.....	255	279	300
pages of bills/subsidiary legislation gazetted (English).....	1 658	2 215	1 700
pages of bills/subsidiary legislation gazetted (Chinese).....	1 658	2 215	1 700
pages of legislation compiled for publication in the loose- leaf edition.....	7 686	10 346	9 000
pages of Committee Stage Amendments (English).....	943	530	700
pages of Committee Stage Amendments (Chinese).....	702	470	560

### *Matters Requiring Special Attention in 2004–05*

23 During 2004–05, the Division will continue to:

- meet the Government's requirements for the drafting of legislation and incidental professional service in an effective manner;
- compile replacement pages for the loose-leaf edition of the Laws of Hong Kong; and
- update the Bilingual Laws Information System database in a timely and accurate manner.

### **Programme (5): International Law**

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	35.4	37.9	36.4 (–4.0%)	35.9 (–1.4%)

(or –5.3% on  
2003–04 Original)

### *Aim*

24 The aim is to provide advice on international law issues to the Government and to handle requests for international legal co-operation efficiently.

### *Brief Description*

25 The work of the International Law Division involves:

- providing advice on all aspects of public international law including the application to HKSAR of multilateral and bilateral international agreements, maritime and aviation law, consular privileges and immunities and the resolution of trade disputes;
- negotiating and advising on international agreements, including those for surrender of fugitive offenders, mutual legal assistance, transfer of sentenced persons, investment promotion and protection, air services and avoidance of double taxation;
- participating in the activities of the Hague Conference on Private International Law and negotiating multilateral agreements relating to private international law;

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- providing advice on the international legal aspects of HKSAR's laws; and
- handling requests to and from HKSAR for surrender of fugitive offenders, mutual legal assistance in criminal matters, transfer of sentenced persons and enforcement of confiscation orders and advising on matters involving international legal co-operation.

26 The key performance measures are:

### *Indicators*

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
international agreements initialled.....	4	2	4
briefings, negotiation and discussion (number of working sessions).....	373	288	320
items of advice provided .....	8 023	8 534	8 000
new requests dealt with in various categories of mutual legal assistance .....	179	127	150
court appearances .....	75	69	75

### *Matters Requiring Special Attention in 2004–05*

27 During 2004–05, the Division will continue to:

- provide timely and accurate advice on international law issues and on issues relating to mutual legal assistance;
- negotiate international agreements or contribute as legal advisers in these negotiations; and
- handle requests for international legal co-operation effectively.

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### ANALYSIS OF FINANCIAL PROVISION

Programme	2002-03 (Actual) (\$m)	2003-04 (Original) (\$m)	2003-04 (Revised) (\$m)	2004-05 (Estimate) (\$m)
(1) Prosecutions.....	387.5	406.6	379.5	<b>379.0</b>
(2) Civil .....	268.8	377.5	347.8	<b>326.9</b>
(3) Legal Policy.....	65.0	67.1	64.1	<b>63.8</b>
(4) Law Drafting.....	97.5	99.3	93.9	<b>92.3</b>
(5) International Law.....	35.4	37.9	36.4	<b>35.9</b>
	854.2	988.4	921.7 (-6.7%)	<b>897.9</b> <b>(-2.6%)</b>
				<b>(or -9.2% on 2003-04 Original)</b>

#### Analysis of Financial and Staffing Provision

##### Programme (1)

Provision for 2004-05 is \$0.5 million (0.1%) lower than the revised estimate for 2003-04. This is mainly due to the net deletion of 11 posts and effect of the 2004 and 2005 civil service pay cut, partly offset by the anticipated increase in court costs.

##### Programme (2)

Provision for 2004-05 is \$20.9 million (6.0%) lower than the revised estimate for 2003-04. This is mainly due to the deletion of 12 posts, effect of the 2004 and 2005 civil service pay cut, and reduced provisions for general departmental and briefing out expenses, partly offset by the anticipated increase in court costs.

##### Programme (3)

Provision for 2004-05 is \$0.3 million (0.5%) lower than the revised estimate for 2003-04. This is mainly due to the deletion of four posts, effect of the 2004 and 2005 civil service pay cut, and reduced general departmental expenses, partly offset by the provision for new one-off projects.

##### Programme (4)

Provision for 2004-05 is \$1.6 million (1.7%) lower than the revised estimate for 2003-04. This is mainly due to the deletion of 11 posts.

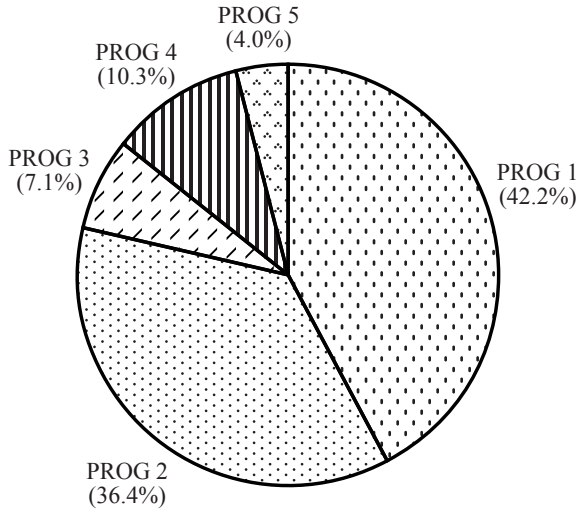
##### Programme (5)

Provision for 2004-05 is \$0.5 million (1.4%) lower than the revised estimate for 2003-04. This is mainly due to the deletion of two posts.

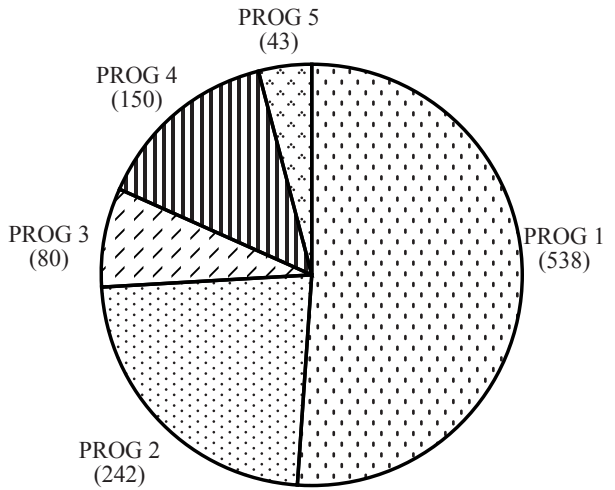
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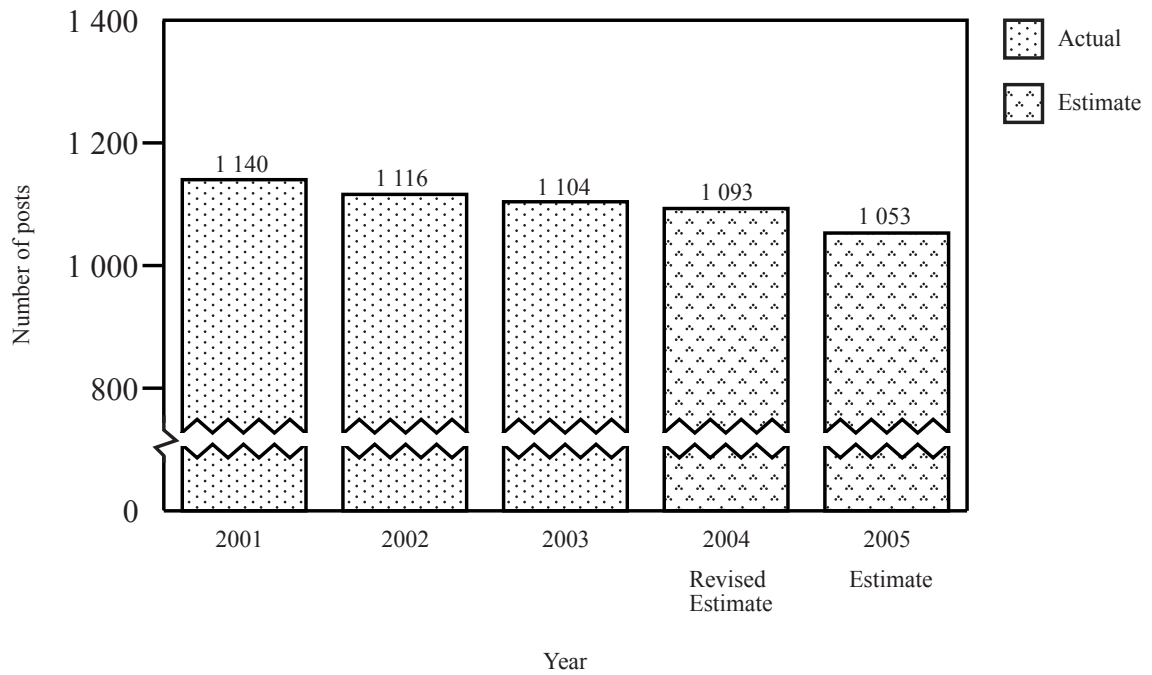
*Allocation of provision  
to programmes  
(2004-05)*



*Staff by programme  
(as at 31 March 2005)*



*Changes in the size of the establishment  
(as at 31 March)*





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Sub-head (Code)	Actual expenditure 2002-03	Approved estimate 2003-04	Revised estimate 2003-04	<b>Estimate 2004-05</b>	
	\$'000	\$'000	\$'000	<b>\$'000</b>	
<b>Operating Account</b>					
Recurrent					
000	Operational expenses.....	—	887,077	835,191	<b>795,577</b>
234	Court costs.....	69,054	98,561	83,694	<b>98,561*</b>
	Salaries.....	556,676	—	—	—
	Allowances.....	5,822	—	—	—
	Job-related allowances.....	6	—	—	—
	Remuneration for special appointments.....	2,978	—	—	—
	General departmental expenses.....	67,190	—	—	—
	Hire of legal services and related professional fees.....	125,045	—	—	—
	Legal services for construction dispute resolution.....	25,420	—	—	—
	Total, Recurrent.....	<u>852,191</u>	<u>985,638</u>	<u>918,885</u>	<b><u>894,138</u></b>
Non-Recurrent					
700	General non-recurrent.....	1,974	2,808	2,845	<b>3,804</b>
	Total, Non-Recurrent.....	<u>1,974</u>	<u>2,808</u>	<u>2,845</u>	<b><u>3,804</u></b>
	Total, Operating Account.....	<u>854,165</u>	<u>988,446</u>	<u>921,730</u>	<b><u>897,942</u></b>
<hr/>					
	Total Expenditure.....	<u><u>854,165</u></u>	<u><u>988,446</u></u>	<u><u>921,730</u></u>	<b><u><u>897,942</u></u></b>

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### Details of Expenditure by Subhead

The estimate of the amount required in 2004–05 for the salaries and expenses of the Department of Justice is \$897,942,000. This represents a decrease of \$23,788,000 against the revised estimate for 2003–04 and an increase of \$43,777,000 over actual expenditure in 2002–03.

#### Operating Account

##### Recurrent

**2** Provision of \$795,577,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department of Justice. This includes provision of \$184,700 for a non-accountable entertainment allowance for the Secretary for Justice.

**3** The establishment as at 31 March 2004 will be 1 092 permanent posts and one supernumerary post. It is expected that a net permanent 40 posts will be deleted in 2004–05. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2004–05, but the notional annual mid-point salary value of all such posts must not exceed \$405,452,000.

**4** An analysis of the financial provision under *Subhead 000 Operational expenses* is as follows:

	2002–03 (Actual) (\$'000)	2003–04 (Original) (\$'000)	2003–04 (Revised) (\$'000)	<b>2004–05 (Estimate) (\$'000)</b>
Personal Emoluments				
- Salaries.....	556,676	562,937	549,446	<b>533,323</b>
- Allowances.....	5,822	7,253	5,150	<b>4,972</b>
- Job-related allowances .....	6	6	6	<b>6</b>
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	—	585	700	<b>700</b>
Departmental Expenses				
- Remuneration for special appointments ...	2,978	3,537	3,537	<b>3,530</b>
- General departmental expenses.....	67,190	84,480	71,061	<b>69,285</b>
Other Charges				
- Hire of legal services and related professional fees .....	125,045	168,019	151,548	<b>143,761</b>
- Legal services for construction dispute resolution .....	25,420	60,260	53,743	<b>40,000</b>
	783,137	887,077	835,191	<b>795,577</b>

**5** Provision of \$98,561,000 under *Subhead 234 Court costs* is for the payment of costs awarded against the Government in criminal and civil cases. The increase of \$14,867,000 (17.8%) over the revised estimate for 2003–04 is mainly due to the deferment of some payments to 2004–05 as a result of protracted negotiations.

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### Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.2003	Revised estimated expenditure for 2003-04	Balance
			\$'000	\$'000	\$'000	\$'000
<b><i>Operating Account</i></b>						
700		<i>General non-recurrent</i>				
	512	Hire of service for translation and Chinese typing .....	5,100	2,403	550	2,147
	513	Conducting mock trials in the Mainland.....	2,400	1,609	400	391
	514	Promotion of rule of law and Hong Kong's legal system.....	6,300	5,805	200	295
	516	Production of publicity materials to promote the awareness of the rule of law .....	5,000	4,097	725	178
	517	Development of a community legal information website in Hong Kong....	3,180	—	970	2,210
	518	Consultancy study on the demand for and supply of legal and related services .....	4,500	—	—	4,500
		Total.....	<u>26,480</u>	<u>13,914</u>	<u>2,845</u>	<u>9,721</u>