

## Head 94 — LEGAL AID DEPARTMENT

**Controlling officer:** the Director of Legal Aid will account for expenditure under this Head.

**Estimate 2004–05** ..... **\$785.7m**

**Establishment ceiling 2004–05** (notional annual mid-point salary value) representing an estimated 545 non-directorate posts as at 31 March 2004 reducing by 23 posts to 522 posts as at 31 March 2005..... **\$164.7m**

In addition there will be an estimated 15 directorate posts as at 31 March 2004 and as at 31 March 2005.

### Controlling Officer's Report

#### Programmes

<p><b>Programme (1) Processing of Legal Aid Applications</b></p> <p><b>Programme (2) Litigation Services</b></p> <p><b>Programme (3) Support Services</b></p> <p><b>Programme (4) Official Solicitor's Office</b></p>	<p>These programmes contribute to Policy Area 20: Legal Aid (Director of Administration).</p>
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#### Detail

##### Programme (1): Processing of Legal Aid Applications

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	<b>2004–05 (Estimate)</b>
Financial provision (\$m)	78.5	79.4	78.8 (–0.8%)	77.6 (–1.5%)
				(or –2.3% on 2003–04 Original)

#### Aim

- 2 The aim is to ensure that legal aid service is provided only to eligible applicants.

#### Brief Description

3 The Application and Processing Division and the Crime Section and Insolvency Unit of the Litigation Division assess applicants' eligibility for legal aid and the financial contribution required of them towards the relevant legal costs.

- 4 To qualify for legal aid, an applicant has to pass both the means test and merits test.

5 Although an applicant's financial resources may exceed the prescribed financial eligibility limit, the Director may grant legal aid if a breach of Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights is an issue, or in a criminal case if the Director is satisfied that it is desirable in the interests of justice to do so.

6 In respect of civil cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid, whether based on means or merits. In respect of criminal cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid only where appeals to the Court of Final Appeal are involved. Legal aid may also be granted to an accused or appellant by a Judge in certain circumstances even though such has been refused by the Director.

- 7 The department generally met the aim of the programme in 2003.

- 8 The key performance measures in respect of processing legal aid applications are:

#### Targets

	Target	2002 (Actual)	2003 (Actual)	<b>2004 (Plan)</b>
<i>Civil legal aid</i>				
% of applications processed within three months from the date of application.....	85%	90%	91%	<b>85%</b>

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	Target	2002 (Actual)	2003 (Actual)	<b>2004 (Plan)</b>
<i>Criminal legal aid</i>				
Appeals against sentence				
% of applications processed within two months from the date of application.....	85%	95%	92%	<b>90%</b>
Appeals against conviction				
% of applications processed within three months from the date of application.....	85%	92%	91%	<b>90%</b>
Court of First Instance of the High Court/District Court				
% of applications processed within ten working days from the date of application.....	90%	90%	91%	<b>90%</b>
Committal proceedings				
% of applications processed within eight working days from the date of application.....	90%	92%	92%	<b>90%</b>

### *Indicators*

	2002 (Actual)	2003 (Actual)	<b>2004 (Estimate)</b>
<i>Civil</i>			
enquiries received.....	40 237	39 729	<b>41 620</b>
appointments made.....	15 949	14 318	<b>14 900</b>
applications received.....	21 961#	21 749	<b>22 600</b>
applications processed.....	21 788	21 381	<b>22 500</b>
applications pending decision as at end of year.....	2 014	2 382	<b>2 482</b>
legal aid certificates granted.....	10 036	10 773	<b>11 200</b>
applications refused			
on means.....	1 082	929	<b>960</b>
on merits.....	7 850§	7 490	<b>7 690</b>
appeals against Director's decisions			
appeals heard.....	1 141†	1 182	<b>1 210</b>
appeals allowed.....	81	97	<b>100</b>
<i>Criminal</i>			
applications received.....	4 691	4 411	<b>4 590</b>
applications processed.....	4 640	4 486	<b>4 560</b>
applications pending decision as at end of year.....	343	268	<b>298</b>
legal aid certificates granted.....	2 892	2 803	<b>2 900</b>
applications refused			
on means.....	115	55	<b>58</b>
on merits.....	1 446	1 502	<b>1 550</b>

# Excluding 3 661 applications by right of abode claimants to sue the HKSAR Government for damages and to have their removal order quashed.

§ Excluding 3 661 and 931 applications by right of abode claimants lodged in 2002 and previous years respectively.

† Excluding 2 007 appeals by right of abode claimants.

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

9 During 2004–05, the department will continue to:

- monitor the number of legal aid applications and the processing times;
- improve the quality of its services; and
- monitor the effectiveness of the means-testing processes.

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### Programme (2): Litigation Services

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	<b>2004–05 (Estimate)</b>
Financial provision (\$m)	601.8	711.0	654.9 (–7.9%)	<b>672.4</b> (+2.7%)
				(or –5.4% on 2003–04 Original)

#### *Aim*

**10** The aim is to discharge the department’s statutory duties relating to assignment and conduct of legal aid cases.

#### *Brief Description*

##### *Assigning out and monitoring of cases*

**11** The Application and Processing Division and the Crime Section of the Litigation Division systematically monitor cases assigned to private practitioners.

##### *In-house litigation*

**12** The Litigation Division conducts litigation on behalf of legally-aided persons. The work involves:

##### Civil litigation

- Personal injury—taking proceedings for legally-aided persons in respect of claims for common law damages for personal injuries and death, and compensation under the Employees’ Compensation Ordinance, claims for seamen’s wages, and claims for damages due to professional negligence;
- Matrimonial—taking or defending proceedings for legally-aided persons in respect of separation, dissolution/annulment of marriage/ancillary and other relief and wardship;
- Insolvency—taking winding up and bankruptcy proceedings for legally-aided persons to recover employment entitlements and judgment debts;

##### Criminal litigation

- representing legally-aided persons in committal proceedings in Magistrates’ Court, plea day proceedings in the District Court, and Listing and bail applications in the Court of First Instance; and
- acting as instructing solicitor for legally-aided persons in Court of First Instance (Fixture/Running List) cases, as well as in appeals before the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

**13** The department generally met the aim of the programme in 2003.

**14** The key performance measures in respect of assignment and conduct of legal aid cases are:

#### *Indicators*

	2002 (Actual)	2003 (Actual)	<b>2004 (Estimate)</b>
Assigning out and monitoring of cases			
<i>Civil</i>			
new cases assigned .....	7 621	7 080	<b>7 460</b>
cases concluded .....	6 685	7 696	<b>7 200</b>
active cases as at end of year .....	16 696	18 468	<b>18 728</b>
<i>Criminal</i>			
new cases assigned .....	1 865	1 842	<b>2 000</b>
cases concluded .....	1 765	1 720	<b>1 960</b>
active cases as at end of year .....	350	472	<b>512</b>
In-house Litigation			
<i>Civil</i>			
Personal injury			
new cases assigned .....	502	524	<b>480</b>
cases concluded .....	512	498	<b>550</b>
active cases as at end of year .....	890	940	<b>870</b>
Matrimonial			
new cases assigned .....	1 120	2 464	<b>2 600</b>
cases concluded .....	980	1 100	<b>1 800</b>
active cases as at end of year .....	1 140	2 780	<b>3 580</b>

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	2002 (Actual)	2003 (Actual)	2004 (Estimate)
<b>Insolvency</b>			
new cases assigned .....	648	806	<b>830</b>
cases concluded .....	703	979	<b>1 100</b>
active cases as at end of year .....	2 555	2 382	<b>2 112</b>
<b>Criminal</b>			
new cases assigned .....	1 070	760	<b>730</b>
cases concluded .....	1 065	947	<b>750</b>
active cases as at end of year .....	525	338	<b>318</b>
<b>Damages/costs recovered from all civil cases</b>			
amount of damages recovered (\$'000) .....	961,090	768,824	<b>830,000</b>
amount of costs recovered (\$'000) .....	185,864	197,341	<b>210,000</b>

*Note:* The total number of cases concluded and cases remaining active at the end of a year does not tally with the number of new cases assigned during the same year as the former two categories include cases already assigned before the beginning of the relevant year.

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

**15** During 2004–05, the department will continue to:

- monitor the progress and expenditure of legal aid cases;
- monitor the performance of assigned private practitioners and consider new measures to strengthen the monitoring of assigned-out cases; and
- monitor the cost effectiveness of litigation services.

### **Programme (3): Support Services**

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	33.2	31.9	30.8 (–3.4%)	<b>30.3</b> (–1.6%)
				(or –5.0% on 2003–04 Original)

### ***Aim***

**16** The aims are to provide effective support services for processing applications and conducting legal aid cases and for increasing public understanding and awareness of legal aid services, and to review/make recommendations on legal aid policy to meet areas of perceived needs.

### ***Brief Description***

**17** Support services include:

- Insolvency—dealing with cases to be referred to the Protection of Wages on Insolvency Fund Board for ex-gratia payments without the need for bankruptcy and winding-up proceedings;
- Costing—assessing costs and preparing bills of costs, as well as attending taxation hearings;
- Enforcement—taking actions to enforce unsatisfied judgments and orders; and
- Public education—organising or participating in activities to enhance the public’s knowledge and awareness of legal aid services provided by the department.

**18** The department assesses and makes payments to assigned solicitors and counsel, and pays damages recovered to clients.

**19** In the area of policy and legislation, constant effort is made to improve the practical working of the legal aid scheme; to increase the department’s efficiency and productivity; to make recommendations on any change in legal aid legislation; and to comment on other legislation which may have an impact on the provision of legal aid services.

**20** It is not possible to specify quantitative measures and indicators for work on policy and legislation, as performance in such areas must be judged in qualitative terms.

**21** The department generally met the aims of the programme in 2003.

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22 The key performance measures in respect of support services are:

### *Targets*

	Target	2002 (Actual)	2003 (Actual)	2004 (Plan)
<i>Payment to aided persons</i>				
<i>Interim payment</i>				
% of payments processed within one month.....	90%	99%	99%	95%
<i>Final payment</i>				
% of payments processed within six weeks .....	90%	99%	96%	95%
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
% of payments processed within six weeks .....	90%	99%	99%	95%
<i>Balance payment</i>				
% of payments processed within six weeks .....	90%	99%	96%	95%

### *Indicators*

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund.....	1 469	1 405	1 400
<i>Costing</i>			
taxation and call-over attendance .....	1 041	928	810
assessment made.....	5 505	5 725	5 700
<i>Enforcement</i>			
cases assigned.....	906	631	600
enforcement action taken.....	912	870	734
active cases as at end of year.....	2 911	854	720
amount of debts and costs recovered (\$'000).....	32,812	39,144	30,000

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

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

- publish and update departmental pamphlets and its homepage on the Internet and to promote public understanding of legal aid services;
- provide support to the Legal Aid Services Council and implement recommendations of the Council to improve the quality and efficiency of legal aid services;
- monitor the performance pledge on payments related to legal aid cases; and
- provide customer service training to staff of the department.

### **Programme (4): Official Solicitor's Office**

	2002–03 (Actual)	2003–04 (Original)	2003–04 (Revised)	2004–05 (Estimate)
Financial provision (\$m)	4.5	4.6	5.5 (+19.6%)	5.4 (-1.8%)

(or +17.4% on  
2003–04 Original)

### *Aim*

24 The aim is to provide representation to those persons who are under a legal disability and to discharge the Official Solicitor's duties as prescribed by the Official Solicitor Ordinance, Cap. 416 and by the other enactments.

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### *Brief Description*

**25** Under the Official Solicitor Ordinance, the Director of Legal Aid has been appointed the Official Solicitor. He may also act as the Judicial or Official Trustee if so required and appointed by the Court.

**26** Under Common Law, the Official Solicitor plays an important role in safeguarding the rights of those under a disability (i.e. mental patients and minors).

**27** Cases falling within the scope of the Official Solicitor's duties include general litigation, wardship, adoptions, contempt, matrimonial causes, paternity issues, Judicial Trustee cases, Official Trustee cases, grants of administration, investigation, enquiries and reports. A large proportion of the cases involving the work of the Official Solicitor includes the representation of persons under a legal disability, representation of deceased's estates in litigation and the maintenance of a number of trust funds. Where so directed by the Court, the Official Solicitor undertakes investigations and reports on such matters as paternity issues, the mental condition of a party and complex custody cases.

**28** The Official Solicitor also provides advice to other government departments on matters relating to guardianship, custody and adoption of children and comments on legislation which may have an impact on the provision of services by the Official Solicitor's Office (OSO).

**29** The department generally met the aim of the programme in 2003.

**30** The key performance measures in respect of OSO are:

### *Indicators*

	2002 (Actual)	2003 (Actual)	2004 (Estimate)
new cases received .....	127	184	<b>190</b>
cases concluded .....	130	137	<b>160</b>
active cases as at end of year .....	227	274	<b>304</b>

*Note:* The total number of cases concluded and cases remaining active at the end of a year does not tally with the number of new cases received during the same year as the former two categories include cases already received before the beginning of the relevant year.

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

**31** During 2004–05, the OSO will:

- continue to enhance the efficiency and cost-effectiveness of its services; and
- promote communication with other government departments and non-government organisations interested in or connected with the work of the Office and provide relevant information about the work via the OSO website.

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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) Processing of Legal Aid Applications .....	78.5	79.4	78.8	<b>77.6</b>
(2) Litigation Services .....	601.8	711.0	654.9	<b>672.4</b>
(3) Support Services .....	33.2	31.9	30.8	<b>30.3</b>
(4) Official Solicitor's Office .....	4.5	4.6	5.5	<b>5.4</b>
	718.0	826.9	770.0 (-6.9%)	785.7 (+2.0%)
				<b>(or -5.0% on 2003-04 Original)</b>

#### Analysis of Financial and Staffing Provision

##### Programme (1)

Provision for 2004-05 is \$1.2 million (1.5%) lower than the revised estimate for 2003-04. This is mainly due to the deletion of six posts and effect of the 2004 and 2005 civil service pay cut.

##### Programme (2)

Provision for 2004-05 is \$17.5 million (2.7%) higher than the revised estimate for 2003-04. This is mainly due to an increase in legal aid costs arising from an actual and anticipated increase in the number of legal aid cases, partly offset by the deletion of 15 posts and effect of the 2004 and 2005 civil service pay cut.

##### Programme (3)

Provision for 2004-05 is \$0.5 million (1.6%) lower than the revised estimate for 2003-04. This is mainly due to the deletion of two posts and effect of the 2004 and 2005 civil service pay cut.

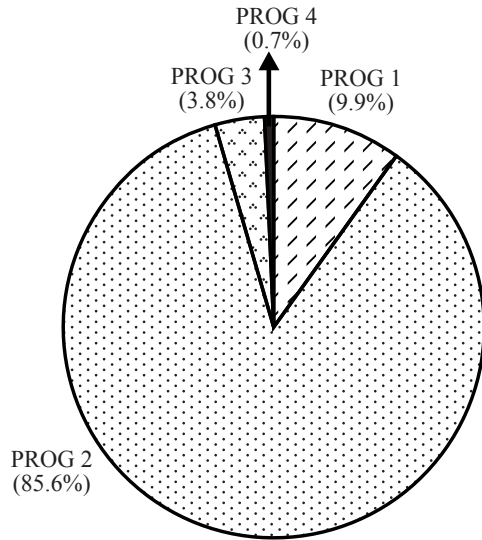
##### Programme (4)

Provision for 2004-05 is \$0.1 million (1.8%) lower than the revised estimate for 2003-04. This is mainly due to the effect of the 2004 and 2005 civil service pay cut.

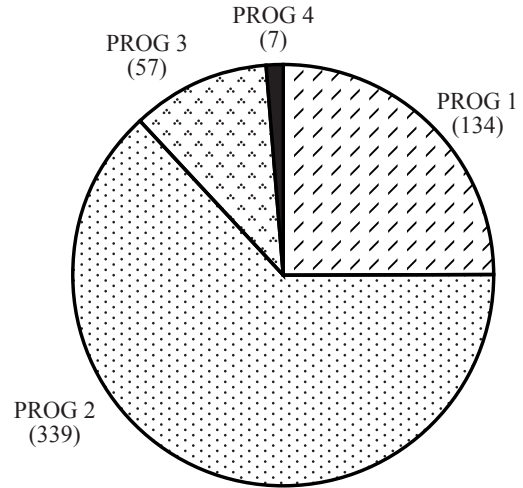
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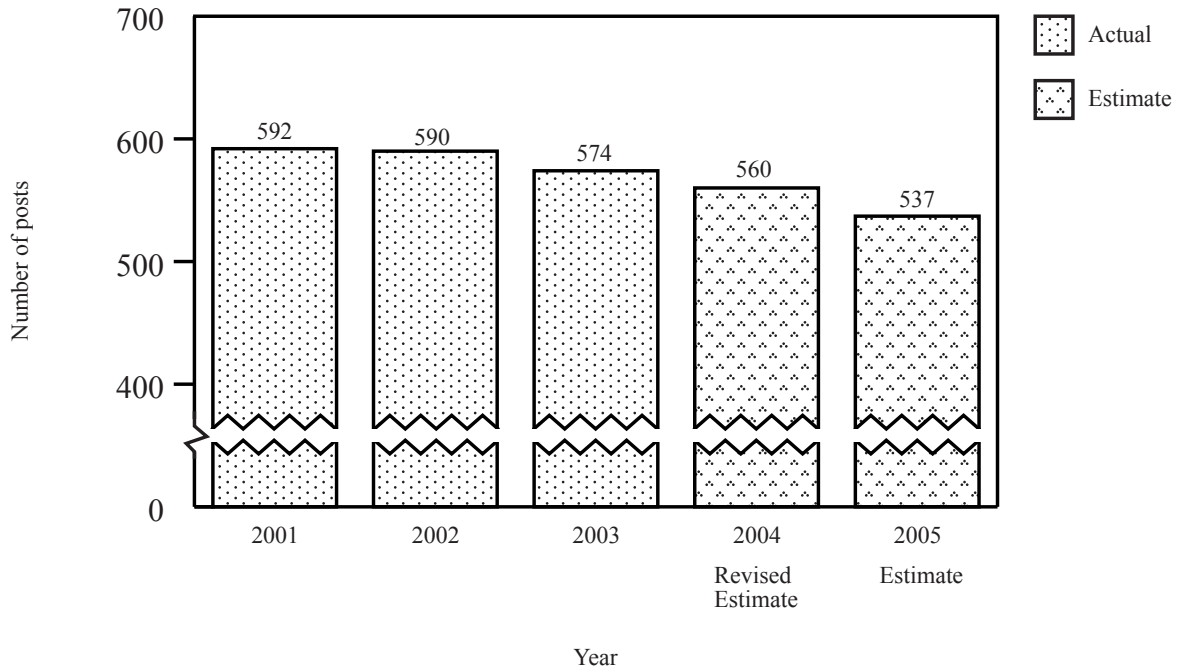
*Allocation of provision to programmes (2004-05)*



*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.....	—	244,017	239,626
208	Legal aid costs.....	476,981	582,928	530,083
	Salaries.....	221,929	—	—
	Allowances.....	2,050	—	—
	Job-related allowances.....	25	—	—
	General departmental expenses.....	16,964	—	—
	Total, Recurrent.....	717,949	826,945	769,709
	Total, Operating Account.....	717,949	826,945	769,709
<b>Capital Account</b>				
Plant, Equipment and Works				
	Minor plant, vehicles and equipment (block vote).....	23	—	259
	Total, Plant, Equipment and Works.....	23	—	259
	Total, Capital Account.....	23	—	259
	Total Expenditure.....	717,972	826,945	769,968

**234,548**  
**551,188\***

**785,736**  
**785,736**

**785,736**

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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 Legal Aid Department is \$785,736,000. This represents an increase of \$15,768,000 over the revised estimate for 2003–04 and of \$67,764,000 over actual expenditure in 2002–03.

#### *Operating Account*

#### Recurrent

**2** Provision of \$234,548,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Legal Aid Department.

**3** The establishment as at 31 March 2004 will be 560 permanent posts. It is expected that 23 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 \$164,665,000.

**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.....	221,929	225,912	221,998	<b>217,786</b>
- Allowances.....	2,050	2,186	1,969	<b>1,810</b>
- Job-related allowances .....	25	28	9	—
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	—	71	89	<b>95</b>
Departmental Expenses				
- General departmental expenses.....	16,964	15,820	15,561	<b>14,857</b>
	240,968	244,017	239,626	<b>234,548</b>

**5** Provision of \$551,188,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid cases and cases handled by the Official Solicitor.