

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2005–06..... **\$751.5m**

Establishment ceiling 2005–06 (notional annual mid-point salary value) representing an estimated 521 non-directorate posts as at 31 March 2005 reducing by three posts to 518 posts as at 31 March 2006 **\$152.6m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2005 and as at 31 March 2006.

Controlling Officer's Report

Programmes

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

Detail

Programme (1): Processing of Legal Aid Applications

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	77.2	77.6	75.3 (–3.0%)	74.0 (–1.7%)
				(or –4.6% on 2004–05 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 the 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 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 2004.

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

Targets

	Target	2003 (Actual)	2004 (Actual)	2005 (Plan)
<i>Civil legal aid</i> applications processed within three months from the date of application (%).....	85	91	92	85

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	Target	2003 (Actual)	2004 (Actual)	2005 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%)	85	92	95	90
Appeals against conviction				
applications processed within				
three months from the date of				
application (%)	85	91	94	90
Court of First Instance of the High				
Court/District Court				
applications processed within				
ten working days from the date				
of application (%)	90	91	94	90
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%)	90	92	96	90

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
<i>Civil</i>			
enquiries received	39 729	40 240	40 700
applications received	21 749	17 729	17 820
applications processed	21 381	18 575	17 850
applications pending decision as at end of year	2 382	1 536	1 506
legal aid certificates granted	10 773	9 012	9 070
applications refused			
on means	929	774	750
on merits	7 490	6 036	6 010
appeals against Director's decisions			
appeals heard	1 182	765	760
appeals allowed	97	52	50
<i>Criminal</i>			
applications received	4 411	4 477	4 540
applications processed	4 486	4 530	4 555
applications pending decision as at end of year	268	215	200
legal aid certificates granted	2 803	3 033	3 100
applications refused			
on means	55	36	28
on merits	1 502	1 428	1 430

Matters Requiring Special Attention in 2005–06

9 During 2005–06, the Department will continue to:

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

Programme (2): Litigation Services

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	556.6	672.4	651.6 (–3.1%)	642.6 (–1.4%)

(or –4.4% on
2004–05 Original)

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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 and miscellaneous—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; and
- 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 2004.

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

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	7 080	5 895	6 140
cases concluded	7 696	7 199	7 000
active cases as at end of year	18 468	17 164	16 304
<i>Criminal</i>			
new cases assigned.....	1 842	2 353	2 450
cases concluded	1 720	2 061	2 400
active cases as at end of year	472	764	814
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	524	316	300
cases concluded	498	455	460
active cases as at end of year	940	801	641
<i>Matrimonial</i>			
new cases assigned.....	2 464	2 007	2 000
cases concluded	1 100	1 741	1 800
active cases as at end of year	2 780	3 046	3 246
<i>Insolvency</i>			
new cases assigned.....	806	691	630
cases concluded	979	1 155	1 100
active cases as at end of year#			
pending issue of winding-up and bankruptcy order	—	342	300
pending realisation of assets	—	1 915	1 487
<i>Criminal</i>			
new cases assigned.....	760	672	650
cases concluded	947	865	680
active cases as at end of year	338	145	115

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	2003 (Actual)	2004 (Actual)	2005 (Estimate)
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	768,824	730,189	N.A.
amount of costs recovered (\$'000)	197,341	174,557	N.A.

The two indicators are added to reflect more precisely the position of the active cases at end of each year.

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 assigned in preceding years.

Matters Requiring Special Attention in 2005–06

15 During 2005–06, 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

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	29.9	30.3	29.6 (–2.3%)	28.0 (–5.4%)
				(or –7.6% on 2004–05 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 or 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 action 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 effects payment of 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 2004.

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

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Targets

	Target	2003 (Actual)	2004 (Actual)	2005 (Plan)
<i>Payment of damages or compensation to aided persons</i>				
<i>Interim payment</i>				
payments processed within one month (%)	90	99	99	95
<i>Final payment</i>				
payments processed within six weeks (%).....	90	96	99	95
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
payments processed within six weeks (%).....	90	99	99	95
<i>Balance payment</i>				
payments processed within six weeks (%).....	90	96	99	95

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	1 405	877	790
<i>Costing</i>			
taxation and call-over attendance.....	928	779	750
assessment made	5 725	5 270	5 200
<i>Enforcement</i>			
cases assigned	631	818	810
enforcement action taken	870	956	900
active cases as at end of year	854	716	626
amount of debts and costs recovered (\$'000)	39,144	34,390	N.A.

Matters Requiring Special Attention in 2005–06

23 During 2005–06, the Department will continue to:

- update departmental pamphlets and its website on the Internet 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; and
- monitor the performance pledge on payments related to legal aid cases.

Programme (4): Official Solicitor's Office

	2003–04 (Actual)	2004–05 (Original)	2004–05 (Revised)	2005–06 (Estimate)
Financial provision (\$m)	5.6	5.4	6.9 (+27.8%)	6.9 (—)
				(or +27.8% on 2004–05 Original)

Aim

24 The aim is to provide representation to persons 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 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 and grants of administration. 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 of the Official Solicitor's Office (OSO).

29 The Department generally met the aim of the programme in 2004.

30 The key performance measures in respect of OSO are:

Indicators

	2003 (Actual)	2004 (Actual)	2005 (Estimate)
new cases received.....	184	210	220
cases concluded	137	163	170
active cases as at end of year	274	321	371

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 received in preceding years.

Matters Requiring Special Attention in 2005–06

31 During 2005–06, the OSO will:

- continue to enhance the efficiency and quality 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 its work via the OSO website.

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ANALYSIS OF FINANCIAL PROVISION

Programme	2003-04 (Actual) (\$m)	2004-05 (Original) (\$m)	2004-05 (Revised) (\$m)	2005-06 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	77.2	77.6	75.3	74.0
(2) Litigation Services	556.6	672.4	651.6	642.6
(3) Support Services	29.9	30.3	29.6	28.0
(4) Official Solicitor's Office	5.6	5.4	6.9	6.9
	669.3	785.7	763.4 (-2.8%)	751.5 (-1.6%)
				(or -4.4% on 2004-05 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2005-06 is \$1.3 million (1.7%) lower than the revised estimate for 2004-05. This is mainly due to the full-year effect of the 2005 civil service pay cut and the deletion of one post, partly offset by the increase in provision for information system enhancements.

Programme (2)

Provision for 2005-06 is \$9.0 million (1.4%) lower than the revised estimate for 2004-05. This is mainly due to savings in legal aid costs as a result of cost control measures, the full-year effect of the 2005 civil service pay cut and the deletion of one post, partly offset by the increase in provision for information system enhancements.

Programme (3)

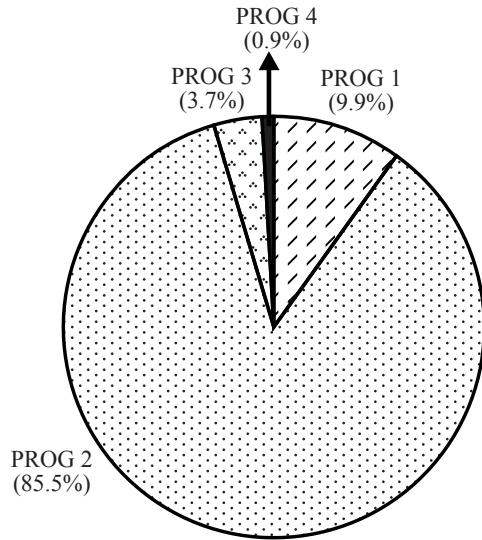
Provision for 2005-06 is \$1.6 million (5.4%) lower than the revised estimate for 2004-05. This is mainly due to the full-year effect of the 2005 civil service pay cut and the deletion of one post, partly offset by the increase in provision for information system enhancements.

Programme (4)

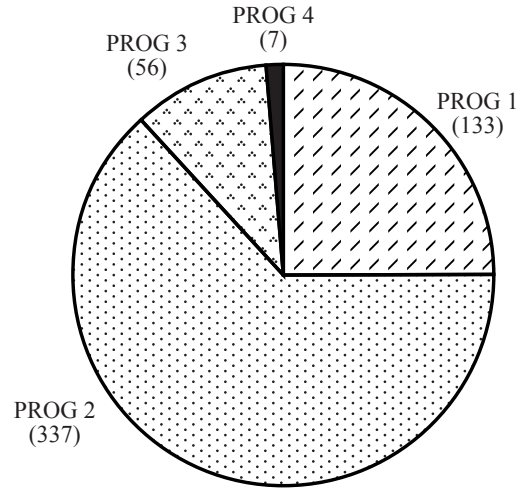
Provision for 2005-06 is the same as the revised estimate for 2004-05.

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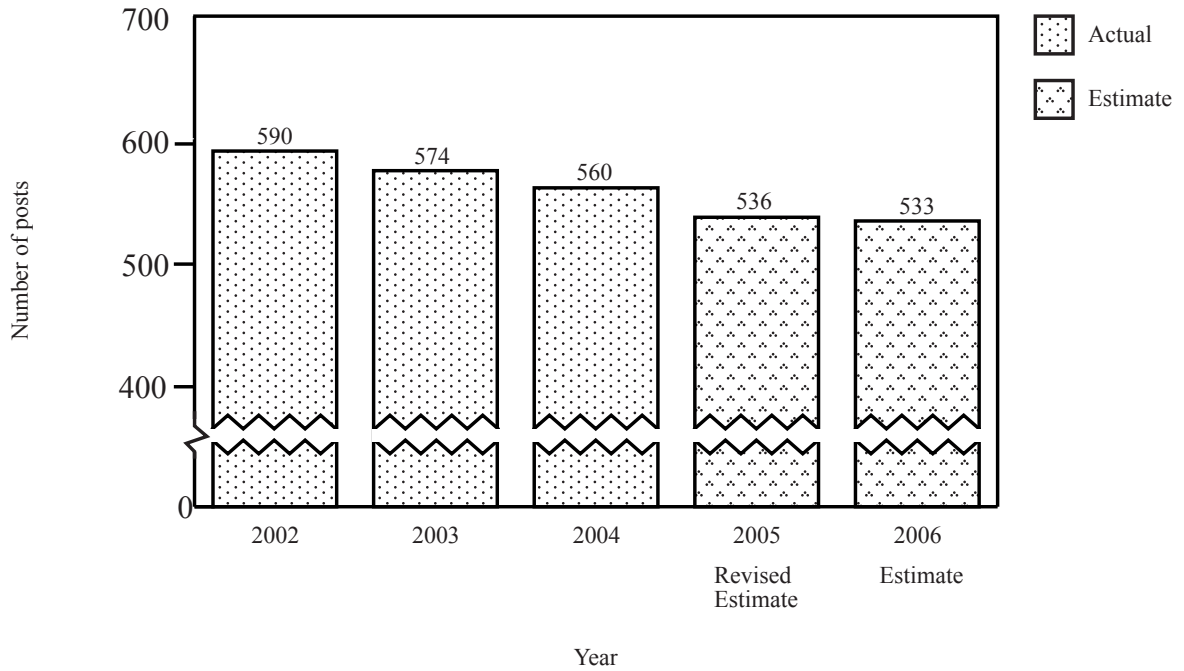
*Allocation of provision
to programmes
(2005-06)*



*Staff by programme
(as at 31 March 2006)*



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



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Sub-head (Code)		Actual expenditure 2003-04	Approved estimate 2004-05	Revised estimate 2004-05	Estimate 2005-06
		\$'000	\$'000	\$'000	\$'000
Operating Account					
Recurrent					
000	Operational expenses	239,206	234,548	228,727	223,959
208	Legal aid costs	429,846	551,188	534,687	527,532*
	Total, Recurrent	<u>669,052</u>	<u>785,736</u>	<u>763,414</u>	<u>751,491</u>
	Total, Operating Account	<u>669,052</u>	<u>785,736</u>	<u>763,414</u>	<u>751,491</u>
Capital Account					
Plant, Equipment and Works					
	Minor plant, vehicles and equipment (block vote).....	259	—	—	—
	Total, Plant, Equipment and Works	<u>259</u>	<u>—</u>	<u>—</u>	<u>—</u>
	Total, Capital Account	<u>259</u>	<u>—</u>	<u>—</u>	<u>—</u>
	Total Expenditure	<u><u>669,311</u></u>	<u><u>785,736</u></u>	<u><u>763,414</u></u>	<u><u>751,491</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2005–06 for the salaries and expenses of the Legal Aid Department is \$751,491,000. This represents a decrease of \$11,923,000 against the revised estimate for 2004–05 and an increase of \$82,180,000 over actual expenditure in 2003–04.

Operating Account

Recurrent

2 Provision of \$223,959,000 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 2005 will be 536 permanent posts. It is expected that three posts will be deleted in 2005–06. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2005–06, but the notional annual mid-point salary value of all such posts must not exceed \$152,637,000.

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

	2003–04 (Actual) (\$'000)	2004–05 (Original) (\$'000)	2004–05 (Revised) (\$'000)	2005–06 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	221,077	217,786	211,228	203,628
- Allowances	1,171	1,810	1,810	1,658
- Job-related allowances	9	—	—	—
Personnel Related Expenses				
- Mandatory Provident Fund contribution	88	95	104	88
Departmental Expenses				
- General departmental expenses	16,861	14,857	15,585	18,585
	239,206	234,548	228,727	223,959

5 Provision of \$527,532,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.