

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2006–07 **\$748.5m**

Establishment ceiling 2006–07 (notional annual mid-point salary value) representing an estimated 518 non-directorate posts as at 31 March 2006 reducing by eight posts to 510 posts as at 31 March 2007 **\$151.1m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2006 and as at 31 March 2007.

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

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	73.6	74.0	69.9 (–5.5%)	70.2 (+0.4%)
				(or –5.1% on 2005–06 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 2005.

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

Targets

	Target	2004 (Actual)	2005 (Actual)	2006 (Plan)
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%)	85	92	89	85

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	Target	2004 (Actual)	2005 (Actual)	2006 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%) (Note)	90	95	98	90
Appeals against conviction				
applications processed within				
three months from the date of				
application (%) (Note)	90	94	94	90
Court of First Instance of the High				
Court/District Court				
applications processed within				
ten working days from the date of				
application (%)	90	94	91	90
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%)	90	96	95	90

Note: The targets have been revised to reflect the improvement made in processing criminal applications with effect from 2006–07.

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
<i>Civil</i>			
enquiries received	40 240	42 397	42 500
applications received	17 729	16 964	17 000
applications processed	18 575	16 618	16 932
applications pending decision as at end of year	1 536	1 882	1 950
legal aid certificates granted	9 012	8 741	8 850
applications refused			
on means	774	794	770
on merits	6 036	4 747	4 500
appeals against Director's decisions			
appeals heard	765	802	800
appeals allowed	52	39	40
<i>Criminal</i>			
applications received	4 477	4 162	4 200
applications processed	4 530	4 172	4 190
applications pending decision as at end of year	215	205	215
legal aid certificates granted	3 033	2 666	2 700
applications refused			
on means	36	37	35
on merits	1 428	1 328	1 330

Matters Requiring Special Attention in 2006–07

9 During 2006–07, 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

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	518.0	642.6	576.1 (–10.3%)	641.9 (+11.4%)

(or –0.1% on
2005–06 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 solicitors 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 2005.

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

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned	5 895	6 214	6 430
cases concluded	7 199	6 430	6 448
active cases as at end of year	17 164	16 948	16 930
<i>Criminal</i>			
new cases assigned	2 353	2 106	2 150
cases concluded	2 061	2 073	2 147
active cases as at end of year	764	797	800
<i>In-house litigation</i>			
<i>Civil</i>			
Personal injury and miscellaneous			
new cases assigned	316	221	270
cases concluded	455	373	320
active cases as at end of year	801	649	599
Matrimonial			
new cases assigned	2 007	1 641	1 600
cases concluded	1 741	2 165	1 940
active cases as at end of year	3 046	2 522	2 182
Insolvency			
new cases assigned	691	574	550
cases concluded	1 155	864	800
active cases as at end of year			
pending issue of winding-up and			
bankruptcy order	342	266	250
pending realisation of assets	1 915	1 701	1 467
<i>Criminal</i>			
new cases assigned	672	567	550
cases concluded	865	624	548
active cases as at end of year	145	88	90

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	2004 (Actual)	2005 (Actual)	2006 (Estimate)
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000)	730,189	646,128	N.A.
amount of costs recovered (\$'000)	174,557	154,647	N.A.

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 2006–07

15 During 2006–07, the Department will continue to:

- monitor the progress and expenditure of legal aid cases;
- monitor the performance of assigned private practitioners and progress of assigned-out cases; and
- monitor the cost effectiveness of litigation services.

Programme (3): Support Services

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	28.9	28.0	27.6 (–1.4%)	27.2 (–1.4%)
				(or –2.9% on 2005–06 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 2005.

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

Targets

	Target	2004 (Actual)	2005 (Actual)	2006 (Plan)
<i>Payment of damages or compensation to aided persons</i>				
Interim payment				
payments processed within				
one month (%) (<i>Note</i>)	95	99	99	95

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	Target	2004 (Actual)	2005 (Actual)	2006 (Plan)
Final payment				
payments processed within six weeks (%) (Note)	95	99	99	95
<i>Payment to lawyers/experts/other parties</i>				
Advance payment				
payments processed within six weeks (%) (Note)	95	99	99	95
Balance payment				
payments processed within six weeks (%) (Note)	95	99	99	95

Note: The targets have been revised to reflect the improvement made in processing payments to aided persons, lawyers, experts and other parties with effect from 2006–07.

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund.....	877	578	500
<i>Costing</i>			
taxation and call-over attendance	779	786	790
assessment made.....	5 270	4 350	4 400
<i>Enforcement</i>			
cases assigned.....	818	649	650
enforcement action taken.....	956	657	660
active cases as at end of year.....	716	708	698
amount of debts and costs recovered (\$'000).....	34,390	21,469	N.A.

Matters Requiring Special Attention in 2006–07

23 During 2006–07, 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

	2004–05 (Actual)	2005–06 (Original)	2005–06 (Revised)	2006–07 (Estimate)
Financial provision (\$m)	6.8	6.9	8.9 (+29.0%)	9.2 (+3.4%)
				(or +33.3% on 2005–06 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 other enactments.

Brief Description

25 Under the Official Solicitor Ordinance, the Director of Legal Aid is appointed the Official Solicitor. He may also act as the Judicial or Official Trustee if appointed by the Court.

26 The Official Solicitor plays an important role in safeguarding the rights of those under a legal disability (i.e. mentally incapacitated persons and minors).

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27 Cases falling within the scope of the Official Solicitor’s duties include wardship, adoptions, contempt cases, divorce and family cases, committee cases, Judicial and 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 persons’ estates in litigation and the management of a number of trust funds. Where so directed by the Court, the Official Solicitor undertakes investigations and reports on matters such as complex custody and/or access issues.

28 The Official Solicitor also provides advice to other government departments on matters relating to custody, adoption and representation 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 2005.

30 The key performance measures in respect of OSO are:

Indicators

	2004 (Actual)	2005 (Actual)	2006 (Estimate)
new cases received.....	210	182	200
cases concluded	163	142	145
active cases as at end of year	321	361	416

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 2006–07

31 During 2006–07, the OSO will:

- continue to enhance the efficiency and quality of its services; and
- enhance understanding of the work of the OSO by strengthening communication with other government departments and non-government organisations in addition to updating the OSO website and giving talks to legal practitioners.

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ANALYSIS OF FINANCIAL PROVISION

Programme	2004–05 (Actual) (\$m)	2005–06 (Original) (\$m)	2005–06 (Revised) (\$m)	2006–07 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	73.6	74.0	69.9	70.2
(2) Litigation Services	518.0	642.6	576.1	641.9
(3) Support Services	28.9	28.0	27.6	27.2
(4) Official Solicitor’s Office	6.8	6.9	8.9	9.2
	627.3	751.5	682.5 (–9.2%)	748.5 (+9.7%)
				(or –0.4% on 2005–06 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2006–07 is \$0.3 million (0.4%) higher than the revised estimate for 2005–06. This is mainly due to filling of vacancies and salary increment for staff, partly offset by the decrease in departmental expenses.

Programme (2)

Provision for 2006–07 is \$65.8 million (11.4%) higher than the revised estimate for 2005–06. This is mainly due to the increase in legal aid costs upon the implementation of improvement measures for assessing the financial eligibility of legal aid applicants, the anticipated increase in lengthy trials and high costs cases, filling of vacancies and salary increment for staff, partly offset by the deletion of eight posts and decrease in departmental expenses.

Programme (3)

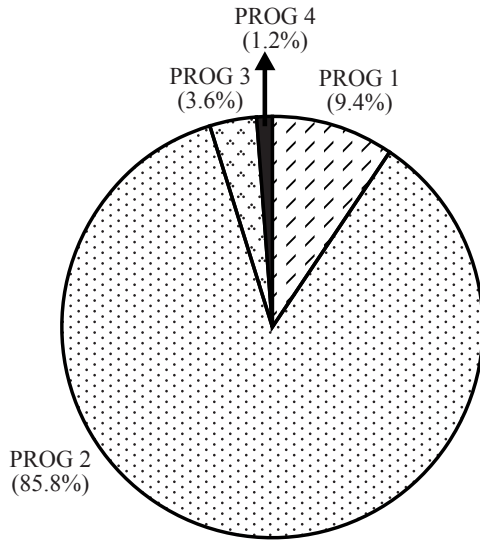
Provision for 2006–07 is \$0.4 million (1.4%) lower than the revised estimate for 2005–06. This is mainly due to the decrease in departmental expenses, partly offset by the increase in salary increment for staff.

Programme (4)

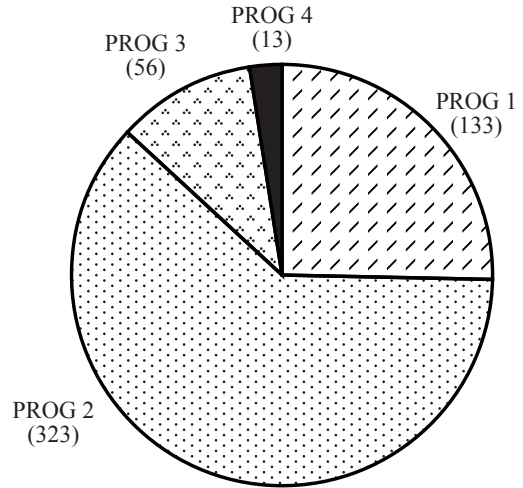
Provision for 2006–07 is \$0.3 million (3.4%) higher than the revised estimate for 2005–06. This is mainly due to filling of vacancies and salary increment for staff, partly offset by the decrease in departmental expenses.

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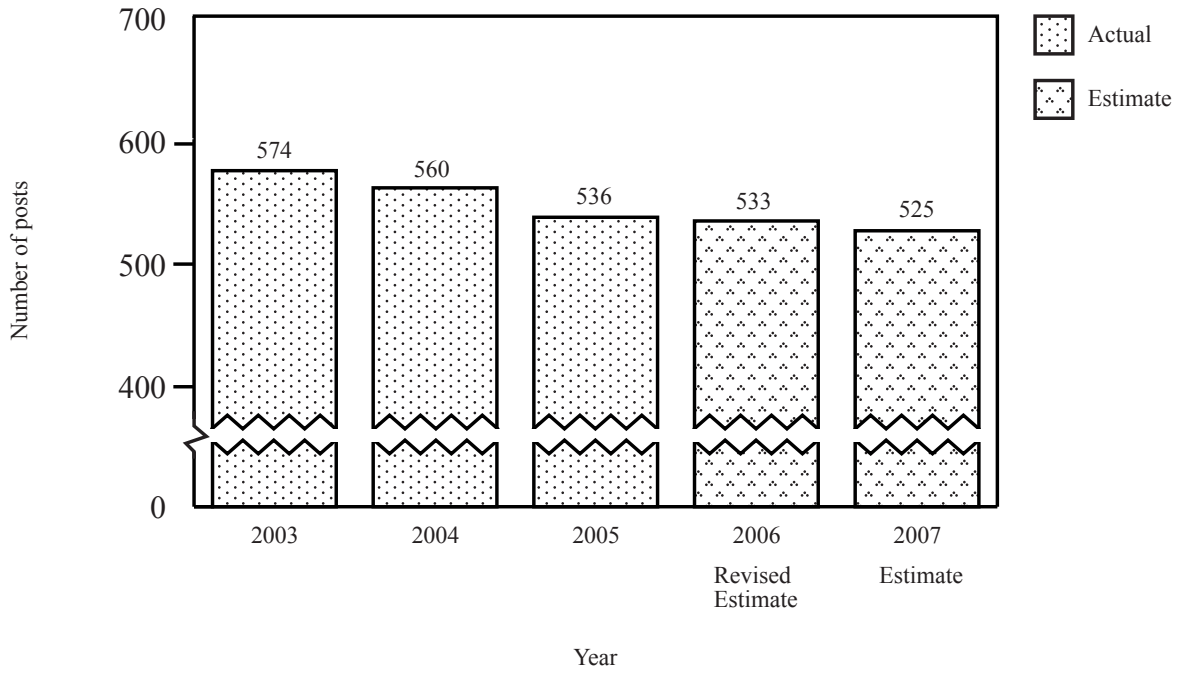
Allocation of provision to programmes (2006-07)



Staff by programme (as at 31 March 2007)



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



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Sub-head (Code)	Actual expenditure 2004-05	Approved estimate 2005-06	Revised estimate 2005-06	Estimate 2006-07
	\$'000	\$'000	\$'000	\$'000
Operating Account				
Recurrent				
000	Operational expenses	225,903	223,959	216,354
208	Legal aid costs	401,350	527,532	466,158
	Total, Recurrent.....	627,253	751,491	682,512
	Total, Operating Account.....	627,253	751,491	682,512
<hr/>				
	Total Expenditure.....	627,253	751,491	682,512
				748,491

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Details of Expenditure by Subhead

The estimate of the amount required in 2006–07 for the salaries and expenses of the Legal Aid Department is \$748,491,000. This represents an increase of \$65,979,000 over the revised estimate for 2005–06 and of \$121,238,000 over actual expenditure in 2004–05.

Operating Account

Recurrent

2 Provision of \$217,355,000 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 2006 will be 533 permanent posts. It is expected that eight posts will be deleted in 2006–07. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2006–07, but the notional annual mid-point salary value of all such posts must not exceed \$151,142,000.

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

	2004–05 (Actual) (\$'000)	2005–06 (Original) (\$'000)	2005–06 (Revised) (\$'000)	2006–07 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	209,496	203,628	196,579	200,669
- Allowances	1,499	1,658	1,900	1,566
Personnel Related Expenses				
- Mandatory Provident Fund contribution	103	88	75	120
Departmental Expenses				
- General departmental expenses	14,805	18,585	17,800	15,000
	225,903	223,959	216,354	217,355

5 Provision of \$531,136,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$64,978,000 (13.9%) over the revised estimate for 2005–06 is mainly due to the increase in legal aid costs upon the implementation of improvement measures for assessing the financial eligibility of legal aid applicants and the anticipated increase in lengthy trials and high costs cases in 2006–07.