

## Head 94 — LEGAL AID DEPARTMENT

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

**Estimate 2009–10** ..... **\$752.5m**

**Establishment ceiling 2009–10** (notional annual mid-point salary value) representing an estimated 523 non-directorate posts as at 31 March 2009 and as at 31 March 2010 ..... **\$174.3m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2009 and as at 31 March 2010.

### 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 (Secretary for Home Affairs).</p>
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#### Detail

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

	2007–08 (Actual)	2008–09 (Original)	2008–09 (Revised)	<b>2009–10 (Estimate)</b>
Financial provision (\$m)	74.6	76.5	80.8 (+5.6%)	<b>83.1</b> (+2.8%)
				(or +8.6% on 2008–09 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 the 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 2008.

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

#### Targets

	Target	2007 (Actual)	2008 (Actual)	<b>2009 (Plan)</b>
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%) .....	85	88	91	<b>85</b>

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	Target	2007 (Actual)	2008 (Actual)	<b>2009 (Plan)</b>
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%) .....	90	94	94	<b>90</b>
Appeals against conviction				
applications processed within				
three months from the date of				
application (%) .....	90	95	93	<b>90</b>
Court of First Instance of the High				
Court/District Court				
applications processed within				
ten working days from the date of				
application (%) .....	90	93	91	<b>90</b>
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%) .....	90	96	91	<b>90</b>

### *Indicators*

	2007 (Actual)	2008 (Actual)	<b>2009 (Estimate)</b>
<i>Civil</i>			
enquiries received .....	38 859	39 034	<b>39 000</b>
applications received§ .....	15 598	15 314	<b>15 300</b>
applications processed .....	15 752	15 089	<b>15 300</b>
applications pending decision as at end of year .....	1 993	2 218	<b>2 220</b>
legal aid certificates granted .....	7 937	7 513	<b>7 650</b>
applications refused			
on means .....	864	875	<b>880</b>
on merits .....	4 923	4 521	<b>4 520</b>
appeals against Director's decisions			
appeals heard .....	789	690	<b>720</b>
appeals allowed .....	38	22	<b>30</b>
<i>Criminal</i>			
applications received .....	3 765	3 413	<b>3 450</b>
applications processed .....	3 831	3 420	<b>3 400</b>
applications pending decision as at end of year .....	132	125	<b>175</b>
legal aid certificates granted .....	2 507	2 235	<b>2 210</b>
applications refused			
on means .....	36	34	<b>35</b>
on merits .....	1 152	1 012	<b>1 020</b>

§ The number of applications received for 2007 and 2008 includes six and 16 applications respectively from applicants who are subject to an Order made pursuant to Regulation 11 of the Legal Aid Regulations.

### *Matters Requiring Special Attention in 2009–10*

9 During 2009–10, 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.

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### Programme (2): Litigation Services

	2007–08 (Actual)	2008–09 (Original)	2008–09 (Revised)	<b>2009–10 (Estimate)</b>
Financial provision (\$m)	534.9	638.2	566.2 (–11.3%)	<b>628.1</b> (+10.9%)
				(or –1.6% on 2008–09 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 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 2008.

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

#### Indicators

	2007 (Actual)	2008 (Actual)	<b>2009 (Estimate)</b>
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned .....	5 980	5 884	<b>6 150</b>
cases concluded .....	7 419	7 022	<b>6 180</b>
active cases as at end of year .....	16 165	15 027	<b>15 000</b>
<i>Criminal</i>			
new cases assigned .....	1 908	1 693	<b>1 700</b>
cases concluded .....	1 941	1 791	<b>1 700</b>
active cases as at end of year .....	672	574	<b>570</b>
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned .....	196	185	<b>180</b>
cases concluded .....	294	397	<b>200</b>
active cases as at end of year .....	530	318	<b>300</b>
<i>Matrimonial</i>			
new cases assigned .....	1 260	960	<b>960</b>
cases concluded .....	1 351	1 296	<b>1 300</b>
active cases as at end of year .....	1 875	1 539	<b>1 200</b>

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	2007 (Actual)	2008 (Actual)	2009 (Estimate)
Insolvency			
new cases assigned .....	260	247	<b>360</b>
cases concluded .....	1 182	740	<b>500</b>
active cases as at end of year			
pending issue of winding-up and bankruptcy order .....	141	127	<b>130</b>
pending realisation of assets .....	770	291	<b>150</b>
Criminal			
new cases assigned .....	558	512	<b>510</b>
cases concluded .....	579	436	<b>510</b>
active cases as at end of year .....	81	157	<b>160</b>
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000) .....	740,071	798,586	<b>N.A.</b>
amount of costs recovered (\$'000) .....	172,230	162,087	<b>N.A.</b>

### ***Matters Requiring Special Attention in 2009–10***

**15** During 2009–10, 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**

	2007–08 (Actual)	2008–09 (Original)	2008–09 (Revised)	2009–10 (Estimate)
Financial provision (\$m)	28.1	29.6	30.2 (+2.0%)	<b>29.9</b> (–1.0%)
				(or +1.0% on 2008–09 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, preparing bills of costs and 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 2008.

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

### *Targets*

	Target	2007 (Actual)	2008 (Actual)	<b>2009 (Plan)</b>
<i>Payment of damages or compensation to aided persons</i>				
<i>Interim payment</i>				
payments processed within one month (%) .....	95	99	99	<b>95</b>
<i>Final payment</i>				
payments processed within six weeks (%) .....	95	99	99	<b>95</b>
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
payments processed within six weeks (%) .....	95	99	99	<b>95</b>
<i>Balance payment .....</i>				
payments processed within six weeks (%) .....	95	99	99	<b>95</b>

### *Indicators*

	2007 (Actual)	2008 (Actual)	<b>2009 (Estimate)</b>
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund.....	427	366	<b>500</b>
<i>Costing</i>			
taxation hearings and call-over attendance .....	796	881	<b>800</b>
assessments made .....	5 155	5 369	<b>5 370</b>
<i>Enforcement</i>			
cases assigned.....	710	619	<b>710</b>
enforcement action taken.....	694	776	<b>780</b>
active cases as at end of year .....	844	687	<b>620</b>
amount of debts and costs recovered (\$'000).....	25,473	28,342	<b>N.A.</b>

### *Matters Requiring Special Attention in 2009–10*

23 During 2009–10, the Department will continue to:

- promote public awareness and understanding of legal aid services through publication or updating of departmental pamphlets and its website;
- 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
- monitor the early operation of the Legal Aid Electronic Services Portal and if necessary to effect enhancement or modification of the portal.

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

	2007–08 (Actual)	2008–09 (Original)	2008–09 (Revised)	<b>2009–10 (Estimate)</b>
Financial provision (\$m)	9.2	14.6	11.2 (–23.3%)	<b>11.4</b> (+1.8%)
				(or –21.9% on 2008–09 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 and other enactments.

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### *Brief Description*

25 Under the Official Solicitor Ordinance, the Director of Legal Aid is appointed the Official Solicitor.

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). He is also the Official Trustee pursuant to the Trustee Ordinance and may also act as the Judicial Trustee if appointed by the Court.

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 is also asked by other government departments to provide advice on matters such as custody, adoption and representation of children and comment 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 2008.

30 The key performance measures in respect of OSO are:

### *Indicators*

	2007 (Actual)	2008 (Actual)	2009 (Estimate)
new cases received.....	225	270	270
cases concluded .....	206	254	250
active cases as at end of year .....	448	464	485

### *Matters Requiring Special Attention in 2009–10*

31 During 2009–10, the OSO will continue to:

- enhance the efficiency and quality of its services; and
- promote understanding of the work of the OSO by strengthening communication with other government departments, non-government organisations and legal practitioners.

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### ANALYSIS OF FINANCIAL PROVISION

Programme	2007–08 (Actual) (\$m)	2008–09 (Original) (\$m)	2008–09 (Revised) (\$m)	2009–10 (Estimate) (\$m)
(1) Processing of Legal Aid				
Applications .....	74.6	76.5	80.8	<b>83.1</b>
(2) Litigation Services .....	534.9	638.2	566.2	<b>628.1</b>
(3) Support Services .....	28.1	29.6	30.2	<b>29.9</b>
(4) Official Solicitor's Office .....	9.2	14.6	11.2	<b>11.4</b>
	646.8	758.9	688.4 (-9.3%)	<b>752.5</b> <b>(+9.3%)</b>
				<b>(or -0.8% on 2008–09 Original)</b>

#### Analysis of Financial and Staffing Provision

##### Programme (1)

Provision for 2009–10 is \$2.3 million (2.8%) higher than the revised estimate for 2008–09. This is mainly due to filling of existing vacancies, salary increments for staff and the increase in other operating expenses.

##### Programme (2)

Provision for 2009–10 is \$61.9 million (10.9%) higher than the revised estimate for 2008–09. This is mainly due to filling of existing vacancies, salary increments for staff as well as the increase in legal aid costs arising from an anticipated increase in lengthy trials and high costs cases.

##### Programme (3)

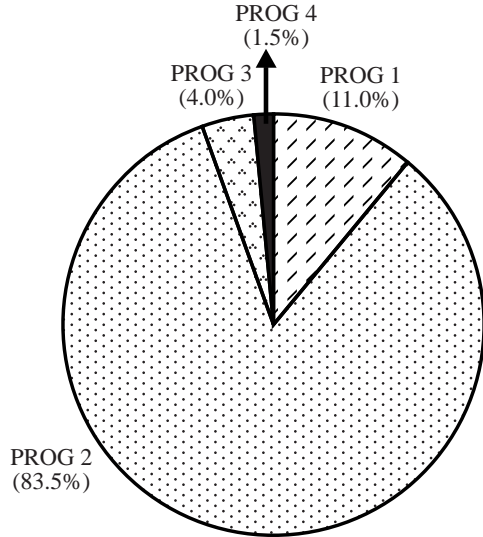
Provision for 2009–10 is \$0.3 million (1.0%) lower than the revised estimate for 2008–09. This is mainly due to the reduced salary provision resulting from staff changes, partly offset by the increase in salary increments for staff.

##### Programme (4)

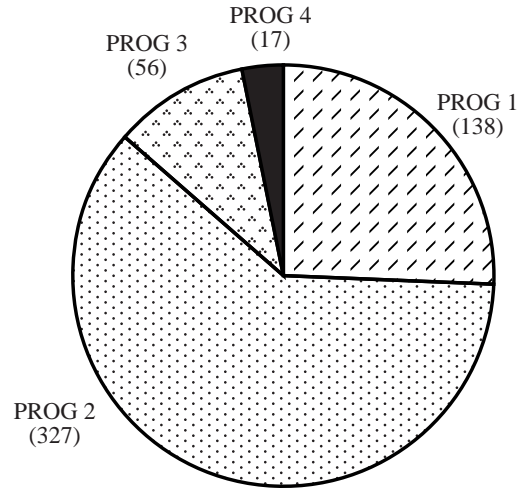
Provision for 2009–10 is \$0.2 million (1.8%) higher than the revised estimate for 2008–09. This is mainly due to filling of existing vacancies and salary increments for staff.

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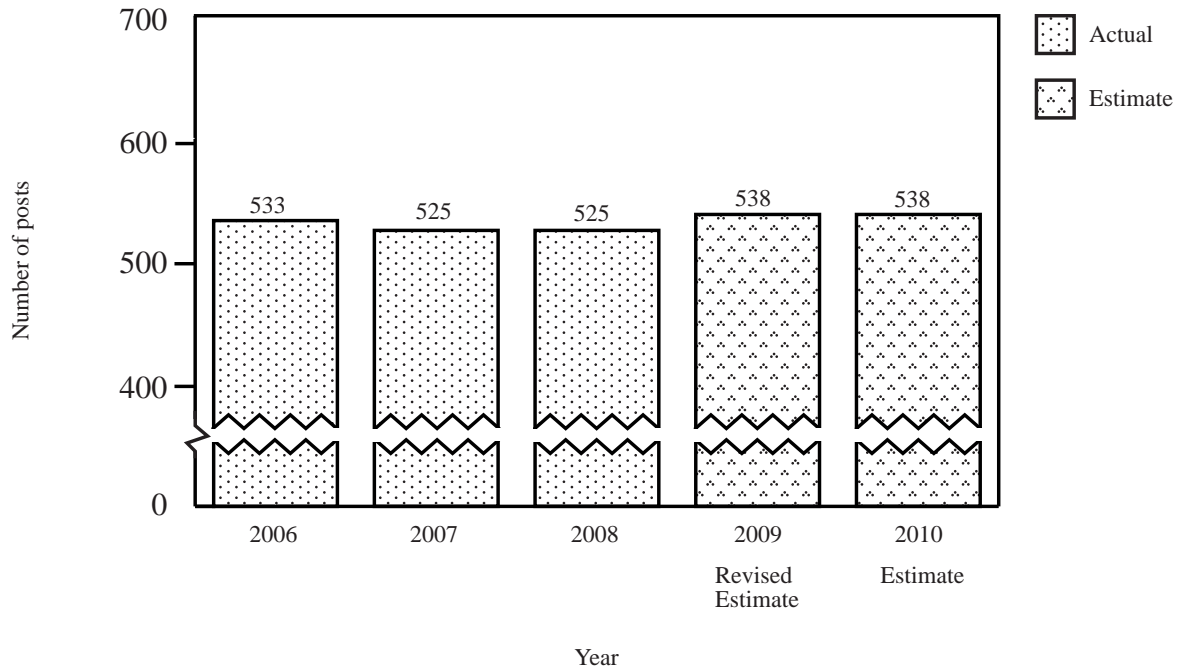
*Allocation of provision to programmes (2009-10)*



*Staff by programme (as at 31 March 2010)*



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





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Sub-head (Code)	Actual expenditure 2007-08	Approved estimate 2008-09	Revised estimate 2008-09	<b>Estimate 2009-10</b>
	\$'000	\$'000	\$'000	<b>\$'000</b>
<b>Operating Account</b>				
Recurrent				
000	Operational expenses .....	218,568	230,860	233,407
208	Legal aid costs .....	428,212	528,003	455,000
	Total, Recurrent.....	646,780	758,863	688,407
	Total, Operating Account .....	646,780	758,863	688,407
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	Total Expenditure .....	646,780	758,863	688,407

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### Details of Expenditure by Subhead

The estimate of the amount required in 2009–10 for the salaries and expenses of the Legal Aid Department is \$752,482,000. This represents an increase of \$64,075,000 over the revised estimate for 2008–09 and of \$105,702,000 over actual expenditure in 2007–08.

#### *Operating Account*

#### Recurrent

**2** Provision of \$236,351,000 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 2009 will be 538 permanent posts. No net change in establishment is expected in 2009–10. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2009–10, but the notional annual mid-point salary value of all such posts must not exceed \$174,292,000.

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

	2007–08 (Actual) (\$'000)	2008–09 (Original) (\$'000)	2008–09 (Revised) (\$'000)	<b>2009–10 (Estimate) (\$'000)</b>
Personal Emoluments				
- Salaries .....	199,341	211,237	214,335	<b>216,557</b>
- Allowances .....	1,643	1,710	1,813	<b>1,710</b>
Personnel Related Expenses				
- Mandatory Provident Fund contribution .....	92	240	249	<b>422</b>
- Civil Service Provident Fund contribution .....	78	503	510	<b>532</b>
Departmental Expenses				
- General departmental expenses .....	17,414	17,170	16,500	<b>17,130</b>
	218,568	230,860	233,407	<b>236,351</b>

**5** Provision of \$516,131,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$61,131,000 (13.4%) over the revised estimate for 2008–09 is mainly due to the increase in legal aid costs arising from the anticipated increase in lengthy trials and high costs cases in 2009–10.