

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2013–14..... **\$842.2m**

Establishment ceiling 2013–14 (notional annual mid-point salary value) representing an estimated 527 non-directorate posts as at 31 March 2013 and as at 31 March 2014 **\$196.7m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2013 and as at 31 March 2014.

Controlling Officer's Report

Programmes

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

Detail

Programme (1): Processing of Legal Aid Applications

	2011–12 (Actual)	2012–13 (Original)	2012–13 (Revised)	2013–14 (Estimate)
Financial provision (\$m)	87.4	92.5	93.1 (+0.6%)	97.2 (+4.4%)
				(or +5.1% on 2012–13 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 of the Department 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 of Legal Aid (the Director) may grant legal aid if a breach of the Hong Kong Bill of Rights Ordinance (Cap. 383) 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 For civil cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid on grounds of means or merits. For criminal cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid 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 2012.
- 8 The key performance measures in respect of processing legal aid applications are:

Targets

	Target	2011 (Actual)	2012 (Actual)	2013 (Plan)
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%)	85	90	89	85

Head 94 — LEGAL AID DEPARTMENT

	Target	2011 (Actual)	2012 (Actual)	2013 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within two months from the date of application (%)	90	98	97	90
Appeals against conviction				
applications processed within three months from the date of application (%)	90	97	95	90
Court of First Instance of the High Court/District Court				
applications processed within ten working days from the date of application (%)	90	94	96	90
Committal proceedings				
applications processed within eight working days from the date of application (%)	90	94	94	90

Indicators

	2011 (Actual)	2012 (Actual)	2013 (Estimate)
<i>Civil</i>			
enquiries received	41 758	40 584	40 600
applications received#	16 480	16 533	16 700
applications processed	16 167	16 602	16 700
applications pending decision as at end of year	2 467	2 398	2 400
legal aid certificates granted	8 297	8 171	8 300
applications refused			
on means	690	788	790
on merits	4 754	5 210	5 210
appeals against Director's decisions			
appeals heard	855	837	835
appeals allowed	56	35	35
<i>Criminal</i>			
applications received	3 888	3 684	3 690
applications processed	3 922	3 663	3 690
applications pending decision as at end of year	160	181	180
legal aid certificates granted	2 795	2 521	2 530
applications refused			
on means	33	40	40
on merits	949	943	940

The number of applications received in 2011 and 2012 included 19 and 23 applications respectively from applicants who were subject to an Order made pursuant to Regulation 11 of the Legal Aid Regulations (Cap. 91A).

Matters Requiring Special Attention in 2013–14

- 9 During 2013–14, the Department will continue to:
- monitor the number of legal aid applications and the processing time;
 - monitor the effectiveness of the means-testing processes; and
 - monitor the use of mediation in legally aided cases.

Head 94 — LEGAL AID DEPARTMENT

Programme (2): Litigation Services

	2011–12 (Actual)	2012–13 (Original)	2012–13 (Revised)	2013–14 (Estimate)
Financial provision (\$m)	573.7	655.2	629.1 (–4.0%)	695.4 (+10.5%)

(or +6.1% on
2012–13 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 of the Department 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 (Cap. 282), 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 or annulment of marriage or 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 the 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 2012.

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

Indicators

	2011 (Actual)	2012 (Actual)	2013 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	6 600	6 525	6 920
cases concluded	6 178	6 211	6 920
active cases as at end of year	16 127	16 441	16 440
<i>Criminal</i>			
new cases assigned.....	2 121	1 813	1 880
cases concluded	2 202	1 865	1 875
active cases as at end of year	657	605	610
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	200	218	200
cases concluded	210	206	210
active cases as at end of year	279	291	280
<i>Matrimonial</i>			
new cases assigned.....	1 161	1 117	1 100
cases concluded	1 079	1 080	1 080
active cases as at end of year	1 193	1 230	1 250

Head 94 — LEGAL AID DEPARTMENT

	2011 (Actual)	2012 (Actual)	2013 (Estimate)
Insolvency			
new cases assigned.....	98	78	80
cases concluded	236	213	215
active cases as at end of year			
pending issue of winding-up and bankruptcy order	23	21	20
pending realisation of assets	371	238	100
Criminal			
new cases assigned.....	657	666	650
cases concluded	663	638	650
active cases as at end of year	140	168	170
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	839,535	809,514	N.A.
amount of costs recovered (\$'000)	194,843	189,545	N.A.

Matters Requiring Special Attention in 2013–14

15 During 2013–14, 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

	2011–12 (Actual)	2012–13 (Original)	2012–13 (Revised)	2013–14 (Estimate)
Financial provision (\$m)	31.9	34.9	35.7 (+2.3%)	36.8 (+3.1%)
				(or +5.4% on 2012–13 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 2012.

Head 94 — LEGAL AID DEPARTMENT

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

Targets

	Target	2011 (Actual)	2012 (Actual)	2013 (Plan)
<i>Payment of damages or compensation to aided persons</i>				
<i>Interim payment</i>				
payments processed within one month (%)	95	99	99	95
<i>Final payment</i>				
payments processed within six weeks (%).....	95	99	99	95
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
payments processed within six weeks (%).....	95	99	99	95
<i>Balance payment</i>				
payments processed within six weeks (%).....	95	99	99	95

Indicators

	2011 (Actual)	2012 (Actual)	2013 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	406	358	360
<i>Costing</i>			
taxation - court attendance	213	220	220
preparation of bills and objections.....	258	239	240
assessments made.....	6 821	7 405	7 410
<i>Enforcement</i>			
cases assigned	489	445	450
enforcement action taken	568	430	430
active cases as at end of year	395	410	430
amount of debts and costs recovered (\$'000)	26,788	14,054	N.A.

Matters Requiring Special Attention in 2013–14

23 During 2013–14, the Department will continue to:

- promote public awareness and 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

	2011–12 (Actual)	2012–13 (Original)	2012–13 (Revised)	2013–14 (Estimate)
Financial provision (\$m)	11.7	11.9	12.3 (+3.4%)	12.8 (+4.1%)
				(or +7.6% on 2012–13 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) (OSO) and other enactments.

Head 94 — LEGAL AID DEPARTMENT

Brief Description

25 Under the OSO, the Director 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 (Cap. 29) 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.

29 The Department generally met the aim of the programme in 2012.

30 The key performance measures in respect of the Official Solicitor's Office are:

Indicators

	2011 (Actual)	2012 (Actual)	2013 (Estimate)
new cases received.....	275	285	290
cases concluded	265	277	280
active cases as at end of year	430	438	450

Matters Requiring Special Attention in 2013–14

31 During 2013–14, the Official Solicitor's Office will continue to:

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

Head 94 — LEGAL AID DEPARTMENT

ANALYSIS OF FINANCIAL PROVISION

Programme	2011–12 (Actual) (\$m)	2012–13 (Original) (\$m)	2012–13 (Revised) (\$m)	2013–14 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	87.4	92.5	93.1	97.2
(2) Litigation Services.....	573.7	655.2	629.1	695.4
(3) Support Services.....	31.9	34.9	35.7	36.8
(4) Official Solicitor's Office.....	11.7	11.9	12.3	12.8
	704.7	794.5	770.2 ^β (-3.1%)	842.2 (+9.3%)
				(or +6.0% on 2012–13 Original)

^β The figure does not include the one-off capital injection of \$100.0 million into the self-financing Supplementary Legal Aid Fund to facilitate the continued operation of the Supplementary Legal Aid Scheme.

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2013–14 is \$4.1 million (4.4%) higher than the revised estimate for 2012–13. This is mainly due to the increase in operating expenses.

Programme (2)

Provision for 2013–14 is \$66.3 million (10.5%) higher than the revised estimate for 2012–13. This is mainly due to the anticipated increase in legal aid costs, including the additional provision for implementing the revised criminal legal aid fees structure.

Programme (3)

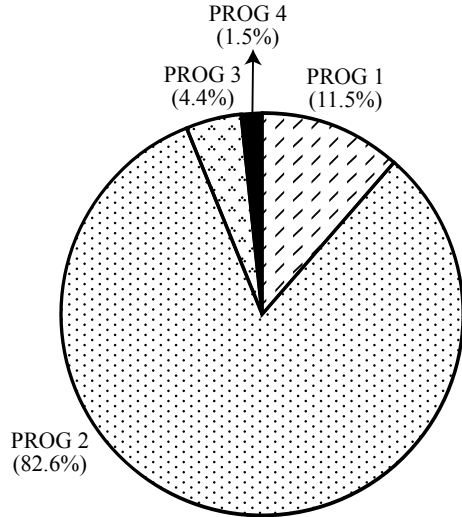
Provision for 2013–14 is \$1.1 million (3.1%) higher than the revised estimate for 2012–13. This is mainly due to the increase in operating expenses.

Programme (4)

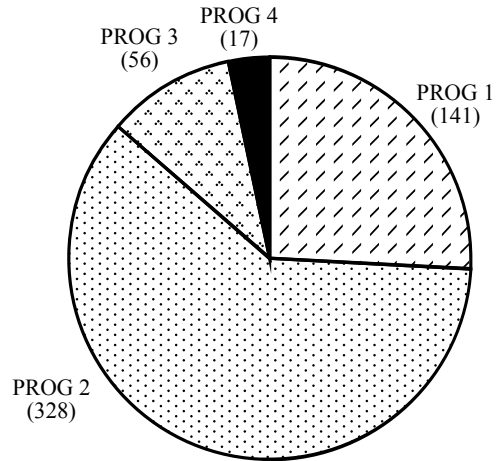
Provision for 2013–14 is \$0.5 million (4.1%) higher than the revised estimate for 2012–13. This is mainly due to the increase in operating expenses.

Head 94 — LEGAL AID DEPARTMENT

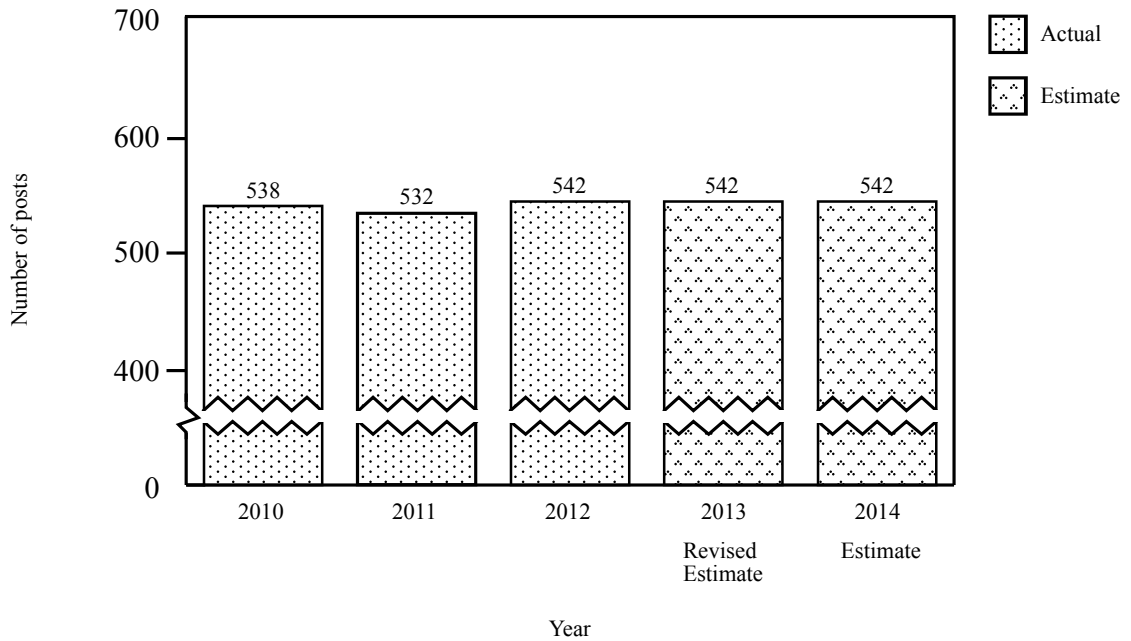
Allocation of provision to programmes (2013-14)



Staff by programme (as at 31 March 2014)



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



Head 94 — LEGAL AID DEPARTMENT

Sub-head (Code)	Actual expenditure 2011–12	Approved estimate 2012–13	Revised estimate 2012–13	Estimate 2013–14	
	\$'000	\$'000	\$'000	\$'000	
Operating Account					
Recurrent					
000	Operational expenses	241,545	255,734	261,667	271,205
208	Legal aid costs.....	463,161	538,789	508,550	570,958
	Total, Recurrent	<u>704,706</u>	<u>794,523</u>	<u>770,217</u>	<u>842,163</u>
Non-Recurrent					
	General non-recurrent	—	—	100,000‡	—
	Total, Non-Recurrent	<u>—</u>	<u>—</u>	<u>100,000</u>	<u>—</u>
	Total, Operating Account.....	<u>704,706</u>	<u>794,523</u>	<u>870,217</u>	<u>842,163</u>
Total Expenditure					
		<u><u>704,706</u></u>	<u><u>794,523</u></u>	<u><u>870,217</u></u>	<u><u>842,163</u></u>

‡ The figure represents the one-off capital injection of \$100.0 million into the self-financing Supplementary Legal Aid Fund to facilitate the continued operation of the Supplementary Legal Aid Scheme.

Head 94 — LEGAL AID DEPARTMENT

Details of Expenditure by Subhead

The estimate of the amount required in 2013–14 for the salaries and expenses of the Legal Aid Department is \$842,163,000. This represents a decrease of \$28,054,000 against the revised estimate for 2012–13 taking into account the one-off capital injection of \$100.0 million in 2012–13 into the self-financing Supplementary Legal Aid Fund which operates outside the operating account of the Legal Aid Department and an increase of \$137,457,000 over actual expenditure in 2011–12.

Operating Account

Recurrent

2 Provision of \$271,205,000 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 2013 will be 542 permanent posts. No change in establishment is expected in 2013–14. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2013–14, but the notional annual mid-point salary value of all such posts must not exceed \$196,708,000.

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

	2011–12 (Actual) (\$'000)	2012–13 (Original) (\$'000)	2012–13 (Revised) (\$'000)	2013–14 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	223,623	232,546	239,652	246,963
- Allowances	1,183	1,497	1,226	1,601
Personnel Related Expenses				
- Mandatory Provident Fund contribution	590	468	628	701
- Civil Service Provident Fund contribution	1,974	3,523	3,461	4,140
Departmental Expenses				
- General departmental expenses	14,175	17,700	16,700	17,800
	241,545	255,734	261,667	271,205

5 Provision of \$570,958,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$62,408,000 (12.3%) over the revised estimate for 2012–13 is mainly due to the anticipated increase in legal aid costs, including the additional provision for implementing the revised criminal legal aid fees structure.