

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2015–16 **\$845.1m**

Establishment ceiling 2015–16 (notional annual mid-point salary value) representing an estimated 527 non-directorate posts as at 31 March 2015 rising by one post to 528 posts as at 31 March 2016 **\$214.6m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2015 and as at 31 March 2016.

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

| | 2013–14 (Actual) | 2014–15 (Original) | 2014–15 (Revised) | 2015–16 (Estimate) |
|---------------------------|---------------------|-----------------------|----------------------|-----------------------------------|
| Financial provision (\$m) | 96.7 | 97.9 | 99.9 (+2.0%) | 100.5 (+0.6%) |
| | | | | (or +2.7% on 2014–15 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 2014.
- 8 The key performance measures in respect of processing legal aid applications are:

Targets

| | Target | 2013 (Actual) | 2014 (Actual) | 2015 (Plan) |
|---|--------|------------------|------------------|------------------------|
| <i>Civil legal aid</i> applications processed within three months from the date of application (%) | 85 | 85 | 83 | 85 |

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| | Target | 2013 (Actual) | 2014 (Actual) | 2015 (Plan) |
|---|--------|------------------|------------------|----------------|
| <i>Criminal legal aid</i> | | | | |
| Appeals against sentence | | | | |
| applications processed within two months from the date of application (%) | 90 | 95 | 96 | 90 |
| Appeals against conviction | | | | |
| applications processed within three months from the date of application (%) | 90 | 94 | 92 | 90 |
| Court of First Instance of the High Court/District Court | | | | |
| applications processed within ten working days from the date of application (%) | 90 | 94 | 94 | 90 |
| Committal proceedings | | | | |
| applications processed within eight working days from the date of application (%) | 90 | 95 | 92 | 90 |

Indicators

| | 2013 (Actual) | 2014 (Actual) | 2015 (Estimate) |
|---|------------------|------------------|--------------------|
| <i>Civil</i> | | | |
| enquiries received..... | 37 273 | 38 208 | 38 200 |
| applications received#..... | 15 691 | 16 288 | 16 300 |
| applications processed..... | 15 507 | 16 286 | 16 300 |
| applications pending decision as at end of year | 2 582 | 2 584 | 2 580 |
| legal aid certificates granted..... | 7 386 | 7 526 | 7 530 |
| applications refused | | | |
| on means | 800 | 912 | 910 |
| on merits..... | 5 138 | 5 583 | 5 580 |
| appeals against the Director's decisions | | | |
| appeals heard..... | 744 | 809 | 810 |
| appeals allowed..... | 37 | 32 | 35 |
| <i>Criminal</i> | | | |
| applications received..... | 3 797 | 3 717 | 3 800 |
| applications processed..... | 3 832 | 3 688 | 3 795 |
| applications pending decision as at end of year | 146 | 175 | 180 |
| legal aid certificates granted..... | 2 785 | 2 690 | 2 760 |
| applications refused | | | |
| on means | 54 | 38 | 40 |
| on merits..... | 889 | 823 | 820 |

The number of applications received in 2013 and 2014 included 21 and 14 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 2015–16

- 9 During 2015–16, 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.

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Programme (2): Litigation Services

| | 2013–14 (Actual) | 2014–15 (Original) | 2014–15 (Revised) | 2015–16 (Estimate) |
|---------------------------|---------------------|-----------------------|----------------------|-----------------------------------|
| Financial provision (\$m) | 695.8 | 685.2 | 685.4 (—) | 691.3 (+0.9%) |
| | | | | (or +0.9% on 2014–15 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 2014.

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

Indicators

| | 2013 (Actual) | 2014 (Actual) | 2015 (Estimate) |
|--|------------------|------------------|----------------------------|
| <i>Assigning out and monitoring of cases</i> | | | |
| <i>Civil</i> | | | |
| new cases assigned..... | 5 855 | 5 987 | 6 030 |
| cases concluded..... | 5 726 | 5 823 | 6 035 |
| active cases as at end of year | 16 570 | 16 734 | 16 730 |
| <i>Criminal</i> | | | |
| new cases assigned..... | 2 044 | 2 033 | 2 050 |
| cases concluded..... | 1 995 | 1 866 | 2 050 |
| active cases as at end of year | 654 | 821 | 820 |
| <i>In-house litigation</i> | | | |
| <i>Civil</i> | | | |
| <i>Personal injury and miscellaneous</i> | | | |
| new cases assigned..... | 146 | 200 | 230 |
| cases concluded..... | 192 | 169 | 210 |
| active cases as at end of year | 245 | 276 | 295 |
| <i>Matrimonial</i> | | | |
| new cases assigned..... | 1 083 | 1 096 | 1 200 |
| cases concluded..... | 1 175 | 952 | 1 200 |
| active cases as at end of year | 1 138 | 1 282 | 1 280 |

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| | 2013 (Actual) | 2014 (Actual) | 2015 (Estimate) |
|---|------------------|------------------|--------------------|
| Insolvency | | | |
| new cases assigned..... | 57 | 61 | 70 |
| cases concluded..... | 110 | 70 | 100 |
| active cases as at end of year | | | |
| pending issue of winding-up and bankruptcy | | | |
| order..... | 17 | 16 | 15 |
| pending realisation of assets | 189 | 181 | 150 |
| Criminal | | | |
| new cases assigned..... | 695 | 692 | 710 |
| cases concluded..... | 717 | 671 | 710 |
| active cases as at end of year | 146 | 167 | 165 |
| <i>Damages/costs recovered from all civil cases</i> | | | |
| amount of damages recovered (\$'000)..... | 1,056,521 | 1,174,756 | N.A. |
| amount of costs recovered (\$'000)..... | 249,601 | 255,906 | N.A. |

Matters Requiring Special Attention in 2015–16

15 During 2015–16, 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

| | 2013–14 (Actual) | 2014–15 (Original) | 2014–15 (Revised) | 2015–16 (Estimate) |
|---------------------------|---------------------|-----------------------|----------------------|------------------------------------|
| Financial provision (\$m) | 34.1 | 35.4 | 39.0 (+10.2%) | 40.0 (+2.6%) |
| | | | | (or +13.0% on 2014–15 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 2014.

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

Targets

| | Target | 2013 (Actual) | 2014 (Actual) | 2015 (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

| | 2013 (Actual) | 2014 (Actual) | 2015 (Estimate) |
|---|------------------|------------------|--------------------|
| <i>Insolvency</i> | | | |
| cases for ex-gratia payment from Protection of Wages on Insolvency Fund | 312 | 304 | 300 |
| <i>Costing</i> | | | |
| taxation - court attendance | 185 | 225 | 225 |
| preparation of bills and objections | 257 | 267 | 270 |
| assessments made | 7 749 | 8 754 | 8 800 |
| <i>Enforcement</i> | | | |
| cases assigned | 448 | 311 | 400 |
| enforcement action taken | 395 | 345 | 400 |
| active cases as at end of year | 463 | 429 | 430 |
| amount of debts and costs recovered (\$'000) | 21,913 | 10,123 | N.A. |

Matters Requiring Special Attention in 2015–16

23 During 2015–16, 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

| | 2013–14 (Actual) | 2014–15 (Original) | 2014–15 (Revised) | 2015–16 (Estimate) |
|---------------------------|---------------------|-----------------------|----------------------|-----------------------------------|
| Financial provision (\$m) | 14.9 | 14.7 | 16.7 (+13.6%) | 13.3 (–20.4%) |
| | | | | (or –9.5% on 2014–15 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.

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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 2014.

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

Indicators

| | 2013 (Actual) | 2014 (Actual) | 2015 (Estimate) |
|-------------------------------------|------------------|------------------|----------------------------|
| new cases received | 229 | 250 | 250 |
| cases concluded | 246 | 195 | 195 |
| active cases as at end of year..... | 421 | 476 | 530 |

Matters Requiring Special Attention in 2015–16

31 During 2015–16, 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-governmental organisations and legal practitioners.

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ANALYSIS OF FINANCIAL PROVISION

| | 2013–14 (Actual) (\$m) | 2014–15 (Original) (\$m) | 2014–15 (Revised) (\$m) | 2015–16 (Estimate) (\$m) |
|---|------------------------------|--------------------------------|-------------------------------|---|
| Programme | | | | |
| (1) Processing of Legal Aid Applications... | 96.7 | 97.9 | 99.9 | 100.5 |
| (2) Litigation Services | 695.8 | 685.2 | 685.4 | 691.3 |
| (3) Support Services..... | 34.1 | 35.4 | 39.0 | 40.0 |
| (4) Official Solicitor’s Office | 14.9 | 14.7 | 16.7 | 13.3 |
| | 841.5 | 833.2 | 841.0 (+0.9%) | 845.1 (+0.5%) |
| | | | | (or +1.4% on 2014–15 Original) |

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2015–16 is \$0.6 million (0.6%) higher than the revised estimate for 2014–15. This is mainly due to the creation of one post and increase in operating expenses.

Programme (2)

Provision for 2015–16 is \$5.9 million (0.9%) higher than the revised estimate for 2014–15. This is mainly due to the anticipated increase in legal aid costs.

Programme (3)

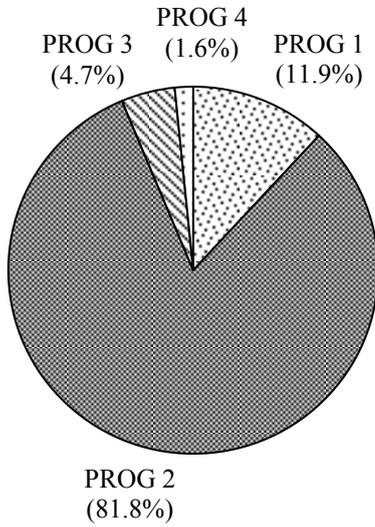
Provision for 2015–16 is \$1.0 million (2.6%) higher than the revised estimate for 2014–15. This is mainly due to cash flow requirement for a capital item.

Programme (4)

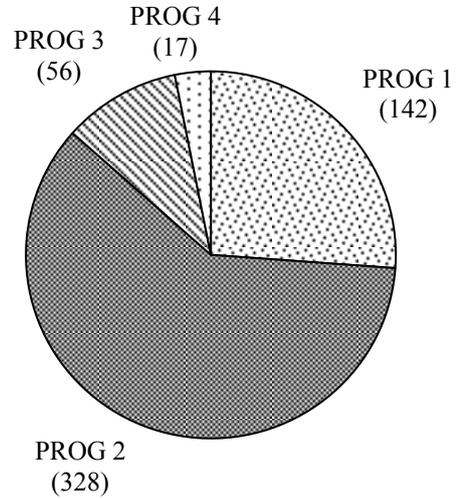
Provision for 2015–16 is \$3.4 million (20.4%) lower than the revised estimate for 2014–15. This is mainly due to the decrease in operating expenses.

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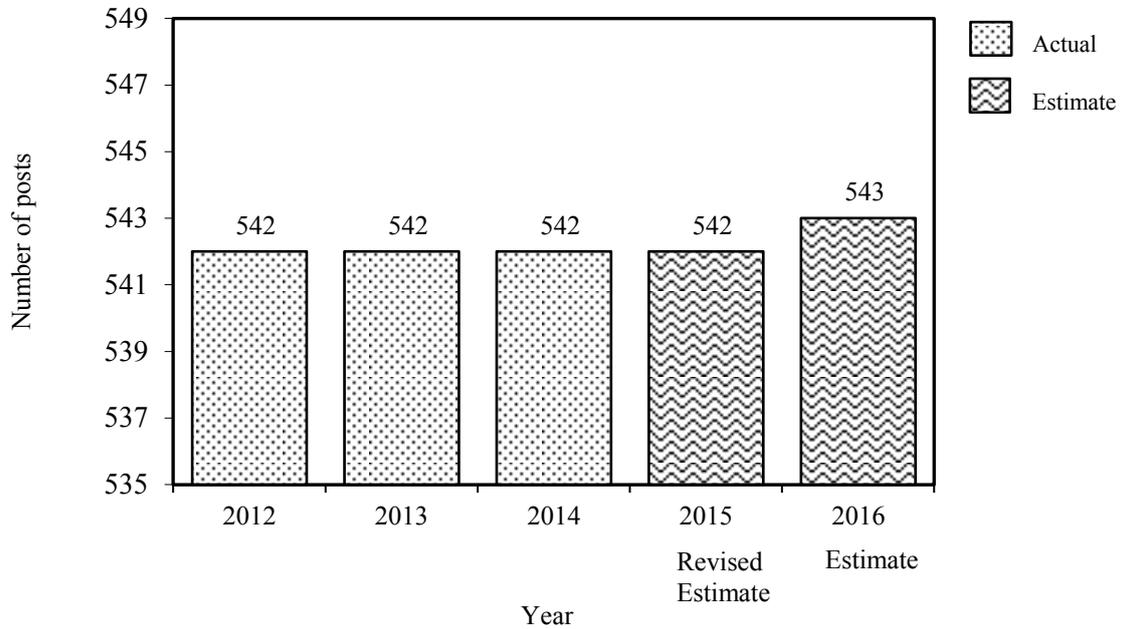
Allocation of provision to programmes (2015-16)



Staff by programme (as at 31 March 2016)



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



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| Sub-head (Code) | Actual expenditure 2013-14 | Approved estimate 2014-15 | Revised estimate 2014-15 | Estimate 2015-16 |
|----------------------------|--|---------------------------------|--------------------------------|-----------------------------|
| | \$'000 | \$'000 | \$'000 | \$'000 |
| Operating Account | | | | |
| Recurrent | | | | |
| 000 | Operational expenses | 270,776 | 275,305 | 283,194 |
| 208 | Legal aid costs..... | 570,732 | 557,846 | 557,846 |
| | Total, Recurrent..... | 841,508 | 833,151 | 841,040 |
| | Total, Operating Account | 841,508 | 833,151 | 841,040 |
| Capital Account | | | | |
| Plant, Equipment and Works | | | | |
| 661 | Minor plant, vehicles and equipment (block vote)..... | — | — | — |
| | Total, Plant, Equipment and Works..... | — | — | — |
| | Total, Capital Account..... | — | — | — |
| | Total Expenditure | 841,508 | 833,151 | 841,040 |

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Details of Expenditure by Subhead

The estimate of the amount required in 2015–16 for the salaries and expenses of the Legal Aid Department is \$845,148,000. This represents an increase of \$4,108,000 over the revised estimate for 2014–15 and of \$3,640,000 over the actual expenditure in 2013–14.

Operating Account

Recurrent

2 Provision of \$284,324,000 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 2015 will be 542 permanent posts. It is expected that there will be a net increase of one post in 2015–16. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2015–16, but the notional annual mid-point salary value of all such posts must not exceed \$214,579,000.

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

| | 2013–14 (Actual) (\$'000) | 2014–15 (Original) (\$'000) | 2014–15 (Revised) (\$'000) | 2015–16 (Estimate) (\$'000) |
|--|---------------------------------|-----------------------------------|----------------------------------|--|
| Personal Emoluments | | | | |
| - Salaries..... | 248,841 | 251,118 | 258,932 | 258,050 |
| - Allowances..... | 1,660 | 1,264 | 1,673 | 1,543 |
| Personnel Related Expenses | | | | |
| - Mandatory Provident Fund contribution..... | 728 | 666 | 768 | 753 |
| - Civil Service Provident Fund contribution..... | 4,192 | 5,657 | 5,821 | 7,223 |
| Departmental Expenses | | | | |
| - General departmental expenses | 15,355 | 16,600 | 16,000 | 16,755 |
| | 270,776 | 275,305 | 283,194 | 284,324 |

5 Provision of \$560,024,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.

Capital Account

Plant, Equipment and Works

6 Provision of \$800,000 under *Subhead 661 Minor plant, vehicles and equipment (block vote)* is for purchasing new equipment.