

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2002–03 **\$791.4m**

Establishment ceiling 2002–03 (notional annual mid-point salary value) representing an estimated 574 non-directorate posts at 31 March 2002 reducing by 14 posts to 560 posts at 31 March 2003 **\$177.8m**

In addition there will be an estimated 16 directorate posts at 31 March 2002 reducing by one post to 15 posts at 31 March 2003.

Controlling Officer's Report

Programmes

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

2 Targets highlighted in this Report reflect the quantitative standards of service formulated for the department's Performance Pledge on processing time launched in November 1997 and the Performance Pledge on payments launched in November 1999.

Detail

Programme (1): Processing of Legal Aid Applications

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	73.1	78.7 (+7.7%)	79.4 (+0.9%)	79.0 (–0.5%)

Aim

3 The aim is to ensure that legal aid service is provided only to eligible applicants.

Brief Description

4 The Application and Processing Division and the Crime Section and Insolvency Unit of the Litigation Division assess applicants' eligibility for legal aid and the amount of required contribution.

5 The current ceiling of an applicant's financial resources for both civil and criminal legal aid is \$169,700. A self-financing Supplementary Legal Aid Scheme provides civil legal aid to those whose financial resources exceed the current ceiling but are not over \$471,600. The scheme is limited to personal injury claims, including claims for employees' compensation, claims for damages arising from medical and dental negligence and professional negligence of lawyers.

6 Under Rule 15(2) of the Legal Aid in Criminal Cases Rules, the Director may grant legal aid in criminal cases even if an applicant's financial resources exceed \$169,700 if he is satisfied that it is desirable in the interests of justice to do so.

7 A merits test will be carried out to ensure that an applicant has reasonable grounds for litigation in civil cases; or in criminal cases, that he has reasonable grounds of appeal (a merits test is applied mainly in criminal appeals).

8 There are provisions for appeal against the Director's refusal to grant legal aid in civil cases, on means or on merits. There are no provisions for appeal against the Director's refusal to grant legal aid in criminal cases, on means or on merits except in respect of appeals to the Court of Final Appeal. However, legal aid may be granted to an accused or appellant by a Judge in certain circumstances notwithstanding that legal aid has been refused by the Director.

9 The department generally met the aim of the programme in 2001.

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

Head 94 — LEGAL AID DEPARTMENT

Targets

	Target	2000 (Actual)	2001 (Actual)	2002 (Plan)
<i>Civil legal aid</i>				
% of applications processed within 3 months from the date of application	85%	93%	92%	85%
<i>Criminal legal aid</i>				
Appeals against sentence				
% of applications processed within 2 months from the date of application	85%	97%	97%	85%
Appeals against conviction				
% of applications processed within 3 months from the date of application	85%	94%	95%	85%
Court of First Instance of the High Court/District Court				
% of applications processed within 10 working days from the date of application	90%	94%	92%	90%
Committal proceedings				
% of applications processed within 8 working days from the date of application	90%	94%	94%	90%

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
<i>Civil</i>			
enquiries received	41 784	36 113	37 200
appointments made	14 011	14 748	15 200
applications received	21 736 [†]	20 840	21 460
legal aid certificates granted	9 003	9 220	9 500
applications refused			
on means	1 979	1 330	1 370
on merits	6 220	6 760	6 960
legal aid certificates concluded/discharged	9 085	8 994	9 260
appeals against Director's decisions			
appeals heard	1 228 [#]	1 081	1 110
appeals allowed	101	98	100
<i>Criminal</i>			
applications received	4 338	4 423	4 560
legal aid certificates granted	2 545	2 748	2 830
applications refused			
on means	86	80	80
on merits	1 404	1 455	1 500
legal aid certificates concluded/discharged	2 510	2 700	2 785

[†] Includes 1 560 applications by right of abode claimants in 2000.

[#] Excludes 3 036 appeals by right of abode claimants which are pending the decision of the Registrar of the High Court.

Note: The total number of applications received during the year does not tally with the total number of certificates granted, applications refused and certificates concluded/discharged during the same year as these results may be related to applications received in preceding years.

Matters Requiring Special Attention in 2002–03

11 During 2002–03, the department will:

- continue to monitor the level of applications received following the implementation of the proposals arising from the last Legal Aid Policy Review;
- continue to monitor the processing time and improve the quality of its services; and
- review legal aid application and means-testing processes and the related resource deployment.

Head 94 — LEGAL AID DEPARTMENT

Programme (2): Litigation Services

	2000-01 (Actual)	2001-02 (Approved)	2001-02 (Revised)	2002-03 (Estimate)
Financial provision (\$m)	599.0	767.2 (+28.1%)	660.9 (-13.9%)	673.1 (+1.8%)

Aim

12 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

13 The Application and Processing Division and the Crime Section of the Litigation Division systematically monitor cases assigned to private practitioners.

In-house litigation

1. Civil litigation

(a) Personal injury

Litigates cases for common law damages for personal injuries and death involving negligence of others and for compensation under the Employees' Compensation Ordinance for legally-aided injured persons and dependants/relatives of the fatally-injured, seamen's wages claims and professional negligence.

(b) Matrimonial

Litigates cases for legally-aided persons by taking or defending proceedings for separation, dissolution/annulment of marriage/ancillary and other relief and wardship.

(c) Insolvency

Litigates cases for legally-aided persons for recovery of employment entitlements and judgment debts by taking winding-up and bankruptcy proceedings.

2. Criminal litigation

(a) Provides in-house representation in committal proceedings in Magistrates' Court, plea day proceedings in the District Court, and Listing and bail applications in the Court of First Instance.

(b) Acts as instructing solicitor in Court of First Instance (Fixture/Running List) cases, and in appeals before the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

14 The department generally met the aim of the programme in 2001.

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

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned	6 285	6 910	7 120
cases closed	7 630	6 980	7 190
active cases as at end of year	15 830	15 760	15 690
<i>Criminal</i>			
new cases assigned	1 463	1 530	1 570
cases closed	1 468	1 430	1 480
active cases as at end of year	150	250	340
<i>In-house Litigation</i>			
<i>Civil</i>			
Personal Injury Litigation Section			
new cases assigned	486	540	555
cases closed	710	695	715
active cases as at end of year	1 055	900	740
Family Litigation Section			
new cases assigned	1 283	917	945
cases closed	1 323	1 091	1 120
active cases as at end of year	1 174	1 000	825

Head 94 — LEGAL AID DEPARTMENT

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
<i>Insolvency</i>			
new cases assigned.....	580	608	625
cases closed.....	287	228	235
active cases as at end of year	2 230	2 610	3 000
<i>Criminal</i>			
new cases assigned.....	1 079	1 240	1 275
cases closed.....	982	1 270	1 305
active cases as at end of year	550	520	490
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	1,091,627	918,800	946,000
amount of costs recovered (\$'000).....	266,856	223,000	230,000

Note: The total number of new cases assigned during the year does not tally with the total number of cases closed and active cases during the same year as these results may be related to cases assigned in preceding years.

Matters Requiring Special Attention in 2002–03

16 During 2002–03, the department will:

- continue to monitor progress and expenditure in legal aid cases and performance of assigned private practitioners;
- implement measures to strengthen the monitoring of assigned-out cases;
- meet the additional demands following the implementation of the proposals arising from the last Legal Aid Policy Review; and
- implement measures to enhance efficiency of the Litigation Division.

Programme (3): Support Services

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	30.8	34.2 (+11.0%)	35.3 (+3.2%)	34.9 (–1.1%)

Aim

17 The aims are to provide effective support services for processing applications and conducting legal aid cases; to review/make recommendations to the Government on legal aid policy to meet areas of perceived needs; and to organise or participate in activities for increasing the public's knowledge and awareness of legal aid services provided by the department.

Brief Description

18 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*—dealing with assessment and preparation of bills of costs, and attendance at taxation hearings;
- *Enforcement*—dealing with the enforcement of unsatisfied judgments and orders; and
- *Probate*—dealing with the obtaining of grants of representation for fatal cases litigated in-house and entering caveats in contentious probate matters.

19 The department assesses and makes payments to assigned solicitors and counsel, and pays damages recovered to clients.

20 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.

21 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.

22 The department generally met the aims of the programme in 2001.

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

Head 94 — LEGAL AID DEPARTMENT

Targets

	Target	2000 (Actual)	2001 (Actual)	2002 (Plan)
<i>Payment to aided persons</i>				
Interim payment				
% of payments processed within 1 month	90%	99%	99%	90%
Final payment				
% of payments processed within 6 weeks	90%	97%	99%	90%
<i>Payment to lawyers/experts/other parties</i>				
Advance payment				
% of payments processed within 6 weeks	90%	99%	99%	90%
Balance payment				
% of payments processed within 6 weeks	90%	98%	99%	90%

Indicators

		2000 (Actual)	2001 (Actual)	2002 (Estimate)
Insolvency				
cases for ex-gratia payment from Protection of Wages on Insolvency Fund		1 060	1 046	1 075
Costing				
taxation and call-over attendance		2 468	1 261	1 200
assessment made		8 105	6 445	6 300
Enforcement				
cases requiring enforcement		1 180	874	900
enforcement action taken		1 033	833	860
active cases as at end of year		2 876	2 917	2 957
amount of debts and costs recovered (\$'000)		15,942	13,584	14,000
Probate				
grants received		24	21	22
caveats lodged		47	43	44

Matters Requiring Special Attention in 2002–03

24 During 2002–03, the department will:

- continue to publish and update departmental pamphlets and its homepage on the Internet and 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 productivity and efficiency of the department;
- continue to monitor the performance pledge on payments related to legal aid cases launched in November 1999 and to streamline the payment procedures; and
- implement the Information Systems Strategy with a view to improving processing time and strengthening case management and cost control.

Programme (4): Official Solicitor's Office

	2000–01 (Actual)	2001–02 (Approved)	2001–02 (Revised)	2002–03 (Estimate)
Financial provision (\$m)	3.1	3.5 (+12.9%)	4.4 (+25.7%)	4.4 (0.0%)

Aim

25 The aim is to provide legal representation to those who are under legal disability, act as committee, represent deceased's estates in litigation and maintain a number of trust funds.

Brief Description

26 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.

Head 94 — LEGAL AID DEPARTMENT

27 At Common Law, the Official Solicitor plays an important role in safeguarding the rights of those under a disability (i.e. mental patients and minors).

28 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, grants of administration, investigation, enquiries and reports. 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.

29 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.

30 The department generally met the aim of the programme in 2001.

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

Indicators

	2000 (Actual)	2001 (Actual)	2002 (Estimate)
new cases received.....	120	114	115
cases closed.....	84	98	100
active cases as at end of year	214	230	245

Note: The total number of new cases received during the year does not tally with the total number of cases closed and active cases during the same year as these results may be related to cases in preceding years.

Matters Requiring Special Attention in 2002-03

32 During 2002-03, the Official Solicitor's Office will:

- continue to provide service to persons under legal disability and assist the court in proceedings; and
- step up the publicity of the role and the work of the Official Solicitor.

Head 94 — LEGAL AID DEPARTMENT

ANALYSIS OF FINANCIAL PROVISION

Programme	2000-01 (Actual) (\$m)	2001-02 (Approved) (\$m)	2001-02 (Revised) (\$m)	2002-03 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	73.1	78.7	79.4	79.0
(2) Litigation Services.....	599.0	767.2	660.9	673.1
(3) Support Services.....	30.8	34.2	35.3	34.9
(4) Official Solicitor's Office.....	3.1	3.5	4.4	4.4
	706.0	883.6 (+25.2%)	780.0 (-11.7%)	791.4 (+1.5%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2002-03 is \$0.4 million (0.5%) lower than the revised estimate for 2001-02. This is mainly due to reduced operating expenditure and the deletion of one post under the Enhanced Productivity Programme, as well as the deletion of three posts upon implementation of the Information Systems Strategy.

Programme (2)

Provision for 2002-03 is \$12.2 million (1.8%) higher than the revised estimate for 2001-02. This is mainly due to an increase in legal aid costs arising from an increase in the number of legal aid certificates granted in previous years and an anticipated increase in the number of legal aid certificates to be granted in 2002-03. The increase in expenditure is partly offset by reduced operating expenditure and the deletion of two posts under the Enhanced Productivity Programme, as well as the deletion of six permanent posts and one supernumerary post upon implementation of the Information Systems Strategy.

Programme (3)

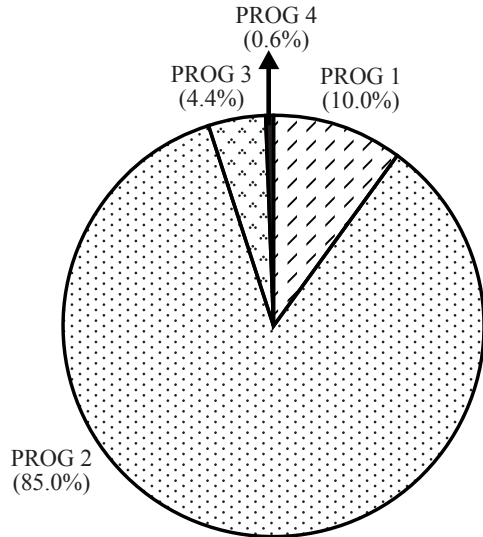
Provision for 2002-03 is \$0.4 million (1.1%) lower than the revised estimate for 2001-02. This is mainly due to the deletion of two posts upon implementation of the Information Systems Strategy and reduced operating expenditure under the Enhanced Productivity Programme.

Programme (4)

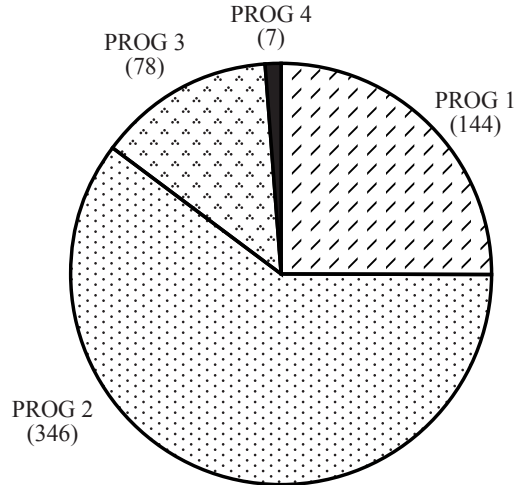
Provision for 2002-03 is the same as the revised estimate for 2001-02.

Head 94 — LEGAL AID DEPARTMENT

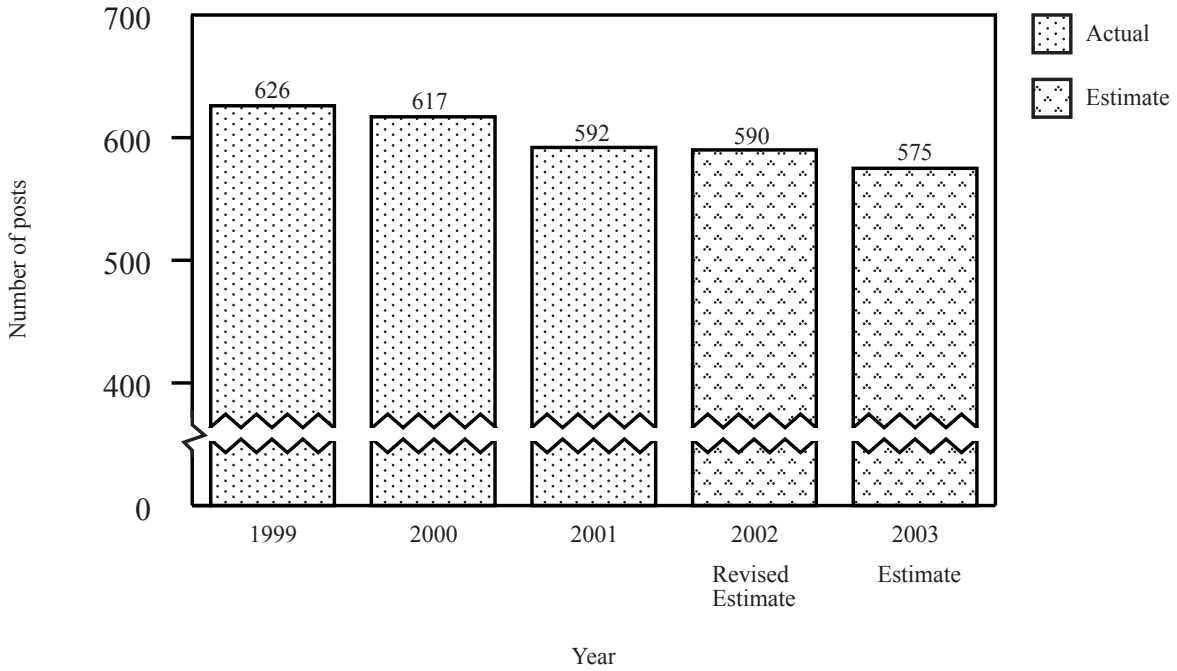
Allocation of provision to programmes (2002-03)



Staff by programme (as at 31 March 2003)



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



Head 94 — LEGAL AID DEPARTMENT

Sub-head (Code)	Actual expenditure 2000-01	Approved estimate 2001-02	Revised estimate 2001-02	Estimate 2002-03	
	\$'000	\$'000	\$'000	\$'000	
Recurrent Account					
I — Personal Emoluments					
001	Salaries	214,564	217,142	222,869	222,014
002	Allowances	1,884	3,206	2,850	2,949
007	Job-related allowances	48	60	50	50
	Total, Personal Emoluments	<u>216,496</u>	<u>220,408</u>	<u>225,769</u>	<u>225,013</u>
III — Departmental Expenses					
149	General departmental expenses	14,816	18,477	18,477	16,143
	Total, Departmental Expenses	<u>14,816</u>	<u>18,477</u>	<u>18,477</u>	<u>16,143</u>
IV — Other Charges					
208	Legal aid costs	473,168	644,586	535,654	550,117*
	Total, Other Charges	<u>473,168</u>	<u>644,586</u>	<u>535,654</u>	<u>550,117</u>
	Total, Recurrent Account	<u>704,480</u>	<u>883,471</u>	<u>779,900</u>	<u>791,273</u>
Capital Account					
I — Plant, Equipment and Works					
661	Minor plant, vehicles and equipment (block vote)	45	100	100	130
	Total, Plant, Equipment and Works	<u>45</u>	<u>100</u>	<u>100</u>	<u>130</u>
II — Other Non-Recurrent					
	General other non-recurrent	1,487	—	—	—
	Total, Other Non-Recurrent	<u>1,487</u>	<u>—</u>	<u>—</u>	<u>—</u>
	Total, Capital Account	<u>1,532</u>	<u>100</u>	<u>100</u>	<u>130</u>
	Total Expenditure	<u><u>706,012</u></u>	<u><u>883,571</u></u>	<u><u>780,000</u></u>	<u><u>791,403</u></u>

Head 94 — LEGAL AID DEPARTMENT

Details of Expenditure by Subhead

The estimate of the amount required in 2002–03 for the salaries and expenses of the Legal Aid Department is \$791,403,000. This represents an increase of \$11,403,000 over the revised estimate for 2001–02 and of \$85,391,000 over actual expenditure in 2000–01.

Recurrent Account

Personal Emoluments

2 Provision of \$225,013,000 for personal emoluments represents a decrease of \$756,000 against the revised estimate for 2001–02.

3 The establishment at 31 March 2002 will be 589 permanent posts and one supernumerary post. It is expected that 14 permanent posts will be deleted and one supernumerary post will lapse in 2002–03.

4 Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2002–03, but the notional annual mid-point salary value of all such posts must not exceed \$177,796,000.

5 Provision of \$2,949,000 under *Subhead 002 Allowances* is for standard allowances.

6 Provision of \$50,000 under *Subhead 007 Job-related allowances* is for standard job-related allowances.

Departmental Expenses

7 Provision of \$16,143,000 under *Subhead 149 General departmental expenses* represents a decrease of \$2,334,000 (12.6%) against the revised estimate for 2001–02. This is mainly due to reduced operating expenditure under the Enhanced Productivity Programme.

Other Charges

8 Provision of \$550,117,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.

Capital Account

Plant, Equipment and Works

9 Provision of \$130,000 under *Subhead 661 Minor plant, vehicles and equipment (block vote)* represents an increase of \$30,000 (30.0%) over the revised estimate for 2001–02. This is mainly due to an increase in the cashflow requirement for the replacement of a minor equipment.