

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2000–01	\$951.2m
Establishment ceiling 2000–01 (notional annual mid-point salary value) representing an estimated 603 non-directorate posts at 31 March 2000 rising by two posts to 605 posts at 31 March 2001	\$191.3m
In addition there will be an estimated 14 directorate posts at 31 March 2000 rising by one post to 15 posts at 31 March 2001.	
Capital Account commitment balance	\$1.5m

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

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	81.1	87.9 (+8.4%)	81.2 (–7.6%)	85.1 (+4.8%)

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 assesses the applicants' eligibility for legal aid on the basis of the prescribed means test and merits test. The Division also assesses the amount of the applicants' 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 it is in the interests of justice that an applicant be legally represented (a merits test is applied only 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.

9 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.

10 The department has broadly achieved the aim of the programme in 1999.

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

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Targets

	Target	1998 (Actual)	1999 (Actual)	2000 (Plan)
<i>Civil legal aid</i>				
% of applications processed within 3 months from the date of application	80%	88%	91%	85%
<i>Criminal legal aid</i>				
Appeals against sentence				
% of applications processed within 2 months from the date of application	80%	97%	97%	85%
Appeals against conviction				
% of applications processed within 3 months from the date of application	80%	96%	96%	85%
Court of First Instance of the High Court/District Court				
% of applications processed within 10 working days from the date of application	90%	99%	98%	90%
Committal proceedings				
% of applications processed within 8 working days from the date of application	90%	99%	98%	90%

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
<i>Civil</i>			
enquiries received	37 355	40 734	44 800
appointments made	17 362	14 696	16 200
applications received	25 617	31 578 [†]	28 000
legal aid certificates granted	9 850	10 075	12 000
applications refused			
on means	2 598	2 645	2 900
on merits	6 678	14 231	9 500
legal aid certificates concluded/discharged	8 204	10 057	11 100
appeals against Director's decisions			
appeals heard	1 042	1 357	1 500
appeals allowed	46	54	60
<i>Criminal</i>			
applications received	4 396	4 212	4 640
legal aid certificates granted	2 859	2 548	2 800
applications refused			
on means	13	28	30
on merits	1 441	1 467	1 600
legal aid certificates concluded/discharged	2 552	2 633	2 890

[†] Includes 8 130 applications by right of abode claimants arising from the challenge of interpretation of Basic Law by National People's Congress.

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 2000–01

12 During 2000–01, the department will:

- monitor and cope with increases in applications as a result of the implementation of the proposals arising from the Legal Aid Policy Review 1997; and
- continue to monitor the processing time and improve the quality of its services.

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Programme (2): Litigation Services

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	626.1	780.3 (+24.6%)	734.7 (–5.8%)	830.6 (+13.1%)

Aim

13 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

14 The Application and Processing Division and the Criminal 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, cases under the Pneumoconiosis (Compensation) Ordinance as well as litigates cases in respect of commercial disputes (such as disputes over contracts or insurance indemnity), 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, wardship and affiliation.

(c) Insolvency

Deals with all winding-up and bankruptcy matters usually referred by the Labour Department where employees have not been paid their entitlements by their employers (to reflect more accurately the nature of work, insolvency cases involving winding-up and bankruptcy proceedings have been put under Programme (2) and those insolvency cases which do not involve winding-up and bankruptcy proceedings have been put under Programme (3)).

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.

15 The department has broadly achieved the aim of the programme in 1999.

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

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned	6 539	6 863	8 580
cases closed/discharged	6 401	7 780	8 800
active cases as at end of year	18 915	17 175	17 000
<i>Criminal</i>			
new cases assigned	1 610	1 416	1 600
cases concluded/discharged	1 608	1 422	1 560
active cases as at end of year	180	155	160
<i>In-house Litigation</i>			
<i>Civil</i>			
Personal Injury Litigation Section			
new cases assigned	703	691	720
cases closed/discharged	663	673	700

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	1998 (Actual)	1999 (Actual)	2000 (Estimate)
active cases as at end of year	1 228	1 279	1 300
Family Litigation Section			
new cases assigned.....	1 633	1 378	1 500
cases closed/discharged	1 140	1 604	1 600
active cases as at end of year	1 648	1 214	1 200
Insolvency			
new cases assigned.....	1 809†	1 880†	1 200
cases closed.....	937†	1 978†	1 500
active cases as at end of year	3 304†	3 205†	2 800
Criminal			
new cases assigned.....	1 146	1 177	1 200
cases concluded/discharged	944	1 211	1 330
active cases as at end of year	491	453	350
Damages/costs recovered from all civil cases			
amount of damages recovered (\$'000).....	975,378	1,163,476	1,280,000
amount of costs recovered (\$'000).....	243,651	218,039	253,000

† Includes cases referred to the Protection of Wages on Insolvency Fund Board for ex-gratia payments without bankruptcy and winding-up proceedings.

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 2000–01

17 During 2000–01, 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; and
- meet the additional demands arising from the implementation of proposals from the Legal Aid Policy Review 1997.

Programme (3): Support Services

	1998–99 (Actual)	1999–2000 (Approved)	1999–2000 (Revised)	2000–01 (Estimate)
Financial provision (\$m)	29.8	31.9 (+7.0%)	32.7 (+2.5%)	32.5 (–0.6%)

Aim

18 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 public's knowledge and awareness of legal aid services provided by the department.

Brief Description

19 Support services include:

- Insolvency—dealing with cases to be referred to the Protection of Wages on Insolvency Fund Board for ex-gratia payments without bankruptcy and winding-up proceedings (to reflect more accurately the nature of work, insolvency cases involving winding-up and bankruptcy proceedings have been put under Programme (2) and those insolvency cases which do not involve winding-up and bankruptcy proceedings have been put under Programme (3));
- Costing—dealing with assessment and preparation of bills of costs, and attendance at taxation hearings;
- Enforcement—dealing with the enforcement of unsatisfied judgements 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.

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

21 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.

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22 It will not be possible to specify quantitative measures and indicators as performance measures in respect of policy and legislation which must be judged in qualitative terms.

23 The department has broadly achieved the aims of the programme in 1999.

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

Targets

	Target	1998 (Actual)	1999 (Actual)	2000 (Plan)
<i>Payment to aided persons</i>				
<i>Interim payment</i>				
% of payments processed within 1 month	80%	N.A.†	N.A.†	80%
<i>Final payment</i>				
% of payments processed within 6 weeks	80%	N.A.†	N.A.†	80%
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
% of payments processed within 6 weeks	80%	N.A.†	N.A.†	80%
<i>Balance payment</i>				
% of payments processed within 6 weeks	80%	N.A.†	N.A.†	80%

† The performance pledge on payments related to legal aid cases was only launched in November 1999, thus no data for 1998 and 1999 was available for comparison.

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund.....	N.A.†	636	1 300
<i>Costing</i>			
taxation and call-over attendance	2 620	2 942	3 240
assessment made.....	7 928	7 833	8 600
<i>Enforcement</i>			
new cases assigned	1 183	1 414	1 560
cases closed	726	836	920
active cases as at end of year	2 151	2 729	3 000
amount of debts and costs recovered (\$'000).....	12,837	10,056	11,000
<i>Probate</i>			
grants received.....	23	19	20
caveats lodged	40	54	60

† Data for these cases were collected as from July 1999 only, thus no indicator for 1998 was available for comparison.

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 2000–01

25 During 2000–01, the department will:

- continue to publish and update departmental pamphlets to increase the transparency of the operations of the department;
- organise exhibitions and produce a documentary video to publicise legal aid services;
- provide support to the Legal Aid Services Council and to implement recommendations of the Council to improve the productivity and efficiency of the department;
- monitor the Performance Pledge on payments related to legal aid cases launched in November 1999 and continue 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.

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Programme (4): Official Solicitor's Office

	1998-99 (Actual)	1999-2000 (Approved)	1999-2000 (Revised)	2000-01 (Estimate)
Financial provision (\$m)	4.7	3.0 (-36.2%)	3.0 (0.0%)	3.0 (0.0%)

Aim

26 The aim is to provide legal representation to those who are under legal disability, unclaimed estates and to maintain a number of trust funds.

Brief Description

27 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.

28 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).

29 Cases falling within the scope of the Official Solicitor's duties include general litigation, receivership, wardship, bail applications, adoptions, contempt, matrimonial causes, paternity issues, conveyancing, Judicial Trustee cases, Official Trustee cases, grant 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, unclaimed estates, the maintenance of a number of trust funds and where so directed by the Court, make investigation and report on such matters as paternity issues, the mental conditions of a party and sensitive custody cases.

30 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.

31 The department has broadly achieved the aim of the programme in 1999.

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

Indicators

	1998 (Actual)	1999 (Actual)	2000 (Estimate)
new cases received.....	128	108	130
cases closed.....	120	83	100
active cases as at end of year	153	178	210

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 2000-01

33 During 2000-01, the Official Solicitor (the Director of Legal Aid) will:

- continue to discharge his duties in financing and conducting the proceedings under the Official Solicitor Ordinance;
- step up the publicity of the role and the work of the Official Solicitor; and
- continue to contribute to policy discussion on provision of legal representation for children/juveniles in care and protection proceedings to meet obligations under the UN Convention on the Rights of the Child.

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ANALYSIS OF FINANCIAL PROVISION

Programme	1998–99 (Actual) (\$m)	1999–2000 (Approved) (\$m)	1999–2000 (Revised) (\$m)	2000–01 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	81.1	87.9	81.2	85.1
(2) Litigation Services	626.1	780.3	734.7	830.6
(3) Support Services	29.8	31.9	32.7	32.5
(4) Official Solicitor's Office	4.7	3.0	3.0	3.0
	741.7	903.1 (+21.8%)	851.6 (–5.7%)	951.2 (+11.7%)

Note: For comparison purpose, the actual expenditure for 1998–99 and the approved and revised estimates for 1999–2000 under Programmes (2) and (3) have been revised to take into account the transfer of legal aid costs on insolvency cases involving winding-up and bankruptcy proceedings from Programme (3) to Programme (2).

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2000–01 is \$3.9 million (4.8%) higher than the revised estimate for 1999–2000. This is mainly due to the creation of four posts in 2000–01 for implementation of the Legal Aid Policy Review recommendations and other improved services and an increase in legal aid costs arising from an anticipated increase in the number of legal aid applications, partly offset by the deletion of one post under the Enhanced Productivity Programme.

Programme (2)

Provision for 2000–01 is \$95.9 million (13.1%) higher than the revised estimate for 1999–2000. This is mainly due to the creation of four posts in 2000–01 for implementation of the Legal Aid Policy Review recommendations and other improved services, and 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 2000–01, partly offset by the deletion of three posts under the Enhanced Productivity Programme.

Programme (3)

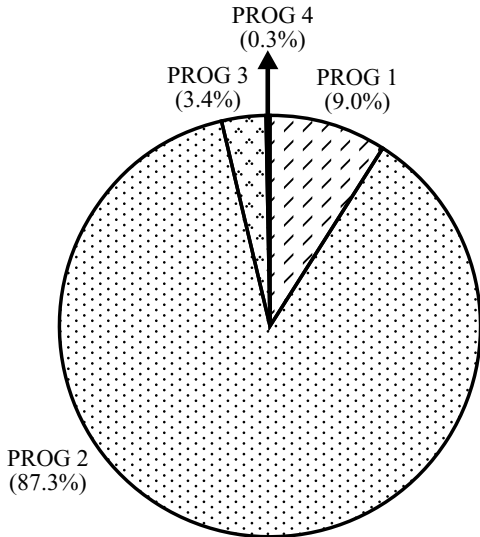
Provision for 2000–01 is \$0.2 million (0.6%) lower than the revised estimate for 1999–2000. This is mainly due to the deletion of one post under the Enhanced Productivity Programme.

Programme (4)

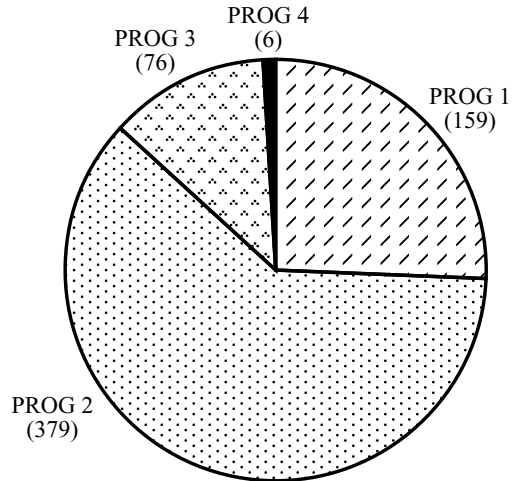
Provision for 2000–01 is the same as the revised estimate for 1999–2000.

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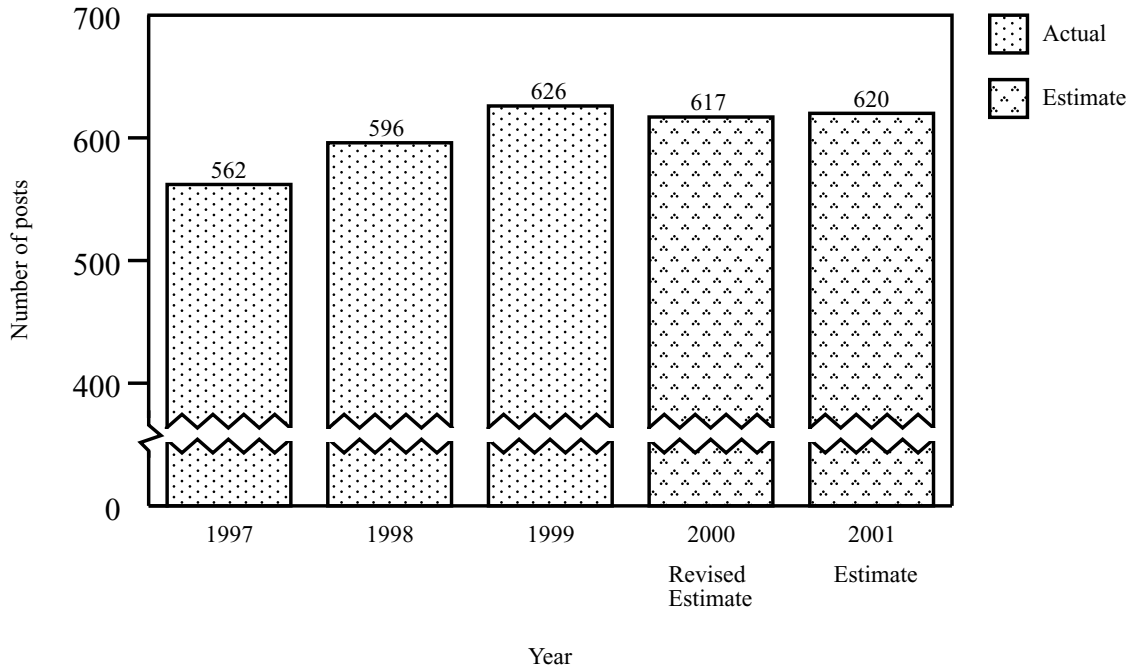
Allocation of provision to programmes (2000-01)



Staff by programme (as at 31 March 2001)



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



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Sub-head (Code)		Actual expenditure 1998-99	Approved estimate 1999-2000	Revised estimate 1999-2000	Estimate 2000-01
		\$'000	\$'000	\$'000	\$'000
Recurrent Account					
I — Personal Emoluments					
001	Salaries	206,845	216,204	215,733	214,851
002	Allowances	4,205	4,938	4,300	4,400
007	Job-related allowances	56	70	57	60
	Total, Personal Emoluments	<u>211,106</u>	<u>221,212</u>	<u>220,090</u>	<u>219,311</u>
III — Departmental Expenses					
149	General departmental expenses.....	9,565	11,669	11,000	13,114
	Total, Departmental Expenses	<u>9,565</u>	<u>11,669</u>	<u>11,000</u>	<u>13,114</u>
IV — Other Charges					
208	Legal aid costs	518,389	669,125	620,170	717,000*
209	Special legal expenses	—	60	60	60*
	Total, Other Charges	<u>518,389</u>	<u>669,185</u>	<u>620,230</u>	<u>717,060</u>
	Total, Recurrent Account	<u>739,060</u>	<u>902,066</u>	<u>851,320</u>	<u>949,485</u>
Capital Account					
I — Plant, Equipment and Works					
661	Minor plant, vehicles and equipment (block vote)	—	403	170	233
	Total, Plant, Equipment and Works.....	<u>—</u>	<u>403</u>	<u>170</u>	<u>233</u>
II — Other Non-Recurrent					
700	General other non-recurrent	2,616	600	110	1,490
	Total, Other Non-Recurrent.....	<u>2,616</u>	<u>600</u>	<u>110</u>	<u>1,490</u>
	Total, Capital Account.....	<u>2,616</u>	<u>1,003</u>	<u>280</u>	<u>1,723</u>
	Total Expenditure	<u><u>741,676</u></u>	<u><u>903,069</u></u>	<u><u>851,600</u></u>	<u><u>951,208</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2000–01 for the salaries and expenses of the Legal Aid Department is \$951,208,000. This represents an increase of \$99,608,000 over the revised estimate for 1999–2000 and of \$209,532,000 on actual expenditure in 1998–99.

Recurrent Account

Personal Emoluments

2 Provision of \$219,311,000 for personal emoluments represents a decrease of \$779,000 against the revised estimate for 1999–2000 and takes into account full-year savings arising from posts deleted in 1999–2000 and provision for new posts likely to be created during 2000–01.

3 The establishment at 31 March 2000 will be 617 permanent posts. Taking into account the creation of eight posts for implementation of the Legal Aid Policy Review recommendations and other improved services and the deletion of five posts under the Enhanced Productivity Programme, it is expected that a net three permanent posts will be created in 2000–01.

4 Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2000–01, but the notional annual mid-point salary value of all such posts must not exceed \$191,314,000.

5 Provision of \$4,400,000 under *Subhead 002 Allowances* is for standard allowances.

6 Provision of \$60,000 under *Subhead 007 Job-related allowances* is for standard job-related allowances. The increase of \$3,000 (5.3%) over the revised estimate for 1999–2000 is mainly due to an increased requirement for extraneous duties allowances (standard).

Departmental Expenses

7 Provision of \$13,114,000 under *Subhead 149 General departmental expenses* represents an increase of \$2,114,000 (19.2%) over the revised estimate for 1999–2000. This is mainly due to increased requirement for departmental expenses arising from the implementation of the Information Systems Strategy and the employment of non-civil service contract staff.

Other Charges

8 Provision of \$717,000,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$96,830,000 (15.6%) over the revised estimate for 1999–2000 is mainly due to increased expenditure on 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 applications and legal aid certificates to be granted in 2000–01.

9 Provision of \$60,000 under *Subhead 209 Special legal expenses* is to meet the costs of providing legal representation for the next of kin of the deceased or those in jeopardy at coroners' inquests, where it is considered appropriate to do so.

Capital Account

Plant, Equipment and Works

10 Provision of \$233,000 under *Subhead 661 Minor plant, vehicles and equipment (block vote)* represents an increase of \$63,000 (37.1%) over the revised estimate for 1999–2000. This is mainly due to an increase in the cashflow requirement for the replacement of an interactive voice processing system.

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Capital Account

Commitments

Sub-head (Code)	Item (Code)	Ambit	Approved commitment	Accumulated expenditure to 31.3.99	Revised estimated expenditure for 1999–2000	Balance
			\$'000	\$'000	\$'000	\$'000
700		<i>General other non-recurrent</i>				
	212	Legal Aid Drama	2,400	2,100	—	300
	213	Legal Aid Publicity.....	300	—	110	190
	214	LAD Publication and Video	1,000	—	—	1,000
		Total	<u>3,700</u>	<u>2,100</u>	<u>110</u>	<u>1,490</u>