

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2001–02..... **\$883.6m**

Establishment ceiling 2001–02 (notional annual mid-point salary value) representing an estimated 582 non-directorate posts at 31 March 2001 reducing by seven posts to 575 posts at 31 March 2002... **\$174.8m**

In addition there will be an estimated 16 directorate posts at 31 March 2001 and at 31 March 2002.

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

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	84.4	85.1 (+0.8%)	77.3 (–9.2%)	78.7 (+1.8%)

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 is carried out to ensure that an applicant has reasonable grounds for litigation in civil cases. As for criminal cases, the consideration is whether it is in the interests of justice that an applicant be legally represented, and 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. 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 2000.

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

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Targets

	Target	1999 (Actual)	2000 (Actual)	2001 (Plan)
<i>Civil legal aid</i>				
% of applications processed within 3 months from the date of application	85%	91%	93%	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%	94%	85%
Court of First Instance of the High Court/District Court % of applications processed within 10 working days from the date of application	90%	98%	94%	90%
Committal proceedings % of applications processed within 8 working days from the date of application	90%	98%	94%	90%

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
<i>Civil</i>			
enquiries received	40 734	41 784	43 860
appointments made	14 696	14 011	14 700
applications received	31 578 [†]	21 736 [†]	22 330
legal aid certificates granted	10 075	9 003	9 500
applications refused			
on means	2 645	1 979	1 800
on merits	14 231	6 220	6 400
legal aid certificates concluded/discharged	10 057	9 085	9 540
appeals against Director's decisions			
appeals heard	1 357	1 228 [#]	1 260
appeals allowed	54	101	105
<i>Criminal</i>			
applications received	4 212	4 338	4 470
legal aid certificates granted	2 548	2 545	2 660
applications refused			
on means	28	86	80
on merits	1 467	1 404	1 470
legal aid certificates concluded/discharged	2 633	2 510	2 640

[†] Includes 8 130 and 1 560 applications by right of abode claimants in 1999 and 2000 respectively.

[#] 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 2001–02

11 During 2001–02, the department will:

- continue to monitor the level of applications received following the implementation of the proposals arising from the Legal Aid Policy Review 1997;
- 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.

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Programme (2): Litigation Services

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	685.2	830.6 (+21.2%)	730.2 (–12.1%)	767.2 (+5.1%)

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 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, 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 2000.

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

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	6 863	6 285	6 640
cases closed/discharged.....	7 780	7 630	7 560
active cases as at end of year.....	17 175	15 830	14 910
<i>Criminal</i>			
new cases assigned.....	1 416	1 463	1 510
cases concluded/discharged.....	1 422	1 468	1 500
active cases as at end of year.....	155	150	160
<i>In-house Litigation</i>			
<i>Civil</i>			
Personal Injury Litigation Section			
new cases assigned.....	691	486	510
cases closed/discharged.....	673	710	680
active cases as at end of year.....	1 279	1 055	885
Family Litigation Section			
new cases assigned.....	1 378	1 283	1 300
cases closed/discharged.....	1 604	1 323	1 280
active cases as at end of year.....	1 214	1 174	1 194

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	1999 (Actual)	2000 (Actual)	2001 (Estimate)
Insolvency			
new cases assigned.....	1 880†	580	600
cases closed/discharged.....	1 978†	287	300
active cases as at end of year.....	3 205†	2 230	2 530
Criminal			
new cases assigned.....	1 177	1 079	1 110
cases concluded/discharged.....	1 211	982	1 050
active cases as at end of year.....	453	550	610
Damages/costs recovered from all civil cases			
amount of damages recovered (\$' 000).....	1,163,476	1,091,627	1,150,000
amount of costs recovered (\$' 000).....	218,039	266,856	280,000

† 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 2001–02

16 During 2001–02, 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 Legal Aid Policy Review 1997; and
- review the structure of Litigation Division.

Programme (3): Support Services

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	31.9	32.5 (+1.9%)	33.1 (+1.8%)	34.2 (+3.3%)

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 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 2000.

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

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Targets

	Target	1999 (Actual)	2000 (Actual)	2001 (Plan)
<i>Payment to aided persons</i>				
<i>Interim payment</i>				
% of payments processed within 1 month.....	80%	N.A.†	99%	80%
<i>Final payment</i>				
% of payments processed within 6 weeks	80%	N.A.†	97%	80%
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
% of payments processed within 6 weeks	80%	N.A.†	99%	80%
<i>Balance payment</i>				
% of payments processed within 6 weeks	80%	N.A.†	98%	80%

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

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	636†	1 060	1 100
<i>Costing</i>			
taxation and call-over attendance	2 942	2 468	2 600
assessment made	7 833	8 105	8 510
<i>Enforcement</i>			
new cases assigned.....	1 414	1 180	1 240
cases closed.....	836	1 033	1 080
active cases as at end of year.....	2 729	2 876	3 036
amount of debts and costs recovered (\$' 000).....	10,056	15,942	16,750
<i>Probate</i>			
grants received.....	19	24	25
caveats lodged.....	54	47	50

† Data for these cases was collected as from July 1999 only.

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 2001–02

24 During 2001–02, 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

	1999–2000 (Actual)	2000–01 (Approved)	2000–01 (Revised)	2001–02 (Estimate)
Financial provision (\$m)	3.1	3.0 (–3.2%)	3.4 (+13.3%)	3.5 (+2.9%)

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Aim

25 The aim is to provide legal representation to those who are under legal disability, act as committee, represent unclaimed estates 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.

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, receivership, 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, unclaimed estates 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 2000.

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

Indicators

	1999 (Actual)	2000 (Actual)	2001 (Estimate)
new cases received.....	108	120	125
cases closed.....	83	84	95
active cases as at end of year.....	178	214	244

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 2001–02

32 During 2001–02, the Official Solicitor 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	1999–2000 (Actual) (\$m)	2000–01 (Approved) (\$m)	2000–01 (Revised) (\$m)	2001–02 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	84.4	85.1	77.3	78.7
(2) Litigation Services	685.2	830.6	730.2	767.2
(3) Support Services	31.9	32.5	33.1	34.2
(4) Official Solicitor's Office	3.1	3.0	3.4	3.5
	804.6	951.2 (+18.2%)	844.0 (-11.3%)	883.6 (+4.7%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2001–02 is \$1.4 million (1.8%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff, the full-year provision for posts created in 2000–01 and an increase in legal aid costs arising from an anticipated increase in the number of legal aid applications. The increase in expenditure is partly offset by the deletion of two posts under the Enhanced Productivity Programme.

Programme (2)

Provision for 2001–02 is \$37.0 million (5.1%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff, the full-year provision for posts created in 2000–01, additional provision for appointment of non-civil service contract staff for improving professional and administrative support, 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 2001–02. The increase in expenditure is partly offset by the deletion of five posts under the Enhanced Productivity Programme.

Programme (3)

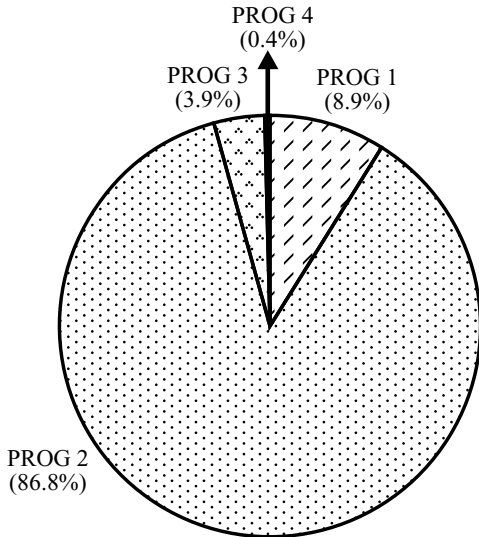
Provision for 2001–02 is \$1.1 million (3.3%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff and additional provision for appointment of non-civil service contract staff for improving professional and administrative support.

Programme (4)

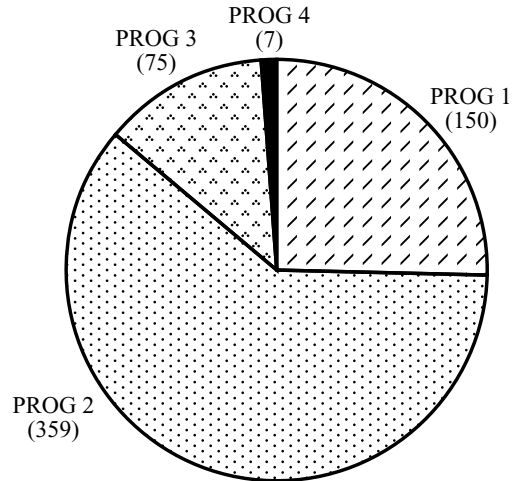
Provision for 2001–02 is \$0.1 million (2.9%) higher than the revised estimate for 2000–01. This is mainly due to salary increments for existing staff.

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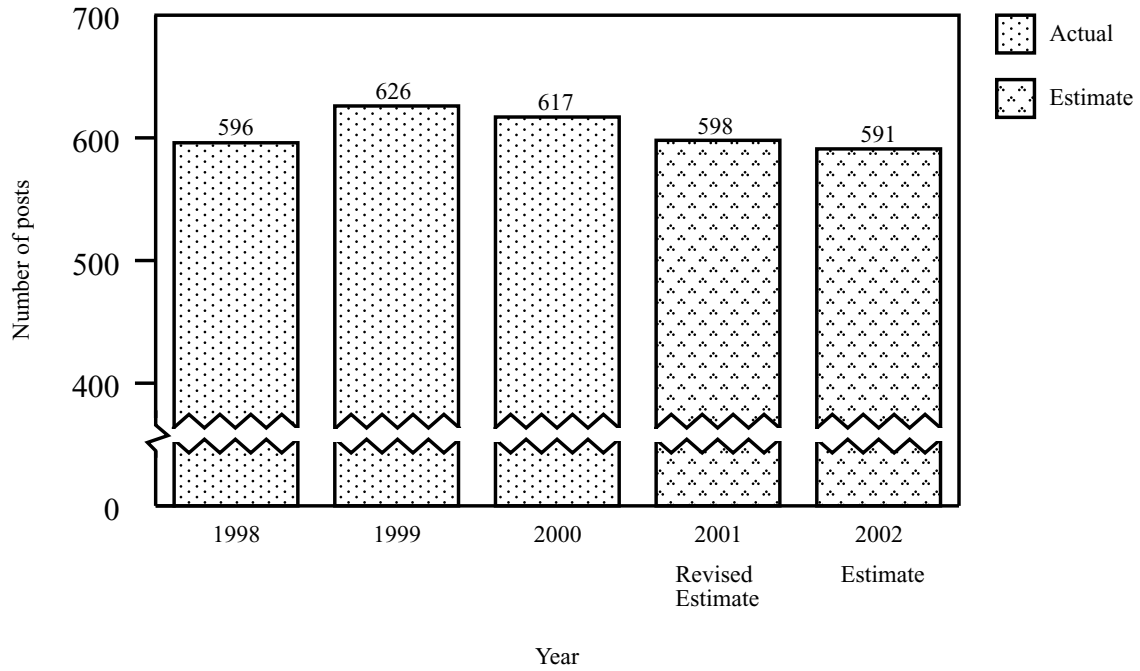
Allocation of provision to programmes (2001-02)



Staff by programme (as at 31 March 2002)



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



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Sub-head (Code)		Actual expenditure 1999–2000	Approved estimate 2000–01	Revised estimate 2000–01	Estimate 2001–02
		\$ 000	\$ 000	\$ 000	\$'000
Recurrent Account					
I — Personal Emoluments					
001	Salaries.....	214,349	214,851	215,175	217,142
002	Allowances.....	3,126	4,400	3,137	3,206
007	Job-related allowances.....	50	60	50	60
	Total, Personal Emoluments	<u>217,525</u>	<u>219,311</u>	<u>218,362</u>	<u>220,408</u>
III — Departmental Expenses					
149	General departmental expenses.....	9,591	13,114	13,114	18,477
	Total, Departmental Expenses	<u>9,591</u>	<u>13,114</u>	<u>13,114</u>	<u>18,477</u>
IV — Other Charges					
208	Legal aid costs.....	577,183	717,000	610,893	644,586*
	Special legal expenses	60	60	—	—
	Total, Other Charges.....	<u>577,243</u>	<u>717,060</u>	<u>610,893</u>	<u>644,586</u>
	Total, Recurrent Account	<u>804,359</u>	<u>949,485</u>	<u>842,369</u>	<u>883,471</u>
Capital Account					
I — Plant, Equipment and Works					
661	Minor plant, vehicles and equipment (block vote).....	119	233	100	100
	Total, Plant, Equipment and Works	<u>119</u>	<u>233</u>	<u>100</u>	<u>100</u>
II — Other Non-Recurrent					
	General other non-recurrent.....	113	1,490	1,486	—
	Total, Other Non-Recurrent.....	<u>113</u>	<u>1,490</u>	<u>1,486</u>	<u>—</u>
	Total, Capital Account.....	<u>232</u>	<u>1,723</u>	<u>1,586</u>	<u>100</u>
	Total Expenditure	<u><u>804,591</u></u>	<u><u>951,208</u></u>	<u><u>843,955</u></u>	<u><u>883,571</u></u>

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Details of Expenditure by Subhead

The estimate of the amount required in 2001–02 for the salaries and expenses of the Legal Aid Department is \$883,571,000. This represents an increase of \$39,616,000 over the revised estimate for 2000–01 and of \$78,980,000 over actual expenditure in 1999–2000.

Recurrent Account

Personal Emoluments

2 Provision of \$220,408,000 for personal emoluments represents an increase of \$2,046,000 over the revised estimate for 2000–01.

3 The establishment at 31 March 2001 will be 597 permanent posts and one supernumerary post. It is expected that seven permanent posts will be deleted in 2001–02 under the Enhanced Productivity Programme.

4 Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2001–02, but the notional annual mid-point salary value of all such posts must not exceed \$174,819,000 which will be reduced to \$174,202,000 upon deletion of three of the seven posts in the course of the year under the Enhanced Productivity Programme.

5 Provision of \$3,206,000 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 \$10,000 (20.0%) over the revised estimate for 2000–01 is mainly due to an increased requirement for extraneous duties allowances (standard).

Departmental Expenses

7 Provision of \$18,477,000 under *Subhead 149 General departmental expenses* represents an increase of \$5,363,000 (40.9%) over the revised estimate for 2000–01. This is mainly due to increased requirement for departmental expenses arising from the employment of non-civil service contract staff and the implementation of the Information Systems Strategy.

Other Charges

8 Provision of \$644,586,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$33,693,000 (5.5%) over the revised estimate for 2000–01 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 2001–02.