

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2003–04 **\$826.9m**

Establishment ceiling 2003–04 (notional annual mid-point salary value) representing an estimated 559 non-directorate posts as at 31 March 2003 reducing by three posts to 556 posts as at 31 March 2004..... **\$173.3m**

In addition there will be an estimated 15 directorate posts as at 31 March 2003 and as at 31 March 2004.

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

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	79.4	79.0 (–0.5%)	78.5 (–0.6%)	79.4 (+1.1%)

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 2002.

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

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Targets

	Target	2001 (Actual)	2002 (Actual)	2003 (Plan)
<i>Civil legal aid</i>				
% of applications processed within 3 months from the date of application	85%	92%	90%	85%
<i>Criminal legal aid</i>				
Appeals against sentence				
% of applications processed within 2 months from the date of application	85%	97%	95%	90%
Appeals against conviction				
% of applications processed within 3 months from the date of application	85%	95%	92%	90%
Court of First Instance of the High Court/District Court				
% of applications processed within 10 working days from the date of application	90%	92%	90%	90%
Committal proceedings				
% of applications processed within 8 working days from the date of application	90%	94%	92%	90%

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
<i>Civil</i>			
enquiries received.....	36 113	40 237	42 280
appointments made.....	14 748	15 949	16 750
applications received	20 840	21 961#	23 100
legal aid certificates granted.....	9 220	10 036	10 550
applications refused			
on means.....	1 330	1 082	1 135
on merits.....	6 760	7 850§	8 250
legal aid certificates concluded/discharged	8 994	8 880	9 305
appeals against Director's decisions			
appeals heard.....	1 081	1 141†	1 200
appeals allowed	98	81	85
<i>Criminal</i>			
applications received	4 423	4 691	4 920
legal aid certificates granted.....	2 748	2 892	3 040
applications refused			
on means.....	80	115	120
on merits.....	1 455	1 446	1 515
legal aid certificates concluded/discharged	2 700	2 830	3 000

Excludes 3 661 applications by right of abode claimants to sue HKSAR Government for damages and to have their removal order quashed.

§ Excludes 3 661 and 931 applications by right of abode claimants in 2002 and previous years respectively.

† Excludes 2 007 appeals by right of abode claimants.

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 2003–04

11 During 2003–04, the department will continue to monitor:

- the level of applications;
- the processing time and improve the quality of its services; and
- the effectiveness of the means-testing processes.

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Programme (2): Litigation Services

	2001-02 (Actual)	2002-03 (Approved)	2002-03 (Revised)	2003-04 (Estimate)
Financial provision (\$m)	602.9	673.1 (+11.6%)	674.2 (+0.2%)	711.0 (+5.5%)

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 2002.

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

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned	6 910	7 621	8 000
cases closed	6 980	6 685	7 000
active cases as at end of year	15 760	16 696	17 696
<i>Criminal</i>			
new cases assigned	1 530	1 865	1 950
cases closed	1 430	1 765	1 880
active cases as at end of year	250	350	420
<i>In-house Litigation</i>			
<i>Civil</i>			
Personal Injury Litigation Section			
new cases assigned	540	502	525
cases closed	695	512	535
active cases as at end of year	900	890	880
Family Litigation Section			
new cases assigned	917	1 120	1 175
cases closed	1 091	980	1 030
active cases as at end of year	1 000	1 140	1 285

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	2001 (Actual)	2002 (Actual)	2003 (Estimate)
Insolvency			
new cases assigned	608	648	680
cases closed	228	703	740
active cases as at end of year	2 610	2 555	2 495
Criminal			
new cases assigned	1 240	1 070	1 125
cases closed	1 270	1 065	1 120
active cases as at end of year	520	525	530
Damages/costs recovered from all civil cases			
amount of damages recovered (\$'000)	918,800	961,090	1,000,000
amount of costs recovered (\$'000)	223,000	185,864	200,000

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 2003–04

16 During 2003–04, the department will:

- continue to monitor progress and expenditure in legal aid cases and performance of assigned private practitioners;
- consider measures to strengthen the monitoring of assigned-out cases; and
- continue to monitor the cost effectiveness of litigation services.

Programme (3): Support Services

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	35.3	34.9 (–1.1%)	33.2 (–4.9%)	31.9 (–3.9%)

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 2002.

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

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Targets

	Target	2001 (Actual)	2002 (Actual)	2003 (Plan)
<i>Payment to aided persons</i>				
<i>Interim payment</i>				
% of payments processed within 1 month	90%	99%	99%	90%
<i>Final payment</i>				
% of payments processed within 6 weeks.....	90%	99%	99%	90%
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
% of payments processed within 6 weeks.....	90%	99%	99%	90%
<i>Balance payment</i>				
% of payments processed within 6 weeks.....	90%	99%	99%	90%

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund.....	1 046	1 469	1 500
<i>Costing</i>			
taxation and call-over attendance	1 261	1 041	1 090
assessment made.....	6 445	5 505	5 780
<i>Enforcement</i>			
cases requiring enforcement	874	906	930
enforcement action taken.....	833	912	960
active cases as at end of year.....	2 917	2 911	2 881
amount of debts and costs recovered (\$'000).....	13,584	32,812	33,000
<i>Probate</i>			
grants received.....	21	5	7
caveats lodged	43	33	35

Matters Requiring Special Attention in 2003–04

24 During 2003–04, 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 quality and efficiency of the services;
- continue to monitor the performance pledge on payments related to legal aid cases; and
- continue to provide customer service training to staff of the department.

Programme (4): Official Solicitor's Office

	2001–02 (Actual)	2002–03 (Approved)	2002–03 (Revised)	2003–04 (Estimate)
Financial provision (\$m)	4.4	4.4 (0.0%)	4.5 (+2.3%)	4.6 (+2.2%)

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.

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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 2002.

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

Indicators

	2001 (Actual)	2002 (Actual)	2003 (Estimate)
new cases received	114	127	133
cases closed	98	130	136
active cases as at end of year	230	227	224

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 received in preceding years.

Matters Requiring Special Attention in 2003–04

32 During 2003–04, the Official Solicitor’s Office will:

- continue to provide service to persons under legal disability and assist the Court in proceedings; and
- publish the biennial report of the Official Solicitor’s Office.

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ANALYSIS OF FINANCIAL PROVISION

Programme	2001-02 (Actual) (\$m)	2002-03 (Approved) (\$m)	2002-03 (Revised) (\$m)	2003-04 (Estimate) (\$m)
(1) Processing of Legal Aid Applications.....	79.4	79.0	78.5	79.4
(2) Litigation Services	602.9	673.1	674.2	711.0
(3) Support Services	35.3	34.9	33.2	31.9
(4) Official Solicitor's Office	4.4	4.4	4.5	4.6
	722.0	791.4 (+9.6%)	790.4 (-0.1%)	826.9 (+4.6%)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2003-04 is \$0.9 million (1.1%) higher than the revised estimate for 2002-03. This is mainly due to an increase in legal aid costs arising from an anticipated increase in the number of legal aid applications, salary increments for staff, and the creation of one post for improved information technology support services. The increase in expenditure is partly offset by the deletion of two posts upon implementation of the Information Systems Strategy.

Programme (2)

Provision for 2003-04 is \$36.8 million (5.5%) higher than the revised estimate for 2002-03. This is mainly due to an increase in legal aid costs arising from an actual and anticipated increase in the number of legal aid cases, salary increments for staff, and the creation of two posts for improved information technology support services. The increase in expenditure is partly offset by the deletion of three posts upon implementation of the Information Systems Strategy.

Programme (3)

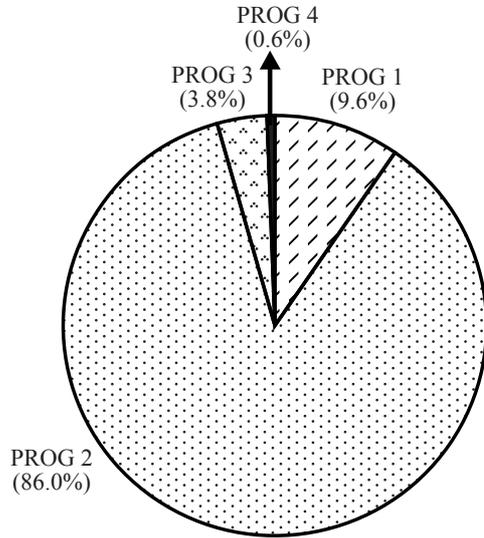
Provision for 2003-04 is \$1.3 million (3.9%) lower than the revised estimate for 2002-03. This is mainly due to the deletion of one post upon implementation of the Information Systems Strategy, full-year effect of posts deleted in 2002-03, and reduced operating expenditure.

Programme (4)

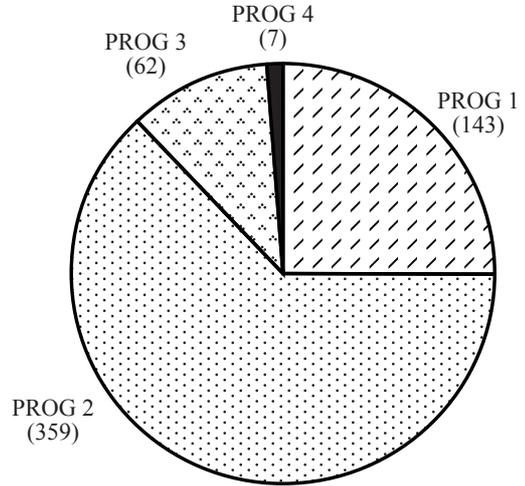
Provision for 2003-04 is \$0.1 million (2.2%) higher than the revised estimate for 2002-03. This is mainly due to an increase in legal aid costs arising from an anticipated increase in the number of complex cases referred to the Official Solicitor's Office.

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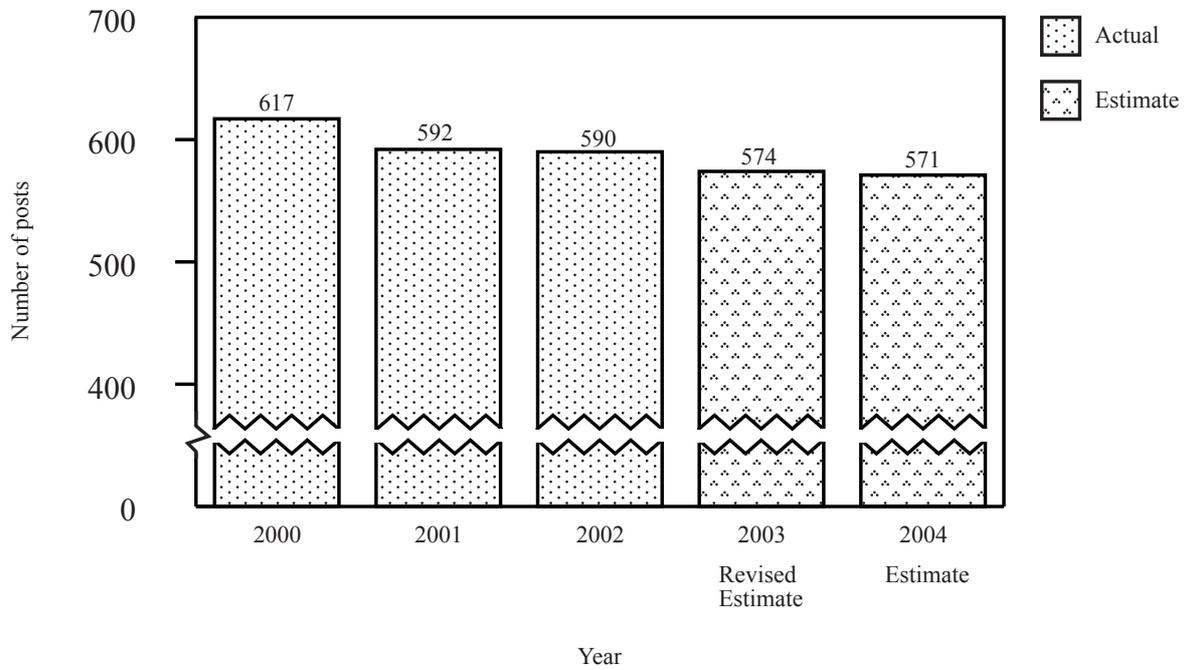
Allocation of provision to programmes (2003-04)



Staff by programme (as at 31 March 2004)



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



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Sub-head (Code)	Actual expenditure 2001-02	Approved estimate 2002-03	Revised estimate 2002-03	Estimate 2003-04
	\$'000	\$'000	\$'000	\$'000
Recurrent Account				
000	Operational expenses.....	—	—	244,017
208	Legal aid costs.....	478,718	550,117	582,928*
	Salaries	223,738	222,014	—
	Allowances	1,867	2,949	—
	Job-related allowances	38	50	—
	General departmental expenses	17,665	16,143	—
	Total, Recurrent Account	722,026	791,273	826,945
Capital Account				
I — Plant, Equipment and Works				
	Minor plant, vehicles and equipment (block vote).....	—	130	130
	Total, Plant, Equipment and Works	—	130	130
	Total, Capital Account	—	130	130
	Total Expenditure.....	722,026	791,403	826,945

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Details of Expenditure by Subhead

The estimate of the amount required in 2003–04 for the salaries and expenses of the Legal Aid Department is \$826,945,000. This represents an increase of \$36,516,000 over the revised estimate for 2002–03 and of \$104,919,000 over actual expenditure in 2001–02.

Recurrent Account

2 Provision of \$244,017,000 under *Subhead 000 Operational expenses* is for the salaries and allowances of staff of the Legal Aid Department and its other operating expenses.

3 The establishment as at 31 March 2003 will be 574 permanent posts. It is expected that a net three posts will be deleted in 2003–04. Subject to certain conditions, the controlling officer may under delegated powers create or delete non-directorate posts during 2003–04, but the notional annual mid-point salary value of all such posts must not exceed \$173,336,000.

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

	2001–02 (Actual) (\$'000)	2002–03 (Original Estimate) (\$'000)	2002–03 (Revised Estimate) (\$'000)	2003–04 (Estimate) (\$'000)
Personal Emoluments				
- Salaries.....	223,738	222,014	221,845	225,912
- Allowances.....	1,867	2,949	2,441	2,186
- Job-related allowances	38	50	28	28
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	—	—	—	71
Departmental Expenses				
- General departmental expenses.....	17,665	16,143	16,143	15,820
	243,308	241,156	240,457	244,017

Other Charges

5 Provision of \$582,928,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$33,086,000 (6.0%) over the revised estimate for 2002–03 is mainly due to an increase in legal aid costs arising from an actual and anticipated increase in the number of legal aid cases.