

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2008–09..... **\$758.9m**

Establishment ceiling 2008–09 (notional annual mid-point salary value) representing an estimated 510 non-directorate posts as at 31 March 2008 rising by 13 posts to 523 posts as at 31 March 2009.... **\$164.8m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2008 and as at 31 March 2009.

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

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	71.4	73.2	75.0 (+2.5%)	76.5 (+2.0%)
				(or +4.5% on 2007–08 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 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 may grant legal aid if a breach of the Hong Kong Bill of Rights Ordinance 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 In respect of civil cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid, whether based on means or merits. In respect of criminal cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid only where appeals to the Court of Final Appeal are involved. Legal aid may 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 2007.

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

Targets

	Target	2006 (Actual)	2007 (Actual)	2008 (Plan)
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%)	85	90	88	85

Head 94 — LEGAL AID DEPARTMENT

	Target	2006 (Actual)	2007 (Actual)	2008 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%)	90	96	94	90
Appeals against conviction				
applications processed within				
three months from the date of				
application (%)	90	90	95	90
Court of First Instance of the High				
Court/District Court				
applications processed within				
ten working days from the date				
of application (%)	90	91	93	90
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%)	90	92	96	90

Indicators

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
<i>Civil</i>			
enquiries received	44 276	38 859	40 000
applications received§	17 422	15 598	16 000
applications processed	17 157	15 752	15 990
applications pending decision as at end of year	2 147	1 993	2 000
legal aid certificates granted	9 356	7 937	8 000
applications refused			
on means	887	864	860
on merits	4 893	4 923	4 930
appeals against Director's decisions			
appeals heard	858	789	780
appeals allowed	34	38	40
<i>Criminal</i>			
applications received	3 779	3 765	3 750
applications processed	3 786	3 831	3 740
applications pending decision as at end of year	198	132	140
legal aid certificates granted	2 357	2 507	2 450
applications refused			
on means	40	36	35
on merits	1 216	1 152	1 120

§ The number of applications received for 2006 and 2007 includes 17 and six applications respectively from applicants who are subject to an Order made pursuant to Regulation 11 of the Legal Aid Regulations.

Matters Requiring Special Attention in 2008–09

9 During 2008–09, the Department will continue to:

- monitor the number of legal aid applications and the processing time;
- improve the quality of its services; and
- monitor the effectiveness of the means-testing processes.

Head 94 — LEGAL AID DEPARTMENT

Programme (2): Litigation Services

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	521.3	611.0	559.9 (–8.4%)	638.2 (+14.0%)
				(or +4.5% on 2007–08 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 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, 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/annulment of marriage/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 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 2007.

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

Indicators

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	7 295	5 980	6 300
cases concluded	6 639	7 419	6 200
active cases as at end of year	17 604	16 165	16 260
<i>Criminal</i>			
new cases assigned.....	1 901	1 908	1 890
cases concluded	1 993	1 941	1 900
active cases as at end of year	705	672	670
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	230	196	180
cases concluded	251	294	260
active cases as at end of year	628	530	450
<i>Matrimonial</i>			
new cases assigned.....	1 209	1 260	1 260
cases concluded	1 765	1 351	1 350
active cases as at end of year	1 966	1 875	1 800

Head 94 — LEGAL AID DEPARTMENT

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
Insolvency			
new cases assigned.....	374	260	260
cases concluded	508	1 182	300
active cases as at end of year			
pending issue of winding-up and			
bankruptcy order	169	141	140
pending realisation of assets	1 664	770	730
Criminal			
new cases assigned.....	451	558	560
cases concluded	437	579	530
active cases as at end of year	102	81	110
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	663,626	740,071	N.A.
amount of costs recovered (\$'000)	153,188	172,230	N.A.

Matters Requiring Special Attention in 2008–09

15 During 2008–09, 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

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	27.1	28.6	29.3 (+2.4%)	29.6 (+1.0%)
				(or +3.5% on 2007–08 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 and preparing bills of costs, as well as 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 2007.

Head 94 — LEGAL AID DEPARTMENT

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

Targets

	Target	2006 (Actual)	2007 (Actual)	2008 (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

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	654	427	400
<i>Costing</i>			
taxation and call-over attendance.....	830	796	800
assessment made	4 580	5 155	5 100
<i>Enforcement</i>			
cases assigned	821	710	710
enforcement action taken	701	694	700
active cases as at end of year	828	844	850
amount of debts and costs recovered (\$'000)	18,876	25,473	N.A.

Matters Requiring Special Attention in 2008–09

23 During 2008–09, the Department will continue to:

- update departmental pamphlets and its website on the Internet 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 legal aid services;
- monitor the performance pledge on payments related to legal aid cases; and
- implement the Legal Aid Electronic Services Portal to enhance communication between the Department and assigned lawyers and facilitate timely and efficient monitoring of assigned out legal aid cases.

Programme (4): Official Solicitor's Office

	2006–07 (Actual)	2007–08 (Original)	2007–08 (Revised)	2008–09 (Estimate)
Financial provision (\$m)	9.0	9.7	9.4 (–3.1%)	14.6 (+55.3%)
				(or +50.5% on 2007–08 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 and other enactments.

Head 94 — LEGAL AID DEPARTMENT

Brief Description

25 Under the Official Solicitor Ordinance, the Director of Legal Aid 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 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 (OSO).

29 The Department generally met the aim of the programme in 2007.

30 The key performance measures in respect of OSO are:

Indicators

	2006 (Actual)	2007 (Actual)	2008 (Estimate)
new cases received.....	234	225	230
cases concluded	166	206	200
active cases as at end of year	429	448	480

Matters Requiring Special Attention in 2008–09

31 During 2008–09, the OSO will continue to:

- enhance the efficiency and quality of its services; and
- promote understanding of the work of the OSO by strengthening communication with other government departments, non-government organisations and legal practitioners.

Head 94 — LEGAL AID DEPARTMENT

ANALYSIS OF FINANCIAL PROVISION

Programme	2006-07 (Actual) (\$m)	2007-08 (Original) (\$m)	2007-08 (Revised) (\$m)	2008-09 (Estimate) (\$m)
(1) Processing of Legal Aid Applications	71.4	73.2	75.0	76.5
(2) Litigation Services	521.3	611.0	559.9	638.2
(3) Support Services	27.1	28.6	29.3	29.6
(4) Official Solicitor's Office	9.0	9.7	9.4	14.6
	628.8	722.5	673.6 (-6.8%)	758.9 (+12.7%)
				(or +5.0% on 2007-08 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2008-09 is \$1.5 million (2.0%) higher than the revised estimate for 2007-08. This is mainly due to filling of existing vacancies and salary increments for staff, partly offset by the decrease in general departmental expenses.

Programme (2)

Provision for 2008-09 is \$78.3 million (14.0%) higher than the revised estimate for 2007-08. This is mainly due to the creation of five posts, filling of existing vacancies, salary increments for staff as well as the increase in legal aid costs arising from an anticipated increase in lengthy trials and high costs cases.

Programme (3)

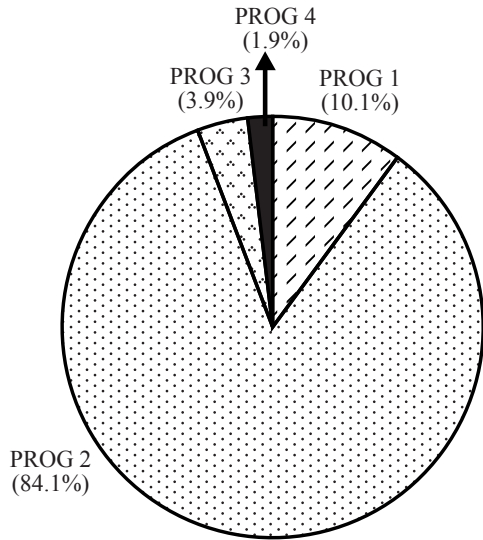
Provision for 2008-09 is \$0.3 million (1.0%) higher than the revised estimate for 2007-08. This is mainly due to salary increments for staff and other increase in operating expenses.

Programme (4)

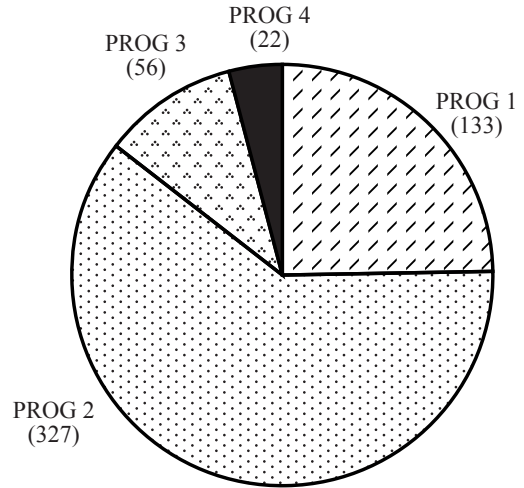
Provision for 2008-09 is \$5.2 million (55.3%) higher than the revised estimate for 2007-08. This is mainly due to the creation of eight posts and filling of existing vacancies.

Head 94 — LEGAL AID DEPARTMENT

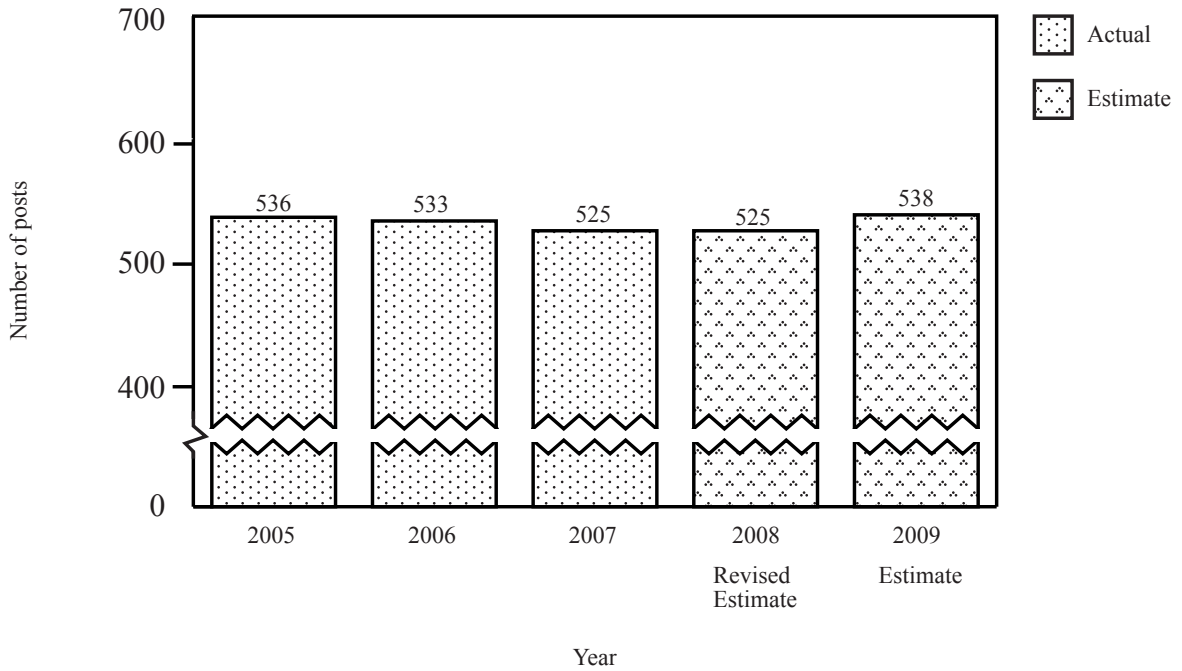
Allocation of provision to programmes (2008-09)



Staff by programme (as at 31 March 2009)



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



Head 94 — LEGAL AID DEPARTMENT

Sub-head (Code)	Actual expenditure 2006-07	Approved estimate 2007-08	Revised estimate 2007-08	Estimate 2008-09	
	\$'000	\$'000	\$'000	\$'000	
Operating Account					
Recurrent					
000	Operational expenses	210,157	218,177	220,332	230,860
208	Legal aid costs	418,688	504,363	453,300	528,003
	Total, Recurrent.....	628,845	722,540	673,632	758,863
	Total, Operating Account	628,845	722,540	673,632	758,863
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	Total Expenditure	628,845	722,540	673,632	758,863

Head 94 — LEGAL AID DEPARTMENT

Details of Expenditure by Subhead

The estimate of the amount required in 2008–09 for the salaries and expenses of the Legal Aid Department is \$758,863,000. This represents an increase of \$85,231,000 over the revised estimate for 2007–08 and of \$130,018,000 over actual expenditure in 2006–07.

Operating Account

Recurrent

2 Provision of \$230,860,000 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 2008 will be 525 permanent posts. It is expected that there will be a creation of 13 posts in 2008–09. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2008–09, but the notional annual mid-point salary value of all such posts must not exceed \$164,771,000.

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

	2006–07 (Actual) (\$'000)	2007–08 (Original) (\$'000)	2007–08 (Revised) (\$'000)	2008–09 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	193,240	197,952	200,031	211,237
- Allowances	1,541	1,687	1,702	1,710
Personnel Related Expenses				
- Mandatory Provident Fund contribution	67	116	93	240
- Civil Service Provident Fund contribution	—	22	106	503
Departmental Expenses				
- General departmental expenses	15,309	18,400	18,400	17,170
	210,157	218,177	220,332	230,860

5 Provision of \$528,003,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$74,703,000 (16.5%) over the revised estimate for 2007–08 is mainly due to the increase in legal aid costs arising from the anticipated increase in lengthy trials and high costs cases in 2008–09.