

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2010–11..... **\$753.0m**

Establishment ceiling 2010–11 (notional annual mid-point salary value) representing an estimated 523 non-directorate posts as at 31 March 2010 and as at 31 March 2011..... **\$170.7m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2010 and as at 31 March 2011.

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

	2008–09 (Actual)	2009–10 (Original)	2009–10 (Revised)	2010–11 (Estimate)
Financial provision (\$m)	80.5	83.1	80.4 (–3.2%)	81.8 (+1.7%)
				(or –1.6% on 2009–10 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 2009.

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

Targets

	Target	2008 (Actual)	2009 (Actual)	2010 (Plan)
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%)	85	91	91	85

Head 94 — LEGAL AID DEPARTMENT

	Target	2008 (Actual)	2009 (Actual)	2010 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%)	90	94	97	90
Appeals against conviction				
applications processed within				
three months from the date of				
application (%)	90	93	93	90
Court of First Instance of the High				
Court/District Court				
applications processed within				
ten working days from the date				
of application (%)	90	91	92	90
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%)	90	91	93	90

Indicators

	2008 (Actual)	2009 (Actual)	2010 (Estimate)
<i>Civil</i>			
enquiries received	39 034	42 232	42 200
applications received#.....	15 314	17 357	17 400
applications processed	15 089	17 482	17 400
applications pending decision as at end of year	2 218	2 093	2 090
legal aid certificates granted	7 513	9 031	9 030
applications refused			
on means	875	992	990
on merits	4 521	5 193	5 190
appeals against Director's decisions			
appeals heard	690	824	820
appeals allowed.....	22	31	30
<i>Criminal</i>			
applications received.....	3 413	3 816	3 820
applications processed	3 420	3 862	3 800
applications pending decision as at end of year	125	79	100
legal aid certificates granted	2 235	2 800	2 750
applications refused			
on means	34	33	30
on merits	1 012	899	1 000

The number of applications received for 2008 and 2009 includes 16 and 29 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 2010–11

9 During 2010–11, the Department will continue to:

- monitor the number of legal aid applications and the processing time;
- improve the quality of its services;
- monitor the effectiveness of the means-testing processes; and
- monitor the use of mediation in legally aided cases.

Head 94 — LEGAL AID DEPARTMENT

Programme (2): Litigation Services

	2008–09 (Actual)	2009–10 (Original)	2009–10 (Revised)	2010–11 (Estimate)
Financial provision (\$m)	539.8	628.1	597.0 (–5.0%)	627.4 (+5.1%)

(or –0.1% on
2009–10 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 2009.

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

Indicators

	2008 (Actual)	2009 (Actual)	2010 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	5 884	7 334	7 450
cases concluded.....	7 022	6 440	7 450
active cases as at end of year	15 027	15 921	15 920
<i>Criminal</i>			
new cases assigned.....	1 693	2 199	2 130
cases concluded.....	1 791	1 977	2 180
active cases as at end of year	574	796	750
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	185	188	200
cases concluded.....	397	189	190
active cases as at end of year	318	317	330
<i>Matrimonial</i>			
new cases assigned.....	960	963	1 100
cases concluded.....	1 296	1 430	1 100
active cases as at end of year	1 539	1 072	1 070

Head 94 — LEGAL AID DEPARTMENT

	2008 (Actual)	2009 (Actual)	2010 (Estimate)
Insolvency			
new cases assigned.....	247	279	280
cases concluded.....	740	380	350
active cases as at end of year			
pending issue of winding-up and bankruptcy			
order	127	82	80
pending realisation of assets	291	632	560
Criminal			
new cases assigned.....	512	581	620
cases concluded.....	436	606	620
active cases as at end of year	157	132	130
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	798,586	744,158	N.A.
amount of costs recovered (\$'000).....	162,087	190,750	N.A.

Matters Requiring Special Attention in 2010–11

15 During 2010–11, 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

	2008–09 (Actual)	2009–10 (Original)	2009–10 (Revised)	2010–11 (Estimate)
Financial provision (\$m)	29.2	29.9	32.9 (+10.0%)	33.1 (+0.6%)
				(or +10.7% on 2009–10 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, preparing bills of costs and 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 2009.

Head 94 — LEGAL AID DEPARTMENT

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

Targets

	Target	2008 (Actual)	2009 (Actual)	2010 (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

	2008 (Actual)	2009 (Actual)	2010 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	366	613	610
<i>Costing</i>			
taxation - court attendance δ	881	672	610
preparation of bills and objections Ψ	N.A.	N.A.	210
assessments made.....	5 369	6 312	6 300
<i>Enforcement</i>			
cases assigned	619	628	630
enforcement action taken	776	748	730
active cases as at end of year	687	567	470
amount of debts and costs recovered (\$'000)	28,342	26,380	N.A.

δ Revised description of previous indicator "taxation hearings and call-over attendance".

Ψ New Indicator as from 2010.

Matters Requiring Special Attention in 2010–11

23 During 2010–11, the Department will continue to:

- promote public awareness and understanding of legal aid services through publication or updating of departmental pamphlets and its website;
- 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
- introduce Phone Payment Service for payments to the Department by aided persons and judgment debtors.

Programme (4): Official Solicitor's Office

	2008–09 (Actual)	2009–10 (Original)	2009–10 (Revised)	2010–11 (Estimate)
Financial provision (\$m)	11.7	11.4	10.9 (–4.4%)	10.7 (–1.8%)

(or –6.1% on
2009–10 Original)

Head 94 — LEGAL AID DEPARTMENT

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.

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 2009.

30 The key performance measures in respect of OSO are:

Indicators

	2008 (Actual)	2009 (Actual)	2010 (Estimate)
new cases received	270	229	230
cases concluded.....	254	256	260
active cases as at end of year	464	437	410

Matters Requiring Special Attention in 2010–11

31 During 2010–11, 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	2008-09 (Actual) (\$m)	2009-10 (Original) (\$m)	2009-10 (Revised) (\$m)	2010-11 (Estimate) (\$m)
(1) Processing of Legal Aid				
Applications	80.5	83.1	80.4	81.8
(2) Litigation Services.....	539.8	628.1	597.0	627.4
(3) Support Services.....	29.2	29.9	32.9	33.1
(4) Official Solicitor's Office.....	11.7	11.4	10.9	10.7
	661.2	752.5	721.2 (-4.2%)	753.0 (+4.4%)
				(or +0.1% on 2009-10 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2010-11 is \$1.4 million (1.7%) higher than the revised estimate for 2009-10. This is mainly due to increase in operating expenses.

Programme (2)

Provision for 2010-11 is \$30.4 million (5.1%) higher than the revised estimate for 2009-10. This is mainly due to increase in legal aid costs.

Programme (3)

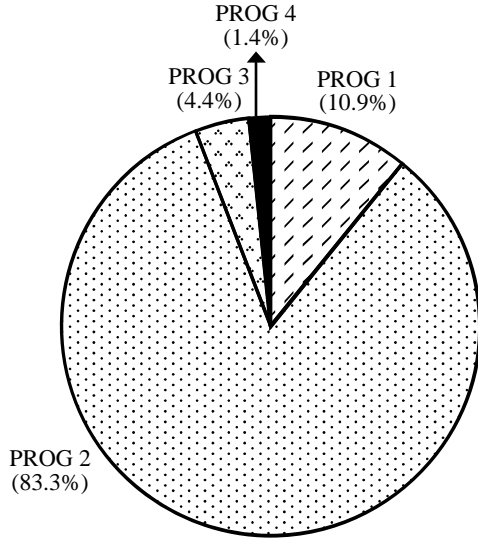
Provision for 2010-11 is \$0.2 million (0.6%) higher than the revised estimate for 2009-10. This is mainly due to increase in operating expenses.

Programme (4)

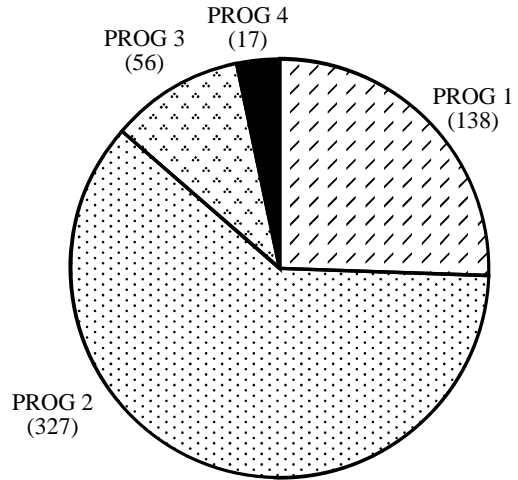
Provision for 2010-11 is \$0.2 million (1.8%) lower than the revised estimate for 2009-10. This is mainly due to reduced salary provision resulting from staff changes.

Head 94 — LEGAL AID DEPARTMENT

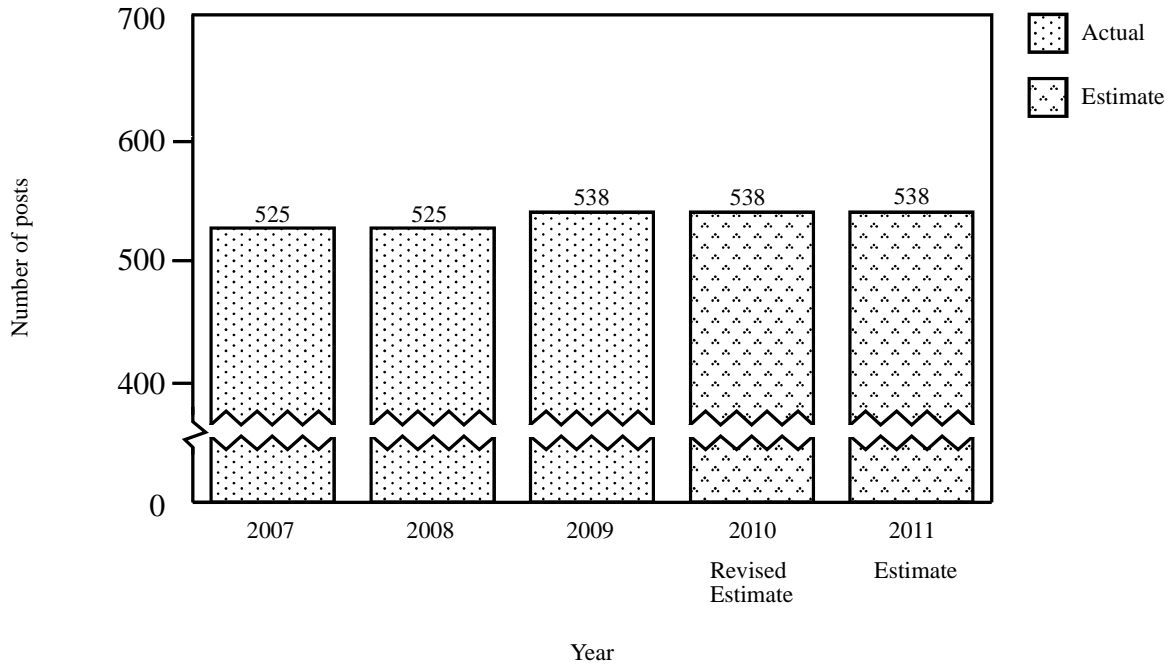
Allocation of provision to programmes (2010-11)



Staff by programme (as at 31 March 2011)



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



Head 94 — LEGAL AID DEPARTMENT

Sub-head (Code)	Actual expenditure 2008-09	Approved estimate 2009-10	Revised estimate 2009-10	Estimate 2010-11	
	\$'000	\$'000	\$'000	\$'000	
Operating Account					
Recurrent					
000	Operational expenses.....	231,052	236,351	231,944	233,874
208	Legal aid costs.....	430,111	516,131	489,248	519,097
	Total, Recurrent	661,163	752,482	721,192	752,971
	Total, Operating Account.....	661,163	752,482	721,192	752,971
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	Total Expenditure	661,163	752,482	721,192	752,971

Head 94 — LEGAL AID DEPARTMENT

Details of Expenditure by Subhead

The estimate of the amount required in 2010–11 for the salaries and expenses of the Legal Aid Department is \$752,971,000. This represents an increase of \$31,779,000 over the revised estimate for 2009–10 and of \$91,808,000 over actual expenditure in 2008–09.

Operating Account

Recurrent

2 Provision of \$233,874,000 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 2010 will be 538 permanent posts. No change in establishment is expected in 2010–11. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2010–11, but the notional annual mid-point salary value of all such posts must not exceed \$170,748,000.

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

	2008–09 (Actual) (\$'000)	2009–10 (Original) (\$'000)	2009–10 (Revised) (\$'000)	2010–11 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	213,463	216,557	213,820	213,936
- Allowances	1,655	1,710	1,504	1,603
Personnel Related Expenses				
- Mandatory Provident Fund contribution	237	422	454	568
- Civil Service Provident Fund contribution	486	532	666	767
Departmental Expenses				
- General departmental expenses.....	15,211	17,130	15,500	17,000
	231,052	236,351	231,944	233,874

5 Provision of \$519,097,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.