

## Head 94 — LEGAL AID DEPARTMENT

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

**Estimate 2011–12**..... **\$784.3m**

**Establishment ceiling 2011–12** (notional annual mid-point salary value) representing an estimated 520 non-directorate posts as at 31 March 2011 rising by seven posts to 527 posts as at 31 March 2012 ..... **\$174.8m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2011 and as at 31 March 2012.

### 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

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	<b>2011–12 (Estimate)</b>
Financial provision (\$m)	80.2	81.8	82.7 (+1.1%)	<b>86.5</b> (+4.6%)
				(or +5.7% on 2010–11 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 of the Legal Aid Department (the Department) 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 (Cap. 383) 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 For civil cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid on grounds of means or merits. For criminal cases, unsuccessful applicants may appeal against the Director's refusal to grant legal aid where appeals to the Court of Final Appeal are involved. Legal aid may also 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 2010.

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

#### Targets

	Target	2009 (Actual)	2010 (Actual)	<b>2011 (Plan)</b>
<i>Civil legal aid</i> applications processed within three months from the date of application (%) .....	85	91	91	<b>85</b>

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	Target	2009 (Actual)	2010 (Actual)	<b>2011 (Plan)</b>
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%) .....	90	97	97	<b>90</b>
Appeals against conviction				
applications processed within				
three months from the date of				
application (%) .....	90	93	96	<b>90</b>
Court of First Instance of the High				
Court/District Court				
applications processed within				
ten working days from the date				
of application (%) .....	90	92	92	<b>90</b>
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%) .....	90	93	91	<b>90</b>

### *Indicators*

	2009 (Actual)	2010 (Actual)	<b>2011 (Estimate)</b>
<i>Civil</i>			
enquiries received .....	42 232	41 009	<b>41 000</b>
applications received#.....	17 357	16 124	<b>16 100</b>
applications processed .....	17 482	16 063	<b>16 100</b>
applications pending decision as at end of year .....	2 093	2 154	<b>2 150</b>
legal aid certificates granted .....	9 031	8 263	<b>8 260</b>
applications refused			
on means .....	992	776	<b>770</b>
on merits .....	5 193	4 609	<b>4 600</b>
appeals against Director's decisions			
appeals heard .....	824	796	<b>790</b>
appeals allowed.....	31	28	<b>30</b>
<i>Criminal</i>			
applications received.....	3 816	3 907	<b>3 910</b>
applications processed .....	3 862	3 792	<b>3 915</b>
applications pending decision as at end of year .....	79	194	<b>190</b>
legal aid certificates granted .....	2 800	2 740	<b>2 740</b>
applications refused			
on means .....	33	31	<b>30</b>
on merits .....	899	957	<b>960</b>

# The number of applications received in 2009 and 2010 included 29 and 22 applications respectively from applicants who were subject to an Order made pursuant to Regulation 11 of the Legal Aid Regulations (Cap. 91A).

### *Matters Requiring Special Attention in 2011–12*

9 During 2011–12, the Department will continue to:

- monitor the number of legal aid applications and the processing time;
- improve the quality of its services including making necessary preparations for relaxing the eligibility limits of the legal aid schemes and related improvements;
- monitor the effectiveness of the means-testing processes; and
- monitor the use of mediation in legally aided cases.

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### Programme (2): Litigation Services

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	<b>2011–12 (Estimate)</b>
Financial provision (\$m)	592.9	627.4	622.0 (–0.9%)	<b>656.3</b> (+5.5%)

(or +4.6% on  
2010–11 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 of the Department 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 (Cap. 282), 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 the 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 2010.

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

#### *Indicators*

	2009 (Actual)	2010 (Actual)	<b>2011 (Estimate)</b>
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	7 334	6 536	<b>6 800</b>
cases concluded.....	6 440	6 752	<b>6 800</b>
active cases as at end of year .....	15 921	15 705	<b>15 710</b>
<i>Criminal</i>			
new cases assigned.....	2 199	2 066	<b>2 090</b>
cases concluded.....	1 977	2 124	<b>2 095</b>
active cases as at end of year .....	796	738	<b>735</b>
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	188	200	<b>200</b>
cases concluded.....	189	228	<b>230</b>
active cases as at end of year .....	317	289	<b>260</b>
<i>Matrimonial</i>			
new cases assigned.....	963	1 131	<b>1 100</b>
cases concluded.....	1 430	1 092	<b>1 090</b>
active cases as at end of year .....	1 072	1 111	<b>1 120</b>

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	2009 (Actual)	2010 (Actual)	2011 (Estimate)
<b>Insolvency</b>			
new cases assigned.....	279	159	160
cases concluded.....	380	341	340
active cases as at end of year .....			
pending issue of winding-up and bankruptcy order .....	82	33	30
pending realisation of assets .....	632	499	320
<b>Criminal</b>			
new cases assigned.....	581	659	650
cases concluded.....	606	645	645
active cases as at end of year .....	132	146	150
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	744,158	866,699	N.A.
amount of costs recovered (\$'000).....	190,750	207,038	N.A.

### ***Matters Requiring Special Attention in 2011–12***

**15** During 2011–12, 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**

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	31.0	33.1	30.4 (–8.2%)	30.4 (—)
				(or –8.2% on 2010–11 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 2010.

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

### *Targets*

	Target	2009 (Actual)	2010 (Actual)	2011 (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*

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund .....	613	527	520
<i>Costing</i>			
taxation - court attendance .....	672	217	220
preparation of bills and objections§ .....	N.A.	309	310
assessments made.....	6 312	6 952	6 950
<i>Enforcement</i>			
cases assigned .....	628	594	590
enforcement action taken .....	748	687	690
active cases as at end of year .....	567	474	370
amount of debts and costs recovered (\$'000) .....	26,380	21,575	N.A.

§ New indicator as from 2010.

### *Matters Requiring Special Attention in 2011–12*

23 During 2011–12, the Department will continue to:

- promote public awareness and 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
- enhance customer service by expanding the use of Phone Payment Service for payment of contribution to the Department by aided persons.

### **Programme (4): Official Solicitor's Office**

	2009–10 (Actual)	2010–11 (Original)	2010–11 (Revised)	2011–12 (Estimate)
Financial provision (\$m)	11.4	10.7	11.0 (+2.8%)	11.1 (+0.9%)
				(or +3.7% on 2010–11 Original)

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### *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 (Cap. 416) (OSO) and other enactments.

### *Brief Description*

25 Under the OSO, 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 (Cap. 29) 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.

29 The Department generally met the aim of the programme in 2010.

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

### *Indicators*

	2009 (Actual)	2010 (Actual)	2011 (Estimate)
new cases received .....	229	209	210
cases concluded.....	256	226	230
active cases as at end of year .....	437	420	400

### *Matters Requiring Special Attention in 2011–12*

31 During 2011–12, the Official Solicitor's Office will continue to:

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

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### ANALYSIS OF FINANCIAL PROVISION

Programme	2009–10 (Actual) (\$m)	2010–11 (Original) (\$m)	2010–11 (Revised) (\$m)	2011–12 (Estimate) (\$m)
(1) Processing of Legal Aid Applications .....	80.2	81.8	82.7	<b>86.5</b>
(2) Litigation Services.....	592.9	627.4	622.0	<b>656.3</b>
(3) Support Services.....	31.0	33.1	30.4	<b>30.4</b>
(4) Official Solicitor's Office.....	11.4	10.7	11.0	<b>11.1</b>
	715.5	753.0	746.1 (-0.9%)	<b>784.3</b> <b>(+5.1%)</b>
				<b>(or +4.2% on 2010–11 Original)</b>

#### Analysis of Financial and Staffing Provision

##### Programme (1)

Provision for 2011–12 is \$3.8 million (4.6%) higher than the revised estimate for 2010–11. This is mainly due to the creation of three posts and increase in operating expenses.

##### Programme (2)

Provision for 2011–12 is \$34.3 million (5.5%) higher than the revised estimate for 2010–11. This is mainly due to the creation of four posts and anticipated increase in legal aid costs.

##### Programme (3)

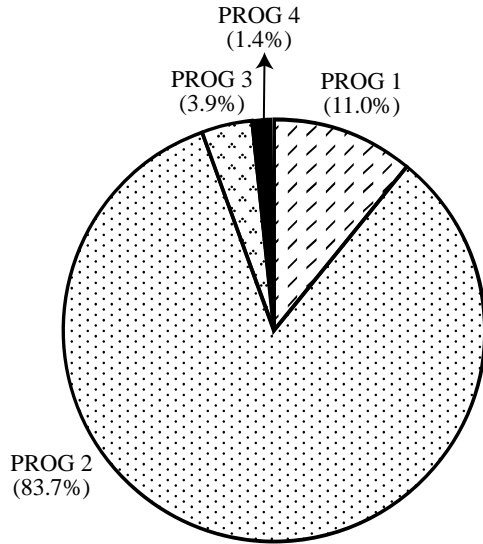
Provision for 2011–12 is comparable with the revised estimate for 2010–11.

##### Programme (4)

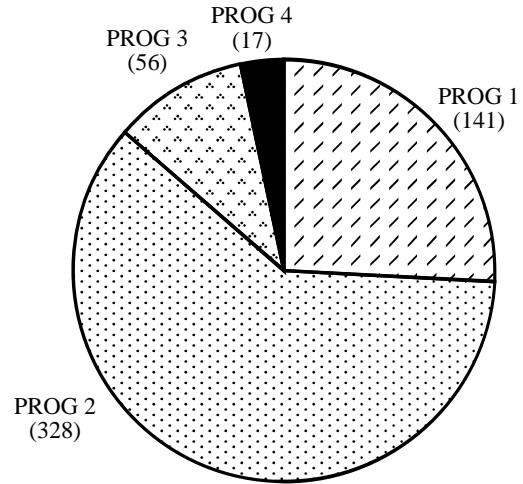
Provision for 2011–12 is \$0.1 million (0.9%) higher than the revised estimate for 2010–11. This is mainly due to the salary increment for staff and increase in operating expenses.

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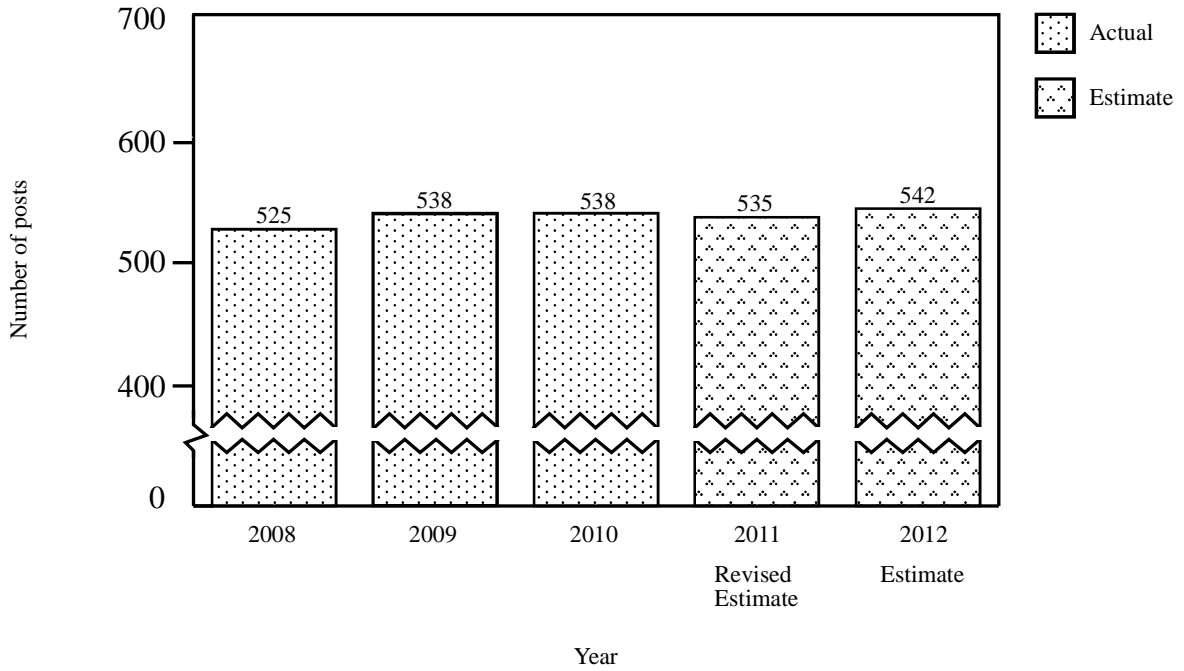
*Allocation of provision to programmes (2011-12)*



*Staff by programme (as at 31 March 2012)*



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





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Sub-head (Code)	Actual expenditure 2009-10	Approved estimate 2010-11	Revised estimate 2010-11	<b>Estimate 2011-12</b>	
	\$'000	\$'000	\$'000	<b>\$'000</b>	
<b>Operating Account</b>					
Recurrent					
000	Operational expenses.....	229,755	233,874	231,578	<b>238,740</b>
208	Legal aid costs.....	485,767	519,097	514,474	<b>545,520</b>
	Total, Recurrent .....	715,522	752,971	746,052	<b>784,260</b>
	Total, Operating Account.....	715,522	752,971	746,052	<b>784,260</b>
<hr/>					
	Total Expenditure .....	<u>715,522</u>	<u>752,971</u>	<u>746,052</u>	<u><b>784,260</b></u>

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### Details of Expenditure by Subhead

The estimate of the amount required in 2011–12 for the salaries and expenses of the Legal Aid Department (the Department) is \$784,260,000. This represents an increase of \$38,208,000 over the revised estimate for 2010–11 and of \$68,738,000 over actual expenditure in 2009–10.

#### *Operating Account*

#### Recurrent

**2** Provision of \$238,740,000 under *Subhead 000 Operational expenses* is for the salaries, allowances and other operating expenses of the Department.

**3** The establishment as at 31 March 2011 will be 535 permanent posts. It is expected that seven posts will be created in 2011–12. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2011–12, but the notional annual mid-point salary value of all such posts must not exceed \$174,791,000.

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

	2009–10 (Actual) (\$'000)	2010–11 (Original) (\$'000)	2010–11 (Revised) (\$'000)	<b>2011–12 (Estimate) (\$'000)</b>
Personal Emoluments				
- Salaries .....	213,451	213,936	212,548	<b>217,310</b>
- Allowances .....	1,113	1,603	1,592	<b>1,622</b>
Personnel Related Expenses				
- Mandatory Provident Fund contribution .....	453	568	530	<b>549</b>
- Civil Service Provident Fund contribution .....	673	767	808	<b>1,759</b>
Departmental Expenses				
- General departmental expenses.....	14,065	17,000	16,100	<b>17,500</b>
	229,755	233,874	231,578	<b>238,740</b>

**5** Provision of \$545,520,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.