

## Head 94 — LEGAL AID DEPARTMENT

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

**Estimate 2012–13**..... **\$794.5m**

**Establishment ceiling 2012–13** (notional annual mid-point salary value) representing an estimated 527 non-directorate posts as at 31 March 2012 and as at 31 March 2013 ..... **\$186.3m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2012 and as at 31 March 2013.

### Controlling Officer's Report

#### Programmes

<p><b>Programme (1) Processing of Legal Aid Applications</b></p> <p><b>Programme (2) Litigation Services</b></p> <p><b>Programme (3) Support Services</b></p> <p><b>Programme (4) Official Solicitor's Office</b></p>	<p>These programmes contribute to Policy Area 20: Legal Aid (Secretary for Home Affairs).</p>
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#### Detail

##### Programme (1): Processing of Legal Aid Applications

	2010–11 (Actual)	2011–12 (Original)	2011–12 (Revised)	<b>2012–13 (Estimate)</b>
Financial provision (\$m)	82.5	86.5	89.1 (+3.0%)	<b>92.5</b> (+3.8%)
				(or +6.9% on 2011–12 Original)

#### Aim

- 2 The aim is to ensure that legal aid 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 2011.
- 8 The key performance measures in respect of processing legal aid applications are:

#### Targets

	Target	2010 (Actual)	2011 (Actual)	<b>2012 (Plan)</b>
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%) .....	85	91	90	<b>85</b>

## Head 94 — LEGAL AID DEPARTMENT

	Target	2010 (Actual)	2011 (Actual)	2012 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within				
two months from the date of				
application (%) .....	90	97	98	<b>90</b>
Appeals against conviction				
applications processed within				
three months from the date of				
application (%) .....	90	96	97	<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	94	<b>90</b>
Committal proceedings				
applications processed within				
eight working days from the date				
of application (%) .....	90	91	94	<b>90</b>

### *Indicators*

	2010 (Actual)	2011 (Actual)	2012 (Estimate)
<i>Civil</i>			
enquiries received .....	41 009	41 758	<b>41 800</b>
applications received# .....	16 124	16 480	<b>16 500</b>
applications processed .....	16 063	16 167	<b>16 500</b>
applications pending decision as at end of year .....	2 154	2 467	<b>2 470</b>
legal aid certificates granted .....	8 263	8 297	<b>8 300</b>
applications refused			
on means .....	776	690	<b>690</b>
on merits .....	4 609	4 754	<b>4 750</b>
appeals against Director's decisions			
appeals heard .....	796	855	<b>855</b>
appeals allowed .....	28	56	<b>55</b>
<i>Criminal</i>			
applications received .....	3 907	3 888	<b>3 890</b>
applications processed .....	3 792	3 922	<b>3 890</b>
applications pending decision as at end of year .....	194	160	<b>160</b>
legal aid certificates granted .....	2 740	2 795	<b>2 800</b>
applications refused			
on means .....	31	33	<b>30</b>
on merits .....	957	949	<b>950</b>

# The number of applications received in 2010 and 2011 included 22 and 19 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 2012–13*

9 During 2012–13, the Department will continue to:

- monitor the number of legal aid applications and the processing time;
- 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

	2010–11 (Actual)	2011–12 (Original)	2011–12 (Revised)	<b>2012–13 (Estimate)</b>
Financial provision (\$m)	611.3	656.3	587.1 (–10.5%)	<b>655.2</b> (+11.6%)

(or –0.2% on  
2011–12 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 2011.

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

#### *Indicators*

	2010 (Actual)	2011 (Actual)	<b>2012 (Estimate)</b>
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	6 536	6 600	<b>6 900</b>
cases concluded .....	6 752	6 178	<b>6 900</b>
active cases as at end of year .....	15 705	16 127	<b>16 130</b>
<i>Criminal</i>			
new cases assigned.....	2 066	2 121	<b>2 150</b>
cases concluded .....	2 124	2 202	<b>2 150</b>
active cases as at end of year .....	738	657	<b>660</b>
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	200	200	<b>200</b>
cases concluded .....	228	210	<b>210</b>
active cases as at end of year .....	289	279	<b>270</b>
<i>Matrimonial</i>			
new cases assigned.....	1 131	1 161	<b>1 100</b>
cases concluded .....	1 092	1 079	<b>1 080</b>
active cases as at end of year .....	1 111	1 193	<b>1 210</b>

## Head 94 — LEGAL AID DEPARTMENT

	2010 (Actual)	2011 (Actual)	2012 (Estimate)
Insolvency			
new cases assigned.....	159	98	<b>100</b>
cases concluded .....	341	236	<b>235</b>
active cases as at end of year			
pending issue of winding-up and bankruptcy			
order .....	33	23	<b>20</b>
pending realisation of assets .....	499	371	<b>240</b>
Criminal			
new cases assigned.....	659	657	<b>650</b>
cases concluded .....	645	663	<b>650</b>
active cases as at end of year .....	146	140	<b>140</b>
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	866,699	839,535	<b>N.A.</b>
amount of costs recovered (\$'000) .....	207,038	194,843	<b>N.A.</b>

### ***Matters Requiring Special Attention in 2012–13***

**15** During 2012–13, 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;
- monitor the cost effectiveness of litigation services; and
- implement the revised criminal legal aid fees structure.

### **Programme (3): Support Services**

	2010–11 (Actual)	2011–12 (Original)	2011–12 (Revised)	2012–13 (Estimate)
Financial provision (\$m)	28.8	30.4	33.5 (+10.2%)	<b>34.9</b> (+4.2%)
				(or +14.8% on 2011–12 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 2011.

## Head 94 — LEGAL AID DEPARTMENT

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

### *Targets*

	Target	2010 (Actual)	2011 (Actual)	2012 (Plan)
<i>Payment of damages or compensation to aided persons</i>				
<i>Interim payment</i>				
payments processed within one month (%) .....	95	99	99	<b>95</b>
<i>Final payment</i>				
payments processed within six weeks (%).....	95	99	99	<b>95</b>
<i>Payment to lawyers/experts/other parties</i>				
<i>Advance payment</i>				
payments processed within six weeks (%).....	95	99	99	<b>95</b>
<i>Balance payment</i>				
payments processed within six weeks (%).....	95	99	99	<b>95</b>

### *Indicators*

	2010 (Actual)	2011 (Actual)	2012 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund .....	527	406	<b>410</b>
<i>Costing</i>			
taxation - court attendance .....	217	213	<b>210</b>
preparation of bills and objections.....	309	258	<b>260</b>
assessments made .....	6 952	6 821	<b>6 820</b>
<i>Enforcement</i>			
cases assigned .....	594	489	<b>490</b>
enforcement action taken .....	687	568	<b>570</b>
active cases as at end of year .....	474	395	<b>315</b>
amount of debts and costs recovered (\$'000) .....	21,575	26,788	<b>N.A.</b>

### *Matters Requiring Special Attention in 2012–13*

23 During 2012–13, 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; and
- monitor the performance pledge on payments related to legal aid cases.

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

	2010–11 (Actual)	2011–12 (Original)	2011–12 (Revised)	2012–13 (Estimate)
Financial provision (\$m)	10.9	11.1	11.5 (+3.6%)	<b>11.9</b> (+3.5%)

(or +7.2% on  
2011–12 Original)

## Head 94 — LEGAL AID DEPARTMENT

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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 2011.

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

**Indicators**

	2010 (Actual)	2011 (Actual)	2012 (Estimate)
new cases received.....	209	275	<b>280</b>
cases concluded .....	226	265	<b>270</b>
active cases as at end of year .....	420	430	<b>440</b>

**Matters Requiring Special Attention in 2012–13**

31 During 2012–13, 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.

## Head 94 — LEGAL AID DEPARTMENT

### ANALYSIS OF FINANCIAL PROVISION

Programme	2010-11 (Actual) (\$m)	2011-12 (Original) (\$m)	2011-12 (Revised) (\$m)	2012-13 (Estimate) (\$m)
(1) Processing of Legal Aid				
Applications .....	82.5	86.5	89.1	<b>92.5</b>
(2) Litigation Services .....	611.3	656.3	587.1	<b>655.2</b>
(3) Support Services .....	28.8	30.4	33.5	<b>34.9</b>
(4) Official Solicitor's Office.....	10.9	11.1	11.5	<b>11.9</b>
	733.5	784.3	721.2 (-8.0%)	<b>794.5</b> <b>(+10.2%)</b>
				<b>(or +1.3% on 2011-12 Original)</b>

#### Analysis of Financial and Staffing Provision

##### Programme (1)

Provision for 2012-13 is \$3.4 million (3.8%) higher than the revised estimate for 2011-12. This is mainly due to the increase in operating expenses.

##### Programme (2)

Provision for 2012-13 is \$68.1 million (11.6%) higher than the revised estimate for 2011-12. This is mainly due to the anticipated increase in legal aid costs.

##### Programme (3)

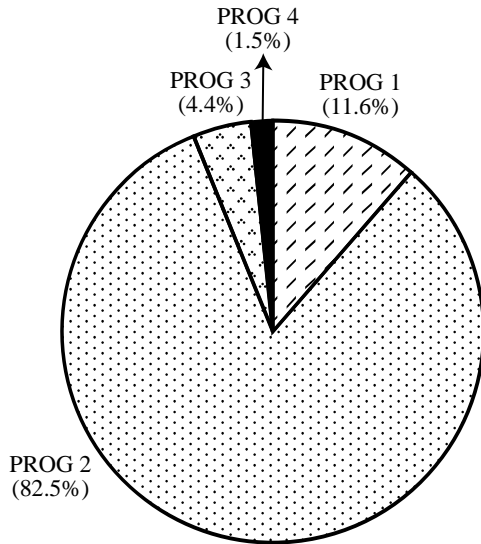
Provision for 2012-13 is \$1.4 million (4.2%) higher than the revised estimate for 2011-12. This is mainly due to the increase in operating expenses.

##### Programme (4)

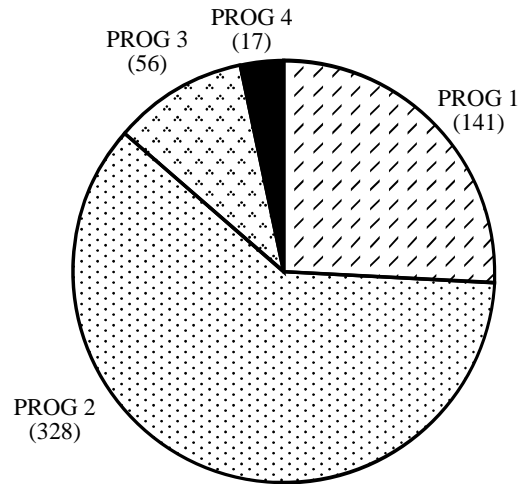
Provision for 2012-13 is \$0.4 million (3.5%) higher than the revised estimate for 2011-12. This is mainly due to the increase in operating expenses.

Head 94 — LEGAL AID DEPARTMENT

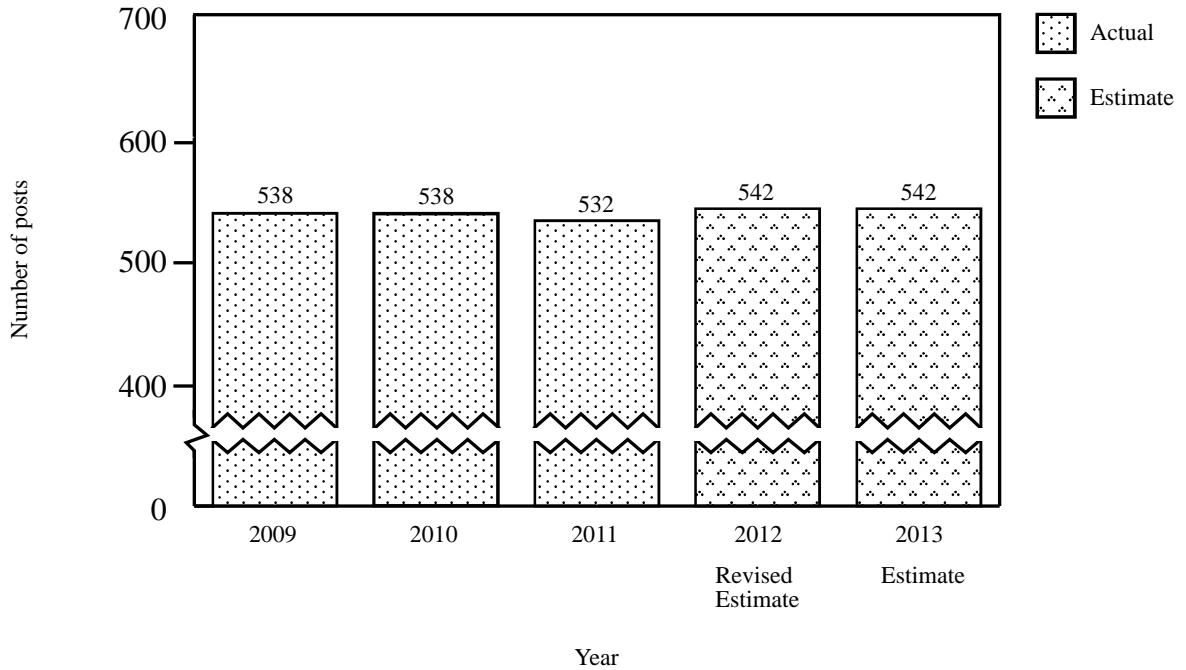
Allocation of provision to programmes (2012-13)



Staff by programme (as at 31 March 2013)



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





**Head 94 — LEGAL AID DEPARTMENT**

Sub-head (Code)		Actual expenditure 2010-11	Approved estimate 2011-12	Revised estimate 2011-12	<b>Estimate 2012-13</b>
		\$'000	\$'000	\$'000	<b>\$'000</b>
<b>Operating Account</b>					
Recurrent					
000	Operational expenses .....	228,221	238,740	245,660	<b>255,734</b>
208	Legal aid costs.....	505,308	545,520	475,496	<b>538,789</b>
	Total, Recurrent .....	733,529	784,260	721,156	<b>794,523</b>
	Total, Operating Account .....	733,529	784,260	721,156	<b>794,523</b>
	Total Expenditure .....	733,529	784,260	721,156	<b>794,523</b>

## Head 94 — LEGAL AID DEPARTMENT

### Details of Expenditure by Subhead

The estimate of the amount required in 2012–13 for the salaries and expenses of the Legal Aid Department is \$794,523,000. This represents an increase of \$73,367,000 over the revised estimate for 2011–12 and of \$60,994,000 over actual expenditure in 2010–11.

#### Operating Account

##### Recurrent

**2** Provision of \$255,734,000 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 2012 will be 542 permanent posts. No change in establishment is expected in 2012–13. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2012–13, but the notional annual mid-point salary value of all such posts must not exceed \$186,271,000.

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

	2010–11 (Actual) (\$'000)	2011–12 (Original) (\$'000)	2011–12 (Revised) (\$'000)	2012–13 (Estimate) (\$'000)
Personal Emoluments				
- Salaries .....	210,247	217,310	224,751	<b>232,546</b>
- Allowances .....	1,587	1,622	1,427	<b>1,497</b>
Personnel Related Expenses				
- Mandatory Provident Fund contribution .....	475	549	589	<b>468</b>
- Civil Service Provident Fund contribution .....	938	1,759	1,993	<b>3,523</b>
Departmental Expenses				
- General departmental expenses .....	14,974	17,500	16,900	<b>17,700</b>
	228,221	238,740	245,660	<b>255,734</b>

**5** Provision of \$538,789,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$63,293,000 (13.3%) over the revised estimate for 2011–12 is mainly due to the anticipated increase in legal aid costs arising from implementation of the revised criminal legal aid fees structure.