

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2017–18 **\$996.8m**

Establishment ceiling 2017–18 (notional annual mid-point salary value) representing an estimated 528 non-directorate posts as at 31 March 2017 and as at 31 March 2018..... **\$236.9m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2017 and as at 31 March 2018.

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

	2015–16 (Actual)	2016–17 (Original)	2016–17 (Revised)	2017–18 (Estimate)
Financial provision (\$m)	102.5	103.7	107.1 (+3.3%)	111.3 (+3.9%)
				(or +7.3% on 2016–17 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 Department assess applicants' eligibility for legal aid and the financial contributions 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 of Legal Aid (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 as applied to Hong Kong 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 2016.

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

Targets

	Target	2015 (Actual)	2016 (Actual)	2017 (Plan)
<i>Civil legal aid</i> applications processed within three months from the date of application (%)	85	86	88	85

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	Target	2015 (Actual)	2016 (Actual)	2017 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within two months from the date of application (%)	90	98	96	90
Appeals against conviction				
applications processed within three months from the date of application (%)	90	96	97	90
Court of First Instance of the High Court/District Court				
applications processed within ten working days from the date of application (%)	90	93	93	90
Committal proceedings				
applications processed within eight working days from the date of application (%)	90	93	92	90

Indicators

	2015 (Actual)	2016 (Actual)	2017 (Estimate)
<i>Civil</i>			
enquiries received.....	37 153	36 699	36 700
applications received#.....	15 165	14 733	14 700
applications processed.....	15 255	14 967	14 700
applications pending decision as at end of year	2 494	2 260	2 260
legal aid certificates granted.....	7 058	6 878	6 880
applications refused			
on means	814	786	790
on merits.....	5 227	5 294	5 290
appeals against the Director's decisions			
appeals heard.....	705	750	750
appeals allowed	38	28	30
<i>Criminal</i>			
applications received.....	3 630	3 567	3 570
applications processed.....	3 599	3 578	3 570
applications pending decision as at end of year	206	195	195
legal aid certificates granted.....	2 521	2 641	2 640
applications refused			
on means	47	25	25
on merits.....	921	817	820

The number of applications received in 2015 and 2016 included five and 13 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 2017–18

- 9 During 2017–18, the Department will continue to monitor:
- the number of legal aid applications and the processing time,
 - the effectiveness of the means-testing processes, and
 - the use of mediation in legally-aided cases.

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Programme (2): Litigation Services

	2015–16 (Actual)	2016–17 (Original)	2016–17 (Revised)	2017–18 (Estimate)
Financial provision (\$m)	703.0	845.7	849.3 (+0.4%)	825.8 (–2.8%)
				(or –2.4% on 2016–17 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 or annulment of marriage or 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 2016.

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

Indicators

	2015 (Actual)	2016 (Actual)	2017 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	5 638	5 521	5 515
cases concluded.....	5 745	5 481	5 515
active cases as at end of year	16 627	16 667	16 665
<i>Criminal</i>			
new cases assigned.....	1 787	2 041	1 970
cases concluded.....	1 812	1 764	1 970
active cases as at end of year	796	1 073	1 075
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	205	206	220
cases concluded.....	162	161	160
active cases as at end of year	319	364	425
<i>Matrimonial</i>			
new cases assigned.....	1 070	967	1 100
cases concluded.....	1 056	984	980
active cases as at end of year	1 296	1 279	1 400

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	2015 (Actual)	2016 (Actual)	2017 (Estimate)
Insolvency			
new cases assigned.....	53	44	45
cases concluded.....	51	56	55
active cases as at end of year			
pending issue of winding-up and bankruptcy			
order.....	17	14	15
pending realisation of assets	182	173	160
Criminal			
new cases assigned.....	710	632	670
cases concluded.....	675	648	670
active cases as at end of year	202	186	185
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	1,242,174	1,314,026	N.A.
amount of costs recovered (\$'000).....	266,161	326,464	N.A.

Matters Requiring Special Attention in 2017–18

15 During 2017–18, the Department will continue to monitor:

- the progress and expenditure of legal aid cases,
- the performance of assigned private practitioners and progress of assigned-out cases, and
- the cost effectiveness of litigation services.

Programme (3): Support Services

	2015–16 (Actual)	2016–17 (Original)	2016–17 (Revised)	2017–18 (Estimate)
Financial provision (\$m)	40.5	42.4	43.4 (+2.4%)	44.9 (+3.5%)
				(or +5.9% on 2016–17 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 2016.

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

Targets

	Target	2015 (Actual)	2016 (Actual)	2017 (Plan)
<i>Payment of damages or compensation to aided persons</i>				
Interim payment				
payments processed within one month (%)	95	99	99	95
Final payment				
payments processed within six weeks (%)	95	99	99	95
<i>Payment to lawyers/experts/other parties</i>				
Advance payment				
payments processed within six weeks (%)	95	99	99	95
Balance payment				
payments processed within six weeks (%)	95	99	99	95

Indicators

	2015 (Actual)	2016 (Actual)	2017 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	326	360	360
<i>Costing</i>			
taxation - court attendance	206	194	195
preparation of bills and objections	339	440	440
assessments made	9 036	9 689	9 690
<i>Enforcement</i>			
cases assigned	261	289	290
enforcement action taken	342	277	280
active cases as at end of year	348	360	370
amount of debts and costs recovered (\$'000)	11,232	11,523	N.A.

Matters Requiring Special Attention in 2017–18

23 During 2017–18, 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 pledges on payments related to legal aid cases.

Programme (4): Official Solicitor's Office

	2015–16 (Actual)	2016–17 (Original)	2016–17 (Revised)	2017–18 (Estimate)
Financial provision (\$m)	14.5	15.9	14.6 (–8.2%)	14.8 (+1.4%)
				(or –6.9% on 2016–17 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 (Cap. 416) (OSO) and other enactments.

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Brief Description

25 Under the OSO, the Director 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 2016.

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

Indicators

	2015 (Actual)	2016 (Actual)	2017 (Estimate)
new cases received	273	258	260
cases concluded	230	283	285
active cases as at end of year	519	494	470

Matters Requiring Special Attention in 2017–18

31 During 2017–18, 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-governmental organisations and legal practitioners.

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ANALYSIS OF FINANCIAL PROVISION

Programme	2015–16 (Actual) (\$m)	2016–17 (Original) (\$m)	2016–17 (Revised) (\$m)	2017–18 (Estimate) (\$m)
(1) Processing of Legal Aid Applications....	102.5	103.7	107.1	111.3
(2) Litigation Services	703.0	845.7	849.3	825.8
(3) Support Services.....	40.5	42.4	43.4	44.9
(4) Official Solicitor's Office	14.5	15.9	14.6	14.8
	860.5	1,007.7	1,014.4 (+0.7%)	996.8 (–1.7%)
				(or –1.1% on 2016–17 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2017–18 is \$4.2 million (3.9%) higher than the revised estimate for 2016–17. This is mainly due to salary increments for staff and the increase in operating expenses.

Programme (2)

Provision for 2017–18 is \$23.5 million (2.8%) lower than the revised estimate for 2016–17. This is mainly due to adjustment to legal aid costs with reference to anticipated expenditure on litigation services.

Programme (3)

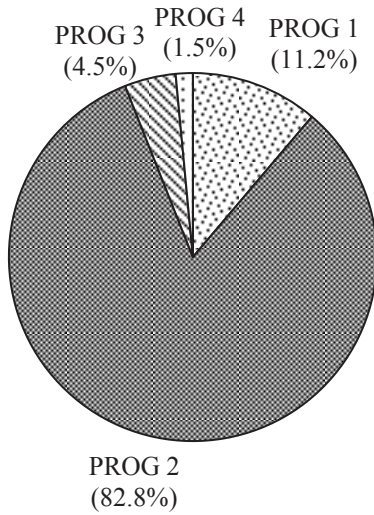
Provision for 2017–18 is \$1.5 million (3.5%) higher than the revised estimate for 2016–17. This is mainly due to salary increments for staff and the increase in operating expenses, partly offset by decreased cash flow requirement for a capital item.

Programme (4)

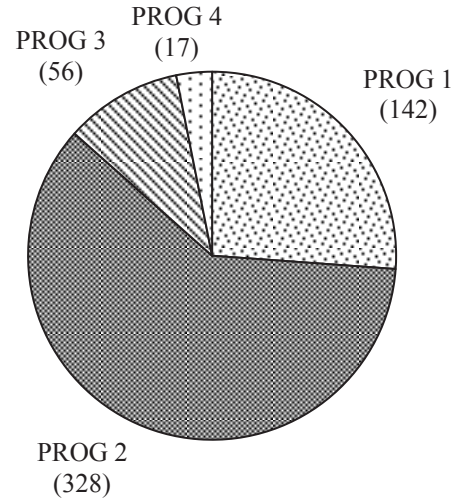
Provision for 2017–18 is \$0.2 million (1.4%) higher than the revised estimate for 2016–17. This is mainly due to salary increments for staff.

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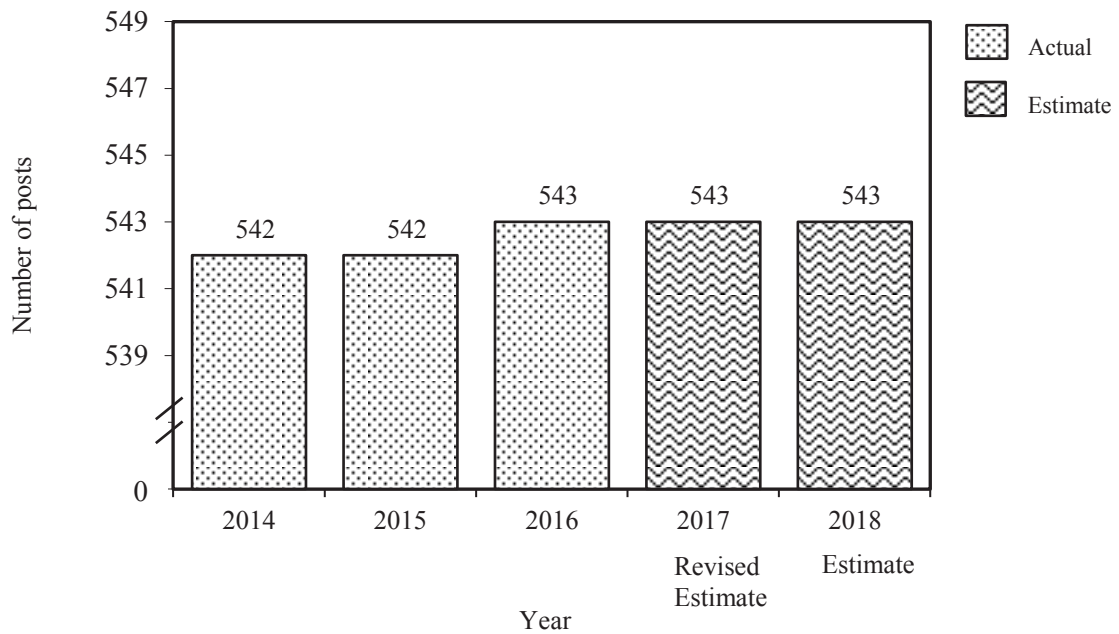
*Allocation of provision
to programmes
(2017-18)*



*Staff by programme
(as at 31 March 2018)*



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



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Sub-head (Code)		Actual expenditure 2015-16	Approved estimate 2016-17	Revised estimate 2016-17	Estimate 2017-18
		\$'000	\$'000	\$'000	\$'000
Operating Account					
	Recurrent				
000	Operational expenses	291,902	295,369	302,166	313,332
208	Legal aid costs.....	568,173	712,024	712,024	683,480
	Total, Recurrent.....	860,075	1,007,393	1,014,190	996,812
	Total, Operating Account	860,075	1,007,393	1,014,190	996,812
Capital Account					
	Plant, Equipment and Works				
	Minor plant, vehicles and equipment (block vote).....	461	263	225	—
	Total, Plant, Equipment and Works.....	461	263	225	—
	Total, Capital Account.....	461	263	225	—
	Total Expenditure	860,536	1,007,656	1,014,415	996,812

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Details of Expenditure by Subhead

The estimate of the amount required in 2017–18 for the salaries and expenses of the Legal Aid Department is \$996,812,000. This represents a decrease of \$17,603,000 against the revised estimate for 2016–17 and an increase of \$136,276,000 over the actual expenditure in 2015–16.

Operating Account

Recurrent

2 Provision of \$313,332,000 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 2017 will be 543 permanent posts. No change in establishment is expected in 2017–18. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2017–18, but the notional annual mid-point salary value of all such posts must not exceed \$236,925,000.

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

	2015–16 (Actual) (\$'000)	2016–17 (Original) (\$'000)	2016–17 (Revised) (\$'000)	2017–18 (Estimate) (\$'000)
Personal Emoluments				
- Salaries.....	265,379	265,892	272,555	280,956
- Allowances.....	2,678	2,289	2,395	1,750
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	822	869	894	967
- Civil Service Provident Fund contribution.....	7,478	9,125	9,128	11,459
Departmental Expenses				
- General departmental expenses	15,545	17,194	17,194	18,200
	<u>291,902</u>	<u>295,369</u>	<u>302,166</u>	<u>313,332</u>

5 Provision of \$683,480,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.