

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2018–19 **\$1,116.8m**

Establishment ceiling 2018–19 (notional annual mid-point salary value) representing an estimated 528 non-directorate posts as at 31 March 2018 rising by three posts to 531 posts as at 31 March 2019 **\$245.9m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2018 and as at 31 March 2019.

Controlling Officer's Report

Programmes

<p>Programme (1) Processing of Legal Aid Applications Programme (2) Litigation Services Programme (3) Support Services Programme (4) Official Solicitor's Office</p>	<p>These programmes contribute to Policy Area 20: Legal Aid (Secretary for Home Affairs (up to 30 June 2018) / Director of Administration (with effect from 1 July 2018)).</p>
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Detail

Programme (1): Processing of Legal Aid Applications

	2016–17 (Actual)	2017–18 (Original)	2017–18 (Revised)	2018–19 (Estimate)
Financial provision (\$m)	107.4	111.3	110.1 (–1.1%)	113.1 (+2.7%)
				(or +1.6% on 2017–18 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 2017.

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

Targets

	Target	2016 (Actual)	2017 (Actual)	2018 (Plan)
<i>Civil legal aid</i> applications processed within three months from the date of application (%)	85	88	88	85

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	Target	2016 (Actual)	2017 (Actual)	2018 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within two months from the date of application (%)	90	96	92	90
Appeals against conviction				
applications processed within three months from the date of application (%)	90	97	93	90
Court of First Instance of the High Court/District Court				
applications processed within ten working days from the date of application (%)	90	93	92	90
Committal proceedings				
applications processed within eight working days from the date of application (%)	90	92	93	90

Indicators

	2016 (Actual)	2017 (Actual)	2018 (Estimate)
<i>Civil</i>			
enquiries received.....	36 699	37 036	37 000
applications received#.....	14 733	15 373	15 400
applications processed.....	14 967	15 203	15 400
applications pending decision as at end of year	2 260	2 430	2 430
legal aid certificates granted.....	6 878	6 340	6 340
applications refused			
on means	786	939	940
on merits.....	5 294	5 967	5 970
appeals against the Director's decisions			
appeals heard.....	750	937	935
appeals allowed.....	28	40	40
<i>Criminal</i>			
applications received.....	3 567	3 471	3 470
applications processed.....	3 578	3 490	3 470
applications pending decision as at end of year	195	176	175
legal aid certificates granted.....	2 641	2 469	2 470
applications refused			
on means	25	30	30
on merits.....	817	848	850

The number of applications received in 2016 and 2017 included 13 and 25 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 2018–19

- 9 During 2018–19, 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

	2016–17 (Actual)	2017–18 (Original)	2017–18 (Revised)	2018–19 (Estimate)
Financial provision (\$m)	859.8	825.8	828.3 (+0.3%)	944.9 (+14.1%)
				(or +14.4% on 2017–18 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 bail applications in the Court of First Instance; and
- acting as instructing solicitors for legally-aided persons in Court of First Instance 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 2017.

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

Indicators

	2016 (Actual)	2017 (Actual)	2018 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	5 521	5 040	5 110
cases concluded.....	5 481	4 762	5 110
active cases as at end of year	16 667	16 945	16 945
<i>Criminal</i>			
new cases assigned.....	2 041	2 295	1 930
cases concluded.....	1 764	2 015	1 930
active cases as at end of year	1 073	1 353	1 355
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	206	184	200
cases concluded.....	161	193	190
active cases as at end of year	364	355	365
<i>Matrimonial</i>			
new cases assigned.....	967	907	1 000
cases concluded.....	984	978	980
active cases as at end of year	1 279	1 208	1 230

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	2016 (Actual)	2017 (Actual)	2018 (Estimate)
Insolvency			
new cases assigned.....	44	28	30
cases concluded.....	56	57	55
active cases as at end of year			
pending issue of winding-up and bankruptcy order.....	14	10	10
pending realisation of assets	173	148	125
Criminal			
new cases assigned.....	632	543	540
cases concluded.....	648	611	540
active cases as at end of year	186	118	120
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	1,314,026	1,236,105	N.A.
amount of costs recovered (\$'000).....	326,464	319,906	N.A.

Matters Requiring Special Attention in 2018–19

15 During 2018–19, 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

	2016–17 (Actual)	2017–18 (Original)	2017–18 (Revised)	2018–19 (Estimate)
Financial provision (\$m)	41.8	44.9	45.0 (+0.2%)	42.8 (–4.9%)
				(or –4.7% on 2017–18 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 2017.

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

Targets

	Target	2016 (Actual)	2017 (Actual)	2018 (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

	2016 (Actual)	2017 (Actual)	2018 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	360	337	340
<i>Costing</i>			
taxation - court attendance	194	204	205
preparation of bills and objections	440	382	380
assessments made	9 689	9 848	9 850
<i>Enforcement</i>			
cases assigned	289	259	260
enforcement action taken	277	290	290
active cases as at end of year	360	329	300
amount of debts and costs recovered (\$'000)	11,523	15,722	N.A.

Matters Requiring Special Attention in 2018–19

23 During 2018–19, 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

	2016–17 (Actual)	2017–18 (Original)	2017–18 (Revised)	2018–19 (Estimate)
Financial provision (\$m)	14.6	14.8	15.9 (+7.4%)	16.0 (+0.6%)
				(or +8.1% on 2017–18 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 2017.

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

Indicators

	2016 (Actual)	2017 (Actual)	2018 (Estimate)
new cases received	258	278	280
cases concluded	283	272	270
active cases as at end of year.....	494	500	510

Matters Requiring Special Attention in 2018–19

31 During 2018–19, 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

	2016-17 (Actual) (\$m)	2017-18 (Original) (\$m)	2017-18 (Revised) (\$m)	2018-19 (Estimate) (\$m)
Programme				
(1) Processing of Legal Aid Applications...	107.4	111.3	110.1	113.1
(2) Litigation Services	859.8	825.8	828.3	944.9
(3) Support Services.....	41.8	44.9	45.0	42.8
(4) Official Solicitor's Office	14.6	14.8	15.9	16.0
	1,023.6	996.8	999.3 (+0.3%)	1,116.8 (+11.8%)
				(or +12.0% on 2017-18 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2018-19 is \$3.0 million (2.7%) higher than the revised estimate for 2017-18. This is mainly due to salary increments for staff, the increase in operating expenses and a net increase of one post.

Programme (2)

Provision for 2018-19 is \$116.6 million (14.1%) higher than the revised estimate for 2017-18. This is mainly due to the increased provision for legal aid costs and an increase of two posts.

Programme (3)

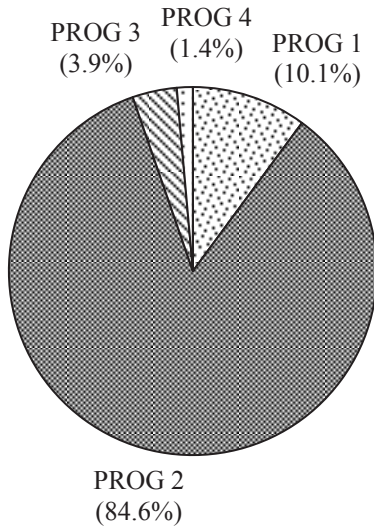
Provision for 2018-19 is \$2.2 million (4.9%) lower than the revised estimate for 2017-18. This is mainly due to the decrease in operating expenses, partly offset by increased cash flow requirement for a capital item.

Programme (4)

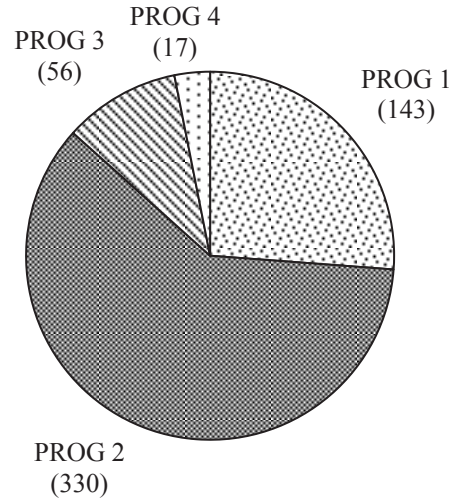
Provision for 2018-19 is \$0.1 million (0.6%) higher than the revised estimate for 2017-18. This is mainly due to salary increments for staff, partly offset by the decrease in operating expenses.

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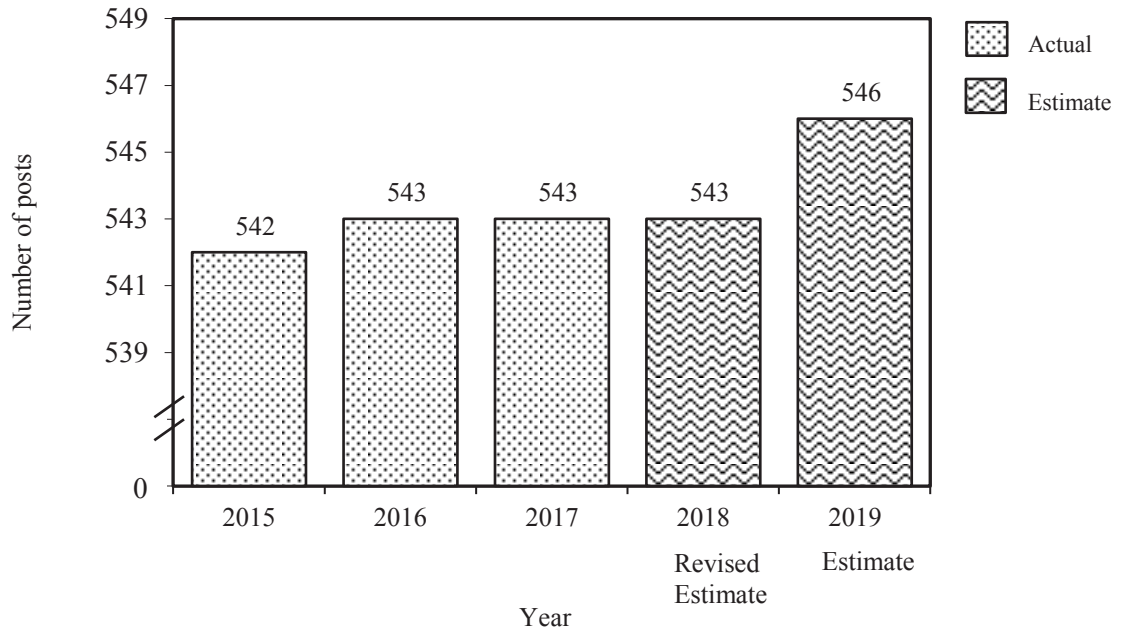
Allocation of provision to programmes (2018-19)



Staff by programme (as at 31 March 2019)



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



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Sub-head (Code)	Actual expenditure 2016-17	Approved estimate 2017-18	Revised estimate 2017-18	Estimate 2018-19
	\$'000	\$'000	\$'000	\$'000
Operating Account				
Recurrent				
000	Operational expenses	301,583	313,332	315,778
208	Legal aid costs.....	721,825	683,480	683,480
	Total, Recurrent.....	1,023,408	996,812	999,258
	Total, Operating Account	1,023,408	996,812	999,258
Capital Account				
Plant, Equipment and Works				
661	Minor plant, vehicles and equipment (block vote).....	225	—	—
	Total, Plant, Equipment and Works.....	225	—	—
	Total, Capital Account.....	225	—	—
	Total Expenditure	1,023,633	996,812	999,258

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Details of Expenditure by Subhead

The estimate of the amount required in 2018–19 for the salaries and expenses of the Legal Aid Department is \$1,116,769,000. This represents an increase of \$117,511,000 over the revised estimate for 2017–18 and \$93,136,000 over the actual expenditure in 2016–17.

Operating Account

Recurrent

2 Provision of \$319,841,000 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 2018 will be 543 permanent posts. It is expected that there will be a net increase of three posts in 2018–19. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2018–19, but the notional annual mid-point salary value of all such posts must not exceed \$245,936,000.

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

	2016–17 (Actual) (\$'000)	2017–18 (Original) (\$'000)	2017–18 (Revised) (\$'000)	2018–19 (Estimate) (\$'000)
Personal Emoluments				
- Salaries.....	271,799	280,956	283,619	283,310
- Allowances.....	2,183	1,750	1,891	2,284
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	880	967	1,036	1,107
- Civil Service Provident Fund contribution.....	9,151	11,459	11,202	13,405
Departmental Expenses				
- General departmental expenses	17,570	18,200	18,030	19,735
	301,583	313,332	315,778	319,841

5 Provision of \$796,503,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$113,023,000 (16.5%) over the revised estimate for 2017–18 is to cater for the anticipated increase in legal aid costs for both civil and criminal cases.

Capital Account

Plant, Equipment and Works

6 Provision of \$425,000 under *Subhead 661 Minor plant, vehicles and equipment (block vote)* is for purchasing new equipment.