

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2019–20 **\$1,590.2m**

Establishment ceiling 2019–20 (notional annual mid-point salary value) representing an estimated 531 non-directorate posts as at 31 March 2019 rising by 12 posts to 543 posts as at 31 March 2020..... **\$266.9m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2019 and as at 31 March 2020.

Controlling Officer's Report

Programmes

Programme (1) Processing of Legal Aid Applications These programmes contribute to Policy Area 20: Legal Aid (Director of Administration).
Programme (2) Litigation Services
Programme (3) Support Services
Programme (4) Official Solicitor's Office

Detail

Programme (1): Processing of Legal Aid Applications

	2017–18 (Actual)	2018–19 (Original)	2018–19 (Revised)	2019–20 (Estimate)
Financial provision (\$m)	108.6	113.1	114.4 (+1.1%)	122.7 (+7.3%)
				(or +8.5% on 2018–19 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 2018.

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

Targets

	Target	2017 (Actual)	2018 (Actual)	2019 (Plan)
<i>Civil legal aid</i> applications processed within three months from the date of application (%)	85	88	90	85

Head 94 — LEGAL AID DEPARTMENT

	Target	2017 (Actual)	2018 (Actual)	2019 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within two months from the date of application (%)	90	92	92	90
Appeals against conviction				
applications processed within three months from the date of application (%)	90	93	91	90
Court of First Instance of the High Court/District Court				
applications processed within ten working days from the date of application (%)	90	92	90	90
Committal proceedings				
applications processed within eight working days from the date of application (%)	90	93	92	90

Indicators

	2017 (Actual)	2018 (Actual)	2019 (Estimate)
<i>Civil</i>			
enquiries received.....	37 036	36 375	36 400
applications received#.....	15 373	15 091	15 100
applications processed.....	15 203	15 359	15 100
applications pending decision as at end of year	2 430	2 162	2 160
legal aid certificates granted.....	6 340	5 888	5 890
applications refused			
on means	939	920	920
on merits.....	5 967	6 813	6 810
appeals against the Director's decisions			
appeals heard.....	937	1 632	1 550
appeals allowed.....	40	61	57
<i>Criminal</i>			
applications received.....	3 471	3 314	3 310
applications processed.....	3 490	3 249	3 310
applications pending decision as at end of year	176	241	240
legal aid certificates granted.....	2 469	2 364	2 360
applications refused			
on means	30	23	25
on merits.....	848	745	750

The number of applications received in 2017 and 2018 included 25 and 40 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 2019–20

- 9 During 2019–20, 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.

Head 94 — LEGAL AID DEPARTMENT

Programme (2): Litigation Services

	2017–18 (Actual)	2018–19 (Original)	2018–19 (Revised)	2019–20 (Estimate)
Financial provision (\$m)	836.7	944.9	946.7 (+0.2%)	1,403.3 (+48.2%)
				(or +48.5% on 2018–19 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 2018.

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

Indicators

	2017 (Actual)	2018 (Actual)	2019 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	5 040	4 692	4 740
cases concluded.....	4 762	4 907	4 740
active cases as at end of year	16 945	16 730	16 730
<i>Criminal</i>			
new cases assigned.....	2 295	2 217	1 830
cases concluded.....	2 015	2 144	1 830
active cases as at end of year	1 353	1 426	1 425
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	184	176	200
cases concluded.....	193	199	200
active cases as at end of year	355	332	330
<i>Matrimonial</i>			
new cases assigned.....	907	837	930
cases concluded.....	978	976	980
active cases as at end of year	1 208	1 069	1 020

Head 94 — LEGAL AID DEPARTMENT

	2017 (Actual)	2018 (Actual)	2019 (Estimate)
Insolvency			
new cases assigned.....	28	15	20
cases concluded.....	57	65	65
active cases as at end of year			
pending issue of winding-up and bankruptcy order.....	10	5	5
pending realisation of assets	148	103	60
Criminal			
new cases assigned.....	543	529	530
cases concluded.....	611	536	530
active cases as at end of year	118	111	110
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	1,236,105	1,370,686	N.A.
amount of costs recovered (\$'000).....	319,906	377,589	N.A.

Matters Requiring Special Attention in 2019–20

15 During 2019–20, 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

	2017–18 (Actual)	2018–19 (Original)	2018–19 (Revised)	2019–20 (Estimate)
Financial provision (\$m)	44.6	42.8	46.3 (+8.2%)	48.6 (+5.0%)
				(or +13.6% on 2018–19 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 2018.

Head 94 — LEGAL AID DEPARTMENT

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

Targets

	Target	2017 (Actual)	2018 (Actual)	2019 (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	98	95

Indicators

	2017 (Actual)	2018 (Actual)	2019 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	337	349	350
<i>Costing</i>			
taxation - court attendance	204	240	240
preparation of bills and objections	382	313	310
assessments made	9 848	10 826	10 830
<i>Enforcement</i>			
cases assigned	259	259	260
enforcement action taken	290	255	260
active cases as at end of year	329	333	335
amount of debts and costs recovered (\$'000)	15,722	7,312	N.A.

Matters Requiring Special Attention in 2019–20

23 During 2019–20, 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

	2017–18 (Actual)	2018–19 (Original)	2018–19 (Revised)	2019–20 (Estimate)
Financial provision (\$m)	15.9	16.0	16.4 (+2.5%)	15.6 (–4.9%)
				(or –2.5% on 2018–19 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.

Head 94 — LEGAL AID DEPARTMENT

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 2018.

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

Indicators

	2017 (Actual)	2018 (Actual)	2019 (Estimate)
new cases received	278	295	300
cases concluded	272	280	280
active cases as at end of year.....	500	515	535

Matters Requiring Special Attention in 2019–20

31 During 2019–20, 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.

Head 94 — LEGAL AID DEPARTMENT

ANALYSIS OF FINANCIAL PROVISION

	2017-18 (Actual) (\$m)	2018-19 (Original) (\$m)	2018-19 (Revised) (\$m)	2019-20 (Estimate) (\$m)
Programme				
(1) Processing of Legal Aid Applications...	108.6	113.1	114.4	122.7
(2) Litigation Services	836.7	944.9	946.7	1,403.3
(3) Support Services.....	44.6	42.8	46.3	48.6
(4) Official Solicitor's Office	15.9	16.0	16.4	15.6
	1,005.8	1,116.8	1,123.8 (+0.6%)	1,590.2 (+41.5%)
				(or +42.4% on 2018-19 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2019-20 is \$8.3 million (7.3%) higher than the revised estimate for 2018-19. This is mainly due to the increased provision for salary increments, operating expenses and creation of five posts.

Programme (2)

Provision for 2019-20 is \$456.6 million (48.2%) higher than the revised estimate for 2018-19. This is mainly due to the increased provision for legal aid costs arising from the upward adjustment of solicitors' hourly rates pursuant to a review, salary increments and creation of four posts.

Programme (3)

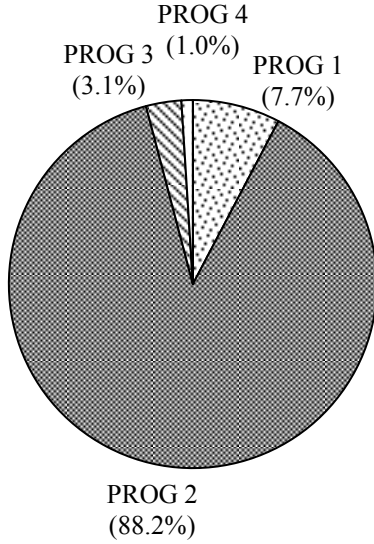
Provision for 2019-20 is \$2.3 million (5.0%) higher than the revised estimate for 2018-19. This is mainly due to the increase in operating expenses and creation of three posts.

Programme (4)

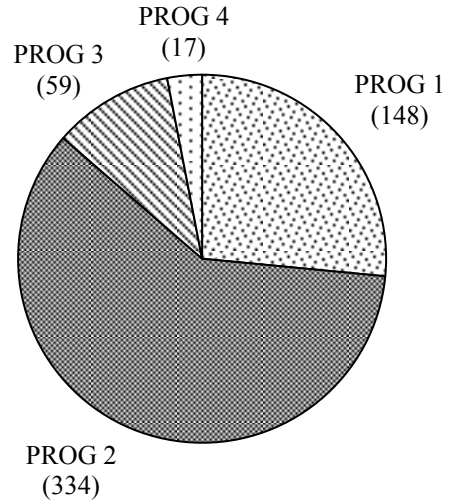
Provision for 2019-20 is \$0.8 million (4.9%) lower than the revised estimate for 2018-19. This is mainly due to the decrease in salary provision resulted from staff movements.

Head 94 — LEGAL AID DEPARTMENT

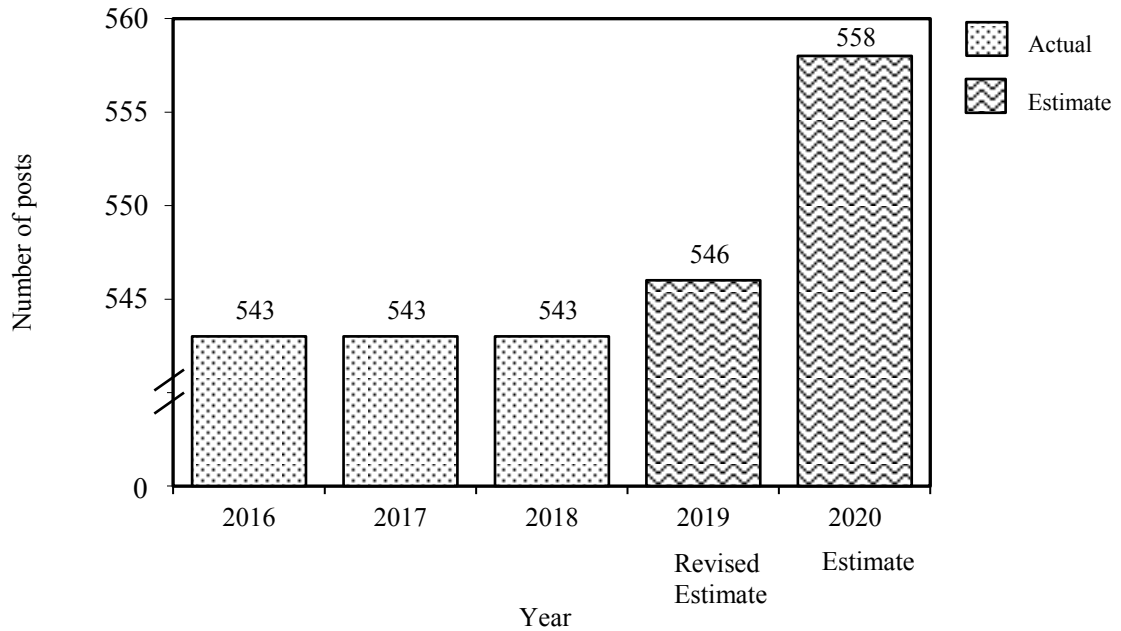
Allocation of provision to programmes (2019-20)



Staff by programme (as at 31 March 2020)



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



Head 94 — LEGAL AID DEPARTMENT

Sub-head (Code)	Actual expenditure 2017-18	Approved estimate 2018-19	Revised estimate 2018-19	Estimate 2019-20
	\$'000	\$'000	\$'000	\$'000
Operating Account				
Recurrent				
000	Operational expenses	313,483	319,841	326,874
208	Legal aid costs.....	692,358	796,503	796,503
	Total, Recurrent.....	1,005,841	1,116,344	1,123,377
	Total, Operating Account	1,005,841	1,116,344	1,123,377
Capital Account				
Plant, Equipment and Works				
661	Minor plant, vehicles and equipment (block vote).....	—	425	425
	Total, Plant, Equipment and Works.....	—	425	425
	Total, Capital Account.....	—	425	425
	Total Expenditure	1,005,841	1,116,769	1,123,802

Head 94 — LEGAL AID DEPARTMENT

Details of Expenditure by Subhead

The estimate of the amount required in 2019–20 for the salaries and expenses of the Legal Aid Department is \$1,590,214,000. This represents an increase of \$466,412,000 over the revised estimate for 2018–19 and \$584,373,000 over the actual expenditure in 2017–18.

Operating Account

Recurrent

2 Provision of \$348,299,000 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 2019 will be 546 permanent posts. It is expected that there will be an increase of 12 posts in 2019–20. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2019–20, but the notional annual mid-point salary value of all such posts must not exceed \$266,890,000.

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

	2017–18 (Actual) (\$'000)	2018–19 (Original) (\$'000)	2018–19 (Revised) (\$'000)	2019–20 (Estimate) (\$'000)
Personal Emoluments				
- Salaries.....	283,062	283,310	289,737	306,951
- Allowances.....	1,774	2,284	3,097	1,956
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	1,008	1,107	1,174	1,386
- Civil Service Provident Fund contribution.....	11,171	13,405	13,131	15,306
Departmental Expenses				
- General departmental expenses	16,468	19,735	19,735	22,700
	313,483	319,841	326,874	348,299

5 Provision of \$1,241,655,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases. The increase of \$445,152,000 (55.9%) over the revised estimate for 2018–19 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 \$260,000 under *Subhead 661 Minor plant, vehicles and equipment (block vote)* represents a decrease of \$165,000 (38.8%) against the revised estimate for 2018–19. This is mainly due to decreased requirement for replacement of equipment.