

## Head 94 — LEGAL AID DEPARTMENT

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

**Estimate 2020–21** ..... **\$1,721.2m**

**Establishment ceiling 2020–21** (notional annual mid-point salary value) representing an estimated 543 non-directorate posts as at 31 March 2020 rising by five posts to 548 posts as at 31 March 2021 ..... **\$282.8m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2020 and as at 31 March 2021.

### 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

	2018–19 (Actual)	2019–20 (Original)	2019–20 (Revised)	<b>2020–21 (Estimate)</b>
Financial provision (\$m)	113.5	122.7	121.7 (–0.8%)	<b>129.8</b> (+6.7%)
				(or +5.8% on 2019–20 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 2019.

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

#### Targets

	Target	2018 (Actual)	2019 (Actual)	<b>2020 (Plan)</b>
<i>Civil legal aid</i>				
applications processed within three months from the date of application (%) .....	85	90	91	<b>85</b>

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	Target	2018 (Actual)	2019 (Actual)	2020 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within two months from the date of application (%) .....	90	92	90	<b>90</b>
Appeals against conviction				
applications processed within three months from the date of application (%) .....	90	91	94	<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	90	89	<b>90</b>
Committal proceedings				
applications processed within eight working days from the date of application (%) .....	90	92	91	<b>90</b>

### *Indicators*

	2018 (Actual)	2019 (Actual)	2020 (Estimate)
<i>Civil</i>			
enquiries received.....	36 375	33 679	<b>35 050</b>
applications received#.....	15 091	12 922	<b>13 420</b>
applications processed.....	15 359	13 145	<b>13 420</b>
applications pending decision as at end of year .....	2 162	1 939	<b>1 940</b>
legal aid certificates granted.....	5 888	5 406	<b>5 630</b>
applications refused			
on means .....	920	915	<b>915</b>
on merits.....	6 813	5 211	<b>5 210</b>
appeals against the Director's decisions			
appeals heard.....	1 632	1 193	<b>1 190</b>
appeals allowed .....	61	45	<b>45</b>
<i>Criminal</i>			
applications received.....	3 314	3 152	<b>3 500</b>
applications processed.....	3 249	3 207	<b>3 495</b>
applications pending decision as at end of year .....	241	186	<b>190</b>
legal aid certificates granted.....	2 364	2 328	<b>2 515</b>
applications refused			
on means .....	23	64	<b>60</b>
on merits.....	745	709	<b>720</b>

# The number of applications received in 2018 and 2019 included 40 and 23 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 2020–21*

- 9 During 2020–21, 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

	2018–19 (Actual)	2019–20 (Original)	2019–20 (Revised)	<b>2020–21 (Estimate)</b>
Financial provision (\$m)	958.1	1,403.3	1,402.9 (—)	<b>1,521.1</b> (+8.4%)
				(or +8.4% on 2019–20 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 2019.

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

#### *Indicators*

	2018 (Actual)	2019 (Actual)	<b>2020 (Estimate)</b>
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned.....	4 692	4 359	<b>4 500</b>
cases concluded.....	4 907	4 841	<b>4 500</b>
active cases as at end of year .....	16 730	16 248	<b>16 250</b>
<i>Criminal</i>			
new cases assigned.....	2 217	2 274	<b>2 010</b>
cases concluded.....	2 144	2 353	<b>2 005</b>
active cases as at end of year .....	1 426	1 347	<b>1 350</b>
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned.....	176	180	<b>200</b>
cases concluded.....	199	125	<b>125</b>
active cases as at end of year .....	332	387	<b>460</b>
<i>Matrimonial</i>			
new cases assigned.....	837	733	<b>900</b>
cases concluded.....	976	936	<b>940</b>
active cases as at end of year .....	1 069	866	<b>825</b>

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	2018 (Actual)	2019 (Actual)	2020 (Estimate)
<b>Insolvency</b>			
new cases assigned.....	15	19	30
cases concluded.....	65	42	40
active cases as at end of year			
pending issue of winding-up and bankruptcy order.....	5	2	5
pending realisation of assets .....	103	83	70
<b>Criminal</b>			
new cases assigned.....	529	523	505
cases concluded.....	536	547	500
active cases as at end of year .....	111	87	90
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000).....	1,370,686	1,351,712	N.A.
amount of costs recovered (\$'000).....	377,589	401,683	N.A.

### ***Matters Requiring Special Attention in 2020–21***

**15** During 2020–21, 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**

	2018–19 (Actual)	2019–20 (Original)	2019–20 (Revised)	2020–21 (Estimate)
Financial provision (\$m)	44.5	48.6	49.1 (+1.0%)	53.4 (+8.8%)
				(or +9.9% on 2019–20 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 schemes; 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 2019.

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

### *Targets*

	Target	2018 (Actual)	2019 (Actual)	2020 (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	98	95
<i>Balance payment</i>				
payments processed within six weeks (%) .....	95	98	97	95

### *Indicators*

	2018 (Actual)	2019 (Actual)	2020 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund .....	349	432	480
<i>Costing</i>			
taxation - court attendance .....	240	261	260
preparation of bills and objections .....	313	429	430
assessments made .....	10 826	9 906	9 910
<i>Enforcement</i>			
cases assigned .....	259	227	230
enforcement action taken .....	255	293	290
active cases as at end of year .....	333	267	205
amount of debts and costs recovered (\$'000) .....	7,312	10,625	N.A.

### *Matters Requiring Special Attention in 2020–21*

23 During 2020–21, 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**

	2018–19 (Actual)	2019–20 (Original)	2019–20 (Revised)	2020–21 (Estimate)
Financial provision (\$m)	16.5	15.6	15.9 (+1.9%)	16.9 (+6.3%)
				(or +8.3% on 2019–20 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 2019.

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

### *Indicators*

	2018 (Actual)	2019 (Actual)	<b>2020 (Estimate)</b>
new cases received .....	295	320	<b>320</b>
cases concluded .....	280	288	<b>290</b>
active cases as at end of year.....	515	547	<b>575</b>

### *Matters Requiring Special Attention in 2020–21*

31 During 2020–21, 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

	2018–19 (Actual) (\$m)	2019–20 (Original) (\$m)	2019–20 (Revised) (\$m)	2020–21 (Estimate) (\$m)
<b>Programme</b>				
(1) Processing of Legal Aid Applications...	113.5	122.7	121.7	<b>129.8</b>
(2) Litigation Services .....	958.1	1,403.3	1,402.9	<b>1,521.1</b>
(3) Support Services.....	44.5	48.6	49.1	<b>53.4</b>
(4) Official Solicitor’s Office .....	16.5	15.6	15.9	<b>16.9</b>
	1,132.6	1,590.2	1,589.6 (—)	<b>1,721.2</b> <b>(+8.3%)</b>
				<b>(or +8.2% on 2019–20 Original)</b>

#### Analysis of Financial and Staffing Provision

##### Programme (1)

Provision for 2020–21 is \$8.1 million (6.7%) higher than the revised estimate for 2019–20. This is mainly due to the increased provision for salary increments, operating expenses and creation of two posts.

##### Programme (2)

Provision for 2020–21 is \$118.2 million (8.4%) higher than the revised estimate for 2019–20. This is mainly due to the increased provision for legal aid costs arising from the proposed increase in financial eligibility limit of the Ordinary Legal Aid Scheme, salary increments and creation of two posts.

##### Programme (3)

Provision for 2020–21 is \$4.3 million (8.8%) higher than the revised estimate for 2019–20. This is mainly due to the increase in operating expenses and net increase of one post.

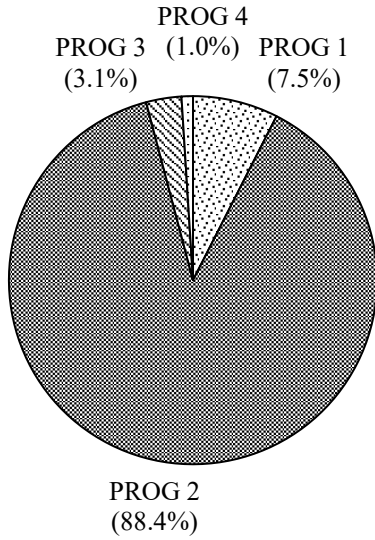
##### Programme (4)

Provision for 2020–21 is \$1.0 million (6.3%) higher than the revised estimate for 2019–20. This is mainly due to the increased provision for salary increments and operating expenses.

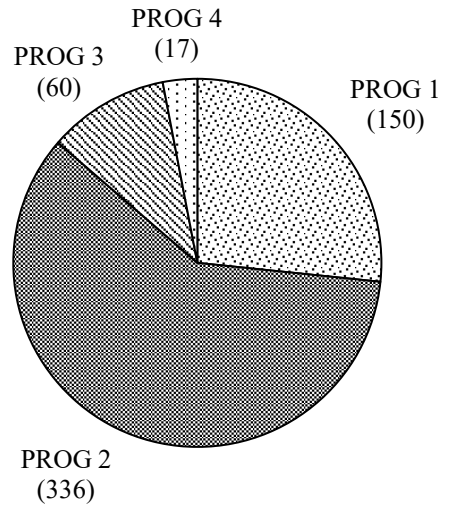
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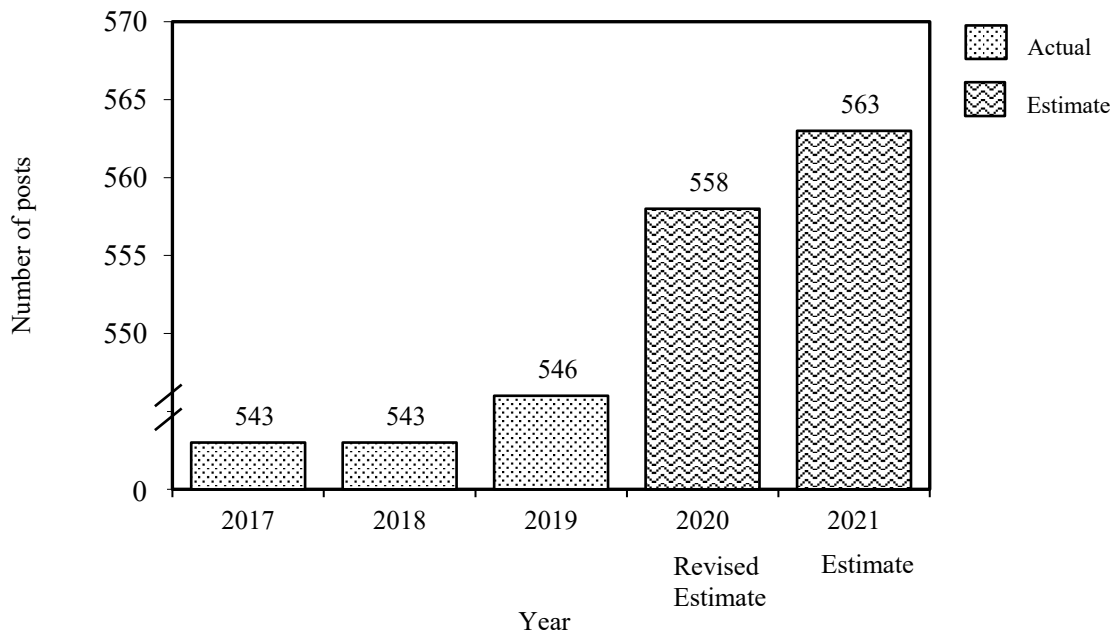
*Allocation of provision to programmes (2020-21)*



*Staff by programme (as at 31 March 2021)*



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





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Sub-head (Code)	Actual expenditure 2018–19	Approved estimate 2019–20	Revised estimate 2019–20	<b>Estimate 2020–21</b>	
	\$'000	\$'000	\$'000	<b>\$'000</b>	
<b>Operating Account</b>					
Recurrent					
000	Operational expenses .....	325,777	348,299	347,659	<b>370,022</b>
208	Legal aid costs.....	806,473	1,241,655	1,241,655	<b>1,350,512</b>
	Total, Recurrent.....	1,132,250	1,589,954	1,589,314	<b>1,720,534</b>
	Total, Operating Account .....	1,132,250	1,589,954	1,589,314	<b>1,720,534</b>
<b>Capital Account</b>					
Plant, Equipment and Works					
661	Minor plant, vehicles and equipment (block vote).....	330	260	260	<b>638</b>
	Total, Plant, Equipment and Works.....	330	260	260	<b>638</b>
	Total, Capital Account.....	330	260	260	<b>638</b>
	Total Expenditure .....	1,132,580	1,590,214	1,589,574	<b>1,721,172</b>

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**Details of Expenditure by Subhead**

The estimate of the amount required in 2020–21 for the salaries and expenses of the Legal Aid Department is \$1,721,172,000. This represents an increase of \$131,598,000 over the revised estimate for 2019–20 and \$588,592,000 over the actual expenditure in 2018–19.

*Operating Account*

Recurrent

**2** Provision of \$370,022,000 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 2020 will be 558 permanent posts. It is expected that there will be a net increase of five posts in 2020–21. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2020–21, but the notional annual mid-point salary value of all such posts must not exceed \$282,804,000.

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

	2018–19 (Actual) (\$'000)	2019–20 (Original) (\$'000)	2019–20 (Revised) (\$'000)	<b>2020–21 (Estimate) (\$'000)</b>
Personal Emoluments				
- Salaries.....	288,869	306,951	305,080	<b>317,045</b>
- Allowances.....	2,829	1,956	3,231	<b>2,357</b>
Personnel Related Expenses				
- Mandatory Provident Fund contribution.....	1,142	1,386	1,355	<b>1,590</b>
- Civil Service Provident Fund contribution.....	13,124	15,306	15,293	<b>18,511</b>
Departmental Expenses				
- General departmental expenses .....	19,813	22,700	22,700	<b>30,519</b>
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	325,777	348,299	347,659	<b>370,022</b>
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**5** Provision of \$1,350,512,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.

*Capital Account*

Plant, Equipment and Works

**6** Provision of \$638,000 under *Subhead 661 Minor plant, vehicles and equipment (block vote)* represents an increase of \$378,000 (145.4%) over the revised estimate for 2019–20. This is mainly due to increased requirement for replacement of equipment.