

Head 94 — LEGAL AID DEPARTMENT

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

Estimate 2021–22 **\$1,673.7m**

Establishment ceiling 2021–22 (notional annual mid-point salary value) representing an estimated 548 non-directorate posts as at 31 March 2021 and as at 31 March 2022 **\$282.8m**

In addition, there will be an estimated 15 directorate posts as at 31 March 2021 and as at 31 March 2022.

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

	2019–20 (Actual)	2020–21 (Original)	2020–21 (Revised)	2021–22 (Estimate)
Financial provision (\$m)	121.4	129.8	124.8 (–3.9%)	128.8 (+3.2%)
				(or –0.8% on 2020–21 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 2020.
- 8 The key performance measures in respect of processing legal aid applications are:

Targets

	Target	2019 (Actual)	2020 (Actual)	2021 (Plan)
<i>Civil legal aid</i> applications processed within three months from the date of application (%).....	85	91	88	85

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	Target	2019 (Actual)	2020 (Actual)	2021 (Plan)
<i>Criminal legal aid</i>				
Appeals against sentence				
applications processed within two months from the date of application (%).....	90	90	82	90
Appeals against conviction				
applications processed within three months from the date of application (%).....	90	94	92	90
Court of First Instance of the High Court/District Court				
applications processed within ten working days from the date of application (%)	90	89	78	90
Committal proceedings				
applications processed within eight working days from the date of application (%)	90	91	66	90

Indicators

	2019 (Actual)	2020 (Actual)	2021 (Estimate)
<i>Civil</i>			
enquiries received	33 679	29 375	31 000
applications received	12 922#	11 286#	12 100
applications processed	13 145	11 136	12 100
applications pending decision as at end of year	1 939	2 089	2 090
legal aid certificates granted	5 406	4 754	5 000
applications refused			
on means	915	780	820
on merits	5 211	4 289	4 700
appeals against the Director's decisions			
appeals heard	1 193	778	780
appeals allowed	45	35	35
<i>Criminal</i>			
applications received	3 152	3 537	3 350
applications processed	3 207	3 381	3 350
applications pending decision as at end of year	186	342	340
legal aid certificates granted	2 328	2 751	2 540
applications refused			
on means	64	46	45
on merits	709	472	510

The number of applications received in 2019 and 2020 included 23 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 2021–22

- 9 During 2021–22, 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

	2019–20 (Actual)	2020–21 (Original)	2020–21 (Revised)	2021–22 (Estimate)
Financial provision (\$m)	1,297.0	1,521.1	1,523.6 (+0.2%)	1,472.0 (–3.4%)
				(or –3.2% on 2020–21 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 2020.

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

Indicators

	2019 (Actual)	2020 (Actual)	2021 (Estimate)
<i>Assigning out and monitoring of cases</i>			
<i>Civil</i>			
new cases assigned	4 359	4 086	4 040
cases concluded	4 841	4 198	4 035
active cases as at end of year	16 248	16 136	16 140
<i>Criminal</i>			
new cases assigned	2 274	2 637	2 140
cases concluded	2 353	1 677	2 135
active cases as at end of year	1 347	2 307	2 310
<i>In-house litigation</i>			
<i>Civil</i>			
<i>Personal injury and miscellaneous</i>			
new cases assigned	180	269	200
cases concluded	125	132	150
active cases as at end of year	387	524	575
<i>Matrimonial</i>			
new cases assigned	733	347	700
cases concluded	936	513	510
active cases as at end of year	866	700	890

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	2019 (Actual)	2020 (Actual)	2021 (Estimate)
Insolvency			
new cases assigned	19	30	60
cases concluded	42	29	30
active cases as at end of year			
pending issue of winding-up and bankruptcy			
order	2	20	20
pending realisation of assets	83	66	95
Criminal			
new cases assigned	523	393	400
cases concluded	547	392	400
active cases as at end of year	87	88	90
<i>Damages/costs recovered from all civil cases</i>			
amount of damages recovered (\$'000)	1,351,712	1,131,316	N.A.
amount of costs recovered (\$'000)	401,683	392,484	N.A.

Matters Requiring Special Attention in 2021–22

15 During 2021–22, 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

	2019–20 (Actual)	2020–21 (Original)	2020–21 (Revised)	2021–22 (Estimate)
Financial provision (\$m)	47.0	53.4	52.2 (–2.2%)	56.7 (+8.6%)
				(or +6.2% on 2020–21 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 2020.

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

Targets

	Target	2019 (Actual)	2020 (Actual)	2021 (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	98	99	95
Balance payment				
payments processed within six weeks (%).....	95	97	99	95

Indicators

	2019 (Actual)	2020 (Actual)	2021 (Estimate)
<i>Insolvency</i>			
cases for ex-gratia payment from Protection of Wages on Insolvency Fund	432	316	600
<i>Costing</i>			
taxation - court attendance.....	261	247	250
preparation of bills and objections.....	429	395	430
assessments made	9 906	8 996	10 400
<i>Enforcement</i>			
cases assigned.....	227	126	300
enforcement action taken.....	293	169	295
active cases as at end of year	267	223	230
amount of debts and costs recovered (\$'000).....	10,625	8,406	N.A.

Matters Requiring Special Attention in 2021–22

23 During 2021–22, 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

	2019–20 (Actual)	2020–21 (Original)	2020–21 (Revised)	2021–22 (Estimate)
Financial provision (\$m)	15.9	16.9	15.5 (–8.3%)	16.2 (+4.5%)
				(or –4.1% on 2020–21 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 2020.

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

Indicators

	2019 (Actual)	2020 (Actual)	2021 (Estimate)
new cases received.....	320	256	260
cases concluded	288	246	250
active cases as at end of year	547	557	565

Matters Requiring Special Attention in 2021–22

31 During 2021–22, 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

	2019–20 (Actual) (\$m)	2020–21 (Original) (\$m)	2020–21 (Revised) (\$m)	2021–22 (Estimate) (\$m)
Programme				
(1) Processing of Legal Aid Applications ..	121.4	129.8	124.8	128.8
(2) Litigation Services	1,297.0	1,521.1	1,523.6	1,472.0
(3) Support Services	47.0	53.4	52.2	56.7
(4) Official Solicitor’s Office	15.9	16.9	15.5	16.2
	1,481.3	1,721.2	1,716.1 (–0.3%)	1,673.7 (–2.5%)
				(or –2.8% on 2020–21 Original)

Analysis of Financial and Staffing Provision

Programme (1)

Provision for 2021–22 is \$4.0 million (3.2%) higher than the revised estimate for 2020–21. This is mainly due to the increased provision for filling of vacancies, salary increments and operating expenses.

Programme (2)

Provision for 2021–22 is \$51.6 million (3.4%) lower than the revised estimate for 2020–21. This is mainly due to adjustment to legal aid costs with reference to anticipated expenditure on some high-cost criminal trials and appeals.

Programme (3)

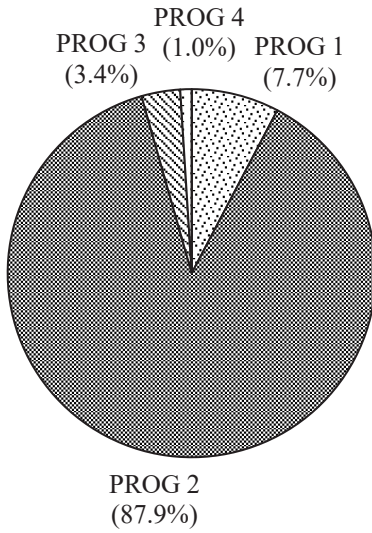
Provision for 2021–22 is \$4.5 million (8.6%) higher than the revised estimate for 2020–21. This is mainly due to the increased provision for salary increments and operating expenses, partly offset by the decreased requirement for replacement of equipment.

Programme (4)

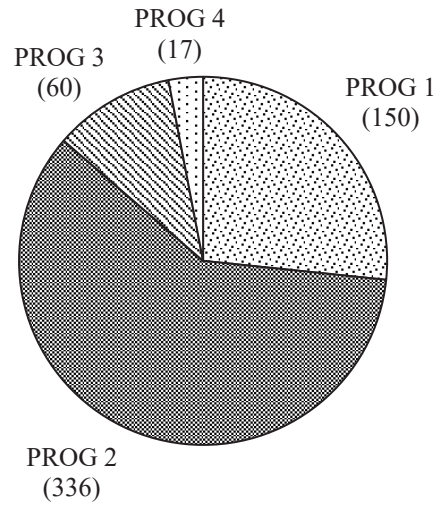
Provision for 2021–22 is \$0.7 million (4.5%) higher than the revised estimate for 2020–21. This is mainly due to the increased provision for salary increments and operating expenses.

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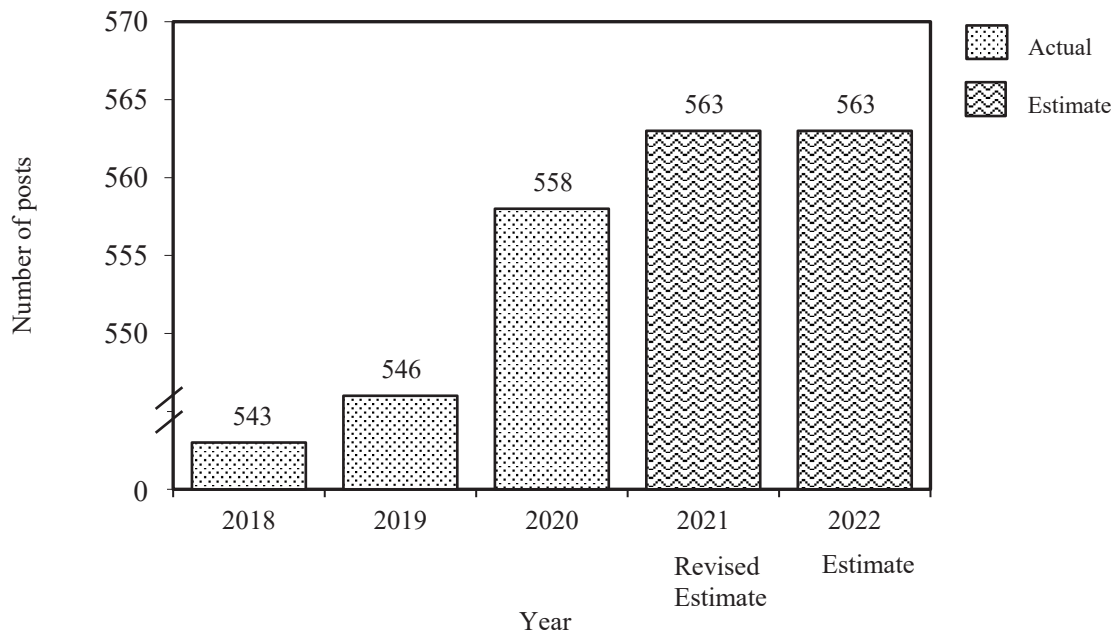
Allocation of provision to programmes (2021-22)



Staff by programme (as at 31 March 2022)



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



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Sub-head (Code)	Actual expenditure 2019–20	Approved estimate 2020–21	Revised estimate 2020–21	Estimate 2021–22	
	\$'000	\$'000	\$'000	\$'000	
Operating Account					
Recurrent					
000	Operational expenses	347,421	370,022	364,926	378,578
208	Legal aid costs.....	1,133,751	1,350,512	1,350,512	1,295,150
	Total, Recurrent.....	1,481,172	1,720,534	1,715,438	1,673,728
	Total, Operating Account	1,481,172	1,720,534	1,715,438	1,673,728
Capital Account					
Plant, Equipment and Works					
	Minor plant, vehicles and equipment (block vote).....	86	638	638	—
	Total, Plant, Equipment and Works.....	86	638	638	—
	Total, Capital Account.....	86	638	638	—
	Total Expenditure	1,481,258	1,721,172	1,716,076	1,673,728

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Details of Expenditure by Subhead

The estimate of the amount required in 2021–22 for the salaries and expenses of the Legal Aid Department is \$1,673,728,000. This represents a decrease of \$42,348,000 against the revised estimate for 2020–21 and an increase of \$192,470,000 over the actual expenditure in 2019–20.

Operating Account

Recurrent

2 Provision of \$378,578,000 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 2021 will be 563 permanent posts. No change in establishment is expected in 2021–22. Subject to certain conditions, the controlling officer may under delegated power create or delete non-directorate posts during 2021–22, 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:

	2019–20 (Actual) (\$'000)	2020–21 (Original) (\$'000)	2020–21 (Revised) (\$'000)	2021–22 (Estimate) (\$'000)
Personal Emoluments				
- Salaries	302,643	317,045	311,331	319,472
- Allowances	2,842	2,357	3,654	2,226
Personnel Related Expenses				
- Mandatory Provident Fund contribution	1,301	1,590	1,313	1,185
- Civil Service Provident Fund contribution	15,307	18,511	18,109	22,410
Departmental Expenses				
- General departmental expenses	25,328	30,519	30,519	33,285
	347,421	370,022	364,926	378,578

5 Provision of \$1,295,150,000 under *Subhead 208 Legal aid costs* is for expenses related to legal aid and Official Solicitor cases.