



COMMONWEALTH GRANTS COMMISSION

DRAFT ASSESSMENT PAPER CGC 2003/16

LAW AND ORDER FEES AND FINES

Prepared for the Commission's 2003 Conferences on Draft Assessments

AUGUST 2003

Note

Included in this paper are the results of preliminary calculations based on the methods proposed throughout the paper and using the data currently available. Those results are indicative only and should be seen as work in progress. Ongoing changes are being made to standards and factor calculations as new data come to hand. Moreover, the calculations have been done using a prototype assessment system and are subject to ongoing revision as checking processes proceed.

CONTENTS

INTRODUCTION	1
THE 1999 REVIEW ASSESSMENT	1
Description of the category	1
Importance of current assessment	1
User charges assessment	2
PROPOSED CATEGORY DEFINITION AND ASSESSMENT STRUCTURE	
2004 REVIEW	3
Scope of the category	3
Assessment structure	3
Updating component weights	4
FEES COMPONENT	5
Economic environment — fees component	5
FINES COMPONENT	8
SUMMARY OF RESULTS	9
Derivation of category factor	9
Calculation formulae	9
Standardised user charges	10
ANALYSIS	11

INTRODUCTION

1. This paper presents a draft assessment for the Law and Order Fees and Fines category for the 2004 Review. Originally a 'no change' category, this paper builds on the staff proposals set out in *Discussion Paper CGC 2002/36, Law and Order*, State comments provided in the 2003 rejoinder submissions, and State responses to further staff proposals set out in *Discussion Paper CGC 2003/6 Law and Order Fees and Fines*.

2. The proposed assessment structure for this category in the 2004 Review is shown in Table 7 on page 8.

THE 1999 REVIEW ASSESSMENT

Description of the category

3. In the 1999 Review, the Law and Order Fees and Fines category comprised the net collections from fines and forfeitures and from fees and charges collected by the courts. It included traffic fines imposed by the police but excluded other licence fees collected by the courts which were classified to the Other Taxes category.

Importance of current assessment

4. Table 1 shows the gross standard user charges for the last six financial years. In 2001-02, this category represented 11.21 per cent of total user charges and 50.08 per cent of Administration of Justice gross standard expenses.

Table 1 LAW AND ORDER FEES AND FINES — GROSS STANDARD USER CHARGES, 1996-97 TO 2001-02

	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02
\$ per capita	33.55	34.15	37.24	35.39	43.43	47.89
% of total user charges	10.24	9.67	9.89	9.00	10.68	11.21
% of Administration of Justice gross standard expenses	48.74	41.71	48.28	43.44	48.82	50.08

5. Compared with an equal per capita assessment, the 2003 Update assessment redistributed \$1.2 million in grants from Victoria and Western Australia to the other States. Table 2 sets out the redistribution between States in the 2003 Update. This indicated that, although the user charge standard was relatively large, the redistributive impact of the assessment was quite small.

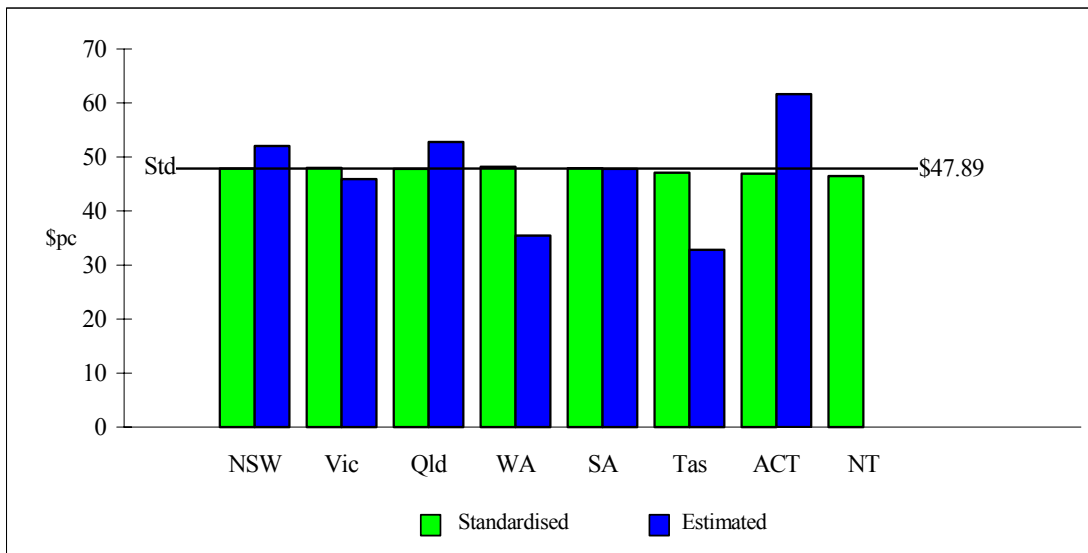
Table 2 EFFECT OF ASSESSMENT ON GRANTS DISTRIBUTION — LAW AND ORDER FEES AND FINES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Contribution to 2003 Update relativities^(b)	0.0	-0.5	0.3	-0.6	0.0	0.3	0.3	0.3	1.2

(a) Total redistribution.

6. Figure 1 shows, for 2001-02, the standardised, estimated and standard user charges per capita in the 2003 Update.

Figure 1 LAW AND ORDER FEES AND FINES — USER CHARGES PER CAPITA — STANDARDISED, ESTIMATED AND STANDARD, 2001-02



User charges assessment

7. In the 1999 Review, the Law and Order Fees and Fines assessment comprised two components — court fees and court fines. The component weights were estimated on the basis of a five-year average of fees and fines raised by all States.

8. The 1999 Review assessment structure is shown in Table 3.

Table 3 LAW AND ORDER FEES AND FINES ASSESSMENT STRUCTURE, 1999 REVIEW

User charges component	Component weight	Factors	Basis of calculation
Fees	47.11	% Economic environment	Number of general population (weight of 1), small businesses (weight of 2) and large businesses (weight of 6).
Fines	52.89	None	Equal per capita

**PROPOSED CATEGORY DEFINITION AND ASSESSMENT STRUCTURE
2004 REVIEW**

Scope of the category

9. ***Staff proposals.*** In *Discussion Paper CGC 2002/36 Law and Order*, staff proposed that for the 2004 Review the scope of the user charges category be maintained.

10. ***State views.*** No States commented on the scope or definition of the category.

11. ***Commission decision.*** Law and Order Fees and Fines remains an important user charges category. No State comments were made on the scope and definition of the category. The Commission has decided to retain the existing scope of the category.

Assessment structure

12. ***Staff proposals.*** In *Discussion Paper CGC 2002/36 Law and Order*, staff proposed that for the 2004 Review the assessment structure be maintained.

13. ***State views.*** No State commented on the assessment structure of the category.

14. ***Commission decision.*** Given that no State commented on the assessment structure, the Commission has decided to retain the structure used in the 1999 Review. The category will contain two components:

- (i) fines comprises the net collections from fines and forfeitures, including traffic fines imposed by police; and
- (ii) fees comprises fees and charges collected from the courts.

Updating component weights

15. **Staff proposals.** In *Discussion Paper CGC 2002/36 Law and Order*, staff proposed that for the 2004 Review the component weights be maintained.

16. **State views.** No States commented on the component weights.

17. **Analysis.** In the 2003 Update, component weights were not updated annually. Updating component weights annually using ABS Government Finance Statistics (GFS) data would provide a more accurate assessment.. For 2001-02, the new component weights would be:

- (i) 26.78 per cent of the category for fees; and
- (ii) 73.22 per cent of the category for fines.

18. **Commission decision.** The Commission accepts that a conceptual case exists for updating component weights annually. The conceptual case is supported by data which the Commission is satisfied are comparable and representative, and provide an adequate basis for updating the weights. The data indicate that fees and fines are variable and have a different impact on State budgets in different years which the Commission considers to be material. The Commission therefore proposes to update the component weights annually and base them on GFS data.

19. The Commission’s decisions relating to the scope, structure and component weights relating to Law and Order Fees and Fines are summarised in Table 4.

Table 4 COMMISSION DECISIONS — LAW AND ORDER FEES AND FINES CATEGORY SCOPE, ASSESSMENT STRUCTURE AND COMPONENT WEIGHTS

Decision	Reason
Scope:	
The 1999 Review scope of the category will be retained.	Remains an important State source of revenue. No State comments were made on the definition or scope of the category.
Assessment structure and component weights^(a):	
Fees: 26.78%	Based on GFS data.
Fines: 73.22%	Based on GFS data.

(a) These component weights are the ones which would apply to 2001-02.

FEES COMPONENT

Economic environment — fees component

20. **1999 Review.** In the 1999 Review, the court fees component was differentially assessed, with relative revenue raising capacity based on the economic environment factor assessed in the Administration of Justice category. The assessment was based on the assumptions that:

- (i) small businesses were more likely to engage in civil litigation than individuals, and each action was likely to be more complex and expensive than those undertaken by individuals;
- (ii) large businesses were more likely to engage in civil litigation than small businesses, and each action was likely to be more complex and expensive than those undertaken by small businesses; and
- (iii) higher fees could be charged for more complex action.

21. Combined use and cost weights of 1.0 for the general population, 2.0 for small business entities and 6.0 for large business entities (other than individuals) were derived using judgement. These weights were applied in calculating the economic environment factor. The two business use weights were based on business taxation data, which was obtained from the Australian Taxation Office (ATO).

22. **Staff proposals.** In *Discussion Paper CGC 2002/36 Law and Order*, staff proposed that, for the 2004 Review, the assessment method for Law and Order Fees and Fines be maintained and be based on the economic environment factor assessed in the civil courts component of the Administration of Justice expenses category.

23. Subsequently, staff reconsidered their proposal and because the category was originally a 'no change' category, issued a further discussion paper — *Discussion Paper CGC 2003/6 Law and Order Fees and Fines*. Because the data used to calculate the factor were no longer available in the required format, staff proposed three options for assessing the fees component.

Option 1: Continuation of existing method. ATO data were available only at a higher level of aggregation. Retention of the existing method would mean reusing the 1998-99 dataset in the 2004 Review and subsequent updates.

Option 2: Revision of existing method. The availability of ATO data at a higher level of aggregation meant that these data could no longer support separate weights for small and large businesses. A single weight would have to apply to all businesses, regardless of size. A weight of 4 could be used, representing the average of the two existing weights (2 and 6).

Option 3: Alternative method. The method dispensed with Mean Resident Population and business taxation data as the basis for quantifying litigation (and fees). In its place, actual civil court lodgements data were used.

24. **State views.** In their rejoinder submissions, New South Wales, Queensland, Tasmania and the Northern Territory supported the retention of the existing assessment method. The remaining States did not comment.

25. States also responded to *Discussion Paper CGC 2003/6 Law and Order Fees and Fines*. South Australia, the ACT and the Northern Territory supported Option 3, the use of a lodgements based factor. New South Wales, Victoria and Tasmania were opposed to a lodgements based factor and generally supported Option 1, the existing 1999 Review assessment method, or Option 2, the proposed revision to that method. Western Australia favoured Option 1, the existing method, but acknowledged that data problems existed with it.

26. **Analysis.** In the 1999 Review, the revenue capacity assessment was based on weighted numbers of individuals, small businesses and large businesses (the economic environment factor assessed in the civil courts component of the Administration of Justice category was used). Annually updateable data are no longer available to support this assessment. Data are available on numbers of individuals and all businesses (a disaggregation by size of business is not available) but they are not regularly updated. Also, there are no quantitative data available to determine the combined use and cost weights for businesses and individuals with respect to civil court actions. For these reasons, the Commission considered alternative data sources on which to base the assessment.

27. On the use side, court lodgements provide some indication of total actual demand for civil court services. However, lodgements data are not disaggregated by type of litigant. In the 1999 Review, demand according to type of litigant was taken into account by applying judgment based weights (within the combined use and cost weights) to the numbers of individuals and businesses.

28. On the cost side, quantitative data are not available on unit costs of providing services to different types of civil court litigants or by different levels of court. It is possible to disaggregate lodgements data by the level of court but there is no information on what differential weights might be applied to them.

29. The Commission accepts that the capacity of State's to raise law and order fees is influenced by State policies but it also reflects the volume of potential civil actions — an influence which is beyond the control of States. As a result, the Commission considers that a conceptual case exists for the differential assessment of law and order fees.

30. The Productivity Commission said lodgements were a reflection of the degree to which the Australian community demands court services such as dispute resolution and criminal justice¹. The larger States have a higher number of criminal and civil lodgements. The number of lodgements per capita would be a possible indicator of

¹ Productivity Commission *Report on Government Services 2003*, p 6.17

comparative workloads. They would also serve as a broad indicator of the capacity of States to raise law and order fees from courts. However, the Commission acknowledges that there are problems with court lodgements data, because they conceal influences on revenue raising capacity associated with:

- (i) the nature of cases dealt with — for example, the complexity and length of cases; and
- (ii) the courts in which the proceedings are held — for example, the fees charged in supreme courts versus magistrates courts.

31. The Commission has no use and unit cost data which it could apply to a disaggregation of civil court lodgements to better reflect revenue raising capacity.

32. **Commission decisions.** The Commission accepts that a conceptual case exists for assessing different State capacities to raise revenue from law and order fees. There are consistent and comparable data to support the conceptual case. The data indicate the State capacities to raise law and order fees has an impact on State budgets which the Commission considers to be material. The Commission therefore proposes to apply a differential assessment to law and order fees.

33. The Commission accepts that a conceptual case exists for assessing law and order fee capacity using lodgement data. The conceptual case is supported by data, which the Commission is satisfied are comparable and representative, and provide an adequate basis for making an assessment. The data indicate that differences in the number of lodgements have an impact on State budgets which the Commission considers to be material. The Commission therefore proposes to assess law and order fees capacity using lodgements data.

34. The Commission does not consider that, on balance, a conceptual case exists for applying use and cost weights to lodgement data. There are insufficient data on which to consider whether there are differences in use or costs and how an assessment for them could be made. For these reasons, the Commission does not propose to apply use or cost weights to lodgement data.

35. The Commission decisions are summarised in Table 5.

Table 5 COMMISSION DECISION — REVENUE RAISING CAPACITY, LAW AND ORDER FEES COMPONENT

Decision	Reason
To assess law and order fees based on the per capita number of civil court lodgements.	Gives States the capacity to raise the average level of law and order fees.

36. **Method and results.** The calculation of relative capacities to raise law and order fees, set out in Table 6, has been based on per capita numbers of civil court lodgements. These revenue capacities are equivalent to the economic environment factors

assessed for the civil courts component of the Administration of Justice expenses category, in the 2004 Review draft assessment for that category.

Table 6 LAW AND ORDER FEES REVENUE RAISING CAPACITIES — BASED ON CIVIL COURTS LODGEMENTS PER CAPITA

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
1997-98	1.09750	1.04524	0.87332	0.94186	0.91092	0.73029	0.96105	0.92376	1.00000
1998-99	1.09366	1.07791	0.87217	0.96647	0.84250	0.65843	0.94317	0.77873	1.00000
1999-2000	1.06552	1.15347	0.82662	0.95333	0.78431	0.87120	0.96932	0.71868	1.00000
2000-01	1.09865	1.10007	0.83813	0.96137	0.79523	0.89363	0.90773	0.58750	1.00000
2001-02	1.12423	1.12306	0.78729	0.92481	0.72695	0.97564	0.78862	0.98453	1.00000

37. **Reality check.** The 2004 Review capacities reflect expectations. The capacities for New South Wales and Victoria are higher because there is a concentration of corporate head offices located in these States which could be expected to generate higher law and order fees in those States.

38. **Updateability.** Annual civil court lodgements numbers are available from the Productivity Commission to update these capacity measures.

FINES COMPONENT

39. **1999 Review.** In the 1999 Review, the law and order fines component was assessed by the equal per capita method. It was considered that the interstate differences in revenue from fines were driven by differences in policies on the range of actions that attracted fines and the level of the fine for each action.

40. **Staff proposals.** In *Discussion Paper CGC 2002/36 Law and Order*, staff proposed that for the 2004 Review draft assessment, the fines component continue to be assessed by the equal per capita method.

41. **State views.** No States commented of the assessment of law and order fines.

42. **Commission decision.** The Commission remains convinced that the capacity of a State to raise law and order fines is influenced by State policy settings and should be assessed equal per capita. Because there is no conceptual case to differentially assess fines and no State objected to the current method, the Commission has decided to continue to assess law and order fines by the equal per capita method.

SUMMARY OF RESULTS

43. Table 7 summarises the proposed assessment structure for the 2004 Review.

Table 7 LAW AND ORDER FEES AND FINES ASSESSMENT STRUCTURE FOR THE 2004 REVIEW

User charges component	Component weight	Factors	Basis of calculation
Fees	26.78	Economic environment	Per capita number of civil court lodgements.
Fines	73.22	None	Equal per capita.

Derivation of category factor

44. Table 7 summarises the components, component weights and disability factors for this category for 2001-02. It shows the calculation of the category factor.

Table 8 LAW AND ORDER FEES AND FINES — DERIVATION OF CATEGORY FACTOR, 2001-02

Factors	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Fees (FE) (component weight = 26.78%)								
Economic environment (e)	1.12423	1.12306	0.78729	0.92481	0.72695	0.97564	0.78862	0.98453
Component factor	1.12423	1.12306	0.78729	0.92481	0.72695	0.97564	0.78862	0.98453
Cont. to category factor	0.30107	0.30076	0.21084	0.24766	0.19468	0.26128	0.21119	0.26366
Fines (FI) (component weight = 73.22%)								
EPC factor	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000
Component factor	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000	1.00000
Cont. to category factor	0.73220	0.73220	0.73220	0.73220	0.73220	0.73220	0.73220	0.73220
CATEGORY FACTOR	1.03327	1.03296	0.94304	0.97986	0.92688	0.99348	0.94339	0.99586

Calculation formulae

45. The following formulae were used to calculate the contribution of each component to the overall category factor. In each case, the contributions were calculated as the component weight multiplied by the component factor (the bracketed terms in the formulae). Each contribution to category factor was rescaled to ensure that the sum of standardised equals the sum of actual user charges.

FE	=	0.2678 (e)
FI	=	0.7322
Category Factor	=	FE + FI

Standardised user charges

46. Table 9 compares the category factors assessed for 2001-02 in the 2003 Update with those for the 2004 Review draft assessment.

Table 9 LAW AND ORDER FEES AND FINES — CATEGORY FACTORS, 2004 REVIEW AND 2003 UPDATE

Category factor	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
2004 Review draft assessment	1.03327	1.03296	0.94304	0.97986	0.92688	0.99348	0.94339	0.99586
2003 Update	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698

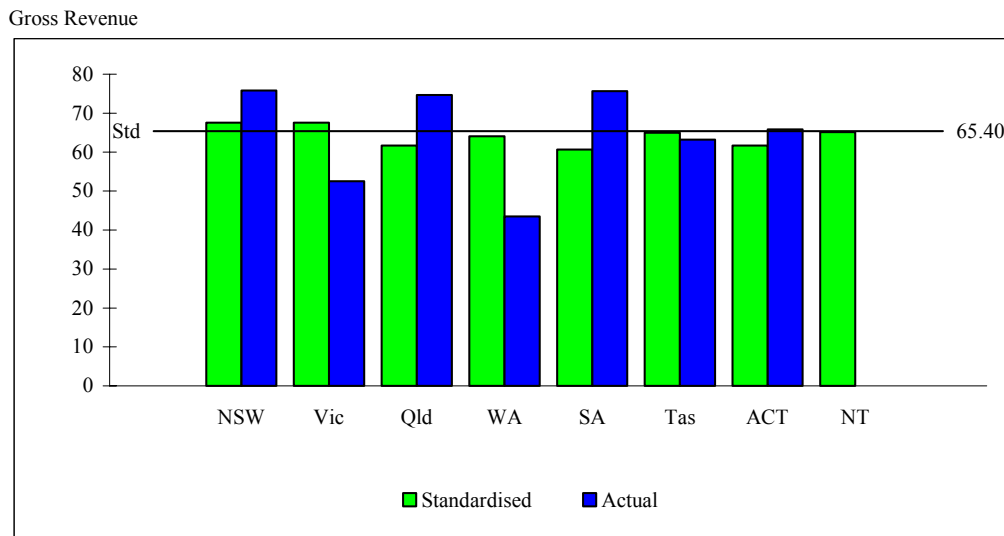
47. Table 10 shows the standardised user charges assessed for this category for 2001-02 in the draft assessment compared with that assessed in the 2003 Update.

Table 10 ACTUAL, STANDARD AND STANDARDISED USER CHARGES, 2001-02

	Standard	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Actual User charges (\$pc)									
2003 Update	47.89	52.08	45.92	52.78	35.44	47.82	32.85	61.64	0.00
2004 Review draft assessment	65.40	75.79	52.53	74.64	43.48	75.62	63.17	65.86	0.00
2003 Update - Standardised User charges									
\$'000		318 006	233 096	175 459	92 485	72 776	22 275	15 145	9 290
\$ per capita	47.89	47.89	48.01	47.80	48.21	47.92	47.07	46.94	46.46
2004 Review Draft Assessment - Standardised User charges									
\$'000		448 745	327 966	226 365	122 919	92 053	30 743	19 907	13 021
\$ per capita	65.40	67.57	67.55	61.67	64.08	60.62	64.97	61.70	65.13

48. Figure 2 shows the gross user charges per capita for 2001-02 in terms of standardised, estimated and gross standard user charges.

Figure 2 LAW AND ORDER FEES AND FINES — GROSS USER CHARGES PER CAPITA — STANDARDISED, ESTIMATED AND STANDARD, 2001-02



ANALYSIS

49. Table 11 shows the redistribution of grants resulting from the assessment in the 2003 Update and the Draft Assessment. It also shows the sources of change.

50. Compared with an equal per capita assessment, the draft assessment redistributed \$21 million away from New South Wales and Victoria to the other States, almost \$20 million more than in the 2003 Update.

51. The main reasons for the change in grants were changes to assessment methods and data, including:

- (i) changes to the component weights;
- (ii) a change to the assessment of revenue raising capacities (via the economic environment factor from the Administration of Justice expenses assessment), from an assessment based on ATO business data, to an assessment based on civil court lodgements; and
- (iii) changes in the category standards.

Table 11 EFFECT OF ASSESSMENT ON GRANT DISTRIBUTION — LAW AND ORDER FEES AND FINES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Contribution to 2003 Update relativities^(b)	0.0	-0.5	0.3	-0.6	0.0	0.4	0.3	0.3	1.2
Composition	0.0	-0.2	0.1	-0.3	0.0	0.1	0.1	0.1	0.5
Assessment	-8.5	-5.9	7.6	1.9	3.7	0.7	0.1	0.3	14.3
Interaction	-3.5	-2.3	3.1	0.8	1.5	0.3	0.0	0.1	5.9
Contribution to 2004 Review Draft Assessment relativities^(b)	-12.1	-9.0	11.1	1.8	5.2	1.6	0.5	0.7	21.0
Total Change	-12.0	-8.4	10.8	2.5	5.2	1.2	0.2	0.5	20.4

(a) Total redistribution.

(b) Assuming same pool and a constant population.