



# **COMMONWEALTH GRANTS COMMISSION**

**DRAFT ASSESSMENT PAPER CGC 2003/69**

## **LAND RIGHTS**

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.

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## INTRODUCTION

1. This paper presents the lands rights assessment for the 2004 Review.

## 1999 REVIEW METHOD

2. The land rights assessment recognised the additional and unique costs of providing services in the Northern Territory because of the operation of the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). Under the provisions of the Act, the Aboriginal Land Commissioner must report on the financial impact on the Northern Territory of successful land claims. The Northern Territory incurs costs in preparing submissions to the Commissioner and in challenging claims through the Federal and High Courts. Although there is a sunset clause in the legislation, it was expected that claims would proceed for many years.

3. For most categories with land rights expenses, the Commission assessed the Territory's land rights needs as being equal to its actual expenses.

4. For the Administration of Justice category, in which expenses on the co-ordination of the Territory's involvement in these processes fall, the Commission considered that some Territory expenses were avoidable. The Commission recognised that the Northern Territory had an obligation to protect the interests of the Territory from claims with the potential to influence income, land use policy or the economy but concluded that the extent to which the Northern Territory mounted legal challenges to land claims was in part a policy choice. Based on information provided during workplace discussions in the Northern Territory, the Commission judged the Northern Territory's standardised expenses in this category to be 80 per cent of its actual expenses.

5. The land rights factor was calculated by dividing the Australian population by the Northern Territory population. This produced the same result as dividing the Northern Territory per capita amount of expense by the Australian per capita (or standard) amount. Table 1 shows the factors used in the 2003 Update.

**Table 1** LAND RIGHTS FACTORS, 2003 UPDATE

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
All years	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.91725

6. Land rights expenses were treated as a separate component in eight categories. The land rights factor was applied in the component related to land rights in each.

7. The proportion of land rights related expenses in each category was estimated by dividing the estimated expenses on land rights in the affected category by the total expenses for that category.

8. Table 2 shows expenses on land rights in the Northern Territory in 1996-97 in each affected category and the calculation of the component weights. These proportions, calculated in the 1999 Review, were unchanged in subsequent updates.

**Table 2** EXPENDITURE ON LAND RIGHTS IN THE NORTHERN TERRITORY AND COMPONENT WEIGHTS — 1999 REVIEW

Category	Land rights expenditure (1996-97)	Category expenditure (1996-97)	Rounded weight
	\$'000	\$'000	%
Administration of Justice <sup>(a)</sup>	1 103	1 268 554	0.07
Concessions & Other Payments - Water Supply & Sewerage	254	515 030	0.05
National Parks and Wildlife Services	4 610	341 893	1.35
Aboriginal Community Services	109	141 227	0.08
Other General Public Services	463	1 487 652	0.03
Mining Fuel and Energy	615	237 881	0.26
Roads	470	2 288 228	0.02
Regulatory and Other Services	734	1 034 831	0.07

(a) Land rights expenses for this category were discounted by 20 per cent.

9. The grant share effect of this assessment in the 2003 Update is shown in Table 3.

**Table 3** GRANT SHARE EFFECTS OF THE LAND RIGHTS ASSESSMENT, 2003 UPDATE

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Land rights	-4.9	-3.6	-2.7	-1.4	-1.1	-0.3	-0.2	14.3	14.3

## 2004 REVIEW METHOD

10. **Preliminary proposal.** A special information collection was sent to States in late 2002 asking:

- (i) for updated information on costs; and
- (ii) whether there had been any significant changes in policy direction and/or legislation since the 1999 Review that could impact on the Commission's assessment.

11. Commission staff said, in the absence of any new issues concerning land rights, they proposed to recommend to the Commission that the current assessment be continued.

12. **State views.** States provided no comment on this assessment in their main or rejoinder submissions.

13. **Analysis.** The Northern Territory is assessed to have needs in this area because its costs are influenced by Commonwealth legislation. This legislation does not apply in other States. Although other States have their own lands rights legislation, it is not as pervasive as the Commonwealth legislation in the Northern Territory. It appears that most expenses to do with Indigenous land claims in other States are associated with administration of the Native Title Act. An assessment of these expenses has already been made through the Native Title assessment.

14. **Commission decision.** The Commission accepts that a conceptual basis exists for continuing to assess needs for the Northern Territory in relation to the Commonwealth's land rights legislation. The conceptual case is supported by evidence, which the Commission is satisfied provides a strong basis for an assessment. This evidence indicates that expenses on land rights have an impact on the Northern Territory's budget which the Commission considers to be material. The Commission has therefore decided to continue to assess needs for the Northern Territory in relation to land rights. It proposes to assess these needs using the same methods it used in the 1999 Review.

## UPDATING COMPONENT WEIGHTS

15. **Analysis.** In the 1999 Review, the land rights component weights were estimated as the proportion of land rights expenses in the affected category in 1996-97. These component weights were not changed in subsequent updates. The implication of this approach is that land rights expenses move proportionally with category expenses. If this were the case, the grant share effect of the land rights factor for the Northern Territory should be close to its actual expenses on land rights. This was not the case. In the 2003

Update the Northern Territory's actual expenses on land rights were \$8.36 million, whereas its grant increased by \$14.3 million as a result of the land rights assessment.

16. Total expenses in the categories with a land rights component have increased since the 1999 Review, whereas land rights expenses have been static. Land rights expenses in 1996-97 \$8.36 million, they are \$8.40 million in 2001-02. Commission staff propose to overcome this problem by updating the land rights component weights annually. We will ask the Northern Territory to provide lands rights expenses annually. This change would redistribute around \$6 million from the Northern Territory to the other States.

17. **Commission decision.** The Commission accepts that a conceptual case exists for updating the land rights component weights annually. The conceptual case is supported by data, which the Commission is satisfied are comparable and representative, and provide a strong basis for updating the weights. The Commission is satisfied that the strength of the conceptual case, and the indications provided by the data are sufficient to consider equalisation would be improved by updating these component weights annually. The evidence indicates that updating the weights will have a material impact on the assessment of the Northern Territory. The Commission has therefore decided to update the land rights component weights annually.

## PROPOSED METHOD AND RESULTS

18. The land rights factor will be calculated by dividing the Australian population by the Northern Territory population. Table 4 shows the land rights factors for the 2004 Review.

**Table 4** LAND RIGHTS FACTORS, 2004 REVIEW

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.58552
1998-99	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.02771
1999-00	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	97.58712
2000-01	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	97.45037
2001-02	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.02489

19. Table 5 shows the 1999 Review and proposed 2004 Review categories which will have land rights needs assessed in a separate component. It should be noted that the Regulatory and Other Services category has been discontinued in the 2004 Review. The land rights expenses that were allocated to this category have been relocated to the General Public Services and Mining, Fuel and Energy categories.

**Table 5** CATEGORIES WITH A LAND RIGHTS ASSESSMENT

1999 Review	2004 Review
Administration of Justice	Administration of Justice
COP – Water Supply and Sewerage	Water, Sanitation and Protection of the Environment
National Parks and Wildlife Services	National Parks and Wildlife Services
Aboriginal Community Services	Services to Indigenous Communities
Other General Public Services	General Public Services
Mining, Fuel and Energy	Mining, Fuel and Energy
Roads	Roads
Regulatory and Other Services	

20. Table 6 shows the land rights component weights calculated for the 2004 Review preliminary assessment. The land rights component weights were calculated by assessing the 2001-02 proportion of land rights expenditure in each category.

**Table 6** LAND RIGHTS COMPONENT WEIGHTS FOR CATEGORIES AFFECTED BY LAND RIGHTS DISABILITIES, 2004 REVIEW

Category	Land rights expenditure (2001-02)	Category expenditure (2001-02)	Expenditure proportion
	\$'000	\$'000	%
Administration of Justice <sup>(a)</sup>	857.6	1 758 019	0.05
Water, Sanitation and Protection of the Environment	212	800 873	0.03
National Parks and Wildlife Services	4711	490 928	0.96
Services to Indigenous Communities	98	176 767 351	0.06
General Public Services	807	5 765 890	0.01
Mining, Fuel and Energy	716	277 474	0.26
Roads	106	4 441 085	0.00

(a) Land rights expenses for this category were discounted by 20 per cent.

### UPDATEABILITY

21. The factor based on estimated resident population and the component weights will be updated annually.

## **SUMMARY OF COMMISSION DECISIONS**

22. The current methodology for assessing land rights factors will be retained. That is, the assessment will be based on population data. These factors will be updated in subsequent updates.

23. The current methodology for assessing land rights expenditure proportions (component weights) will be retained. That is, the assessment will be based on actual expenditure incurred by the Northern Territory using the actual per capita method. These proportions will be updated annually.