



# **COMMONWEALTH GRANTS COMMISSION**

**DISCUSSION PAPER CGC 2003/6**

## **LAW AND ORDER FEES AND FINES**

Prepared for the Commission's 2003 Conferences on Draft Assessments

**MAY 2003**

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## INTRODUCTION

1. This paper presents a draft assessment for the Law and Order Fees and Fines category for the 2004 Review. This was originally a 'no change' category. The purpose of this paper is to outline a proposed change in the assessment method for the 2004 Review and invite comment from the States.

## BACKGROUND

### *Description of the category*

2. 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*

3. Table 1 shows the standard user charges for the six years ended 2001-02. 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 — STANDARDS, 1996-97 TO 2001-02

	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02
\$pc	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

4. 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 indicates that, although the standard is relatively large, the redistributive impact of the assessment is small.

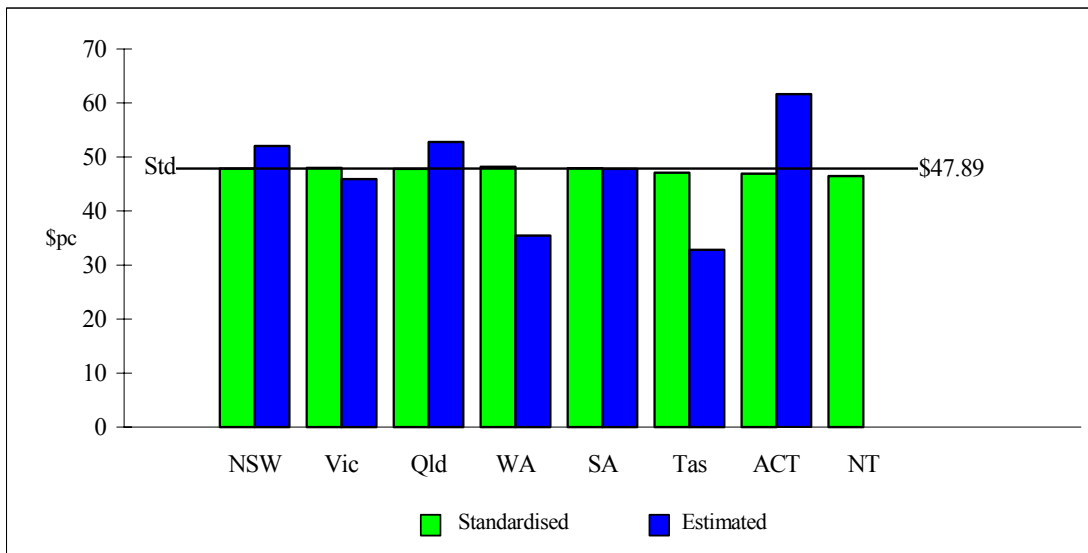
**Table 2** EFFECT OF ASSESSMENT ON GRANTS DISTRIBUTION — LAW AND ORDER FEES AND FINES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total <sup>(a)</sup>
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
<b>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.

5. 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 — REVENUE PER CAPITA — STANDARDISED, ESTIMATED AND STANDARD, 2001-02



***The 1999 Review assessment method***

6. ***Structure of the assessment.*** 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 in the 1999 Review on the basis of a five-year average of fees and fines raised by all States.

7. The assessment structure used in the 1999 Review is shown in Table 3.

**Table 3** 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		Equal per capita

8. **Fees component.** The court fees component was differentially assessed, with relative revenue raising capacity based on the economic environment factor assessed in the Administration of Justice expenditure 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.

9. 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.

10. **Fines component.** The court 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.

## ISSUES RAISED IN STATE SUBMISSIONS

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

### *State views*

12. New South Wales, Queensland, Tasmania and the Northern Territory supported the retention of the existing assessment method. The remaining States did not comment.

## ASSESSMENT METHOD FOR THE 2004 REVIEW

### *Assessment structure*

13. The Commission remains convinced that:

- (i) the capacity of a State to raise law and order fines is influenced by State policy settings and should be assessed EPC; and
- (ii) the capacity of a State to raise law and order fees is in part influenced by State policies. However, it also in part reflects the volume of potential civil actions — an influence which is beyond the control of States. As a result, the Commission considers that law and order fees should be differentially assessed. The Commission considers the quantum of court type fees which a State can generate is influenced, in part, by the size of the State's population, as well as the size and composition of the State's commercial and financial base. As these variables are not directly affected by State policies, we conclude that a conceptual case for differential assessment of States' capacities to raise law and order fees in the 2004 Review remains.

14. In the light of this conclusion and State comments, the Commission proposes to continue the existing assessment structure for Law and Order Fees and Fines by partitioning the category into two components — Fees and Fines. We propose to assess the Fees component differentially, and the Fines component by the equal per capita method.

15. Based on the average of law and order fees and fines raised by States for 1998-99, 1999-2000 and 2000-01, as reported in the GFS data<sup>1</sup>, the Commission proposes to change the size of the two components assessed in the 2004 Review. In particular:

- Fees represent 27 per cent of the category; and
- Fines represent 73 per cent of the category.

### ***Assessment of the fees component***

16. The Commission has considered three options for the assessment.

17. ***Option 1: Continuation of existing method.*** This option has the advantages that:

- (i) the States generally seem to accept it; and
- (ii) it is reasonably simple.

18. *Disadvantages* of this option include:

- (i) Updated data are not available in the required format. The Australian Taxation Office (ATO) has recently advised that, due to privacy regulations, it is not able to release data for small and large business categories when the counts are too low for a State. Staff analysis of ATO data confirms that the levels of aggregation in the latest data do not permit a continuation of the existing method. Accordingly, retention of the existing method would require repeated use of the 1998-99 dataset for the 2004 Review and subsequent updates. This is considered to be unsuitable.
- (ii) The method lacks face validity. It implies that the population of fee-paying litigants comprises the *entire* population (including children and socio-economically disadvantaged groups) and *all* businesses. That implication is unlikely to be correct, which means the drivers of the propensity to litigate (and incur fees) are poorly articulated.

19. Attachment A shows the calculation of the relative revenue raising capacity using the existing method of assessment.

20. ***Option 2: Revision of existing method.*** This option represents a simple revision of the existing method to address its data problems.

21. The availability of ATO data at a higher level of aggregation would require a change to the existing method of assessment, as the data needed to establish separate

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<sup>1</sup> Data contained in ETF 1146 'Fines', ETF 1120 'Sales of goods and services' and GPC 2320 'Law courts and legal services'.

weights for small and large businesses would no longer exist. Rather, only one weight could be estimated for application to all businesses, regardless of size.

22. Commission staff have received information from States on civil court fee structures and have determined:

- (i) there is considerable variability between States in civil court fee structures for individuals and companies; and
- (ii) there is a pattern in civil court fee structures whereby fees increase with complexity (and thus duration). This applies particularly to companies.

23. In the absence of data to the contrary and based on the judgment applied by the 1999 Review Commission, we think a weight of 2 for all companies and a weight of 1 for all individuals could be reasonable to use in calculating the relative revenue raising capacity. The weight for companies reflects the fact that small companies greatly outnumber large companies.

24. *Advantages* of this method include:

- (i) it requires only a small change to the existing method, which is generally accepted by States; and
- (ii) it is simple.

25. *Disadvantages* of this method include:

- (i) ATO data are not timely—the inherent lag in taxation returns means the most recent dataset available covers 1999-2000; and
- (ii) like Option 1, it lacks face validity.

26. Capacities derived using population and company count data for 1999-2000 are shown in Table 4.

**Table 4** FEES COMPONENT, CIVIL COURTS — RELATIVE REVENUE RAISING CAPACITIES, 1999-2000 — OPTION 2

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Population	6480287	4731313	3539318	1868229	1503669	472194	315396	195786	19106192
Companies	551296	428943	278085	168176	121651	29663	19934	8663	1606411
Total weighted entities	7582879	5589199	4095488	2204581	1746971	531520	355264	213112	22319014
Relative capacity	1.00170	1.01127	0.99057	1.01017	0.99456	0.96360	0.96426	0.93181	1
2003 Update capacity	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698	1

Source: ABS mean resident population; Australian Taxation Office data.

27. **Option 3: Alternative method.** This option is based on actual court lodgment data rather than the mean resident population and business taxation data used in the previous option.

28. In its annual *Report on Government Services*, the Productivity Commission provides information on many aspects of court administration. Among the many indicators of performance and workload, it is lodgments (or matters initiated in courts) that are a good reflection of the degree of *demand* for court services.

29. We have noted considerable variability between States in the civil court fee structures set by the States. We consider those variations reflect State policy decisions on civil court fee structures. As noted by the Productivity Commission: ‘In some jurisdictions, court fees (which are part of income) are set by government and not by court administrators’ (Report on Government Services 2003, p.6.10). Because of the difficulty in determining the standard policy on the level of fees, the Commission proposes not to subdivide lodgment data to isolate any categories of lodgments that may attract higher fees.

30. Capacities derived using civil court lodgment data for 2001-02 are shown in Table 5.

**Table 5** FEES COMPONENT, CIVIL COURTS — RELATIVE REVENUE RAISING CAPACITIES, 2001-02 — OPTION 3

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total <sup>(a)</sup>
Number of lodgments	261359	190874	101160	62101	38647	16161	8908	6891	686101
MRP	6640909	4854989	3670473	1918199	1518642	473177	322671	199939	19598999
Lodgments per capita	0.03936	0.03932	0.02756	0.03237	0.02545	0.03415	0.02761	0.03447	0.03501
Relative capacity	1.12423	1.12306	0.78729	0.92481	0.72695	0.97564	0.78862	0.98453	1.00000

Source: Productivity Commission (2003), *Report on Government Services 2001-02*, Table 6A.2.

31. *Advantages* of this method include:

- (i) It has face validity as it is based on actual court lodgments. Factors appear to be in the expected direction, with larger factors in the more populous States where more companies and head offices of national companies are located.
- (ii) It is simple and transparent.
- (iii) Through its use of stringent counting rules and detailed adjustments, for differences in the responsibilities of courts, the Productivity Commission has sought as far as possible to make the lodgment data comparable between States.
- (iv) Data are timely — the most recent dataset available covers 2001-02.
- (v) Data may be updated annually.

32. *Disadvantages* of this method include:

- (i) The number of lodgments could be affected by State policies (for example, States' civil court fee structures may influence the propensity to progress a matter through the court system). Staff have no information to check this.
- (ii) There are some apparent idiosyncrasies in the lodgment data (for example, Queensland's per capita lodgment rate appears to be lower than expected when compared with other States).

**Results**

33. Table 6 shows that Option 2 produces little change in the redistribution compared with the existing method. Option 3 produces a larger amount of redistribution compared with the 2003 Update result. However, we expect to use lodgment data as the

basis of the economic environment factor in the Administration of Justice category. It is anticipated that such a change will affect relativities in the opposite direction.

**Table 6** EFFECT OF ASSESSMENT ON GRANTS DISTRIBUTION — LAW AND ORDER FEES AND FINES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total <sup>(a)</sup>
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
<b>Option 1:</b>									
Contribution to 2003 Update relativities <sup>(b)</sup>	0.0	-0.5	0.3	-0.6	0.0	0.3	0.3	0.3	1.2
<b>Option 2:</b>									
Estimated contribution to 2004 Review relativities <sup>(b)</sup>	0.2	0.0	-0.1	-0.4	-0.1	0.1	0.1	0.1	0.6
<b>Option 3:</b>									
Estimated contribution to 2004 Review relativities <sup>(b)</sup>	-7.5	-5.6	6.9	1.8	3.4	0.6	0.0	0.2	13.1

(a) Total redistribution.

(b) All calculations use the same pool of GST revenue and a constant December 2003 population.

### ***Reality check***

34. With Option 3, the relative revenue raising capacities appear to be in the expected direction, resulting in a redistribution of grant shares away from the larger States due to their greater capacity to raise law and order fees and fines. This is because more lodgments per capita occur in their courts than the Australian average.

### ***Updateability***

35. For Option 3, Productivity Commission data are published annually.

### ***Simplification***

36. Option 3 represents a simplification of the existing method.

## **SUMMARY**

37. While there are some reservations regarding lodgment data in Option 3, on balance it is considered to be a better option than using the comparatively crude data of Option 2.

38. For reasons of data availability, increased validity, ease of updateability and improved simplicity, staff propose to recommend to the Commission that actual civil court lodgment data (Option 3) be used in the 2004 Review to assess State capacities to raise revenue from Law and Order Fees. We seek the opinions of States on the options for assessment and the proposed approach.

39. A similar approach will also be used in the Administration of Justice category and will serve to improve the assessment for that category.

40. We ask States to comment on whether differences in State policies have a material influence on the relative number of civil court lodgments. For example, would the introduction of ceiling and floor levels reduce the number of claims? Have any major differences between States, in the range of other organisations that would handle matters otherwise dealt with by civil courts, been omitted from the Productivity Commission data? Is there any evidence that interstate differences in fee structures affect the relative number of lodgments per capita and if so, what is the size of the effect?)

41. Staff propose to recommend to the Commission that it continue the assessment of Law and Order Fines by the equal per capita method.

**RELATIVE REVENUE RAISING CAPACITY UNDER THE  
EXISTING METHOD OF ASSESSMENT**

1. The relative revenue raising capacity is calculated as follows:
- (i) the annual number of individuals (based on mean resident population), and small and large business entities excluding individuals (based on the publication *Taxation Statistics*) from 1996-97 to 1998-99 (1998-99 data were the latest available) were tabulated (see Table A-1);

**Table A-1** NUMBER OF INDIVIDUALS, SMALL BUSINESSES AND LARGE BUSINESSES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
1996-97									
Individuals	6 248 630	4 583 262	3 369 399	1 782 081	1 478 000	474 406	309 283	184 706	18 429 767
Small businesses	467 308	358 637	257 692	155 001	105 090	28 424	16 213	8 212	1 396 577
Large businesses	14 261	6 662	4 476	2 866	1 622	316	256	150	30 609
1997-98									
Individuals	6 323 870	4 626 331	3 426 313	1 811 500	1 486 382	473 205	309 822	189 141	18 646 564
Small businesses	477 438	368 908	261 281	157 967	109 125	28 380	16 766	8 136	1 428 001
Large businesses	16 138	7 221	5 008	2 915	1 660	317	489	123	33 871
1998-99									
Individuals	6 401 942	4 676 946	3 481 500	1 841 812	1 495 171	472 354	312 184	192 542	18 874 451
Small businesses	504 189	393 035	277 959	164 275	123 625	29 363	18 279	8 834	1 519 559
Large businesses	13 786	6 925	3 740	2 790	1 730	316	213	158	29 658

Source: Taxation Statistics (Australian Taxation Office).

- (ii) the total weighted number of entities for years were calculated by applying the use and cost weights of 1 for individuals, 2 for small businesses and 6 for large businesses (see Table A-2);

**Table A-2** TOTAL WEIGHTED NUMBER OF ENTITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
1996-97	7 268 812	5 340 508	3 911 639	2 109 279	1 697 912	533 150	343 245	202 030	21 406 575
1997-98	7 375 574	5 407 473	3 978 923	2 144 924	1 714 592	531 867	346 288	206 151	21 705 792
1998-99	7 493 036	5 504 566	4 059 858	2 187 102	1 752 801	532 976	350 020	211 158	22 091 517

(iii) the total weighted number of entities was divided by the total population for each State and Australia (see Table A-3); and

**Table A-3** WEIGHTED NUMBER OF ENTITIES PER CAPITA

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
1996-97	1.16326	1.16522	1.16093	1.18360	1.14879	1.12383	1.10981	1.09379	1.16152
1997-98	1.16631	1.16885	1.16128	1.18406	1.15353	1.12397	1.11770	1.08993	1.16406
1998-99	1.17043	1.17696	1.16612	1.18747	1.17231	1.12834	1.12120	1.09669	1.17045

(iv) the State per capita value was divided by the Australian per capita value to calculate the relative revenue raising capacity.

2. The relative revenue raising capacities are shown in Table A-4. The factors for the last three years are the same as for 1998-99 because the 1998-99 data are the latest data available.

**Table A-4** COURT FEES COMPONENT — RELATIVE REVENUE RAISING CAPACITY

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	1.00193	1.00411	0.99761	1.01718	0.99095	0.96555	0.96017	0.93632
1998-99	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698
1999-2000	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698
2000-01	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698
2001-02	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698