



# **COMMONWEALTH GRANTS COMMISSION**

**DRAFT ASSESSMENT PAPER CGC 2003/38**

## **ADMINISTRATION OF JUSTICE**

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 a draft assessment for the Administration of Justice category for the 2004 Review. It builds on the staff proposals set out in *Discussion Paper 2002/36, Law and Order* and State comments provided at the 2002 Conferences and in the 2003 Rejoinder Submissions.

2. The proposed assessment structure for this category in the 2004 Review is shown in Table 21 on page 28.

## THE 1999 REVIEW ASSESSMENT

### *Description of the category*

3. In the 1999 Review, the Administration of Justice category comprised expenses on administration, support, operation and review of law courts, the judicial system and legal aid programs. More specifically, the category included expenses on:

- (i) legal representation and advice on behalf of the government and others;
- (ii) costs of crown prosecutions;
- (iii) trusteeship services; and
- (iv) law reform and registration of legal titles to property.

4. The category excluded expenses on:

- (i) the registration of births, deaths and marriages;
- (ii) regulation of the sale and supply of liquor;
- (iii) industrial law;
- (iv) prisons and corrective services; and
- (v) tribunals and appeals boards classified to other categories.

5. The category included expenses funded by the SPP paid for State legal aid matters.

### *Importance of current assessment*

6. Table 1 shows the gross standard expenses and user charges for the six years ended 2001-02. In 2001-02, this category represented 1.91 per cent of total gross standard expenses.

**Table 1** ADMINISTRATION OF JUSTICE — GROSS STANDARD EXPENSES AND USER CHARGES, 1996-97 TO 2001-02, 2003 UPDATE

	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02
Gross standard expenses (\$pc)	68.83	81.86	77.13	81.46	88.96	95.62
% of total gross standard expenses	1.87	2.12	1.69	1.76	1.83	1.91
Gross standard user charges (\$pc)	5.50	17.06	13.43	14.07	14.43	15.04
% of total gross standard expenses	7.9	20.8	17.4	17.3	16.2	15.7

7. Compared to an equal per capita assessment, the 2003 Update Administration of Justice assessment redistributed \$87.8 million away from New South Wales, Victoria and South Australia to the other States.

8. Table 2 shows the redistribution of grants resulting from the assessment in the 2003 Update.

**Table 2** EFFECT OF ASSESSMENT ON GRANT DISTRIBUTION — ADMINISTRATION OF JUSTICE, 2003 UPDATE

	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<sup>(b)</sup></b>	-29.6	-51.7	9.6	19.1	-6.6	6.0	8.9	44.2	87.8

(a) Total redistribution.

(b) Assuming same pool and a constant population.

9. The socio-demographic composition factor in this category had the largest impact on State grant shares of all factors assessed. Compared with an equal per capita assessment, the 2003 Update socio-demographic composition assessment redistributed about \$60.2 million away from New South Wales, Victoria, South Australia and the ACT to the other States.

### *Expenses assessment*

10. In the 1999 Review, the Administration of Justice assessment was undertaken in seven components — scale-affected expenses, criminal courts, civil courts, other services, isolation, land rights and native title administration. The structure used is summarised in Table 3.

**Table 3** ADMINISTRATION OF JUSTICE ASSESSMENT STRUCTURE, 1999 REVIEW

Expenditure component	Component weight	Factors	Basis of calculation
	%		
Scale-affected expenditure	5.37	Input costs	General method with weights of 80% for wages, 2% for accommodation and 1% for electricity.
Criminal courts	52.51	Administrative scale	General method.
		Dispersion	General method.
		Input costs	General method with weights of 60% for wages, 2% for accommodation and 1% for electricity.
Civil courts	35.00	Socio-demographic composition	Indigenous and non-Indigenous age-sex use weights applied to population. Cost weights applied to remote Indigenous people (1.1) and those with low English fluency (1.5). A cost weight of 2 applied for higher court appearances. Adjustment was made for court appearances of Commonwealth offenders.
		Cross-border	General method.
		Dispersion	General method.
		Economic environment	General population (weight of 1), small businesses (weight of 2) and large businesses (weight of 6).
Other services	6.00	Input costs	General method with weights of 60% for wages, 2% for accommodation and 1% for electricity.
		Cross-border	General method.
		Dispersion	General method.
Isolation	0.41	Isolation	General method.
National capital	0.01	National capital	A national capital allowance of \$200 000 a year was assessed.
Land rights	0.07	Land rights	The additional costs in the Northern Territory arising from the Commonwealth <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> discounted by 20%.
Native title administration	0.63	Native title administration	The costs associated with the administration of <i>Commonwealth Native Title Act 1993</i> (NTA).

### *User charges assessment*

11. Administration of Justice user charges were assessed by the equal per capita method.

## PROPOSED CATEGORY DEFINITION AND ASSESSMENT STRUCTURE 2004 REVIEW

### *Category scope and structure*

12. **1999 Review.** The assessment structure for the 1999 Review is set out in Table 3.

13. **Preliminary State views.** States suggested that the assessment structure for Administration of Justice and the disability factors assessed were generally well-identified. The ACT proposed that the national capital assessment should be removed from the category structure because it had introduced new criminal compensation legislation making the assessment of this component unnecessary.

14. **Staff proposals.** Based on research and States' submissions, in *Discussion Paper 2002/36, Law and Order*, staff proposed that the 1999 Review assessment category definition and assessment structure be retained, with one adjustment. The national capital component should be deleted from the assessment because the ACT had introduced new criminal compensation legislation.

15. **Further State views.** States were generally happy with the discussion paper proposals.

16. **Commission decisions.** The Commission agreed with the ACT that the introduction of new criminal compensation legislation in the ACT had removed the justification for the assessment of a national capital allowance (\$200 000 was assessed in the 1999 Review) in this category. Therefore, the Commission has decided to remove this component from the category assessment structure for the 2004 Review.

17. Because the SPP for legal aid is now paid for Commonwealth matters only, it will not be included in the category.

18. Other than these changes, the scope and structure of the Administration of Justice category for the 2004 Review is the same as that defined in the 1999 Review.

### *Component weights*

19. **1999 Review.** The size of the component weights for isolation and administrative scale were estimated using the general methods for the 1999 Review. The size of the component weights for land rights, native title, and national capital allowance were estimated by dividing the apportioning expenditure on these functions according to total category expenditure.

20. The other services component included expenditure on trusteeship services, law reform, and registration of legal titles to property. The size of the component weights for other services was estimated at 6.0 per cent of States' budget data.

21. The component weights for the criminal and civil courts components were set at 60 per cent and 40 per cent respectively of the remaining expenditure.

22. **Staff proposals.** In the discussion paper, staff proposed to review the component weights.

23. **Further State views.** No State objected to the review of component weights.

24. **Commission decisions.** The Commission reviewed all component weights for the Administration of Justice category.

25. The size of the component weights for the fixed costs, isolation, land rights and native title (administration and compensation) components were calculated according to the general methods for the 2004 Review. In the absence of information to the contrary, the weight for the other services component, which includes expenses on trusteeship services, law reform, and resignation of legal titles to property, was maintained at the 1999 Review level of 6 per cent.

26. For the 1999 Review, the size of the criminal courts and civil courts component weights were set at 60 per cent and 40 per cent of the balance of the category expenses respectively, after the other components had been determined. In the absence of data to the contrary, the Commission decided to adopt the 60/40 split used in the 1999 Review for these two components.

27. The Commission's decisions for the category are summarised in Table 4.

**Table 4** COMMISSION DECISIONS — ADMINISTRATION OF JUSTICE  
CATEGORY DEFINITION, ASSESSMENT STRUCTURE AND  
COMPONENT WEIGHTS

Decisions	Reason
<b>Definition.</b> Changed from 1999 Review to exclude the legal aid SPP.	This category remains an important State function.
<b>Treatment of SPPs:</b>  No SPPs are included in this category.	  The legal aid SPP has been excluded because it is now paid for Commonwealth matters only.
<b>Assessment structure and component weights:</b> <sup>(a)</sup>	
<ul style="list-style-type: none"> <li>• Fixed costs: 2.28%</li> <li>• Criminal courts: 54.64%</li> <li>• Civil courts: 36.42%</li> <li>• Other services: 6.00%</li> <li>• Isolation: 0.20%</li> <li>• Land rights: 0.05%</li> <li>• Native title (administration and compensation): 0.41%</li> </ul>	<p>The Commission decided to subdivide this category into these components because evidence available from States in their submissions and ABS Government Finance Statistics suggested that these were the most important groups of Administration of Justice services provided.</p> <p>The component weights for the fixed costs, isolation, land rights and native title components were calculated by the 2004 Review general methods.</p> <p>The component weight for the other services component was maintained at the 1999 Review level.</p> <p>The component weights for the criminal courts and civil courts components were based on a 60/40 per cent split of the balance of total category expenses after the other component weights had been determined.</p>

(a) Component weights apply to 2001-02.

## FIXED COSTS COMPONENT

28. The Commission has decided to assess input costs and administrative scale factors for the fixed costs component.

### *Administrative scale — fixed costs component*

29. **1999 Review.** The administrative scale factor was assessed to account for differences in per capita costs of providing central office functions and whole of State services. Scale-affected expenses for this category were assessed as \$8 million, of which \$4 million was considered as fixed cost and \$4 million as variable cost. The scale-affected expenses component represented 5.37 per cent of expenses in this category.

30. **2004 Review.** *Draft Assessment Paper CGC 2003/60 Administrative Scale* discusses the issues raised by the States regarding the assessment of this factor. The paper sets out the Commission's decisions on the general method of assessment adopted for the

2004 Review and on the size of the fixed costs component in each category. The States did not raise issues specific to this category.

31. The Commission has decided that administrative scale will be assessed for this category to recognise the unavoidable costs each State would incur to have the policy and administrative infrastructure necessary to provide the service regardless of the size of the task.

32. The administrative scale factors for this category, shown in Table 5, have been calculated using the 2004 Review general method. Fixed costs for this category have been estimated to be \$5 million per State, which represents 2.28 per cent of the category standard.

**Table 5** ADMINISTRATIVE SCALE FACTORS — FIXED COSTS COMPONENT

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	0.36858	0.50382	0.68027	1.28668	1.56812	4.92560	7.52310	12.32319
1998-99	0.36853	0.50445	0.67767	1.28097	1.57795	4.99478	7.55742	12.25346
1999-2000	0.36854	0.50478	0.67478	1.27836	1.58830	5.05782	7.57230	12.19839
2000-01	0.36846	0.50489	0.67161	1.27768	1.60144	5.12202	7.57722	12.18130
2001-02	0.36891	0.50461	0.66745	1.27717	1.61320	5.17750	7.59249	12.25311

33. The factor based on estimated resident population and the component weight will be updated annually.

#### ***Input costs — fixed costs component***

34. **1999 Review.** The input costs factor was assessed to recognise differences between States in per capita costs of labour, office accommodation and electricity. A separate factor was calculated for each of those inputs. For the scale-affected costs component, those factors were applied to the following proportions of standard expenses:

- (i) wages and salaries 80 per cent;
- (ii) accommodation 2 per cent; and
- (iii) electricity 1 per cent.

35. **2004 Review.** *Discussion Paper CGC 2003/04 Input Costs* discusses the issues raised by the States regarding the assessment of wages and salaries costs. The paper sets out the Commission's proposals for the general method of assessment to be adopted for the 2004 Review and on the size of the standard expense proportions in each category for wages and salaries. *Draft Assessment Paper CGC 2003/79 Input Costs — Electricity and Accommodation* discusses the issues raised by the States regarding the assessment of input costs relating to accommodation and electricity. The paper sets out the Commission's

decisions on the general method of assessment to be adopted for the 2004 Review and on the size of the standard expense proportions in each category for accommodation costs and electricity costs. The States did not raise issues specific to this category.

36. The Commission considered that the prices of labour, accommodation and electricity used in providing head office type services differ across States for reasons beyond the control of individual States. We have therefore decided that input costs will be assessed for this component.

37. The input costs factors for the fixed cost component of this category, shown in Table 6, have been calculated according to the 2004 Review general methods. The standard expense proportions applied were 80 per cent for wages and salaries, 2 per cent for accommodation and 1 per cent for electricity.

**Table 6** INPUT COSTS FACTORS — FIXED COSTS COMPONENT

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	1.03086	0.98776	0.98243	0.98229	0.97405	0.93225	1.00817	1.11439
1998-99	1.03267	0.98876	0.98050	0.97883	0.97213	0.92981	1.01243	1.10979
1999-2000	1.03546	0.98791	0.97763	0.98082	0.96857	0.92317	1.01680	1.10513
2000-01	1.03603	0.98930	0.97573	0.98076	0.96738	0.92031	1.01603	1.10244
2001-02	1.03498	0.99044	0.97446	0.98186	0.97135	0.92001	1.01306	1.09897

38. The factors will be updated annually. The proportions represented by wages and salaries, accommodation and electricity will not be re-examined until the next review.

## CRIMINAL COURTS COMPONENT

39. The Commission has decided to assess dispersion, input costs, cross-border and socio-demographic composition for the criminal courts component.

40. *State and Territory criminal court systems.* All State and Territory magistrates' courts deal with criminal matters that can be decided without a jury and committal proceedings. All supreme courts have jurisdiction over serious criminal matters such as murder, treason and certain drug offences, but significant differences exist across States. For example, Tasmania, the ACT and the Northern Territory do not operate district/county courts. The supreme courts in these States generally exercise a jurisdiction equal to both the supreme and district/county courts in other States. The Commission has therefore included data for supreme and district/county courts in higher courts data used for the criminal courts assessment.

**Dispersion — criminal courts component**

41. **1999 Review.** The dispersion factor was assessed to account for differences in per capita costs of providing services arising from differences between States in the spread of their population. The factor reflects the effects of population dispersion on State expenses associated with telecommunication, freight, travel and staffing on-costs.

42. There were seven indexes within the dispersion factor, each reflecting the effect of interstate differences in population dispersion on a separate type of dispersion-affected cost. The indexes were weighted by the proportions of standard expenses affected by each type of dispersion-affected cost and combined to form the overall dispersion factor. The proportions of standard expenses estimated for this component are shown in Table 7.

**Table 7** COST WEIGHTS FOR DISPERSION, 1999 REVIEW

Telephone	Freight	Air Travel	Road Travel		Remote Removals	Locality Allowances
			Inter Regional	Local		
0.0059	0.0008	0.0012	0.0107	0.0057	0.0000	0.0004

Source: 2003 Update Working Papers.

43. **2004 Review.** *Draft Assessment Paper CGC 2003/63 Dispersion* discusses the issues raised by the States regarding the assessment of the dispersion factor. The paper sets out the Commission’s decisions on the general method of assessment adopted for the 2004 Review and on the size of the standard expense proportions estimated for each of the nine elements of dispersion-affected expenses. The States did not raise issues specific to this category.

44. The Commission noted that the expenses incurred in providing criminal courts include costs that are affected by population dispersal. We have therefore decided that a dispersion disability will be assessed.

45. The dispersion factors for criminal courts have been calculated according to the 2004 Review general method. There were nine indexes within the dispersion factor for the 2004 Review. Table 8 shows the proportions of standard expenses estimated for each of the nine elements of dispersion affected expenses for this component.

**Table 8** COST WEIGHTS FOR DISPERSION, CRIMINAL COURTS COMPONENT

Tele-communications		Air Travel	Road Travel		Repairs and Maintenance	Remote Removals	Locality Allowances	Repair Technology	Training
Voice	Broadband		Inter Regional	Local					
0.008	0.002	0.003	0.002	0.005	0.000	0.000	0.001	0.002	0.002

46. Table 9 shows the dispersion factors assessed for the criminal courts component for the 2004 Review.

**Table 9** DISPERSION FACTORS — CRIMINAL COURTS COMPONENT

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	0.99900	0.99447	1.00690	1.00704	0.99442	0.99503	0.98202	1.06217
1998-99	0.99898	0.99445	1.00688	1.00702	0.99440	0.99501	0.98200	1.06215
1999-2000	0.99896	0.99443	1.00687	1.00700	0.99438	0.99499	0.98198	1.06213
2000-01	0.99895	0.99442	1.00685	1.00699	0.99437	0.99498	0.98197	1.06212
2001-02	0.99894	0.99441	1.00684	1.00698	0.99436	0.99497	0.98196	1.06211

47. Neither the factor nor the dispersion costs weights will be updated before the next review.

48. The dispersion disabilities shown in Table 9 were also applied in the civil courts and other services components within this category.

***Input costs — criminal courts component***

49. **1999 Review.** The following standard expense proportions were applied to each of the factors assessed for this component:

- (i) wages and salaries                      60 per cent;
- (ii) accommodation                         2 per cent; and
- (iii) electricity                                1 per cent.

50. **2004 Review.** The input costs factors for the criminal courts component of this category, shown in Table 10, have been calculated according to the general method outlined in *Discussion Paper CGC 2003/04 Input Costs* and in *Draft Assessment Paper CGC 2003/79 Input Costs — Electricity and Accommodation*. The standard expense proportions applied were 60 per cent for wages and salaries, 2 per cent for accommodation and 1 per cent for electricity.

**Table 10** INPUT COSTS FACTORS — CRIMINAL COURTS COMPONENT

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	1.02347	0.99051	0.98643	0.98734	0.98043	0.94629	1.00588	1.09164
1998-99	1.02483	0.99126	0.98499	0.98475	0.97899	0.94446	1.00907	1.08820
1999-2000	1.02692	0.99063	0.98283	0.98624	0.97632	0.93948	1.01235	1.08470
2000-01	1.02735	0.99167	0.98141	0.98620	0.97543	0.93734	1.01177	1.08268
2001-02	1.02656	0.99252	0.98046	0.98702	0.97840	0.93711	1.00954	1.08008

51. The input cost disabilities shown in Table 10 were also applied in the civil courts component and the other services component of this category.

#### ***Cross-border — criminal courts component***

52. **Background.** The cross-border phenomenon occurs because some residents of New South Wales travel across the border into the ACT and use its court services. At the same time, some ACT residents travel across the border into New South Wales and use its court services. If the incoming and outgoing populations were exactly the same size, the net effect would be zero and both States would incur no additional service delivery costs. However, when the incoming and outgoing populations are different sizes, the State that has to service more incoming people than it has outgoing people incurs additional service delivery costs. In undertaking cross-border assessments, it is the net cross-border population that is of interest.

53. **1999 Review.** In the 1999 Review, the cross-border factor was assessed in the criminal courts component to compensate the ACT for the additional costs it incurred in providing court services to New South Wales residents. The cross-border factor was based on 50 per cent of the population aged 10 and over in Queanbeyan, Yass, Yarrowlumla and Gunning Local Government Areas (LGAs) and 20 per cent of the population aged 10 and over in the Bega Valley, Bombala, Boorowa, Cooma-Monaro, Crookwell, Eurobodalla, Goulburn, Harden, Mulwaree, Snowy River, Tallaganda and Young LGAs.

54. **State views.** No state objected to the cross-border assessment.

55. **Commission decision.** There is a conceptual case for assessing cross-border influences on demand for criminal courts services to compensate the ACT for the additional costs it incurs in providing services to New South Wales residents. Given the support for the general assessment method from the ACT and the lack of comment from other States, the Commission decided to use the 2004 Review general method to assess the impact of cross-border populations. *Draft Assessment Paper CGC 2003/68 Cross-border Factors* sets out details of the cross-border assessment for the 2004 Review and Commission decisions on that assessment. Table 11 summarises the Commission's decision.

**Table 11** COMMISSION DECISION — CROSS-BORDER FACTORS, CRIMINAL COURTS COMPONENT

Decision	Reason
A cross-border factor was assessed for the criminal courts component using the 2004 Review general method.	Gives the ACT the capacity to provide the average level of services by assessing the additional costs that it incurs in providing criminal court services to New South Wales residents.

56. **Method and results.** The cross-border factors for this component, shown in Table 12, have been calculated according to the 2004 Review general method outlined in *Draft Assessment Paper CGC 2003/68 Cross-border Factors*. The cross-border factors shown in Table 12 have also been applied in the civil courts component.

**Table 12** CRIMINAL COURTS COMPONENT — CROSS-BORDER FACTORS

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
All years	0.99127	1.00000	1.00000	1.00000	1.00000	1.00000	1.17880	1.00000

57. **Updateability.** Annual estimates of LGA resident populations are available to update the cross-border factors.

***Socio-demographic composition — criminal courts component***

58. The socio-demographic composition factor for the criminal courts component is one of the two largest drivers in this assessment.

59. **1999 Review.** The socio-demographic factor was assessed in the criminal courts component to account for differences between States in the costs of service delivery due to differences in the characteristics of populations subject to criminal courts proceedings. It was calculated as a joint factor incorporating cost weights for differences in use and unit cost — by age, sex, Indigeneity (including the additional costs of providing services to Indigenous people in remote areas), low English fluency, higher courts and Commonwealth offenders.

60. **Preliminary State views.** New South Wales argued that the processing time for criminal cases, from lodgement to finalisation in the higher courts, was generally longer in New South Wales than in other States because cases tend to be more complex in Sydney.

61. Victoria argued that the information used to determine standard use pattern for criminal courts should be more representative than that used in the 1999 Review. It also argued that estimated standard use rates should be adjusted by levels of total use in each State before applying cost and use weights. It also submitted that the data used to determine

the number of Commonwealth offenders in State courts<sup>1</sup> be reviewed. Victoria also questioned the basis of the current cost weight of 1.1 applied to Indigenous populations in remote areas and argued that the same weight be applied to other population groups, such as those distinguished by cultural differences.

62. Queensland and the Northern Territory contended that the current weight for remote Indigenous people be raised from 1.1 to 2. While Northern Territory supported the adjustment for Commonwealth offenders, it suggested a weight of 2 be applied because of the need to process Commonwealth offenders in higher courts.

63. **Staff proposals. Population profiles.** In the discussion paper, staff proposed to obtain a more comprehensive coverage of criminal court population profiles for the 2004 Review, so that:

- (i) standard use weights by age and sex for non-Indigenous people could be based on more than four States' data (in the 1999 Review, these use weights were based on data provided by New South Wales, Queensland, Western Australia and the Northern Territory); and
- (ii) standard use weights by age, sex and Indigeneity for Indigenous people (in the 1999 Review, these use weights were based on data provided by Western Australia and the Northern Territory).

Staff stated that if court profile data were forthcoming by age, sex and Indigeneity, such data would be incorporated into the assessment.

64. In replying to Victoria's argument that standard use rates should be adjusted for total use before applying the cost and use weights to specific population segments, staff argued that no adjustment for total use would be required. This was because the higher lodgement rates in Victoria, Queensland, Western Australia and South Australia were already reflected in the average use rate, when the higher and lower court use weights for the 1999 Review were calculated. To do anything else would compromise the policy neutrality of the assessment.

65. **Remote Indigenous cost weight.** Staff proposed that a cost weight of 1.1 for remote Indigenous populations (to reflect the stronger cultural characteristics of remote Indigenous people compared with more urbanised Indigenous people) be added to a cost weight of 1.5 for all people who had low fluency in English. The proposed combined weight for remote Indigenous people with low English fluency was specifically intended to account for the longer court processing times, the cost of interpreters and other costs associated with providing services to remote Indigenous people. Identifiable expenditure did not support the weight, but evidence presented by Queensland and the Northern Territory relating to additional court time did. The proposed weight for the 2004 Review was thus based on judgement and evidence presented by Queensland and the Northern Territory.

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<sup>1</sup> That is, criminal prosecutions conducted in the State judicial system and relate to offences against Commonwealth laws.

66. *Cultural and linguistic diversity.* Staff requested data from States which might assist in determining an appropriate socio-demographic composition weight for culturally and linguistically diverse populations, or subsets of those populations. The discussion paper indicated that the nature of diversionary programs, and the degree and range of interactions with the Indigenous community representatives or organisations were available<sup>2</sup>. It also indicated that there is much less evidence of equivalent programs for different cultural and linguistic groups. Staff argued that data would be required for the Commission to make an informed judgment about any disabilities associated with other culturally and linguistically diverse groups who access criminal court services.

67. *Commonwealth offenders.* In the discussion paper, staff indicated that, for the 1999 Review, only criminal prosecutions were included when determining the number of Commonwealth offenders in State courts, on the understanding that the Commonwealth Director of Public Prosecutions (DPP) conducted all such proceedings. Staff investigated this issue, and found that the DPP does not conduct all prosecutions on behalf of the Commonwealth. It was therefore proposed that the assessment be refined to take into account Commonwealth prosecutions data from other agencies that conduct prosecutions on behalf of the Commonwealth, where data were available.

68. The discussion paper also indicated that approximately 5 per cent of all prisoners on 30 June 2001 were held under one or more Commonwealth warrants. Of these 42 per cent had a serious offence/charge relating to illicit drug offences<sup>3</sup>. These data supported the Northern Territory's argument that many Commonwealth offenders need to be processed in higher courts. Staff therefore proposed that the weight for Commonwealth offenders be increased.

69. *Further State views.* Victoria argued that the appropriateness of using a data set based on a very limited sample for criminal courts usage, to determine the number of criminal prosecutions conducted for offences against the Commonwealth, should be reviewed. It argued again that the additional weight for remote Indigenous populations (because of cultural differences) should be applied to other populations segments with significant cultural differences. It also repeated its argument that standard usage rates should be adjusted for total use before applying the cost and usage weights for specific population segments.

70. Victoria contended that the cost weightings for the dispersion assessment should be reduced to account for the impact and take-up of information technology with respect to justice services. It also argued that an urban influences weight be included in the courts assessment to reflect the additional demand in urban areas.

71. New South Wales, Queensland and the Northern Territory submitted that the weight to be applied to remote Indigenous people be increased.

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<sup>2</sup> For example, establishing the Indigenous conflict management unit (New South Wales), Koori Court (Victoria), and more generally support mechanisms for those appearing in court for the first time, and in recognition of Indigenous customary laws.

<sup>3</sup> Australian Bureau of Statistics, *Prisoners in Australia*, No 4517.0, March 2002, p 8.

72. The Northern Territory proposed that an assessment be made of an economic environment factor to account for the additional costs associated with its small and highly dispersed, low-income population.

73. ***Commission decisions.*** The Commission accepts that a conceptual case exists for assessing a socio-demographic composition disability for the criminal courts component because States incur additional court delivery costs due to the age, sex and Indigenous profiles of their populations.

74. Concerning the calculation of standard use weights by age and sex, the Commission has decided to use population court use data provided by New South Wales, Queensland, Western Australia, South Australia and the Northern Territory to calculate the population profile of offenders in higher and lower courts. We will review age, sex and Indigeneity proportions if more State data become available.

75. The Commission was not convinced that a conceptual case exists for assessing an economic environment factor for the criminal courts component because we consider the additional costs associated with a small and highly dispersed population are accounted for in the dispersion factor.

76. While accepting that a disability could exist, the Commission decided not to assess an urban influences factor for this component because adequate data were not available. Victoria was the only State that supported the inclusion of an urban influences factor for this assessment.

77. Concerning the specific elements of the criminal courts socio-demographic composition factor, the Commission came to the following conclusions.

78. *Cultural diversity / low-English fluency.* In the 1999 Review, a weight of 1.5 was assessed for low English fluency because the Commission was convinced that the involvement of people with low English fluency in court cases impacted on the length of proceedings and could result in costs for interpreters. There were insufficient quantitative data to allow the direct calculation of a weight to reflect the additional costs.

79. In the discussion paper, staff noted the increasing emphasis being placed on diversionary programs as a mechanism to reduce recidivism. Staff asked States for data on specific diversionary programs; interactions with ethnic community representatives or organisations; and evidence of additional service delivery costs of culturally and linguistically diverse groups.

80. New South Wales argued in this review that there were additional costs imposed by culturally and linguistically diverse, and Indigenous population groups, on the courts system. These costs included additional requirements in new and renovated or refurbished court buildings — such as special rooms and areas for religious purposes and the provision of separate waiting and public spaces to assist in reducing tensions between different ethnic groups. It contended these facilities were particularly necessary in areas with large ethnic populations, such as Bankstown-Liverpool.

81. Victoria argued that the weight for remote Indigenous populations for cultural differences should be applied to other population segments with significant cultural differences.

82. Queensland and Tasmania contended that evidence of additional service delivery costs to cultural and linguistic diverse groups could not be established.

83. The Commission acknowledges that a conceptual case had been made for assessing the *cultural diversity* for the criminal courts component, especially in Sydney and Melbourne because of the concentrations of ethnic communities. However there is insufficient evidence to consider whether and how cultural diversity impacts service delivery costs, and for this reason the Commission proposes not to assess standard use and cost rates for culturally diverse populations, or subsets of those populations.

84. However, in recognition of the cost of interpreters and other specialist services, and the additional time taken to service people with low-English fluency, the Commission has decided to continue to apply a cost weight of 1.5 to all people with *low English fluency*. In the light of the previous judgement-based decision for the 1999 Review and the case presented by New South Wales concerning the additional time taken to service people from different cultural backgrounds, especially those with low-English fluency, the Commission has acknowledged that low English fluency has a material impact on service delivery costs. This is a judgement based decision that remains unchanged from the 1999 Review. We note that no State objected to an assessment of low English fluency for the criminal courts component.

85. While the conceptual case is supported by limited data, the Commission is satisfied that the strength of the conceptual case, and the indications provided by the evidence are sufficient to consider that equalisation would be improved by an assessment of low English fluency.

86. *Indigeneity*. In the 1999 Review a weight of 1.1 was applied to remote Indigenous populations in recognition of the additional costs of providing court services to Indigenous people in remote areas.

87. The Northern Territory and Queensland each presented a sound case for an assessment of the additional costs of servicing remote Indigenous populations. Queensland provided detailed evidence of 13 specific Indigenous diversionary programs, and the degree and range of interactions with Indigenous community representatives and organisations.

88. The Northern Territory argued that a significant proportion of its Indigenous people, particularly those in remote areas, live their lives with a view to observing and maintaining their traditional culture. It noted that the Royal Commission on Aboriginal Deaths in Custody, and other studies that have indicated that conventional Western justice systems tend to neither manage nor deliver appropriate outcomes to remote Indigenous people. The Northern Territory therefore contended that its courts needed to be flexible in their approach to managing cases involving these people. This led to increased costs for justice services in the Territory.

89. Queensland and the Northern Territory argued that a weighting of 2 would be more appropriate for remote Indigenous people to reflect the extra costs incurred in the provision of culturally appropriate services.

90. The Commission has acknowledged that a conceptual case exists for assessing an additional cost weight for remote Indigenous people because States face differential costs in providing services to such people. While data were supplied to support the case presented by Queensland and the Northern Territory, we do not have sufficient data across the States to calculate a standard cost weight for remote Indigenous populations. However, we remain convinced that servicing remote communities is both time-consuming and costly due to delayed proceedings (caused by the difficulty of finding suitable, impartial interpreters), lengthened hearing times and adjournments.

91. Based on the evidence presented by these two States, both with large Indigenous populations in remote and non-remote areas, the Commission thinks there is a conceptual case to maintain the cost weight assessed by judgement in the 1999 Review. We cannot support a cost weight of 2, as suggested by Queensland and the Northern Territory. In the light of the evidence presented, we have decided to retain the cost weight to 1.1, to apply to Indigenous people in remote areas, for this socio-demographic composition assessment. This is a judgment based decision. It is based on the previous judgement based decision and the strong case made by the Northern Territory and Queensland. This remote Indigenous weight of 1.1 will apply in addition to the low-English fluency weight of 1.5.

92. *Allowance for the cost of higher courts.* In the 1999 Review a judgement based weight of 2 was applied to higher level courts to reflect the complexity of the cases dealt with by these courts.

93. The Commission has decided to retain the 1999 Review weight of 2 for higher courts. No State proposed an alternative approach, nor objected to this approach.

94. *Commonwealth offenders.* In the 1999 Review, Commonwealth DPP data, averaged over five years, was used to assess the above/below standard number of Commonwealth offenders.

95. The Commission has accepted that a conceptual case exists for assessing a cost weight for Commonwealth offenders because States face additional costs in processing Commonwealth offenders. In some States, the number of Commonwealth cases has increased significantly in recent years and many offenders now require processing in higher courts.

96. The Northern Territory contended that the increase in cases was primarily due to an increase in the number of people detained for people smuggling. To deter people smugglers, the penalties associated with this crime were increased, meaning these matters must be heard in the Supreme Court. It argued that in light of these changed circumstances, a weight of 2 should be applied to these offenders.

97. The Commission has decided to use the same method as for the 1999 Review. However, the assessment will take account of Commonwealth prosecutions data from all agencies that conduct criminal prosecutions on behalf of the Commonwealth,

where data are available. This approach was supported by the States because it will better reflect Commonwealth use of State and Territory criminal courts.

98. The Commission decided not to apply a cost weight to Commonwealth offenders in higher courts, in addition to the allowance for the costs of higher courts, because relevant data were not available on the numbers of Commonwealth offenders in higher and lower courts.

99. The Commission’s decisions concerning this factor are summarised in Table 13.

**Table 13** COMMISSION DECISION — SOCIO-DEMOGRAPHIC COMPOSITION, CRIMINAL COURTS COMPONENT

Decision	Reason
A socio-demographic composition factor was assessed for the criminal courts component taking into account differences in service delivery costs due to age, sex and Indigenous status; low English fluency; costs of higher courts; and numbers of Commonwealth offenders.	Gives States the capacity to provide the average level of services by assessing the additional costs that States incur because of different population profiles accessing criminal court services.

100. *Method and results.* The socio-demographic composition factors for this component, shown in Table 14, have been calculated according to the standard approach which involves:

- (i) deriving Australian standard use weights for higher and lower criminal court populations — by age, sex and Indigeneity — based on data from the Productivity Commission and Queensland, Western Australia, South Australia and the Northern Territory;
- (ii) using cross-tabulated 2001 Census data, calculating the standardised number of offenders in higher and lower courts in each State and Australia by age, sex, Indigeneity, low English fluency and location;
- (iii) cost weighting the standardised number of offenders in higher and lower courts for low-English fluency, remote Indigeneity and the greater unit cost of higher court appearances;
- (iv) adjusting each State’s weighted population for above/below average numbers of court appearances by Commonwealth offenders;
- (v) calculating the ratio of adjusted weighted population to unweighted population for each State and Australia; and
- (vi) calculating each State’s factor by dividing the State ratio by the Australian ratio.

**Table 14** CRIMINAL COURTS COMPONENT — SOCIO-DEMOGRAPHIC COMPOSITION FACTOR

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
2004 Review	0.96484	0.79867	1.10111	1.12873	0.88947	1.07090	0.94706	5.13065
2003 Update	0.95666	0.84296	1.09926	1.11378	0.91877	1.08048	1.00093	3.92531

101. **Reality check.** The relative level of socio-demographic composition factors reflects expectations. Queensland, Western Australia and the Northern Territory’s higher factors reflect their large Indigenous populations which are over-represented in court statistics. Tasmania’s factor reflects its relatively high proportion of higher court cases.

102. **Updateability.** Annual data on higher and lower criminal court cases (sourced from the Productivity Commission) as well as the numbers of criminal prosecutions for offences against Commonwealth law (sourced from the DPP, Australian Taxation Office and Customs) are available to update this factor. State age-sex and Indigeniety court statistics are also available.

## CIVIL COURTS COMPONENT

103. The Commission has decided to assess dispersion, input costs, cross-border and economic environment factors for the civil courts component.

### *Dispersion — civil courts component*

104. **1999 Review.** In the 1999 Review, the dispersion factors assessed for this component were the same as those for criminal courts component.

105. **2004 Review.** The Commission considers that the 1999 Review approach remains appropriate for the 2004 Review because the proportion of dispersion-affected costs in criminal courts component and civil courts components remain similar. The dispersion factors shown in Table 9 have also been applied in the civil courts component.

### *Input costs — civil courts component*

106. **1999 Review.** In the 1999 Review, the input costs factors assessed for this component were the same as those for the criminal courts component.

107. **2004 Review.** The Commission considered that the 1999 Review approach remains appropriate for the 2004 Review because the proportion of standard expenses affected by input cost factors in the criminal courts and civil courts components remain similar. The input costs factors shown in Table 10 have also been applied in the civil courts component.

### ***Cross-border — civil courts component***

108. **1999 Review.** In the 1999 Review, the cross-border factors assessed for this component were the same as those for the criminal courts component.

109. **2004 Review.** The Commission considered that the 1999 Review approach remains appropriate for the 2004 Review because the cross-border influences on demand for civil courts services in the ACT remain similar. The cross-border factors shown in Table 12 have also been applied in the civil courts component.

### ***Economic environment — civil courts component***

110. **1999 Review.** In the 1999 Review, the economic environment factor was assessed to account for differences between States in per capita costs of providing civil courts services due to differences in:

- (i) the proportions of small and large businesses within States;
- (ii) the relative propensities of individuals and businesses (small and large) to litigate; and
- (iii) the costs of cases involving such litigants.

111. The 1999 Review factor was based on the weighted numbers of individuals (mean resident population), small business entities and large business entities. In the calculation of the factor, individuals attracted a combined use and cost weight of 1.0, small businesses a weight of 2.0, and large businesses a weight of 6.0. These combined use and cost weights were judgement based, supported by some qualitative information provided by States. The weights used were based on the following conceptual grounds:

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

112. **State views.** New South Wales proposed an urban influences cost factor be introduced in the civil courts component to take into account the greater number and complexity of civil cases in urban areas.

113. Victoria proposed the actual usage of civil courts by different population segments, an appropriate definition of small and large business consistent with the payroll tax assessment, and other factors that influence the level of usage be taken into account.

114. Tasmania supported the current assessment in the absence of a superior alternative.

115. The Northern Territory argued that the economic environment factor should account for the additional costs associated with the lack of legal resources.

116. **Commission decisions.** A conceptual case exists for assessing economic environment disabilities for this component because differences between States exist in the per capita costs of providing civil courts services. These differences in per capita costs are conceptually due to:

- (i) different rates of use of civil courts services by different types of litigants; and
- (ii) different unit costs of providing such services to different types of litigants in different levels of court.

117. In the 1999 Review, the factor was based on weighted numbers of individuals, small businesses and large businesses. Data are no longer available on this basis. Data are available on numbers of individuals and all businesses, not disaggregated by size of business, but they are not regularly updated. In addition, 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 has looked at alternative data sources on which to base the assessment.

118. On the use side, court lodgements provide some indication of total actual demand for civil court services. However, lodgements data are not available disaggregated by type of litigant. In the 1999 Review, demand was reflected through the application of judgment based weights (within the combined use and cost weights) to individuals and businesses. Total demand was not actually measured then, but an attempt was made by judgement to split demand according to type of litigant.

119. On the cost side, the Commission has no quantitative data on unit costs of providing services to different types of civil court litigants or by different levels of court. We can subdivide lodgements data by level of court but have no information on what weights might be applied. We have no basis to subdivide lodgements data by different types of litigants or any information on appropriate cost weights for them.

120. The Commission considered basing the 2004 Review factor on a combination of civil courts lodgements and finalisations data. The lodgements data would provide an indicator of inputs and the finalisation data a measure of outputs. Ideally, data on finalisations by length of time taken to reach finalisation by level of court could provide an indicator of differences in costs. However, such data are not available.

121. The Commission recognises that problems exist with both lodgements and finalisation sets of data. For example, the number of finalisations for South Australia and Tasmania for 1997-98 and 1998-99, as documented by the Productivity Commission, are not available. There are also yearly fluctuations in the data for some States which are difficult to explain, and appear not to reflect differences in court work loads or resources.

122. The Productivity Commission stated that lodgements are a reflection of the degree to which the Australian community demands court services such as dispute resolution and criminal justice<sup>4</sup>. The larger States have a higher number of criminal and civil lodgements. The number of lodgements per 100 000 people can assist in understanding the comparative workload of a court in relation to the size of the State population.

123. On balance, given the conceptual case and the limited availability of data on use *and* unit costs, the Commission has decided to base the economic environment factor for the 2004 Review draft assessment on civil courts lodgements. We have not made an assessment by judgment, of differential use and unit costs for different types of litigants or by different court levels. Nor have we based the factor on a combination of lodgements and finalisations data for civil courts.

124. States are welcome to comment on whether lodgements and finalisations data should be used in calculating the economic environment factor for civil courts and on what weights might be applied to them for differences in unit costs.

125. The Commission's overall decisions are summarised in Table 15.

**Table 15** COMMISSION DECISION — ECONOMIC ENVIRONMENT FACTOR, CIVIL COURTS COMPONENT

Decision	Reason
An economic environment factor was assessed for the civil courts component, based on numbers of civil court lodgements by State.	Gives States the capacity to provide the average level of services by assessing the additional costs that States face because of different propensities of entities (whether they be individuals or businesses) to litigate in civil courts.

126. *Method and results.* The Commission has decided to introduce a new method to calculate the economic environment factor, based on actual civil court lodgement data, rather than the mean resident population and business taxation data used in the 1999 Review assessment. Table 16 shows the derivation of economic environment factors based on civil court lodgements for 2001-02. Table 17 shows the factors for the five years ended 2001-02.

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<sup>4</sup> Productivity Commission *Report on Government Services 2003*, p 6.17

**Table 16** CIVIL COURTS COMPONENT — DERIVATION OF ECONOMIC ENVIRONMENT FACTORS, 2001-02

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Lodgements	261359	190874	101160	62101	38647	16161	8908	6891	686101
Mean resident population	6611283	4840044	3666227	1914502	1515986	472134	320553	197753	19538482
Lodgements per capita	0.03953	0.03944	0.02759	0.03244	0.02549	0.03423	0.02779	0.03485	0.03512
Factor	1.12578	1.12305	0.78576	0.92373	0.72598	0.97478	0.79138	0.99234	1.00000

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

**Table 17** CIVIL COURTS COMPONENT — ECONOMIC ENVIRONMENT FACTORS

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
<b>2004 Review</b>									
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
<b>1999 Review</b>									
2001-02	0.99999	1.00556	0.99631	1.01455	1.00159	0.96403	0.95792	0.93698	1.00000

127. **Reality check.** The 2004 Review factors reflect expectations. The factors for New South Wales and Victoria are higher because there is a concentration of corporate head offices located in these States which conceptually should generate bigger per capita demand in civil courts, than in other States.

128. **Updateability.** Annual civil court lodgement numbers are available from the Productivity Commission to update the economic environment factors.

## OTHER SERVICES COMPONENT

129. The Commission has decided to assess dispersion and input cost factors for the other services component.

### ***Dispersion — other services component***

130. **1999 Review.** In the 1999 Review, the dispersion factors assessed for this component were the same as those for criminal courts component.

131. **2004 Review.** The Commission considers that approach remains appropriate for the 2004 Review because the proportion of dispersion-affected costs in criminal courts component and other services components remain similar. The dispersion factors shown in Table 9 have also been applied in the civil courts component.

### ***Input costs — other services component***

132. **1999 Review.** In the 1999 Review, the input costs factors assessed for this component were the same as those for the criminal courts component.

133. **2004 Review.** The Commission considered that approach remains appropriate for the 2004 Review because the proportion of standard expenses affected by input cost factors in the criminal courts and other services components remain similar. The input costs factors shown in Table 10 have also been applied in the other services component.

## **ISOLATION COMPONENT**

### ***Isolation — isolation component***

134. **1999 Review.** The isolation factor was assessed to account for differences in per capita costs of service provision for some States because of their economic and geographical isolation from the main interstate sources of supply in South Eastern Australia. It reflected the combined effect of isolation on labour-related costs, interstate freight costs, professional infrastructure costs, commercial goods costs, airfares, travel allowances and other travel-related subsidies. The isolation-affected expenses component represented 0.41 per cent of expenses in this category.

135. **2004 Review.** *Draft Assessment Paper CGC 2003/65 Isolation* discusses the issues raised by the States regarding the assessment of isolation. The paper sets out the Commission's decisions on the general method of assessment adopted for the 2004 Review and on the size of the isolation-affected expenses component for relevant categories. The States did not raise issues specific to this category.

136. The isolation factors for the isolation component, shown in Table 18, have been calculated according to the 2004 Review general method. Isolation-affected expenses for this category have been estimated to be 0.19 per cent of the category standard.

**Table 18** ISOLATION FACTORS — ISOLATION COMPONENT

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
All years	0.05107	0.10737	0.17783	0.74776	0.56469	3.49490	1.51842	68.27218

137. The factor and component weight will not be updated until the next review. This means that isolation-affected expenses will grow at the same rate as category expenses.

### LAND RIGHTS COMPONENT

#### *Land Rights — land rights component*

138. **1999 Review.** The land rights factor was assessed to take account of the additional costs incurred by the Northern Territory arising from the operation of the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).

139. **2004 Review.** *Draft Assessment Paper CGC 2003/69 Land Rights* discusses the issues raised by the States regarding the assessment of this factor. The paper sets out the Commission's decisions on the general method of assessment adopted for the 2004 Review and the categories in which the factor would be assessed.

140. Land rights affected expenses for this category have been estimated to be \$1.07 million, which represents 0.05 per cent of the category standard. Table 19 shows the 2004 Review disability factors implied by those levels of costs.

141. The factors and the component weight determined by the expense proportion will be updated annually.

**Table 19** LAND RIGHTS FACTORS — LAND RIGHTS COMPONENT

	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
1999-2000	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

## NATIVE TITLE COMPONENT

### *Native Title — native title component*

142. **1999 Review.** Native title factors were assessed to allow for the additional costs incurred by the States arising from the operation of the Commonwealth *Native Title Act 1993*.

143. **2004 Review.** *Draft Assessment Paper CGC 2003/70 Native Title Assessment* discusses the issues raised by the States regarding the assessment of this factor. The paper sets out the Commission's decisions on the general method of assessment adopted for the 2004 Review and the categories in which the factor has been assessed.

144. Native title-affected expenses for this category in 2001-02 have been estimated to be \$0.11 million, which represents 1.02 per cent of the category standard. Table 20 shows the 2004 Review calculation of the factor for 2001-02 implied by those expenses.

145. The factors and the component weight determined by the expense proportion will be updated annually.

**Table 20** NATIVE TITLE FACTORS, 2001-02

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
Administration expenses - actual	500	2 480	20 206	14 859	6 718	204	204	4 853	50 024
Compensation expenses - actual	765	0	0	34	0	0	0	4 650	5 449
Total expenses	1 265	2480	20 206	14 893	6 718	204	203	9 503	55 473
Factors	0.0673	0.1805	1.9450	2.7431	1.5630	0.1523	0.2231	16.7924	1.00

## SUMMARY OF RESULTS

146. Table 21 summarises the Administration of Justice assessment structure for the 2004 Review.

**Table 21** ADMINISTRATION OF JUSTICE ASSESSMENT STRUCTURE, 2004 REVIEW

Expenses component	Component weight	Factors	Basis of calculation
Fixed costs	2.28	Input costs	General method with weights of 80% for wages, 2% for accommodation and 1% for electricity.
Criminal courts	54.64	Administrative scale	General method.
		Dispersion	General method.
		Input costs	General method with weights of 60% for wages, 2% for accommodation and 1% for electricity.
Civil courts	36.42	Socio-demographic composition	Indigenous and non-Indigenous age-sex use weights applied to population. Cost weights applied to remote Indigenous people (1.1) and those with low English fluency (1.5). A cost weight of 2 applied for higher court appearances. Adjustment was made for court appearances of Commonwealth offenders.
		Cross-border	General method.
		Dispersion	General method.
		Economic environment	Based on civil court lodgements
Other services	6.00	Input costs	General method with weights of 60% for wages, 2% for accommodation and 1% for electricity.
		Cross-border	General method.
		Dispersion	General method.
Isolation	0.20	Isolation	General method.
Land rights	0.05	Land rights	The additional costs in the Northern Territory arising from the Commonwealth <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> discounted by 20%.
Native title (administration and compensation)	0.41	Native title	The costs associated with the administration and compensation resulting from the <i>Commonwealth Native Title Act 1993</i> (NTA).

### *Calculating the category factor*

147. Table 22 summarises the components, component weights and disability factors assessed for this category for 2001-02. It shows the calculation of the category factor.

**Table 22** ADMINISTRATION OF JUSTICE — DERIVATION OF CATEGORY FACTOR, 2001-02

Factors	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
<b>Fixed costs (FC) (component weight = 2.28%)</b>								
Administrative scale (s)	0.36891	0.50461	0.66745	1.27717	1.61320	5.17750	7.59249	12.25311
Input costs (ic_fc)	1.03498	0.99044	0.97446	0.98186	0.97135	0.92001	1.01306	1.09897
Component factor	0.38252	0.50072	0.65162	1.25634	1.56990	4.77221	7.70596	13.49087
Cont. to category factor	0.00872	0.01142	0.01486	0.02864	0.03579	0.10881	0.17570	0.30759
<b>Criminal courts (CRIM) (component weight = 54.64%)</b>								
Dispersion (d)	0.99894	0.99441	1.00684	1.00698	0.99436	0.99497	0.98196	1.06211
Input costs (ic_oth)	1.02656	0.99252	0.98046	0.98702	0.97840	0.93711	1.00954	1.08008
Socio-demographic composition (sdc)	0.96484	0.79867	1.10111	1.12873	0.88947	1.07090	0.94706	5.13065
Cross-border (x)	0.99127	1.00000	1.00000	1.00000	1.00000	1.00000	1.17880	1.00000
Component factor	0.97096	0.78031	1.07621	1.11069	0.85655	0.98814	1.09579	5.80131
Cont. to category factor	0.53050	0.42634	0.58800	0.60684	0.46799	0.53989	0.59870	3.16964
<b>Civil courts (CIV) (component weight = 36.42%)</b>								
Dispersion (d)	0.99894	0.99441	1.00684	1.00698	0.99436	0.99497	0.98196	1.06211
Input costs (ic_oth)	1.02656	0.99252	0.98046	0.98702	0.97840	0.93711	1.00954	1.08008
Economic environment (e)	1.12423	1.12306	0.78729	0.92481	0.72695	0.97564	0.78862	0.98453
Cross-border (x)	0.99127	1.00000	1.00000	1.00000	1.00000	1.00000	1.17880	1.00000
Component factor	1.14199	1.10757	0.77672	0.91858	0.70663	0.90871	0.92105	1.12369
Cont. to category factor	0.41596	0.40343	0.28291	0.33459	0.25739	0.33099	0.33549	0.40930
<b>Other services (OS) (component weight = 6.00%)</b>								
Dispersion (d)	0.99894	0.99441	1.00684	1.00698	0.99436	0.99497	0.98196	1.06211
Input costs (ic_oth)	1.02656	0.99252	0.98046	0.98702	0.97840	0.93711	1.00954	1.08008
Component factor	1.02550	0.98693	0.98730	0.99400	0.97276	0.93208	0.99150	1.14219
Cont. to category factor	0.06153	0.05922	0.05924	0.05964	0.05837	0.05592	0.05949	0.06853
<b>Isolation (ISO) (component weight = 0.20%)</b>								
Isolation (iso)	0.05107	0.10737	0.17783	0.74776	0.56469	3.49490	1.51842	68.27218
Component factor	0.05107	0.10737	0.17783	0.74776	0.56469	3.49490	1.51842	68.27218
Cont. to category factor	0.00010	0.00021	0.00036	0.00150	0.00113	0.00699	0.00304	0.13654
<b>Land Rights (LRTS) (component weight = 0.05%)</b>								
Land rights (l)	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.02489
Component factor	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.02489
Cont. to category factor	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.04803

**Table 22** ADMINISTRATION OF JUSTICE — DERIVATION OF CATEGORY FACTOR, 2001-02 (continued)

<b>Native title (NT) (component weight = 0.41%)</b>								
Native title (n)	0.06730	0.18047	1.94495	2.74309	1.56301	0.15232	0.22312	16.79242
Component factor	0.06730	0.18047	1.94495	2.74309	1.56301	0.15232	0.22312	16.79242
Cont. to category factor	0.00028	0.00074	0.00797	0.01125	0.00641	0.00062	0.00091	0.06885
<b>Category factor</b>	<b>1.01709</b>	<b>0.90135</b>	<b>0.95334</b>	<b>1.04245</b>	<b>0.82707</b>	<b>1.04322</b>	<b>1.17333</b>	<b>4.20849</b>

**Calculation formula**

148. The following formulas were used to calculate the contribution of each expenses component to the overall category factor. In each case, the contributions are calculated by multiplying the expenses component weight by the component factor (the bracketed terms in the formulas). Each contribution to category factor was rescaled to ensure that, for each of them, the sum of standardised equals the sum of actual expenditure.

$$\begin{aligned}
 FC &= 0.0228 (ic\_fc * s) \\
 CRIM &= 0.5464 [(ic\_oth + d - 1) * sdc * x] \\
 CIV &= 0.3642 [(ic\_oth + d - 1) * e * x] \\
 OS &= 0.0600 (ic\_oth + d - 1) \\
 ISO &= 0.0020 (iso) \\
 LRTS &= 0.0005 (1) \\
 NT &= 0.0041 (nt)
 \end{aligned}$$

$$\text{Category Factor} = FC + CRIM + CIV + OS + ISO + LRTS + NT$$

**Standardised expenses**

149. Table 23 compares the category factor for the 2004 Review draft assessment with the category factor for the 2003 Update.

**Table 23** CATEGORY FACTORS FOR 2003 UPDATE AND 2004 REVIEW — ADMINISTRATION OF JUSTICE

Factors	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
2003 Update factor	0.95488	0.89087	1.02430	1.10068	0.95258	1.13057	1.29715	3.30827
<b>2004 Review factor</b>	<b>1.01709</b>	<b>0.90135</b>	<b>0.95334</b>	<b>1.04245</b>	<b>0.82707</b>	<b>1.04322</b>	<b>1.17333</b>	<b>4.20849</b>

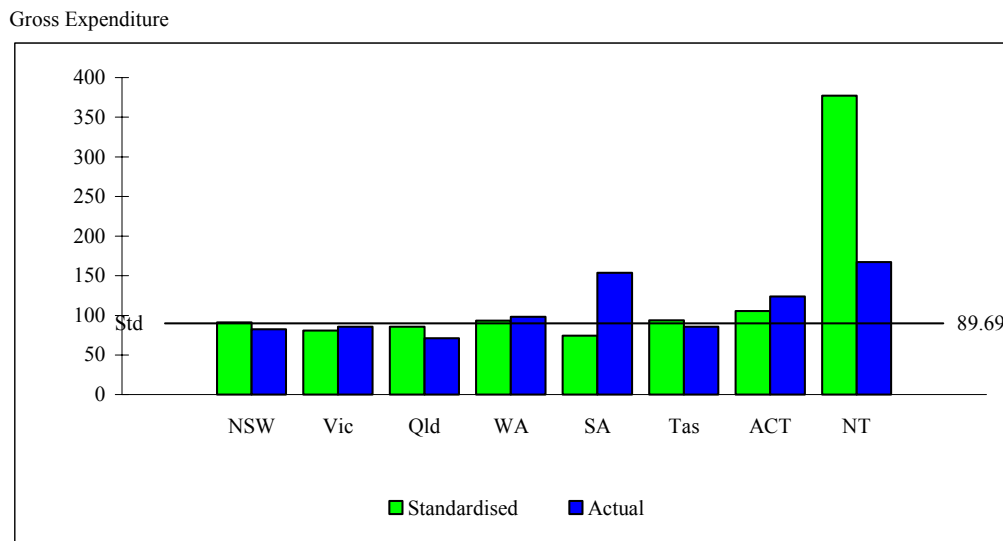
150. Table 24 shows the standardised expenses assessed for this category for 2001-02 in the draft assessment, compared with that assessed in the 2003 Update.

**Table 24** ACTUAL AND STANDARDISED AND EXPENSES, 2001-02

	Standard	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
<b>Actual Expenses</b>									
\$ per capita	89.69	82.17	85.70	70.98	98.08	153.61	85.74	123.87	167.32
<b>2003 Update - Standardised Expenses</b>									
\$'000		606349	413568	359497	201884	138327	51153	40022	63248
\$ per capita	95.62	91.31	85.18	97.94	105.25	91.09	108.10	124.03	316.33
<b>2004 Review Draft Assessment - Standardised Expenses</b>									
\$'000		605774	392467	313830	179339	112647	44271	33955	75465
\$ per capita	89.69	91.22	80.84	85.50	93.49	74.18	93.56	105.23	377.44

151. Figure 1 shows the gross expenses per capita for 2001-02 in terms of standardised, estimated and gross standard expenses.

**Figure 1** ADMINISTRATION OF JUSTICE — GROSS EXPENSES PER CAPITA — STANDARDISED, ESTIMATED AND STANDARD, 2001-02



## ANALYSIS

152. Table 25 shows the redistribution of grants resulting from the assessment in the 2003 Update and the Draft Assessment. It also shows the sources of change.

153. Compared to an equal per capita assessment, the draft assessment redistributed \$76.6 million away from Victoria, Queensland and South Australia to the other States, \$14.5 million less than in the 2003 Update.

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

- (i) The change to the economic environment factor assessment has some impact on notional grants. In particular, this factor is now based on the number of civil court lodgements — which has caused the notional grants for New South Wales and Victoria to increase because of the higher per capita number of lodgements recorded for these two States in civil courts.
- (ii) There has been a bigger increase in (higher and lower) court use rates by Indigenous people, males especially, compared with non-Indigenous people. This trend has resulted in higher socio-demographic composition factors for States with higher proportions of Indigenous people (males especially), causing the notional grants for the Northern Territory, in particular, to increase.

155. Reducing the impact of the administrative scale assessment (by reducing the size of the component to which it applies) also had some impact on the assessment. The changes in the input costs factors also had substantial effects and led to increases in the redistribution towards New South Wales and mitigated the reduction for the Northern Territory.

**Table 25** ADMINISTRATION OF JUSTICE — EFFECT OF ASSESSMENT ON GRANT DISTRIBUTION

	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<sup>(b)</sup></b>	-30.7	-53.6	10.0	19.8	-6.8	6.3	9.2	45.9	91.1
<b>Composition</b>	2.3	4.0	-0.7	-1.5	0.5	-0.5	-0.7	-3.4	6.7
<b>Assessment</b>	31.9	0.7	-18.6	-9.5	-14.2	-5.9	-1.5	17.1	49.7
<b>Interactions</b>	-2.2	-0.2	1.4	0.7	1.1	0.4	0.1	-1.3	3.7
<b>Contribution to 2004 Review Draft Assessments relativities<sup>(b)</sup></b>	1.3	-49.2	-8.0	9.5	-19.4	0.3	7.1	58.3	76.6
<b>Total Change</b>	32.0	4.4	-17.9	-10.3	-12.6	-6.0	-2.1	12.4	48.8

(a) Total redistribution.

(a) Assuming same pool and a constant population.

## **USER CHARGES**

156. No States commented on the Administration of Justice user charges assessment for this category.

157. The amount of user charges is small and remains policy influenced. The Commission has decided that user charges for this category continue to be assessed by the equal per capita method.