



COMMONWEALTH GRANTS COMMISSION

DISCUSSION PAPER CGC 2002/19

THE STAMP DUTY ON CONVEYANCES ASSESSMENT

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INTRODUCTION

1. This paper reviews issues related to the assessment of States' capacities to raise revenue from Stamp Duty on Conveyances. This is a category where currently the calculation of the revenue base is totally dependant on information from State tax systems on the value of dutiable transactions and on the effect of differences in provisions defining the value of dutiable transactions. The Commission requires consistent and comprehensive data from the States to maintain the accuracy of the assessment during the course of annual updates. At each review, there are additional information requirements to review the range and impact of policy differences. A list of the data requirements for this Review is attached to the paper.

2. The paper proposes that there should be no major changes to the current method of assessment, but there are some issues to be addressed, namely:

- (i) whether stamp duty on conveyances is capitalised into the value of improved land and, if it is, how differences in rates of duty should be taken into account in measuring the revenue base;
- (ii) what adjustments to the revenue base for differences in States' policies on the liability of transactions for duty are needed, and what size they should be; and
- (iii) ensuring the coverage of the sample data is appropriate for the Commission's purposes.

DESCRIPTION OF THE CATEGORY

3. This category covers stamp duties imposed on the transfers of property (principally real estate, business and other property) excluding shares and marketable securities. It also excludes duty collected from the sale of major State government-owned assets.

State policies

4. State policies on stamp duty on conveyances are broadly as follows.

- (i) Exemptions, concessions and rebates are allowed for:
 - first home buyers;
 - pensioners;
 - transfers of a family farm to family members; and

- transfers between spouses in the case of marriage breakdown.

Some jurisdictions also extend the rebates to the principal place of residence (Queensland and Western Australia), small businesses (Western Australia) and new residential strata title or community strata title home units in the inner city area (South Australia).

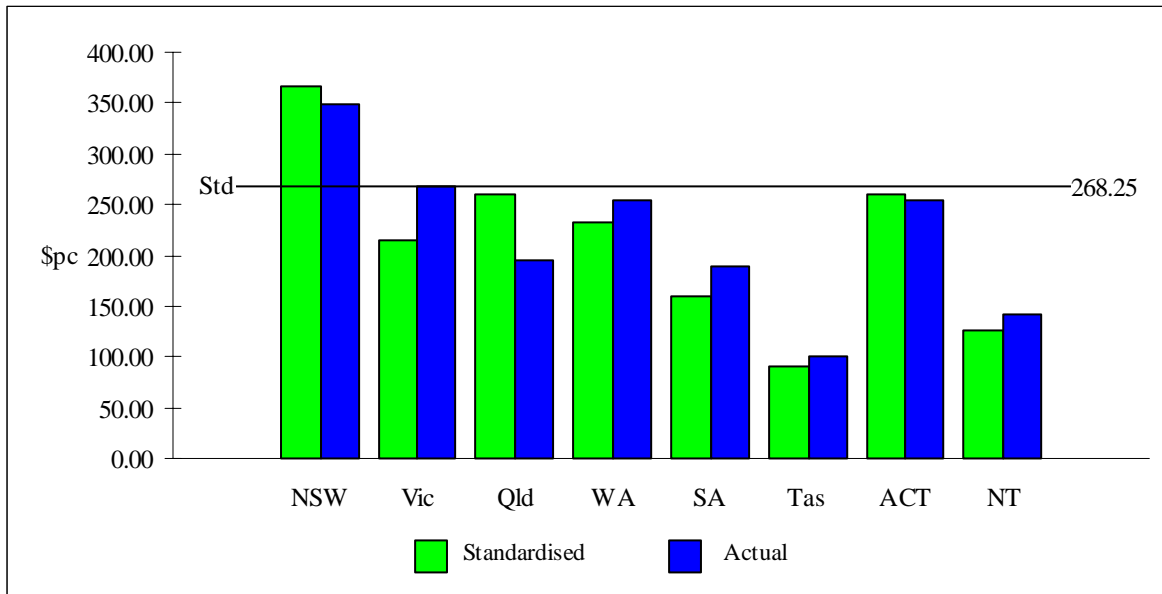
- (ii) Exemptions are made for corporate reconstructions that meet eligibility criteria.
- (iii) States apply a progressive rate structure — a higher rate of tax is applied to properties with higher values.
- (iv) Marginal and maximum rates of duty differ greatly among States — in 2001-02, the top marginal rate varies from 3.75 per cent in Queensland to 5.5 per cent in New South Wales, Victoria and the ACT.
- (v) Differences in policies exist among the States in the taxation of:
 - goodwill in the sale of businesses (taxable in all States except Victoria);
 - classes of transactions covered by legislation (narrower bases in Victoria and until recently the ACT); and
 - treatment of unit trusts (taxable in Queensland, Western Australia and South Australia).

IMPORTANCE OF CURRENT ASSESSMENT

5. Stamp Duty on Conveyances is a very important State tax, contributing \$5170 million to State revenues in 2001-02 (an average of \$268 per capita). This is about 10 per cent of State own-source revenue. In the 2002 Update, the assessment redistributed \$547 million (FAG relativities) compared with an equal per capita distribution, second in importance to the mining assessment (among all categories, including expenditure). Figure 1 summarises the assessment for the 2002 Update. Victoria's capacity is assessed to be well below that of New South Wales, Queensland, Western Australia and the ACT.

6. The importance of the category to State budgets and the Commission's assessments changes over time because revenues are volatile depending on the state of property markets. Currently, most States are experiencing a property boom with higher than usual stamp duties revenues.

Figure 1 STAMP DUTY ON CONVEYANCES: STANDARDISED, ACTUAL AND STANDARD REVENUE FOR 2001-02



CURRENT METHOD OF ASSESSMENT

7. Revenue capacity is assessed using the value of dutiable transactions (turnover) as the revenue base, adjusted for differences in policies outlined in paragraph 4(v). The base includes the full value of transactions attracting concessional rates of duty.

8. The policy adjustments were established some time ago after a review of information provided by States which compared their legislative provisions on the range of dutiable transactions and the depth of their revenue effect. Three main areas of policy differences were identified: goodwill in the sale of businesses; classes of transactions; and private unit trusts. In the past, there were policy adjustments for differences in provisions covering 'land rich' companies and corporate reconstructions, but they were discontinued when State policies converged.

9. The nature and size of policy adjustments were last reviewed in detail in the Commission's 1995 Report on the Stamp Duty on Conveyances Revenue Base¹. They have been varied in the light of information on changes in associated legislation provided by States during the course of updates and the 1999 Review. The size of each adjustment assessed for 2000-01 in the 2002 Update is shown in Table 1.

¹ See Commonwealth Grants Commission *Report on Research in Progress – The Stamp Duty on Conveyances Revenue Base*, September 1995.

Table 1 POLICY ADJUSTMENTS^(a), 2000-01

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Goodwill	1.0000	1.0400	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
Classes of Transactions	1.0000	1.0400	1.0000	1.0000	1.0000	1.0000	1.0400	1.0000
Unit Trusts	1.0000	1.0000	0.9700	0.9700	0.9700	1.0000	1.0000	1.0000

(a) An adjustment above one increases a State's revenue base, an adjustment below one reduces it.

Source: CGC 2002 Update Working Papers, Vol. 2.

10. An adjustment factor of 1.0000 implies that a State follows the average policy; a factor of more than 1.0000 implies that a State provides above average levels of exemptions or concessions (and its reported value of transactions should be increased to approximate the revenue base that would have been taxed if the standard policy had been applied – that is, to achieve policy neutrality). A factor of less than 1.0000 implies that its provisions are less generous than the average (and its reported base should be reduced).

11. The grant share effects of policy adjustments are shown in Table 2. These show what each adjustment contributes to the total redistribution. For example, the removal of the goodwill adjustment would have increased Victoria's grant share by about \$30 million.

Table 2 GRANT SHARE EFFECTS OF POLICY ADJUSTMENTS, 2002 UPDATE FAG RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$n	\$m
Goodwill	16.4	-29.8	6.9	3.6	1.8	0.3	0.5	0.2	29.8
Classes of Transactions	17.6	-29.3	7.4	3.8	1.9	0.4	-2.1	0.3	314
Unit Trusts	-22.6	-9.7	19.1	9.9	4.9	-0.5	-0.7	-0.4	33.9
Total	11.3	-67.6	33.5	17.2	8.6	0.2	-2.4	0.1	70.0

(a) Total redistribution.

Source: CGC 2002 Update Working Papers, Vol. 2.

12. Because the duty is levied at progressive rates, States with relatively more transactions in the higher value ranges have a revenue raising advantage. The Commission calculates an adjustment for differences in the value distribution of transactions by applying average effective rates of tax per value range to the value of transactions falling in that range, and comparing that notional revenue with the notional revenue that would result from applying the overall average effective rate of tax to the total value of transactions. The value distribution adjustments for each year of the 2002 Update are shown in Table 3. A value distribution factor of greater than 1.0000 implies that a State has an above average proportion of transactions in the higher value ranges. The grant share effects of these adjustments are shown in Table 4.

Table 3 VALUE DISTRIBUTION ADJUSTMENTS, 2002 UPDATE

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
1996-97	1.0281	0.9271	1.0472	0.9682	0.9476	0.8091	0.8876	0.9096	1.0000
1997-98	1.0313	0.9246	1.0226	0.9991	0.9896	0.7980	0.9657	0.9454	1.0000
1998-99	1.0267	0.9374	1.0445	0.9923	0.9408	0.8386	0.9518	0.8935	1.0000
1999-2000	1.0395	0.9352	1.0400	0.9854	0.9135	0.7568	0.9418	0.9053	1.0000
2000-01	1.0618	0.9624	0.9624	0.9781	0.8939	0.7292	0.9289	0.9123	1.0000

Source: CGC 2002 Update Working Papers, Vol. 2.

Table 4 GRANT SHARE EFFECT OF VALUE DISTRIBUTION ADJUSTMENT, BASED ON 2002 UPDATE FAG RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$n	\$m
	-84.2	61.6	-21.0	6.7	16.7	12.4	4.6	3.1	105.2

(a) Total redistribution.

Source: CGC 2002 Update Working Papers, Vol. 2.

13. **Sample data.** The value of dutiable transactions was estimated from sample data provided by each State on the number, value of, and duty paid on transactions in each value range. The proportion of State's revenue covered by the sample data differed across States and from year to year. This proportion was measured by comparing sample revenues with standard budget revenues for the category. The proportions are shown in Table 5.

Table 5 SAMPLE REVENUES AS A PROPORTION OF STANDARD BUDGET REVENUES, 2002 UPDATE FAG RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
	%	%	%	%	%	%	%	%	%
1996-97	99.40	100.06	69.26	56.71	102.02	43.13	93.06	100.54	90.46
1997-98	100.73	102.45	73.92	72.47	112.90	82.88	103.72	100.72	95.12
1998-99	79.85	99.95	61.43	68.47	104.36	83.42	106.47	104.67	82.39
1999-2000	74.59	100.00	55.71	66.27	108.03	80.61	99.95	90.32	79.76
2000-01	78.57	99.84	91.48	82.74	101.26	93.19	99.87	99.75	87.81

Source: CGC 2002 Update Working Papers, Vol. 2.

14. Sample data on duty paid were used:
- (i) to scale the sample data provided by each State to what it would have been to produce the total revenue reported in the Commission's standard budget; and
 - (ii) to estimate effective rates of tax by value range as part of the calculation of the value distribution adjustment.

15. The coverage of the Queensland sample increased markedly in 2000-01, which coincided with a reduction in its value distribution adjustment. Both these outcomes were due to the inclusion of self-assessed transactions in the sample. These tend to be clustered in the lower value ranges.

MAJOR DEVELOPMENTS SINCE THE 1999 REVIEW

16. Since 1999, some States have increased the thresholds below which first home purchasers are exempt and the threshold at which concessional rates for first home buyers cease. Some have also changed their rate structures to incorporate additional ranges and to change the values at which different rates apply. Because the assessment method does not refer to any threshold, these changes affect revenue efforts rather than the size of the revenue base. Revenues from conveyances duties have been high in recent years because of the property boom. High State revenues have ignited efforts by lobby groups to reduce rates, but States have not done so.

National Stamp Duties Rewrite Project

17. New South Wales, Victoria, Queensland, Tasmania and the ACT have introduced new legislation to enact uniform stamp duty legislation. The legislation was the result of a joint project aimed at harmonising the States' legislation for the sake of transparency, but not necessarily to impose further liabilities on transactions which are not dutiable. New South Wales enacted new legislation in 1997, taking effect on 1 July 1999; the ACT enacted new legislation with effect from 1 March 1999; Victoria and Tasmania from 1 July 2001; and Queensland late in 2001 with effect from March 2002.

18. Under the rewritten provisions, stamp duty is no longer an instrument-based tax (on the stamping of documents giving evidence to particular transfers) but a transaction-based tax. It is possible that in rewriting their stamp duties provisions, and the transition to a wider transaction-based tax, the scope of the transactions which attract duty has broadened. (This was the case in the ACT.) Commission staff expect that States will draw attention to changes in the scope of their provisions in responding to the proposals discussed below.

National Tax Reform – the IGA

19. Under the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* (IGA), signed by the States in June 1999, there is to be a review of the need to impose conveyance duty on non-residential transactions by 2005. If States abolish duty on non-residential transactions, the scope of the base would be narrowed to residential property. In that event, the Commission might backcast the change in the scope of the tax, as it has done for Financial Transaction Taxes with the abolition of Financial Institutions Duty. That may have implications for how States compile the sample data in the next few years because the Commission may ask them to revise the sample data to exclude non-residential transactions. At the same time, the change in scope would simplify the assessment because the policy adjustments would no longer be required.

ISSUES IN STATES' MAIN SUBMISSIONS

20. New South Wales and Western Australia have a general preference for the use of global or sub-global revenue bases for all categories, but also raised particular concerns with the current method of this assessment. Other States generally supported the existing assessment method. No State commented on the exclusion of the sale of major State government assets from the base, indicating support for the continuation of this exclusion.

Tax Capitalisation

21. New South Wales submitted that the value of transactions should be adjusted for differences in rates of duty because these were capitalised into improved land values (equivalent to an elasticity adjustment). Victoria and Queensland opposed any elasticity adjustments.

Policy Adjustments

22. ***Goodwill in the sale of businesses.*** Victoria submitted that the adjustments for goodwill and classes of transaction were overstated and possibly double counted the effect of differences from other States in the breadth of its tax base.

23. ***Classes of transactions.*** This adjustment reflected the fact that coverage of legislation differs between States. Differences in the coverage of tax bases have narrowed as States have brought their definitions of dutiable transactions in line with other States. The ACT submitted that it had now broadened its definition of dutiable property to match those of the majority of jurisdictions and the adjustment for differences in classes of transactions should be removed.

24. ***Unit trusts.*** Western Australia submitted that the policy adjustment for unit trusts should be revised to reflect recent developments in the ownership of commercial property. It said that the increased importance of managed investment funds had led to the

greater use of sub-trusts as a legal device to hold property titles and to minimise conveyances duty when units in the sub-trusts are sold or transferred. This meant the policy of some States not to impose conveyances duty on unit trusts had greater revenue effects. Western Australia also submitted that the provisions of Queensland and South Australia to impose duty on unit trusts were narrower than Western Australia's.

25. ***Corporate reconstructions.*** Western Australia submitted that the exemptions for corporate reconstructions in some States had extended beyond their original scope of transfers of property within a corporate group and there was a new requirement for a policy difference adjustment.

Quality of Sample Data

26. Western Australia noted the problems it and Queensland had in compiling the annual sample data because of the use of settlement agents to collect revenue data. It also noted that the transfers of properties processed in this way were mainly homes and small businesses. This may mean that the sample data are biased towards higher values.

ISSUES TO BE ADDRESSED

The Revenue Base Measure

27. Except for New South Wales and Western Australia, which propose global assessment of all revenues, and Victoria which proposes greater use of sub-global measures, States generally accept, or are resigned to, the existing approach. (As discussed in *Discussion Paper 2002/4 Global Revenue Assessments*, the Commission is not inclined to adopt a global approach to revenue assessments.) Commission staff intend to recommend to the Commission that the current approach to revenues from conveyances should be continued for the following reasons.

- (i) Stamp duty on conveyances is a transactions tax, and is levied on value of property sold or transferred. The total value of transactions taking place in each State inherently reflects the effects of those factors that give rise to differences in values and turnovers (whatever the cause), and hence revenue capacities.
- (ii) Difficulties and complexities in identifying policy differences and adjusting the base for them are a concern, but there is no obvious sub-global base that would adequately measure differences in capacities to raise revenue from activity in the real estate market².

² See Commonwealth *Grants Commission Report on Research in Progress – The Stamp Duty on Conveyances Revenue Base*, September 1995, Chapter 4, pp 206-212 for a discussion of alternative bases.

Tax Capitalisation — An Elasticity Adjustment?

28. This issue is also raised in respect of Land Revenue. The Commission's response to the analysis by Neil Warren, commissioned by New South Wales, is discussed in detail in *Discussion Paper CGC 2002/13 — The Land Revenue Assessment*.

29. The essence of New South Wales' argument is that rates of stamp duty affect the value of property because they affect the income stream to the owner or prospective owner. Higher taxes reduce the income stream and lower the value of the property. This argument is plausible in theory, but it would seem to have less weight for conveyances transactions than for land revenue for which the base is commercial and industrial land because:

- (i) conveyances duty is payable only when the property is sold — land tax is an annual tax; and
- (ii) a large proportion of property bought in any year is residential and is:
 - owner occupied for which considerations of income stream are not relevant; or
 - negatively geared investments for which duties paid are tax deductible.

30. Neil Warren takes these considerations into account in the analysis of tax capitalisation effects on the revenue base for stamp duty on conveyances, but the results are sensitive to the assumptions about the rate of property turnover, and the proportion of residential property. He assumes that property turns over every 15 years, and one third is commercial, but suggests that the Commission would need to obtain actual data for property turnover rates in each State to refine his results. His analysis suggests that tax capitalisation has a minor effect on standardised revenues for Stamp Duty on Conveyances. For most States it makes a difference of less than 0.5 per cent of standardised revenues. It is larger for Victoria, the State with the highest effective rate, and for Queensland, the State with the lowest effective rate; but it is still less than 2 per cent.

31. The submission from Victoria said that the key drivers of prices and transaction volumes are population growth, interest rates, household income and wealth, rental vacancies and expectations of capital appreciation. Victoria said differences in effective rates are relatively minor and duties represent less than 5 per cent of the property values.

32. At this stage, the inclusion of an adjustment for tax capitalisation or elasticity does not seem warranted given the uncertainty of the evidence and the small size of the effect. It would add another layer of complexity to the calculation without materially improving the accuracy of the assessment.

Policy Adjustments

33. It is difficult for the Commission to identify differences among States in their legislation and provisions covering tax liability because of the technicality and complexity of those provisions. It is just as difficult to get information and agreement among parties on the importance of those differences to States' relative capacities. The existing adjustments reflect differences that were material at the time of the 1999 Review, were believed to improve the accuracy of the assessment and were generally thought to remain the same each year unless there were changes in legislative provisions or noticeable changes in the level of relevant transactions. Ideally, policy adjustments should change every year to reflect changes in the composition of the transactions that constitute the revenue base in that year. Difficulties in estimating the size of adjustments in the first place, and considerations of simplicity and transparency, generally rule out this sort of precision.

34. The current adjustments derive from information provided in State submissions in early reviews, a subsequent survey of State provisions, and judgements of the Commission. The nature and size of the adjustments were reviewed by the Commission in the 1995 research report into the conveyances revenue base, but States at that time were generally unable to provide better estimates of the revenue effect of aspects of their provisions.

35. When States have provided evidence of changes in their provisions and their probable revenue effect, the policy adjustments have been revised. Commission staff assume that States that have rewritten their stamp duties legislation have considered the implications for their revenue bases and informed the Commission of any material effects at the time.

36. ***Goodwill in the sale of businesses.*** Victoria has asked the Commission to substantiate the policy adjustments for goodwill and classes of transactions. CCH Australia Limited produces manuals on stamp duties for all States. It says that:

... the tax base is narrower in Victoria than that of the other participating jurisdictions. Victoria transfer duty is chargeable generally on relevant dealings in real property, shares and units (and certain interests in these things). In the other participating jurisdictions, transfer duty is also chargeable on relevant dealings in other specified kinds of property including the goodwill in a business.³

37. In the 1999 Review, the Commission reduced the size of the goodwill adjustment to Victoria's revenue base from seven per cent to four per cent. In theory, the adjustment should respond to changes in the importance of the sale of businesses in any year, and it is possible that changes in the nature of the property market, such as booms in residential property, have affected the importance of the policy adjustment. Any evidence that States can provide relevant to these possible effects would assist the review of this adjustment.

³ CCH Victorian Stamp Duties Law and Practice, p 3023.

38. *Classes of transactions.* The adjustment for classes of transactions affects Victoria and the ACT; their bases are increased by four per cent. Commission staff understand that all States now have ‘land rich’ provisions that discourage the transfer of ownership of land rich entities by selling shares in the entity to attract a lower rate of duty.

39. It is understood that Victoria’s definition of dutiable property remains more narrowly focussed on real property and goods than other States. Unlike other States, Victoria does not include business names, copyrights, industrial designs, patents or registered designs as dutiable property. Table 6 sets out some independent information for New South Wales, Victoria and Queensland.

Table 6 DUTIABLE PROPERTY CHECKLIST FROM CCH AUSTRALIA LIMITED

Asset	NSW	Vic	Qld
Business or trading name	Yes	No	Yes
Contracts (not creating an interest in dutiable property)	No	No	Yes*
Copyrights of a business	Yes	No	Yes
Debts	No	No	Yes*
Debentures	No	No	Yes*
Goods acquired with land interests	Yes	Yes	Yes
Goods acquired by themselves	No	No	No
Goodwill of a business	Yes	No	Yes
Industrial designs of a business	Yes	No	Yes
Information and know-how	No	No	No
Interest of beneficiary in un-administered estate of deceased person	No	Yes	No
Land	Yes	Yes	Yes
Options to purchase land	Yes	No	Yes
Options to purchase other property	No	No	Yes
Patents of a business	Yes	No	Yes
Partnership interests	Yes	Yes	Yes
Registered designs of a business	Yes	No	Yes
Registered trademarks of a business	Yes	No	Yes
Shares (unquoted)	Yes	Yes	Yes
Software licences of a business	Yes	No	Yes
Statutory licences	Yes	No	Yes
Stock-in-trade/inventory	No	No	Yes*
Transferable floor space	Yes	No	Yes
Units in a unit trust scheme (unquoted)	Yes	Yes	Yes

Note: * If another dutiable property is the subject of the same transaction or aggregation applies.

Sources: CCH New South Wales & ACT Duties Law and Practice, p 3032, Victoria & Tasmania Duties Law and Practice, p 5022, Queensland Duties Law and Practice, p 3022.

40. The ACT has advised that since its *1999 Duties Act*, its definition of dutiable transactions has converged with that of other States. Its submission shows the similarity of its provisions with the corresponding New South Wales provisions. This would imply that the four per cent increase to its base should be reduced by one third in 1998-99 (the date of

effect of the new definitions was 1 March 1999) and discontinued from 1999-2000 onwards, leaving Victoria the only State to be affected by this adjustment.

41. **Off-the-plan concession.** It also appears that Victoria has a narrower scope of liability for property transactions⁴. It offers an additional concession for off-the-plan purchases of residential property. According to the Full Report of the *Review of State Business Taxes, February 2001*⁵, Victoria is the only State to offer this concession.

42. Victoria introduced the concession in 1984 to purchasers of house and land packages. Duty was levied on the land component plus the value of any work commenced. The legislation also covered clear-site developments but refurbishment of properties for apartment living was not covered until 1994. With the strong growth in inner city apartment developments and refurbishments, this concession now represents a material departure from the standard tax policy and has a significant impact on Victorian conveyances revenues.

43. The *Review of State Business Taxes* estimates that the concession cost Victoria about \$70 million⁶. Actual revenues from stamp duty on conveyances in 1999-2000 were \$1294 million and might have been about \$1364 but for the exemption — about 5 per cent higher.

44. It appears that the value of the transactions in the sample data, from which Victoria's capacity is estimated, would exclude the exempt component but clarification has been sought from Victoria. Pending that response, Commission staff propose to increase Victoria's adjustment by up to 5 per cent. The effect of a five per cent increase in the classes of transaction adjustment on the 2002 Update redistribution is shown in Table 7.

Table 7 REDISTRIBUTIVE EFFECT OF AN OFF-THE-PLAN ADJUSTMENT, BASED ON THE 2002 UPDATE FAG RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
	20.2	-36.7	8.5	4.4	2.2	0.4	0.6	0.3	36.7

(a) Total redistribution.

45. **Unit trusts.** This adjustment was introduced in 1990 to allow for legislative differences in levying duty on the issue and redemption of units in private unit trusts. Most States exempt these transactions but Queensland, Western Australia and South Australia do not. The adjustment reduces the value of transactions reported by these three States by three per cent.

⁴ This matter is also relevant to the 2003 Update and is discussed in the *Discussion Paper CGC 2002/44, Proposals for the Treatment of New Developments in State Finances, and Data Changes Relevant to the 2003 Update of Relativities*.

⁵ *Review of State Business Taxes*, Victorian Business Tax Review Committee, Chairman John Harvey, February 2001, p 77.

⁶ *Ibid*, p 77.

46. Western Australia submitted that the increase in superannuation funds in recent years has spawned a managed funds industry. Managed funds diversify their property holdings by placing individual properties into sub-trusts in which units are issued. Interests of less than 50 per cent in sub-trusts can be sold in most States without attracting conveyances duty. Western Australia also said that managed funds in New South Wales and Victoria use the corporate reconstructions exemptions to avoid duty. It believed that duty will cease to be collected on transfers of interests in major commercial properties in other States but will remain a significant source of income in Western Australia. It provided the Commission with a list of shopping centres, offices and commercial buildings and their holding structure to demonstrate its point. It believes that there is enough evidence to justify making the reduction to its revenue base five per cent, instead of three per cent.

47. Western Australia also submitted that a differential should be introduced for Queensland (two per cent) and South Australia (four per cent) to reflect the narrower protection afforded by their unit trust provisions.

48. Western Australia does not say from when these changes should take place, but the material it provided indicated they were relevant in 2001-02⁷. The Commission seeks comments from other States on how their provisions with regard to sale of units in sub-trusts compare with Western Australia's.

49. Table 8 sets out the current unit trust adjustment and the one Commission staff think follows from Western Australia's submission. Table 9 provides estimates of the effects in grant distributions from the proposed adjustment assuming first that the proposed adjustment had been made to all assessment years in the 2002 Update and second, assuming it had been made from 1999-2000 onwards. The precise starting date would depend on when the major differences in provisions arose and when there was a noticeable increase in the use of sub-trusts as a means of owning and transferring properties.

Table 8 UNIT TRUST ADJUSTMENT

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Current	1.0000	1.0000	0.9700	0.9700	0.9700	1.0000	1.0000	1.0000
Proposed	1.0000	1.0000	0.9700	0.9500	0.9900	1.0000	1.0000	1.0000

⁷ This issue has also been raised in *Discussion Paper CGC 2002/44*.

Table 9 GRANT SHARE EFFECT OF REVISED UNIT TRUST ADJUSTMENT, BASED ON THE 2002 UPDATE FAG RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total ^(a)
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$n	\$m
Applied to all years	-2.2	-1.0	-0.9	9.5	-5.3	0.0	-0.1	0.0	9.5
Applied to 1999-2000 onwards	-0.9	-0.4	-0.3	4.1	-2.3	0.0	0.0	0.0	4.1

(a) Total redistribution.

50. **Corporate reconstructions.** During the 1999 Review, the Commission was told that all States exempted corporate reconstructions. The Commission made no policy adjustment for corporate reconstructions because it believed the eligibility criteria of each State were similar and because previous terms of reference instructed it to omit reconstructions from the revenue base.

51. Western Australia says that:

- (i) New South Wales, Victoria and Queensland now exempt property that is transferred to a subsidiary company or trust prior to public listing;
- (ii) New South Wales and the ACT now allow a corporate group to include publicly owned companies or unit trusts outside the group whose shares or units are 'stapled' to a company within the group; and
- (iii) New South Wales and Victoria provide more generous relief in that they require property to remain within the group for one year, not five as required by Western Australia, and they now exempt transfers to commonly owned unit trusts as well as companies.

52. If the Commission were to try to allow for such policy differences, it would face the same difficulties it met in earlier reviews when it made a corporate reconstruction adjustment. In principle, it would need to include some or all exempt transactions in the sample data, but it can be argued that the transactions would not have proceeded but for the exemption. Western Australia proposed, and Commission staff accept, that policy neutrality in the revenue base could be better achieved if all corporate reconstructions were to be excluded from the measure of the revenue base for all States, whether or not they are granted an exemption. (Exempt corporate reconstructions are already excluded). This approach would ensure consistency of data across the States and would not penalise those States that give fewer exemptions. For this purpose, the definition of a corporate reconstruction would need to be the same across all States. Commission staff propose that New South Wales' provisions be used as setting the standard definition as, we believe, they are sufficiently broad.

53. To implement this approach, each State would need to:
- (i) exclude all corporate constructions from the annual sample data it provides the Commission, whether or not they were granted an exemption; and
 - (ii) advise the Commission of the amount of revenue raised from corporate reconstructions so that it could be treated appropriately.

Coverage of the Sample Data

54. A number of problems appear to be arising in the annual data States provide the Commission. They could affect the accuracy of its measure of the revenue bases.

- (i) States have different policies and thresholds for first home buyers and principal place of residences. This should be overcome by the current approach of including all such transactions in the sample data and leaving the granting of concessions or exemptions to affect the revenue effort of each State. This approach should achieve consistent and comparable data across States.
- (ii) There are differences in the exemptions granted for corporate reconstructions, the effect of which was discussed above.
- (iii) There are differences in policies on the sale of government assets. The effects of these differences are best overcome by excluding such transactions from the sample.
- (iv) ***Self-assessment schemes.*** The integrity of the assessment method relies on States providing as full an enumeration of transactions as possible, or at least a fully representative sample. A number of States allow registered agents, such as solicitors or banks, to process transactions and self-assess the duty liability. Such transactions are most likely to be for residential property of lower values where it is not cost efficient for the State revenue office to process them. These self-assessment returns are sometimes not covered in the sample, with the result that the proportion of transactions in the lower ranges may be understated. This would result in an overstatement of the value distribution adjustment, to the disadvantage of a State that does not include such transactions in its sample.

Data anomalies arose for New South Wales in the 2002 Update because it initially left many transactions out, and Queensland because it brought those transactions into the sample for the first time. Western Australia has advised the Commission that these transactions were not included in its recent samples. However, it hopes to use data from the Department of Land Administration (DOLA) to include these smaller transactions in its data, going back to 1998-99.

SUMMARY

55. The revenue base used in the current assessment seems to be the best way of measuring the capacity of governments to raise this tax, bearing in mind the volatility of capacities which should be taken into account.

56. There are two difficulties with this approach:

- (i) the complexity of taxation provisions makes it difficult to identify and measure the effect of differences in the coverage of dutiable transactions; and
- (ii) State databases may not be able to provide the Commission with the necessary data.

57. The Commission seeks the assistance of the parties in overcoming these difficulties. A list of data requirements is attached. Given the evidence available so far, Commission staff are inclined to recommend to the Commission that it continue the existing approach to the assessment, abolish the classes of transactions adjustment for the ACT and increase the classes of transactions adjustment for Victoria to allow for its off-the-plan concessions. Variations to other adjustments, including the unit trusts adjustment and an adjustment for corporate reconstructions, would be considered based on data the States provide.

ATTACHMENT — DATA REQUIREMENTS

1. This attachment presents a consolidated list of the data required to review each of the policy adjustments discussed in the paper. The Commission seeks information that compares the coverage of a State's taxable transactions with that of other States, and quantifies the effect of differences on its capacity. Information should be for 2001-02 if possible.

Goodwill

2. The Commission requires information on:
- (i) the proportion of conveyances revenues that relate to the sale of businesses;
 - (ii) the proportion of goodwill in the value of the sales of businesses; and
 - (iii) the revenue raised from imposing duty on goodwill.

Classes of transactions

3. The Commission requires the following information.
- (i) Details of the range of matters on which a State imposes conveyances duty compared with other States.

Table 6 might provide a useful starting point for a survey of the coverage of dutiable property in each jurisdiction. Information is required from the other States on whether they impose duty on the transactions listed in the table.

- (ii) Details, and an estimate of the extra revenue raised (or forgone), in cases where a State thinks that its provisions are more (or less) comprehensive than another State's.

4. In some cases, such provisions will have both a direct effect — revenue raised specifically from that provision — and an indirect effect — it may discourage taxpayers from seeking to avoid conveyances duty. The Commission requires details of direct effects and estimates of indirect effects (including details of the assumptions used in preparing those estimates.)

Unit trusts

5. The Commission requires information from each State on:

- (i) how its provisions governing the treatment of private unit trusts compare with Western Australia and when they became different (if that is the case);
- (ii) how the provisions applying to the establishment of sub-trusts by managed investment funds for the holding of property compare with Western Australia, and when they became different (if that is the case); and
- (iii) the revenue effect of any differences in provisions compared with those of other States.