

COMMONWEALTH GRANTS COMMISSION

DRAFT ASSESSMENT PAPER CGC 2003/3

STAMP DUTY ON CONVEYANCES

Prepared for the Commission's 2003 Conferences on Draft Assessments

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CONTENTS

INTRODUCTION	1
1999 REVIEW ASSESSMENT METHOD	1
Description of the category	1
Category standard	1
The revenue base	2
Importance of the category	3
CATEGORY DEFINITION FOR THE 2004 REVIEW	4
ISSUES FOR THE 2004 REVIEW	5
ELASTICITY (TAX CAPITALISATION) ADJUSTMENT	5
POLICY ADJUSTMENTS	7
Engagement of consultant	7
Goodwill policy adjustment	7
Classes of transactions policy adjustment	11
Unit trusts policy adjustment	15
Exemptions for corporate reconstructions	20
SAMPLE DATA	23
VALUE DISTRIBUTION ADJUSTMENT	25
PROPOSED ASSESSMENT METHOD FOR THE 2004 REVIEW	25
Calculation of the revenue base	25
2004 REVIEW DRAFT CALCULATIONS	26
Grant share effects	26
Revenue raising capacity ratios	28
Standardised revenue	28
Reality check	30
Updateability	31
ATTACHMENT A: BLAKE DAWSON WALDRON REPORT ON CONVEYANCE DUTY DIFFERENCES BETWEEN THE STATES & TERRITORIES	32

INTRODUCTION

1. This paper presents the draft assessment of the Stamp Duty on Conveyances category for the 2004 Review. It builds on staff proposals in *Discussion Papers CGC 2002/19 The Stamp Duty on Conveyances Assessment* and *CGC 2002/44 Proposals for the Treatment of New Developments in State Finances, and Data Changes Relevant to the 2003 Update of Relativities*. It also responds to States' comments in 2004 Review submissions, 2003 Update submissions and the 2002 conferences.

2. It draws on a consultant's *Report to Commonwealth Grants Commission, Conveyance Duty Differences Between States & Territories* by Peter McMahon and Peter Edmundson of Blake Dawson Waldron, Lawyers, June 2003. That report is attached to this paper.

1999 REVIEW ASSESSMENT METHOD

Description of the category

3. In the 1999 Review, the category comprised stamp duties imposed on the transfers of property (principally real estate, business and other property) excluding shares and marketable securities. It also excluded duty collected from the sale of major State government-owned assets.

Category standard

4. Table 1 shows the revenue standards for conveyances revenue in dollars per capita and as percentages of own source revenue used in the 2003 Update. It was the second largest category of own source revenue with total collections of \$7 253.8 million (an average of \$370.11 per capita) in 2001-02. This represented about 14.87 per cent of State own-source revenue.

Table 1 REVENUE STANDARD STAMP DUTY ON CONVEYANCES

	1997-98	1998-99	1999-2000	2000-01	2001-02
Standard revenue (\$ per capita)	217.10	231.23	278.96	267.63	370.11
As percentage of own-source revenues (%)	10.46	9.79	11.53	11.00	14.87

Source: 2003 Update Working Papers, Volume 2, pages 12 and 21.

The revenue base

5. The revenue base was the value of dutiable transactions adjusted for differences in regard to:

- (i) duty on goodwill: Victoria’s policy to exclude the value of goodwill in the sale of businesses from duty — ***the goodwill policy adjustment***;
- (ii) coverage of classes of assets subject to duty: Victoria’s policy to levy duty on a narrower range of real property, personal property and business assets — ***the classes of transactions policy adjustment***;
- (iii) duty on unit trusts: Queensland, Western Australia and South Australia have tighter duty provisions for unit trusts — ***the unit trusts policy adjustment***; and
- (iv) the distribution of transactions by value range — ***the value distribution adjustment***. Stamp duties are progressive, so the value distribution of transactions affects revenue raising capacity.

6. ***Sample data.*** The assessment used sample data provided annually by the States to estimate the value of transactions and duty receipts in each value range. Because the coverage of the sample differed from State to State, the sample data were scaled up or down by the ratio of sample revenues to conveyances revenues in the equalisation budget.

7. Table 2 shows the components of the revenue base for 2001-02, expressed as capacity ratios and policy adjustments.

Table 2 COMPONENTS OF THE REVENUE BASE, 2001-02

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Value of transactions ^(a)	1.2556	0.7979	1.1191	0.8730	0.6288	0.4773	1.0301	0.4569
Value distribution adjustment	1.0728	0.9794	0.9170	1.0128	0.8576	0.8035	0.9469	0.8901
Goodwill ^(b) adjustment	1.0000	1.0400	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
Classes of transactions ^(b) adjustment	1.0000	1.0400	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
Unit trusts ^(b) adjustment	1.0000	1.0000	0.9700	0.9700	0.9700	1.0000	1.0000	1.0000
Category capacity	1.3388	0.8401	0.9894	0.8523	0.5199	0.3811	0.9694	0.4042

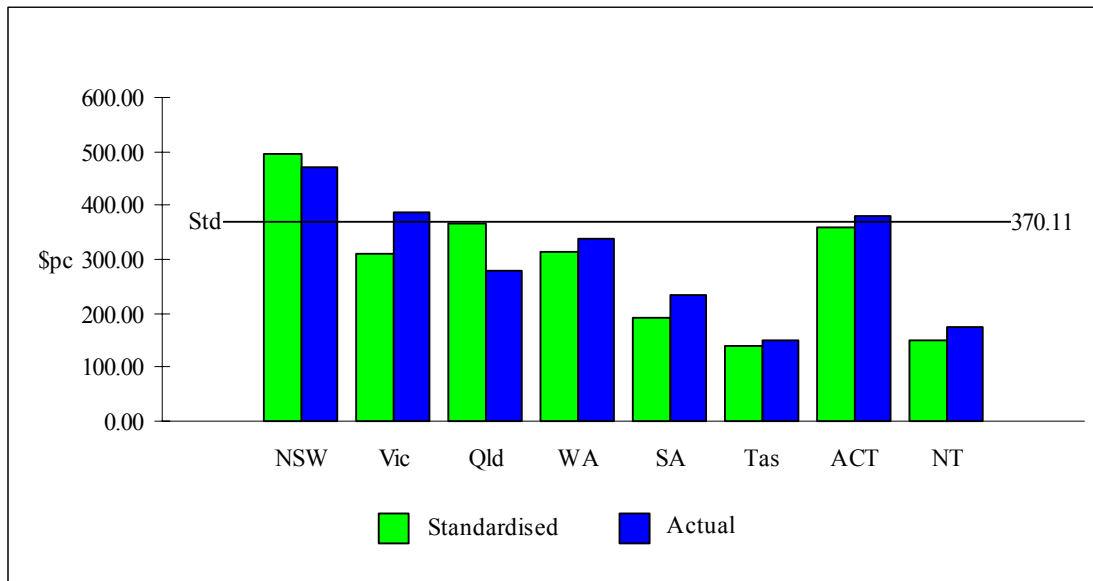
(a) States were unable to enumerate all transactions. They provided a sample. The Commission rescaled their data so that a State’s total sample revenues equalled its actual revenue collections.

(b) An adjustment above one increases a State’s revenue base; an adjustment below one reduces it. Classes of transactions and unit trusts adjustments were added prior to compounding with the goodwill adjustment. For consistency and simplicity, we propose that the three policy adjustments be added in the 2004 Review.

Source: 2003 Update Working Papers, Volume 2, p. 83.

8. Figure 1 shows the assessment for 2001-02.

Figure 1 STAMP DUTY ON CONVEYANCES: STANDARDISED, ACTUAL AND STANDARD REVENUES PER CAPITA, 2001-02



Importance of the category

9. Table 3 shows that, compared with an equal per capita assessment, the stamp duty on conveyances assessment redistributed about \$672.1 million in the 2003 Update. This was the second largest redistribution, next to Mining Revenue.

Table 3 GRANT DISTRIBUTION OF STAMP DUTY ON CONVEYANCES COMPARED WITH EPC DISTRIBUTION, GST RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total redistributed
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Grant share effect	-672.1	305.6	27.9	26.4	184.6	90.5	10.3	26.9	672.1

10. Table 4 shows the grant share effect of each component of the assessment. The policy adjustments, though small in percentage terms, have a large effect on results, particularly for Victoria.

Table 4 GRANT SHARE CONTRIBUTIONS OF ASSESSMENT COMPONENTS

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT redistributed	Total
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Value of transactions	-558.5	330.9	-25.8	2.4	147.8	74.5	5.6	23.1	584.3
Value distribution	-129.2	63.0	12.6	3.0	26.4	15.7	5.0	3.5	129.2
Goodwill adjustment	21.2	-38.1	8.8	4.5	2.2	0.4	0.7	0.3	38.1
Classes of transactions adjustment	21.6	-37.9	8.9	4.6	2.3	0.5	-0.2	0.3	38.1
Unit trusts adjustment	-27.2	-12.3	23.4	12.0	5.9	-0.6	-0.9	-0.4	41.3
Total	-672.1	305.6	27.9	26.4	184.6	90.5	10.3	26.9	672.1

CATEGORY DEFINITION FOR THE 2004 REVIEW

11. There is general support for the existing scope of the category and the Commission has found no reason to change it. The category will continue to comprise net collections from stamp duty on conveyances and transfers of real estate, business and other property. The category excludes stamp duties on shares and marketable securities, which are assessed separately.

12. ***Inclusion of sales of major State government assets.*** For the 1999 Review, the category excluded duty raised from the sale of major State government assets and the value of those transactions were excluded from the revenue base. Examples of such asset sales include the sales of power generation and transmission networks, gas pipelines, plants, aluminium smelters, insurance office, banks, and casinos. The exclusion meant that the revenues in the Commission's equalisation budget could differ from the budget revenue reported by States in some years. It was also equivalent to an equal per capita assessment.

13. States generally accept the treatment of sales of major State government as a policy choice. Revenues have been excluded from the equalisation budget to ensure the scaling process is correct. Including stamp duty from such sales in the equalisation budget, as a separate component, and assessing it by the equal per capita method (EPC) would produce the same relativities. Arguably, it would increase the transparency of the assessment and would better align the equalisation budget with State budget documents. The disadvantage would be the additional complication of collecting data on these revenues and assessing the separate component.

14. ***Commission decisions.*** The Commission accepts that there is a case for including sales of major State government assets in the category definition and assessing duty from those sales by the equal per capita method. The evidence indicates that these duties arise from States' decisions to sell major assets and the Commission considers they should not be subject to a differential assessment. The Commission has, therefore, decided to:

- (i) include duty raised from the sale of major State government assets in a separate component. The two category components would be:
 - sales of private property — equivalent to the equalisation budget revenues in the category for the 2003 Update;
 - sales of major State government assets — revenues previously excluded from the equalisation budget.
- (ii) assess duty raised from the sales of major State government assets by the equal per capita approach.

ISSUES FOR THE 2004 REVIEW

15. In their main submissions, most States supported the existing assessment method, but New South Wales and Western Australia preferred a broader (global or sub-global) assessment of revenue capacity across all revenue categories.

16. The main issues for conveyances for the 2004 Review were:

- (i) whether an elasticity adjustment should be applied;
- (ii) the range and size of the policy adjustments, particularly:
 - whether the goodwill adjustment for Victoria should be reduced;
 - whether the classes of transactions adjustment for Victoria should be revised to, among other things, reflect Victoria's policy on off-the-plan concessions; and
 - whether the unit trusts adjustment should be revised; and
- (iii) the reliability of the sample data.

ELASTICITY (TAX CAPITALISATION) ADJUSTMENT

17. *State views.* *New South Wales* submitted that an adjustment for elasticity (tax capitalisation) should be made to remove the effect of interstate differences in the rates of duty on property values. It said rates of duty affected income streams arising from, and hence the value of, a property. The duty was capitalised into land values.

18. *Victoria* opposed an elasticity adjustment because differences in effective tax rates were relatively small. It said that the key drivers of house prices and transaction volumes were population growth, rates of household formation, interest rates, household

income and wealth, rental vacancy rates, expectations of capital appreciation and rates of returns on other financial assets.

19. **Preliminary proposal.** In *Discussion Paper CGC 2002/19*, staff proposed to retain the existing approach, with no elasticity adjustment because of the uncertainty of the evidence and the small size of the effect.

20. **Further State views. New South Wales** maintained its view that an elasticity adjustment was required. It said overseas studies showed that the value of property was affected by capitalisation of rates of duty and the rate of property turnover was affected by transactions costs.

21. **Queensland** said it opposed elasticity adjustments in general because all government intervention in markets produced some distortions both in the short term and in the long term. It said the Commission had no framework to deal with them.

22. **South Australia** opposed an elasticity adjustment because it was not feasible to unravel the effects of tax rate differences on transaction values.

23. **Tasmania** said elasticity adjustments would add complexity to assessments and would rarely be empirically based. It noted that some States had argued selectively for an adjustment in one category but not another. It said revenue bases were not sensitive to rates, noting that States had not adjusted their rates in response to the recent property boom.

24. The **Northern Territory** opposed an elasticity adjustment because rates of duty had a minimal effect on transaction values.

25. **Analysis and evaluation.** The Commission accepts the conceptual case that State expenditure and taxation regimes affect the level of economic activity. However, to be able to analyse this effect properly, the Commission would require a general equilibrium model of State economies, which it does not have. In the absence of such models, it is not convinced that selective elasticity adjustments would move equalisation in the right direction or by the right magnitude. So, the Commission is not attracted to making selective elasticity adjustments for differences in State rates of tax.

26. **Commission decision.** The Commission does not accept the conceptual case has been established for assessing selective elasticity adjustments. There is no doubt that State expenditure and taxation regimes affect the levels of economic activity. However, it is not at all clear that these effects could be estimated with any reliability (in respect of either direction or the magnitude) by a series of selective adjustments. For these reasons, the Commission has decided not to assess a tax capitalisation adjustment in the Stamp Duty on Conveyance category.

POLICY ADJUSTMENTS

Engagement of consultant

27. Because of the complexity of State legislation provisions and practice, the Commission engaged Peter McMahon of Blake Dawson Waldron (assisted by Peter Edmundson) to advise on differences in State provisions. The consultant was asked:

- (i) to provide advice on what differences exist among the States in their provisions governing the range of transactions subject to conveyance duty which may have a material impact on interstate comparisons of the value of transactions subject to conveyance duty;
- (ii) in particular to comment on material differences that relate to conveyance duty on unit trusts, land rich entities and corporate reconstructions; and
- (iii) to provide information that could assist the Commission make judgements on the size of any adjustments it should make.

28. The consultant was provided with the relevant material from States' submissions to the 2004 Review, and their submissions to the 2003 Update to assist his review. A draft report was sent to all jurisdictions for comment, along with a request for data to help quantify the revenue effect of policy differences. The attached final report on *Conveyances Duty Differences Between States & Territories* reflects States responses to that draft.

29. The report highlighted numerous differences in provisions across the States but found that most were likely to be of small significance and the effects on revenue capacity were not likely to be large enough to merit a policy adjustment. It noted the difficulty of measuring the effects because, for example, a tighter provision may not lead to increased revenue capacity because the transaction may not take place, may be shifted to another jurisdiction, or may be organised in a way to circumvent the provision.

30. The consultant highlighted those differences that were 'highly significant' and greatly impacted on revenue raising capacity. He advised that policy adjustments were justified for them. His report suggested the Commission broadly had the directions of the policy adjustments correct. However, he was unable to assist with the quantification.

Goodwill policy adjustment

31. *State views.* *Victoria* said the goodwill and classes of transactions policy adjustments were double-counted, the four per cent increases were too high, and the size of the goodwill adjustment should change each year with the proportion of goodwill in total transactions. It asked that the goodwill adjustment be reduced to between two and three per cent.

32. **Preliminary proposal.** In *Discussion Paper CGC 2002/19*, staff noted that Victoria continued to exclude the value of goodwill in a business from dutiable values and that a policy adjustment was warranted, the size of which would be reviewed in the light of any evidence States could provide.

33. **Further State views.** *New South Wales* opposed reducing the four per cent adjustment to Victoria's base.

34. **Victoria** said the consultant supported the view that the goodwill and classes of transactions adjustments measured similar things. It asked the Commission to be more rigorous in quantifying the size of the adjustments.

35. **Queensland** said the treatment of goodwill was a material policy influence, and supported the adjustment. However, it said it did not collect any data that could shed light on the size of the adjustment.

36. **Western Australia** estimated the proportion of revenue from the sale of businesses during 2001-02 at 13 per cent, of which 10 per cent related to sales excluding land. It said it was considering undertaking a survey to determine the specific proportion of goodwill in the value of property sales.

37. **South Australia** supported the adjustment, but did not comment on its size.

38. **Consultant's view.** The consultant said that while the Victorian legislation excluded goodwill, its revenue office had recently attempted to impose duty on goodwill in effect by arguing that the value of land transferred is enhanced by any site goodwill. However, from the cases before the Supreme Court, it was highly uncertain that it would succeed.

39. The consultant said it was difficult to estimate the extent of revenue lost by not taxing the transfer of goodwill because it was difficult to generalise about the significance of goodwill in business sales. Also, when a business was sold, there was a tendency for the consideration to be apportioned between business names, intellectual property rights and goodwill. He warned that to the extent that the classes of transactions policy adjustment reflected Victoria's failure to tax business names and property rights, there was a possible element of double counting with goodwill. He concluded that in relation to goodwill:

Victoria is a clear anomaly and a policy adjustment is justifiable. However, we would suggest consideration be given to a reduction to this adjustment to take account of a likely element of "double counting" with respect to the adjustment for "classes of transactions".¹

40. **Analysis and evaluation.** It is not certain whether Victoria's revenue office will succeed in raising revenue from goodwill indirectly by changing interpretation. In any case, the Commission adjustment is applied to data for past years. If Victoria broadens its

¹ *Report to Commonwealth Grants Commission Conveyance Duty Differences Between States & Territories*, Blake Dawson Waldron, Executive Summary, p 25, June 2003.

base to capture some goodwill, it would be considered as a new development in a subsequent update.

41. The consultant has supported the making of a goodwill adjustment but has not been able to assist on the size of the adjustment. Several Commission requests for information to help quantify the effect of policy differences have yielded little information.

42. The goodwill policy adjustment dates back to the 1988 Review. Based on the information at that time, the Commission concluded that States that did not tax goodwill could have increased their revenue bases by seven per cent if they had broadened their bases². The working papers say that this adjustment ‘was assessed by broad judgment following an examination of sample data provided by some States and a consideration of Victoria’s argument that, while it did not levy duty directly on the transfer of goodwill, the value of physical property may have been enhanced by the goodwill attaching to a business’³.

43. The adjustment was reduced from seven per cent to four per cent in the 1999 Review. This reflected further consideration in the Commission’s *Research Report into the Stamp Duty on Conveyances Revenue Base*. Information available for 1993-94 showed that the percentage of the total conveyance revenue that related to the sale of businesses ranged from 1.7 per cent in the ACT, 3.5 per cent in New South Wales, 5.9 per cent in South Australia, 6.5 per cent in Tasmania, and 8.5 per cent in Queensland. The Commission considered that given revenue from the sale of businesses was less than 10 per cent, and goodwill was only a part of that, seven per cent was too high.

44. Information provided to the 2004 Review are summarised in Table 5. It is difficult to know what to make of such limited, and often heavily qualified, information. The proportion of revenue from sales of business varies from State to State and over time. It is low in New South Wales, yet information from Victoria’s *Review of State Business Taxes* suggested that in 2000-01, about 30 per cent of Victoria’s revenue was attributable to business sales.

² At that time, Victoria, Tasmania and the Northern Territory did not tax goodwill.

³ Volume 2 of the Working Papers to the Report on General Revenue Grant Relativities 1988, p 54.

Table 5 PROPORTIONS OF GOODWILL IN SALES OF BUSINESSES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
	%	%	%	%	%	%	%	%
A. Proportion of conveyances revenue attributable to sales of businesses								
1999-2000	4.18	na	19.34	na	14.60	21.13	0.64	6.20
2000-01	4.00	na	12.14	na	18.30	15.04	1.91	10.20
2001-02	4.35	na	7.64	13.00	7.60	13.93	0.27	5.90
B. Proportion of revenue from sales of businesses attributable to goodwill								
1999-2000	na	na	na	na	na	27.18	na	na
2000-01	na	na	na	na	na	67.96	na	na
2001-02	na	na	na	na	na	64.68	77.00	na
C. Proportion of conveyances revenue attributable to goodwill (A * C)								
1999-2000	na	na	na	na	na	5.74	na	na
2000-01	na	na	na	na	na	10.22	na	na
2001-02	na	na	na	na	na	9.01	0.21	na

Sources: Responses by States to data requests.

45. Information on the size of the proportion of goodwill in business sales is more limited. States that tax goodwill have been unable to estimate how much difference it makes to them, but none have said that the four per cent adjustment is too low.

46. The consultant said that, in practice, values allocated to goodwill and to other business assets might be substitutable. Therefore the four per cent adjustment may include some double counting with the classes of transactions adjustment. Assuming that the proportion of revenue from sales of business in Victoria is closer to New South Wales (four per cent) than the smaller States, and allowing for the evidence that between two thirds and three quarters of this relates to goodwill, there is a case to reduce the adjustment from four per cent to three per cent.

47. On the ground of simplicity and transparency, the goodwill adjustment could be assessed additively — the same as other policy adjustments — rather than multiplicatively (as it was in the 1999 Review). There is not sufficient interrelation between goodwill and the other policy adjustments to warrant compounding. The change would have little effect on grant shares.

48. Ideally, the size of the goodwill adjustment should change each year in response to changes in the proportion of goodwill in total transactions. However, data are not available to support an annual assessment. Therefore, the adjustment will remain fixed for the review. The size of the adjustment could be reviewed if one or more States change their policies. If this happens, the change would be raised as a new development in a subsequent update.

49. **Commission decisions.** The Commission accepts that Victoria's policy of not levying duty on goodwill is different from the policies of other States. It also accepts

that since data on the actual value of transaction in each State are used to measure the revenue base, that policy difference would affect the assessment of relative revenue raising capacities. Therefore the conceptual case has been established for assessing a goodwill policy adjustment for Victoria's policy of excluding the value of goodwill in a business from dutiable values.

50. Evidence of the effect of including goodwill in the base is limited and varies from one State to another, but the Commission considers the direction of the adjustment is clear and data are sufficiently indicative of the magnitude for it to determine an adjustment. The data indicate that the policy has an impact on State budgets that the Commission considers to be material.

51. The Commission also accepts that a case has been established for reducing the size of Victoria's goodwill policy adjustment. The consultant's report supports a decrease in its adjustment because of likely double counting with the classes of transaction adjustment. For these reasons, the Commission proposes to:

- (i) assess a goodwill policy adjustment; and
- (ii) reduce Victoria's goodwill policy adjustment from four per cent to three per cent.

52. The Commission also accepts that a case has been established for assessing the adjustment additively. The evidence suggests that the change is not material. The Commission does not consider that the additional complexity of compounding is warranted and it proposes to assess the goodwill policy adjustment additively in the 2004 Review.

Classes of transactions policy adjustment

53. ***State views.*** *Victoria* said the classes of transactions and the goodwill adjustment measured similar things and there were not sufficient material differences to justify the adjustment for classes of transactions.

54. The *ACT* said that its adjustment for classes of transactions should be discontinued because its *1999 Duties Act* had broadened its definition of dutiable transactions in line with other States.

55. ***Preliminary proposal.*** In *Discussion Paper CGC 2002/19*, Commission staff cited evidence from CCH Australia Limited showing the narrower range of dutiable transactions in Victoria compared with New South Wales and Queensland. The paper noted that Victoria had an even narrower tax base for real estate because of its concession for off-the-plan purchases of property. This suggested a material difference of up to five per cent of Victoria's revenue, based on data from the Full Report of the *Victorian Review of State Business Taxes, February 2001*⁴.

⁴ *Review of State Business Taxes*, Victorian Business Tax Review Committee, Chairman John Harvey, February 2001, p 77.

56. The ACT provisions are now similar to those of New South Wales. Commission staff proposed that the four per cent increase to the ACT's base 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. The Commission subsequently made this change for the 2003 Update. The States have raised no new issues about this decision, and the consultant supports it.

57. **Further State views.** *New South Wales* supported the retention of the four per cent adjustment because Victoria's definition of liability was narrower, particularly relating to business names, patents, licences, trademarks and copyright. It also supported the proposed five per cent adjustment for Victoria's off-the-plan concession.

58. *Victoria* said its off-the-plan concession was an anti-avoidance measure to stop contract splitting and it was not clear what other States were doing. It said that the difference was not material.

59. *Queensland* raised a further difference for Queensland because it had the broadest provisions in regard to partnership acquisitions, but said that it had no data to assist in quantification.

60. *South Australia* noted that it was difficult to determine the size of adjustments with confidence given the complexity of stamp duty laws.

61. The *Northern Territory* supported the proposal to base the adjustment for off-the-plan concessions on data from the *Review of State Business Taxes*.

62. **Consultant's view.** The consultant concluded that:

- *Victoria's revenue base clearly is narrower than the other States' and a continuing policy adjustment is justifiable;*
- *Victoria's off-the-plan concession is highly significant and a policy adjustment is justifiable in respect of this concession;*
- *a policy adjustment no longer is justifiable in relation to the Australian Capital Territory (assuming that the Commission's methodology elsewhere accounts for the significantly lower rate of duty in respect of many non-land items of dutiable property); and*
- *a policy adjustment may be justifiable in relation to Western Australia (flowing from the fact that Western Australia does not currently impose duty on many dealings in intellectual property). However, such a policy adjustment, if any, should be small as it would not be expected that significant revenue is raised purely on transfers or conveyances of intellectual property.⁵*

⁵ *Report to Commonwealth Grants Commission Conveyance Duty Differences Between States & Territories*, Blake Dawson Waldron, Executive Summary, p 25.

63. The consultant noted that mechanisms for the imposition of duty on the transfer of partnership interests varied between the States. However, he concluded that the differences were not sufficiently clear to allow a confident conclusion that a policy adjustment was justifiable.

64. ***Analysis and evaluation. Victoria's narrower scope of classes of transactions.*** The Commission has accepted the consultant's finding that Victoria's revenue base was narrower in a number of respects than other States and that an adjustment was justifiable.

- (i) Victoria has a more restrictive concept of dutiable land than other States.
- (ii) It does not duty the transfer of an existing option to purchase land.
- (iii) It imposes duty on goods only when they are acquired together with land.
- (iv) It does not impose duty on the transfers of business or trading names and intellectual property rights held by a business (such as copyrights, industrial designs, patents, registered designs and registered trademarks).

65. The current four per cent adjustment dates back to the 1988 Review and, according to working papers, was based on sample data provided by Queensland and judgments made by the Commission at that time. The Commission has not been able to obtain more recent data to justify a change to the size of this adjustment, either in the course of reviews or the *1995 Research Report into the Stamp Duty on Conveyances Revenue Base*⁶.

66. ***Victoria's off-the-plan concession.*** Victoria's concession for off-the-plan purchases was unique and the consultant concluded that a policy adjustment was justifiable.

67. New South Wales estimated revenue from the sale of units off-the-plan at \$173 million in 2000-01 and \$195 million in 2001-02, about seven to eight per cent of actual revenue. Queensland estimated that the duty raised from the sale of strata units that had more than 90 days between the date of contract and the date of possession at \$37 million in 2001-02, a figure it thought to be conservative, or about four per cent of its actual revenue.

68. The most relevant evidence comes from Victoria's own *Review of State Business Taxes* of February 2001. It estimated that the full cost of the concession was \$70 million⁷. This figure represents about five and a half per cent of Victorian revenues in 1999-2000 and 2000-01. It is probable that the estimate of \$70 million coincided with a period of very high interest in new developments of residential units and conversions of offices into residential units and it may be atypical of the longer run.

⁶ Commonwealth Grants Commission, Reports on Research in Progress, 1995, Volume 1, Report 4, pp 191-228.

⁷ *Review of State Business Taxes, Full Report 2001*, Victorian Department of Treasury and Finance, p 77.

69. **Commission decisions.** The Commission accepts that Victoria's policy of levying duty on a narrower range of transactions and its policy to offer a concession for units off-the-plan are different from the policies of other States. It also accepts that since data on the actual value of transaction in each State are used to measure the revenue base, these policy differences would affect the assessment of relative revenue raising capacities. Therefore the conceptual case has been established for assessing a classes of transaction policy adjustment for Victoria.

70. Recent data are limited, but the Commission considers that there is evidence to support the continuation of the existing adjustment and to increase it to include the effect of off-the-plan concessions. These policy differences have an impact on State budgets, which the Commission considers to be material. The Commission has decided to:

- (i) assess a classes of transaction policy adjustment; and
- (ii) based on the most recent estimate of the full cost of the off-the-plan concession, increase the adjustment to Victoria's revenue base from four per cent to seven per cent because of its off-the-plan concession.

71. **Western Australia's dealings in intellectual property.** The consultant drew attention to the fact that Western Australia does not impose duty on some dealings in intellectual property. He suggested that any adjustment would be small.

72. **Analysis and evaluation.** The Full Report of the *Review of State Business Taxes* produced by the Western Australia Treasury estimates the direct revenue yield of applying conveyance duty to transfers of intellectual property at about \$3 million in 2003-04 compared with projected revenues from conveyances of \$840 million.

73. **Commission decision.** While the Commission acknowledges that a conceptual case has been established for making a classes of transaction adjustment for Western Australia, the evidence indicates that the impact would not be material. For that reason, the Commission has decided not to introduce a classes of transaction policy adjustment for Western Australia.

74. **Queensland's partnership provisions.** Queensland said it had the broadest provisions in regard to partnership acquisitions, but said it had no data to assist in the quantification of an adjustment.

75. **Analysis and evaluation.** Queensland is unable to provide evidence to show how material this policy difference would be. The consultant could not be sufficiently clear about the extent of the differences and did not support making an adjustment for this difference.

76. **Commission decision.** The Commission concluded that there is insufficient information to consider whether and how an adjustment could be made. For these reasons, the Commission has decided not to introduce a classes of transaction policy adjustment for Queensland.

Unit trusts policy adjustment

77. ***State views. Western Australia*** proposed that the reduction to its revenue base for its tighter provisions on private unit trusts should be increased from three to five per cent and a differential introduced between itself and Queensland and South Australia. It argued that the growth in managed funds and the use of sub-trusts to hold individual property titles meant that the current allowance was inadequate. At the workplace discussions, it provided a sample list of properties held in sub-trusts in New South Wales and Victoria to show the expansion of the practice in those States.

78. ***Preliminary proposal.*** In *Discussion Paper CGC 2002/19*, Commission staff noted the difficulty of evaluating Western Australia's submission but said the size of the adjustment should be reviewed in the light of available evidence.

79. ***Further State views. New South Wales*** acknowledged the increasing use of unit trusts by investors to acquire interest in land. Under its 'land rich' provisions, issues and redemptions of units are not subject to duty, provided that no single unit holder or group of 'associated' unit holders acquired more than 50 per cent of the units. It estimated that if these were subject to normal rates, additional revenue would be less than Western Australia had estimated.

80. New South Wales opposed increasing the adjustment. It said that what New South Wales might have collected had it imposed their provisions was irrelevant. It was up to the 'non-standard' States to show the impact of the policy difference on their bases.

81. ***Victoria*** said that Western Australia had provided no evidence that Victoria's revenue loss from the unit trust provisions was greater than other States. It said that while Western Australia had provided some examples of the use of unit trusts in Victoria, the issue was the value of transactions that were subject to duty in Western Australia. In any case, Victoria's compliance efforts were possibly more effective than other States.

82. ***Queensland*** supported an adjustment for those States that had non-standard provisions with regard to the taxing of the issue and redemption of units in private unit trusts; but it disagreed with Western Australia's interpretation of Queensland's provisions.

83. ***Western Australia*** said that its adjustment should be five per cent. The managed funds industry increasingly held high value properties in individual sub-trusts and dealing in interests of 50 per cent or less through changing the ownership of units rather than dealing in property directly. The duty regime in Western Australia imposed duty on all dispositions in land-owning private unit trusts as if the real property had been transferred irrespective of the size of the unit holding or the value of the real property held. Western Australia said other States had failed to respond to changes in commercial property holding.

84. Western Australia estimated that the disposition of private unit trusts raised \$2.3 million in total conveyance duty of \$670 million but it said this apparently low amount was misleading because the provisions had a deterrent effect. Because one instrument may contain several forms of dutiable property, Western Australia was unable to obtain estimates of the revenue raised from specific classes of transactions. In its interim rejoinder submission, it provided two examples of transactions that yielded \$5 million duty to Western Australia because of its provisions.

85. Western Australia estimated that New South Wales and Victoria had foregone likely revenue losses in 2001-02 of \$41.3 million and \$20 million respectively in regard to transactions in sub-trusts. It said the loss could be much higher because its estimates were constrained by the available public information.

86. Western Australia said that unit trust provisions in South Australia had never been as strong as its own, but Queensland's provisions were similar until weakened in 1995 and again in 2000. It disputed the submissions of Queensland and South Australia that their provisions were effectively the same as Western Australia's.

87. Western Australia dated the increase in the use of unit trusts to the 1999-2000 financial year. It proposed the following adjustments.

Table 6 UNIT TRUSTS ADJUSTMENT PROPOSED BY WESTERN AUSTRALIA

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
1997-98	1.0000	1.0000	0.9800	0.9700	0.9900	1.0000	1.0000	1.0000
1998-99	1.0000	1.0000	0.9800	0.9700	0.9900	1.0000	1.0000	1.0000
1999-2000	1.0000	1.0000	0.9700	0.9600	0.9900	1.0000	1.0000	1.0000
2000-01	1.0000	1.0000	0.9700	0.9500	0.9900	1.0000	1.0000	1.0000
2001-02	1.0000	1.0000	0.9700	0.9500	0.9900	1.0000	1.0000	1.0000

88. *South Australia* opposed a different adjustment for Western Australia compared with South Australia. It said that its sub-trust provisions were effectively the same as Western Australia's. South Australia said that in some circumstances, its assessed duty might be higher than Western Australia's because it assessed duty on the total of land and non-land component values, not as separate components. It noted that Western Australia had not provided examples of the use of sub-trust provisions to avoid conveyances duty in South Australia. It concluded that its provisions were essentially the same as Western Australia and its adjustment should be the same.

89. *Tasmania* agreed that the change in the nature of the market and the use of managed funds was relevant to the private unit trusts adjustment, but it had no data to assist the Commission.

90. The *ACT* noted that sales of units in sub-trusts (of private unit trusts) would attract conveyances duty if the trust owned land in the ACT and the acquisition gave the purchaser over 50 per cent interest. The duty was calculated by applying conveyances duty to the unencumbered value of all land holdings in the ACT owned by the trust and then

adjusted by the proportion of the trust being purchased. The marketable securities duty rate applied to the value of the other assets owned by the trust, again adjusted by the proportion of the trust being purchased. The ACT did not keep individual statistics on private unit trusts and could not report the quantitative effect of differences on revenues.

91. The ACT thought that to determine whether a change was required to the three per cent allowance, all States should provide data on the proportion of conveyance revenue raised through the transfer of property via units in private unit trusts and the value of the asset. It argued that a complementary adjustment was required for the Stamp Duty on Shares and Marketable Securities category — if the imposition of conveyances duty on private unit trusts, rather than the lower marketable securities duty, was treated as above standard effort for conveyances, it should be treated as below standard effort for shares duty.

92. The *Northern Territory* said that it did not assess transactions involving interests in unit trusts in the same way as Western Australia, but had no data. Sales of units in sub-trusts were subject to marketable securities duty and may be caught by land rich provisions. Anecdotal evidence was that there was a low incidence of the use of private unit trusts. It did not apply corporate reconstruction exemptions to the reconstruction of private unit trusts.

93. The Northern Territory supported differential adjustments for South Australia and Queensland given the variation in their unit trust provisions. But it opposed increasing the unit trusts adjustment for Western Australia unless robust data could be provided on the proportion of unit trusts transactions that would otherwise have been exempt in Western Australia.

94. *Consultant's view.* The consultant found that State provisions in this area involve provisions covering 'land rich entities' as well as provisions governing unit trusts. Comparisons were complex and difficult because States adopt different general approaches to the imposition of duty, rather than variations of a similar approach.

95. In most States, land rich provisions apply in circumstances where there is an acquisition in entities that directly or indirectly hold land. The purpose of the provisions is to remove incentives to avoid duty (or to replace it with lower marketable securities duty) by purchasing an entity that holds land, rather than purchasing the land directly. The consultant listed many areas where potential differences between States arose⁸, but said that both Western Australia and Queensland have effective land rich regimes that are more rigorous than the provisions of other States. He found a highly significant difference for the acquisition of interest of less than 50 per cent in an isolated transaction whereby duty would be payable in Western Australia, Queensland and South Australia, but not elsewhere. However, he said it was difficult to assess the relative strength of each State's provisions

⁸ These included the entities to which provisions applied, the exemption of public unit trusts (and their definition), value thresholds at which the provisions applied or thresholds for the proportion of land to the entities' total assets, what constitutes an 'interest' in a land rich entity, what level of interest must be acquired to trigger liability, time period over which the interest may be acquired, method of aggregating acquisitions of interests, and the operation of anti-avoidance provisions.

because they operate as anti-avoidance measures and few transactions lead to the lodgement of land rich statements.

96. The consultant compared State provisions covering unit trusts and again found that States do not adopt a common approach. After an examination of the provisions in each State, he said that there was no justification for a policy difference between New South Wales, Victoria, Tasmania, the ACT and the Northern Territory.

97. The consultant said that Queensland provisions were more rigorous than the South Australian provisions because in Queensland duty is calculated on the gross value of dutiable property, whereas in South Australia, there can be a deduction for the liabilities of the trust. However, the consultant found that the Western Australia provisions were more rigorous than Queensland in some respects and less rigorous in others. He concluded that it was difficult to justify a different policy adjustment for Queensland and Western Australia.

98. The consultant concluded that in relation to land rich duty and unit trusts:

- *New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory should be subject to the same treatment;*
- *South Australia, Queensland and Western Australia have more rigorous provisions and a policy adjustment is justifiable; and*
- *if any distinction is to be drawn between South Australia, Queensland and Western Australia, it should be on the basis that South Australia has less rigorous provisions than the other two States. However, in its treatment of land-holding unit trusts, South Australia is closer to Queensland and Western Australia than it is to the other States.*⁹

99. **Analysis and evaluation.** Apart from Western Australia, no State has challenged the size or direction of the existing policy adjustment that reduces the revenue bases of Western Australia, Queensland and South Australia. These three States have the more rigorous non-standard policy.

100. The issues for the Commission to decide were:

- (i) whether Western Australia, Queensland and South Australia should be treated differently from the other States and from one another;
- (ii) whether the current three per cent reduction to their revenue bases should be changed; and
- (iii) how the differential should be applied over the years of the assessment period.

⁹ *Report to Commonwealth Grants Commission Conveyance Duty Differences Between States & Territories*, Blake Dawson Waldron, Executive Summary, p 25.

101. With regard to increasing the size of the adjustment, Western Australia has mounted a largely circumstantial case. Even so, other evidence is that New South Wales might raise about two per cent of its actual conveyances revenues.

102. Western Australia's estimates of its own additional revenue of between \$2.5 million and \$6.5 million do not support the case that the current reduction is too low. The latter represents about one per cent of Western Australia's conveyances revenues in 2001-02, although the direct effect of the provisions may be low because they could act as a deterrent.

103. The existing broad judgement-based adjustment was increased from one per cent to three per cent at the 1999 Review. The working papers say that this was done 'on the basis of evidence provided to the Commission about the increased prevalence of unit trusts and a number of court rulings (including the Industry Superannuation Property Trust)'. It is worth noting that the adjustment captures the additional revenue from applying conveyance duty to transfers of interests in private unit trusts rather than the lower marketable securities duty that would have been applied on similar transactions in other States — that is, it is a net adjustment that allows for the difference between rates of conveyances duty and marketable securities duty.

104. With regard to the grouping of States, the consultant supports the current groupings, and indicates that South Australia has less rigorous provisions than Western Australia and Queensland, but is closer to them than the other States. He has suggested the Commission consider a small differential for South Australia.

105. The ACT proposed to make a claw back adjustment for loss of revenue from stamp duty on marketable securities. There is no evidence of the volume of transactions subject to conveyances duty in one State but subject to marketable securities duty in another to enable the Commission to make such an assessment. New South Wales has estimated that it raises negligible duty from marketable securities duty on sales in units in private unit trusts. In any case, the existing adjustment already accounts for the difference in the two types of duty.

106. **Commission decisions.** The Commission accepts that the duty provisions in Queensland, Western Australia and South Australia are more rigorous than those in other States and those differences should not affect its assessments. Thus, the conceptual case has been established for assessing a unit trusts policy adjustment. The limited evidence point to unit trusts policies having an impact on State budgets that the Commission considers to be material. The consultant's report supports this conclusion.

107. The Commission also accepts that a case has been established for reducing the size of South Australia's unit trusts policy adjustment. The consultant's report suggests that the size of the adjustment for Queensland and Western Australia should be similar but the size of South Australia's adjustment should be reduced. For these reasons, the Commission proposes to:

- (i) continue to assess a unit trusts policy adjustment; and
- (ii) to assess a three per cent adjustment for Queensland and Western Australia and a two per cent adjustment for South Australia.

108. The Commission does not consider that a conceptual case exists for making a claw back adjustment for loss of revenue from stamp duty on marketable securities as proposed by the ACT. There is insufficient evidence on which to consider whether to make an adjustment. The Commission proposes therefore not to make a claw back adjustment for the loss of revenue from stamp duty on marketable securities.

Exemptions for corporate reconstructions

109. ***State views.*** Western Australia said that the Commission should reinstate a policy adjustment for exemptions for corporate reconstructions because in some States there had been an expansion beyond their original scope and more generous conditions. It said that, ideally, the notional value of exempt property should be added into the revenue base, but this was impractical. It proposed that the Commission should subtract from Western Australia's base all transactions that would have been exempt under the corporate reconstruction schemes of New South Wales, Victoria, Queensland and the ACT.

110. ***Preliminary staff view.*** In *Discussion Paper 2002/19*, Commission staff proposed making no policy adjustment for corporate reconstructions. They said all States should exclude all corporate reconstructions, exempt or not, from their sample data because standard policy was to grant exemptions and the simplest method of removing any policy influence was to exclude all corporate reconstructions from the sample data. Also, previous terms of reference had instructed the Commission not to make a policy adjustment for exempt corporate reconstructions.

111. ***Further State views.*** *New South Wales* opposed the re-introduction of a policy adjustment because reconstructions would not have occurred without the exemption. Even if States' guidelines differ, there would be no real effect on their revenue bases.

112. ***Queensland*** supported the proposal to exclude all corporate reconstruction exemptions from the revenue base, but it could not identify them in its database.

113. ***Tasmania*** said that significant revenue was raised in Tasmania from corporate reconstructions (\$5.9 million in 2000-01) and relief was granted as ex gratia payments, rather than under specific exemption provisions as in other States. It said a policy adjustment was necessary and that subtracting all corporate reconstructions from the revenue base was the best way to achieve it.

114. The ***ACT*** said that the aim of the exemptions was to encourage companies to adopt good corporate governance provisions and that without it, the reconstruction would not probably occur. It doubted that Western Australia raised more revenue from corporate reconstructions because of greater effort. It was more likely that the exemptions in the larger States were sufficient to convince the company to proceed with a multi-jurisdictional

reconstruction. Any revenues Western Australia raised were ‘windfall gains’ and no policy adjustment for exemption policies was necessary.

115. The *Northern Territory* supported the proposal to exclude all corporate reconstructions from the revenue base, but it was unable to provide separate data on these transactions because they were assessed in the same way as other sales.

116. **Consultant’s view.** The consultant noted that there were differences in a number of respects in corporate reconstruction regimes, including the absence of a formal scheme of relief in Tasmania. Tasmania provided relief only through ex gratia payments. He found that while provisions may vary, none of the differences were significant and said that a policy adjustment was not necessary. The report said

‘We are of the view that a State with a tighter (less favourable) reconstruction regime should not collect significantly greater revenue than a State with more relaxed corporate reconstruction exemptions. In our experience the availability of reconstruction relief will often be a decision factor in whether or not the reorganisation of a group proceeds. An absence of reconstruction relief simply results in fewer reconstructions rather than significantly increased revenues.’¹⁰

117. The consultant addressed Tasmania’s response to his draft report in his final report.

‘Finally we note that Tasmania has provided evidence that it has raised a significant proportion of revenue from corporate reconstructions and refers to a single transaction that gave rise to more than 10% of its conveyance revenue in a particular year. This appears to be a highly significant matter. We note that in some circumstances an enterprise that operates across a number of jurisdictions may be prepared to undertake a restructure if:

- *it does not have to pay duty in respect of significant holdings outside Tasmania; and*
- *it is prepared to accept payment of duty in respect of Tasmanian holdings if they are relatively insignificant.’¹¹*

118. The consultant concluded that ‘*if the revenue raised has been as a result of multi-jurisdiction reconstructions where reconstruction relief in other States was the precipitating factor, our view is that no policy adjustment should be made*’¹².

¹⁰ *Report to Commonwealth Grants Commission Conveyance Duty Differences Between States & Territories*, Blake Dawson Waldron, Executive Summary, p 24

¹¹ *ibid.*, p 24.

¹² *Ibid.*, p 24.

119. ***Analysis and evaluation.*** The Commission would prefer not to make a policy adjustment for the granting of exemptions for corporate reconstructions on three grounds:

- (i) it is standard State policy to do so, although States may have different criteria for exemption;
- (ii) it facilitates more efficient corporate restructuring; and
- (iii) previous terms of references instructed the Commission not to make an adjustment for this.

120. Such an adjustment would entail adding back some exempt reconstructions into the base. In the 1993 Review, when the Commission did make a policy adjustment, the proportion of exempt reconstructions that would have proceeded without the granting of exemption was highly contentious. The Australian Government Treasury asked for relativities without the policy adjustment, and subsequent update terms of reference instructed the Commission to assume that the exempted corporate reconstructions would not have proceeded if they were subject to duty.

121. At the 1999 Review, the Commission judged that no policy adjustment was required because by then all States had policies that provided for granting of exemptions. While this is still the case, noting that Tasmania provides *ex gratia* relief, there is a question as to whether one State might grant an exemption where another would not. The consultant has suggested that in the larger States the reconstruction would not proceed without the granting of the exemption. However, smaller States are able to apply tighter provisions so long as the exemption proceeds in the larger States. It is arguable that this provides them with a revenue raising advantage compared to the larger States.

122. States seem also to differ in whether all or what corporate reconstructions are exempt. The Commission is of the view that it would be more robust, consistent and transparent to assume the standard policy is to exempt all corporate reconstructions. This means that all corporate reconstructions should be excluded from the base. The proportion that would proceed in the absence of exemptions would be either minor and any revenue raised would be treated as extra effort.

123. ***Commission decisions.*** The Commission does not accept the conceptual case for assessing a policy adjustment for exemptions of corporate reconstructions has been established. It is standard practice to grant an exemption and the evidence suggests that most reconstructions would not proceed without the exemption, at least in the States where most duty would be payable. The Commission has decided:

- (i) not to introduce a corporate reconstruction policy adjustment; and
- (ii) ask States to exclude corporate reconstructions data from their sample data.

124. The Commission accepts that a case has been established for including any revenue from corporate reconstructions in the category definition and assessing duty from those transactions by the equal per capita method. The Commission considers these transactions should not be subject to a differential assessment. The Commission has, therefore, decided to:

- (i) include any duty raised from corporate reconstructions in a separate component of the category;
- (iii) assess any duty raised from corporate reconstructions by the equal per capita approach.

125. As a consequence, the Commission invites States to review the sample data they have provided for years back to 1998-99. If they wish, States should advise the Commission of any corporate reconstructions that were included in any year, classified according to value of transaction and show the amount of duty raised. Apart from the one case instanced by Tasmania, the revisions should be minor.

SAMPLE DATA

126. *State views.* Western Australia said that its sample data excluded transactions processed by collection agents, but it was looking at providing revised data using data from its Department of Land Administration in the next update. It asked the Commission to substitute these data when available.

127. *Preliminary proposal.* In *Discussion Paper CGC 2002/19*, Commission staff said the conveyances assessment relied on the States providing accurate and comprehensive sample data. They noted that:

- (i) including all transactions involving first home buyers/principal place of residence in the sample data overcame differences in thresholds for the exemptions or concessions; but that
- (ii) differences in the way some transactions are processed might affect the scope of a State's sample data and hence its value distribution adjustment. If a State did not include self-assessment transactions in the sample data provided by its revenue office, and those transactions were of smaller value, their exclusion could distort the proportion of transactions classified by value range.

128. *Further State views.* *New South Wales* opposed any adjustment to the sample data for those States that excluded self-assessment schemes because transactions would be spread evenly through the value range.

129. *Queensland* said that the exclusion of self-assessed transactions from the sample data in earlier years had possibly overestimated the value of transactions in the higher value ranges. It was seeking supplementary data from the Department of Natural Resources and Mines to investigate the quality and reliability of data for 1998-99 and 1999-2000. It had provided more representative data for both 2000-01 and 2001-02.

130. *South Australia* said that it included self-assessment transactions in its data. The *ACT* currently had no self-assessment scheme, though it was consulting with stakeholders as to how best to develop one. The *Northern Territory* said that it was able to provide representative sample data on self-assessment transactions in relation to real property; self-assessment was not used for complex/business transactions or other conveyance duties.

131. *Analysis and evaluation.* All States impose conveyance duty on the value of property transferred. Measuring the revenue base using value of property transferred is therefore consistent with what States do. However, the only source of data is State revenue collection systems. Table 4 showed the importance of the value of transactions and value distribution adjustment derived from sample data to the assessment. The Commission relies on States providing sample data that:

- (i) includes transactions processed under first home buyers and principal place of residence schemes, even though they are subject to full or part concessions;
- (ii) includes transactions processed under self-assessment schemes (if possible);
- (iii) excludes transactions involving the sale of major State government assets; and
- (iv) excludes transactions involving corporate reconstructions.

132. The Commission will need separate data on the amounts of revenue raised from (iii) and (iv) so those revenues can be classified as a separate component of conveyances revenue in the equalisation budget and assessed by the equal per capita method.

133. Western Australia and Queensland have said they are looking at ways of improving the data provided in earlier years when they were unable to include self-assessment transactions in their sample data. The Commission proposes to use those revised data, if those two States are able to provide them, for earlier years.

134. Some States have said that they could collect information on the type of transaction and its constituent components if they implemented a change to the data collection processes or conducted a special survey. The Commission would welcome better information on which to assess the size of the policy adjustments.

VALUE DISTRIBUTION ADJUSTMENT

135. States support the value distribution adjustment and have not commented on it. The Commission has concluded that there is general support for the continuation of this adjustment and its method of calculation, and sees no reason to change it.

PROPOSED ASSESSMENT METHOD FOR THE 2004 REVIEW

136. The assessment method for the 2004 Review will be similar to that used for the 1999 Review. The revenue base will continue to be calculated from the sample data on the value of dutiable transactions (value of turnover, rescaled by the ratio of actual to sample revenues) adjusted for differences in regard to:

- (i) the coverage of the sample — sample data are scaled by the ratio of actual revenue to sample revenues (excluding transactions relating to the sale of major State government assets and corporate reconstructions);
- (ii) the value distribution adjustment;
- (iii) the goodwill policy adjustment for Victoria (reduced from four per cent to three per cent and treated additively);
- (iv) the classes of transactions policy adjustment for Victoria (increased from four per cent to seven per cent to take account of Victoria's narrower ranges of dutiable transactions including its off-the-plan concession; and
- (v) the unit trusts policy adjustment retained at three per cent for Queensland and Western Australia and reduced to two per cent for South Australia.

Calculation of the revenue base

137. Table 7 shows the calculation of the sales of private property component of the revenue base. This was the only component assessed in the 2003 Update. The new components for the 2004 Review draft assessment are sales of major government assets and corporate reconstructions (both assessed equal per capita). Data are not yet available for corporate reconstructions.

Table 7 PROPOSED COMPONENTS OF THE REVENUE BASE, 2001-02

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Sample value of transactions (\$m)	94 458.4	42 911.4	39 547.5	13 558.5	10 504.2	2 511.9	3 684.9	1 017.0
Sample revenue (\$m)	3 189.2	1 885.2	887.1	473.2	351.9	71.2	122.3	34.7
Actual revenue (\$m)	3 118.5	1 885.2	1 020.7	647.4	354.4	70.9	122.2	34.5
Scaling factor	0.9779	1.0000	1.1506	1.3681	1.0071	0.9959	0.9992	0.9950
Scaled value of transactions (\$m)	92 366.4	42 911.4	45 502.9	18 549.6	10 578.8	2 501.6	3 682.0	1 011.9
Implied capacity	1.2556	0.7979	1.1191	0.8730	0.6288	0.4773	1.0301	0.4569
Adjustments								
Value distribution ^(a)	1.0728	0.9794	0.9170	1.0128	0.8576	0.8035	0.9469	0.8901
Goodwill ^(b)	1.0000	1.0300	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
Classes of transactions ^(b)	1.0000	1.0700	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
Unit trusts ^(b)	1.0000	1.0000	0.9700	0.9700	0.9800	1.0000	1.0000	1.0000
Revenue base (\$m) ^(c)	99 094.2	46 231.1	40 474.8	18 222.6	8 890.5	2 010.1	3 486.6	900.7
Revenue raising capacity	1.3335	0.8510	0.9855	0.8490	0.5232	0.3796	0.9656	0.4026

(a) The consultant raised informally whether policy adjustments should be applied to the sample data before calculating the value distribution. There is a theoretical case for doing so, but it would complicate the assessment without materially changing the results. For transparency and simplicity, the Commission intends to continue to calculate the value distribution adjustment directly from sample data.

(a) For simplicity, goodwill, classes of transactions and unit trusts adjustment are added. This is a change from the 1999 Review. It directly affects only Victoria and it makes a negligible difference to assessed capacities.

(b) Revenue base = Scaled value of transactions * value distribution adjustment * (goodwill adjustment + classes of transactions adjustment + unit trusts adjustment - 2).

2004 REVIEW DRAFT CALCULATIONS

138. The draft results are qualified because some States might wish to revise the sample data on which they are based (for example, to exclude corporate reconstructions and/or to include self assessed transactions).

Grant share effects

139. Table 8 shows the grant share effect of the proposed method of assessment. The changes are due to the decisions to:

- reduce Victoria's goodwill policy adjustment from four per cent to three per cent;
- increase Victoria's class of transactions policy adjustment from four per cent to seven per cent because of its off-the-plan concession; and

- reduce South Australia's unit trusts policy adjustment from three per cent to two per cent.

Table 8 GRANT DISTRIBUTION OF STAMP DUTY ON CONVEYANCES COMPARED WITH EPC DISTRIBUTION, GST RELATIVITIES

Change in grants	NSW	Vic	Qld	WA	SA	Tas	ACT	NT redistributed	Total
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
2003 Update	-672.1	305.6	27.9	26.4	184.6	90.5	10.3	26.9	672.1
2004 Review Draft	-661.5	289.5	32.2	28.7	182.8	90.7	10.6	27.0	661.5
Difference	10.6	-16.1	4.4	2.2	-1.8	0.2	0.3	0.1	17.9

140. Table 9 shows the grant share effect of each component of the assessment. Revisions to policy adjustments reduced the grant shares of Victoria and South Australia.

Table 9 GRANT SHARE CONTRIBUTIONS OF ASSESSMENT COMPONENTS SALES OF PRIVATE PROPERTY, GST RELATIVITIES

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT redistributed	Total
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Difference from EPC assessment									
Value of transactions	-557.7	328.8	-25.1	2.7	147.7	74.6	5.7	23.2	582.7
Value distribution adjustment	-129.2	63.5	12.3	2.9	26.5	15.6	5.0	3.5	129.2
Goodwill adjustment ^(a)	15.1	-27.2	6.3	3.2	1.6	0.3	0.5	0.2	27.2
Classes of transactions adjustment	36.0	-63.8	14.9	7.6	3.8	0.8	0.3	0.5	63.8
Unit trusts adjustment	-25.7	-11.8	23.9	12.2	3.1	-0.5	-0.8	-0.3	39.2
Total	-661.5	289.5	32.2	28.7	182.8	90.7	10.6	27.0	661.5
Change from 2003 Update									
Value of transactions ^(b)	0.8	-2.1	0.7	0.4	0.0	0.1	0.1	0.0	2.1
Value distribution ^(b)	-0.1	0.5	-0.3	-0.1	0.1	-0.1	0.0	0.0	0.6
Goodwill adjustment ^(a)	-6.1	10.9	-2.5	-1.3	-0.6	-0.1	-0.2	-0.1	10.9
Classes of transactions adjustment	14.4	-25.9	6.0	3.0	1.6	0.3	0.5	0.2	25.9
Unit trusts adjustment	1.5	0.5	0.5	0.3	-2.8	0.0	0.0	0.0	2.8
Total	10.6	-16.1	4.4	2.2	-1.8	0.2	0.3	0.1	17.9

(a) Includes the effect of adding the goodwill adjustment. This increases Victoria's grant by about \$1.4 million.

(b) The figures shown arise because of interactions with the policy adjustment. If States revise sample data to exclude non-exempt corporate reconstructions, these figures will change.

Revenue raising capacity ratios

141. Table 10 shows the revenue raising capacity ratios for the 2004 Review draft assessment for 2001-02, as compared with those in the 2003 Update.

Table 10 REVENUE RAISING CAPACITY RATIO, 2001-02

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Std
2003 Update	1.3388	0.8401	0.9894	0.8523	0.5199	0.3812	0.9694	0.4042	1.0000
2004 Review Draft	1.3335	0.8510	0.9855	0.8490	0.5232	0.3796	0.9656	0.4026	1.0000

Standardised revenue

142. Table 11 shows actual and standardised revenue for 2001-02 using the 2003 Update revenue base and the draft 2004 Review revenue base.

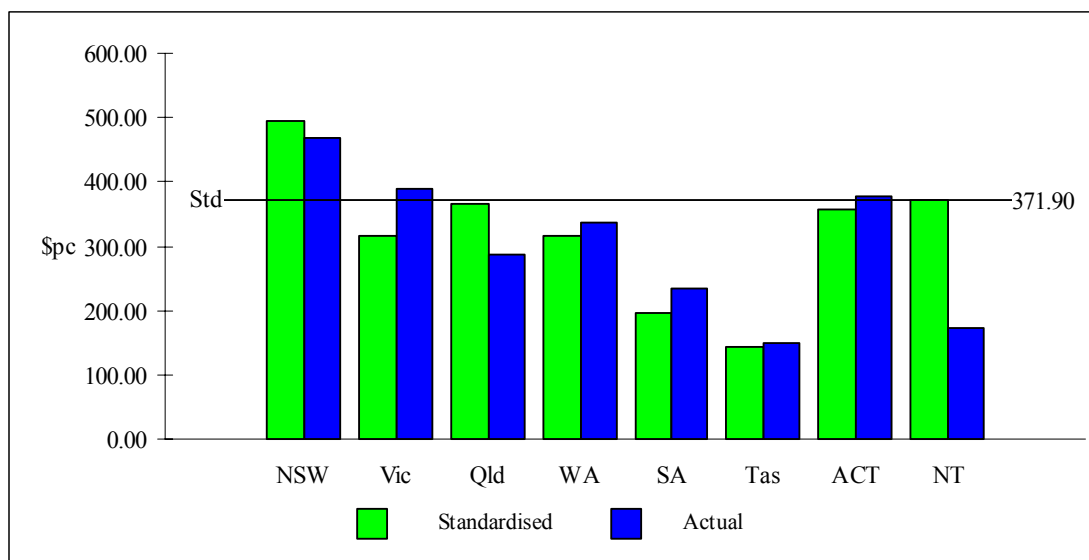
Table 11 STAMP DUTY ON CONVEYANCES ACTUAL AND STANDARDISED REVENUE 2001-02

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Std
	\$pc	\$pc	\$pc	\$pc	\$pc	\$pc	\$pc	\$pc	\$pc
Actual revenue									
2003 Update	469.60	388.29	278.08	337.50	233.36	149.78	378.82	172.78	370.11
2004 Review Draft									
Sales of private property	469.60	388.29	278.08	337.50	233.36	149.78	378.82	172.78	370.11
Sale of major State government assets	0.00	0.00	9.54	0.00	0.00	0.00	0.00	0.0	1.79
Corporate reconstructions	na	na	na	na	na	na	na	na	na
Total	469.60	388.29	287.62	337.50	233.36	149.78	378.82	172.78	371.90
Standardised revenue									
2003 Update	495.50	310.92	366.17	315.46	192.42	141.07	358.80	149.59	370.11
2004 Review Draft									
Sales of private property	493.55	314.96	364.73	314.21	193.63	140.51	357.39	149.00	370.11
Sale of major State government assets	1.79	1.79	1.79	1.79	1.79	1.79	1.79	1.79	1.79
Corporate reconstructions	na	na	na	na	na	na	na	na	na
Total	495.33	316.75	366.52	316.00	195.42	142.30	359.19	150.79	371.90

na Data not available.

143. Figure 2 shows the results graphically. It includes both components of the assessment.

Figure 2 STAMP DUTY ON CONVEYANCES: STANDARDISED, ACTUAL AND STANDARD REVENUES PER CAPITA, 2001-02



Reality check

144. The results show that standardised revenues are consistent with actual revenues for most States allowing for differences in revenue effort. The standardised and actual revenues for Victoria and Queensland seem to have the largest differences. Victoria’s actual revenue is higher than standardised, but this is consistent with it having relatively high rates of conveyances duty (see Table 12). According to the effective rates of tax produced by our calculations, Victoria’s rate of tax is 4.08 per cent compared with the average of 3.31 per cent. On the other hand, Queensland has lower than average effective tax rates.

Table 12 CONVEYANCE DUTY PAYABLE ON SELECTED PROPERTY VALUES, 2001-02

Property Value	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
\$	\$	\$	\$	\$	\$	\$	\$	\$
50 000	765	1 000	975	975	1 080	1 050	815	1 213
100 000	1 990	2 200	2 350	2 130	2 830	2 425	2 015	2 750
150 000	3 740	4 660	3 975	3 980	4 830	3 925	3 765	4 613
250 000	7 240	10 660	7 225	7 680	8 830	7 550	7 265	9 313
500 000	17 990	25 660	15 975	19 055	18 830	17 550	18 015	26 750
1 000 000	40 490	55 000	34 725	43 305	41 330	37 550	40 515	54 000
5 000 000	260 490	275 000	184 725	237 305	241 330	197 550	260 515	270 000

Source: *Overview of State Taxes, Western Australia, 2001-02*, Western Australia Department of Treasury and Finance.

Updateability

145. The value distribution adjustment is calculated for each year of the assessment period and is updated for every update. The three policy adjustments, however, are generally fixed in terms of the relative magnitudes (the percentages). This is because they involve judgements and it is not possible or too costly to gather information for changing the percentages for updates.

ATTACHMENT A

**BLAKE DAWSON WALDRON REPORT ON
CONVEYANCE DUTY DIFFERENCES BETWEEN
THE STATES & TERRITORIES**