

NATIVE TITLE

- 1 This working paper describes the Native Title assessment and the results. The development of the 2004 Review method for assessing native title expenses is discussed in Volume 7 of the Working Papers for the 2004 Review.

NATIVE TITLE

- 2 The Native Title assessment accounts for the additional costs incurred by the States due to the operation of the Commonwealth's *Native Title Act 1993*. Expenses include the costs of administering the legislation and of compensating holders of native titles in the settlement of claims. The legislation was the result of a High Court decision on 3 June 1992, which recognised Indigenous people's traditional rights on their land as common law.

WHY NATIVE TITLE EXPENSES DIFFER

- 3 The amount incurred in each State due to native title expenses varies depending on the number of native title claims made in the State and the compensation awarded in settling a claim. The *Native Title Act 1993* applies to all States and, therefore, is not influenced by State policies. As a result, native title expenses are assessed by the Commission using the actual per capita (APC) method. Under this method, a State's need for expenses reflects what it actually spends.

ASSESSING STATES NATIVE TITLE EXPENSES

The equalisation task

- 4 The Commission assesses differences (needs) for native title administration and compensation expenses using the actual per capita method. This involves identifying the expenses States incur in administering the legislation and for compensating holders of native titles in settlement of claims. These expenses are allocated to the relevant categories, including:
 - Housing;
 - Services to Indigenous Communities;

- Administration of Justice;
 - National Parks and Wildlife Services;
 - Water, Sanitation and Protection of the Environment;
 - Roads;
 - Primary Industry;
 - Mining Fuel and Energy; and
 - General Public Services.
- 5 There are other factors that influence State spending in the categories listed above. The Commission therefore needs to combine the impact of differences between States in the need for spending on native title with differences due to other factors. It does this by identifying the proportion or component of expenses to which the factor relates. The factor is weighted by this proportion. The next two sections describe how the component weights and factors used to assess spending on native title are derived.

DERIVING THE COMPONENT WEIGHTS

- 6 The Commission examines services to decide whether parts of the total expense are affected by different influences. If the differences are material, the expense is divided into component parts to ensure that the various influences are accurately matched with the expenses they affect. The different expense types identified are referred to as *components*. The proportion of total expense attributable to a particular component is referred to as the *component weight*. Component weights for native title expenses are derived for the nine categories listed in paragraph 4.
- 7 The native title assessment aimed to redistribute GST revenue on an actual per capita basis. Therefore, the amount of money it redistributes should reflect the actual amount of native title expenses incurred by the States.
- 8 The Commission considered that there was a conceptual case for updating the component weights for the native title assessment annually. While updating component weights each year adds to the complexity of the assessments, the Commission considered it was necessary to ensure the assessments distribute GST revenue appropriately. Therefore, to obtain more accurate redistributions for the Native Title assessment, the Commission decided to update component weights annually.
- 9 The native title component weights were derived by dividing the native title expense allocated to a category by the total adjusted budget expense allocated to the category. The component weights are updated annually for each assessment year.
- 10 Table 1 shows the native title component weights from 2001-02 to 2006-07.

Table 1 Native title component weights 2001-02 to 2006-07

	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
	%	%	%	%	%	%
Housing	0.02	0.00	0.00	0.00	0.00	0.00
Services to Indigenous Communities	2.87	1.81	0.00	0.01	0.00	0.00
Administration of Justice	0.95	1.10	0.99	1.05	0.88	1.28
National Parks and Wildlife Services	0.73	0.51	0.87	0.87	1.08	1.30
Water, Sanitation and Protection of the Environment	0.02	0.04	0.08	0.02	0.03	0.01
Roads	0.03	0.03	0.03	0.02	0.02	0.02
Primary Industry	0.02	0.02	0.02	0.00	0.02	0.01
Mining, Fuel & Energy	2.61	2.35	1.92	2.65	1.96	2.04
General Public Services	0.56	0.40	0.47	0.36	0.34	0.32

DERIVING THE NATIVE TITLE FACTORS

- 11 Box 1 provides a brief overview of the Commission's concept of a factor. The rest of this section describes what is included in the native title factor and how factors are derived.

Box 1: Commission factors

A factor is the Commission's estimate of the relative financial impact a particular influence has on a State's cost of providing a service. Factors are only calculated for the part of the influence which is beyond the control of individual State governments.

A factor value of one means the Commission considers the State could provide the average level of service by spending the average expense per capita. A factor value of more than one means the Commission considers the State will have to spend more than the average expense per capita to provide the average level of service. A factor value of less than one means the Commission considers the State can provide the average level of service by spending less than the average expense per capita.

- 12 **Administration costs.** The Commission accepted that a conceptual basis existed for assessing costs incurred due to native title expenses. This was because States continued to incur unavoidable costs in administering the *Native Title Act 1993*. These costs were material and actual data on native title expenses costs could be obtained from States each year. Therefore, as for the 1999 Review, the Commission decided to continue an actual per capita assessment of administrative costs for the 2004 Review.
- 13 **Compensation costs.** Due to the Commonwealth's *Native Title Act 1993*, uniform processes and protocols were put in place to settle native title claims. The claims could be for native title rights, or for compensation. During the process of settling claims, States may, through negotiation, reach an agreement with the claimants and decide on a settlement. As demonstrated in Western Australia's rejoinder submission, this settlement could be a financial payment or a service commitment. Alternatively, if no settlement could be reached through negotiation, legal proceedings could be initiated.

- 14 In general, States have very little choice as to whether they address a native title claim. In the course of addressing the claim, they may choose whether to oppose it, how much they pay to settle a claim, and what other proxies for payment might be used.
- 15 As native title compensation payments were a relatively new issue, it was not clear in the 2004 Review if differing policies concerning native title settlement would have a material effect on expenses. However, regardless of whether an upfront payment was made, or a service commitment entered into, they represented identifiable impacts on State budgets as a result of settling native title claims.
- 16 The Commission accepted that a conceptual case existed for assessing native title compensation costs incurred by States. This was because States were now incurring costs due to settling native title claims, and these costs were material. Also, actual data on native title compensation costs could be obtained from States each year.
- 17 The small amount of data available at the time of the 2004 Review on native title compensation payments and processes made it difficult to determine the most appropriate assessment. Therefore, the Commission decided to introduce an assessment for native title compensation costs using the same method (actual per capita) as that used to assess native title administrative expenses.
- 18 For simplicity, administration and compensation expenses were assessed together.
- 19 ***Deriving the factor.*** Box 2 provides an overview of the calculation of the native title factor.

Box 2: Native title factor

Step 1: Obtain native title expenses from States

Obtain native title expenses from States. Liaise with States concerning any expense allocated to 'Other' to determine which category it should be allocated to.

Step 2: Calculate expense ratios for each State

The native title factor for each category was calculated by dividing the native title expense for each State (for each assessment years) by its Mean Resident Population (MRP).

Step 3: Divide the State ratios by the Australian ratio

The resulting ratios were then divided by the Australian ratio to ensure that the Australian factor equalled one. This results in the native title factors.

- 20 The native title factor, for each relevant category, was calculated by dividing the native title expense for each State (for each assessment year) by its Mean Resident Population (MRP). The resulting State ratios were then divided by the Australian ratio to ensure that the Australian factor equalled one. The native title factors are updated annually.
- 21 Table 2 below shows the native title factors for the 2008 Update.

Table 2 Native title factors, 2001-02 to 2006-07

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aus
4160 Housing									
2001-02	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.40499	1.00000
2002-03	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000
2003-04	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000
2004-05	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000
2005-06	0.00000	0.00000	5.07732	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
2006-07	1.14231	0.00000	3.15002	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
4180 Services to Indigenous Communities									
2001-02	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	98.40499	1.00000
2002-03	0.00000	0.00000	0.00000	10.20334	0.00000	0.00000	0.00000	0.00000	1.00000
2003-04	2.32594	0.00000	1.15391	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
2004-05	0.97257	0.00000	3.46899	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
2005-06	3.02804	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
2006-07	3.04250	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
4450 Administration of Justice									
2001-02	0.00000	0.47637	0.52568	3.49332	4.22659	0.24503	0.36061	9.94154	1.00000
2002-03	0.00000	0.35935	1.17431	3.17760	3.87333	0.00539	0.00790	7.61646	1.00000
2003-04	0.14481	0.37751	0.00000	3.46689	5.22818	0.02596	0.03825	11.46301	1.00000
2004-05	0.18164	0.49996	0.00908	4.09719	3.79737	0.01978	0.02919	11.83582	1.00000
2005-06	0.11988	0.51458	0.00870	4.76477	3.59574	0.00000	0.06697	8.34477	1.00000
2006-07	0.08492	0.38721	0.00000	6.22857	2.59761	0.00000	0.00000	5.69546	1.00000
4720 National Parks and Wildlife Services									
2001-02	0.00000	0.00000	2.60364	2.89335	0.69396	0.00000	0.00000	17.04409	1.00000
2002-03	0.00000	0.00000	1.32749	4.38106	1.17877	0.00000	0.00000	22.49344	1.00000
2003-04	0.72148	0.00000	0.52126	4.57914	0.59165	0.00000	0.00000	16.22606	1.00000
2004-05	0.55483	0.00000	0.25878	5.53917	0.62923	0.00000	0.00000	16.94778	1.00000
2005-06	0.51275	0.00000	0.78915	4.51867	1.23309	0.00000	0.00000	13.15223	1.00000
2006-07	0.40994	0.00000	0.62878	5.55790	1.10151	0.00000	0.00000	10.05357	1.00000
5420 Water, Sanitation and Protection of the Environment									
2001-02	0.00000	0.00000	0.00000	10.20497	0.00000	0.00000	0.00000	0.00000	1.00000
2002-03	0.00000	0.00000	0.00000	10.20334	0.00000	0.00000	0.00000	0.00000	1.00000
2003-04	0.00000	0.00000	0.43394	9.32187	0.00000	0.00000	0.00000	0.00000	1.00000
2004-05	0.00000	0.00000	0.50970	9.12814	0.00000	0.00000	0.00000	0.00000	1.00000
2005-06	0.00000	0.00000	0.01060	6.95395	4.06162	0.00000	0.00000	0.00000	1.00000
2006-07	0.43629	0.00000	0.00000	2.41508	5.48787	0.00000	0.00000	19.67519	1.00000

Table 2 Native title factors, 2001-2002 to 2006-07 (continued)

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aus
5430 Roads									
2001-02	0.00000	0.00000	5.19770	0.00000	0.00000	0.00000	0.00000	2.26282	1.00000
2002-03	0.01557	0.00000	5.15383	0.00000	0.00000	0.00000	0.00000	1.29809	1.00000
2003-04	0.00000	0.00000	5.18385	0.00000	0.00000	0.00000	0.00000	0.00000	1.00000
2004-05	0.00000	0.00000	5.08896	0.00000	0.00000	0.00000	0.00000	0.67947	1.00000
2005-06	0.00000	0.00000	5.02804	0.00000	0.00000	0.00000	0.00000	0.95595	1.00000
2006-07	0.00000	0.00000	4.97340	0.00000	0.00000	0.00000	0.00000	1.36599	1.00000
5440 Primary Industry									
2001-02	0.00000	0.00000	4.91711	0.14738	0.00000	0.00000	0.00000	6.03183	1.00000
2002-03	0.00000	0.00000	4.92994	0.00000	0.00000	0.00000	0.00000	6.04675	1.00000
2003-04	0.00000	0.00000	4.88459	0.00000	0.00000	0.00000	0.00000	5.75362	1.00000
2004-05	0.00000	0.00000	4.38651	0.00000	0.00000	0.00000	0.00000	14.28466	1.00000
2005-06	0.00000	0.00000	0.00000	0.00000	12.62180	0.00000	0.00000	4.12644	1.00000
2006-07	0.03706	0.00000	0.00000	0.00000	13.06872	0.00000	0.00000	0.00000	1.00000
5450 Mining, Fuel and Energy									
2001-02	0.17365	0.00000	1.64936	5.13522	0.02572	0.00000	0.00000	12.40394	1.00000
2002-03	0.00000	0.00000	0.00000	7.51068	1.11082	0.00000	0.00000	17.67079	1.00000
2003-04	0.00000	0.00000	1.22309	6.47385	0.17627	0.00000	0.00000	11.38068	1.00000
2004-05	0.00000	0.00000	0.64821	7.62520	0.06207	0.00000	0.00000	11.56241	1.00000
2005-06	0.00000	0.00000	1.57688	5.69502	0.29510	0.00000	0.00000	10.07265	1.00000
2006-07	0.00656	0.00000	1.61775	5.98954	0.08736	0.00000	0.00000	7.12015	1.00000
5525 General Public Services									
2001-02	0.09975	0.78733	2.73804	1.99790	0.00000	0.17923	0.26377	5.14551	1.00000
2002-03	0.00000	1.11725	1.83266	2.67007	0.00000	0.00000	0.00000	11.17861	1.00000
2003-04	0.13928	0.80925	2.76477	1.27405	0.00000	0.08069	0.11891	9.03956	1.00000
2004-05	0.21843	0.43936	3.01706	1.97836	0.00000	0.00000	0.00000	3.44345	1.00000
2005-06	0.20637	0.45413	2.73307	1.86923	0.73805	0.00000	0.00000	3.91058	1.00000
2006-07	0.20554	0.32537	2.91788	1.87710	0.52858	0.00000	0.00000	4.50882	1.00000

Note: for 2000-01 to 2004-05 Tasmania's native title administrative expenses were set to those of the ACT because in the 2004 Review Tasmania was unable to provide this data. In 2005-06 a data working party concluded that native title expense data provided by all States, including Tasmania, was reliable and fit for purpose.

CHANGES SINCE THE 2007 UPDATE AND CONTRIBUTION OF THE 2008 UPDATE TO GST REVENUE DISTRIBUTION

22 Table 3 shows the effect of the Native Title assessment on the GST revenue distribution in the 2007 and 2008 Updates. It also shows the change between Updates.

Table 3 Effect of the Native Title assessment on GST revenue distribution, 2007 Update and 2008 Update

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total redist'd
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Redistribution from EPC resulting from the 2007 Update assessment (a)	-21.9	-10.9	6.0	18.4	3.8	-1.7	-1.1	7.5	35.6
Redistribution from EPC resulting from the 2008 Update assessment (a)	-20.3	-11.1	3.5	21.2	4.0	-1.7	-1.1	5.5	34.2
Total effect of revisions and updating^(b)	1.7	-0.2	-2.5	2.8	0.2	0.0	0.0	-2.0	4.7

(a) Assuming the same pool and a constant population.

(b) This figure shows the change in the amount redistributed among the States between the 2006 Update and the 2007 Update. It does not necessarily equal the difference in the total redistribution from EPC between the two inquiries.

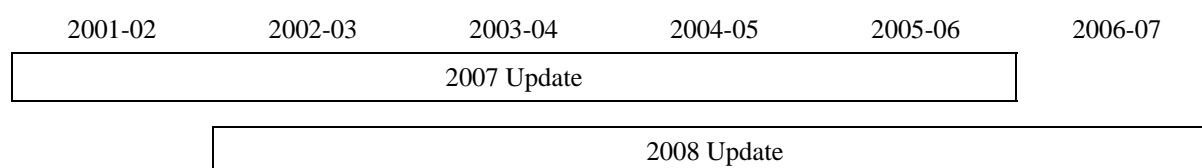
Contribution of the 2008 Update Assessment

- 23 Compared to an equal per capita assessment, the 2008 Update assessment redistributed \$34.2 million away from New South Wales, Victoria, Tasmania and the ACT to Queensland, Western Australia, South Australia and the Northern Territory.

CHANGES SINCE THE 2007 UPDATE

- 24 Changes in the distribution of GST revenue between the 2007 Update and the 2008 Update were brought about because the Commission:
- used revised average expenses data and other revised data in updating factor calculations for the years 2001-02 to 2005-06; and
 - replaced 2001-02 average expenses and factors with those of 2006-07 to move forward the five year period on which GST revenue distribution was based. Moving the five year period forward in this way ensures the assessments reflect recent trends in State priorities on the services provided and recent trends in State demographic and economic circumstances which affect the relative costs of the services.

- 25 Figure 1 shows the reference period for the two inquiries.

Figure 1 Advancing the reference period, 2006 Update

- 26 The 2008 Update assessment resulted in a \$4.7 million change in the pattern of redistribution between the States. This change was due to revising expense data in earlier years and bringing in new expense data in the final year.
- 27 Table 4 shows the change in actual native title expenses from 2001-02 to 2006-07 and percentage changes from previous years and from 2001-02 to 2006-07.

Table 4 Native title actual expenses, percentage change from previous years and from 2001-02 to 2006-07

	Actual expenses	% change from previous year	% change from 2001-02
	\$m	%	%
2001-02	60.8		
2002-01	54.3	-10.7	
2003-04	58.6	7.9	
2004-05	56.8	-3.1	
2005-06	55.5	-2.3	
2006-07	72.4	30.5	19.1

Changes due to revising expense data and factors for years 2001-02 to 2005-06

- 28 The main reasons for the changes in GST revenue redistribution due to revisions made to expense data for the years 2001-02 to 2005-06 were as follows:
- **Northern Territory.** Minor revisions to General public services for 2005-06 of \$78 000 due to increased salary and partial operation costs associated with a Native Title matter at Blue Mud Bay.
 - **New South Wales.** Minor revisions to General public services for 2005-06 of \$15 000 for additional salary costs and legal advice due to a delay in settling a Native Title claim over land at Wellington NSW.
 - ABS revisions to Mean Resident Population (MRP) data for 2005-06 and Census data revisions to MRP.

Changes due to bringing in the new 2006-07 expense data

- 29 Expenses have grown over the 2001-02 to 2006-07 period by 19.1 per cent. This is less than the increase in the GST pool of 43.9 per cent reducing the importance of this category in the redistribution of GST revenue.
- 30 Compared to 2001-02, 2006-07 assessed Native Title expenses fell for Victoria, Queensland, Tasmania, the ACT and the Northern Territory and increased for New South Wales, Western Australia and South Australia.
- 31 This working paper was prepared by the Expense — Health and Welfare section of the Commonwealth Grants Commission. If you have any questions about its content please contact Daniel Dwyer on (02) 6229 8856 or Daniel.Dwyer@cgc.gov.au. Date: 29/02/08