

ACT Auditor-General's Office
Performance Audit Report

Collection of Fees and Fines

June 2007



ACT AUDITOR-GENERAL'S OFFICE



PA06/07

The Speaker
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled 'Collection of Fees and Fines', conducted under the authority contained in the *Auditor-General Act 1996*.

I would appreciate it if you could arrange for the distribution of the Report to each member of the Legislative Assembly, and its subsequent tabling in the Legislative Assembly, pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Tu Pham
Auditor-General
25 June 2007

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LIST OF ABBREVIATIONS

ACTEW	ACTEW Corporation Limited
ACTPLA	ACT Planning and Land Authority
Audit	ACT Auditor-General's Office
Auditor-General Act	<i>Auditor-General Act 1996 (ACT)</i>
CMD	ACT Chief Minister's Department
CPI	Consumer Price Index
DFAT	Commonwealth Department of Foreign Affairs and Trade
JACS	ACT Department of Justice and Community Safety
PIN	Parking Infringement Notice
RGO	Registrar-General's Office
Road Transport	ACT Road Transport Authority
TAMS	ACT Department of Territory and Municipal Services
Territory	Australian Capital Territory (ACT)
TIN	Traffic Infringement Notice
WAC	Water Abstraction Charge
WPI	Wage Price Index, also known as the Labour Price Index

1. REPORT SUMMARY AND AUDIT OPINION

INTRODUCTION

1.1 This report presents the results of a performance audit of the collection of selected fees and fines by three ACT Government agencies: Territory and Municipal Services, Justice and Community Safety and the ACT Planning and Land Authority.

BACKGROUND

1.2 The ACT has a relatively narrow tax base. Unlike other States and the Northern Territory, the ACT does not have mineral resources or large-scale manufacturing sectors in its revenue base.

1.3 Fees raised \$141m in revenue in 2005-06. Fines, mainly derived from traffic and parking infringements, contributed a further \$21m, making a total of \$162m. Total estimated outcome in 2006-07 for fees and fines revenue was \$172m, representing approximately 6% of total Territory revenue.

1.4 Fees are collected by agencies under Territory legislation (Territorial fees), and for their own cost recovery purposes (administrative fees). Territorial fees are determined by Ministers under a provision of an Act, and the determination is laid before the Legislative Assembly, which may disallow it.

1.5 Table 1.1 below lists the main categories of Territorial fees and fines for the financial years 2003-04 to 2007-08.

Table 1.1: Territorial fees and fines for the financial years 2003-04 to 2007-08

	2003-04 \$m	2004-05 \$m	2005-06 \$m	2006-07 \$m (estimated outcome)	2007-08 \$m (budget)
Fees					
Motor Vehicle Registration	59	61	66	65	69*
Drivers' Licences	6	6	7	7	7
Change of Use Charge	9	5	12	4	5*
Water Abstraction Charge	7	11	13	27	27
Other Regulatory Fees	40	42	43	46	49
Total Fees	121	125	141	149	157
Fines					
Traffic Fines	10	12	13	14	20
Parking Fines	7	9	8	9	10
Total Fines	17	21	21	23	30
TOTAL - FEES AND FINES	138	146	162	172	187

Sources: *Budget Paper Number 3, 2007-08 Budget Overview, Chapter 3 Revenue and Forward Estimates* and the *Consolidated Financial Statements for the ACT, 2003-04, 2004-05, 2005-06*.

* In the 2007-08 Budget documentation, Motor Vehicle Registration and the Change-of-Use charge are classified as taxes, and not fees. The remaining fees in the table above are presented under the heading *Sale of Goods and Services*. Differences between fees and user charges, and between fees and taxes, are considered at Chapter 2 of this report.

1.6 The *Consolidated Financial Statements* include the Water Abstraction Charge as a user charge rather than a fee, which is the classification adopted by *Budget Paper No.3 2005-06*. TAMS financial report for 2005-06 classifies motor vehicle registration and licence fees as taxes, not fees.

1.7 At the time of the 2006-07 Budget, fees and fines revenue was forecast to increase by 11 per cent in 2006-07 compared to the 2005-06 estimated outcome. (The increase was 9.9% on the actual 2005-06 figures). The major contributors to fees and fines revenue are:

- motor vehicle registration, forecast to generate 37% of total fees and fines revenue in 2006-07;
- other fees for regulatory services – 26%;
- water abstraction charge -15%; and
- traffic and parking infringement fines - 13 % of total fees and fines.

Table 1.2: Legislative basis and purpose of selected fees and fines

Fee or fine name	Legislative basis	Purpose of fee or fine	Basis of the fee or fine
Motor Vehicle registration	<i>Road Transport (General) Act 1996</i> , section 96	Registration of passenger and goods carrying vehicles, motorbikes, trailers and caravans.	Parity with other jurisdictions/revenue raising.
Casino Licence Fees	<i>Casino Control Act 2006</i> , section 26	Regulation of the operation of casinos in the ACT.	Recovery of the cost of regulation and supervision of the casino.
Drivers' Licences	<i>Road Transport (General) Act 1996</i> , section 96	Licences to drive motor vehicles in the ACT and other jurisdictions.	Parity with other jurisdictions/revenue raising.
Change of Use Charge	<i>Land (Planning and Environment) Act 1991</i> , part 5	To ensure that windfall gains do not accrue to the landholder through an increase in the value of the land derived from the changes in the activities that can be conducted on that land.	Payable on the increased value of a block of land arising from a development application. It is calculated at 75% of the value of the added property value.
Fees for Regulatory Services	Various legislation	These are fees for various regulatory services, such as those charged by the Registrar-General's Office. These charges are for the registration of entities, lodgement of documents, searching of registers and the like.	Parity with other jurisdictions, as adjusted by price indices.
Water Abstraction Charge	<i>Water Resources Act 1998</i> , section 78	A charge on the abstraction of water from ACT supplies levied on ACTEW and other water licensees. It was introduced to reflect economic value, help to conserve water, and to manage demand.	Structural adjustment.
Traffic Fines	<i>Road Transport (Offences) Regulation 2005</i> , Schedule 1	Penalties for infringement of traffic rules.	Set by reference to prescribed penalties under the legislation.
Court Fines and other Fines	Various legislation	Penalties imposed by the courts for offences under ACT legislation.	Set by legislation.
Parking Fines	<i>Road Transport (Offences) Regulation 2005</i> , Schedule 1	Penalties for infringement of parking rules.	Set by reference to prescribed penalties under the legislation.

AUDIT OBJECTIVES AND SCOPE

1.8 The objective of this audit was to provide independent opinions to the Legislative Assembly on the legislative compliance, and efficiency and effectiveness of the administration and collection of certain fees and fines. The audit focussed on policies and procedures, debt management, performance reporting and risk management.

1.9 Audit adopted the classification of fees and fines used in the Budgets up to and including 2006-07. Not included in the audit were fees that were clearly user charges of a commercial nature, such as ACTPLA charges for sale of maps and publications and search fees; and JACS' charges for court transcripts.

AUDIT OPINION

1.10 The independent opinions drawn against the audit objectives are set out below:

- Agencies were generally clear about the purpose and intent of fees and fines. Fees are payments for regulatory and other services, payable before the service is delivered; and fines are penalties for non-compliance with the law.
- The methods by which fees and fines are determined were not robust and did not always reflect their purposes. For the most part, fees were based on what was charged last year, plus an adjustment for the WPI. There was little evidence that the cost of services was taken into account in determining the amount of the fee.
- There was little guidance on the administration of fees available to agencies. Budget-related guidance aside, specific central agency guidance consisted of circulars issued in 1997 and in 2002 that provided very brief and basic information. ACT Treasury is currently drafting a new policy and guidance document.
- Revenue collection was not effective in a number of areas. Traffic and parking related fees and fines revenue were particularly at risk.
- There was little information collected on the effectiveness and efficiency of fees and fines collections, and particularly whether certain fees achieve their objective of changing fee-payers' behaviours. With the exception of 'ACT NOWaste', there was little evidence of agencies developing and using performance information to evaluate and improve the management of fees and fines.
- Agencies gave scant consideration to risks to the collection of their fees and fines revenue. There was scope for significant improvement in risk management related to fee and fine collection; and to debt management.

KEY FINDINGS

1.11 The audit opinions are supported by the following key findings:

Purpose and determination of fees and fines

- There were a number of bases used by agencies to set their fees:
 - increasing fees annually using the Wage Price Index (WPI);
 - re-basing fees for the cost of services, or introducing new fees based on costs;
 - increasing fees by more or less than the WPI;
 - keeping fees on a par with those charged by State Governments and local councils; and
 - putting fees up, or keeping them low, to achieve a social or ‘structural adjustment’ objective.
- Fees are not taxes, because they are related to a particular service, often reflecting the costs of the service, and do not have a profit-making purpose. Some regulatory fees also seek to change behaviour and hence take into account various financial, social and environmental considerations.
- Generally, agencies determined fees, not based on the current cost of services, but on what was charged last year plus an adjustment based on the WPI. The use of an index should not replace the need to understand the costs of services for which fees are charged. When costs are known, indexation can be used in years when cost reviews are not done.
- Other factors, notably parity with fee levels in other jurisdictions, also played an important role in fee setting.
- Fines are determined by legislation and are based on penalty units. Infringement notices, which are common in traffic and parking related offences, are a percentage of the maximum fine under the legislation.
- Currently, traffic and parking infringement penalty amounts are adjusted by an index each year. There is no requirement to do this, either in legislation, or in ACT Treasury’s advice to agencies on the annual indexed adjustment of fees and charges. How traffic fine amounts should be best adjusted has not been agreed between TAMS, which administers road transport legislation, and JACS, which has overall responsibility for legislative policy and practice.
- Audit identified the following risks to the collection of fees and fines:
 - if a fee is generating a surplus, it may be challenged as being a tax if it is not authorised by legislation;
 - some services that are not covering their costs may be subsidised by other revenue. Such subsidies may not be justified, or may not accord with the objectives of Government for that particular function;
 - there is a reduced incentive to control costs and achieve efficiencies in services when costs are unknown to delivering agencies; and

- fees lose transparency, as the underlying basis of the fee is often obscure and difficult to justify.
- Audit also identified some opportunities that may be lost due to the current lack of information and transparency in decisions on fees and fines, such as the opportunity to:
 - recover more outlays on low priority services, and subsidise higher priorities;
 - subsidise groups of specific users, in accordance with Government policy;
 - direct positive cashflow to the improvement or extension of services (or both);
 - improve agency experience in the costing of services, such experience being directly applicable to better management and compliance with Government policy;
 - inform debate on the long-term sustainability of services that are fee-chargeable; and
 - better manage the demand for goods and services.

Policies and procedures

- Current ACT Treasury guidance is dated and incomplete. ACT Treasury is currently drafting a revised policy and procedures document.
- There was insufficient information and guidance within agencies or from Treasury on:
 - the objectives of fees and charges;
 - the risks to fee revenue and how those risks may be treated;
 - the principles of cost recovery, and guidance on costing methods;
 - the performance indicators on the collection of fees and charges;
 - the periodic review of fees and charges;
 - the use of indexation adjustments, and what agencies should do if they decide to use another factor other than that recommended;
 - when it is reasonable to impose and collect late fees;
 - when administrative cost recovery fees can be charged;
 - communicating fees and charges to clients and the public; and
 - fee waivers.
- Business units responsible for advising and preparing Ministers' fees determinations were not aware of, and therefore did not use, ACT Treasury's current guidance.
- Few agencies had developed their own internal guidance on fees determination; and where guidelines existed, they were incomplete and unhelpful.

- There was no central agency guidance on the administration of fines, the great majority of which are parking and traffic infringements. An internal audit of TAMS brought attention to missing and incomplete procedures for the processing of parking infringement notices.
- Guidance on fees waivers under the *Financial Management Act 1996*, or agencies' own legislation, was incomplete or absent.
- Most agencies did not consolidate their fee determinations into a single fees book, which would make access to, and review of, fee determinations easier.

Collection of fees and fines

- Fees and fines were collected mostly through over-the-counter transactions. Although this provided a well-established payment procedure and facilitated compliance and public access, it was a more costly method of collection, compared to other methods, such as BPAY and the internet.
- Due to resource constraints within TAMS, and difficulties with RegoACT, the Road Transport's management information system, it was not possible to suspend or cancel registrations that have been paid with cheques that have subsequently been dishonoured. Road Transport was therefore unable to comply with the *Road Transport (General) Regulations 2000* relating to dishonoured cheque payments.
- Registration and licence sanctions are only partly effective in achieving payment of traffic infringement notices and parking infringement notices issued to interstate drivers, resulting in a significant number of unpaid penalties.
- For the period 1 July 2006 to 12 March 2007, some \$987 075 in traffic infringement penalties were owed by interstate drivers. TAMS estimated that up to 60% or \$592 000 may not be paid – and were considered to be doubtful debts. On a straight line extrapolation, this equates to approximately \$850 000 in lost revenue for a full year.
- A difficulty faced by ACT Policing in prosecuting suspended drivers - both local and interstate - was a tendency for motorists to claim they have not received a notice of suspension of licence. ACT Policing advised Audit that there is a high probability that prosecutions will fail and costs will be awarded against ACT Policing if the court finds that there is reasonable doubt that the offending motorist did not receive their notice of suspension. In the period 1 June 2005 to 31 May 2006, 35 charges out of a total of 533 were dismissed because the Magistrate was not convinced beyond reasonable doubt that the notice was received by the offender. Potentially, this imposed a cost of approximately \$40 000 in court costs alone on ACT Policing; costs which it considers avoidable.
- There is no national scheme of demerit point and traffic and parking fines transfer. Lack of progress on the issue nationally and the implementation costs for the transfer of interstate fines and demerit points are barriers to putting such arrangements in place.

- Although Road Transport acknowledges that bilateral arrangements with other States in lieu of a national agreement, would recover revenue, deter bad driving behaviour and improve road safety, it has not pursued such arrangements based on its assessment of the significant costs of implementing them.
- An internal audit report into parking operations in July 2006 found approximately \$2.2m in outstanding parking fines, about half of which related to unidentified interstate drivers. Some dated back to 1991. These debts were still recorded in the RegoACT system, and were more than likely unrecoverable.
- There is currently \$143 000 in outstanding traffic fines (more than 120 days old) owed by a number of overseas missions and individual diplomats. Recovery of fines incurred by diplomat drivers depends on timely and co-ordinated action by Road Transport and the Commonwealth Department of Foreign Affairs and Trade.
- In about 30% of traffic infringement cases, (19 700 of a total of 61 085 in 2005-06) a statutory declaration was lodged requesting withdrawal. A small number of traffic infringement notices (about 3%) were withdrawn. There was no checking of these statutory declarations by Road Transport to establish if they were correct.
- Approximately 150 or 50% of ground water users were not required to pay the charge for water abstraction under the *Water Resources Act 1998*. The Government has proposed amending legislation to remedy this situation.
- The library fine collection strategy was not effective in collecting debts.
- The Government has announced that a whole-of-government approach to debt collection could be investigated. Such an approach, when implemented properly, should improve efficiencies over the current system of debt collection from fees and fines.

Performance information

- Audited agencies had very few performance indicators specifically for fees and fines revenue. The Budget papers included annual revenue budgets, and these are compared with overall results at year end. Canberra Connect also reported some accountability indicators as part of its Budget documentation.
- There was a lack of appropriate performance information, which reflected the objectives of the fee or fine, and the risks to its calculation and collection. There was no evidence that this has been considered on any consistent and widespread scale.
- Similarly, debt management at agency levels had few indicators of efficiency and effectiveness.

Risk management

- Agencies conducted some analysis of risks to revenue, however, the focus of risk management was not specific to fees and fine revenue. In the main, general revenue risks, such as the risk of internal and internet fraud are

considered, rather than risks to compliance with fee legislation and fee collection specifically.

RECOMMENDATIONS AND RESPONSES TO THE REPORT

1.12 Audit made 14 recommendations to address the audit findings detailed in this report.

1.13 In accordance with section 18 of the *Auditor-General Act 1996*, a proposed report was provided to the Chief Executives of the Department of Treasury (Treasury), the Department of Territory and Municipal Services (TAMS), the Department of Justice and Community Safety (JACS), and the ACT Planning and Land Authority (ACTPLA), for consideration and comments. The Chief Executives' overall responses are set out in the following paragraphs.

Response from the Chief Executive of Treasury

Treasury recognises the value of improving documentation on the basis for setting fees and fines and supports developments that increase the transparency of this process. In this regard, Treasury has already commenced improving its whole of government guidance and is working with agencies on improving their approaches to setting fees and fines.

As recognised in the report, Treasury is concerned that the report starts from the assumption that all fees relate to a service. Regulatory fees relate to the underlying privilege or activity being regulated not the service provided by the Government. The appropriate amount of a regulatory fee is that required to regulate activity or change behaviour not the cost of administering the fee. Accordingly, for regulatory fees the concepts of surplus or subsidies are not relevant or applicable.

Response from the Chief Executive of JACS

A number of findings and recommendations relate to services delivered by this agency on behalf of government. You are correct in pointing out that the responsibility for the development of criminal law policy lies with this agency, as does the policy in relation to the development of the Legislation Act. However, the development of policy in relation to these matters is undertaken on a whole of government basis. In that regard, this agency will closely liaise with other agencies in considering the recommendations.

I note that other recommendations and findings relate to the enforcement of unpaid parking fines and the implementation of recommendations of an internal review into unpaid parking fines. The functions of Parking Operations and Parking Review were transferred to this agency in the 2006-07 Budget process. While officers from the Parking Review are "authorised" officers for the purpose of enforcement procedure provisions of the Road Transport (General) Act 1999, those officers have not previously been involved in issuing reminders or collecting unpaid fines. This agency

will continue to work closely with TAMS to improve the method of enforcing unpaid fines.

I fully support your comments in relation to the development of a revised fees and charges policy. Such a policy would greatly assist this agency in reviewing its own fees and charges.

Response from the Chief Planning Executive, ACTPLA

The Authority agrees with the report outcome and recommendations.

1.14 In addition, some Chief Executives provided responses to recommendations, as shown below.

Recommendation 1 (Chapter 2)

The Department of Justice and Community Safety consider amending the definition of a fee included in the *Legislation Act 2001*, to allow for the possibility that fees may include a taxation component. This would provide more legislative certainty and minimise risks of legal challenges.

Recommendation 2 (Chapter 2)

The Departments of Justice and Community Safety and of Territory and Municipal Services examine and agree on the best method of adjusting the amount of traffic and parking fines and penalties.

TAMS' response:

Agreed: *A review of the policy for adjusting infringement penalty amounts should consider not only traffic and parking infringement penalties but other infringement penalties.*

Recommendation 3 (Chapter 3)

ACT Treasury issue:

- (i) a comprehensive revised fees and charges policy and procedure advice, that will include the features listed in the report (paragraph 3.4); and
- (ii) more detailed and useful guidance on processing the waiver of debts under section 131 of the *Financial Management Act 1996*.

Treasury's response:

As highlighted in the report, Treasury is developing comprehensive guidance to further assist departments in applying fees and charges. Treasury, however, does not consider it necessary to provide prescriptive guidance on well understood technical practices, and aspects of financial management which would be covered in other guidance and directions.

Recommendation 4 (Chapter 3)

- (i) Agencies supplement the ACT Treasury's advice with further guidance particular to their fees and charges portfolio, and disseminate this information to business units that are responsible for advising Ministers and drafting determinations for them.
- (ii) Agency guidance on fees and fines administration includes advice on processing waiver of fees and charges, especially where waivers can be executed under legislation administered by the agency.
- (iii) Agencies compile all their fees determinations into a single document to assist easy access, and for better management of agency performance in fees and fines determination.

TAMS' responses:

Agreed: Recommendations 4(i) and 4(ii) **Not agreed:** Recommendation 4(iii).

Due to the broad and diverse nature of the business for which TAMS is responsible, there is no value to our customers and consumers in having all fees determinations in a single document. The need to adequately record fee determinations is agreed, but it is not our opinion that these need to be in a single document. The Department also notes that all Legislative fees are accessible centrally on the ACT on-line Legislation Register.

Treasury's response:

Treasury supports the preparation of specific documentation by relevant agencies. Copies of this documentation should be provided to Treasury by each agency.

Recommendation 5 (Chapter 3)

The Department of Justice and Community Safety implement the recommendations of the Department of Territory and Municipal Services internal audit to:

- (i) document the follow up of outstanding parking infringement notices;
- (ii) establish documented quality assurance procedures; and
- (iii) ensure that reasons for Parking Infringement Notice withdrawal are consistent with Ministerial notices.

Recommendation 6 (Chapter 4)

In light of the cost savings through use of electronic and other related means of paying fees and fines, agencies take action to encourage the use of these means of payment.

TAMS' response:

Agreed: *The Government's strategy to utilise Canberra Connect payment services arrangements to deliver cost savings in fine collection should be highlighted.*

ACTPLA's response:

Agreed: ACTPLA is currently promoting electronic payments and, in conjunction with Canberra Connect, is investigating the requirements for introducing BPAY processes.

Recommendation 7 (Chapter 4)

- (i) Road Transport (TAMS) and the Office of Regulatory Services (JACS) consider the merit of entering into bilateral or multilateral agreements with other jurisdictions, particularly NSW and Victoria, regarding the exchange of demerit points between jurisdictions, and the collection of traffic and parking infringement penalties incurred by interstate motorists in the ACT.
- (ii) The Office of Regulatory Services implements the recommendation of the Department of Territory and Municipal Services internal audit regarding the collection or write-off of outstanding parking fines.
- (iii) Road Transport consider using debt collection agencies in other jurisdictions to recover debts incurred in the ACT by interstate motorists.

TAMS' response:

Agreed: In relation to recommendation 7(iii) this should be examined in the context of the Interdepartmental Committee on Debt Recovery.

Recommendation 8 (Chapter 4)

The Department of Territory and Municipal Services resolve its resourcing issues to enable the timely implementation of enhancements to RegoACT, where those enhancements will improve the collection of Road Transport fees and fines.

TAMS' response:

Agreed.

Recommendation 9 (Chapter 4)

The Departments of Territory and Municipal Services (Road Transport) and of Justice and Community Safety (Office of Regulatory Services) consider the benefits of reviewing the veracity of statutory declarations used to avoid Parking Infringement and Traffic Infringement Notice penalties.

TAMS' response:

Agreed.

Treasury's response:

Treasury notes that only a very small proportion of statutory declarations resulted in the withdrawal of a parking or traffic infringement notice.

Recommendation 10 (Chapter 4)

The Department of Territory and Municipal Services review the billing regime to receive more timely payments from non-ACTEW licensees.

TAMS' response:

Agreed: *An increase in the frequency of invoicing and thus payments will require additional staffing resources.*

Recommendation 11 (Chapter 4)

The ACT Library and Information Service revise its debt collection strategy, with particular emphasis on collecting larger debts from persons whose address is known.

TAMS' response:

Agreed.

Recommendation 12 (Chapter 4)

ACT Treasury and agencies consider more effective mechanisms and processes for recovering debts, including the establishment of a central Territory debt collection function.

TAMS' response:

Agreed.

Treasury's response:

As recognised by the audit, an interdepartmental committee is examining consolidation of debt collection issue. Establishment of a debt collection agency will be considered as part of that work. This, however, will be subject to a Government decision.

Recommendation 13 (Chapter 5)

Agencies develop and use performance indicators for fees and fines that set targets and measure the extent to which:

- (i) the objectives of the fee, and identified risks to collection of the fee have been met and managed, and
- (ii) debts due to the agency from fee and fines have been managed.

TAMS' response:

Agreed.

Recommendation 14 (Chapter 6)

Agencies review their risk management plans to include risks to specific fees and fines, and appropriate actions to reduce these risks. In particular, consideration should be given to the risks specified in this report.

TAMS' response:

Agreed.

ACTPLA's response:

Agreed: *ACTPLA's risk management plan is reviewed annually. Risks specified in part 6.6 from this report will be reviewed and implemented where possible.*

In regard to ACTPLA valuation services risks, changes have been implemented including detailed training for staff to ensure that valuations are consistent and effective. This will also be incorporated into the Risk Management Plan for monitoring.

2. PURPOSE AND DETERMINATION OF FEES AND FINES

INTRODUCTION

2.1 This chapter examines the purpose and intent of fees and fines, and assesses if their legislative basis and the method of determining them is valid.

KEY FINDINGS

- There were a number of bases used by agencies to set their fees:
 - increasing fees annually using the Wage Price Index (WPI);
 - re-basing fees for the cost of services, or introducing new fees based on costs;
 - increasing fees by more or less than the WPI;
 - keeping fees on a par with those charged by State Governments and local councils; and
 - putting fees up, or keeping them low, to achieve a social or ‘structural adjustment’ objective.
- Fees are not taxes, because they are related to a particular service, often reflecting the costs of the service, and do not have a profit-making purpose. Some regulatory fees also seek to change behaviour and hence take into account various financial, social and environmental considerations.
- Generally, agencies determined fees, not based on the current cost of services, but on what was charged last year plus an adjustment based on the WPI. The use of an index should not replace the need to understand the costs of services for which fees are charged. When costs are known indexation can be used in years when cost reviews are not done.
- Other factors, notably parity with fee levels in other jurisdictions, also played an important role in fee setting.
- Fines are determined by legislation and are based on penalty units. Infringement notices, which are common in traffic and parking related offences, are a percentage of the maximum fine under the legislation.
- Currently, traffic and parking infringement penalty amounts are adjusted by an index each year. There is no requirement to do this, either in legislation, or in ACT Treasury’s advice to agencies on the annual indexed adjustment of fees and charges. How traffic fine amounts should be best adjusted has not been agreed between TAMS which administers road transport legislation, and JACS, which has overall responsibility for legislative policy and practice.

- Audit identified the following risks to the collection of fees and fines:
 - if a fee is generating a surplus it may be challenged as being a tax that is not authorised by legislation;
 - some services that are not recovering their costs may be subsidised by other revenue. Such subsidies may not be justified, or otherwise may not accord with the objectives of Government for that particular function;
 - there is a reduced incentive to control costs and achieve efficiencies in services when costs are unknown to delivering agencies; and
 - fees lose transparency, as the underlying basis of the fee is often obscure and difficult to justify.
- Audit also identified some opportunities which may be lost due to the current lack of information and transparency in decisions on fees and fines, such as the opportunity to:
 - recover more outlays on low priority services, and subsidise higher priorities;
 - subsidise groups of specific users, in accordance with Government policy;
 - direct positive cashflow to the improvement or extension of services (or both);
 - improve agency experience in costing of services, such experience being directly applicable to better management and compliance with Government policy;
 - inform debate on the long-term sustainability of services that are fee-chargeable; and
 - better manage demand for goods and services.

PURPOSE OF FEES AND FINES

2.2 The Macquarie Dictionary defines a fee as:

a payment for services; a sum paid for a privilege, or a charge allowed by law for the service of a public officer.

2.3 A fine is:

a sum or money exacted as a penalty for an offence or dereliction.

2.4 ACT Treasury defines a fee as:

a monetary payment (for) a permit or privilege, or ... regulation of an activity. Fees are a compulsory payment with an identifiable benefit attached. Fees are an instrument ... to regulate certain activities.

2.5 There are two types of fees: *Territorial*, which agencies collect on behalf of the Territory; and *Administrative*, which offset costs incurred in providing a service.

- 2.6 According to ACT Treasury advice to Departments, fees:
- pay for regulatory services associated with the granting of a permit or privilege or regulation of activity; or
 - are charges to recover the cost of work performed by government bodies for the benefit of the payer.
- 2.7 To this can be added two further purposes for fees:
- raising revenue as part of the Government's budget; and
 - encouraging some behaviours, such as waste recycling; and discouraging others, such as not building on land bought in the ACT within 12 months.
- 2.8 As noted previously, the 2007-08 Budget presented items previously classified as fees, as either sale prices or taxes.

Fees and user charges

2.9 A fee as generally understood by the payers, can be indistinguishable from a user charge as it is related to a service received. Treasury makes a distinction between user charges and regulatory fees:

. . . a user charge is 'revenue directly related to the sale of goods, or provision of services ...'. User charges are 'not a policy instrument ... to regulate activity'. On the other hand, 'regulatory fees relate to the underlying privilege or activity being regulated, not the service provided by the Government'.

2.10 ACT Treasury's view is that fee revenue is mainly Territorial (that is, collected by the agency on behalf of the Territory), whereas user charges are departmental - collected by the agency to defray its own costs of service provision. Although this is generally true, Treasury acknowledges that some user charges belong also to Territorial revenue.

2.11 Various ACT Government departments derived user charge revenues by charging fees for the provision of goods and services. User charge revenue is not part of Government appropriation and is paid for the user of the goods and services. This revenue is driven by consumer demand and is commercial in nature.

Fees and taxes

2.12 It is generally accepted that a tax is a compulsory exaction of money by a public authority for public purposes, enforceable by law; and not a payment for

services rendered. Under ACT law, taxation is a power of the Executive, which is composed of the Chief Minister and other Ministers¹.

2.13 The relationship between fees and taxes is complex. Legal advice obtained by the Commonwealth Productivity Commission in 2001, and the Auditor-General of Western Australia in 2004, notes that whether a fee or charge is a tax will depend on factors such as the circumstances and legislation relevant to each fee or charge. Some of the factors are:

- the presence of a reasonable relationship between the cost of the service and the amount of the fee;
- whether the fee or charge reflects the value of the licence or service provided; or
- whether the fee for the service generates a relatively large surplus over the costs of supply of the goods or service.

2.14 Legislation enabling agencies to levy fees typically includes a provision authorising Ministers to determine fees. For example, the *Land (Planning and Environment) Act 1991* at sub-section 287.1 provides that: ‘The Minister may, in writing, determine fees for this Act.’

2.15 For determinations of fees by disallowable instrument (which are all fees imposed under specific legislation), the *Legislation Act 2001*, part 6.3 at section 55 defines a fee as including a charge or other amount². A tax is not included in the definition of a fee, although it could be argued that an ‘other amount’ may include a tax.

2.16 Audit found that several ACT enactments contained provisions that included taxes with fees. They are:

- the *Court Procedures Act 2004* section 12;
- the *Road Transport (General) Act 1999* section 96;
- the *Water Resources Act 1998* section 78;
- the *Gas Safety Act 2000* section 67; and
- the *Waste Minimisation Act 2001* section 45.

2.17 Audit found that many fees and charges are likely to contain a significant revenue component, including those covered by the legislation above. Where the legislation does not provide that fees may include taxes, or be taxes, it is possible that a court may find that these fees lack a legal basis; either in the legislation determining the fees, or in the *Legislation Act 2001*.

¹ The Commonwealth enacted the *ACT Self-Government Act 1988* section 37, and Schedule 4. Membership of the Executive is at section 39 of the Act.

² A disallowable instrument includes a fee determination under an Act by a Minister – *Legislation Act 2001*, paragraph 9.1.b

2.18 To remove doubt, Audit recommends that the definition of a fee in enabling legislation, and in the *Legislation Act 2001*, be amended to allow for the possibility that all fees may include a taxation component, when this was the intention of the Government to raise additional revenue above cost recovery.

Recommendation 1

The Department of Justice and Community Safety consider amending the definition of a fee included in the *Legislation Act 2001*, to allow for the possibility that fees may include a taxation component. This would provide more legislative certainty and minimise risks of legal challenges.

The Water Abstraction Charge for urban reticulation

2.19 In 1999, the ACT Government introduced the Water Abstraction Charge (WAC) on water use under the *Water Resources Act 1998*. Initially, the WAC was set at 10c per kilolitre. It is a charge on licenses granted by the Government to take water from ACT water bodies. The WAC aims to ‘promote conservation of a scarce resource, and to reflect the full cost of water supply’³. The current rate of WAC for all water licensees except ACTEW is 25c per kilolitre.

2.20 ACTEW is the largest water licence holder, and passes on the cost of the WAC, with its other costs, to its customers. ACTEW now pays 55c per kilolitre.⁴

2.21 The Government’s view is that water is a commodity or right over which the ACT has a monopoly and may grant licences for its use. Therefore, the Territory may set a fee for the use of its water having regard to the quantity and value of the water sold.

2.22 Audit understands that the Queanbeyan Council has questioned the validity of the WAC as it could be construed as a tax on goods (water). If this view is upheld, the WAC may contravene section 90 of the Commonwealth *Constitution*, which prohibits States and Territories from imposing duties of excise; in other words, taxes on goods.

2.23 Audit also understands that Queanbeyan Council has announced that, subject to funding from the NSW Public Interest Litigation fund, it will contest the constitutional validity of the WAC. As at the date of this report no litigation has commenced.

2.24 The imposition of fees needs to be strongly supported by a clear legislative basis. ACT Treasury advised that legal opinion was obtained by the Independent Competition and Regulatory Commission in 2003, and by Treasury in 2006 regarding the legality of increases in the WAC.

³ *Budget Paper Number 3, 1999-2000* <http://www.treasury.act.gov.au/budget/budget99/BP3/b3fr.htm>

⁴ Section 35, Water Resources (Fees) Determination 2006 (No.1), Disallowable Instrument DI2006-138

What is a fine?

2.25 Fines are payments for civil and criminal penalties imposed on offenders. The aim of fines is to discourage unlawful behaviour and punish transgression by the imposition of a monetary penalty.

2.26 Audit noted some instances where late fees were charged, usually when a statutory submission period had passed. The effect of a late fee is very similar to a fine: to penalise transgression and to encourage compliance. For example, under item 111 of the Attorney-General's Determination for 2006 (DI 2006-141), lodgement of a statement under sections 12 and 32 of the *Business Names Act 1963*, attracts a fee of \$19 if lodged within a month of the prescribed time, but a fee of \$39 if lodged after a month.

2.27 Failure to pay late fees will prevent a customer lodging a document, and therefore complying with regulatory requirements. Similarly, failure to pay a traffic fine will, until fines are paid, result in suspension of a licence to drive.

DETERMINATION OF FEES AND FINES

Determinations by Ministers

2.28 As mentioned earlier, Ministers determine fees in accordance with the legislation they administer. These determinations are made usually just before the commencement of each financial year, and are tabled in the Legislative Assembly, which may disallow them. Disallowance of a fees determination has not occurred in the recent history of the ACT Legislative Assembly.

2.29 Each determination is made public on the ACT Legislation Register: <http://www.legislation.act.gov.au/>. Fees incorporated in legislation are Territorial: they are collected by agencies on behalf of the Territory.

2.30 Fees for administrative purposes are allowed by the *Financial Management Act 1996*, section 9. ACTPLA, for example, forwards a list of fees to its Minister for approval, not determination, because they are levied for administrative cost recovery.

ACT Treasury survey of the methods used by agencies to set fees

2.31 In February 2007, Treasury surveyed the Chief Financial Officers of government agencies, asking them how they set prices and adjust existing fees and charges. The purpose of the review was to 'assist in establishing a consistent and transparent approach when setting fees and charges across Government ...'. The results of the survey have not been collated at the time of audit, and Treasury advised Audit that the data collected is of varying quality and quantity.

2.32 ACT Treasury needs comprehensive information on the practices currently adopted by agencies in setting fees and charges to assist with its advice to agencies. This would address the current deficiencies identified by Audit relating to the lack of

detailed framework from central agencies to guide business areas in setting correctly the amount of fees collected.

2.33 There were a number of bases used by agencies to set their fees:

- increasing fees annually using the Wage Price Index (WPI);
- re-basing fees for the cost of services, or introducing new fees based on costs;
- increasing fees by more or less than the WPI;
- keeping fees on a par with those charged by State Governments and local councils; and
- putting fees up, or keeping them low, to achieve a social or 'structural adjustment' objective.

2.34 Each one of these methods is considered in the paragraphs below.

The Wage Price Index

2.35 Current advice to agencies on the administration of fees consists of two circulars: the first issued in 1997 by CMD's Office of Financial Management, entitled *CPI Review of Revenue Estimates including Government Fees and Charges 1997/98*; and the second issued by ACT Treasury in 2002, entitled *2002-2003 Revised Budget Timetable and Requirements for the Provision of Financial Information for Annual Report Purposes*.

2.36 The 1997 advice states that 'all fees and charges should be increased in line with expected movements in the Consumer Price Index.' The exceptions to this policy are where agencies recover costs, align with other States, or increase fees to raise revenue or manage demand.

2.37 For 2006-07, the Government reversed its previous decision to adjust fees by the Consumer Price Index (CPI), and adopted instead the WPI. The Government considered that the WPI is a far better reflection of the cost of Government service delivery than measurements against the CPI. ACT Treasury instructions require all fees and user charges to be increased by the WPI, which in 2006-07 was 3.7%.

2.38 For 2006-07, the replacement of the CPI by the WPI increased the indexation factor by 1.2 percentage points. It was expected to yield extra revenue of \$1.7m, rising to \$8.6m by 2009-10.

2.39 Although the WPI applies to all fees and user charges, not all changes to fees and user charges were driven by labour costs. For example, labour costs were not the main cost drivers for fees payable for water under section 45 of the *Utilities Act 2000*.

2.40 ACT Treasury considers the WPI to be a better proxy than the CPI for specific cost escalators. Labour costs drive most of the costs of Government. Should

agencies want to use a different cost inflator, they may seek their Minister's or the Government's approval for its use.

2.41 Audit observed one instance where an agency sought not to apply the WPI to its fees. Road Transport obtained Ministerial approval to raise motor vehicle registration, motor-vehicle-related fees and licence fees by a rate close to the CPI (2.5%) from 1 July 2006. The primary reason for that application was to maintain parity with fees in NSW.

2.42 Audit's general observation was that agencies accepted ACT Treasury's advice to apply the WPI, without considering the nature of the fee and what was driving the costs of services. The costs of providing the services are, in most cases, unknown to agencies. The lack of cost information is discussed in the next section.

Using cost of services to set fees

2.43 CMD's 1997 advice to agencies states the principles that should be applied when reviewing, or introducing, fees and charges. One principle is cost recovery. The advice says that, except where there is an explicit intention to provide free or subsidised services, agencies should consider their options for cost recovery.

2.44 Where fees are introduced to recover costs, ACT Treasury expects that agencies will know the costs of providing services covered by the fee. From 2006-07, agencies were to review fees (and fines) regularly, usually every three years, to ensure that pricing is still current.

2.45 Audit noted examples where costs have purportedly been used to adjust fees:

- the annual administration fee of \$300 relating to water licences was computed using labour input costs;
- the Public Trustee (JACS) increased its accounts examination fee from \$54 to \$104 per hour to better reflect costs. The fee was last increased in 1992, and had been overlooked in subsequent fee revisions; and
- ACT NOWaste has adopted a pricing system that encourages re-use and recycling of waste products by reflecting (at least in part) the actual costs of disposal. ACT NOWaste has quantified a range of economic and environmental costs attributable to waste disposal. An October 2006 Commonwealth Productivity Commission report entitled *Waste Management* further discussed the nature of these costs, and others, in waste management.

2.46 With few exceptions, costs are not known, or not known precisely. Despite being used to justify the introduction of administrative fees, to abolish other fees, and to increase fees each year, there was very little cost data available to justify and support fees collected.

2.47 By costing their services for determining fees, agencies could better manage risks and capitalise on opportunities. These risks include:

- fees that are generating surpluses may be challenged as being taxes that are not authorised by legislation;
- some services that are not recovering their costs may be subsidised by other revenue. Such subsidies may not be justified, or otherwise may not in accordance with the objectives of Government for the particular function;
- there is a reduced incentive to control costs and achieve efficiencies in services when costs are unknown to delivering agencies; and
- fees lose transparency, as the underlying basis of the fee is obscure and difficult to justify.

2.48 When cost of providing services is known, agencies could capitalise on opportunities:

- to recover more outlays on low priority services, and subsidise higher priorities;
- to subsidise groups of specific users, in accordance with Government policy;
- to direct positive cashflow to the improvement or extension of services (or both);
- to improve agency experience in costing of services, such experience being directly applicable to better management and compliance with Government policy;
- to inform debate on the long-term sustainability of services that are fee-chargeable; and
- to manage demand for goods and services.

2.49 Given the lack of cost information, Audit considers it desirable for ACT Treasury to better guide agencies in assessing the costs underlying the fees that they are charging. Central agency guidance is discussed in the following chapter, and Audit understands that the ACT Treasury is in the process of preparing and issuing a document on fees and charges that provides agencies with information on policy and guidance on costing techniques.

2.50 Treasury commented that regulatory fees seek to change behaviour or regulate activity (or both) and the level of such fees needs to take into account various financial, social and environmental considerations. Audit acknowledged that changing behaviour is an appropriate objective for fee setting and considers that in these cases decisions need to be transparent and justified.

Introducing fees, or increasing fees by more or less than the Wage Price Index

2.51 Government endorses any new revenue item, or fees that are increased by more than the WPI. Usually, agencies prepare an *Initial Concept Brief* and submit it through ACT Treasury's Budget process.

2.52 The *Legislation Act 2001*, section 34 requires a *Regulatory Impact Statement* to be prepared when delegated legislation imposes a new fee likely to impose ‘appreciable costs’ on the community. Section 35 of the Act defines the contents of the Statement.

2.53 New fees and large fee increases may generate significant revenue for the Government. The Budget papers in 2006-07 stated:

To address the mismatch in revenue and expenditure efforts, the ACT will pursue new sources of revenue, and revenue alignment with other jurisdictions. These include revenues of a taxation nature, as well as *fees and charges*.⁵

2.54 As discussed, if revenue raised from a fee significantly exceeds the cost of providing a service, the fees and charges may be perceived as taxes by another name. Such policy has the inherent risk that fees may be invalid if they are not backed by legislation allowing fees to contain elements of taxation. Some, but not all, ACT legislation provides that a reference to a fee includes a fee that is a tax.

Aligning fees to those charged by State Governments and local councils

2.55 Inevitably, fees charged by the ACT invite comparisons to those charged in other jurisdictions. CMD’s 1997 advice, which is the main policy document on fees and fines administration, includes ‘similar practices’ as a rationale for increasing fees and charges; that is, agencies should compare their fees and charges to the private sector, or to other State and local government sectors.

2.56 The common view is that maintaining parity across borders avoids revenue loss and administrative anomalies. In some cases, if ACT fees are too low compared to other State or local governments, non-ACT residents will seek to use the cheaper (possibly subsidised) service provided by the ACT. The reverse is possible if ACT fees are too high - ACT residents will ‘go shopping’ for cheaper services offered by other local and State governments.

2.57 Motor vehicle registration is a good example. If ACT registration fees were appreciably more expensive than those in NSW, ACT motor vehicle owners may look for ways to register their vehicles in NSW.

2.58 As part of the 2006-07 Budget Review, the Government analysed the development application fee administered by ACTPLA, and levied pursuant to section 226 of the *Land (Planning and Environment) Act 1991*. The review compared the development application fee to five other local government authorities, and found that the Territory’s fees were the lowest of the five councils. Subsequently, the development application fees were increased – for a development of \$500 001 the fee increased from \$898 in 2005-06 to \$1508 in 2006-07. Even with this increase, the ACT fee remained comparable to these other local government authorities.

⁵ *Budget Paper Number 3, Budget and Financial Projections*, Chapter 4, *Revenue and Forward Estimates*, page 40

2.59 Audit found that agencies ensure their fees are comparable to other jurisdictions. Examples included:

- TAMS' *Fees and Charges Guidelines* which acknowledges parity as the principal consideration for some but not all fees;
- TAMS' Road Transport has, since 1998, aligned its motor vehicle registration and licence fees with NSW;
- JACS' fees maintain parity with NSW and Victoria, although the Registrar-General's Office's fees are not comparable. For example, Land Titles searches are \$19 in the ACT, but \$9 in NSW; and
- ACT NOWaste's pricing strategy seeks to achieve an equitable balance between waste disposal prices in NSW and the ACT, thereby minimising the export (and import) of waste.

Social policy and 'structural adjustment'

2.60 Fees are also a tool to influence behaviour. The amount of fee charged can discourage or encourage certain behaviours.

2.61 Treasury considers that it is important to distinguish regulatory fees (where the fee is designed to regulate access to an activity or privilege or change behaviour) from administrative fees (where the fee relates to the provision of a particular good or service). In particular, where the purpose of a fee is to regulate activity, the setting of that fee is a matter of government policy rather than administrative practice. The decision on the level of a regulatory fee takes into account a broad range of economic, social and political considerations and incorporates trade-offs between these factors.

2.62 Examples of where Audit has found that social policy considerations have influenced fee-setting are below:

- Fees for registration of a brothel or an escort agency are set to encourage operators to register under the *Prostitution Act 1992*. Government's priority in this case is to regulate the commercial activities of brothel or agency operators.

The fee is a flat fee of \$228 per annum for each establishment, and in 2005-06 raised \$4 668. This fee is low compared to liquor licence fees, which commence at \$1 517 for a new licence, and \$946 for an annual renewal.

Under Victorian law, the brothel registration fee is composed of a flat charge per establishment (currently \$2 101.60 per year), and a variable charge of \$394.10 for each room, business name or telephone number. Victorian law has substantially the same aim as that in the ACT, namely to maintain standards in and to regulate an industry. It is not clear to Audit why the ACT has set its fees much lower than other States, including Victoria. Audit did not find any review by JACS to indicate whether increases in fees to a similar level as in Victoria would encourage brothels and similar activities to operate illegally. However, Audit notes that the capacity of JACS to regulate

these activities may be impeded by lack of revenue which could have been raised by fees set at the right level to recover costs.

Audit suggests that a review of the rationale supporting the current fee may be justified, and an investigation of options for making the ACT fee comparable to those in other jurisdictions with similar regulatory aims for similar services.

- ACT NOWaste uses its information on costs to help the costing and pricing of its services, and to work toward the goals of greater waste resource re-use and recycling.
- Water fees are structured so greater consumption results in higher relative charges. The Water Abstraction Charge (WAC) was increased from 1 July 2006, primarily to encourage better water use. Some primary producers are charged less than 1c per kilolitre (the normal charge is 25c/kl, and 55c/kl for ACTEW) as they compete with water-subsidised industry in NSW.
- ACTPLA increased the extension of time fee to assist in enforcing the rule that land bought in the ACT should be built on within 12 months.

Setting statutory fines and penalties

2.63 Through legislation, the Legislative Assembly sets maximum penalties for a statutory offence. The court decides if a person has committed an offence and imposes a penalty up to the maximum set by legislation. JACS oversees the schema of legislative penalties, ensuring that penalties are proportional to the offence.

2.64 Fines for offences created by Acts of the Legislative Assembly are expressed as numbers of penalty units. Section 133 of the *Legislation Act 2001* sets the amount of a penalty unit – for an individual: \$100; for a corporation: \$500. These amounts have not been reviewed since 2001 when the *Legislation Act 2001* was enacted.

2.65 In some cases, such as traffic and parking offences, a system of infringement notices operates as an alternative to prosecution. Infringements are set as a proportion of the amount of the maximum fine. The ratio of traffic infringement fines to statutory maximum fines is approximately 20%. For example, under the *Road Transport (Offences) Regulations 2005*, schedule 1, item 47, the penalty for not giving way at traffic lights to a pedestrian on the road is 20 penalty units (equivalent to \$2 000 for an individual, or \$10 000 for a corporation). For the same offence the infringement notice amount is \$239. Most revenue from fines is infringement penalties, as offenders avoid the risk of a larger court-imposed penalty.

2.66 Traffic and parking penalties are introduced or adjusted in response to particular problems, such as mobile phone use while driving. Road Transport confers with JACS and ACT Policing before making such adjustments.

2.67 In February 2006, Road Transport obtained Ministerial approval to increase infringement penalties by the CPI for traffic and parking infringement penalties for 2006-07. It also obtained Ministerial approval for a review of penalties in 2006.

2.68 Indexation of infringements brings the penalty closer to the maximum fine payable for an offence proved in court. According to JACS, this could lead to more matters being brought before the court, as those accused of an offence may elect to have the court determine their culpability, and therefore their liability for a fine.

2.69 JACS has raised some concerns about penalties increasing by the CPI. JACS' alternative to CPI adjustment is for Ministers to propose an increase in the statutory maximum fines – and thereby the maximum amount of the related infringement notices - by increasing the number of penalty units per offence. The Road Transport legislation currently carries a maximum fine of 20 penalty units per offence. This could be increased; as could the number of penalty units per offence. To date, TAMS has not taken any such action.

2.70 While disapproving of CPI adjustments to fines, JACS has not increased the amount of a penalty unit since 2001 at least, although such an adjustment would affect every fine in the ACT statute book. For its part, TAMS has not taken action to adjust the number of penalty units, and thereby increase the potential court imposed fine and related infringement notice amounts.

2.71 Audit considered that there was scope for greater co-ordination between JACS and TAMS to reach agreement on the most appropriate way to adjust traffic and parking penalties. A pro-active approach by both agencies would ensure that on-going decisions to adjust traffic and parking penalties are consistent with any whole-of-government policy and objectives.

Recommendation 2

The Departments of Justice and Community Safety and of Territory and Municipal Services examine and agree on the best method of adjusting the amount of traffic and parking fines and penalties.

CONCLUSION

2.72 Fees are a charge for services and are similar to user charges. They are not taxes, which are general revenue raising imposts not related directly to the delivery of any particular service.

2.73 Fees can be set by reference to cost recovery, parity with other jurisdictions, revenue raising and behaviour modification.

2.74 There was no proper cost basis for the vast majority of fees charged by ACT agencies. Services are provided, and a fee charged but only in the minority of cases (e.g. ACT NOWaste) is the cost of the service known or investigated.

2.75 Agencies generally followed ACT Treasury's advice to increase fees by the amount of the WPI. Audit formed the view that, CMD's 1997 advice notwithstanding,

the majority of agencies did not give any attention to costing of services, or consider other bases for their fees other than what was charged last year.

2.76 The use of an index should not replace the need to understand the costs of services for which fees are charged. When costs are known, indexation can be used in years when cost reviews are not done.

2.77 ACT Treasury has recognised that the procedures to set fees for services need to be improved. It intends to draft policy and guidelines for agencies to use in costing and administering fees. This is further discussed in Chapter 3, Policy and Procedures.

2.78 Fines are a different concept – they are penalties for transgression and a disincentive for bad or unlawful behaviour, rather than a regulatory tool. Infringement notices are set as a proportion of the court imposed maximum penalty. Most revenue from fines arises from traffic and parking infringement notices. Whether fines should be adjusted upward by an index such as the CPI or through a review of statutory penalties is not settled. JACS and TAMS need to resolve this situation.

3. POLICY AND PROCEDURES

INTRODUCTION

3.1 This chapter deals with the adequacy and effectiveness of policy and procedures guiding the collection of fees and fines; and debt management.

KEY FINDINGS

- Current ACT Treasury guidance is dated and incomplete. ACT Treasury is currently drafting a revised policy and procedures document.
- There was insufficient information and guidance within agencies or from Treasury on:
 - the objective of fees and charges;
 - the risks to fee revenue and how those risks may be treated;
 - the principles of cost recovery and guidance on costing methods;
 - the performance indicators on the collection of fees and charges;
 - the periodic review of fees and charges;
 - the use of indexation adjustments and what agencies should do if they decide to use another factor other than that recommended;
 - when it is reasonable to impose and collect late fees;
 - when administrative cost recovery fees can be charged;
 - communicating fees and charges to clients and the public; and
 - fee waivers.
- Business units responsible for advising and preparing Ministers' fees determinations were not aware of, and therefore did not use, ACT Treasury's current guidance.
- Few agencies have developed their own internal guidance on fees determination and where guidelines existed, they were incomplete and unhelpful.
- There was no central agency guidance on the administration of fines, the great majority of which are parking and traffic infringements. An internal audit of TAMS brought attention to missing and incomplete procedures for the processing of parking infringement notices.
- Guidance on waivers of fees under the *Financial Management Act 1996*, or agencies' own legislation, was incomplete or absent.
- Most agencies did not consolidate their fee determinations into a single fees book, which would make access to and review of fee determinations easier.

POLICY AND PROCEDURE

Central agency guidance

3.2 As outlined previously (paragraph 2.35), there are currently two circulars dating from 1997 and 2002 dealing with fees and charges. The 1997 circular briefly sets out the method of setting fees and fines.

3.3 Further advice is contained in:

- ACT Treasury memoranda on the preparation of the budget, that includes advice on budget parameters, indexation and the necessity for Government approval if increases exceed indexation limits; and
- the *Chief Executive Financial Instructions* template covers risk management, reporting, debt management and invoicing, that includes fees and fines. Each agency takes this template and modifies it to its own circumstances.

3.4 The current guidance is general, and only briefly touches on fees and fines. There are a number of matters that are not considered that would better guide agencies in administering their fees portfolios. There was insufficient information and guidance on the:

- objectives of fees and charges;
- risks to fee revenue and how those risks may be treated;
- principles of cost recovery, and guidance on costing methods;
- performance indicators on the collection of fees and charges;
- periodic review of fees and charges;
- use of indexation adjustments, and what agencies should do if they decide to use another factor other than that recommended;
- when it is reasonable to impose and collect late fees;
- when administrative cost recovery fees can be charged;
- communicating fees and charges to clients and the public; and
- fee waivers.

3.5 ACT Treasury is currently drafting a policy and guidelines document that will update the current guidance.

3.6 Audit found that the limited information currently available was not appropriately communicated to relevant areas and staff. Audit queried ACTPLA, TAMS and JACS business units to determine if they were aware of the two circulars on fees management. Results showed that central finance areas were aware of them, whereas business units were not, notwithstanding their role in fee determination.

3.7 There is no central agency guidance related to the administration of fines. These are set by legislation and administered by the Criminal Law Division of JACS. As is evidenced by Table 1.1 (page 3), most fines revenue originated from traffic infringement notices, and parking infringement notices. TAMS has responsibility for administering the Road Transport Acts, and related fee determinations. TAMS collects Traffic Infringement Notice penalties, while parking infringement notices are collected by JACS.

3.8 The Road Transport legislation contains detailed provisions on the collection of fines, whether imposed by a court or contained in an infringement notice. Audit noted that a TAMS internal audit of Parking Operations revenue collection recommended that procedures for the follow-up and acquittal of outstanding parking infringement notices (and quality assurance procedures) should be documented, and internal guidelines that list reasons for withdrawal of parking infringement notices should be consistent with Ministerial notices.

3.9 Parking operations transferred from TAMS to JACS from 1 July 2006. JACS will be implementing the recommendations of the internal audit report, and Audit notes that JACS' internal audit section is planning to review the implementation in 2007-08.

Guidance in agencies - general

3.10 Audit found that specific fees and charges guidance was not adequate in most agencies. Guidance to staff consisted of general accounting and finance material, counter operations manuals, fraud control plans and fees schedules often in the form published as determinations. Audit noted that the use of determinations by customers and staff was easier where they were collected into a single fees book, such as has been done in JACS and ACTPLA.

3.11 TAMS' Strategic Finance and business units have developed some internal guidelines for fees revenue management:

- accounts receivable guidelines (part of the *Financial Guidelines for Business Units*) for invoice creation, receipting and debtor management;
- *Fees and Charges Guidelines*: the guidelines were updated for the introduction of the use of the WPI and covers subjects such as the TAMS timetable for determining fees; types of fees (territorial or administrative), and the budget. The guidelines cover only some of the subjects listed in paragraph 3.4 above. However, they are a good start in providing some guidance on management of fees revenue; and
- procedures for fee calculation and debt management under the *Water Resources Act 1988*.

Guidance in agencies - waiver of fees and fines

3.12 Waiving a fee or fine debt extinguishes the right of the Territory to collect it at any time. For the year ended 30 June 2006, total waivers, including fee and fine waivers totalled less than \$1m, while write-offs were approximately \$3m.

3.13 Some business units are able to waive or remit fees under their legislation.

- The *Public Trustee Act 1985*, sub-section 28.4 gives the Public Trustee a wide discretion to dispense with or reduce the amount payable. To administer it the Public Trustee has issued a policy that assists in ensuring consistency within the Public Trustee's Office.
- The *Births, Deaths and Marriages Registration Act 1997*, section 68 allows the Registrar-General to remit fees. The Registrar-General's Office has prepared general advice on the application of this section, but it needs updating. The Australasian Council of Births, Deaths and Marriages Registrars has drafted a national fee waiver policy, although this is not yet finalised. The draft is dated June 2003.
- Under the *Road Transport (General) Regulations 2000* Regulation 13, the relevant Minister may remit any fee, charge or other amount, or part of any fee, charge or other amount, payable under the road transport legislation. This provision is not used extensively, and Road Transport has not produced any guidance document on it.
- The *Associations Incorporation Act 1991*, section 125, provides that the Registrar-General may waive a late fee if late lodgement was beyond the control of the person lodging the document.

3.14 Audit observed that most business units and agencies rely on section 131 of the *Financial Management Act 1996* if considering waiver of debts. Section 131 is a discretion of the Treasurer, who delegates this power to officers of his Department, the ACT Treasury.

3.15 The model *Chief Executive Financial Instructions* at chapter 4.1 deals with fee waiver, as well as the debt write-off or write-down, that removes the debt as an asset from the accounts.

3.16 ACT Treasury external guidance on waiving debts consists of some brief information in chapter 4.1, and a document called *FMA explained* that resides on Treasury's accounting website.

3.17 ACT Treasury maintains internal guidelines for the use of Treasury officers. These guidelines contain information that would be of use to agencies; including details of supporting documentation to be provided with applications, and an expansion on the reasons for that waiver may be granted.

3.18 These guidelines are not made available outside Treasury. Audit considers that this type of information would assist agencies in making applications for fee waiver. Better practice would be to explain publicly the context to the exercise of fee

waiver delegations, as is done in other jurisdictions, such as the Commonwealth Department of Finance and Administration.⁶

Recommendation 3

ACT Treasury issue:

- (i) a comprehensive revised fees and charges policy and procedure advice, that will include the features listed in the report (paragraph 3.4); and
- (ii) more detailed and useful guidance on processing the waiver of debts under section 131 of the *Financial Management Act 1996*.

Recommendation 4

- (i) Agencies supplement the ACT Treasury's advice with further guidance particular to their fees and charges portfolio, and disseminate this information to business units that are responsible for advising Ministers and drafting determinations for them.
- (ii) Agency guidance on fees and fines administration includes advice on processing waiver of fees and charges, especially where waivers can be executed under legislation administered by the agency.
- (iii) Agencies compile all their fees determinations into a single document to assist easy access, and for better management of agency performance in fees and fines determination.

Recommendation 5

The Department of Justice and Community Safety implement the recommendations of the Department of Territory and Municipal Services internal audit to:

- (i) document the follow up of outstanding parking infringement notices;
- (ii) establish documented quality assurance procedures; and
- (iii) ensure that reasons for Parking Infringement Notice withdrawal are consistent with Ministerial notices.

CONCLUSION

3.19 Guidance on setting and administering fees and charges and waiving the Territory's right to collect debts, whether prepared by ACT Treasury or agencies, was dated or incomplete. Relevant staff did not have access to, or were unaware of, current Treasury guidance, or other material to effectively perform their functions.

3.20 Audit noted that ACT Treasury has commenced drafting a policy and guidelines document for administering fees and charges. Agencies should also review and revise their own guidance, using Treasury's revised material when available.

⁶ See the Department's website: http://www.finance.gov.au/FinFramework/fc_2006_05.html

4. COLLECTION OF FEES AND FINES

INTRODUCTION

4.1 This chapter assesses the efficiency and effectiveness of fees and fines collection, and of debt management.

KEY FINDINGS

- Fees and fines were collected mostly through over-the-counter transactions. Although this provides a well-established payment procedure and facilitates compliance and public access, it was a more costly method of collection, compared to other methods, such as BPAY and the internet.
- Due to resource constraints within TAMS, and difficulties with RegoACT, the Road Transport's management information system, it was not currently possible to suspend or cancel registrations that have been paid with cheques that have subsequently been dishonoured. Road Transport was therefore unable to comply with the *Road Transport (General) Regulations 2000* relating to dishonoured cheque payments.
- Registration and licence sanctions are only partly effective in achieving payment of traffic infringement notices and parking infringement notices issued to interstate drivers, resulting in a significant number of unpaid penalties.
- For the period 1 July 2006 to 12 March 2007, some \$987 075 in traffic infringement penalties were owed by interstate drivers. TAMS' estimated that up to 60% or \$592 000 may not be paid – they were doubtful debts. On a straight line extrapolation, this equates to approximately \$850 000 for lost revenue for a full year.
- A difficulty faced by ACT Policing in prosecuting suspended drivers - both local and interstate - was a tendency for motorists to claim they have not received a notice of suspension of licence. ACT Policing advised Audit that there is a high probability that prosecutions will fail and costs will be awarded against ACT Policing if the court finds that there is reasonable doubt that the offending motorist did not receive their notice of suspension. In the period 1 June 2005 to 31 May 2006, 35 charges out of a total of 533 were dismissed because the Magistrate was not convinced beyond reasonable doubt that the notice was in fact received by the offender. Potentially, this imposed a cost of approximately \$40 000 in court costs alone on ACT Policing; costs which it considers avoidable.
- There is no national scheme of demerit point and traffic and parking fines transfer. Lack of progress on the issue nationally and the implementation costs for the transfer of interstate fines and demerit points are barriers to putting such arrangements in place.
- Although Road Transport acknowledges that bilateral arrangements with other States in lieu of a national agreement, would recover revenue, deter bad

driving behaviour and improve road safety, it has not pursued such arrangements based on its assessment of the significant costs of implementing them.

- An internal audit report into parking operations in July 2006 found approximately \$2.2m in outstanding parking fines, about half of which related to unidentified interstate drivers. Some dated back to 1991. These debts were still recorded in the RegoACT system, and were more than likely unrecoverable.
- There is currently \$143 000 in outstanding traffic fines (more than 120 days old) owed by a number of overseas missions and individual diplomats. Recovery of fines incurred by diplomat drivers depends on timely and co-ordinated action by Road Transport and the Commonwealth Department of Foreign Affairs and Trade.
- In about 30% of traffic infringement cases, (19 700 of a total of 61 085 in 2005-06), a statutory declaration was lodged requesting withdrawal. A small number of traffic infringement notices (about 3%) were withdrawn. There was no checking of these statutory declarations by Road Transport to establish if they were correct.
- Approximately 150 or 50% of ground water users were not required to pay the charge for water abstraction under the *Water Resources Act 1998*. The Government has proposed amending legislation to remedy this situation.
- The current library fine collection strategy was not effective in collecting debts.
- The Government has announced that a whole-of-government approach to debt collection could be investigated. Such an approach, when implemented properly, should improve efficiencies over the current system of debt collection from fees and fines.

COLLECTION OF FEES AND FINES

Methods of collecting fees and fines

4.2 Most services are provided to customers only on payment of a fee. The *Legislation Act* at section 57 provides that services do not need to be supplied if the fee is not paid.

4.3 Some agencies have their own payment receipting. ACTPLA, the Registrar - General's Office and the Public Trustee are examples.

4.4 The collection of all revenue transactions, including fees and fines, through Canberra Connect and other methods is shown in Table 4.1. These data relate to the 6 month period from May to October 2006.

Table 4.1 Number and value of revenue transactions (including fees and fines) paid through various means – May to October 2006

	No.	No. %	Amount \$	Amt %	Cost per transaction	Notional total cost of transactions
Counter						
Australia Post	162 797		\$63 021 117		\$1.47	\$92 312
Canberra Connect Shopfront	326 287		\$83 688 541		\$6.63 ¹	\$2 163 283
Sub-total Counter	489 084	77	\$146 709 659	76	NA	\$2 255 594
Internet transactions						
Australia Post	426		\$110 836		\$0.75	\$319
Canberra Connect and RegoACT	66 091		\$23 145 699		\$0.64	\$42 298
Sub-total Internet	66 517	10	\$23 256 536	12	NA	\$42 617
Telephone						
Australia Post	14 476		\$4 463 672		\$0.75	\$10 857
Canberra Connect Call Centre	15 178		\$3 087 756		\$4.69	\$71 184
Integrated voice recording	2 371		\$1 082 921		Not available	Not available
Sub-total Telephone	32 025	5	\$8 634 350	4	NA	\$82 041
BPAY	49 747	8	\$15 661 245	8	\$0.69	\$34 325
TOTAL	637 373	100	\$194 261 791	100	NA	\$2 414 577

Source: TAMS, Community and Infrastructure Services.

¹ Canberra Connect provides services to agencies on a three tiered system. Simple transactions, as are those undertaken at Australia Post, are charged to agencies at \$1.72. More complex transactions are charged at \$4.31 and the most complex transactions are charged at \$8.64. It should also be noted that the Canberra Connect shopfronts provide complex services to the community at no charge to agencies. The cost cited above is the full cost of the Canberra Connect counter service as per the 2006-07 Budget.

The 2007-08 Budget cites Canberra Connect's estimated actual costs per transaction costs for 2006-07 transaction are:

- Shopfronts, following removal of duplicate accounting of some registration renewals in RegoACT: \$8.92
- Call centres: \$3.70
- Internet: \$0.72

4.5 The table illustrates that the cost of collecting revenue of \$194m is \$2.414m or 1.24% of revenue collected. Counter service is the preferred method of payment through Canberra Connect but it is also the most expensive.

4.6 Table 4.2 below shows the cost of collecting \$100 in revenue through the various methods: counter service, telephone, internet and BPAY. The cost advantages of using electronic means of payment are apparent. The cheapest option, internet, is less than one eighth of the cost of counter service, and a fifth of the cost of telephone transactions. BPAY is also very cost effective.

4.7 Treasury advised that the cost difference between various transaction channels has been considered by Government on several occasions, and that the Government has made specific policy choices to continue to provide the method of counter transaction for equity and access reasons. Treasury further commented that there was a fixed cost of providing over-the-counter transactions, and a decrease in the use of shopfronts is in fact likely to increase costs per transaction.

Table 4.2: Cost of collection of \$100 in revenue by various means.

Payment option	Cost per \$100 of collections
Internet transactions	\$0.18
BPAY transactions	\$0.22
Telephone transactions	\$0.95
Counter transaction (Canberra Connect and Australia Post)	\$1.53

4.8 Audit found some evidence that agencies encourage customers to use electronic means of payment of fees, fines and other revenue. These are listed in Table 4.3 below.

4.9 For example, Audit was advised that, in April 2004, 81% of road transport transactions occurred through Canberra Connect shopfronts, however by April 2007 this figure had dropped to 53%. In early 2007, changes were made to the vehicle registration forms, supported by changes to legislation, to encourage renewals via channels other than shopfronts.

4.10 Of particular interest is Canberra Connect’s proposal, which will cover the ambit of Government, and will reinforce Canberra Connect’s advantages as the one-stop collector of Government revenue.

Table 4.3 Payment options current and proposed

Agency	Payment options: current and proposed
Canberra Connect	<p>Outline plan of a strategy in the form of a PowerPoint presentation exists. Full strategy including details such as timelines, marketing and resourcing was not available at the time of the audit.</p> <p>Canberra Connect is also seeking a mandate from Government which if agreed, will enable a review and overhaul of payment methods and collection channel arrangements across the Government.</p>

Agency	Payment options: current and proposed
ACT NOWaste	<p>NOWaste uses Canberra Connect for additional household services, which allows for phone payment and B pay options.</p> <p>Account holders pay by cheque, credit card and direct deposit arrangements only. These arrangements are satisfactory to account holders.</p> <p>Use of Australia Post, and B pay options would require an overhaul of the non Government network revenue collection software.</p>
Public Trustee	<p>The Public Trustee collects its own revenue, a substantial part of which is deducted as fees from client funds lodged with the Public Trustee.</p>
Water Resources, TAMS	<p>Majority of customers pay by cheque through the post. Customers are offered various methods of payment, such as phone payment and EFTPOS.</p>
Road Transport	<p>Payments for public transport accreditation and public transport licences are currently made by cheque or money order only.</p> <p>Road Transport is putting in place arrangements that will use existing Canberra Connect payment systems to receive payments for public transport accreditation and licensing.</p>

Recommendation 6

In light of the cost savings through use of electronic and other related means of paying fees and fines, agencies take action to encourage the use of these means of payment.

Recovery of infringement penalties from interstate drivers

Demerit points transfer

4.11 Whether the ACT can effectively sanction an interstate licensee for a parking or traffic offence depends on whether the licensee comes before an ACT court. If an ACT court finds that an interstate driver has committed an offence in the ACT for which licence suspension applies, the interstate licensing authority will, with information provided by the ACT Road Transport, suspend the interstate licensee’s right to drive anywhere in Australia for the period set by the ACT court.

4.12 Traffic infringements, those not dealt with by the court, may take demerit points from the licensee, or impose a fine, or both. When a licensee loses a number of points (for ACT licensees this is currently 12 in 3 years), the driver’s licence is suspended or cancelled. If an interstate licensee loses points for an offence in the ACT, there is a strong likelihood that the interstate road licensing authority will not subtract points from the licence.

4.13 Road Transport advised Audit that the reason why interstate licensees do not lose points is because:

- computer systems between jurisdictions are not compatible;
- similar offences in various jurisdictions attract a different amount of demerit points;
- double demerit points are applied in some jurisdictions during dangerous driving periods, such as Easter; and
- some jurisdictions, including the ACT, have been unable to set up mechanisms to administer a system where demerit points can be transferred across jurisdictions. In the ACT's case, Audit was advised that lack of resources is a major factor in its inability to set up such a mechanism.

4.14 Audit was advised that some licensees are sufficiently aware of the difficulties of demerit point transfer to evade their application.

4.15 The collective inability of road traffic authorities in all jurisdictions to find a way to transfer demerit points effectively waives them, and allows interstate drivers to avoid any consequences of breaking local traffic laws.

Recovery of infringement penalties

4.16 The normal procedure for the recovery of infringement penalties from ACT drivers is as follows:

- issue of first infringement notice;
- issue of reminder 28 days after first infringement notice; and
- after another 28 days, issue of a notice that the driver's license would be suspended if not paid.

4.17 If an interstate licensee is issued with an infringement notice in the ACT, and does not pay the fine, the ultimate sanction available to Road Transport is to suspend the interstate licensee's right to drive in the ACT. Other jurisdictions will not act as collectors of infringement penalties for the ACT, and take no action to suspend or cancel a driver's licence or registration if the penalty is not paid.

4.18 Road Transport's analysis has shown that collection rates for fines payable by interstate licensees is low - estimated at 40% of the outstanding balance. The remaining balance of fines issued to these drivers is considered doubtful debts by TAMS. The debts and infringements remain on TAMS books until they are considered bad debts, when they may be written off. The licence to drive in the ACT is suspended until the debts are paid - if ever.

4.19 Drivers who are suspended can be prosecuted in the ACT courts. Audit reviewed the number of prosecutions of interstate drivers who were suspended from driving in the ACT for 2005-06 and 2006-07. The ratio of this number over the

number of drivers who actually were suspended for non-payment of fines would be an indicator of the effectiveness of suspension of the right to drive in the ACT.

4.20 Table 4.4 shows the number of Parking and Traffic Infringement Penalties that have been incurred by interstate drivers, and the rate at which they have been paid. It also shows the number of suspensions that have been incurred by interstate drivers, and the number of prosecutions for driving in the ACT while suspended.

Table 4.4: Traffic Infringement Notices and Parking Infringement Notices – Interstate Drivers

Details	2005-06	2006-07 year to 10 May 2007
Traffic infringement notices – issued	21 752	18 318
Traffic infringement notices – paid	16 619	11 650
Traffic infringement notices paid (%)	76%	64%
Parking infringement notices – issued	30 536	22 976
Parking infringement notices – paid	23 628	15 430
Parking infringement notices paid (%)	77%	67%
Interstate drivers suspended from driving in the ACT	3 184	3 966
Interstate drivers convicted for driving in the ACT while suspended	34	47
Interstate drivers convicted (%)	1%	1%

Source: Road Transport, TAMS

4.21 For the period 1 July 2006 to 12 March 2007, some \$987 000 in traffic infringement penalties were owed by interstate drivers. TAMS (Strategic Finance) estimated that up to 60% or \$592 000 was considered doubtful. On a straight line extrapolation, this equates to approximately \$850 000 for a full year.

4.22 Given the significant revenue loss from non-payment by interstate drivers, Audit considers that responsible agencies should make greater efforts to put better systems and procedures in place to collect the fines and avoid ongoing losses of revenue. There are also public safety implications if there are no real consequences for those interstate drivers who may have repeatedly committed traffic offences in the ACT and continued to drive in the Territory.

4.23 This contrasts with the situation of ACT licensees, who may have their licence or vehicle registration suspended or cancelled until or unless fines are paid in full. Fine payment rates in 2005-06 for all drivers were 85% for parking infringements, 88% for traffic camera infringements and 74% for traffic infringements.

4.24 Table 4.4 shows a low rate of prosecutions relative to the numbers of suspensions of interstate drivers. ACT Policing advised TAMS that a difficulty in prosecuting suspended drivers - both local and interstate - is a tendency for motorists to claim that they have not received a notice of suspension of licence. In the period 1 June 2005 to 31 May 2006, 35 charges (out of a total of 533) were dismissed when the court was not convinced that the notice was in fact received by the offender. Potentially, this imposed court costs alone of approximately \$40 000 on ACT Policing.

4.25 ACT Policing further advised TAMS that it had legal advice that if the notice of suspension was sent by registered (rather than 'ordinary') post it would be effectively served, and the costs of failed prosecutions would be avoided.

4.26 Road Transport's response to ACT Policing cited claims from other jurisdictions that they had not encountered any legal obstacles to serving infringement notices by 'ordinary' post and that Victoria had reverted to 'ordinary' post after finding that registered post delivered benefits less than the high costs of registered post.

4.27 Road Transport has sought further information from ACT Policing and the Director of Public Prosecutions on the circumstances surrounding the dismissal of charges by ACT courts. When TAMS receives this information, it will decide if registered post is preferable to 'ordinary' post in serving suspension notices on ACT and interstate drivers.

4.28 Audit considers that there is merit in TAMS assessing the net benefits of sending suspension notices by registered post. This assessment should take into account the positive effect on improved road safety as well as financial factors.

4.29 Road Transport and the ACT is a member of the *Austroads Registration and Licensing Task Force*: an association of Australian and New Zealand transport and traffic authorities that aims to improve road and road transport outcomes. It has carriage of efforts to apply a national scheme of demerit point and fines transfer. To date, no such national scheme has been established.

4.30 TAMS considers that a lack of progress on the issue at a national level and the implementation costs of arrangements for transfer of interstate fines and demerit points are a barrier to putting such arrangements in place.

4.31 Road Transport has not pursued bilateral arrangements with other States in lieu of a national agreement, based on its assessment of the significant costs of implementing such an arrangement. However, it acknowledges that such arrangements would recover revenue, deter bad driving behaviour and improve road safety.

4.32 Audit was not aware of the costs of implementing a national scheme, or of bilateral arrangements. However, audit evidence points to a potential significant and

on-going loss of revenue from non-payment of traffic fines by interstate drivers, of over \$800 000 annually.

4.33 The problem was compounded when Audit considers the state of parking infringements issued to interstate drivers. The TAMS internal audit report into parking operations in July 2006 found approximately \$2.2m in outstanding parking fines, about half of which related to unidentified interstate drivers. Some dated back to 1991. These debts were still recorded in the RegoACT system, and were more than likely unrecoverable.

4.34 Parking operations moved from TAMS to the Office of Regulatory Services at JACS in the 2006-07 Budget process. Prior to the move, TAMS implemented a number of recommendations, including changing procedures to ensure that interstate drivers were identified, thus arresting the accumulation of debts payable by them. Audit was advised that the JACS' Office of Regulatory Services will take action on the internal audit report's recommendations that TAMS have not yet implemented, including possible write-off of uncollectible parking debts.

4.35 Other findings in the internal audit report relate to policies and procedures, documentation, training and the development of additional relevant performance measures. To date, the Office of Regulatory Services has yet to take action on the reports findings or its remaining recommendations.

Recommendation 7

- | | |
|-------|--|
| (i) | Road Transport (TAMS) and Office of Regulatory Services (JACS) consider the merit of entering into bilateral or multilateral agreements with other jurisdictions, particularly NSW and Victoria, regarding the exchange of demerit points between jurisdictions, and collection of traffic and parking infringement penalties incurred by interstate motorists in the ACT. |
| (ii) | the Office of Regulatory Services (JACS) implements the recommendation of the Department of Territory and Municipal Services internal audit regarding the collection or write-off of outstanding parking fines. |
| (iii) | Road Transport considers using debt collection agencies in other jurisdictions to recover debts incurred in the ACT by interstate motorists. |

Recovery of infringement penalties from diplomat drivers

4.36 The Commonwealth *Diplomatic Privileges and Immunities Act 1967*, section 7 gives the force of law to the international *Vienna Convention on Diplomatic Relations 1961*. Under the Act, and the Convention, diplomats and their households enjoy immunity from the civil and administrative jurisdiction of Australia and thus are under no legal obligation to pay parking or traffic infringements. They are under an obligation, however, to respect the laws and regulations of Australia.

4.37 Within the framework of the Act and Convention, DFAT and TAMS aim to ensure that diplomat drivers are aware of their responsibilities to pay parking and traffic infringement penalties. DFAT advised Audit that the majority of missions and

diplomats comply with parking and traffic laws, and if they do not, willingly pay infringement notice penalties.

4.38 DFAT advised Audit that the effective collection of fines depends on the timeliness and quality of information which Road Transport provides to DFAT. Road Transport's information contains many outstanding Parking and traffic infringement notices that were incurred by diplomats who have left Australia.

4.39 Road Transport advised Audit that it is unable to withdraw a fine until the overseas mission, not DFAT, advised that the diplomat had left Australia. DFAT has no role in advising Road Transport when diplomats are intending to leave or have left Australia.

4.40 If an overseas mission declares that the driver of a vehicle at the time of the infringement has left Australia, Road Transport will withdraw the infringement. As diplomatic postings are usually for 3 years, an infringement that is over 3 years old is virtually certain to remain unpaid.

4.41 According to DFAT, some missions will collect fines from their former members, however overseas missions do not assume responsibility for payment of a fine after a diplomat has left Australia. To collect fines it is essential that the diplomat driver be requested to pay while still in the country.

4.42 Table 4.5 shows the number and amount of outstanding fines by mission as at 9 May 2007. These are debts which are over 120 days overdue, (and would, according to normal accounting practice, be regarded as unlikely to be paid).

Table 4.5: Number and amount of outstanding fines by number of overseas missions, as at 9 May 2007

Total fines owed	Number of overseas missions	Number of fines over 120 days old	Total amount over 120 days old
Under \$500	27	42	\$4 477
\$500 to \$999	10	38	\$7 157
\$1 000 to \$2 999	12	98	\$20 960
\$3 000 to \$7 999	6	118	\$21 688
\$8 000 to \$14 999	1	48	\$8 581
Over \$15 000	2	111	\$34 188
TOTAL	58	455	\$97 051

4.43 In addition to amounts owing by missions, individual diplomats had outstanding fines totalling \$46 936 (for 342 infringement notices) which were over 120 days overdue. As at May 2007, the total amount of fines more than 120 days old

from overseas missions and individual diplomats was therefore \$143 936 relating to 797 infringement notices.

Table 4.6: Status of parking and traffic infringement penalties imposed on overseas missions and diplomats - 2003-04 to 2006-07

		2003/04	2004/05	2005/06	2006/07	Total
Cancelled	Number	-	-	5	2	7
	Amount	-	-	\$715	\$237	\$952
Infringement Served	Number	-	1	2	87	90
	Amount	-	\$127	\$338	\$20 842	\$21 307
On Hold	Number	3	1	-	7	11
	Amount	\$1 483	\$1 049	-	\$1 776	\$4 308
Paid	Number	561	592	538	475	2 166
	Amount	(\$263)	(\$127)	(\$71)	(\$109)	(\$570)
Reminder Notice Served	Number	92	175	208	167	642
	Amount	\$17 428	\$36 615	\$45 641	\$36 589	\$136 273
Withdrawn	Number	212	126	38	23	399
	Amount	\$44 931	\$35 765	\$7 217	\$2 513	\$90 426
Total Number		868	895	791	761	3 315
Total Amount		\$63 579	\$73 429	\$53 840	\$61 848	\$252,696

Note: Negative amounts under *Paid* represent overpayment of fines.

Cancelled are those fines that have been cancelled out of RegoACT due to errors.

Infringement Served are those fines that are current, that is, they have not yet due for payment.

On hold are those fines awaiting further information, but which probably should be under *Reminder Notice Served*.

4.44 Table 4.5 shows that, over the nearly 4 financial years, 65% (2 166 out of 3 315) of parking and traffic infringements were paid. Some 12% (\$90 426) were withdrawn following advice that the offending diplomat had left Australia.

4.45 “Reminder Notice Served” (19% by number, valued at \$136 273) were those infringements which have not been paid, but Road Transport, TAMS has not been notified that the diplomat has left Australia. They have been written off for accounting purposes. The total amount of fines therefore which have been withdrawn or otherwise unpaid, was \$226 699.

4.46 Audit notes that there have been recent improvements in information exchange and co-operation between DFAT and Road Transport – changes which will assist in the speedy recovery of traffic and parking fines from overseas missions and their members.

Dishonoured cheque payments to Road Transport Authority

4.47 Regulations 16-19 of the *Road Transport (General) Regulations 2000* prescribe action to be taken when a payment is dishonoured. It provides for the suspension followed by cancellation of a driver's licence or vehicle registration if a person fails to reimburse Road Transport for a dishonoured payment.

4.48 Due to resource constraints within TAMS and difficulties within RegoACT, Road Transport's management information system, it is not currently possible to suspend or cancel registrations that have been paid with cheques that have subsequently been dishonoured. Road Transport is therefore unable to comply with the *Road Transport (General) Regulations 2000* relating to dishonoured cheque payments.

4.49 The amount of dishonoured cheque debt as at 7 March 2007 was \$159 642, of which approximately \$106 000 related to previous financial years.

4.50 A substantial portion of a payment for registration is an insurance payment. The insurance payment is not recovered from the insurer when the registration cheque is dishonoured. The Territory bears the cost of insurance for vehicles that are registered, although the registration was not paid by the vehicle owner in these circumstances.

4.51 Road Transport has recognised that RegoACT will need functionality improvements if Road Transport is to comply with its legislation. These improvements – programming changes – will be implemented by July 2007 at the earliest. Until then, Road Transport is not able to effectively recover its debts when payments by cheque are dishonoured.

4.52 Problems within RegoACT also affect payments for infringements, although it is possible to more easily manually re-instate infringement penalties. The complexity in backing out dishonoured licence and registration payments from RegoACT has daunted attempts to manually workaround the problem.

4.53 These problems are a subset of many problems besetting RegoACT. Of concern to Audit is an internal audit report in July 2006 into parking infringement revenue that found that:

- reporting facilities within RegoACT are limited, necessitating some manual fixes; and
- at July 2006, there were some 700 work requests for changes to RegoACT. However, a lack of funds meant that lower priority work requests (such as those relating to parking operations and parking infringement notices) were not actioned.

4.54 The RegoACT Steering Committee, based on advice from InTACT, placed a moratorium on application development work including work requests within the system in early 2006. This was to enable available resources to be deployed on

operating software upgrades and migration to new InTACT hardware – work which will mitigate a heightened risk of system failure in RegoACT.

4.55 The current situation means that the Territory is losing money through:

- payment by the ACT Government of insurance for those vehicle owners that have paid their motor vehicle registration with dishonoured cheques;
- non-recovery of debts owed to the ACT through dishonoured cheques; and
- the inability to fine owners of vehicles where the registration has been paid with dishonoured cheques.

4.56 Road Transport advised that revenue and compliance risks associated with outstanding functionality enhancements to RegoACT were identified through internal risk assessments and an external review of the system, including its resource requirements.

4.57 Audit was advised that to date only limited funding has been made available for system functionality enhancements. This has been applied to implementing a very small number of enhancements. Some will assist in more effective revenue collection and compliance, and enable suspension and cancellation of registration where payment is made by cheque which is subsequently not honoured. Road Transport maintains, however, that it requires additional resources to implement the substantial number of system enhancements that are required.

Recommendation 8

The Department of Territory and Municipal Services resolve its resourcing issues to enable the timely implementation of enhancements to RegoACT, where those enhancements will improve the collection of Road Transport fees and fines.

Use of statutory declarations to avoid traffic and parking fines in the ACT

4.58 Recent media coverage has drawn attention to the use of statements, particularly statutory declarations, to avoid penalties for traffic or parking offences.

4.59 The *Road Transport (General) Act 1999* allows a person who has received an infringement notice to declare that they are not the person who was responsible for the vehicle at the time of the offence, and therefore avoid a penalty attached to the offence.

4.60 Table 4.7 shows the number of infringement penalties against the number waived following submission of a statutory declaration. Audit notes that there are some significant gaps in the data collection, which impedes analysis.

Table 4.7: Infringement penalties waived following submission of a statutory declaration – (2005-06 and 2006-07)

Year	Detail	Parking (Office of Regulatory Services, JACS)	Traffic (Road Transport, TAMS)
2005-06	Number of infringements issued	103 755	61 085
	Number of statutory declarations received relating to the 2005-06 infringements	5 000	19 700
	Statutory declarations received as a proportion of total infringements	4.8%	32%
	Number of infringements withdrawn as a result of statutory declarations.	No data available	982
	Infringements withdrawn as a proportion of the number of statutory declarations	No data available	4.9%
2006-07	Number of infringements issued	41 224 (to end Nov 2006)	46 085 (to end Mar 2007)
	Number of statutory declarations received relating to infringements	2 000	13 956
	Statutory declarations received as a proportion of total infringements	4.8%	30%
	Number of infringements withdrawn as a result of statutory declarations.	No data available	451
	Infringements withdrawn as a proportion of the number of statutory declarations	No data available	3.2%

4.61 There was a significant number of statutory declarations submitted. The withdrawal rate of traffic infringement notices is low following receipt of a statutory declaration. Nonetheless, Road Transport has not audited the veracity of statutory declarations for traffic offences, and hence there was no deterrent or consequence for those submitting false declarations.

4.62 The Office of Regulatory Services has prosecuted one person for submission of false Statutory Declaration since 1990. There would not appear to be any systematic review of the veracity of statutory declarations before they are accepted. Audit considered that a systematic review of the veracity of the statutory declarations should be performed.

4.63 In 2006, the NSW Office of State Revenue's fine collection agency, the State Debt Recovery Office (SDRO), checked some statutory declarations lodged to avoid traffic fines. The SDRO's compliance activity was based on an analysis of risks. For example, SDRO paid attention to circumstances where many drivers claimed that the same individual was driving at the time of the infringement. SDRO were assisted by other State and Commonwealth bodies, that provided names of deceased persons, and persons holding international driver's permits.

4.64 To date, SDRO's activity has resulted in 170 charges being laid against 78 people. SDRO's compliance activity is continuing.

4.65 Audit considers that Road Transport should consider the merits of employing the services of bodies like the NSW SDRO to recover debts in other jurisdictions, and with checking of false declarations. Procuring the services of an experienced bureau would probably result in the recovery of fines which would be written off, and indirectly can also contribute to road safety issues through deterrence effects.

Recommendation 9

The Departments of Territory and Municipal Services (Road Transport) and of Justice and Community Safety (Office of Regulatory Services) consider the benefits of reviewing the veracity of statutory declarations used to avoid Parking Infringement and Traffic Infringement Notice penalties.

The Water Abstraction Charge – non-urban reticulation

4.66 This report previously described the WAC in relation to urban reticulation provided by ACTEW, which holds a licence to take water from ACT water bodies under section 35 of the *Water Resources Act 1988*.

4.67 Aside from ACTEW - by far the largest water licensee - there are approximately 300 other licensees. They fall into 3 categories:

- those who pay a WAC of 25c per kilolitre; approximately 150 in number;
- those who pay the WAC, but receive a competition equalisation payment that almost cancels it out. There are 5 rural based water licensees in this category. The net cost of water – WAC less the competition equalisation payment – is intended to match that prevailing in NSW, which heavily subsidises the cost of water to rural users; and
- those who do not pay the WAC. There are approximately 150 licensees in this category. These are commercial operators and private persons who extract groundwater under licences issued before the commencement of section 13 of the *Water Resources Act 1988* in December 1998.

4.68 Table 4.8 shows the amount of revenue collected from the WAC, including that paid by ACTEW for urban reticulation.

Table 4.8: Revenue collected from the Water Abstraction Charge

Fee	ACTEW	Non-ACTEW water licensees
Water abstraction charge	2005-06: \$12.632m	Calendar 2005: \$60 466
	2006-07 year end Feb: \$18.019m	Calendar 2006: \$95 671
Water administration fee at \$300 per licence up to 1 000 megalitres, and amounts as shown paid by ACTEW	2005-06: \$5 615	Calendar 2005: \$90 000 approx
	2006-07: \$5 823	Calendar 2006: \$90 000 approx

Source: Chief Minister's Department 2005-06 financial report, *Note 36 Fees and Fines – Territorial*, and TAMS. From 2006-07, TAMS will include the WAC in its financial report.

The WAC paid by ACTEW was increased by 30 cents per kilolitre in the 2006-07 Budget. This accounts for the large rise in the WAC in the 2006-07 financial year.

4.69 Audit notes that the WAC incurred in calendar 2006 for non-ACTEW licences is due to be paid by June 2007. If the WAC is considered the sale price for a product and not a tax, then Audit expects a more commercially oriented billing regime. The current arrangements grant payment terms for up to 18 months for water that is drawn in January 2006, but is not paid for under the WAC until June 2007.

4.70 Audit considers that a payment or payments equal to a percentage, say 80%, of last year's WAC charge, with a final adjustment at year end would put invoicing arrangements on a more commercial footing. TAMS advised Audit that invoices were delayed because there was a lack of staff to prepare them.

4.71 Some 913 million litres of water is not covered by the WAC of 25c per kilolitre. This is expected to fall to 796 million litres as licences are handed back. Currently, the loss of revenue to the Territory is approximately \$228 000 per annum. TAMS is investigating options to bring all licensees under the umbrella of the WAC, including amendments to the *Water Resources Act 1988*.

Recommendation 10

The Department of Territory and Municipal Services review the billing regime to receive more timely payments from non-ACTEW licensees.

Collection of Library fines

4.72 The total charge to the borrower who does not return library items is composed of:

- a fine that accrues at \$0.20 per day, up to a maximum of \$5.90 per item;
- a lost item fee of \$5.55 per item; and
- item replacement cost, which is the actual cost of the item or the current average cost, whichever is the greater.

4.73 Table 4.9 shows the number and amount of fines by class that have been accumulated by library customers who have not borrowed from 18 May 2004 to 18 May 2006, and which were written off in the 2005-06 financial year.

Table 4.9: Library fines

Category of debt	Number	Percentage number	Amount	Percentage amount
Over \$500	10	0.13%	\$6 521	3.57%
\$200 to \$500	100	1.29%	\$26 951	14.76%
\$50 to \$200	796	10.28%	\$70 843	38.80%
Under \$50	6 840	88.30%	\$78 263	42.87%
TOTAL	7 746	100.00%	\$182 579	100.00%

Source: ACT Library and Information Service

4.74 The ACT Library and Information Service (the Library) sends two notices when borrowers have overdue library materials. The borrower is suspended from borrowing if they have an item overdue for more than 14 days; fines of over \$15.00; fines and lost item payments outstanding for 90 days or more; five or more lost items, or five or more unresolved items that have been claimed as returned. No other action is taken against borrowers who have debts owing to the Service.

4.75 As at May 2006, over 57% of all library fine debts were over \$50, totalling \$104 315. It may be cost effective to more rigorously pursue collection of the debts rather than writing them off. Currently, however, the ACT Library and Information Service has no analysis or information to help it plan to collect its higher end debts.

4.76 Information that may assist the Library would be an estimate of the minimum debt that is worth pursuing, given the costs and likelihood of debt recovery. As the addresses of a high proportion of most high end debtors are known, this should assist the Library in collecting a higher proportion of its debts.

4.77 In the absence of any active debt recovery activities, there is no incentive for debtors to repay their debts.

Recommendation 11

The ACT Library and Information Service revise its debt collection strategy, with a particular emphasis on collecting larger debts from persons whose address is known.

A Territory debt recovery function

4.78 As noted previously in the report, ACT driver's licences and registration remain suspended until traffic and parking fines are paid in full.

4.79 The Chief Magistrate of the ACT has drawn attention to a case where accumulated unpaid debts prevented a tradesman from driving. Without a licence this tradesman was unable to earn his living, and therefore pay off his debts. Audit has been informed that disadvantaged persons have been unable to hold down jobs because they have been without transport because of accumulated unpaid fines.

4.80 It is evident that prompt actions to collect fines increase the likelihood of receiving them. In a number of ACT agencies, effective debt recovery actions were non-existent.

4.81 The Minister for Territory and Urban Services has written to the Attorney-General and the Treasurer pointing out that other jurisdictions possess debt recovery agencies; and have time-to-pay arrangements. He suggested that those with large infringement debts could repay by instalments; and that once a number of instalments had been paid a person's licence to drive or vehicle registration could be reinstated. The licence or registration and licence would remain current while instalments to pay off debt were paid.

4.82 In setting up a debt recovery function, the Government can draw on experience in ACT and NSW agencies: the ACT Revenue Office, the NSW State Debt Recovery Office and the ACT Essential Services Consumer Council.

4.83 The ACT Revenue Office, has established debt recovery activities which also allow ratepayers and taxpayers to repay debts by instalment, taking into account their financial and personal circumstances.

4.84 The NSW State Debt Recovery Office has wide powers under the NSW *Fines Act 1996* to manage and recovery debts. It can:

- issue and process enforcement orders;
- suspend or cancel driver licences;
- cancel vehicle registrations;
- apply business restrictions preventing persons from doing business with the NSW Road Transport;
- issue property seizure orders, and take and sell goods to pay outstanding fines;
- issue garnishee orders to take money from wages or bank accounts to pay outstanding fines;
- issue examination summons to make a person go to court to explain their financial situation;
- place a charge on land affecting its sale until outstanding fines are paid;
- issue a community service order to work off outstanding fines; and
- issue warrants for breach of community service orders.

4.85 The ACT Essential Services Consumer Council grants debt relief for hardship cases, and is analogous to some of the functions of a debt recovery office. It is set up under Parts 11 and 12 of the *Utilities Act 2000*, to ‘facilitate the resolution of, and determine unresolved complaints and ensure that utility services – electricity, gas, water and sewerage – continue to be supplied to persons suffering financial hardship.’ It has wide powers to deal with debt forgiveness and repayment.

4.86 Aside from addressing the issue of repeated offences by certain debtors, there are other efficiencies in a specific debt recovery function:

- long-standing debts owed to the Territory may be collected;
- reduce the age of debts to improve the likelihood of recovering the revenue; and
- expertise in debt collection can be centralised, rather than remain fragmented across agencies.

4.87 The Chief Minister announced on 8 March 2007 that an inter-departmental committee would examine debt recovery in the ACT, and advise on a whole-of-government approach to debt collection. The review would consider the role of the private sector in debt collection, time-to-pay arrangements, and the possibility of a debt recovery function.

4.88 Audit considered that a centralised debt recovery function for all ACT agencies, as currently considered by Government, would address the issues identified by Audit.

Recommendation 12

ACT Treasury and agencies consider more effective mechanisms and processes for recovering debts, including the establishment of a central Territory debt collection function.

CONCLUSION

4.89 There was significant scope for improvement in the collection processes for certain fees and charges to minimise revenue loss, and reduce the costs of collection. Audit identified actual and potential losses that can be reduced by addressing the following issues:

- encourage greater shift to less expensive methods of payment of fees, fines and charges;
- improve co-operation between the ACT Road Transport and other jurisdictions in enforcing parking and traffic penalties (financial and demerit points) incurred by interstate motorists in the ACT;
- address deficiencies in RegoACT, the major system used by Road Transport, that prevents collection of debts incurred through dishonoured cheques;

- conduct appropriate level of verification of statutory declarations that cause traffic infringements to be withdrawn;
- require all water licensees who draw on ground water supplies to pay for them; and
- improve library debt collection.

4.90 Audit noted that the Government has moved to investigate a whole-of-government approach to debt recovery, including the establishment of a single administrative body. Such a body would address the debt recovery problems identified by the audit. Experience in NSW would seem to indicate that, with appropriate legislative backing, a debt recovery office can introduce many efficiencies into debt recovery activity.

5. PERFORMANCE INFORMATION

INTRODUCTION

5.1 This chapter assesses whether performance information on fees and fines collection, and debt management is complete, accurate and informative to decision makers and other users.

KEY FINDINGS

- Audited agencies had very few performance indicators specifically for fees and fines revenue. The Budget papers included annual revenue budgets, and these are compared with overall results at year end. Canberra Connect also reported some accountability indicators as part of its Budget documentation.
- There was a lack of appropriate performance information which reflected the objectives of the fee or fine, and the risks to its calculation and collection. There was no evidence that this has been considered on any consistent and widespread scale.
- Similarly, debt management at agency levels had few indicators of efficiency and effectiveness.

PERFORMANCE INFORMATION – FEES AND FINES

5.2 Like user charges, revenues from certain fees are driven by demand for services. Demand for services depends in part on conditions in the economy, or compliance with law. For example, the number of motor vehicles registered in any year varies depending on the number of vehicles renewed, sold or transferred.

5.3 Fines are imposed on offenders to punish recalcitrance and to promote improved behaviour. Estimates of fine revenue are set, and compared to actuals at year end.

5.4 There are few performance indicators directly related to fees and fines. Instead, estimates of total revenue derived from taxes, fees and charges are included in each agency's budget documents. *Budget Paper Number 4* contains budgeted operating and cash flow statements that include forecasts for taxes, fees and fines under each agency.

5.5 Due to the lack of relevant performance indicators relating to major fees and fines (aside from revenue information in Budgets), it was difficult to determine whether agencies performed well in the administration and collection of fees and fines.

5.6 Canberra Connect takes in a large proportion of revenue across the counter at the four ACT shopfronts. *Budget Paper Number 4*, includes accountability indicators

for Canberra Connect. These indicators include customer satisfaction, call centre waiting time, queue times, and cost per transaction.

5.7 Other Budget papers contain further information on revenue to be raised through fees and fines. *Budget Paper Number 3, Budget and Financial Projections*, includes at chapter 4 an analysis of the likely performance of types of revenue, including fees and charges.

5.8 Agencies need to implement performance indicators particular to their fees and fines portfolios to assist improvements in their collection. Performance information should be linked to:

- the objectives of the fees and fines program; and
- risks to the collection of fees and fines. These risks are discussed in the next chapter.

5.9 Audit analysed the general risks and objectives of fees and fines and compiled the following list of performance indicators based on the analysis. These following indicators could be considered and used by agencies where appropriate, as a basis to measure the efficiency and effectiveness of their administration of their fees and fines portfolios:

- the extent to which the fees or fines are achieving their objectives, such as cost recovery, parity with other jurisdictions, revenue raising or structural adjustment;
- the rate of detection of non-payment of fees;
- the rate of errors by staff, and by fee collecting and charging systems, in calculating the correct fee;
- the number of complaints from customers and percentage resolved;
- the clarity of information to payees about the objective and basis of the fee or fine;
- the adequacy of payment arrangements;
- the quality of fee documentation and assessment;
- the rate of use of various methods of payment, especially the use of newer internet and automated payment systems; and
- the incidence of late fees, and their effectiveness in promoting lodgement on time.

Performance information - effectiveness of fees in changing behaviour

5.10 Performance information should also be used to measure the extent to which fees have changed behaviour as intended by Government policy. The NOWaste strategy partly relies on price signals through differential fee levels to encourage recycling and recovery of waste resources. Each year, as foreshadowed in its policy

document, NOWaste publishes annual reports to compare progress in reducing waste against established benchmarks.

5.11 A good example is a comparison of the percentage of materials recovered and recycled to those that are dumped in landfill. In 1993-94 some 22% of materials were recovered; in 2005-06 this had grown to 75%. However, these outcomes reflected many factors including the impact of fees and fines such as community education and awareness.

5.12 ACTPLA increased the Departmental application fee for an extension of time for meeting lease covenants for each 3 months or parts thereof. The aim of this increase is to discourage land speculation. ACTPLA has not evaluated whether the increase has been effective in accomplishing its aim.

Performance information - debt recovery

5.13 As has been discussed, unpaid fines and fees are debts due to the Territory. Some debts, such as unpaid library and parking fines, are not effectively collected from certain types of debtors.

5.14 Audit found that, where agencies had debts, they did not measure their performance, and did not have the systems to support measurement of performance.

5.15 The problems with RegoACT have been discussed previously, which include limited and ineffective reporting facilities. The internal audit report into parking operations referred to earlier noted that there were no performance measures for the follow-up and acquittal of outstanding parking infringement notices. There was an urgency to this matter, as the internal auditor found that \$811 555 in parking infringement notices was outstanding over 120 days, and must be regarded as doubtful.

5.16 Performance indicators for fine debt recovery that could be used include:

- the number of offenders who pay fines as a proportion of the number of offenders who have a fine imposed in that year;
- the percentage of fines by value issued annually that are collected that year;
- debts as a proportion of revenue collected;
- the rate of change of arrears compared with previous year;
- the number of offenders requiring enforcement action; and
- the success rate of legal enforcement actions.

Recommendation 13

Agencies develop and use performance indicators for fees and fines that set targets and measure the extent to which:

- (i) the objectives of the fee, and identified risks to collection of the fee have been met and managed; and
- (ii) debts due to the agency from fee and fines have been managed.

CONCLUSION

5.17 There was inadequate performance information beyond the top level indicators used to measure revenue performance in the context of the annual Budget. Performance information is important to measure the extent to which the objectives of the fee have been met, debts collected and the risks to collection of the fees have been managed effectively. Without the relevant information, agencies would not be able to review their outputs and outcomes against the targets, and would not be able to take appropriate actions for improvement.

6. RISK MANAGEMENT

INTRODUCTION

6.1 This chapter assesses whether risks to fee and fine revenue are analysed, assessed, and managed according to an approved risk management plan.

KEY FINDINGS

- Agencies conducted some analysis of risks to revenue, however, the focus of risk management was not specific to fees and fine revenue. In the main, general revenue risks, such as the risk of internal and internet fraud are considered, rather than risks to compliance with fee legislation and fee collection specifically.

RISKS FOR FEE AND FINE REVENUE

6.2 Risks to revenue are considered in agency business and fraud risk plans. Audit analysed the risk and fraud management plans of ACTPLA, TAMS and JACS to determine if any risks to revenue specifically were analysed and treated. Risks identified were:

- staff misappropriating revenue (most agencies);
- staff waiving fees for personal benefit (Registrar-General's);
- internet fraud (TAMS);
- Electronic Funds Transfer fraud (TAMS);
- ineffective or inconsistent valuation services resulting in revenue loss (ACTPLA);
- persons building structures without approval (ACTPLA);
- commercial activities not raising sufficient revenue to fund the administration of the office and Community Service Obligations (Public Trustee); and
- inability to notify and commence legislation and instruments (loss of Territory revenue due to inoperative legislation) (Parliamentary Counsel's Office).

6.3 Setting the amount of fees and fines includes elements of risk management. For example, to discourage illegal dumping, a risk to the NOWaste strategy, fines should be sufficiently high to act as a deterrent. Fees for motor vehicle registration should not provide any incentive for persons to register their vehicles interstate to obtain cheaper services.

6.4 TAMS' approach, which may reflect that of other agencies, is that risks to revenue are not high risks, and therefore do not rank highly for management action

and attention. Since the audit, TAMS has revised its risk management documents at all levels in the hierarchy.

6.5 The ACT Public Service's *Integrity Policy* nominates revenue collection as a risky area that is 'prone to breakdowns in integrity'; and suggests it should feature in any risk assessment of integrity. Audit found that, in general, business and fraud risk plans considered internal risks, such as the activity of dishonest staff.

6.6 In addition to these integrity risks, Audit considers that risk management plans, where appropriate, for fees and fines should include an analysis of:

- those fees and fines that are more likely to be avoided, with consequential action to recover them;
- incorrect fee charging decisions by counter staff, when fees charged are arrived at by complex calculations;
- administrative fees not being recovered, when there is scope to do so;
- services that are subsidised, when there has been no explicit decision to do so;
- recovery of debt identified through non-payment of fee and fines; and through dishonoured payments;
- fees designed to encourage or discourage behaviours that do not achieve these outcomes;
- fees not targeted properly, leading to unintended outcomes;
- lack of basic information of the impact of fees and charges on the users of the services;
- services which may not be deliverable if the fees for it are not paid;
- payment methods inappropriate to the needs of customers who must pay the fee or fine;
- failure of key systems that collect and account for fee and fine revenue;
- lack of awareness by customers of the basis for the fee or fine, leading to a loss of customer confidence in the value for money and equity of the fee charging and fine collection arrangements; and
- lack of co-ordination between agencies which share responsibility for collecting fees and fines.

Recommendation 14

Agencies review their risk management plans to include risks to specific fees and fines, and appropriate actions to reduce these risks. In particular, consideration should be given to the risks specified in this report.

CONCLUSION

6.7 Audit concluded that agencies had conducted some analysis of risks to revenue, however, the focus of risk management was not specific to fees and fine revenue. In the main, general revenue risks, such as the risk of internal and internet fraud are considered, rather than risks to compliance with fee legislation and fee collection specifically.

APPENDIX A – AUDIT APPROACH AND CRITERIA

AUDIT APPROACH

The Audit approach included the following steps:

- survey of reviews, audits and reports of other audit agencies for relevant findings, criteria and good practice;
- assessment of revenue policy and procedures relating to the determination, collection and administration of fee and fine;
- review of agency performance against indicators, risk management plans, policies and procedures; and
- sampling and testing agency fee and fine transactions against the audit criteria.

AUDIT CRITERIA

Audit assesses key issues against the following criteria:

- Objective, purpose and nature of the fee or fine is established and documented, and supported by legislation.
- Costs to be covered by fees and fines are determined using valid costing methods, and are regularly reviewed and adjusted as required.
- Agencies should have internal policies for fee and fine collection, debt collection and fraud control, that are regularly reviewed and updated.
- Fee and fine collection targets exist, are monitored, and updated when necessary.
- Performance information on fee and fine payment is comprehensive and current, and used by decision makers.
- Risks are analysed, assessed, ordered by priority, and managed according to an approved Risk Management plan that is based on the risk management standard.

AUDIT REPORTS

Reports Published in 2006-2007

Report No. 3 / 2007	Collection of Fees and Fines
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Report No. 9 / 2006	Sale of Block 8, Section 48, Fyshwick
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Report No. 4 / 2004	Data Reliability for Reporting on the ACT 'No Waste by 2010' Strategy
Review Report	Matters Relevant to the Office of the Special Advisor, Council of Australian Governments and Inter-Governmental Relations

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