

**Response to Commonwealth Grants
Commission position paper 2008/23**

Justice Services - 2010 Review

February 2009



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1. Introduction

In its recent position paper 2008/23, the Commonwealth Grants Commission (CGC) proposes to assess the Justice Services category (including expenses relating to police, criminal courts and corrective services) using a **weighted population** approach as the broad indicator of service use, based on greater use of:

- Indigenous people;
- males aged 15-34; and
- people living in low SES areas

Victoria supports the Commission's two judgements in relation to police expenses, in particular assessing a proportion of police expenses on an equal per capita (EPC) basis, and discounting of police custody rates by 50 percent.

However, based on the data provided by Victoria, it argues that proportion of the split should be aligned to:

- 60 per cent of police expenses be assessed EPC; and
- 40 per cent of police expenses be assessed using police custody rates, with weights derived from police custody data to be discounted by 50 per cent.

Victoria considers that the Commission should discount the criminal court use factors (based on number of court defendants) by 50 per cent to take into account the complexity of crime for which a defendant is being charged.

Victoria does not support the Commission's intention to assess low SES disability for the Justice Services category due to the lack of reliability and robustness of the data.

Victoria also supports the Commission's intention to assess civil court expenses Equal Per Capita (EPC).

The Commission do not intend to include any cost weights in the assessment due to lack of data and evidence that would have a material impact on the redistribution of funds. Victoria acknowledges that the CGC do not intend to assess CALD or urban complexity disabilities due to lack of data, despite the strong conceptual case that exists for both these disabilities.

In addition, administrative scale, location, cross border, national capital and native title and land rights disabilities are also included in this category.

2. Police Expenses

2.1 Proportional split

Victoria has previously argued that majority of police expenses on community safety and support programs are provided for the whole community and are not influenced by particular population groups.

During the recent State Visits, Victoria Police presented to the Commission cost data to assert that 60 per cent of State's total policing expenses were targeted at the community, whilst only 40 per cent were targeted at young males and indigenous people.

Whilst it is acknowledged that this split is based on Victorian data, it is still representative of overall policing effort in the State. Given the potential redistribution impact of such a split, Victoria urges the Commission to consider collecting further data on this basis from States.

The data is presented in the table below:

Outputs Targeted at the community	Outputs targeted at young males and indigenous people
Community Safety and Support	
\$420m	\$240m
Road Safety/ Traffic Management	
\$144m	\$10m
Crime Investigation	
\$220m	\$270m
Supporting the Judicial process	
\$139m	\$109m
Total expenses targeted at the community: \$923m	Total expenses targeted at young males and indigenous people: \$629m
Proportion of Total Victoria Police Expenses: 60%	Proportion of Total Victoria Police Expenses: 40%

2.2 Use of Custody Rates

Victoria has previously argued that police custody incidents do not reflect the relative complexity of different crimes.

For instance, it takes less time and resources to manage a drunk and disorderly offence than it would to investigate major organised crime. Police custody incidents are also policy driven, for instance States may have different diversion programs which eventually will have an impact on overall custody rates. Further, focussing on incident data also does not reflect the substantial amount of policing work targeted at prevention. These activities include community liaison, crime prevention strategies, administering 'neighbourhood watch' programs and engaging parents and schools.

However, given that the Commission has been unable to find a reliable alternate data source, Victoria concurs with the Commission's proposal to use police custody rates as a measure of police expenses, whilst discounting the data by 50 per cent in recognition of the obvious deficiencies in this data source.

Victoria notes that the Commission is still using the custody rates obtained from the Australian Institute of Criminology's *2002 National Police Custody Survey*. Victoria acknowledges that the results of the 2007 survey (initially due for release in September 2008) are still not available. It is still expected that the results of the new survey will be used for the 2010 assessment.

Victoria considers that the proportion of police expenses assessed EPC should be 60 per cent and 40 per cent police expenses should be assessed differentially using police custody rates. Victoria supports the use of police custody rates as a measure of police expenses, and discounting of the data by 50 per cent in recognition of the obvious deficiencies in this data source.

3. Civil Court Expenses and User Charges

Victoria supports the Commission's proposal to assess civil court expenses on an equal per capita basis. Victoria agrees that revenue from fees and fines should be assessed in the miscellaneous revenue category on an equal per capita basis.

4. Criminal Courts

Victoria does not agree with the Commission's intention to assess criminal court expenses differentially, thereby applying the young males, indigenous and low SES disabilities. This approach will effectively apply a use weight of 46 for Indigenous young male population. This weight will grossly overestimate the impact of Indigenous young males on the criminal court system.

Victoria argues that the use of court defendants data, based on the number of persons rather than the complexity of the charge is inappropriate. Similar to the fact that police custody incidents do not reflect the relative complexity of different crimes.

The court defendants data does not take into account complexity of the defendant's charge. This could vary between, and sometimes within the different levels of courts (eg higher courts, magistrates courts or children's courts). Under this proposal, a defendant who is charged and presents at court for a drunk and disorderly incident, will be assumed to take up as much of the Court's time and resources as a defendant who presents at court on murder or sexual assault charges. Indeed, under the current proposal, a defendant being presented at court for several charges, will only be counted as one.

Victoria presented information on the impact of major trials on the criminal courts system, including data that indicated the increased number of days taken to consider a criminal matter in Supreme Court due to the complexity of criminal matters, impact on judicial staff, and court security and technology upgrades. Victoria understands that previous Reviews, cost weights of 2 were applied to the number of appearances in higher courts.

As stated in Commission's discussion paper (CGC 2007/17-S) the Criminal court activity data, particularly in relation to the Indigenous rates of criminal court appearances, is based on a sample of data collected from five States, this should be treated with some caution.

Victoria understands that it would be difficult to collect comparable and reliable data from all States on the complexity of charges or make an inference of complexity through a split of data by courts (supreme court, magistrates court etc). Importantly, Victoria acknowledges that there may also be differences in the legislation and **policy** available to the court when administering justice. There are significant differences between the states and territories in the way the higher court, magistrates' court and children's court systems are structured and how criminal cases are allocated between court levels. For instance, New South Wales, Victoria, Queensland, South Australia and Western Australia also have an intermediate level of court, known as the District Court or County Court.

For these reasons Victoria strongly urges the Commission to discount the criminal court use factors based on number of court defendants by 50 per cent. This approach is consistent with the Commission's intention to discount the police service use factors derived from policy-influenced custody incidents by 50 per cent.

Victoria argues that the use of court defendants data, based on the number of persons rather than the complexity of the charge is inappropriate. Victoria strongly urges the Commission to discount the criminal court use factors based on number of court defendants by 50 per cent.

5. Service Use

5.1 SDC factor calculations

Victoria supports the Commission staff's recent revision to its approach on the use of services in the younger age groups by including a 10-14 age group in its assessment. This approach is sound, especially given that data is both available and reliable, and the fact that the 10-14 cohort has significantly different use rates to the 15-17 age cohort. Furthermore, this approach will ensure that the use rates in the younger age groups are not overstating the total use of justice services and the impact on the overall assessment.

5.2 Low Socio Economic Status

The Commission is proposing to include a disability for people from a low SES area, concluding that more crimes per capita are committed by people from low SES area. However, for simplicity the Commission intends to only assess two groups (those in a region with a SEIFA index above 900 and those with an index below 900) with a proposed weight of 1.6 (including indigenous people) for population with a SEIFA index below 900.

Victoria concurred with the Commission's views as per discussion paper (CGC 2007/17-S), that the evidence to link people from low SES to higher crime rate is mixed.

During its State visit, Victoria Police presented the police allocation model (PAM), a two stage regression model that identifies key social and demographic characteristics that are drivers of crime against the person, crime against property and road trauma. The PAM also serves as a distributive model (as opposed to a forecasting tool), assisting in the allocation of proportion of total number of available resources to respond to emergency and calls for assistance from the community across each of the 56 Police Service Areas (PSAs) in an equitable manner. This model was further able to demonstrate that SES was identified as one of 12 key variables. However, there are other social and demographic characteristics, including the level of retail activity, minority groups, number of retail employees, licensed premises hotels/night clubs, number of major events, number of police stations and the number of hours provided that are more important in determining the level of policing required in an area.

It is understood that data could only be collected from NSW, Qld, SA and Tasmania to assess the materiality of this disability. It is further understood that the data is not publicly available, and it is not comparable across States due to different collection methods (ie using police or court data). Further the Commission is proposing to use this data to apply to the whole of the Justice Services, ie police, courts and prison services. While this data may be applicable to police and/ or court services, it is inappropriate to extend this data to prison services and doing so may lead to a potentially material and incorrect assessment.

Given the lack of robustness and reliability of data, the significant weight proposed for this disability, and the overall material redistribution impact of applying this disability, Victoria does not support the Commission's intention to assess low SES as a disability for the whole of the Justice Services category. Victoria considers that the Commission's treatment of this data to derive the proposed weight of 1.6 appears at best complex and unreliable. This is inconsistent with Commission's approach in not assessing other disabilities that have a strong conceptual case, but where data integrity and coverage are both questionable.

If however, the Commission decides to assess low SES as a disability, Victoria urges the Commission to consider discounting the data and limit the application of the weight to police/ and or courts services only.

Victoria does not support the Commission's intention to assess low SES as a disability for the whole of the Justice Services category. Victoria notes that the data used to derive the proposed weight of 1.6 is based on information from only some States. Victoria urges the Commission to consider discounting the data and limit the application of the weight to police/ and or courts services only.

6. Common Factors

6.1 Service Delivery Scale/ Location

It is understood that the Commission intends to consider whether a service delivery scale factor can be assessed for particular services, including Justice Services.

A service delivery scale assessment implies that some States require more than the national average number of staff to deliver services due to population dispersion. Largely an issue for police services, this captures the increased cost per unit of service in small police stations due to diseconomies of

small scale and the differing patterns of State settlements in sparsely populated areas on the number of police stations.

As outlined in Victoria's paper on Location – wage costs, Victoria understands from the Location Working Group meeting held on 3 December 2008, that the CGC may be extending their analysis past the breakdowns by SARIA regions (that produces a pattern that is not significantly different from a flat line) to analyse regressions for population density, which indicates that there is some form of service delivery scale.

Victoria considers this preliminary analysis for police services to be questionable, as the regression has only focussed on very, very low population densities, and has not continued to the same depth of scale to larger population densities. The analysis does not appear to include all data points for all population densities. Such partial analysis is inconsistent with the requirement that data from all states is to contribute to the average. Victoria is mindful of this Review's Terms of Reference outlining that the methodology is to be simplified and category assessments found unreliable because of unsatisfactory data or methodology, are to be eliminated.

6.2 Urban Complexity

The Commission does not intend to assess an urban complexity disability in the Justice service category.

Whilst urban complexity has been a considered a law and order disability in past Reviews, the Commission does not believe there is sufficient evidence based on the data on the number of crimes per capita, staffing levels per capita and expenses incurred on specialist squads.

Victoria has previously argued larger cities have higher law and order needs, given that there is greater opportunity to commit crime and the difficulty in detecting crime in larger cities. Given the materiality of this assessment, Victoria believes that the Commission should further look into the Australian Crime Commission study which supports that "crime groups operate in every Australian state and territory, and tend to be focused in areas of large populations with access to industry, resources and services"¹ and consider exercising judgement on this important issue to avoid a materially incorrect outcome.

With respect to **more crimes per capita**, the data used by the Commission for Household and personal crime victimisation rates by capital city, does not reflect the complete picture as it based on a survey of victims, not data collected by police. Importantly, the data is used very selectively and the assessment is based on two high volume but relatively low level crime types which are not necessarily more common in highly urbanised areas. The assessment fails to acknowledge the incidence and impact of major and organised crime on associated police investigation costs. For instance, the relative security threat to large cities, and the level of preparedness and response capacity required for counter terrorism purposes, cannot be linked to the incidence of lower-level volume crime in those locations. There is no causal relationship between ordinary crime rates and the level of threat posed by high level organised crime or terrorism.

With respect to the data on **specialist squads**, Victoria Police has advised that the cost information provided to the Commission was specifically for costs associated with its counter terrorism and emergency management coordination department and did not include provision for preparedness and emergency response or the costs of specialist investigation squads. In considering the type of costs included by other States data comparative costs would be around \$30.5 million. As is the case in New South Wales, this estimate is conservative, as it does not include costs incurred in areas such as the Special Operations Group or Search and Rescue Squad. Those units are required to respond to a wide range of other crime and emergency incidents (not directly related to counter terrorism or organised crime).

¹ Source: Organised Crime in Australia 2008, p5, Australian Crime Commission.

6.3 Cultural and Linguistic Diversity

The Commission does not intend to assess a CALD disability in the Justice Services category due to lack of comprehensive data for the case to be fully established.

Victoria has previously argued that there is a wealth of data on indigenous populations and costs borne by service delivery agencies, this is because there is a requirement to collect this information and a national focus on indigenous outcomes. However, similar focus has not been afforded to CALD populations and data sources are limited.

Victoria has presented the Commission with anecdotal evidence from members of the police services on the impact of CALD communities, with respect to time and resources required to deal with both victims and offenders of crime and efforts in relation to workforce development to ensure cultural competence.

Further, the challenges on government services are due to **both** the cultural and language differences, including educating the community on the role of police and the law, attendance at local events/festivals etc. The issues are not isolated to particular regions, as discussed by service delivery staff in both regional and metropolitan police service areas.

Notwithstanding, Victoria supported the application of a broad factor for CALD based on the cost information gathered by the CGC from the Centrelink, a national and neutral data source. This information collected by Centrelink, which suggested that it costs 30% more to deal with a non-English speaking customer and 40% more to deal with a refugee, provides a good indication of the additional costs of CALD populations that is applicable to the broad range of services states provide.

Victoria agrees with the Commission that a balance must be struck between data reliability and achieving an appropriate assessment. However the absence of comprehensive data in this instance, will lead to material amounts being inappropriately redistributed (especially if the proposed age/indigenous use weights are retained) and as such would not achieve HFE. The Commission will need to devote more effort in collecting data at a national level, to ensure reliability and comparability of the costs related to a growing significance of the CALD population.

6.4 Cross Border

Victoria has no further comment on this issue.

6.5 Other Expenses

Victoria has no further comment with respect to National capital or Native title and land rights issues. Victoria notes that this assessment will not be finalised until more information is available on the impact of operational changes made in Commonwealth legislation.