

COMMONWEALTH GRANTS COMMISSION (CGC) 2010 REVIEW

COMMISSION POSITION PAPER 2008/23

JUSTICE SERVICES

NEW SOUTH WALES TREASURY COMMENTS

FEBRUARY 2009

New South Wales Treasury questions some elements of the proposed assessment of the Justices services category.

Of significant concern is the proposed use of custody rates in assessing Police expenses.

Treasury does not believe there is a strong conceptual case for the application of all the disability adjustments proposed by the Commission for Justice services.

New South Wales Treasury notes the Commission's proposal to assess the Service expenses of the Justice services category using each state or territory's adjusted population. These adjustments are proposed to reflect the higher use of Justice services by some groups within the population, particularly, males aged 15 years to 34 years, Indigenous residents and people from low socio-economic status backgrounds. The adjustment process will employ weights calculated using a number of indicators:

- the police use weight will be calculated from police custody rates,
- the court use weight from court defendant data and
- the corrective services weight from prisoner data.

Should a Portion of Police Expenses be Assessed EPC?

New South Wales Treasury notes the Commission's preference to assess police expenses 50 per cent EPC. New South Wales Treasury has expressed a belief in the past that a portion of police expenses are influenced directly or indirectly by potential offenders/users. It is valid to assess the remaining portion of police expenses on an EPC basis to reflect the portion of police services provided to the wider community. New South Wales Treasury believes that a large portion of police expenses are associated with services to the whole community, hence, New South Wales Treasury is of the opinion that a 50 per cent equal per capita (EPC) assessment represents a minimum. A greater than 50 per cent EPC assessment may be desirable to overcome difficulties in assessing some expenses, as discussed below.

Are Custody Rates an Appropriate Indicator of Police Expenses?

New South Wales Treasury continues to question the use of custody rates in their current form. Policy differences between the jurisdictions and their influence on custody rates result in the statistics provided by the states and territories being a questionable basis for policy free interstate comparisons. The Commission itself states “Five States were able to provide a split of police expenses into four distinct service delivery areas (SDAs). For the other States, we were able to obtain information from police annual reports that provided us with an approximate split. The State provided data and the data obtained from the annual reports are not totally comparable across States, but it is the best information we have.”¹

As discussed in previous submissions, Treasury questions the use of custody rates on the basis that they reflect neither the complexity of cases nor, therefore, the expenses involved.

A further issue on the comparability of state and territory custody statistics lies in the definition of “custody” applied in each of the jurisdictions. The issue of safety in New South Wales means that cell custody is reserved for cases where it is absolutely necessary. Further, the comparability of custody statistics can be questioned as a consequence of a number of changes in New South Wales legislation. New South Wales custody rates now reflect changes in:

- The Bail Act which has changed in recent years whereby the presumption in favour of bail is removed for repeat offenders. For domestic and other violent offenders, removal from the scene does not necessarily mean placement in cells.
- The Law Enforcement (Powers and Responsibility) Act (LEPRA) which makes it clear that an ‘arrest’ may be ceased at any time, not necessarily only after laying of charges. NSW may therefore take people into custody but who never appear in cells.
- The encouragement of police to spend more time ‘on the streets’ and so use Field Court Attendance Notices and, more recently, Criminal Infringement Notices, resulting in custody of any type being reduced.

We note the Commission’s view that it agrees “with New South Wales and Victoria that police custody rate fail to acknowledge the complexity of criminal investigation. However, we have been unable to find a suitable alternative data source. The Commission’s inclination is to use police custody rates but discount them by 50 per cent.”²

New South Wales Treasury awaits the outcome of further studies by CGC and the results of the analysis of the 2007 National Police Custody Survey. However,

¹ Commonwealth Grants Commission, Review 2010, Justice Services, Commission Paper CGC 2008/23, page 5, para 24

² *ibid*, page 7, para 45

Treasury continues to believe an alternative to custody rates needs to be identified for police expenses. The use of custody rates as an indicator for police expenses does not appear to be a sound foundation for interstate expense comparisons. The Commission recognises this by expressing doubts about its validity and discounting it by 50 per cent. New South Wales Treasury is of the opinion that the substantial doubts about custody rates should encourage the Commission to either find a robust alternative or implement an EPC basis for the entire police expenses component of the assessment.

Civil Court Expenses and User Charges

Treasury notes Civil court expenses are to be assessed on an EPC basis as they reflect a service to the entire population of a state or territory.

Treatment of Fees and Fines

New South Wales Treasury notes the proposed treatment of fees and fines, including property titles on an EPC basis in the Miscellaneous revenue category.

Service Use

In calculating police/population ratios, New South Wales Treasury requests the Commission to be mindful that NSW Police numbers excludes recruits. Treasury understands that all other states and territories include recruits in their staff numbers. In New South Wales recruits do not become members of police staff until graduation and attestation as police officers.

Service Use – Low Socio-Economic Status

Treasury requests the Commission to be mindful that there may be distinct differences between where offenders live and where they commit offences. Police costs are apportioned according to the location of the offence not where the offender lives.

The Commission should also note that a SEIFA score for a district may not be as significant as the difference between that district's SEIFA and adjacent district's SEIFA. Problems are more likely to occur where there is a disparity of economic status within or between nearby areas. People within a given area of the same low socio-economic group have little incentive to criminality compared to situations where easily accessible or neighbouring higher socio-economic act as an incentive to be involved in property crime.

Service Delivery Scale

New South Wales Treasury notes the CGC conclusion that there is little evidence to suggest that an adjustment is required in Service delivery scale for the provision of police services. Any disability in this area will be accommodated in the Location disability adjustment proposed for both the Service expenses and the Administrative scale expenses components.

Urban Complexity

New South Wales Treasury continues to believe there is a conceptual case supporting the inclusion of an urban complexity adjustment in the Justice services category.

Victoria previously identified the Australian Crime Commission's (ACC) staffing statistics as substantiating the Urban complexity disability. New South Wales Treasury agrees with Victoria in that having 70 per cent of ACC personnel deployed in Melbourne and Sydney indicates ACC priorities. It is assumed ACC assigns officers where they are most effective in combating crime.

Conceptually, it is difficult to accept the existence of the same degree of threat from terrorism and organised crime and threats to financial and other infrastructure, in the other states and territories, similar to those of Sydney and Melbourne. That is not to deny the existence of threats in the other jurisdictions, but rather, these threats are not of the same scale as Sydney and Melbourne.

The statistics on Household and personal crime victimisation rates by capital city³, quoted by the Commission, are only a snapshot of a component of the crime spectrum. These types of crimes are the daily concern of regular policing. The urban complexity argument views these crimes as a minor component of the overall threat. A threat of terrorism is not likely to be reflected in personal crime statistics, nor are the activities of criminal gangs in the importation, manufacture and distribution of drugs nor higher order white collar crime.

Further, data generated from surveys of victims of crime may be questioned on the basis of the consistency of responses. Questions are open to varied interpretation by the respondent and the answers will reflect that interpretation. This could then lead to inaccurate conclusions.

New South Wales Treasury continues to support the use of an urban complexity measure in Justice Services believing it to be conceptually valid. The problem which prevents the assessment is the separation of the expenses from other police, emergency services and other costings. If the Commission's view is to discard the

³ *ibid*, page 18, Table 6

Urban complexity disability on the basis of difficulties in collecting data, then it may also be appropriate to treat police custody data in the same manner.

CALD background

New South Wales Treasury continues to believe there needs to be a cost weighting for the extra expenses incurred by the justice system associated with CALD background populations.

In the “NSW Inmate Census 2007”, the Department of Corrective Services states the proportion of New South Wales inmates with a Non-English speaking country of birth is 16.1 per cent.⁴ The Commission’s figure for New South Wales appears to be 11.1 per cent. Whilst CALD background individuals may be under-represented in custody data and prisoner populations, the discrepancy may not be as large as the Commission identified.

The problems still exists, however, of separating the added costs of CALD background individuals in the justice system from the other expenses. The participation of CALD background individuals in the justice system is at a considerably greater cost than the remainder of the population.

Cross-Border

New South Wales Treasury needs reassuring evidence that cross-border justice services are being calculated in an accurate, robust manner. The assessment of this disability is complicated by the existence of agreements for reimbursements of costs between jurisdictions. In the case of prisoners, for example, where prisoners convicted in Australian Capital Territory courts are housed in New South Wales prisons, a reimbursement can be made for the cost to New South Wales.

Unless there is clear statistical evidence, NSW does not support this adjustment for cross border.

Administrative Scale

New South Wales Treasury continues to question the use of the Administrative scale as outlined in the separate submission on the disability.

⁴ NSW Department of Corrective Services, “NSW Inmate Census 2007”, Table 1.1 Demographic characteristics, page 4