

CHAPTER 16

JUSTICE SERVICES

WHAT IS INCLUDED IN THE JUSTICE SERVICES CATEGORY?

- 1 The Justice services category comprises expenses on police services, law courts and legal services, and prisons and corrective services.
- 2 Justice services expenses, including superannuation for State government employees engaged in the provision of these services, were \$13.1 billion in 2008-09. Table 16-1 shows expenses on justice services varied between 6.3 per cent of total expenses in the ACT and 9.6 per cent in Western Australia and the Northern Territory. The average was 7.7 per cent.

Table 16-1 Justice services category expenses, 2008-09

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Police services	2 193.8	1 604.1	1 402.3	906.2	564.0	195.7	113.4	190.8	7 170.2
Law courts and legal services	919.0	759.7	579.0	404.6	238.5	42.1	65.1	97.3	3 105.2
Prisons and corrective services	951.4	479.3	470.3	530.3	205.7	58.5	40.7	94.3	2 830.4
Category expenses (\$m)	4 064.2	2 843.0	2 451.6	1 841.2	1 008.2	296.3	219.2	382.3	13 105.9
Total (\$pc)	577.19	529.93	563.64	835.36	625.42	592.19	630.28	1 724.62	605.59
Proportion of State operating expenses (%)	8.0	7.3	6.6	9.6	7.4	6.8	6.3	9.6	7.7

Source: Commission calculation using State data.

- 3 Table 16-2 shows the category as a proportion of total State operating expenses. It shows that expenses on justice services have fallen slightly, from 7.9 per cent of total expenses in 2005-06 to 7.7 per cent of total expenses in 2008-09.

Table 16-2 Justice services expenses as a proportion of State operating expenses

	2005-06	2006-07	2007-08	2008-09
Total for category (\$m)	10 608.4	11 363.5	12 235.2	13 105.9
Total operating expenses (\$m)	134 969.0	146 359.0	157 538.0	171 074.5
Proportion of total operating expenses (%)	7.9	7.8	7.8	7.7

Source: Commission calculation using ABS GFS data and State data.

The average service delivery policy

4 Governments provide justice services through three broad functions.

Policing services

5 Police services can be broadly divided into four service delivery areas.

- Community safety and support — which includes crime prevention programs, responding to emergencies and major incidents and calls for assistance.
- Road safety and traffic management — which includes the provision of speed cameras, random breath testing, attendance at accidents and crash investigations.
- Crime investigation — which covers arresting/apprehending criminals including interviews, evidence collection, forensic analysis and the provision of crime squads such as for gangs, organised crime, drug squad and special operations.
- Services to the judicial process — which include attending and preparing for court hearings and the transportation of defendants to court.

6 Policing services are primarily divided into general policing and more specialised units. General policing, which includes the work of general duties officers and traffic police, is provided throughout the State. The more specialised units, such as the major crime squads and forensics, while provided for the entire State, are usually located in major cities or large regional centres. When a major crime is committed in remote areas, specialised units are transferred to those locations by road or air for the duration of the investigation.

7 In the ACT, police services are provided by the Australian Federal Police (AFP) under an arrangement between the ACT Government and the Commonwealth. All other States have their own police forces.

Court services

8 Court services are provided in each State and are hierarchical in nature. Each level deals with criminal and civil matters but the seriousness and complexity of cases heard in each court level varies across States. They generally consist of a:

- Magistrate's (or Local) Court, that deals with summary offences and small civil claims;
- District (or County) Court¹, which is an intermediate court that generally hears serious indictable offences except murder and treason; and
- Supreme Court, which hears disputes more serious than those heard in the other courts, such as murder or treason and unlimited civil claims.

9 Children's courts are also provided by States and deal with matters involving young people.

10 District and Supreme courts are generally provided in the major cities. Magistrates' courts are in the major cities and regional centres. Offenders in remote regions are usually transported to a regional centre for trial. However, given the geographic nature of Australia, it is not always

¹ District courts do not operate in Tasmania, the ACT or the Northern Territory.

possible for people to attend a permanent court. Consequently, circuit courts travel to the more remote regions. Alternatively, video and audio conferencing facilities are provided to enable defendants or witnesses to be involved in a hearing from a remote location.

Corrective services

- 11 Corrective services include the administration, support and operation of prisons and other places of secure detention, both Government administered and privately run, for convicted persons and alleged offenders. The facilities offer varying levels of security from maximum through to low level prison farms, sometimes as separate entities and sometimes as combined multi-level secure facilities. Further segregation of inmates occurs on the basis of age and gender to promote a safe environment for rehabilitation. Juvenile detention services are also provided by States for young offenders.
- 12 Prisons and juvenile detention centres are located where there is greatest need for the service, taking into account the geographic nature of the State. This is generally in major cities and/or large regional centres.
- 13 Community-based corrective services are also offered by the States to provide a non-custodial sentencing alternative designed to release offenders into the community while subjecting them to corrective services supervision. This service is provided in a more dispersed manner.

What is the role of the Commonwealth?

- 14 The Commonwealth provides a range of justice services which augment State services.

Policing services

- 15 The AFP's primary role is to enforce Commonwealth criminal law and protect Commonwealth and national interests from crime in Australia and overseas. While there is some overlap, we consider AFP services are not generally a substitute for States services. It is more likely that State police forces augment Commonwealth services, but in much the same way across States. As a result, we have not taken AFP services into account in assessing State expenses, except for the AFP services provided for ACT policing.

Court services

- 16 The Commonwealth provides courts to hear matters of federal law. They include the High Court, Federal Court, Family Law Court and Federal Magistrates Court. Some of these courts also hear matters that have been transferred by State courts such as appeals to decisions.
- 17 The interaction of Commonwealth and State courts is well defined and similar across States. As such, the Commission considers that expenses on Commonwealth courts are not relevant to assessed State expenses.

Corrective services

- 18 The Commonwealth does not provide correctional facilities. However, the Department of Immigration and Citizenship administers detention centres on behalf of the Commonwealth for persons breaching the *Migration Act 1958*.

- 19 Offenders found guilty of breaching Commonwealth law are housed in a State prison on behalf of the Commonwealth, which places a real cost on States. However, the number of these prisoners is small, approximately three per cent of the total prisoner population. We have concluded that these services have a minor impact on State fiscal capacities and as a result, a separate assessment will not be made.

Commonwealth payments to States

- 20 The Commonwealth makes payments to the States for justice related purposes. National partnership payments under the *Improving policing in very remote areas* program are provided in support of a State function to address violence and child abuse in Indigenous communities. We have decided they should impact on our recommended relativities. Commonwealth payments that do not affect State fiscal capacities are also shown in Table 16-3. Full details of the treatment accorded Commonwealth payments and the reasons for them are in the Adjusted budget chapter.

Table 16-3 Commonwealth payments to States relevant to the Justice services category and their treatment

Payments affecting the relativities	Payments not affecting the relativities
National partnership payments	National partnership payments
Improving policing in very remote areas	Legal aid
	CrimTrac police reference system

Source: Commonwealth of Australia, *Budget Paper No 3, 2009-10*.

ASSESSMENT APPROACH

- 21 We hoped to use a broad indicator such as population or offence rates to measure the quantity of justice services required in each State. However, offence rates were found not to be policy neutral or comparable between States. Also, population alone does not allow for the effects on State expenses of differences in the rates at which some demographic groups come into contact with justice services.
- 22 We concluded a more relevant and robust indicator would be population, adjusted for differences in the quantity of services used by certain sub-groups and the unit cost of providing services to them. Our analysis indicates the level of service required is materially affected by Indigenous people, males aged 15 to 34 and people with low socio-economic status (SES).
- 23 States agreed that population, adjusted to reflect differences in the quantity and unit cost of services provided to different sub-groups, is the most appropriate basis for assessing expenses on justice services.

Factors affecting service use

- 24 States suggested service use was affected by the following factors, which are discussed below:

- the nature of the services provided;
- Indigenous people;
- males aged 15 to 34 years;
- people from different socio-economic backgrounds;
- use by residents of another State; and
- people from culturally and linguistically diverse backgrounds.

The nature of the services

- 25 *Police services.* The diverse nature of police services suggests the level of resources devoted to them could be affected by many factors. State submissions and visits suggested the resources devoted to an area could be affected by its total population (reflecting the broad community safety, support and crime prevention aspects of the task), the level of criminal activity (reflecting the investigative aspects of the task) and broad State policy decisions.
- 26 However, there was much argument over the relative effect of those factors. Western Australia undertook detailed analysis to allocate national police expenditure, taken from State budget papers, between community driven purposes (such as general patrols and support to community groups) and crime related purposes, to determine a split. Its conclusion was that, at most, 25 per cent of expenses are not crime related and should be assessed on an equal per capita basis and at least 75 per cent are crime related and should be assessed differentially.
- 27 The Northern Territory believed that almost all expenses should be differentially assessed because a significant component of police work that is described as community safety and support, and road safety and traffic management (as well as crime investigation and services to the judiciary) is undertaken to reduce potential offenders.
- 28 New South Wales, Victoria, South Australia and the ACT did not share this view. They argued that a large proportion of police activities, possibly as much as 60 per cent, were not influenced by those with a greater propensity to commit crime.
- 29 Based on evidence provided in State submissions and at discussions with senior police officers, the Commission formed the view that police staffing levels are not influenced by crime rates alone and that State police staffing allocation models are driven by a large number of factors, including State policy decisions. The data in Table 16-4 show that, apart from the Northern Territory, police to population ratios are relatively consistent across States. A relatively large base level of resources appears to be provided to service the population, with additional resources being provided in those States with higher Indigenous, low SES and young male proportions in their populations. In other words, State government spending on police forces may not be due to crime itself but may be aimed at providing adequate resources across the board to ensure public safety and to enhance the public's perception of their safety.
- 30 An interpretation of Table 16-4 could be that, even if 75 per cent of police time is spent responding to crime, this does not necessarily translate into a lot more police above the base level.

Table 16-4 Police to population ratios by State, 2007-08

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Total staff	16 316	11 052	11 136	5 710	4 761	1 375	750	1 329	52 429
Staff per 10 000 population (a)	23.5	21.0	26.2	26.7	29.9	27.8	21.9	61.1	24.7
Relative to average	0.952	0.851	1.063	1.082	1.210	1.124	0.888	2.476	1.000

(a) Includes all operational staff. Does not include non-operational staff.

Source: Productivity Commission, *Report on Government Services 2009*, Chapter 6, Attachment tables and ABS ERP December 2007.

- 31 This is a difficult issue. There are contradictory views from States and no national data on which to base an estimate of the effects of the various influences. In these circumstances, we have had to use judgment. Given the broad community safety and security aspects of police services, we consider a proportion of them are provided for the population as a whole. Until more definitive data become available on police resourcing, we have decided that we will assess half of police expenses on the basis of State population and half on the basis of population adjusted for factors linked to the cost of crime.
- 32 *Court services.* Court services cover both criminal and civil courts. We consider that the level of criminal court services required in each State is due to the level of crime and hence the size of population groups more likely to be involved in crime.
- 33 However, that is not the case for civil courts where the main users are the general public and businesses. In the absence of data indicating differential use rates by different groups, we consider civil courts should be treated as though they are provided for the total population.
- 34 There is also a related issue of how we should assess States' relative capacities to raise revenue from court fees and fines. These revenues are influenced by State policies on the level of fines imposed and the extent to which civil court costs are recovered from users. The Northern Territory said they are also affected by default rates, which are driven by population characteristics. We do not have reliable means of determining the average policies for imposing fees and fines or estimating the revenue each State might collect if it applied those policies. Nor is there reliable evidence of interstate differences in default rates. In these circumstances, we consider the most reliable and simple approach is to assess fees and fines on an equal per capita basis. Since these revenues are part of a combined GFS item for court fees and fines and property title fees, which can only be dissected using data collected specially from the States, we have included the total item in the Other revenue category which is assessed on an equal per capita basis.
- 35 Most States supported separate assessments for civil and criminal court expenses, with civil court use based on total population and criminal court use based on adjusted population. They also supported assessing revenue from fees and fines on an equal per capita basis.
- 36 *Corrective services.* We consider that all corrective services expenses are influenced by the population groups with a higher risk of offending. As a result, they are assessed differentially using prisoner and juvenile detention data. States did not comment on this proposal.

Indigenous people

- 37 States generally agreed that there was a conceptual case, supported by data, for adjusting State populations to recognise that Indigenous people are substantially over-represented in police custody incidents, appearances in criminal courts and the prison population.
- 38 *Police services.* In 2007, the Australian Institute of Criminology (AIC) conducted the *National Police Custody Survey – Draft* in which all States participated and which detailed the extent and nature of police custody incidents over a one month period. An incident of police custody referred to any occasion in which a person was physically lodged in a police cell.
- 39 Results of the draft survey indicated that Indigenous people made up 33.1 per cent of all custody incidents during August 2007. Table 16-5 shows that Indigenous people were, on average, 22.1 times more likely to be involved in a custody incident (per relevant population) than non-Indigenous people. While this was only a snapshot in time, it was comprehensive and indicates the level of over-representation of Indigenous people taken into custody.

Table 16-5 Police custody rates per 100 000 population by State, 2007

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
Indigenous rate	1 190	921	1 861	1 860	4 852	338	1 980	5 183	2 124
Non-Indigenous rate	121	54	128	68	93	59	95	116	96
Over-representation (a)	9.9	17.2	14.5	27.5	52.0	5.7	20.9	44.6	22.1

- (a) Indigenous over-representation is calculated by dividing Indigenous custody incidents per 100 000 Indigenous population aged 10 and above by non-Indigenous custody incidents per 100 000 non-Indigenous population aged 10 and above.

Source: AIC, *2007 National Police Custody Survey - Draft*, Table 3 and ABS ERP June 2008.

- 40 New South Wales and Victoria argued police custody rates could overstate the effect of those taken into custody and did not recognise that Indigenous people tended to be involved in less complex crimes. Analysis of the survey results confirmed that Indigenous people were over-represented in all types of crime. However, they are more over-represented for crimes such as break and enter, trespass, offensive language and criminal intent than for crimes such as homicide, sexual assault, fraud and drug offences. Thus, deriving use rates from police custody rates alone does not allow for differences in the complexity of police investigations of different types of crime.
- 41 The Commission made a preliminary judgment to use the weights derived from the custody data, but to discount these by 50 per cent to allow for differences in the complexity of police investigations, concerns about the quality of the custody data and the fact that some police activities do not involve taking people into custody.
- 42 Western Australia, Tasmania and the Northern Territory did not support this level of discount. They said their data suggested that, while there may be differences in the offending patterns of Indigenous and non-Indigenous people, overall Indigenous offending was not less serious and did not generate less work. In fact, they claimed it generated more work and took longer

- because of cultural and language differences. Tasmania and the Northern Territory said that the discount should be reduced while Western Australia said that there should be no discount.
- 43 Table 16-6 shows the level of over-representation of Indigenous people compared with non-Indigenous people in police custody by the type of crime committed. For crimes that may be more resource intensive for police to investigate such as homicide, sexual assault, fraud and drug offences, the level of over-representation is less than the average Indigenous over-representation. In addition, there are very few of these more serious types of crimes committed compared with other types of crimes.
- 44 Given the uncertainty relating to how well custody incidents data allow us to measure relative police work loads, we have discounted the use rates derived from them by 25 per cent. This is a medium level of discounting which recognises that the data may not adequately capture differences in the complexity of police investigations, that the data are drawn from a survey of one month and the fact that some police activities do not involve taking people into custody. Tasmania accepted that this rate of discount was more defensible but Queensland, Western Australia and the Northern Territory continued to oppose any discounting.
- 45 *Court services.* State data on criminal court activity for 2008-09 indicated that Indigenous rates of criminal court appearances were much higher than those for non-Indigenous people. Indigenous people made up, on average, 15.1 per cent of total criminal court defendants. Table 16-7 shows that Indigenous people are 7.9 times more likely to appear in a criminal court than non-Indigenous people.
- 46 New South Wales and Victoria sought an adjustment to court use rates for differences in the complexity of the charge and data quality concerns, similar to that proposed for police custody rates. Western Australia took the opposite view, considering that the Indigenous weights were underestimated by the data.
- 47 Criminal court data have been provided by all States and we consider them fit for purpose. However, they do not provide any information on the complexity of each court case. Data are not available on Indigenous/non-Indigenous criminal court defendants by type of crime. We consider it would be inappropriate to apply the police adjustment to courts because the level of over-representation of Indigenous people varies considerably between the two services. Indigenous over-representation in police custody rates may be greater than in criminal courts because fewer Indigenous people are taken to court due to the less serious nature of their crimes, such as public drunkenness. In the absence of reliable data, we decided not to adjust the criminal court use data in either direction.

Table 16-6 Police custody rates by Indigeneity and type of crime, 2007

Reason for custody	Incidents per 100 000 persons		Indigenous over-representation	
	Indigenous	Other	Average (a)	% of average (all offences)
Homicide	4.2	0.4	11.0	55.35
Assault/intent to injure	397.9	16.2	24.6	123.43
Sexual assault	17.2	1.3	13.1	65.80
Dangerous acts (b)	143.6	9.9	14.6	72.98
Abduction	0.0	0.1	0.0	0.00
Robbery/extortion	21.8	1.5	14.5	72.45
Break and enter	122.8	4.0	30.6	153.35
Theft	88.7	5.3	16.7	83.76
Deception/fraud	8.6	1.2	7.3	36.40
Drug offences	43.1	5.4	7.9	39.78
Weapons	12.5	0.5	26.6	133.23
Property damage	63.5	2.6	24.7	123.54
Public order offences (c)	224.9	11.8	19.1	95.71
Traffic offences	57.1	3.1	18.6	92.98
Justice offences (d)	213.7	8.0	26.8	134.37
All offences (e) (f)	1 419.4	71.1	20.0	100.00

- (a) Indigenous over-representation is calculated by dividing Indigenous custody incidents per 100 000 Indigenous population aged 10 and above by non-Indigenous custody incidents per 100 000 non-Indigenous population aged 10 and above.
- (b) Includes drink driving offences.
- (c) Includes trespass, offensive language, offensive behaviour, criminal intent, conspiracy, disorderly conduct, betting and gambling offences, liquor and tobacco offences, censorship offences and prostitution offences.
- (d) Includes breaches of justice orders, subverting the course of justice, resisting or hindering police or government officials and offences against government security.
- (e) Offences where the reasons for custody were 'miscellaneous', 'other not definable' or 'not stated' were excluded.
- (f) Offences where the reasons for custody were 'not applicable' (which included incidents of public drunkenness and also where the word 'arrest' or 'warrant' was written but nothing else) were excluded because we are unsure what percentage of these incidents are for public drunkenness.

Source: AIC, 2007 *National Police Custody Survey - Draft*, Table 9 and ABS ERP June 2008.

Table 16-7 Criminal court defendant rates per 100 000 population by State, 2008-09

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
Indigenous rate	14 635	22 382	23 544	36 416	26 741	50 234	9 278	14 959	22 575
Non-Indigenous rate	2 276	1 989	3 458	4 218	2 684	11 027	1 184	1 831	2 842
Over-representation (a)	6.4	11.3	6.8	8.6	10.0	4.6	7.8	8.2	7.9

Note: Victoria, Tasmania and the ACT apportioned criminal court defendants by Indigeneity based on corrective services Indigenous proportions. To ensure comparability across States in the calculation of use rates, Indigenous use was imputed using these data onto ABS criminal court finalisations.

- (a) Indigenous over-representation is calculated by dividing Indigenous defendants per 100 000 Indigenous population aged 10 and above by non-Indigenous defendants per 100 000 non-Indigenous population aged 10 and above.

Source: State provided criminal court data 2008-09 and ABS ERP June 2008.

48 *Corrective services.* The ABS publication *Prisoners in Australia 2009* details the number of prisoners in each State disaggregated by age, sex and Indigeneity. Indigenous prisoners

represented 25.5 per cent of the total prisoner population in Australia. Table 16-8 shows that Indigenous people are, on average, 17.6 times more likely to be in prison than non-Indigenous people.

Table 16-8 Prisoner custody rates per 100 000 population by State, 2009

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
Indigenous rate	2 591	1 159	1 733	4 075	2 597	578	966	2 104	2 310
Non-Indigenous rate	156	99	125	159	121	126	66	161	131
Over-representation (a)	16.6	11.7	13.9	25.6	21.4	4.6	14.7	13.1	17.6

(a) Indigenous over-representation is calculated by dividing Indigenous use rates (Indigenous prisoners divided by adult Indigenous population) by non-Indigenous use rates (non-Indigenous prisoners divided by adult non-Indigenous population).

Source: ABS, Prisoners in Australia 2009, Cat. No.4517.0, Table 3.3.

Males aged 15 to 34 years

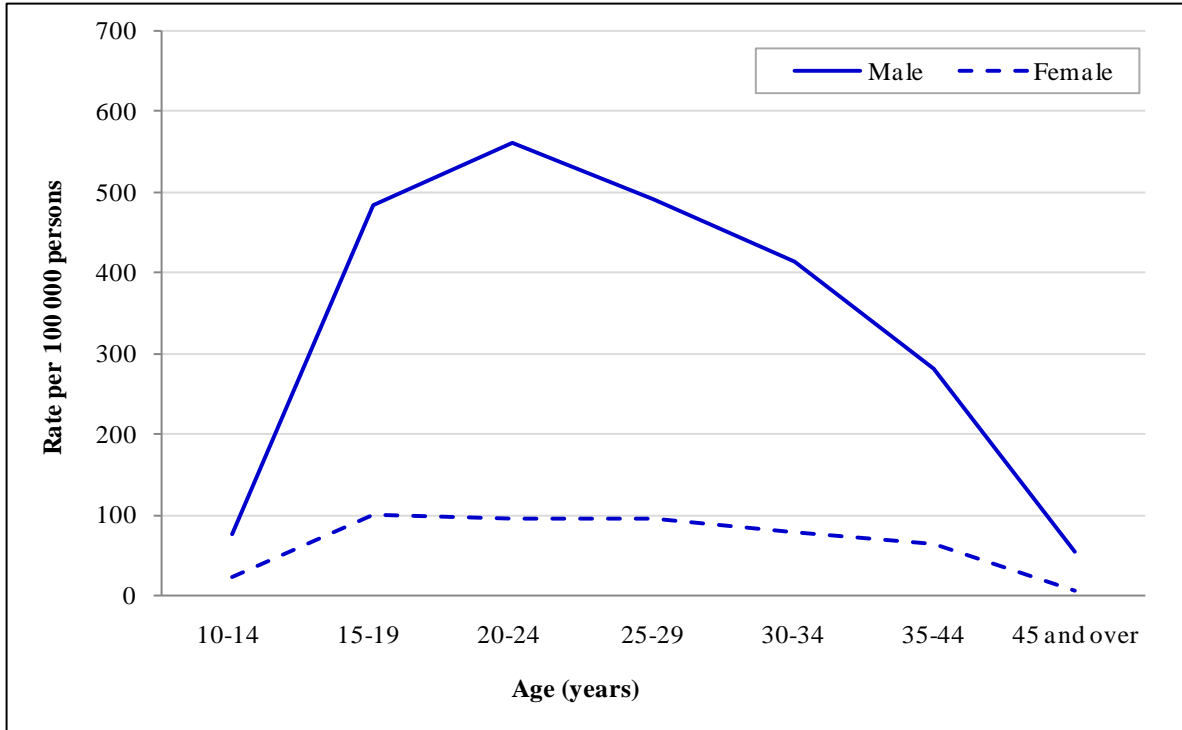
- 49 States generally agreed that there was a conceptual case, supported by data, for an adjustment to State population to allow for the over-representation of males aged 15 to 34 in police custody incidents, appearances in criminal courts and prison sentences.
- 50 *Police services.* Figure 16-1 shows the number of custody incidents per 100 000 persons taken from the *2007 National Police Custody Survey - Draft*. It indicates the number of police custody incidents involving males aged 15 to 34 was substantially higher than that of other age groups². Males aged 15 to 34 were 4.1 times more likely to be involved in a police custody incident than males over 35 and 5.3 times more likely than females in the 15 to 34 age group.
- 51 *Court services.* Figure 16-2 details the number of criminal court defendants taken from the ABS publication *Criminal Courts 2007-08*³. The data show that the majority of criminal court defendants are males in the 20 to 24 age group. The ratio per 100 000 persons is still considerably higher in the 15 to 19 and 25 to 34 age groups compared with males in the 35 and over age groups.
- 52 Males aged 15 to 34 are 3.6 times more likely to be a defendant in a criminal court than males over 35 and 3.7 times more likely than females in the 15 to 34 age group.
- 53 *Corrective services.* Figure 16-3 shows the number of prisoners in Australia by age and sex, including those in juvenile detention. The data show that prisoner rates are higher for males aged 20 to 34 than for other age groups. Males aged 20 to 34 are 2.8 times more likely to be in prison than males over 35 and 12.9 times more likely than females in the 20 to 34 age group.
- 54 Prisoner rates differ slightly from police custody rates or criminal court rates in that the average age of prisoners tends to be higher. Imprisonment rates for males aged 35 to 44 are still relatively high and do not start to substantially fall until after age 45.

² The rates per 100 000 should not be compared to court or prison data as the custody incidents were collected over a one month period only.

³ Data include defendants in higher, magistrate's and children's courts.

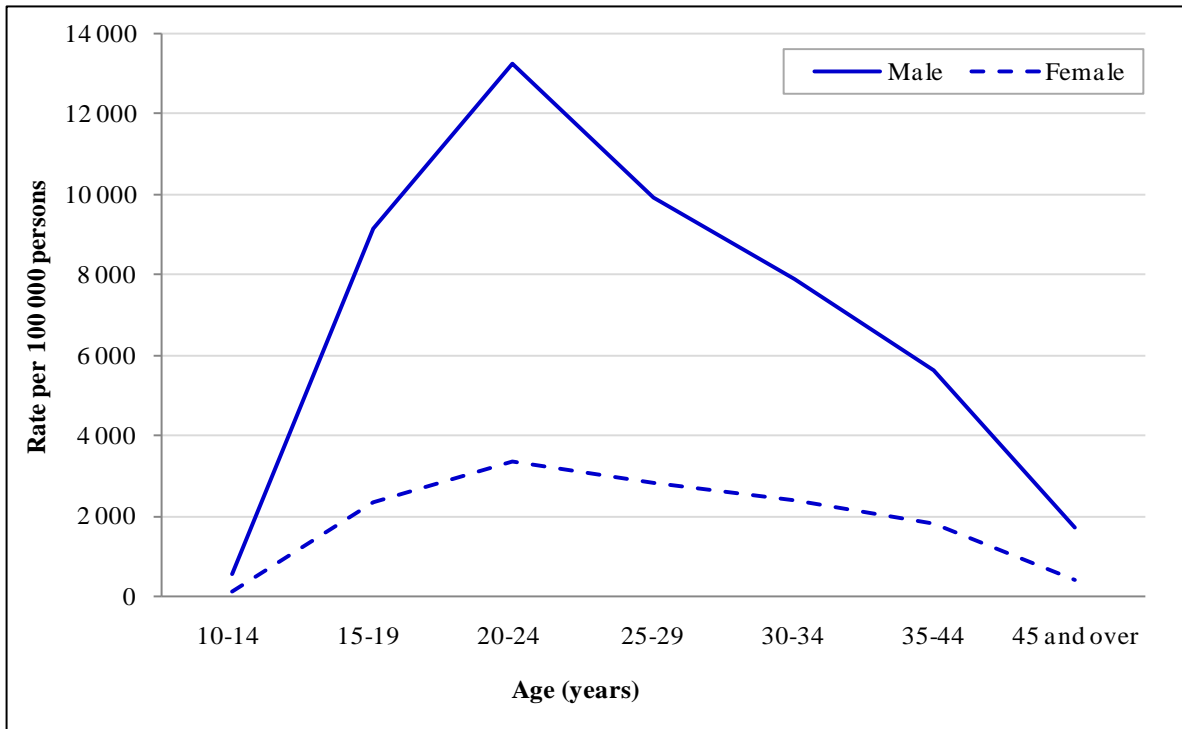
55 ABS data on use of children’s courts and the AIC data on juvenile detention show that criminal activity associated with demand on justice services tends to jump at the age of 15.

Figure 16-1 Police custody incidents per 100 000 persons

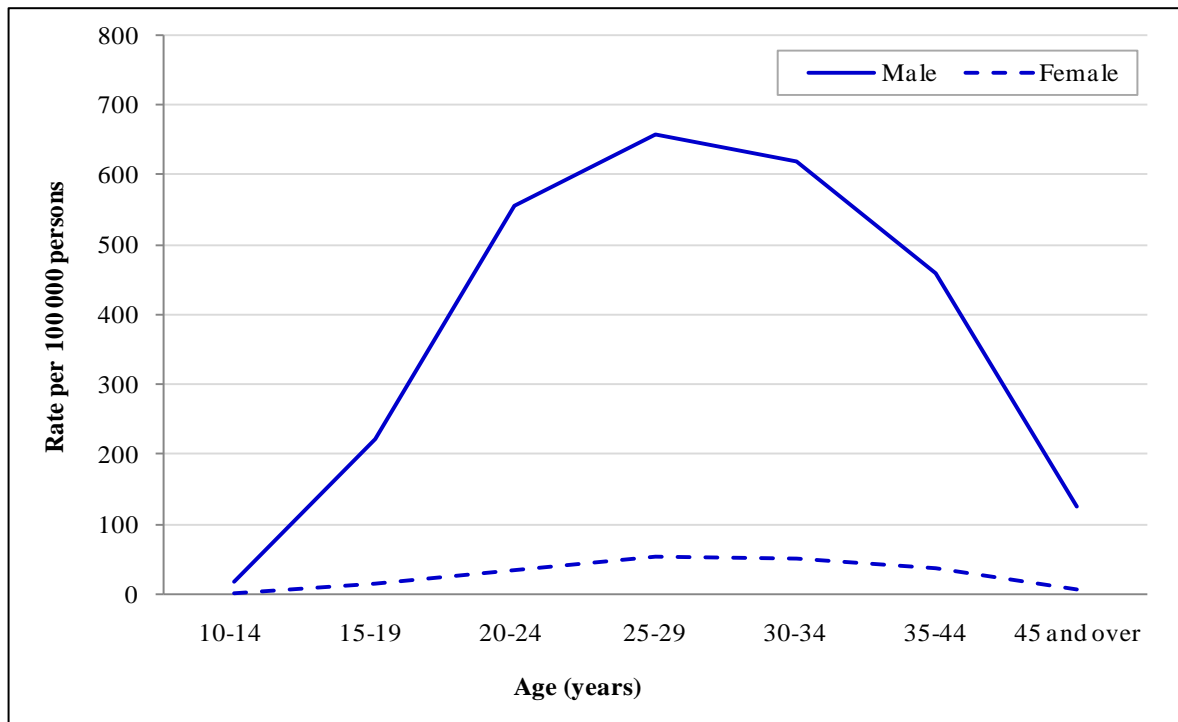


Source: AIC, 2007 National Police Custody Survey - Draft.

Figure 16-2 Criminal court defendants adjudicated per 100 000 persons



Source: ABS, Criminal Courts 2007-08, Cat. No. 4513.0.

Figure 16-3 Number of prisoners in Australia per 100 000 persons

Source: ABS, Prisoner in Australia 2009, Cat. No. 4517.0; AIC, Juveniles in detention 2007-08, special data collection.

People from a low SES background

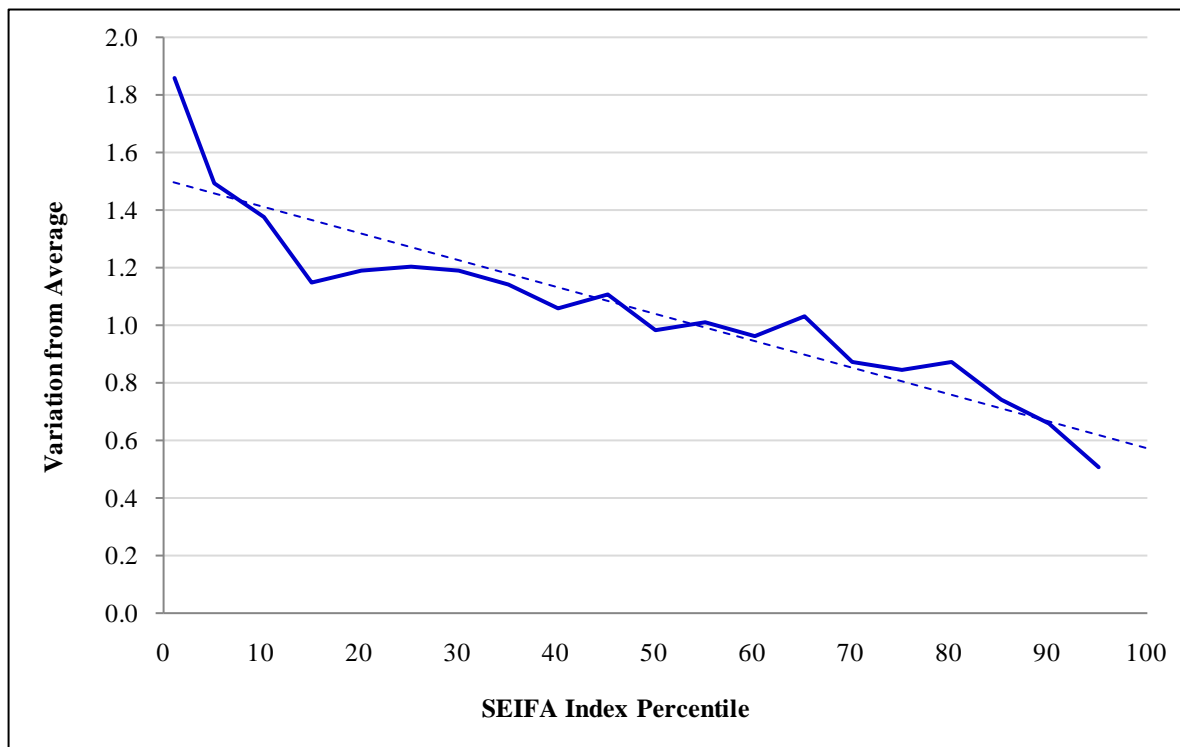
- 56 Many studies, including those by the Australian Institute of Criminology and the New South Wales Bureau of Crime Statistics and Research show a positive relationship between higher crime rates and low income, or high levels of socio-economic disadvantage. They suggest that poverty and unemployment are linked to crime because they motivate people to offend as a means of overcoming their disadvantage.⁴
- 57 In previous reviews, reliable data were not available to support the case that low SES leads to increased use of justice services. In this review, however, New South Wales, Queensland, Western Australia, South Australia, Tasmania and the ACT provided information on the number of offenders charged by police by the location in which they lived.
- 58 Two methods were used to determine whether SES had an effect, independent from Indigeneity, on the use of justice services. The first method involved removing data points from the analysis where the Indigenous population in a postcode exceeded two per cent. The results showed that, after removing the influence of Indigeneity, more offences per capita are committed by people who live in areas of lower SES than people in higher SES areas. However, by removing those data points, the sample size was reduced by more than 50 per cent.
- 59 The second method involved weighting the offenders data based on the proportion of Indigenous people in the postcode. If a postcode had a large proportion of its population that

⁴ D. Weatherburn, *What causes crime?* New South Wales Bureau of Crime Statistics and Research, 2001.

identified as Indigenous, the number of offenders was proportionally reduced. Weighting the number of offenders avoided the need to remove any data points from the analysis. As with the first method, the results showed that, after removing the influence of Indigeneity, more offences per capita are committed by people who live in areas of lower SES than people in higher SES areas. The results of this analysis are shown in Figure 16-4.

- 60 While the two methods produced similar results, the second method was deemed more reliable because all the data were used. Based on the results, we have applied 3 SES use weights to the population in three SES groups as measured by the ABS SEIFA disadvantage index⁵ – low, medium and high. Figure 16-4 shows that there is an above average number of offenders per capita in the bottom SEIFA quintile and a below average number of offenders per capita in the top SEIFA quintile. As a result, a weight of 1.5 was applied to people in the bottom SEIFA quintile (20 per cent), a weight of 1.0 was applied to people in the middle 3 quintiles (60 per cent) and a weight of 0.7 was applied to people in the top quintile (20 per cent).

Figure 16-4 Offenders per capita by SES location — with Indigeneity removed



Source: State provided data.

- 61 Queensland, South Australia, Tasmania and the Northern Territory supported the proposal to allow for the impact of SES on justice services although Queensland wanted the SEIFA index tailored to include only variables that directly affect the use of justice services. However, we

⁵ The ABS advised that SEIFA has more power to distinguish areas at either end of the socio-economic distribution, rather than those in the middle. Therefore, using cut-offs such as the top and bottom quintiles is preferred.

do not consider that warranted because it would require judgment to decide which variables should be included, and add complexity to the calculations without necessarily improving the outcome.

- 62 The ACT said the low SES weight should be discounted because low SES people commit less serious crimes. Our analysis of the State provided data did not support this view.
- 63 Western Australia was concerned that the apparent relationship between SES and offenders may still be picking up the influences of Indigeneity and young males. Victoria said: SES was only one of twelve key variables used to allocate police resources; the data used in the Commission's analysis lacked robustness and reliability; and the method used to derive the proposed weight appeared complex and unreliable.
- 64 We consider that there is a strong conceptual case for allowing for the impact of SES on State expenses. This is supported by research conducted by independent organisations. While we would ideally base such an allowance on national data on the SES of the individual arrested from a third party data source, those data are not available. However, we consider that data based on the SES of the area in which the offender lives provide a reliable indicator for determining whether low SES increases an individual's propensity to commit crime and that the data available to us were reliable and representative of all States. As such, we consider the data fit for purpose and the results reliable.

Cross-border

- 65 Cross-border disabilities are assessed to recognise the additional costs incurred by the ACT when New South Wales residents use ACT services in greater numbers than the same service provided to ACT residents by New South Wales.
- 66 The ACT argued that a cross-border allowance should be assessed for all Justice services. Conversely, New South Wales argued that cross-border allowances should only be assessed on the basis of sound and reliable data. Data provided by both States on the last known address of users of their justice related services indicate the following.
- 67 *Police services.* Data provided by the ACT indicated there were 627 offenders apprehended by ACT police in 2006-07 who were residents of New South Wales. These numbers included any offender who was taken into custody and included offenders apprehended where there was no further action required (after investigation the person had no case to answer and was released), an official caution was given or a fine was issued. New South Wales data indicated there were 622 ACT residents who were apprehended by New South Wales police in 2006-07 and were proceeded against by any means. It included those offenders where an official caution or warning was given or criminal infringement notice was issued. This indicates that the net flow of cross-border police services is minimal.
- 68 *Criminal courts.* ACT data indicated that there were 470 New South Wales residents who appeared in ACT criminal courts in 2006-07. New South Wales data indicated that there were 478 ACT residents apprehended by police and proceeded against to court in 2006-07. This indicates that the net flow of cross-border criminal court services is negative.

- 69 *Corrective services.* Snapshot data as at 30 June 2008 provided by the ACT indicated there were 19 prisoners⁶ who had been convicted in ACT courts who were New South Wales residents. Comparable data provided by New South Wales indicated there were 34 prisoners who had been convicted in New South Wales courts who were ACT residents. This indicates a net flow of 15 prisoners to New South Wales.
- 70 Ideally we would use data on prisoner days to measure the cross-border impact. There is no doubt that snapshot data does not measure full year costs for either State, but it is the only comparable data available.
- 71 *Civil courts.* The ACT provided data that showed that, over the last three years to 2008-09, on average there were 721 New South Wales residents using ACT civil courts (representing 10.3 per cent of services). New South Wales advised the Commission that it does not keep data on civil court cases by the users address. However, given the observed net flow of services in the sub-categories where data exist, it is unlikely that there would be a net cross-border use of ACT civil courts by New South Wales residents.
- 72 In summary, the data do not support the ACT argument that there is a net cross-border flow in justice services. In contrast with the views of previous Commissions, the receipt of data from both States for the first time has shown that it is difficult to support a cross-border adjustment for justice services. As a result, the Commission has not assessed a cross-border allowance in the Justice services category.

Culturally and linguistically diverse (CALD) backgrounds

- 73 New South Wales and Victoria argued that there is a differential expense in providing services to people with a CALD background due to their different level of use of services and/or the additional per unit costs of providing services to them. They argued that the mix of different cultures and religions in the State placed extra costs on the delivery of justice services.
- 74 The available data are suggestive of lower use and higher unit costs in providing services to people with a CALD background.
- The ABS publication 4517.0 *Prisoners in Australia 2008* showed that prisoners born in a non-English speaking country (BNESEC) made up 8.2 per cent of the total prisoner population⁷. However, they made up 18.2 per cent of the population aged 17 and over.
 - During State visits, some States provided advice that the use of interpreting services increased costs but were unable to reliably quantify these additional costs.
- 75 However, the data are not sufficiently comprehensive to fully establish the case or to reliably measure the effects. We consider that the CALD effect is adequately recognised because unit cost effects are offset by service use effects. Therefore, we could not conclude that CALD

⁶ Also includes periodic detention prisoners and remandees.

⁷ New South Wales said that 25.5 per cent of its prisoner population come from a CALD background. However, it included inmates that were born in Australia who had a diverse cultural background as well as those born in a non-English speaking country.

people increase costs in the Justice services category. The majority of States agreed with this conclusion.

Summary of factors affecting service use

- 76 We have decided to adjust State populations for differences in the use of services by Indigenous people, males aged 15 to 34 and people from a low SES background. Reliable data are available to allow each influence to be separately identified and to avoid double counting.

Factors affecting the cost of services

- 77 States suggested that the cost per unit of service could also be affected by service delivery scale, urban complexity and Indigenous share.

Service delivery scale

- 78 Service delivery scale captures the effects of the diseconomies of scale incurred in providing services from small police stations in sparsely populated areas.
- 79 To examine this issue, we compared police to population ratios in small isolated communities with those in other communities, and the differences across States in the occurrence of small isolated communities that would have a police station under the average policies. We found police to population ratios were higher in small isolated communities, after allowing for population characteristic influences (Indigeneity, age and sex), and the proportion of the population living in small remote communities differed across States. Since these factors had a material effect we have assessed a service delivery scale disability.
- 80 We also examined data supplied by Western Australia that showed remote magistrate courts required more staff per case than metropolitan and inner regional courts. In addition, Queensland provided evidence indicating its Department of Justice and Attorney General had twice the staff per cost weighted client in remote areas as in highly accessible areas. As a result, we concluded that service delivery scale disabilities are relevant to Magistrate courts. However, we do not think they are relevant to higher courts (supreme and district courts) because these cases tend to be heard in major cities.
- 81 The case was not supported for assessing service delivery scale in corrective services. For more information, see the Service delivery scale chapter.

Urban complexity

- 82 There are differences between States in some or all of the characteristics of their urban areas such as population density, centre size, urban form, population growth and congestion. Urban complexity refers to the effects on the costs of services arising from interactions between those characteristics which result in the need for particularly complex service delivery arrangements.
- 83 New South Wales and Victoria argued for the inclusion of an urban complexity disability to recognise the higher cost of police services in very large urban areas which arise because:
- there are more recorded crimes per capita, although that may be policy influenced;

- those cities require higher staffing levels as a result; and
- Sydney and Melbourne require specialist squads and more highly trained officers to deal with more drug related activities and organised crime than other cities.

- 84 However, available data do not support their arguments. While actual staffing levels are policy and disability influenced, the data do not support the view that large cities have higher police staffing levels compared to smaller cities (Table 16-9). The data which New South Wales provided showing higher police costs per capita in some inner Sydney CBD areas did not support the case because the higher staffing ratios were primarily due to low residential population in these areas. Nor are the per capita costs of specialist squads in New South Wales and Victoria greater than other States. Moreover, data from the ABS *National Crime and Safety Survey (CSS)* showed that Sydney and Melbourne had the lowest household crime victimisation rates of all the capital cities and Melbourne had the lowest personal crime per capita.
- 85 Based on that evidence, we concluded that urban complexity did not increase costs in the Justice services category. This decision was supported by the majority of States.

Table 16-9 Police staff per 1000 population by SARIA region

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Highly accessible	2.3	1.8	2.2	2.0	2.9	3.2	2.2	5.8
Accessible	2.0	2.8	2.2	2.6	3.1	2.3	0.0	2.6
Moderately accessible	3.1	3.7	3.2	5.0	2.5	4.2	0.0	5.9
Remote	6.7	0.0	9.7	5.7	4.2	0.0	0.0	7.4
Very remote	0.0	0.0	7.5	8.6	11.1	3.7	0.0	6.8

Note: State supplied police staffing numbers have been rebased using operational staffing numbers in the *Report on Government Services* to ensure comparability across States.

Source: State data returns from Law and Order special data request, March 2008; Productivity Commission, *Report on Government Services 2009*, Chapter 6 Attachment tables; and ABS ERP December 2008.

Indigenous cost weight

- 86 The Northern Territory stated that Indigenous people cost more than non-Indigenous people per capita in the administration of justice and argued for the inclusion of an Indigenous cost weight for criminal courts and prisons. It noted that while there was an absence of national data in this area, it believed that there was sufficient evidence to enable the Commission to develop an Indigenous weight based on judgment.
- 87 The Northern Territory provided magistrates court data that indicated Indigenous people had 1.6 times the number of court appearances per finalisation compared to non-Indigenous people. The Territory considered appearances per finalisation measures the length of time a case is before a magistrate. Thus, the higher number of appearances, even if they are non-appearances, equates to a higher cost per finalisation for Indigenous defendants.
- 88 We do not think this is necessarily the case. The data say little about how much more an additional appearance will cost. It could mean more court time or more, but shorter

appearances. The Northern Territory argued that Indigenous people were more often involved in complex cases, requiring many witnesses, different translators and more court time. But it could provide no cost data. While we are aware that a number of States operate special programs for Indigenous offenders and that translators are often required in dealing with them, we have no guidance on what an appropriate judgment based weight might be. Unless cost data, or data on the length of time a case is before a court disaggregated by the Indigenous status of the defendant are available, we are unable to make an assessment.

- 89 In addition, the Northern Territory said that Indigenous prisoners incur greater costs because of the higher turnover compared with non-Indigenous prisoners. It claimed that higher costs are incurred when processing a prisoner at admission and discharge due to mandatory health assessments that need to be undertaken by a qualified health professional. The Northern Territory provided data that showed that Indigenous prisoners turn over 1.6 times as frequently as non-Indigenous prisoners.
- 90 On the basis of the information provided by the Northern Territory on the additional time taken in administration because of turnover, we believe that the additional cost would be immaterial. We have no way of estimating additional costs associated with health assessments.
- 91 As a result, we decided not to make an assessment of an Indigenous cost weight.

Other factors affecting the cost of services

Administrative scale

- 92 Administrative scale expenses capture the costs of the minimum level of administration required to provide justice services. The estimation of those minimum scale affected costs is set out in the Administrative scale chapter.

Location

- 93 We consider that influences that vary with location have a differential impact on the cost of providing justice services across States. For example, differences between States in the cost of wage and non-wage related inputs to services and differences in wage and non-wage costs between regions within a State have an impact on the average costs incurred by each State. These influences are measured in a similar way for all assessment categories and the methods are described in the Location chapter.

National capital

- 94 We consider the ACT's status as the national capital affects its cost of providing police services. The ACT has no practical alternative but to use the AFP as the provider of its police services. It also has no power to influence the terms and conditions of AFP employees and must pay officers involved in ACT Community Policing the above average salaries paid under the AFP's wage agreements. This leads to unavoidable higher costs for the ACT.

- 95 States agreed with the assessment made by the Commission as described in the chapter on National capital allowances.

Native title and land rights

- 96 We have evidence that the Native title and land rights legislation affect Justice services costs. These Commonwealth Acts recognise the rights of Indigenous people over their traditional land and impose costs on the States. The amount incurred varies significantly from State to State. While Native title and land rights expenses for this category are small, they are material across all categories. For more information, see the Native title and land rights chapter.

THE ASSESSMENT METHOD

- 97 The Commission has measured the expenses required by States to deliver justice services at national average levels by recognising that they are affected by population characteristics and other disabilities. We have assessed disabilities for two expense components in this category:
- service delivery expenses — recognising socio-demographic composition, location and service delivery scale factors; and
 - other expenses — recognising administrative scale, national capital and native title and land rights factors.
- 141 Table 16-10 sets out the category structure, the disabilities assessed and the relative size of each component for 2008-09. The component weights will be adjusted annually in accordance with actual expenses.

Service delivery expenses

- 98 Service delivery expenses are 98.47 per cent of the average expenses. Table 16-11 shows the equal per capita allocation of those expenses across the States is adjusted for:
- the effects on service use of interstate differences in the socio-demographic composition of State populations using a socio-demographic composition factor;
 - the effects on costs of location; and
 - the effects of service delivery scale.
- 99 The equal per capita expenses for each State are multiplied by the disability factors which have been calculated as described below.

Table 16-10 Justice services category structure, 2008-09

Component	Component weight	Disability %	Influence measured by disability
Service expenses	98.47	Socio-demographic composition	Recognises that certain population characteristics affect the use and cost of providing justice services, for example Indigeneity, males aged 15-34 and people from low SES areas.
		Service delivery scale	Recognises the additional costs of providing services from police stations in sparsely populated areas.
		Location	Recognises the differences in the cost of providing labour and non-labour resources between States and to different areas within a State.
Other expenses	1.53	Administrative scale	Recognises the unavoidable costs each State incurs to provide the policy and administrative infrastructure necessary to provide the minimum unavoidable service, regardless of the size of the task.
		National capital	Recognises the costs to the ACT arising because of Canberra's status as the national capital and seat of government.
		Native title and land rights	Recognises State costs of settling native title and land rights claims made under Australian Government legislation.

Source: Commission calculation.

Table 16-11 Assessed expenses, 2008-09, Service expenses component

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Service expenses (\$m)	4 199.0	3 199.2	2 593.8	1 314.3	961.3	298.3	207.4	132.2	12 905.6
Socio-demographic composition	0.98359	0.89585	1.04836	1.04656	0.98022	1.08752	0.88438	2.75784	
Service delivery scale	0.99920	0.99826	1.00081	1.00207	1.00178	1.00161	0.99743	1.01862	
Location factor	1.00951	0.96912	0.99638	1.04234	0.98278	0.97477	0.99553	1.28458	
Assessed expenses (\$m)	4 138.7	2 754.6	2 693.8	1 427.3	921.6	314.7	181.0	473.9	12 905.6

Source: Commission calculation.

Socio-demographic composition (SDC) factor

- 100 We consider the population groups that materially affect the level of justice services are Indigenous people, males aged 15 to 34 and people from a low SES background. However, those population groups have different effects on the use of police, criminal courts and corrective services. People who are in prison have come through the court system and have been in contact with police. However, not all people involved with police move into the court system and not all people that go to court, end up in prison.
- 101 We have used three national datasets to calculate national average use rates — police custody data, criminal court defendant data and prisoner and juvenile detention data. Differential use weights were calculated for each service for population groups cross-classified by Indigeneity, age, sex and SES. Table 16-12 shows these weights for each group and service. For example, for criminal court services, use by Indigenous males aged 15 to 34 with low socio-economic

status was 20.3 times the average per capita use. We recommend these weights be updated annually when new data become available⁸.

- 102 Table 16-12 also shows the aggregate weight for each group, calculated by adding the service specific rates, weighted by the proportion of expenses on each service. It shows, for example, that use of justice services by Indigenous males aged 15 to 34 with low socio-economic status was 23.2 times the average per capita use.
- 103 The table also reflects our other decisions relating to service use, specifically:
- for police (54.7 per cent of the category), use rates based on differences in custody rates for each population group are applied to only 50 per cent of police expenses reflecting our view that half of police services are provided to the population in general;
 - for reasons of simplicity, instead of discounting the custody use weights by 25 per cent, we have discounted the amount of police expenses to which the custody rates apply. Consequently, 20.5 per cent of police expenses are assessed differentially and 34.2 per cent are assessed on an equal per capita basis;
 - criminal court expenses (14.2 per cent of the category) are assessed differentially using the number of court defendants and no differential use is assessed for civil courts expenses (9.5 per cent)⁹; and
 - corrective services expenses (21.6 per cent of category expenses) are assessed differentially using prisoner and juvenile detention data.
- 104 The aggregate weights for each population group are then applied to State populations and an SDC factor calculated. The results for 2008-09 are shown in Table 16-13.

⁸ The police custody data are from an occasional survey. The weights for police were updated when the *2007 Police Custody Survey – Draft* was released to the Commission in January 2010 and we recommend freezing the weights until the next survey is available.

⁹ Note that law and order fees and fines are assessed EPC in the Other revenue category.

Table 16-12 Justice services use weights, 2008-09

Indigeneity	Gender	SES	Age	Police (a)	Community policing (b)	Criminal courts	Civil courts (b)	Prisons	Aggregate weight (c)		
Percentage of category expenses				20.5%	34.2%	14.2%	9.5%	21.6%	100.0%		
Indigenous	Male	Low SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	7.4	1.0	2.3	1.0	2.5	2.8		
			15 - 34	50.0	1.0	20.3	1.0	44.4	23.2		
			35 and over	24.5	1.0	10.4	1.0	26.2	12.6		
		Mid SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	5.0	1.0	1.5	1.0	1.7	2.0		
			15 - 34	33.3	1.0	13.5	1.0	29.6	15.6		
			35 and over	16.3	1.0	7.0	1.0	17.4	8.5		
		High SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	3.5	1.0	1.1	1.0	1.2	1.6		
			15 - 34	23.3	1.0	9.5	1.0	20.7	11.0		
			35 and over	11.4	1.0	4.9	1.0	12.2	6.1		
	Female	Low SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	2.5	1.0	0.5	1.0	0.2	1.1		
			15 - 34	12.3	1.0	7.9	1.0	3.9	4.9		
			35 and over	5.9	1.0	4.1	1.0	2.2	2.7		
		Mid SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	1.7	1.0	0.4	1.0	0.2	0.9		
			15 - 34	8.2	1.0	5.2	1.0	2.6	3.4		
			35 and over	3.9	1.0	2.7	1.0	1.4	1.9		
		High SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	1.2	1.0	0.3	1.0	0.1	0.7		
			15 - 34	5.7	1.0	3.7	1.0	1.8	2.5		
			35 and over	2.8	1.0	1.9	1.0	1.0	1.5		
		Non-Indigenous	Male	Low SES	0 - 9	0.0	1.0	0.0	1.0	0.0	0.4
					10 - 14	0.5	1.0	0.2	1.0	0.1	0.6
					15 - 34	4.1	1.0	4.7	1.0	3.8	2.8
					35 and over	1.0	1.0	1.3	1.0	1.8	1.2
Mid SES	0 - 9			0.0	1.0	0.0	1.0	0.0	0.4		
	10 - 14			0.3	1.0	0.1	1.0	0.0	0.5		
	15 - 34			2.7	1.0	3.1	1.0	2.5	2.0		
	35 and over			0.7	1.0	0.9	1.0	1.2	1.0		
High SES	0 - 9			0.0	1.0	0.0	1.0	0.0	0.4		
	10 - 14			0.2	1.0	0.1	1.0	0.0	0.5		
	15 - 34			1.9	1.0	2.2	1.0	1.8	1.5		
	35 and over			0.5	1.0	0.6	1.0	0.9	0.8		
Female	Low SES		0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	0.2	1.0	0.0	1.0	0.0	0.5		
			15 - 34	0.7	1.0	1.2	1.0	0.3	0.8		
			35 and over	0.2	1.0	0.4	1.0	0.1	0.6		
	Mid SES		0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	0.1	1.0	0.0	1.0	0.0	0.5		
			15 - 34	0.4	1.0	0.8	1.0	0.2	0.7		
			35 and over	0.1	1.0	0.2	1.0	0.1	0.5		
	High SES		0 - 9	0.0	1.0	0.0	1.0	0.0	0.4		
			10 - 14	0.1	1.0	0.0	1.0	0.0	0.5		
			15 - 34	0.3	1.0	0.5	1.0	0.1	0.6		
			35 and over	0.1	1.0	0.2	1.0	0.1	0.5		

- (a) Police use weights have not been discounted by 25 per cent. However, the percentage of expenses that police and community policing use weights are applied to have been adjusted to reflect the discount. As a result, the aggregate weights show the discounted use weights for each population group.
- (b) For community policing and civil court expenses the user group is the total population, which means there are no differential effects on State assessed expenses. A weight of one is therefore applied to each population group.
- (c) For each group, the aggregate weights were the sum of the expense proportion weighted use rates for each function.
- Sources: Commission calculation.

Table 16-13 Socio-demographic composition factor calculation, 2008-09, Justice services

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Unweighted population (million) (a)	6.984	5.314	4.294	2.171	1.603	0.498	0.346	0.220	21.429
Weighted population (million) (b)	6.870	4.761	4.502	2.272	1.572	0.541	0.306	0.606	21.429
SDC factor (c)	0.98359	0.89585	1.04836	1.04656	0.98022	1.08752	0.88438	2.75784	1.00000

(a) Unweighted population taken from June 2008 ERP and includes entire population.

(b) Weighted population is calculated by applying aggregate justice weights to State populations.

(c) SDC factor has been rescaled.

Source: Commission calculation.

Location

105 The location factor includes disabilities related to the cost of providing services in more remote areas, and differences in the cost of inputs between States (see the Location chapter for more details on the calculations used to derive the factor).

Service delivery scale

106 The service delivery factor reflects the higher staffing levels States provide in small isolated communities. It is based on police staffing level data provided by States.

107 As service delivery scale was not shown to affect higher court or corrective services costs, the factor has been discounted so that it effectively applies only to the police and Magistrates courts component.

Other expenses

Administrative scale affected expenses

108 The calculation of the assessed administrative scale affected expenses, as adjusted for the effects of interstate differences in wage costs, is shown in the Administrative scale chapter.

National capital

109 The Commission assessed that the ACT would need to incur an additional \$11.4 million to be able to provide policing services at the assessed level. That amount, which reflects the above-average salaries paid by the AFP is calculated as:

- a nominal level of ACT police is derived by applying the adjusted national average per capita level of police staff (sworn and unsworn combined) to the ACT population; multiplied by
- the difference between average AFP and average State police staff salaries (sworn and unsworn combined) discounted for the interstate wages location factor to avoid double counting of the ACT's higher wage costs¹⁰.

¹⁰ A similar adjustment was made in the 2004 Review assessment of Police national capital allowances.

Native title and land rights

- 110 Native title and land rights expenses incurred in each State vary depending on the number of claims made in the State and the compensation awarded in settling each claim.
- 111 We consider the State expenses are the result of Commonwealth policies and States have little scope to influence them. Consequently, each State's assessed expenses were set equal to its actual expenses.
- 112 Table 16-14 summarises the assessed expenses for the other expenses component.

Table 16-14 Assessed expenses, 2008-09, Other expenses component

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Administrative scale expenses	21.6	21.0	20.7	21.4	20.8	20.4	21.9	22.0	169.8
National capital	0.0	0.0	0.0	0.0	0.0	0.0	11.4	0.0	11.4
Native title and land rights	0.0	2.8	0.0	9.1	4.8	0.0	0.0	2.3	19.1
Assessed expenses	21.6	23.8	20.7	30.5	25.7	20.4	33.3	24.3	200.3

Source: Commission calculation.

Bringing the category assessment together

- 113 Table 16-15 brings the assessed expenses for each component together to derive the total assessed expenses for each State for justice services.

Table 16-15 Assessed expenses, 2008-09, Justice services

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Service expenses (\$m)	4 138.7	2 754.6	2 693.8	1 427.3	921.6	314.7	181.0	473.9	12 905.6
Other expenses (\$m)	21.6	23.8	20.7	30.5	25.7	20.4	33.3	24.3	200.3
Total (\$m)	4 160.3	2 778.3	2 714.5	1 457.9	947.3	335.1	214.3	498.2	13 105.9
Assessed expenses (\$pc)	590.84	517.88	624.09	661.45	587.65	669.84	616.00	2 247.43	605.59
Cost of service provision ratio	0.9756	0.8552	1.0306	1.0922	0.9704	1.1061	1.0172	3.7111	1.0000

Source: Commission calculation.

- 114 Table 16-16 summarises the calculation of category disability factors which indicate how much more or less than average a State needs to spend to deliver Justice services. It also shows for each disability factor how the expenses per capita in each component, and in total, are affected by differences in State characteristics. Disability factors below one indicate a State is assessed to need to spend less than average. Disability factors above one indicate a State is assessed to need to spend more than average.

Table 16-16 Category factor, 2008-09, Justice services

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
Service expenses (component weight = 98.47 %)									
Socio-demographic composition	0.98359	0.89585	1.04836	1.04656	0.98022	1.08752	0.88438	2.75784	1.00000
Service delivery scale	0.99920	0.99826	1.00081	1.00207	1.00178	1.00161	0.99743	1.01862	1.00000
Location factor	1.00951	0.96912	0.99638	1.04234	0.98278	0.97477	0.99553	1.28458	1.00000
Component factor	0.98564	0.86101	1.03856	1.08596	0.95874	1.05484	0.87242	3.58499	1.00000
A. Weighted component factor	0.97058	0.84785	1.02269	1.06936	0.94409	1.03872	0.85909	3.53021	0.98472
Other expenses (component weight = 1.53 %)									
Administrative scale	0.39095	0.49858	0.60687	1.23740	1.64752	5.20147	8.00778	12.64710	1.00000
National capital	0.00000	0.00000	0.00000	0.00000	0.00000	0.00000	62.21647	0.00000	1.00000
Native title and land rights	0.00000	0.59116	0.00183	4.70157	3.39228	0.00000	0.07413	11.75356	1.00000
Component factor	0.33142	0.47894	0.51464	1.49657	1.71960	4.40949	10.34586	11.84035	1.00000
B. Weighted component factor	0.00506	0.00732	0.00786	0.02287	0.02628	0.06738	0.15810	0.18094	0.01528
Category factor [A+B]	0.97564	0.85517	1.03055	1.09223	0.97037	1.10610	1.01718	3.71114	1.00000

Source: Commission calculation.

115 Table 16-15 and Table 16-16 show that service expenses and the differences between the States in the socio-demographic characteristics are the main drivers of assessed expenses in this category.

WHAT IS THE IMPACT ON THE GST DISTRIBUTION?

116 Table 16-17 shows the extent to which the assessment for this category moves the recommended distribution of the GST for the 2010 Review away from an equal per capita distribution. It shows New South Wales, Victoria and South Australia are assessed as needing to spend less than the average per capita amount to deliver justice services. Queensland, Western Australia, Tasmania, the ACT and the Northern Territory are assessed as needing to spend more.

Table 16-17 Impact on the GST redistribution of the Justice services assessment

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Redist
Dollars million	-96.5	-447.8	76.0	111.3	-27.7	30.6	4.4	349.8	572.1
Dollars per capita	-13.54	-82.00	17.06	49.21	-17.01	60.63	12.41	1 544.77	25.98

Note: The difference from an equal per capita assessment, derived using 2006-07 to 2008-09 assessed revenue and 2009-10 GST.

Source: Commission calculation.

117 The driver for each State is different. The redistribution for New South Wales and Victoria arises primarily because they have below average proportions of Indigenous people who use

justice services more, and below average expense needs relating to per capita minimum administrative costs. Queensland, Western Australia, Tasmania and the Northern Territory's redistribution arises because they have above average proportions of Indigenous people in their population. While South Australia has a below average proportion of Indigenous people, this is partly offset by its above average proportion of people from a low SES background. The ACT has above average needs because of the above average salaries paid by the AFP and above average expense needs relating to per capita minimum administrative costs.

118 Table 16-18 shows State proportions of Indigenous people, males aged 15 to 34 and people from a low SES background.

Table 16-18 State proportions of selected population groups

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Average
	%	%	%	%	%	%	%	%	%
Indigenous people	2.27	0.66	3.55	3.39	1.82	3.86	1.30	30.16	2.52
Males aged 15-34	14.05	14.36	14.22	14.62	13.38	12.31	16.29	16.78	14.19
People from low SES areas	22.45	17.50	18.95	14.93	26.03	33.40	3.13	37.18	20.12

Source: ABS, ERP June 2008.

119 Table 16-19 provides a summary of the major reasons the assessment moves State GST revenue away from an equal per capita distribution.

Table 16-19 Major reasons for difference from EPC, Justice services

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Redist
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Socio-demographic composition factor	-67.8	-317.5	120.2	58.8	-18.3	24.5	-22.9	223.0	426.5
Location factor	44.6	-91.8	-9.4	43.9	-15.8	-7.1	-0.4	35.9	124.4
Administrative scale factor	-33.3	-20.9	-13.2	4.2	8.0	16.1	19.0	20.2	67.4

Source: Commission calculation.

120 Table 16-20 provides a summary of the main reasons for changes between the recommended and the 2009 Update distributions arising from the Justice services assessments. It shows the main reason for those changes is method changes. They include:

- increasing the use weights for Indigeneity in the police component;
- including a use weight for people from a low SES background;
- removing the assessments for urban complexity, cross-border and CALD disabilities; and
- removing category-specific cost weights applied to criminal courts and corrective services.

121 The change due to State circumstances was largely driven by the rapid growth in the category size. State spending on justice services has increased at a faster rate than the increase in GST

revenue from 2005-06 to 2008-09, leading to a greater amount of GST revenue being redistributed by this category. Therefore, GST has been redistributed to the States whose assessed expenses are above average, namely Queensland, Western Australia, Tasmania, the ACT and the Northern Territory. However, for the ACT, the increase is offset by a decrease in its service provision over the same period.

Table 16-20 Changes since the 2009 Update, Justice services

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Redist
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Shortening the review period	-5.8	-8.7	8.0	4.7	-0.9	-0.1	0.1	2.7	15.5
Method changes	-95.0	-152.8	112.2	38.6	56.5	30.9	-35.6	45.4	283.4
State circumstances	-7.5	-24.7	4.6	13.8	-1.1	1.3	-0.7	14.2	34.0
Total	-108.3	-186.2	124.8	57.1	54.4	32.0	-36.2	62.3	330.7

Source: Commission calculation.

UPDATE PROCESS

122 We recommend that data used in these assessments be updated when new data become available to ensure the relativities remain contemporary and consistent with the circumstances of the States. On this basis we expect:

- the following data would be updated annually:
 - ABS population data disaggregated by age, gender, Indigeneity and SEIFA;
 - GFS expense data that supports the category structure;
 - Criminal court data published by the ABS;
 - Prisoner data published by the ABS; and
 - Juvenile detention data obtained from the AIC; and
- the following data would be updated at longer intervals when new data become available or material changes occur:
 - police custody data — the AIC conducts the survey, on average, every five years;
 - the Indigenous and non-Indigenous split of annually updated ABS criminal court use — the split in the assessments has been gleaned from the 2008-09 State supplied court data and to date the annual changes have not been material and providing the data is an onerous task for States; and
 - the proportion of expenses considered to be affected by service delivery scale.

SIMPLIFICATION

- 123 In the Justice services category, simplification has been achieved by:
- assessing justice services expenses in one rather than the three categories (police, administration of justice and corrective services) used in the 2004 Review. We consider that the main cost drivers that affect police expenses also affect criminal courts and corrective services expenses;
 - using total State population as a broad indicator because it is reliable and policy-neutral;
 - including only adjustments to total population that are conceptually justifiable, can be reliably assessed and make a material difference to results. These include adjustments in the use of justice services by Indigenous people, males aged 15 to 34 and people from a low SES background;
 - not assessing any category-specific cost weights due to the lack of reliable and comparable data. In the 2004 Review, cost weights were applied to criminal courts and corrective services. These included weights applied to court appearances in higher courts, appearances by people with low English proficiency and appearances by remote Indigenous people. The corrective services assessment had cost weights such as prisoners in secure prisons, the number of drug dependent prisoners, the number of federal offenders, remote Indigenous people in community corrections, juveniles with low incomes and Indigenous juveniles in remote areas or with low English proficiency; and
 - not assessing urban complexity, cross-border or CALD disabilities because a case could not be made that was supported by reliable data.
- 124 By doing so, the Commission has reduced the complexity of the calculations and reduced the use of data that are insufficiently comparable and reliable.

FURTHER INFORMATION

- 125 Background material in support of this assessment is published on the Commission's website. That material includes the following documents, released for comment in the development of this assessment, together with State submissions responding to those documents:
- Staff discussion paper *2007/17-S Assessing law and order for the 2010 Review*;
 - Commission position paper *2008/23 Justice services*; and
 - *2010 Review Draft Report*.