

# Justice

## Review outcomes

- The Commission will maintain the 2024 Update method for recommendations for GST distribution in 2025–26.
- The Commission will implement any 2025 Review changes in the 2026 Update. This will allow for the collection and processing of 2022–23 and 2023–24 data, which are less likely to reflect temporary changes in service delivery made in response to the COVID-19 pandemic. This also enables substantive consultation on potential method changes.
- The Commission will consult states on the justice assessment method during 2025. A revised Draft Report chapter will be released to the states in June 2025 for comment. The use of discounts in the justice assessment will be considered as part of this consultation process.
- The Commission’s final position on changes made to the assessment method will be provided in a paper to states prior to the 2026 Update.

## Introduction

- 1 On 6 July 2024, the Commission published the [Draft Report](#) for the 2025 Methodology Review.
- 2 The Draft Report included a detailed analysis and response to issues raised by states and territories (states) in their [submissions](#) on the Commission’s [consultation paper](#).
- 3 State submissions on the Draft Report can be viewed [here](#).
- 4 The Commission will postpone implementing changes to the justice assessment until the 2026 Update. This is to allow for the collection of 2022–23 and 2023–24 data, which are less likely to reflect the temporary changes in service delivery made in response to the COVID-19 pandemic. This will also enable substantive consultation on potential method changes and adequate time for the Commission to process the new justice data for application into the model.
- 5 This chapter includes:
  - an overview of the issues so far considered during the review
  - the Commission’s response and decisions on issues that are not reliant on further data.
- 6 State views on the Draft Report are included in this chapter. There will be further consultation with states and Commission responses prior to the 2026 Update (see Attachment A).

- 7 A detailed description of the assessment method that will be used for the 2025–26 GST distribution can be found in the justice chapter of the *Commission’s Assessment Methodology*.<sup>1</sup> The Commission will release a revised description of the justice method (incorporating changes made during the 2025 Review) at the time of the 2026 Update.

## Issues considered

### Justice model and data issues

- 8 The Commission sought state views on the appropriateness of the 2020 Review justice model if updated with fit-for-purpose data.
- 9 Given the change in justice services during the COVID-19 pandemic, the Commission noted the likelihood that 2019–20, 2020–21 and 2021–22 did not reflect long-term patterns of justice service provision, particularly for police and criminal courts. During this time, resources were reallocated to enforce public health directives and lockdowns, crime patterns changed, and some court proceedings were moved online or suspended.
- 10 The Commission raised the question of whether 2022–23 data should be used to update the justice assessment if they are fit for purpose.
- 11 It also raised the possibility of updating the assessment with 2022–23 data in the 2026 Update if these were not available in time for inclusion in the 2025 Review.

### State views

- 12 Most states broadly agreed that the 2020 Review justice model remained appropriate, although New South Wales and Western Australia raised issues with elements of the model.
- 13 Victoria did not support the model. It said there were weaknesses in the conceptual case for some aspects, and that the model was open to policy influence and could be a barrier for reform. Victoria engaged a consultant to review the model. Queensland did not support retaining the model without changes to the police assessment.
- 14 All states agreed that data from 2019–20 to 2021–22 did not reflect typical justice services and costs. Other than South Australia, all states supported using 2022–23 data in the assessment. South Australia proposed 2022–23 data be analysed for potential COVID-19 influence prior to use.
- 15 All states that responded supported updating the assessment with 2022–23 data in the update following the review if the data were not available in time for the review.

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<sup>1</sup> This is the same method applied in the 2024 Update.

- 16 Some states raised concerns over using only one year of data.
- 17 The Northern Territory raised the possibility of using annual data to update the assessment. It considered that annual data would better capture short-term and medium-term trends in justice service use, particularly in remote areas.
- 18 Western Australia said it would be prudent to include 2023–24 and 2024–25 data, particularly if 2022–23 data were COVID-19 affected but thought an annual data request could be burdensome. Queensland did not support requesting data from states on an ongoing annual basis.
- 19 Victoria expressed broad concerns regarding the data used to inform the assessment. It said the assessment is unable to adequately capture the drivers of justice expense needs because of data comparability issues. Victoria recommended the Commission discount, or assess components equal per capita, until a nationally consistent dataset is available. Victoria’s consultant also said data limitations warranted discounting the assessment.
- 20 Queensland supported not applying any new equal per capita assessments or discounts due to data concerns, and supported the data used in the assessment.

## **Commission response**

### **Justice model**

- 21 The Commission notes the broad support for the 2020 Review model, and considers the overall approach remains appropriate if supported by new state data. Although there was broad support for the 2020 Review model, states raised several concerns and made suggestions for improving the model.

### **Data quality concerns**

- 22 Where possible, the Commission uses data from organisations with nationally consistent frameworks as this increases data comparability and consistency. In the assessment, some data are currently sourced from the Australian Bureau of Statistics (ABS), the Australian Institute of Health and Welfare and the Productivity Commission.<sup>2</sup> However, most data are sourced directly from states.
- 23 The Commission considers variability in costs across states does not necessarily signify uncertainties in the data that would warrant discounting. This variability is likely due partly to states’ different policy choices. Using national average data smooths policy differences across states and provides a benchmark with which to assess needs in the context of diverse approaches to justice administration.
- 24 The Commission considers the data used in the justice assessment are the best currently available and fit for purpose. The Commission has not identified sufficient

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<sup>2</sup> Prisoner data are sourced from the ABS. Juvenile detainee data are sourced from the Australian Institute of Health and Welfare. Courts costs are sourced from the Productivity Commission.

concerns with the data to support a discount or pursue an equal per capita assessment.

### **Updating data used in the assessment**

- 25 The Commission considers that an annual request for state data would be a significant imposition on states given the size and complexity of the request. Furthermore, the time between receiving the data from all states and processing them is unlikely to be sufficient to meet update deadlines.
- 26 Commission analysis of national totals in ABS data on proceedings, defendants and prisoners showed that these measures are relatively stable over a 5-year period. The Commission therefore considers updating data annually would increase the burden on states for little benefit.
- 27 The Commission's analysis of ABS data indicated data for 2022–23 are not unduly affected by COVID-19. Preliminary analysis of state data indicates that they are also largely unaffected.
- 28 The Commission agrees that incorporating a second year of data (2023–24) would better reflect current and future state justice needs. These data have been requested from states. The average of 2022–23 and 2023–24 data will be incorporated into the new assessment when it is implemented in the 2026 Update. The 2020 Review method and data will be used in the recommendations for relativities for GST distribution in 2025–26.

### **Commission decision**

- 29 The Commission will:
  - broadly retain the 2020 Review model if supported by updated state data
  - not apply discounts or equal per capita assessments in response to policy neutrality concerns
  - not request data from states on an ongoing annual basis
  - maintain the 2020 Review method for recommendations for GST distribution in 2025–26 and implement any 2025 Review method changes in the 2026 Update with data from 2022–23 and 2023–24.

### **Police assessment – policy neutrality**

- 30 In response to state comments, the Commission considered whether its police assessment could present barriers to policy reform. It also explored the possibility of weighting offences by seriousness.

### **State views**

- 31 Victoria said a state that implemented policies that reduce offender rates, court attendance and incarceration would be negatively impacted because these are the measures the Commission uses to determine assessed expenses. Similarly, the Victorian consultant said it was important not to disincentivise investments in

evidence-based measures that cut costs and crime. It suggested that if offence numbers are incorporated into the police assessment method, these should be weighted by seriousness or discounted to account for the impact of state policy on offender numbers.

- 32 Queensland did not support changing the police assessment to account for potential barriers to policy reform.

### **Commission response**

- 33 The Commission's assessments are based on national average policies. If one or more states experience a reduction in offenders from one of the sub-population groups, the assessment will capture the change relative to the national average. However, one state is unlikely to materially affect the national average rates.
- 34 The Commission's 2024 Update police assessment method considers all policing costs, not only costs related to offender rates.<sup>3</sup> If a state chooses to increase spending on diversionary programs to reduce offending, these costs will be captured as part of policing costs and inform the national average per capita costs for policing in each region.
- 35 In relation to the weighting of offences by seriousness, the Commission acknowledges there is a conceptual case that the cost of investigating some crimes is significantly more expensive than other crimes. A state may face higher costs beyond its control if these offences are committed more often within its borders than in other states.
- 36 However, the Commission is not aware of any national data that would allow it to determine whether, or by how much, more serious crimes cost more than less serious crimes. It is also likely that the costs associated with 2 crimes of the same seriousness may differ dramatically. The Commission therefore considers the weighting of offences by seriousness to be unfeasible given current data availability.<sup>4</sup>
- 37 The Commission does not consider having an equal weight for offences conflicts with the principle of policy neutrality. With an equal weighting of offences, states may focus police activities on whichever offences they choose.<sup>5</sup> These policy choices form part of the national average policy on what states spend per offender. This cost weight is then applied to each state's assessed offenders rather than its actual offenders. In this way, individual states are only able to influence their assessed GST needs in proportion to how much they affect national average policies.
- 38 Because the impact of individual state policies is mitigated by using national averages, the Commission does not consider a discount to be warranted.

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<sup>3</sup> The 2020 Review method was revised in the 2024 Update to account for the suspension of the national capital assessment and the continued use of 2016 Census-based First Nations populations.

<sup>4</sup> The Commission will continue to explore whether suitable data can be identified for use in weighting offences for the next review.

<sup>5</sup> The Commission does not make judgements on what states could or should do.

## Commission decision

- 39 The Commission will not make changes to the police assessment in response to concerns regarding potential barriers to policy reform.

## Police assessment - regression

- 40 In response to state comments, the Commission considered if the regression used in the police assessment reflects what states do.
- 41 The Commission proposed investigating whether a remote offender variable should be added to the regression.

## State views

- 42 Victoria said the 2020 Review police assessment was based on reactive police measures, such as offender numbers, which were a poor indicator of need. It recommended that, in the absence of robust preventative policing measures, the Commission should adopt a conservative approach and assess police expenses equal per capita or discount the assessment.
- 43 Victoria also said that, unless the police regression could be adjusted to account for state policy influences on the size, population and composition of police districts, the regression should not be used, or a discount applied.
- 44 The Victorian consultant recommended that a population variable be added to the regression model to fully account for differences in police district size. It found that adding a population variable to the model produced different cost weights, meaning that weighting by population was not fully mitigating potential biases.
- 45 The consultant also recommended using a simplified model based only on police district population and remoteness since it found the offender variable to be ineffective at capturing cost drivers.
- 46 Queensland said that the cost and time attributed to criminal activity within Queensland police services is significantly higher than the approximately 31% of policing costs attributed to criminal policing in the police regression.
- 47 Queensland proposed altering the police assessment to recognise expense needs through a socio-demographic composition assessment of assessed offenders that is weighted by regional costs (instead of applying the cost weights to regional populations).<sup>6</sup> It said that spending on preventative policing is driven by crime propensity rather than population.
- 48 During the state visit, Queensland also presented evidence that policing offenders in remote regions is considerably more costly than in other regions. It supported an

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<sup>6</sup> In the 2020 Review method, police regional cost weights are applied to regional populations instead of assessed offender numbers.

additional cost weight for remote offenders but noted that adding a remote cost weight would be inferior to a wholesale review of the policing model.

- 49 South Australia said the 2020 Review police assessment was an appropriate method for determining states' policing costs. It said if evidence supported the inclusion of an additional cost weight for offenders in remote areas, it should be applied to offenders in both remote and very remote regions, rather than very remote regions only.

## **Commission response**

### **Reactive and preventative policing**

- 50 The police regression captures all recurrent expenses in the policing task and estimates a national average policing cost per offender and a policing cost for each regional area. This should not be interpreted as a split between the costs associated with targeting offenders and the cost of general community policing. Rather, the regression estimates the national average per offender policing cost and a policing cost for each region. It does not assign costs to a specific policing task.<sup>7</sup>
- 51 Assessing all police expenses by only using national average offender numbers or only using police district population characteristics would not adequately recognise all the drivers of police costs.
- 52 The Commission acknowledges that states have different policies for funding police activities, and that the difference between offender driven costs and other policing costs will vary. The Commission considers the 2020 Review regression model to be suitable for accounting for such policy differences.
- 53 While testing in the 2020 Review indicated that capturing offender costs by region was not significant, the Commission considers that the high cost weight in remote regions is capturing the higher cost of policing offenders as well as the higher cost of policing the regions. The Commission will test whether state data support an additional cost weight for remote offenders.

### **District size and population**

- 54 In the police regression, each of the police district costs is weighted by the population in the police district. The regression uses the cost per capita to estimate the national average policing cost in each region and national average cost per offender. Using this type of population weighting negates the bias resulting from states having different numbers and population sizes of police districts.
- 55 The Commission considers the difference in cost weights produced by adding a population variable to the model is caused by the strong correlation between population and population-weighted police districts.

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<sup>7</sup> Accordingly, these proportions are not comparable to the 2015 Review method which split costs between 'specialised' and 'community' policing.

## Commission decision

- 56 The Commission will retain the 2020 Review regression model.
- 57 Further analysis of state data and consultation with states will determine whether there should be an additional cost weight for remote offenders. The Commission will consider this issue during the consultation process prior to the 2026 Update.

## Police and prisons assessment - central costs and global cities

- 58 In response to state comments, the Commission considered whether the method used to allocate central costs prior to running the police regression was appropriate.
- 59 The Commission also explored the possibility of a global city assessment.

## State views

- 60 New South Wales said allocating all central policing costs across all police districts/regions in a state overestimates the cost of remoteness. It originally said that central costs should be allocated to police districts on an equal per capita basis, and an additional 25% discount should be applied to the regional cost gradient. New South Wales provided further analyses to suggest that costs in metropolitan areas are greater than an equal per capita share would indicate.
- 61 Similarly, Victoria said the 2020 Review method overestimates remoteness cost weights and socio-demographic use weights. Victoria said it is more likely that central costs are driven by state population size rather than number of offences or remoteness of the population. It considered that central costs should be excluded from the regression and assessed separately on an equal per capita basis.
- 62 The Victorian consultant also raised concerns with central costs being allocated across states' policing districts. It recommended assessing some central costs on an equal per capita basis and most police support services costs allocated according to the number of full-time equivalent police officers.
- 63 Queensland did not support New South Wales' and Victoria's proposals to split central costs. It said that splitting these costs would breach the Commission's what states do, policy neutrality and practicality supporting principles and would be difficult to implement. Queensland noted that regional and remote police services rely more heavily on central services because they lack the capability of metropolitan police stations. It also said that central policing costs are driven by actual policing need and are not detached from other police spending.
- 64 New South Wales said densely populated and highly globalised cities face costs and pressures that other areas do not. These include terrorism, complex crime, disproportionate rates of federal prisoners, and culturally and linguistically diverse prisoners. It recommended these effects should be assessed jointly to determine materiality. Alternatively, police service use rates could be estimated by remoteness



area, which may allocate higher shares of costs related to complex crime to metropolitan areas.

- 65 Queensland and South Australia did not view complex crimes to be unique to major cities and said that Commonwealth agencies often investigate these crimes. They said there was a lack of evidence that the operation of justice services in major cities incurs greater expenses than anywhere else.

## **Commission response**

### **Central costs**

- 66 While some types of police services, such as counter terrorism, state intelligence and cybercrime are likely to be skewed towards metropolitan areas, some types of central costs (for example, those related to human resources, IT, education and financial services) are likely to be used by police services across the whole state and not just major cities. Excluding all central costs from the regression would underestimate costs outside capital cities.
- 67 The Commission will analyse state data to determine the appropriate treatment of central costs in the police assessment. Any change would be included in the 2026 Update.

### **Global cities assessment**

- 68 The Commission has requested data from states on policing expenses including those related to counter terrorism and complex crime. The Commission is analysing these data to determine whether certain costs are unique to major cities and whether a reliable, material assessment can be developed.
- 69 The Commission accepts there is a conceptual case that certain population groups, such as culturally and linguistically diverse prisoners, could drive higher costs in providing justice services. However, there are significant impediments to reliably identifying and quantifying how such groups affect costs across justice services. In preparation for the next review, the Commission will work with states and relevant data providers to examine available data.

## **Commission decision**

- 70 The Commission will determine the appropriate treatment for central and global cities costs in the police assessment following further analysis of data and state consultation. The Commission will consider this issue during the consultation process prior to the 2026 Update.
- 71 The Commission will consider how cultural and linguistic diversity may affect state service costs, including justice services, as part of its forward work program.

## Police data

72 In response to state comments, the Commission considered the following issues with data, or the treatment of data, used to inform the police assessment:

- the socio-economic status classifications applied to First Nations people
- the exclusion of traffic and breach of bail offences
- the use of proceedings data for assessed offenders.

## State views

73 The Victorian consultant recommended the Commission use the ABS's offender counts rather than its proceedings counts to calculate assessed offenders.<sup>8</sup> It considered proceedings to be an inappropriate measure of cost allocation. The consultant also said the non-linear relationship between socio-economic status and offences did not warrant merging the standard 5-tier socio-economic groups into 3.

74 Western Australia said the Commission should determine whether traffic and breach of bail offence data are robust enough to include in the police assessment. It said their inclusion would provide a more accurate representation of police expenses.

75 Queensland said it supported excluding traffic and breach of bail offence data from the police assessment, continuing to use proceedings data in the calculation of assessed offenders and continuing to apply the socio-economic status approach for First Nations people that best reflects a linear relationship with offence rates.

## Commission response

### Use of proceedings data for assessed offenders

76 The Commission uses proceedings data in the police assessment to ensure it captures costs associated with investigating and charging a single offender on multiple occasions within a single year.<sup>9</sup> Using the ABS's offenders count would not recognise the costs associated with a second (or more) separate instances of offending and their impact on the cost of policing.

### Socio-economic status classifications applied to First Nations people

77 Criminologists have identified a relationship between socio-economic status and offence rates.<sup>10</sup> If a socio-economic status structure does not show this relationship, it may mean that the measure is capturing the effects of factors unrelated to socio-economic status which the Commission cannot control for because of data

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<sup>8</sup> The Commission scales state-provided data to ABS totals to calculate the Commission's number of assessed offenders.

<sup>9</sup> Each instance of offending would be counted as a separate proceeding regardless of the number of offences an individual is charged with.

<sup>10</sup> L Ellis, DP Farrington and AW Hoskins, *Handbook of Crime Correlates*, 2nd edn, Academic Press, London, 2019, pp 92–102.

limitations. This may include the effects of structural inequalities or being removed from culture and/or family.<sup>11</sup>

### **Exclusion of traffic and breach of bail offences**

- 78 The Commission sought advice from the ABS about whether the quality and comparability of states' traffic and breach of bail offence data still raised concerns. The ABS indicated that it had not recently reviewed the quality and comparability of traffic and breach of bail offence data across states. In the absence of evidence of improvements in the quality and comparability of the data, the Commission considers that these data are not fit for purpose. The Commission will continue to liaise with the ABS on the quality of the data.
- 79 The Commission does not consider the exclusion of these offences to raise significant issues with the model since they tend to require fewer resources than other types of crime. Furthermore, it is likely the model used in the police assessment would partially capture the effects of these types of offences.

### **Commission decision**

- 80 The Commission will continue to use proceedings counts for its measure of assessed offenders and exclude traffic and breach of bail offence data from the assessment.
- 81 The Commission will determine an appropriate socio-economic structure for First Nations people following further analysis of data and state consultation. The Commission will consult states on its approach prior to the 2026 Update.

### **Criminal courts assessment**

- 82 In response to state comments, the Commission considered concerns with the use of finalisations in the criminal courts assessment.
- 83 It also explored whether it should use a regression to quantify regional and service delivery costs.

### **State views**

- 84 Victoria said finalisations was not an adequate measure of spending needs given the highly variable relationship between criminal courts spending and volume of finalised defendants.
- 85 Victoria recommended the Commission use population as a measure of spending needs. It provided analyses based on data from the *Report on Government Services* which indicated that population was a better predictor of costs than finalisations.

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<sup>11</sup> Australian Law Reform Commission (ALRC), [Pathways to Justice—Inquiry Into The Incarceration Rate Of Aboriginal And Torres Strait Islander Peoples](#), ALRC, Australian Government, 2018, accessed 6 February 2024.

- 86 During its state visit, Victoria also suggested that programs that were used to divert people from the court system, including several of its specialist courts, were not captured in national data.
- 87 The Victorian consultant said that in the 2020 Review, state-reported data on court expenses showed a wide variance in the proportion of criminal court expenditure across states. This raised doubts about reliability for making accurate comparative assessments or for drawing broad conclusions about state-level spending practices.
- 88 Western Australia said a criminal courts regression could also be used to account for service delivery scale costs. It suggested that if a regression could not be developed for the criminal courts component, the service delivery scale factor derived from the prisons assessment should be applied to criminal courts.

## **Commission response**

### **Use of finalisations**

- 89 The Commission acknowledges there are policy differences in how states provide their criminal court services that may affect the number of finalised defendants or courts costs. These differences include the number of court levels in state systems, the types of cases held at each level (and the method used to finalise them) and the number of staff employed. The Commission considers such differences are responsible for the variation between the cost per finalisation in each state.
- 90 The 2024 Update assessment method uses finalised defendants as a measure of the use of criminal courts. The Commission considers it reasonable to assume there is a relationship between defendant volume and state court expenses, especially with the lack of alternative, measurable drivers.
- 91 The Commission will investigate the validity of using population as a driver of criminal courts spending needs.

### **Specialist courts and diversions programs**

- 92 The 2024 Update assessment method includes states' spending for all court-related expenses as defined by Government Finance Statistics data. This enables the Commission to include all criminal courts spending in its assessment, including the costs of running specialist courts and court-based diversion programs.
- 93 While the number of assessed finalised defendants currently excludes finalised defendants in specialist courts and diversion programs, excluding these data produces a more nationally comparable cost per assessed defendant.<sup>12</sup> Because these defendants are finalised in the court that first heard their case, including any additional finalisations would lead to double counting.

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<sup>12</sup> This exclusion is consistent with the ABS's practice of counting defendants.

## Regression for regional and service delivery costs

- 94 The regional cost gradient in the 2024 Update assessment method recognises the combined effect of regional and service delivery scale costs. In the 2020 Review, the Commission decided to adopt a simple approach to calculating regional costs because of data limitations and offsetting cost factors. For instance, while higher courts in remote areas had a greater cost per defendant, remote defendants often travelled to non-remote areas to attend higher courts.
- 95 A regression could potentially be developed if state data are of sufficient quality and can be disaggregated at the district level. However, a regression may add unnecessary complexity to the model.

## Commission decision

- 96 The Commission will determine whether population should replace finalisations as the driver of criminal court expenses following further analysis and state consultation.
- 97 The Commission will continue to apply a cost gradient when assessing regional and service delivery scale costs in the criminal courts assessment. Analysis of the updated state data and consultation with states is required to determine if the cost gradient should be changed.
- 98 The Commission will consider these issues during the consultation process prior to the 2026 Update.

## Criminal courts data

- 99 In response to state comments, the Commission considered concerns that the criminal courts assessment used data from a limited number of states to determine the socio-demographic profile of defendants and the regional cost gradient.
- 100 The Commission also explored whether its approach to attributing Indigenous status to defendants who had not provided their Indigenous status was appropriate.

## State views

- 101 Victoria said that using data from only 5 states in the socio-demographic composition calculation and 4 states in the criminal courts regional cost gradient failed to accurately capture the average of state policy. It noted that this likely biased the results in the prisons component, which also uses defendants' socio-economic status as a proxy for prisoners' socio-economic status. For this reason, it recommended either that socio-economic status not be used in prisons, or a discount be applied.
- 102 The Victorian consultant supported using defendant socio-economic status as a proxy for prisoner socio-economic status. However, the consultant recommended limiting modelling to data available in every state (age and socio-economic status) or

imputing data for any missing states rather than excluding them from the national average.

- 103 Western Australia said Indigenous status should be attributed to the not-stated finalised defendants based on the proportion of stated defendant responses, which the Commission does elsewhere in the justice assessment. It provided data to show the 2020 Review approach (attributing Indigenous status based on population shares) underestimated the number of finalised defendants who identify as First Nations. Western Australia said this change should be implemented in the 2025 Review.

## **Commission response**

### **Data quality and averaging**

- 104 In the 2020 Review, the Commission used all fit-for-purpose data available to inform the socio-demographic composition calculation and regional cost gradient in courts. The Commission agrees that, where possible, the assessment should be based on data from all states. However, given the importance of Indigenous status and regional costs, limiting modelling to where data are available for every state would limit the assessments that can be undertaken and would be contrary to the objective of horizontal fiscal equalisation.
- 105 The Commission considers using data from a selection of states provides a reasonable estimate of the national average if these states form a representative cross-section of all states. For example, this would be the case if the cross-section included states with large remote regions, diverse socio-demographic profiles and highly populated major cities.
- 106 Regarding the use of courts data in prisons, the Commission will use all available and robust data for calculating defendant socio-economic status. It will undertake further analysis and consultation on this issue prior to the 2026 Update, including whether any discounts are warranted.
- 107 The Commission notes the Victorian consultant supported using defendant socio-economic status as a proxy for prisoner socio-economic status.

### **Treatment of non-stated Indigenous status**

- 108 In the 2020 Review, the Commission was concerned that attributing Indigenous status to not-stated finalised defendants by shares of stated defendant responses would overestimate the number of First Nations finalised defendants. After analysing Western Australian traffic offence data, it considered most First Nations offenders may have already been identified in the data.
- 109 Data provided by Western Australia for the 2020 Review showed a large proportion of the state's non-stated defendant responses for traffic offences came from areas where First Nations people make up a smaller proportion of the population.

- 110 Western Australia’s 2022–23 data show 24% of finalised defendants (before attributing Indigenous status to not-stated responses) identified as First Nations.<sup>13</sup> This proportion of First Nations responses more closely aligns with 2020 Review data when not-stated responses are attributed by shares of stated defendant responses (23% First Nations) rather than population shares (16% First Nations).
- 111 The Commission also noted that the proportion of not-stated defendant responses has fallen to 7% in the 2022–23 data down from 41% in the 2020 Review data.
- 112 The Commission considers that attributing Indigenous status to not-stated finalised defendants by shares of stated defendant responses would not overestimate the number of First Nations finalised defendants.
- 113 The Commission considers applying the change in the 2026 Update is appropriate as this will allow consultation with states including the GST impacts of all proposed changes prior to their implementation.

### Commission decision

- 114 The Commission will take the following actions.
- Use data from all states in the criminal courts component. If this is not possible, the Commission will determine the best approach consistent with the objective of horizontal fiscal equalisation in consultation with states.
  - Determine the socio-demographic composition calculation for the regional cost gradient in the criminal courts assessment following further analysis of data and state consultation. The Commission will consider this issue during the consultation process prior to the 2026 Update.
  - Attribute Indigenous status to not-stated finalised defendants by the proportion of the stated defendant responses for inclusion in the 2026 Update.

### Other legal services data

- 115 In response to state comments, the Commission considered whether the method used to split criminal courts and other legal services was appropriate.

### State views

- 116 Victoria said the expense split between criminal courts and other legal services was unreliable because it relied heavily on state data that were not comparable. It said the data had high levels of variability, likely due to classification inconsistencies between states. The Victorian consultant raised similar concerns.
- 117 Victoria recommended the Commission use the *Report on Government Services* criminal courts expenditure data for criminal and civil courts and place any remaining difference between expense totals in *Report on Government Services* data and Government Finance Statistics data into the other legal services component.

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<sup>13</sup> Western Australia said it made the reasonable assumption that the composition of offenders has not changed structurally from 2016–17 to 2022–23 for traffic offences.

## Commission response

118 The Commission has previously explored using *Report on Government Services* data for splitting criminal courts and other legal services but found the data unsuitable. There are some legal services related to both criminal courts and other legal services that are excluded from these data. The Commission considers splitting court expenses in this manner does not provide the best estimate of costs incurred by states' criminal courts and other legal services.

## Commission decision

119 The Commission will continue to use data provided by states for the 2025 Review to split other legal services expenses from criminal courts expenses.

## Prisons assessment

120 The Commission asked states whether it would be appropriate to apply a juvenile detainee cost weight if it is material. It considered that changes to the age of criminal responsibility did not warrant a change in the age groups used in prisons.

121 In response to state comments, the Commission considered whether the use of regional and service delivery cost weights in prisons was appropriate and proposed a separate assessment for non-custodial services.

## State views

### Juvenile cost weight and age group

122 Most states supported the application of a juvenile detainee cost weight if it is material. Queensland proposed an alternative method for calculating cost weights, based on cost per bed night in youth detention.

123 Victoria said it did not support the application of a cost weight because the *Report on Government Services 2023* juvenile detention expenditure data were not comparable across states.

124 All states that responded supported not changing the juvenile detainee age groups in response to changes to the minimum age of criminal responsibility across states.

### Prison regression, regional cost weights and service delivery scale

125 New South Wales said the presence of remote prisons was not driven by necessity and may not reflect average policy. It also said that while small prisons are more expensive than larger ones, it considered that this effect was not driven by remoteness. It suggested the Commission replace the remoteness dummy variable in the prisons regression with a major cities one because it found that its own major cities prisons cost more (per prisoner) than remote prisons.

126 Victoria said the conceptual case for cost weighting remote prisoners was weak. This was because it considered prisons are not located based on population dispersion, nor are prisoners commonly imprisoned in prisons near to their prior residence.



Victoria said the Commission had not presented a compelling case that there was a material relationship between population remoteness and prison remoteness. It said that in Victoria prison location is independent of prisoner origin and prisons are not built in a particular location to service the imprisonment needs of the surrounding area. It said prison locations are often based on historical circumstances or are a policy choice.

- 127 New South Wales and Victoria recommended that a discount be applied to recognise the uncertainty associated with the model.
- 128 Conversely, Queensland and Western Australia said the conceptual case of remote prisons having higher costs per prisoner was very strong. Queensland noted its corrective services aim to place incarcerated people in prisons close to their communities.
- 129 Western Australia suggested adding more variables into the model to improve its explanatory power. Queensland said this would produce a less meaningful regression, introduce policy influence and increase complexity.

#### **Non-custodial services**

- 130 Given the disproportionate costs of full-time custodial and non-custodial services, New South Wales said a separate assessment was appropriate.
- 131 Victoria said it requires further time, data, detail and analysis from the Commission before commenting on the proposal to separately assess community corrections expenses. It requested the Commission not take any decisions on justice assessment proposals newly introduced in the Draft Report until further consultation with states has been done prior to the 2026 Update.
- 132 Queensland did not support the introduction of a non-custodial expenses assessment as it considered it to be policy contaminated. It said their inclusion should be driven by socio-demographic drivers and adjusted for costs associated with regional and remote service delivery.

### **Commission response**

#### **Juvenile cost weight and age group**

- 133 The Commission notes the Productivity Commission's *Report on Government Services 2024* juvenile detention expenditure data are published with a qualifier saying the data are not comparable across states.<sup>14</sup> The Productivity Commission advised that data are not comparable because states have different funding structures for their youth justice services.

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<sup>14</sup> This refers to the Steering Committee for the Review of Government Service Provision 2024, *Report on Government Services 2024*, Productivity Commission, Australian Government, 2024, Part F Community services, youth justice data on 'Cost per young person subject to detention-based supervision, 2022-23', table 17A.21. The table notes include the qualifier that data 'are not comparable across jurisdictions but are comparable (subject to caveats) within jurisdictions over time'.

- 134 Despite the Productivity Commission’s caveat, the *Report on Government Services* juvenile detention expenditure data are currently the best available for determining adult prisoner versus juvenile detainee cost differences. The Commission considers that using national average data from the *Report on Government Services* to calculate juvenile detainee cost weights is appropriate and will reduce the impact of state policy influences.
- 135 The Commission will consider Queensland’s proposed method of using cost per bed night in the consultation paper provided prior to the 2026 Update.
- 136 If the cost weight is material once it has been applied to the final 2025 Review data, the Commission proposes to apply the cost weight to a (revised) 0–17 year age group, instead of trying to split the cost weight over 2 different age groups (the current 0–14 and 15–24 age groups).<sup>15</sup> The 0–17 years age group will include all juvenile detainees derived from Australian Institute of Health and Welfare data.
- 137 If the juvenile detainee cost weight is not material, the Commission will continue to use a 0–14 age group because it does not consider changing the age group to be warranted to account for changes in the minimum age of responsibility.

#### **Prisons regression**

- 138 In the 2020 Review, the Commission considered that, while greater explanatory power was preferable, the conceptual case for the assessment was strong and the regression approach was the most reliable measure available.
- 139 The Commission acknowledges state concerns with the regression method and reiterates that a regression model with greater explanatory value is preferred. Data provided by states for the 2025 Review will be analysed to determine whether a regression-based approach remains appropriate.

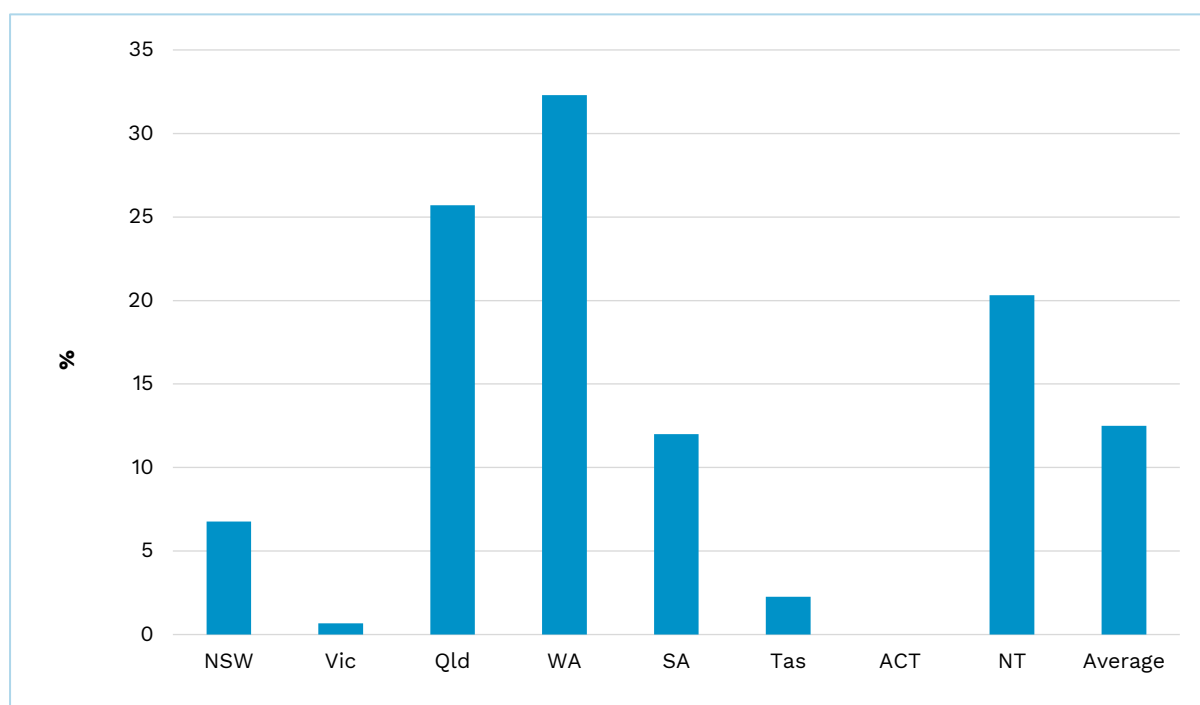
#### **Regional cost weights**

- 140 The Commission considers there is a conceptual case for recognising remoteness costs in prisons. Of the 4 states that have remote prisons, Queensland, Western Australia and the Northern Territory have above-average remote populations and South Australia’s remote population is only slightly below average (Figure 1).

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<sup>15</sup> To test the materiality of applying a cost weight, prisoner use rate age groups will be changed from 0–14 years and 15–24 years to 0–17 and 18–24 years. This change will mean all juvenile detainees are grouped together in the 0–17 years age group and a cost weight, applicable only to juvenile detainees, will be applied.

**Figure 1 Shares of total remote population, 2022–23**



Note: A state's total remote population is a state's combined remote and very remote estimated residential population.

Source: ABS disaggregated estimated residential population data at June 2022 rescaled to total estimated residential population data at December 2022.

- 141 The Commission's approach to average policy is based on a weighted average of all states, recognising that some states may choose not to provide a service. Therefore, the Commission considers it average policy to have prisons in remote areas to service remote populations.
- 142 The Commission considers there is a reasonable link between remote prisoners' usual address and their placement in a remote prison. For instance, in Western Australia, remote prisoners are more likely to be sent to a prison in the same region as they were convicted. This indicates that residents of the Pilbara, for example, are likely to be sent to a remote prison at Roebourne.<sup>16</sup> The Commission acknowledges that not all remote prisoners will go to a remote prison, and it adjusts the regional cost weight to reflect this.<sup>17</sup>
- 143 If data received from states as part of the 2025 Review process show a material relationship between regionality and costs, the Commission proposes to maintain an assessment of the cost of regional prisons. It will examine data to determine the relationship between regionality and costs and investigate whether a regression approach to estimating regional costs remains appropriate.

<sup>16</sup> Corrective Services, [Roebourne Regional Prison](#), Western Australian Government website, 2024, accessed 5 March 2024.

<sup>17</sup> The regional cost weight of remote prisoners is reduced by 60%. This reflects the difference between the assessed number of remote offenders and the actual number of remote prisoners.

### Service delivery scale

- 144 The Commission is not aware of any evidence that suggests states need to have a certain number of small prisons in a specific region. The number of small (or large) prisons each state has across its regions may be due to policy choices and other factors, such as historical circumstances.
- 145 The Commission will reassess the treatment of service delivery scale costs using 2025 Review data to determine if an assessment of service delivery scale is required.

### Non-custodial services

- 146 The Commission considers there is a conceptual case for community corrections orders to be assessed in the prisons assessment. It notes Queensland's concerns regarding policy contamination.
- 147 The Commission tested the materiality of including an assessment for community correction orders based on the 2024 Update prisons assessment and found it to be material.<sup>18</sup> The Commission will retest the materiality of community correction orders using 2022–23 and 2023–24 data. If material, an assessment of these orders will be included for the prisons assessment in the 2026 Update. By using national average policies, the Commission mitigates the impact of individual state policies on community corrections expenses.

### Commission decision

- 148 The Commission accepts the conceptual case for including a regional costs assessment in the prisons assessment. It will determine an approach to regional and service delivery scale costs for the prisons assessment following further analysis of data and state consultation. The Commission will consider this issue during the consultation process prior to the 2026 Update.
- 149 The Commission will include an assessment of community correction orders in the prisons assessment in the 2026 Update, if it is material.

## GST impacts of method changes

- 150 The Commission has postponed any changes to the justice assessment until the 2026 Update. The GST impacts of any method changes will be included in the 2026 Update.

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<sup>18</sup> The Commission used ABS Community correction order data and the Productivity Commission's *Report on Government Services* data to test materiality instead of ABS non-custodial order data. Australian Bureau of Statistics (ABS), 'Table 4. Persons in Community-based corrections' [data set], [Corrective Services, Australia, Age Standardised Community-based corrections](#), ABS website, 2023, accessed 24 November 2023.

## Attachment A: Revised process and timing for finalising the justice assessment

Timing	Process
<b>2025</b>	
February	Commission releases the 2025 Review.
May	2023–24 state justice data due.
June	Revised Draft Report chapter for justice released to states.
August	State submissions on revised Draft Report chapter due.
October	Overview of final justice assessment including changes since the revised Draft Report chapter and indicative GST impacts.
<b>November</b>	State submissions on Overview of final justice assessment paper due.
<b>2026</b>	
February	Final justice assessment applied in the 2026 Update. Revised Review Outcomes and Commission's Assessment Methodology chapters released.