



AUSTRALIAN CAPITAL TERRITORY

SUBMISSION TO THE COMMONWEALTH GRANTS COMMISSION'S 2010 REVIEW DRAFT REPORT:

ATTACHMENT 15 – JUSTICE SERVICES

September 2009



JUSTICE SERVICES ASSESSMENT ISSUES OF CONCERN

Introduction

The Commonwealth Grants Commission (Commission) has accepted that there is a strong conceptual case that residents of the regions in New South Wales that surround the Australian Capital Territory affect its need to provide justice services.¹

Based on the data supplied to date by the ACT for the 2010 Review, the Commission intends to assess an allowance of 30 per cent of the population of the surrounding areas in NSW in respect of the Territory's police and criminal court expenses. This proportion represents 8 per cent of an expanded ACT population including cross-border residents.² The ACT supports this proposal.

The ACT is concerned, however, with the proposal not to assess two cross-border factors within the justice services assessment, namely:

- corrective services; and
- civil courts.

Additionally, the ACT is also concerned that the proposed criminal courts cross-border factor currently understates the cost impediments imposed by cross-border residents on the Territory.

These outstanding areas of concern and the requested course of action to address these issues are detailed below.

Corrective Services cross-border factor

Background

In February 2009, in response to a request from the Commission, the ACT provided 2006-07 data on the count of all prisoners over the entire financial year.

However, the Commission then requested snapshot data from the ACT (as at 30 June 2008) so that it could analyse ACT and NSW data on a comparable basis, and subsequently, determine whether a net flow of cross-border prisoners to the ACT existed.

NSW provided a prisoner count as at 30 June 2008 that was apparently in line with the ABS publication *4517.0 Prisoners in Australia 2008*. It appears that data for any NSW sentenced ACT resident remandees and those serving period detention orders are not available from NSW.

To assist the Commission with its investigations, the ACT was prepared to provide snapshot data on the number of ACT sentenced NSW resident prisoners, remandees and those serving periodic detention.

The data in the following table were provided, and it can be derived that the proportion of NSW residents:

¹ 2010 Review Draft Assessment, Attachment 15 - Justice Services, paragraph 60, page 334.

² 2010 Review Draft Assessment, Attachment 15 - Justice Services, paragraph 61, page 334.

- in the ACT's remand centres was 7.4 per cent;
- serving periodic detention orders in the ACT was 11.9 per cent; and
- serving jail sentences in the ACT was 4.5 per cent.

Snapshot data on ACT prisoners / offenders– as at midnight 30 June 08

Last Known Address Data	ACT	NSW	Vic	Unknown	Total
ACT in ACT Remand Centres	81	7	2	5	95
ACT PD Prisoners in ACT	59	8	0	0	67
ACT Prisoners in NSW	74	4	1	9	88

Source: Department of Justice and Community Safety.

The Commission has advised that based on data as at 30 June 2008, NSW indicated that there were 34 ACT residents convicted in NSW courts and the ACT advised that there were 19 NSW residents convicted in ACT courts. A comparison of the ACT and NSW data thus indicated that there was a net flow of **+15** prisoners / offenders to NSW.

On this basis the Commission proposes not to assess a cross-border allowance for corrective services.

Snapshot data are not reflective of State circumstances over time

The ACT provided the requested snapshot data in *good faith* to assist the Commission with its investigations into cross-border activity. In this context, the ACT did not expect the Commission to use the snapshot data for determining a cross-border factor as it does not provide a robust basis to do so.

The ACT did not think it necessary to qualify the snapshot data, nor outline the deficiencies that existed. However, it did highlight that the provided data conflicted with the last known address data provided by NSW for those prisoners held in its facilities.

The ACT has previously used point-in-time (snapshot) data as the main measure of determining the number of prisoners and offenders that were housed in or attending correctional facilities. This dataset also captured cross-border information. However, snapshot data were identified to be a poor measure of actual prisoners and offenders over time, and thus a poor measure of annual costs borne.

Snapshot data only capture the number of prisoners and offenders in correctional facilities on a particular day in any given financial or calendar year. That meant the data were deficient, and had high standard errors with the data in terms of estimating the actual number of prisoners / offenders over an entire year or over a longer period.

These deficiencies were identified and in 2003-04, the ACT moved to collect prisoner and offender data over the entire financial year to ensure that accurate data were available.

Corrective services snapshot data is misleading as it overstates or understates the net cross-border flows for the ACT and NSW at any given point in time.

For the ACT, a comparison of prisoner / offender data over the entire year with snapshot data demonstrates just how different the measures are. The snapshot data for 30 June 2008 clearly understates the number of prisoners and offenders housed in the ACT (irrespective of whether they are ACT or NSW residents), and therefore the cost faced for delivering correctional services.

**Comparison of ACT prisoner / offender entire year data (2007-08)
with snapshot data (as at 30 June 2008)**

Last Known Address Data	Entire year data			Snapshot data		
	ACT	NSW	NSW propn. (%)	ACT	NSW	NSW propn. (%)
Prisoners	985	60	5.7%	74	4	5.1%
Community Based Orders	2,042	176	7.9%	140	15	9.7%

Source: Department of Justice and Community Safety.

Evidence highlighting a positive flow of prisoners / offenders from NSW to the ACT

It is understood that NSW does not collect data on cross-border prisoners over the entire financial year, and only snapshot data are available.

Given that snapshot data do not reflect the long run circumstances of the ACT and NSW, the ACT does not accept that there is a net flow of +15 prisoners to NSW. If entire year data capturing prisoners and offenders were available from NSW, the ACT contends that it would show a net flow to the Territory.

This leaves the Commission in somewhat of a quandary because a comparison of data to determine the net flow of prisoners using snapshot data are unreliable³ and data over the entire financial year are unavailable for NSW. It is unacceptable to the ACT for snapshot data to be used when there is clear evidence that over an entire financial year, there is a significant proportion of ACT sentenced prisoners from NSW for which the Territory bears the cost.

The ACT considers that, in the absence of reliable data from NSW, the Commission should assess cross-border prisoner needs for the Territory using the default – the general method.

There are logical grounds for assessing a positive net flow of prisoners and offenders from NSW to the ACT. In this context the Commission needs to ‘reality test’ the proposed approach as:

- the net flow for all other cross-border factors, totalling approximately \$58 million per annum, is to the ACT;

³ Snapshot data are unreliable in the sense that they do not capture the long run circumstances and costs of the States.

- the ACT's population size is small relative to NSW, therefore relatively fewer ACT residents are charged with an offence in NSW, compared to NSW residents charged with an offence in the ACT:
 - over the period 2003-04 to 2007-08, 1,004,298 lodgements were made to NSW criminal courts compared to 32,299 lodgements made to the ACT's criminal courts;⁴
- the ACT has the lowest per capita number of prisoners in Australia, hence it is unlikely that there could be a net flow of prisoners to NSW:
 - in 2007-08, the imprisonment rate in NSW was 179.5 per cent compared to the ACT's rate of 68.3 per cent;⁵
- the ACT's lower levels of Indigeneity; fewer unemployed; and more higher SES persons relative to NSW suggest the net flow of prisoners would be to the ACT:
 - the ratio of crude Indigenous/non-Indigenous imprisonment rate for NSW was 16.9 compared to 12.7 for the ACT;⁶ and
- in the absence of NSW data, the ACT's community based orders (CBOs) data also clearly highlight that there is a net flow of offenders from NSW to the ACT.

Way Forward

The Commission has, in the 1999 and 2004 Reviews, assessed a positive net flow of prisoners and other offenders from NSW to the ACT. In light of the existence of the conceptual case of a positive flow of prisoners and offenders to the ACT, the Commission should, on balance, continue to assess a cross-border disability for prisoners using the general cross-border method.

The data collected on an 'over the entire year' basis, for the years of the 2010 Review, show that the proportion of NSW residents:

- serving jail sentences in the ACT was 6.3 per cent; and
- serving community based orders (CBOs) was 7.7 per cent per cent.

These data are conservative as clients with an unknown address were all allocated to the ACT (none were considered to be NSW residents).

⁴ *Report of Government Services 2009*, Productivity Commission, Table 7A.1.

⁵ *Report of Government Services 2009*, Productivity Commission, Table 8A.4.

⁶ *Ibid.*

Entire year data on ACT prisoners / offenders 2006-07 to 2008-09

Last Known Address Data	2006-07			2007-08			2008-09		
	ACT	NSW	NSW propn. (%)	ACT	NSW	NSW propn. (%)	ACT	NSW	NSW propn. (%)
Prisoners	949	58	5.8%	985	60	5.7%	886	73	7.6%
Community Based Orders	1,888	139	6.9%	2,042	176	7.9%	2245	201	8.2%

Source: Department of Justice and Community Safety.

It is noted that the prisoners data are gross figures, and do not adjust for any impact of ACT residents sentenced in NSW. Deducting 34 ACT prisoners convicted in NSW courts in 2007-08, based on NSW snapshot data, could suggest that the net flow is +26 prisoners to the ACT, equivalent to a cross-border factor of 2.6 per cent.

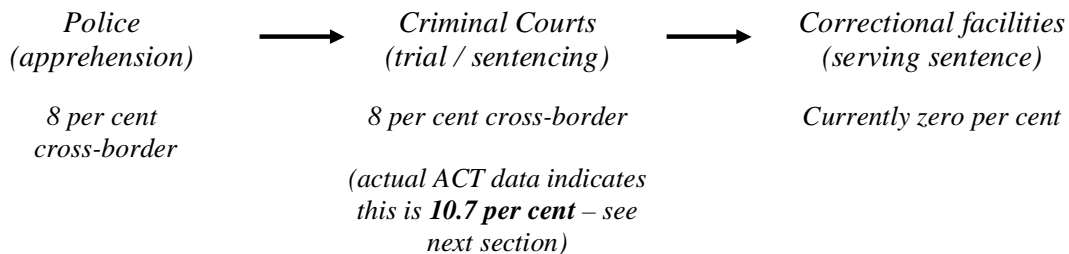
Whilst acknowledging that data ‘over the entire year’ and snapshot data are not comparable, the comparison provides a useful starting point for determining a cross-border factor for the ACT.

Additionally, JACS has found that incentives exist for NSW residents to report false ACT addresses. In many cases the addresses provided are the commercial addresses of their legal representation.

The reasons for providing a false address typically surround the desire to be housed in an ACT correctional facility which may be closer to their family and friends.

The data sets also identified a large number of non-responses or ‘unknown’ data entries for residential address (around 15 per cent of all offenders have a residential listing as ‘unknown’). This may occur for a number of reasons such as where offenders were previously homeless or itinerant, or as detailed above, may be an attempt to ensure that they are housed in an ACT prison or a NSW prison geographically nearby to the ACT.

Taking all of these matters into consideration, it is considered that the Commission’s approach to assessing a cross-border factor of 8 per cent for both police and criminal courts functions should also be used as an indicator for determining the net flow of prisoners. This is because of the flows between police, criminal courts and incarceration / attendance at correctional facilities.



There is no reason to believe that the proportion of NSW persons sentenced in the ACT and being housed in / attending correctional facilities would be any different to the 8 and 10.7 per cent of cross-border residents being apprehended by police and being sentenced by the ACT's criminal courts respectively.

As such, given the 8 per cent cross-border factor being assessed for police, and a cross-border factor of 10.7 per cent for criminal courts, as well as the underestimation of NSW residents sentenced to prison by the ACT (due to provision of false addresses), it is considered that a judgement based net cross-border factor of +6 per cent to the ACT for prisoners is reasonable.

Furthermore, as it appears that NSW has not provided any data on the numbers of ACT offenders serving CBOs in NSW, a cross-border factor of 7.7 per cent should also be assessed for the ACT for this component of the justice services assessment.

Criminal and Civil courts cross-border factors

In the 2004 Review, the Commission decided to assess an economic environment factor for the civil courts component of the Administration of Justice category using actual court lodgement data. This was because while data on the numbers of individuals and all businesses remained available, they were not disaggregated by size of business and were not regularly updated.

The ACT raised the issue of a lack of a specific civil courts cross-border factor as part of the 2004 Review. However, the Commission correctly advised that for civil courts:

*“Cross-border was not assessed in the 2004 Review because actual lodgements data were used in the economic environment factor. These data included the cross border effect.”*⁷

The proposed 2010 Review draft report does not include a civil courts cross-border factor because:

*“Since there are also no data to suggest that there is a net cross-border use of ACT civil courts by New South Wales residents, no assessment is required for prisons or civil courts.”*⁸

Given the significant changes made to the justice services assessment, the lack of a cross-border factor for civil courts has gone unnoticed until this point in time.

The ACT considers that just as in the 1999 and 2004 Reviews, a strong conceptual case remains for assessing a cross-border factor for civil courts.

JACS has been collecting cross-border courts data since the 1999-00 financial year, and as part of the whole-of-government exercise to improve this data collection, the reliability of these data have been increasing over time. The data collection exercise required JACS to provide cross-border data based on the 2004 Review Administration of justice category structure. That is, cross-border data for criminal and civil courts.

⁷ 2004 Review State Revenue Sharing Relativities, Working Papers, Volume 6, paragraph 101, page 75.

⁸ Ibid.

Consistent with the three years of the 2010 Review, the following cross-border data are provided. The data show that the proportion of NSW residents using the ACT's courts services over the period was 10.5 per cent (1,414 NSW residents / 13,520 clients).

Cross-border use of the ACT's Courts – average of 2006-07 to 2008-09

ACT service accessed by NSW residents	Total no. of clients using service	Total no. of NSW residents using service	Cross-border proportion (%)
(a)	(b)	(c)	(d) = (c) / (b)
Criminal Courts Component	6,495	693	10.7 %
Civil Courts Component	7,025	721	10.3 %
Total	13,520	1,414	10.5 %

Source: Department of Justice and Community Safety, September 2009.

The data are also provided on an annual basis for each of the three years at **Attachment A**.

The Courts provide data annually for the Report on Government Services (ROGS) and to the Australian Bureau of Statistics for their criminal data series. The courts case management system (MAX) for civil and criminal data is updated daily, checked monthly and the data are rigorously assessed as part of the ROGS and ABS processes annually.

The cross-border figures are generated from MAX and are classified in the report as persons with an 'interstate address'. However, a query has been applied to the data so that only NSW users are picked up, and other interstate users are excluded.

Also included is a small number of defendants whose address is described as 'unknown'. ACT Courts has ascribed 25 per cent of unknown addresses as interstate addresses which the Courts believe to be a fair proportion. The use of the figure of 25 per cent is considered to be conservative as for criminal courts over the period 2006-07 to 2008-09, on average, this represents just 31 persons allocated to NSW (0.47 per cent of total clients) and for civil courts this is equivalent to 92.5 persons (1.3 per cent of total clients).

The Commission has adopted the use of a simplified general model in cases where the cross-border data are not available or are unreliable. The ACT Courts consider the data to be reliable, whilst noting that the data have been adjusted for the small proportion of unknown addresses.

As such, the ACT considers that actual data should be used by the Commission to determine the criminal and civil cross-border factors. If the Commission does not consider the data to meet its required standards, then it is proposed that the simplified general model be used by the Commission using the ACT Courts data as the benchmark for determining the cross-border factor:

- actual criminal courts data indicate that the cross-border proportion is 10.7 per cent compared to the figure of 8.0 per cent currently being used by the Commission; and
- actual civil courts data indicate that the cross-border proportion is 10.3 per cent compared to the figure of 0 per cent currently being used by the Commission.

Federal Financial Relations Unit
Department of Treasury
Australian Capital Territory Government

ANNUAL COURTS CROSS-BORDER DATA

Cross-border use of the ACT's Courts – 2006-07

ACT service accessed by NSW residents	Total no. of clients using service	Total no. of NSW residents using service	Cross-border proportion (%)
(a)	(b)	(c)	(d) = (c) / (b)
Criminal Courts Component	6,240	745	11.9 %
Civil Courts Component	6,827	886	13.0 %
Total	13,067	1,631	12.5 %

Source: Department of Justice and Community Safety, September 2009.

Cross-border use of the ACT's Courts – 2007-08

ACT service accessed by NSW residents	Total no. of clients using service	Total no. of NSW residents using service	Cross-border proportion (%)
(a)	(b)	(c)	(d) = (c) / (b)
Criminal Courts Component	6,562	709	10.8 %
Civil Courts Component	5,959	617	10.4 %
Total	12,521	1,326	10.6 %

Source: Department of Justice and Community Safety, September 2009.

Cross-border use of the ACT's Courts – 2008-09

ACT service accessed by NSW residents	Total no. of clients using service	Total no. of NSW residents using service	Cross-border proportion (%)
(a)	(b)	(c)	(d) = (c) / (b)
Criminal Courts Component	6,682	625	9.4 %
Civil Courts Component	8,290	659	7.9 %
Total	14,972	1,284	8.6 %

Source: Department of Justice and Community Safety, September 2009.