




Australian Government  
Commonwealth Grants Commission

# 2025 Methodology Review

## Justice Consultation Paper

June 2023

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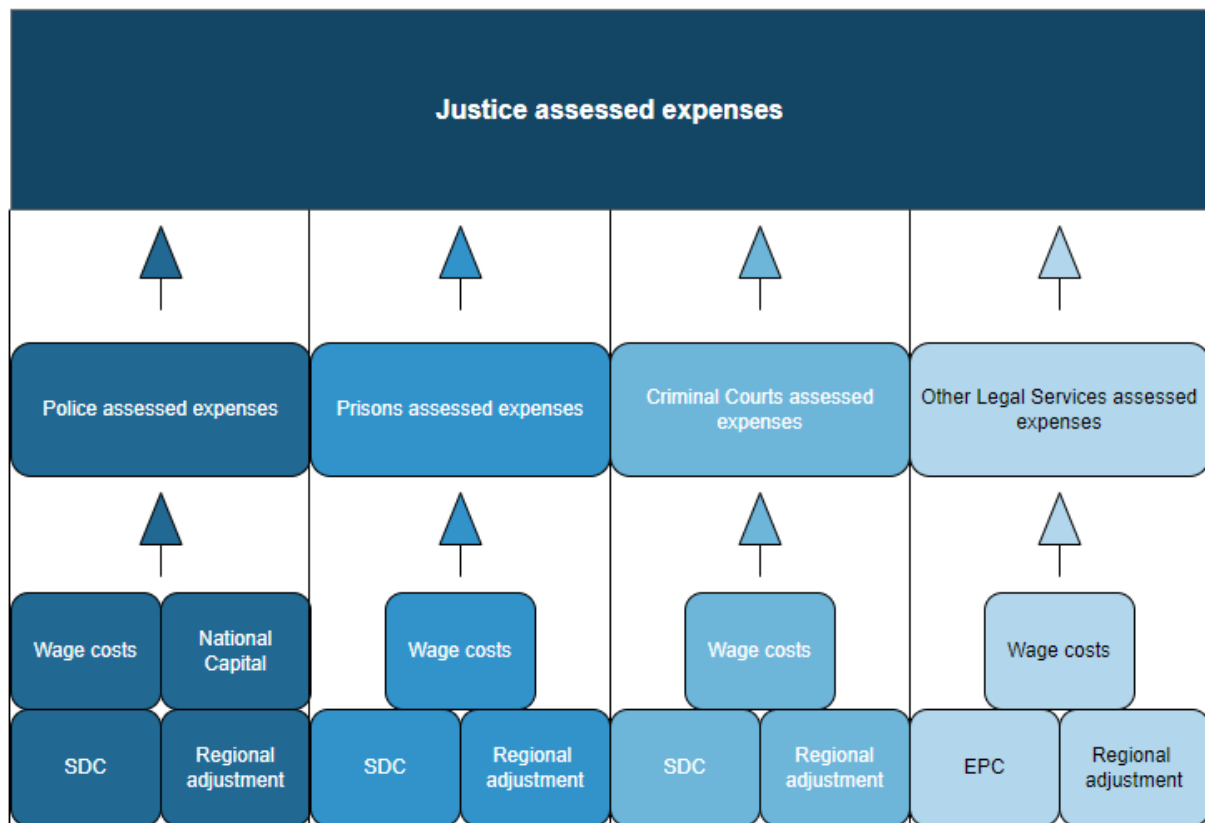
## Overview of category

- 1 The justice assessment covers a range of state expenses related to policing, the court system and prisons. Justice expenses comprise 4 components:
  - Police
    - Crime prevention and investigation, road safety, maintenance of social order, promoting community safety – including through safety programs, policing major events and assisting court prosecutions.
  - Criminal courts
    - Costs associated with criminal courts, public prosecution, legal aid related to criminal courts and other legal services related to criminal courts.
  - Other legal services
    - Court and legal expenses not included in criminal courts. These include civil courts, Attorney-General departments, crown solicitors and law reform commissions.
    - The Commission uses budgetary information and advice provided by states to calculate the split between criminal courts and other legal services.
  - Prisons
    - The operation of government and private prisons and other places of secure detention for convicted people and alleged offenders. This includes juvenile detention, community-based corrections, and the administration of parole, community service and home detention.

## Current assessment method – 2020 Review

- 2 In the 2020 Review, the Commission reworked the police, prisons and criminal courts components and introduced a new component, called other legal services.
- 3 The drivers of GST distribution in each of the 4 justice components are shown in Figure 1 below.

**Figure 1 Drivers of expenses for the justice assessment**



Note: SDC stands for socio-demographic composition and EPC stands for equal per capita.

Source: Commission calculations

### Socio-demographic composition

- 4 Socio-demographic composition assessments take account of some population groups using services more than other population groups. These assessments may also apply a cost weight to recognise that services for some population groups are more expensive (per user) than for other groups.
- 5 Socio-demographic composition calculations are used in the police, criminal courts and prisons components.
- 6 The Commission aggregates state-provided data to create national average use weights (by various socio-demographic composition groups). These national average use weights, when applied to state estimated resident populations, provide a policy neutral estimate of state expenses for justice services.
- 7 The justice assessment includes socio-demographic composition population groups broken down by Indigenous status, age, remoteness and socio-economic status for:
  - offenders in the police component
  - defendants in the criminal courts component
  - prisoners in the prisons component.

8 Table 1 and Table 2 below show the characteristics of the groups used in each justice component calculation:

**Table 1 Police: socio-demographic composition groups**

Offenders				
Indigenous status	Age	Socio-economic status <sup>(a)</sup>		
		First Nations <sup>(b)</sup>	or	Non-Indigenous
First Nations	0-14	Most disadvantaged (40%)		Most disadvantaged (20%)
Non-Indigenous	15-24	Middle quintile (20%)		2 <sup>nd</sup> most disadvantaged (20%)
	25-44	Least disadvantaged (40%)		Middle quintile (20%)
	45-64			2 <sup>nd</sup> least disadvantaged (20%)
	65+			Least disadvantaged (20%)

Notes:

(a) An offender's Indigenous status determines the socio-economic status index the Commission will apply. For First Nations offenders, the Commission uses the Indigenous Relative Socioeconomic Outcomes index. For non-Indigenous offenders, the Commission uses the non-Indigenous socio-economic index for areas index.

(b) In the 2020 Review, the Commission decided that there would be 3 First Nations socio-economic status groups for offenders, and 5 socio-economic status groups for defendants and prisoners.

Source: Commission decision.

**Table 2 Criminal courts and prisons: socio-demographic composition groups**

Defendants and prisoners					
Indigenous status	Age	Remoteness	Socio-economic status (a) (b)		
			First Nations (c)	or	Non-Indigenous
First Nations	0-14	Major cities	Most disadvantaged (20%)		Most disadvantaged (20%)
Non-Indigenous	15-24	Inner regional	2 <sup>nd</sup> most disadvantaged (20%)		2 <sup>nd</sup> most disadvantaged (20%)
	25-44	Outer regional	Middle quintile (20%)		Middle quintile (20%)
	45-64	Remote	2 <sup>nd</sup> least disadvantaged (20%)		2 <sup>nd</sup> least disadvantaged (20%)
	65+	Very remote	Least disadvantaged (20%)		Least disadvantaged (20%)

Notes:

(a) An offender's Indigenous status determines the socio-economic status index the Commission will apply. For First Nations offenders, the Commission uses the Indigenous Relative Socioeconomic Outcomes index. For non-Indigenous offenders, the Commission uses the non-Indigenous socio-economic index for areas index.

(b) The Commission uses court defendant socio-economic status as a proxy for prisoner socio-economic status (as socio-economic status data are not available for prisoners.)

(c) In the 2020 Review, the Commission decided that there would be 3 First Nations socio-economic status groups for offenders, and 5 socio-economic status groups for defendants and prisoners.

Source: Commission decision.

## Regional costs

9 The assessment of regional costs captures the additional costs of providing justice services to populations living in some remote areas.

- 10 In police, the regional cost adjustment captures the additional costs of police being the primary face of government in remote areas, and the community-based aspect of policing (such as being present at large events). The regional cost weights are calculated using a regression, which uses number of offences and estimated resident population by the remoteness classifications to predict police expenses for each police district.<sup>1</sup>
- 11 In criminal courts, a regional cost gradient is calculated using magistrate court expenses per finalisation. The other legal services assessment applies this regional cost adjustment to the civil courts portion of other legal services expenses.
- 12 In prisons, a regional adjustment is used to recognise the additional cost of service delivery in remote areas. The Commission uses a regression, which uses remoteness and prisoner counts by security classification to predict expenses in each corrective centre. The regression's outputs inform the calculation of a regional cost gradient. In the 2020 Review, this gradient recognised a 17% higher cost in remote areas.

### **Wage costs**

- 13 The Commission applies its general method for measuring the influence of wage costs. The Commission's approach to measuring wage costs is described in the wage costs assessment consultation paper.

### **National Capital**

- 14 The national capital factor recognises the additional cost that the ACT incurs due to its legally mandated use of the Australian Federal Police.
- 15 This driver will be covered in the national capital assessment consultation paper, to be released in October 2023.

### **Data used in the assessment**

- 16 Data were provided by states at the commencement of the 2020 Review. State data were not updated each year because they are heavily disaggregated. Collecting them posed a significant administrative burden on states, and collating and processing them is a time consuming task for the Commission.

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<sup>1</sup> States have indicated the data used in the police and prisons regressions are confidential; therefore the Commission is unable to share the data used to calculate the regression. Descriptions of the method used to measure the regional costs of prisons are outlined in the Final Report ([Volume 2 Chapter 19 - Justice of the Report on GST Revenue Sharing Relativities, 2020 Review](#)) p. 260-261, 278

17 Table 3 below shows the data used in each component, the source and whether they are updated yearly or held constant for the review period.

**Table 3 Data used in each component of the justice assessment**

Data name	Data provider	Held constant	Updated yearly
<b>Police component</b>			
Police costs by district	States	✓	✗
Offender counts by SDC	States	✓	✗
Police proceedings counts	ABS	✓	✗
ERP counts by SDC (for use rates)	ABS	✓	✗
ERP counts by SDC (for assessed expenses)	ABS	✗	✓
Geographical data to map state offender and cost data into remoteness areas	ABS	✓	✗
<b>Criminal courts component</b>			
Defendant counts by SDC	States	✓	✗
Defendants finalised	ABS	✓	✗
Court costs by region	States	✓	✗
Magistrate court finalisations	RoGS	✓	✗
Magistrate court costs	RoGS	✓	✗
Criminal court costs	RoGS	✓	✗
ERP counts by SDC (for use rates)	ABS	✓	✗
ERP counts by SDC (for assessed expenses)	ABS	✗	✓
Geographical data to map state offender and cost data into remoteness areas	ABS	✓	✗
<b>Other legal services component</b>			
Civil court costs	RoGS	✗	✓
Government Finance Statistics data on other legal services	ABS	✗	✓
ERP counts by region	ABS	✗	✓
<b>Prisons component</b>			
Prison location and cost by security classification (maximum, high, low)	States	✓	✗
Juvenile detainee counts by SDC	AIHW	✗	✓
Prisoner counts by SDC	ABS	✗	✓
ERP counts by SDC (for use rates and assessed expenses)	ABS	✗	✓
Geographical data to map state offender and cost data into remoteness areas	ABS	✓	✗

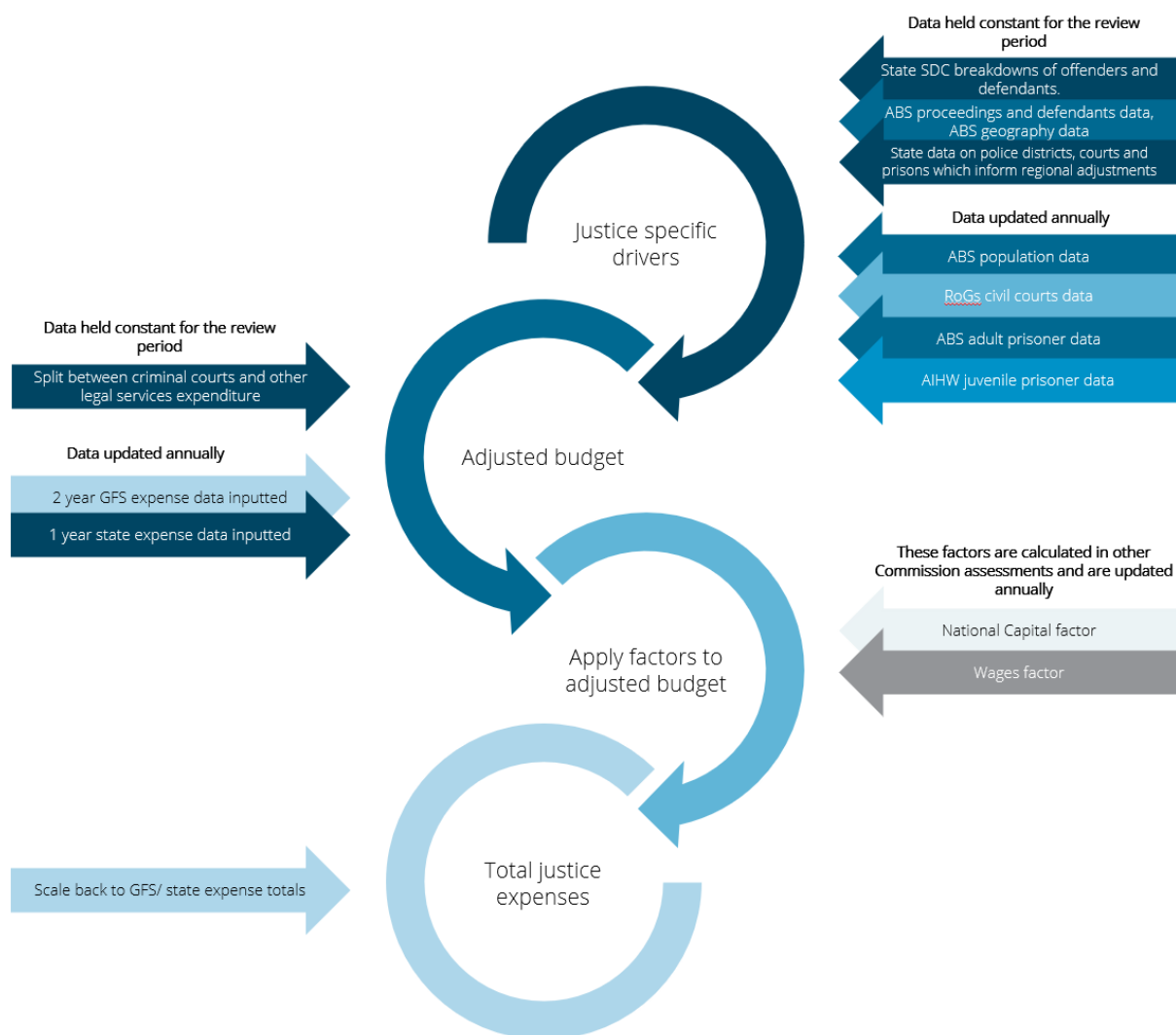
Note: ABS - Australian Bureau of Statistics; RoGS - Productivity Commission, Report on Government Services; AIHW - Australian Institute of Health and Welfare.

Source: Justice 2020 Review method.



18 Figure 2 below demonstrates where data are sourced and used in justice:

**Figure 2 Data in the justice assessment**



Source: Commission calculations.

## Category and component expenses

19 Justice is assessed in 4 components:

- police
- criminal courts
- other legal services
- prisons.

20 Table 4 shows the structure of the justice assessment:

**Table 4 Structure of the justice assessment**

Component	Component expense	Driver	Influence measured by driver
\$m			
Police	13,446	SDC	Recognises that the age, Indigenous status, remoteness and socio-economic status influence the use and costs of services
		Regional costs	Recognises that the cost of providing policing services increases as the level of remoteness increases
		Wage costs	Recognises differences in wage costs between states
		National Capital	Recognises the higher costs of the ACT using federal police
Criminal Courts	2,813	SDC	Recognises that the age, Indigenous status, remoteness and socio-economic status influence the use and costs of services
		Regional costs	Recognises the additional costs of providing services in sparsely populated and remote areas
		Wage costs	Recognises differences in wage costs between states
Other legal services	2,591	EPC	Allocates expenses equal to a national per capita amount
		Regional costs	Recognises the additional costs of providing some services in sparsely populated and remote areas
		Wage costs	Recognises differences in wage costs between states
Prisons	7,135	SDC	Recognises that the age, Indigenous status, remoteness and socio-economic status influence the use and costs of services
		Regional costs	Recognises the additional costs of providing services in remote areas
		Wage costs	Recognises differences in wage costs between states

Source: Commission calculation, 2023 Update.

21 Table 5 outlines that total justice expenses makes up around 9% to 10% of the total assessed state spending annually.

**Table 5 Total justice expenses**

	2018-19	2019-20	2020-21	2021-22
Total expenditure (\$m)	22,137	23,389	24,576	25,985
Proportion of total expenditure (%)	9.3	10.3	9.7	9.0

Source: Commission calculation, 2023 Update.

## GST distribution in the 2023 Update

22 Table 6 shows the GST impact (distribution from equal per capita) of the justice assessment. It distributed just under \$1.5 billion, or \$57 per capita, away from an equal per capita distribution in the 2023 Update.

**Table 6 GST impact of the justice assessment, 2023 Update**

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total effect
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Police	-204	-467	176	170	17	84	-67	291	737
Criminal Courts	-8	-93	26	16	5	5	-16	65	117
Other legal services	7	-4	-7	9	-5	-2	2	1	19
Prisons	-70	-491	147	122	-19	13	-47	344	626
<b>Total (\$m)</b>	<b>-275</b>	<b>-1,055</b>	<b>342</b>	<b>317</b>	<b>-2</b>	<b>100</b>	<b>-127</b>	<b>700</b>	<b>1,499</b>
<b>Total (\$pc)</b>	<b>-33</b>	<b>-156</b>	<b>63</b>	<b>111</b>	<b>-1</b>	<b>171</b>	<b>-270</b>	<b>2,694</b>	<b>57</b>

Source: Commission calculation, 2023 Update.

23 Service provision arrangements, the scope of the adjusted budget and the underlying conceptual cases for the assessment methods are explained in [Volume 2 Chapter 19 - Justice of the Report on GST Revenue Sharing Relativities, 2020 Review](#).

## What has changed since the 2020 Review?

24 During the COVID-19 outbreak there was a change in service provision for the enforcement and adjudication of crime. There have also been increases in the costs of juvenile detention, changes to the minimum age of criminal responsibility and legislative changes to court structures. These issues are discussed below.

### COVID-19 affected the way states provided justice services

25 The outbreak of COVID-19, and states' responses to it, temporarily changed the nature of justice service provision in states. During this time, resources were reallocated to enforce public health directives and lockdowns, altering the propensity of certain crimes being committed and causing some court proceedings to move online or be suspended.

### State legislation and spending on juvenile detainees has changed

26 The cost of juvenile detention has increased since the 2020 Review. Based on the *Report on Government Services 2023*, the cost of juvenile detention was \$517 million

in 2015–16, increasing to \$816 million in 2021–22. This was driven mainly by increasing costs in Victoria and Queensland.<sup>2</sup>

27 At the time of the 2020 Review, the minimum age of criminal responsibility was 10 in all states. However, in 2022, the Northern Territory increased its minimum age of criminal responsibility from 10 years of age to 12.<sup>3</sup> Other states are also planning to increase their minimum age:

- Victoria plans to raise its minimum age to 12
- Tasmania plans to raise its minimum age to 14
- The ACT plans to increase its minimum age to 12 and then to 14 within 2 years.<sup>4</sup>

28 The minimum age of criminal responsibility for the other states remains at 10 years of age.

29 Increasing the age of criminal responsibility could mean there would be slightly fewer juvenile detainees included in the prisons assessment. In 2021–22, there were 1.4 juvenile detainees under the age of 12 and 123.6 aged 12 to 14, in detention on an average day.<sup>5</sup>

## **There has been a change in the structure of the court system**

30 In 2021, the Federal Circuit and Family Court of Australia was established.<sup>6</sup> This reform combined the Family Court of Australia and the Federal Circuit Court of Australia. This has not changed the way states fund court services or the types of services that states provide.

31 The Federal Circuit and Family Court of Australia is almost exclusively federally funded.<sup>7</sup> Western Australia manages the budget of its Family Court, with the operating costs principally funded by a grant from the Commonwealth.

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<sup>2</sup> Productivity Commission, *Report on Government Services 2023 (Community services)*, 2023, Table 17A.21, see <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

<sup>3</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2021–22*, 2023, p 48, see <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/contents/summary>

<sup>4</sup> The ACT Government website, *Raising the Minimum Age of Criminal Responsibility*, 2022 see [Raising the Minimum Age of Criminal Responsibility - Chief Minister, Treasury and Economic Development Directorate \(act.gov.au\)](#); ABC News, *Tasmania set to be first jurisdiction to raise minimum age of children in youth detention*, 2022, see [Tasmania set to be first jurisdiction to raise minimum age of children in youth detention - ABC News](#); ABC News, *Victoria to raise the age of criminal responsibility to 12, youth advocates push for 14*, 2023, see [Victoria to raise the age of criminal responsibility to 12, youth advocates push for 14 - ABC News](#)

<sup>5</sup> The Australian Institute of Health and Welfare, *Youth justice in Australia 2021–22* (Table S76A: Young people in detention on an average day by age, sex and Indigenous status, Australia, 2021–22), 2023, see [Youth justice in Australia 2021–22, Data - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)

<sup>6</sup> Federal Circuit and Family Court of Australia, *About the Court*, see [About the Court | Federal Circuit and Family Court of Australia \(fcfcoa.gov.au\)](#)

<sup>7</sup> Productivity Commission, *Report on Government Services 2023 (Justice)*, 2023, Table 7A.12, see <https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice/courts>

## Implications for assessment

- 32 The Commission has identified 3 issues for consideration. These are:
- to what extent has the experience of COVID-19 challenged the underlying assumptions of the justice assessment?
  - are reliable data available to update the assessment of justice needs?
  - should the justice model recognise the additional costs associated with juvenile detention?

### To what extent has the experience of COVID-19 challenged the underlying assumptions of the justice assessment?

#### Impact of COVID-19 on justice services

- 33 The COVID-19 pandemic altered the nature of justice services provided by states. To ensure public safety, all state governments at some point ordered lockdowns and introduced new public health safety laws and directives.

#### Police and offenders

- 34 Lockdowns and the introduction of public health directives altered the opportunities and conditions for crime in Australia. This influenced the propensity of specific crimes, with some increasing and others falling. For example:
- acts intended to cause injury and miscellaneous crime both increased during the COVID-19 affected years<sup>8</sup>
  - conversely, illicit drugs charges and thefts decreased during this period.<sup>9</sup>
- 35 The Commission explored whether the offender population profile from the COVID-19 ‘lockdown’ years (2020–21 and 2021–22) was different to those obtained from the data provided by states for 2015–16 and 2016–17. The offender population profile determines the size of the use rates that are applied in the police assessment.
- 36 ABS offenders data by Indigenous status and age (excluding penalty notices, such as COVID-19 related fines), for selected states, were available to explore the offender

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<sup>8</sup> The Australian Bureau of Statistics, *Recorded Crime - Offenders (Table 1: Offenders, Principal Offence (divisions and selected sub divisions), 2008–09 to 2021–22)*, 2023, see <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>

<sup>9</sup> The Australian Bureau of Statistics, *Recorded Crime – Offenders (Table 1: Offenders, Principal Offence (divisions and selected sub divisions), 2008–09 to 2021–22)*, 2023, see <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>

population profiles.<sup>10</sup> These are shown in Table 7, Table 8 and Table 9. However, the ABS data has some limitations.<sup>11</sup>

- 37 Table 7 shows a steady decrease in the number of non-Indigenous people recorded by police as having offended up to 2019–20, with larger decreases in 2020–21 and 2021–22. The number of First Nations people recorded as having offended increased steadily up to 2019–20, with larger increases in 2020–21 and 2021–22.
- 38 Table 8 shows a fairly stable percentage change from 2015–16 for First Nations people recorded as having offended in the 0–14 and 15–24 years age groups. However, there were increases for the 25–44, 45–64 and 65+ age groups, and particularly in 2020–21 for the 65+ group.

**Table 7 The number of people recorded as having offended by Indigenous status, 2015–16 to 2021–22**

Indigenous status	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Number</b>							
First Nations	37,905	38,669	38,436	39,458	40,220	41,999	43,776
Non-Indigenous	158,778	156,254	151,255	152,111	149,648	137,490	129,769
<b>Percentage change from 2015-16</b>							
First Nations	n/a	2%	1%	4%	6%	11%	15%
Non-Indigenous	n/a	-2%	-5%	-4%	-6%	-13%	-18%

Note: The data excludes offenders with a penalty notice. The majority of COVID-19 related offences were penalty notices.  
Source: ABS Recorded Crime – Offenders, 2015–16 to 2021–22.

<sup>10</sup> Selected offenders data excludes offenders with a penalty notice as their principal method of proceeding. The ABS notes the majority of COVID-19 related proceedings were penalty notices. The Australian Bureau of Statistics, *Recorded Crime – Offenders of COVID-19 related offences (Table 3 COVID-19 related proceedings(a)(b), Method of proceeding, Selected states and territories, 2019-20 to 2021-22)*, 2023, see <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#data-downloads>

<sup>11</sup> The ABS *Recorded Crime – Offenders data (Indigenous status, selected states and territories) 2020–21 to 2021–22*, contained a number of limitations, including that the data was only available for 5 states (New South Wales, Queensland, South Australia, the ACT and the Northern Territory) and that data users were advised not to make comparisons between the 2020–21 and 2021–22 reference periods for Indigenous status data in New South Wales and South Australia data due to variation in the quality of this data between these reference periods. The Australian Bureau of Statistics, *Recorded Crime – Offenders (Table 25: Selected Offenders by Indigenous status and selected states and territories, 2020-21 to 2021-22)*, 2023, see [Recorded Crime - Offenders, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/2021-22-financial-year)

**Table 8 The number of First Nations people recorded as having offended by age, 2015–16 to 2021–22**

Age group	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Number</b>							
0-14	3,225	3,397	3,368	3,133	2,950	3,004	3,262
15-24	13,493	13,192	13,038	13,165	12,868	12,860	13,307
25-44	17,018	17,750	17,456	18,408	19,323	20,563	21,160
45-64	4,063	4,183	4,444	4,606	4,929	5,378	5,849
65+	106	147	130	146	150	194	198
<b>Percentage change from 2015-16</b>							
0-14	n/a	5%	4%	-3%	-9%	-7%	1%
15-24	n/a	-2%	-3%	-2%	-5%	-5%	-1%
25-44	n/a	4%	3%	8%	14%	21%	24%
45-64	n/a	3%	9%	13%	21%	32%	44%
65+	n/a	39%	23%	38%	42%	83%	87%

Note: The data excludes offenders with a penalty notice. The majority of COVID-19 related offences were penalty notices.  
Source: ABS Recorded Crime – Offenders, 2015–16 to 2021–22.

**Table 9 The number of non-Indigenous people recorded as having offended by age, 2015–16 to 2021–22**

Age group	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Number</b>							
0-14	6,766	6,733	6,928	6,251	6,291	6,487	6,188
15-24	54,301	51,234	48,155	46,739	43,419	37,442	33,940
25-44	73,048	72,877	70,612	71,535	71,472	66,010	61,968
45-64	22,308	23,037	23,150	24,917	25,569	24,629	24,631
65+	2,355	2,373	2,410	2,669	2,897	2,922	3,042
<b>Percentage change from 2015-16</b>							
0-14	n/a	0%	2%	-8%	-7%	-4%	-9%
15-24	n/a	-6%	-11%	-14%	-20%	-31%	-37%
25-44	n/a	0%	-3%	-2%	-2%	-10%	-15%
45-64	n/a	3%	4%	12%	15%	10%	10%
65+	n/a	1%	2%	13%	23%	24%	29%

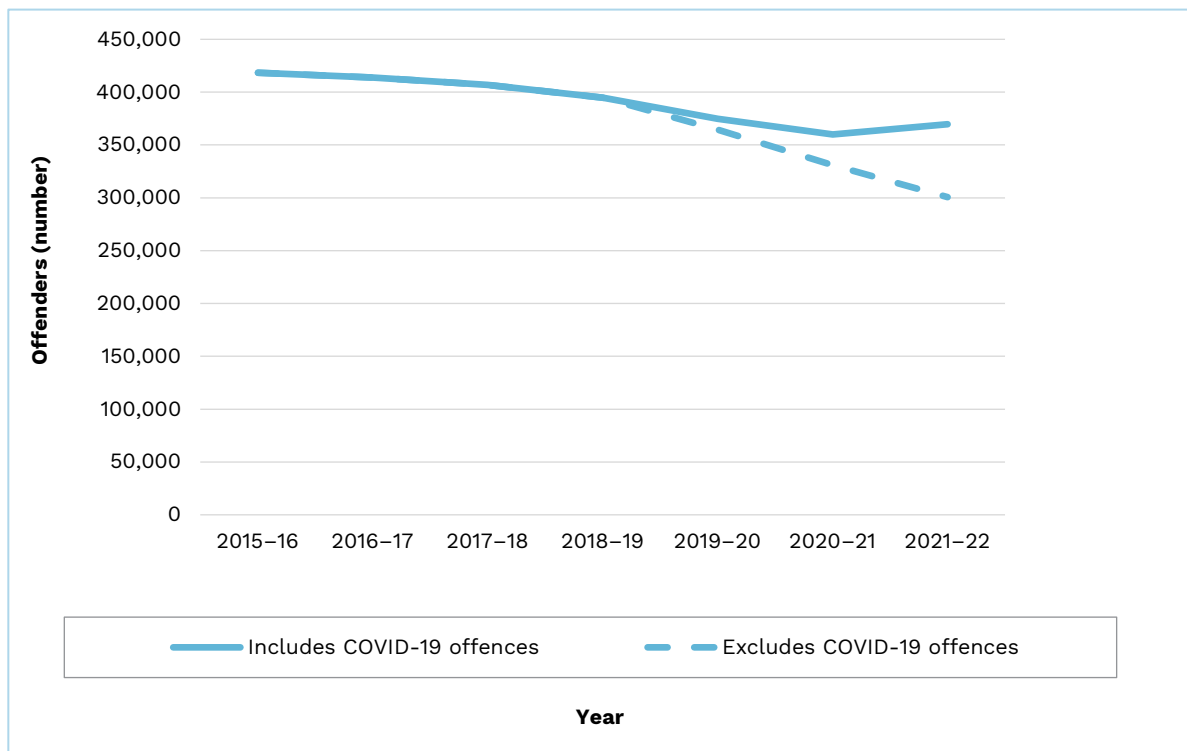
Note: The data excludes offenders with a penalty notice. The majority of COVID-19 related offences were penalty notices.  
Source: ABS Recorded Crime – Offenders, 2015–16 to 2021–22.

- 39 Table 9 shows a decrease in the number of non-Indigenous people being recorded as having offended for the 0–14, 15–24 and 25–44 year age groups. The 15–24 year group showed the largest decrease, particularly in 2020–21. Increases in offenders occurred in the 45–64 and 65+ groups.
- 40 These changes suggest the profile of offenders, who commit crimes other than penalty notices, has changed since 2015–16. It also shows certain offender population groups experienced larger changes in 2020–21 and 2021–22 (the most COVID-19 affected years). These include:

- an increase in the number of First Nations people being recorded as having offended
- a decrease in the number of non-Indigenous people being recorded as having offended
- an increase in the number of First Nations people in the 65+ age group being recorded as having offended
- a decrease in the number of non-Indigenous people in the 15-24 age group being recorded as having offended.

41 The total number of offenders has been falling since 2015-16. These trends are demonstrated in Figure 3 below. However, data show an increase in offenders in 2021-22, which the ABS said was largely driven by the increase in COVID-19 related offences in New South Wales.<sup>12</sup> The ABS also noted most COVID-19 related proceedings (except in the ACT) were non-court actions such as penalty notices.<sup>13</sup> A number of COVID-19 related offences were also noted in 2019-20 and 2020-21.

**Figure 3 Number of offenders – state totals**



Source: ABS, Recorded Crime – Offenders, 2021-22, (Table 2) and Offenders of COVID-19 related offences (Table 1)

42 Government Finance Statistics data showed a steady, rather than a sharp, increase in police expenses since 2015-16 (shown in Figure 4.) This suggests that, rather than

<sup>12</sup> The Australian Bureau of Statistics, *Recorded Crime – Offenders*, 2023, see <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>

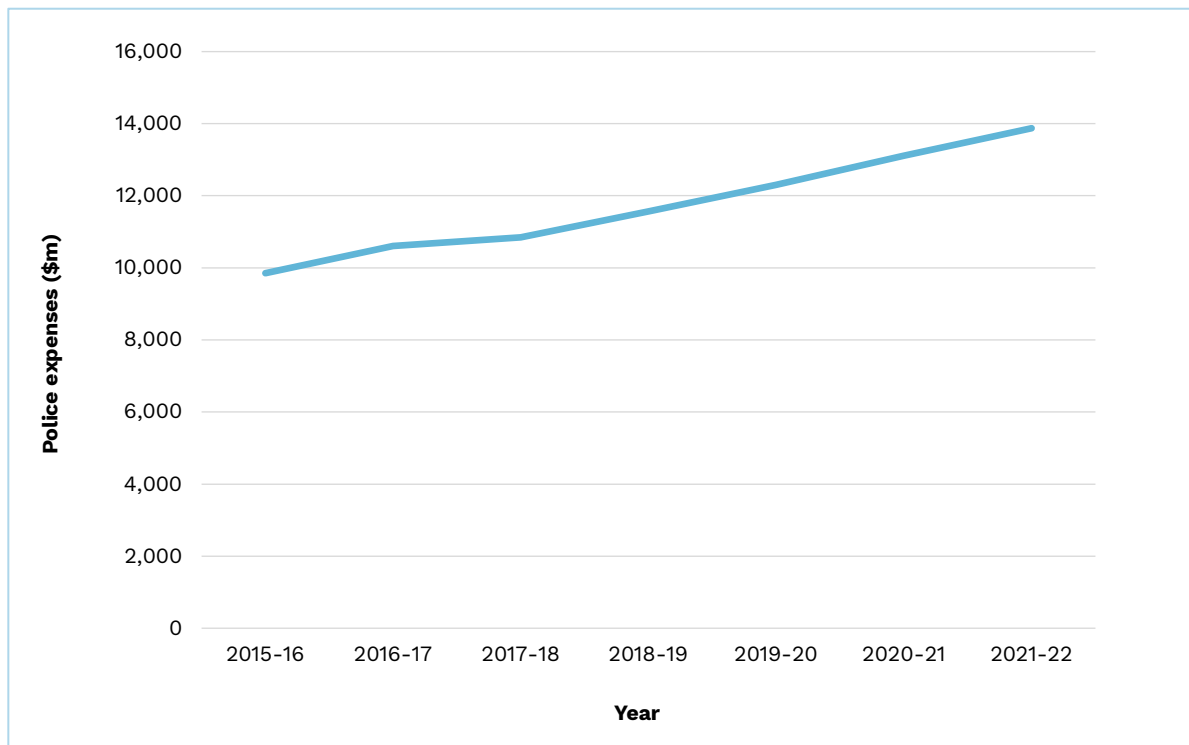
<sup>13</sup> The Australian Bureau of Statistics, *Recorded Crime – Offenders of COVID-19 related offences* (Table 3 COVID-19 related proceedings, Method of proceeding, Selected states and territories, 2019-20 to 2021-22), 2023, see <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#data-downloads>



increasing their spending on police services during COVID-19, states redistributed existing police resources to address COVID-19 specific challenges. These included:

- checking home isolation orders with other emergency services
- preventing interstate border movements
- attending political protests
- using patrols to enforce lockdowns.

**Figure 4 Police expenses – state totals (\$ million)**



Source: State and ABS Government Finance Statistics data.

### Courts and defendants

43 COVID-19, and state responses to it, affected the courts systems. For example, in response to public health safety directives in 2020:

- most Australian court buildings were closed, with all personal appearances other than continuing jury trials moving online<sup>14</sup>
- all states suspended new jury trials<sup>15</sup>
- several state legal aid services moved online.<sup>16</sup>

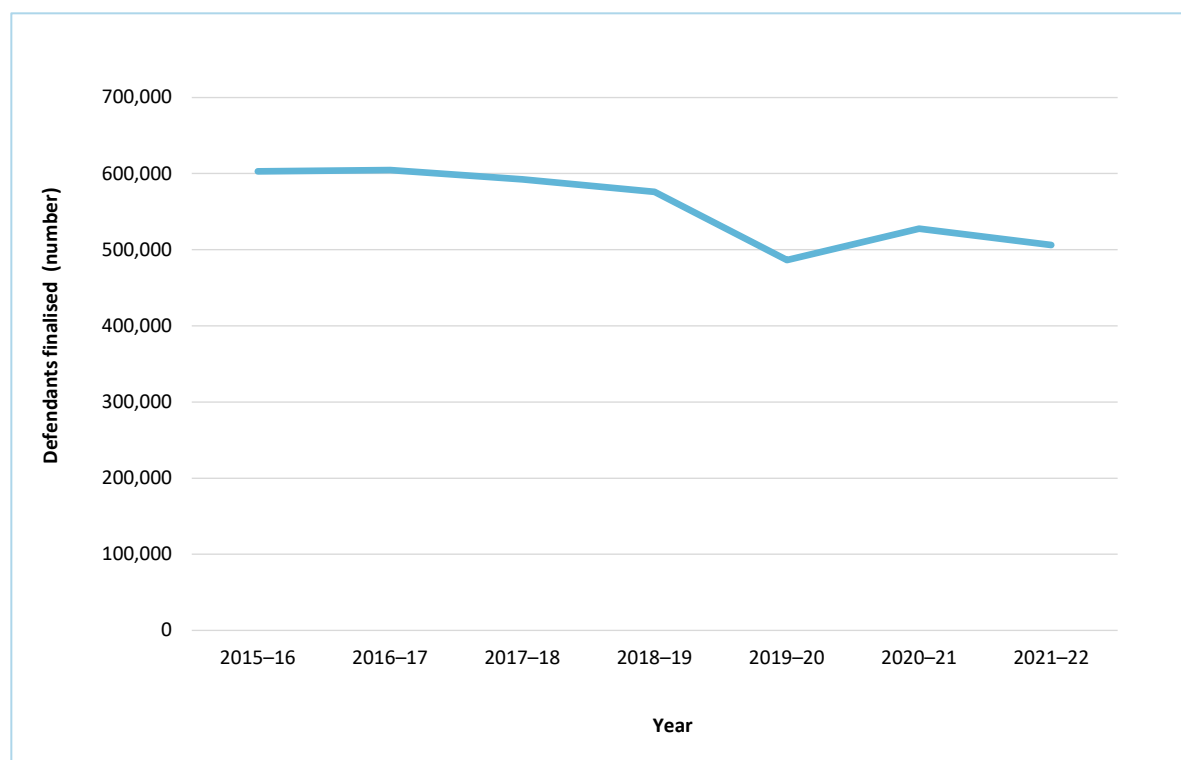
<sup>14</sup> Michael Legg and Anthony Song, *The Courts, the Remote Hearing and the Pandemic: From Action to Reflection*, UNSW Law Journal, p 127, see <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/04/04-Legg-Song.pdf>

<sup>15</sup> Law Council of Australia, *Principles on Jury Trials in the context of COVID-19*, 2020, see <https://www.lawcouncil.asn.au/docs/31f50edc-74ac-ea11-9434-005056be13b5/Principles%20on%20Jury%20Trials%20in%20the%20Context%20of%20COVID%20-19.pdf>

<sup>16</sup> Legal Aid New South Wales, *Annual Report 2019–20*, 2020, p. 22, see <https://www.legalaid.nsw.gov.au/publications/annual-report/annual-report-2019-2020>; Victoria Legal Aid, *Annual Report 2020–21*, 2021, p. i, see

- 44 These disruptions created a backlog and influenced a drop in the number of defendants and cases finalised in criminal courts in 2019–20. A temporary easing of COVID-19 restrictions (in most states) from mid-2020 and an additional use of online hearings allowed more defendants to be processed by courts. This is reflected in the slight increase in defendant numbers in 2020–21.<sup>17</sup> Figure 5 below shows the trend of defendants finalised in criminal courts over the 2020 Review period.
- 45 Criminal court expenses (Figure 6) decreased slightly in 2020–21, but showed a slight increase in 2021–22, while expenses on other legal services (Figure 7) showed a steady increase since 2016–17.

**Figure 5 Defendants finalised in criminal courts – state totals**

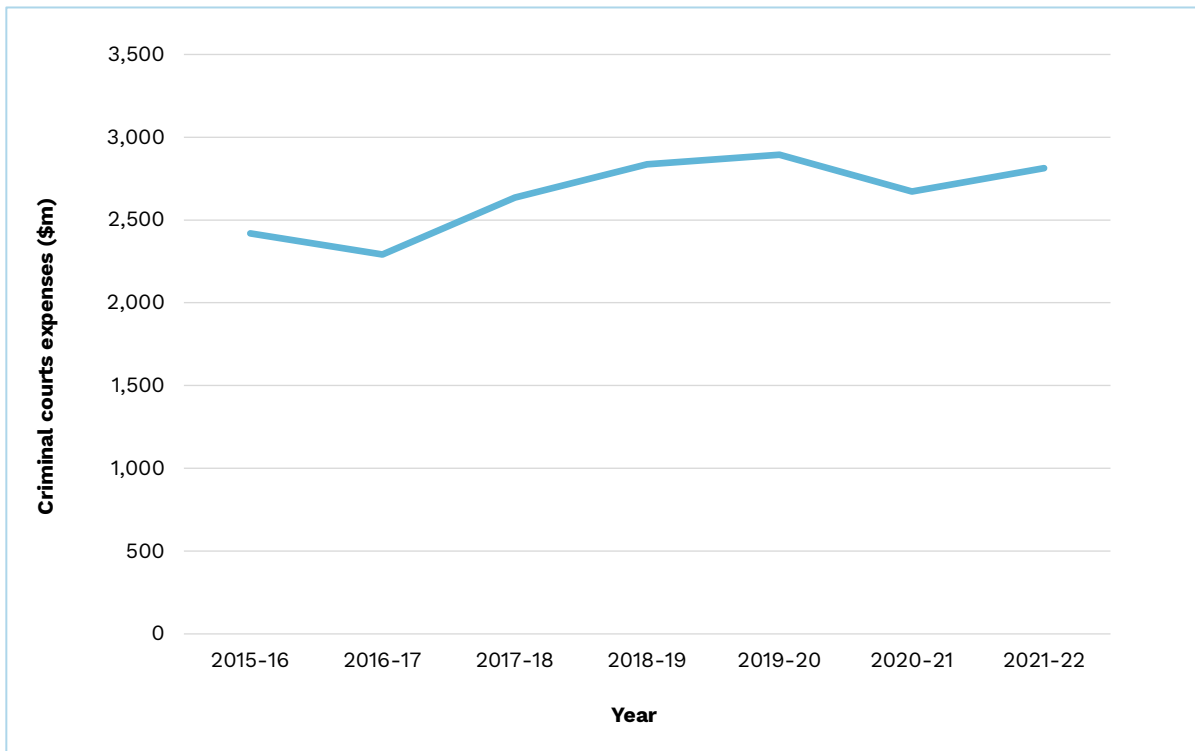


Source: ABS, Criminal courts Australia, 2021–22. Defendants finalised in criminal courts, (Table 1).

<https://www.legalaid.vic.gov.au/previous-annual-reports>; Legal Aid Queensland, *COVID-19 service delivery*, 2020, see <https://www.legalaid.qld.gov.au/About-us/Corporate-publications/Annual-reports/2019%E2%80%9320-annual-report/COVID19-service-delivery>; Legal Services Commission of South Australia, *Annual Report 2019–20*, 2020, p. 10, see [https://lsc.sa.gov.au/cb\\_pages/archivedreports.php](https://lsc.sa.gov.au/cb_pages/archivedreports.php); Northern Territory Legal Aid Commission, *Annual Report 2019–20*, 2020, p. iv, see <https://www.legalaid.nt.gov.au/about-ntlac/our-annual-reports/>

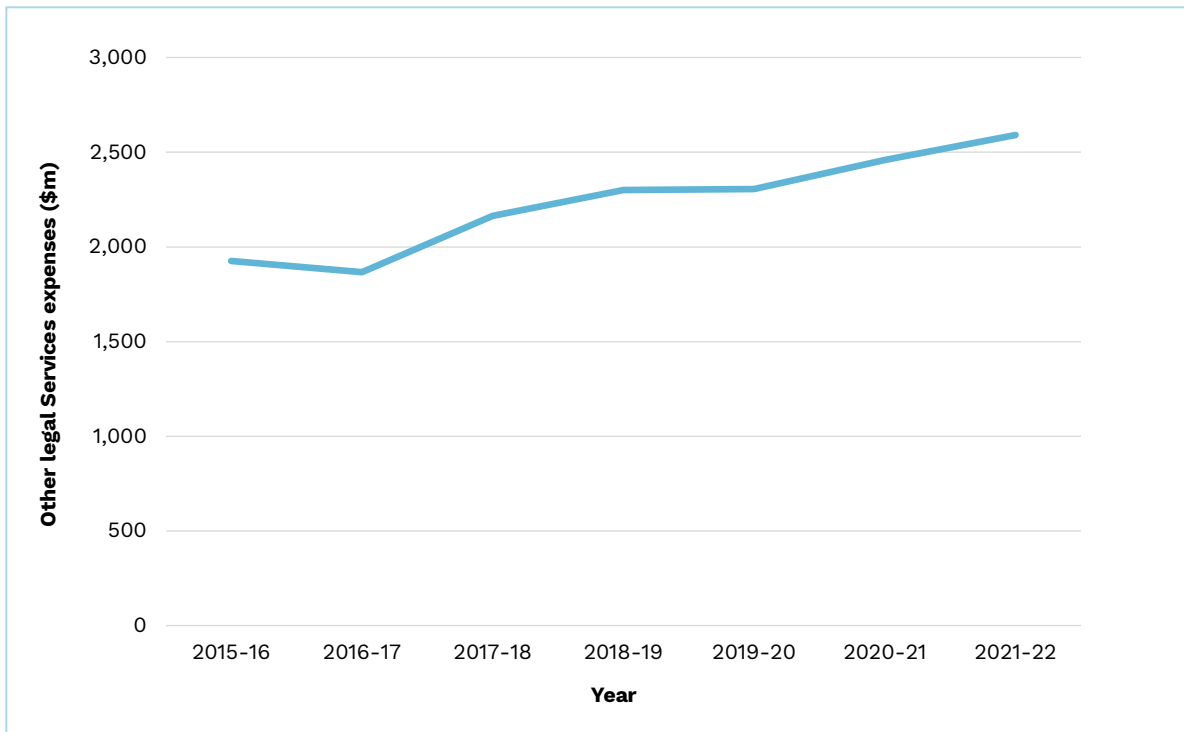
<sup>17</sup> The Australian Bureau of Statistics, *Criminal courts defendant numbers rose by 8 per cent in 2020–21*, 2022, see <https://www.abs.gov.au/media-centre/media-releases/criminal-courts-defendant-numbers-rose-8-cent-2020-21>; ABC News, *Like being suspended in mid-air: The enduring impact of ongoing delays in Australia’s courts*, 2023, see <https://www.abc.net.au/news/2023-03-04/court-delays-not-meeting-national-benchmarks/102044662>

**Figure 6 Criminal court expenses – state totals (\$ million)**



Source: State and ABS Government Finance Statistics data.

**Figure 7 Other legal services expenses – state totals (\$ million)**



Source: State and ABS Government Finance Statistics data and state courts data (2016–17).

## Prisons and prisoners

- 46 State responses to COVID-19 had less of an effect on prisons than on other justice services.
- 47 The ABS noted that drops in defendant and prisoner numbers had a connection to state responses to COVID-19.<sup>18</sup> Moreover, the Australian Institute of Health and Welfare reported there was a 15% drop in juvenile detainees between 2017–18 and 2021–22.<sup>19</sup>
- 48 The total prisoner population remained relatively steady, despite a slight decrease in 2019–20.<sup>20</sup> This may be due to the presence of a long-term prisoner population, which insulates against the effect of volatility in offender or court defendant numbers. Figure 8 below shows the total number of prisoners in Australia (including juvenile detainees).
- 49 While prisoner numbers appear to have stabilised in recent years, prison expenses (including juvenile detention) have been increasing steadily since 2015–16. This is shown in Figure 9.

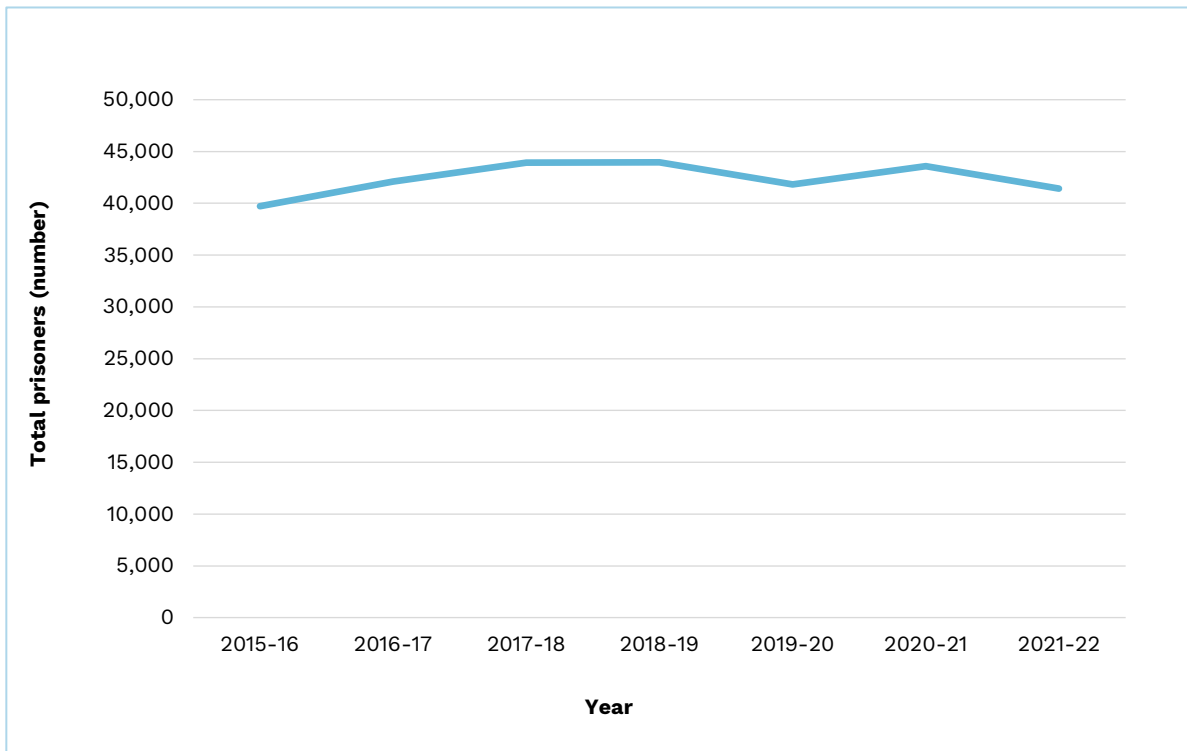
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<sup>18</sup> The Australian Bureau of Statistics, *Police recorded almost 30,000 COVID-19 offenders in 2020–21, 2022*, see <https://www.abs.gov.au/media-centre/media-releases/police-recorded-almost-30000-covid-19-offenders-2020-21>; The Australian Bureau of Statistics, *Criminal courts defendants down 16 percent, 2021*, see <https://www.abs.gov.au/media-centre/media-releases/criminal-courts-defendants-down-16-percent>; The Australian Bureau of Statistics, *Sentenced prisoners down 7 per cent, 2023*, see <https://www.abs.gov.au/media-centre/media-releases/sentenced-prisoners-down-7-cent>

<sup>19</sup> Australian Institute of Health and Welfare, *Youth Justice*, 2023, see <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

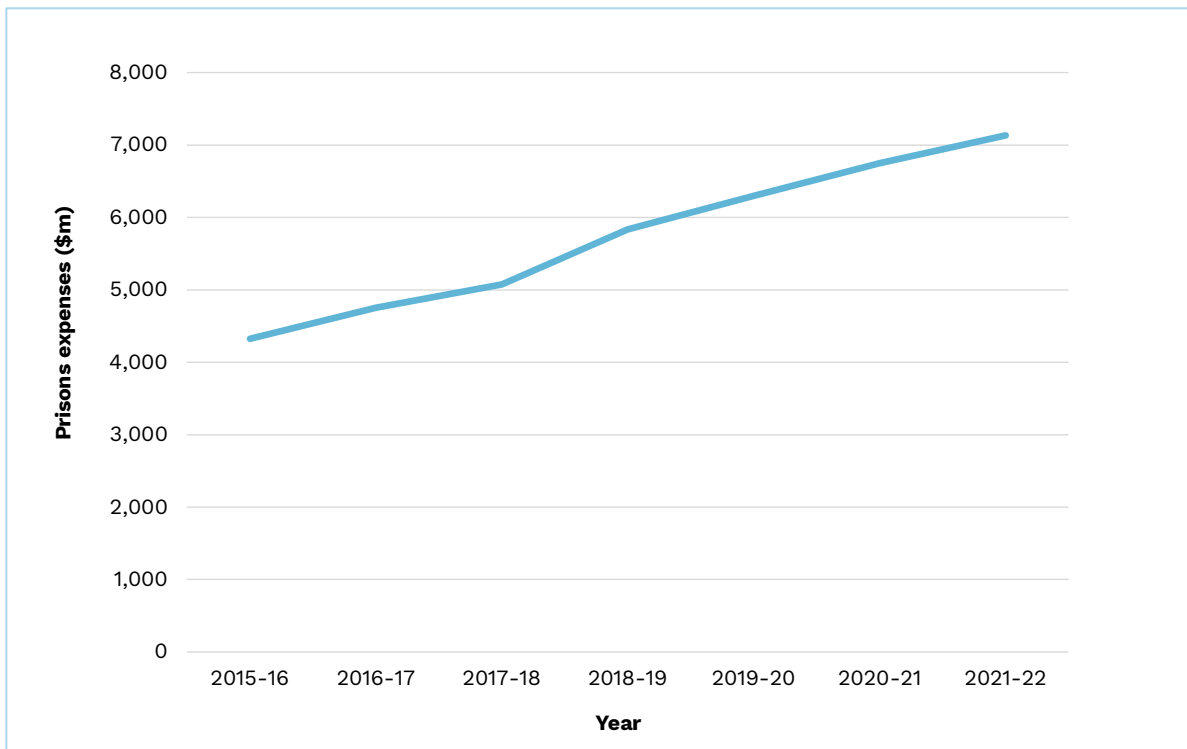
<sup>20</sup> The Australian Bureau of Statistics, *Prisoner numbers fall 5% - the first decrease since 2011, 2020*, <https://www.abs.gov.au/media-centre/media-releases/prisoner-numbers-fall-5-first-decrease-2011>

**Figure 8 Prisoners (including those in juvenile detention) - state totals**



Source: ABS, Prisoners in Australia, 2016–2021 (adult prisoners) and Australian Institute of Health and Welfare, Youth in Justice, 2015–16 to 2020–21 (juvenile detainees.)

**Figure 9 Prison expenses (including juvenile detention) – state totals (\$ million)**



Source: State and ABS Government Finance Statistics data.

## To what extent has COVID-19 challenged the justice model?

- 50 Based on the data, COVID-19 and the state responses to it resulted in a temporary departure from typical patterns of justice service use and provision, particularly in relation to police and courts services. However, analysis indicates that the use and associated costs of justice services may be returning to their long-term trends, despite experiencing a temporary impact from COVID-19.
- 51 The 2020 Review assessment was not designed to capture yearly variations in the profile of offenders and defendants, costs per offender or regional costs. The assessment also does not distinguish by type of crime. Therefore, the justice model was not able to reflect service changes during the height of state responses to COVID-19.
- 52 For the assessment to be responsive to year-on-year changes, a large amount of data would need to be collected from states annually. Given that change in the profile of offenders and costs is typically steady and slow, it is unclear if the additional data burden (required to update the assessment) would result in a materially different outcome.<sup>21</sup>
- 53 In addition, to recognise the costs of different offence types in the police assessment, data from states on the type of offence committed and the associated costs would be required. While the Commission recognises that not all crimes result in the same costs, it is not clear whether a reliable method supported by fit for purpose data could be developed to measure these differences.
- 54 This is because not all related offences incur the same costs. For example, the costs of responding to and investigating a theft would differ depending on the circumstances surrounding the theft. It may also be difficult for states to accurately disaggregate costs at this level.
- 55 The evidence suggests that state responses to the introduction of lockdowns and health safety orders have not permanently affected the underlying relationships between drivers and expenses, or the current methods used to capture these drivers. The Commission's preliminary view is that justice service provision has largely returned to normal and that the model remains robust and conceptually sound if used with fit for purpose data.

### Consultation question

- Q1. Do states agree that COVID-19 resulted in a temporary departure from long term patterns of justice service provision, use and costs such that the 2020 Review Justice model remains appropriate if used with fit for purpose data?

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<sup>21</sup> Without disaggregated state data, the Commission cannot test the materiality of this with any certainty.

## Are reliable data available to update the assessment of justice needs?

- 56 The majority of data currently used to derive use and costs of police, prison and court services are based on 2015–16 and 2016–17 data provided by states. They were collected for the 2020 Review and have not been updated subsequently.
- 57 Ordinarily, the Commission would request updated data in a review to ensure the assessment continues to accurately reflect the activities of states. However, the experience of COVID-19, and state interventions as a result, may mean that available data do not reflect typical justice services and costs.
- 58 Data from 2019–20, 2020–21 and 2021–22 may not be fit for purpose, due to the impacts of the pandemic on:
- the variations in state responses to COVID-19, including the timing of their lockdowns
  - the profile of offenders and defendants, offence rates and related costs
  - police costs by region due to the redistribution of police resources.
- 59 It is possible that these data would not accurately reflect typical service usage and cost patterns that occur outside the context of the COVID-19 lockdowns.
- 60 Data from 2022–23 are likely to be more reliable than data collected during the pandemic affected years, because public health orders associated with COVID-19, including lockdowns, had been removed or relaxed in all states.
- 61 The Commission’s preliminary view is to collect 2022–23 data to update the justice model. This will replace 2015–16 and 2016–17 data. This approach will have the advantages of:
- using the most recent data available
  - using data that are largely unaffected by state responses to COVID-19
  - using data that are relatively close to the 2021 Census data. The estimated resident population data (sourced from the 2021 Census) will be applied in the justice assessment.
- 62 If 2022–23 data cannot be collected from states and processed by the Commission in time for the 2025 Review, the Commission could replace this data in a subsequent update, when the new data becomes available. This would occur in consultation with the states.

## Consultation questions

- Q2. Do states agree that data from 2019–20, 2020–21 and 2021–22 include the effects of COVID-19 related public health orders and do not reflect typical justice services and costs?
- Q3. If data from 2019–20 to 2021–22 are not fit for purpose, do states support using data from 2022–23 to update the justice assessment? If so, can states provide an indication of when 2022-23 data could be provided to the Commission? An indication of the data required from states for the 2025 Review justice assessment is shown in Attachment A.
- Q4. If data from 2022–23 are considered fit for purpose but are not available in time for inclusion in the 2025 Review, do states support updating the assessment in an update following the 2025 Review?

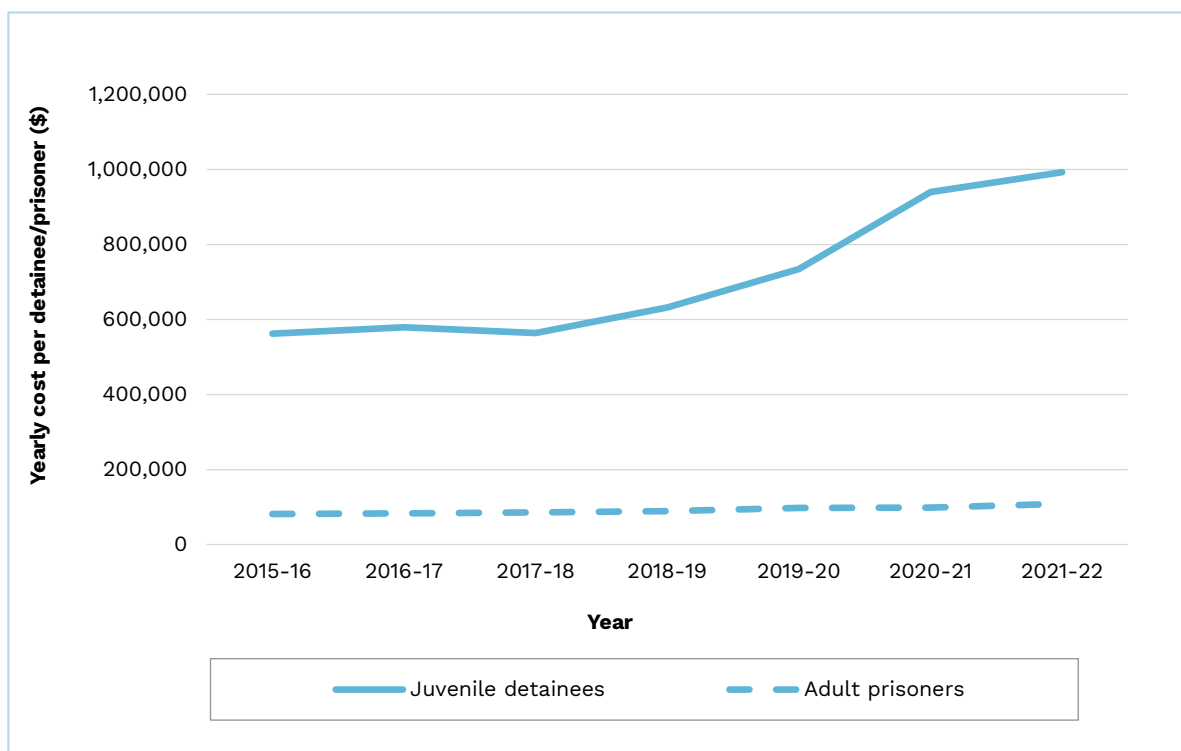
## Implications of changes in juvenile detention funding and minimum age of criminal responsibility

### Changes in juvenile detention funding

- 63 The 2020 Review prisons assessment includes the majority of juvenile detainees and adult prisoners in the same population group (15-24 year olds). The current method does not distinguish between the assessed costs of juvenile detainees and adult prisoners.
- 64 The average spend per juvenile detainee has been increasing since the 2020 Review. In 2021–22 it was 76% higher than in 2015–16, compared with a 34% increase in the average spend on an adult prisoner. This is shown in Figure 10.



**Figure 10 Yearly cost per juvenile detainee and adult prisoner**



Source: Productivity Commission, *Report on Government Services 2023*, and ABS Prisoners in Australia data.

- 65 Due to this increase, the Commission explored the option of applying a cost weight that captures the difference in costs between juvenile detainees and adult prisoners in the prisons assessment.
- 66 Estimated resident population data based on the 2021 Census (which contains the new Indigenous status and socio-economic status breakdowns) will become available in September 2023. The Commission will check the materiality at that point.<sup>22</sup> If this change is material, the Commission’s preliminary view is to apply a cost weight to juvenile detainees in the prisons assessment.

### Changes to the minimum age of criminal responsibility

- 67 The Northern Territory, Victoria, Tasmania and the ACT have increased, or are planning to increase, the minimum age of criminal responsibility from 10 years of age to 12 or 14.<sup>23</sup> At the time of the 2020 Review, the minimum age of criminal responsibility was 10 in all states. Increasing this age in some states and not others

<sup>22</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.

<sup>23</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2021–22*, 2023, p 48, see [Youth justice in Australia 2021-22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](#); The ACT Government website, *Raising the Minimum Age of Criminal Responsibility*, 2022 see [Raising the Minimum Age of Criminal Responsibility - Chief Minister, Treasury and Economic Development Directorate \(act.gov.au\)](#); ABC News, *Tasmania set to be first jurisdiction to raise minimum age of children in youth detention*, 2022, see [Tasmania set to be first jurisdiction to raise minimum age of children in youth detention - ABC News](#); ABC News, *Victoria to raise the age of criminal responsibility to 12, youth advocates push for 14*, 2023, see [Victoria to raise the age of criminal responsibility to 12, youth advocates push for 14 - ABC News](#).

means that some states may detain juveniles aged 10–12 while other states would not.

68 Juvenile detainee data are updated yearly.<sup>24</sup> Any change to detainee numbers would be captured in this yearly data and flow through to the prisons assessment. Based on Australian Institute of Health and Welfare data, the number of juvenile detainees in the 10–12 age group is small. These are shown in Table 10.

**Table 10 Juvenile detainees aged 10-18+ (total) and 10-12 years**

	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
10-18+ years (total)	883	914	913	974	956	863	787	822
10-12 years	15	13	15	18	19	12	9	11
10-12 years (%)	2%	1%	2%	2%	2%	1%	1%	1%

Source: Australian Institute of Health and Welfare, Youth justice in Australia, Young people in detention on an average day.

69 Due to the small number of 10-12 year old juvenile detainees currently in the system, the effect of differential state policy decisions relating to the minimum age of criminal responsibility is not material.

70 For issues relating to the juvenile detainees in the prisons assessment, the Commission’s preliminary views are to apply a cost weight to juvenile detainees if material and to make no change to account for proposed increases in the age of criminal responsibility.

## Consultation questions

Q5. Do states agree that the Commission:

- apply a cost weight for juvenile detainees in the prisons assessment if material?
- not make any changes to the juvenile detainees age groups in the prisons assessment?

## Proposed assessment

### Differences from the 2020 Review approach

71 Subject to state views, the Commission proposes no changes for the assessment of justice expenses.

<sup>24</sup> The juvenile detainee data is updated each year from the Australian Institute of Health and Welfare, Youth justice in Australia (report), ‘Young people in detention on an average day’ data. The latest release of this is Australian Institute of Health and Welfare, Youth justice in Australia 2021-22 (Table S76a: Young people in detention on an average day by age, sex and Indigenous status, Australia, 2021-22), 2023, see [Youth justice in Australia 2021-22, Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au)

## Proposed assessment structure

72 Subject to state views, Table 11 shows the proposed structure of the justice assessment.

**Table 11 Proposed assessment structure for the justice assessment**

Component	Driver	Influence measured by driver	Change since 2020 Review?
Police	SDC	Recognises that the age, Indigenous status, remoteness and socio-economic status influence the use and cost of services	No
	Regional costs	Recognises that the cost of providing policing services increases as the level of remoteness increases	No
	Wage costs	Recognises differences in wage costs between states	No
	National capital	Recognises the higher costs of the ACT using federal police	To be discussed in the national capital paper (tranche 2)
Criminal Courts	SDC	Recognises that the age, Indigenous status, remoteness and socio-economic status influence the use and cost of services	No
	Regional costs	Recognises the additional costs of providing services in sparsely populated and remote areas	No
	Wage costs	Recognises differences in wage costs between states	No
Other Legal Services	EPC	Allocates expenses equal to a national per capita amount	No
	Regional costs	Recognises the additional costs of providing some services in sparsely populated and remote areas	No
	Wage costs	Recognises differences in wage costs between states	No
Prisons	SDC	Recognises that the age, Indigenous status, remoteness and socio-economic status influence the use and cost of services	No
	Regional costs	Recognises the additional costs of providing services in remote areas	No
	Wage costs	Recognises differences in wage costs between states	No

Source: Commission calculation.

## New data requirements

73 Data to update the assessment will be required. These data are the same as those requested in the 2020 Review and will be held constant for the 2025 Review period.

- 74 They include:
- Police costs by district
  - Offender counts by socio-demographic composition
  - Defendant counts by socio-demographic composition
  - Court costs by region
  - Prison location and cost by security classification.
- 75 Information on the timing of these data requests will be provided in July 2023.
- 76 If reliable data from all states are received by June 2024, they may be able to be reflected in the 2025 Review.
- 77 All other data are available on an annual basis and can be updated when required.

## Consultation

- 78 The Commission welcomes state views on the consultation questions identified in this paper (outlined below) and the proposed assessment. State submissions should accord with the 2025 Review framework. States are welcome to raise other relevant issues with the Commission.

- Q1. Do states agree that COVID-19 resulted in a temporary departure from long term patterns of justice service provision, use and costs such that the 2020 Review Justice model remains appropriate if used with fit for purpose data?
- Q2. Do states agree that data from 2019–20, 2020–21 and 2021–22 include the effects of COVID-19 related public health orders and do not reflect typical justice services and costs?
- Q3. If data from 2019–20 to 2021–22 are not fit for purpose, do states support using data from 2022–23 to update the justice assessment? If so, can states provide an indication of when 2022–23 data could be provided to the Commission? An indication of the data required from states for the 2025 Review justice assessment is shown in Attachment A.
- Q4. If data from 2022–23 are considered fit for purpose but are not available in time for inclusion in the 2025 Review, do states support updating the assessment in an update following the 2025 Review?
- Q5. Do states agree that the Commission:
- apply a cost weight for juvenile detainees in the prisons assessment if material?
  - not make any changes to the juvenile detainees age groups in the prisons assessment?

# Attachment A

## Indicative data required from states for the 2025 Review justice assessment

### Police – Offender numbers and expenses

#### Police offender data

- 79 The police assessment calculates offender use weights that reflect the propensity for different types of population groups to commit an offence.
- 80 To allow us to update these use weights, we would like counts of incidents where an alleged offender is proceeded against and recorded by police for one or more offences. We would also like some associated socio-demographic information about the offender (i.e., location of the offender’s usual residence, Indigenous status and age range.)
- 81 The table, and accompanying notes below, outline the information we require.

#### Police offender data, 2022–23

State of usual residence of offender	Location of usual residence of offender	Indigenous status of offender	Age range of offender	Counts of Breach of bail (Number)	Counts of Traffic offences (Number)	Counts of all Other offences (Number)

#### Notes on information required:

- State of usual residence of offender – The offender’s location of usual residence may be interstate. Providing the state of the offender’s residence assists us to be more accurate in coding the offender location of residence.
- Location of usual residence of offender – we would like the most detailed level of geography available. For example, suburb or town would be more useful than postcode. If you can provide the location in one of the ABS Australian Statistical Geography Standard (ASGS) Edition 3, formats, this would be very useful. The reason for this is we will map the offender location of usual residence back to one of the five ABS ‘Remoteness Areas’ (which are part of the ABS ASGS structure).<sup>25</sup> We will also use the offender location of usual residence to map the offender’s socio-economic grouping.
- Indigenous status of offender – could this please be grouped into: Indigenous, non-Indigenous or Not stated/unknown.
- Age range of offender – could this please be grouped into the following age ranges: 0-14, 15-24, 25-44, 45-64, 65+.

<sup>25</sup> The five ABS remoteness areas are: Major Cities of Australia, Inner Regional Australia, Outer Regional Australia, Remote Australia, Very Remote Australia. [Remoteness Areas | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/remoteness-areas) [Australian Statistical Geography Standard \(ASGS\) Edition 3, July 2021 - June 2026 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-statistical-geography-standard)

- Counts of Breach of bail – These are the 2022–23 counts of breach of bail (Australian and New Zealand Standard Offence Classification (ANZSOC) Group 1523) for a particular offender.
- Counts of traffic offences – Please separately list 2022–23 traffic proceedings specifically related to:
  - ANZSOC Division 14 - Traffic and vehicle regulatory offences and
  - ANZSOC Subdivision 041 - Dangerous or negligent operation of a vehicle.
- Counts of Other offences – We would like counts of 2022–23 incidents where an alleged offender is proceeded against and recorded by police for one or more offences. We consider the ABS definition of ‘police proceeding’ is appropriate for defining a count of an offence.<sup>26</sup>

Examples that may assist with compiling counts of all other offences are:

- A person charged with (for example) theft, indecent language, assaulting a police officer and resisting arrest resulting from a single incident should be counted as a single proceeding.
- Multiple people charged following a single incident should be counted as multiple proceedings.
- A single offender who has been proceeded against three times during 2022–23 should be recorded with a count of ‘3’. The offender usual residence (i.e., suburb), Indigenous status and age would be the same, unless they have changed address or were a different age during one (or more) of the offences.
- If no official proceeding is implemented, these incidents should not be counted, for example:
  - Informal cautioning,
  - Alleged offender below age of criminal responsibility
- The counts should include police proceedings for: arrest, summons, formal cautioning, official warning, warrant issued, penalty infringement notice issued, and given a notice to appear.
- As much as possible, we would like offence data to be comparable between states. Our understanding is traffic offences are captured and recorded in different ways across different states and that few traffic offences record Indigenous status. Therefore, we would like counts of ANZSOC 14 & 041 identified separately so we can remove them from the offender data used to calculate use weights. Similarly, we do not include breach of bail offences in the offender use weight calculations. However, having data for all offence types assists us with validating/reconciling total state offender data against ABS data.
- Please provide the data in Excel or csv format and use as many rows as needed.

## Police expenses

82 The police assessment applies a base cost to assessed offenders and also applies cost weights to account for the costs of providing police services in different regional areas. To allow us to update these cost weights we would like to obtain data on expenses for each police service location in your state.

83 The table, and accompanying notes, below outline the information we require.

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<sup>26</sup> ABS glossary - *Police proceeding*: ‘A legal action initiated against an alleged offender for an offence(s). In this publication, police proceedings represent a count for each separate occasion on which police initiate a legal action against an offender’. [Recorded Crime - Offenders methodology, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/Recorded-Crime-Offenders-methodology-2021-22-financial-year)

### Police expense data, 2022–23

Location of police service	Total expenses (\$m)

Notes on data required:

- Location of police service - we would like the most detailed level of geography available. For example, suburb or town would be more useful than postcode. We acknowledge that states have different ways of organising and delivering their policing services and therefore may use different terminology to refer to their police geographical units. Some examples for the 'name of location of police services' are:
  - suburb of police station
  - local area command names
  - police area command names
  - police region
  - police district

If there are central police services that are provided for all police services in the state, please indicate that is a central service expense. We will distribute these central service expenses to the other police service locations in your state (the distribution is based on the percentage of costs for each police location service.)

If you are able to provide the location in one of the ABS Australian Statistical Geography Standard (ASGS) Edition 3, formats, this would be useful. The reason for this is we will map the location of police service back to one of the five ABS Remoteness Areas (which are part of the ABS ASGS structure). A police services cost weight is calculated for each of the 5 remoteness areas.<sup>25</sup>

- Total expenses - this is the total 2022–23 expenses for police services at the location provided.
- Please note, we reconcile the police expenses provided in this data request with Government Finance Statistics (GFS) police expense data that states also provide to us each year. This will help us to ensure that we are capturing all relevant policing costs for each state.
- Please provide the data in Excel or csv format and use as many rows as needed.

## Courts – criminal court defendants and court expenses

### Criminal court defendants

- 84 The criminal courts assessment calculates defendant use weights that reflect the propensity for different types of population groups to appear in a criminal court.
- 85 To allow us to update these use weights, we would like counts of the number of offences a defendant had finalised in a criminal court. We would also like some associated socio-demographic information about the defendant (i.e., location of the defendant's usual residence, Indigenous status and age range.)
- 86 The table, and accompanying notes, below outline the information we require.

### Criminal court defendants finalised, 2022–23

Defendant residential location	Defendant Indigenous status	Defendant age range	Traffic offences: Traffic and vehicle regulatory (ANZSOC Division 14) and Dangerous or negligent operation of a vehicle (ANZSOC Subdivision 041 (Number of offences)	Number of <u>Other</u> offences

#### Notes on data required:

- Definition of a defendant - we are after the number of defendants finalised in criminal courts only. The data should be consistent with the definition of Defendant used by the ABS for its *Criminal Courts Australia* collection. However, unlike the ABS definition, please do not include data for organisations.
- ABS definition of Defendant - *A person (or organisations) against whom one or more criminal charges have been laid which are heard together as one unit of work by the court.*<sup>27</sup>
- Further information concerning data required on defendants:
  - A defendant is a person against whom one or more criminal charges have been laid and which are heard together as one unit of work by a court at a particular level.
  - It is expected if a person is a defendant in a number of criminal cases and is dealt with and finalised separately within the courts during the reference period, this person will be counted more than once within that reference period.
  - Finalised defendants should include all methods of finalisation including transfer to a different court.
- Defendant residential location – we would like the most detailed level of geography available. For example, suburb or town would be more useful than postcode. If you can provide the location in one of the ABS Australian Statistical Geography Standard (ASGS) Edition 3, formats, this would be very useful. The reason for this is we will map the offender location of usual residence back to one of the five ABS ‘Remoteness Areas’ (which are part of the ABS ASGS structure).<sup>28</sup> We will also use the defendant’s residential location to map their socio-economic status.
- Defendant Indigenous status – could this please be grouped into: Indigenous, non-Indigenous or not stated/unknown.
- Defendant age range – please list the defendants age range group. These are: 0-14, 15-24, 25-44, 45-64, 65+ years.
- Traffic offences – please list the count of 2022–23 offences (for each defendant finalised) relating to ANZSOC Division 14 - Traffic and vehicle regulatory offences and ANZSOC Subdivision 041 - Dangerous or negligent operation of a vehicle.

In the 2020 Review, it was our understanding that Indigenous status for traffic offences may be of poor quality in some states. By separately listing these

<sup>27</sup> Criminal Courts, Australia methodology, 2021–22 financial year | Australian Bureau of Statistics (abs.gov.au)

<sup>28</sup> The five ABS remoteness areas are: Major Cities of Australia, Inner Regional Australia, Outer Regional Australia, Remote Australia, Very Remote Australia. [Remoteness Areas | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-statistical-geography-standard/asgs-edition-3-july-2021-june-2026) [Australian Statistical Geography Standard \(ASGS\) Edition 3, July 2021 - June 2026 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-statistical-geography-standard/asgs-edition-3-july-2021-june-2026)



offences, we can assess their quality (i.e., is there a high level of unknown/not stated Indigenous status) and make a more informed decision on whether to use them in the calculation of use criminal court defendant use rates. It also assists with validating/reconciling state data against ABS data.

- Other offences – This includes the number of 2022–23 offences (for each defendant finalised) other than ANZSOC Division 14 – Traffic and vehicle regulatory offences and ANZSOC Subdivision 041 Dangerous or negligent operation of a vehicle.
- Please provide the data in Excel or csv format and use as many rows as needed.

### **Criminal courts and Other legal services expenses**

87 The courts assessment is split into two components, one for criminal courts and the second for other legal services. This is because the Commission considers the drivers of states’ expense needs for these two services are different.<sup>29</sup>

88 As we have two different assessments, we need to split court expenses into:

- criminal court related expenses
- all other legal services expenses.

89 There is no split available for these two expenses from the ABS and state Government Finance Statistics (GFS) data (via the Classification of the Functions of Government - Australia (COFOG-A) codes).<sup>30</sup> Therefore, we are asking states to provide this information.

90 The table, and accompanying notes, below outline the information we require.

#### **Criminal courts and Other legal services expenses, 2022–23**

	Criminal court related expenses (\$m)	Other legal service-related expenses (\$m)	Total (Criminal courts and Other legal service expenses) (\$m)
2022-23			

Notes on data required:

- General - We are seeking data from states on the total 2022–23 expenses for all agencies who provide criminal court and other legal services, split by criminal and non-criminal matters. Data providers should be aware of following:
  - All of the expenses of joint funded services should be provided (e.g., Legal Aid)
  - Centralised costs should also be included and allocated to either criminal court or and other legal service expenses. If you are unable to split central expenses, please still include them in the table (with a label of ‘central expense’) and the CGC can allocate these based on the percentage of expenses in criminal courts and other legal services.

<sup>29</sup> The criminal courts assessment calculates defendant use weights that reflect the propensity for different types of population groups to appear in a criminal court. The population groups include socio-demographic groupings based on the defendant’s Indigenous status, age group, residential remoteness area and socioeconomic status. Other legal services are assessed using an equal per capita method.

<sup>30</sup> The COFOG-A code (033 Law Courts) includes all state expenses for law courts in one grouping.

- Please include all expenses (or as close as possible) that would typically be coded to your states GFS COFOG-A code - 033 Law Courts. The reason for this is that we will reconcile the total in this table with those from your GFS COFOG-A code: *033 Law Courts* expense data. This will help us to check we have not missed a significant amount of expenses when calculating the criminal courts and other legal services expense split.
- Criminal court related expenses – These include 2022–23 expenses related to the administration, operation, or support of criminal courts, including public prosecution, legal aid and other legal services related to criminal courts.
- Other legal services related expenses - These include 2022–23 court and legal expense not related to criminal courts, such as civil courts, Attorney-General departments, crown solicitors and law reform commissions.
- Please provide the data in Excel or csv format.

### Regional court expenses

91 The criminal courts assessment recognises that it costs states more to operate courts in regional areas and applies cost weights to recognise this. These cost weights are also applied to civil court expenses in the other legal services assessment.

92 The table, and accompanying notes, below outline the information we require.

#### **Criminal and civil court expenses and finalisations, 2022–23**

Level of court	Name of court	Location of court	Number of criminal cases finalised	Total expenses of criminal court	Number of civil matters finalised	Total expenses of civil court	Total expense of both criminal and civil courts
			(Number)	(\$m)	(Number)	(\$m)	(\$m)

Notes on data required:

- General - Please do not include any costs for administrative tribunal court expense data.
- Level of court – Please list the level of the court. Examples include:
  - Supreme court
  - District court
  - Magistrates court
  - Youth court
  - Childrens court
  - Coroners court
  - Local court
  - County court
- Name of court – This is the name given to the court.
- Location of court – This may be apparent from the name of the court. We would like the most detailed level of geography available. For example, suburb or town would be more useful than postcode. If you can provide the location in one of the ABS Australian Statistical Geography Standard (ASGS) Edition 3, formats, this

would be very useful. The reason for this is we will map the court location to one of the five ABS ‘Remoteness Areas’ (which are part of the ABS ASGS structure.)<sup>25</sup>

- Number of criminal cases finalised – Please list the number of criminal cases finalised for each individual criminal court in 2022–23.
- Total cost of criminal court – Please list the expense for each individual criminal court in 2022–23.
- Number of civil cases finalised – Please list the number of civil cases finalised for each individual civil court in 2022–23.
- Total cost of civil court – Please list the expense for each individual civil court in 2022–23.
- Total cost of criminal and civil courts – Please list the total expense for both criminal and civil courts listed in each row in 2022–23.
- Please provide the data in Excel or csv format and use as many rows as needed.

## Prisons – regional costs

### Prison regional costs and prisoner numbers

93 The prisons assessment applies costs weight to recognise it costs states more to operate prisons in regional areas. The Commission is also aware that security ratings can have an impact on the cost of prisons, therefore we are also requesting a count of the number of prisoners incarcerated at each level of security rating.

94 To allow us to update these cost weights we would like data on the cost of prisons and the number of prisoners for each different level of security.

95 The table, and accompanying notes, below outline the information we require.

### Prison costs and prisoner numbers, 2022–23

Prison name	Prison Location	Net Operating Expense	Number of Prisoners (daily average)			
			Maximum Security	Medium Security	Minimum Security	Total prisoners
		(\$m)	(Number)	(Number)	(Number)	(Number)

Notes on data required:

- Prison name – name of the prison.
- Prison location – we would like the most detailed level of geography available. For example, suburb or town would be more useful than postcode. If you can provide the location in one of the ABS Australian Statistical Geography Standard (ASGS) Edition 3, formats, this would be very useful. The reason for this is we will map the prison location back to one of the five ABS ‘Remoteness Areas’ (which are part of the ABS ASGS structure.)<sup>25</sup>
- Net Operating Expense – the net operating expense of each prison for 2022–23.
- Number of prisoners – When counting the number of prisoners, our preference is the average daily number of prisoners for 2022–23. However, if this not available please provide the count of prisoners on 30 June 2023.

Please split the number of prisoners into three different security rating groups:

- maximum (includes prisoners classified as high risk)
  - medium
  - minimum
- Please provide the data in Excel or csv format and use as many rows as needed.