

# NSW Treasury response to Justice draft position paper

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NSW Treasury response to 2025 Methodology Review: Justice draft  
position paper

22 August 2025

# Acknowledgement of Country

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

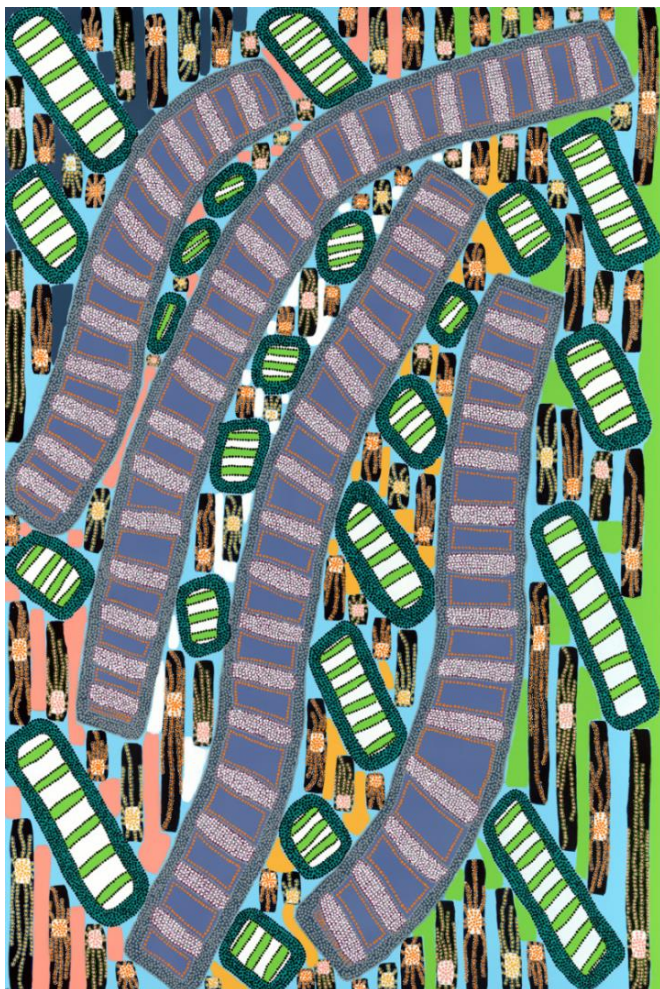
We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes.

Artwork:

*Regeneration* by Josie Rose



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# 1 Summary of NSW Treasury response

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- The method used to apportion Police central costs has improved. However, NSW proposes that the ratio of 75:25 is retained. The Commission chose to discount the ratio to 50:50 given two states and territories (states) did not provide data. NSW Treasury provides evidence that these two states have been overweighted in the proposed discount.
  - Central costs include human resource services, technical and communication services and specialist services terrorism and forensics squads.
- Densely populated and highly globalised cities face a variety of costs and pressures that other areas do not. This should be recognised in a major cities' driver. NSW argues that the Commission should continue investigating this driver.
- NSW Treasury proposes to remove the general service delivery gradient or discount the general service delivery gradient by 50 per cent if it is used in the prisons assessment.
- NSW Treasury supports the discontinuation of regional cost gradients in the criminal courts and prison components.
- NSW Treasury supports the use of 2022-23 and 2023-24 data.
- NSW Treasury supports the Commission's position to not include an additional variable for remote offenders.
- NSW Treasury supports the inclusion of community corrections and juvenile detainees if material.
- NSW Treasury notes other Commission positions to:
  - Combine the remote and very remote variables in the police regression.
  - Use a five-tier structure to measure socio-economic status.
  - Not assess the criminal courts component on an equal per capita basis. NSW finds that the evidence produced by Victoria in their submission to the draft report compelling. Population clearly has a higher explanatory value than finalisations in explaining the expenses faced by courts.

## 2 Justice model and data issues

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### 2.1 Updating Estimated Residential Population and 2021 First Nations data

#### 2.1.1 Commission information

In the 2024 Update, the Commission noted that there had been a substantial growth in First Nations populations due to non-demographic changes between the 2016 Census and the 2021 Census. The Commission decided to continue to use 2016 Census-based projections of First Nations estimated residential population until new use data could be incorporated into the justice assessment. The revised justice assessment, to be published in the 2026 Update, will include new use data for 2022–23 and 2023–24. The Commission will use 2021 Census based estimated residential populations in the revised justice assessment method. The Commission will separate the effect of this change when calculating the effect of proposed method changes in the justice assessment.

#### 2.1.2 NSW Treasury response

**NSW Treasury supports the use of 2022-23 and 2023-24 data.**

We support the update of First Nations data from the 2021 Census as it would be more comparable with the 2022-23 and 2023-24 use data.

NSW understands that other states, particularly QLD and WA have raised concerns about the potential that increased identification of Indigenous Australians is being driven by those in advantaged areas mainly in metropolitan and inner regional areas. NSW understands this concern and is eager to engage thoroughly in the forward work program on the Indigenous Relative Socioeconomic Outcomes (IRSEO) index.

While the Commission mainly focuses on socio-economic factors, NSW encourages further research through the forward work program to accurately measure advantage and disadvantage for Indigenous Australians, ensuring this work is done in consultation with First Nations communities.

## 3 Police assessment

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### 3.1 How should central costs be allocated to regions?

#### 3.1.1 Commission draft position

Commission analysis of the available data would suggest allocating 75 per cent of central costs by the proportion of full-time equivalent (FTE) staff in each Police district and 25 per cent by police district expenses. The Commission notes that the two states that were unable to provide disaggregated central cost data have large remote areas. States with larger remote areas tend to have a higher proportion of costs associated with specialist units. The Commission is concerned that the available data underestimate the proportion of these costs. For this

reason, it proposes to allocate central costs using a 50:50 split of police district proportions of FTE staff and police district expenses.

The Commission proposes to allocate central costs using a 50:50 blend of proportion of Police district FTE staff and police district expenses.

### 3.1.2 NSW Treasury response

#### **NSW Treasury proposes to use a 75:25 split between FTE and district expenses**

NSW Treasury supports the change in methodology used for allocating central costs, however, recommends the use of 75:25 rule instead of 50:50.

The Commission has acknowledged that central costs are driven by factors other than district expenses, which neutralises the central cost allocation. The Commission has chosen to use FTE as a driver of expenses; however, this is being diluted by also using district expenses to apportion half of central costs.

NSW Treasury is concerned that the use of direct police district expenses to apportion central costs fundamentally overstates regional costs. The shift from using only district expenses to a combination of FTE staff (as a proxy for police support services) and district expenses (as a proxy for specialist units) represents an improvement in the method. However, the use of direct expenses should be limited.

We accept that, for any given level of offending, direct policing expenses in regional and remote areas will be higher than in major cities because of service delivery scale and the costs of remoteness. It is reasonable, therefore, that per capita direct expenses are higher in regional areas.

Specialist or central costs are not driven by service delivery scale or remoteness but is driven by service use. The Commission has accepted this in relation to functions that are best characterised as police support services and hence will use FTE numbers to apportion these costs. However, it intends to continue to use direct expenses as a proxy for service use for other services.

This does not make sense. NSW has provided data on the service use of its central functions that shows that a significant proportion of the costs relate disproportionately to major metropolitan areas. The central costs of these specialist services are driven by service use in metropolitan areas. If those costs were distributed to the metropolitan police districts that they disproportionately serve, then the ratio of metropolitan to regional expenses would better reflect actual expenses faced by districts in the police regression. But the Commission's method is to distribute the costs on the basis of the proposed ratios based on the proxies of FTE and district expenses.

The Commission's proxy approach is not a simplification; it is a mischaracterisation. It assumes, for example, that a regional district like Wagga Wagga should be allocated a higher per capita share of central costs that are disproportionately consumed by metropolitan police districts. This would be directionally wrong.

Furthermore, the neutralising effect of apportioning central costs in proportion to district expenses undermines the fact that services are centralised in the first place to precisely avoid or minimise costs inefficiencies driven by regional service delivery scale and remoteness.

The ideal scenario would be to apportion these costs on the basis of service use. This is already done for public transport command through census data. Where possible the Commission should pursue this for as many central units as possible. NSW Treasury provided data to enable the Commission to do that for our police districts.

NSW Treasury has provided the Commission with data to show a proceeding charging and responsible command. The charging command is either the local police district or one of a number of central charging commands, including the State Crime Command, the Organised Crime Squad, and the Counter Terrorism and Special Tactics squad.

Crucially, these central commands charge through the relevant local police district. This means that we can estimate the geographic focus of these commands. We have previously suggested that many of these commands would be focused on major metropolitan areas, as much of the organised and serious crime takes place in these areas.

NSW Treasury provided data in our previous submissions to highlight how these “specialist driven” units have disproportionate proceedings occur in major cities. In the 2023-24 data recently provided to the submission, there have been increases in the percentage of proceedings that occur in metropolitan areas in the following commands:

- Financial Crimes
- Robbery and Serious Crime Squad
- Counter Terrorism and Special Tactics charges
- Drug and Firearms Squad

There is no reason why NSW central cost data should not be apportioned on this basis. There may be practical data reasons why other states cannot provide similar geographic apportionment for their central commands. In those cases, some combination of FTE and direct expense apportionment may be necessary. But the Commission should limit the use of direct expenses beyond what is necessary so as to not misallocate costs. The Commission should at the very least maintain its 75:25 apportionment ratio of FTE and direct expenses.

Beyond the theoretical argument in favour of service use and against direct expenses, the Commission’s decision to adopt a 50:50 ratio despite the available data appears to unreasonably overweight whichever two states did not provide disaggregated central costs.

The Commission was unable to share with NSW Treasury which two states could not provide data. It is said, however, that the two states have large remote areas. States with large remote areas include WA, QLD, SA and NT. Of those, WA and QLD are the most populous. Together, they account for around 32 per cent of the Australian population.

For example, if WA and QLD couldn’t provide data and all their central costs were assigned to direct expenses (an unlikely scenario), a population-weighted apportionment for Australia would show the remaining states, making up 68 per cent of the population, using a 75:25 split between FTE and direct expenses. This results in an overall 51:49 FTE to direct expenses apportionment.

The Commission’s simplifying assumption to adopt a 50:50 ratio would marginally overstate the apportionment to direct expenses even in the extreme edge case that it was the two largest remote states that didn't provide the



data, and those states apportioned 100 per cent of their costs based on direct expenses. This is an extreme example given, in reality, those states would have a significant proportion of their central costs best apportioned on the basis of FTEs. After all, all states have centralised police support and administration functions.

	Remote states (0:100) Rest of Australia (75:25)	Remote states (50:50) Rest of Australia (75:25)
WA & QLD	51:49	67:33
WA & SA	62:38	71:29
SA & QLD	54:46	68:32
NT & QLD	59:41	70:30
SA & NT	69:31	73:27
NT & WA	66:34	72:28

Table 3.1 Calculation of the weighted average for different combinations of states with large remote areas.

This table shows the combination of remote states under an assumption of 100 per cent apportionment to direct expenses and under a more realistic assumption of 50:50 apportionment. In no case is an Australian-wide apportionment of 50:50 justified. Under any plausible scenario, it is evident that the Commission is giving far too much weight to the states that did not provide disaggregated central cost data.

## 3.2 Should an additional variable for remote offenders be added to the regression?

### 3.2.1 Commission draft position

The Commission proposes to not include an additional cost weight for remote offenders.

### 3.2.2 NSW Treasury response

**NSW Treasury supports the Commission position to not include an additional cost weight for remote offenders.**

There is no evidence that offenders themselves are more costly in remote areas. The Commission already accounts for remoteness costs in the regression cost weights. Further inclusion will double count the remote costs and as shown by the Commission has little explanatory value.

The cost of policing different severities of crime would be a useful addition to the regression. However, NSW acknowledges that this is not possible with current data limitations.



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## 3.3 Is there a case for a global cities driver in the police assessment?

### 3.3.1 Commission draft position

The Commission proposes not to include a global cities driver in the assessment of police expenses. The Commission gave the below reasons as to why the global cities driver should not be included:

- Culturally and linguistically diverse impacts will be discussed in the forward work program;
- An Australian Federal Police (AFP) submission to a parliamentary committee quotes that terrorism happens regionally;
- an Australian Criminal Intelligence Commission (ACIC) report highlights higher drug use in regions and a Border force media release which discusses a drug trafficking offence at a regional port;
- AFP mainly polices terrorism and complex crimes; and
- Difficulty in defining scope and other states not providing data.

### 3.3.2 NSW Treasury response

#### **NSW Treasury proposes further investigation of the global cities' driver.**

A global cities driver is necessary to incorporate the extra costs taken on by areas that have significantly dense populations and serve central business districts.

Currently, the Commission only considers costs associated with remoteness rather than costs associated with density and cities. The urban transport assessment is the only attempt made to highlight the diseconomies of scale faced by major cities as well as the unique circumstances they face. Justice is no exception and the opportunity to investigate how a global cities driver could be incorporated into this assessment should be undertaken by the Commission.

Realistically, correctly apportioning central costs on the basis of service use would go a long way to mitigating the need for a separate global cities' driver for Justice, which we have requested the Commission look further into in our above argument on central costs. The additional costs that states with major metropolitan areas experience would, under this scenario, be correctly apportioned to major cities rather than being incorrectly attributed disproportionately to regional and remote areas.

#### **Terrorism in global cities**

NSW Treasury accepts that terrorist attacks can and do happen anywhere and that drug use is a pervasive social problem that affects all communities. The key issue is not whether these things happen everywhere, but whether they occur more often in some areas and whether policing costs are higher there.

To ignore these differences in service use intensity on the basis that terrorism and drug use affects all communities would be akin to removing the indigeneity cost driver from the health assessment on the basis that everyone accesses public health services. This would plainly undermine genuine equalisation.

NSW Treasury has shown with our command unit charging data that costs related to major and organised crime, counterterrorism, and drugs and firearms are disproportionately concentrated in our major cities. We accept that we do not have visibility of other state data, but we would question the theoretical basis for assuming that the occurrence of these types of crimes would be significantly different in other states.

In relation to terrorism, it is widely acknowledged that attacks are *more likely* to occur in major cities, notwithstanding that they *can* occur anywhere. This is borne out of NSW Police Force (NSWPF) data showing the geographical distribution of terrorism-related charges, which has been shared with the Commission.

While it is true that the AFP runs counter-terrorism operations, the AFP works closely with state police.

It is beyond any dispute that states incur costs in relation to counterterrorism and these costs are driven by the incidence and risk of terrorist attacks. It is relevant that:

1. Terrorist attacks are more likely to happen in major cities<sup>1</sup>
2. AFP works with states to identify and investigate terrorist activities<sup>2</sup>

These are facts acknowledged by the AFP and National Security.

#### Drug use and crime

In relation to drug use and crime, the Commission argues that because drug use is relatively higher in rural and regional areas, by extension drug trafficking and both the criminal and policing activities associated with it must also be. However, the report cited by the Commission makes no reference to this. If policing costs in relation to drugs were driven only by the investigation of low-level distribution and dealing, then rates of drug use would be a reasonable driver. However, much focus of investigative work relates to the importation and distribution of bulk quantities of drugs by large and sophisticated criminal networks who are disproportionately based in major cities and gateways.

Further, the emergence of fentanyl for the first time since the measurement program referenced in the report began has reversed the long-term trend and capital cities are seeing higher consumption rates. The report also makes no mention of the rates of trafficking in regional vs capital cities.

NSWPF has collaborated closely with the ABF through the NSW Operations Co-ordination Group (OCG) and the Multi-Agency Strike Team.

The OCG includes membership of the AFP, Australian Border Force, ACIC, the Australian Transaction Reports and Analysis Centre and the NSW Crime Commission. The NSWPF is represented in a range of working groups that share operational insight, intelligence, best practices and investigative experience.

NSWPF and ABF collaborate through the Multi-Agency Strike Team (MAST) investigate border-controlled drug offences. Joint operations typically occur in major cities, due to common entry points via the sea and air.

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<sup>1</sup> <https://www.nationalsecurity.gov.au/national-threat-level/current-national-terrorism-threat-level>

<sup>2</sup> <https://www.afp.gov.au/crimes/terrorism#our-work>

Additionally, the NSWPF notes that with Serious and Organised Crime increasing globally, the provision of assistance to Commonwealth agencies will continue at an ongoing cost to the NSWPF.

## 4 Criminal courts assessment

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### 4.1 Do data support an assessment of regional costs for criminal and civil courts?

#### 4.1.1 Commission draft position

The Commission proposes to discontinue assessing regional costs for criminal and civil courts.

#### 4.1.2 NSW Treasury response

**NSW Treasury supports the Commission's position to remove the regional cost gradient for criminal and civil courts.**

The inclusion of technology in courts, which was accelerated by COVID-19, has eliminated any additional costs perceived to be driven by remoteness. In NSW this is becoming the norm, as soon all bail hearings will be done virtually. Since 7 July, adults in regional NSW have attended bail hearing via a centralised virtual bail court. The magistrate, prosecutor and lawyer are present via video link. Bail for most children in regional NSW will also be online. Eventually, all bail applications in NSW will be heard in the new virtual courts. This streamlining of court systems highlights some of the improvements and cost savings being made by technology in regional and remote areas.

## 5 Prisons assessment

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### 5.1 Are separate assessments of community corrections and juvenile detainees material?

#### 5.1.1 Commission draft position

The Commission decided to include a cost weight for juvenile detainees and an assessment of community correction orders if they had a material impact on GST distribution.

#### 5.1.2 NSW Treasury response

**NSW Treasury supports the inclusion of community corrections and juvenile detainees if material.**

Given the significant differences in costs of these services compared to adults in full custody, a separate assessment would be appropriate. This is supported by:

- The Commission has previously provided evidence that juvenile detainees have costs that have significantly higher than adults.
- Community corrective service costs in 2023-24 accounted for 16.5 per cent of total operating costs of all corrective services in the most recent Report on Government Services. Whereas the number of people under community corrective represent of 74.3 per cent of total corrective services. On that basis, it warrants a separate assessment.

Consistent with previous submission, NSW Treasury highlights the importance of HFE principles being followed in this assessment, as including this assessment is in line with policy neutrality. Other states have raised issues with changes in NSW community corrective service to full custody service ratios. NSW Treasury reiterates that a state shifting its proportion of community correction orders would factor into the Commission's existing approach in establishing a weighted average policy. This would be the case if states increased or decreased their proportion of such orders.

## 5.2 Do data support an assessment of regional costs for prisons?

### 5.2.1 Commission draft position

The Commission proposes to use the general service delivery scale cost gradient (discounted by 25 per cent) to assess service delivery scale in prisons and not assess regional costs.

### 5.2.2 NSW Treasury response

**NSW Treasury proposes to remove the general service delivery gradient or discount the general service delivery gradient by 50 per cent if it is used in the prisons assessment**

NSW Treasury supports the Commission position to not assess regional costs. This is a significant improvement and acknowledges that there is little evidence of a positive relationship between remoteness and prison costs rising.

The prison regression was problematic given its poor explanatory power. While NSW acknowledges there are economies of scale with the size of prisons at an aggregate, this relationship does not exist within regions. For example, this trend is not followed by:

- Major cities (smallest prisons are cheaper than second smallest prisons);
- Inner regional (second smallest prisons are cheaper than the middle quintile of prisons); and
- Outer regional (largest prisons are more expensive than second largest prisons and second smallest prisons are cheaper than the middle quintile of prisons)

NSW Treasury finds this further evidence to remove the general service delivery scale gradient in its entirety.

NSW Treasury also understand that for remote and very remote areas, only eight prisons are reported, highlighting issues with sample size.

The driver behind the prison expenses is mainly the type of prisoners that are incarcerated in prisons. Maximum security prisoners are likely to cost more to incarcerate than minimum security prisoners. Over 60 per cent of NSW prisoners are maximum security prisoners.

NSW Treasury argues that should the Commission decide to use the general service delivery gradient it should be discounted by Commission 50 per cent instead of 25 per cent to acknowledge:

1. The inappropriate nature of the general service delivery scale gradient to justice services
  - a. The cost of running prisons is driven more by the function of the prison than factors driving the general service delivery scale gradient. A measure calculated using health and education data should not be applied to prisons. The economies of scale that exist in the health and education sector do not flow to a sector such as justice which is particularly unique from other state provided services.
  - b. The use of the general service delivery gradient will apply a random quantification to scale costs and there is no evidence that applying this gradient moves the dial closer towards horizontal fiscal equalisation.
2. The lack of evidence that a positive relationship exists between increasing prisons costs and prison size.
  - a. Drivers of prison location and size are not related to providing justice services to that area – a prison is not large or small depending on the location but rather the supply of prisoners and required capacity.
  - b. Other confounding variables that drive prison costs are being ignored and possibly biasing the relationship that the Commission finds.

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