Justice Impact Tests: What are they and what is their value?

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Key messages

- Justice Impact Tests (JITs) are a standardised approach to assessing both negative and positive impacts and identifying the resource implications of proposals for all parts of the justice system and allied entities, prior to their implementation.
- JITs also provide a mechanism to ensure that the differential impacts on specific parts of the community are recognised in the decision-making process.
- Summary JITs which describe the available evidence are a first step and are sufficient for many proposals and may be all that is feasible while the necessary policy, analytical and data infrastructure is developed.
- JITS should be embedded at a high level within government to ensure they are an integral part of evidence-based decision-making.
- Making JITs public may enhance public confidence in the justice system and government decision making.

What are Justice Impact Tests?

In support of evidence-based decision making and appropriate and adequate resourcing, jurisdictions across Australia and internationally are adopting a standardised approach to assessing the potential impact of proposals on the justice system and beyond.

Justice Impact Tests (JITs)[1] **support good use of public funds** by providing a robust assessment of the relative benefit to cost ratio of undertaking a proposed change to any law, policy or procedure that has, or could have, a justice-related impact. This type of analysis compares the costs and benefits of the proposal to the status quo and/or to alternative options. Although it is primarily a monetised assessment, costs and benefits for which there is inadequate data, or which cannot be readily costed (non-monetised), should also be referenced. The exercise provides a standardised approach to ensuring that what is proposed will achieve the intended purpose. Together, this information supports well informed high-level decision making about proposals.

[1] The term Justice Impact Test is adopted here to encompass equivalent procedures, such as Justice Impact Assessments.

There are two important byproducts of undertaking a JIT. The first is to **support adequate resourcing** by identifying and quantifying any potential justice system and allied entity costs, separately for each agency. This is the mechanism by which the downstream impacts of proposals on legal assistance and allied human service providers are recognised.

The second important byproduct is the **transparency** that JITs can bring to decisions that have a justice related element; an area of policy particularly susceptible to the pressures of misinformed public opinion. Publication of JITs, which include a commentary on the availability and reliability of the evidence, also promotes the funding, collection and utilisation of reliable information about the justice system and, ultimately, better evidence-based decision making.

Types of proposals assessed by a JIT

Here we propose JITs as a tool to assess justice-related impacts, whatever sector the proposal originates from. This whole-of-government requirement is the approach recommended by the Law Council of Australia in The Justice Project (see details below). This approach necessarily requires a high degree of cooperation between government bodies, and a commitment to identifying and taking account of the justice impacts of proposals from non-justice areas of policy. The term Justice Impact Test is sometimes used in the narrower context of criminal justice, with some jurisdictions choosing to focus on this area of law, given the relatively high individual, community and system costs of criminal justice cases.[2]

The principle of judicial independence has sometimes been used to resist appraisal and measurement of court functions.[3] However, decisions relating to the operation of the courts can have cost implications that governments need to be aware of to facilitate effective planning. As a JIT is only intended as a tool to improve decision making and support the effective resourcing of impacted agencies, it should not in itself present a threat to judicial independence. The value of JITs may be more readily embraced in those jurisdictions where the judiciary lead responsibility for the administration of the court and are thus obliged to work co-operatively with government to ensure adequate resources and accountability.[4]

[2] See for example proposals for Justice Impact Tests in Queensland outlined below.

[3] See for example, the Honourable JJ Spigelman AC, at the time Chief Justice of NSW, address to the annual conference of the Australian Institute of Judicial Administration in 2006, where amongst other concerns regarding the culture of performance measurement and invalidity of 'client' satisfaction surveys, he noted that "the most important aspects of the work of the courts are qualitative and cannot be measured". He did, though, acknowledge that costs and delays were quantifiable.

[4] Chief Justice Terence Higgins (2008). The ways in which self-administration improves responsibility, accountability and efficiency. AIFA Courts Governance Seminar. https://aija.org.au/wp-content/uploads/2017/11/Higgins.pdf

Justice Impact Tests in the UK

The UK Ministry of Justice introduced JITs as a mechanism to identify the costs to the justice system of proposals that were being developed by *other* government agencies. This could hypothetically include, for example, Transport introducing new driving offences, Social Security revising penalties for benefit fraud, or Education criminalising parents whose children fail to attend school.

JITs recognise that any changes to laws, policies and procedures *may* have downstream impacts, adding to pressures on the police, prosecutors, courts, legal assistance providers, correctional services, victim and allied support services.

In the UK, a JIT is required by the Ministry of Justice from any agency or government department that is proposing a change to laws, policies or procedures that may increase or decrease the volume of cases in the court and tribunal system, and/or change the way in which cases are dealt with by the justice system.[5]

Information requirements

JITs draw on a range of information sources. To support quality decision making they should be underpinned by relevant and robust data about the likely impacts of proposals, and appropriate analysis of that data. For impacts on justice system resources, a model of the inter-relationship between the elements of the justice system, and allied entities is desirable, though requires considerable analytical investment and agreements to data-sharing between entities.

A cost benefit analysis requires a shared agreement of justice system unit costs, including methods for monetising non-financial impacts. Findings from evaluations of pilot proposals, or those of similar interventions, perhaps in other jurisdictions, can provide evidence of broader impacts, including unintended consequences. Information sources will vary in their relevance and robustness, so a challenge for JITS is accurately reflecting the relative reliability of the evidence sources.

That said, JITs can only incorporate and draw on the information that is available. For example, JITs can proceed without a justice system model in place, or evidence from a relevant evaluation, but their value, and the weight that can be placed on their findings, will be constrained. Where the quality of the available information is dubious, this should be acknowledged in the JIT. The JIT process can therefore helpfully identify requirements for additional evidence gathering. They can also become a mechanism for the sharing of information to enhance the quality of future decision making.

[5] Ministry of Justice (2018). Justice Impact Test: Guidance. London: UK. Available here: https://assets.publishing.service.gov.uk/media/5b6daf8ee5274a1cfa14fb9c/justice-impact-test-guidance.pdf Costs for proposals only affecting policing are excluded, as funding is the responsibility of another department (the Home Office).

Expertise required

Given the range of information that is deployed in a JIT, an effective and informative JIT process draws on a range of professional, and in some circumstances, community expertise. At its core it is dependent on an infrastructure that includes expertise in justice system policies and processes, evidence evaluation, administrative data, cost benefit analysis, behavioural insights, consultation, and the effective communication of analytical information to senior decision makers. The contributing areas of expertise are:

- Policy, strategy and/or operational experts with a good understanding of the utility and appropriate use of evidence, to develop effective proposals. These professionals will likely lead on collating the evidence at the first step of the JIT process (see further below).
- Social researchers and behavioural scientists are sources of expertise for their individual sectors, understand the relative utility of the range of evidence sources, and offer insights on the behavioural responses of those impacted by proposals.
- Economists provide guidance on cost benefit appraisal, including the monetisation of non-financial benefits and costs.
- Data scientists build, manage and interrogate models of justice systems that can be used to simulate the impact of proposals.
- Community groups targeted by proposals, interest groups, and the general public may in some circumstances be given an opportunity to comment on draft JITs during the policy approval process, which in itself can enhance public confidence and trust in justice related decision making.
- Knowledge translators and communication experts can assist in ensuring that complex, and often uncertain, analytical information is conveyed effectively to stakeholders.

Summary vs comprehensive JITs

Whether a JIT is required should be unambiguous to avoid any potential for evading appraisal of the very proposals that should attract such scrutiny. That said, JITs are resource intensive to prepare, so are not appropriate for all proposals. One approach, adopted by many Australian jurisdictions for other types of impact assessment (see further below), is to require a summary assessment for all proposals. These are then independently assessed to determine whether a comprehensive analysis is likely to be worth the analytical investment. Summary JITs can be prepared relatively early in proposal development, and undertaking this exercise may in itself contribute to a better quality proposal.

A summary JIT can be completed by the team developing the proposal, using standard templates and guidance (see further details below). However, a comprehensive JIT will, at a minimum, require cost-benefit analytical expertise. Proposals that justify investment in a full JIT will tend to be those that:

- are expected to be of high dollar cost to government, in terms of capital investment and/or ongoing expenditure
- initially of limited cost, but likely to scale up in the future
- present uncertainty regarding the impacts; and/or a high degree of risk associated with the proposal delivery; and/or significant potential for unintended consequences

- are proposed by a body whose funding is external to the justice sector (such as a different government cluster/jurisdiction)
- will or may have a significant impact on at least one community group
- will or may impact on multiple parts of the justice system and/or allied service providers.

Timing

As noted above, a summary JIT can be commenced relatively early in the policy development process. However, the cost-benefit element of a comprehensive JIT will require the proposal to be sufficiently well described to assess and scale benefits and costs, as it is resource intensive to separately assess multiple versions of a policy. Comprehensive JITs are therefore usually the final step in the proposal development process. For new legislation, for example, they may be included in the final submission to the responsible minister, prior to legislation being laid before parliament.

Nevertheless, there are advantages to commencing the JIT process sufficiently early, so that any additional information requirements can be actioned. This is especially true when some form of user or public consultation is envisaged. Also, as said, the process of developing the JIT can itself usefully inform the proposal development.

JITs vs evaluation

Unlike evaluations, JITs are completed prior to the proposal being approved and actioned. They may, though, draw on evidence from previous evaluations, such as small-scale pilots of the initiative proposed or evaluations of similar interventions. Ex-post evaluation takes place following implementation and collects information that is likely to be relevant to future JITs. An impact evaluation quantifies the effectiveness of the intervention, ideally by comparison to a valid counter factual. An impact evaluation may also collect information that allows for the calculation of unit costs, such as the time spent by staff on delivering the intervention. Other types of evaluation include process evaluations which describe how the proposal is operationalised and any issues, such as unintended consequences, encountered during implementation.

JITs do not replace the need for robust ex-post evaluations but can inform their design. The information captured by ex-post evaluations can be used to refine the estimates and assumptions deployed in future JITs (Figure 1).

Figure 1 The proposal development cycle

Key components of a JIT

The JIT process has several components, the relationship of which is illustrated in Figure 2. The colour of the elements aligns with their description in the accompanying text. Not all components will be required for all proposals.

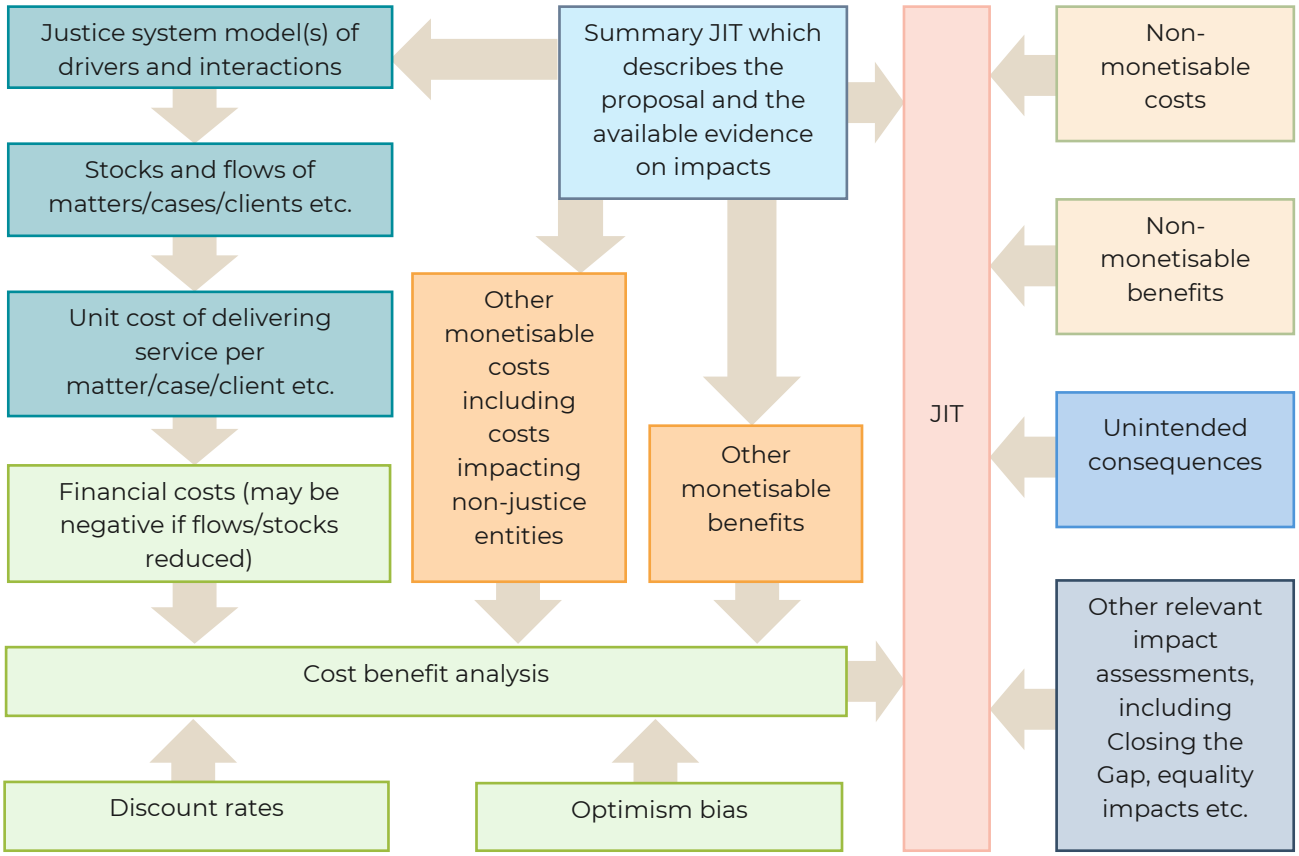
Summary JIT

The process commences with the lead department or agency completing a detailed description of the proposal. This outlines its purpose and how it is intended to achieve this purpose. The latter may be depicted through a theory of change model or similar. This identifies the available evidence, drawn from relevant comparators, pilot findings, or other jurisdictions, and provides at least a qualitative description of the expected benefits and costs of what is proposed.[6]

Outlined at Annex B is the UK's Ministry of Justice form that is used to gather this type of information. Once completed, this essentially forms a summary JIT and can be used to determine whether to proceed to a comprehensive JIT, utilising justice system models, cost benefit analyses and other components as appropriate.

[6] There are many sources of guidance on developing theory of change models or similar. See for example NSW Government (2025) available at: https://www.nsw.gov.au/departments-and-agencies/premiers-department/evaluation-toolkit/steps-managing-an-evaluation-project/step-1-develop-program-logic-and-review-needs.; and resources such as NSW Treasury (2023) Evaluation Workbook 1 available at https://www.treasury.nsw.gov.au/sites/default/files/2023-02/202302-evaluation-workbook-i-foundations-for-evaluation.pdf

Figure 2 Components of a JIT (Figure element colours align with text headings)



Justice system model(s)

The parameters of a system model describe the drivers of flows into and between the elements of the system, and the relationships and interactions between the elements.[7] [8] A comprehensive model identifies all government and non-government bodies that may be impacted by changes to justice system flows. The overall model may utilise or reference models of individual agencies, which have been developed to forecast and manage the business of that agency, such as the courts,[9] the youth justice system,[10] or correctional services[11]. Different models may be required for

[7] For an excellent, if now technologically dated, introduction to criminal justice system models, see: Rhodes (1990). Models of the Criminal Justice System: a review of the existing impact models. US Department of Justice, Bureau of Justice Statistics. Models of the Criminal Justice System: A Review of Existing Impact Models (ojp.gov)

[8] The development of NSW's model of the criminal justice system JUSTSIMTWO is described in: Halloran, N and Fitzgerald J (2018). The NSW Criminal Justice System simulation model. NSW Bureau of Crime Statistics and Research. https://bocsar.nsw.gov.au/documents/publications/general-series/r60-report-cjs-simulation-model-2018.pdf

[9] Thorburn, H (2017). A simulation model of the NSW District Criminal Court with illustrative applications. Contemporary Issues in Crime and Justice No. 204. NSW Bureau of Crime Statistics and Research. https://bocsar.nsw.gov.au/documents/publications/cjb/cjb201-250/cjb204-report-a-simulation-model-of-the-nsw-district-criminal-court-with-illustrative-applications-2017.pdf

[10] Livingston, M, Stewart, A and Palk G (2006). A micro-simulation model of the juvenile justice system in Queensland. Trends and Issues in crime and criminal justice No.307. Australian Government: Australian Institute of Criminology. https://www.aic.gov.au/sites/default/files/2020-05/tandi307.pdf

[11] See for example, Halloran et al (2017) The NSW Prison Population Simulation Model: a policy analysis tool. NSW Bureau of Crime Statistics and Research. Contemporary Issues in Crime and Justice: Number 203. https://bocsar.nsw.gov.au/documents/publications/cjb/cjb201-250/cjb203-report-nsw-prison-population-simulation-model-2017.pdf

different types of proposals, and separately for each of the civil, criminal and family justice systems, although there are advantages in applying a common set of assumptions to support comparability of model outputs. While it may be too complex to incorporate allied entities into a system-wide quantitative model, such potential impacts should be acknowledged, at least qualitatively.

Justice system models build in the capacity of system elements (for example, identifying when a court or correctional centre will reach capacity) and the potential for backlogs. Models also need to consider the extent to which matters/cases/clients might loop back to an earlier part of the system and, for criminal justice matters, the potential impact of changes in the offence type between arrest, charge, proceeding initiation and finalisation. Models may also improve their predictivity by appropriately reflecting underlying trends, such as seasonality.[12]

Administrative data from the individual elements of the system will form the basis of model development, but the input of stakeholders representing affected parts of the system in sense-checking the levers and drivers of change is crucial to the construction of an accepted and valid model. Dashboards of model assumptions and outputs can facilitate real time testing of parameters with expert stakeholders.[13] Perfection is impossible, but the transparent use of such data should help provide an incentive to stakeholders for ongoing improvement of data availability, relevance and reliability. System model(s) should be reviewed on a regular basis to ensure they remain a reasonable depiction of the flows of matters through the justice system.

Once the base model is agreed, the impact of proposals can be simulated by changing the parameters of the model(s).[14] Justice system models should also allow manipulation of the drivers of justice system costs. In addition to the number of cases, this will likely include some indicator of case seriousness, early and late plea rates and elections for criminal offences, defended civil matters, settlement/discontinuance rates, legal representation rates, number of hearings per matter, availability of judges/commissioners/tribunal members/magistrates, rates of appeal and rates of enforcement.

The OECD has identified the value of JITs in supporting people-centred justice systems, by ensuring that all elements of proposals are assessed against the purpose of equal access to justice for all.[15] A people-centred approach would additionally consider what resources will be required to effectively support applicants/respondents and defendants/victims through the justice process.

Stocks and flows

The outputs of a justice system model are counts of matters, cases, applicants, or defendants, moving in and through each element of the justice system – additional to or reduced from the

[12] See for example, Clark, J and Lind, B (2003). The New South Wales Criminal Justice System Simulation Model: Further developments. Contemporary Issues in Crime and Justice Number 76. NSW Bureau of Crime Statistics and Research. https://www.austlii.edu.au/au/journals/NSWCrimJustB/2003/2.pdf

[13] Lavelle, Ben (2019). A guide to automated forecasting of criminal court cases at the Ministry of Justice. The Operational Research Society. Webinar. https://www.youtube.com/watch?v=_j92yPEmIrM

[14] Dabbaghian, P et al (2013). High-level simulation model of a Criminal Justice System. Chapter 6 in Theories and Simulations of Complex Social Systems. Edition: Intelligent Systems Reference Library. Editors: V. Dabbaghian, V.K. Mago Publisher: Springer. https://www.researchgate.net/publication/265468189_High-Level_Simulation_Model_of_a_Criminal_Justice_System#fullTextFileContent

[15] OECD (2021). OECD Framework and Good Practice Principles for People-Centred Justice. Paris: OECD Publishing. Available here: https://www.oecd.org/en/publications/oecd-framework-and-good-practice-principles-for-people-centred-justice_cdc3bde7-en.html

existing baseline. Stocks will also be relevant where they indicate, for example, increased waiting times at specific stages due to backlogs, or agencies reaching capacity. Depending on the system design, it may be necessary to separately report by regions, at least for those agencies whose business is geographically based. The outputs of the model should cover a sufficient time frame that the impact on the system can be fully recognised. Managing slow and fast uptake of a new proposal are each likely to present their own challenges for different parts of the system.

Unit costs

Unit costs are an estimate of the average full cost of delivering specific elements of justice for each target of the proposal, per case, applicant or defendant. What units are relevant will vary, but a standardised set of agreed unit costs facilitate a standardised approach and allow for comparisons between proposals. Examples of unit costs are:

- The cost of an additional police officer per annum, including recruitment, training, uniform, management, equipment, wages, leave and superannuation.
- The cost of an additional place in a correctional services facility. While unit costs are generally the cost of housing an inmate, where facilities are reaching capacity, the likely large cost of building new facilities will need to be recognised.
- The cost of providing legal representation service to a Family Law client for a child-access matter.
- The cost of an additional tribunal member per X additional tenancy matters, to maintain a fixed time from filing to resolution.

Cost benefit analysis

The quantifiable and unquantifiable benefits and costs are systematically combined in cost benefit analysis, which will form the basis of the JIT. The standardised approach to allocating monetary costs to inputs, outputs and outcomes not only allows for valid comparison of alternative proposals, but is also a reassurance that the net economic benefits exceed the costs.[16] In deriving these estimates, it is important to consider indirect effects which may occur when individuals or bodies that are not the direct target of the proposal are positively or negatively impacted. Guidance on undertaking cost-benefit analysis is available from state/territory Treasury or Finance departments.

Cost benefit analysis is relatively common for criminal justice interventions and is well supported by a growing international evidence base and Australian focused guidance.[17] In NSW, for example, cost benefit analysis is generally mandatory for government proposals with an estimated cost of over $10million.[18]

[16] The ratio of the present value (see section on discount rates) of benefits to the present value of costs is generally quoted as a numeric value, where values above 1 indicate benefits exceed costs, and below 1, that costs exceed benefits. For example, a ratio of 2 would indicate that for every dollar spent, a benefit of 2 dollars will be delivered.

[17] Dossetor, K (2011). Cost-benefit analysis and its application to crime prevention and criminal justice research. AIC Reports Technical and Background Paper 42. Australian Institute of Criminology. Available here: https://www.aic.gov.au/publications/tbp/tbp42

[18] NSW Treasury (2023). NSW Government Guide to Cost-Benefit Analysis. Available here: https://www.treasury.nsw.gov.au/sites/default/files/2023-04/tpg23-08_nsw-government-guide-to-cost-benefit-analysis_202304.pdf

Sources of data on costs and benefits

There are some helpful resources that compile the available evidence to quantify the costs and benefits of criminal justice interventions, the estimates from which can be a useful basis for criminal justice proposal appraisal.[19] [20]

Ready accessibility of reliable information about justice system costs and benefits, and appropriate application of this data in appraisal is required to support a whole-of-government JIT process. In NSW, the Department of Communities and Justice has a process for measuring the economic and social benefits for justice systems proposals, but there is currently no publicly available guidance on this process. NSW Treasury offers guidance about their approach to cost-benefit analysis more generally.[21]

Discount rates

The impact of proposals is costed according to present values by applying a discount rate to future values. Discount rates are particularly relevant when the costs or benefits of a proposal are realised over a long period of time and/or when they occur at different times. For example, a cost incurred now may not deliver a benefit for some years, but applying a discount rate allows for the future benefit to be valued at today's prices. Governments publish a fixed discount rate that tends to be varied only occasionally. The Commonwealth rate is currently 7 per cent.[22]

Optimism bias

In recognition of the tendency of proposal appraisals to be overly optimistic, standardised adjustments to estimates can be applied. These adjustments are, as far as possible, based on information following the roll-out of previous similar proposals. This information is readily available for proposals involving building and equipment development, where evidence suggests corrections of up to 200% for costs.[23] Evidence of appropriate optimism bias corrections can be collated over time by comparing JIT projections to actualities. For example, the number of cases resulting from the proposal that enter the justice system in set time periods; the length/cost of cases and/or the number of cases where the parties receive legal assistance provision.

Monetising non-financial costs and benefits

Not all costs and benefits of a proposal can be quantified financially, in that they do not explicitly require dollar expenditure or translate into dollar savings. Some of these have accepted methods

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[19] Heeks, M Reed, S Tafsiri, M and Prince S (2018). The economic and social costs of crime: second edition. London: Home Office. Available here: https://assets.publishing.service.gov.uk/media/60094b86d3bf7f2ab1a1af96/the-economic-and-social-costs-of-crime-horr99.pdf

[20] Mayhew P (2003). Counting the costs of crime in Australia. *Trends & issues in crime and criminal justice* no. 247. Canberra: Australian Institute of Criminology. Available here: https://www.aic.gov.au/publications/tandi/tandi247

[21] NSW Treasury (2023). NSW Government guide to cost-benefit analysis. NSW Government. Guidance TPG23-08. https://www.treasury.nsw.gov.au/sites/default/files/2023-04/tpg23-08_nsw-government-guide-to-cost-benefit-analysis_202304.pdf

[22] See Office of Impact Assessment, Cost Benefit Analysis guidance. Canberra: Australia. Available here: Cost Benefit Analysis | The Office of Impact Analysis (pmc.gov.au)

[23] HM Treasury (2013). Green Book supplementary guidance: optimism bias. London: UK, Available here: Microsoft Word - GreenBook_optimism_bias.doc (publishing.service.gov.uk)

of deriving cost estimates, such as the various measures of adjusted life years and health-related quality of life, used to value risks to life and health.[24]

There are also various methods that can be used to produce monetary estimates for activities for which there are no financial costs. These include revealed preference (to value the non-monetary resources people actually expend on justice-related activities, such as self-representation) and stated preference (which deploy survey techniques to quantify such estimates using hypothetical scenarios). [25]

Non-monetisable costs and benefits

There are other sources of information on potential impacts that cannot be translated into monetary estimates, but should nevertheless be referenced in a JIT. Examples include information on impacts derived from qualitative research, attitudinal surveys, consultation findings and lived experience. In the absence of any quantification, appraisal guidance generally requires that all benefits and costs are described qualitatively, recognising that this exercise in itself can prompt a more informed consideration of the details of the proposal.[26]

Unintended consequences

A comprehensive appraisal should assess the potential for unintended consequences, both positive and negative, and consider any necessary mitigations. Unintended consequences range from the unknowable and unavoidable to the knowable and avoidable.[27] However, even knowable and avoidable effects of legislation and regulation are often ignored in proposal development.[28]

Unintended consequences may take various forms. Changes to policies and procedures are generally intended to impact behaviour positively, but may inadvertently create perverse incentives.[29] Overly rigid legislation, with insufficient discretion, has been identified as undermining just outcomes for individuals.[30] Other potential impacts to consider are those on

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[24] See The Office of Impact Analysis (OIA) https://oia.pmc.gov.au for Australian based guidance on the use of Value of Statistical Life (VSL). For the source of the current guidance, see Abelson, P. (2008). Establishing a monetary value for lives saved: issues and controversies. Working papers in cost-benefit analysis. WP 2008-2.Office of Best Practice Regulation, Department of Finance and Regulation. Available here: https://oia.pmc.gov.au/sites/default/files/2021-06/Working_paper_2_Peter_Abelson.pdf

[25] Australian Government (2020). Cost-benefit analysis. Guidance Note. Department of the Prime Minister and Cabinet. Canberra: Australia. Available here: Cost-benefit analysis Guidance Note (pmc.gov.au)

[26] Australian Government (2020). Op cit.

[27] Suckling, J et al (2021). Unintended consequences: Unknowable and unavoidable, or knowable and unforgiveable? Methods. Frontiers in Climate. Frontiers | Unintended Consequences: Unknowable and Unavoidable, or Knowable and Unforgivable? (frontiersin.org)

[28] Norton, R. (undated). Unintended Consequences. Econlib. https://www.econlib.org/library/Enc/UnintendedConsequences.html

[29] For example, when the Victorian government introduced 'no grounds' evictions it allowed for eviction at the end of the first fixed term, thus creating an incentive for landlords who wished to maintain control to end tenancies at this point. Ross, LP (2021). Available athttps://www.tenants.org.au/blog/end-fixed-term-evictions-are-unfair-no-grounds-evictions-part-2

[30] McMillan, J (2009). Mistakes and unintended consequences – a safety net approach. Commonwealth Ombudsman Issues paper. Available here:

public perceptions of the justice system, including confidence and trust in its ability to balance the rights and fair treatment of all stakeholders.[31] Justice system impacts themselves may be the unanticipated consequence of legislation or regulatory change that inadvertently increases the extent of justice system contact, such as environmental or public health interventions with penalties for non-compliance. Unintended consequences may have implications for the justice and fairness of interventions, particularly where they impact groups differentially.[32]

Behavioural Insight Units within jurisdictions may offer assistance in reviewing proposals to assess the potential for unintended consequences. This can identify the likelihood of generally recognised behavioural responses to what is proposed.[33] Expert knowledge may be required to identify potential consequences that are unique to a specific sector. For example, within criminal justice, the unintended consequences of interventions such as incarceration are relatively well documented,[34] and drug related policies are known to have unexpected health, justice, employment and environmental impacts.[35] Careful selection of salient experts, circulating draft JITs across departments/agencies, consulting and valuing multiple voices including those of groups likely impacted, may all assist in identifying unintended effects and mitigating strategies.[36]

Identifying impacts may necessitate additional data collection. An assessment of the impact of proposed changes to court fee tiers, for example, could require the collection of data to monitor the capacity-to-pay profile of those accessing the courts and utilising fee waivers, to monitor for the unintended impact of lack of awareness of the new arrangements on uptake, and ultimately access to justice.[37]

Unfortunately, shared knowledge of unintended impacts is constrained by their limited documentation, with a recognised bias towards the reporting of positive rather than negative impacts.[38] A systematic approach to collating and disseminating unintended consequences supports better informed policy design into the future and should ideally be incorporated into the policy and evaluation cycle.

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https://www.ombudsman.gov.au/__data/assets/pdf_file/0010/31141/issues_paper_mistakes_and_unintended_consequences.pdf

[31] Mirrlees-Black, C (2001). Confidence in the criminal justice system: findings from the 2000 British Crime Survey. Research Findings No. 137. Home Office: UK. https://www.legal-tools.org/doc/0716b2/pdf/

[32] See for example, behavioraleconomics.com (2025) on the unintended consequences of behavioural 'nudges'. Available at https://www.behavioraleconomics.com/be-academy/courses/behavioral-science-ethics/lessons/nudge-ethics-part-1/topic/effects-of-nudges/ [Accessed 4/4/2025]

[33] For example, the NSW Government's Behaviour Insights Unit https://www.nsw.gov.au/departments-and-agencies/behavioural-insights-unit

[34] See for example, Vera Institute of Justice (1996). The unintended consequences of incarceration: papers from a conference organised by the Vera Institute of Justice; https://vera-institute.files.svdcdn.com/production/downloads/publications/uci.pdf

[35] Reuter P. H. (2009). The unintended consequences of drug policies. Report 5. RAND Corporation. https://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR706.pdf

[36] Oliver, K Lorenc T, Tinkler, J and Bonell, C. (2019). Understanding the unintended consequences of public health policies: the views of policymakers and evaluators. BMC Public Health 19. Article 1057. https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-019-7389-6#citeas

[37] Victoria Law Foundation (2022). Submission: Regulatory Impact Statement on Magistrates' Court (Fees) Regulations and Juries (Fees) Regulations. https://cdn.prod.website-files.com/64e6d2582dd4319151be6a26/653b3ad78cac599667a1cc48_64ec1ded5eb38b96eb610a7f_vlf-court-and-juries-fees-ris-submission.pdf

[38] Vaganay, A. (2016). Outcome reporting bias in government-sponsored policy evaluations: a qualitative content analysis of 13 studies. PLoS One. 11(9). https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5045216/

Additional components of JITs

The priority focus of a JIT is an assessment of the justice related costs and benefits of the proposal. However, there are other types of impacts that can also be assessed, drawing on additional evidence sources. These may be incorporated into the JIT or provided independently.

Although a more holistic approach may be appealing, there are risks to increasing the complexity of JITs, and thus the information requirements. Too detailed a requirement may impact timeliness, quality, clarity, and achieving an appropriate balance regarding the strength of the evidence. However, some additional appraisals may need to be routinely incorporated.

Closing the Gap

In the Australian context, it is important to consider the impact of justice-related proposals on the Closing the Gap targets. What this looks like in practice will be shaped by the input of Aboriginal and Torres Strait Islander peoples. The differential impact of justice policies on Aboriginal and Torres Strait Islander peoples is well recognised, [39] [40] as is the importance of Aboriginal and Torres Strait Islander peoples having a say in the design and delivery of all policies that impact them.

JITs can provide an opportunity to work in partnership on an assessment of the impact of proposals and achieve a shared agreement on how the impact of the proposals on Aboriginal and Torres Strait Islander peoples will be monitored. The 2020 National Agreement on Closing the Gap made a whole-of-government commitment to work in partnership with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations to "set out a future" where policy making is "done in full and genuine partnership".[41] The Agreement specified a number of "transformation elements" which included full and transparent engagement and access to information and decision making in respect of proposed changes to policy and programs that primarily impact Aboriginal and Torres Strait Islander peoples.[42]

Equality Impacts

Equality Impact Assessments (EIAs) identify which groups of people will be impacted positively or negatively by a proposal and attempt to quantify this impact. Subject to the availability of sufficiently robust data, these differential impacts may be monetised. However, the primary purpose of an EIA is to ensure that any differential impacts are recognised prior to finalisation of proposals, and either mitigated or accepted as justified in the circumstances.

EIAs were introduced in the UK in 2010,[43] and were initially conducted separately to JITs. However, they have subsequently been partially incorporated into JITs to ensure that the differential impacts on specific groups are recognised and costed.

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[39] Australian Law Reform Commission.(2018) Improving police practices and procedures. Available at Improving police practices and procedures | ALRC

[40] Australian Human Rights Commission (undated). Factsheet: Criminal Justice System 1 (humanrights.gov.au)

[41] Closing the Gap in Partnership (2020). National agreement on closing the gap. Paragraph 18. National Agreement on Closing the Gap

[42] Op cit. Paragraph 59.

[43] House of Commons Library (2020). The Public Sector Equality Duty and Equality Impact Assessments. Briefing Paper 06591. https://researchbriefings.files.parliament.uk/documents/SN06591/SN06591.pdf

Jurisdictions will vary on which socio-demographic characteristics they wish to assess, but could include:

- age and gender
- disability
- sexual orientation
- marriage and civil partnerships
- pregnancy and maternity
- metro, regional, remote residence
- culturally and linguistically diverse
- religion or belief.

Social Impacts

In the context of JITs, the concept of social impacts is most usefully considered as a requirement to assess the impacts of proposed policies on individuals and communities.[44] For justice-related proposals, this can helpfully support a people-centred approach to access to justice policy development.[45]

In its discussion of JITs, the Law Council of Australia specifically identified the value of considering social impacts, in recognition that many government policy areas can impact **legal need**,[46] directly or indirectly, by impacting disadvantage and other drivers of legal need.[47]

Arguably, even where there are no direct formal justice-system impacts of proposals, social impacts should be incorporated into the JIT scope, because changes to the resourcing of legal assistance may be required to mitigate, manage or even enhance the impacts of the intervention that is being proposed. An example of this operating in practice is the **Knowmore** [48] legal service, which was formed to support people providing information to the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

Health Impacts

Health Impact Assessments (HIAs) assess the impact of policies, programs and projects on physical, mental and social wellbeing.[49] Like JITs, they are used to assess proposals prior to implementation and are primarily aimed at assessing the impact of other sectors' proposals.

Although there is no one agreed approach, generally they are intended to engage decision makers in identifying the potential positive and negative, direct and indirect, health impacts of

[44] Though the complexity of attributing social impacts to specific organisations/programs is well recognised, resources such as those of the Australian Social Value Bank and the Centre for Social Impact provide valuable guidance.

[45] Mulherin. G, 2023. Evolution to people-centred justice. Justice Methods (6), Law and Justice Foundation of NSW https://lawfoundation.net.au/wp-content/uploads/2023/11/JM6-Evolution-to-people-centred-justice-1.pdf

[46] For information on what comprises "legal need" see Law and Justice Foundation of NSW (2024) available at:: https://lawfoundation.net.au/access-to-justice-research-hub/understanding-legal-needs/#:~:text=Legal%20needs%20arise%20when%20a%20person%20has%20a,self-help%20materials%20to%20legal%20representation%20by%20a%20lawyer.

[47] Law Council of Australia (2018). The Justice Project Final Report. Final Report - Law Council of Australia

[48] For information on Knowmore see: https://knowmore.org.au/

[49] NSW Health (2017) Health Impact Assessment. Available at:. https://www.health.nsw.gov.au/environment/hazard/Pages/health-impact-assessment.aspx

cross-sector proposals. HIAs identify the health impacts of hazards, including potential health inequities, and can inform the communication of health risks to those who may be impacted. Guidance on conducting HIAs is available within jurisdictions, including NSW.[50]

Environmental Impacts

Environmental impacts can cover both environmental protection/conservation and climate change related impacts. In Australia, Commonwealth laws regulate activities on nationally protected land,[51] and state laws determine the requirement for assessment of impacts on specific types of facility.[52]

In the UK, some JITs include a disclosure in respect of climate impacts, such as "What is the CO_2 equivalent change in greenhouse gas emissions? Traded and non-traded" of the justice proposal. Government guidance is available on valuing emissions for economic analysis.[53]

Privacy Impacts

A Privacy Impact Assessment (PIA) is intended to assess risks to privacy and ensure proposals comply with legislation and good practice regarding personal information. The *NSW Information and Privacy Commission* describes PIAs as "a methodology for assessing the impacts on privacy of a project, technology, product, service, policy, programme or other initiative and, in consultation with stakeholders, for taking remedial actions as necessary in order to avoid or minimise negative impacts".[54]

Are Justice Impact Tests effective?

An international review of impact assessments of all kinds, conducted by the Scottish Government, identified that even though the requirement to conduct them is generally met, this is often just a formality.[55] Evidence of any influence on policy making was limited, with their often late timing in the policy development process a particular hindrance.[56] However, the review notes that "even where an impact assessment does not lead to changes in a policy, it can have

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[50] University of NSW and NSW Health (2007) Health Impact Assessment: a practical guide. Available at:. HIA Guide_final 11/10/07 (hiaconnect.edu.au)

[51] Australian Government (1999) Environment Protection and Biodiversity Conservation Act 1999. Available at: Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) - DCCEEW

[52] For example, NSW provides environmental impact statement guidelines in respect of roads, marinas, sewerage etc. Environmental Impact Statement guidelines | Planning (nsw.gov.au)

[53] See for example: NSW Government (2023) Technical note to NSW Government Guide to Cost-Benefit Analysis TPG23-08. Available at: https://www.treasury.nsw.gov.au/sites/default/files/2023-03/20230302-technical-note-to-tpg23-08_carbon-value-to-use-for-cost-benefit-analysis.pdf and https://www.infrastructureaustralia.gov.au/publications/valuing-emissions-economic-analysis

[54] Information and Privacy Commission NSW (2020). A guide to Privacy Impact Assessments. Available here: https://www.ipc.nsw.gov.au/guide-privacy-impact-assessments-nsw

[55] Scottish Government (2021). Literature review of impact assessment in governments. Available here: https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/02/literature-review-impact-assessment-governments/documents/literature-review-impact-assessment-governments/literature-review-impact-assessment-governments/govscot%3Adocument/literature-review-impact-assessment-governments.pdf

[56] However, the review also recognises their findings may be affected by reporting bias, with the academic literature, at least, favouring examples of failure.

benefits in terms of improved transparency and accountability of decision-making, increased awareness of the public, and increased trust between stakeholders". [57]

Preconditions for effective impact assessments were found by the review to be both about process (starting the assessment early in the process; adequate data, expertise and resourcing; quality-review; follow-up) and behaviour/culture (open-mindedness; commitment to considering the findings; involving others; sharing information; appropriate framing of the assessment messages).[58]

The Scottish Government review did not explicitly assess the effectiveness of JITs in identifying potential justice system resource impacts. It is notable that, more than a decade after their introduction, the UK Ministry of Justice continues to require JITs, which given the analytical resource demands, suggests they deliver a net-benefit to the Ministry.

Justice Impact Tests in Australia

JITs in the specific form described here have only been partially implemented in Australia, with jurisdictions focusing on their use to support internal decision-making, rather than as an opportunity to share assumptions and findings publicly. Retaining confidentiality of JITs may be seen to support the opportunity for frank and fearless policy advice that would be challenging to convey in public documents.

Even where there is no explicit JIT requirement, Business Cases and Regulatory Impact Assessments – which similarly tend to incorporate a cost benefit impact appraisal of proposals – are undertaken for many government decisions. Government regulation is intended to achieve social, economic and environmental outcomes. At its broadest, regulation can encompass any government-imposed requirement or action that will impact community or business behaviour, and regulatory compliance may create a justice impact. In theory, therefore, criminal, civil and family justice impacts may arise from direct or indirect forms of regulation and may be referenced in such appraisals.

Current jurisdictional arrangements that could be identified primarily from publicly available information are outlined below.

[57] Scottish Government (2021) op cit. Section 4.2

[58] Scottish Government (2021 op cit.

Current jurisdictional arrangements

NSW

The NSW Bureau of Crime Statistics and Research (BOCSAR) manages a Justice Impact Assessment (JIA) process on behalf of the NSW Government.[59] It draws on BOCSAR's criminal justice simulation model framework[60] and focuses on impacts across the criminal justice system, including costs to the Department of Communities and Justice, the judiciary, Legal Aid NSW, and the Office of the Director of Public Prosecution (the model does not currently measure impacts to the NSW Police). The JIA process considers impacts to the criminal justice system resulting from changes originating in all NSW Government agencies, including the NSW Police, Transport for NSW, and the Environmental Protection Authority. JIAs have only a limited coverage of the civil justice system, and do not measure any of the social or wellbeing benefits that could be considered in an appraisal.

The completion of a JIA is not publicly stated as a mandatory requirement, but evidence-based policy is generally supported through NSW Government's requirement for government agencies to provide a Business Case for new proposals (at least, for those exceeding $10million). Proposals exceeding $100million (or $20million for information communication technology and digital initiatives) incorporate the features generally found in a full JIT, such as logic models, cost benefit analysis, and monitoring and evaluation plans.[61] While there is no stated requirement to assess justice related impacts within the Business Case guidelines, there is a reminder that the stakeholders to be consulted should include other agencies impacted by the proposal.[62]

Queensland

The newly formed Justice Reform Office, within the Queensland Government Department of Justice and Attorney-General, is, as one of its first priorities, developing a "justice impact test" to assess the impact of proposed new laws or policies on the criminal justice system.[63] The government introduced a Better Regulation Policy in 2023, supported by the Office of Best Practice Regulation. An Impact Analysis Statement (IAS) is required for all regulatory proposals: either a brief summary or a full IAS for proposals with significant impacts.[64]

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[59] NSW Treasury (2024). Evidence Bank Annual Insights Report. NSW Government. Available here: https://www.treasury.nsw.gov.au/sites/default/files/2024-06/20240606-evidence-bank-annual-insights-report.pdf

[60] Halloran, N and Fitzgerald, J (2018). The NSW Criminal Justice System Simulation Model. NSW Bureau of Crime Statistics and Research. Available here: https://www.bocsar.nsw.gov.au/research-evaluations/2018/r60-the-nsw-criminal-justice-system-simulation-model.html

[61] NSW Treasury (2023). Policy and Guidelines: Submission of Business Cases. NSW Government. Available here: https://www.treasury.nsw.gov.au/sites/default/files/2023-02/202302_tpg22-04_submission-of-business-cases.pdf

[62] NSW Treasury (2018). NSW Government Business Case Guidelines. NSW Government. Available here: https://www.treasury.nsw.gov.au/sites/default/files/2021-05/TPP18-06%20%20NSW%20Government%20Business%20Case%20Guidelines.pdf

[63] Queensland Government (2024). Justice Reform Office. Available here: https://www.justice.qld.gov.au/about-us/services/justice-reform-office [retrieved 21 August 2024]

[64] Queensland Treasury (2024). Better regulation policy and process. Available here: https://www.treasury.qld.gov.au/queenslands-economy/office-of-productivity-and-red-tape-reduction/regulatory-review/regulatory-review-process/ [retrieved 21 August 2024]

Victoria

The Victorian Government has a requirement for two types of impact assessment: legislative and regulatory. These are required when the proposals are likely to impose a significant burden, which is indicated to be around $2million per year, but lower if impacts are concentrated on particular groups. This figure includes both quantifiable and unquantifiable impacts.[65] Support is provided by Better Regulation Victoria and the Commissioner for Better Regulation reviews all impact assessments. Although the requirement does not currently cover all justice related proposals, other tests are required including a statement of compatibility with human rights for new legislation.

South Australia

Regulatory Impact Assessments (RIAs) are required for most rules endorsed by the South Australian Government, where there is an expectation of compliance. They provide a structured framework to assess initiatives and are promoted as a method of continuous improvement to the quality of policy and supporting evaluation. However, proposals relating to police powers and general criminal law with no impact on business and the administration of justice, such as court rules and sentencing, are exempt from the RIA requirement.[66]

Western Australia

Western Australia's Better Regulation Program supports agencies to self-assess their proposals, with a more detailed assessment expected for proposals likely to have a significant adverse economic impact on stakeholders.[67] Excluded are proposals relating to police powers, general criminal laws with no impact on business, and administrative matters such as court procedures and sentencing. There is no requirement to consider impacts on the justice system of proposals included in the publicly available guidance.[68]

Tasmania

The Tasmanian Government has a Legislation Review Program (LRP) primarily to assess impacts on business. Regulatory impact statements are required for amendments to existing legislation and for new legislation and regulations. The Economic Review Unit in the Department of Treasury and Finance provides advice on the processes required by the LRP.[69] The LRP guidance does not explicitly mention justice system impacts.[70]

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[65] Better Regulation Victoria (2024). Victorian Guide to Regulation: A handbook for policy-makers in Victoria. Victorian Government. Available here: https://www.vic.gov.au/impact-assessments

[66] Government of South Australia (2022). Better regulation handbook: How to design and review regulation and prepare a Regulatory Impact Statement. Available here: https://www.dpc.sa.gov.au/resources-and-publications/Better-Regulation-Handbook.pdf

[67] Government of Western Australia (2023). Better regulation – Regulatory Impact Assessment. Available here: https://www.wa.gov.au/organisation/department-of-treasury/better-regulation-regulatory-impact-assessment

[68] Government of Western Australia (2023). Better Regulation Program: Agency information paper. Western Australia Department of Treasury. Available here: https://www.wa.gov.au/system/files/2024-02/better-regulation-program-agency-information-paper.pdf

[69] Tasmanian Government (undated). Legislative and regulatory impact statement (Annexe 6.4). Available here: https://www.dpac.tas.gov.au/divisions/office_of_the_secretary/Executive_Services/cabinet_office/handbook/3._writing_a_cabinet_minute/3.14_legislative_and_regulatory_impact_statement_annexe_6.4

[70] Tasmanian Government (2016). Legislation Impact Assessment Guidelines. Available here: https://www.treasury.tas.gov.au/Documents/Legislative-Impact-Assessment-Guidelines-2016.pdf and https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/legislation-review-program

Australian Capital Territory

The Australian Capital Territory Government requires completion of a Regulatory Impact Statement (RIS) as part of the policy development process. The available guidance dates from 2003 and does not specifically mention justice impacts,[71] but a review in 2013 identified that the Justice and Community Safety Directorate published targeted reviews of legislation.[72] These are ex-post rather than ex-ante assessments of the impact of legislation, with recommendations for future amendments.

Northern Territory

The Northern Territory Government's Regulation-Making Framework supports best practice for assessing the impact of 'rules' for which there is an expectation of compliance (and thus may potentially have a justice impact). A senior level inter-agency committee, on which the Attorney General and Justice Department is represented, reviews the regulatory impacts and benefits of proposed regulations and determines whether a net public benefit exists. Assessments are expected to include an analysis of the sectors of the community likely to be impacted and how.[73]

Proposals to deploy JITs in Australia

Although all Australian jurisdictions have some form of general appraisal process, none of these currently cover all proposals with a potential justice-related impact. In theory, such general appraisals could identify potential justice system costs. However, the minimal reference, if any, to the justice system in most general appraisal jurisdictional guidance suggests that if these assessments are being made, they may not be as well-considered as they could be. It is unrealistic for governments to make reliable assessments of justice impacts without ready access to robust evidence of what these might be. Further, the word 'regulation' is most commonly understood to be concerned with the oversight of business and organisational service delivery and the various regulatory bodies that perform these functions. The language of business doesn't readily map to the justice system.

In recognition of the limitations of current practice and the value of specialised evidence to inform justice resource allocation, a number of reports have proposed, or at least considered, the introduction of JITs in Australia.

2013 Law Council of Australia

In 2013, the Law Council of Australia issued a Policy Statement proposing the adoption by the Commonwealth of a national justice impact assessment process.[74] It expressed concern that the existing Regulatory Impact Assessment (RIA) processes, whether at national or state levels, did

[71] ACT Government (2003). Best practice guide for preparing regulatory impact statements. Available here: https://www.treasury.act.gov.au/__data/assets/pdf_file/0011/449894/2003-RIS-guide.pdf

[72] ACT Government (2013). Regulatory impact assessment in the ACT: Issues paper. Available here: https://www.treasury.act.gov.au/__data/assets/pdf_file/0009/494109/Regulatory-Impact-Assessment-Processes-Issues-Paper.pdf

[73] NT Government (2017). The Northern Territory Government Regulation-Making Framework. Version 2.0. Department of Treasury and Finance. Available at: https://treasury.nt.gov.au/__data/assets/pdf_file/0020/490007/I-ECO-RMF.pdf

[74] Law Council of Australia (2013). Policy Statement: Justice Impact Assessments. Available at: 1309-Policy-Statement-Justice-Impact-Assessment-Policy-Statement.pdf (lawcouncil.au)

not explicitly include a requirement to consider "the broader social impacts…including impacts on the Australian justice system". The Law Council cited the example of changes to federal court filing fees where the impact on the legal assistance sector, court administration costs, and access to justice were not transparent, and were not therefore open to parliamentary or public challenge.

2014 Productivity Commission Review

The Productivity Commission's review of access to justice arrangements considered the Law Council's proposal, but envisaged that, if undertaken comprehensively, existing requirements for regulation impact analysis "should capture all the significant costs and benefits that a proposal is likely to impose on the community, including the justice sector", though "in practice it is unclear whether or not this is occurring".[75] At that time, the Commission concluded that legal assistance forums and direct incentives, in the form of funding contributions, were more likely to encourage governments to assess the impact of proposals on legal assistance services, than any requirement for a JIT.[76]

2018 Law Council's Justice Project

The Law Council of Australia again proposed the introduction of JITs in its 2018 Justice Project.[77] This included the recommendation for a whole-of-government cross-jurisdictional recognition of access to justice issues, supported by mechanisms such as JITs, equality impact and social impact assessments.

The report sensibly proposed that JITs should:

- consider the UK JIT model as a potential guide, thus including agency accountability for downstream justice system costs;
- be a requirement for all government agencies within both the civil and criminal justice systems;
- be overseen by central treasury or finance agencies, as well as justice departments;
- be conducted early in the policy development process;
- require early engagement and input from across the justice sector to identify and assess likely impacts;
- periodically recognise incremental and cumulative system impacts; and
- be subject to evaluation to improve JITs over time.

2024 National Legal Assistance Partnership (NLAP) Review

In the recent review of the National Legal Assistance Partnership (NLAP), Dr Warren Mundy recommended the introduction of Legal Assistance Impact Assessments, whereby the cost of government policy or law reform on legal assistance providers - including Legal Aid Commissions, Aboriginal Legal Services and Community Legal Centres – would be identified and

[75] Productivity Commission (2014). Access to Justice Arrangements. Inquiry Report Volume 2. Report No.72 Available at: Volume 2 - Inquiry report - Access to Justice Arrangements (pc.gov.au)

[76] Productivity Commission (2014). Op cit. Page 808.

[77] Law Council of Australia (2018). The Justice Project Final Report. Available at: Final Report - Law Council of Australia

incorporated into their baseline funding.[78]

The Office of Impact Analysis (OIA)

In 2022, the Commonwealth Office of Best Practice Regulation was renamed the Office of Impact Analysis (OIA). While the function and scope of this body remained the same, the change of name was intended to more accurately reflect the breadth of the service the OIA provided to government.[79] The OIA provides a Guide to Policy Impact Analysis, the language of which has broad applicability across government sectors.[80]

The Commonwealth government requires an Impact Analysis (IA) for policies that would have an impact on people, businesses or community organisations.[81] The IA has seven elements:

1. What is the problem and what data is available?
2. What is the objective, why is government intervention required, and how will success be measured?
3. What policy options are being considered?
4. What is the likely net [financial] benefit of each option?
5. Who was consulted and how was feedback incorporated?
6. Which is the best option and how will it be implemented?
7. How will this option be evaluated against success metrics?

Although the Guide is necessarily generic and has a focus on regulatory options, it contains useful suggestions on how to assess alternative policy options and conduct stakeholder consultations. The OIA's website includes published impact analyses. There is currently no explicit requirement to consider and address potential justice system costs, although many policies may have such an impact, either by increasing demand through enforcement or decreasing demand through improved compliance.

Considerations for the introduction of JITs

JITs promote a systematic approach to assessing proposals, to support good use of public funds. At their best, JITs enhance the effective delivery of proposals by ensuring adequate resourcing of mainstream justice and allied services, and facilitating improved community understanding of justice-related decision-making.

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[78] Mundy, W (2024). Independent Review of the National Legal Assistance Partnership: Final Report. Available at: https://www.ag.gov.au/legal-system/publications/independent-review-national-legal-assistance-partnership-2020-25

[79] Department of the Prime Minister and Cabinet (2025). The Office of Impact Analysis: Developing the evidence base for decision making. Available at: https://oia.pmc.gov.au/

[80] Australian Government (2023). Australian Government Guide to Policy Impact Analysis. Department of the Prime Minister and Cabinet. Available at: https://oia.pmc.gov.au/sites/default/files/2023-02/oia-impact-analysis-guide-nov-22.pdf

[81] Australian Government (2023). Op cit.

Other than for areas of federal law, states and territories are responsible for their own legal systems and associated budgets. While there may be some advantages in promoting a consistent approach to appraisals of justice impacts across states and territories, variations in legal systems, allied services, and the relevance of local contexts would all tend to limit the usefulness of nationally prescribed JITs,

Existing jurisdictional appraisal guidance could be amended to articulate the importance of assessing the impacts of proposed legislative, policy or procedural changes on the justice system. While such appraisals could in theory perform the role of JITs, access to justice would be enhanced by a bespoke approach to assessing justice system impacts, which:

- identifies the full range of government and non-government services that are directly or indirectly impacted by flows into the justice system, including those services which can support the effective and people-centred delivery of access to justice and justice outcomes
- provides publicly available jurisdictional based guidance on how to assess impacts on the justice system, including agreed unit cost-estimates
- sets out a roadmap for collecting and collating improved information on the parameters of the justice system, as necessary
- embeds a whole-of-government approved requirement for the consideration of justice impacts at key points within the proposal development and decision-making process.

Considerations for developing JIT processes within Australian jurisdictions are outlined in Annex A to this report, but in summary include identifying:

- the purpose of collating information on justice impacts
- the analytical and other expertise required to prepare JITs
- the audience for JITs and how to ensure JIT content is accessible to non-analytical decision makers
- the most appropriate timing for JITs to effectively and efficiently influence proposal decision making
- where, and in what format, justice impact tests might be disseminated to support public transparency and knowledge sharing.

Meaningful justice impact assessments require adequate resourcing of analytical and data infrastructures, and a commitment to data collection and sharing from the service providers that may be affected by justice impacts. Transparency regarding data and information gaps, and the relative reliability of the available evidence, may initially be challenging, but shining a light on data limitations and information gaps supports ongoing improvement.

In the absence of robust appraisal, there is the risk that proposals will fail to deliver on their promise due to inadequate resourcing of justice and/or allied services. And, without the review of evidence that JITs require, effective delivery of proposals may be undermined by over-optimism regarding costs, delivery timetables, pace of uptake, availability of legal and other human service assistance, and risks of negative impacts. Without this evidence-based approach, costly decisions may be, or perceived to be, driven primarily by specific interest groups, and fail to consider whole of community interests.

Annex A - Considerations for developing a Justice Impact Test process

What is the intended purpose of JITs?	Which of the following should JITs address? • Whether to proceed with a proposal at all • Identify amendments to proposals to reduce costs, risks, unintended impacts etc • Identify and quantify justice-system and allied service costs
For what types of proposals should a JIT be required?	How broad should the requirement for a JIT be? • Proposals that may directly or indirectly impact legal need, or • Proposals that directly impact the justice system only (e.g. new dispute resolution rights; new criminal offences), or • Proposals with criminal justice impacts only
What proposals should require a summary vs comprehensive JIT?	• What body should determine the type of JIT required? Should an independent body make this decision? • Should a summary JIT be mandatory for all proposals? A mandatory requirement for completion of a summary JIT may reduce the risk of evasion/cherry-picking proposals for assessment. • Which proposals trigger a comprehensive JIT? This would ideally include some flexibility, by not only considering proposal budgets, but also broader benefits and costs, delivery risks, unintended consequences, and other relevant impacts, such as on allied entities
What information should be collected in the JIT?	Information requirements will vary according to JIT purpose and whether a summary or comprehensive JIT is required: • Identify which standard and optional JIT components are relevant to the range of proposals to be reviewed • A summary JIT could collect information in a standardised format on the purpose of the proposal, readily available information on likely benefits and costs, and identify the organisations and individuals likely impacted by the proposals • The content of the UK Ministry of Justice JIT is provided as an example at Annex B
Who will be responsible for completing summary/comprehensive JITs and what support (e.g. guidance, analysts) will be required to facilitate this?	Who should have the lead responsibility for commencing a JIT? • As undertaking the process of assessment will ideally inform better decision-making, policy-leads may be best placed to take initial responsibility • Analytical advice and resource should ideally be available to ensure appropriate use and presentation of data and other evidence.
What data and analysis will be required?	This could include one or more the following: • Identify which justice and allied organisations may be impacted by justice related proposals

	• Determine the potential relationship between flows in and out of these organisations • Collate data for a point in time analysis of current and historical stocks and flows of matters/clients/cases in, through, and out of the justice system and allied services • Maintain comprehensive records of stakeholder input and decisions made regarding the assumptions of the model or other use of data • Arrange for data sharing agreements that specify the acceptable use of the data • Consider frequency of updates
What additional resourcing and/or infrastructure will be required?	Additional required resources may include: • Analysts with appropriate technical skills, including cost benefit analysis • Software and hardware to support the processing of large, hierarchical datasets • Communications support for the effective dissemination of materials
When should a JIT be commenced and finalised?	• Appropriate timing avoids investing resources in multiple versions of the JIT as the policy develops, while ensuring the contents can inform the proposals at an early enough stage to have influence on them • Some flexibility, depending on the range of parameters of the proposals, is likely to be required. At a minimum, the JIT should be available to support (rather than confirm) the final version of the proposals
Who should be consulted as part of the JIT process?	JITs may optionally build in requirements for consultation with stakeholders: • At a minimum this is likely to include representatives of the impacted organisations • In some circumstances it may involve a public consultation, potentially informed by a draft of the JIT
What are the key decision-making points that the JIT should inform?	JITs should be available to those making decisions about proposal implementation, and to inform transparent proposal development. JITs can usefully inform: • An initial appraisal of the evidence supporting the proposal, at a high level, prior to the details of the proposal being developed • Once fully developed, decisions regarding whether to proceed with the proposal and/or whether further amendments are required • Engaging with impacted stakeholders and the public, and to seek their input to proposals
How is the reliability of the JIT best conveyed?	• To maintain trust in the process, JITs should include an assessment of the reliability of the incorporated evidence and the extent to which there is uncertainty regarding what will happen in practice • To avoid undermining the perceived value of the exercise, there may be merit in developing a standardised approach to conveying the degree of uncertainty of JIT assessments. This could include statistical visuals, such as error bars, but qualitative statements, such as 'low', 'moderate', 'high' reliability can be sufficient to communicate how much reliance should be placed on estimates.

How can the JIT process support transparency of, and trust in, government decision-making?	• Agree how, when and where JITs will be made publicly available. • While this could be the responsibility of the relevant department/agency, a centralised lead, such as Treasury or Premier, or even a separate JIT agency website, would facilitate access to guidance, adherence to dissemination principles, a standard format for contents, and ease of sharing assumptions. The UK Government publishes completed JITs categorised by sector on the **www.gov.uk** website[82]
How can actual and perceived political independence be accomplished?	• To retain the value of the JIT process, it is essential that it cannot be manipulated for political purposes. Individuals of sufficient seniority should be designated responsibility for publicly stating the JIT meets professional analytical standards • Ideally these would be senior level analysts within government departments/agencies. In the absence of these, contractual arrangements with respected analytical experts, who have a sound appreciation of the use and value of justice-related evidence, may be necessary
How can the sharing of evidence support better decision-making?	• Given the necessary investment in deriving the cost and other estimates that underpin the JIT process, and the value of an agreed set of assumptions, it is likely to be mutually beneficial to make these available to stakeholders and other jurisdictions where appropriate – together with an assessment of their reliability and associated uncertainty

[82] For example, Home Office and Ministry of Justice (2023). Criminal Justice Bill: overview impact assessment. Available at: https://www.gov.uk/government/publications/criminal-justice-bill-2023-impact-assessments/criminal-justice-bill-overview-impact-assessment-accessible-version

Annex B – Example of Justice Impact Form content, based on the UK Ministry of Justice

The current version of the UK form can be accessed here:
https://www.gov.uk/government/publications/justice-impact-test

The content is summarised below, with some textual amendments for the Australian context.

Preamble	• Answer as many questions as possible on this form before you contact the Ministry of Justice (MoJ). If exact figures are not yet known, please provide your best estimates along with any evidence and assumptions you have based these on • If MoJ identifies a potential impact, you will be contacted to discuss and agree an estimate of costs including funding arrangements for the additional costs. In both cases, the outcome must be included in the Impact Assessment accompanying your final proposals • Please be aware that your department will be required to meet any costs incurred by the MoJ as a result of any changes/additional work that is created by the introduction of this proposal
Contact details	• Name/department/business area/email/telephone • Contact details of lead analyst for the cost appraisal
Description of proposal/policy	• Current position, intended changes, and why • Relevant legislation • Timing of introduction and justice impacts • Who will be affected: individuals, private and/or public institutions • Geographical areas affected • Type of justice impact: civil penalties, criminal etc.
Criminal offences, penalties and sanctions	• Mode of trial • Anticipated number of cases per year, with evidence • Estimated proportion to be committed to higher court • Maximum penalty, and estimated likelihood of custody for custodial offences, with evidence • Prosecuting agency

	• Outline of enforcement process
Civil justice, courts and tribunals	• Expectation of a change in court/tribunal process or increase/decrease in applications/cases • Estimated change to volumes of cases, with evidence • Identify which courts/tribunals likely impacted/required to manage the sanction or extension to a new tribunal jurisdiction • Requirement for court to inform regulatory authorities of convictions • Does proposal create a new or expand a right of appeal/judicial review • Has alternative dispute resolution been considered, if not why • Will enforcement mechanisms be required, and if so who will do this • Will any civil procedure/court/tribunal rules require amendment
Public legal assistance (legal aid)	• Estimate likely requirement for individuals to seek legal advice and to apply for public legal assistance (with evidence) • Area of law of legal assistance (criminal, civil, family, other) • Would legal assistance costs increase or be reduced, and by what margin
Prison and offender management services	• Will the proposals increase number of offenders being committed to custody (including on remand) or probation/community sentences – with estimates/reasoning • Estimated timeframe to reach this number of sentences, evidence and its source
Summary	• For civil penalties, courts, tribunals, legal assistance: table of volumes (numeric estimates and ranges) summarised by agency affected and type of impact • Separate table for prisons, covering offence, maximum penalty, likely number sentenced to immediate custody, likely average custodial sentence length in months, annual prison places at steady state (formula provided)

Justice impact tests
Justice Issues No. 35

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