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# C Justice sector overview

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### Attachment tables

There are no Justice sector overview attachment tables throughout this Indigenous Compendium.

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The Justice sector overview in the *Report on Government Services 2015* (2015 Report) provides contextual and cross-sector information relating to justice services in Australia.

This sector overview provides an introduction to justice services, comprising police services (chapter 6), civil and criminal courts' administration (chapter 7) and adult corrective services (chapter 8). It provides an overview of the justice sector, presenting both contextual information and high-level performance information.

The justice system is usually divided into criminal and civil justice. Under the federal system of government in Australia, the States and Territories assume responsibility for the administration of criminal justice within each individual State and Territory and, as a result, there is no single criminal justice system operating across Australia. The eight States and Territories have separate and independent systems of police, courts, prisons, community corrections systems and juvenile justice centres. There are also some criminal justice services that operate at national level, for example, the Australian Federal Police has jurisdiction for certain offences regardless of whether these are committed in a particular State or Territory. National law enforcement functions are also provided by other Commonwealth agencies, such as the Australian Crime Commission (ACC). There are also federal courts and tribunals with national jurisdiction for both civil and criminal matters,

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however, the majority of court and law enforcement matters are dealt with by services administered at State and Territory government level.

Civil justice services are provided at State and Territory government levels, as well as at the federal level. There is a wide variety of services available for civil dispute resolution and the vast majority of civil matters are resolved outside of courts. Most States and Territories now have an overarching civil and administrative tribunal which processes many matters which would once have been dealt with through the courts. Tribunals are not currently included in this Report but nevertheless constitute an important component of the justice system. Both courts and tribunals have the power to resolve disputes by making legally binding decisions. Many matters are also resolved through alternative dispute resolution (ADR) processes, by which a neutral third party assists disputing parties to reach a resolution without a formal decision by a court or tribunal.

The operations of the civil and criminal justice systems require the provision of government services for crime prevention, detection and investigation, judicial processes and dispute resolution, prisoner and offender management, and rehabilitation services. These are largely delivered through the three service delivery agency types that are reported in this Report — police services, courts and corrective services — however it is acknowledged that not all of the above justice-related operations are included in this Report. Other agencies also deliver some of these functions, although more restricted in scope. For example, government departments may investigate and prosecute particular offences directly, as in the case of social security fraud or tax evasion. Public prosecutions are an important link between charges being laid by police and cases going to court.

## **Sector scope**

The justice sector services covered in this Report (box C.1) comprise both criminal and civil jurisdictions. Services in the criminal jurisdiction are delivered by police, courts and corrective services. In the civil jurisdiction, police deliver services for infringements, and courts deal with civil law matters.

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## Box C.1 **Justice sector services covered in this Report**

In this Report:

- Police reporting covers the operations of police agencies of each State and Territory government but excludes the national policing function delivered by the Australian Federal Police and other national non-police law enforcement bodies such as the Australian Crime Commission (ACC).
- Courts reporting covers service delivery in the State and Territory supreme, district/county and magistrates' courts (including children's courts, coroner's courts and probate registries). The Federal Court of Australia, Family Court of Australia, Family Court of WA and the Federal Circuit Court of Australia are included, but the High Court of Australia and tribunals and specialist jurisdiction courts such as Indigenous courts, circle sentencing courts and drug courts operating at State and Territory level are excluded.
- Corrective services reports on adult custodial facilities and community corrections, including prison services provided through contractual arrangements with private providers.

## **Profile of the Justice sector**

Detailed profiles for each of the three services comprising the justice sector in this Report are reported in chapters 6, 7 and 8 and cover:

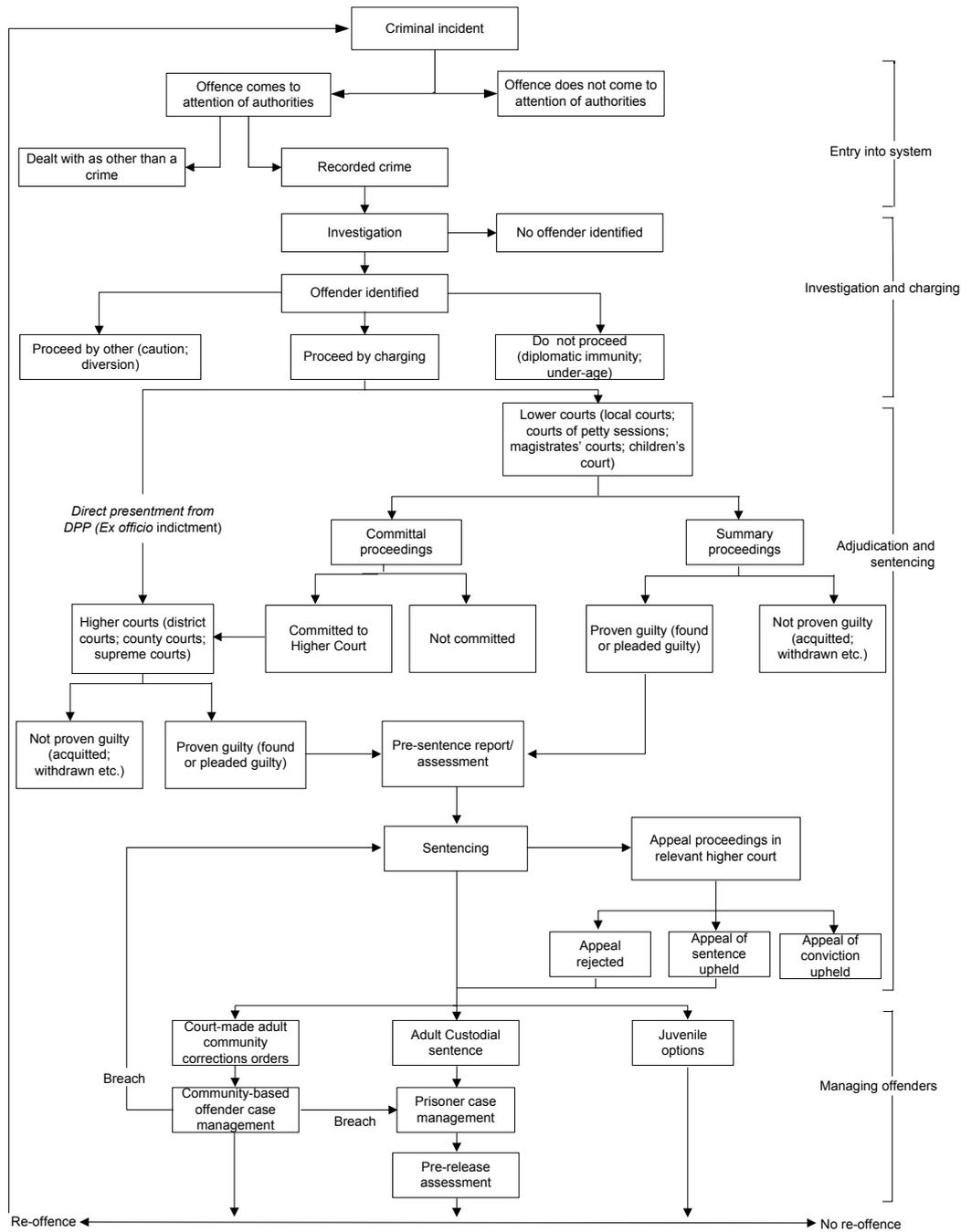
- size and scope of the individual service types
- roles and responsibilities of each level of government
- funding and expenditure.

### **Overview of the criminal justice system**

The criminal justice system involves the interaction of many entities and their processes and practices are aimed at providing protection for the rights and freedoms of all people. For most people who come into contact with it, the criminal justice system is a sequentially structured process.

Figure C.1 shows the typical flow of events in the criminal justice system. The roles of police, courts and corrective services, and the sequencing of their involvement, are clearly shown. This depiction is broadly indicative and, for brevity and clarity, does not seek to capture all the complexities of the criminal justice system or variations across jurisdictions.

Figure C.1 Flows through the criminal justice system<sup>a, b, c</sup>



<sup>a</sup> Does not account for all variations across Australian, State and Territory governments' criminal justice systems. <sup>b</sup> The flow diagram is indicative and does not seek to include all the complexities of the criminal justice system. <sup>c</sup> Youth justice is covered in chapter 16.

Source: 2015 Report, figure C.1, p. C.5.

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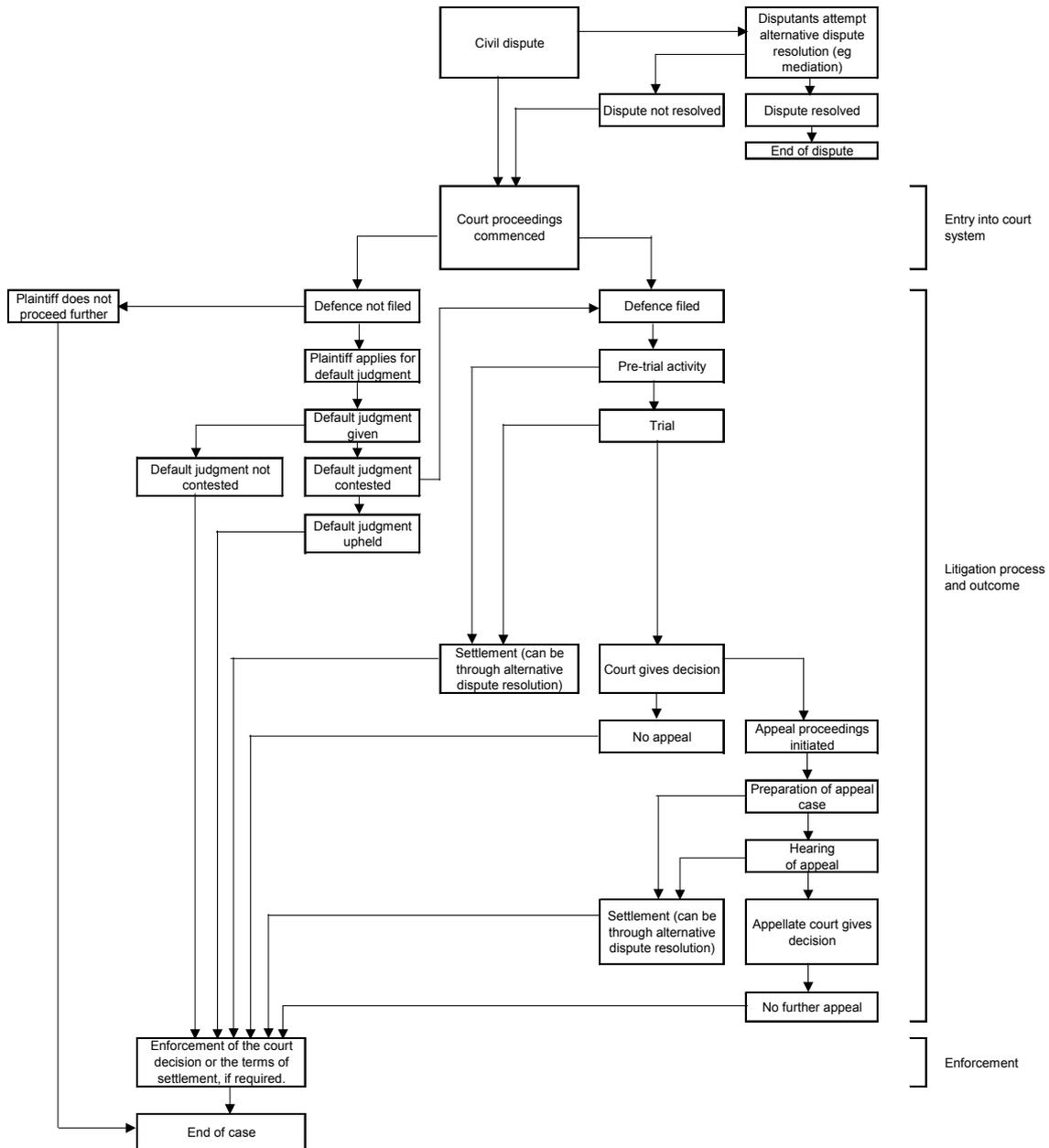
## Overview of the civil justice system

In the civil justice system, courts deal with civil law matters. The civil justice system involves the interaction of a number of practices, procedures and case management processes aimed at achieving fair, accessible and effective dispute resolution.

Courts are not the primary means by which people resolve their disputes. The vast majority of disputes are settled outside of the formal court system. Methods of resolution can include legal advice and help, internal complaint mechanisms, external dispute resolution and ombudsmen, tribunals, family dispute resolution services, and alternative dispute resolution processes such as mediation, negotiation and arbitration (Australian Government Attorney-General's Department 2009).

Figure C.2 is an indicative model of the flows through the civil justice system; it has been simplified because specific steps are complex, vary between jurisdictions, and cannot all be captured in a single figure. While the emphasis in figure C.2 is on the flow of disputes which proceed to court, the role of alternative dispute resolution processes is considerable in civil justice.

Figure C.2 Flows through the civil justice system<sup>a, b</sup>



<sup>a</sup> Does not account for all variations across Australian, State and Territory governments' civil justice systems. <sup>b</sup> The flow diagram is indicative and does not seek to include all the complexities of the civil justice system.

Source: 2015 Report, figure C.2, p. C.7.

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## **Social and economic factors affecting demand for services**

### **Civil jurisdiction**

Demand for civil justice services is influenced by the types of legal issues people experience, which in turn are influenced by social and economic factors. Demand also varies with the way in which people respond to legal issues — do nothing, deal with the issue independently or seek advice or legal assistance (Australian Government Attorney-General's Department 2009). A survey of legal needs undertaken in New South Wales in 2003 (Law and Justice Foundation 2006) found that in disadvantaged areas, legal needs for civil issues were generally higher for people with chronic illness or disability. Age, Indigenous status and personal income also had varying influences on both the type of legal issue experienced and whether people chose to seek assistance.

In addition to expenditure by State and Territory governments on civil justice, the Australian Government contributes substantially to the federal civil justice system. In 2007-08 over \$1 billion was spent on federal civil courts, tribunals, legal aid, programs for Aboriginal and Torres Strait Islander Australians, community legal centres, Commonwealth Ombudsman, and insolvency and trustee services (Australian Government Attorney-General's Department 2009). Expenditure on the federal courts (the High Court, the Federal Court of Australia, the Family Court and the Federal Circuit Court) comprised just over a quarter of the total federal gross expenditure on civil justice.

Courts are not the primary means by which people resolve disputes and in many cases courts are not the appropriate avenue to do so. The Australian Government is committed to improving access to justice for civil litigants by making the federal civil justice system less complex and more accessible. The Attorney-General's Department is responsible for coordinating government policy and projects that will improve access to justice for all Australians.

### **Cross-cutting and interface issues**

Although service areas are represented in separate chapters in this Report, performance results are to some extent inter-dependent. Changes to the functions and operations of each element of the justice system can affect the other parts of the system, for example, the effect of:

- police services on the courts through the implementation of initiatives such as police cautions and other diversionary strategies
- police and courts on corrective services, such as use of court diversion schemes, bail and the range of sentencing options available
- correctional systems' services on courts sentencing decisions through court advice services.



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## **Aboriginal and Torres Strait Islander data in the Justice sector overview**

The Justice sector overview in the 2015 Report contains no specific data items on Aboriginal and Torres Strait Islander Australians.

Indigenous reporting on service-specific performance indicator frameworks for police services (chapter 6) and corrective services (chapter 8) are in the subsequent chapters of this Compendium. There is no Aboriginal and Torres Strait Islander reporting in the courts chapter (chapter 7).

### **References**

Australian Government Attorney-General's Department 2009, *A strategic framework for access to justice in the federal civil justice system*. Report by the Access to Justice Taskforce, Canberra.

Law and Justice Foundation of NSW 2006, *Justice made to measure: NSW legal needs survey in disadvantaged areas*. Report on access to justice and legal needs vol. 3, NSW.