



Why does NSW have a higher imprisonment rate than Victoria?

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Aim: To examine the influence of sentencing practice and other factors on the difference between NSW and Victoria in their imprisonment rates.

Method: Descriptive analysis of national crime, court and prison data.

Results: The NSW court appearance rate is 26 per cent higher than that in Victoria. The overall conviction rate in NSW is 85.7 per cent, compared with 79.0 per cent in Victoria. The overall percentage imprisoned is significantly higher in NSW (7.5%) than in Victoria (5.4%). The mean expected time to serve among prisoners dealt with by Victorian courts is slightly longer than the mean expected time to serve among prisoners dealt with by NSW courts. The NSW remand rate is approximately 2.5 times the Victorian remand rate.

Conclusion: The higher NSW imprisonment rate is attributable to a higher rate of court appearance, a slightly higher conviction rate, a higher likelihood of imprisonment and a higher likelihood of remand in custody.

Keywords: NSW, Victoria, prison, bail, sentence, remand, crime

INTRODUCTION

The NSW imprisonment rate is about twice that of Victoria (204 per 100,000 population vs. 104 per 100,000 population) (Australian Bureau of Statistics, 2009a). This fact is widely believed to indicate that sentencing policy and practice in NSW is much harsher than in Victoria. A higher imprisonment rate, however, does not necessarily indicate tougher sentencing. The difference between the two states in their imprisonment rates may, for example, arise from differences in the rate of arrest for serious crime, differences in their bail laws or differences in their parole policies.

The purpose of this bulletin is to shed some light on the reasons behind the higher NSW imprisonment rate. In the next section we briefly describe the determinants of prison population size. The following two sections examine differences between NSW and Victoria in the percentage of convicted offenders given a prison sentence and the length of the prison terms imposed. The fifth section examines differences in court appearance and conviction rates. The penultimate section examines differences in rates of remand. The final section discusses the interpretation of results from earlier sections.

METHOD AND RESULTS

THE DETERMINANTS OF PRISON POPULATION SIZE

When a prison population is stable, its size (P) is a product of the number sent to prison (N) and the average length of stay (S).

$$P = N \times S$$

Each of N and S is, in turn, affected by a large range of other factors. N, for example, is affected by the number appearing in court, the percentage of those appearing who are convicted, the percentage of those convicted who are given a prison sentence, the number remanded in custody and the number whose parole is revoked. S, on the other hand, is affected by the average length of the minimum term imposed by a court and the average length of time Parole Boards keep people in custody beyond the expiry of their minimum term. If the higher imprisonment rate of a jurisdiction were attributable to tougher sentencing, we would expect to see either a higher percentage of convicted offenders getting a prison sentence or a longer average minimum term imposed on those who are sent to prison.

DOES NSW SEND A HIGHER PERCENTAGE OF CONVICTED OFFENDERS TO PRISON?

The Australian Bureau of Statistics collects data for each Australian jurisdiction on the percentage of convicted offenders sent to prison. Table 1, below, shows the number and percentage of all convicted offenders who received a prison sentence for NSW and Victoria and for both the Higher (HC) and Local (or in the case of Victoria, Magistrates') Courts (LC). The court data in this and succeeding tables cover the financial year 2008/2009 (Australian Bureau of Statistics, 2010a).

It can be seen from the highlighted columns of Table 1 that the percentage of convicted offenders given a prison sentence by the Higher Criminal Courts is about 15 percentage points (25%) higher in NSW than in Victoria. The NSW Local Court also imprisons a higher percentage of convicted offenders than the Victorian Magistrates' Court. The difference is only two percentage points but in relative terms it is much larger (49%). Though it is not displayed in the table, the overall percentage imprisoned (combining both Local and Higher Criminal Courts) is about two percentage points (39%) higher in NSW (7.5%) than in Victoria (5.4%).

DOES NSW SEND CONVICTED OFFENDERS TO PRISON FOR LONGER?

There are no national data on the relative length of sentences imposed by NSW and Victorian courts. There are national data, however, on the *expected* time to serve in custody in each state by persons currently serving prison terms. In most cases this is the time between the date of reception and the earliest date of release. It therefore gives us some indication of whether

Victorian courts are imposing shorter minimum terms than NSW courts. Note, however, that the average expected time to serve among prisoners currently serving sentences will tend to be longer than the average expected time to serve among incoming cohorts of convicted offenders. Prisoners serving short sentences are under-represented in analyses of prison census data because prisoners serving long sentences tend to accumulate. Figure 1 shows the mean and median expected time to serve in NSW and Victoria.

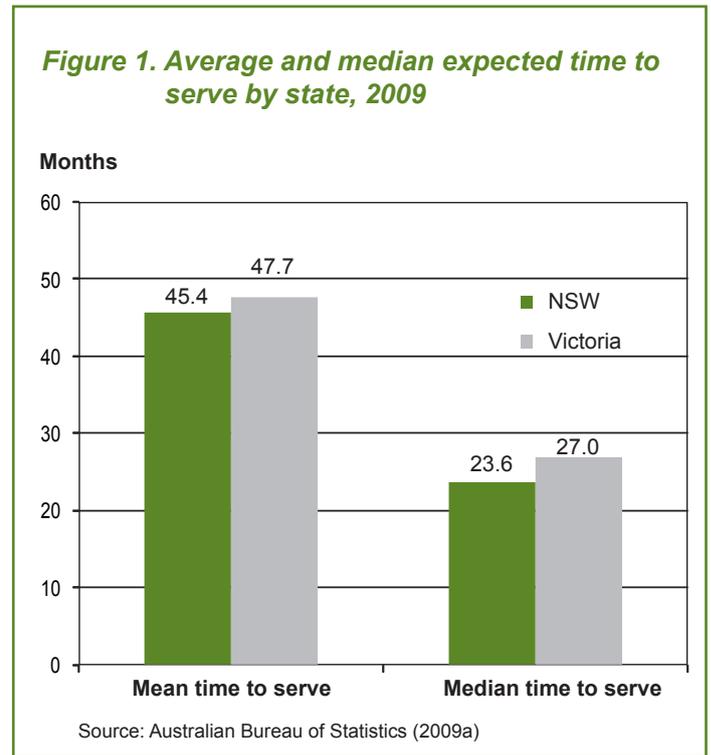


Table 1. Number and percentage convicted and imprisoned by court and state, 2008/09

Jurisdiction	Higher Court			Local Court		
	No. proven guilty	No. imprisoned	% imprisoned	No. proven guilty	No. imprisoned	% imprisoned
NSW	2,998	2,249	75.0	146,952	8,964	6.1
Victoria	1,963	1,180	60.1	82,524	3,383	4.1

Source: Australian Bureau of Statistics (2010a)

Table 2. Number and percentage appearing and convicted by court and state, 2008/09

Jurisdiction	Higher Court			Local Court		
	No. appearing	No. convicted	% convicted	No. appearing	No. convicted	% convicted
NSW	3,477	2,998	86.2	171,531	146,952	85.7
Victoria	2,257	1,963	87.0	104,695	82,524	78.8

Source: Australian Bureau of Statistics (2010a)

It can be seen from Figure 1 that the mean expected time to serve in Victoria (47.7 months) is slightly higher than in NSW (45.4 months). The median expected time to serve is somewhat higher in Victoria (27.0 months) than in NSW (23.6 months). It would appear, then, that the minimum terms imposed by Victorian courts are slightly longer than those imposed by NSW courts.

DOES NSW HAVE A HIGHER COURT APPEARANCE OR CONVICTION RATE?

The number of defendants whose cases were finalised in the NSW courts (175,008) is much (64%) higher than that in Victoria (106,952). Figure 2 shows the court appearance rate per capita for NSW and Victoria. Adjusted for the adult population, the NSW court appearance rate is about 26 per cent higher than that in Victoria.

Table 2 compares the NSW and Victorian conviction rates. Inspection of Table 2 shows that there is virtually no difference between Victoria and NSW in the percentage of defendants convicted in the Higher Criminal Courts (86.2% in NSW vs. 87.0% in Victoria) but NSW convicts a slightly higher percentage (+ 6.9 %) of defendants in the Local Court than Victoria does in the Magistrates' Court (85.7% in NSW vs. 78.8% in Victoria). The overall conviction rate in NSW is 85.7 per cent, compared with 79.0 per cent in Victoria.

Table 3 shows the differences in rates of appearance by principal offence type, ranked in terms of the NSW/Victorian rate ratio. The data were obtained by dividing the number of

Figure 2. Rate of court appearance per 100,000 population by state, 2008/09



Source: Australian Bureau of Statistics (2010a)

persons appearing in court for each offence (Australian Bureau of Statistics, 2010a) by estimates of the NSW and Victorian populations aged 18 and over (NSW = 5,474,398, Victoria = 4,207,194) and multiplying by 100,000. The population data were sourced from the Australian Bureau of Statistics (2009b).

Table 3. Rates of court appearance per 100,000 population by principal offence type and state, 2008/09

Offence	Rate per 100,000 population		Ratio (NSW/Victoria)
	NSW	Victoria	
Acts intended to cause injury	416.4	184.4	2.3
Illicit drug offences	162.6	76.0	2.1
Property damage and environmental pollution	92.0	46.6	2.0
Traffic and motor vehicle regulatory offences	1,469.4	756.9	1.9
Robbery, extortion and related offences	11.7	8.0	1.5
Offences against justice procedures, gov't security and operations	124.3	93.0	1.3
Homicide and related offences	3.4	3.2	1.1
Abduction, harassment and other offences against the person	14.3	14.9	1.0
Unlawful entry with intent	32.2	33.7	1.0
Sexual assault and related offences	18.0	19.3	0.9
Fraud, deception and related offences	74.9	81.9	0.9
Theft and related offences	145.2	162.7	0.9
Dangerous or negligent acts endangering persons	116.0	181.5	0.6
Miscellaneous offences	64.6	101.6	0.6
Prohibited and regulated weapons and explosives offences	19.7	43.2	0.5
Public order offences	117.1	463.5	0.3

Source: Australian Bureau of Statistics (2010a)

Inspection of the final column in Table 3 shows that NSW has much higher rates of appearance in the categories of *acts intended to cause injury* (e.g. assault); *illicit drug offences*; *property damage and environmental pollution* and *traffic/motor vehicle regulatory offences*. It also has higher rates of appearance for *robbery, extortion and related offences* and for *offences against justice procedures* (e.g. breach of apprehended violence orders, breach of community service order). It is interesting to note that NSW also has much larger numbers of prisoners in most of these categories. It has an additional 1,561 prisoners serving sentences for *acts intended to cause injury*; an additional 892 prisoners serving sentences for *illicit drug offences*; an additional 778 prisoners serving sentences for *robbery, extortion and related offences*; an additional 740 prisoners serving sentences for *offences against justice procedures*, and an additional 531 prisoners serving sentences for *traffic/motor vehicle regulatory offences* (Australian Bureau of Statistics, 2009a). We will return to this observation in the discussion.

DOES NSW HAVE A HIGHER RATE OF REMAND?

Prison populations are made up of sentenced and remand prisoners. Remand prisoners are prisoners who have been refused bail and are waiting for their case to be heard. Figure 3 shows the difference in the remand rate per capita for NSW and Victoria. As before, the data were obtained by dividing the annual average number of persons on remand (Australian Bureau of Statistics, 2009a) by estimates of the NSW and Victorian populations aged 18 years and over.

In 2009, Victoria had 813 adult defendants in prison on remand, giving it a remand rate of 19.3 per 100,000 population. By contrast, in the same year NSW had 2,592 defendants on remand, giving it a remand rate of 47.3 per 100,000 population. This is approximately 2.5 times the Victorian remand rate. The higher rate of remand in NSW is no doubt partly attributable to the higher NSW rate of court appearance. The gap between NSW and Victoria in their remand rates (47.3 per 100,000 population vs. 19.3 per 100,000 population), however, is much larger than the gap between them in their court appearance rates (3,196.8 per 100,000 population vs. 2,542.1 per 100,000 population). There are several possible explanations for the higher NSW remand rate: a higher percentage of defendants refused bail, a higher bail revocation rate, or a longer average period on remand. Australian Bureau of Statistics data show almost no difference between NSW and Victoria in the average time spent on remand (Australian Bureau of Statistics 2009). The higher NSW remand rate is therefore due either to a higher bail refusal rate and/or a higher bail revocation rate.

We now discuss the interpretation of these findings.

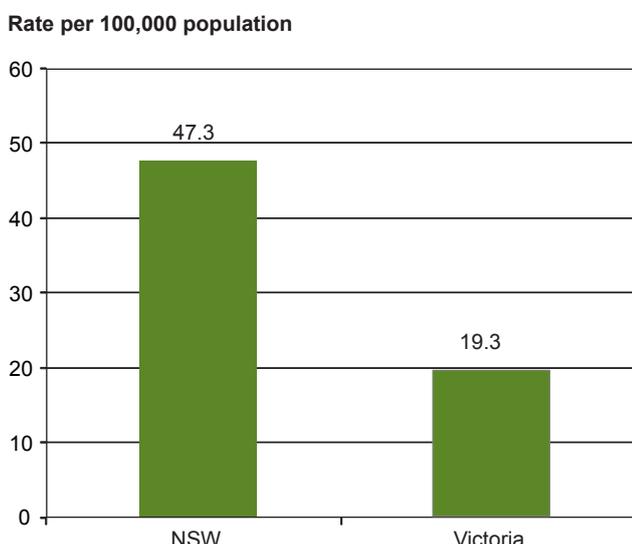
DISCUSSION

The data presented in the previous sections indicate that the higher imprisonment rate in NSW stems from the fact that, compared with Victoria:

1. NSW has a higher court appearance rate (3,196.8 per 100,000 population vs. 2,542.1 per 100,000 population).
2. NSW convicts a higher proportion of those appearing in court (85.7% vs. 79.0%).
3. NSW imprisons a significantly higher proportion of those convicted (7.5% vs. 5.4%).
4. NSW has a substantially higher rate of remand than Victoria (47.3 per 100,000 population vs. 19.3 per 100,000 population).

Before adjusting for differences in population size, the number of adults appearing in NSW courts is approximately 1.6 times the number appearing in Victorian courts. Because of the higher NSW conviction rate, the number of defendants exposed to the risk of imprisonment at the point of case finalisation in NSW is 1.8 times that of Victoria. Because of the higher percentage imprisoned in NSW, the number flowing into prison in NSW is 2.5 times that of Victoria. Adjusted for population size, this means that the per capita rate at which NSW sends convicted offenders to prison (204 per 100,000 population) is 2 times that of Victoria (104 per 100,000 population). This fact and the higher remand rate in NSW are the main reasons for the higher NSW rate of imprisonment.

Figure 3. Remand rate per 100,000 by state, 2009



What explanation can be given, then, for the higher court appearance rate, the higher proportion of defendants convicted, the higher proportion of convicted offenders imprisoned and the higher remand rate?

The higher court appearance rate in NSW is likely to be due, at least in part, to higher rates of crime. In 2004, for example, (the last year in which comparable figures were published)¹ the NSW recorded armed robbery rate was nearly 1.9 times that of Victoria (Australian Bureau of Statistics, 2005). The higher rate of court appearance for drug offences is probably also at least partly a reflection of crime. NSW has a much higher rate of court appearance for importing illicit drugs (Australian Bureau of Statistics, 2010a). It also happens to be the port where the largest quantities of illicit drugs are seized (Australian Crime Commission, 2010).

The much higher NSW court appearance rate for acts intended to cause injury is harder to explain. It would not be surprising if NSW, given its significantly larger Aboriginal population, had higher rates of assault. Twenty-one per cent of the NSW prison population is Indigenous, compared with six per cent of the Victorian prison population (Australian Bureau of Statistics, 2009a). Assault is the most common offence for which Indigenous offenders in NSW are imprisoned (NSW Bureau of Crime Statistics and Research, 2010). In 2004, (the last year in which comparable figures were published), NSW *did* have much higher recorded rates of assault (Australian Bureau of Statistics 2005). The Victorian police figures on assault, however, have been called into question by the Victorian Ombudsman (Brouwer, 2009). Survey figures, moreover, show no difference between NSW and Victoria in the prevalence of assault (Australian Bureau of Statistics, 2010b). The surveys conducted by the Australian Bureau of Statistics measure the prevalence rather than the incidence² of assault. It is possible that NSW has a higher incidence of assault than Victoria. At this stage, however, it is impossible to say to what extent the higher NSW court appearance rate for acts intended to cause injury is attributable to higher assault rates, as opposed to differences in the way NSW and Victorian police and prosecutors respond to incidents of assault.

In other cases, the higher NSW court appearance rate is more likely to reflect differences between NSW and Victoria in policing or penal policy. NSW, for example, has double the number of people appearing in court for breaching apprehended violence orders (2,976 for NSW vs. 1,057 for Victoria) (Australian Bureau of Statistics, 2010a). This difference is much too large to be plausibly attributed to a greater proclivity on the part of domestic violence offenders living in NSW to breach domestic violence orders. The more likely explanation is that the number of domestic violence orders issued in NSW is much higher than in

Victoria and/or that police in NSW are more likely to take action in response to an alleged breach of an apprehended violence order. The same applies to the large difference between the two states in the rate of appearance in court for traffic/motor vehicle regulatory offences. Much of this difference stems from the fact that NSW has nearly four times as many people appearing in court for drink-driving offences (Australian Bureau of Statistics, 2010a). It is possible that NSW residents are nearly four times more likely to drink and drive than their Victorian counterparts but a more likely explanation for the high rate of drink-driving appearances is that levels of enforcement for drink-driving are higher in NSW than in Victoria.

There are several possible explanations for the higher proportion of defendants convicted in NSW. Juries in NSW may be more likely to convict defendants who plead not guilty than their Victorian counterparts. Likewise, NSW magistrates may be more likely to convict defendants who plead not guilty than Victorian magistrates. The proportion of defendants pleading guilty may be higher in NSW than in Victoria. Since the guilty plea rate varies from offence to offence, the difference in the percentage convicted may arise from differences in the offence profile of cases coming before the criminal courts. The higher percentage of convicted offenders given a prison sentence in NSW may also be due to several factors. It could, of course, reflect a greater proclivity on the part of NSW courts (regardless of offence and offender characteristics) to impose a custodial sanction. It is also possible, however, that NSW courts deal with a more serious population of offenders³ or that prosecutors in NSW are more likely to lay multiple charges.

Although this analysis has answered some questions, it raises many others. The NSW court appearance rate for acts intended to cause injury is more than double that of Victoria yet national survey data show little if any difference between NSW and Victoria in the prevalence of assaults. Is the difference in court appearance rates for this offence due to differences between NSW and Victoria in the incidence of assault or is it due to differences between the two states in the way they respond to assault? The percentage of convicted offenders sent to prison in NSW is 39 per cent higher than in Victoria. Is the higher imprisonment rate attributable to differences between the two states in the profile of offenders coming before the court system or do NSW courts imprison offenders who, had they appeared in a Victorian court, would be given some kind of non-custodial sanction? NSW has a far higher remand rate than Victoria. Is this because NSW courts are less likely to grant bail at first instance, because police in NSW are more likely to take action in response to alleged breaches of bail or because NSW courts are more likely to revoke bail following evidence of a breach?

There are other issues, not dealt with in this bulletin, that also need to be explored. The length of time spent in custody is only partly a function of the sentence imposed by the courts. For many offenders it is also shaped by the willingness of parole authorities to grant or revoke parole. Do NSW and Victoria differ in the willingness of parole authorities to grant or revoke parole? There is clearly a great deal more work to do before the differences between NSW and Victoria in their imprisonment rates are fully understood.

ACKNOWLEDGEMENTS

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NOTES

1. Due to concerns about comparability, the Australian Bureau of Statistics does not currently permit comparison of NSW with Victorian crime rates.
2. The prevalence of assault is the percentage of the population that has experienced an assault. The incidence of assault is the overall number of assaults. Two states that do not differ in the prevalence of assault may differ in the incidence of assault because one state has a higher repeat victimisation rate.
3. There is some support for this explanation. NSW, it will be recalled, has much higher rates of appearance than Victoria in the categories of *acts intended to cause injury* (e.g. assault); *robbery, extortion and related offences* and *offences against justice procedures*. These are all offences where the risk of imprisonment is fairly high (Australian Bureau of Statistics 2010a).

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