



# Justice Sector Outlook

March 2016 quarter



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# Summary of the current quarter

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## Inflows to the pipeline have flattened, following five years of decline

After five years of falling steeply, the following inflow quantities have levelled off:

- Proceedings by court action (prosecution).
- Proceedings by non-court action (mainly formal and informal warnings).
- Court volumes – at 43 percent below the 2009 peak.

But there has been an increase in prosecution of serious cases (Category 3), especially for family violence offences due to greater Police focus in that area.

## Legal aid expenditure has increased

Legal aid expenditure is higher than in recent years, as forecast. This is due to:

- A decrease in the number of cases allocated to the Public Defence Service, resulting from resource constraints.
- An increase in the number of applications for legal aid, partly due to an increased Police focus on family violence.

Legal aid expenditure is forecast to remain at about the current level, on the assumption of steady volumes and steady average costs per case.

## Crown Law volumes have increased; now forecast to be flat

The number of cases involving Crown Law has increased due to more serious violence cases. The Crown Law forecast has been updated in this report. Crown Law cases volume is forecast to remain at about current levels, on the assumption of steady volumes.

## The trend towards more serious sentence types continues

Numbers of most sentence types – especially fines – have fallen over the last few years due to declining prosecution volumes. However, as a proportion of all sentences, imprisonment and community-based sentences have increased. This trend is driven by Police tending to deal with minor crime out of court and the recent increase in serious cases.

## Remand population continues to increase

Despite lower volumes in the criminal justice pipeline, there are upward pressures on remand due to:

- An increase in cases prosecuted as serious violence.
- Greater Police focus on family violence.
- Increased use of custodial remand, especially resulting from the Bail Amendment Act 2013.
- Longer remand periods relating to pre-sentence restorative justice.

Those trends have caused the remand population to grow significantly over the past two years and will likely flow on to a larger sentenced prison population. The total prison population is at an all-time high, which is putting pressure on prison capacity.

# Environmental factors are mixed

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## Operational and legislative factors drive the criminal justice pipeline

Variation in the criminal justice pipeline is only weakly driven by the amount of criminal offending. More important factors are the:

- Operational and legislative settings that influence the entry of offenders into the pipeline.
- Choices that the justice sector makes, as offenders proceed through the pipeline.
- Time taken to travel through the pipeline.

## Operational and legislative drivers

Current key operational and legislative drivers are:

- **Offenders deported from Australia.** Changes in Australian law are increasing the number of offenders deported from Australia. The eventual estimated change in the prison population is +100.
- **Parole Amendment Act 2014.** The amendment removed the 10-year limit on monitoring of child sex offenders after the end of prison sentences and allowed for deferral of parole hearings. The eventual estimated change in the prison population is +100.
- **Bail Amendment Act 2014.** The intended focus of this legislation was to increase the likelihood of custodial remand for serious and repeat offenders committing specified offences. The impact has actually spread across a wider range of offences, with remand rates increasing in less serious offence categories.
- **Restorative justice.** An increase in the use of restorative justice, following legislative changes in December 2014, means some offenders remain in custodial remand for longer while the restorative justice process is completed. The estimated change in the current prison population is +150.
- **Legal aid reforms.** Criminal legal aid fees are to increase in stages over the next three years. Few historic Waitangi Tribunal claims remain to be completed; as these come to an end, contemporary claims will rise, but these are expected to be less costly.
- **Family Court Proceedings Reform Act 2013.** The Act introduced Family Dispute Resolutions for care of children cases in the Family Court. The aim is to resolve parenting matters outside of court; the result, since the Act was implemented in March 2014, is a 19% reduction in the number of Care of Children Act applications. This has reduced legal aid expenditure in the family jurisdiction.

Future potential operational and legislative drivers are:

- ***Policing Excellence: the Future.*** Expected to continue the focus on prevention and more effective use of Police resources. Decisions are expected later in 2016, with impacts currently unknown.
- **Family violence legislation review.** Currently a review of family violence legislation is underway. Decisions of reforms will be made later in 2016, with the outcomes currently uncertain.

# Emerging risks of upwards pipeline pressures

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Risks that are currently emerging across the criminal justice pipeline are:

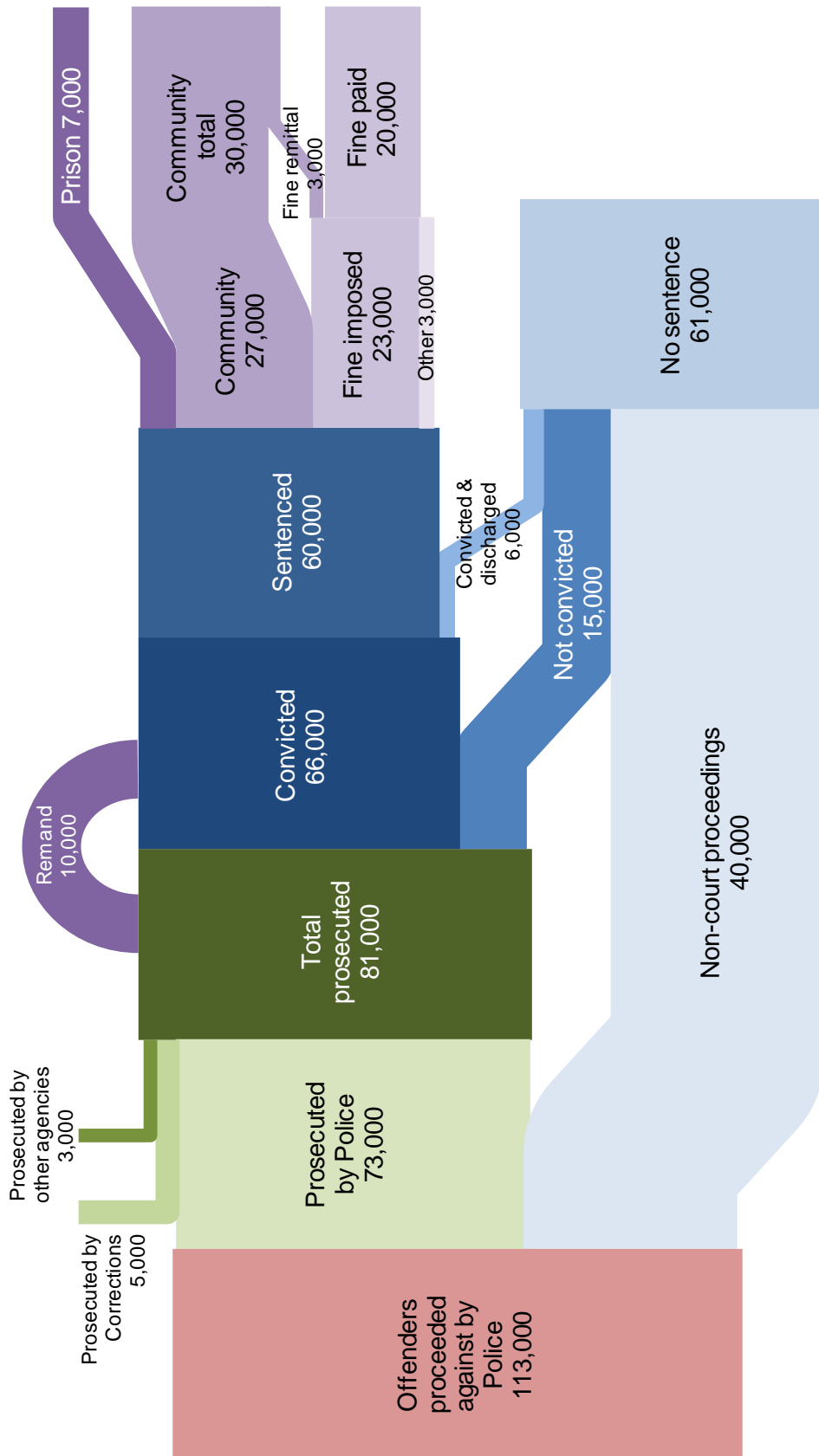
- The number of active Court cases has increased, especially for the serious (Category 3) cases. This increased number of active court cases is likely to flow through to the rest of the pipeline over the next few months (especially criminal legal aid expenditure and the sentenced prison population).
- There is an upward trend in prosecution of violence cases. This is creating pressure on Courts, legal aid, custodial remand, and potentially an eventual flow through to the sentenced prison population.
- Expenditure on family legal aid could increase with greater Police focus on family violence.
- The review of family violence legislation may create further upwards pressure on Court volumes, legal aid expenditure, and the prison population. The size and timing of those pressures will depend on decisions that will be made later this year.

These risks are being monitored and will be updated in the next quarterly outlook report.

# Criminal justice pipeline

## Counts of unique offenders in the criminal justice pipeline

12 months to March 2016



# Pipeline focus: Three strikes

## The three strikes sentencing regime has been in place nearly six years

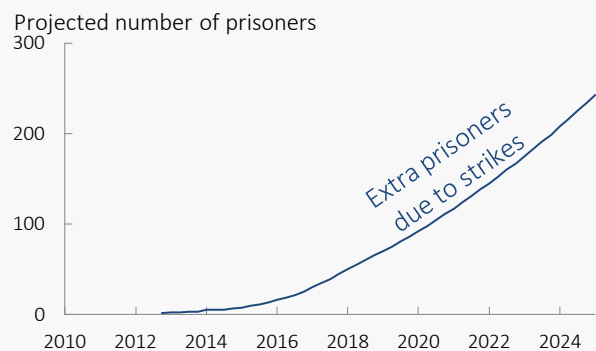
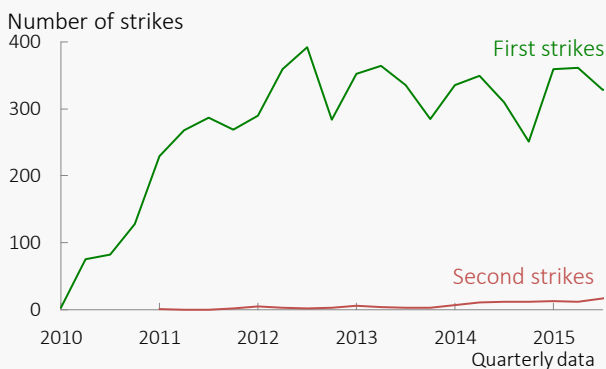
Impacts so far:

- First-strike warnings have levelled off at about 300-350 per quarter.
- Second-strike (final warning) sentences are small but growing. An imposed prison sentence will be served with no parole (including life sentences).
- There have been no third-strike sentences, but the first ones are likely to occur this year. Any prison sentence will be the maximum for that offence, with no possibility of parole.

Up to the end of December 2015, courts had imposed 6295 first warnings and 116 final warnings (second strikes). Fifty-nine percent of the strikes were for violence offences.

Demographic groups over-represented in the strikes, compared with non-strike offenders, are:

- Maori: 47 percent of strike offenders, compared with 34 percent of non-strike offenders.
- Males: 92 percent of strike offenders were males, compared with 73 percent of non-strike offenders.
- Younger adults: Strike offenders are younger than non-strike offenders. 57 percent of strike offenders are aged 17–29 years, against 50 percent of non-strike offenders from the same age group.



## Impact on the prison population so far is small but growing

Imprisoned second and third strike offenders impact on the prison population only after the date at which they would otherwise have been released on parole. Most second-strike offenders have not reached that late stage of their sentence so the impact on the prison population from those strikes is minimal at this stage.

Estimated impacts on the prison population from strike convictions:

- The impact on the prison population is estimated to be 10 so far, due to second strikes.
- By 2018 that impact will be about 50.
- By 2025 the prison population will be larger by about 240 as a result of the three strikes regime and that impact will continue to grow over the long term.

# Police proceedings volume has stopped falling

Police proceedings against apprehended offenders are the main entry point into the criminal justice pipeline:

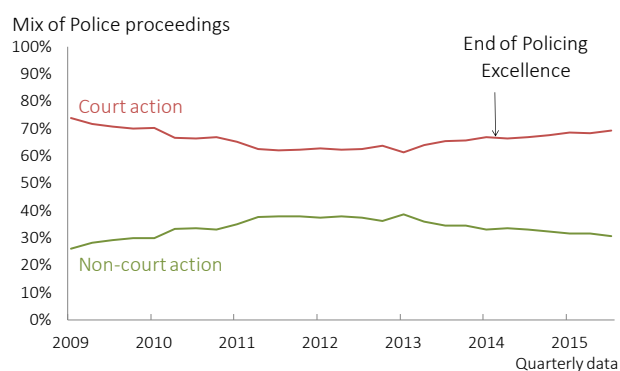
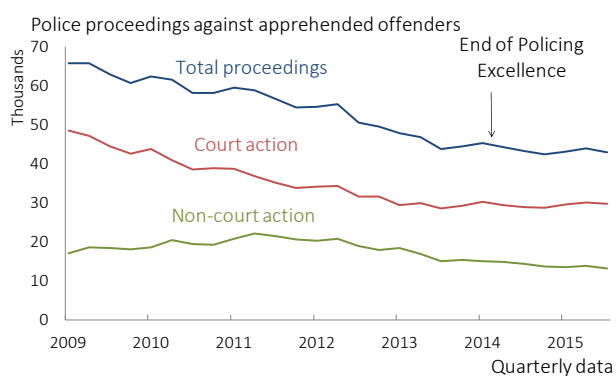
- Proceedings against apprehended offenders fell by one-third from a peak in 2009 until early 2014, due to falling crime and the Policing Excellence initiatives.
- Overall changes since then have been relatively small.
- But Police prosecutions for public order offences and drink driving have continued to fall, while prosecutions for assault and sexual offences have risen.

Police proceedings	Current quarter		Last 12 months		
	Proceedings	Change c.f. last year	Proceedings	Change c.f. last year	Change c.f. 2009 peak
By court action	29,800	+3%	118,200	0%	-35%
By non-court action	13,300	-8%	54,500	-8%	-24%
Total	43,100	-1%	172,700	-3%	-32%

## Policy decisions may further decrease inflows

The anticipated *Policing Excellence: the Future* initiatives may further drive down inflows into the pipeline from Police prosecutions, both by preventing offending and by dealing with apprehended offenders out of court. However, there is limited scope to reduce prosecutions for some types of crime. For example, public order offence prosecutions decreased 75 percent from 2009 to 2014, leaving little scope for further absolute decrease.

As a proportion of all proceedings, court action fell from about 70 percent in 2009 to 60 percent in 2012 and 2013, before gradually increasing to 67 percent by the end of 2015. The fall was driven by greater use of alternative resolutions, such as warnings.





# Court volumes have flattened

## Prosecution volumes have flattened, following five years of decline

Falling recorded crime and the Policing Excellence initiatives that kept many offenders out of court led to a large fall in the number of criminal court cases disposed from the 2009 peak until 2014. Since then volumes have declined only slightly – to 43 percent below the 2009 peak.

Criminal Cases	Disposed cases				Active cases on hand	
	Current quarter		Last 12 months		Current quarter	
	Cases	Change c.f. last year	Cases	Change c.f. last year	Cases	Change c.f. last year
Category 1	3,000	-2%	12,200	-7%	2,466	-2%
Category 2	14,100	-3%	56,700	-9%	12,219	+6%
Category 3 & 4	10,600	+27%	39,900	0%	18,097	+14%
Total	27,700	+7%	108,800	-6%	32,782	+9%

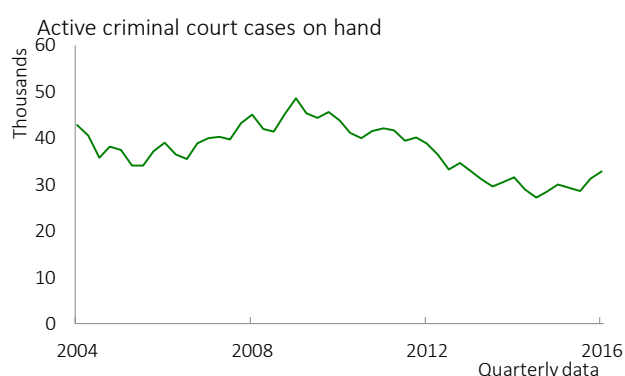
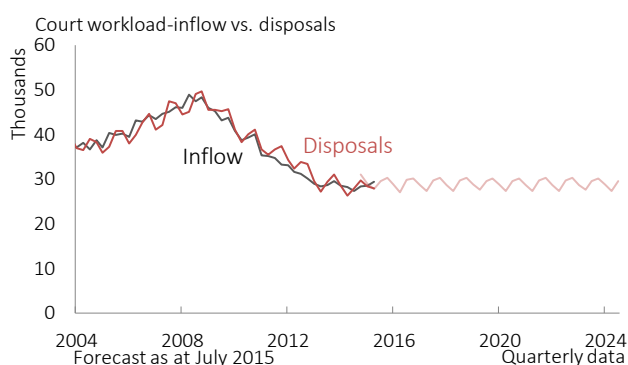
The recent increase in Category 3 cases (and a small number of Category 4 and ‘other’ pre-Criminal Procedure Act cases) is driven by an increase in violence cases – especially family violence – from a low point 12 months earlier. The increase in active cases will likely lead to increased flows further along the pipeline over the next few months.

## Forecast court volume is flat

The number of cases disposed has broadly matched the inflow of new cases, though disposals always show greater seasonal variation (due to court scheduling, especially around Christmas).

In the years leading up to 2009, the number of disposed cases was generally lower than the inflow of new cases. Since then, disposals have generally exceeded inflows. Consequently, the number of cases on hand grew before 2009 but had fallen by 35 percent by March 2014. There has been a rise of 4 percent in cases on hand since then.

The future number of court case disposals is assumed to remain at current levels through to 2025, based on no policy change.



# Crown Law case volumes are projected to be flat

Crown Law handles serious court cases that require the participation of Crown solicitors. Crown Law cases include: District Court jury trials, judge-alone trials in either the High Court or District Court, High Court jury trials, Court of Appeal cases and High Court appeal cases.

The quarterly number of Crown Law cases is small and volatile, especially for High Court jury and Court of Appeal cases, leading to large percentage changes. We have a very short historic time series after the implementation of Criminal Procedure Act in 2013, which limits our ability to identify and forecast longer-term trends.

Disposals by case type	Current quarter				Last 12 months	
	Forecast cases	Actual cases	Change c.f. last year	Difference c.f. forecast	Actual cases	Change c.f. last year
District Court jury trial	520	546	+16%	+5%	2529	+6%
Judge-alone	165	166	+2%	+1%	827	+6%
High Court jury	29	34	+183%	+17%	141	-15%
Court of Appeal	108	128	+38%	+19%	523	+16%
High Court appeal	165	158	-12%	-4%	796	-10%
<b>Total</b>	<b>987</b>	<b>1032</b>	<b>+12%</b>	<b>+5%</b>	<b>4816</b>	<b>+4%</b>

\* Forecast as at March 2016.

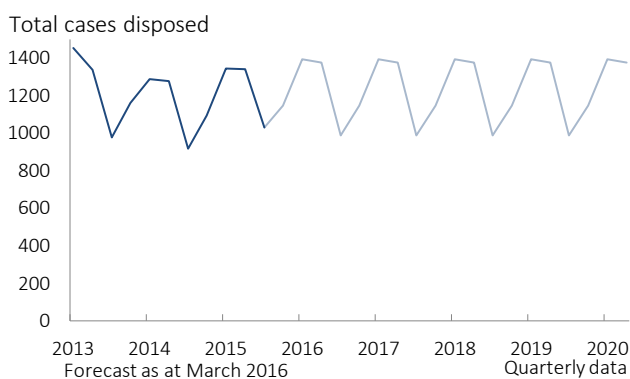
## Crown Law outflows have risen from last year

The recent focus on family violence is resulting in more serious charges, on average, and more Crown Law cases.

## Refreshed forecast: Crown Law case disposals are projected to be flat

The Crown Law forecast was refreshed this quarter:

- It projects a slight upward trend overall in case disposal volume, due to more serious cases (mainly District Court jury trials), then flat thereafter.
- There is a small increase in violent offending based on a more focused response to family violence.
- The key assumption is a continuation of recent trends, given completion of Policing Excellence and the absence of other significant proposals for legislative or operational change.



# Legal aid expenditure has risen

Legal aid expenditure for private lawyers covers six court jurisdictions, with the largest being criminal and family cases.

Jurisdiction*	Current quarter				Last 12 months	
	Forecast (\$000)	Actual (\$000)	Change c.f. last year	Difference c.f. forecast	Actual (\$000)	Change c.f. last year
Criminal	\$12,000	\$13,200	+5%	+10%	\$60,800	+15%
Family	\$9,800	\$9,100	0%	-7%	\$44,500	+8%
Civil	\$1,100	\$1,100	+5%	0%	\$5,800	+3%
Waitangi Tribunal	\$3,100	\$3,100	+9%	0%	\$12,700	-10%
Duty lawyer scheme	\$2,400	\$2,500	+8%	+4%	\$10,400	+8%
PDLA scheme	\$100	\$100	+2%	0%	\$400	-9%
<b>Total legal aid</b>	<b>\$28,500</b>	<b>\$29,100</b>	<b>+4%</b>	<b>+2%</b>	<b>\$134,600</b>	<b>+6%</b>

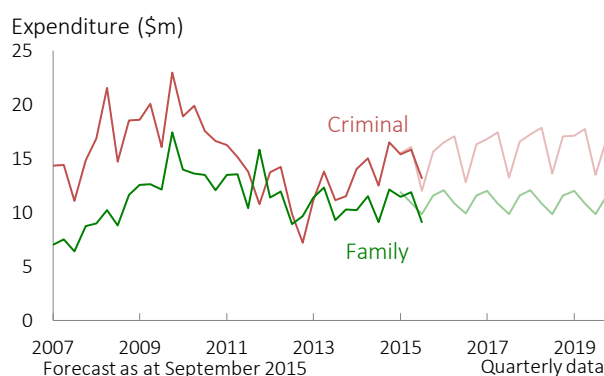
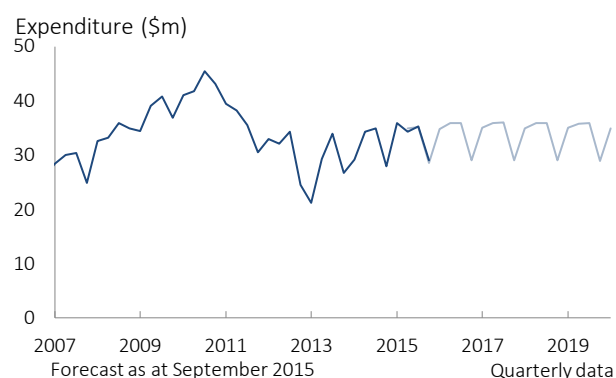
\* The Public Defence Service (PDS) has a fixed budget, so it is excluded from this analysis.

\* Forecast as at September 2015.

## Criminal and family expenditures are rising

Legal aid expenditure has risen, especially in the criminal jurisdiction, due to:

- Resource constraints on the number of cases taken by the Public Defence Service (PDS).
- Increasing number of offences resulting in court action.
- More serious charges for family violence offending.



After peaking in 2009–2010, legal aid expenditure fell substantially, as a result of fewer criminal prosecutions, expansion of the PDS, and new operational policies. Since the Family Court Proceedings Reform Act was implemented in March 2014, there has been a 19 percent reduction in the number of Care of Children Act applications. However, overall legal aid expenditure in the family jurisdiction has increased due to more applications for protection orders.

## Total forecast legal aid expenditure is projected to be flat

Total legal aid expenditure is forecast to remain at current levels through to 2019. However:

- There is a risk that expenditure in the family and criminal jurisdictions, although forecast to remain flat, could increase with greater Police focus on family violence.
- Waitangi Tribunal legal aid expenditure is forecast to decline as historic claims are resolved, while contemporary claims are expected to be less costly. As contemporary claims are relatively new, this assumption is quite uncertain.

# Sentencing mix continues to change

There are four broad types of sentences: prison, community-based, monetary, and other (such as driving disqualification). The proportions below are based on the most serious sentence type imposed on convicted offenders, and therefore do not represent all sentences.

## Community-based sentences have risen while fines have fallen

The introduction of additional types of community-based sentences in 2007 (Home Detention, Community Detention and Intensive Supervision) resulted in an increase in use of community-based sentences and a decrease in fines and prison sentences.

Sentence type	Current quarter	Forecast	Same quarter last year	Last 12 months	Previous 12 months
Prison	10%	11%	10%	11%	10%
Community	40%	42%	39%	42%	40%
Monetary	36%	34%	37%	34%	36%
Other	14%	13%	14%	13%	14%

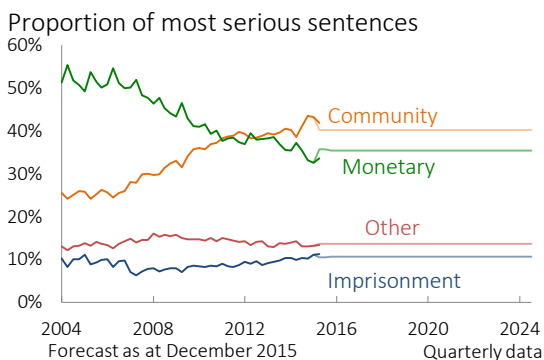
\* Forecast as at December 2015.

Those trends have broadly continued up to the latest quarter, but for changing reasons:

- The relative growth in more serious sentences types (community-based sentences and imprisonment) after 2009 is likely driven by the changing mix of offence types coming up for sentencing.
- The Policing Excellence initiatives and related changes resulted in large decreases in prosecutions for minor offences, especially public order and traffic offences. Offenders for those offence types have increasingly been dealt with out of court or without a sentence being imposed. Many of those offences would previously have resulted in monetary sentences.

## Forecast sentence mix is flat

The mix of sentences in the future will depend to a large extent on the types of offences that are dealt with by court action, and the conviction history of offenders coming up for sentencing. Major operational decisions by the Police, such as *Policing Excellence: the Future* may therefore be important influences on the future sentence mix but at this stage the forecast is for the status quo to persist.



# Court-imposed fines are broadly flat

## Total dollar amount imposed is levelling off after a decline from last year

The total dollar amount of court-imposed fines imposed has decreased markedly since peaking in 2009, even though a decrease in the number of court-imposed fines has been partly outweighed by an increase in average fine amount. Relative to the year to March 2016, court-imposed fines are:

- Down 3 percent compared with the previous year.
- Down 25 percent compared with the year to March 2009.

Monetary penalty	Current quarter				Last 12 months	
	Forecast	Actual	Change c.f. last year	Difference c.f. forecast	Actual	Change c.f. last year
Imposed	\$10m	\$11m	+7%	+7%	\$44m	-3%
Paid	\$9m	\$8m	-7%	-5%	\$35m	-10%
Remittals	546	571	-17%	+5%	2,694	-23%

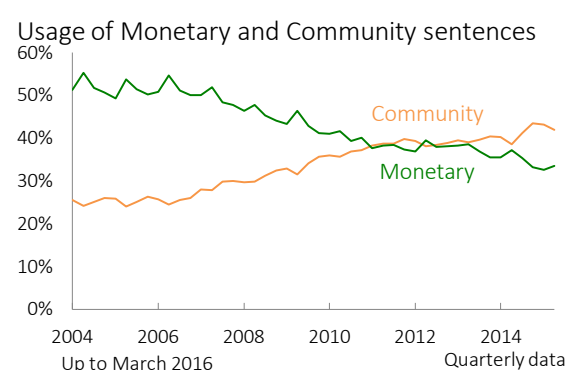
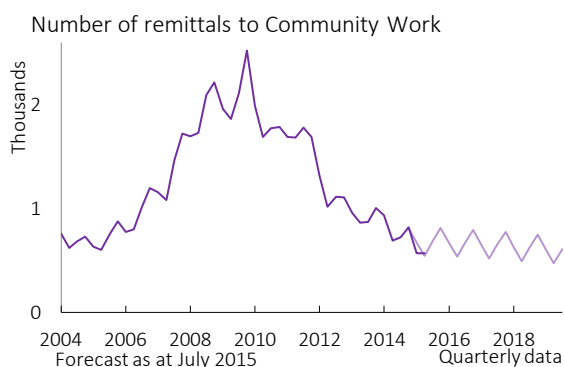
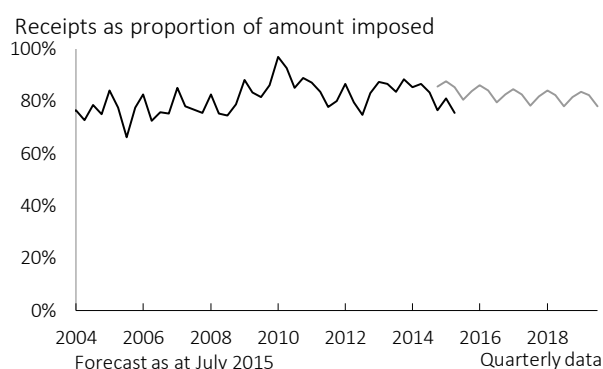
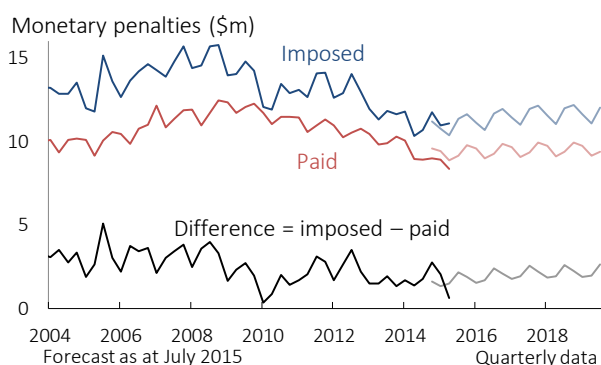
\* Forecast as at July 2015.

The Policing Excellence initiative resulted in fewer fines being imposed, as minor offences that otherwise would have attracted low-value fines were increasingly kept out of court. Furthermore, the introduction of additional types of community sentences in 2007 gave courts more sentence options other than, or in addition to, fines.

Most fines are paid – the value of receipts (the amount paid) has remained around 75–85 percent of the amount imposed. Fines that are not paid may be remitted to Community Work. The number of remittals has continued to fall since 2010 as the focus of fine collection is on single-fine offenders, who are less appropriate candidates for remittals compared with multiple-fines offenders.

## Fines are forecast to slowly increase

The total value of fines imposed is forecast to gradually increase over the next four years as a result of a decline in the number of fines imposed outweighed by an increase in the average amount imposed.



# Numbers of community sentences are falling

The number of community-based sentence starts has fallen, though they have become a larger proportion of sentences (see page 10). This fall in starts is mainly due to a decrease in Community Work sentences, which are about half of all community sentences. Community Work starts have fallen due to a trend towards more serious charges and more serious sentence types.

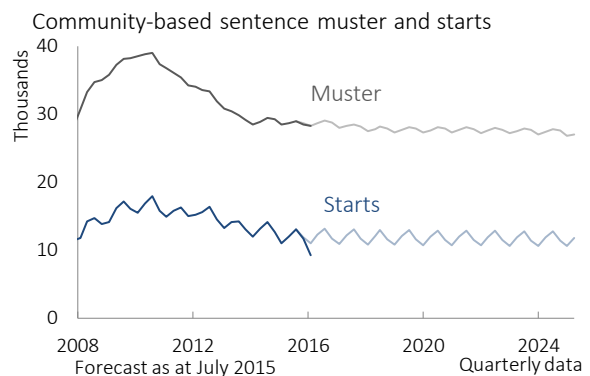
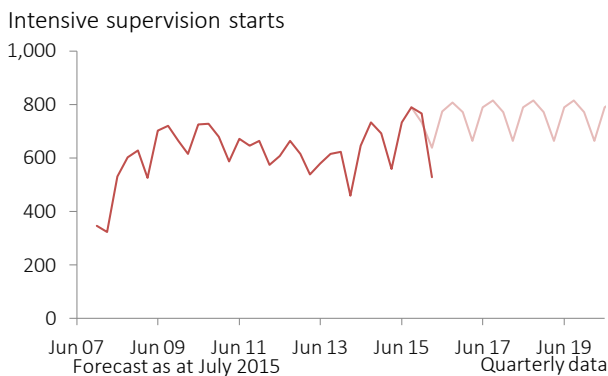
The number of Intensive Supervision starts increased by 24 percent in the two year from 2014 to 2016 (year to March). The Intensive Supervision muster has increased by 23 percent over the same time. These increases are consistent with a trend towards using more serious sentences types.

Community sentence type	Current quarter				Last 12 months	
	Forecast starts	Actual starts	Change c.f. last year	Difference c.f. forecast	Sentence starts	Change c.f. last year
Home Detention	700	600	-5%	-14%	3,200	-1%
Community Detention	1,200	900	-16%	-25%	4,900	-8%
Intensive Supervision	600	500	-5%	-17%	2,800	+7%
Supervision	2,500	2,300	-6%	-8%	10,500	0%
Community Work	6,100	5,000	-21%	-18%	24,600	-16%
<b>Total</b>	<b>11,100</b>	<b>9,300</b>	<b>-15%</b>	<b>-16%</b>	<b>46,000</b>	<b>-10%</b>

\* Forecast as at July 2015.

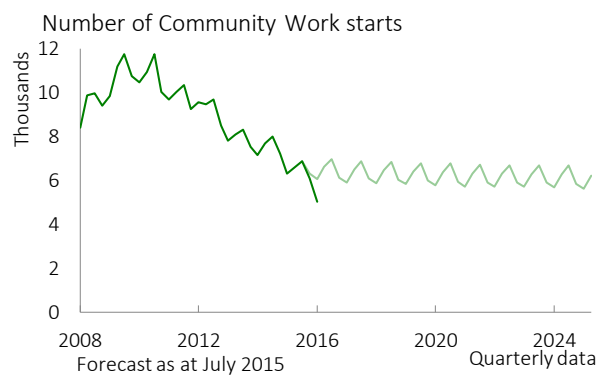
## Community sentences forecast is flat

The forecast for all community-based sentences is broadly flat, reflecting the expected stable number of offenders passing through the pipeline, though there is substantial variation from quarter to quarter.



## Time to complete Community Work sentences has increased

Over the past two years the number of Community Work sentences has been falling but the time taken to complete those sentences has been increasing. Those two trends have approximately cancelled out so that the number of people serving a Community Work sentence has remained stable.



# Prison population is high and trending up

## Remand population continues to increase

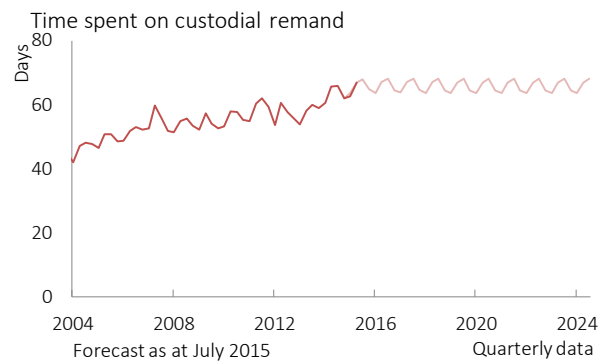
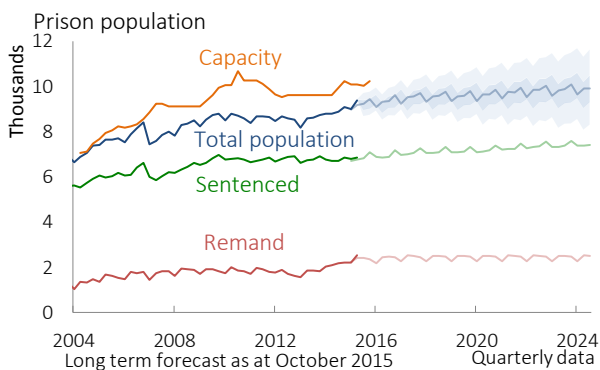
Over the past year the prison population has risen by 7 percent. That rise is nearly all due to the growing remand population (up 20 percent).

Prison population	Current quarter				Last 12 months	
	Forecast*	Actual	Change c.f. last quarter	Difference c.f. forecast	Actual	Change c.f. last year
Remand	2,500	2,530	+14%	+1%	2,100	+20%
Sentenced	6,930	6,850	+1%	-1%	6,710	+2%
Total	9,430	9,380	+4%	-1%	8,810	+7%

\* 1-year forecast as at February 2016.

Reasons for the rise in remand:

- The Bail Amendment Act 2013 continues to cause more offenders to be remanded. That legislation made it less likely that some types of offenders will be granted bail.
- Length of time spent on remand has increased. One contributor to the length of remand is restorative justice (RJ). Pre-sentence RJ has been used much more extensively since December 2014 and for some offenders that has resulted in longer periods in remand.



## Sentenced population remains flat

The major component of the prison population – sentenced prisoners – has remained level at about 6700 to 6900 for the past five years.

## Forecast prison population is gradually increasing

The total prison population is forecast to rise at around 1 percent per year for the next nine years. The main drivers of that rise are:

- A continuing increase in the remand population due to an increase in family violence prosecutions.
- A long-term increase in the sentenced population due to those prisoners serving time without parole under the 'three strikes' legislation.
- The change in arrangements regarding offenders deported from Australia will also contribute.

# Glossary of terms

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**Crown Law case disposals:** Measures the number of cases that are handled by Crown Law and Crown solicitors. These include, for example, all Category 4 cases, and appeals. We count disposals to align with Crown Law's workload assessments. The measure is obtained by combining projections of disposals for each of the different types of case handled by Crown Law.

**Community Detention:** Punitive sentence for low level of risk offenders who have patterns of offending at specific times of the day or week. Community Detention restricts an offender's movements during their curfew, and requires the offender to remain at an approved residence at certain times specified by the court. Community Detention length ranges between 14 days and six months.

**Community Work:** Punitive sentence that gives offenders an opportunity to take responsibility for their offending and learn new skills and work habits. Offenders do unpaid work in the community to pay something back for the offence they have committed. Community Work hours range between 40 and 400 hours (at up to 40 hours per week).

**Criminal justice pipeline:** Working as a justice sector recognises that there is a pipeline across the criminal justice system, which extends from the investigation of crime to arrest and prosecution, through to courts, sentencing, sentence management and rehabilitation. The numbers of offenders in the main parts of the pipeline are shown on page 4. Policies and approaches in one part of the system can have significant effects on others. Joining up our services allows agencies to identify these sector-wide effects, and implement changes that have the best outcomes for the sector as a whole.

**Duty lawyer scheme:** Provides a lawyer at the start of the court process for criminal defendants who would otherwise lack legal representation.

**Home Detention:** Punitive and rehabilitation sentence that is an alternative to imprisonment for short prison sentences (two years or less). It requires an offender to remain at a suitable and approved residence at all times, and be monitored 24 hours a day, seven days a week. Home Detention length ranges between 14 days and one year. Home Detention allows an offender to seek or maintain employment, complete a sentence of Community Work if imposed, access programmes to address their offending and maintain their family relationships.

**Intensive Supervision:** Community-based rehabilitation sentence for offenders who are convicted of more serious offending, and are more likely to reoffend. It is imposed if the court deems that a sentence of Intensive Supervision would reduce the likelihood of someone offending again, by supporting their rehabilitation needs and re-integration back into the community. Intensive Supervision length ranges from six months to two years.

**Legal Aid:** Legal aid is available in all jurisdictions of the court (criminal, family and civil), as well as for claims before the Waitangi Tribunal. Legal aid also supports the Duty Lawyer scheme and the Police Detention Legal Assistance.

**Police Detention Legal Assistance (PDLA):** Provides initial legal advice for persons detained by the Police.

**Proceeding:** A proceeding is a decision by Police to take action against an alleged offender for one or more offences. Proceedings can be by either court action, such as prosecution, or non-court action, such as a formal warning.

**Public Defence Service (PDS):** Provides professional, independent criminal legal aid representation to clients who are eligible for legal aid. The Public Defence Service also oversees the duty lawyer scheme.



**Remand:** In this document, remand means being held in custody while awaiting trial or sentencing. Remand prisoners are kept separate from sentenced prisoners (remand prisoners could be held in police cells, court cells, psychiatric facilities, or in prison). Offenders granted bail are technically remanded on bail, but do not contribute to what is called the remand population in prisons.

**Time on remand:** Time spent in custody while awaiting trial or sentencing. Any time spent on remand is taken off a person's total prison sentence time.

**Remittals:** People who do not pay fines may have them remitted to another sentence types, such as Community Work.

**Supervision:** Rehabilitation sentence for offenders convicted of less serious offences, with relatively straightforward rehabilitation needs and a lower risk of re-offending. Supervision provides an offender with opportunities to address the causes of their offending and motivate them to seek positive change. Offenders can be sentenced to supervision for between six months to one year.

**Waitangi Tribunal:** The Waitangi Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Māori relating to actions or omissions of the Crown that potentially breach the promises made in the Treaty of Waitangi.

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