

Strengthening the
Criminal Justice System
for Victims

Te Tangi o te Manawanui Recommendations for Reform

Chief Victims Advisor to Government
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Te Tangi o te Manawanui: Recommendations for Reform

The heart that says 'no more' – to protect future generations

The name for this report **Te Tangi o te Manawanui** was gifted from **Te Whare Tiaki Wahine Refuge**.

The meaning of the name refers to the heart that says 'no more' in order to protect our taonga, future generations.

Te Tangi means a voice, a cry that's heard, that represents the outpouring (grief) and mamae (pain), but also a release or letting go (tukua), as well as a statement of challenge (mana) of the strong heart.

"Te Tangi o te Manawanui" - Enough is enough! 'No more' ... I'm committed - stand proud, stand tall, stand strong.

Foreword

Tēnā koutou katoa

This report carries the voices and tears of Māori and ¹Tauīwi victims of crime, as they talk about the lack of safety, fairness and justice they experience in our current criminal justice system.

Their voices carry much hurt and frustration. The hurt is caused by the crimes they have experienced, but also caused by their experience in the justice system. The frustration is born from Māori and ¹Tauīwi victims having to say yet again what they have said for many years. They tell us that victims' justice needs are not being recognised by the system, that there are insufficient integrated and tailored support services to help them heal from victimisation and there are few prevention initiatives to stop re-victimisation.

It has been said that what we measure we value. We do not have measures for victims' procedural justice needs. We do not know how many victims are in the criminal justice system at any one time, what their needs are or whether their rights are implemented.

I have spent more than 30 years listening to and working with people who have been harmed by crime. It is in my role as Chief Victims Advisor to Government, however, that I have truly come to understand the degree to which victims are marginalised by our criminal justice system. It is a system that, at its most fundamental level, renders victims invisible and peripheral to the responses we make to the crimes committed against them.

I am also, however, keenly aware that there are many individuals in the criminal justice system who work hard every day to improve systems and services for, and responses to, victims. I want to acknowledge those people and their efforts, and be clear that the criticisms in this report are of *the system* and not of individual people, many of whom constantly strive to make Aotearoa New Zealand safer for all of us.

The voices reflected in this report have taken on more urgency through a new public conversation about criminal justice reform, initiated in 2018 by the Minister of Justice, the Hon Andrew Little, through the Hāpaitia te Oranga Tangata - Safe and Effective Justice reform programme.

At the Criminal Justice Summit in August 2018 we heard many people say that our current criminal justice system is broken and needs to be fixed. It was heartening though to also hear the Minister's reform programme be described by many victim advocates as a 'once in a generation opportunity' to make improvements for victims.

The victims whose voices we present in this report, both Māori and ¹Tauīwi, have not just entrusted us with their stories. They have also entrusted all of us in Aotearoa New Zealand with their hope that this time will be different.

This Government has made bold promises about transforming the justice system. I challenge the Government to hold fast to those promises. Together we have an opportunity to make sure victims' rights and needs are addressed, so that we can create a safer and more just Aotearoa New Zealand for everyone.

Tēnei te mihi nui ki a koutou

Dr Kim McGregor

Chief Victims Advisor to Government
September 2019

¹ The term 'Tauīwi' refers to people who are not Māori.

Executive summary

“Justice: Basically, a safety net for people who have been wronged. And whether or not that net has holes in it you don’t know until you’ve got on the journey”

Interview with victim, Victim Support research ²

Following the Hāpaitia te Oranga Tangata Safe and Effective Justice Summit in August 2018, Hon Andrew Little, the Minister of Justice, invited me to host a workshop on victims’ issues, the Strengthening the Criminal Justice System for Victims Workshop (‘victims workshop’) which took place on 4-5 March 2019. To inform that workshop, I also hosted the Strengthening the Criminal Justice System for Victims Survey (‘online victims survey’) in February 2019.

This *Te Tangi o te Manawanui – Recommendations for Reform* report is a synthesis of what victims told me through the survey and the workshop, at subsequent engagements with victims across the country and my experiences talking to victims and personnel within the justice system over my three years as Chief Victims Advisor to Government. While there is little administrative data on victims, this report also draws on recent New Zealand research, such as the New Zealand Crime and Victims Survey (‘NZCVS’).³

There is a crisis of confidence in the criminal justice system for victims

Victims say the criminal justice system does not help make them safe, does not listen to them, does not give them the information and support they need at each stage of the system, and their overall experiences in the system are negative.⁴ The current criminal justice system is experienced as an immense and complicated maze that many have described as ineffective. Some victims say they were further harmed and indeed re-victimised by the justice system and many say they received little justice.

The NZCVS tells us that less than a quarter of victims had reported crimes against them. This figure reduces to 17% for crimes of interpersonal violence.⁵ Of those who have been through the criminal justice system many have stated that they would not advise others to report crime.

A higher proportion of Māori are victimised each year than any other ethnic group

Māori (37%) are more likely to experience crime compared with the average New Zealander (29%). We know from Māori that victimisation affects the whole whānau. We heard from Māori that the burden of victimisation is experienced as another legacy of colonisation which affects the cohesion of whānau and hapū. Māori have stated that the current system doesn’t work for Māori and in the report ‘Inaia Tonu Nei’ Māori call for Government to truly partner with Māori in any reform of the criminal justice system.⁶

² Victim Support, (2019), *Victims’ Voices: The Justice Needs and Experiences of New Zealand Serious Crime Victims*.

³ New Zealand Ministry of Justice. (2019). *New Zealand Crime and Victims Survey 2018*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

⁴ Chief Victims Advisor to Government, (2019), *Strengthening the Criminal Justice System for Victims Survey Report*. Retrieved from: <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/8dhfd3-Criminal-Justice-Victims-Survey-report.pdf>

⁵ New Zealand Ministry of Justice. (2019). *New Zealand Crime and Victims Survey 2018*

⁶ Te Ohu Whakatika, (2019), *Ināia Tonu Nei – Hui Māori Report*.

The system is not set up to address the justice needs of victims

The main focus of our criminal justice system is on offenders and the State's responsibility to ensure that offenders are held responsible for their crimes and to impose appropriate penalties. There is an assumption that this amounts to justice being served. But the State also has an obligation to victims separate to the process of making offenders accountable because over the past millennia, the rights and responsibilities for the compensation, investigation, and prosecution of personal wrongdoing, in Western jurisdictions, has shifted from victims to the State. It is important to remember this shift when focusing on government's responsibilities to victims, and the fundamental basis of victims' rights. The State's obligations extend to helping victims deal with the impact of the offending on them and to help them recover from the harm they have suffered.

There have been many attempts to add on support for victims and give them limited opportunities to have a voice in the existing system. However, because of the shift in responsibility from victims prosecuting for wrongdoing to the State, victims are no longer a party to the prosecution of the harm they experienced, but instead are just treated as another witness. As the views and needs of the victim are therefore not a core part of the system, there are huge gaps in the knowledge and training about victims currently provided for in the criminal justice system workforce. With less than 50 cents in every 100 dollars the Government spends on the justice system being ringfenced for victims⁷, it is understandable that the workforce is often under resourced to provide the wide range of victims with the appropriate support and advice. People working in the system as well as victims and victim advocates report that there is a shortage of specialist trained staff throughout the criminal justice system.

Most importantly, there is no specific mechanism or entity reviewing the overall system from a victim's perspective or monitoring if victims' rights are upheld. No one in the justice system knows how many victims are in the system at any one time, what their needs are, the average length of time each case takes or how many times an individual case has been stood down at the last minute. Because there is no central integrated database on victims that enables the tracking of their case throughout the system, and there are multiple personnel involved at different points along the process, information is often not relayed to victims

when they need it. Victims complain that they are constantly chasing information about their case and become frustrated when they are not informed about key decisions. Failure to track victims through the system has resulted sometimes in a lack of safety, in thousands of victims who have a right to be listed on the Victim Notification Register but who are not, and multi-millions of dollars in reparations unable to be paid to victims because their details were not retained in all databases.

Change is needed on many fronts

We need to look closely at the many opportunities there are to improve procedural justice for victims throughout the criminal justice system. In particular, because of the lack of overall co-ordination for victims, their families and their whānau, one solution is to provide a single point of contact, independent of the currently restricted siloed roles. They need someone who can help them understand the various processes and who can advocate for them.

Some victim survey respondents said that it was primarily the adversarial nature of the courts that left victims feeling re-traumatised. To move victims to the centre of the system, there are many calls for a shift from a purely adversarial system to one that includes more inquisitorial, restorative, therapeutic and whānau-focussed processes that listen to victims' voices while also holding offenders to account for their actions.

We have heard that a whānau-centred approach is particularly essential for a justice system that is to work for Māori. We have heard that a truly just system for Māori would acknowledge the full whakapapa of every incident, the wider set of challenges faced by the relevant whānau, and the intergenerational context of their collective lives.

A justice workforce that reflects the diversity of victims needs to be developed. This workforce should possess the knowledge, skill and attitudes to be culturally competent, and fully trained in trauma-based and violence-informed practice. It should be supported by an adequate number of specialists able to meet the distinct needs of different cultures, different types of victimisation, and the diverse aspirations of victims.

⁷ 2019/2020 Budget appropriations. Retrieved from <https://treasury.govt.nz/publications/budgets/justice-sector-estimates-appropriations-government-new-zealand-year-ending-30-june-2020>

I have four broad high-level recommendations for Government

Recommendation 1: Improve procedural justice for victims

There are many aspects of our criminal justice system that need fundamental change if the needs of victims are to be addressed. However, there is also much that can be done now to improve the experience of victims in our current system. Appendix A provides an initial list of detailed practical suggestions for change. A key focus on victims' safety is paramount.

I recommend, at a minimum, that all government agencies review their practices to ensure they comply with the provisions of the Victims Rights Act 2002, measure their compliance and seek opportunities to implement the additional initial list of changes in Appendix A. The independent mechanism which is the subject of my recommendation 4, is vital to provide a monitoring function to ensure victims' rights are upheld.

Recommendation 2: Develop an integrated system focussed on restoring victims' well-being

A criminal justice system focussed primarily on people who offend will inevitably fail to adequately address the needs of victims. It is therefore recommended that a system that co-ordinates services for victims be developed independent of this offender-focused system. Government needs to develop a system that co-ordinates a range of proactive and comprehensive social services able to respond to the wide-ranging needs of victims of crime; review myriad of complex pathways victims must travel to access the support they need to stay safe, heal, recover and restore, and develop a response so that victims do not have to carry the burden of finding the help they need.

Recommendation 3: Develop a variety of alternative justice processes by partnering with Māori and working with restorative justice specialists and other communities to develop a variety of alternative therapeutic justice processes

A criminal justice system designed around the punishment of offenders will never be capable of fully addressing the needs of victims. Better treatment of victims within this system, and additional services offered alongside it will certainly help. However, it is necessary to go further and to critically examine and propose reform of some of the more fundamental underpinnings and core processes of the system we have in place. Some victims will never want to report to an adversarial justice system that only has jail as an option. Some victims may be more interested in a justice process where the person who harmed them takes part in treatment to stop their harmful behaviour.

Māori have long said that services and systems that are designed by Māori work best for Māori. To achieve better services for Māori means being committed to our obligations under Te Tiriti o Waitangi. The justice system needs to recognise and incorporate Te Ao Māori models of healing and tikanga principles; the system must affirm tino rangatiratanga, and the Crown must deliberately partner with iwi, hapū, whānau and Māori communities to design and deliver kaupapa Māori responses to crime that have a clear focus on whānau and whakapapa.

We also need to invest in promising restorative and alternative pathways, to better understand and improve them for victims, and use them to establish the foundation for long term and transformational change.

Recommendation 4: Establish an independent mechanism to enforce victims' rights

Meaningful transformation for victims is unlikely without a specialist victims-focussed mechanism to help drive the change necessary. To be effective any new mechanism must be developed with Māori. If the criminal justice system is to be responsive to the needs of victims, it must be structured to ensure that victims and their whānau can influence change. Further, any transformation must be properly resourced, including the development of a victim-focused, and culturally capable workforce.

An independent body should be established that can:

- urgently focus on improving victim safety
- focus on reducing barriers to reporting crime
- help to properly implement and enforce the rights of victims and their whānau
- enable victims easy access to co-ordinated, tailored and proactive support services whether they have reported to the Police or not
- monitor the criminal justice system and develop a continuous system improvement feedback loop to provide impetus for ongoing system improvements
- advocate for victims across the system, providing feedback on the system's performance for victims
- empower Māori and Tauīwi victims alike
- receive and investigate complaints and resolve issues (including breaches of victims' rights).

Transforming the criminal justice system so that it can genuinely meet victims' needs in 21st-century Aotearoa New Zealand will be an enormous challenge, and action will be needed at all levels. It will take time, so we need to start now!

Whakapapa for this report

A brief history of the victims' movement and victims' rights

There has been a victims' movement in Aotearoa New Zealand for a number of years, working to increase the support given to victims of crime. Starting from the middle of last century, NGOs such as the Māori Women's Welfare League, Women's Refuge, Rape Crisis, Victim Support and individual victim advocates have consistently advocated for change, as well as providing services on a voluntary or partially-funded basis.

Governments have responded slowly to calls for change from victims. Some of the first signs of change followed the Ministerial Committee of Inquiry into Violence in 1987. The Committee recommended Police training in victim support and better services for victims. It also supported the provisions of the first victim-focussed legislation enacted in New Zealand: The Victims of Offences Act 1987.

The Victims of Offences Act 1987 stated that victims should be treated with courtesy and compassion by Police, Judges, legal counsel and other officials. It also stated that victims should have access to welfare, medical and legal services, information, the right to make Victim Impact Statements, express their views on bail, and be notified when an offender escapes or is released from custody. However, these rights were not made obligatory.

This changed with the Victims' Rights Act 2002. That Act placed an obligation on agencies to implement these rights. There is, however, a statutory bar preventing victims from financial compensation for breaches of their rights.

In 2009, the Ministry of Justice carried out a review of victims' rights. The review sought feedback on enhancing victims' rights in the criminal justice process and access to support services. It found that victims of crime were generally unaware of their rights, were confused by criminal justice processes and had difficulty accessing information about it, including about what support services were available to them.

In response to this review, substantial amendments to the Victims' Rights Act were made in 2014. The purpose of the amendments was to strengthen the existing legislation to widen the rights of victims of serious offences, provide more opportunities for victims to be involved in criminal justice processes and ensure victims are better informed of their rights.

This was followed by the publication of a Victims Code in 2015, which sets out eight key principles for the treatment of victims and provides ten specific rights for victims. While the eight principles apply to all victims, the rights only apply to victims who have reported a crime to Police or are before the courts, as they link to criminal processes focussed on offenders (e.g. bail, sentencing and parole).⁸

The reforms also established the part-time role of Chief Victims Advisor to Government in November 2015. The purpose of the role is to give the Minister of Justice independent advice about how to improve the system for victims, and how to improve victims' experiences in, and their engagement with, the criminal justice system.

⁸ For further information about the Victims Code, see Appendix C or visit: <http://www.victiminfo.govt.nz/>

Recent voices for change

In 2018, the Government announced its ambition to transform the criminal justice system through the Hāpaitia te Oranga Tangata - Safe and Effective Justice reform programme. The Government's approach has been to start with an in-depth public conversation about what New Zealanders want from their criminal justice system. This conversation has included many opportunities for victims to make their voices heard.

The conversation was formally launched at the Criminal Justice Summit in August 2018. At the Summit, Hon Andrew Little, Minister of Justice, reaffirmed his commitment to ensuring that the needs of victims are at the heart of any reform of the criminal justice system.

The Minister responded to calls from victims at the Summit for a dedicated opportunity for their issues to be heard by inviting me to host a workshop for this purpose. The victims workshop subsequently took place in March 2019.

“Fixing the system (means) putting victims and survivors at the heart of change”

Hon Andrew Little, Minister of Justice

This workshop brought together victims of crime, victim advocates and the NGOs that work to support them, legal representatives, academics, experts, members of the judiciary and government officials. Participants identified gaps for victims in the criminal justice system, possible solutions that might address those gaps and articulated their vision for a future victim-responsive system that was uniquely suited to Aotearoa New Zealand.

An online victims survey was also conducted in February 2019 to help inform the workshop and the wider Hāpaitia te Oranga Tangata reform programme. The survey provided an opportunity for victims to share their experiences of the criminal justice system. It also prompted a series of meetings between victims and myself around the country in Timaru, Christchurch, Wellington, Tauranga and Auckland.

The wider conversation about criminal justice reform has been led by Te Uepū Hāpai i te Ora - the independent Safe and Effective Justice Advisory Group. This group has sought to hear the views of a range of New Zealanders at hui around the country as well as through digital channels, allowing direct engagement with victims.

Māori have also organised to ensure their voices are heard following the Summit. A three-day Hui Māori, was held in April this year, organised by Te Ohu Whakatika, a group of Māori representatives from 11 rohe across Aotearoa New Zealand. Hui Māori also provided the opportunity for Māori victims to be heard.

Māori and Tauīwi differing concepts of justice

Through the conversations, both historically and more recently, attention has focussed on the different nature of justice in Māori and Tauīwi societies.

Prior to the arrival of Europeans in Aotearoa New Zealand, Māori had well-established social structures, and systems of accepted rules and conventions by which their societies were regulated and governed. Commonly referred to as 'tikanga Māori', these rules and conventions related to all aspects of communal life including, for example, family relationships, property, conflict resolution, trade and land rights, and protection of the environment.

Under tikanga, offenders can't get their mana back until the victim is better – only the victim can give their mana back.

Te Uepū engagement

Following the signing of Te Tiriti o Waitangi in 1840, and despite the promise that Māori would continue to exercise rangatiratanga over their affairs, colonisation imposed an adversarial British system of justice on New Zealand and all its citizens.

This British system of justice, at its most fundamental level, was based on a social contract whereby citizens handed over the right to dispense justice in exchange for various protections under the law.

This system was founded on a different set of principles and values to those of tikanga Māori. It divided the rules by which society operated into two distinct streams of law, civil and criminal. Each had their own distinct set of principles and procedures.

The civil law dealt with matters that were considered 'private', typically disputes between individuals or companies, often involving money, contracts, wills, tax, land or other property, and family matters. The criminal law, by comparison, dealt with wrongs considered to be done against the State, even though the harm from these wrongs was mostly experienced by individual victims.

Crimes were defined in law. They were behaviours that law-makers (the State) believed were harmful and which should be subject to criminal penalty imposed by the State. The focus of this system was on punishing wrong-doers and ensuring 'fairness', in the sense that everyone had the same right to basic liberties and the law should apply equally to all. Critically, victims were largely excluded from this process and had no role, unless called as witnesses.

The institutions established to maintain this system of law have consequently developed around three major functions, all focussed around offenders:

- investigation (Police)
- adjudication (courts)
- sentence management (Correctional services).

This report adds to a long history of advocacy aimed at bringing the voices of victims to the public, a history that includes minor triumphs (piecemeal changes made in response to the voices of victims) amid major disappointments.

While victims generally have complained about their lack of voice in the current criminal justice system Māori in particular are highly dissatisfied with the imposed common law model of justice.

“There are significant differences in philosophy and practice at every stage between Māori and Pākehā justice. Whereas the cornerstone of modern Pākehā justice is arguably backwards-looking, retributive justice, a Māori approach is strongly forward-focussed, in terms of repairing disrupted relationships, and achieving mediated outcomes acceptable to all parties, including victims of wrongdoing.”

Associate Professor Khylee Quince,
Strengthening the Criminal Justice System for Victims Workshop, 2019

An unsafe and ineffective criminal justice system

Me matua titiro whakamuri kia mārama ai te hikoi whakamua.
We must look back to move forward.⁹

What do victims want?

When someone is victimised often what they want is for the person who harmed them to stop the harm to them or anyone else, acknowledge and apologise for the pain and suffering caused and take genuine steps to make some form of reparation to the victim. The current adversarial criminal justice system works to oppose these basic victim needs by discouraging those who have offended from acknowledging the harm and instead encourages the offender to deny the harm, give no apology, and fight to reduce any reparation provided.

When they seek justice what victims are seeking is a fair process that includes having information, participation, voice, agency, validation, vindication, respect, reparation and repair to relationships.

Between February to March 2019, 620 people responded to an online survey of victims' experiences in the criminal justice system.¹⁰ Ninety percent of respondents were victims. For each of the questions we asked, a majority of respondents reported a negative experience of the criminal justice system.

- 63% of victims reported that their overall experience of the criminal justice system was either poor or very poor
- 83% of respondents either disagreed or strongly disagreed that the criminal justice system is safe for victims
- 77% of respondents either disagreed or strongly disagreed that victims' views, concerns and needs are listened to throughout the justice process

⁹ Te Ohu Whakatika, (2019), *Ināia Tonu Nei - Hui Māori Report*.

¹⁰ Chief Victims Advisor to Government, (2019), *Strengthening the Criminal Justice System for Victims Survey Report*. Retrieved from: <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/8dhfd3-Criminal-Justice-Victims-Survey-report.pdf>

- 79% of respondents either disagreed or strongly disagreed that victims have enough information and support (not including family and friends) throughout the justice process.

These results are consistent with previous research that found victims have very low levels of trust in the justice system, and that most victims of crime do not report their offence to the police. Less than a quarter of offences are reported to the police and this number drops to approximately 20% of family violence and less than 10% for sexual offences.¹¹

Another recent Ministry of Justice survey also indicated a low level of trust in the justice system's responsiveness to victims. Only 24% of people agreed with the statement 'Criminal court processes treat victims with respect'. In contrast, 44% of people agreed with the statement 'Criminal court processes protect offenders' rights.¹²

In a recent qualitative New Zealand study with victims of serious crime, the majority (68%) felt justice had not been served in their case, despite 86% of cases resulting in a guilty verdict and 52% resulting in imprisonment of the offender. Fifty nine percent said they had no faith in the system.¹³

“The criminal justice system tends to focus on the perpetrators and ignores the victims of crime, leaving them feeling unempowered, ignored, isolated, ashamed, with low social status.”

Web submission

¹¹ New Zealand Ministry of Justice, (2019), *New Zealand Crime and Victims Survey 2018*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

¹² Ministry of Justice, (2016), *Public Perceptions of Crime - survey report*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/20161130-Final-PPS-report.pdf>

¹³ Victim Support, (2019), *Victims' Voices: The Justice Needs and Experiences of New Zealand Serious Crime Victims*

The system does not work for Māori

Ināia Tonu Nei. Mā mātou e arāhi, me whai mai koe.

We lead, you follow.¹⁴

Māori experience the impact of colonisation as an overwhelming trauma, a denial of voice, and neo-colonial practices and racism as everyday ongoing experiences that undermine and disenfranchise them. Colonisation has led to enormous problems for Māori. Similar to negative impacts on indigenous peoples in other colonised countries (such as Australia, Canada and the USA), Māori suffer from high victimisation rates, poor health, poor education and housing, higher rates of unemployment, lower incomes and severe social and economic disadvantage.

Māori want to realise the promises of Te Tiriti o Waitangi to develop and control their own institutions as a real expression of tino ranatiratanga (self-determination and autonomy). Participants at the victims workshop stated that Te Tiriti o Waitangi is currently absent from the criminal justice system and that constitutional change is required to address this. The framing and approach of the current system is not inclusive of Te Ao Māori processes and practices.

“The system needs to make room for an iwi perspective, tikanga Māori and Māori models of healing, support and affirm tino rangatiratanga/ mana motuhake and be prepared to share power and control.”

Strengthening the Criminal Justice System for victims workshop

¹⁴ Te Ohu Whakatika, (2019), *Ināia Tonu Nei - Hui Māori Report*.

Māori have told us that it is essential that the justice system promote the values of power-sharing and respect towards Māori, with a focus on whānau, hapū and iwi. Māori need a whānau-centred approach that understands the whakapapa of a person and their whānau and how they entered the criminal justice system. This would help to address important underlying issues of both offending and victimisation. Māori clinical practitioners have long argued that a kaupapa Māori response enhances whānau, victim, and perpetrator wellbeing in a way that mainstream responses cannot.

Te Ohu Whakatika’s report from Hui Māori, Ināia Tonu Nei recommends that Māori must be at the forefront of any reform of the criminal justice system. I support their recommendations that Māori be enabled to work in partnership with Government to effect the change needed to restore balance by stopping the ongoing effects of colonisation and reintroducing Te Ao Māori processes and practices to the criminal justice system.¹⁵

“With the best will in the world a Pākehā system will not cater to Māori in an appropriate way to achieve positive results”

Te Uepū report¹⁶

¹⁵ Te Ohu Whakatika, (2019), *Ināia Tonu Nei - Hui Māori Report*.

¹⁶ Te Uepū Hāpai I te Ora, (2019), *He Waka Roimata - Transforming our Criminal Justice System*. Retrieved from: https://www.safeandeffectivejustice.govt.nz/assets/Uploads/7efb12cccb/teuepureport_hewakaroimata2.pdf

We need to improve the current criminal justice system for victims

Research from a range of different countries found that there are four key areas that work when supporting victims¹⁷:

- information and communication – timely and accurate information is vital to victims
- procedural justice – the quality of service victims receive from criminal justice professionals, their perception of ‘fair treatment’, including knowledge of and access to their rights, and can increase victims’ perceptions of the legitimacy of the justice system
- agency co-ordination – partnerships across the Government, NGO and voluntary sectors can provide effective support for victims in terms of information sharing and reducing duplication and confusion for victims
- professionalisation of victim services – often a single point of contact with a trained professional who has sufficient knowledge of the criminal justice system, as well as compassion and empathy, is an effective way to provide victims with both information and support.

However, the current criminal justice system does not adequately provide these four areas of support for victims.

Victims feel sidelined by the justice system because our adversarial system reduces victims to the status of witness, with little or no standing in a system that is designed as a ‘straight fight’ between the accused and the Crown. The accused have the protection of legal advice right through to the end of the case, but the victim does not. The adversarial system is not a fair contest for victims who are effectively robbed of all agency.¹⁸

In the online victims survey, some respondents said that it was primarily the adversarial nature of the courts that left victims feeling re-traumatised. In order to move victims to the centre of the system, some respondents in the online victims survey called for a shift from a purely adversarial system to include more inquisitorial, restorative, therapeutic, family and whānau-centred processes.

¹⁷ Wedlock, E., & Tapley, J., (2016), *What works in supporting victims of crime: A rapid evidence assessment*/ Retrieved from: <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2019/02/VC-What-works-in-supporting-victims-of-crime-Review-2016.pdf>

¹⁸ Victim Support, (2019), *Victims’ Voices: The Justice Needs and Experiences of New Zealand Serious Crime Victims*

We must recognise the challenges that victims face in entering the criminal justice system

Not all victims have the same pathway into the criminal justice system. For example, the families of homicide victims have no choice whether to participate in the criminal justice system. Victims of other crimes such as burglary, workplace robbery, fraud, and assault, however, often have to decide whether there will be any benefit to them for reporting the crime. This is a difficult decision for many given the time and emotional costs to them in going through the process of prosecution. Sometimes a third party makes the complaint to the Police with or without the victim’s knowledge and the victim may then be drawn into the criminal justice system without their consent.

Some victims do not report their victimisation to the Police because they fear they will not be believed. Victims of interpersonal violence can take many years before they risk reporting crimes against them to the Police for complex reasons. Sometimes victims’ lives can be at risk when they disclose crime to the Police and in some cases witness intimidation may even be a concern. In these cases, it can be difficult for the Police to provide appropriate protections to the victims because until an alleged offender is proven to be guilty in a court of law, the complainant of the crime can only be treated as an ‘alleged victim’. We have heard that in some cases ‘alleged victims’ have been further harmed and intimidated after complaining to the Police or even disclosing harm and abuse to NGOs or indeed telling anyone. To keep people safe from violence we need to develop more appropriate ways to protect complainants and their families before, during and after entering the criminal justice system.

We must uphold victims' rights during all pre-trial proceedings

“Victims are still in danger and their abusers are often out on bail or not even charged. There is not good enough protection.”

Strengthening the Criminal Justice System for Victims Survey, 2019

For far too many of the victims who do report or are forced into the criminal justice system, the experience of going through the justice system is often one that re-traumatises, re-victimises, and is experienced as a further injustice. Not only do victims have to live through the trauma of the original offending, but being ignored, not believed or unsupported at this time leaves many victims feeling hopeless and unvalued by society.

Under the Victims Code¹⁹, victims are specifically entitled to be given information about the investigation and criminal proceedings. This includes information from investigating authorities, court staff or the prosecutor that covers:

- charges filed against the defendant
- reasons for not laying charges
- the victims' role as a witness
- when and where any hearings will take place
- the outcome of any criminal proceedings, including any proceedings on appeal.

Survey respondents told us that all justice sector agencies could be more proactive and timely in contacting victims. This included being updated on how their case was progressing at every step along the way. Many people noted that the lack of communication added to the stress of the court process:

“Not knowing or understanding what is going on adds to the stress and trauma.”

Strengthening the Criminal Justice System for Victims Survey, 2019

¹⁹ For further information about the Victims Code, see Appendix B or visit: <http://www.victiminfo.govt.nz/>

“There is scant information given to victims of crime by police or courts as to their rights.”

Strengthening the Criminal Justice System for Victims Survey, 2019

We were informed that some victims felt they were not believed by the Police when they reported the offence and felt that their cases were not properly investigated. Some victims were distressed that once the Police had spoken to the accused, the Police believed the accused over them and made the decision not to proceed with the investigation. This theme seemed to emerge particularly from the young, those experiencing interpersonal violence, Māori victims or victims for whom English is not their first language.

Other victims complained that they were not informed about any progress the Police were making with their case, despite asking the Police that they be informed about appearances and court dates. In cases such as interpersonal violence, this can be a high-risk time for the victim who may be concerned about potential retaliation from the offender and they need to be informed when the Police have contacted the offender. In the Victims' Rights Act, several roles such as the investigating officer, the prosecutor and the Court Victims Advisor are mandated to provide information to victims, but victims frequently say they did not receive all the information they needed, or that information was inconsistent or difficult to understand.

Some victims told us that information was lacking and they spent a great deal of time calling various parts of the system. For example, in the last financial year alone, Victim Support received 27,355 calls to their 0800 VICTIM line, and 31,612 calls to their 0800 Victims of Crime Information line, some of these calls are from victims trying to get access to information about the system.²⁰

In the online victims survey, respondents called for more explicit information to be made available on victims' rights and roles in the criminal justice system. Victims generally called for more explanations to be provided in advance about any aspects of the criminal justice process that would affect them so that they could make informed choices at all times. Victims wanted to clearly understand how all decisions were made.

²⁰ Statistics provided by Victim Support.

Victims asked that their views be taken into consideration at every stage of the justice process. For example, victims were rarely consulted in the decision-making process over charges. Often the victim's account of the crime was amended or downplayed in order to meet the scope of reduced charges for the offender. An agreed summary of facts could omit the context within which victimisation had occurred. This can further marginalise and disempower victims.

We must ensure safety for victims during bail processes

Under the Victims Code, victims of serious crime have the right to be informed about bail and to express their views to the prosecutor who must then present their views to the court.²¹

In research conducted by the Ministry of Justice, only 12% of the public agreed that bail decisions take appropriate account of public safety.²²

Many victims who responded to the online victims survey called for an overhaul of the bail process, with some asking that bail not be considered for violent or recidivist offenders. Survey respondents called for stricter monitoring and enforcement of bail conditions, including a re-assessment of these conditions when they are broken. There were also calls for more 'victim-trained' Police to speak face-to-face with victims before bail was granted to ensure the bail conditions set were able to keep the victims safe and that the risk of contact with a victim was minimised. It seems that this practice does not always happen, and victims informed us of their distress at finding out that the offender had been released on bail, especially when they then witnessed reoccurring breaches of bail conditions which the accused was not made accountable for. To keep victims safe there have been calls for Police to collect more complete information about areas relevant to the victim's daily life, such as not just where the victim and their families live, but also where they work and study.

“Initially they were going to bail [the offender] just down the road from [the victim’s] mum, around 500 metres away. We had to put a protest up about this, there was no thought even though they had all addresses.”

Victim engagement with the Chief Victims Advisor, 2019

Even after some victims reported having to pay well over \$10,000 to gain a Protection Order for themselves, some talked of continually living in fear as the accused regularly breached their conditions

Respondents to our victims survey asked for stricter monitoring of bail conditions, and protection orders, and called for harsher consequences for breaches of bail conditions. Survey respondents saw this as a way to protect not only the victim, but the wider community.

“Offenders are getting off too lightly. I have heard about defendants whose bail is opposed get bailed then go and cause further harm to the victim or create new victims.”

Strengthening the Criminal Justice System for Victims Survey, 2019

21 For further information about the Victims Code, see Appendix C or visit: <http://www.victimsinfo.govt.nz/>

22 Ministry of Justice, (2016), *Public Perceptions of Crime - survey report*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/20161130-Final-PPS-report.pdf>

Delays in court

Victims often have to wait for a long time before their case gets to trial, with many cancelled court dates along the way. These delays have a huge impact on victims. Many feel their lives are on hold and they have to remember details of their evidence sometimes for years.

Significant distress is caused to victims and their families and whānau due to cases commonly taking up to two years or longer to get to court. We also heard about the stress caused by not having sufficient and timely information about court dates, not being informed about changes to court dates and cases being stood down at the last minute multiple times. There is also personal cost to the victims, who often have to take annual leave in order to attend court hearings and when court is cancelled or runs only part of the day, are not paid a court attendance allowance.

The process of overbooking courts in the expectation that not all cases will end up at trial, is problematic. Every adjournment places an additional burden on victims regarding stress, mental and emotional preparation, and practical costs such as work leave and childcare. Some victims even feel forced to withdraw from the process due to emotional exhaustion and despair, just wanting to get on with their lives.

“The length of time it takes for hearings to be heard [needs to change], this leaves victims and witnesses in limbo, they can’t move forward till the hearing is over.”

Strengthening the Criminal Justice System for Victims Survey, 2019

“One case with multiple victims who travelled from overseas and throughout the country to attend the case were told of their case being stood down more than four times with the accused entering hospital the night before the case each time.”

Victim Engagement with the Chief Victims Advisor, 2019

The nature of court experiences is re-traumatising for victims

Victims are unprepared for an antagonistic, adversarial court system where offenders’ rights take centre stage. Many victims are unaware in advance that they are not a ‘real’ party to the proceedings, and that their only status is as a witness to their own victimisation. In the case of homicide, family members are sometimes not even a part of the process at all if they are not needed as a witness. Many victims also expect the Crown or Police prosecutor to act as their lawyer but then don’t understand why the prosecutor does not advise them or debrief them about what happened.

“The legal system can often make victims of crime feel like accessories in the process.”

Web submission

Few victims felt well prepared for attending court. We heard that a great number of victims only get to meet the prosecutor the morning or day before the trial. They are often insufficiently prepared for the realities of giving evidence in court and the roles of the various court personnel. Court preparation for victims needs to include explanations that the prosecutor represents the State and not the victim’s interests, and that court processes include both giving evidence and being cross-examined, as well as an accurate description of the likely stressful nature of cross-examination for victims.

We heard that Court Victim Advisors are able to prepare victims for the court process by showing victims the layout of the courthouse and courtroom and where everyone will sit in the court. However, as their role is ultimately to serve the court rather than the victim, their role and their high case workload often precludes them from being able to properly prepare the victim for the true harshness of cross examination by carrying out a thorough witness familiarisation as is often provided in the United Kingdom.

Although victims of serious crimes are supposed to be able to give evidence behind a screen in the courtroom, or via CCTV from a separate room or location, we heard that the reality is often quite different. Problems arise when applications for these modes of evidence fall between the gaps in the various roles of the personnel who have contact with the victim (Police, Court Victim Advisor, Crown and Police prosecutors). Due to the workload of the Police and Court Victim Advisors as well as high demand and limited facilities at court, these protective modes of giving evidence are often unavailable unless the victim is consulted ahead of time and someone in the system makes a request in advance. In addition, defence counsel can apply to the court to argue against victims having access to these alternative modes of evidence.

There is a presumption in the Evidence Act 2006 that these alternative modes of giving evidence should always be available for child witnesses, but that it is a matter of discretion by the judge for adult victims. We have heard from victim advocates that on some occasions, these protections have not even been made available for children.

Some victims have complained that many of the CCTV rooms at the courts were not fully soundproofed which meant that sound travelled from the room. Remote victim premises were regarded as a good solution when they were available if the victim preferred this option.

Victims need to be able to understand the legal language used in the courts, be spoken to in a language they understand, and have any legal terminology interpreted for them into plain English (or the equivalent). This is particularly important for victims with neuro-deficits, or when English is not their first language.

“Smaller migrant and refugee communities in particular find it hard to access interpreters, particularly as they may be known to the families concerned and may be in conflict.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

Section 12 of the Victims Rights Act 2002 sets out that either the investigating officer, court staff or the prosecutor must give the victim information about a wide range of aspects of the investigation and court proceedings. As responsibility is shared, practice often differs around the country and good practice relies on various personnel forming good relationships, so they can transfer information effectively and keep the victim updated as they move through the system. However, if the Victims Rights Act specified responsibility for each stage of the system, it would be easier to establish a clear working procedure.

Cross-examination

We have heard that the experience of cross-examination is often the most traumatic part of the justice process for all victims. Even families of homicide victims have expressed distress stating that they were treated as though ‘they’ were the offender.

Victims often have to give evidence years after the offence, and some victims have complained that defence lawyers try to trick them in an effort to reduce the jury’s belief in the accuracy of their evidence. Victims complain that defence counsel behaviour and cross-examination often involve inappropriate and bullying tactics. Many victims have complained that Judges rarely intervene to protect them.

“It’s a [...] harrowing experience, and that was the biggest retrigger of essentially the PTSD since the actual event and it was, you know, within two weeks after the trial when I was in the midst of my para-suicidal thing of I’m just gonna take this massive overdose. If you experience something, if you have to go through something that make you want to kill yourself or the process of which makes you want to kill yourself it kind of suggests that the process or the system is not quite right and that there’s issues.”²³

Interview with victim of sexual violence, 2017

²³ Parkes, R. M. (2017). *The Journey of Complainant Witnesses for Sexual Violence Crimes in the New Zealand Justice System*. Auckland: The University of Auckland

Some victims said that cross-examination left them feeling highly distressed and some even stated that the cross-examination was so brutal and relentless that they suffered for years afterwards.

“They broke her. They absolutely broke her, and she’s never recovered.”

Victim engagement with the Chief Victims Advisor, 2019

Sexual violence victims have said that cross examination can be particularly distressing when it reflects victim-blaming rape myths common in broader society. This includes assumptions that most rapes are stranger assaults, or that you can only be a victim of sexual assault if you fight back and receive physical injuries, or an implication that rape is just ‘rough sex’ that is enjoyed by the victim. Cross examination can promote these rape myths and imply consent was given despite the victim clearly stating it was not.

The lack of fairness for victims is held up starkly when a case involves multiple offenders. Having the multiple accused able to sit in silence while each of their defence counsel take turns at cross examining the victim over several days highlights the huge power imbalance at play in our current adversarial system.

Survey respondents to our online victims survey felt that offenders were protected when information such as the offender’s criminal history was withheld from the jury. Victims felt as though a double standard existed because defence counsel were able to call character witnesses in support of a defendant, but victims were not entitled to the same.

Many victims and victim advocates strongly support moving away from a jury-based system especially for interpersonal crimes such as family violence and sexual violence. Some believed that a panel of judges would be best for court trials as they are less prone to bias.

“Sexual assault crimes need to be heard only in front of a judge. No jury! Unconscious biases do not make court a safe place for victims.”

Strengthening the Criminal Justice System for Victims Survey, 2019

The Victims’ Rights Act 2002 states that a victim should be treated with respect. Participants in the victims workshop questioned why victims’ rights to be treated with respect were not always held up in the court process and especially during cross examination. Child and adult witnesses have complained over many years that defence counsel commonly resort to calling them liars, and that victims endure bullying, humiliation and trickery. Yet, many experienced senior defence counsel have also demonstrated that it is entirely possible to test a victim’s evidence without resorting to character attacks, tricks, repeated questioning aimed at wearing the victim/witness down, bullying or yelling at them.

Many victim advocates complain that there is a general lack of understanding of the reality of the trauma suffered by victims of serious crimes such as family violence, sexual violence, robbery, assaults, serious fraud, or families of homicide victims. Victims and victim advocates request that legal personnel and judges have the benefit of training in the realities for victims of crime. Many legal personnel and judges have expressed how much they value further education and the benefits they have gained from specialist training.

Victims have complained about not having access to a support person during the court case. We have been told that family members can be inappropriate as support in court because often the family member becomes distressed hearing how their loved one was harmed and also witnessing cross-examination and its impact on the victim. Yet, because of their high case-loads, few Court Victim Advisors are able to sit with a complainant throughout the victims' part in the court case. Even when a victim does have an appropriate support person with them in court, many victims have complained that they are not allowed to have their support person in their line of sight for comfort.

"I guess for some it's nice to know that (the support person is) there but you still feel alone. That's the one person I'm not allowed to look at. I can look at the judge, I can look at the jury, I can look at the defence lawyer, the prosecution lawyer. I can look at the defendant who is the one who [...] assaulted me, but I'm not allowed to look at the one person that's there to get me through this. So, put [the support person] on the other side of the room at the jury box."²⁴

Interview with sexual violence victim

"It makes it unfair that [it] just creates again the conditions for the witness to experience a traumatic experience again. Being challenged on the truth, what they fear is not to be believed, being put in a place of being a liar or making it up... And so all of that is playing out again in the courtroom."

Interview with Court Victim Advisor, 2017²⁵

"Being cross-examined by defence lawyers [does not work well] — the amount of victim blaming questions that they are allowed to ask; being told that I simply forgot what had happened."

Strengthening the Criminal Justice System for Victims Survey, 2019

²⁴ Ibid.

²⁵ Ibid.

Court layout

Safety for victims and their families and whānau remains a major concern. One area that has been frequently criticised is the physical layout of the courts. In many cases, there are few comfortable and safe waiting areas, entrances or facilities for victims and their families and whānau.

Victims gave examples of being seated next to the offender's family or encountering the offender in the courthouse foyer. Some victims have complained about being called names, being spat at and even physical fights breaking out both inside and outside of the court. Consequently, some victim survey respondents called for separate facilities for victims at the courthouse, including separate entrances and purpose-built areas which would keep them away from offenders and their supporters.

Children's experiences in court

The court process is particularly hard on children and young people who are victims/witnesses as well as their families and whānau. Children involved in the criminal justice system are subjected to a broad range of stressors that not only compound their victimisation, but also negatively impact the quality of evidence they are able to provide to the court. One six-year-old waited two years for her case to get to court,²⁶ a time delay equivalent to a third of her lifetime.

In the mid-1990s, sexual assault cases involving victims under 17 years took on average eight months to be processed through the New Zealand courts,²⁷ despite judicial practice notes since 1992 ordering that such cases be expedited. By 2008-2009, average court processing delays had nearly doubled to 15 months and children were waiting 19 months between reporting and trial. Anecdotal reports from practitioners suggest that the situation in many parts of New Zealand has not changed²⁸, though the current sexual violence court pilot has been able to reduce this time delay for sexual violence cases.

²⁶ Chief Victims Advisor, (2017), *Child witnesses in the NZ criminal courts: Issues, responses, opportunities*, unpublished report.

²⁷ Lash, B. (1995). *Time taken to process sexual offence cases through the courts*. Wellington: Ministry of Justice.

²⁸ Hanna, K., Davies, E., Henderson, E., Crothers, C., & Rotherham, C. (2010). *Child witnesses in the New Zealand criminal courts: A review of practice and implications for policy*. Auckland, New Zealand: Institute of Public Policy

Parents of children going through court are often highly stressed seeing the impact on their child while at the same time trying to hide their distress from their child. Courtroom questioning is very difficult and stressful for children due to the use of complex and technical language, that is often beyond the comprehension of adult witnesses, let alone children. In the past, one nine-year old was asked "in what circumstances did this offending occur?"²⁹ In one trial a child was accused of lying five times within 11 utterances. Children generally report that being suspected of lying is highly distressing.³⁰ The sexual violence court pilot has also been able to improve the experiences of children during cross-examination by the use of Communication Assistants to ensure they have age appropriate questions.

"The victim was ridiculed and called a liar by defence counsel despite the offender admitting to everything the victim said he did in a video interview [...] Defence counsel made the jury laugh when cross-examining the victim. She is a big girl. He called her "stout" and asked her underpants size and how frilly they were. He was rude and aggressive".³¹

NZ Police officer, as cited in Hanna et al., (2010)

An excellent example given of good practice is the Child/Vulnerable Witnesses Protocol in Whangarei where:

- children/vulnerable witnesses are not brought to court until required to give evidence
- the child first meets the judge and counsel for a low-key familiarisation
- a Communication Assistant is appointed to ensure they have age appropriate questions
- judges do not allow confusing questions to be asked by defence counsel
- children are entitled to frequent breaks during evidence
- no evidence is given after 3pm
- the waiting/CCTV room is more welcoming and 'child friendly'.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

Another example of good practice is a judge who always took the time to bring a child witness into chambers after the verdict to check that he or she properly understood the verdict. Children need to be properly debriefed after they have given their evidence to ensure that they are coping emotionally and fully comprehend the consequences.

Children also need suitable court environments with child friendly CCTV rooms. Many CCTV rooms have been described as "tiny, noisy and horrible or poky little rooms". In one instance while testifying in a CCTV room, they "could hear a[nother] child weeping in another courtroom".³²

Many victim advocates believe that the significant distress caused through testifying in a court of law requires immediate free access to ongoing mental health support, not in relation to the evidence, but in order to deal with the trauma caused by the criminal justice system.

Name suppression

Under the Victims Code, victims have the right to express their views on applications for permanent name suppression made by the offender.³³

The name suppression of the victim and the offender are often linked. The law presumes that victims of interpersonal crimes want their names suppressed. However, some victims believe some offenders use the excuse of 'protecting' the victim to keep the offender's name suppressed. These examples are especially highlighted when the victim and offender have a close relationship.

Some victims do not want a defendant to have name suppression and are willing to have their name suppression removed so that people can know who harmed them. Victims often fear an offender can hide under their name suppression and go on to harm others, who have no knowledge of their previous history of harm.

Victims currently have to bear the cost of a lawyer if they want to get their name suppression lifted by the courts. Some victims have spent many thousands of dollars attempting to have their name suppression lifted so that the public can know who harmed them.

³² Davies, E., & Hanna, K. (2013). *Pre-recording testimony in New Zealand: Lawyers' and victim advisors' experiences in nine cases*. Australian and New Zealand Journal of Criminology, 46(2), 289-305.

³³ For further information about the Victims Code, see Appendix C or visit: <http://www.victiminfo.govt.nz/>

It is important to enable a victim to review their need for name suppression as their personal circumstances change. Victims who were comfortable having name suppression at the start of the process may want to remove their name suppression at a later stage but are then restricted by the suppression order. They need to understand their right to have name suppression lifted and be able to easily access the processes and resources to exercise that right. Ideally, victims need access to free legal advice to help them not only to understand their rights to name suppression, but to assert those rights.

Victim Impact Statements

Under the Victims Code, victims have the right to give a Victim Impact Statement that enables the victim to provide information to the court about the effects of the offending on them, assist the court in understanding the victim's views about the offending, and inform the offender about the impact of the offending from the victim's perspective. These statements are considered by the judge when sentencing the offender.³⁴ The Victims Rights Act 2002 stipulates that the prosecutor must make all reasonable efforts to ensure that this information is ascertained from the victim. In practice, we have heard that the act of collecting the information for the Victim Impact Statement often falls to the Police, the Court Victim Advisor or the NGO victim support worker.

There were also complaints that some Victim Impact Statements that the victim had carefully developed with a victim support worker over months had been redacted without the victim's knowledge. In one case a father of a murdered son was very distressed when he opened his Victim Impact Statement to read it in court and discovered that most of it was blacked out. When their Victim Impact Statements are edited many victims have said they feel as though they are being silenced again. We heard that some judges won't allow victims to speak or read their Victim Impact Statements in court, even though the legislation defaults in favour of victims being accorded this opportunity. Victims want to have the choice of speaking to the offender when reading out their Victim Impact Statements.

³⁴ Ibid.

Victims are frustrated that tools like the Victim Impact Statement that should give them a voice in fact limit what they can say and can have minimal effect on the sentence received.

“Let victims speak in our own words. There should be no limitations in Victim Impact Statements (except for threats and swearing). Giving a Victim Impact Statement should be therapeutic for the victim and should therefore be the victim's voice.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

“The end result meant the rewritten Victim Impact Statements were not “our” statements but were those of the prosecution. [It is] very hard reading out a watered-down version that someone else has written after personally spending months writing them (probably one of the hardest things we have ever had to do).”

Interview with victim, Victim Support research, 2019³⁵

Victims are drip-fed reparation

Victim survey respondents have noted the need for stricter monitoring of reparation and that systems need to be put in place to ensure offenders are paying the reparation owed to the victim. Victims are frustrated by how slowly reparation payments are made. Several have requested that Government pay the reparation to the victim immediately and that Government (not the victim) collects the reparation from the offender through the 'drip-feed' method.

³⁵ Victim Support, 2019, *Victims' Voices: The Justice Needs and Experiences of New Zealand Serious Crime Victims*.

“Further revictimisation is caused through non-payment of reparations, or by the drip payment of reparation. Currently offenders pay the reparation owed \$20 weekly over a period of time. Victims should not have to wait for reparation.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

One victim said he received 50 cents in his bank account weekly and each week it felt like an insult. Many victims complained that receiving a regular amount in their bank account every week reminds them of the crime against them.

In addition, there are millions of dollars in reparation that have not reached victims because the victims' contact details have been lost over the years it took to complete the court case and the poor infrastructure maintaining any communication with victims.

Victims want the community to be safe from the offender

While many victims feel the only way they can feel safe and can keep the community safe is by having the person who harmed them imprisoned, many victims (and sometimes the same victims) want the offender to have appropriate rehabilitation as soon as possible. To protect the wider community and future generations and to reduce offending, many victims want offenders to receive rehabilitation or counselling to address problems such as mental health issues or drug and alcohol addictions. Many survey respondents indicated that they were motivated to report their crimes to the Police to protect the wider community and believe that a rehabilitative approach would ultimately reduce the number of recidivist offenders. In order to create a better society, these survey respondents noted that early intervention is key, especially in relation to young people who offend.

“I want to see less focus on what it costs and more focus on outcomes. I want 1) meaningful consequences for the offenders, and then 2) enforced and supported rehabilitation. For me, the crime is done. The situation can't be undone. But what I want to see is that individual 'sorted out' – one way or another, so that they become a productive member of society moving forward. If they don't serve their full sentence and they offend again or breach probation: back in they go. While they're in there, their time is spent learning the skills they lack.”

Strengthening the Criminal Justice System for Victims Survey, 2019

The parole process is offender-centric

Under the Victims Code, victims of serious crime have the right to make a submission relating to parole or extended supervision orders when the offender is serving more than two years in prison.³⁶

We have been told by victims that the Parole Board process is currently too offender-centric. While victims are able to meet with the Parole Board and make their submission on parole, outside of this they have no general opportunity to ask questions or make further submissions at Parole Board hearings or appeal the decision, while the offender does.

Many victims who responded to our online victims survey called for an overhaul of the parole process. Some felt that offering parole to offenders who had been sentenced to life imprisonment was inappropriate.

³⁶ For further information about the Victims Code, see Appendix C or visit: <http://www.victiminfo.govt.nz/>

A woman was murdered by an offender who breached his parole. The victim's parents do not understand why the offender was granted parole in the first place as one of his earlier crimes was a violent one. The victim's family have suffered immensely "Our lives have basically been taken away too." The victim's parents want the issue of parole fixed so it doesn't happen to anyone else. "They need to take input from us, be open to admitting that the system does not work and take advice on how to fix it."

Victim engagement with the Chief Victims Advisor, 2019

"Now he is coming up for Parole again, and still has done nothing. He has been in more than two years – has done a parenting course, business course – all good things but not what he needs to address his violence to women."

Victim engagement with the Chief Victims Advisor, 2019

Victim notifications need urgent attention

The Victim Notification Register (VNR) is designed to notify all eligible victims of serious crimes when an offender is out on bail, on parole, on temporary leave of absence from prison, been convicted of breaching any release or detention conditions, has escaped or passed away while in hospital or custody, or the offender is being considered for a suspension or cancellation of a deportation order.

In practice, there are many gaps and inconsistencies which can result in victims not being informed about the release of an offender. This has led to unexpected and distressing meetings between the victim and the offender when the offender is back in the community.

There are four entirely separate VNR processes held by Police, the Department of Corrections, the Ministry of Health, and Ministry of Immigration. All have different challenges in gathering and relaying vital safety information to victims and all appear to be poorly resourced. The Ministry of Health and the Department of Corrections also frequently have to pass the responsibility for offenders between them as the status of the offender changes, and the offender moves between prison and hospital. This creates potential confusion when each agency has their own siloed database of information.

In addition, when a victim changes their personal details, changes their representative, or withdraws from the VNR, each agency has to notify the other appropriate agency rather than updating one central record. If all agencies do not receive the updated information, their records are inaccurate or incomplete and the victim will not receive the notifications they are entitled to.

The VNR needs to cater for more victims than those currently meeting the criteria legislated under the Victims' Rights Act 2002. Currently victims need to 'opt in' to the register and an 'opt out' process would capture more victims.

For technical reasons some victims are not currently able to be registered due to omissions in the legislation. For example, previous family violence victims of an offender are not entitled to be notified when the offender is released for any future offences that did not involve them, despite the ongoing threat that the offender may still pose.

We have also been told that there are many victims entitled to be on the VNR but are not, some by choice but many due to not being informed of their right to notifications. There also seems to be a problem of variability with how some Police interpret which victims are entitled to be registered. We have heard that the legislation supporting the VNR make it extremely difficult to provide victims with the information they need to keep themselves safe. A stark example is when a victim of a 'special patient' who was unable to be tried due to insanity is placed in a special unit. Even though this person may have murdered or severely harmed, victims of this person are not entitled to information if the special patient is transferred to another facility even if it's close in proximity to the victim. District Health Boards are not set up to keep track of the victims of these special patients and there have been distressing failures in this system.

Problems for victims with media

Victims and their whānau felt that they needed greater protection from the media. This included a call for greater limitations on what media could report on as coverage of their case could traumatise victims. It also included a call for greater limitations on media's direct access to victims, as some felt harassed by the media.

Victims also said that media perpetuated the stigmatisation of victims and work needed to be done to change the negative perceptions of who victims are. Survey respondents suggested that educating the community on victimisation and the criminal justice system itself would begin to address this stigmatisation.

Restorative justice can be an effective option

Victims tell us they are frequently disappointed in the criminal justice system for its failure to deliver a sense of justice. We need to create a system that combines the strengths of the retributive system (ensuring due process for those accused of wrongdoing and protecting future victims from predatory behaviour), with the strengths of a restorative system (that puts the moral and therapeutic needs of the harmed parties at the centre). There is a gap in our system when it comes to the promotion of healing and recovery.³⁷

Victims have the right to request a restorative justice conference under the Victims' Rights Act 2002, but the only place restorative justice processes are usually offered occur pre-sentence after an offender has pleaded guilty. We heard that very little restorative justice is currently available post-sentence, mainly due to a lack of funding.

In 2011 and 2016, a victim satisfaction survey was undertaken with victims who had attended a restorative justice conference. The survey measured their experience and satisfaction with Ministry of Justice funded pre-sentence restorative justice processes. In 2016, the results showed that:

- a large majority (92%) were satisfied with the conference they attended
- more than three-quarters (77%) said they were satisfied with their overall experience of restorative justice
- the majority (80%) said they would be likely to recommend restorative justice to others.³⁸

Despite overwhelmingly positive satisfaction results, restorative justice processes are not appropriate for everyone. For example, some families of homicide victims have complained that they do not want restorative processes that just benefit the offender. It is difficult for victims to accept that the offender is truly remorseful if the offender benefits as the result of a restorative process such as prior to sentencing when the offender can benefit from a reduced sentence or before a Parole Board hearing when the offender may benefit from gaining parole.

In other cases, such as family violence crimes, there may be dynamics of coercion and control still operating between the offender and the victim. This can make it inappropriate for restorative justice to take place. Specialist family violence practitioners are needed to ensure there is no pressure on a victim to take part in the process for the benefit of the offender.

To ensure the process is designed for victims, restorative justice processes should always be victim-led and only occur at a time when the victim wants it to happen.

“...(there is) the need to integrate restorative justice into a wider range of support services for victims... the justice system needs to be committed to the restoration of victim wellbeing and to funding, not just a few more restorative justice conferences, but an integrated suite of restorative measures to promote repair and recovery.”

Professor Chris Marshall, Strengthening the Criminal Justice System for Victims Workshop, 2019

³⁷ Strengthening the Criminal Justice System for Victims Workshop, (2019), *Notes from Speech made by Professor Chris Marshall, unpublished memo.*

³⁸ Ministry of Justice (2016). *Restorative Justice Survey - Victim Satisfaction Survey.*

Would an inquisitorial-based system be better for victims?

In order to move victims to the centre of the system, some victims advocates and respondents in the victims survey have called for a shift from a purely adversarial system to include more inquisitorial processes. Some survey respondents said that it was primarily the adversarial nature of the courts that left victims feeling re-traumatised, often at the hands of defence counsel.

An alternative to the adversarial model is an inquisitorial system, most commonly found in the civil law jurisdictions of Europe. Here, the State through an investigating judge or magistrate takes a more neutral role and gathers all evidence that both incriminates and exculpates the offender. There is far more emphasis on the pre-trial stage of proceedings with the investigating judge taking a leading role in questioning witnesses. The questioning is generally less confrontational in nature. There are far fewer rules of evidence, with no real distinction between evidence-in-chief and cross-examination of witnesses.³⁹

In 2010, Elizabeth McDonald and Yvette Tinsley undertook a detailed review of the feasibility of adopting an inquisitorial model or aspects of such a model into sexual offending trials with the aim of improving the criminal justice experience for sexual violence victims. They visited and researched five European civil law jurisdictions.⁴⁰

New Zealand research has established that the main problems for victims in the current system are:

- the lack of specialised and co-ordinated services and support
- the lack of key information and support provided in a timely manner
- limited contact with the prosecutor ahead of trial
- the lack of ability to give evidence in an alternative way
- exposure to unfair questioning at trial
- the defendant exerting their right to silence at trial.⁴¹

³⁹ McDonald, E., & Tinsley, Y., (eds.), (2011), *From "Real Rape to Real Justice: Prosecuting Rape in New Zealand*, Wellington: Victoria University Press

⁴⁰ Ibid.

⁴¹ Mossman, E., MacGibbon, L., Kingi V., & Jordan, J., (2009) *Responding to Sexual Violence: Environmental Scan of New Zealand Agencies*, Wellington: Ministry of Women's Affairs. Retrieved from: https://women.govt.nz/sites/public_files/environmental-scan.pdf

McDonald and Tinsley (2011) concluded that these concerns could all be addressed without the need to introduce wholesale reform over to the inquisitorial model. Instead reform in Aotearoa New Zealand could incorporate aspects of the inquisitorial model into our existing system to improve processes for victims.⁴²

“...a contest between individual accused and the State... Victims might know that it is THEIR case... but... they are not a party, and they do not have a lawyer... This model assumes that individuals and families will all want to be relieved of the burden the State takes on.”

“We have an opportunity to make real change: the State-run adversarial system seems well settled but is actually not long-lived in a historical sense, even in England & Wales — this gives us the opportunity to reimagine aspects of our system, how we view offending, who we make responsible and how we address harm.”

Professor Yvette Tinsley, *Strengthening the Criminal Justice System for Victims Workshop, 2019*

One of the most appealing aspects of an inquisitorial system is increased judicial control over questioning of witnesses, which can help to protect victims and minimise re-traumatisation especially during cross-examination. This would require a fundamental shift in the way that the judiciary currently supervise the examination of witnesses. Changes such as this, as well as the removal of juries from sexual violence trials, and the provision of specialised support and access to necessary information for all victims throughout the whole system would help to improve the criminal justice system for all victims, not just victims of sexual violence. The following sections of the report will focus on such potential solutions to the gaps in the system for victims of all crime.

⁴² McDonald, E., & Tinsley, Y., (2011).

Focussing on solutions

Ehara taku toa, I te toa takitahi, engari he toa takitini
Success is not the work of one, but the work of many

Victims, their families and whānau need a single point of contact who can navigate and advocate for them

Under New Zealand's current criminal justice system, services for victims are generally treated as add-ons to a legal process that is focussed on establishing an offender's guilt or innocence and administering a proportionate sentence rather than on meeting victims' needs.

Over the course of a victim's journey through the justice system, they will often have to deal with many separate organisations and individuals, from Police through the court system to Corrections and the Parole Board. They may also have to deal with many other agencies and NGOs to get help addressing their needs. These agencies all aim to support victims as much as they are able but are far from adequately resourced to provide a comprehensive end-to-end service for all victims of crime. There is also no infrastructure to co-ordinate easy access to these agencies for victims when they need them.

Currently, victims often do not know about their rights or what support services are available. The NZCVS found that even when they knew of services available most victims do not contact them.⁴³ However, when services proactively contact victims to offer their services we heard that victims appreciated the offer and often accepted the help offered.

"There is no central victim support office, you have to access too many different departments so you can go in circles trying to find right support service that suits your needs."

Strengthening the Criminal Justice System for Victims Survey, 2019

Victims said they felt unsupported and alone in navigating the justice system. There was a call for greater access to advocacy services, support workers, financial support, medical services, counselling and therapeutic services for victims.

How can we provide a more co-ordinated provision of specialised support services to victims as they progress through the criminal justice system? One of the most consistent messages that we have heard from victims and victims' advocates is the need for an end-to-end navigator service. One person who co-ordinates all support services for the victim, and keeps the victim informed and prepared as they progress through the system so they can make the best decisions about any choices they have in their case.

The earlier a victim's needs can be assessed and identified, the sooner they get access to the communication and support they need. We heard that not all victims are the same, but the criminal justice system tends to treat all victims as a homogenous group.

43 New Zealand Ministry of Justice, (2019), *New Zealand Crime and Victims Survey 2018*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

A truly victim-centred justice system would focus on meeting the needs of victims, their families and whānau, and dealing with those needs when and how the victim wants them dealt with. A truly victim-centred justice system would:

- have a single point of contact for victims, their families and whānau at all times, so that victims do not have to keep repeating their story
- ensure the immediate and ongoing safety needs of victims, their families and whānau are addressed
- keep the victim, their family and whānau fully informed of developments in their case at all times and consult them on decisions to be made on their case
- advocate, represent and navigate all legal and non-legal processes and service needs, with a constant focus on healing and preventing re-victimisation
- deal with all the needs of the victim, family and whānau, whatever those needs are for as long as those needs last
- empower the victim to make informed choices at all times.

In contrast we have heard that a common experience for victims is a lack of information that starts with poor communication about victims' rights at the beginning of the process and continues throughout the criminal justice system. The experience of victimisation is highly traumatic. Having to keep explaining what has happened forces victims to relive the trauma. It reinforces their feeling that they are not being listened to and dealt with as a person, but just as an information source.

A single point of contact is especially vital for the safety of victims of interpersonal violence because currently there is no one person ensuring the victim has the information or support they need to keep safe from when they first report a crime until the end of the process. Victims of interpersonal violence say victims need an independent advocate to make sure they are safe after they report to the Police.

Victims say that this single point of contact needs to be independent from the Crown to manage conflicts of interest. Police are not suitable for the role because of their dual responsibility for both investigation and prosecution. In both roles the Police represent the State, not the victim, which means they cannot fully support victims in the way victims need. In the United Kingdom the single point of contact is known as an Independent Specialist Advisor (ISA). These professionals who are trained in the dynamics of one crime type (such as family violence and sexual violence) understand all parts of the criminal justice system and can speak on the victim's behalf across the whole system.

“Not knowing or understanding what is going on adds to the stress and trauma.”

Strengthening the Criminal Justice System for Victims Survey, 2019

“People are constantly retraumatised by constantly having to tell their story, this can result in disillusionment and frustration, which when manifesting in a court can lead to poor outcomes. Results in people feeling they haven't received justice.”

Te Uepū engagement, Taupō

If someone is accused of a crime, they are immediately entitled to be represented by a lawyer who helps guide them through the criminal justice process and provides advocacy in court. It is a source of frustration to victims that they are not entitled to equivalent advocacy in the criminal justice system.

An ISA service can provide victims' advocacy from the time of reporting a crime until the end of the criminal justice process. Victims want agency, self-determination and the choice to be involved in major decisions that affect them, including:

- whether to prosecute
- whether to use a court-based or alternative resolution process
- whether to accept the outcome of a charging discussion, and under what terms
- appropriate reparation and sentencing
- whether and when a restorative process is used.

While an Independent Specialist Advocate may be required to support a victim through the technicalities of the sometimes long and complex criminal justice system, other victims may choose to never enter the criminal justice system. These victims also need a separate person able to help them co-ordinate the range of social services they need to heal and recover from the harm suffered through crime. A possible example in Aotearoa New Zealand that could be explored that involves a single point of contact able to help a family or whānau with a range of complex social service needs is the Whānau Ora initiative that provides whānau-centred support. Navigators provide wrap-around services integrating health, social, justice and education services. It is a culturally grounded, holistic approach focussed on improving the wellbeing of whānau. It aims to tackle complex issues such as restoring mana, and supporting whānau to develop skills and education by co-ordinating services across agencies and providers.⁴⁴ It has included a research and monitoring programme to track its impact on whānau.⁴⁵ Within the Phase One period, two-thirds of whānau within the Whānau Ora programme received support from navigators. In the evaluation, the navigator role was identified as a main enabler of the whānau-centred approach. Navigators built trust, supported whānau through crises and then helped them develop a plan with realistic and aspirational goals to build whānau capability and make sustainable changes by drawing on a range of services and resources.⁴⁶

44 TePuni Kokiri, (2015), Understanding whānau-centred approaches: Analysis of Phase One Whānau Ora Research and monitoring results, Wellington. Retrieved from: <https://www.tpk.govt.nz/en/a-matou-mohiotanga/whanau-ora>

45 Ibid.

46 Ibid.

The Whānau Ora model could be explored to be developed as the basis for a wrap-around service helping victims address a range of counselling, housing, financial needs and so forth.

Meeting the justice needs of victims

In all their diversity, only victims can each know what justice really is for themselves and what it will take for them to rebuild their lives. Different victims will want different outcomes, will want to move at different speeds, and may need different people involved in that process.

“There are usually other issues to be addressed together (mental health, addiction etc.) Support needs to be present at the time help is sought – when you seek help and nothing happens, you feel like you are on your own.”

Ministry of Justice consultation with family violence victim, 2018

Because every victim is different, the support services available must be flexible to meet different needs. We have heard that genuinely meeting victims' needs will require an adaptive, integrated approach that can activate the relevant supports from across a wide network of governmental and NGOs.

Victims want a meaningful choice about how to deal with what has happened to them, and the support possible to realise that choice. This may be as simple as letting victims decide whether and when a restorative conference takes place, divorcing it completely from the sentencing and charging process, allowing victims a say on whether to accept the results of a charging or plea discussion, or giving victims a stronger voice at parole hearings. But regardless of how these choices are realised, we have heard that supporting victims to have a say in their case is a key step towards providing them with justice.

Victims have been clear that support must also meet the needs of the wider family and whānau, whose needs can be as great and varied as the victim's. Examples from our victim engagement include a victim's grandchildren who sleep with a knife under their pillow after a home invasion at the victim's home, and the brother of a homicide victim who cannot get support from his mother who is consumed by her own grief when he is beginning to truant from school after his sister was murdered. Each victim and family member need their own tailored support that meets their needs and helps them recover from the trauma suffered following victimisation.

“In terms of recovery, there should be greater focus on assisting the victim's family too. Currently there is nothing – which does prevent family from obtaining help where they can suffer just as much as the victim.”

Strengthening the Criminal Justice System for Victims survey, 2019

True partnership with Māori requires power to be devolved

The concept of partnership is fundamental in relation to Māori. The Crown has a responsibility to partner with Māori under Te Tiriti o Waitangi. We have heard from Māori victims that no justice system will meet their needs unless it allows for the full expression of rangatiratanga alongside kāwangatanga - this requires the sharing of power.⁴⁷

Māori advocates state that Māori have their own solutions and models for dealing with *hara* and other *take* that were developed and applied for hundreds of years before colonisation. We have been told that these models are grounded in tikanga Māori and reflect Māori values such as *whanaungatanga*, *whakamanatanga*, *aroha* and *wairuatanga*.

⁴⁷ Under Te Tiriti o Waitangi, the crown guaranteed each of the many rangatira (chiefs) who signed it their ongoing authority to pursue the self-determination of their people, in exchange for the right of the governor (kāwana) to govern. The appropriate interpretation of this exchange of powers is still extensively debated as a legal, political and moral issue.

When Māori are denied the right to use these culturally relevant and meaningful models to deal with harm suffered in their whānau, this is experienced as another aspect of ongoing colonisation. Māori are forced to submit to a set of cultural, legal and social structures imposed upon them by Pākehā.

We have heard many Māori voice frustration at the fact Governments have been told this since at least the 1988 report *Puao-Te-Ata-Tu*⁴⁸, but with little results. *Puao-Te-Ata-Tu* means *A New Dawn*, but for Māori it was in fact a false dawn.

The concept of partnership between victim, family and society is one that can apply to all New Zealanders. However, we have heard that a whānau-centred approach is particularly essential for a justice system that is to work for Māori, to prevent the continuation of intergenerational patterns of harm. We have heard that a truly just system for Māori would acknowledge the full whakapapa of every incident, the wider set of challenges faced by the relevant whānau, and the intergenerational context of their collective lives.

“Involve kuia, police, and community leaders, all working together in a collaborative relationship would enable the naming and location of vulnerable households, rather than waiting until they are in court to be responsive.”

Strengthening the Justice System for Victims Workshop, 2019

“Māori should be providing the solutions to build whānau resilience to care for their tamariki and rangatahi.”

Criminal Justice Summit, 2018

⁴⁸ Ministry of Social Development, (1988), *Puao-te-ata-tu. The report of the Ministerial Advisory Committee on a Māori perspective for the Department of Social Welfare*, Wellington. Retrieved from: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-puaoateatatu.pdf>

Indeed, Māori are more vocal than any other group in rejecting the dichotomy between victims and offenders as false. Māori remind us that although most victims are not offenders, most offenders have been harmed, particularly as children. Māori encourage us to extend our compassion out beyond the immediate victim, to show aroha for all whānau affected by crime.

“Language matters. When we speak of ‘victims’ and ‘offenders’, we are placing people into boxes and lose sight of the whānau and the wider context within which they live.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

Frontline Māori advocates who work with interpersonal violence also add that while they absolutely agree with a whānau first approach, the frontline kaupapa Māori services must be properly resourced with sufficient Kaupapa Māori practitioners who specialise in working with the specific crime type to be able to conduct a safety assessment to ensure everyone’s safety.

They say Māori specialists trained to deal specifically with different crime types such as interpersonal violence must be involved in any safety planning with the whānau.

The system needs to focus on victim safety and support

The main focus of our criminal justice system is on offenders and the State’s responsibility to ensure that offenders are held responsible for their crimes and to impose appropriate penalties. There is an assumption that this amounts to justice being served. But the State also has an obligation to victims separate to the process of making offenders accountable. The State has a similar obligation to help victims deal with the impact of the offending on them and to help them recover from the harm they have suffered.⁴⁹

49 Herman, S., (2010), *Parallel Justice for Victim of Crime*, Washington D.C.: The National Center for Victims of Crime.

“I’ve been suffering panic attacks and am very badly shaken. I feared for my life. I’ve taken up smoking again and am really upset and angry. I’ve also started taking sleeping pills’

Robbery victim.

“I don’t feel safe, I can’t work, I’m distracted. I’m too scared to be left alone in the shop. How can I protect myself and my family? It’s going to get riskier every year.

Robbery victim.

The obligation to help victims recover from their victimisation, and rebuild their lives is derived from the breach of the social contract that has visited harm upon the victim. This concept is sometimes known as parallel justice.⁵⁰

Parallel justice is a way of meeting victims’ needs that does not depend on the arrest and prosecution of an offender. It focuses on the victim’s safety and immediate access to support services to address the impact of the offence on a victim, regardless of whether an offender is arrested or convicted. It is a more equitable approach that requires justice and social sector government agencies, victim advocates and NGOs, and the wider community to act cohesively to address harm.⁵¹

It is an approach that benefits not just victims, but society generally. Being a victim of crime makes victims more vulnerable to future victimisation. Thirty-seven percent of victims of interpersonal violence are victimised more than once over a year and 15% were victimised five or more times. Four percent of victims of household offences and 10% of victims of personal crime are victimised five or more times over a year.⁵²

By protecting these victims, ensuring their safety and addressing the harm they have suffered, it reduces the likelihood they will be victimised again. This can have a positive impact on the wider community, reducing crime generally and eventually helping to address ongoing problems such as intergenerational violence.⁵³

50 Ibid.

51 Ibid.

52 New Zealand Ministry of Justice. (2019). *New Zealand Crime and Victims Survey 2018*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

53 Herman, S.

Victims need to be believed, and their victimisation recognised regardless of whether they want to participate formally in the justice system. We should assume that any person claiming to be a victim of crime is one, unless there is good reason not to in terms of helping them gain access to the help they need to deal with the harm.⁵⁴

The following should be the main goals of a parallel justice system:

- the safety of the victim, their family and whānau
- ensure no further re-victimisation by making access to services as easy as possible, with minimal associated cost or inconvenience to the victim
- properly implement and enforce all victims' rights as set out in the Victims' Rights Act 2002
- victims need the opportunity to talk about their victimisation and be listened to
- victims' needs should be addressed
- we need to affirm to victims and the community that what happened to them was wrong.⁵⁵

We need to work with the victim, whānau and community

“Focus on empowering the victim and their support people so that they feel like they are being included in the positive role of bringing a criminal to justice rather than being attacked and re-traumatised.”

Strengthening the Criminal Justice System for Victims Survey, 2019

When victims experience procedural justice their trust and confidence in the justice system is likely to increase. With increased trust in the justice system, reporting of crimes may also increase. Increased initiatives focussed on healing, repairing, and more reported crime gives us a chance to prevent crime increasing.

⁵⁴ Ibid.

⁵⁵ Ibid.

Social sanctions are often a more powerful deterrent of future offending than court-imposed sentences.⁵⁶

“I don't believe the court system is beneficial or a deterrent for many Māori offenders. My first time in court – I saw nothing but power symbols of “the colonizers” – flags, wigs, pompous stuff that is completely foreign to my community. I saw a rapist on the stand – facing no one he respected – no one from his community. I thought – gee this guy isn't going to change – if I feel an aversion to this room then how can he respect this process and find the will to change or reflect? I believe that guy needed to stand in front of his own community – his own kaumatua, aunts and uncles.”

Strengthening the Criminal Justice System for Victims Survey, 2019

Community validation and denunciation is important because it affirms the solidarity of the community with the victim and transfers the burden of disgrace from the victim to the offender. Families and whānau can also help ensure that offenders meet the conditions of their sentence and follow through on any promises of reparation.

“We need to work as a community to keep victims safe.”

Criminal Justice Summit, 2018

Courts cannot focus on the wide range of other needs arising from the harm. The victim may need very significant emotional, psychological and financial help. There may be practical matters such as finding new housing or new childcare arrangements for the victim's children. Courts are not well equipped to resolve these issues, but justice for victims demands that we design a system that focuses on the whole of the harm, not just the wrong committed by the offender.

⁵⁶ Pratt, T., Cullen, F., Blevins, K., Daigle, L. & Madensen, T. (2006). *The empirical status of deterrence theory: a meta-analysis*. In F. Cullen, J. Wright and K. Blevins (eds). *Taking Stock: The Status of Criminological Theory*.

Professor Chris Marshall⁵⁷ has highlighted several ideas from restorative justice theory and practice that could offer some guidance in creating such a system:

- The understanding of justice as repair rather than justice as punishment. We should think of justice as healing rather than identifying 'justice' and 'healing' as separate concerns. Every policy decision could be judged on how much it repairs and restores. Every judge could ask the question: how will this sentence promote repair, in its fullest sense, for everyone involved?
- The notion of whakapapa and community involvement. We need to develop a wide variety of alternative resolution processes, both within and outside the traditional criminal justice system, and have mechanisms available to help people choose the option that best meets their needs, while also safeguarding the larger protective responsibilities of the State for victims. Local communities could work in partnership with the State, to provide a range of processes that address the harms suffered by victims, meet their needs, and reaffirm shared values. Justice would be measured, not only in terms of procedural uniformity but in terms of reparative outcomes.⁵⁸

While there needs to be a great deal of work developing and exploring a range of possible alternative processes victims may be able to choose from, including the opportunity of enhancing the pathway through Police diversion that can be victim-led, an example of restorative justice that is victim-led in Aotearoa New Zealand is that of Project Restore⁵⁹, an innovative service for people affected by sexual harm. Restorative justice in sexual violence cases is very complex and challenging due to the nature and the degree of harm caused, the complexity of damaged relationships and concerns about the potential for re-victimisation.⁶⁰ Restorative justice for other types of serious crime can be equally complicated, and the Project Restore model could be developed for a variety of other crime types. The most important aspect of the model is that the victim and offender specialists and the facilitator are trained in the dynamics of the particular crime and the trauma likely suffered by the victim.

57 Professor Chris Marshall's is an academic and researcher who focuses on restorative justice theory and practice, and its many applications in society.

58 Strengthening the Criminal Justice System for Victims Workshop, (2019), *Notes from Speech made by Professor Chris Marshall, unpublished memo.*

59 <https://projectrestore.nz/>

60 <https://projectrestoredotnz.files.wordpress.com/2016/10/project-restore-the-research-summary.pdf>

The programme is unique in Aotearoa New Zealand and one of only four such programmes in the world.⁶¹ They claim that their service is based on the values of informed consent, voluntarism, accountability and hope⁶², and aim to deliver the safest programme for all participants, particularly for victims.

Project Restore is based on the usual restorative justice conference model used in Aotearoa New Zealand, but it has been expanded to include:

- a restorative justice facilitator who has an in-depth understanding of the dynamics of the crime (in this case sexual violence)
- two community specialists – a victim specialist and as an offender specialist
- a clinical psychologist.⁶³

Some referrals come from the Criminal Court and others are from the community. In some cases, the victim engages but the offender is assessed as not being suitable or chooses not to participate. In others, the victim may choose not to participate in the conference and a surrogate is sent to represent them. After a thorough assessment preparation with both the victim and offender, some cases progress to a facilitated restorative conference. During the conference participants agree on outcomes which are followed up on by Project Restore staff. Even for those cases that do not progress to a facilitated conference many of the victim's justice needs may have been met by the consultation process. Feedback on the process is actively sought and reviewed on a regular basis with practices changed as required.⁶⁴

Having discussed some of the gaps and possible solutions in the criminal justice system, the next two pages set out some of the values and visions for a future justice system that were developed by the 150 participants at the 'Strengthening the Criminal Justice System for Victims Workshop' I held in March 2019. Following the values and visions pages, I outline my recommendations for moving towards a victim centred justice system.

61 Koss, M. P., & Achilles, M. *Restorative Justice Responses to Sexual Assault. (2008)* cited in Julich, S., Buttle, J. W., Cummins, C., & Freeborn, E. V., (2010), *Project Restore: An exploratory study of restorative justice and sexual violence*, Auckland: AUT University.

62 <https://projectrestore.nz/about/>

63 <https://projectrestoredotnz.files.wordpress.com/2016/10/project-restore-the-research-summary.pdf>

64 <https://projectrestoredotnz.files.wordpress.com/2016/10/pr-participants-perspectives-jul-2013.pdf>

A criminal justice system for Aotearoa NZ must demonstrate these values

Tino Rangatiratanga
Protection Prevention
Feveitokai'aki
Tovo vaka turanga
Co-design
Equality
Relationships
Dignity
Mana motuhake
Whanaungatanga
Listening
Mana enhancing
Whakamana
Power sharing
Restoration and repair
Tika
Trust
Empowerment
Needs based
Easy to navigate
Respect
Independence
Compassion
Healing
Excellence
Holistic
Te Tiritio Waitangi
Enablement
Rangatiratanga
Balance the whole person
Pono
Love
Resolution
Fa'aaloalo
Accessible information
Participation
Turanga
Empathy
Accountability
Safety
Integrity
Education focussed
Timeliness
Proportionate
Kaitiakitanga
Hāpainga
Motivation to change
Diversity
Fairness
Harm minimisation
Reintegration
Choices
No more harm
Honesty
Tama manu
Responsiveness
Victim autonomy
Whakapapa
Responsibility
Support
Culturally informed
Measurement and review
Victim led
Wellbeing
Consistency
Empowerment
Inclusiveness
Kindness
Community
Humanity
Change focus
Choice
Innovation
Reparation
Truth seeking
Equal access
Partnership
Care Compassion
Acknowledgement
Flexibility
Information
Ōritetanga
Navigation
Wairuatanga
Advocacy

What are our visions for a victim-responsive criminal justice system in Aotearoa NZ?

Tino Rangatiratanga for whānau , hapū and iwi

A system that doesn't re-victimise

A system that empowers people by listening, and responds with choices

Children and sexual violence cases have alternative pathways

All less serious crime goes to the community

A Victims Commission

Justice through health and wellbeing

Doing justice differently

Communities deal with social issues, Courts deal with serious crime, and Department of Corrections deals with restoration, safety and monitoring

Pasifika values are practiced and upheld

The system must be organic, flexible, and have multiple pathways

When people are incarcerated, they don't come out angry

The system must be based on inclusiveness, autonomy, respect, empowerment, and value diversity and equity

A criminal justice system for Aotearoa NZ that enhances the mana of everyone

A system that is mana enhancing, heals and repairs

A system shaped from a collectivist perspective

Healing for the long term

Treatment is the only way out

A system that significantly invests in families to prevent harm

...and have more options when charges are not denied

Strong communities

Victims have support and a voice

Resolutions meet victims' needs

Investment in victims and offenders is equitable

A system that is informed by Te Tiriti, whakapapa, and trauma

The system is accountable to individuals and whānau

Victims are supported by a system that is fair, responsive and respectful

A system that has a heart and makes the best use of technology. Resources kick in at the first indication of harm

A system that works towards healing, recovery and restoration of all parties affected by harm, while reducing the risk of further harm

Providers who are educated or culturally sensitive to identify the nuances of Pasifika victims and their families

Non-criminal and whānau-centred pathways for victims to tell their truth

It's person centred

Multiple safety nets

Courts that hold more of a conversation, getting rid of traditional processes and jury trials when charges are denied

A model for support of Pasifika victims that is co-designed with Pasifika

NZ - a world leader in restoring lives damaged by harm

Building a victim-centred justice system – recommendations for reform

Ka tika a muri, ka tika a mua.

Healing the past, building a future.

The first part of this report reflected on what victims have told us about their needs, their experiences of our criminal justice system and their aspirations for the future. To some extent, this report paints a depressing picture of a system that is constantly failing victims. However, the situation is by no means without hope. The sense that our criminal justice system is not working is becoming more widely shared by people across our communities. The Government has acknowledged the need for reform and is asking what New Zealanders want from their criminal justice system and how it can be improved.

This conversation is providing the impetus for reform; to develop long-term solutions that keep people safe from crime, and help victims to heal and communities to thrive. The reform programme provides the opportunity to move victims from the periphery more towards the centre of our criminal justice system.

The Government has promised reform. This final section of this report, therefore contains my recommendations to the Government for changes to strengthen the criminal justice system for victims. This is a once in a generation opportunity to improve the system for victims, and the need to act has never been so urgent.

A change of direction for New Zealand’s criminal justice system is long overdue.

Minister of Justice, Introduction to the Criminal Justice Summit Playback, 2018⁶⁵

⁶⁵ Ministry of Justice, (2018), *Hāpaitia te Oranga Tangata - Safe and Effective Justice Summit Playback*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/hapaitia-summit-playback.pdf>

Reform on the scale needed to fully address the needs of all victims will necessarily take time. But victims cannot wait. People’s safety is at stake. Therefore, my high level recommendations contain proposals to immediately mitigate the most damaging aspects of our current criminal justice system, as well as long term reform, to establish the foundations of a very different system - a system that can properly deliver justice for victims. I recommend that:

- a range of improvements be made in procedural justice processes to the current criminal justice system for victims
- an integrated, co-ordinated and tailored system be developed that is able to address victim’s safety needs, respond proactively and reach out to victims of crime and their families and whānau to restore a victim’s well-being regardless of whether the victim reports to the Police, or whether an offender is apprehended and/or prosecuted
- Government partners with Māori under its Te Tiriti o Waitangi obligations to enable full partnership with iwi, hapū, whānau and Māori communities, to enable Māori to design and lead kaupapa Māori justice services and responses
- Government work with restorative justice specialists and other communities to develop a variety of alternative therapeutic justice processes that may be integrated into the wider system and carefully monitored to safeguard the larger protective responsibilities of the State
- an independent victim focussed framework and supporting mechanisms needs to be established to:
 - » monitor victims’ safety and voice in the system
 - » properly implement and enforce the rights of victims and their family and whānau
 - » provide a victim-friendly referral service to strengthen the complaints process, and
 - » monitor the criminal justice system from a victim’s perspective and develop a continuous system improvement feedback loop.

I further recommend that Government adopt the following vision for a criminal justice system that promotes the interests of victims by:

- promoting safety, healing and repair
- providing victims with a voice in the reform of the criminal justice system
- honouring Te Tiriti o Waitangi obligations and working in partnership with Māori.

Recommendation 1: Improve procedural justice for victims

A key focus on victims' safety is paramount. There are many aspects of our criminal justice system that need fundamental change if the needs of victims are to be addressed. However, there is also much that can be done now to improve the experience of victims in our current system.

Appendix A provides an initial list of detailed practical suggestions for change received from victims and victim advocates. Only a few of these suggestions require legislative change and some require additional funding. Examples include:

- urgently conduct a safety audit of the entire criminal justice system from a victim's perspective
- providing an end-to-end independent specialist advocacy service to address victims' needs starting especially with victims of serious crime
- amending the Victims Rights Act 2002 to expand the definition of a victim and addressing the gaps and loopholes in the Victim Notification Register system.

Other suggestions effectively ask authorities to comply with the rights set out in the Victims Rights Act 2002 and measure their compliance. This includes:

- treating victims with respect and listening to them at all times throughout the system to ensure fair treatment
- keeping victims much better informed by significantly improving the infrastructure within the justice sector to ensure victims receive the information they have a right to, at the right time and in an understandable format so they can make informed decisions about their options and choices throughout the process

- giving victims and the family members of victims, who have welfare, health, counselling, medical, or legal needs arising from an offence, access to quality culturally appropriate services.

Even though these rights have been in effect since the Victims Rights Act 2002 was enacted, there has been no infrastructure built for victims so that we can measure whether their rights are upheld. There is very little data collected about victims' journeys through the criminal justice system and very little evidence to suggest that these rights are actually being implemented day to day. There is no specific feedback loop from victims' complaints about the gaps in the system that may improve the overall justice system from a victim's perspective.

I therefore recommend, at a minimum, that all government agencies review their practices to ensure they comply with the provisions of the Victims Rights Act 2002, measure their compliance and seek opportunities to implement the additional initial list of changes in Appendix A. The independent mechanism which is the subject of my recommendation 4, is vital to provide a monitoring function to ensure victims' rights are upheld.

Recommendation 2: Develop an integrated system focussed on restoring victims' well-being

A criminal justice system focussed primarily on people who offend will inevitably fail to adequately address the needs of victims. It is therefore recommended that a system that co-ordinates services for victims be developed independent of this offender-focussed system.

Currently, when a crime is notified to the authorities, effort is mobilised and directed at identifying, apprehending, prosecuting and sanctioning the perpetrator. Victims' needs are almost incidental to this process. Victims need access to social services regardless of whether any crime against them is investigated and regardless of whether a perpetrator is prosecuted. Few crimes have proactive, specialist, co-ordinated, tailored, and well-resourced services that provide the early outreach to those affected.

Many victims of crime and their families and whānau complain that there are no tailored services to help them deal with the wide-ranging impacts of crime on their lives. For example, although Victim Support provides a certain number of counselling sessions for homicide victims, many victims complain that the number of sessions is insufficient. Those impacted by fraud report struggling to find specific supports that match their needs. Victims often complain that searching for the help they need is frustrating and exhausting. One burglary victim reached out to 25 different agencies to get the help he needed. While ACC may subsidise a certain number of counselling sessions for many victims of sexual violence, not all eligible victims are aware of the subsidy. Limited eligibility means that those who experience other crimes such as family violence do not always qualify.

Criminal justice agencies (Police, Courts, Corrections), NGOs, as well as social and health agencies need to rethink their systems to consider how they can prioritise helping victims rebuild their lives. Businesses, schools, marae and other community groups can also have a part to play in supporting victims to re-build their lives after being harmed by crime.

Services and effort will need to be re-orientated to focus more on the victim and their families and whānau to ensure their safety, to help them to recover from the trauma of the crime and empower them to regain a sense of control over their lives. These services must also be provided when, and as, they are needed by victims, which may be immediately after a crime has been committed but may be much later. The healing process can take many different paths for different victims.

The idea of parallel services for victims is not an entirely new concept for Aotearoa New Zealand. For example, as we have become more aware of family violence and sexual violence and the terrible impact this is having on our communities, we have made some positive steps to provide more co-ordinated and tailored services focussed on victims of these crimes. This has been a good place to start, and valuable lessons are being learned; but it is not nearly enough.

I therefore recommend, that Government:

- develop a system that co-ordinates a range of proactive and comprehensive social services able to respond to the wide-ranging needs of victims of crime
- review the myriad of complex pathways victims must travel to access the support they need to stay safe, heal, recover and restore, and develop a response so that victims do not have to carry the burden of finding the help they need.

Recommendation 3: Develop a variety of alternative justice processes by partnering with Māori and working with restorative justice and other therapeutic justice specialists

A criminal justice system designed around the punishment of offenders will never be capable of fully addressing the needs of victims. Better treatment of victims within this system, and additional services offered alongside it will certainly help. However, it is necessary to go further and to critically examine and propose reform of some of the more fundamental underpinnings and core processes of the system we have in place.

Some victims, especially victims of interpersonal violence will never want to report to an adversarial justice system that only has jail as an option. Some victims may be more interested in a justice process where the person who harmed them takes part in treatment to stop their harmful behaviour. This recommendation is divided into two parts. The first addresses issues that Māori have called for and the second is focussed on broad alternative restorative, therapeutic processes for all.

Te Ao Māori Processes

Māori have long said that services and systems that are designed by Māori work best for Māori. To achieve better services for Māori means being more committed about our obligations under Te Tiriti o Waitangi. The justice system needs to recognise and incorporate Te Ao Māori models of healing and tikanga principles. The system must affirm tino rangatiratanga, and the Crown must deliberately partner with iwi, hapū, whānau and Māori communities to design and deliver kaupapa Māori responses to crime that have a clear focus on whānau and whakapapa.

Māori systems and services are likely to benefit both Māori and non- Māori, alike.

I refer again to Te Ohu Whakatika 's report from Hui Māori, Ināia Tonu Nei, and repeat my support that Māori must be at the forefront of any reform of the criminal justice system, working in partnership with Government.

Restorative justice

We need to invest in promising restorative and alternative pathways, to better understand and improve them for victims, and use them to establish the foundation for long term and transformational change.

Restorative justice approaches are able to hold offenders to account for their offending as well as helping to repair the harm caused to victims by giving them a voice in the criminal justice process and enabling them to receive answers, apologies and reparation. When well-managed by skilled specialised facilitators and victim-led, restorative approaches can and do help some victims to heal more effectively than a court-based process ever can.

“Restorative justice helped me to come into terms with the offence that was committed against me and helped me heal. It’s helped me to move forward and not feel like a victim.”

Restorative Justice Victim Satisfaction Survey⁶⁶

It is important to understand however that many victims have conflicting views about restorative justice. Not all victims are interested in it, and some feel that the way it is sometimes conducted coerces them into participating, and on a timeframe not of their choosing.

However, this does not diminish the opportunity to improve justice processes for victims by expanding restorative justice services. It only means that restorative justice processes must be victim-led and must involve specialists trained to understand the impact of the crime on victims. Victims need to be in charge of whether and when the process goes ahead, as well as the nature and purpose of the process. Victims also need to be adequately supported to make informed and empowered choices. Any restorative justice process must be voluntary and flexible enough to be tailored to victim’s needs rather than be determined by a court or an accused’s needs.

“Give victims the option of confidential restorative practices instead of prosecution.”

Te Uepū engagement, Tasman/Marlborough

⁶⁶ Ministry of Justice (2016). *Restorative Justice Survey - Victim Satisfaction Survey*.

Alternative Pathways

In recent years, a number of alternative processes have been established to improve outcomes for participants. They include Community Panels and marae-based justice initiatives (which tend to take a strong restorative justice approach and involve community members in the process of holding offenders to account), and a variety of specialist courts.

These initiatives tend to be offender focussed. However, some have also proven somewhat helpful for victims. While most of these initiatives tend to be offender focused, they demonstrate that we can develop and test new ways to deliver justice. The opportunity, then, is to also develop new ways of doing justice for victims.

Although they are embryonic, developing alternative processes offer victims important opportunities that included different justice pathways. For example, some victims who do not report crimes against them because they do not want the people who harmed them to go to jail may well be interested in reporting the harm if they could be assured that the person who hurt them was put through a treatment court and was mandated to receive treatment. This way at least some of the victim’s justice needs such as for the offender to not harm them or anyone else, may be achieved. Some victims of serious crimes including family violence, sexual violence, assault and robbery have expressed interested in this option. Victims must be deliberately involved in the design of all new justice initiatives helping to ensure that their needs are addressed.

Recommendation 4: Establish an independent mechanism to enforce victims’ rights

Meaningful transformation for victims is unlikely without a specialist victim-focused mechanism to help drive the change necessary. To be effective any new mechanism must be developed with Māori. If the criminal justice system is to be responsive to the needs of Māori and Tauiwi victims, it must be structured to ensure that victims and their whānau can influence change. Further, any transformation must be properly resourced, including the development of a victim-focused, and culturally capable workforce.

Mechanisms and structures to ensure accountability

The voice of victims needs to be heard not just by the many advocates who already do such great work to promote their interests, but also by people in positions of power who can influence decision-makers at the highest levels if the system is to be improved. The office of the Chief Victims Advisor is one such mechanism, but it is not enough. An independent body should be established that can:

- urgently focus on improving victim safety
- focus on reducing barriers to reporting crime
- help to properly implement and enforce the rights of victims and their whānau
- enable victims easy access to co-ordinated, tailored and proactive support services whether they have reported to the Police or not
- monitor the criminal justice system and develop a continuous system improvement feedback loop to provide impetus for ongoing system improvements
- advocate for victims across the system, providing feedback on the system's performance for victims
- empower Māori and Tauīwi victims alike
- receive and investigate complaints and resolve issues (including breaches of victims' rights).

“[Introduce] A Victims Commission.... – not a new separate silo but a unifying entity with power to ensure that ‘institutional harm’ is not re-victimising people. Professionalism and consistency are upheld and workforce, capability and best practice are demonstrated in measurable outcomes.”

Web submission

“Victims should be encouraged to complain and are supported when they do.”

Criminal Justice Summit, 2018

In addition, justice services must be properly aligned and coordinated. Victims' needs will not be met so long as agencies:

- operate in their own silos
- fail to collaborate and continue to measure success only in terms of their own activity, not in terms of achieving the goals of their users
- fail to have the support of victims as its main focus.

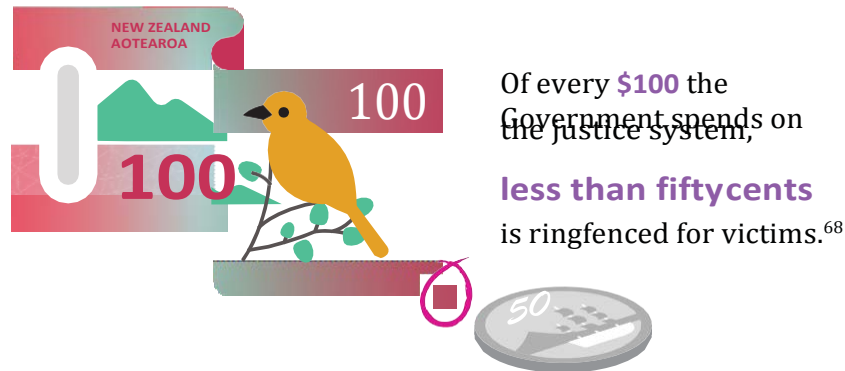
Lack of alignment and siloed thinking are problems that have been known for a long time and some government agencies have expressed the will to address them. Yet the problems persist. With renewed effort and focus, and sufficient prioritisation from Ministers, they can be addressed. This is more likely if efforts are supported by:

- creating a dedicated victim-focussed service that is independent of the offender-centred agencies and that can provide a one-stop-shop for all victims' needs, flexible and tailored to the needs of specific victims
- combining advocacy, representation and navigation into a seamless, victim-centred service.

In addition, (and further to what is proposed in Recommendation 3) we need genuine co-governance arrangements with victims, victim advocates and Māori, to hold agencies accountable for respecting and adequately responding to the needs of victims.

Funding

Given that the needs of victims have been over-looked for so long, it is inevitable that new funding streams are required if these needs are to be adequately addressed.



New funding (in addition to that recently provided in Budget 2019 for victims of family violence and sexual violence) is needed to reduce stress on current justice services as well as to fill gaps in service provision. This should include funding for Māori service providers to both develop and deliver kaupapa Māori support services for victims and their whānau.

“There are wonderful people working in the Police and Victim Support but they are horrendously overloaded and not supported and the burn out is negatively impacting their work in a serious way.”

Strengthening the Criminal Justice System for Victims Survey, 2019

67 2019/2020 Budget appropriations. Retrieved from <https://treasury.govt.nz/publications/budgets/justice-sector-estimates-appropriations-government-new-zealand-year-ending-30-june-2020>

Consideration should also be given to consolidate and ring-fence funding for victims’ services that is dispersed across multiple agencies and larger budgets. This has the potential to improve efficiency as well as enable better and more transparent prioritisation of resources directed at supporting victims and their whānau.

Consideration should also be given to the model for funding NGOs. Inadequate funding levels, a competitive model that constrains co-operation between these organisations, and short-term funding arrangements all make it difficult to train and retain high-quality staff and deliver high quality services. Given that most victim-centred services are provided by NGOs, these problems are a major barrier to making the justice system work effectively for victims and must be addressed.

Workforce training and culture

The criminal justice system includes our institutions, our criminal laws and our justice policies. However, victims’ experiences of this system are generally mediated through people – through the justice sector workers and volunteers throughout the system. It is the myriad of decisions these people make that determine how victims and their whānau experience the system.

If victims are to have a positive experience of the criminal justice system, it is critical that our justice workforce is properly equipped and sufficiently resourced to both understand and respond to the needs of the victims they will encounter. People who work in our criminal justice system must be provided with the ongoing, specialist victim-focussed training and education to understand what victims need and how they can help to address these needs.

We need specialists to provide support services to victims, especially those victims of serious crime. Further, we need to value this expertise more, for example, by reducing reliance on volunteers and instead providing victims with a well-trained specialist, professional and stable workforce.

“[We need] more paid roles to support victims. These roles should be highly skilled and adequately paid. Don’t always rely on volunteers.”

Te Uepū engagement, Otago/Southland

However, the job cannot be left to specialists alone. All those who act in the criminal justice system have the potential to impact victims. Police, judges, lawyers, court staff, Court Victim Advisors, Corrections officers and others working in the system all need to understand the rights of victims, and all need the ability to understand and respond to their needs.

“They just don’t get it! They just don’t get that if I leave (a violent relationship), I have no home, no money, no transport, no food to feed my children. So I stay, because at least they will be safe, have a warm house and food on their table.”

Interview by Professor Denise Wilson with family violence victim⁶⁸

Given the high rates of Māori victimisation, competence in Te Ao Māori is particularly important for the justice workforce. However, the workforce must also be competent to work with the many diverse victims they encounter, such as members of the disabled, rainbow, migrant and refugee communities. Given the huge prevalence of family violence and sexual violence in New Zealand, training in the dynamics of these crimes is also vitally important.

“All victims [should] get to deal with people competent in their roles and provide them with good advice and correct, current information – rather than hoping you “strike a good one”. That’s from the Officer in Charge of the case – to the Victim Advisor – to the Police Prosecutor.”

Strengthening the Criminal Justice System for Victims Survey, 2019

⁶⁸ Wilson, D., (2019) *E Tū Wāhine, E Tū Whānau*, to be published study.

Final words

I thank the Minister of Justice for the opportunity to present my recommendations for improving the criminal justice system for victims.

I trust this report will be a valuable input to his reform of the criminal justice system. I look forward to a future where victims are safer, treated with respect and where the harm they have suffered is acknowledged and addressed.

A note on the term ‘Victim’

I acknowledge that some people who have experienced crime dislike being referred to as a ‘victim’. Some feel the term accurately conveys their experience of harm, but some prefer to be referred to as ‘survivors’ and some, including many Māori, wish for no label at all.

I have used the term ‘victim’ within this report to maintain consistency with the legislation, for example the ‘Victim’s Rights Act’, and because most criminal justice agency personnel recognise the term. Exceptions are where the term ‘survivor’ is part of a quote or a title.

It is my hope that, through future consultation with those who have been victimised, we can find a better solution to recognise and respect the needs of all people who have been harmed by crime.

Limitations of this report

There is limited data, especially administrative data, and limited New Zealand research on victims’ experiences in the criminal justice system.

This report, therefore, relies heavily on direct consultations with victims and victim advocates over the last year through the Hāpaitia te Oranga Tangata – Safe and Effective Justice Reform programme. This has included the Strengthening the Criminal Justice System for Victims Survey, the Strengthening the Criminal Justice System for Victims Workshop, and my engagements with victims across the country and with personnel in many parts of the criminal justice system over the last three years.

Many of the descriptions of victim challenges in the criminal justice system focus at a high-level on general issues related to adversarial court processes. There has been insufficient time to include specific issues for victims’ participation in special courts including the Coronial Court, Youth Court, Family Court, the Alcohol and Other Drug Treatment Courts, or the Matariki Court. The focus on children in this document is on child victims as witnesses in the criminal courts.

Appendix A:

Improving procedural justice for victims in the current adversarial criminal justice system

This list is not exhaustive but could be used as a basis to develop a more comprehensive work programme to improve the experience of victims in the New Zealand criminal justice system.

General

- Urgently conduct a safety audit from a victim's perspective. This involves auditing the pathway of information from victims through the criminal justice system, and identifying opportunities to strengthen victims' safety at each point in the system.
- Introduce and expand the Independent Specialist Advocates ('ISA') service for victims of serious crime. To provide an integrated model of service delivery that will enable systems and services to victims to be linked and coordinated, I recommend that more independent specialist advocates be provided similar to those currently providing this role through the Victim Support Homicide teams and the independent specialist sexual violence advocate pilot at HELP (Auckland Sexual Abuse Help Foundation). These roles can provide a single point of contact within the justice system and wider social system for victims. The role requires the ISA to understand all parts of the justice system, walk beside a victim to help them to understand legal processes and their choices at each point (for example when police and prosecutors are making charging decisions an ISA can give voice to a victim's view having consulted with them), and can help the victim be safe throughout the process (for example ensuring the Police or Court Victim Advisor has arranged a safe entrance into the court and for their modes of evidence to be in place) and ensuring all of their rights are upheld. The United Kingdom also uses ISAs for victims of family violence and sexual violence.
- Amend the Victims Rights Act 2002 to expand the definition of a victim and address the gaps and loopholes in the Victim Notification Register system.
- Amend the Victims' Rights Act 2002 to include the right for victims to express their views on any discussion of charges considered by the prosecutor.
- Develop an infrastructure to provide ongoing specialist victim-focussed training to all criminal justice personnel especially the Police and include all levels from the front desk to the Executive, as well as all Justice, Court and Corrections staff, and Parole Board members beginning with those who have any contact with victims.
- Ensure that all government agencies and NGO services that provide services to victims of crime are fully trained to understand victims' needs. Expertise in understanding the needs of victims of crime should be a prerequisite for service provision. Victims of all crime types, for example families of homicide victims, victims of family violence, sexual violence, serious fraud, burglary, workplace robbery, cyber-crime, all have different needs. Each crime type has its own dynamics and therefore needs differently trained independent specialist advocates and specialist teams to support victims of these crimes through the different processes.
- Provide victim support services that are tailored to women, men, and child witnesses and are able to address the specific needs of different cultures, including but not limited to Māori, Pasifika, ethnic and migrant communities, and rainbow and disabled communities.
- Provide legal representation for victims to ensure their views regarding matters such as victim's view on bail and the address suggested for bail, charges and name suppression are heard by the Court, and that victims are adequately informed of their rights.

- Review and address the obstacles to the rights of victims of offenders found not guilty by reason of insanity to receive the same rights as other victims. Enable victims of mental health patients the same notifications and access to information about their perpetrators as other victims. Currently, victims of mental health patients do not get the same range of notifications as victims whose offenders are serving a prison sentence.
- Provide victims with legal aid so that victims can access professional witness familiarisation or witness preparation through an independent agency that includes the opportunity for neutral content role play practice in cross examination as is available in Aotearoa New Zealand currently for a fee in civil cases.
- Judges and lawyers should be trained in victim issues in specific crime types such as family violence and sexual violence, as happens in the UK. Judges and lawyers who work with children and young people should be trained in child development so they can make appropriate decisions to protect child witnesses in court. Judges and lawyers should have a good understanding of the obligations of Te Tiriti o Waitangi and strong knowledge of Te Ao Māori.
- Increase victims' rights so victims are able to review their case at any point, similar to the UK.
- Standardised good practice throughout the country in supporting victims, taking what works well from different areas and standardise this nationally.
- Lack of alignment and siloed thinking in government agencies are problems that need to be addressed to allow government to tackle complex issues such as supporting victims of crime. An example of promising practice in Aotearoa New Zealand that prioritises an integrated approach from government agencies focused on family violence and sexual violence is the newly formed Joint Venture that seeks to co-ordinate all government agencies work in these areas, partner with Māori (through Te Rōpū) and continuously consult with the specialist NGO sectors. While the Joint Venture is only focussed on family violence and sexual violence so far, the approach and the structure to co-ordinate improvements to victims of these crimes may be a valuable model to view when considering ways of meeting the social and justice needs of other victims of crime.
- Ensure accurate and fulsome information about the context and impact of the crime is gathered from victims and that this information is transferred accurately through the system. This will involve data collection on victims in the criminal justice system. For example -
 - » how many victims are in the system at any one time
 - » how long victims spend in the system
 - » what percentage of victims are informed about their overall rights
 - » what percentage of victims' rights are upheld and what are the obstacles to implementing all rights
 - » what percentage of victims are informed about different types of support services, remedies and programmes
 - » what percentage of victims are referred to Victim Support or other services (and which services are referred to) by Police and for what crime types
 - » how long before their court case are victims able to meet with the Prosecutor
 - » what percentage of victims are assisted by a Court Victims Advisor
 - » what percentage of victims are asked to give their views on bail
 - » the number of bail hearings where judges decide whether to grant bail in the absence of the victim's view
 - » the percentage of victims who are informed by Police where the offender has been released to on bail compared with those who are not informed
 - » the number of adjournments victims experience during the court process
 - » what percentage of victims are asked to give their views on parole
 - » what percentage of victims/witnesses in trials are children
 - » what percentage of victims of serious crime are asked if they want to give a Victim Impact Statement at court
 - » what percentage of victims of serious crime are asked if they want to be registered on the VNR
 - » how many victims make complaints and where are their complaints lodged
 - » the percentage of victims who have received all relevant notifications compared to those who have not
 - » what percentage of victims are awarded reparation and how long does it take to receive the entire amount of reparation.

Bail

- Enable more thorough address checks to be made before bail is granted. Victims should be contacted in person so they can provide details of the addresses of their work, children's schools etc. that must be avoided to ensure that the risk of contact with a victim is minimised.
- Ensure bail decisions prioritise victim safety especially in cases of interpersonal violence and when victims live in close communities including in small rural communities, or in closed groups such as institutions, or gangs.
- Enable stricter monitoring and enforcement of bail conditions, including a re-assessment when bail conditions are breached. Increase face to face meetings with victims and increase safety mechanisms.
- Ensure EM bail breaches are taken seriously and not just seen as 'technical' in nature to minimise breaches
- Ensure judges have access accurate and up-to-date information from victims before making bail decisions. Improve information sharing between the Family Court and District Court.

Name Suppression

- Review the name suppression process with the view to making it easier for victims to opt out of name suppression, and at no cost to the victim.
- Provide victims with legal advice on their rights and the long-term implications of name suppression.

During trial

- Minimise delays in court scheduling and adjournments. Abandon the use of reserve trials for serious crime types or give victims the choice of scheduling their case to a reserved trial as an option and explain the risks to them of their case not being heard based on a reserve trial date not becoming available. Undertake a review of the reasons for the delays in court proceedings to understand issues for the delays and then to develop remedies based on evidence. Are the delays caused by for example: a defence adjournment and if so, what is the reason the adjournment; is the delay due to overscheduling and, if so, why is the overscheduling occurring; is the delay because the prosecution is not ready and if so why were they not ready, or, is the delay because the victim was not at court and if so what was the obstacle to the victim being at court. All this information should be collected to understand 'why' there are delays and then there should be monitoring of why the Criminal Procedure Act timeframes are not being met.
- Automatically make the use of communication assistants available for children, young people, and other vulnerable witnesses.
- Provide for the automatic use of screens or audio-visual links (AVL) for victims unless they choose to give evidence in open court without these protections. (This provision is already underway for victims of sexual violence but could be extended to all victims of serious crime.)
- Increase the option of using pre-recording of cross-examination for all victims of serious crime.
- Provide greater judicial protection for victims (and other witnesses) during cross-examination. (This is already being drafted into legislation for sexual violence victims but could be extended to all victims of serious crime.)
- Court victim advisors should be given the capacity to provide all victims of serious crime safe entrance into court facilities. Much intimidation occurs before, during and after court proceedings from exposure to offenders and their supporters in common break areas. It is also vital there are enough supports and resources that enable victims and their families and whānau access to adequate, soundproofed private spaces and protection. (This is already being drafted into legislation for sexual violence victims but could be extended to all victims of serious crime.)

- For child witnesses, provide CCTV rooms that are child-friendly and appropriate including sound proofed rooms that are large enough to have whole families to wait comfortably. Have sufficient space to manage multiple witnesses and their supporters at any one time. An excellent example of good practice is the Child/ Vulnerable Witnesses Protocol used in Whangarei.
- Enable victims to be spoken to in a language they understand, and to have any legal terminology interpreted for them into plain English (or the equivalent).

Deal with interpersonal violence cases differently

- Based on the successful sexual violence court pilots operating in Auckland and Whangarei, establish specialist courts across the country to specifically to deal with sexual violence cases to minimise court delays and provide a specialised space where victims are better protected from re-victimisation.
- Consult victims, victim focussed academics and victim advocates who work with family violence and sexual violence on ways to improve justice outcomes for victims of these crimes. Some victims, victim focussed academics, victim advocates, legal personnel and judiciary recommend replacing jury trials for these crimes with a panel of judges, others request more inquisitorial processes, some request restorative processes and yet others request therapeutic courts be piloted to deal with these crimes.

“Sexual assault crimes need to be heard only in front of a judge. No jury! Unconscious biases do not make court a safe place for victims.”

Strengthening the Criminal Justice System for Victims Survey, 2019

Sentencing

- Ensure sentencing also goes ahead as scheduled and not delayed or adjourned. Delays cause huge stress to victims. Review reasons for delays with sentencing and if for example the delay is caused by courts awaiting reports, improve the case management system to ensure all pre-sentence reports are available and do not cause delays.
- Give increased control to the victim over the content in Victim Impact Statements.
- To enhance the opportunity of victims having a voice, develop a national training programme for all those who assist victims to write and deliver their Victim Impact Statements.
- Ensure that victims are able to update their Victim Impact Statements right up to sentencing and review the definition of who can give a Victim Impact Statement (for example, to extend to people who might be affected by a crime such as homicide, but who are currently excluded).
- Ensure that the victim or a delegated person can read the Victim Impact Statement in court if they choose.
- Amend the wording of the verdict ‘not guilty by reason of insanity’ to ‘proven but insane’ to acknowledge that the defendant did physically commit the act that harmed the victim..

Reparation

- Provide victims with a lump-sum reparation payment from Government, which Government then seeks to collect from the offender (in relevant cases). Currently victims are made to wait as the offender pays reparation off over a long period.

Post-conviction

- Review the Victim Notification Register with the view to closing gaps and eliminating the numerous loopholes.
- Re-launch the Victims Code with proper promotion and information packs to all relevant government agencies, NGOs and communities.
- Review and strengthen sections 49-50 of the Victims' Rights Act 2002 regarding the complaints process for victims.
- Review the parole process to enable more weight to be given to victims' views when assessing offenders' release, and to enable greater transparency around the timing and conditions of release.
- Consider allowing victims to appeal parole decisions.
- Include relevant specialists on the Parole Board to sit on appropriate cases, e.g. experts in family violence for family violence cases, experts in fraud on fraud cases.
- Make access to the VNR automatic with the ability of victims to 'Opt Out' of the VNR if they prefer not to be on the register. Ensure all victims are fully aware of the implications for them if they are not on the VNR.

Government must partner with Māori

I defer to Te Ohu Whakatika's report *Ināia Tonu Nei* and the recommendations, such as:⁶⁹

- Under Te Tiriti o Waitangi enable and resource Māori to design and lead justice solutions for Māori.
- Embed Te Ao Māori into any newly designed justice processes. Recognise Māori models of healing and tikanga Māori principles and processes.
- Ensure that all services provided to Māori communities are whānau, hapū and iwi led.
- Partner with Māori to increase the provision of funded kaupapa Māori service options for victims.
- Amend the Victims' Rights Act 2002 to include whānau in the definition of a victim.

⁶⁹ Te Ohu Whakatika, (2019), *Ināia Tonu Nei - Hui Māori Report*.

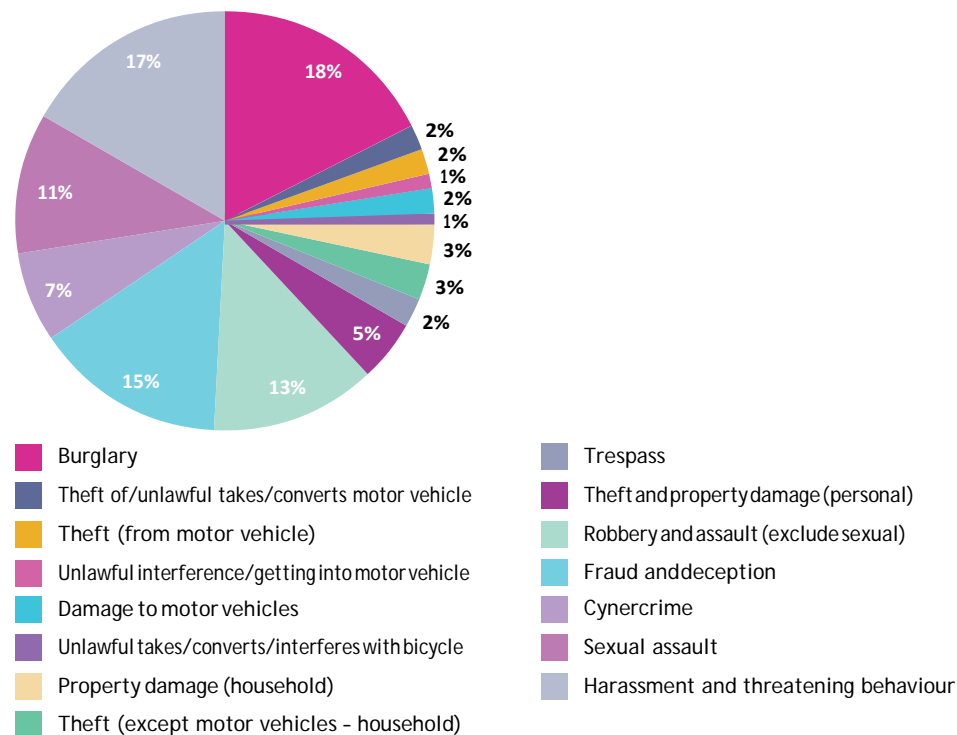
Appendix B: The complex nature of victimisation

Mā te rongo ka mōhio. Mā te mōhio ka mārama. Mā te mārama ka mātau. Mā te mātau ka ora.

Through perception comes awareness. Through awareness comes understanding. Through understanding comes knowledge. Through knowledge comes wellbeing.

Victimisation experiences

Incidence by offence type. New Zealand Crime and Victim Survey



Who experiences and reports victimisation?

People who are victimised are not a homogenous group. They vary in age, ethnicity, gender, sexuality, income, health and educational status.

Many victims do not report the crimes against them to the Police, nor do they seek help for themselves. Personal and intimate crimes are less likely to be reported than, for example, property crime. Over 70% of victims who experience harm don't currently report the crime to the criminal justice system. How can we address their needs independent of reporting their crime? We need to ensure that these victims have a clear pathway to healing and justice for the victimisation they have suffered.

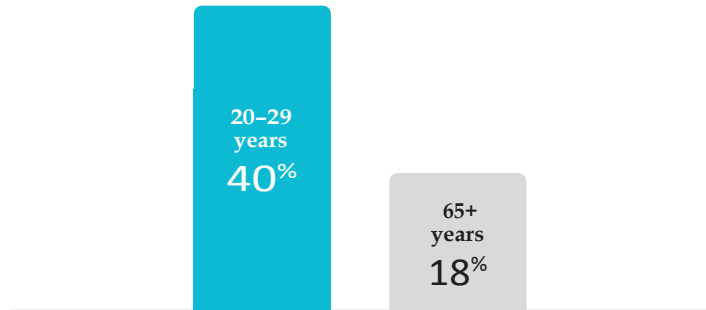
“What about the 75% of victims who aren't making it to court or don't want to go through that process because doing so causes irreparable harm to their families?”

Criminal Justice Summit, 2018

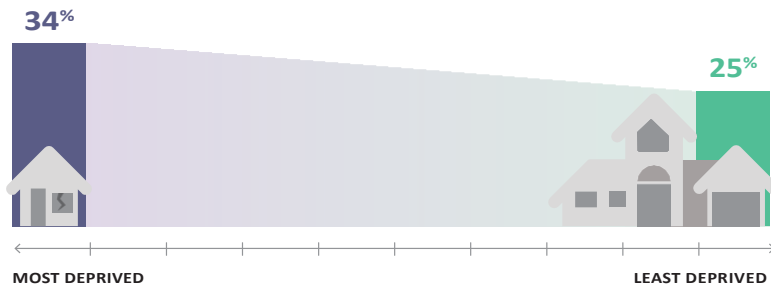
Victimisation relating to serious crime can create life-long trauma for victims, their families and whānau, sometimes across generations.

In the New Zealand Crime and Victim Survey, overall, the average New Zealander's likelihood of being **an adult victim of crime** is 29%*

But for people interviewed in 2018 the likelihood of experiencing crime is varied:



People who live in the **most deprived areas**** (34%) were more likely to be victims of crime than people living in the **least deprived areas***** (25%)



* the New Zealand Crime and Victim Survey (NZCVS) does not include children under 15 years old, families of homicide victims or those in institutions

** 10% of areas in New Zealand that are most deprived ('Decile 10')

*** 10% of areas in New Zealand that are least deprived ('Decile 1')

Victimisation can occur at any stage of life

Victimisation can affect people very differently depending on their age. Children and adults may respond very differently to the impact of victimisation.

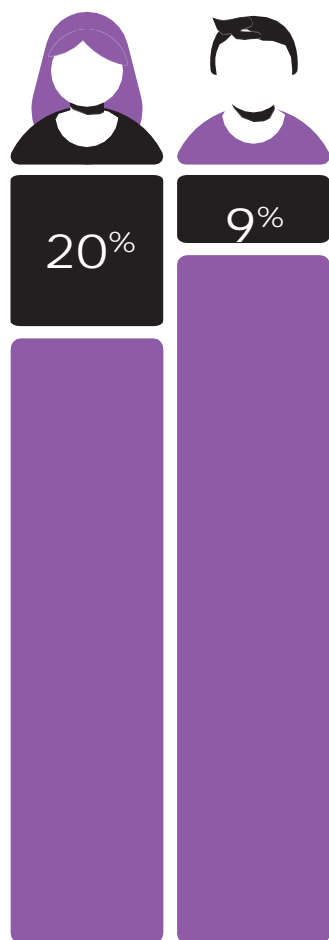
Children are particularly vulnerable. Living surrounded by violence or the threat of violence, witnessing or experiencing racism, hate crime and other harms and injustices on a regular basis can have a huge impact on children's social, psychological, and educational development. Such an environment can also be a precursor for long-term physical and mental health conditions.

Every year between 2006 and 2016, **Child Youth and Family** substantiated between **16,000 and 23,000** findings of abuse⁷⁰



70 New Zealand Family Violence Clearinghouse. (2017). *Children and Youth affected by Family Violence June 2017*. Retrieved from <https://nzfvc.org.nz/sites/nzfvc.org.nz/files/DS3-Children-and-Youth-2017.pdf>

Children can experience fear, anxiety, anger and other impacts following invasive household offences, such as burglary. Early interpersonal victimisation is a strong risk factor for later re-victimisation.



In a 2012 survey of secondary students, **20% of girls and 9% of boys** reported being ‘touched in a sexual way or made to do unwanted sexual things’ in the **past 12 months**⁷¹

71 New Zealand Family Violence Clearinghouse. (2017). *Child Sexual Abuse*. Retrieved from <https://nzfvc.org.nz/sites/nzfvc.org.nz/files/DS4-Child-Sexual-Abuse-2017.pdf>

In the New Zealand Crime and Victim Survey, for adults, victimisation is most common between the ages of **20 and 29 years**



4 out of every 10 people in this age bracket experiencing victimisation each year.



More than 40% of all family violence victims



and **two in three** victims of sexual assault are between

15 and 29 years old⁷²

Adults can be profoundly impacted by victimisation, which can affect the rest of their lives and the lives of those around them. Common effects of adult victimisation are shock and fear that can develop into longer term anxiety, as well as a loss of confidence that can flow on to affect a person’s ability to work, study and parent. If there are no early interventions to reduce the harm caused by crime, not only the individual is affected, but the person’s children, partner, family, whānau, hapū, iwi and work relationships can all be impacted.

Statistically, older adults are the least commonly victimised⁷³, but the vulnerability of many older people can make crime particularly difficult to deal with when it does occur. This is especially true in the case of elder abuse, where the harm is caused by a family member or other trusted person who is responsible for caring for them.

72 New Zealand Ministry of Justice. (2019). *New Zealand Crime and Victims Survey 2018*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

73 Ibid.

Victimisation greatly harms Māori whānau

Similar to other colonised countries where the indigenous populations are highly victimised, a higher proportion of Māori are victimised each year than any other ethnic group. Māori (37%) are more likely to experience crime compared with the average New Zealander (29%).

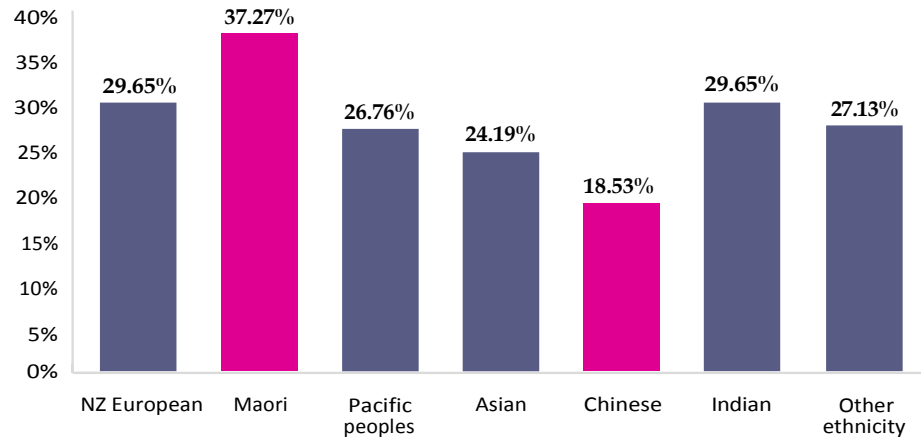


Figure 3.7: Prevalence rates by ethnicity – all offences

Ministry of Justice (2018). *New Zealand Crime and Victims Survey*

We know from Māori that victimisation affects the whole whānau, and that a truly victim-centred approach for Māori needs to work with the whole whānau. Whānau will often know and care for both the offender and the victim. Māori have stated they want to see the justice process work to the best interests of both those who have harmed and those who were harmed.

“The language strips identities. She’s a victim but she’s still my sister. He’s a perpetrator but he’s still my papa John.”

Te Uepū engagement, Waikato

We have heard from Māori that the burden of victimisation is experienced as another legacy of colonisation and racism, which affects the cohesion of whānau and hapū. Māori have said the justice system is an alienating, homogenising force that disempowers not only a Māori victim, but all Māori.

“Due to the impact of ongoing systemic racism and the legacy of colonisation Māori feature highly in both offender and victim groups. Yet, Māori voices are absent, especially when it comes to how best to work with Māori.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

Victimisation occurs in all cultures and requires tailored responses

The criminal justice system's focus on individual offenders and victims does not fit well with those cultures which are more collective and holistic in nature, such as Māori and the communities of our Pacific peoples.

“Having a system that values individual rights and values over the collective means that there is a difference from the start in understanding. Traditional Pasifika approaches are holistic.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

We have also heard from victims in our refugee and migrant communities that there are challenges to providing justice to non-English speaking immigrants. Language, has been identified as a significant barrier as well as a lack of training in cultural competency for personnel in the system.

We have been told that there are insufficient neutral interpreters on hand to interpret for victims throughout the system at the time and place they are needed and that the small, close-knit nature of many communities can create challenges for victims in the justice system.

“There needs to be recognition of cultural dynamics and issues with safety in attending trials. Fear and safety of witnesses are often not taken into account, particularly taking into context how small some communities can be and that everyone knows one another.”

Strengthening the Criminal Justice System for Victims Workshop, 2019

The quality of training of some interpreters has been challenged by some victim advocates who have complained, for example, that some interpreters brought in by the Police to interpret for a victim of family violence has instead threatened the victim using their own language and have told the victim to go home to their husband and not to report the crime to the Police. Advocates say this has happened without the English-speaking Police being aware of the intimidation.

Some victim advocates have called on justice personnel to also recognise and deal with immigration abuse such as threatening to take away a victim's visa as a form of coercion.

Language, in particular, has been identified as a significant barrier to engaging well with the criminal justice system as well as a lack of training in cultural competency for personnel in the criminal justice system.

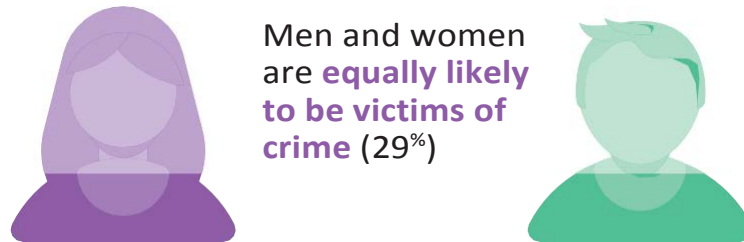
“Most of them...face isolation...Coming here, you left your home country, you left your good job, and you left the whole family. You left everything there... You don't have friends here; you don't know how to reach out to the community. It is a foreign country; it's totally different culture, totally different laws. Most of men and women face language barriers.”

Research participant, PhD thesis, 2016⁷⁴

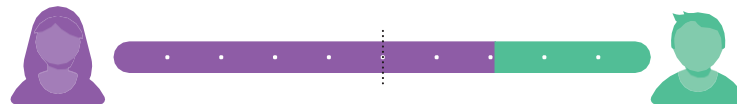
⁷⁴ Somasekhar, S., (2016) “What will people think?” *Indian Women and Domestic Violence in Aotearoa/New Zealand*. Retrieved from: <https://researchcommons.waikato.ac.nz/bitstream/handle/10289/10592/thesis.pdf?sequence=3&isAllowed=y>

Men and women experience victimisation differently

In the New Zealand Crime and Victim Survey, while overall rates of victimisation of men and women are roughly the same, women are significantly over-represented in statistics relating to family violence and sexual violence and family violence victimisations.



The proportion of **female victims** of family violence (**71%**) more than **twice exceeds** that of **male victims** (**29%**).



NZCV Survey 2018

The number of sexual assault incidents for women is almost four times higher than that reported for men. Females (21%) were more likely than males (10%) to have experienced one or more incidents of interpersonal violence at some point during their lives.⁷⁵

Given the high level of gendered violence it is vital that the criminal justice workforce is well trained to understand coercive control and other interpersonal dynamics that stop victims from reporting crime or continue to put them at risk.

At the same time, we also know that there has been less research on interpersonal abuse experienced by men and boys, and interpersonal abuse against males may be greatly under-reported. Male victims of sexual abuse for example, have said they find it particularly difficult dealing with the shame of experiencing abuse, and this is a barrier to reporting their victimisations and accessing the support they need. We were told there is a lack of support and specialist services for male victims through the ACC system, the court process and the health system. This problem is compounded for Māori men.

⁷⁵ New Zealand Ministry of Justice. (2019). *New Zealand Crime and Victims Survey 2018*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

Victimisation in the rainbow community

The rainbow community state that they experience crime and victimisation in very different and complex ways and that currently legislation and practice does not understand or adequately reflect that. Rainbow community members say that crimes such as intimate partner violence can be harder to recognise within this community. The rainbow community say they often face a general societal bias that can lead to negative responses from Police when reporting crimes, making it harder for them to come forward.

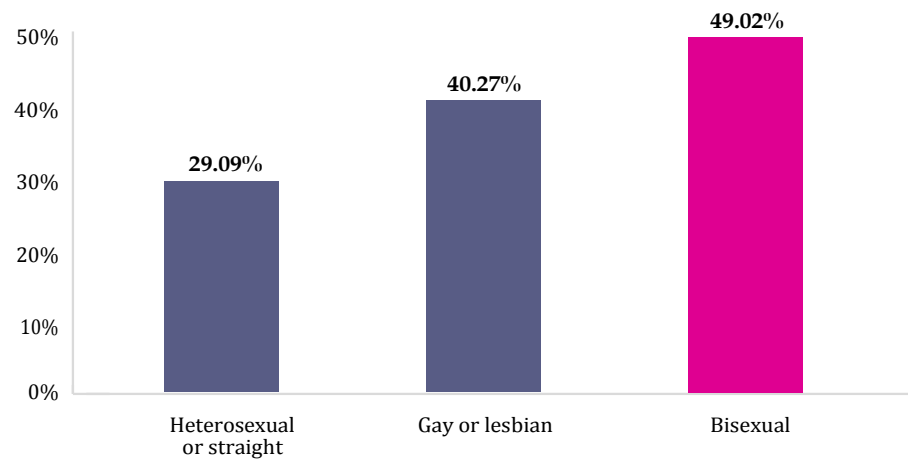


Figure 3.4: Prevalence rates by sexual orientation – all offences

Ministry of Justice (2018). *New Zealand Crime and Victims Survey*

The proportion of bisexual victims of crime is almost 70% higher than that of heterosexual or straight victims.⁷⁶

⁷⁶ Ibid.

Vulnerabilities and other challenges can compound the experience of victimisation

We have heard that the justice system needs to go above and beyond to ensure people with both physical and intellectual disabilities are supported through the criminal justice system. People with disabilities are a highly vulnerable group. Disabled victims suffer from the one-size-fits-all design of the justice system, with inadequate specialist support and customisation available. Sometimes there are difficulties with the legal capacity of victims and the specialist support needed to make properly informed decisions. Victims with disabilities can have particular communication needs and may need support for decision making.

“If the victim has a disability they don’t have the same access to justice.”

Strengthening the Criminal Justice System for Victims Survey, 2019

Victimisation is more common among people with mental health problems. Moderate and high levels of psychological distress are both associated with significantly higher rates of victimisation than the national average.⁷⁷

⁷⁷ Ibid.

Being a victim of crime can also trigger severe mental distress. For example, the traumatic experience of violence has been linked to the development of mental health diagnoses such as major depressive disorder, acute stress disorder (ASD) and post-traumatic stress disorder (PTSD)⁷⁸.

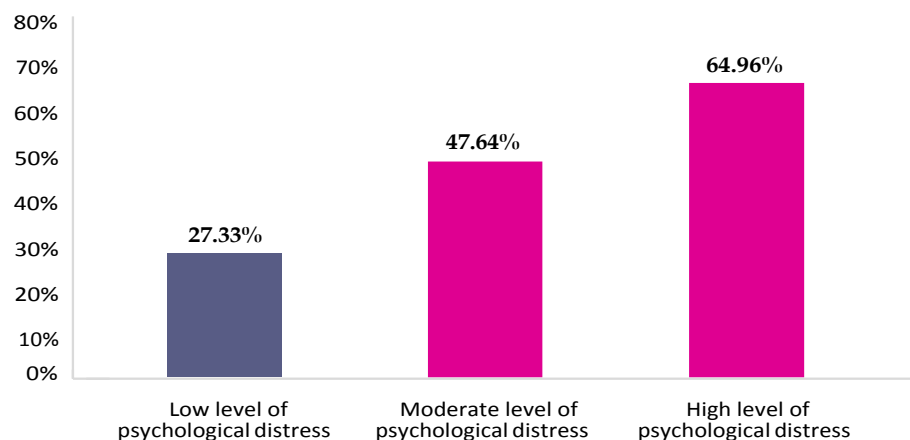


Figure 3.21: Proportion of adults who experienced crime, by level of psychological distress

Ministry of Justice (2018). *New Zealand Crime and Victims Survey*

Victimisation can occur in people’s homes, workplaces and communities

Almost 400,000 people (about 7.5% of adults) experienced one or more incidents of fraud or cybercrime over the last 12 months alone. Approximately 355,000 households (20% of all New Zealand households) experienced one or more property crime incidents over the last 12 months.⁷⁹

Other types of victimisation, particularly with crimes such as theft, usually but not always have a more short-term impact. Victims of these types of crime can be focussed on practical issues such as resolving insurance and gaining financial reparation.⁸⁰ But property crimes such as workplace robbery can also have a serious effect on people’s wellbeing and trust.

“We feel victimised from every angle, firstly from offenders – being robbed, hurt, intimidated. Then from Police, continuously advised to either improve the cameras or build a cage or clear the windows or stopping the business for hours for the scene examination. Then from the justice system who either lets the offenders loose or if they are imprisoned, there is no reparation. Then from insurance companies for increasing our premium. Hence, we are continuously losing the battle from all fronts

Victim of workplace robbery, Counties Manukau, 2017

78 Fichera, G. P., Fattori, A., Neri, L., Musti, M., Coggiola, M., & Costa, G. (2014). Post-traumatic stress disorder among bank employee victims of robbery. *Occupational Medicine*, 65(4), 283–289

79 New Zealand Ministry of Justice. (2019). *New Zealand Crime and Victims Survey 2018*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-findings-report-2018-fin-for-release.pdf>

80 Shapland, J., & Hall, M., ‘What Do We Know About the Effects of Crime on Victims’ (2007) 14 *International Review of Victimology* 175, 178.

Experiencing or witnessing violence in the community or on the street can have serious impacts as can having a person's life savings stolen or scammed. The impact of any crime can have an enormous impact not just on the individual who experiences the crime, but also the well-being of those around them. We have heard of cases where theft, fraud and other crimes have had a major impact, particularly for older victims, or where a robbery involves the threat of violence.⁸¹

“Last year one of my clients aged 87, while in hospital, had her entire life savings of \$8,000+ stolen from her bank account by a hospital employee who got access to her eftpos card and PIN number. The client said: “I felt destitute, shocked that someone could take advantage of me when I was in hospital. I could not even afford to buy food, my medication or a new pair of shoes. I was left with only \$32 in my account. I learnt not to trust anyone.”

Web submission

While this brief section has not been able to cover the wide range of victimisation experiences across the country or the tailored specialist responses required in responding to such victimisations, it has highlighted some of the complexities of delivering justice outcomes to some victims.

81 Elklit, A. (2002). Acute stress disorder in victims of robbery and victims of assault. *Journal of Interpersonal Violence*, 17(8), 872–887.

Appendix C: Victims Code

The Victims Code sets out how you can expect to be treated when you are a victim of crime.

What is the Victims Code?

The Victims Code sets out how you can expect to be treated when you are a victim of crime. The Victims Code has three parts:

- Part 1 lists the key principles that are expected to be followed by a person, organisation or government agency that provides services to victims (a provider).
- Part 2 sets out your rights in the criminal justice system and the youth justice system.
- Part 3 explains how you can make a complaint if you believe your rights are not being met.

As far as possible, the Code governs the way providers should treat victims of crime. However, the Code is not legally enforceable and there are no sanctions for failure to comply with it.

Who is a victim of crime?

Under the Victims' Rights Act 2002, a victim of crime is anyone who has:

- had a crime committed against them, or
- suffered physical harm because of a crime committed by someone, or
- had property taken or damaged because of a crime committed by someone.

A victim of crime is also:

- a parent or legal guardian of a victim who is a child or young person, as long as the parent or legal guardian has not been charged with the crime, or
- the immediate family members of someone who dies, or can no longer take care of themselves, because of a crime committed by someone.

What services are available to victims?

There is a range of services to help you at each stage in the criminal justice system and youth justice system. You can also get personal support to help you deal with the effects of the crime.

Find out about these services by calling the Victims Information Line on 0800 650 654. The Information Line staff will tell you what services are available and can help you get in contact with the agency or service that is right for you. Please tell the Information Line staff if you need an interpreter and they will get one for you.

You can also find information about the services at victimsinfo.govt.nz under 'Support and Services'. The information is on the website in a range of languages.

Where can I get more information?

For more information on how the criminal and youth justice systems work, the Victims Code (including the meaning of legal terms and related Acts) or how to make a complaint:

- visit victimsinfo.govt.nz, or
- call the Victims Information Line 0800 650 654.

Part 1: How providers are expected to treat victims

Eight principles guide the way that providers should treat you, your family and whānau when you have been affected by a crime.

A provider is a person, organisation or government agency that works to promote your wellbeing and rights, helps reduce your psychological, physical or financial suffering, and/or supports you in the justice system.

The principles apply to all victims of crime, including victims who have suffered only emotional harm because of a crime committed by someone. You do not need to have reported the crime to Police.

Providers should follow these principles. They must also comply with legal, professional and ethical standards and codes of conduct, and the Human Rights Act 1993.

The principles aim to ensure better outcomes for you when you've been affected by a crime. Although they are not legal rights, the principles guide providers about what victims can expect.

PRINCIPLE 1: Safety

Services should be provided in a way that minimises any potential harm to you and your family/whānau, and puts your safety first.

PRINCIPLE 2: Respect

Providers should treat you with courtesy and compassion.

They should respect your cultural, religious, ethnic and social needs, values and beliefs.

PRINCIPLE 3: Dignity and privacy

Providers should treat you with dignity and protect your privacy.

PRINCIPLE 4: Fair treatment

Providers should respond appropriately to your needs, and should provide their services in a timely and straightforward way.

PRINCIPLE 5: Informed choice

Providers should properly understand your situation and tell you the different ways you can get help. They should honestly and accurately answer your questions about their services. This includes how long you can receive them.

PRINCIPLE 6: Quality services

Providers should make sure you, your whānau or family, receive quality services. Quality services include services that meet your particular needs, such as culturally appropriate services. If you are dealing with more than one provider, they should work together.

PRINCIPLE 7: Communication

Providers should give you information in a way that is easy to understand. You and your provider should communicate with each other openly, honestly and effectively.

PRINCIPLE 8: Feedback

Providers should let you know how you can give feedback or make a complaint. It should be easy for you to do this.

Part 2: Victims' rights in the criminal justice and youth justice systems

While the principles apply to all victims, the rights only apply to victims of a crime that has been reported to Police or is before the courts.

The rights are part of the Victims' Rights Act 2002. Victims also have rights under other laws, such as the Privacy Act 1993, the Bill of Rights Act 1990, the Sentencing Act 2002, the Bail Act 2002 and the Children, Young Persons, and their Families Act 1989.

Who do the rights apply to?

Rights 1-6 apply to all victims of a crime that has been reported to Police or is before the courts. Rights 7-10 apply only to victims of certain serious crimes. Police will tell you if you have these rights. Right 11 applies only to victims of a crime committed by a child or young person.

Who is responsible for meeting the rights?

Depending on the right, different government agencies, investigators, prosecutors and other public bodies are responsible for making sure that your rights as a victim are being met.

Not all agencies are responsible for each of the rights in the Code.

To find out which agencies have responsibilities for each of the rights visit victiminfo.govt.nz or call the Victims Information Line on 0800 650 654.

RIGHT 1: To be given information about programmes, remedies and services

You have the right to be told about programmes, remedies or services for victims. This might include services where you can meet with the offender (this could be at a restorative justice conference or family group conference).

RIGHT 2: To be given information about investigation and criminal proceedings

You have the right to be told within a reasonable time what is happening with the case, unless the information could harm the investigation or the criminal proceedings. This might include information from investigating authorities, court staff or the prosecutor that covers:

- charges filed against the defendant or young person
- reasons for not laying charges
- your role as a witness
- when and where the hearings will take place
- the outcome of any criminal proceedings, including any proceedings on appeal
- a young person's progress on a plan agreed at a family group conference. You can also ask for this information to be given to someone else who will then explain it to you.

RIGHT 3: To make a victim impact statement

You have the right to make a victim impact statement that tells the court how the crime has affected you. You can get help to write your victim impact statement.

The judge will consider your victim impact statement only when sentencing the offender.

In the Youth Court, the family group conference is the main way that victims take part in the youth justice system, which operates differently to the criminal justice system. The main way that your views are considered by a judge is through a family group conference plan (see Right 11). Some victims of offending by a child or young person may also have the right to read a victim impact statement in court. A court victim advisor can give you more information.

RIGHT 4: To express your views on name suppression

If the offender applies to the court for permanent name suppression, you have the right to say what you think about the application.

In the Youth Court, children and young people who offend and victims automatically get name suppression. Other information that could be used to identify offenders or victims is also suppressed. For example, information about your family or the school an offender goes to.

RIGHT 5: To speak official languages in court

If you're a witness in court, you have the right to speak Māori or use New Zealand Sign Language in any legal proceedings. An interpreter will be provided.

If you're not a witness, you may speak Māori or use New Zealand Sign Language if the judge says you can.

RIGHT 6: To get back property held by the state

If a law enforcement agency (like the Police) took any of your property as evidence you have the right to get it back as soon as possible.

Victims of serious crimes

In addition to rights 1-6, victims of certain serious crimes also have the following rights (rights 7-10).

Serious crimes include crimes of a sexual nature or serious assault, including where a person is killed or becomes unable to look after themselves. The Police will tell you if you have these rights.

RIGHT 7: To be informed about bail and express your views

You have the right to tell the prosecutor your views if the person who has committed an offence against you is being released on bail. The prosecutor must give your views to the court.

If you ask for information about a defendant or young person's bail, the Police or the Ministry of Justice must give it to you if that bail impacts you or your family. They must also tell you if the offender is released on bail and of any conditions relating to your safety.

RIGHT 8: To receive information and notifications after sentencing

You have the right to receive information about the sentenced offender. To receive this information, you must register to receive victim notifications. Several agencies can give you a copy of the application form and help you fill it in, including the Police, Victim Support, the Department of Corrections and court victim advisors.

Victims of youth or child offending can sometimes apply to Police to receive certain notifications. Police, court victim advisors, or Child, Youth and Family staff can tell you if you are eligible and give you an application form.

Registered victims will be told when significant events happen for the offender, such as Parole Board hearings or if they reoffend during their sentence, are released from prison or home detention, leave hospital, are granted temporary unescorted releases from prison, escape from prison or die.

You can ask to stop being notified at any time.

RIGHT 9: To have a representative receive notifications

You have the right to name a person to be your representative. Your representative will receive information about the offender or young person on your behalf and help you understand it.

RIGHT 10: To make a submission relating to parole or extended supervision orders

This right applies only when the offender is serving more than two years in prison.

If you are registered to receive victim notifications (see Right 8), you will automatically be told when the offender is having a parole hearing or a hearing to impose special conditions on an Extended Supervision Order. You have the right to make a written or verbal submission, or both, to the Parole Board. The Parole Board must consider your submission before making a decision. The Parole Board may show your submission to the offender, but will remove your contact details.

You have the right to ask for certain information from Corrections to help you make your submission. You need to ask only once - the information will be automatically sent to you for future parole hearings.

If an offender has been convicted of a serious sexual or violent crime, Corrections may apply for an order to monitor them after they are released from prison (Extended Supervision Order). If Corrections applies for this order, you can make a submission to the court. To do this, you need to be a registered victim (see Right 8).

Victims of youth offending

The youth justice system operates differently from the criminal justice system. Rights 1-10 also apply in the youth justice system, unless specified. Right 11 is only for the youth justice system. It gives victims of offending by a child or young person the right to attend a family group conference.

RIGHT 11: Family group conferences

If you're the victim of offending by a child (10-13 years old) or young person (14-16 years old), and the Police charge or intend to charge the child or young person, you have the right to go to a family group conference. You can take people with you for support.

Child, Youth and Family must make all reasonable efforts to give you this opportunity. They must talk to you about where and when the family group conference will be held. They must also consider the wishes of the family of the child or young person who has offended and of Police.

The family group conference is the main way that victims take part in the youth justice system. At the conference you'll meet with the child or young person, their family, and others such as Police or a social worker. You will be able to say how the offending has affected you and your family and say what you'd like to see happen.

The purpose of the family group conference is to set up a plan that holds the child or young person to account and addresses the underlying causes of the offending. You have the right to disagree with this plan. If you do, the Youth Court will decide what happens next.

You don't have to take part in the conference. If you want to take part, but you don't want to be there in person, you can join in by telephone, give a written or verbal statement, or ask someone else to stand in for you.

Part 3: What can I do if I think my rights are not being met?

If you believe a government agency hasn't carried out its legal responsibilities in providing the rights explained in this Code, or that you have under any other law, you can make a complaint.

You can make a complaint by:

- contacting the agency - issues are often resolved by speaking directly with the person or going through the agency's complaints process
- calling the Victims Information Line on 0800 650 654 - the Information Line staff will give you information about your rights and tell you how to make a complaint and who to send it to.

More information is on our website at victimsinfo.govt.nz

An agency that receives a complaint must respond promptly and fairly.

If you are still not satisfied after the agency has looked at the complaint, or it is taking too long to get back to you, you can complain to:

- Office of the Ombudsman
0800 802 602
ombudsman.parliament.nz
- Independent Police Conduct Authority (if the complaint involves the Police)
0800 503 728
ipca.govt.nz
- Privacy Commissioner (if you think someone has breached your privacy)
0800 803 909
privacy.org.nz/your-privacy/how-to-complain/

Judiciary and the parole board

Courts and judges and the New Zealand Parole Board work with victims in the legal system but must remain independent and free to operate without interference from executive government, such as the Police or Ministry of Justice. These bodies have a role to play in upholding the principles and rights contained in the Code, but are not subject to the Code.

If you want to make a complaint about a judge's conduct, contact the Judicial Conduct Commissioner on 0800 800 323 or complete a complaint form, available at www.jcc.govt.nz

If you want to make a complaint about any service or information provided by the New Zealand Parole Board, contact the Manager, New Zealand Parole Board, on 0800 727 653 or email info@paroleboard.govt.nz

Glossary

Adjourn	To postpone any court date, to another date and/or location.	Domestic/ family violence	Physical abuse, sexual abuse and psychological abuse (for example intimidation, harassment, damage to property and threats) against a person by any other person who is or has been in a domestic relationship with that person.
Adversarial System	In New Zealand we use an adversarial court system, where a case is argued by two opposing sides. These sides have primary responsibility for finding and presenting facts to the independent judge (and sometimes jury) who will decide the guilt of the defendant. The Crown or Police prosecutor argues for the guilt of the defendant, while the defence attempts to defend their innocence.	Family Court	The Family Court is a division of the District Court and provides help with family problems. The court deals with a wide range of family-related matters. It hears cases such as adoption, child abduction, separation and divorce, relationship property, wills, family violence, mental health, surrogacy and child support. Wherever possible, the court aims to help people resolve their own problems by way of counselling, conciliation and mediation.
Aroha	Love, affection.	Hapū	Clusters of whānau who share closer and more direct genealogical ties to a common ancestor than iwi.
Bail	If a person is charged with an offence, they may apply for bail. Bail is when a person is released from court or police custody on conditions, including that they return to court for their next required appearance.	Hui	To gather, congregate, assemble, meet.
Charge	A formal accusation brought to the court that a person or organisation has committed a criminal offence.	Inquisitorial System	An inquisitorial system is a legal system found in civil law jurisdictions where the court is actively involved by investigating the facts of the case to determine the truth and guilt of the accused. This is opposed to an adversarial system where the role of the court is primarily that of an impartial referee between the prosecution and the defence. Inquisitorial systems are used in most European countries.
Criminal Proceeding	The prosecution in court of a person for an offence, usually by the police.	Iwi	Extended kinship group, community; often refers to a large group of people descended from a common ancestor.
District Court	Most court cases take place in the District Court, including most criminal cases and civil cases.		

Mana	Status, power, prestige, influence
Name Suppression	In most cases, the media has the right to publish a person's name if that person has been charged with an offence. In cases where publication of a person's name might lead to extreme hardship to a defendant or undue hardship for that person or another person, the court can grant either interim or permanent name suppression. Suppression may also be granted for other reasons, for example, because publication might prejudice a fair trial.
New Zealand Crime and Victims Survey (NZCVS)	The New Zealand Crime and Victims Survey collects information about New Zealanders' experience of crime and victimisation. This new survey will run every year from 2018 asking 8,000 New Zealanders from all walks of life about their experiences.
Non-governmental organisation (NGO)	Encompasses: community or voluntary organisations; Māori iwi and hapū organisations where government organisations contract with them for the delivery of outputs and outcomes.
Parole	A system for the supervised release of prisoners before their prison sentences have expired.
Parole Board	An independent statutory body that considers when offenders can be released on parole.

Police Safety Order (PSO)	An order police may issue without having to involve the courts. A PSO is intended to give people immediate short-term protection if they are at risk of family violence. The person a PSO is made against must immediately leave their home and stay away from the person being harmed for up to five days.
Protection Order	An order issued by the Family Court. Protection orders are intended to give people protection if they are at risk of family violence. Protection orders name the person who has been violent or abusive (the respondent) and says they must not be violent or abusive towards the person who applied for the order, or to their children. Protection orders will also impose various other conditions on the respondent.
Rangatiratanga	Autonomy, legitimacy to make decisions over self
Restorative Justice	Includes conferences that bring offenders and victims together to discuss the offence that occurred and resolve the issues that arose from it. They can happen at any stage of the court process in Aotearoa New Zealand, but most commonly they happen just before sentencing.
Rohe	District, region and/or boundary.
Strengthening the Criminal Justice System for Victims Survey	An online victims survey run by the Chief Victims Advisor in February 2019. It received 620 respondents, the majority victims. It asked victims about their experiences in the criminal justice system.

Strengthening the Criminal Justice for Victims Workshop	A 2-day workshop held by the Chief Victims Advisor on 4-5 March at the request of the Minister of Justice. It was attended by victims, victims advocates and academics, judges, lawyers and government officials.
Tamariki	Children
Tauiwi	Foreigner, European, non-Māori
Tikanga Māori	The system of rules, principles, practices, laws and customs that guide behaviour in te ao Māori - the Māori world. It embodies ideas of justice and correctness and the right way of doing things according to a Māori world view. Whanaungatanga, mana, utu, tapu, noa and manaakitanga are fundamental principles that underpin tikanga Māori. In the context of realising aspirations for the justice system, these principles reflect the centrality of relationships, respect for the inherent dignity of people, the importance of reciprocity in striving to rebalance circumstances where people and relationships have been harmed, recognition of a spiritual dimension in all things, and the obligation to nurture and care for others.
Victim	A lot of people dislike the term 'victim' however some find the term 'victim' validates the harm they have experienced. Some people prefer the term 'survivor'. The report uses the term 'victim' for the sake of consistency with legislation and other agencies in the justice system.

Victim Code	The Victims Code (2015) sets out how people can expect to be treated when they are a victim of crime. It outlines the key principles that are expected to be followed by a person, organisations or government agency that provides services to victims (a provider), sets out rights in the criminal justice system and the youth system and explains how to make a complaint if rights are not being met.
Victim Impact Statement	A prepared statement made by a victim in court for the sentencing of an offender to describe how the offending has affected them. Victims can be helped with the victim impact statement by different authorities, including police and court victim advisors.
Victim Notification Register	If someone is a victim of a serious crime, they can choose to stay informed about what happens to an offender after they are sentenced by applying to go on the Victim Notification Register. People who are registered can receive information about the offender including about their: Parole Board hearings, release dates, temporary release from prison, home detention, and possible deportation.
Victim's Rights Act 2002	The Victims Right Act 2002 is the legislation that outlines the rights victims have in New Zealand.
Whakamanatanga	State of being empowered.
Wairuatanga	Spirituality.
Whakapapa	Relationships, relational, genealogy, history.
Whānau	Family group, extended family.
Whanaungatanga	Whakapapa, connecting relationships.





Hapaitia te Oranga
Tangata

Safe and Effective Justice