



Chief Victims Advisor
to Government

Chief Victims Advisor to Government

Briefing for the Incoming Minister of Justice, November 2020

Working for a safe and effective justice system for all victims of crime in Aotearoa.

Part A – Challenges, opportunities and key focus areas for victims of crime

Challenges within the criminal justice system make it difficult to deliver justice for victims

1. The adversarial criminal justice system focusses on offender accountability and does not recognise victims as a party to proceedings. This structural challenge means that there is a lack of victim-focussed representation, expertise and resources available to address victims' justice needs. This has resulted in:
 - increasing numbers of victims losing confidence in the criminal justice system
 - high levels of victims of crime reporting they do not feel safe or heard, and they do not have enough information or support¹
 - low reporting rates of crime - for example, approximately 6% of adult sexual violence cases are reported to Police²
 - a lack of resources with less than 50 cents in every 100 dollars the Government spends on the justice system ringfenced for victims³
 - a justice sector workforce that lacks victim expertise to provide the range of diverse Māori and Tauīwi victims with the tailored support and advice they require
 - many victims reporting that they feel further harmed and retraumatised by the criminal justice system.⁴

Victims of crime often feel side-lined and disempowered in the justice system

2. Victims of crime do not have their own legal representation, and rarely do they have a single point of contact available throughout the system who knows their entire case. They are often left to find their own way through the complex and siloed criminal justice and social services systems. With their role in the criminal case reduced to being simply 'a

¹ 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>

² New Zealand Ministry of Justice (2019) *New Zealand Crime and Victims Survey 2018*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Y2-core-report-for-release-.pdf>

³ 2019/2020 Budget appropriations. Retrieved from <https://treasury.govt.nz/publications/budgets/justice-sector-estimates-appropriations-government-new-zealand-year-ending-30-june-2020>

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>

witness' to the crime they experienced, combined with a lack of information and support, the justice system can increase distress and re-victimise people.

Data and monitoring are missing

3. The ability to map a victim's journey through the criminal justice and social services systems is required to understand victims' justice experiences. However, there is a lack of data collected on victims across the criminal justice system and the data that is collected remains with each agency's siloed database of information.
4. Overall, there is limited data on the number of victims in the criminal justice system, how long their cases have been within the system, and what their needs are. This makes it difficult to provide quantitative evidence on specific areas that may in fact urgently need reform and/or increased resources. It is also extremely difficult to develop services in a planned way without accurate victim-focussed data. With no unique identifier and completely different databases that are unable to be joined to share common victim data, currently there appears to be no simple cost-effective ways to understand victims' issues. Most enquiries need a survey developed on each issue.
5. There has also been little monitoring or evaluation of the implementation of the victims' rights set out in the Victims' Rights Act 2002. For example, it is unknown how many victims' views on bail are recorded or whether victims receive timely information to fully understand their part in the criminal justice process.

Siloed and competing priorities undermine effort

6. While improvements for victims may be possible within individual agencies, transformational change is not possible without a joined-up whole-of-system approach. Competing priorities between agencies and the need to balance the interests of all involved can create tensions. A current example is the pressure to reduce Aotearoa New Zealand's high remand and prison population while also making sure that victim safety is achieved. Recently there have been criticisms from the victim community that these tensions have led to victims' rights and needs not always being prioritised.
7. Collaboration by government agencies, including work to partner with Māori and the NGO sector, should assist to reduce these silos. A useful example of working to reduce silos is the Joint Venture Business Unit which supports a cross-government work programme to eliminate family violence and sexual violence.

Victims are not a homogenous group, and the nature of victimisation is complex and can affect different people differently

8. The experiences and needs of victims will vary depending on personal factors such as age, gender, ethnicity, socio-economic status and health, the type of crime, the seriousness of the crime, the victim's relationship with the offender and the victim's interactions with authorities. Our systems and workforce must be able to respond to diverse needs in a way that is fair and just to all victims.

9. A higher proportion of Māori are victimised each year than any other ethnic group. Māori report that the burden of victimisation is experienced as another legacy of colonisation which affects the cohesion of whānau and hapū. The absence of Te Tiriti o Waitangi principles in the criminal justice system means that Government must work directly with Māori to redesign the justice system and its responses to Māori.

Opportunities to improve the justice system for victims in the short and long-term

10. Following eighteen months of consultation, including a national two-day workshop, a victims' survey and face-to-face meetings with victims and victim advocates across the country, in 2019 the Chief Victims Advisor provided recommendations to the Minister of Justice for improvements to the justice system from a victim's perspective (*Te Tangi o Te Manawanui: Recommendations for Reform*).
11. This report provided four high-level recommendations:
 - a. *Improve procedural justice for victims within the current adversarial criminal justice system* – Providing procedural justice to victims can be significantly improved by ensuring all victims' rights are fully implemented, beginning with prioritising keeping victims safe at all points. On a practical, day-to-day level, victim satisfaction in the criminal justice system could be vastly increased simply by improving victims' procedural justice experiences and upholding victims' rights. To deliver procedural justice, victims need accessible victim-friendly, professionals who can listen to and respond to them. Victims need accurate, timely, understandable information at all points throughout the system and justice responses able to cater to diverse cultures within an integrated system.
 - Appendix A in *Te Tangi o Te Manawanui* provides a range of general and specific opportunities for such procedural justice reform. Here are just three examples:
 - There is a need for independent specialist advocates to provide a single point of contact for victims end to end through the justice system. To reduce their distress and enable their safety, victims need accurate and timely information. From when they report the crime, victims, especially victims of violent crimes, need an independent case co-ordinator or advocate to support them to access support services, co-ordinate with agencies, and to help them understand their role and the roles of all other parties in the sometimes multiple year criminal justice process with changing personnel.
 - Gaps in the Victim Notification Register (VNR) system should be urgently addressed. Many victims are not entitled to be listed on the VNR. There are four different processes across four ministries (Police, Corrections, Health, Immigration). Each have little resource supporting them and much of the information is transferred manually. There is a great deal of risk for victims if these four processes are not better aligned with each other and better resourced. The definitions of which victims are entitled to be listed on the VNR should also be reviewed. There have been many complaints from victims, especially victims of violent crimes, that all those who are fearful of the

offender are not always able to be registered on the VNR and so are not notified of changes to the offender's movements.

- For the safety of victims it is essential that victims of interpersonal violence are able to have their current views on bail properly considered. This means resource needs to be dedicated to be able to collect detailed information about safe bail addresses from meetings with victims, rather than simply relying on viewing the victim's address stored electronically. For victims of interpersonal violence it is also important that the offender not be released to other locations such as near the victim's work, or near their children's school. Such information is not usually stored electronically and without checking directly with the victim, even the victim's current address could be out of date and therefore inaccurate and may increase risk.

b. *Develop an integrated system focussed on restoring victims' well-being* – To prevent re-victimisation and promote wellbeing, victims need to be served by a seamless system that co-ordinates a range of proactive and comprehensive health and social services tailored to deal with the wide-ranging impacts of crime on their lives. These services should be available regardless of whether the crime against them is reported to or investigated by Police. Much prevention of re-victimisation is possible in the community when appropriate Kaupapa Māori and Taiwi wrap-around services are engaged early. Victims should not have to carry the burden of finding or paying for the help they need to recover from crimes committed against them.

c. *Develop a variety of alternative justice processes* – A criminal justice system solely designed around the punishment of offenders will never be capable of fully addressing the needs of victims. Some victims may not wish to take part in a system that has prison as the only option. Some victims are more interested in a justice process where the person who has harmed them takes part in treatment to stop their harmful behaviour. Many victims will not report crime if they expect they will not be believed or supported through an adversarial justice system. A range of alternative victim-led justice pathways need to be developed, in partnering with Māori, and working with restorative justice and other therapeutic justice specialists.

d. *Establish an independent mechanism to enforce victims' rights* – Given the lack of monitoring of victims' rights since the Victims Rights Act 2002, it appears that meaningful transformation for victims is unlikely without an independent victim-focussed mechanism to help drive forward the change necessary.

12. Extensive consultations through the *Hāpaitia te Oranga Tangata (Hāpaitia)* reform programme provided a significant review of issues in the criminal justice system for all involved, including victims. The reform programme provided a comprehensive opportunity to consider both short and more fundamental long-term solutions to transform the justice system for our current Aotearoa New Zealand society. Victim views collected should be seriously considered. Going forward, any transformation of the system must not focus solely

on reducing victimisation, but also on improving the system for victims of crime and addressing their justice needs.

13. *The Victims Leadership Group (VLG)*: After the Chief Victims Advisor raised serious concerns about the lack of governance for victims across the justice sector, the VLG was formed in mid-2020. The VLG comprises of senior leadership from the six justice sector agencies. The VLG has recently set up a more operational Victims Working Group (VWG). Both the VLG and the VWG need to be properly resourced so they can work to ensure collaboration and shared outcomes among agencies in addressing the many systemic victims' issues identified through the Hāpaitia reform programme.
14. *Ināia Tonu Nei*⁵ was formed to give voice to Māori within the *Hāpaitia* reform programme. There is an opportunity for government to work with Ināia Tonu Nei to improve outcomes for Māori victims of crime. Having recently appointed within the Ministry of Justice a Pou Whakaterere - Deputy Secretary Māori who has supported the development of Ināia Tonu Nei provides another important opportunity to give voice to tangata whenua in any future reforms of the criminal justice system.
15. *Workforce training and culture*: If victims are to have a positive experience of the criminal justice system, it is critical that the justice workforce and all of the Kaupapa Māori and Taiwiwi NGO workforce has sufficient capability, capacity, training and resources to both understand and respond to the diverse needs of Māori and Taiwiwi victims of crime.
16. *The Joint Venture Business Unit (JVBU)*: Ten Chief Executives on the Social Wellbeing Board are jointly accountable for the cross-government work programme that aims to eliminate family violence and sexual violence. This work programme is supported by the JVBU. The Chief Victim Advisor is a critical friend to the JVBU and works to support the inclusion of victim advocate voices. The JVBU is a useful example of government agencies working to partner with Māori, reducing working in agency silos, and increasing partnerships with NGOs. Should it be successful, it will be a valuable model for future collaboration across government agencies.
17. *Partnering with the JSLB and the judiciary*: To make real and lasting change for victims, there must be active engagement between the Chief Victims Advisor and the six justice agencies (Ministry of Justice, Ara Poutama, NZ Police, Oranga Tamariki, Crown Law and Serious Fraud Office) to ensure that a focus on victims is maintained. The Chief Victims Advisor has constructive and regular engagement with sector leadership including Chief Executives, Deputy Chief Executives and the Heads of Bench on her strategic direction and work programme. She also consistently provides a valuable feedback loop for the Justice Sector Leadership Board and the judiciary by providing insights from the frontline that they may not otherwise receive.
18. *Learnings from the Christchurch Sentencing Event (R v T)*: There are many learnings from this event, which demonstrated just how therapeutic the criminal justice system can be for victims

⁵ The Ināia Tonu Nei kaupapa was born from resistance to the lack of Māori voice at the 2018 Criminal Justice Summit. Ināia Tonu Nei will provide independent advice to Justice Sector Ministers to deliver better justice outcomes for Māori and share decision making power with the Justice Sector Leadership Board.

when all agencies work together with a clear victim-focus. The presiding Judge's empathy and focus on giving victims a voice by allowing them the time to present their Victim Impact Statements in full, combined with access to interpreters and remote participation, enabled victims to express some feelings of justice. Many of these lessons could be implemented more widely without the need for policy or legislative change.

Part B – The role of the Chief Victims Advisor and her Office

The Chief Victims Advisor role was established in 2015 as an independent Ministerial advisor to Government

19. The Chief Victims Advisor is appointed by, and accountable to, the Minister of Justice. The Chief Victim Advisor's advice includes recommendations on how to improve the justice system for victims, and input on significant policy work.
20. The scope of the role of Chief Victims Advisor is set out in the Terms of Reference (attached as **Appendix A**) and acknowledges victims' experiences across the justice sector.

The Chief Victims Advisor provides sector wide victim-related advice to Government

21. The Chief Victims Advisor assists Ministers and government to improve the justice system for victims of crime in their engagement with the criminal justice system. The Chief Victims Advisor does this through reviewing and commissioning research on victims' issues, providing feedback on key policy and system developments and through extensive engagement with government officials across the justice sector, NGOs and the wider victim-survivor community.

There is no single government agency that is accountable for progressing improvements for victims across the justice sector

22. The Office of the Chief Victims Advisor is the only office set up with a sole focus on improving criminal justice system responses to all victims of crime. The Office is available for requests on specific, relevant victims research to be included in her work programme. The Chief Victims Advisor and her Office engages with:
 - victims and their supporters
 - Ministers
 - government officials from across the justice sector including the Justice System Leadership Board, Deputy Chief Executives, as well as the JVBU and other ministries and regulatory bodies
 - NGOs, independent victim advocates, and victim focussed academics
 - independent Commissions and Commissioners such as the Ombudsman, Privacy Commissioner, the Independent Police Conduct Authority, the Human Rights Commission, the Children's Commission, and Health and Disabilities Commission
 - the legal profession
 - the judiciary
 - international victim experts (for example the United Kingdom and Australian Victims Commissioners) and
 - the media, including interviews and public speaking.

Dr Kim McGregor was appointed to the role in November 2015

23. Dr McGregor has been reappointed with her term expiring in November 2021. Dr McGregor is currently appointed at 0.7 FTE. Attached as **Appendix B** is a full timeline of Chief Victim's Advisor activities since the role's establishment. Dr McGregor has provided nine research reports to the Minister of Justice in her term as Chief Victims Advisor. Attached as **Appendix C** is a brief description of all nine reports.

The ability of the office to respond to demand for advice and consultation is constrained

24. The ability of the Office to respond to requests for consultation is limited based on the capacity of two full time Advisors and one part time Executive Assistant (2.5FTE). This was adequate when Dr McGregor was first appointed when her role was 0.3FTE. As her role has increased to 0.7FTE, capacity has become an issue for the Office as consultation and engagement with the Chief Victims Advisor has increased by officials across the justice sector.⁶

Te Ao Māori knowledge is missing within the Office of the Chief Victims Advisor

25. A significant challenge for the Office is the lack of Te Ao Māori knowledge. Given that Māori experience greater rates of victimisation than Tauwiwi it is important to be able to provide expert advice to government that originates from a Māori world-view. To fulfil our obligations under Te Tiriti o Waitangi the establishment of a bi-cultural/two-whare model for the role is recommended. This model could be structured with two Chief Victims Advisors that work alongside each other (one Māori and one Tauwiwi). If this model is not preferred, another option would be for the Office to employ an additional Senior Advisor dedicated to working with Māori and able to provide a Te Ao Māori view of victims' issues. This additional role could work with key Kaupapa Māori rōpū such as Ināia Tonu Nei, and commission Kaupapa Māori research designed to improve outcomes for Māori. The Office will be providing further advice on these options to the new incoming government.

The Chief Victims Advisor is currently developing a Work Programme for 2021

26. Through 2020-21, the Chief Victims Advisor will deliver reports that will provide a range of further evidence-based advice that expand on the four recommendations provided in *Te Tangi o te Manawanui: Recommendations for Reform* report (attached as **Appendix D** is the Chief Victims Advisor's work programme for 2020/21).

⁶ Including the Ministry of Justice, Courts (including Coroners), Crown Law, NZ Police, Ara Aotearoa, Serious Fraud Office, Oranga Tamariki), as well as agencies such as the Ministry of Social Development, and regulatory bodies such as Worksafe, Maritime NZ, and others.