



He Waka Roimata

Transforming Our
Criminal Justice System

First report of Te Uepū Hāpai i te Ora – SAFE AND EFFECTIVE JUSTICE ADVISORY GROUP

He Waka Roimata

“It was a privilege to be asked by Te Uepū Hāpai i te Ora to name its first report. This task was too important to perform alone, and so I discussed possibilities with friends and colleagues.

My colleague Dr Karena Kelly, of Victoria University of Wellington, suggested 'He Waka Roimata', which translates as 'A Vessel of Tears'. This seemed to me to reflect in a Māori way the purpose, indeed the burden, of this volume: to accurately convey to its readers the deep sense of frustration, hurt and grief we knew had been expressed to Te Uepū in its consultations with communities throughout Aotearoa.

It might be said that grieving is the necessary first step in the journey towards real change. It is my honour to offer He Waka Roimata: not just a name, but a declaration of hope.”

—Justice Joe Williams

Foreword

Tēnā koutou katoa

We have known for decades that the criminal justice system in New Zealand is failing us. It was a tremendous challenge and opportunity, therefore, to be asked by the Minister of Justice, Hon Andrew Little, to chair and join others in the independent advisory group Te Uepū Hāpai i te Ora. Te Uepū has been tasked with helping to lead public discussion to develop proposals that address the failures of New Zealand's criminal justice system. In this report, we reflect themes from the discussions we have participated in so far.

At times, we were almost overwhelmed by the range of problems we heard New Zealanders have experienced in their encounters with the criminal justice system. We were particularly moved by the experiences of people we have spoken with who have been victimised; of Māori whose experiences of the system are often negative (whether they have been victimised or have offended); and of others who have experienced multiple disadvantage and have struggled to find justice.

We recognise that finding solutions to the problems we have heard will not be simple. We will be required to work together and trust each other. In some cases, we will need to front up and take responsibility for past wrongs and deal with a legacy of social neglect. As we have often heard following the terrible events of Christchurch, we will need to be courageous in our compassion. We have shown in our response as a nation to this terrorist event that we have these sensibilities; we can, therefore, apply them to determining how best to create a much better justice system for all.

In addressing the failures of the criminal justice system, we need to honestly face up to our Te Tiriti o Waitangi responsibilities and recognise the needs of our newest citizens. We need to offer support to all our people, so the conditions that help drive antisocial and criminal behaviour (including poverty and prejudice) are addressed. In addition, if we are to succeed, we cannot keep thinking of people in categories of 'innocent' or 'guilty'. We must continue to have compassion for victims of spontaneous offending who are harmed at random. We also need to better understand the needs of people who have been victimised over long periods with consequences that are shown through their own offending behaviour.

The full name of our group is Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group. Regretfully, a safe and effective justice system is still a distant ambition for many people, for example, the victims of sexual abuse, the whānau of offenders and victims whose lives are put on hold while court cases drag on (sometimes for years), and those who are incarcerated and released with little prospect of being able to live crime free.

To recognise the need in this area and do nothing is unintelligent, uncivilised and unfathomable. Encouragingly, it seems an increasing number of people are willing to step up and meet the challenges. The system does not lack examples of innovation and success, but these need to become the norm, and this will take time.

In fact, significant and lasting change will likely take a generation to achieve. This is why we must all be involved. Change can only happen if voters pick up the conversation, which Te Uepū has ignited and facilitated, and governments of all shades can agree we need to do better – together. This report contributes to that continuing conversation.

Tēnei te mihi nui kia koutou

Hon Chester Borrows QSO

Chair, Te Uepū Hāpai i te Ora

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Executive summary

He Waka Roimata, the first report from Te Uepū Hāpai i te Ora - Safe and Effective Justice Advisory Group, shares reflections on conversations and submissions the group received from New Zealanders about the criminal justice system. We heard many diverse views, including from people harmed by crime and people who have offended. We also heard from their whānau and families, their communities and those who provide services within the system.

The conversations we had constantly reiterated the view for urgent transformation to our criminal justice system. Some people we spoke with had specific criticisms; others identified more general failings. Some of what we heard was confronting; some has been more optimistic. Without doubt, the clearest call we heard is the call for change.

Among these conversations the overwhelming emotion we encountered is one of grief – because so many people feel the system has not dealt with them fairly, compassionately or with respect; associated with this grief is often anger. However, we also heard the importance of hope and the belief that we can build a system that works for everyone.

We highlight in this report the dominant themes and issues emerging from what we have heard.

Dominant themes and issues

Many people harmed by crime feel unheard, misunderstood and revictimised. It was uncommon to hear positive experiences of the criminal justice system from people who have been harmed. We heard the system is not responsive to their needs and, in the most serious cases, can add to their distress.

We also heard that the number of Māori in the system is a crisis and in need of urgent attention. We heard the effects of colonisation undermine, disenfranchise and conspire to trap Māori in the criminal justice system and that racism is embedded in every part of it. That said, we heard from Māori that they still hold hope for change. They told us solutions for Māori exist, but they must be led locally and by Māori if they are going to work and be sustained over time.

We heard that violence is an enormous problem, particularly for families and children. As a nation, we find family violence abhorrent. Tackling it brings many challenges, which the justice system struggles to address. We also heard that those subjected to the violence of sexual assault have among the worst experiences of those in the criminal justice system and that our responses to it are not always the most effective.

Many people told us the formal justice processes are confusing and alienating and privilege those with more resources and education, while disadvantaging many others. We heard about problems with the adversarial system, delays, inconsistencies and difficulties with accessing justice services. Many told us they would like to see more alternative ways of dealing with criminal offending, and that these processes should be informed by tikanga Māori and restorative justice approaches.

We were also told that the system focuses on punishment at the expense of rehabilitation, reconciliation and restoration of the harm done by crime. We heard that many people want to prioritise solutions that focus on prevention. They said that a criminal justice response that focuses on punishment is often ineffective at keeping communities safe.

In attending to the criminal justice system many people told us that our social system must be attended to as well. They told us many families and whānau lack the basic necessities, and this makes them more vulnerable to crime (both as victims and perpetrators). We heard that iwi, hapū, local communities, non-governmental organisations (NGOs) and others want a greater role in improving the wellbeing of their people, but they are constrained by the siloed nature of government structures and funding arrangements.

We heard about the grief, hurt and anger experienced by people trying to get support for whānau and family members suffering from mental illness, distress from addiction, and drug and alcohol abuse. Many feel huge frustration that these issues are treated as criminal justice issues rather than health issues.

The problems with the criminal justice system that we heard about were often amplified for Māori, Pacific peoples, refugee and migrant communities, and minority groups, including Rainbow (LGBTQI+) communities and disabled communities. These people told us that all parts of the criminal justice system need to be better informed about the diverse needs of all our communities. They said people working in the system should have the appropriate cultural competencies to find workable solutions, services and supports.

Next steps

Successful transformation of the criminal justice system will require a deliberate focus on people who have been harmed, people who offend and their whānau and families in their wider social context. It will also require reform throughout the whole system and a long-term commitment to change.

We are convinced from what we have heard that solutions already exist and that people from all sectors of society wish to be actively engaged in building a justice system that all people can be collectively proud of. We are now developing some options for reform for our final report that we believe will help transform the criminal justice system to meet this goal.

1 Context

the failure of New Zealand's
criminal justice system

If jail makes people worse what can we do?

We have the solutions in our Pacific communities. We know what to do we need to be empowered to do it?

Everyone has to have a voice

Start looking local - looking here
we own the issue of crime - the values of respect and service (should) underlie the system

Build relationships

Ensure kaupapa Māori values are used Victims have to be heard, feel listened to, cared for

We have the courage to move forward as everything has failed

Creative and lateral thinking, and courage is needed Hope is the key ingredient

It is becoming overwhelmingly clear that our criminal justice system is not working. People who have been victimised are speaking up to say that the system is not providing what they need. The statistics are telling us that, too frequently, the people caught for offending have long-standing vulnerabilities (suggesting better and earlier support could help many to avoid the circumstances that lead to offending and contact with the justice system). Members of the public are also saying they have little confidence in the system.

One in five adult women have experienced partner violence

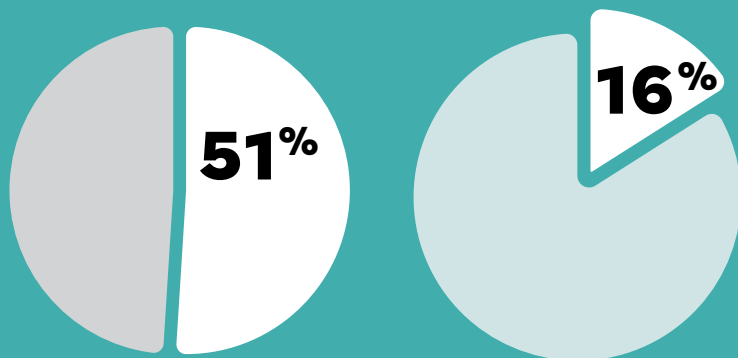


SOURCE: New Zealand Crime and Victimisation Survey 2018

Māori are over-represented in prison

Prison population

General population



SOURCES: Department of Corrections 2018 and Stats NZ 2018.

Public attention has recently focused on three symptoms of this failure.

The first symptom is our high rates of violence, particularly family violence. Many people have naturally voiced concern that this should not be tolerated.

The second symptom is the devastating impact of the justice system on Māori. The intergenerational effect on whānau and communities is severe, mirroring the impact on Indigenous people in other colonised countries. We know that the effect of colonisation is still being felt, with Māori facing considerable disadvantages, including disproportionate representation at every stage of the criminal justice system as both victims and offenders. A recent Waitangi Tribunal decision (WAI 2540)¹ relating to Māori and the criminal justice system also indicates a significant failure of the Crown to live up to its Te Tiriti o Waitangi obligations.

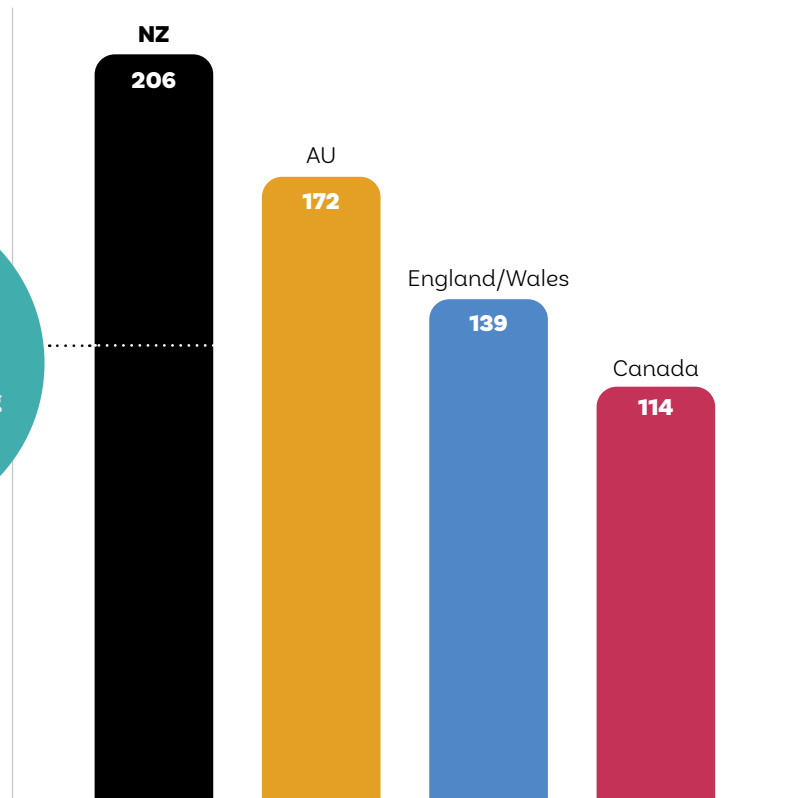
The third symptom of failure is represented by the high numbers of people who cycle through the system and the high imprisonment rate. The need to accommodate increasing numbers of people in prison has recently forced difficult and often contentious decisions about new prison builds. This failure is also imposing ever higher costs on the taxpayer at the expense of investments that could deliver more positive benefits to communities.

¹ Wai 2540 Department of Corrections and Reoffending Prisoners Claim, see Waitangi Tribunal's final report

New Zealand has a high imprisonment rate

Imprisonment rate per 100,000

61%
are reconvicted
within 2 years following
release from prison



SOURCE: Department of Corrections Annual Report p166

SOURCE: Ministry of Justice, March 2019 (NZ), 2016 (OECD); World Prison brief, 2018 (Australia, England & Wales), 2016 (Canada).

Many (largely ad hoc and incremental) changes have been made to address concerns about crime and improve the criminal justice system. Over the past 30 years, these changes have tended to increase the emphasis on punishment and control as the best response to people who break the law. However, the changes have not always resulted in what we might have hoped for; and the evidence suggests they have not made the system more effective, with reoffending rates remaining high.

The independent advisory group heard that the criminal justice system and responses to crime need rebalancing.

For change to be effective and enduring, however, it must be the right change. The advisory group's terms of reference outline the need for a national discussion about what an effective criminal justice system looks like. They say this must involve a thoughtful and informed conversation about what New Zealanders want and need from their criminal justice system, drawing on proven methods from Aotearoa New Zealand and overseas.

Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group has been established to help lead this public conversation. We have been asked to talk to New Zealanders about what they want from their criminal justice system, to canvass ideas and, from this discussion, recommend proposals about how the failing criminal justice system can be improved.

We have prepared this first report as a precursor to developing our proposals, to share the dominant themes we heard as we talked to New Zealanders about the criminal justice system.

2 Our process



First steps

As the first step in developing proposals to improve our criminal justice system, we sought to actively listen to and understand what New Zealanders think about the current system.

In particular, we wanted to hear from people with direct experience of the criminal justice system – those who have been victimised, who have been prosecuted for offending, and who offer services within the system. These have been our experts.

We tried to reach people from all parts of Aotearoa New Zealand. Beginning in late 2018, we have visited communities across the country. Our engagements have included a victims workshop, hosted by the Government’s Chief Victims Advisor, a hui Māori (Ināia Tonu Nei) hosted by Māori, and a Pacific fono hosted by the Minister for Pacific Peoples. We met with tangata whenua, local councils and non-governmental organisations (NGOs), as well as Police, Courts and Corrections staff. We visited prisoners, victims’ groups, businesses and business associations. We travelled to rural communities and metropolitan districts, and we talked to judges and politicians, as well as to some of our newest New Zealanders from among our migrant and refugee communities. We heard many diverse views and experiences.

When we have travelled, we have invited members of the public to join us in conversations, often in their local libraries; and we have invited comment through our website and via social media. We have also attended events where we expected there to be people interested in talking to us about the justice system; these ranged from the Justice Summit in August 2018 to the celebrations at Waitangi in February 2019.

Overall, we estimate we have attended over 220 hui across 13 regions, talked directly with many hundreds of people and received over 200 online or emailed submissions. Effectively, we have heard from thousands of New Zealanders.

It has been a privilege to hear about so many people’s experiences, and we have been humbled by the goodwill and hospitality shown to us. But we do not own this conversation; it belongs to everyone. We encourage New Zealanders to keep the conversation going with each other so they can inform change to the system.

We want to continue the conversation

This report highlights the dominant themes and issues we have heard about and identifies the major problems with the system that need particular attention.

Communities we visited

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In particular, we wanted to hear from people with direct experience of the criminal justice system – those who have been victimised, who have been prosecuted for offending, and who offer services within the system. These have been our experts.



Te Uepū Hāpai i te Ora

The Safe and Effective
Justice Advisory Group

The purpose of the Advisory Group is:

- to engage in a public conversation about what people in New Zealand want from their criminal justice system
- to canvass a range of ideas about how the criminal justice system can be improved

Find out more about us at:

www.safeandeffectivejustice.govt.nz/advisory-group

The members of Te Uepū Hāpai i te Ora are:



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Professor Tracey McIntosh MNZM

3 Problems with the current system

There are failures at every stage. People come out worse than they went in. We don't tell us what to do, we just do what we need to do. We build relationships with Police and with our people to make the changes. We don't wait around for the right policy, we don't get on with it - our lay advocates and our advisors to speak on behalf of Māori need to start again. You can't try and fix this broken system - we just need to start again. (We) need to address grievances compounded from generation to generation.

What we heard

The overwhelming impression we got from people who have experienced the criminal justice system is one of grief. They feel the system has not dealt with them fairly or compassionately or with respect; often associated with this grief is anger.

This sense of grief and anger is particularly evident among individuals who have experienced the worst crimes. We also encountered it among the families and whānau of those who have experienced the system – either because they have been victimised or because they have offended.

Our conversations have reinforced our view that the criminal justice system is in urgent need of reform. We encountered wide agreement that the system is failing and significant change is needed at all levels. Māori, in particular, feel a strong sense of disengagement from the system. They see it as one that has been imposed on them and not one they would have signed up to when their rangatira² signed Te Tiriti o Waitangi in 1840.

Without exception, Māori we spoke with identified relatives (usually their tāne, although increasingly their wāhine) who were removed from their whānau by the criminal justice system. They talked with us about their resulting mamae.³ We commonly heard that this removal was not the first – many also experienced removal as tamariki into state care.

We witnessed grief and anger among people who the system should most protect – those who face significant disadvantage because of their circumstances. This can include women and children, people who are economically disadvantaged, people who suffer mental illness, and migrant, refugee and minority communities who experience prejudice.

We also heard this sense of grievance with the criminal justice system can span generations.

We are concerned by what we heard. We are concerned, not only because people should expect better, but because if people are being let down by the criminal justice system, they will lack trust and confidence in it. To be effective, the criminal justice system needs the trust and confidence of the public to ensure legitimacy. It needs trust and confidence to ensure the public's participation in the administration of justice – to report crimes to the Police, to co-operate with criminal prosecutions and simply to obey the law.

Some people we spoke to have not had direct contact with the system but they hold strong views about it. We acknowledge it is important we also understand their views to inform our thinking. For the system to have the trust and confidence of the public, we need to understand and address both people's fears about crime and concerns with the criminal justice system, along with the issues experienced by those in direct contact with it.

“There are failures at every stage. People come out worse than they went in.”

Northland

“We need to start again. You can't try and fix this broken system – we just need to start again.”

Pacific fono

“[We] need to address grief – compounded from generation to generation.”

Canterbury

² Chief (male or female), those of high rank.

³ Hurt and pain.

Clear themes

As we travelled around the country, we heard many criticisms of the criminal justice system. Some criticisms were related to specific aspects of the system; others identified more general failures. Some of what we heard was confronting; some has been much more optimistic.

The major problems, which are discussed in the remainder of this report, can be summarised as follows:

- too many people who have been harmed by crime feel unheard, misunderstood and re-victimised
- the number of Māori in the system is a crisis
- violence is an enormous problem, particularly for families and children
- formal justice processes fail us too often
- the system is too focused on punishment and neglects prevention, rehabilitation, reconciliation and repair of the harm done by crime
- individuals, families and whānau feel unsupported and disempowered by the system, and the ability of iwi, hapū,⁴ communities, NGOs and others to provide support is constrained by the siloed nature of government structures and funding arrangements
- people experiencing mental distress lack the support they need.

4 Clusters of whānau who share closer and more direct genealogical ties to a common ancestor than iwi.

We also heard many people say they want to be part of the solution. Māori said they not only want to be part of the solution but see it as an obligation of the Crown to ensure any solution is designed in true partnership with them. We were also inspired by the work of many amazing people committed to improving the experience of those who have been affected by crime, and we take encouragement from them.

“We don’t wait for Government to tell us what to do, we just do what we need to do. We build relationships with Police and Courts and use care and kindness with our people to make the changes. We don’t wait around for the right policy; we don’t have time to do this. We need to get on with it – iwi lay-advocates and iwi advisors to speak on behalf of Māori.”

Bay of Plenty

4 Victims

Whatever your healing journey, you should

be able to have what you need

Our concerns include accessibility for both alleged perpetrators with disabilities and disabled victims within the legal system can often make victims of crime feel like accessories in the process. A lot of retailers don't report incidents.

[We need] more paid roles to support victims. If we [small business owners] were white, we would have been treated differently. It is as if our lives don't matter. These roles should be highly skilled and adequately paid. Don't always rely on volunteers.

op talking about victim support. It's the whole family that needs support

Maybe the State should pay the reparation to the victim, and then the offender pays back the state. Could there be a consolidated fund? That would be wonderful, imagine how much better the victim would feel about it.

people are moderate - most victims don't want strong retribution - just want to know [The] judicial system needs to be focused on

We were told that the criminal justice system must change to address the needs of people who have been victimised.



83%
say the criminal
justice system is
NOT SAFE for
victims

From a survey conducted
before a recent victims' hui

SOURCE: Strengthening the Criminal Justice
System for Victims Survey, Chief Victims
Advisor, 2019.

The experiences of these people usually form the basis of any case against those who offend. In a sense, they are central to the criminal justice process, or should be. However, few of the people we spoke to who had been seriously harmed by crime reported positive experiences of the criminal justice system; many told us it produces further harm. Others told us the justice system is disempowering, confusing, slow and disrespectful. We heard, for many victims, the justice system leaves them with a sense that justice has not been done.

The justice system is not responsive to people who have been victimised

Under New Zealand's common law system, victims have traditionally had no formal role in the criminal justice process. The process focuses on determining the guilt or innocence of individuals who may have offended, and responding to them accordingly. Decisions about what happens when a crime is committed are (almost exclusively) in the hands of parties other than the victim. For example:

- police decide whether or not to investigate and/or prosecute a person for a crime
- courts determine guilt and what sentence may be appropriate
- the Parole Board decides whether or not to release a prisoner.

Unless called as witnesses, victims and their whānau and families have had no role in this process at all.

In recent years (often in response to demands from victims and their advocates), concessions have been made, and victims have been given some (limited) rights. For example, they are now entitled to:

- be kept informed about the progress of their case through court
- at sentencing, make a victim impact statement telling the court how the crime has affected them
- tell the judge what they think about an offender being considered for name suppression
- attend a family group conference and say what they would like to see happen, if the offence was committed by a child or young person.

These entitlements, however, are not enforceable. We heard they are not always honoured and victims' needs continue not to be met.

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

Web submission

“[The] judicial system needs to be focused on the victim - now it seems to focus on everyone other than the victim.”

Otago/Southland

People who have been victimised have many different needs but few choices

One of the problems we heard is that the number of options available to meet the different needs of people who have been victimised is simply inadequate.

“Whatever your healing journey; you should be able to have what you need.”

Wellington

Different people have different experiences of crime. For example, the family of a homicide victim will have a very different experience from a household or small business that has been burgled. People who have been victimised are also likely to have different expectations of the criminal justice system. Some seek offender accountability, some want retribution, some seek healing, some want financial reparation, some want public acknowledgment; most want others to be safe from future victimisation, and all want to feel safe themselves.

“Most people are moderate – most victims don’t want strong retribution – just want to know someone has been held to account and that it won’t happen again.”

Canterbury

As well as these differences, we heard that people affected by crime also have diverse needs relating to their ethnicity, religion, gender identity, disability and sexual orientation. Members of the disabled community told us about specific challenges they face in accessing justice services.

“Our concerns include accessibility for both alleged perpetrators with disabilities and disabled victims within the system.”

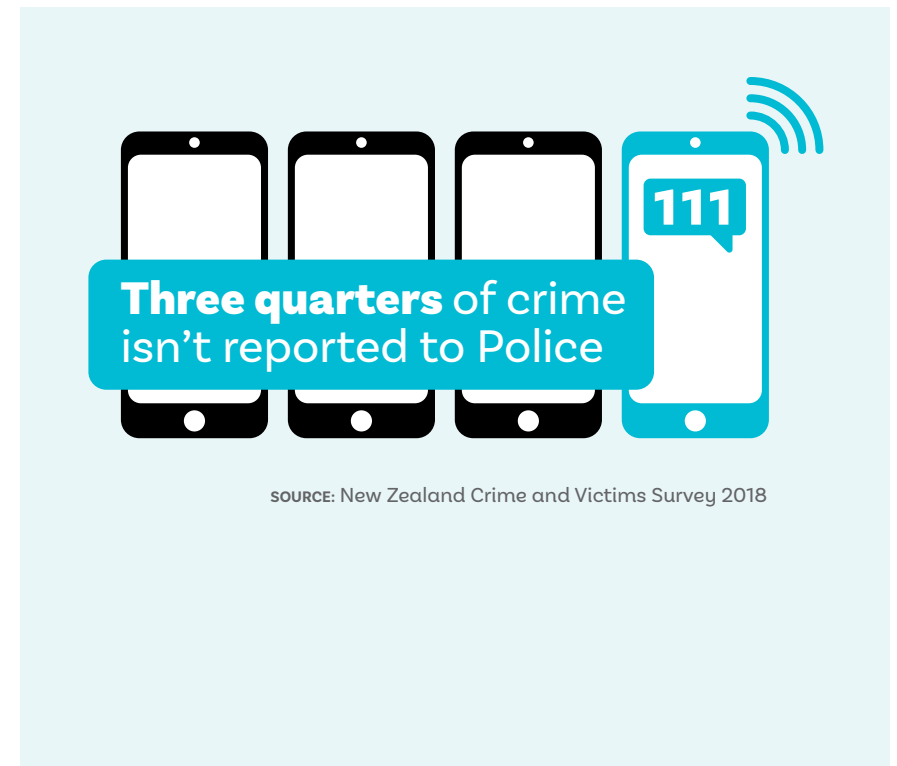
Auckland

These factors help to inform or determine people’s experience of crime, their response to it and the particular support they need to recover from any harm. They highlight the need for services to be delivered in appropriate ways.

“If we [small business owners] were white, we would have been treated differently. It is as if our lives don’t matter.”

Manukau

Despite this range of potential needs, victims have few choices. This is partly because, as noted, the system takes decision-making power from them. It is also because the system itself offers few options (see chapter 7). For many victims, the choice is either to report a crime, and face the potentially difficult prospect of formal court processes (if police investigate and apprehend a suspect) or not to report and seek whatever support may be available to them privately. Even this choice might be out of their hands if the offence occurs in public and police become involved without the victim notifying them.





IN ONE YEAR, **3 in 10** New Zealanders are **victims of crime**

SOURCE: New Zealand Crime and Victims Survey 2018

Many people affected by crime do not use the formal justice system

We know that most people who are victimised do not report the crime against them. Instead, they seek the support they feel they need from whānau, family and friends. In more serious cases, they may seek support through NGOs, such as refuge services, or, in the case of sexual harm, through ACC, or, in the case of crimes like fraud, from their banks.

“A lot of retailers don’t report incidents.”

South Auckland

“I have been burgled 3 times and know who did it; but I don’t want to report it because I don’t want them to go to prison ... so I don’t know what to do.”

Waikato

It is difficult to know how big the problem of unreported crime is. It may be that many people who do not report crimes against them are satisfied their needs can be met without resorting to formal criminal justice processes. However, we heard that, for many people, this is not the case. We heard many people do not report crime because they do not feel safe enough to report it, or because they believe the formal justice system will not be responsive to their needs and it may make matters worse. This shows a lack of faith in the system, undermines its integrity and suggests it is not fit for purpose.

Formal justice processes fail victims in many ways

If people do report crime, we heard the services and support for victims are under-resourced, inadequate and fragmented, and justice processes often alienate and may re-traumatise them.

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

Otago/Southland

As well as experiencing the physical and economic consequences of a crime, people who are victimised often suffer significant psychological and social consequences (particularly in the case of violent crime). This may include strong emotions, such as anger, grief, guilt, anxiety and depression. We heard the system is often ill-equipped to adequately deal with the many vulnerabilities of people who have been victimised – at least in the most serious cases. For example, we heard of cases where brain injuries, physical disabilities and mental health issues resulting from a crime are being tested regularly by ACC, in order for victims to prove they require ongoing medical and financial support. We were also told how stringent victim support requirements regularly leave victims of serious crime feeling unsupported and financially disadvantaged.

“Maybe the state should pay the reparation to the victim, and then the offender pays back the state. Could there be a consolidated fund? That would be wonderful: imagine how much better the victim would feel about that.”

West Coast

We also heard the system does not always recognise that a crime, particularly if it is more serious, can have a significant impact on the family and whānau of the individual who was victimised. This wider group may also need significant support but largely goes unrecognised by the present system.

“Stop talking about victim support. It’s the whole family that needs support.”

Manukau

Victims, and the people who support them, told us that the formal justice system, and court processes in particular, are confusing, stressful and costly. They are costly financially, because victims get little or no compensation for attending (sometimes prolonged) proceedings, and costly emotionally, because of the uncertainty of outcome and the time it often takes to resolve a case.

“Victims need a shorter process.”

West Coast

We were also told that victims do not reliably get access to the information they need to make sense of the proceedings they are involved in or the crime they experienced. We heard this is often because people within the system simply fail to communicate with victims (or to think such communication is important). We also heard of active barriers within the system that prevent victims from finding out what has or is happening.

“The Privacy Act should be changed so that victims ... gain the information they need to heal and understand what happened to them.”

Tasman/Marlborough

Formal processes may also increase victims’ insecurity. For example, they may not trust the system to protect them after disclosing an offence, and they may feel exposed and fearful through contact at court with those who have offended against them.

“When people are charged, they come back to the business the following week even angrier.”

New Lynn

“Change the layout of the courtroom so the victims don’t have to keep coming into contact with offenders.”

Otago/Southland

We heard victims are given little opportunity to have their views and fears validated or heard (including, for example, because victim impact statements may be edited before being presented to the court), and their lack of trust in the system’s ability to protect them is sometimes compounded by perceived racism or discrimination.

“Victim impact statements are being diluted by the courts.”

Auckland

The needs and hurt of victims (especially those affected by the worst crimes) often continue beyond the end of a trial and are left unaddressed.

As discussed in chapter 8, people serving more than two years in prison must be considered for release on parole. Victims registered on the Victim Notification Register are entitled to make a written and/or oral submission to the Parole Board when it considers parole for the person who offended against them. They are also entitled to a copy of the Parole Board's decision.

We heard that this process, while meaning to empower victims, often does not work. Victims do not know or receive information about registering or receive it when they are too traumatised to make an informed decision about whether they want to be registered. The consequences of being registered can also re-traumatise them:

“... it's a long-term process, when people come up for parole, year after year, it's revisited by the family and the victim, and then they have to cope with the possibility that the person who hurt them might be released. Their level of vulnerability skyrockets, and the level of support that that person required at the start of the process is now required again, and again each time; it never ends.”

West Coast

As difficult as these processes are for many victims, we heard from another group for whom processes at trial and following the end of a trial are even more difficult. These are the victims of serious crime, where the perpetrator is found not guilty by reason of insanity. They do not have the same rights to information and support as other victims of crime, and they told us this is not good enough, unfair and unjustified.

“We [victims in crime where the perpetrator was found ‘not guilty by reason of insanity’] want rights like other victims of crime.”

Tasman/Marlborough

Legal reasons exist for why this group of victims is treated differently from others – some are tied to the right to privacy of people who are very unwell and others to a basic tenet of the system that someone can only be held accountable for a crime if they understood and had the intention of committing it.

However, we heard this often causes deep distress, both because of anxiety around the fear that a perpetrator will be released from hospital back into their community and because many victims feel the technical ‘not guilty’ verdict implies a sort of denial that the, often severe, harm they experienced was real. We note that a private member's bill intended to address these concerns was recently pulled from the ballot.

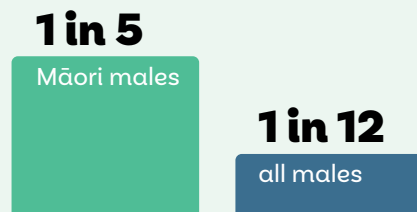
We return to several of these themes in chapter 6.

5 Māori

We have to be the circuit breakers, we have to believe in whānau. We need to ask Māori how to fix their own people. There is a lot of hurt that needs to be addressed before we can fix the justice system. The justice system has been used as a blunt tool of colonisation ... it has been used to harm whānau in this room or in this country that has not been addressed. With the best will in the world a Pākehā system will not work for Māori in an appropriate way to achieve positive results. The numbers (Māori in the criminal justice system) are too high. It shouldn't be dealing with tikanga - the pūtea (funds) should be coming to Māori to decide how to use tikanga - not the Pākehā. We've been trying to fix Maori for 175 years and it's still not working. We have to be brave and start working with them at the start. The problem - it's a Treaty issue. We shouldn't be talking about a justice system, we should be talking about a Treaty issue.

We heard the voices of many Māori. These included those harmed by crime; iwi, hapū and community representatives; lawyers, social workers and teachers; Māori who have experienced state care; Māori who are or have been gang affiliated; and Māori who have been in prison. They told us that the criminal justice system hurts all Māori.

A high percentage of Māori males have been imprisoned by age 35



SOURCE: Ministry of Justice

We heard that the negative statistics describing the over-representation of Māori in prison have been normalised and this has created a negative stereotype of Māori as being criminal that is entrenched and harmful. We heard a demand for accountability – that those responsible for the criminal justice system should recognise and accept the harm it and the broader social system has done and is doing to Māori who have both been victimised and have harmed. Māori are clear it is imperative they recover control over the things that affect Māori and that they work to restore the mana of those systems.

“There is a lot of hurt that needs to be addressed before we can move forward.”

Whanganui

Throughout our conversations about the criminal justice system, we have been mindful that our terms of reference ask us specifically to identify principles to guide the future development of the system, ensuring that our advice reflects mātauranga Māori⁵ and seeks to strengthen Te Tiriti o Waitangi partnerships with Māori. We have, therefore, sought to identify and understand the drivers for the over-representation of Māori in the system and to seek kaupapa Māori⁶ solutions.

- 5 Knowledge, comprehension and understanding of all things within a Māori world view.
- 6 Philosophical doctrine, incorporating the knowledge, skills, attitudes and values of Māori society.

“Government needs to ask Māori how to fix their own people.”

Hawkes Bay

Although issues relating to Māori feature in other chapters, we focus here on what we heard in Māori-specific conversations in terms of context, topic, area and solutions. This includes concerns expressed to us regarding:

- the number of Māori in the criminal justice system
- Te Tiriti o Waitangi and the criminal justice system
- the detrimental impact of colonisation and racism, which affect Māori at every point in the criminal justice system, including intergenerationally
- the need for Māori to lead and shape solutions to the failures of the criminal justice system.

Māori in the criminal justice system

We attended the Hui Māori on criminal justice issues convened in Rotorua in April 2019 and heard many powerful voices for change. We also received a strong reminder of the appalling number of Māori caught up in the criminal justice system.

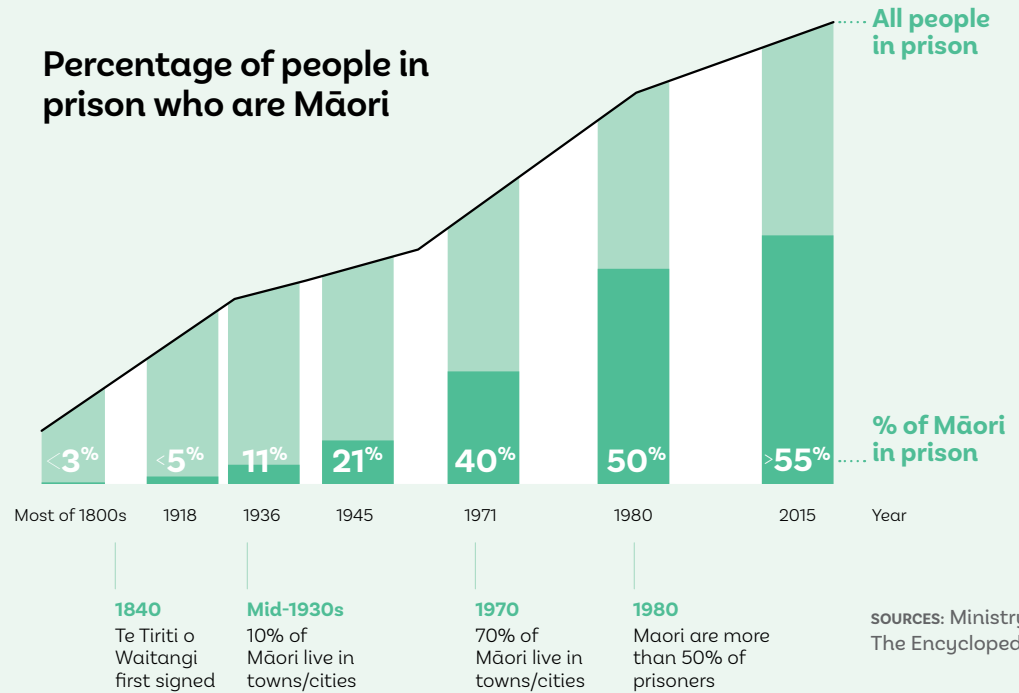
“There is not a whānau in this room or in this country that has not been affected by these numbers [Māori in the criminal justice system].”

Hui Māori

These numbers have remained constant for decades and are expressed in the devastating effect they are having on the wellbeing of our whānau and communities. The gross disproportionality of tāne Māori in the system has been entrenched since the 1980s. For more than a decade, we have seen a huge increase in the number of wāhine Māori who have been imprisoned. While Māori men make up over half of the male prison population, Māori women make up around 63 percent of the women’s prison population.

The women come from communities where they are members of whānau, have iwi and hapū connections and intimate and complex ties that link them to places, histories and people. They are likely to have experienced multiple forms of social harm, including high levels of violence and sexual violence, and some have gone on to perpetrate social harm on others. The intergenerational reach of imprisonment is particularly clear when considered against the huge increase of Māori women into the prison system.

Percentage of people in prison who are Māori



The data tells the story that, at every point in their lives, and over generations, Māori experience disadvantage that increases the risk they will come into contact with the criminal justice system. Poorer physical and mental health, education, housing and employment outcomes significantly reduce their ability to participate in and contribute meaningfully to their whānau, communities and wider society. Combined with high rates of removal of their tamariki into state care and protection, leading many to describe Oranga Tamariki as a ‘gateway into the criminal justice system’, this has helped produce a situation where Māori now comprise around 16 percent of the general population but make up:

- 38 percent of people proceeded against by police
- 42 percent of adults convicted
- 57 percent of adults sentenced to prison.

In the face of these facts, Māori we heard from were clear about the need to totally rethink the current criminal justice system.

“We’ve been punishing Māori for 175 years, and it’s still not working. We have to be brave and start working with them at the start of the system.”

Tasman/Marlborough

Te Tiriti o Waitangi and the criminal justice system

At the Hui Māori, we heard a critical challenge in the question: ‘Would our tīpuna Māori, as a practical consequence of their signing the Treaty, have expected their mokopuna to be put into prison and into state care?’

“The problem – it’s a Treaty issue.”

Northland

Those present at the hui responded resoundingly in the negative. They said that the notion of isolating people from their whānau and disrupting whakapapa is not part of tikanga.⁷ We heard that prison and state care are not seen as appropriate solutions to addressing the harms caused by crime or the things that cause crime. Participants at the Hui Māori identified solutions from te ao Māori that they are confident offer unique and effective ways of dealing with those who harm others and ensuring safe environments for all mokopuna.

A more fundamental issue we heard in many of our conversations is that, if the criminal justice system is to be improved, then constitutional change also needs to be addressed. Māori, in particular, want to realise the promises of Te Tiriti o Waitangi to develop and control their own institutions – as a real expression of tino rangatiratanga.⁸ They are seeking to find culturally informed, adaptive solutions to

7 Tikanga Māori refers to 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.

8 Unqualified exercise of chieftenship – self-determination and autonomy – as guaranteed in Te Tiriti o Waitangi.

the problems of social harm and crime, and to work in equal partnership with government agencies to respond to these challenges.

“The justice system has been used as a blunt tool of colonisation ... it has been used to harm whānau.”

East Coast

Colonisation and racism

Colonisation and issues of racism have consistently been identified in our conversations as underlying the relationship of Māori with the criminal justice system. We heard that, for Māori, the impact of colonisation, neo-colonial practices and racism are everyday experiences that undermine, disenfranchise and frequently conspire to trap them in the criminal justice system. We heard that the criminal justice system has been used to actively weaken and undermine Māori culture and identity. We also heard these are confronting and difficult concepts for many non-Māori.

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

Wellington

Māori land loss

1860–2000

1860

In 1860 Māori held about 80% of the land in the North Island.

NB By 1860 the vast majority of land in the South Island had already passed out of Māori ownership.

1910

In 1910 Māori held nearly 27% of the land of the North Island.

2000

In 2000 Māori held only a fraction of the land of the North Island – perhaps as little as 4%.

SOURCE: ‘Māori land loss, 1860-2000’, (Ministry for Culture and Heritage), updated 17-May-2017

Colonisation started around 1840 with the signing of Te Tiriti o Waitangi and the arrival of European, mainly British, settlers who demanded land. Despite the expectation of Māori that they would continue to exercise rangatiratanga⁹ following the signing of Te Tiriti, subsequent colonial governments, through various mechanisms, including criminal law and legislation, sought to establish control over land and other Māori resources and actively pursued policies of assimilation.

In the mid-20th century, driven largely by economic pressures, Māori moved from the rural areas they had previously lived in to urban areas, where they were encouraged to integrate into 'mainstream' (Pākehā) society. A major effect of this was to separate Māori from whānau and traditional structures of support. This shift coincided with a significant increase in Māori involvement in the criminal justice system. For the first half of the 20th century, convictions against Māori were more or less commensurate with their share of the population; this pattern changed rapidly from around 1950.

Many Māori described colonisation and its impact on them as an overwhelming trauma: a denial of voice, opportunity and potential on an intergenerational scale; a loss of rangatiratanga, mana and dignity; stolen identity; stolen culture and language; stolen land and dispossession; a loss of place; and, for many, disconnection from whakapapa. Colonisation has led to enormous problems for Māori, as for Indigenous peoples in other colonised countries, including poor health, poor education and housing, unemployment and low incomes culminating in severe social and economic disadvantage – the major social indicators that lead to crime.

“We need to be clear about the impact of colonisation and how current trauma is an extension of historical trauma. The system needs to acknowledge Māori in pain.”

West Coast

We were humbled that Māori shared their experiences with us. They highlighted both the historical and intergenerational impact of colonisation on their whānau and communities and its present-day impact within the criminal justice system, which is experienced as racism.

“The system is inherently racist. It all goes back to the impacts of colonisation. They’ve been brought up in violence and poverty, and it keeps going.”

Otago/Southland

A consistent message throughout our conversations has been that racism is embedded in every part of the criminal justice system. We heard that the system often treats Māori, and Māori ways, as inferior and that individuals acting within the system hold active biases against Māori (consciously and unconsciously). This was reflected in the comments we heard (see, for example, comments in right column), in the different effects of the system on Māori and the composition of the justice workforce.

“CYFS are like an abuser. They used taking my moko as a threat when I asked for help. We are scared of them.”

— NORTHLAND

ORANGA TAMARIKI

“Police are the gateway to the criminal justice system, and it is police decisions that are sending more Māori into it than any other group.”

— TARANAKI / WHANGANUI

POLICE

“Duty lawyers are often patronising and racist.”

— WAIKATO

DUTY SOLICITORS

“I don’t know why a hard punishment is handed out to our people... I really believe this is racism...the system is more punitive to Māori than Pakeha.”

— WAIKATO

JUDICIARY

“A number of staff in Corrections, particularly from overseas, lack seriously for cultural competency and general motivation, use power to force compliance rather than respect.”

— OTAGO / SOUTHLAND

CORRECTIONS

9 The right to exercise autonomy and self-determination.

Despite these challenges, Māori we spoke to were not without hope. Many offered tangible solutions to address the problems of racism within the justice system. Primarily, this means exercising rangatiratanga in all elements pertaining to Māori. The current justice workforce also needs to upskill through provision of cultural competency training based on Te Tiriti o Waitangi, te reo and tikanga Māori; courses on both Māori and Aotearoa New Zealand history; and secondment opportunities to work with iwi organisations and NGOs. Many said that incremental, targeted changes would not be enough, and complete structural change is required and critical, to ensure fairer communities and the ability for all to truly flourish.

“The system has broken our families, but the marae can be the basis of healing them.”

Auckland

Rangatiratanga – Māori-led solutions for Māori

A strong message often reinforced in our conversations was that solutions to problems with the justice system that affect Māori must be led locally and by Māori if they are to produce positive results. They cannot be imposed by those with no connection to the communities concerned. Resourcing was also seen as critical. We heard that communities struggling with multiple deprivations cannot be expected to also find the extra reserves required to address their current needs in relation to the justice system.

**“We have to be the circuit breakers;
we have to believe in whānau.”**

Northland

We were reminded that Te Tiriti o Waitangi imposes obligations on government to work in partnership with Māori. This includes finding solutions to the evident problems with the criminal justice system. Hui Māori, in particular, urged government to accept that Māori know what works for them and must, therefore, lead the development and implementation of solutions and responses, with government support.

“The government shouldn’t be dealing with tikanga – the pūtea [funds] should be coming to Māori to decide how to use tikanga – using the Treaty partnership.”

Orakei

We heard from iwi, hapū and Māori NGOs that Māori want to work constructively with government agencies. They want to find solutions that better support Māori affected by crime and that reduce the numbers of Māori caught up in the criminal justice system. We further heard that Māori have an expectation to be decision-makers when it comes to these solutions. They expect government to accept responsibility to actively protect Māori rights and interests through honourable conduct and fair processes.

We were told that solutions will require a holistic approach and to adopt appropriate tikanga elements into the system. Māori want Māori in places of leadership, involved in programme design, implementation and governance of justice system responses.

“We shouldn’t be talking about a justice system, we should be talking about strengthening families.”

Waikato

Many hui participants stressed that tikanga-based solutions must be considered as a priority. They said principles such as whanaungatanga, mana, manaakitanga, utu, tapu and noa, and the practices associated with them, can provide the basis for effective tikanga-based solutions.¹⁰ They also said Māori need to exercise rangatiratanga over funding and that partnerships must be properly resourced.

¹⁰ Whanaungatanga, mana, utu, tapu and 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 re-balance 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.

They also warned us that cultural practices will not work if appropriated by people who do not understand them. To get traction and ensure that solutions stick, they need to be developed and implemented by those who have sound understanding of the wider tikanga associated with them.

“Don’t take our idea and then run it – devolution is key.”

Hawke’s Bay

To illustrate this point, people spoke of their deep disappointment that proposed kaupapa Māori solutions in *Puao-te-Ata-Tu: The report of the Ministerial Advisory Committee on a Māori perspective*¹¹ were ‘cherry picked’ and adapted without an understanding of the wider tikanga connected to them. As a result, they did not work. This is a common example. It reinforces our view that, if tikanga-based solutions are to be developed and designed for and by Māori within the criminal justice system, they must include an understanding of the kaupapa Māori context in which the solutions are set.

Finally, as part of this tikanga-based approach, we were reminded that the person who offends and the person who is victimised do not stand alone but are part of a whānau. Whānau have a pivotal role in providing support to the person harmed and to the person who has harmed, and to be part of the solution. Whānau themselves also need support. This means solutions will need a whānau-centred approach that both recognises the whānau dynamic and reflects that whānau have also been affected by having a member in the criminal justice system.

¹¹ *Puao-te-Ata-Tu: The report of the Ministerial Advisory Committee on a Māori perspective* was published by the Department of Social Welfare in 1988 and reported on the treatment of Māori in New Zealand society.

6 Family and sexual violence

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When will Police get it: rape is not sex, it's violence! Ad

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6 Family and sexual violence

Violent crime attracts the most public attention of all crime, and it can invoke a lot of fear. This fear frequently focuses on stranger violence. However, we heard that the violent crime we should be most concerned about is happening in our families. We also heard that those who experience the violence of a sexual assault have among the worst experiences of any group in the criminal justice system, and our responses are not always the most effective.

Every 4 minutes



Police attend a **family violence callout**

SOURCE: Data Summaries 2017: Snapshot, New Zealand Family Violence Clearinghouse June 2017.

Family violence

Many people told us that family violence is a significant problem in their communities. They spoke about the substantial harm (physical, psychological and emotional injury) borne both by individuals directly experiencing family violence and those who witness it, especially children and the wider family and whānau. We heard this harm is frequently perpetuated across generations and is felt among all our diverse communities.

We also heard the criminal justice system is not working effectively to prevent or address this violence and is frequently exacerbating it. People told us that services directed at family violence are too fragmented, under-resourced, often poorly targeted and ineffective. They said processes are too drawn out (particularly for children), and too many people working in the system lack the skills, understanding and support they need to effectively help those who experience family violence. Further, not all communities have equal access to the services that do exist, for example, we heard rural people often struggle to access services.

“We have a shortage of prevention teams – there are heaps of families we would like to go back to [after a family violence call out] but we haven’t the capacity.”

Northland

“[There needs to be] good sharing of information between the family and criminal courts.”

Taupō

“After escaping from family violence with a protection order, it took 8 years for the settlement of assets in the divorce, driven by husband defending himself, obstructing the process, slowing it all down, enabled in this by the courts and using the courts to continue power and control.”

Waikato

“People in the system need to understand what family violence is – family violence is a cumulative body of harm that is episodic and often hidden. Perpetrators often have a very good public face.”

Taupō



40%
of all homicides are
family violence



29%
of **family violence deaths** are
children killed by abuse or neglect



Māori are 4x
more likely than non-Māori to be
killed by family violence

SOURCES: Homicide Victims Report 2017, NZ Police,
Family violence deaths from Family Violence
Death Review Committee. 2017. Fifth Report
Data: January 2009 to December 2015.

Some issues emerged as recurrent themes in our discussions about the criminal justice system generally (see chapters 7 and 8). Other issues are more specific to the problem of family violence.

Challenges of family violence

Family violence has been described as both ‘very simple and very complicated’. It is simple, because most people agree that violence in families should not be tolerated. However, it is complicated because (among other things) it speaks to our beliefs about relationships and gender, about who should be responsible for family and whānau wellbeing in our communities and how public and private resources should be used.

These challenges were highlighted in our conversations with many New Zealanders, particularly ethnic and minority communities, including Māori, Pacific peoples, migrant and refugee communities, and members of the Rainbow (LGBTQI+) communities, and disability communities. These groups told us their needs are frequently misunderstood and, consequently, they are poorly served by the justice system in relation to family violence, including culturally sanctioned forms of abuse.

“A ‘family harm model’ does a disservice to ethnic women. Frontline practice does not find the ‘mutual participant’ language helpful. More PSOs [Police Safety Orders] are issued against victims.”

Manukau

“Violence between same-gendered couples is often dismissed by police as ‘just a cat fight.’”

Wellington

For example, we heard culturally endorsed abuse includes dowry, forced marriage and honour-based violence. Those who break away from such abuse are stigmatised and isolated and receive little support to rebuild their lives. Current provisions within the law and justice system do not adequately address these types of issues, are frequently unhelpful and can be misused. We were told that practitioners working in this area are not equipped with the appropriate tools and cultural capability to address the needs of those who have been affected by this kind of abuse. Plus, victims who do not speak English are further compromised because they are unable to relate their experiences without being misunderstood or misinterpreted.

The challenges are also evident in the fact that family violence is considered within two jurisdictions of the court: the family jurisdiction (which is essentially a private forum) and the criminal jurisdiction (where the state plays a more active role). We heard that divisions between these courts can lead to perverse decision-making, that mechanisms available to protect vulnerable family members and address the underlying issues are often ineffective, that processes can be too complex and that accessing them is difficult for many (including language and other cultural barriers). We heard that the agencies supporting families involved in these processes, including Oranga Tamariki, are frequently not well aligned.

The numerous criticisms we heard of protection orders highlight many of these issues. We heard this mechanism is used too often and the (culturally appropriate) support families and whānau need to manage relationships and other issues leading to an order being made is infrequently provided. We also heard the legal aid threshold acts as a barrier to many women wanting to access orders, and police responses to breaches are often inadequate. We are aware some issues are being looked at by the independent panel that is examining the 2014 family justice reforms. We look forward to their report.

Fragmented and siloed services

Along with a lack of availability, we heard that services are fragmented and siloed (see chapter 9.) While encouraging stories exist of services collaborating in response to these challenges, this is not sufficient. We heard there is still an urgent need for:

- more investment in prevention and support services
- better coordination and partnerships among these services and with communities
- more workers with the right skills and ability to intervene with families and whānau affected by family violence (including in ways that are sensitive to diverse cultural preferences).

“We need more programmes and support for family violence – we see boys come in with their mothers, then we see them later after they have turned into offenders. There is no one to guide them, no father, no programmes.”

Northland

While family structures and customs vary significantly, we heard that New Zealanders share a belief in the importance of family. It follows, therefore, that we should all support the effort to be violence free. Further, we heard that a high prevalence of family violence helps to perpetuate cycles of crime. Addressing it can therefore help to improve the criminal justice system in a much broader sense. As was said to us:

“For every offender there are also victims as well. They were abused and then go on to join gangs. Women in prison are victims of family violence. A lot of offenders are victims, and if we don’t deal with it, they will continue to harm people.”

Waikato

“[We want] fewer protection orders – they are not always the solution, but government agencies always want them. A whānau protection plan can give good protection, but government agencies always want an order. What happens is the abuser breaches, and they end up in prison.”

Northland

Sexual violence

Effects of sexual violence

Sexual violence and the damage done by it is undeniably common in Aotearoa New Zealand. The impact of sexual violence on individuals, either children or adults, also has severe ramifications for their families and whānau. We heard it is essential to do much more to prevent it.

“Address the things that normalise rape culture in New Zealand.”

Wellington

Several people shared their experiences of brutal sexual assaults. As shocking and heartbreaking as these attacks were, we were appalled by what they told us happened to them after the attacks were reported to police. People told us that, while the original offence had caused them great harm, the criminal justice system response had been worse.

As one survivor said:

“The trauma is like an iceberg. The bit you can see is the original trauma [of the offence]. The rest of the iceberg is done by people trying to help.”

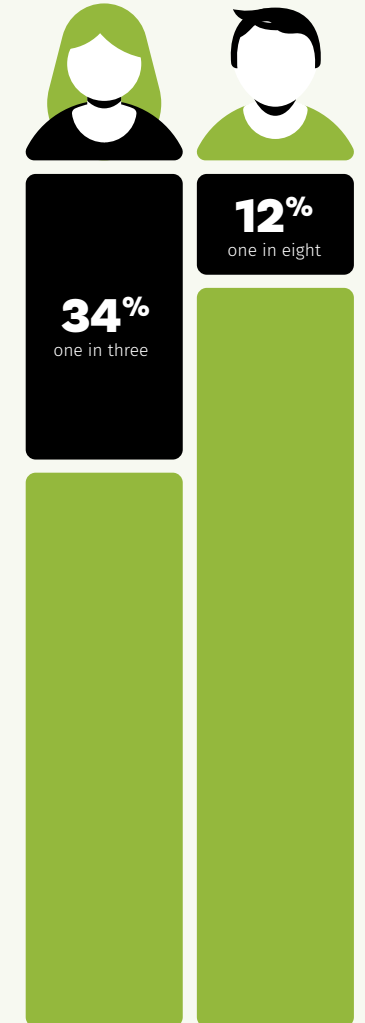
Tasman/Marlborough

We understand that reporting a sexual assault can be difficult because of ongoing safety issues, fear of being stigmatised and ostracised, cultural concerns and cultural condemnation, a lack of faith that the system can protect and many other issues. Most assaults of this nature are not reported and often a significant delay occurs between an assault (or series of assaults) and when survivors feel able to talk about their experience.

We also know the evidence-gathering process in these cases is often difficult and intrusive. We heard this is made much worse when authorities do not understand the nature of these types of offences, for example, that they can be perpetrated against anyone, regardless of gender, age, ethnicity or ability, and it is both a cause and a consequence of gender inequality. We also heard that

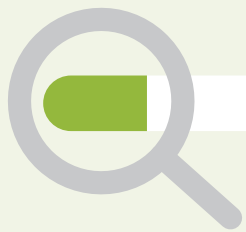
Ever experienced sexual violence

1 in 3 women
1 in 8 men



SOURCE: New Zealand Crime and Victims Survey Topline Report (2018)

Fewer than 10% of sexual offences are reported to police



Of reported sexual offences:

3 in 10 RESULT IN PROSECUTION 1 in 8 LEADS TO CONVICTION

SOURCES: NZ Crime and Safety Survey 2014, and Responding to sexual violence; attrition in the New Zealand criminal justice system. (2009) Ministry for Women's Affairs

current procedures do not always help with understanding sexual violence but, instead, reinforce damaging stereotypes and gender norms that contribute to the harm.

Another fundamental issue we heard from survivors of sexual violence is the adversarial nature of the criminal justice system (see chapter 7). This allows for intrusive and disrespectful cross-examination of people who have been assaulted – an experience many describe as being like a second assault. Further, we heard that the trauma from this second ‘assault’ is compounded by the public nature of the courtroom and jury system, which survivors (who are often required to give evidence of a very personal nature) told us is intimidating and degrading.

We also heard that delays through the court frequently distress survivors, and there is insufficient support to help them navigate the system (which can confuse and alienate) and deal with the original distress caused by the assault. For example, we heard:

“From the moment I reported the rape to police my world turned upside down. It took 18 months from this date to get a trial date ... I was terrified and felt sick this whole 18 months ... I have since been diagnosed with PTSD from the rape and am in active therapy. However, if there was a proper support system in place, there should not have been such a ‘gap’ in me getting help for not only being raped but the impact of no justice and being let down by the justice system.”

Web submission

“Not one of the police I work with would recommend a woman take a rape case to court. Not one ... The standard defence approach is awful and totally inappropriate.”

Otago/Southland

“When will the police get it: rape is not sex, it’s violence!”

Tasman/Marlborough

We also heard that the system can ‘miss’ the needs of some groups altogether. For example, while women and girls are more likely to be sexually abused, men and boys also experience high levels of sexual violence. The lack of support for these people can be devastating. As we heard from one young man who had come into contact with the criminal justice system as an offender:

“I was abused as a child by my uncle. There was no support for that. I turned to drugs. It all went into a [downward] spiral.”

Tasman/Marlborough

We heard a lack of appropriate support was also an issue for minority groups, including different ethnic and refugee communities, the Rainbow (LGBTQI+) communities, and disabled groups. We heard from these groups that we must avoid gender and cultural stereotyping, if we are to find appropriate responses to sexual crime.

“There are huge service gaps; nothing for the Asian community. [We] just want equity.”

Auckland

Alternative responses to sexual offending

We heard that, in common with others who have been victimised, survivors of sexual assault do not always want the same thing from the criminal justice system and may not see it as the appropriate forum for addressing their harm and trauma at all. For example, many do not want a formal prosecution, but, unless they agree to this (and sufficient evidence is available based on the criminal standard to support it¹²), few other choices are available to recognise the harm done to them, provide redress and ensure some offender accountability.

“On average, it is 10 years after the event that survivors are coming to Wellington Rape Crisis. It’s because their lives have unravelled over time. They are not looking for ‘criminal justice’ at that time.”

Wellington

Of all offence types, public reaction to sex offending can be the most emotive and sensationalised. This was reflected in some of what we heard, and we understand why this should be the case. However, we also heard people caution against responses to sex offences that are too punitive and not always appropriate to address any ongoing risk posed by the offender.

“Release conditions for child sex offenders are arbitrary and uninformed by the literature, emphasising the fact that offending tends to be within the family context. We need to update release conditions to reflect the literature.”

Otago

As a result, there is a strong voice calling for the availability of alternative responses to sex offending, such as restorative justice options. We heard that, if such options were available, they would better meet the needs of many survivors, communities and offenders than the traditional response of a criminal investigation and prosecution that results in either a decision not to prosecute, an acquittal or a lengthy period of imprisonment.

Although developing such options would not be without challenges, they could encourage higher rates of reporting, provide better closure for victims, enhance offender accountability and improve safety for the wider public.

“Marae justice can do a better job of holding sex offenders to account – they need to know they’re safe, too.”

Auckland

“For Pacific peoples, reporting rates of sexual violence are low for women and even lower for men.”

Pacific fono

12 That is, that sufficient evidence is available to prove ‘beyond reasonable doubt’ that the defendant has committed the crime.

7 Formal and informal justice processes

at in court all day waiting for the sitting. With call backs I've sat for two or three days waiting for
ial system it de-personalises everything - just becomes a big game to everyone. How can
adversarial system. Currently there is a winner and loser - the truth doesn't matter. Some of these ju
ystem is not set up for people with disabilities. We are new to New Zea
The courthouse is like Parliament - a bunch of muppets talking over ea
process of going to court, court process is degrading. The way

We have heard many people call for major reform of the criminal justice system. However, many people also told us that the system is failing on its own terms – that it is not delivering on what it says it will deliver.

Our laws and processes should help ensure access to justice

Ensuring access to justice is one of the most basic functions of the state. People need to know that their rights and interests are protected. In their private lives, this means they need confidence that any disputes they have can be settled fairly. For those caught up in the criminal justice system, we heard this means that:

- offenders in similar circumstances should receive consistent treatment (all people should be treated fairly)
- people should have the right to be legally represented at court by competent practitioners
- the law and its processes should be clear, understandable and accessible, including for Pacific peoples, other migrant and refugee communities and those who may not have previous experience of court processes or for whom English is a second language
- matters should be dealt with promptly.

New Zealand's laws and processes are largely intended to do these things. However, we heard that the criminal justice system often falls short of achieving this ambition. In particular, many people told us that:

- formal justice processes, in particular, the adversarial model, are not meeting the needs of those caught up in these processes, including people who have been victimised, people who have been accused of a crime, and their whānau and families
- delays in justice processes are negatively affecting those participating in them
- inconsistencies within the formal processes, and unreliable access to support for those involved in them, prevent fair and equitable outcomes for people who have been victimised, defendants and their whānau and families
- alternative options are too few both within and outside formal justice processes where solutions to the harms caused by crime can be found
- jurisdictional boundary issues can prevent good decision-making and fair treatment.

“The process of going to court, court process is degrading. The way we do it is wrong.”

Northland

Problems with formal justice processes

Many people told us they found court processes generally confusing and alienating. They said the language used is intimidating and the professional culture of those at court gives the impression of indifference and superiority that privileges more educated and articulate people and disadvantages others. They said they felt that the people occupying powerful positions in court do not represent New Zealand's increasingly diverse communities, and this increases their sense of alienation and disempowerment.

“We are new to New Zealand, so we do not understand this criminal justice system.”

Auckland

“Some of these judges and lawyers just do their job as per legislation, not as humans.”

Waikato

“The justice system is not set up for people with disabilities.”

Wellington

Specifically, we heard many people are dissatisfied with the adversarial system of justice. In chapter 4, we briefly described how people who have been victimised find the adversarial approach difficult. We were told it is challenging for defendants to navigate the system or participate meaningfully, and it is often a poor way of determining whether an accused person is guilty 'beyond reasonable doubt' (the standard of proof required to convict, which is intended to provide protection against the conviction of innocent people).

We have inherited this adversarial system from the United Kingdom. Under this system, the opposing sides (prosecution and defence) act as adversaries and compete to persuade the judge or, in the most serious cases, a jury that their version of the facts about a case is the most convincing. Under this system, the decision-makers (judge or jury) do not investigate the offence, gather evidence or question witnesses. They are confined to making a decision on the basis of the evidence presented to them by each party (prosecution and defence).

However, we heard this system creates problems including that it:

- impedes (rather than promotes) genuine participation in the trial process by both victims and defendants, so they feel disillusioned and alienated
- encourages 'game playing' and attempts to 'muddy' the issues in the hope the decision-maker will be confused or distracted by irrelevancies
- leads to the testing of the evidence under cross-examination, which can be an ineffective means of establishing credibility and can dehumanise and brutalise witnesses whose evidence is tested in this way.

“[We] need debate about the adversarial system. Currently there is a winner and loser – the truth doesn't matter.”

Taranaki/Manawatu

“When [you] have an adversarial system it de-personalises everything – just becomes a big game to everyone.”

Hawke's Bay

“I was a witness – I was questioned on an inconsistency in my statement, but I wasn't allowed to explain.”

Hawke's Bay

“Do juries even have the right blend of people? It’s only a jury of peers in that we’re of the same species. Should be a jury of actual peers – hapū, community.”

Otago/Southland

“How can you give people [jurors] with no understanding of the system or the issues the power to judge somebody?”

Tasman/Marlborough

“[Judges] are a law unto themselves. No one can challenge them. We were squashed and not heard.”

Taranaki/Whanganui

“The jury system needs a major overhaul. We recently lost a staff member for six days on a gang-related trial. He has returned to work injured by the ordeal and has taken more time off work.”

Emailed submission

Some people we spoke to had little confidence that judges and (more often) juries are able to competently perform the role of impartial decision-maker. They questioned the competency of juries to decide a person’s guilt or innocence, particularly in sexual violence cases, where we heard that specialist understanding of the issues is needed.

From another perspective, we heard that the process of sitting on a jury can also take an unfair toll on jurors.

A further issue we heard is that the formal justice process is an ‘all-or-nothing’ approach. Unless a guilty plea is entered, or guilt can be established beyond reasonable doubt, the state generally abandons the victim. In theory (and if the evidence clearly points to wrongdoing and resulting harm on the balance of probabilities), a victim could try to sue for damages through the civil courts (see discussion below under ‘Jurisdictional boundary issues’ about the civil-criminal divide). In practice, however, few victims have access to the financial and emotional resources they would need to be able to do this. It is therefore not surprising that victims are often disillusioned and see the system as uncaring and inhuman (See Chapter 4).

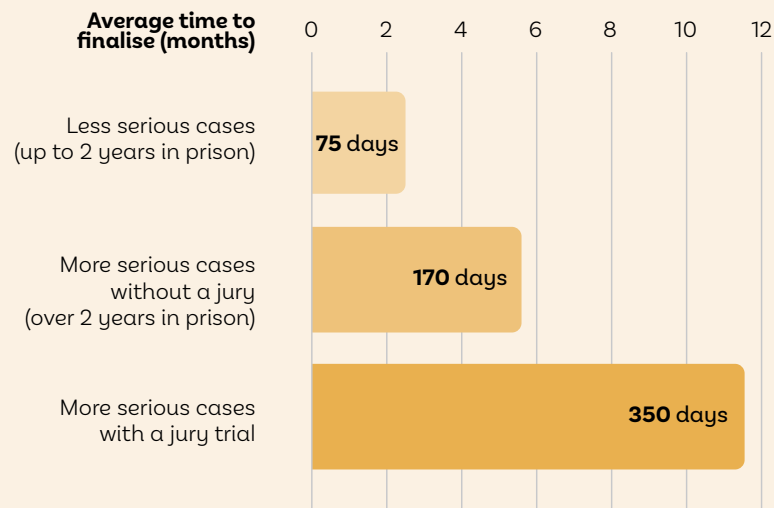
Delays in justice processes

It is often said that ‘justice delayed is justice denied’, and many people told us that long delays are rife in the court system. It is common for court events to ‘fall over’ so that those who are expecting cases to be progressed or resolved find they are simply adjourned to another day. Sometimes defendants, victims and witnesses, and their whānau and families, come to court and wait around only to be sent home again. People told us this is unjust and leaves those associated with prosecutions in a state of uncertainty, unable to move on with their lives for far too long.

“I’ve sat in court all day waiting for the sitting. With call backs, I’ve sat for two or three days waiting for one hearing; waiting to help my son. I’ve often thought how unjust the justice system is.”

Taupō

The court process takes time



Over 4,000 serious harm cases took more than one year.

SOURCE: Ministry of Justice (2019)

We were presented with many reasons for delays. Most often, people told us they thought courts and the agencies they rely on (for example, to write reports) are under-resourced. However, others also blamed the ‘game playing’ mentioned above – for example, lawyers drawing out cases in the hope a complainant drops charges or prosecutors over-charging to encourage people to plead guilty to lesser charges – and the cumbersome nature of the court system.

Some people linked the perceived problem of under-resourcing of courts with the high volume of less serious offences, which they saw as ‘clogging’ them up. Paradoxically, we also heard that, while the number of cases is slowing down the court system generally, particular cases are not getting the time they need because judges aim to dispose of them as quickly as possible. A common view was that a large number of less serious cases currently before the courts would be better dealt with outside the court system (for example, disorderly behaviour, careless driving and liquor ban offences).

“Administrative-type offending is blocking up court.”

Auckland

“Judges could be offering more but are trapped in many cases ticking boxes. eg, giving straightforward sentences for straightforward offences.”

Otago/Southland

Whatever the reasons for delay, we were told that a consequence was a lack of continuity of personnel involved in a case. This is both inefficient and upsetting for parties, many of whom said they felt re-victimised as a result. It also means participants and supporters incur unnecessary expense, in terms of both loss of income and travel to court.

“Constant changes of judge, etc. make it harder for everyone. Judges should remain for the whole case ... Consistency is really important.”

Otago/Southland

We did hear, however, that the specialist courts, such as the Alcohol and Other Drug Treatment Court, may provide a model for a highly engaged, highly participatory court that has a ‘human scale’.

Inconsistencies and access issues within the formal justice process

We heard that inconsistencies are experienced in different parts of formal justice processes, especially in relation to sentencing, accessing adequate legal representation and the administration of bail and remand. We heard these issues have a particular impact on rural communities and their ability to access justice, as well as on Māori, others who lack material resources and minority groups.

Inconsistent and culturally uninformed sentencing

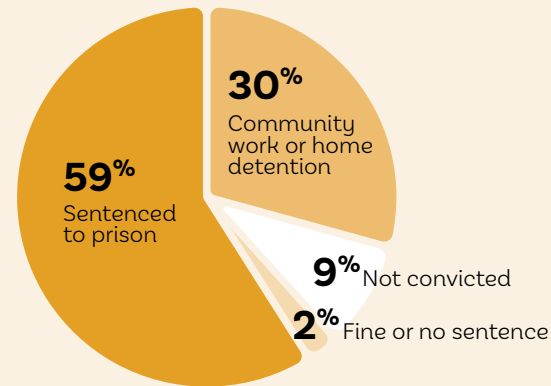
We heard inconsistencies arise at sentencing because different judges exercise their discretion differently: some are 'tougher', and others are less so, to the extent that lawyers explicitly 'judge shop'. Some people suggested this was because the controls and guidance for judges are insufficient, including mechanisms for the public to hold judges accountable for their actions. On the other hand, we heard from some judges that they are frustrated by the lack of information made available to them about defendants and by their consequent inability to tailor sentences to suit the individual circumstances of the offenders they see.

“Different judges penalise different people differently – some judges are much more hard on cases that others would be less hard on. Sentencing is very inconsistent.”

Hawke's Bay

PEOPLE ON REMAND

What happens next



SOURCE: Ministry of Justice (2017)

We heard that a lack of cultural information and understanding of cultural issues among the judiciary particularly disadvantages Māori, Pacific peoples and people from ethnic minority communities. For example, we were told about a Pacific defendant who did not look the judge 'in the eye' in court because he was showing respect from his cultural perspective, but this was misinterpreted as disrespect. Such cultural misunderstandings, and the fact that judges and juries generally have insufficient cultural understanding and competencies, can mean harsher penalties are more likely to be imposed on people from these communities. This accords with what we regularly heard about people's experiences of racism in the system.

Variability of legal representation

New Zealanders' right to legal representation is protected by the legal aid system. However, we heard that people are not always adequately represented in court and that the cost and variable quality of legal advice under this system are issues.

“If you get legal aid, you either get the best or the worst ... everyone who comes in through the system should get the same.”

Waikato

Duty lawyers can give free legal help to people who have been charged with an offence. However, they can usually only provide representation on the first appearance. For people charged with minor offences, this may be the only legal advice they receive. We heard, however, that, at least in some places, duty lawyers struggle to adequately address the needs of the large numbers of defendants they meet on their hearing day.

“People only get a very small amount of time with duty solicitors – maybe they should be seen before they go to court.”

Tasman/Marlborough

If a defendant needs ongoing advice and cannot afford a lawyer, they must apply for legal aid. However, we heard this funding model makes it difficult for proper support to be provided to clients, particularly those in rural areas who may not be served by a sufficient number of local criminal lawyers. Yet, without proper access to legal advice, the likelihood of harsher treatment within the system arises. We heard this tends to advantage those in higher socio-economic groups and disadvantage others.

“If our whānau need a lawyer, we need to go out of town – another expense.”

Hawke's Bay

“If kids don't have support at courts they tend to be dealt with more harshly. Often it's the Māori and Pasifika kids without the obvious support.”

Hawke's Bay

We heard that access to lawyers is also an issue for people who are victims of more serious offending (such as serious assaults including sexual violence). These people told us they are generally not eligible to access advice through legal aid and have to pay for a lawyer themselves. This expense is prohibitive for many people, and we heard they would like this to change.

“I want survivors to have legal representation from the first day.”

Tasman/Marlborough

Problems with bail

When someone is arrested, a decision must be made either to release them on bail, pending trial, or to hold them in custody on remand. This decision requires striking a balance between the rights of the public to remain safe and the right of the defendant to be presumed innocent until proven guilty. We heard we are not consistently getting this balance right.

People told us about three issues, in particular.

First, we heard that judges lack information to make properly informed bail decisions. Particularly at first appearance, but often more generally, they receive little or no reliable information about such matters as the defendant's previous behaviour while on bail, their home circumstances or the availability of supported accommodation, or their employment circumstances. Therefore, they are left to assess the relevant risks in something of a vacuum.

Second, even if judges have the relevant information, they lack the decision-making tools to enable them to make robust risk assessments.

Third, in rural areas, the lack of essential resources limits defendants' access to bail. For example, we heard electronically monitored bail (EM bail) is not available in some regions, making remand in custody more likely. People are also being remanded in custody in rural areas because they do not have timely access to a judge.

This is seen as unfair. It also increases the likelihood of a sentence of imprisonment (because people remanded in custody are often given a prison sentence equal to the time served on remand, meaning they can be discharged at sentencing). It may also be drawing some people into a criminal lifestyle by bringing them in contact with criminal networks and actually extending their reach into communities.

“No cellphone reception is putting people into prison because they cannot be monitored.”

Northland

“Because there is no judge here all the time, and JPs can't give bail, people end up on remand unnecessarily.”

Nelson/Marlborough

“People plead guilty if on remand as [they] know they will be released for time served, even if [they] didn't do the thing.”

Canterbury

“Young ones coming into remand is just making them join gangs. It's not the right place for them. Manage them on the outside.”

Northland

Alternative processes

Many people told us they would like to see more alternatives for dealing with criminal offending. They said formal justice processes offer too few options and do not allow for the development of tailored solutions that could better meet the specific needs of victims and offenders, and their whānau and families. They wanted to see an increased selection of informal local solutions to offending rather than the 'one-size-fits-all' approach of the formal system.

“Judges don’t have very many options.”

Northland

“[We need] alternatives to the formal court.”

Waikato

Specifically, we heard many people advocating for the introduction of more restorative and tikanga-based models of justice. We heard these approaches place victims at the centre, offer healing to all involved, and put responsibility for crime on those who commit it.

“I would like our justice system to be informed by values and principles steeped in tikanga Māori and restorative practice.”

Web submission

“Restorative processes should be more accessible and available without having to go to the police. Survivors want accountability and resolution but don’t necessarily want punishment.”

Otago/Southland

Restorative justice and tikanga-based justice processes are available in a limited capacity within the criminal justice system. We heard about tikanga approaches that have been adopted in some courts (for example, the Alcohol and Other Drug Treatment Court, Matariki and Rangatahi courts), and about restorative justice offered in the form of pre-trial conferences (in the youth justice system) and family group conferences (see the section ‘Youth and adult criminal issues’ on page 45).

“[The] Matariki Court needs to be everywhere ... [It’s] a good initiative; it works.”

Bay of Plenty

It may be that a strong case could be made to expand the scope of these interventions within the formal justice system and to divert appropriate cases out of the formal justice system and deliver much greater benefits to our communities. Many see these approaches as encouraging the peaceful expression of conflicts, promoting tolerance and inclusiveness, building respect for diversity and promoting responsible community practices.

In the context of the recent tragedy in Christchurch, we consider these values should be promoted, and the development of additional community-based approaches deserves more detailed policy consideration. In particular, we heard there may be scope to apply to the adult system many of the principles underpinning the original conception of family group conferences in the youth justice system. We will explore this further as we develop our final recommendations.

Jurisdictional boundary issues

We heard that additional issues arise with the current legal processes because of the distinctions made between jurisdictions: ‘criminal’, ‘civil’, ‘family’ and ‘youth’.

“Align the interventions of Youth, Criminal and Family Courts – take a whānau approach.”

Auckland

Civil and criminal issues

In general, criminal laws regulate wrongs the state has decided are sufficiently harmful for the whole of society that they should be subject to criminal penalty. Civil laws regulate disputes between private parties. Different rules apply between the criminal and civil jurisdictions. One significant difference, as noted above, is that, in the criminal jurisdiction, guilt must be proved ‘beyond reasonable doubt’, while in the civil jurisdiction, this test is less stringent – it is ‘on the balance of probabilities’.

While, in theory, the distinction between what is criminal and what is civil is clear, we heard that in practice this is not always the case. This is a cause of concern.

“Criminal vs. civil. There is a loophole, and people are slipping through.”

Taranaki/Whanganui

For example, we heard some crimes are difficult to prove ‘beyond reasonable doubt’, even when it is clear serious harm has been perpetrated. Sexual offending is one of these areas. We heard that hearing the words ‘not guilty’ in these cases can be hugely distressing for people when they know some form of wrong has been done. We heard similar criticisms in cases where mental health patients are found ‘not guilty’ by reason of insanity, as noted in chapter 4.

“‘Not guilty’ is terrible when everyone knows that the person did the act.”

Taranaki/Whanganui

Another area where it can be difficult to prove wrongdoing to a criminal standard is fraud. The court has to be convinced (beyond reasonable doubt) that someone had the intent to deceive. This is important because, without a criminal conviction, it is often difficult for victims to receive any redress for their losses. The ‘all-or-nothing’ approach taken in such cases means many victims feel unsupported and experience ongoing harm and trauma.

Family and criminal issues

In relation to family violence, in particular, we heard it is common for people to have matters dealt with in both the Family Court and criminal court (see chapter 6). Applications in the Family Court generally deal with orders relating to the care of children, separation of partners and protection of those at some sort of risk of violence. The criminal court deals with offences by the alleged offender as well as the protection of those who are at risk.

Despite the overlap of functions, we heard that a lack of communication between the two jurisdictions can cause significant problems, including issuing of court orders that work against each other.

People told us that the Family Court could be better suited to addressing issues of family violence, because its procedures are more flexible than criminal courts. However, we also heard a lot of grief and anger about the Family Court, especially around court orders to uplift children. We heard that families and whānau, often in relation to the uplifting of children, have felt they have not been consulted in the determination of what was in the best interests of the child so that a range of responses could be considered for that child.

“If family violence is moved to the Family Court, it would be much easier to wrap services around them and care for children who are involved. Has more of a holistic approach than the Criminal Court. And sometimes there are two processes running anyway.”

Otago/Southland

Youth and adult criminal issues

Many people commended the principles underlying New Zealand's model of youth justice. As noted, it was suggested this approach could provide a model for general reform of the criminal justice system because it has a greater range of responses to crime.

“Youth Court has been a leader in partnership and innovation. Youth Court has been better placed to develop partnerships with iwi and marae-based services.”

Wellington

However, we also heard it is not always properly implemented. For example, we heard that family group conferences are not always being appropriately supported with the right people attending, and child protection services are not effective at keeping children and young people from lives of crime.

“The CYF [Child, Youth and Family Services] Act was ground breaking, deliver on its intent. FGC [family group conference] was defunded.”

Wellington

“OT [Oranga Tamariki] is just a conveyor belt to prison.”

Northland

Despite this, many people also commended the recent changes that lifted the age of those eligible to be dealt with in the Youth Court, as opposed to the 'adult' jurisdiction of the District Court, from 17 years to 18 years of age. However, some felt this was not enough and, in recognition of what is known about brain development, recommended it could be raised to as high as 25 years or, at least, that those aged 18 to 25 years be dealt with in a different way.

“Youth court is more wrap around, focused on root causes - Family Group Conferences (FGCs) could be utilised in adult courts.”

Tasman/Marlborough

“The Youth Court age could go up to 25.”

Tasman/Marlborough

8 Punishment

or mums, for nans, for extended family, prison visits etc. are terrible

If you want to learn a trade as a criminal, go to jail
Prisons are machines for creating mental illness. Prison will always be a solution
to be able to make mistakes and be held accountable in a meaningful way - prison doesn't seem to do this
Issues are a massive issue - teach driving skills in school! [Students] should come out with a lot of Maori enter the system through
part of the curriculum - this ties into self-worth, getting a job, having a place. This war (on drugs) has been going on
never going to really address issues - cos convictions are a barrier. The system has not changed or in any way
People here are going to jail for stupid shit. That harms the whānau and community, taking them
away from their tamariki - the loss of income for that whānau creates poverty

[I want] a system that is simple, prompt and consequences. The justice system should

Without exception, all the people we heard from have agreed there should be consequences for those who offend; that is, people who harm others need to be held accountable. This belief is also at the heart of the criminal justice system. The criminal law sets out not only what behaviour is criminal but also maximum penalties for those found guilty of such behaviour. Judges determine the level of penalty within this maximum that individual offenders receive, depending on the circumstances of each case.

However, just as we heard that different people who are victimised have different needs (see chapter 4), we heard that 'being held accountable' means different things to different people. In fact, we heard this is an area that may divide us the most (and sometimes people can hold different opinions depending on the circumstances).

Broadly, people told us that holding someone 'accountable' can mean:

- **punishment** - a penalty to condemn the criminal behaviour, seek retribution and/or deter people from behaving this way in the future
- **rehabilitation** - interventions with people who offend, to help them face up to their wrong doing and lead crime-free lives in the future
- **restoration** - providing the opportunity for reconciliation and healing between offender(s) and their victim(s).

We heard that, although all of these purposes are legitimate, they need to be properly balanced. This is because what we do for one purpose may not help us achieve another purpose and may work against it. For example, a sentence that punishes may do little to help rehabilitate an offender, and a sentence solely designed for rehabilitation may not provide adequate condemnation of the behaviour or healing for the victim.

Many people told us we have not got this balance right. Some think not enough is being done to punish offenders but, more frequently, we heard that the formal criminal justice system emphasises punishment at the expense of rehabilitation and restoration. We heard that too much punishment, especially for relatively minor offences, is not making us safer. For some communities, including Māori, it is having the opposite effect - it is increasing overall harm to individuals and their communities without any obvious benefits.

“[I want] a system that is simple, prompt and consequences [that] are rational, reasonable and related.”

Web submission

“The justice system should pair accountability with restoration.”

Auckland

“People here are going to jail for stupid shit. That harms the whānau and community: taking them away from their tamariki - the loss of income for that whānau creates poverty.”

Northland

Our over-emphasis on punishment criminalises too many people

We heard that the emphasis on punishment is particularly ineffective as a response to crime for two significant groups:

- those experiencing mental health problems and addictions
- those apprehended for minor driving offences – specifically driver licence offences.

People with mental health issues and addictions

We heard that criminalising drug offences, particularly possession and use, is not controlling the harm arising from drugs. Use of the criminal law in this way has a profound impact on people's lives, including their relationships and ability to find employment and housing. Of even greater concern, we heard that use of the formal justice system can actually be a barrier to effective education about drug use. It can also prevent people from accessing the help they need to address drug problems.

“This war [on drugs] has been going on since the 1980s and has not changed or in any way been successful.”

Emailed submission

As discussed in chapter 10, many people are concerned that mental illness and drug addiction problems are being treated as criminal justice rather than health issues. Decriminalisation of some drugs was seen as a solution to taking people out of the criminal justice system.

Similarly, we heard that severely punishing people whose offending is driven by alcohol or drug addiction is often counterproductive. It was suggested greater investment in the treatment of drug abuse and addiction problems could have a much more positive effect – both on offenders and their families and whānau.

“Unless we decriminalise and regulate drugs, we are never going to really address issues – ‘cos convictions are a barrier.”

West Coast

Prisoners with substance use disorders

87%
at any point
in their life



47%
in the last
12 months

SOURCE: Department of Corrections (2016).
Comorbid substance use disorders and mental health disorders among New Zealand prisoners

People failing to comply with driving regulations

Most of us are dependent on being able to drive, whether it is to get to work, take the kids to school, get to the supermarket or for other daily activities. New Zealand's driving laws are intended to help us all be safe on the roads. However, many people told us that the costs associated with complying with our driving laws (for example, obtaining a valid driver licence in rural areas where it is necessary to travel out of town to do so) can be prohibitively high. As a consequence, many people with limited resources end up breaking the law.

“Driving-related offences are a massive issue – teach driving skills in school! [Students] should come out with licences as part of the curriculum – this ties into self-worth, getting a job, having a place.”

Tasman/Marlborough

Driving offences can trap young people in the justice system

Convictions for driving without a licence – under 25s



For **31%**, this was their first conviction.

SOURCE: Ministry of Justice

We heard how this failure to comply can frequently result in trapping people in the justice system. Penalties for relatively minor offences can escalate from the non-payment of fines, resulting in the loss of a licence, confiscation of a car or community service. If criminal charges are filed, people caught in this cycle of escalating penalties can lose their jobs, and, for some, if offending and breaches continue, it can ultimately lead to a custodial sentence.

“A lot of Māori enter the system through driver licensing.”

Northland

We heard that, rather than punishing people, a better response would simply be to provide options to support people, so they can drive safely within the law. We note that initiatives have been started in this area and look forward to the outcomes of this work.

Prisons are good at punishment but poor at rehabilitation

The most serious punishment that can be imposed on an offender in New Zealand is a sentence of imprisonment, and we heard from many people on this topic. Few said we do not need prisons, but many told us they were not working and we have known this for years.

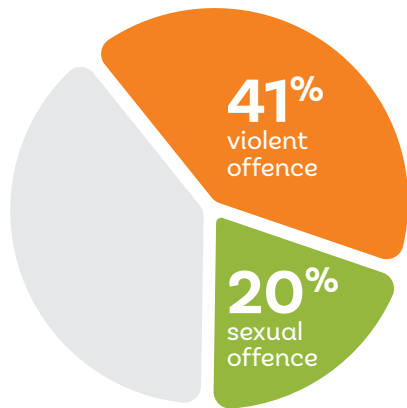
“The prison system is a complete failure. It doesn’t deter, it doesn’t stop recidivism and it doesn’t rehabilitate people, and anybody involved with the prison system today would agree with that statement.”

Sir Clinton Roper on Radio New Zealand: Morning Report
at the time of the release of his report 1989

Māori were the most likely to question their use and doubt their efficacy at enabling thriving communities.

“People need to be able to make mistakes and be held accountable in a meaningful way – prison doesn’t seem to do this.”

Waikato



People in prison – Most serious offence

AS OF DECEMBER 2018

SOURCE: Department of Corrections (2018).
Prison facts and statistics – December 2018.

We were frequently told that too many people are being sent to prison for too long, and we are not doing enough for them while they are there. People told us that the inappropriate use of imprisonment unnecessarily punishes not just offenders but also their families and whānau. They said the negative consequences of this can span generations.

A few ex-prisoners told us that prison had helped them to turn their lives away from crime. However, more often, we heard that imprisonment just makes it harder for them and their families and whānau to live positive and productive lives. We heard that prison environments, which are characterised by the loss of choice, lack of privacy, frequent fear, coercive control and need to wear a constant mask of invulnerability to avoid abuse, are not conducive to rehabilitation. Instead, they diminish people’s sense of responsibility and, particularly for younger people, connect them to a criminal network.

Because we rely on a network of relatively few large prisons, prisoners often need to be accommodated a long way from their social support systems, which could be critical to their eventual successful release. Even when located close to whānau and family, we heard it can be difficult to maintain meaningful contact.

We were also told that rehabilitation programmes are frequently difficult to access, that delays in programmes can lead to longer periods of imprisonment and that the frequent transfer of prisoners between prisons can interrupt programmes. In short, we heard that prisons can increase the likelihood of people reoffending after finishing their sentence.

“Prison will always be a solution; but it should not be the first solution.”

Northland

“Prisons are machines for creating mental illness.”

Wellington

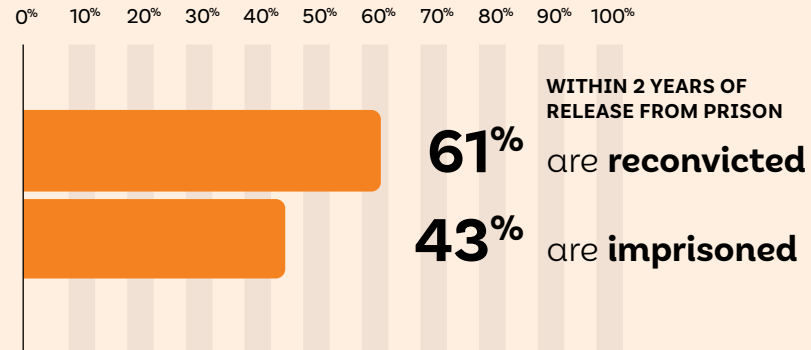
“If you want to learn a trade as a criminal, go to jail.”

Tasman/Marlborough

“For mums, for nans, for extended family, prison visits etc. are terrible.”

East Coast

The likelihood of re-offending is high



SOURCE: Department of Corrections Annual Report (2018)

The problem with parole

A closely related problem to that of prison relates to parole. Parole is when an offender is released from prison before their sentence ends and serves the rest of their sentence in the community. People with prison sentences of two years or less are released after serving half of their sentence. Those with sentences of more than two years will be seen by a panel representing the New Zealand Parole Board. The panel decides whether the prisoner can be released early, and when. It does this by undertaking a risk assessment to determine if it is safe for the prisoner to be released into the community, subject to certain conditions, for example, to not drink alcohol or to live at a certain address.

Parole is intended to help the reintegration of people released from prison by letting them finish their sentence in the community (and effectively determines how much time people actually spend in prison). See chapter 4.

We heard that parole does not work well. People said parole decisions are frequently inconsistent and unfair, and lack transparency.

“Transfer of prisoners to other prisons means their services are interrupted, often when you’re about to get a break through. Relationships and continuity are key, but they get broken when people are transferred.”

Otago/Southland

“It would be good to know what the Parole Board would like you to do before you even go up to them. You go up, you get a knock, do what they say, then you get another knock.”

Hawke’s Bay

“Lack of consistency is a problem in system – prison officers all treat you differently; the Parole Board is inconsistent in their decisions; Corrections doesn’t have to adhere to the Parole Board’s recommendations.”

Hawke’s Bay

We were told parole decision-making and Department of Corrections' practices are not sufficiently integrated. For example, prisoners are not always able to access programmes recommended by Parole Board panels. Some suggested that panels have insufficient guidelines and inadequate information to let them make robust assessments of the risk prisoners may pose on release; sometimes they are too risk averse. For example, we were told about inflexible reporting conditions that seem to be fixed at a level that sets people up for failure rather than ensuring safety – conditions that reflect an approach focused on control rather than support. We were also told that prisoners get too little information about the decisions made on their cases.

“The [Parole] Board requires women to do all these programmes, but Corrections don't have the resources to offer them – this is unfair.”

Wellington

“Parole reports are often written by people who have only met prisoner once. The prisoner has no opportunity to see it before it goes to the Parole Board – it's often wrong, e.g. – describes how [the prisoner] was, not how they have become.”

Canterbury

“The Parole Board don't necessarily understand the link between risk and the person's offending.”

Wellington

Overcoming the consequences of conviction and post-release support

Another aspect of our punishment system that we heard is unfair arises after people have completed their sentence. We heard that punishment can stigmatise offenders and families and whānau long after a sentence has been completed. This is often referred to as the 'silent sentence', and its effect can remain indefinitely.

Former prisoners, in particular, experience barriers to accessing both jobs and housing. While we heard from a few employers whose experience of taking on former prisoners was very positive, we more often heard how difficult it is for former prisoners to make a decent life after they are released. In a sense, we heard that their punishment is ongoing, and this can have obvious negative consequences, including leading them back into crime.

“Last time I was released, I had all these certificates from jail but WINZ said they couldn't help. I had 5 kids to support. What am I to do? Ended up in prison.”

Hawke's Bay

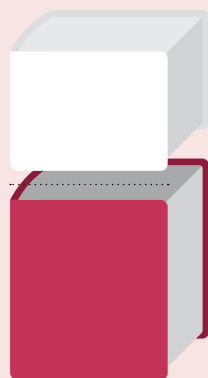
It is well established that crime and victimisation are more likely to be perpetrated and experienced in communities that suffer relative deprivation and poorer wellbeing. This was recognised in many of the conversations we had with people throughout Aotearoa New Zealand. People told us that, if we are to address the problems with the criminal justice system, we must also address problems in our social system – the two cannot be separated.

Addressing the causes of crime

Crime occurs for many complex reasons that vary between individuals. We were constantly told in our conversations that people who lack basic necessities (decent quality housing, education, employment, adequate income, good health and strong connected families, whānau and communities) are significantly more vulnerable to both being harmed by crime and to offending. We also heard that mental distress and addiction (See chapter 10) is often associated with offending and victimisation.

“Our answer to justice is prisons –
this is the wrong answer.”

Bay of Plenty



60%
of people in prison
have literacy and numeracy
**below NCEA
Level One**
competency

SOURCE: Department of Corrections (2017). Investing in prison education:
New approaches to improving educational outcomes and reducing re-offending.

“We can’t arrest our
way to wellbeing.”

East Coast

“If you want to make
improvements in justice,
you need to do education,
housing and health as well.”

Taranaki/Whanganui

“Seventy percent of calls
to Oranga Tamariki go
unaddressed ... this is a
70% failure rate for the
government, failing those
children, who are then failed
by the health system, and
later the justice system ...”

East Coast

Many people told us that a sole focus on improving the criminal justice system will not be enough, because viewing it in isolation will not be sufficient for improving the safety and wellbeing of families, whānau and communities. We must also address the underlying conditions that make crime more likely.

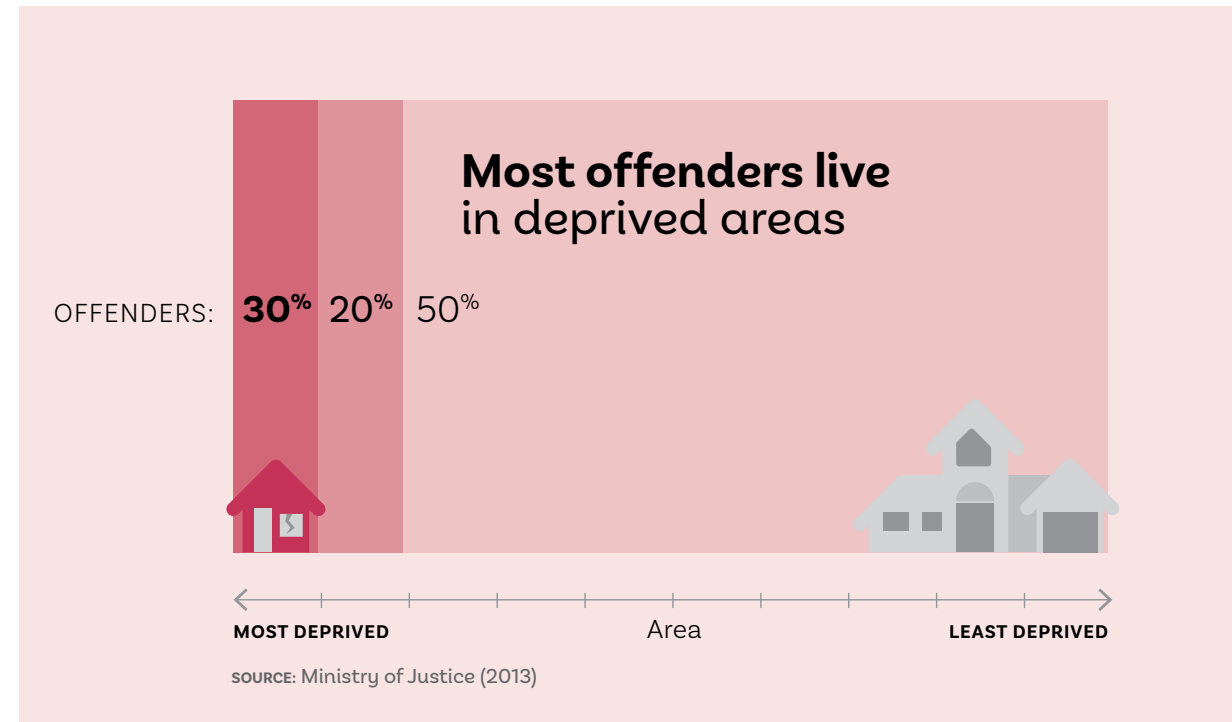
“No one touches the system until they have been failed by other parts of the system.”

Pacific fono

“You can’t fix this system ... you’re spending money on a system that doesn’t work; you need to spend it instead on prevention.”

Christchurch

Many communities we visited are actively seeking a greater role in improving their social wellbeing and reducing crime and its impacts. This includes many Māori communities that are working to address the consequences of colonisation (see chapter 5), which greatly increased their comparative disadvantage and contributed to their over-representation in the criminal justice system. We heard these communities need to be involved in the planning and decision-making about justice services so they can more effectively influence how such services are delivered, to ensure they are closely aligned with social services that focus on crime prevention. However, we were told these services are often under-resourced, and the way they are organised, often in silos, creates barriers to realising this ambition.



“When we do a good job, what are we sending our kids back out to? No employment, no public transport, low salaries - we’re on our third generation of unemployment ... we’re filling prisons up with people who are failed by intergenerational problems - we are simply surviving. How do we give our families mana again?”

Northland

Improving justice through prevention and social support

Overwhelmingly we were told that our first priority must be to keep people out of the criminal justice system. We were also told that, when people do come into contact with the criminal justice system (whether as a victim or offender), we should prioritise the provision of support services with the aim of getting them out of the system and supporting their wellbeing as soon as possible; hence stopping their return.

“Here’s an idea – how about a focus on prevention? There is plenty of research that shows that spending on effective prevention programmes produces outcomes and savings that have more benefits and are more cost efficient than spending relating to those who have already entered the justice system.”

Web submission

People told us this will require the collective effort of communities, government agencies, NGOs led by iwi and Māori organisations, and others. All must collaborate to address both the causes of crime and the harm caused by crime. Many people stressed the need for agencies to take a holistic approach and to work closely with individuals, whānau and families, to allow them to identify solutions tailored to their specific needs in the context of their communities.

“We want an integrated justice system that places as much emphasis on prevention (jobs, home, education, meaningful relationships) as it does on incarceration.”

East Coast

Often, people at risk of being drawn into the criminal justice system have multiple needs that require a range of services, including health, housing, employment, education and training. Sometimes, they have quite simple needs, so if services are provided at the right time, it can have a significantly positive impact on their lives. We were regularly told that many of the support services people and their families and whānau need to help address offending behaviour and the harm caused by crime are not available. We were told many

people felt they had to chase getting help and that accessing support from agencies placed huge pressure on people. This could involve basic things like paying for transport, whether that is putting petrol in an unregistered car or paying for a bus to get to support agencies.

“Enter prisoners into programmes on day one of remand; make it functional, use the entry point into prison as a trigger for change.”

Waikato

We also heard that a lack of adequate housing and mental health support, in particular, is contributing to many of the difficulties that can lead people into the criminal justice system. We heard that the services available are not always provided in a timely manner. Often, these services are provided late in the criminal justice process, when they could have a more positive impact if provided much earlier.

“The problem is waiting for people to come out of prison before starting the plan to support them. This needs to start while they are still in prison – involving their families and all.”

Taranaki/Whanganui

We were encouraged to hear about collaborative approaches, focusing on the wider social needs of people affected by crime or in contact with the criminal justice system, that are said to be working in some of the communities we visited. For example, some iwi are working in partnership with government and non-government agencies to deal with family violence. They told us that solutions identified as appropriate with and for their whānau are starting to lower the incidents of family violence in their rohe.

However, we also heard of many situations where families and whānau have not been included in efforts to identify solutions to their problems. These include situations where they have to navigate multiple agencies to get support and where a ‘one-size-fits-all’ approach means the support received is often not culturally informed nor the kind that will really help. We heard that these services often have a ‘punishment’ rather than a ‘support’ and ‘prevention’ focus.

Barriers to collaboration

Generally, people were in agreement about the benefits of collaborative approaches to respond to crime and to address the current failures of the criminal justice system. However, we were told of two significant (and connected) barriers to the collaborative approach: the siloed nature of services and current funding structures.

Silos

It is not uncommon to hear government agencies being criticised for operating in silos, and we heard exhaustive criticism about government agencies that deliver both justice and social services. We were told this is hugely inefficient and that victims, offenders and their whānau and families are all losers in this arrangement.

“[A] siloed mentality of justice permeates the system.”

Northland

We heard that government silos mean the services people need from different agencies are not coordinated, with consequent duplication, conflict and gaps in provision. We heard they often create delays in providing the help needed, and people needing services are constantly having to ‘re-tell’ their stories to numerous authorities. We were told that silos prevent effective and meaningful responses to people caught up in the criminal justice system at every stage. Many people told us they find this exhausting and disheartening, and, in most cases, it has added to their distress.

Silos are, however, not just a problem of government agencies. We heard they also exist in and among NGOs and between NGOs and government agencies. As with government agencies, we heard NGOs can frequently be too narrowly focused on the service they are providing, failing to appreciate the wider circumstances of the individuals, families and whānau they are intending to help, and so miss opportunities to address their needs more holistically.

“The system is set up to deal with specific issues – it is unable to effectively address the needs of people with multiple problems.”

South Auckland

“Victims have to face this tidal wave of people who are operating inside silos without looking at the needs and past of people holistically.”

Wellington

We heard that several factors help to maintain silos in the criminal justice system. Cultural and philosophical differences, and the lack of a shared vision, were identified as problems by some people we spoke with. Others talked about more structural issues, including a lack of agreed mechanisms to share relevant information, and competing incentives.

“Government department siloes are an incredible issue, ineffective and costly.”

Wellington

“[There is] a total lack of integration in government – everyone is focused on their own votes; CEOs their performance measures.”

Northland

We heard calls for these issues to be addressed through increased emphasis on the co-design of services and on developing a culture of collaboration. We heard repeated calls for ‘one-stop-shop’ arrangements, where people can access services targeting a range of issues (poverty, poor housing and homelessness, mental health and addiction, family and sexual violence, and social exclusion) and where services can be coordinated. This call was especially loud in rural areas, where support services are scarce and/or scattered.

“[We want] to have all government agencies working collaboratively to streamline all factors to make it fair to both victims, perpetrators and families involved.”

Web submission

“The whole process needs to be co-designed.”

Northland

Funding and accountability structures

We heard about and witnessed the critical role NGOs and community groups have in providing care and support to individuals, families and whānau affected by crime, so they recover from the harm they experienced and become positive, contributing members of society. We also heard, however, how funding structures make it difficult for many to do their work, and that these need to be reviewed.

“We need resources to enable kaimahi and whānau to do the prevention work required. This is the only way to bring about change. Resources for prevention will save or prevent incarceration.”

Wellington

We heard from NGOs, and others, that the amount of funding available is often simply not enough to meet the perceived needs of those affected by crime. This creates obvious challenges. We also heard that funding structures create further problems, including that they:

- create divisions by requiring groups to compete against each other for a limited pool of funding, rather than encouraging them to work together to create community solutions. We were given an example where community groups in one area collaborated to develop a joint funding proposal but were then required by the funder to submit competing proposals to address the same issue
- create uncertainty because contracts are generally for relatively short periods. This (combined with constraints on the remuneration that can be offered) makes it difficult for NGOs to retain trained staff on a long-term basis and, in turn, leads to disruption of services and inconsistencies in service delivery
- favour national providers who are frequently better placed to navigate complicated application processes and fulfil the stringent accountability requirements that come with funding contracts. This disadvantages smaller local providers, who may nevertheless have greater capability in terms of meeting the needs of specific groups, including, for example, Māori, Pacific peoples, migrant and refugee communities or those with disabilities

- often focus on creating metrics that can be easily monitored rather than focusing on creating sustained positive outcomes for individuals, families and whānau.

The NGOs we met were very conscious of their accountability to their funders and the communities they serve. However, they said the needs of funders and communities are not always the same, and this can create tension. They also noted that change for people who have the most needs in the criminal justice system can take time. This makes it difficult to show achievement in the outcomes stipulated in their funding contracts in a way that aligns with funding cycles.

“Funding models are too siloed across agencies. Funding criteria and models are incredibly difficult to work through for a very small amount of money.”

Bay of Plenty

“It’s very hard to engage with Government agencies – contractual requirements need to be reviewed.”

Auckland

“Funding criteria and models are incredibly difficult to work through for a very small amount of money. Restorative Justice models/budget does not provide any room for innovation or growth, no incentives to make a difference just incentivised to make money. Youth justice funding model is the same, not going far enough to cover what is needed for providers to cover all needs for youth.”

Bay of Plenty

Role of business

While many of our conversations were with organisations focused on providing social services, we also spoke with several business representatives. Many acknowledged the important role they can play in helping people caught up in the criminal justice system. Some actively recruit people who have offended or are at risk of offending, providing employment and mentoring. Businesses told us, however, that justice agencies do not always make it easy for them to do this (for example, the long process it takes to recruit someone from prison causes workload pressures as the business waits for staff it needs urgently).

Gangs and communities

In some places we visited, discussion was held about the presence of gangs in the community. Concerns were raised about their involvement in criminal activity, their high rates of reoffending and the social impact of this on communities and whānau. We also spoke with gang members who told us about the issues that influenced their membership and the desire of many to change elements of their life for the better – often because they want their children to have better lives than they experienced.

We were given many examples of the harm caused by gangs (in particular, drug-related crime and family and sexual violence). We were told of the impact this is having on whānau and within communities. We also heard that the criminal justice system is not working to effectively address this harm, with some believing it is making it worse. For example, we heard that prisons are a great location for gangs to recruit new members.

People we spoke with were most worried about rangatahi, who are being recruited into gangs through their contact with the criminal justice system. We were told that, if rangatahi are criminalised early, it is inevitable they will be drawn to gangs because of the perceived solidarity the gangs offer. We heard about situations where young men who had been held on remand or imprisoned for the first time were later released as patched members.

“Young ones coming into remand is just making them join gangs. It’s not the right place for them. Manage them on the outside. It’s become a training ground and recruitment area. The young ones are just looking to survive.”

Northland

We also heard criticism about past responses the criminal justice system has made to combat the harm associated with gangs. This has largely focused on the suppression of gang activity. We heard this approach does not make a sufficient distinction between gangs and does not properly focus on the root causes of gang affiliation and crime.

“You can’t just try to get rid of gangs; you need to think about the whakapapa of gangs and where they’ve come from.”

Hawke’s Bay

We were reminded that gangs exist in a wider context and that people often gravitate to them for reasons including poverty, finding somewhere to belong, and security and protection. We were therefore challenged to better understand the function gangs serve for their members. We heard that, rather than attempting to suppress gang activity, holistic, community-based responses are better able to provide long-term solutions that empower gang members to become positive members of their communities. Such an approach would require justice and social agencies to work collaboratively with communities, gangs themselves and other groups. This would ensure the ongoing support and services required to prevent harm caused by gangs and to keep gang members away from the justice system are in place.

10 Mental health, addiction, and drug and alcohol abuse

You must fund mandatory prevention and help for gambling because the addiction turns to crime and is hurting our communities. Community-based programmes are valuable in addressing tikanga Māori BUT can they address the wider inequities of what we see as criminogenic precursors? My answer to that is yes it can but it needs skilled staff in all government departments. I know as I did it for a very long time and the service users that I have worked with went on to live offender-free with they might not have ended up where they are. If you're drowning and overwhelmed and don't know what's out there to help, to get our young people mental health assessments. There is a major lack of resources including specialists. Mental Health is often combined with intellectual disability. People with disabilities ending up in prison for the moment our whānau touches the criminal justice system, they're incarcerated - the moment a charge is laid

Many people shared with us their grief, hurt and frustration about their encounters with the mental health system and the difficulty in getting support for family and whānau members suffering from mental illness, distress and issues associated with addiction. This concern, moreover, was expressed by many groups we talked with, including Māori, Pacific peoples, victims of crime, refugees, migrants, LGBTQI+, youth, kaumātua and kuia, and those living in both urban and rural areas.

We know their concerns come from the problems associated with navigating the mental health system at every level, either within their community or if they or a whānau member is in the criminal justice system with mental health issues.

These concerns were mirrored in *He Ara Oranga - Report of the Government Inquiry into Mental Health and Addiction* (MH&A).¹³ This report provides many insights into what is needed for a better mental health and addiction system in Aotearoa New Zealand.

Much of what we heard was consistent with the people-centred vision for mental health and addiction services as outlined in MH&A, which aspires to ensure that people seeking help:

- are treated with respect and empathy
- have a voice, and their voice has weight
- are seen and treated as a whole person, with their cultural practices and knowledge recognised, rather than as a diagnosis or set of symptoms
- are partners in their own care
- can access the support and services they need and transfer easily between different types of support
- can access culturally appropriate kaupapa Māori and Pacific services
- have their family and whānau actively encouraged to support their recovery
- do not have to repeat their story over and over again
- experience services that are coordinated, trauma informed and high quality.

¹³ Government Inquiry into Mental Health and Addiction (2018) *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*.

With the above as a backdrop, the main themes to emerge from our conversations focus on:

- the key drivers of mental health and addiction
- community access to mental health and addiction services
- mental health and addiction services in the criminal justice system.

Key drivers of mental health, addiction, and drug and alcohol abuse

Consistent with the views in MH&A, people saw mental health and addiction issues as the result of not having basic requirements, such as a warm and safe home, quality education, good health, a job with an adequate income and social connection to community, whānau and family. In the instances where this is overlaid with family violence and abuse, often over many generations, it cumulatively increases mental health and addiction issues for whānau and families. We heard many people talk about poor Māori mental health as being a direct result of colonisation.¹⁴

People we talked with are seeking a social environment that enables a strong social connection to be made and wellbeing to be enhanced. Those who had been victims of crime spoke of the urgent need to address mental health and addiction issues to prevent further social harm and violence. For some survivors, the failure of the mental health system has caused them severe and enduring pain due to the nature and ongoing ramifications of the crime they were subjected to.

We know that, to successfully achieve mental and social wellbeing, an approach is needed that reflects these drivers (rather than one that deals with mental health in a vacuum), focuses on individual and collective wellbeing and ensures people have the right support to live well.

¹⁴ Colonisation is also discussed in chapter 5.

Community access to mental health services

We heard from many about the barriers they face in accessing mental health services in their communities. In some areas, it takes a long time to get counselling when it is required or to get it for as long as it is needed.

“If you’re drowning and overwhelmed, you don’t know what’s out there to help you.”

South Auckland

“There are significant delays, about 6 to 8 weeks, to get our young people mental health assessments. Often, they are waiting in prison for these. There is a major lack of resources including specialists.”

Northland

People spoke of the significant stress involved in getting services from government agencies and NGOs for unwell whānau members and being constantly frustrated by whānau not receiving this support. In many cases, their own wellbeing has been compromised by the level of stress they have been subject to in seeking help for others. We heard that, in some instances, children are having to access an adult mental health programme because no appropriate child and youth mental health unit is in their area. We heard of the overloaded crisis services within some communities that are swamped with requests for support and unable to cater for all.

Many problems arise from the inadequately resourced and thinly spread nature of mental health and addiction services, as identified in the MH&A. Those suffering a mental health crisis or mental health difficulties are often siphoned into the criminal justice system and receive no, or inadequate, treatment simply because good quality and accessible mental health services do not exist in their area. This is a glaring gap in our social and health services that should not be allowed to continue.

“We know that the mental health system is broken, as is the justice system. If the health issues, and then mental health issues, had been dealt with, they might not have ended up where they are.”

West Coast

Culturally informed services for Māori, Pacific peoples, and migrant and refugee communities

The need for mental health services that serve the needs of individuals was noted. However, a consistent view expressed by Māori, Pacific peoples and migrant and refugee communities is that the services provided do not reflect their specific needs or show an understanding of their particular cultural context. These communities had the strong view that the services must be culturally informed and delivered by culturally competent service providers.

“Community based – people for the people. At the moment, agencies are doing it to the people instead of with the people for the people.”

Northland

We heard from many Māori that models of mental health are generally Eurocentric and that Māori responsiveness approaches are necessary for their wellbeing. We heard people talk about being marginalised, stigmatised and criminalised for behavioural issues instead of being offered and provided therapeutic help.

“Māori-based programmes are valuable in addressing tikanga Māori BUT, can they address the wider inequities of what we know are the true criminogenic precursors? My answer to that is yes they can but they need skilled staff in all government departments to carry it out. I know as I did it for a very long time, and the service users that I have worked with went on to live offender-free lives.”

Hawke's Bay

Asian communities mentioned the significant effect that gambling addictions are having on them. An urgent call also came from migrant and refugee communities for resourcing to support cultural expertise and community knowledge and for the enhancement of targeted mental health, addiction, and drug and alcohol services for their communities.

“Korean people have huge shame with addiction, it affects their mental health. They would never involve their family to help because of shame.”

Auckland

“You must fund mandatory prevention and help for gambling because the addiction turns to crime and is hurting our communities.”

Auckland

Drug and alcohol abuse

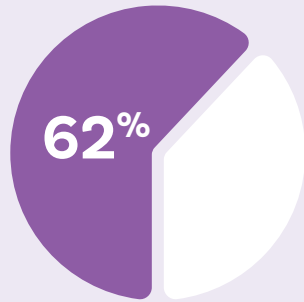
The misuse and abuse of alcohol and other drugs was seen as a major driver of crime in both urban and rural areas. We know that 60 percent of community-based offenders have an identified alcohol or other drug problem, and 87 percent of prisoners have experienced an alcohol or other drug problem in their lifetime.¹⁵

‘P’ was raised as a significant concern. It is doing incredible harm, and having a detrimental impact, throughout Aotearoa New Zealand. Many spoke from personal experience of the devastation this drug had caused to their own lives, those of whānau and family members and their communities. While they want to see the drug gone from their communities, they did not want solely punitive responses to inflict more harm on those who are addicted.

We were told that criminal and legislative responses are not effective, and that trying to sort out abuse and addiction through the criminal justice system does not work, creates risk and leads to unsafe situations. Tough on drugs policies could even incentivise higher levels of gang involvement in drug production and distribution and push those with drug addictions into far greater contact with a criminal underworld. We were told that the punitive criminal justice system response to drug misuse fails to understand the root causes of drug addiction.

As with earlier reports, people we engaged with saw poor mental health, addiction, and alcohol and drug abuse as symptoms of poverty, social exclusion, trauma and disconnection. We heard about the incredible levels of stress experienced by people as they sought to meet their needs, such as finding jobs, securing affordable and appropriate housing, participating in the lives of their whānau and families and the community and living lives that are violence free.

¹⁵ Government Inquiry into Mental Health and Addiction (2018) *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, p 8.



62% of
people in prison
had been diagnosed with a
mental health or substance use
disorder in the **previous 12 months**

SOURCE: Department of Corrections (Bowman, J) Comorbid substance use disorders and mental health disorders among New Zealand prisoners. Practice 4:1 August 2016

Proposed community interventions

Many people told us that locally led solutions are more likely to be successful in the context of mental health. They are developed by those who understand the issues and opportunities, they require community participation and co-design (with agencies and NGOs) and reflect local features that recognise the diverse nature of the community.

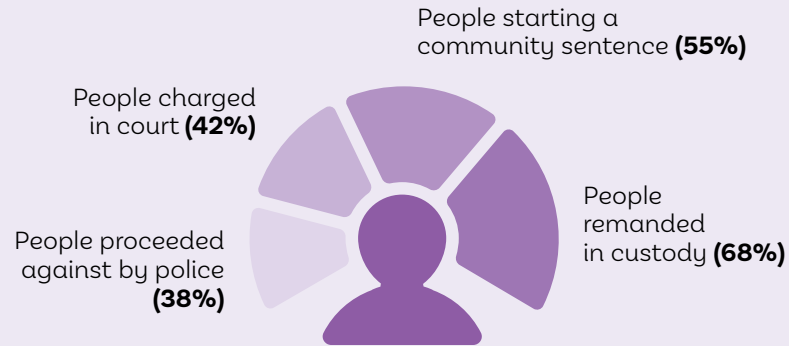
“The moment our whānau touches the criminal justice system, they’re incarcerated – the moment a charge is laid. They get isolated from restorative and tikanga processes – so open the system to allow the community to work with those people.”

Northland

We repeatedly heard that mental health, addiction, and alcohol and drug abuse must be treated as a health rather than criminal justice issue, and further interventions are needed within the community instead of as part of the criminal justice system. This view was reinforced by others who indicated that the current environment seems to be unable to deal with mental health issues and addiction within a health context. As a result, the focus of any treatment becomes one of punishment rather than support.

Proposed opportunities for prevention of mental health, addiction, and alcohol and drug abuse in communities include more resources, more alcohol, drug and mental health treatment and support, and cultural competence training and support.

Mental health and addiction service use is prevalent among:



SOURCE: Department of Corrections (Bowman, J) Comorbid substance use disorders and mental health disorders among New Zealand prisoners. Practice 4:1 August 2016

Many people told us that all parts of the criminal justice system are struggling to deal with those with mental health, addiction, and alcohol and drug abuse issues and even, in some cases, to acknowledge the presence of a mental health condition. We heard that the system sometimes confuses people with mental illness with those who have intellectual disabilities, which results in inadequate and improper treatment and care for both.

“Intellectual disability is also a key issue. Mental health is often combined with intellectual disability. People with disabilities ending up in prison for long periods – not good for anyone.”

Taranaki/Whanganui

Mental health services in the criminal justice system

It is now accepted that high levels of mental illness are embedded within the criminal justice system.

“A lot of people suffer from mental illness and other issues. How can we actually help them instead of just chucking them in prison?”

Taranaki/Whanganui

We were advised that Aotearoa New Zealand has a substantial number of people with mental health issues (including those with undiagnosed mental illness) ‘clogging up the justice system’ who are being treated the same as everyone else in the system.

People in prison diagnosed with Post Traumatic Stress Disorder



52%
women

22%
men

SOURCE: Department of Corrections (Bowman, J) Comorbid substance use disorders and mental health disorders among New Zealand prisoners. Practice 4:1 August 2016

The following concerns were raised in relation to mental health, addiction and the criminal justice system.

Police

- Police officers are often in situations involving mental health issues that they do not have adequate training to deal with.
- Police and prison remand cells are used to house people with severe depression and psychosis.
- Police officers drop off people suffering from mental health difficulties in the street after they have been assessed and require no immediate action, rather than returning them to where they were picked up. In Waikato, for example, the distances to get 'home' can be considerable.

Courts

- People suggested there was a clear need for judges and lawyers to have a better understanding of mental health issues, to inform decisions and safe and just practices within the court system.
- It was critical that victims' needs were understood and responded to effectively and appropriately.
- Information received by judges before sentencing must be comprehensive and alert them to any mental health issues.
- In combination with judges' increased understanding of mental health issues, people proposed that judges consider more rehabilitative pathways for people with mental illness.
- Prosecutors also need a good understanding of mental health. One person told us that they know the language of mental health issues but do not fully understand what they look like and misinterpret behaviours as disrespectful rather than as an expression of a mental health issue.
- Another suggested improvement included setting up a forum, other than a court, that has mental health expertise and can assess the issues so the defendant can get treatment and support rather than imprisonment. A mental health judge was also proposed to review medical advice and determine suitable punishment and a mental health counsellor who would be available to sit in court.

Prisons

- In relation to the prison system, we were told that prison is not equipped to deal with mental health problems, and the best option is to invest in mental health and alcohol and drug treatment outside prison.
- We were told of the lack of forensic services and appropriate resources to meet the growing numbers of prisoners with mental illness.
- We were reminded of the need for prisoners to get psychiatric assessments as part of their entry into prison, along with a plan for those diagnosed with mental illness so they get treatment while there and before release. Concerns were also raised about the length of time it takes for prisoners to access the services they need when they are in prison.
- We know that mental health and addiction issues often occur together. This creates complexity about the role of mental health and addiction and offending. It can often lead to incorrect diagnosis and misdiagnosis, which can result in the wrong treatment.
- A further concern relates to the continuation of medical treatment and support for prisoners once they are in prison. We heard examples where mental health patients are receiving treatment from their GPs or specialists that is not carried over when they enter prison. We also heard that doctors are not asked to supply notes to enable consistent treatment to be provided. Other examples related to the continuation of a regular medication regime for transgender transition being disrupted on entering a prison. Further concerns were noted of people being released, having been stabilised on their medications, with no ongoing mental health provision in their community.

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Next steps



Given what we have heard, we have concluded that the need for transformative change to our criminal justice system is urgent. It will be difficult, however, to find simple solutions to the problems people experience. Meaningful change will require reform throughout the whole system; it will also require a long-term commitment.

Nevertheless, we are convinced from what we have heard that many solutions already exist to the problems identified – they exist among the people working most closely with those affected by crime.

Fundamental culture change and a new vision is needed for the criminal justice system that draws on these solutions and develops new responses to meet the needs of our diverse communities. To achieve this, we need to work together in new partnerships at all levels of the criminal justice system: with people who have been harmed, people who offend, their whānau and families and local communities.

We have been encouraged by the conversations that we have heard, which clearly indicate that people are vested in supporting a new system that creates a more just society. These important conversations must continue, and we encourage all New Zealanders to be actively engaged in such discussions in their own communities. It is critical that we all hear each other and better understand the opportunities for change. The challenges are steep, but we have the ability to remake a system that will provide benefit for those who have been harmed, those who have harmed and to strengthen our communities. New Zealand has a history of distinctive responses to important social issues. We have shown global leadership in many areas, and we can demonstrate this leadership again in building a safe and effective justice system. We have heard that this is a once-in-a-generation opportunity that cannot be squandered.

Having heard from New Zealanders, we are now developing some options for reform for our final report, which we believe will help transform our criminal justice system.

“Creative and lateral thinking, and courage is needed.”

Tasman/Marlborough

“Everyone owns the issue of crime – the values of respect and service [should] underlie the system.”

Auckland

“Everyone has to have a voice.”

Taranaki/Whanganui

“Build relationships.”

Canterbury

“Hope is the key ingredient.”

Waikato

“Start looking local – looking here.”

Wellington

“We have the courage to move forward as everything has failed.”

Bay of Plenty

“We have the solutions in our Pacific communities. We know what to do; we need to be empowered to do it.”

Pacific fono

“Ensure kaupapa Māori values are used.”

Wellington

“If jail makes people worse, what can we do?”

Auckland

“Victims have to be heard, feel listened to, cared for.”

Auckland

Glossary

Acquittal	A judgment that a defendant is not guilty of the offence charged.	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.
Adjourn	To postpone a court sitting, or any meeting, to another date and/or location.	Duty lawyer	A lawyer who provides a specified legal service to unrepresented people or defendants charged with an offence, generally at their first appearance.
Admissible	Evidence is admissible if it is relevant to determining whether the charge is proved and is not excluded by the court under some other rule of evidence.	Electronic monitored bail (EM)	Bail with a residential condition and curfew that is monitored by way of an electrical ankle bracelet.
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.	Evidence in court	The various things presented in court to prove alleged facts, including written or spoken testimony from witnesses, and other material such as documents, maps and so on.
Balance of probabilities	The standard of proof that is required in civil cases and to prove some defences in criminal cases.	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.
Beyond reasonable doubt	The standard of proof in criminal cases, which is usually described as a requirement that the decision-maker be 'sure' of guilt.	Formal justice system	The 'formal justice system' typically refers to the disclosure to or discovery of offending by the authorities, the gathering of evidence, prosecution decisions, trial, conviction and sentencing processes in court, and subsequent sentence management by the Department of Corrections.
Burden of proof	In criminal cases, the prosecution has the responsibility or burden of proving guilt. This means that it is the prosecutor's role to prove beyond a reasonable doubt that the defendant is guilty of committing the alleged offence(s); the defendant does not have to prove their innocence (although they are required to prove a small number of defences if they wish to rely on them).	Hapū	Clusters of whānau who share closer and more direct genealogical ties to a common ancestor than iwi.
Charge	A formal accusation brought to the court that a person or organisation has committed a criminal offence.	High Court	The High Court hears the more serious criminal cases. Appeals against decisions made in a District Court may also be heard in the High Court.
Common law system	The system of law that is developed over time by way of decisions of the courts. In New Zealand, the common law supplements law that is developed by Parliament through legislation.		
Criminal proceeding	The prosecution in court of a person for an offence, usually by the police.		
District Court	Most court cases take place in the District Court, including most criminal cases and civil cases.		

Home detention	An alternative to imprisonment that is intended for offenders who otherwise would have received a short prison sentence (of two years or less) for their offending.
Hui	To gather, congregate, assemble, meet.
Iwi	Extended kinship group, community; often refers to a large group of people descended from a common ancestor.
Kaimahi	Worker, employee, staff.
Kaumatua	Old man, elder
Kaupapa	Subject, topic, proposal, policy or initiative for action.
Kuia	Old woman, elder
Legal aid	Government funding to pay for legal help for people who meet criteria to access legal aid.
Mamae	Be painful, sore, hurt.
Mana	Respect, authority and prestige.
Manaakitanga	To care, nurture and support.
Māori	Indigenous peoples of Aotearoa New Zealand.
Marae	Traditional and contemporary gathering places that carry great cultural meaning.
Matariki Court	A specialist court based in the Kaikohe District Court for adult offenders using section 27 of the Sentencing Act 2002 to allow the Court to hear about an offender's personal circumstances and cultural background, and also how whānau may help in the prevention of further offending.
Mātauranga Māori	Knowledge, understanding and wisdom that comes from a Māori world view.
Mokopuna	Grandchildren or descendants.

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.
Noa	Everyday, free of restriction.
Non-governmental organisation (NGO)	Encompasses: community or voluntary organisations; Māori iwi and hapū organisations; for-profit organisations where government organisations contract with them for the delivery of outputs and outcomes.
Not guilty by reason of insanity	When the judge finds the defendant is not guilty by reason of insanity, it is based on expert evidence that the defendant was legally insane when the offence was committed and they might be sent to hospital instead of prison.
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	The right to exercise autonomy and self-determination.
Rangatira	Chief (male or female), those of high rank.
Remanded	When a case is adjourned, a defendant is remanded in custody or on bail. If they are released on bail, there are often conditions they must comply with (such as having to live at a particular place, having no contact with the victim, or having to report to the police regularly). They must also return to court on their next appearance date. If they are remanded in custody, they are detained in prison until their next court date.
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.
Tamariki	Children.
Tāne	Man, men.
Tapu	The inherent and sacred value of all people, places and things.

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.
Tino rangatiratanga	Unqualified exercise of chieftainship – self-determination and autonomy – as guaranteed in Te Tiriti o Waitangi.
Tipuna	Ancestor.
Utu	The process of restoring one’s place and social standing in the community.
Victim impact statement	A prepared statement made by a victim in court 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.
Victimisation	Victimisation refers to the experiences of people who are offended against by others in a way that goes against the criminal laws of New Zealand.

Victims and their advocates	Victim advocates are sometimes volunteers who provide victims of crime with information and advice about the system and support and represent them in dealings with authorities. Social service non-governmental organisations, such as Victim Support and Women's Refuge, also provide victims with advocacy services.
Wāhine	Woman, women.
Whakapapa	Genealogy, lineage, descent, kin relationships.
Whānau	Extended family.
Whanaungatanga	Relationships.
Youth Court	The Youth Court is a division of the District Court. Young people aged between 14 and 16 who commit offences will be directed to a Youth Court rather than the District or High Court. Twelve- and 13 year-olds will also go to the Youth Court if their offending is particularly serious. Youth Courts can deal with all offences other than murder, manslaughter and non-imprisonable traffic offending. They operate in a less formal manner than the adult courts and seek to hold the young person accountable while also giving them the opportunity to develop in responsible and socially acceptable ways. Wider family and whānau are involved in decision-making through the mechanism of the Family Group Conference (FGC).



