

JUSTICE
REFORM
INITIATIVE

JAILING
IS
FAILING

A System that Fails Victims

A Justice Reform Initiative Briefing Paper
October 2025

Suggested citation: Schetzer, L & Sotiri, M (2025) 'A System that Fails Victims' Justice Reform Initiative, Australia.

A Justice Reform Initiative Briefing Paper

A System that Fails Victims

October 2025



Contents

Introduction	6
Crime victimisation in Australia	7
Who are most likely to be victims of crime?	8
First Nations people	8
People with cognitive or physical disability	10
People with a mental illness	11
People experiencing homelessness	11
People who are incarcerated – the victim-offender overlap	12
People with cognitive disability and/or mental illness who are incarcerated	13
Women who are incarcerated	14
Incarcerated men who have survived childhood sexual abuse	15
What do victims of crime want from the justice system?	16
Do current criminal justice processes address what victims need?	18
Does the criminal justice system address victim trauma?	20
Can Restorative Justice provide an alternative that meets the needs of victims?	23
Restorative justice programs in Australia	24
Benefits of restorative justice for victims/survivors	25
Impact of restorative justice on re-offending	26
Conclusion	28



Introduction

Formulating an approach to crime that genuinely meets the needs of victims requires a close examination of who the victims of crime are, what the concerns of victims are, and the extent to which punitive approaches to criminal justice address victims' needs.

Criminal justice policy decisions about policing, bail, sentencing and imprisonment are often influenced by sensationalised media reporting of crime. **'Tough on crime'** policy responses (for example, stricter bail laws, increased use of imprisonment, increased police powers and harsher sentences) are commonly framed in the media as being in the interests of victims. When crime is committed by people who are on bail or parole, this is framed in the media as evidence of a system that both fails victims and is too 'soft' or 'easy' on perpetrators.

Victims of crime and perpetrators of crime are routinely positioned as constituting two entirely separate and disconnected groups with different interests and needs.

Such reporting also serves to both generate and exacerbate community fear, drawing a narrative link between community aspirations for safety in the wake of serious crime and the need for a more punitive approach to criminal justice.¹ However, research into the needs of victims, and research into 'what works' to build community safety, offers a much more nuanced view.

While the adversarial criminal justice system is able to meet some of the needs of victims of crime, there is considerable research to indicate that it can also leave victims feeling disregarded, unheard and further traumatised.² For many people who have been victims of crime the criminal justice system is confusing, intimidating and alienating. For many it has also been the site of their own incarceration and criminalisation, or that of their family members.³ For some people who have been victimised by criminal offending there is a reluctance to formally report to police the incident that led to their victimisation, particularly in relation to incidents of personal violent crime.⁴

This paper looks at the research and data overviewing criminal victimisation, challenges the media narrative of the 'idealised' victim and untangles the myth of the binary classification where people are either 'victims of criminal behaviour' or 'perpetrators of criminal behaviour.' The paper also unpacks policy, legislative and service sector responses that are evidence based, respond to the needs of victims, and hold people who commit crime to account. These approaches challenge the notion that the needs of victims and the needs of people who commit crime always exist in opposition and also recognise the diversity of victims' voices.

¹ John Pratt. 2007. *Penal Populism* (2007). 172-174.

² Centre for Innovative Justice (CIJ). 2019. *It's healing to hear another person's story and also to tell your own story: Report on the CIJ's Restorative Justice Conferencing Pilot Program*, Centre for Innovative Justice, October 2019; Queensland Parliament Legal Affairs and Safety Committee (Qld LACS). 2023. *Inquiry into Support provided to Victims of Crime*, Report No. 48, 57th Parliament Legal Affairs and Safety Committee May 2023. 13

³ Jennifer M. Reingle. 2014. 'Victim-Offender Overlap' in J.Mitchell Miller (ed). 2014. *The Encyclopedia of Theoretical Criminology*. First Edition. 2014. Blackwell Publishing Ltd.

⁴ Australian Bureau of Statistics (ABS). 2024. *Crime Victimisation, Australia*, released 20 March 2024. <<https://www.abs.gov.au/statistics/people/crime-and-justice/crime-victimisation-australia/latest-release#methodology>>.

Crime victimisation in Australia

Despite regular media commentary that emphasises 'crime waves' the data in Australia tells a very different story.

According to the Crime Victimization Survey (CVS) conducted by the Australian Bureau of Statistics (ABS)⁵, only a very small minority of individuals or households are the victims of a criminal offence in Australia in any given year. In addition, victimisation rates for most personal crimes and household crimes have decreased over the last 15 years.

Based on the CVS conducted throughout Australia from July 2021 to June 2022:

- **4.2%** of persons aged 15 years and over (859,300) experienced one or more selected personal crimes (physical assault, threatened assault, robbery, sexual assault);
- **9.1%** of households (903,700) experienced one or more selected household crimes (break-in, attempted break-in, motor vehicle theft, theft from motor vehicle, malicious property damage, other theft).

Significantly, the ABS recorded a **decrease** in victimisation rates from 2008–09 to 2021–22 in relation to the following personal crimes:

- **Physical assault** (3.1% to 1.9%)
- **Face-to-face threatened assault** (3.9% to 2.2%)
- **Non face-to-face threatened assault** (1.2% to 0.7%)
- **Robbery** (0.6% to 0.3%)

Of those who experienced physical assault, women were more likely than men to experience physical assault by a family member or intimate partner. For women who experienced physical assault, the perpetrator was most often a man (68% or 121,200) and the majority of incidents occurred either at a residential location (53% or 93,600) or at work (26%

or 46,000). Women who experienced physical assault were more likely to experience two or more incidents (57%) than men (38%).

The following groups were more likely to experience physical assault:

- Persons aged **15–24 years**;
- Persons living in the most **socio-economically disadvantaged areas**;
- Persons living **outside a capital city**.

In relation to whether the most recent incident of victimisation for a personal crime was reported to the police by the victim, data collected by the ABS indicates a low rate of reporting to police. Of those who experienced a personal crime in 2021–22, the following reported the most recent incident to police:

- **52%** (202,300) for **physical assault**,
- **39%** (172,700) for **face-to-face threatened assault**,
- **32%** (43,100) for **non face-to-face threatened assault**,
- **45%** (24,400) for **robbery**.

The main reasons given as to why physical assaults or threatened assaults were not reported were a belief that it was a personal matter, feeling that the incident was too trivial or unimportant, or thinking that the police would be unable or unwilling to do anything.

In relation to household crimes, the ABS recorded a decrease in victimisation rates from 2008–09 to 2021–22:

- **Break-in** (3.3% to 2.0%)
- **Attempted break-in** (3.1% to 2.0%)
- **Motor vehicle theft** (1.1% to 0.6%)
- **Theft from a motor vehicle** (4.5% to 2.4%)
- **Malicious property damage** (11.1% to 3.8%)
- **Other theft** (4.4% to 2.0%)

⁵ ABS 2024, n 4.

Who are most likely to be victims of crime?

In much of the media reporting of crime, there is usually very little discussion of who is most likely to be a victim of crime. There is a similar absence of nuanced discussion when policy and legislation is created that purports to centre victims. As the discussion below will illustrate, there is a considerable body of research to suggest that victims are overwhelmingly people who experience social and economic disadvantage, specifically children and young people, people with disabilities, people with mental illness, First Nations people, and people experiencing homelessness. There is also significant research to indicate that there is a strong link between criminal victimisation and criminal offending. That is, that many people who are incarcerated have histories of being the victims of criminal offences themselves, particularly physical and sexual abuse.

First Nations people

First Nations peoples are over-represented in the justice system as victims of violent crime. There is considerable evidence to indicate that First Nations peoples experience violence in the community and family violence at higher rates than non-First Nations people.⁶ According to the 2018–19 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS), more than 1 in 7 First Nations people aged 15 and over (16%; 76,900) reported that they experienced physical and/or threatened physical harm in the preceding 12 months.⁷

The ABS collects data about Aboriginal and Torres Strait Islander victims of crime for NSW, Queensland, South Australia and the Northern Territory.⁸ The data indicates that Aboriginal and Torres Strait Islander people were **over-represented** amongst the total reports for assault and sexual assault in those states/territories.

In 2023 there were:

- **13,542** Aboriginal and Torres Strait Islander victims of assault recorded in Queensland (**23.2%** of 58,479 police recorded victims of assault despite making up only **5.3%** of the total population);
- **8,600** Aboriginal and Torres Strait Islander victims of assault recorded in New South Wales (**11.2%** of 76,533 police recorded victims of assault despite making up only **4.2%** of the total population);
- **8,316** Aboriginal and Torres Strait Islander victims of assault recorded in the Northern Territory (**72.1%** of 11,540 police recorded victims of assault despite making up only **30.0%** of the total population);
- **3,532** Aboriginal and Torres Strait Islander victims of assault recorded in South Australia (**16.1%** of 21,878 police recorded victims of assault despite making up only **2.9%** of the total population).

⁶ Lorana Bartels. 2010. Emerging Issues in domestic/family violence research. Australia Institute of Criminology, Criminology Research Council. 2010; Judy Atkinson. 2013. Trauma-informed services and trauma-specific care for Indigenous Australian children. Closing the Gap Clearinghouse. Canberra: Australian Institute of Health and Welfare & Australian Institute of Family Studies.

⁷ Australian Institute of Health and Welfare (AIHW). 2024. Aboriginal and Torres Strait Islander Health Performance Framework. Tier 2 – Determinants of health – 2.10 Community Safety. <<https://www.indigenoushpf.gov.au/measures/2-10-community-safety>>

⁸ ABS. 2024. Recorded Crime – Victims. Aboriginal and Torres Strait Islander victims of crime. Released 27 June 2024. <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/latest-release#aboriginal-and-torres-strait-islander-victims-of-crime>>. Data about Aboriginal and Torres Strait Islander victims of crime in other states/territories is not available.

Most Aboriginal and Torres Strait Islander victims of assault were women (61–76% across NSW, Qld, SA, NT). Most assaults for Aboriginal and Torres Strait Islander victims were recorded as family and domestic violence related (66–82%). Almost a quarter to a third of all Aboriginal and Torres Strait Islander victims of assault were aged between 25 and 34 years at the date of report (24–30%).

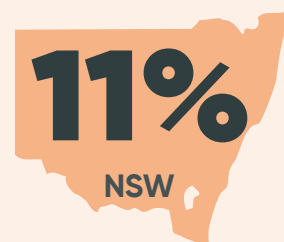
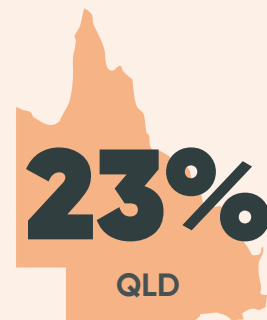
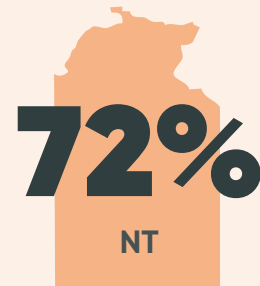
The number of Aboriginal and Torres Strait Islander victims of sexual assault recorded in 2023 were:

- **1,628 victims** in New South Wales (**11.1%** of 14,708 police recorded victims of sexual assault)
- **1,088 victims** in Queensland (**12.9%** of 8,442 police recorded victims of sexual assault)
- **214 victims** in the Northern Territory (**47.3%** of 452 police recorded victims of sexual assault)
- **168 victims** in South Australia (**8.3%** of 2,014 police recorded victims of sexual assault)

Most Aboriginal and Torres Strait Islander victims of sexual assault were women (77–91%), 29–51% were aged between 10 and 17 years at the date of report, and at least one third of all sexual assaults were family/domestic violence related incidents (34–48%).

Over-represented

Percentage of victims of assault in each state that identify as Aboriginal and Torres Strait Islander.



People with cognitive or physical disability

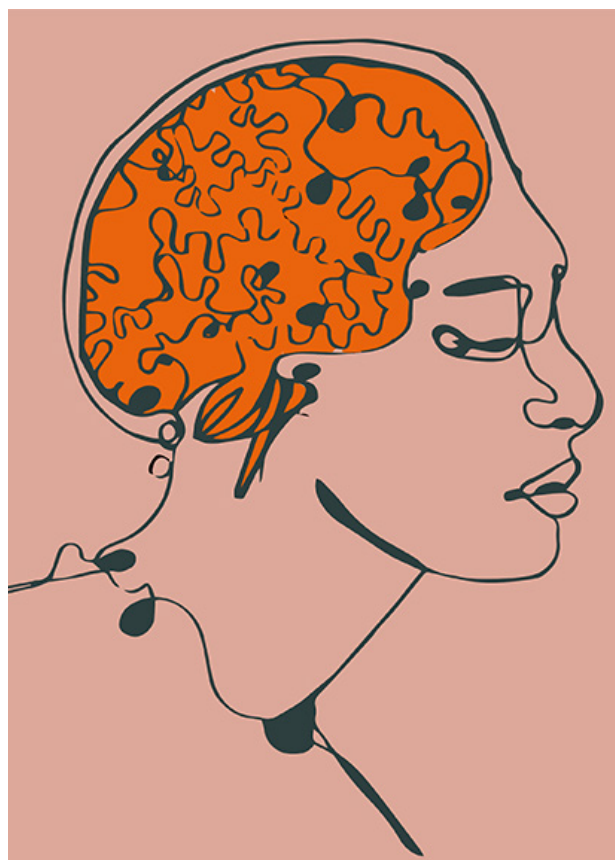
The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability found that people with disability report a higher prevalence of all forms of violence and abuse experienced since the age of 15, than people *without* disability.

More than half of all people with disability aged 18 to 64 years (55%), have experienced physical or sexual violence since the age of 15 (compared to 38% of adults aged 18 to 64 without disability).⁹

According to the 2016 ABS Personal Safety Survey people with disability experienced high rates of physical assault (45%) and sexual assault (18%). In comparison, the rates of physical assault and sexual assault for people without disability were 29% and 9.1%, respectively. People with disability also experience high rates of violence perpetrated by a domestic partner (21%), around twice the rate for people without disability (9.8%).¹⁰

In 2022 the NSW Bureau of Crime Statistics and Research (BOCSAR) reported that of the 542,388 individuals studied who identified as having a disability as part of the National Disability Data Asset pilot, 17% were recorded as a victim in one or more criminal incidents during the period 2014

to 2018, 6.5% experienced a violent incident and 4.4% experienced a Domestic Violence-related incident. The study also suggested that police were less likely to proceed against people in violent and DV-related incidents that involve victims who have a disability. This was particularly evident for incidents involving victims with both cognitive and physical disabilities, with or without psychosocial disability.¹¹



⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('Disability Royal Commission'). 2023. Criminal justice and people with disability. Final Report Volume 8. 86-87.

¹⁰ Ibid.

¹¹ NSW Bureau of Crime Statistics and Research (BOCSAR). 2022. The victimisation of people with disability in NSW: Results from the National Disability Data Asset pilot. Number 252. September 2022. <<https://www.bocsar.nsw.gov.au/Publications/CJB/2022-Report-NDDA-pilot-CJB252.pdf>>.

¹² Chapple, B, Chant, D, Nolan, P, Cardy, S, Whiteford, H, and McGrath, J. (2004). Correlates of victimisation amongst people with psychosis. *Social Psychiatry and Psychiatric Epidemiology* 39 (10) 836-840. <<https://doi.org/10.1007/s00127-004-0819-4>>.

¹³ Purcell R, Harrigan S. Lifetime rates and correlates of crime victimisation in young people with mental ill-health. *Australasian Psychiatry*. 2017;25(2):135-139. <doi:10.1177/1039856216658826>.

People with mental illness

There have been some studies which indicate that people with mental illness are also more likely to experience crime victimisation. A 2004 study involving a large sample of people with a psychotic disorder, found that 18% of that sample had experienced being a victim of a violent crime in the previous year.¹²

Children and young people with mental illness are particularly vulnerable to criminal victimisation, particularly violent assaults. A major 2017 study involved 776 participants aged 12–25 years attending headspace centres in Australia, who consented to a clinical interview and provided self-reported data regarding lifetime victimisation. A quarter of the sample (24.5%) reported crime victimisation, including 18.5% who experienced violent victimisation (mainly physical or sexual assault) and 14.1% who experienced non-violent crime.¹³

People experiencing homelessness

There is considerable international (and some Australian) research that suggests people experiencing homelessness encounter higher levels of violent crime victimisation than people who are housed. A 2005 UK study, based on interviews with over 300 men and women living on the street and in temporary accommodation in three cities across the United Kingdom (London, Oxford and Cambridge) found that, compared with the public, people experiencing homelessness were 13 times more likely to have experienced

violence and 47 times more likely to have been victims of theft. Almost 10% of those interviewed had experienced sexual assault in the last year, around half had experienced damage to property and one-fifth had been a victim of burglary (presumably while in temporary accommodation). The study found that few people experiencing homelessness report being the victim of a crime or anti-social behaviour because of their fear of the police and the social exclusion they may perceive or experience more generally.¹⁴

In 2009 a survey of 102 people experiencing homelessness in inner-Sydney found that 48% (49 people) had been the victim of violence in the previous 12 months.

Participants with a history of schizophrenia or other psychotic disorder were 3.1 times more likely to be victimised than those without such a history. Participants reporting higher levels of depressive symptomatology were two and a half times more likely to report past year victimisation. Women were more likely to have experienced assault, particularly sexual assault, than men.¹⁵

Women who are homeless are particularly over-represented amongst those who have experienced violent crime victimisation. Family and domestic violence is the main reason women and children leave their homes in Australia. In 2022–23, Specialist Homelessness Services (SHS) assisted around 104,000 clients who experienced family and domestic violence – approximately 38% of all SHS clients.¹⁶

¹⁴ Tim Newburn and Paul Rock. 2005. *Living in fear: violence and victimisation in the lives of single homeless people*. Crisis: London.

¹⁵ Sarah Larney, Elizabeth Conroy, Katherine L. Mills, Lucy Burns and Maree Teesson, Factors associated with violent victimisation among homeless adults in Sydney, Australia. *Aust N Z J Public Health*. 2009 Aug;33(4):347–51. doi: 10.1111/j.1753-6405.2009.00406.x. PMID: 19689595.

¹⁶ AIHW. 2024. Specialist homelessness services annual report 2022–23 – Clients who have experienced family and domestic violence, <<https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/clients-who-experienced-fdv>>.

People who are incarcerated – the victim-offender overlap

What is apparent from the above discussion is that the groups of people who are over-represented as victims of crime are also the same groups of people who are over-represented in the criminal justice system and prison population – First Nations people, people with cognitive disability, people with mental illness and people experiencing homelessness. It is therefore not surprising to find that amongst those people who are in prison, there is a high proportion of people who have also been the victims of crime.

This notion of the victim-offender overlap – the strong relationship between victimisation and perpetration of crime¹⁷ – challenges the media narrative of the ‘idealised’ victim. That narrative is predicated on the idea that people can be categorised into a binary classification of either ‘victims of criminal behaviour’ (who are assumed to be people who have not committed crime) and ‘perpetrators of criminal behaviour’ (who are presumed to not be victims). There is little space in this narrative to consider that people can be both victims and perpetrators across various types of criminal behaviour.¹⁸

There is considerable literature and research internationally that suggests a strong link between criminal victimisation and criminal

offending.¹⁹ Men in prison have often experienced high levels of physical, sexual and emotional victimisation before, during and after their incarceration. The UK Prison Reform Trust reported in 2017 that 24% of men in prison were taken into care as a child, 27% experienced abuse and 40% observed violence.²⁰ In the US in relation to violent criminal offending, research indicates a particularly strong overlap with only 5% of people who have committed crimes of violence reporting that they had not previously been victimised or exposed to violence.

74% of people who have committed crimes of violence reported earlier experience of either victimisation or witnessing at least one episode of violence.²¹

There have been only a limited number of studies in Australia regarding the phenomenon of victim-offender overlap and the over-representation of people who have previously experienced crime victimisation in Australian prisons, and these have tended to focus on particular demographics and cohorts within the Australian prison population.

The Law Australia Wide Survey, Australia’s most extensive legal needs survey conducted by the Law and Justice Foundation of NSW in 2008, found that 1.7% of all respondents had been alleged to have recently committed a crime during the 12-month reference period.

¹⁷ Michael G. Gottfredson. 1981. On the Etiology of criminal victimization. *Journal of Criminal Law and Criminology*, Volume 72, Issue 2, 714–726.

¹⁸ Reingle, n 3.

¹⁹ Ibid. See also Wittebrood, K., & Nieuwebeerta, P. (1999). Wages of sin? The link between offending, lifestyle and violent victimization. *European Journal of Criminal Policy and Research*, 7, 63–80; Fiegelman, S., Howard, D. E., Xiaoming, L., & Cross, S. I. (2000). Psychosocial and environmental correlates of violence perpetration among African-American urban youth. *Journal of Adolescent Health*, 27, 202–209; Dobrin, A. (2001). The risk of offending on homicide victimization: A case control study. *Journal of Research in Crime and Delinquency*, 38, 154–173; Heyman, R. E., & Smith, A. M. (2002). Do child abuse and interpersonal violence lead to adulthood family violence? *Journal of Marriage and Family*, 64, 684 – 870; Daday, J. K., Broidy, L. M., Crandall, C. S., & Sklar, D. P. (2005). Individual, neighborhood, and situational factors associated with violent victimization and offending. *Criminal Justice Studies*, 18, 215 – 235; Broidy, L. M., Daday, J. K., Crandall, C. S., Klar, D. P., & Jost, P. F. (2006). Exploring demographic, structural, and behavioral overlap among homicide offenders and victims. *Homicide Studies*, 10, 155–180; Jennings, W. G., Higgins, G. E., Tewksbury, R., Gover, A. R., & Piquero, A. R. (2010). A longitudinal assessment of the victim-offender overlap. *Journal of Inter-personal Violence*, 25, 2147–2174; Reingle, J. M., Jennings, W. G., Maldonado-Molina, M. M., Piquero, A., & Canino, G. (2011). Investigating the role of gender and delinquency in exposure to violence among Puerto Rican youth. *Journal of Con-temporary Criminal Justice*, 27, 361–377.

²⁰ Jennifer Anne Sloan Rainbow. 2018. ‘Male prisoners’ vulnerabilities and the ideal victim concept’, Chapter 14 in Marian Duggan (ed). 2018. *Revisiting the ‘Ideal Victim’ – Developments in critical victimology*. Policy Press. 263, 268; Prison Reform Trust. 2017. *Bromley Briefings Prison Factfile*. Autumn 2017. London. Prison Reform Trust.

²¹ Fiegelman et al, n 19 above.

However, this percentage increased to 5.2% of the sub-group of respondents who reported having been a victim of crime. Conversely, while 13.3% of all respondents reported having experienced a crime, the proportion was much higher (41.1%) for those respondents who were also alleged to have committed a crime during the survey reference period.²² These results suggest that a person who has been the victim of a crime is more likely to also commit a crime, and that a person who commits a crime is more likely to also have been a victim of a crime.

People with cognitive disability and/or mental illness who are incarcerated

A detailed 2012 study of a cohort of 2,731 individuals whose mental health disorders and cognitive disability diagnoses were known and who had been in prison, found that almost all individuals with a cognitive disability had high levels of police contact both as victims and as people who had been accused of perpetrating crime.²³

According to the Australian Institute of Health and Welfare (AIHW) 2018 Adult Prisoner Entrant Survey, 29% of people entering prison reported a chronic condition or disability. This compares with 22% of people in the general community²⁴ A NSW survey

of adults in prison found that 28% of people in NSW prisons who were surveyed reported experiencing difficulties with everyday activities related to long-term health conditions or disability. The survey also found that 15% of people entering prison were in receipt of the disability support pension (DSP) prior to their incarceration.²⁵

Several studies have consistently found higher rates of intellectual disability or cognitive impairment in custodial populations than in the community, with some indicating that 25–30% of people in prison have borderline intellectual disability and 10% have a mild intellectual disability.²⁶

According to the NSW BOCSAR and the Australian Government Department of Social Services, rates of contact with the criminal justice system are higher for people with a disability who have also been the victim of a criminal incident.²⁷ Similarly, people with a previous diagnosis of mental illness make up approximately 51% of people entering prison²⁸ and as noted earlier in this paper are also over-represented as victims. There is a high likelihood of victim-offender overlap amongst people with both cognitive disability and mental health conditions in Australian prisons.

²² Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, R. & Ramsay, S. (2012) Legal Australia-wide survey. Legal need in Australia Law and Justice Foundation of NSW.

²³ Professor Eileen Baldry, Dr Leanne Dowse and Ms Melissa Clarence. 2012. *People with intellectual and other cognitive disability in the criminal justice system*. December 2012. 3.

²⁴ Australian Institute of Health and Welfare (AIHW), *The health of Australia's prisoners 2018*, Report, 2019, 78.

²⁵ Justice Health and Forensic Mental Health Network, *2015 Network patient health survey*, Report, May 2017, 28, 47.

²⁶ AIHW (n 24) 77; Eileen Baldry, Leanne Dowse & Melissa Clarence, *People with mental and cognitive disabilities: Pathways into prison*, Background paper for Outlaws to Inclusion Conference, February 2012, 15.

²⁷ Disability Royal Commission, n 9, 260; Clare Ringland, Stewart Boiteaux & Suzanne Poynton, NSW Bureau of Crime Statistics and Research, 'The victimisation of people with disability in NSW: Results from the National Disability Data Asset pilot', *Crime and Justice Bulletin no. 252*, September 2022

²⁸ AIHW. 2023. *Adults in prison*. 15 Nov 2023 <<https://www.aihw.gov.au/reports/australias-welfare/adults-in-prison#health-of-people-in-prison>>.

Women who are incarcerated

The significant increase in the number of women in Australian prisons over the last two decades has also seen considerable research exploring the various factors that characterise women who are incarcerated. The literature consistently identifies mental health conditions, alcohol and/or substance dependency, histories of victimisation of family and domestic violence, and sexual abuse.²⁹

A 2009 NSW Inmate Health Survey found that 45% of all women in custody had experienced domestic violence or abuse as an adult and 66% had been in violent relationships.³⁰ In a 2007 survey of 199 women who were incarcerated in NSW, 59% said that they had been forced or frightened into doing something sexually that they did not want to do in their lifetime.³¹

More recent studies of women in prison have found that around 70–85% of women in prison have experienced some form of violence or abuse.³²

There are also increasing reports of women who are the victims of domestic violence being misidentified. Such misidentification usually occurs when police incorrectly identify which party is the aggressor and which is the victim. While it is difficult to measure the full extent to

which this occurs, in 2021 the Victorian Family Violence Reform Implementation Monitor found that misidentification occurred in between 10% to 58.7% of domestic violence cases.³³ The issue of misidentification will be covered in more detail in the Justice Reform Initiative briefing paper on the criminalisation and incarceration of women.

For First Nations women in prison the victim-of-fender overlap is even more pronounced. The harmful impacts of the experience of family violence and sexual abuse are recognised as **key drivers of the incarceration** of Aboriginal and Torres Strait Islander women.³⁴

- A 2017 study in Western Australian study suggested that **up to 90%** of Aboriginal and Torres Strait Islander women in prison were survivors of **family and other violence**;³⁵
- A 2014 study of First Nations women in prison in NSW found that **70%** disclosed they were survivors of **child sexual abuse**, with 44% subject to ongoing sexual abuse as adults and **78%** experiencing **violence as adults**;³⁶
- A 2013 study of Victorian women in prison found **87%** were victims of **sexual, physical or emotional abuse**, with most having suffered abuse in multiple forms.³⁷

²⁹ Mary Stathopoulos and Antonia Quadara. 2014. Women as offenders, Women as victims – The role of corrections in supporting women with histories of sexual abuse, A Report for the Women's Advisory Council of Corrective Services NSW. 2014. 14.

³⁰ Corrective Services NSW. 'Women Offenders' (Webpage) 11 May 2023. <<https://correctiveservices.dcj.nsw.gov.au/reducing-re-offending/initiatives-to-support-offenders/specialist-support/women-offenders.html>>.

³¹ Richters, J., Butler, T., Yap, L., Kirkwood, K., Grant, L., Smith, A. M. A., Schneider, K., & Donovan, B. (2008). Sexual health and behaviour of New South Wales prisoners. Sydney: School of Public Health and Community Medicine, University of New South Wales. 21.

³² Australia's National Research Organisation for Women's Safety. 2020. *Women's imprisonment and domestic, family, and sexual violence: Research synthesis* (ANROWS Insights, 03/2020). Sydney: ANROWS. 2; Kilroy, D. (2016) 'Women in Prison in Australia' Conference Paper, Current Issues in Sentencing Conference, National Judicial College of Australia and Australian National University. 6-7 February 2016.

³³ Rhiannon Hobbins and Gemma Breen. 2024. 'What is misidentification? How the legal system fails victims of domestic violence.' ABC News, 14 December 2025, available online at <<https://www.abc.net.au/news/2024-12-14/misidentification-domestic-violence-police-family-violence/104679406>>.

³⁴ PwC's Indigenous Consulting, Indigenous Incarceration: Unlock the Facts (2017) 23, as quoted in Australian Law Reform Commission 'Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', Report No 133 (2017) (ALRC Report 2017) paragraph 11.20.

³⁵ Mandy Wilson et al, 'Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia' (2017) 7(1) SAGE Open 6, as quoted in paragraph 11.19 ALRC Report 2017, n 34.

³⁶ Human Rights Law Centre and Change the Record Coalition. Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment (2017), 17; Mary Stathopoulos and Antonia Quadara, 'Women as Offenders, Women as Victims: The Role of Corrections in Supporting Women with Histories of Sexual Abuse' (Women's Advisory Council of Corrective Services NSW, 2014) 18, as quoted in paragraph 11.19 ALRC Report 2017.

³⁷ Victorian Equal Opportunity and Human Rights Commission. Unfinished Business: Koori Women and the Justice System (2013), as quoted in paragraph 11.19 ALRC Report 2017, n 34.

Incarcerated men who have survived childhood sexual abuse

Between 2013 and 2017 the Royal Commission into Institutional Responses to Child Sexual Abuse conducted private consultations with **6,875 survivors** of childhood sexual abuse and/or their family and friends. Of these, **713** people who reported that they were a survivor of childhood sexual abuse (10.4%) were in prison when they participated in a face-to-face private session. **91% of whom were men**. Over half of these survivors said they were abused in out-of-home care. 62% said they were abused in a government-managed institution and close to one-third indicated they were sexually abused in an institution managed by a religious organisation.³⁸

The majority of survivors who were in prison at the time they provided evidence to the Royal Commission reported that as children they were often subjected to sexual, physical and emotional abuse and neglect. They also described inadequate protection by welfare services, youth detention services and police from such abuse and neglect, indicating that these institutions failed to adequately respond and keep them safe.³⁹

Many survivors who gave evidence while in prison reported that they were often in trouble with police at an early age. Many of them said that as they grew older, they chose to spend less time at home

in an effort to avoid sexual and/or physical abuse, family conflict and dysfunction. Some said their family circumstances made them more vulnerable to being homeless, avoiding school or spending time unsupervised in public areas. These activities, as well as their involvement in petty crime or substance abuse, often brought them to the attention of police.⁴⁰

Most survivors also said that they had been involved with the criminal justice system for many years and had previously been in prison.⁴¹



³⁸ Royal Commission into Institutional Responses to Child Sexual Abuse Vol 5 – Private Sessions 2017, Survivors in prison. 240.

³⁹ Ibid 247.

⁴⁰ Ibid.

⁴¹ Ibid 269-271.

What do victims of crime want from the justice system?

For people who have suffered trauma and distress as a victim of a crime, the criminal justice system can be a difficult and impersonal system to navigate.⁴² Dealing with police interviews, providing witness statements, and then contending with what is a complex adversarial system of criminal justice involving trials, sometimes before juries, and legal counsel arguing complex concepts of evidence and procedure, the process can be confusing, alienating and disempowering.

As noted above, many people who are victims of crime are also significantly socially or economically disadvantaged and living on the margins of society. For First Nations people, people with cognitive disability or mental illness, or people who are homeless, the criminal justice system is not only confusing and alienating, but also often the instrument of their own incarceration and criminalisation, or that of their family members and community. Many victims will therefore hold considerable distrust and even fear of the criminal justice system.

The Centre for Innovative Justice (CIJ) notes that people who are victims of crime are not a homogenous cohort.⁴³ Every experience is different. Every victim deals with their experience differently. Some will be dealing with significant trauma and catastrophe. Others may have more financial rather than emotional and psychological consequences. A person who has experienced theft or

burglary may have a totally different experience and response than someone who was the victim of a violent crime such as assault or sexual assault. This will be different again from someone who is a family member of a person who has been the victim of a homicide or a crime that caused death or catastrophic injury.

It is therefore important to recognise that everybody who has experienced being a victim will require different levels of response and support. These differences in experiences and responses across the large spectrum of victims of crimes will also mean that there will be a large range of hopes, wishes and outcomes that victims will seek when they want a justice system response to a crime. While some victims will seek a punitive response to the person who offended, the research indicates that this is certainly not the only response or primary desire for many victims.

⁴² Qld LACS, n 2.

⁴³ CIJ, n 2, 13.



The Centre for Innovative Justice has identified a number of common themes that indicate the responses that victims want from the justice system.⁴⁴ These are:

- **Voice** – This may involve providing the victim with the opportunity to explain the impact of the offending directly to the person who offended and to tell their story in their own way. This may need to be free from the systems and formal processes of the criminal justice system, so that they can tell the person who offended about how they feel about the crime, to express emotion, to have this person listen to and understand the impact of the crime on all aspects of their life.
- **Validation** – To have others believe and affirm their experience. This may involve a process in which the victim's experience is recognised, treated as meaningful and not challenged or subject to attack or cross-examination.
- **Information** – This may involve a process in which the victim seek answers from the person who offended to various unresolved questions to enable the victim to understand more about the crime, what happened and why.
- **Accountability** – The process of the victim directly addressing the person who offended about how the crime has affected their life can enable the person to be accountable for their action. This may involve an apology or some other expression of remorse, other forms of recompense or reparation, or even a public acknowledgment. It may also encompass a more formal punitive response.
- **Relationships** – This involves looking at whether it is possible to restore damaged relationships with others involved in or affected by the crime, family members and the community. It may also entail

exploring options and arrangements as to how to manage any future interactions if a relationship is not ongoing, such as looking at what will happen if the victim and the person who offended unexpectedly encounter each other in the community.

It is important to recognise that in situations where the victim and person who offended did not know each other before the crime, a relationship of harm has still been created between them through the crime. Some victims may want to address this relationship. This may allow them to change the way they think about or imagine this person.

- **Prevention** – To see that what happened to them does not happen to anyone else. This may involve a process in which the victim is able to assist the person who offended to develop a greater insight into the gravity of the effects of the crime and resolve to address the circumstances that gave rise to the offending.
- **Resolution** – To feel that what needs to happen in order for the crime to be addressed has occurred. This may not necessarily mean having a sense of closure or no longer feeling grief or sadness. It is more about the victim having a process in which they can feel that they have done what they needed to do in order to address the criminal activity.

It is a practice or method that enables the victim to feel that they have had a sense of agency in the process and have not just been a passive bystander in the process.

⁴⁴ Ibid 13-16.

Do current criminal justice processes address what victims need?

While the criminal justice system may meet some of the justice needs of victims on some occasions, there are many needs which it cannot address in its usual form.

The main purpose of a prosecution for a criminal offence within the criminal justice system is to determine questions such as whether the alleged offence has been committed, whether the accused person is pleading guilty, whether the prosecution can establish the guilt of the accused person beyond reasonable doubt, and if so, what is the appropriate sentence or punishment for the accused person.

The criminal justice system will always be limited in its capacity to address the needs of victims given that in a criminal prosecution, the victim is not a party to the proceeding. The parties to a criminal proceeding are the state and the accused person or persons. The victim may be called to give evidence as a witness for the prosecution, but not in all criminal prosecution proceedings. If the accused person is pleading guilty to the offence, the victim will not be required to give evidence at all and will not have any opportunity to make a statement to the court, unless it is in the form of a victim impact statement.

Furthermore, while a victim may decide to report their experience to police and make a statement to police that they have been the victim of an alleged criminal offence, the decision to formally charge a person with that act is a matter for police discretion. There are often situations where police decide not to formally charge a person. In addition, once a person is charged, the decision as to whether the person will face a criminal trial or hearing is then at the discretion of the prosecution, who acts on behalf of the state. The prosecutor will decide whether to continue with the prosecution, what charges to prosecute, and the way in which the prosecution case will be conducted (which may or may not involve calling the victim as a witness).

We can therefore see that in terms of the identified needs of victims as outlined above, there are often situations where the needs will not be met through the traditional criminal justice processes. A victim may not have the opportunity to express their voice and tell of their experience and the impact the experience has had on them. Even if a victim is asked to give evidence in court, the strict processes governing the manner in which they give evidence may not enable them to be able to tell their story in the way they want to tell it and they may not feel that they have been heard by the person who is charged with committing an offence. The adversarial nature of a criminal trial may also be deeply stressful and traumatic for the victim giving evidence as they may be subject to robust cross-examination by the accused person's legal representative. It is an important right for the accused person to be able to test the evidence of the victim as part of their defence.

It is therefore often the case that victims who feel a need to voice their experience in court in the way they want do not have this need met by the criminal justice process.

Likewise, those victims who seek validation and accountability will often not have these needs met by the criminal justice process. While some victims may feel validated if the person who offended against them pleads guilty or is found guilty and has a punishment imposed on them, many will still come away feeling that their experience has not been validated. They may feel that there still has not been any opportunity to gauge whether the person who committed the offence is genuinely remorseful or fully understands the effect of their actions on the victim.

In addition, in many cases the victim will come away from the criminal justice process without any strong sense or confidence that what happened to them will not happen to someone else in the future. If there is insufficient response from the criminal justice proceedings to the underlying causes of the criminal offending, whether that be alcohol and/or other drug dependency, cognitive disability, mental illness or socio-economic disadvantage, the victim may well feel that the response may not prevent the same offence from re-occurring in the future.

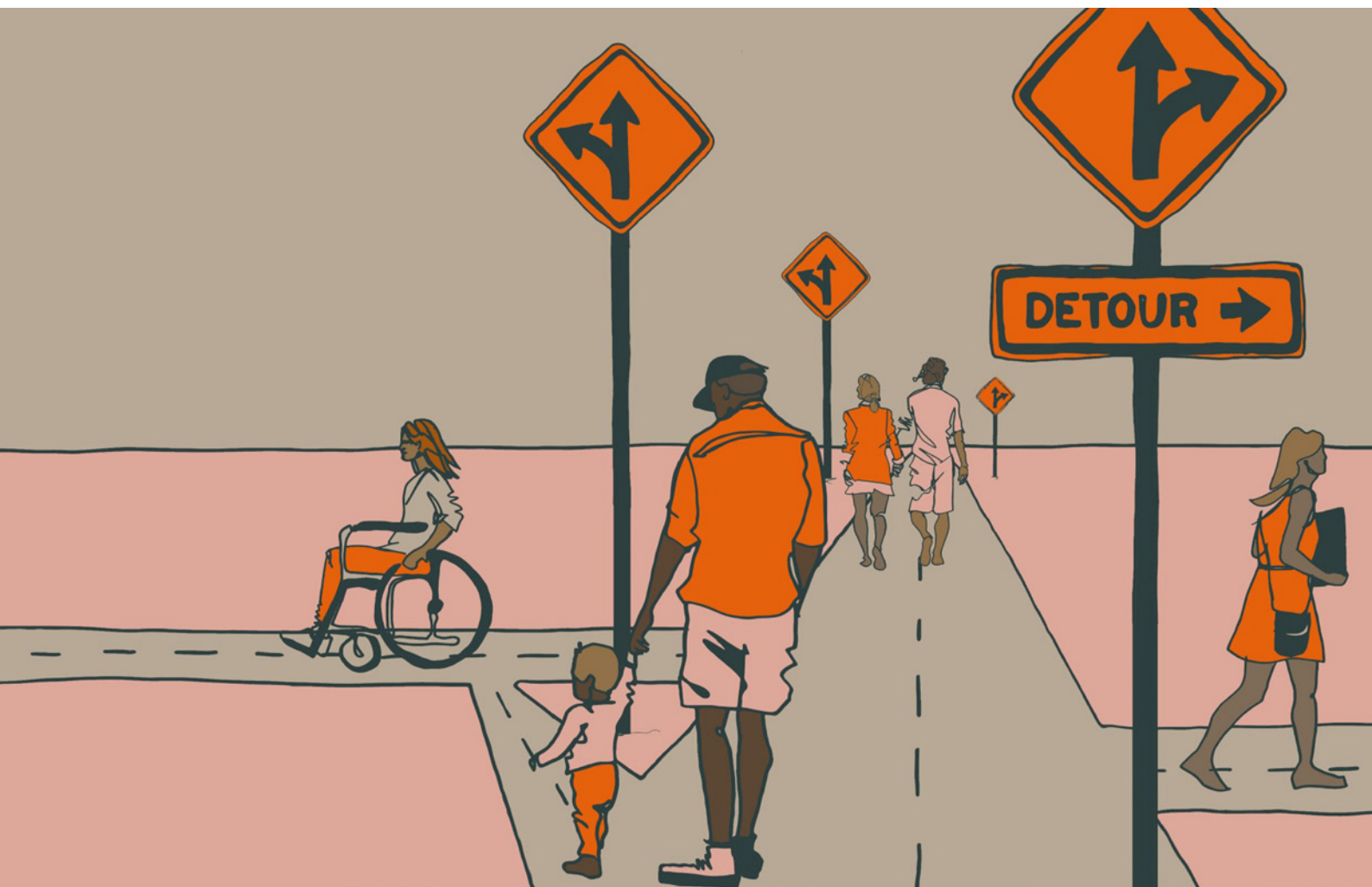
This lack of confidence may also manifest when an offender is sentenced to a term of imprisonment. The failure to address the underlying causes

of criminal offending, together with the harmful effects of imprisonment, will increase the likelihood of recidivism and re-offending upon release. This is borne out by the high rate of recidivism for people released from prison, which has increased by 5% over the last decade.⁴⁵ Well over half (59.9%) of all people in prison in Australia have been in prison before. There has been a dramatic increase in the numbers of people in prison with prior incarceration - up 116% over the last decade.⁴⁶ In 2020-21, 45.2% of people released from prison in Australia returned to prison within two years.⁴⁷ It is clear from both the increasing prior incarceration numbers and the increasing recidivism rates, that sentencing a person to a term of imprisonment is unlikely to prevent future offending.

⁴⁵ Productivity Commission. 2023. Report on Government Services 2023, Table CA.4.

⁴⁶ ABS. 2023. Prisoners in Australia 2022, Table 15. Note: Rate of change was calculated from proportion converted into total numbers.

⁴⁷ Productivity Commission. 2022. Report on Government Services 2022, Table CA.4



Does the criminal justice system address victim trauma?

Given that the parties to a criminal proceeding are the state and the accused person or persons and the main purpose of the criminal justice process is to determine whether the person charged with a criminal offence is guilty, it is unlikely that the system and its various processes respond to the victim's trauma in an appropriate way. The system itself was designed for purposes that did not include responding to the trauma of victims of crime. It is therefore not surprising that most of the stages within the criminal justice process do not accord with trauma-informed principles.

Trauma-informed principles focus on what has happened to a person and recognise that behaviours may be the product of coping mechanisms a person has developed to keep themselves safe in stressful circumstances.⁴⁸ Trauma-informed practices and processes place the emphasis on safety, trustworthiness, choice, collaboration, and empowerment.

Many victims of crime report that their experience at various stages of the criminal justice system fails to reflect trauma-informed practice, and even serves to further traumatise them. For instance, victims often find that police practices are not trauma-informed, which presents a significant barrier for them to report crimes or to continue with their complaint.

The recent Queensland Parliament Legal Affairs and Safety Committee (LASC) reported that many police practices in relation to responding to victims of crime are not trauma-informed. This includes:

- Police officers appearing not to believe the victim;
- Police officers unwilling to file reports, particularly in relation to domestic & family violence;
- Inappropriate responses to male victims of sexual violence;
- Police refusing to allow a support person in an interview.⁴⁹

The Committee heard evidence that many victims of crime experience frustration when trying to find out about the progress of a police investigation, or about decisions to charge, decision to downgrade or discontinue charges. Many victims express frustration and a lack of understanding about reasons decisions are made and feel that they have little power to ask questions and get meaningful responses.⁵⁰

The experiences of victims in a contested criminal proceeding in which the accused person is pleading not guilty can also be re-traumatising. The victims may be required to give evidence and be subject to robust cross examination by defence counsel. The right for a criminal defendant to cross examine prosecution witnesses is a core aspect of the adversarial criminal justice process and an important right for an accused person. However, it can also be a deeply traumatic experience for someone who has reported that they are the victim of a crime, particularly a violent crime.⁵¹

A lack of integrated services for victims as they move through different stages of the criminal justice system contributes to the sense that the process is impersonal and not focused on the needs of victims. As well as frustration with police processes (as noted above) victims also often experience isolation and confusion concerning

⁴⁸ Women's Safety and Justice Taskforce (WSJT). 2021. *Hear her voice, Report one: Addressing coercive control and domestic and family violence in Queensland*. 610.

⁴⁹ Qld LACS, n 2, 13.

⁵⁰ *Ibid* 10.

⁵¹ Qld LACS, n 42, 13-15; Women's Safety and Justice Taskforce (WSJTa). 2022. *Hear her voice, Report two, Volume One: Women and Girls experience across the criminal justice system*. 2022. 49-50.

the criminal trial procedures, and may experience further trauma when their evidence is subject to cross-examination by defence counsel. Finally, once a criminal prosecution has been concluded, regardless of whether there has been a finding of guilty or not guilty, victims may well experience a lack of closure or completion from the experience. There is a lack of post-trial support services for victims to further process their experience of the criminal justice system.

The Queensland Women's Safety and Justice Taskforce was established by the Queensland Government in 2021 to examine the experience of women across the criminal justice system. It recommended that the Government implement a statewide model for the delivery of a professional victim advocate service, in which victim advocates provide individualised, culturally safe, trauma-informed support to victims of sexual violence to help them navigate through the service system and the criminal justice system, and beyond.

The role of victim advocates would include:

- Providing impartial **information to victim-survivors** about the criminal justice and service systems and options available to them and to provide support regardless of whether a person chooses to engage with the criminal justice system;
- Supporting victim-survivors to **understand and exercise their rights**;
- Identifying and assisting victim-survivors to address their **individual needs** including through referrals to services; and
- **Liaising across the service and criminal justice systems** on behalf of victim-survivors, and being the **consistent point of contact** for victim survivors throughout their criminal justice system journey.⁵²

⁵² WSJTa, n 51, 11-12.



While other states and territories have established commissions for victims of crime and appointed a commissioner to advocate for the recognition, inclusion, participation and respect of victims of crime in the justice system,⁵³ the proposed Queensland Victim Advocate Service is focused on individualised support for victims of crime throughout the criminal justice process.

The Queensland Parliament LASC also heard evidence of the need for a trauma-informed approach to victims of crime to be embedded at every level of the criminal justice system 'from the initial police report, to the investigation and prosecution of offences, to sentencing and parole decisions'. This would require participants in the criminal justice system to:

- Ensure they do no harm to victims and survivors;
- Deliver services to victims and survivors in accordance with the core trauma-informed principles of safety, trustworthiness, choice, collaboration and empowerment;
- Recognising the particular needs of victims and survivors and responding to these with an increased level of support.⁵⁴

Another unintended consequence of 'tough on crime' policies for victims, is that with more punitive sentencing regimes, systems of mandatory sentencing, and increasing maximum sentencing limits for particular offences, it reduces the incentive for an accused person to elect to plead guilty to an offence. The reason for this is that an accused person is likely to perceive that there is little value in pleading guilty in the hope of a reduced sentence where the relevant legislative sentencing provisions have been made more punitive. A 2015 study undertaken by the Sentencing Council of Victoria found that offences with the most severe penalties, including murder and sexual offences, have the lowest proportion of guilty pleas. The study found that offences which carry with them sentences of immediate imprisonment have the lowest rate of guilty pleas (80.9%) compared to proven offences where the sentence is a youth justice centre order (97.9%) or a community corrections order (95.8%).⁵⁵

It is likely that under a punitive sentencing regime an accused person will be more inclined to robustly defend the charges. This may involve defence counsel cross examining victim witnesses with a view to undermining their credibility. This is likely to subject victims to further trauma. A more punitive sentencing regime is definitely not a trauma-informed framework that will benefit victims of crime.

⁵³ For example: Victorian Victims of Crime Commissioner, <<https://victimsofcrimecommissioner.vic.gov.au/>>; Victims Support, Victims of Crime Commissioner, ACT, <<https://www.hrc.act.gov.au/complaints/services-for-victims-of-crime-complaints/victims-of-crime-commissioner>>; Commissioner for Victims of Crime, WA, <<https://www.wa.gov.au/organisation/department-of-justice/commissioner-victims-of-crime>>; Office of the Victims' Commissioner, Queensland <<https://www.victimsofcrimecommissioner.qld.gov.au/>>; Commissioner for Victims' Rights, SA, <<https://www.voc.sa.gov.au/>>.

⁵⁴ Qld LACS, n 2, 14-15.

⁵⁵ Sentencing Advisory Council of Victoria. 2015. Guilty Pleas in the Higher Courts: Rates, Timing, and Discounts. Copyright State of Victoria, Sentencing Advisory Council, August 2015. 14-17, 24-28 35-37.

Can Restorative Justice provide an alternative that meets the needs of victims?

As noted above, while the adversarial criminal justice system may be able to meet some of the needs of victims of crime, it will often leave victims feeling disregarded, unheard, invalidated and further traumatised. The failure of traditional criminal justice approaches or models that involve punitive sentencing to provide a trauma-informed approach that meets the various needs of victims of crime gives rise to the question as to whether there are alternative models that can better meet the needs of victims. Restorative justice processes may present as a viable alternative that can meet many of the needs of victims of crime and provide a trauma-informed setting that will enable them to participate in a process designed to address the harm they have experienced.⁵⁶

The widely accepted definition of restorative justice is “a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future”.⁵⁷

Three identified characteristics that are common to restorative justice programs are:

- An emphasis by key participants on **accountability** of the person who offended;
- An inclusive decision-making process that **encourages participation** by key participants; and
- The goal of **putting right the harm** that is caused by an offence.⁵⁸

The reference to “all parties with a stake in a particular offence” envisages that the process of restorative justice includes not just victims of a particular offence but also encompasses family members, friends and the wider community. As noted by the Australian Institute of Criminology

(AIC), central to understanding restorative justice and the concept of ‘restoration’ is an understanding of who is the subject of ‘restoration’ – who are the victims. Victims are those people who are harmed by a crime and will include individuals who were directly harmed. It may also include indirect victims with an emotional connection to the direct victim, or collective/institutional victims such as the wider community.⁵⁹

There are some important differences between restorative justice processes and the traditional criminal justice system. Firstly, restorative justice processes will take the approach of perceiving that the offence committed is a conflict between individuals that has resulted in harm to victims and communities, as distinct from it being seen as a violation of the law and an act committed against the state.⁶⁰ Secondly, restorative justice places a priority in repairing the harm caused by the offending and restoring relationships, whereas the traditional criminal justice approach seeks to determine guilt and impose punishment.⁶¹ Thirdly, restorative justice processes provide an opportunity for “active participation by victims, offenders and their communities”, whereas the traditional criminal justice system assigns passive roles to victims and communities.⁶²

⁵⁶ CIJ, n 2, 16.

⁵⁷ Marshall T.1996. The evolution of restorative justice in Britain. *European Journal on Criminal Policy and Research* 4(4): 21–43, at 37.

⁵⁸ Mara Schiff and Gordon Bazemore. 2004. ‘Paradigm muddle or paradigm paralysis? The wide and narrow roads to restorative justice reform (or, a little confusion may be a good thing)’. *Contemporary Justice Review* 7(1): 37–57, at 41.

⁵⁹ Jacqueline Joudo Larsen. 2014. Restorative Justice in Australian criminal justice system. AIC Reports Research and Policy Series 127. Australian Institute of Criminology 2014. 4.

⁶⁰ Jeff Latimer and Steven Kleinknecht. 2000. *The effects of restorative justice programming: A review of the empirical*. Canada: Department of Justice.

⁶¹ Heather Strang. 2001. *Restorative justice programs in Australia: A report to the Criminology Council*. Canberra: Australian Institute of Criminology (AIC). March 2001. <<http://www.criminologyresearchcouncil.gov.au/reports/strang/>>.

⁶² Ibid.

Restorative justice programs in Australia

In 2014 the AIC published a detailed analysis of restorative justice programs that were then operating in Australia.⁶³ While most of the restorative justice programs have focused on the model of conferencing, the programs now include other models such as victim-offender mediation programs and circle sentencing.

According to the AIC, conferencing involves bringing the victim and the person who committed the offence together with facilitators, police and other support people to attempt to repair the harm caused by the offending and to devise an intervention plan or agree on an undertaking for the offender. While the victim is usually present at the conferences, in some jurisdictions conferences may go ahead without the victim. The plan may include making an apology or reparation to the victim, doing community service or an education program, donating to charity, counselling, or working for the victim or their parent. It can also include drug and alcohol treatment where this has been identified as an influence on their offending behaviour. Generally, the agreed outcomes must not be more onerous than what a court would order. If the person who committed the offence does not comply with the outcomes of a conference they may be required to appear in court to be sentenced under the conventional criminal justice system.⁶⁴

Victim-offender mediation (VOM) usually involves just the victim and the person who committed the offence in a mediation conference that is facilitated by a trained mediator. It can only take place if the person who committed the offence

accepts responsibility and both parties agree to participate. During the mediation the victims and the offenders are provided with an opportunity to discuss the offence and its impact on them, and also consider how the harm can be repaired.⁶⁵

Circle sentencing is a process that may take place as part of specialist First Nations Indigenous courts that have been established in several Australian jurisdictions including New South Wales, Victoria, Queensland, Western Australia, South Australia and the Australian Capital Territory. These courts endeavour to provide a more culturally appropriate process for First Nations People who criminally offend and may employ processes that have restorative justice elements if they are considered more appropriate. Circle sentencing courts which operate in New South Wales and Western Australia exhibit several features of restorative justice processes.⁶⁶

Circle sentencing places the sentencing court in a community setting to:

- **Promote healing** for all affected parties;
- Provide an opportunity for the person who offended to **make amends**;
- Empower victims, community members, families and people who offend by giving them a **voice** and a shared **responsibility** to find constructive resolution;
- Address the **underlying causes** of criminal offending;
- Build a sense of **community** and its capacity for **resolving conflict**; and
- Promote and share **community values**.⁶⁷

⁶³ Jacqueline Joudo Larsen. 2014. *Restorative justice in the Australian criminal justice system*. AIC Reports Research and Public Policy Series 127. Australian Institute of Criminology. 2014.

⁶⁴ *Ibid* 6.

⁶⁵ *Ibid* 18.

⁶⁶ *Ibid* 15-16.

⁶⁷ Gordon Bazemore and Mark Umbreit. 2001. *A comparison of four restorative conferencing models*. *Juvenile Justice Bulletin*. Washington: Office of Juvenile Justice and Delinquency Prevention, US Department of Justice. February 2021.

Benefits of restorative justice for victims/survivors

There is a considerable body of research in Australia and internationally that suggest that restorative justice processes provide significant benefits for victims and survivors of criminal acts, when compared to traditional court processes.

The benefits of restorative justice for the victim/survivor include:

- Greater levels of **victim satisfaction** with processes when compared to formal court processes;
- Higher perceptions by victims of **safety** in participating in restorative justice processes, compared to perceptions of safety in traditional court processes; and
- Greater **opportunity** for victims to **address the traumatic effects** of crime through participation in restorative justice processes.

A detailed study of the impact on victims of crime of a Canberra based restorative justice program over five years found that people who were victims of crime who participated in the restorative justice program were significantly more satisfied with their experience compared to those who went to court.⁶⁸ A study of four restorative justice programs in the UK found that across the

four programs victims of crime reported higher levels of satisfaction, when compared to those who had attended court, and that this sense of satisfaction related to the fact that they had an opportunity to meaningfully participate in the process, they felt that they had been heard, and that they were treated respectfully and fairly.⁶⁹

Studies have also indicated that those people who were victims of crime who participated in the restorative justice programs report significantly greater levels of perceptions of safety compared to those who went through court processes. According to one study in 2005, people who were victims of crime reported perceptions of safety that were higher than their pre-offence levels.⁷⁰

There is also evidence to suggest that participation in restorative justice programs helps to reduce the traumatic effects of crime for people who are victims as well as addressing some of the harm that has been caused to them. A study of youth justice conferencing in Queensland indicated that conferencing results in significant positive outcomes for victims and communities through actions that repair the harm caused by the young person's offending.⁷¹ The study found that 70% of victims in Queensland reported youth justice conferencing helped them to "manage the effects of the crime".⁷² A 2014 study found that participation in a restorative justice program can help reduce the traumatic effects and post-traumatic stress symptoms for people who are the victims of serious offences such as robbery and home invasion.⁷³

⁶⁸ Heather Strang. 2002. *Repair or revenge: Victims and restorative justice*. Oxford University Press, 2002.

⁶⁹ Heather Strang, Lawrence Sherman, Caroline Angel, Daniel Woods, Sarah Bennett, Dorothy Newbury-Birch, and Nova Inkpen. 2006. 'Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis'. (2006) 62 *Journal of Social Issues* 281.

⁷⁰ Jaimie Beven, Guy Hall, Irene Froyland, Brian Steels and Dorothy Goulding. 2005. 'Restoration or Renovation? Evaluating restorative justice outcomes' (2005) 12 *Psychiatry, Psychology and Law* 194.

⁷¹ Restorative Justice ('RJ'). 2018. Twelve-month program evaluation: Restorative Justice Project. <https://www.cjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/restorative-justice-evaluation-report.pdf>; Hennessey Hayes and Kathleen Daly. 2003. Youth Justice Conferencing and Reoffending. *Justice Quarterly*, 20(4). <https://www.researchgate.net/publication/29457142_Youth_Justice_Conferencing_and_Reoffending>.

⁷² RJ, n 71.

⁷³ Caroline Angel, Lawrence Sherman, Heather Strang, Barak Ariel, Sarah Bennett, Nova Inkpen, Anne Keane and Therese Richmond. 2014. 'Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: A randomised controlled trial' (2014) 10 *Journal of Experiential Criminology* 291.

Impact of restorative justice on re-offending

An important question to consider is whether participation in a restorative justice program by a person who has committed a criminal offence will reduce the likelihood of that person re-offending in the future. While several studies have suggested that participation in restorative justice programs is more likely to prevent reoffending than formal court processes, the explanation behind these findings may be more complex. Some of these studies have been criticised for failing to account for factors such as key differences between those people who participate in restorative justice programs and those people who go through the formal court processes. This may include such factors as previous criminal offending experience, socio-economic characteristics, seriousness of offences, availability of restorative justice programs for particular offences or in particular locations.⁷⁴

It is also important to recognise that there are multiple factors that will impact on the likelihood of a person reoffending (or not). This may include the level of support provided to a person outside of the restorative justice process (e.g. access to housing, drug counselling, mental health support, employment, training, education, etc).⁷⁵ Access to such services is likely to have a much more significant influence in reducing the likelihood of reoffending. While such support may be available in addition to participation in a restorative justice process, it can also be available through formal court processes. It is therefore extremely difficult to isolate the effect on likelihood of reoffending

from participating in restorative justice processes, controlling for other relevant factors.

An example of the difficulty in considering whether restorative justice conferences are effective in reducing reoffending is illustrated in 2012 research examining the effectiveness of youth justice conferences in NSW conducted by BOCSAR. Even when the researchers adjusted the methodology to consider factors such as the differences between control and treatment groups they could not establish that participation in a restorative justice processes was more likely to prevent reoffending than the usual Children's Court process.⁷⁶ It is important to note that in terms of a young person's offending history, it is likely that they would have been the beneficiary of other diversionary mechanisms in their offending history prior to participation in a youth justice conference, such as warnings and cautions, which have a significant effect in reducing the likelihood of reoffending. This means that a child or young person will have progressed further in their offending, making it less likely to be effective in preventing re-offending than earlier diversionary mechanisms such as warnings and cautions.

While the 2012 research from BOCSAR found that restorative youth justice conferences are no more effective than the NSW Children's Court in reducing reoffending among children and young people, there is a significant body of research which suggests that restorative justice has positive impacts for both victims and children and young people who commit offences. Internationally, studies have found restorative justice conferencing is cost effective in terms of reducing repeat reoffending.⁷⁷ In Australia, restorative youth justice

⁷⁴ Jeff Latimer, Craig Dowden and Danielle Muise, 'The effectiveness of restorative justice practices: A meta-analysis' (2005) 85 *The Prison Journal* 127; Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (The Smith Institute, 2007). For an overview, see Jacqueline Joudo Larson *Restorative Justice in the Australian Criminal Justice System* (Australian Institute of Criminology, 2014) 24.

⁷⁵ Lawrence Sherman and Heather Strang, 'Verdicts or inventions? Interpreting results from randomized controlled experiments in criminology' (2004) 47 *American Behavioral Scientist* 575.

⁷⁶ Nadine Smith and Don Weatherburn. 2012. 'Youth Justice Conferences versus Children's Court: A comparison of re-offending'. NSW Bureau of Crime Statistics and Research (BOCSAR). *Crime and Justice Bulletin – Contemporary Issues in Crime and Justice*. Number 160. February 2012. 15-16.

⁷⁷ Sherman, L.W., Strang, H., Mayo-Wilson, E. et al. (2015). 'Are Restorative Justice Conferences effective in reducing repeat offending? Findings from a Campbell Systematic Review'. *J Quant Criminol* 31, 1–24.

conferencing has also been shown to reduce reoffending in circumstances where children and young people are remorseful, and their conference outcomes are reached via consensus.⁷⁸

According to an internal 2018 12-month program evaluation of restorative youth justice conferencing in Queensland, **59% of children and young people who participated in restorative justice conferencing did not reoffend within six months of their conference.**⁷⁹

Jesuit Social Services in Australia run restorative justice conferences in Victoria and the Northern Territory. In a recent evaluation of this program by Swinburne University, it was found that group conferencing was associated with a reduction

in recidivism of between 24–40% compared to mainstream justice processes.⁸⁰

It is reasonable to conclude that restorative justice processes can reduce the likelihood of reoffending in certain contexts, for particular types of people who offend and for particular types of offending behaviour. However, it is not clear that it will have that effect for all people who offend and all types of offending.⁸¹ It is important to recognise that the central aim of restorative justice programs is not reducing the likelihood of reoffending, but to repair harm by providing a forum that enables active participation by victims, providing them with a voice, validating their experience and facilitating a reparation of the harm they have experienced.

⁷⁸ Hayes, H. Daly, K. 2003 (n 73).

⁷⁹ RJ, n 71.

⁸⁰ Jesuit Social Services. 2022. New youth justice spending data highlights effectiveness of restorative justice programs [webpage]. <<https://jss.org.au/articles/new-youth-justice-spending-data-highlights-effectiveness-of-restorative-justice-programs/>>.

⁸¹ CIJ, n 2, 19.



Conclusion

People who have been the victim of a crime often experience significant hardship and trauma. The physical and psychological effects can be serious and ongoing. These harmful effects can also extend to the person's family, friends and community. Unfortunately, responses from police and the criminal justice system can add to the trauma. It is important to consider how the criminal justice system can better meet the needs of people who have been victimised by crime so as to minimise this retraumatising effect.

When considering how the justice system can better address the needs of people victimised by crime, it should be recognised that there is no standard or idealised profile of what a victim of crime looks like. The people who are most likely to have experienced crime victimisation are often the most socially and economically disadvantaged people in society including children and young people, people with disabilities, people with mental illness, First Nations people and people experiencing homelessness. Many victims of crime have themselves committed criminal offences. A significant proportion of people who are incarcerated have histories of being the victims of physical and/or sexual abuse. **There is considerable evidence of a significant victim-offender overlap.**

The criminal justice system is an intimidating and confusing environment for many people, including victims of a crime. The adversarial nature of court processes can result in people who have already experienced significant trauma from their experiences being further traumatised. Sentencing regimes that are increasingly punitive are likely to encourage people who have been charged with criminal offences to vigorously defend their charges rather than seek to plead guilty at their court hearing. This inevitably results in a robust defence that can further traumatise a person who has been a victim of a crime. This may also contribute to people being less confident about reporting their experiences out of fear that the process itself will result in further trauma.

Traditional adversarial criminal justice approaches or models that involve punitive sentencing for people who offend are often unable to meet the various needs of people who have been the victims of a crime, and who have experienced significant trauma from their experiences. These people are often looking for a sense of agency in the process and not just to perform the role of a passive bystander.

For many people who are victims of crime it is important that the process provides them with a setting in which they have a voice so they can explain the impact of the offending directly to the offender, tell their story in their own way, and have others affirm their experience.

Restorative justice processes are being increasingly employed in criminal justice settings, recognising the need to provide a more trauma-informed approach for people who have experienced crime victimisation. These processes can provide a viable, person-centred approach to meeting some of the identified needs of people who are victims of crime in a way that punitive law and order policies cannot.



The Justice Reform Initiative is an advocacy organisation working to reduce the use of harmful incarceration and build communities in which disadvantage is no longer met with a criminal justice system response.

We work in partnership with other organisations and individuals seeking to bring about justice system change.

The Initiative respectfully acknowledges and supports the current and longstanding efforts of Aboriginal and Torres Strait Islander people to reduce the numbers of First Nations people incarcerated in Australia and, importantly, the leadership role which First-Nations-led organisations continue to play on this issue.

The Justice Reform Initiative is backed by eminent patrons, including former Governors-General Dame Quentin Bryce AD CVO and Sir William Deane AC KBE as patrons-in-chief. A full list of patrons is available on our website.

The Justice Reform Initiative is also supported by hundreds of organisations who are also working to reduce incarceration. A list of supporter organisations is also available on our website.

Visit our website at:

www.jailingisfailing.org.au

Connect with our campaign 'Jailing is Failing' on social media:

[f @JailingIsFailing](#)

[@JailingIsFailing](#)

[in @Justice Reform Initiative](#)

Contact us at:

info@justicereforminitiative.org.au