



EVIDENCE CENTRE
TE POKAPŪ TAUNAKITANGA

MAXIMISING VICTIM PARTICIPATION AND ENGAGEMENT

Evidence brief

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The Oranga Tamariki Evidence Centre works to build the evidence base that helps us better understand wellbeing and what works to improve outcomes for New Zealand's children, young people and their whānau.

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EXECUTIVE SUMMARY

Research suggests that justice and recidivism outcomes are better when victims participate in justice processes, particularly restorative justice processes (Goren, 2001; Hipple et al., 2015; Maxwell et al., 2004; Strang et al., 2013; Umbreit et al., 2000, 2004). A meta-analysis of restorative justice conferences finds that they are related to a modest but 'highly cost-effective reduction in repeat offending, with substantial benefits for victims' (Strang et al., 2013, p. 2).

However, in New Zealand, victim and family/whānau attendances at youth justice family group conferences (FGC) are low. Over two financial years, 2017/18 and 2018/19, only 18 percent of victims (where they were known and could potentially have attended) attended the FGC in person (Oranga Tamariki Evidence Centre, unpublished). A further 37 percent sent a submission rather than attending, and 45 percent did not participate in the FGC at all.

The areas of interest for this evidence brief for Oranga Tamariki and its partner agencies are approaches to improve participation and engagement for:

- Victims of youth crime, dealt with through the FGC process or the Youth Court
- Youth victims of all crime
- Māori victims of youth crime and of all crime.

For the purposes of this evidence brief, youth are those aged between 0 and 17 years, and FGC are treated as a subset of a broader range of restorative justice processes.

Due to the way the literature is presented and to simplify the reporting of the evidence, this report is divided into three sections:

1. **Victims and family group conferences** – This looks at victims' participation and engagement in FGC.
2. **Victims and the Youth Court** – This looks at victims' participation and engagement in Youth Court processes.
3. **Youth victims and criminal justice processes** – This looks at youth victims of all crime and their participation and engagement in criminal justice processes, covering pre-, during and post-trial situations such as providing evidence to police, the giving of evidence-in-chief and the use of alternative modes of testifying (closed-circuit television (CCTV) and screens).

The evidence base for 'what works' to improve participation of victims in the youth justice setting is relatively limited

Victims and family group conferences

The evaluative research and evidence base on how to improve the participation and engagement of victims in FGC is relatively limited. There is also very little research on the experiences of Māori victims. However, a number of factors appear to be important in improving victim participation and engagement in FGC:

- Allowing sufficient time and resource to enable victims to consider whether they want to engage in an FGC

- Allowing sufficient time and resource to prepare victims for FGC, and for this support to happen face-to-face
- Attending to the needs and characteristics of the victim in the following ways:
 - choosing a venue that’s appropriate and a safe space for the victim
 - holding the FGC outside work hours or at a time when the victim can attend
 - considering the type of offence and the relationship between the victim and offender when deciding whether an FGC is appropriate or needs to be modified to account for the victim’s needs
- The skills, experience and training of the youth justice coordinator
- Collaboration with, and training of, police
- Ensuring full participation and engagement during the conference
- Following up with victims on the outcomes of the FGC and the plan developed at the FGC.

These factors are outlined in the following diagram (Figure 1).

Figure 1. Factors to be considered in order to improve victim participation and engagement in FGC

IMPROVING VICTIM PARTICIPATION AND ENGAGEMENT		
THE PARTICIPANTS	LOGISTICS	THE CONFERENCE
The victim <ul style="list-style-type: none"> • Age • Culture / ethnicity / religion / language • Psychological safety and wellbeing • Relationship with offender • Participation must be voluntary 	Type of offence <ul style="list-style-type: none"> • Special measures may need to be developed and implemented for some types of offences 	Preparation <ul style="list-style-type: none"> • Preparation is crucial • Face-to-face interactions improve engagement
Youth justice coordinator <ul style="list-style-type: none"> • Skills, training and experience 	Venue <ul style="list-style-type: none"> • The conference should be held in a neutral, comfortable setting 	Information sharing <ul style="list-style-type: none"> • Provide adequate time for victims to share their experiences and to contribute freely
Police <ul style="list-style-type: none"> • Training and collaboration 	Time <ul style="list-style-type: none"> • Statutory limits for when FGCs must be held may be contributing to lack of victim participation • FGCs during work hours deter victims’ participation 	Plan making <ul style="list-style-type: none"> • Enable victims to provide active input and participate in the plan making process
		Aftercare <ul style="list-style-type: none"> • Youth justice coordinators should provide victim aftercare • Follow up to update victims on progress with plan implementation and outcomes

Victims and the Youth Court

There is very little New Zealand research on victims and their engagement with the Youth Court.

The evidence base for ‘what works’ to improve engagement of youth victims is also limited – other than on child witness testimony in court

Of the limited research that exists, most focuses on child witness testimony. Nevertheless, the following factors have emerged as playing a positive role in supporting participation and

engagement, reducing stress and trauma on youth victims, and improving criminal justice outcomes:

- Avoiding excessive delay in court hearings
- Separate interview and hearings settings for victims
- Use of CCTV and screens in court
- Pre-recorded testimony as evidence-in-chief and videoing of interviews
- Less formality in the courtroom
- More awareness of the opportunity to provide victim impact statements and for judges to give them proper consideration
- One-stop shops for providing multi-disciplinary services to child victims (for example, health, police, crime investigation, psychological support, court support)
- Specialist police and police training
- Training of judges, prosecutors and the defence in child-friendly justice
- Better access to information, advice and support for victims.

There is very little research on the Māori victim experience of FGC and of New Zealand's broader criminal justice system

Oranga Tamariki values the Māori evidence base and takes into account the whakapapa of Māori children and young people, and the whanaungatanga responsibilities of their whānau, hapū and iwi.¹

While there is some discussion of Rangatahi Courts in the literature, there is little analysis of the experiences of victims – Māori and non-Māori – in this context. Similarly, little attention has been paid to Māori victims, whether adults or children, in the criminal justice system. Where Māori victims and their interactions with the justice system are mentioned, the findings and recommendations coalesce on calls for better cultural support and for support provided by Māori who are versed in Māori tikanga and values. This includes Kaupapa Māori processes such as hohourongo,² rather than (Western) restorative justice processes.

More, and new, research is required on victims' experiences of FGC and the broader criminal justice system in New Zealand

A victim-centred approach to the criminal justice system, particularly in youth justice, is a significant gap in the literature. The FGC literature for New Zealand is now quite dated, with the most comprehensive study of youth justice FGC, which includes a section on victims, being published in 2004. There is also little Māori or indigenous literature on the victim experience. Internationally, the literature and justice performance indicators place little emphasis on victims and there are no standardised measures of participation and engagement or victim benefit. Many studies also fail to examine the experience and motivations of those who do not participate.

¹ Oranga Tamariki Act 1989, section 7AA.

² The principle of hohourongo involves bringing about peace through the healing of violation.

In 2012 the youth organisation JustSpeak recommended a review of the Youth Court, including interviews with observers of Youth Court processes, with offenders, and with victims, to understand the effectiveness of the Youth Court in relation to Māori (JustSpeak, 2012). To date, this does not appear to have been realised.

The Northern Ireland model appears to be one to look to for improving victim participation and engagement in FGC. Their Youth Justice Agency reports high rates of attendance. However, the last comprehensive evaluation of their youth conference service was in 2006. A deeper understanding of their current approach to victim participation and engagement is needed.

There is a paucity of high-quality research on improving the child/youth victim experience and their engagement in the broader criminal justice system. Future research should aim to fill this significant gap, particularly for young Māori victims.

BACKGROUND TO THE EVIDENCE

BRIEF

In youth justice, Oranga Tamariki seeks to ‘support young people, whānau and victims of youth crime to restore mana’ (Oranga Tamariki, 2020). Oranga Tamariki has also recently appointed a Director for victim participation and engagement.

International and national research shows that victims of crime often feel side-lined, unheard and let down by the justice system (Chief Victims Advisor to Government, 2019). Oranga Tamariki is keen to achieve the best level of engagement for all participants in the justice system. Oranga Tamariki would like to learn from both New Zealand and international research to inform best practice for engaging with victims of crime and increasing their participation and engagement. In doing so, Oranga Tamariki seeks to enhance the wellbeing of adults, children and young people as victims of crime and ensure they are safe, recovering and flourishing.

This evidence brief is a time-limited examination that draws on a limited research base

The literature reviewed includes journal articles and grey literature. Literature related to therapeutic and psychiatric situations, and to FGC in a care and protection context, are specifically excluded. The brief draws on literature from New Zealand and internationally, particularly as the FGC model practised overseas often originates from the FGC model first developed in New Zealand (Barnes, 2013; Blecher, 2011; Fox, 2004). Special attention was paid to Māori tamariki and rangatahi; however, the research was scarce.

The brief mainly draws on literature from 2000 and later, with some significant studies from before 2000 referred to where there is no recent research.

The following search terms were used in identifying relevant literature:

Child	Juvenile court	Taitamariki
Circle*	Juvenile justice	Tamariki
Conferenc*	Māori	Victim
Court	Mediation	Victim-offender mediation
Family group conferenc*	New Zealand	Whānau
Indigenous	Panel	Witness
Iwi	Rangatahi	Youth
Justice process*	Survivor	Youth court

A note on terminology

The UN Convention on the Rights of the Child defines all people under the age of 18 as ‘children’. In New Zealand, if children (aged 10 to under 14) and young people (aged 14 to under 18) break the law, they’ll be referred to the youth justice system. In this evidence brief, the use of ‘child’, ‘young’ and ‘youth’ victims and offenders will be used interchangeably.

SECTION 1: VICTIMS AND FAMILY GROUP CONFERENCES

Family group conferences are intended to involve victims as key participants

The youth justice FGC was established by the Oranga Tamariki Act 1989. While restorative justice was not yet a term or concept envisioned, the FGC 'let families and victims be part of the solution' (Henwood & Stratford, 2014, p. 9), an innovative approach at the time.

New Zealand's youth justice system was in dire need of reform. It was a bold and inspired step to change the legislation to allow the family group conference and to let families and victims be part of the solution. Ripples of admiration ran throughout the world and, as time has passed, many countries have followed suit.

– Judge Carolyn Henwood, chair of the Henwood Trust

The American Humane Society went so far as describing it as 'New Zealand's gift to the world' (Becroft, 2017). Youth Court and District Court Judge FWM (Fred) McElrea stated that the three intended significant changes to New Zealand's youth court model were:

1. The transfer of power, the court's power, from the state to the community.
2. The FGC as a mechanism for producing a negotiated, community response.
3. The involvement of victims as key participants, providing a healing process for offenders and victims (McElrea, 2006).

However, McElrea (2006) contends that the new legislation did not inherently focus on victims as active participants, and therefore can't be seen as establishing a restorative justice model. He saw the Act's wording of 'due regard to the interests of any victims' of youth offending as not being forceful enough.³ However, the first principal Youth Court judge insisted that the model was in practice a victim-centred process and paved the way for a restorative approach (McElrea, 2006).

The Act requires that if there is an alternative way of dealing with an offence, criminal proceedings should not be instituted against a child or young person unless this would be against the public interest

In the majority of cases, young people who have offended are dealt with by the police in their local community through warnings or the police diversion scheme. In more serious cases offenders are sent to Intention to Charge (ITC) FGC or directly to the Youth Court.

The Youth Court judge may instigate a Court Ordered FGC with the intention that the conference will provide a plan to deal with the offending and will make recommendations for the judge. The judge does not, and cannot, attend an FGC: the conference is convened and run by the youth justice coordinator, with the following people invited to attend: the young person; their lay advocate and/or

³ Oranga Tamariki Act 1989, section 208(h).

youth advocate (lawyer), family or whānau members, the victim and supporters, the police, and any other person invited to the conference (such as a social worker).

FGC and other similar approaches (such as victim-offender mediation, sentencing circles, restorative justice conferencing, and youth justice committees) have been widely adopted internationally. In the European Union (EU), victim-offender mediation or reconciliation procedures were operating in 15 of the 28 member states in 2014, including the United Kingdom (UK) (Milieu Ltd & ICF GHK, 2014). FGC are also used in the youth justice systems of Australia, Canada, and the United States (US).

A meta-analysis of restorative justice conferencing, including but not restricted to youth-focused processes, finds that it is highly cost-effective and has a modest effect on recidivism. It also has 'substantial benefits for victims' (Strang et al., 2013, p. 2).

The proportion of victims attending and engaging with the FGC process is low

In his reflections as Children's Commissioner and a former Principal Youth Court Judge, Andrew Becroft (2017) notes that by the early 2000s the way FGC were operating fell short of the intended model.

A key concern arising over the years is the low proportion of victims attending and engaging with the FGC process. Without victim participation, it is difficult to get an alternative, direct account of the effects of offending (O'Driscoll, 2008; Schmid, 2002), the crime cannot be personalised (Slater et al., 2015), and the impact of the FGC on the offender and FGC effectiveness is reduced (Schmid, 2002; Slater et al., 2015). In a 2001 survey of all New Zealand youth justice coordinators, half believed that victim attendance was what made the FGC effective (Schmid, 2002). Judge Becroft highlights that without the victim attending, a key component of restorative justice – the repair of harm caused by the offending – is missing (Becroft, 2015).

Victims can participate in FGC in a number of ways – from attending in person, to preparing a submission to be read at the conference and/or having a representative appear on their behalf. Victim attendance rates in New Zealand have remained stagnant over time. Between 2017 and 2019, 18 percent of eligible victims attended the FGC and 37 percent sent a submission in lieu of attending (Oranga Tamariki Evidence Centre, unpublished).

Internationally, victim attendance in conferencing varies, with high participation rates in Northern Ireland

Victim attendance in Australian jurisdictions appears to be higher than in New Zealand. In New South Wales, the proportion of victims (or representatives) in conferences ranged from 56 to 61 percent between 2014 and 2019, with a slight downward trend over time (Department of Communities and Justice, 2019). Victim attendance in England, Wales and Belgium is similar to New Zealand (House of Commons Justice Committee, 2016; Shapland et al., 2017; Youth Justice Working Group, 2012).

Northern Ireland stands out for its high levels of victim participation in youth conferencing. Its Youth Justice Agency reported that during 2018/19, 89 percent (526) of youth conferences included victim participation of some form (Youth Justice Agency, 2019). Other studies suggest that victims attend in person in about half of the youth conferences in Northern Ireland (Shapland et al., 2017). However, the last comprehensive evaluation of their youth conferencing service was in 2006. Further investigation into victim participation and engagement in Northern Ireland is warranted.

Statistics on victim participation and satisfaction with FGCs are difficult to collate

Overseas statistics on victim attendance, submissions, and attendance by victims' representatives are difficult to collate. The data has been collected and presented in different ways, and not all delivery agencies and justice systems record this data regularly and systematically (Federal-Provincial-Territorial Working Group on Restorative Justice, 2016; HM Inspectorate of Probation, 2016; Standing Committee for Youth Justice, 2016; Walker et al., 2010). Further, details on the programmes they represent (some of which are restorative justice programmes in the adult criminal justice system) may not be publicly available, or the studies may be of varying quality or include only some of the sites in a jurisdiction.

Monitoring data on victim engagement and participation is essential for identifying what works. When the HM Inspectorate of Probation (2016) investigated the use of Referral Orders (the equivalent of FGC) in England and Wales, they found that Youth Offending Teams did not have sufficient data to determine whether their victim contact and engagement strategies were effective.

While some form of attendance in conferencing is low, satisfaction is relatively high. Interviews with 100 victims who attended FGC in New Zealand found that (Maxwell et al., 2004):

- 90% reported being treated with respect
- 88% reported understanding what was going on
- 83% reported having had a chance to explain the effect of the offending on them
- 86% reported having the opportunity to say what they wanted
- 71% reported that their needs were met.

Note also that 'satisfaction' is measured in various ways. Usually studies and agencies collect data on how satisfied victims are with the FGC process (Strang et al., 2013). Typically, they will also ask whether the victim's needs were met, for example through material and emotional restoration, as well as whether they were satisfied with the outcome.

Various studies in the US, Canada, England and Northern Ireland have found uniformly high victim satisfaction with the conferencing process – ranging between 83 and 90 percent (Barnes, 2013; House of Commons Justice Committee, 2016; Umbreit et al., 2000; Youth Justice Agency, 2019).

Researchers in Australia have also found high levels of satisfaction. In an evaluation of the New South Wales Youth Justice Conferencing Scheme, 90 percent of victims felt that the conference was fair and that they had the opportunity to express their views and were treated with respect (Trimboli, 2000). Further, 79 percent indicated that they were satisfied with the way their case was dealt with in the justice system. In 2012, a replication of the earlier evaluation found that more than 85 percent of victims were 'satisfied' or 'very satisfied' immediately after the conference, although this fell to about 73 percent four months afterwards (Wagland et al., 2013).

It should also be noted that victims who provide written submissions to an FGC are likely to be less satisfied than those who attend in person (Shapland et al., 2007).

A victim-centric FGC process is needed to improve victim participation and engagement

While the FGC is sometimes referred to as a victim-centred approach to justice, evaluations of its effects on victims and what works in relation to improving their participation and engagement is not reported on as clearly or as extensively as for offenders (Strang et al., 2013). There are many parts of

the FGC process where victim participation and engagement can improve, mostly through making the process more victim-centred. The following sets out in further detail what needs to be considered in relation to the participants, logistics and the conference itself to improve participation and engagement for victims (Figure 2).

Figure 2. Factors to be considered to improve victim participation and engagement

IMPROVING VICTIM PARTICIPATION AND ENGAGEMENT		
THE PARTICIPANTS	LOGISTICS	THE CONFERENCE
<p>The victim</p> <ul style="list-style-type: none"> • Age • Culture / ethnicity / religion / language • Psychological safety and wellbeing • Relationship with offender • Participation must be voluntary 	<p>Type of offence</p> <ul style="list-style-type: none"> • Special measures may need to be developed and implemented for some types of offences 	<p>Preparation</p> <ul style="list-style-type: none"> • Preparation is crucial • Face-to-face interactions improve engagement
<p>Youth justice coordinator</p> <ul style="list-style-type: none"> • Skills, training and experience 	<p>Venue</p> <ul style="list-style-type: none"> • The conference should be held in a neutral, comfortable setting 	<p>Information sharing</p> <ul style="list-style-type: none"> • Provide adequate time for victims to share their experiences and to contribute freely
<p>Police</p> <ul style="list-style-type: none"> • Training and collaboration 	<p>Time</p> <ul style="list-style-type: none"> • Statutory limits for when FGCs must be held may be contributing to lack of victim participation • FGCs during work hours deter victims' participation 	<p>Plan making</p> <ul style="list-style-type: none"> • Enable victims to provide active input and participate in the plan making process
		<p>Aftercare</p> <ul style="list-style-type: none"> • Youth justice coordinators should provide victim aftercare • Follow up to update victims on progress with plan implementation and outcomes

FGC should be tailored to the needs and characteristics of the victim

Age differences between the youth offender and the victim can lead to an imbalance of power, which can negatively impact on the victim and/or offender

In a study of the South Australian Juvenile Justice (SAJJ) programme, the average victim was 33 years old, had secondary-level education, and was employed (Blecher, 2011). It is highly likely that there will be large age differences between youth offenders and their victims, which can lead to an imbalance of power.

Abrams et al. (2006) describe the experiences of a 15-year-old offender who had made terrorist threats, where the offender met his school principal as the victim. In that situation, the offender felt that the conference was a platform for the victim to lecture him for the crime. Feeling equal in the process was highlighted as an important factor in ensuring a good and authentic process (Abrams et al., 2006).

Younger victims may wish for their youth to not be highlighted and for them not to be labelled as 'victims'

Younger people will likely have different justice needs to adults (Anderson & Parkinson, 2018). As with older victims, youth victims will need to be protected from further abuse or victimisation. The effects of victimisation are usually experienced more acutely when the victim is vulnerable and/or young.

The young person who has experienced harm is often referred to as the 'victim', and as 'a young person'. These labels may differ from how they are seen by others, and how they see themselves (Anderson & Parkinson, 2018). Some may wish to be referred to as 'survivor' or not have attention drawn to their age. The skills of the youth justice coordinator and their preparation will be important here.

Support people can improve the victim's ability to participate

Maxwell et al.'s (2004) extensive study of New Zealand's youth justice system found that few victims brought along supporters. The study found that only 11 percent of conferences that victims attended included a supporter.

The opportunity to bring a supporter could be used more often by both youth and adult victims. However, Gal and Moyal (2011) warn that this could decrease satisfaction: in their study, factors that decrease satisfaction and the potential benefits for youth victims include when parents make decisions for them, and when parents talk on their behalf.

Research has found that youth victims who participate in conferences are less satisfied than those who participated in court; further research is needed to support this finding

The original Reintegrative Shaming Experiment (RISE) in Canberra found that satisfaction was higher for conferencing than for court for all victims. However, Gal and Moyal (2011) interrogated the RISE data with a focus on the victim's age and found that youth victims who participated in conferences were less satisfied than those who participated in court.

Further research is needed to provide a better understanding of this finding, but Gal and Moyal (2011) suggest that younger victims were more likely to be victims of personal harm while older victims tended to be involved in property offences, and therefore satisfaction for younger victims would require a higher threshold. No New Zealand research was found that compared victims' satisfaction from participation in an FGC to that from participating in court.

The FGC has flexibility to make accommodations for victims, and offenders, of any cultural or religious background; however, in practice meeting the needs of both groups without compromise can be challenging

This literature review found the following:

- In New Zealand, FGC often begin with a prayer or karakia, while in the US, equivalent Navajo peace-making circles may start with a prayer to seek supernatural assistance (Schmid, 2002). Other ways that cultural needs may be incorporated include avoiding holding a meeting on the Sabbath, closing the meeting with kai or culturally appropriate food, or having a picture of a respected family member at the meeting (Anderson & Parkinson, 2018). It can also include the practice of *ifoga*, a form of Samoan dispute resolution. Similar to the importance of whānau, the core unit of Samoan society is not the individual but the extended family, *aiga*. The entire *aiga* is held responsible for an individual's crime and the victim is the victim's entire *aiga* (Becroft, 2015).
- For Māori, it has been argued that the system creates significant barriers to whānau achieving positive outcomes, that youth justice coordinators and others in the youth justice system lack the necessary cultural competency, and that the use of karakia and an increase in frontline Māori workers are merely tokenism (Cohen & Gershon, 2015; Moyle, 2013; Moyle & Tauri, 2016; Tauri, 2019).

- Kaho (2016) suggests that from a traditional Tongan perspective, the FGC might be an uncomfortable cultural fit and can cause additional stress for some Tongan families and victims. Consensus decision making at FGCs can clash with status differences in Tongan communities between older and younger people and between maternal and paternal sides of the family. Additionally, the complexity of fakalelei (traditional conflict resolution) differs from the general FGC approach.
- The literature has some discussion of ethnic matching of FGC participants. In relation to traditional Tongan and Samoan perspectives, matching of coordinators, victims and offenders may be problematic, as it would need to consider gender, age, place of birth, and status (Kaho, 2016). For Aboriginal youth offender conferences, Daly (2000) found that the dynamics within the conference were improved when, in addition to victims (or offenders), there were other Aboriginal participants at the conference. She also notes that conferences were 'gendered events'. However, in her South Australia Juvenile Justice programme research, victims rarely reported disadvantage in relation to their sex or race-ethnic identity.
- Language assistance (if needed) is also an important factor in improving victim participation and engagement. Victims for whom English is a second language can have difficulty understanding the coordinator and articulating their viewpoints (Abrams et al., 2006; Kaho, 2016). This is vital when victims are contacted initially to ask for their attendance and notifications should be provided in the victim's preferred language.
- For non-Māori victims where the youth offender was Māori, particular challenges included not feeling welcome in the offender's home or on the marae, or because of the use of te reo Māori (Levine, 2000). Conversely, Tauri and Morris (1997) suggest that if the non-Māori victim were able to decide the venue and the FGC approach, then the Māori offender and their whānau would find it difficult to accept this.

A one-size-fits-all approach to ensure the psychological safety and wellbeing of the victim may not work

The material and psychological needs of the victim should be kept in mind, and these needs can often overlap with the youth offender. However, the victim's needs can vary widely and be complex (Anderson & Parkinson, 2018). Needs will be different for different people, and can also be different for the same person at different times (McGlynn & Westmarland, 2019). The FGC needs to be tailored to the victim, rather than following a one-size-fits-all process.

The following points emerged from this literature review:

- When a crime occurs, victims experience a range of negative emotions. Conversely, attendance at FGC and their overseas equivalents has been linked to improved victim wellbeing (Becroft, 2017; Blecher, 2011; Daly, 2002). However, there are very real psychological barriers to participation. In a 2004 New Zealand study of victims who did not attend the FGC, 45 percent did not want to attend because they did not want to meet the young person or their family; they said they had feelings of fear or anxiety, or did not want to be identified by the offender, or wanting to avoid further confrontation. Of the others who did not attend, 31 percent would have liked to attend but were unable to, while 24 percent did not attend for other reasons (Maxwell et al., 2004).
- A key factor in victim dissatisfaction with FGC is the victim not being offered sufficient support to feel safe and not be intimidated by the offender (Anderson & Parkinson, 2018; Wemmers & Canuto, 2002). Appropriate support can range from psychosocial support, to helping the victim

articulate and voice during the conference what they would like to happen. The potential for re-victimisation here needs to be examined and mitigated. Victims should be offered the option of having a representative attend in their place, or of a letter from the victim being read out by the youth justice coordinator (O'Driscoll, 2008).

I know we have to do everything to get [victims] to come along, but no way do I want them to be re-victimised. That makes the victims feel worse

– Youth justice co-ordinator (Slater et al., 2015)

- Micheletti (2012) also reminds us of the importance of maintaining privacy and confidentiality by not having different victims attend the same conference.
- If the victim is known to the offender, the nature of the relationship may mean special measures are needed to ensure the psychological safety of the victim, including considering whether an FGC is appropriate at all (Anderson & Parkinson, 2018).

Victim attendance at an FGC must be voluntary

International evidence suggests that victims being pressured into attending an FGC leads to victim dissatisfaction (Abrams et al., 2006; Nugent et al., 2001; NZ Police et al., 2016). All parties must give informed consent, should participate voluntarily, and be free to withdraw from the FGC at any time (Anderson & Parkinson, 2018). While still voluntary, Australian Capital Territory's youth conferences cannot proceed without participation from the victim or their nominated substitutes (Larsen, 2014).

If the victim does not want to attend, alternative methods of introducing the victim perspective should be explored. Standard options should include letters, written or recorded statements by victims (Crawford & Burden, 2005), or having a representative attend on the victim's behalf (O'Driscoll, 2008). As New Zealand data on FGC shows, more victims submit a statement than attend an FGC in person (Oranga Tamariki Evidence Centre, unpublished).

The skills and experience of the youth justice coordinator are key to victim attendance and satisfaction

In Judge Becroft's reflections on his years as a Youth Court judge, he states that there is a 'compelling need' for standard induction, training and certification of all FGC coordinators (Becroft, 2017). Slater et al. (2015), based on their interviews with youth justice coordinators who had at least 12 years' experience, called for coordinator training and service leadership as one of their main recommendations for improving processes.

Again with reference to the Northern Ireland system, the House of Commons Justice Committee (2016) noted the skills of their facilitators. Facilitators are trained at the University of Ulster on its Certificate, Diploma and Masters courses in Restorative Practice (Shapland et al., 2017) and have about nine weeks' training, while facilitators in England and Wales have only a few days of training. England and Wales now have the Restorative Services Quality Mark which is an external recognition of quality restorative practice. Accreditation is based on achieving six Restorative Service Standards (Restorative Justice Council, 2020). In New Zealand, since 2017, all new coordinators have a two-week induction prior to coordinating FGC.

The personal qualities of coordinators are also important. Coordinators need to set the right tone and ensure respect among all parties (Hipple et al., 2015). Being passionate about working with

young people, families and victims, having a positive outlook while still holding young people accountable for offending behaviour (Slater et al., 2015), cultural competence (Abrams et al., 2006; Umbreit & Coates, 2000), impartiality, and connecting with the victim's and offender's families (Micheletti, 2012) have all been cited as valuable in FGC effectiveness and victim engagement.

Co-facilitation with another youth justice coordinator has also been suggested as a way forward in complex cases or where many parties are involved (Anderson & Parkinson, 2018).

Ensure police buy-in into FGC through collaboration and training

Involvement of police in the FGC process (as participants, not as coordinators) has been mentioned as an on-the-ground deterrent to victim attendance (Slater et al., 2015). Interviews with youth justice coordinators in New Zealand found that coordinators' efforts to engage victims were often compromised by the negative attitudes of police towards FGC. Professional collaboration and police training were recommended as ways to resolve this problem and improve victim participation and engagement (Slater et al., 2015).

Internationally, improving senior police officer buy-in, making sure that the use of FGC is not contrary to police policies or targets, providing feedback to officers about the outcomes of the FGC, and police training have all been recommended as ways to raise the profile and credibility of FGC with police (HM Inspectorate of Probation, 2016).

Conversely, other studies have found that victims can feel that the police representative was their main support person, as they did not feel as supported by the youth justice coordinator (Levine, 2000). This highlights the importance of the skills, experience and training of the youth justice coordinator in supporting victims and helping them engage with the process.

The original 'Wagga Wagga' model used in much of Australia, and to varying degrees in other jurisdictions,⁴ has police officers facilitating the conference rather than lay coordinators. This model also includes a written script for facilitators to follow, ensuring standardisation of conferences and making it easier to train coordinators. Barnes (2013) suggests that within this model victims and the victims' families and friends have a more active role.

Research contrasting conferences facilitated by police officers with conferences facilitated by non-police find that procedures and processes are much the same. Involvement of the police officer as coordinator was reassuring to some victims, which led to increased engagement and improved satisfaction with the process (Hipple & McGarrell, 2008). In the New Zealand context, involvement of police in the FGC and/or making this involvement clearer to victims may be a way to improve victim satisfaction. However, a literature review warns that before any move to closer involvement by police, there should be further investigation as to whether this would deter offenders from being engaged (NZ Police et al., 2016).

FGC can be used for all types of offences but special measures may be needed for some types of offences

The international literature suggests only mixed support for FGC for certain types of offences, with some studies and writers indicating that FGC may not be appropriate for sexual assault, violent inter-

⁴ In England and Wales, and Canada, police officers, police staff, social service professional or trained volunteers from the community can take the coordinator role.

personal crimes, family violence, homicide, and hate crimes (Anderson & Parkinson, 2018; Campbell et al., 2006; Chief Victims Advisor to Government, 2019; House of Commons Justice Committee, 2016).

However, others contend that FGC can be used safely, and with positive outcomes, for any offences if the coordinator has adequately prepared all the participants, the need for any special measures for participants has been considered, and the participants have trust in the authority and coordinators leading the process (Anderson & Parkinson, 2018). The House of Commons Justice Committee (2016) stated that while FGC may not be appropriate in every case, they should not be excluded as an option based simply on the type of offence committed.

The conference should be held in a neutral, comfortable setting

The conference should be held in a neutral setting, where all participants feel equally comfortable and safe (Anderson & Parkinson, 2018; Umbreit & Greenwood, 2000). In New Zealand, conferences can take place wherever the family chooses – for example, in Oranga Tamariki offices, the family's home or on a marae (Becroft, 2017; Maxwell et al., 2004).

- Maxwell and Morris (1993) note that holding FGC in government offices might be convenient for some participants, but that this type of location tends not to meet the spirit of the legislation, which is better reflected by the use of community venues. 'At least some years ago, up to 70 percent of youth justice FGC were held in CYF⁵ offices' (Becroft, 2017, p. D).
- US guidelines for victim-offender mediation state that the number one priority is to protect the safety of the victim (Umbreit & Greenwood, 2000). This can mean ensuring the conference is in a location where the victim feels safe, and encouraging victims to bring in one or more supporters. An FGC case study outlined in the 2004 New Zealand study took place in the victim's restaurant where the alleged offence took place (Maxwell et al., 2004).
- Internationally, there has also been use of culturally appropriate settings that may have graphics or symbolic representations that offenders and victims can relate to (Barnes, 2013).
- However, making assumptions about what constitutes cultural responsiveness can lead to victims being dissatisfied and disengaged. Participants have disengaged in cases when even though a marae is used the whole process does not in fact reflect tikanga and the marae is 'just a venue' – for example, if there is no karakia or mihi (Maxwell et al., 2004). Further, while the victim and other participants may have Māori heritage, this does not necessarily mean they require the FGC to be held on a marae.
- The organisation of the room is important in influencing the quality of engagement by all participants. In the UK, youth offender panels without a table between participants worked best (HM Inspectorate of Probation, 2016). Sitting in a circle, in comfortable low chairs, added to a relaxed environment for effective discussion. Dressing in smart-casual clothing, rather than more formal clothes, also appeared to improve victim engagement (HM Inspectorate of Probation, 2016).

⁵ CYF refers to Child, Youth and Family, the precursor organisation to Oranga Tamariki

Statutory limits for when FGC must be held may be contributing to victims not participating

More funding, and allocating more time for an FGC,⁶ may improve victim participation and engagement. In the early 2000s, spending for an FGC was capped at \$50, with an average spend of \$22 (Becroft, 2017). This was some way off from practices when FGC were first instituted in New Zealand in 1989.

Coordinators are responsible for managing and delivering the FGC process, including supporting and engaging with offenders, victims and their families, ensuring other attendees are present, and gathering and providing relevant information. High conference volumes mean that the quality of the FGC and of the victim's participation and engagement can suffer. Coordinators are recommended to hold 2.5 conferences a week, but most average 4 to 5 conferences (Slater et al., 2015). Increases in the complexity and severity of cases have contributed to high volumes.

I did nine Family Group Conferences last week. It is rubbish. You are just pumping through crap. You are focusing on quantity, not quality.

– Youth justice coordinator (Slater et al., 2015)

Victims do not recover in uniform and predictable time scales. The FGC might be scheduled too early or too late for the victim (Blecher, 2011). The statutory time limits for holding a conference can be a barrier to victims' properly engaging with and preparing for the process (Anderson & Parkinson, 2018; Crawford & Burden, 2005; House of Commons Justice Committee, 2016; O'Driscoll, 2008). High-quality victim liaison takes time, and trust and rapport need to be built.

An evaluation of the work of the Restorative Justice Team within the UK Leeds Youth Offending Service considered the national standards requiring the initial panel meeting to be held within 20 working days and for victims to be contacted within five working days and found that those time limits worked to reduce levels of victim attendance (Crawford & Burden, 2005). In that study, only nine percent of victims attended an initial panel meeting, and this was with the involvement of dedicated victim liaison officers. Mutter et al. (2008) found that on average it took 47 days for victims to decide whether to take part in the UK FGC project they were evaluating. This suggests that the timeframes for holding FGC set a pace that probably does not suit victims.

In Northern Ireland, where victim participation is high, the Youth Conference Rules (Northern Ireland) 2003 require conferences to be completed within 30 days of the referral (Jacobsen & Gibbs, 2009) – a longer statutory timeframe than in New Zealand or England.

FGC during work hours are a deterrent to victims

The inability to take time off work to attend an FGC is a common barrier to victims participating (Maxwell et al., 2004; O'Driscoll, 2008). In the 2004 New Zealand study 31 percent of non-attending victims indicated that they would have liked to attend but were unable to (Maxwell et al., 2004). An older version of their study found that victims were more likely to attend the conference if it was held outside working hours (72 percent) (Maxwell & Morris, 1993).

An FGC should only occur at a time when the victim wants it to happen (Chief Victims Advisor to Government, 2019). When the location and time of the FGC is determined in consultation with the

⁶ The Oranga Tamariki Act, s 249, requires an FGC to be convened not later than 21 days after the date on which the youth justice coordinator received the report in relation to which the FGC is required to be held.

victim, there is higher victim participation and engagement (HM Inspectorate of Probation, 2016; Levine, 2000).

Working with, and preparing the victim for, the FGC process is crucial, and face-to-face interactions improve engagement

The initial contact and the form in which it takes place can improve victim participation

- The HM Inspectorate of Probation (2016) comments that initial letters and documentation issued to victims in England and Wales are often too long and too dense to engage with, and are not personalised.
- In England and Wales, victims are initially contacted by letter, by telephone, at court, and/or through Victim Support or the National Probation Service. While victims tend to be equally satisfied with all measures, a personal visit or face-to-face meeting at some point during preparation seemed to be essential (Shapland et al., 2007).
- In Northern Ireland, victims (including young victims) are provided with leaflets, worksheets and a DVD portraying a mock conference that is specifically tailored to a victim's perspective (Campbell et al., 2006).

Appropriate and sufficient preparation is a key factor in victim engagement

This can include:

- Providing sufficient information about the process (Becroft, 2017; Levine, 2000; NZ Police et al., 2016)
- Assessing the cultural competency of the victim or offender so that they do not misinterpret body language, such as averting their gaze from the other person (Blecher, 2011)
- Coordinators meeting with the victim face-to-face (kanohi ki te kanohi), ideally in the home before the FGC (Becroft, 2017; Nugent et al., 2001; Schmid, 2002; Slater et al., 2015)
- Working with the victim (and the offender) on potential dialogue and ensuring there are no 'surprises' (especially for youth victims) (Anderson & Parkinson, 2018; Umbreit et al., 2007; Walker et al., 2010)
- Working with other professionals to prepare the victim. In New Zealand, preparation can be delegated to social workers, shared with social workers or assisted by police youth aid staff and Victim Support (Maxwell et al., 2004)
- Appropriate resourcing and adequate preparation, which was found to be essential for victim engagement and satisfaction in a Canadian exploratory study of indigenous community-based restorative justice processes (Hurley, 2015).

Engaging with victims before the FGC takes time but helps to build rapport (Slater et al., 2015). New Zealand coordinators felt that this was an under-appreciated part of their job. High workloads meant that engagement with victims is often on the phone rather than face-to-face (Slater et al., 2015). In a UK inspection of Youth Offending Teams, early and persistent direct contact with the victim was critical to participation (HM Inspectorate of Probation, 2016). In two local areas, just over 70 percent of victims provided a statement to the Youth Offender Panel over the inspection year. Conversely, insufficient time and effort spent contacting and preparing victims was found to be a cause of the limited involvement of victims in panels (Youth Justice Working Group, 2012).

Having adequate time to share their experience, being able to contribute freely, having respectful interactions, having their concerns taken seriously, and fair treatment are all essential for victims' genuine participation

In New Zealand, the FGC process is not prescribed by the Act,⁷ but there are some typical aspects to the process. The general flow of an FGC is outlined in Table 1, which allows for flexibility and variation.

Table 1: Typical family group conference process

<p>1. Getting the facts The police summary of facts (this describes the circumstances of the alleged offending) will be read out, and if the child or young person agrees, everyone will discuss how they can make things right. If they don't agree with the summary, the family group conference will end and the police or the court will decide what to do next.</p> <p>2. Time to talk Everyone will discuss the circumstances of the offence and the impact it's had on the victim and the child or young person's whānau. The victim will then share their views and ideas about how the child or young person can make things right.</p> <p>3. Family time Whānau and the child or young person will take timeout to come up with a clear, realistic plan to take back to others at the family group conference.</p> <p>4. The plan The plan is then discussed with the wider group, and if everyone can agree, then a legally binding plan is created and must be completed. This will rely on whānau and professionals providing on-going support, working together, keeping each other informed about progress and problems. If things go off track, the Youth Justice coordinator or social worker will talk to the whānau about what they can do to stick more closely to the plan.</p> <p>If the conference is unable to agree on a plan, the matter is referred back to police or the Youth Court. This may result in a further FGC or the Court making decisions about the offending.</p>

The coordinator usually makes introductions and orients participants to the process. Respectful interactions between all parties, both before and during the FGC, has been acknowledged as key to victim engagement (Levine, 2000; Umbreit et al., 2007). Some dissatisfied victims indicate they were not able to speak freely or to disagree (Levine, 2000), did not feel their concerns and questions were treated seriously (NZ Police et al., 2016), or saw the coordinator as not being fair to everyone at the FGC (NZ Police et al., 2016).

In Northern Ireland, after the young person provides their account of the offence, the victim is then invited to speak (Campbell et al., 2006). Victims involved in a US youth victim-offender mediation process were usually given a chance to decide which party would talk first (Abrams et al., 2006). The use of a 'talking piece' may also be useful if one party is dominating the conversation (Anderson & Parkinson, 2018).

For victims, hearing a sincere apology from the offender during the FGC, or offering the offender forgiveness, can be very powerful, reducing their fear and resentment (Blecher, 2011; Strang et al.,

⁷ The Oranga Tamariki Act 1989, s 256(1), states that 'a family group conference may regulate its procedure in such manner as it thinks fit'.

2013). In Northern Ireland, the young person may agree to apologise at the conference for the harm caused, either orally to a victim present, in a written apology, or both (Campbell et al., 2006).

For many victims (approximately 80 percent) the process can be cathartic, positive and helpful (O’Driscoll, 2008), hence the usually high levels of satisfaction with FGC and restorative justice processes.

Having respectful interactions, having their concerns taken seriously, and fair treatment are all essential for victims’ genuine participation, as it is for the participation of all people invited to an FGC.

For young victims, appropriate techniques and technology should be used to explain the FGC process and to help them engage in the FGC. Access to Communication Assistance may be warranted

The use of role-plays, drawings, diagrams, puppets, comic-strip conversations, pre-recorded videos or props are suggested as ways to help explain things to young victims and to help them communicate during the FGC (Anderson & Parkinson, 2018; McKee, 2018).

In New Zealand, speech-language therapists can also be appointed by the court to Communication Assistance roles for youth victims. To date there has been no research published on young victims’ experience with this assistance (Howard et al., 2020), but it is likely that access to a Communication Assistant improves their ability to participate and engage with the FGC, and with the youth justice system generally.

The effectiveness of some of these methods are further discussed in Section 3: Youth victims and criminal justice processes.

Victims should actively participate in making the plan at the FGC

In New South Wales and Queensland, the intervention or outcome plan is only enforceable if the young person and the victim both agree (Larsen, 2014). However, studies find that many victims feel coerced by the process to agree to the consensus view (Levine, 2000). Some victims see the agreed penalties as too lenient or the agreed financial reparations as impractical.

Youth justice coordinators should provide after-care and follow up with all victims, to update them on progress with implementing the plan and the outcomes

If victims receive feedback about outcomes, are contacted by coordinators, and are told if the FGC plans are completed, this improves their satisfaction with the process (Levine, 2000; NZ Police et al., 2016).

Conversely, if victims do not receive the agreed material restoration, this can lead to general dissatisfaction with the justice system and a reluctance to engage further (Blecher, 2011; Schmid, 2002). Similarly, offenders failing to complete the plan agreed at the FGC contributes to victim dissatisfaction (NZ Police et al., 2016). Feeling that the offender is not truly sorry also leaves the victim with a negative experience, making them feeling depressed, fearful, distressed and/or angry (O’Driscoll, 2008).

For many victims, the quality of follow-up information is as important as the process itself (Campbell et al., 2006).

SECTION 2: VICTIMS AND THE YOUTH COURT

There is no New Zealand peer-reviewed research on victims and their Youth Court experiences

In New Zealand, victims are entitled to attend Youth Court hearings.⁸ However, there is very little New Zealand research on victims and their engagement with Youth Court. A search on “youth court” *New Zealand victim* yielded only two peer-reviewed articles on an article database. Those two articles refer to FGC rather than victims and Youth Court engagement. The comprehensive reviews of youth justice in New Zealand by Maxwell and Morris (1993) and Maxwell et al. (2004) do not comment on the Youth Court and the role of victims. The youth organisation JustSpeak recommends a review of the Youth Court, including interviews with observers, offenders and victims, to understand the effectiveness of the Youth Court in relation to Māori (JustSpeak, 2012) – which would help fill the gap on victims’ Youth Court experience to some extent.

Specialist youth courts exist in other jurisdictions but they are usually offender-focused rather than victim-led

In other jurisdictions, such as in the US, legislation has been amended to give victims the right to attend youth court hearings, to be heard before critical decisions are made, and to be present for oral or written victim impact statements at sentencing (Henning, 2009).

A review of children’s involvement with criminal justice processes in Europe finds that special juvenile courts are established to meet the needs of child suspects and offenders rather than the needs of child victims and witnesses (Milieu Ltd & ICF GHK, 2014). In 20 of the 28 EU member states reviewed, specialist courts deal with youth justice. These specialist courts may be separate from adult courts, or be ordinary courts adapted to the needs of children and youth. The member states without specialist youth courts include Finland, Hungary and Sweden.

Rangatahi Courts reconnect young Māori offenders with their culture, but there is little research on the victim experience

In New Zealand, Rangatahi Courts monitor the performance of FGC plans and also aim to reconnect young Māori offenders with their culture and reduce their risk of reoffending (L. Davies et al., 2012). They are marae-based and emphasise the young person learning who they are and where they are from, as well as learning significant aspects of their Māori tribal history (Taumaunu, 2014). The processes of the Rangatahi Court are deliberately informal to make those present more comfortable and relaxed (Dickson, 2011).

⁸ Oranga Tamariki Act 1989, section 329(ja).

Victims are entitled to attend, observe and participate in Rangatahi Court hearings. In an early outcome evaluation of the Rangatahi Courts, no victims were interviewed, but interviews with youth justice professionals found (L. Davies et al., 2012):

- Small numbers of victims attending
- Good feedback from victims who attend on the marae
- Examples of offenders presenting victims with waiata or taonga (a piece of art – in one case an offender worked for nine months on a taonga)
- Victims being more satisfied with youth offenders proceeding through Rangatahi Court rather than Youth Court, because the plans were monitored and therefore complied with.

In a manner similar to the ‘circle of chairs’ approach recommended for FGC, the Rangatahi Court bench is set up in a horseshoe shape inside the wharenui. A seat is set aside for any victim who attends, next to the police representative (Taumaunu, 2015). Victims are also invited by the Registrar to attend the pōwhiri (welcome) at the beginning of the day.

The Police Court Officer introduces the victim to the Rangatahi Court (Taumaunu, 2015) and the Court hears from the victim after the young person and his or her supporters speak. The guidance manual for Rangatahi Courts says that (Taumaunu, 2015, p. 21):

It is the responsibility of Police, Victims Advisors, Victim Support, and Youth Justice Coordinators, to make victims aware of their right to attend Rangatahi Court sittings and to encourage and support their attendance. Proper management of a victim’s attendance and participation in a Rangatahi Court is vital.

Pasifika Youth Court

A Pasifika Youth Court opened in 2010 in Auckland to address behaviour within a tailored cultural environment for Pacific Island youth offenders (Ioane et al., 2013).

The Pasifika Youth Court is located away from the general court environment and is decorated with artworks, floral cloth and tapa, and staff wear Pacific Island dress. Elders and lay advocates are involved. The sessions open with a prayer, and a formal Pacific Island greeting is given by the elder who is present, towards the young offender, their families and support people, and the victim (if they are present). The elder’s ethnicity is usually matched with the young offender and their family.

There appears to be no research that discusses victims’ participation and engagement with the Pasifika Youth Court.

SECTION 3: YOUTH VICTIMS AND CRIMINAL JUSTICE PROCESSES

Introduction

A review of literature on victims of crime finds that children and young people who have experienced serious victimisation are at increased risk of developing post-traumatic stress disorder and a range of other negative mental health outcomes (Mossman, 2012). Empirical studies focusing on children's involvement as witnesses suggest that the role has short- and long-term effects on their emotional wellbeing and behaviour (Gal, 2011). The criminal process has been known as being re-victimising or causing 'secondary victimisation' for many youth victims (Zedner, 2002).

The research on supporting the participation and engagement of youth victims in the justice system is scant, other than on supporting witness testimony

The support needs of young victims are not given sufficient attention in the literature. Where attention is paid, this is usually on supporting witnesses in criminal proceedings (Criminal Justice Joint Inspection, 2015; Milieu Ltd & ICF GHK, 2014; Mossman, 2012). A literature review published in October 2019 on victims' interactions in the criminal justice system identified 14 studies relating to children and young people that met quality criteria (Healey, 2019).

In New Zealand, the first published interview-based study of young witnesses and their families' experiences in New Zealand court processes was undertaken over 2014 and 2015⁹ (Randell et al., 2018). Further, the research on the experiences of youth victims in the justice system has mainly been based on victims of sexual and family violence, and there are few studies on youth victims of other types of crime (Gal, 2011).

Internationally, and in New Zealand, a number of reforms have been introduced to improve the engagement and participation of youth victims, and to minimise harm. Examples include (Gal, 2011; Milieu Ltd & ICF GHK, 2014):

- Expedited proceedings
- Special waiting areas
- Reduced formality – for example, taking off of wigs and robes and changing seating arrangements
- Exemptions from corroborating evidence requirements in cases of child testimony
- The use of video cameras for early interviews

⁹ The study was small in scale and the researchers had difficulty recruiting young witnesses due to parents/caregivers indicating their children did not want to talk about it, or they did not want their child to participate. Ten parents and four young witnesses were interviewed.

- The use of closed-circuit television (CCTV) so that youth can testify from another room during the trial
- The use of screens to prevent eye contact with the defendant when CCTV is not available or not appropriate
- Interview protocols for working with child victims
- Removing the ability of defendants to cross-examine
- Support people sitting next to youth testifying in court
- Special children’s courts for sexual abuse cases.

After a review of processes for child witnesses, New Zealand now has national guidelines for agencies working with child victims (Victims Information, 2011) and a Court Education for Young Witnesses service through court victims services. The New Zealand Chief Victims Advisor to Government (2019) mentions the Child/Vulnerable Witness Protocol that operates in Whangārei as an example of good practice (Table 1). Proper debriefing, to ensure youth victims understand the verdict, was considered another example of good practice (Chief Victims Advisor to Government, 2019).

Table 1. Child/Vulnerable Witness Protocol in Whangarei

- Children/vulnerable witnesses are not brought to court until they need to give evidence
- The child first meets the judge and counsel for a low-key familiarisation
- A Communication Assistant is appointed to ensure that questions are age-appropriate
- Judges do not allow defence lawyers to ask confusing questions
- Children are entitled to frequent breaks while giving evidence
- No evidence is given after 3 pm
- The waiting/CCTV room is more welcoming and ‘child friendly’.

Source: Chief Victims Advisor to the Government (2019) Strengthening the criminal justice system for victims: Te Tangi o te Manawanui | Recommendations for reform.

The following section outlines the evidence base for the types of reforms mentioned above.

Avoiding excessive delay in court hearings is a key feature of many European and other jurisdictions

The court process can be particularly hard on children and young people who are victims, as well as on their families. The wait for cases to get to court has been mentioned as a particular stressor in New Zealand (Chief Victims Advisor to Government, 2019; Randell et al., 2018). In a New Zealand interview-based study of young witnesses and their families in criminal court trials for sexual offences, a key theme was that pre-trial delay ‘makes everything worse’ (Randell et al., 2018, p. 361) and was the most significant negative aspect of the experience. Parents said that delays were particularly stressful and traumatic given a child’s different experience of time.

The need to avoid excessive delay in determining cases involving children is legislated in 19 EU jurisdictions¹⁰ (Milieu Ltd & ICF GHK, 2014). However, for seven jurisdictions the same provision also applies to adults. For others, while there are no statutory provisions, there are generally policies in place to expedite cases. However, the expediting of cases is usually focused on the child offender or suspect rather than on the child victims.

The strain of delays on victims and their families was mentioned in many of the interviews in relation to the Northern Ireland youth justice service (Northern Ireland Statistics and Research Agency, 2017). In a workshop, employees from the Young Witness Service had a consistent view that there was a need to prioritise trials involving young witnesses, including separate listings for young witness cases and reduced waiting times.

Some regions and jurisdictions have made efforts to have separate interview and hearings settings for young victims

In 28 of the 30 EU jurisdictions, child victims are interviewed or heard in physical settings that have been adapted to mitigate secondary victimisation. These adaptations include having only one person interview the child victim, using a screen or audio-visual techniques during the trial so that the victim has no contact with the defendant, and removing the defendant from the court during the child victim's testimony (Milieu Ltd & ICF GHK, 2014).

In a qualitative study of young victims in Northern Ireland, victims and their families said that pre-trial familiarisation visits were beneficial, and also helped them become familiar with the video link or other technology (Northern Ireland Statistics and Research Agency, 2017). In New Zealand, if the child has accepted the Court Education for Young Witnesses service, the victim advisor will arrange a familiarisation visit (Victims Information, 2011).

In Canada, child victims have benefited from child-friendly courtrooms that may have witness screens, victim support staff, child-friendly waiting rooms, stuffed toys and a back entrance to ensure the child does not see the defendant (McDonald, 2018; Northcott, 2009).

In a New Zealand interview-based study of child witnesses and their families, the possibility of seeing the defendant was a particularly distressing part of the court process (Randell et al., 2018). In the Northern Ireland study, separate waiting facilities, toilets and access from those used by the offender were seen by victims and their families and the Young Witness Service as ways to mitigate or manage their anxiety (Northern Ireland Statistics and Research Agency, 2017). The Young Witness Service preferred the use of remote sites with live link facilities.

CCTV and screens are used to protect victims from having to engage directly with defendants, and have eased the stress on young victims

There are three main ways evidence can be provided in court: CCTV, behind a screen, or without a screen. These alternatives, as well as video-recorded forensic interviews, were introduced through legislation in 1990 (Hanna et al., 2012b). The majority of New Zealand's child witnesses under 12 give their evidence at trial via pre-recorded forensic interview (E. Davies & Hanna, 2013; Hanna et al., 2012b). Additional questions are usually conducted live through CCTV. Teenagers generally give live evidence in the courtroom, but are screened from the defendant (Hanna et al., 2012b). For children

¹⁰ There are 28 member states and 30 jurisdictions as there are three judiciaries in the UK.

and youth, having a screen to hide the offender may not be sufficient as they may still feel intimidated (Chapdelaine Feliciati Aroni, 2007). Further, youth victims can still encounter the defendant in waiting rooms or in courtroom hallways.

CCTV has eased the stress on child victims, with children in Australia indicating that they would report again if they were victimised, knowing that CCTV (among other measures) was in place (Eastwood & Patton, 2002). In Canada, child victims using CCTV said that not having to see the defendant or be in their presence, and not having to see people in the courtroom, helped them feel safe and eased their worries about testifying (Hurley, 2015).

CCTV not being made available across New Zealand, and lack of familiarity with the technology, can add stress to child victims and decrease their engagement

In practice, even where CCTVs are available, international research suggests that technological problems can add to the stress. In a workshop with Young Witness Services in Northern Ireland, the experience of court staff having difficulty operating the video-link equipment, or the equipment not working, was a concern (Northern Ireland Statistics and Research Agency, 2017). Problems with the technology and resulting delays added stress to child victims in the Canadian study (Hurley, 2015).

In a study of applications for alternative modes filed by prosecutors in courts across New Zealand for 134 children in cases between 2008 and 2009, regional differences were found for applications for CCTV (Hanna et al., 2012b). This suggests the law is not being applied consistently across New Zealand.

Interview protocols help in improving the level of evidence collected and ensuring appropriate levels of rapport and engagement are built with child victims

Child victims in the EU are usually interviewed by trained officials in the presence of a specialised professional (such as a psychologist), and/or are video-recorded (Milieu Ltd & ICF GHK, 2014). Video-recording is a requirement in 17 EU jurisdictions.

Developed by a group of researchers at the National Institute of Child Health and Human Development, the NICHD Protocol guides interviewers through all phases of the investigative interview. It uses free-recall prompts and techniques to maximise the amount of information elicited from free-recall memory (NICHD, 2014), and has had positive validations of its effectiveness.

New Zealand's Specialist Child Witness Interviewing (SCWI) model is closely aligned with the NICHD protocol. All interviewers must have completed the nationally-recognised training course in Forensic (Evidential) Interviewing of Children before undertaking forensic video interviews of a child (NZ Police, undated).

In examining adherence to the SCWI model, researchers have found that New Zealand specialist child interviewers closely follow the scripted components of the model during the preparation stage, but during further investigation tended to use more direct and option-posing questions, and fewer broad open-ended questions as identified in the model (Wolfman et al., 2016). The study has implications for training, supervising and providing feedback to interviewers.

Communication aids and props, and Communication Assistance roles support understanding, and can help young victims participate in the justice process

As mentioned in relation to FGC, youth victims in New Zealand are sometimes provided with communication aids and props to assist with interviews and conferencing (McKee, 2018). These

can include dolls/puppets, anatomical dolls, body charts, diagrams, drawings, comic-strip conversations and other visual aids. The use of drawing, and drawing accompanied by direct questions, has shown to be relatively positive, in helping recall in more forensic detail (Bunting et al., 2015). Additionally, in a study where children drew pictures to aid recall compared with children who didn't draw pictures, those that drew reported feelings of hope and success (Katz et al., 2014).

Young victims have access to court-appointed Communication Assistance, but there is no research on how this helps them engage and participate in the justice system. A New Zealand study that interviewed communication assistance professionals focused on interactions with young offenders; however, findings for victims are likely to be similar. The professionals articulated their role as 'a form of specialist support for an identified young person who had particular communication needs and who would otherwise struggle to participate in youth justice processes' (Howard et al., 2020).

While not specifically focused on youth victims, Talking Trouble Aotearoa New Zealand (TTANZ), and other researchers, recently undertook a project on communication in the youth justice sector from a youth point of view (Metzger et al., 2018). The following findings are a timely reminder of what can help or hinder engagement with youth:

- Talking situations have often caused negative consequences for young people in the past. Some do not believe that their talking makes a difference.
- Young people need, and respond to, people who take the time to get to know them and build trust and rapport. They want professionals to be 'straight up'.
- Feeling that it is both physically and emotionally safe to open up and communicate is important.
- Youth justice conversations and processes involve a lot of jargon, and assume knowledge as well as complex words and concepts. These all create barriers to engagement for youth.

Pre-recorded interviews as entire testimony can be less stressful for victims and improve engagement in justice processes

New Zealand's first application to pre-record a child's entire testimony was only approved in December 2010, even though there had been legislative provision for this since 2006 (E. Davies & Hanna, 2013). A small study of practitioners' experiences with this approach indicates that pre-recorded hearings are a positive step for child victims. Because they can elucidate the core issues ahead of trial, they can lead to early resolution and more efficient trials, and allow children and youth witnesses to leave the justice system earlier (E. Davies & Hanna, 2013). Prosecutors and victim advocates also reported that the approach was much less stressful for victims than appearing in court by CCTV or with a screen.

While there was no evidence as to whether having pre-recorded interviews improves participation, prosecutors and other participants noted that enabling young, vulnerable witnesses to exit the criminal justice system at a faster pace is a good thing (E. Davies & Hanna, 2013). Research on the use of CCTV and video recordings also suggests that it enables some children to testify when they otherwise would not be able to (Hanna et al., 2012b).

Child Advocacy Centres in New Zealand, the US, Canada, Europe and Australia provide multidisciplinary services to child victims

Child Advocacy Centres (CAC) were first established in the US in the 1980s in response to 'system-induced trauma' suffered by children who had been abused. They are community-based, family-friendly places where professionals from different agencies and disciplines come together to provide

specialist services to children and young people who have experienced harm, and their families. Police, child protection workers, psychologists, child and family advocates and other allied health professionals form a team to reduce the harmful impacts and stress that being a child victim can cause.

Dedicated programmes operate within CACs such as the Kids and Teens in Court (KITC) programme in San Diego. This is a court preparation programme including relaxation and role playing in the court setting to support child witnesses and reduce the risk of re-victimisation. An evaluation of that programme found significant decreases in court-related anxiety after the programme (Peterson et al., 2019).

Puawaitahi, New Zealand's first Child Advocacy Centre, provides integrated services to child victims

New Zealand's first centre based on the CAC model, Puawaitahi, was established in 2002, opposite Auckland's Starship Children's Hospital. It includes Te Puaruruhau (Auckland DHB's health service for children and young people who have experienced abuse or neglect), Oranga Tamariki Special Services Unit (offering psychological support), the Police Child Protection Team and Central Auckland Video Unit (crime investigation and forensic interviewing, NZ Police and Oranga Tamariki) (NZ Police, 2020; Stevenson, 2017). There are other multi-agency centres in New Zealand, but they are not as comprehensive in scope as Puawaitahi (Stevenson, 2017).

An evaluation of Puawaitahi suggests that (Stevenson, 2017):

- It promotes wellbeing for children and families
- It is a positive, client-focused service and therapeutic process
- The anonymity of the building and the fact that it is not a police station, Oranga Tamariki site or hospital is a positive aspect
- The therapy rooms are welcoming, which ensures children are happy to come to sessions, and the paint colours, murals and artwork inside the building are welcoming and inviting
- The service and staff are culturally aware and sensitive, but the service could do more to meet the needs of different cultures
- It contributes to positive long-term outcomes for children such as improved wellbeing and self-confidence, and contributes to them becoming successful and positive members of society.

While there has been much international research and evaluations on CACs, the evidence is unclear on whether they lead to measurable differences in the incidence of child abuse and neglect, to reductions in recurrence, and to other long-term positive outcomes for children and families (Stevenson, 2017). This is due to the difficulties of running random clinical trials, the multiple variants of CACs, and the complexity of the issue.

The limited research on the Māori victim experience in the justice system suggests it may be helpful to provide more cultural support and to approach justice and resolution from a Māori worldview

Again, Kaupapa Māori research on the experiences of Māori victims of crime is relatively dated, with the last study being completed in 1999 (Cram et al., 1999), and another on Māori and Pasifika experiences of victim services (with a smaller sample) in 2014 (Cram, 2014). A useful discussion in the research to reflect on is the term 'victim' for Māori. The older study found that 'victim' can hold

very negative connotations, particularly in an historical context, while ‘rangatira’ could be used instead to reflect the process of resolution and the restoring of mana (Cram et al., 1999).

The studies made recommendations for the justice system and victims services to be more culturally appropriate (Cram, 2014; Cram et al., 1999). They recommended that there be a clearer and more integrated way for Māori ‘victims’ to enter the justice system – a one-stop-shop approach, where the service is ‘by Māori, for Māori’ – and also for Māori resolution processes to be resourced (Cram et al., 1999). Participants in the research also voiced the importance of healing for all whānau and maintenance of wairua as key needs of Māori ‘victims’ of crime (Cram et al., 1999). Young Māori victims were not the focus of these studies, but were present in the sample (16 of 69 participants were Māori youth in the 1999 study).

In more recent research where Māori victims and their interactions with the justice system are mentioned, it is usually a small component of a larger study. For example, as part of a research project on working with Māori survivors of sexual violence and the different types of intervention programmes available, cursory attention was paid to the justice system (Te Wiata & Smith, 2016). Similar to the recommendations above, participants in that study called for better cultural support and for that support to be provided by Māori who are versed in Māori tikanga and values. This might be through ensuring that Māori practices are used and that there is a space for te reo Māori to be used, or in creating an environment that is safe for whānau and survivors.

At a more systemic level, there may be benefit in integrating or using Kaupapa Māori processes as a platform for the justice system as a whole, to improve Māori victim participation and engagement. Rather than (Western) restorative justice processes, the ability to access and recognise Kaupapa Māori processes such as hohourongo (*bringing about peace through the healing of violation*) was considered to be a form of cultural support that would also lead to improved participation and engagement by survivors (Te Wiata & Smith, 2016). In this vein, the Ministry of Justice is funding a training programme model for restorative justice facilitators devoted to working with Māori offenders, victims and their whanau (Resolution Institute & PACT, 2020).

In another study of recovery and sexual violence, researchers found no difference in the experiences of Māori victims/survivors compared to others in the sample (Kingi & Jordan, 2009). The study noted that while many Māori survivors preferred Kaupapa Māori services, others thought Māori should explore all options in their search for healing and recovery.

Having specialist police who are trained to handle child victims appropriately is an enabler of child victim engagement

Half of the EU member states have special units within their police forces to deal with child victims (Milieu Ltd & ICF GHK, 2014). In eight member states (Austria, Croatia, Cyprus, Finland, Ireland, Latvia, Portugal, Slovenia), police officers within the regular police force receive special training on how to deal with children victims and witnesses, especially in relation to conducting interviews.

In the Northern Ireland interview-based study of 12 young victims of crime, the Young Witness Service workshop emphasised that raising awareness among officers of examples of good practice, and awareness of the importance of training in communication skills with children, were enablers of youth victim engagement (Northern Ireland Statistics and Research Agency, 2017).

Other practices also contributed to positive experiences in relation to police handling of cases (Northern Ireland Statistics and Research Agency, 2017; Stevenson, 2017):

- Continuity in the named officer for the case

- A supportive attitude towards the family
- Regular updates on progress of the cases.

New Zealand and international literature emphasises training of judges, prosecutors and defence lawyers in child-friendly justice

Most EU member states require judges, public prosecutors and defence lawyers to be trained in child-friendly justice (Milieu Ltd & ICF GHK, 2014). Training is generally focused on the rights and needs of child suspects/offenders rather than victims. In the Northern Ireland study, many victims recalled their experience with the prosecutor as reassuring and positive (Northern Ireland Statistics and Research Agency, 2017). However, it was also mentioned in the Young Witness Service workshop that more training should be provided for prosecutors, as well as judges, defence lawyers and court staff.

Cross-examination has routinely been found to be the most stressful aspect of the court process (Randell et al., 2018). Researchers suggest a range of measures to tackle this issue, including alternative ways of examining children such as through video-taping, having trained and impartial 'specialist child examiners' at trials to ask questions, and training for judges (Chapdelaine Feliciati Aroni, 2007; Hanna et al., 2012a; Zajac et al., 2018). These measures would help ensure that the best interests of child victims are respected, and reduce the number of complex, leading or intimidating questions.

Young victims' access to information, advice and training is mixed

All EU jurisdictions except Denmark, Ireland, Malta, Slovenia, Slovakia and Scotland have statutory provisions on the right of child victims to information about their rights and the criminal justice processes. In the qualitative study in Northern Ireland, much information on trials, support and so on was filtered by parents to protect their children (Northern Ireland Statistics and Research Agency, 2017). As a result, some child victims did not receive all the guidance and information material, and found all the different support agencies confusing.

In New Zealand, the Court Education for Young Witnesses service is provided for young victims and witnesses. An evaluation of the pilot version of the programme was positive, with young witnesses believing that it made them feel less stressed and nervous (E. Davies et al., 2004).

New Zealand experimental studies have examined the effects of pre-trial training to counter the negative effects of cross-examination. Righarts et al. (2013) took 5- and 6-year-old children and 9- and 10-year-old children from Otago on a surprise trip to a police station where they were interviewed, and then 10 days later were cross-examined in an interview designed to challenge their earlier responses. Half the children were given practice on answering cross-examination style questions. Those given training made fewer changes to their responses under cross-examination and had higher accuracy levels. The study concluded that comprehensive training and preparation can help children be more accurate during cross-examination (Righarts et al., 2013).

The support of police, Crown prosecutors, counsellors, school staff, friends and family members, victim advisors, sexual abuse survivor NGOs, and court support staff were all identified by young witnesses and their parents as important for emotional and practical support, with the levels of importance attributed to each being different for different families (Randell et al., 2018). Peer support for parents from those who had been through the process before were proposed as an idea for additional support that would have been welcomed.

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