

1. About Victim Support

Victim Support is a national community organisation supporting victims of crime, trauma and individuals and whānau affected by suicide. We provide a wide range of support services to help victims stay safe, get through crisis, navigate the justice system, connect with specialist services and remain positively connected with their whānau, employer and community.

Victim Support's service delivery is via a highly-trained workforce, based in communities from the far north to the deep south, and never closes - operating 24 hours a day, seven days a week, 365 days a year. For some aspects of our service delivery we operate a mixed model of support, utilising both staff and highly trained volunteer Support Workers.

Victim Support has significant involvement and experience in the family harm sector. This experience has been gained through our work directly supporting victims of family harm, victims of other crime and trauma which may have a family harm origin, our involvement in Whangaia Nga Pa Harakeke in Counties Manukau, and in the new multi-agency Integrated Safety Response (ISR) pilot in Canterbury and the Waikato. We work alongside government agencies and other non-government organisations (NGOs) to prevent family harm and better support the victims family harm creates.

We also have particular expertise and experience in supporting victims through the court process which has long been a core part of our role. This role and expertise was recognised by the Ministry of Justice, on whose behalf we now provide the Victims of Crime Information Line. This service provides victims with essential assistance as they navigate the court process.

Victim Support provides support in ways to restore mana, belonging and wellbeing. We are guided by the principle of Manaaki Tāngata, meaning supporting and caring for people, enhancing their mana. Manaaki Tāngata can also be described using the korowai (cloak) that signifies the embracing of people with warmth, care and support. We ensure our work is guided by our 'nga matapono' (values), the principles of the Treaty of Waitangi, and the recognition of Tino Rangatiratanga.

2. Introduction

Victim Support thank the Ministry of Justice for the opportunity to be involved in consultation on this research. We find the conclusions of the research into the New York model compelling and recognise that there are many potential worthwhile benefits which an integrated family court model may offer to 'low' and 'mid' level cases.

These benefits may be practical, through a streamlined court process which is simpler and more accessible for victims, and potential for greater victim participation in the criminal aspects related to their case. They may be psychological, reducing re-victimisation by reducing repeated exposure to uncertainty of outcome or requirements for victims to repeat their story. Most importantly, we see these benefits as enhancing wellbeing for those involved and a holistic approach to all aspects of a case through a court with greater focus on whānau wellbeing, safety, and outcomes.

3. Combinations of proceedings and coping with trauma

We share the concerns of the paper's author that cases being compartmentalised across multiple courts in the current system inhibits the ability for judges to make decisions with a maximum of information and comprehension, and inhibits holistic solutions to complex and inter-linking problems.

It also presents added trauma for victims. Support providers go to significant lengths to avoid re-victimisation by requiring victims to repeat their story. We also see regularly the importance of resolution in a victim's healing and journey through trauma – the conclusion of a court case is a highly important step, a point from which healing and re-normalisation can begin. Multiple court proceedings can exacerbate the trauma and uncertainty which victims face. An integrated family court may make it more manageable for victims to participate constructively in, and cope with the trauma of, the court process.

4. Court culture and judicial discretion

We believe that, in family harm cases up to a certain point of criminal offending, family safety and wellbeing should be the most important outcomes of the judicial process. This reflects a significant culture divide between the family court and a typical criminal court, and requires a much greater level of judicial discretion.

Effective use of discretion rests on being well informed and we believe this could see an integrated family court offer significant benefits both in terms of informed decision-making and court culture. This is reinforced by the findings of the interviews conducted with overseas judges in the production of the research. We were encouraged by the interview feedback that an integrated model enabled judges to:

- “gain greater insight into the personalities and temperaments of each family member which may change through the court proceedings;
- better assess the credibility of family members when giving evidence;
- more fully evaluate safety concerns and undertake risk assessments.”

As well as the findings of Evaluation H, that judges and counsel achieved greater knowledge and understanding of family harm i.e. specialist knowledge was enhanced and able to be applied. By fully understanding both the criminal and family aspects of the case, the judge will be best positioned to determine which services and programmes are best suited for the victim, children involved, the perpetrator or whole whānau.

These are critical advantages over the multiple court model, assisting judges to make fairer decisions in an environment in which conflicting qualitative information is likely to be put forward and the true nature and drivers of harm may not be initially obvious.

The advantages are somewhat countered by the risk of a judge becoming ‘over-invested’ in a particular case, or building prejudicial biases over time through a number of cases as their expertise

in family harm expands and set views are developed at a systematic level. However, these risks are acknowledged in the research and would not be unique to the integrated court model.

We also believe that the highly adversarial nature of the criminal court is not well-suited to many low and mid-level family harm cases where the future wellbeing of the victim and perpetrator may remain mutually-dependent, perpetration of harm may be mutual, and family safety planning and/or programmes can offer the most practical path to manage risk of future harm.

The criminal court functions to provide criminal justice – to determine the facts of a case with minimal consideration to the victim’s or perpetrator’s external interests. The family court does, or should, aim to provide social justice – to achieve the best outcomes for the safety and wellbeing of the whānau, in particular the victims and dependent children. These are quite fundamentally different objectives which are often incompatible.

An integrated family court presents an opportunity to provide a better court culture for low and mid-level family harm cases which enables and empowers family/whanau to move forward and enhances the likelihood of collaborative paths to safety.

5. Type of proceedings in an Integrated Family Court

We note that while there may be significant benefits of an integrated model for ‘low’ and ‘mid’ level family harm cases of the nature identified above, we do not believe that a family court would realistically be best equipped to deal with serious crime.

As an organisation which provides specialist homicide services and a range of services to victims of all serious crimes, we believe it remains important that serious criminal proceedings remain the prerogative of the criminal justice system.

Core to the benefits of an Integrated Family Court are the enhanced prospects for restorative or cooperative justice through a less ‘combative’ court process. This is better suited to ‘low’ and ‘mid’ level cases of family harm where holistic whānau wellbeing would be an important or even primary judicial consideration.

However, where serious or highly aggravated crimes are involved and significant sentencing is a possible outcome, criminal factors are likely to be primary considerations of the trial and primacy in a criminal court is warranted. This also reflects that the more collaborative forms of justice described above, in which the integrated model offers some of its greatest advantages, are unlikely to be applicable in serious cases.

For example, we would see the integrated family court as the optimal model to confront a kidnapping or typical male-assault-female charge. We would not see it as equally optimal for a serious assault involving grievous bodily harm, and certainly not optimal for a homicide or attempted murder.

There are also complications, which get more challenging as the seriousness of the case increases, arising from the right to trial by jury and over the extent of a jury’s involvement in the family

proceedings – i.e. In an integrated court, where do the criminal aspects end and the family aspects begin, and are the advantages of the integrated model lost in a jury trial?

The research notes the challenges presented by jury trials in overseas jurisdictions and also the risk of unintended consequence through altered incentives. Jury trials are arguably the most challenging factor of the integrated model and would require significant consideration in any potential New Zealand model.

Overall, we consider that if an integrated model were introduced to New Zealand, the threshold at which cases proceeded to an integrated court should be restrictive to low and mid-level cases, at least initially. If integrated courts in New Zealand were successful, future policy-makers would likely seek to expand their roles and the initial experiences could inform the development of an integrated model capable of handling more serious cases.

6. Advisory Support through the Court Process

Point 140 identifies advisory support around available government services as a gap in integrated courts and in New Zealand, saying:

“IDV courts do not provide defendants with information about other government funded services that are available, which is a potential gap. This is similar to the situation in New Zealand.”

It should be noted that advisory support for social and justice services available to victims is a core Victim Support role. In New Zealand, 30-35,000 clients per annum receive Victim Support through a community-based support worker, and an additional approximately 25,000 victims are referred by the Victim Support Contact Service to various other agencies. The Victims of Crime Information Line, provided by Victim Support on behalf of the Ministry of Justice, also provides a Freephone contact to receive basic advice and referral services as well as access to Court Victim Advisors.

We do note however that there is scope for a clearer and more accessible framework around court advisory services for victims of family harm, as well as sexual harm. In these cases the victim is likely to be supported by another, specialist, agency and additional access to court advice and referral support may be beneficial.

Victim Support also acknowledges there is a common public mis-perception that Victim Support is a counselling agency which may result in victims being unaware that these advisory services are freely available.

7. Reduction in Court Costs

The court process is expensive and economically disruptive for victims, particular as in family harm cases both the victim and perpetrator may be drawing on or competing for the same limited funds or assets to fund legal and court participation. This must further be viewed in a context of high deprivation families being over-represented in family harm and high financial strain on accessible legal support services such as Community Law and Legal Aid. Financial stress also compounds the already significant stress and trauma of the legal process itself.

Victim Support administers funding on behalf of the Ministry of Justice through the Victim Assistance Scheme which is available to reimburse some victim court costs in serious family harm cases, primarily where sexual harm or a homicide has occurred. However, in most instances, victims must rely in whole or part on their own means to participate in court, at a time when income may well be disrupted by lost earnings or partner separation.

By streamlining the process into a single court, Victim Support hopes that an Integrated Family Court may offer some reduction in the cost of participating in the justice process. This was reinforced in the research by the benefits of same-day scheduling, the significant reduction in average court appearances experienced in Evaluations C & D and other related benefits in Evaluations A, B, and H.

8. Resourcing Implications

It is important to bear in mind that while a structural change to how the family court operates may improve some process or procedural aspects, it is unlikely to address all of the aspects that victims identify as problematic and these still need to be prioritised.

There are many critical financial resource shortages across the family harm and wider justice sector, in particular for victim-related services. One key risk Victim Support can see is diversion of future resources from these high need areas.

There are also multiple fundamental policy changes occurring which require the focus of government and changes in systems for support services. Significant simultaneous changes in different parts of the justice system risks shortage of resource, unintended consequences, and service delivery failure.

This was reinforced in the research, in which the less frequent sittings of the integrated courts with limited resources resulted in longer timeframes to resolve cases, and in the variation of range and quality experienced based on resourcing highlighted in points 137 and 138 of the research.

Fundamental changes to areas of core business may also have resource considerations for support agencies. It is important that policy-makers conduct due diligence on the implications of systematic changes for service providers, and ensure that where expectations or service levels increase resources are available for providers to achieve new expectations. This has not always been the case in the past.

9. Cultural Considerations

New Zealand is a diverse country which presents unique needs for cultural consideration such as those for Pacific, Asian and Refugee/Migrant and international communities, LGBTQ, and particularly for Maori. It is very important that Māori are consulted and inform any developments to meet Treaty responsibilities and address the overrepresentation of Māori in this area.

Naturally, the research of overseas integrated courts is unable to offer significant insight into the additional considerations these cultural factors would require in New Zealand, for example, differing notions of what constitutes family and differing prevailing attitudes toward family harm.

While these challenges are already faced by the New Zealand Court system and would not be unique to the integrated model, they are still complicating factors requiring consideration in service design. We were encouraged to see the research acknowledge these challenges put forward adopting elements of the Rangatahi and Pasifika court process further investigation. We would welcome further research or attention into how an integrated model would respond to cultural diversity and whether additional challenges or benefits may be applicable in an integrated model, particularly for Māori.

We note also that innovative Marae based justice programmes are already operating and may offer insights into what is effective.

10. Conclusion

Victim Support have some reservations regarding the reach of a such a court into serious crime and the potential cost implications of change. We would seek further opportunities for sector consultation as a detailed model is developed. It is particularly important that victims themselves are consulted along with Māori and cultural and diverse communities. However, on balance, we believe the case for an integrated model is compelling and would welcome the progression of this initial research and ultimately the piloting and evaluation of a new Integrated Family Court.