

# Submission to Crime Statistics Agency on the draft measure of crime harm

---

February 2020

## Introduction

The Centre for Innovative Justice ('the CIJ') welcomes the opportunity to contribute to the work of the Crime Statistics Agency (CSA) in the development of a crime-harm index (CHI).<sup>1</sup> We support the initiative of the Victorian Government to create a measure of harm arising from crime that will provide a new lens for understanding trends in victimisation. Beyond the scope of the public consultation, however, we note that there are wider policy concerns relevant to the development and use of a CHI which warrant further exploration.

The ability to interpret crime statistics by way of the spread of harm caused *in addition to* offence prevalence is important for a number of reasons. It can contribute to current policy objectives of harm reduction as set out in Victoria's [Community Safety Statement](#) by promoting a more evidence-based approach to resource allocation for law enforcement, crime prevention and victim support, and the evaluation of the effectiveness of policing. More broadly, as a research tool, CHIs can provide valuable insight into the human cost of specific crimes in particular locations and points in time.

While the CIJ recognises the potential power of a tool of this kind, including for uses other than those envisaged in the Discussion Paper, it is also important to note the inherent limitations of CHIs currently in use. None have the capacity to capture fully the diversity and complexity of offending and the victimisation it causes, and there are both opportunities and risks associated with their use. A well-conceived crime harm measure has the potential to help drive positive change in the criminal justice system, while there is a risk that a poorly conceived tool will lead to policies and policing that entrench historical bias and disadvantage and compound the harm experienced by victims.

We therefore encourage the Department of Justice and Community Safety (DJCS) to extend the project for the development of a CHI to allow a detailed analysis of the various options available, and to conduct additional, targeted consultations and research.

---

<sup>1</sup> Most CHIs used in other jurisdictions aim to measure the extent of victimisation from offending by ascribing a single numeric value for each offence based on the 'harm' caused to the victim. The CSA Discussion Paper does not provide a specific definition of the 'harm' that is being measured, however it appears that like most CHIs, this is restricted to harm experienced by individuals who are direct victims of crime, rather than to businesses, organisations, the environment or the community at large, and does not measure the financial cost of crime or harm to secondary victims.

Extending the scope of the project will better equip the agency to engage with the many complexities and conceptual challenges involved in this work. Central is the need to draw on growing insights into crime victimisation as it relates to understandings of poverty, family violence, marginalisation and the link between victimisation and offending.

Accordingly, the CIJ sees this as an opportunity to maximise the potential for a more finely calibrated, validated measure to be developed, and one that will help advance knowledge in harm measurement.

## The scope of this submission

In this submission, the CIJ aims to broaden the discussion beyond the parameters of the public consultation to address wider considerations relevant to the application of a measure of crime harm, and a preferred methodology for its development.

We note that the feedback sought by the CSA is limited to the categorisation of offences as causing high, medium or low harm, and not on the method underpinning the measure. The degree to which approaches adopted in other jurisdictions were taken into consideration, and the reasons for choosing the proposed approach is not apparent from the Discussion Paper. This submission outlines our concerns both about the categorisation of offences proposed by the CSA and the method used to arrive at this categorisation. By way of summary, these concerns relate to:

- the absence of context for the approach adopted;
- limited reliability and transparency of the proposed scale;
- the likelihood that overly simplistic ratings will result in inaccurate and anomalous assessments of harm;
- the lack of consultation with victims of crime in the development of the measure or engagement with current understandings of victimisation;
- risks associated with using community perceptions, and the failure to address this and other risks and limitations in the methodology used; and
- the inability of the measure to reflect the wider harms caused by criminal offending to include indirect, or secondary, victims of crime, as well as the harm to offenders themselves.

The CIJ also notes that our ability to provide meaningful feedback on the proposal has been impacted by the brevity of the Discussion Paper as well as the limited time allocated for public consultation.<sup>2</sup> Our feedback should be viewed in this context. Given the importance of this work, we strongly encourage future consultations to provide both contextual information relevant to the project and a longer lead time for feedback.

## The CIJ's expertise

The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. It is committed to finding innovative and workable solutions to complex problems that manifest in the justice system.

In the course of our work, we have gained insight into the experiences and needs of victims of crime with particular expertise in the Victorian context. These projects have included:

---

<sup>2</sup> The project commenced in June 2019 with research completed by November 2019. Public consultation occurred over the summer holiday period from 6 – 31 January 2020.

- a [review of government funded services responding to victims of crime in Victoria](#) completed in early 2020, involving 37 in-depth interviews with victims of crime and consultations with approximately 130 stakeholders;
- the 2019 review and redesign of the Child Witness Service, still in finalisation;
- a study for the Office of Public Prosecutions on [best practice in communicating with victims of crime](#);
- projects relating to responses to family violence, including the [Risk and Needs Assessment Practice Team](#) project; the [Pathways Towards Accountability project](#); the [Consent Orders project](#); and the [Positive Interventions for Perpetrators of Adolescent Violence in the home](#) project, as well as other ANROWS funded research;
- projects relating to restorative justice practices, including the report on the pilot for serious driving offences, [‘It’s healing to hear another person’s story and also to tell your story’](#) (Legal Service Board), culminating in the recent establishment of a restorative justice conferencing service ([Open Circle](#)); and
- submissions on reforms relating to:
  - [restitution and compensation orders](#) (Sentencing Advisory Council, or SAC);
  - the [review of the Victims of Crime Assistance Act](#) (Victorian Law Reform Commission, or VLRC);
  - [family violence](#) (Royal Commission into Family Violence);
  - [approaches to sentencing family violence offenders](#) (SAC); and
  - the [role of victims in the criminal trial process](#) (VLRC).

Understandings gained in this work place the CIJ in a good position to contribute to the further development of the index under consideration.

## Policy functions of CHIs

The DJCS proposes that the new CHI will be added to the suite of publicly available crime statistics available on the CSA website and used for:

- reporting to the community and supporting a more nuanced conversation about crime;
- focusing (and evaluating) law enforcement activities;
- informing policy on crime prevention and victim support; and
- supporting additional approaches to analysis and research.<sup>3</sup>

CHIs are potentially powerful tools that can provide more nuanced crime data to enhance understanding of the disproportionate effect of some crimes across time and geographic areas. In application, CHIs have been found to provide a very different perspective to crime prevalence statistics. In Denmark for example, it has been found that while property crime accounts for over 80 per cent of all crime, it represents only 53 per cent of the harm, i.e., almost five times the proportion of total harm as it is of total volume. In addition, researchers who developed the scale found that while the prevalence of certain crimes may be reducing, harm resulting from them is increasing.<sup>4</sup>

---

<sup>3</sup> Crime Statistics Agency, ‘Developing a new measure of harm arising from crime victimisation – Discussion paper’, (2019) 1.

<sup>4</sup> Helle Aagaard Andersen and Katrin Mueller-Johnson, ‘The Danish Crime Harm Index: How it works and why it matters’ (2018), *Cambridge Journal of Evidence-Based Policing*, 2, 52-69.

CHIs have been used as a research tool in family violence studies in the UK, WA and the Northern Territory, and to assess the crime reduction impact of policing in the UK in relation to hot spot patrols, gang injunctions, and automatic number plate recognition.<sup>5</sup>

## Limitations of crime harm measures

Any attempt to rate the personal cost of crime must be based on understandings of the context in which offending and victimisation occurs. There is a risk that using a measure of harm to inform policing or criminal policy fails to adequately consider the ‘messiness’ of crime, including the wide range of offender characteristics, levels of culpability and victim responses. The less sophisticated the measure, the greater the risk that its application will result in distorted understandings of offending and public safety.

By way of example, a charge of aggravated robbery, which is included in the ‘high harm’ category in the draft measure developed by the CSA,<sup>6</sup> can arise in circumstances where a person suffering a psychotic episode makes an unplanned attempt to rob a retailer with an impromptu weapon, such as a kitchen knife. It is reasonable to assume at first instance that the impact of an offence of this nature on the shop attendant involved would be less than that of a robbery involving an offender armed with a gun. However, a victim who had experienced numerous robberies, or had been previously injured in an assault or robbery, may be far more traumatised by this event than one who had not.

Similarly, many people who assault emergency service workers or police do so in a context of alcohol or drug addiction, cognitive impairment or profound mental health issues. Yet under the proposed harm measure, this offence attracts the highest harm rating. New mandatory penalties to ‘protect’ emergency workers and police introduced in 2018 mean that vulnerable people in need of a public health response are instead criminalised. As a consequence, friends and families of ‘offenders’ in these circumstances are likely to be even more reluctant to call the Crisis Assessment and Treatment Team (or CAT team) for fear of putting their loved one at risk of a serious penalty. This illustrates the way in which crude categorisations of offences as being ‘high harm’ have the potential to be used in ways that indirectly cause other forms of harm in the community.

## Risks and opportunities

Potential exists for unintended outcomes from decisions about where best to deploy police resources resulting from the application of a CHI. A harm index is only as reliable as the data set to which it is applied, and it is widely recognised that police figures tend to distort the frequency of certain types of crimes.<sup>7</sup>

---

<sup>5</sup> Janet Ransley, et al. ‘Chapter 12: Developing and applying a Queensland Crime Harm Index – Implications for policing serious and organised crime.’ *Research Report, no. 10, Organised crime research in Australia 2018* (Australian Institute of Criminology, 2018), 105-114. Retrieved 27 January 2020  
from:[file:///C:/Users/e24359/Downloads/rr10\\_for\\_online\\_0%20\(1\).pdf](file:///C:/Users/e24359/Downloads/rr10_for_online_0%20(1).pdf)

<sup>6</sup> CSA 2019, *op. cit.*, p.5. It is interesting to note from the Discussion Paper that ‘aggravated robbery’ was elevated from medium as categorised in the ‘member of the public’ focus groups to high harm, and ‘common assault’ from low harm to medium harm. The classification was done on the basis of ‘expert advice’ and the ‘criminological literature’, however no citations are provided in the paper.

<sup>7</sup> Mike Maguire and Susan McVie, ‘Crime data and criminal statistics: A critical reflection’, in Liebling, Maruna and McAra (eds) *The Oxford Handbook of Criminology*, 6<sup>th</sup> edition (Oxford University Press, 2017) 163-189.

The use of an index to interpret crime statistics for policing purposes – whether applied to police data (criminal incidents recorded by police or victim reports of crime), or crime survey data – may result in resources being diverted away from offences which are traditionally underreported, but cause high levels of harm. These include family violence and sexual offences, or those that are hard to measure, such as cybercrime, crimes in closed institutions, cross-border and organised crime.

Conversely, if certain crime types are perceived to cause more harm, for example 'gang' related violence, this can lead to police targeting specific communities. This frequently includes refugee or newly arrived communities, which in turn increases the disproportionate criminalisation of those cohorts. Similarly, given that Aboriginal Victorians experience disproportionate rates of crime victimisation, a very real risk exists that the application of a crude harm measure could be used to justify heavy-handed policing of Aboriginal communities - again leading to increased criminalisation and making it less likely that victims will seek police support.

While it is unlikely that a harm score would be used to influence individual sentencing decisions in Australia, there is also potential for a measure of this kind to be used to justify 'tough on crime' policies and law enforcement. Used for this purpose, a tool that fails to reflect growing understanding of the context and dynamics of offending, particularly in relation to the less visible offences committed against intimate partners, older people or people with a disability, can act to entrench historical biases and 'blind-spots' in the law.<sup>8</sup> It can also lead to reactive policy-making that in itself generates harm. A case in point is the significant increase in the number of unsentenced prisoners on remand awaiting trial in Victorian prisons,<sup>9</sup> which resulted from changes to the *Bail Act 1977 (Vic)*, made in response to the high-profile case of James Gargasoulas.

The CIJ is also concerned that an index that fails to account for the wider harms that flow from crime, and the ways in which this is used and understood in a restorative context, may impede the development of restorative responses for victims of crime. Crime has a ripple effect that emanates beyond the individual victim to include the impact on the offender, as well as the families and relationships of both victims and offenders. Creating a measure that promotes a more accurate understanding of the impact of crime can contribute to more effective responses to both offenders and victims.

### Driving positive change

Measures of harm can also be used to drive less punitive approaches to what are deemed 'low-harm' offenders. In a recent report, the Queensland Productivity Commission (QPC)<sup>10</sup> looked closely at the extent to which the costs flowing from criminal sanctions (i.e., costs to the offender, those close to them and the community) are proportional to the harm<sup>11</sup> caused by the offending.

---

<sup>8</sup> For a discussion on this point, see CIJ, *Submission to Victorian Law Reform Commission - Review of the Victims of Crime Act 1996* (2017).

<sup>9</sup> Between 2001 and 2019 the prison population of Victoria more than doubled. In the five years between 30 June 2014 and 30 June 2019, there has been an 18% increase in the percentage of the Victorian prison population who are unsentenced remandees. The SAC in its recently published report found that this increase 'has largely been driven by legislative reforms to tighten bail eligibility.' Sentencing Advisory Council, *Time served prison sentences* (2020), 2.

<sup>10</sup> Queensland Productivity Commission, *Imprisonment and Recidivism, Summary Report* (QPC, 2019). Retrieved 31 January from <https://qpc.blob.core.windows.net/wordpress/2020/01/FINAL-REPORT-Imprisonment-Volume-I-.pdf>

<sup>11</sup> The scale used by the QPC was a categorisation of high, medium or low harm associated with an offence based on rankings in the ABS National Offence Index ('NOI'), which orders offences based on their 'perceived seriousness'. The NOI and was designed to determine a principal offence for crime statistics purposes.

This analysis led the QPC to recommend a range of measures aimed at reducing this unwarranted cost, including:

- the removal of some low-harm offences, such as certain drug offences, from the Criminal Code;
- the adoption of a more victim-focused approach (via compensation for victims, the imposition of rehabilitative conditions on offenders, and restorative justice processes); and
- greater use of diversionary practices.<sup>12</sup>

There is also potential for a CHI to be used to support arguments for investment in victim support, including restorative approaches, and to provide some guidance on where those resources would be best directed.

Given the significant potential impact of use of the measure, both positive and negative, it is essential that a Victorian CHI is sophisticated enough to better reflect understandings about the experience of crime, discussed in more detail below, and is presented for use in a way that clearly acknowledges its limitations.

## Ways to measure crime harm

While the task of measuring a subjective concept such as crime harm remains an inherently inexact science, this is nevertheless a growing field in criminological literature, with jurisdictions in Australia and overseas adopting a range of approaches.

### Approaches in other jurisdictions

Other options for estimating harm arising from crime include approaches based on one or more of the following:

- an ‘assessment of harm’ framework which involves a complex, but rigorous research methodology;<sup>13</sup>
- sentencing guidelines i.e., the default prison sentence (or equivalent time for calling in monetary penalties for less serious offence) that an offender would receive for committing an offence (UK);
- prosecutor guidelines (Denmark);
- actual sentences (Canada, NZ and WA);
- surveys of judges (Sweden);
- community perceptions (Queensland, in development).

Western Australia (WA) is currently piloting the first official Australian CHI model. The WA Crime Harm Index (WACHI) takes as its starting point actual court penalties for first time offenders in 100 most harmful and frequently occurring offences. WA police have found this approach to be inexpensive to develop, test and update.<sup>14</sup>

---

<sup>12</sup> Queensland Productivity Commission, *op. cit.* xviii.

<sup>13</sup> V. Greenfield and L. Paoli, ‘A framework to assess the harms of crimes’ (2013), *British Journal of Criminology* 53(5), 864-886.

<sup>14</sup> Paul House and Peter Neyroud, ‘Developing a Crime Harm Index for Western Australia: the WACHI’ (2018) *Cambridge Journal of Evidence-Based Policing*, 2, 70-94.

A project is also currently underway in Queensland to develop a CHI from a mixed method approach using feedback from a representative community survey of crime harm and a survey of police officers.<sup>15</sup>

Most CHIs appear to be developed by, or on behalf of, police and focus on offence penalties as a proxy for perceived harm caused. None appear to incorporate weightings to adjust for current understandings of victim experiences, or to have been informed by consultations with victims of crime. Models based in part or in whole on community perceptions of crime harm, such as the approaches proposed for Victoria and Queensland, may indirectly include input from people who have been the victim of crime. From the information available to the CIJ, however, this would not be in a way that can be scientifically controlled and validated.

A CHI that dominates the literature is that developed in the UK in 2007 and further refined in 2016. The Cambridge Crime Harm Index (CCHI) uses the UK and Wales national Sentencing Guidelines available to trial judges as a basis for determining offence seriousness scores. This approach appears to be the touchstone for other jurisdictions in the cross-validation of the various metrics developed.

### A three-pronged test

The authors of the UK CCHI developed a test setting out the three characteristics deemed essential for measures to be accepted and operationalised by police. These are that the measure is: *democratic* i.e., it in some way resolves the problem of conflicting viewpoints on crime severity, using a transparent process validated by a democratic government (for example officially recognised sentencing guidelines developed by courts); *reliable* i.e., it can be consistently applied in different time periods and across different locations and demographics; and *low-cost* – an approach that is inexpensive to develop and use.<sup>16</sup>

The emphasis on affordability, used in the literature as a reason to preclude more comprehensive and reliable approaches to measuring harm, such as the ‘assessment of harm framework’ mentioned above, appears to arise from the fact that most measures are developed by the police themselves, using limited police resources. The CIJ understands the need for a pragmatic approach that is as cost-effective as possible, but this should not be at the expense of reliability. There is value in the argument that ‘reliability’, as defined by Sherman *et al*, should require that CHIs reflect what is known about factors impacting on the experience of crime by victims including:

- victim characteristics, such as age, gender, abilities, health, ethnicity, culture, socioeconomic status, social networks and previous experiences and interaction with the justice system;
- the type and seriousness of the crime<sup>17</sup>; and
- the nature of the victim’s relationship with the offender.<sup>18</sup>

---

<sup>15</sup> Ransley, et al. *Op. cit.*

<sup>16</sup> Lawrence Sherman, Peter Neyroud and Eleanor Neyroud, ‘The Cambridge Crime Harm Index: Measuring Total Harm from Crime Based on Sentencing Guidelines’ (2016) *Policing*. **10** (3), 1–13

<sup>17</sup> It is important to note that the impact of a crime on a person does not necessarily correspond to the ‘seriousness’ of the crime based solely on crime type. See also Elaine Wedlock and Jacki Tapley, *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*, (Victims’ Commissioner and University of Portsmouth, 2016) 8.

<sup>18</sup> Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Report No 38 (2018) (‘*Review of the Victims of Crime Assistance Act 2018*’).

The known link between being a victim of crime and a trajectory towards offending<sup>19</sup> is another factor relevant to the development of measures of harm.

The following section outlines the CIJ's concerns about the measure proposed by the CSA. It is based on a scan of the 'harm measurement' literature and insights gained from the CIJ's own research. Accordingly, it leads us to conclude that the draft Victorian CHI fails to meet both the 'democratic' and 'reliable' criteria, outlined above.

## A crime harm measure for Victoria

Compared with other CHIs, the proposed measure presents gradations of harm associated with offences in a relatively crude scale of high, medium and low.<sup>20</sup> While all current forms of CHIs have limitations, most provide more sophisticated calibrations of harm drawn from publicly available, externally validated criteria or rigorous research. The lack of detail in the Discussion Paper makes it difficult to know why the proposed approach was chosen over other options.

Given the limitations of the proposed scale, it is not surprising that incongruities arise in the ranking of harm seriousness. In the example of 'assault police, emergency services or other authorised officer' mentioned above, the harm attributed to a victim who is an armed and trained, risk-assuming police officer, who is assaulted while on duty, invariably by a person who is distressed, cognitively impaired or mentally ill, is rated at the same level as that arising from murder and rape. The fact that this is rated above that of harm caused to a member of the public who is stalked, assaulted (including those assaulted by police<sup>21</sup>), or profoundly injured in a dangerous driving incident, indicates the deficiencies of the methodology used and the need to consider other approaches.

The CIJ understands that some existing CHI models are not appropriate in the Victorian context. It is not possible simply to apply the CCHI given significant differences in law and practice in the UK. Similarly, a scale based on sentencing guidelines for trial judges or the Office of the Public Prosecutions (OPP) prosecutor guidelines is not a viable option for Victoria. Neither the [Victorian Sentencing Manual](#) published by the Judicial College of Victoria or the prosecuting policy of the Director of Public Prosecutions sets out recommendations relating to the length of sentences.<sup>22</sup>

There are approaches that, in our view, meet the three requirements discussed above and that could be further 'weighted' to increase reliability. The following ideas are presented to illustrate the value of conducting a more thorough investigation of the options available.

---

<sup>19</sup> Wesley Jennings, Anthony Piqero and Jennifer Reingle, 'On the overlap between victimisation and offending: A review of the literature,' (2012) *Aggression and Violent Behaviour* 17. Prior experience as a victim of family violence is strongly associated with offending for women. Eighty-five per cent of female prisoners in Australia are or have been victims of family violence related abuse. Debbie Kilroy, *Women in prison in Australia* (2016). Paper presented at the Current Issues in Sentencing Conference, Australian National University, February 2016.

<sup>20</sup> We note however that the index is still on development and that there appears to be plans for the measure to be "analysed in conjunction with demographic data and other variables about criminal events to gain a more sophisticated understanding of crime in Victoria". There is no information provided to shed light on what this might entail. Crime Statistics Agency, 2019, *op. cit.*

<sup>21</sup> The harm caused to people who have been assaulted by police can be extraordinarily high – not only from the injuries caused, both physical and psychological, but also from the loss of trust in an institution that was supposed to protect them, compounded by the failure to independently investigate the complaint, and often retribution in the form of malicious prosecution. This can lead to very serious and lasting secondary psychological harm.

<sup>22</sup> Rather than following guidelines relating to sentence length, judges are required to apply an 'intuitive synthesis' on a case-by-case basis in the determination of sentence.



## Developing a robust approach

The methodology proposed by the CSA most closely resembles the approach being developed in Queensland, i.e., a mixed method approach combining views of members of the public with that of criminal justice professionals. While Queensland bases its 'community perception' on a representative survey with a sample size of 2000, however, the Victorian approach consulted with only 73 members of the public. In addition, it is not possible to discern from the information provided how participants for the Victorian sample were selected, or whether they included people with experiences of victimisation.

Similarly, only two focus groups with stakeholders (Victoria Police, Victoria Legal Aid and representatives from DJCS) were held to 'explore experts' views and experiences of harm to victims of crime and the perceptions of the public.' In both the Queensland and Victorian methodology, stakeholders consulted did not include pivotal players in the criminal justice system, including prosecutors from the OPP, judicial officers, the criminal division of the Victorian Bar, plaintiff lawyers with experience in Crimes Compensation or civil claim litigation and the SAC. In addition to concerns about the robustness and reliability of conclusions drawn from the CSA's research that this raises, there is a lack of transparency with the approach taken.

The CIJ recommends that additional work is needed to develop a more robust and sophisticated measure. This could include:

- a thorough analysis of the various methodologies available, with a focus on the experience in jurisdictions where CHIs are in operation;
- seeking input from victims of crime, either by way of focus groups or crime victim surveys. If the latter, domains developed in other surveys could be used to capture the range of harms experienced by victims.<sup>23</sup> Victim surveys have the potential to capture the weight of harm of repeatedly victimised individuals and harm caused to secondary victims;<sup>24</sup>
- looking at data on the impact of crime on offenders and their families, including the prevalence of prior victimisation of offenders to develop a measure that captures the wider harms resulting from crime;
- exploration of ways to 'weight' harm ratings to better reflect harm as experienced by particular cohorts, people with certain characteristics, or victims of specific types of offences (see below);
- if the model is to include a 'community perception' lens, conducting systematic and representative opinion surveys of the public;
- undertaking more comprehensive face-to-face consultations or surveys with stakeholders as listed above;
- testing the validity of whatever scale is developed by cross-referencing it with: other indices, such as the WACHI and the CCHI; the NOI; or a survey of prosecutors and judges; and
- clearly outlining the limitations associated with any measure developed.

---

<sup>23</sup> In a New Zealand study, these domains included: health; emotions; financial; performance; relationships; neglect; cultural harm, and; life course and inter-generational harm. Matthew Brown et al, *Measuring the burden of gambling harm in New Zealand* (Central Queensland University and Auckland University of Technology, 2017). Retrieved 31 January 2020 from:

[https://openrepository.aut.ac.nz/bitstream/handle/10292/12451/NZ\\_harms\\_final\\_report%202017.pdf?sequence=2](https://openrepository.aut.ac.nz/bitstream/handle/10292/12451/NZ_harms_final_report%202017.pdf?sequence=2)

<sup>24</sup> D. Ignatans and K. Pease 'Taking crime seriously: Playing the weighting game' (2015) *Policing*

## Victim perspectives

CHIs that focus primarily on the perceived seriousness of an offence as a proxy for harm caused, as does the scale proposed by the CSA, capture only part of the picture of the human cost of crime. It is important that any measure of harm developed to inform policy or policing aimed at addressing or ameliorating the harm flowing from crime, is grounded in the lived experience of those whose lives it seeks to enhance. It must also be done in a way that does not minimise the impact of underreported crime.

A more victim-focused approach is needed that starts with externally validated data and then overlays additional weighting from demographic or other data to include factors relevant to victims' experience of crime. These include the individual characteristics and vulnerabilities of victims, as well as factors associated with particular offence types.

Under-reporting to police, in addition to the overt and inherent biases in law enforcement and sentencing, have historically resulted in a failure to fully recognise the true extent of harm caused by some crimes. This has particularly been the case in relation to family violence; the abuse of people with a disability<sup>25</sup> and people in institutional or home-care settings; child and elder abuse; and other forms of hidden interpersonal violence.<sup>26</sup> As police, policy and judicial responses to offences such as these continue to improve in Victoria, they demand statistical tools nuanced enough to contextualise crime statistics.

For example, offences that are committed in the context of family violence<sup>27</sup> should be weighted to adjust for the fact that offending of this kind usually involves a pattern of repeated behaviour, committed by an offender known to the victim, which occurs in the victim's home, and often in the presence of the victim's children or against the children themselves. The psychological impact of an assault in these circumstances is likely to differ markedly to an assault in a public place by a person unknown to the victim. Sexual assaults, particularly those committed against children, have similarly been found to have a disproportionately severe and long-lasting negative impact on the wellbeing of many victims.<sup>28</sup>

Also of concern is the narrow definition of 'victim' used in the draft measure. If 'harm' is limited to that experienced by individuals who are direct victims of crimes, rather than a broader range of victims, including indirect or secondary victims, communities, or the environment, as well as the offenders with prior experiences of victimisation, the data is less likely to be used to support the development of responses that have the potential to meet the needs of these categories of victims in diverse and flexible ways.

Insights from the CIJ's research shed light on the many ways in which people experience and respond to harm flowing from crime. These include that:

- victims are not a homogenous group and experience crime in complex and diverse ways;

---

<sup>25</sup> People with cognitive or psychosocial disability are overrepresented in the criminal justice system both as victims and as people charged with criminal offences, and are at a heightened risk of violence, abuse, neglect and exploitation in criminal justice settings. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *The Criminal Justice System Issues Paper* (Australian Government, 2020) 1.

<sup>26</sup> CIJ, 2017, *op. cit.*

<sup>27</sup> These could be identified by using CSA data – victim reports by principal offence and family violence flag. See <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-crime-data/victim-reports-0>

<sup>28</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Impacts* (2017) ('RCIRCSA 2017').

- the effect of crime victimisation can compound, as well as be compounded by, pre-existing vulnerabilities in those already experiencing disadvantage or marginalisation, such as refugees, women escaping family violence, Aboriginal and Torres Strait Islander peoples, and people with disabilities;<sup>29</sup>
- those who have previously been a victim of crime can not only be particularly vulnerable to further crime victimisation but may also engage in offending behaviour;
- while the effects of property crimes are typically not as severe and long-lasting as violent personal crimes, victims of property crime can nevertheless suffer emotional, psychological and physical health effects, sometimes to a severe degree;
- the trajectory of recovery from crime is dynamic and unlikely to be a linear process, with the type of advocacy, support and therapeutic treatment needed changing over time;<sup>30</sup>
- the delivery of appropriate and effective support to victims of crime can:
  - support the functioning of the criminal justice system;
  - mitigate the socioeconomic impacts of victimisation; and
  - disrupt cycles of disadvantage and harm; and
- victims seek acknowledgment and validation of the harm caused to them and failure to receive this can compound harm, leading to further victimisation.

In the development of a CHI for Victoria, the next phase of this project should draw not only on lessons from the existing literature and the Victim Services Review, but could also benefit from the joint project currently being undertaken with the DHHS tracking the trajectories of clients with complex needs common to the two departments. This would provide a solid knowledge base from which to develop a methodology for seeking input from victims of crime.

### Community perspectives

Incorporating ‘community perception’ approaches in the development of a CHI can go part of the way in meeting the ‘democratic’ criteria of the three-pronged test outlined above. When used in a mixed methods approach, and done in an appropriately rigorous way, seeking lay opinions on the seriousness of specific crimes can contribute to richer understandings of the harm resulting from offending.<sup>31</sup>

As suggested earlier, however, there are risks associated with an over-reliance on public perception of crime harm. Public perceptions and fear of crime can fuel ‘tough on crime’ policies via demands for harsher penalties and practices. This can in turn result in significant increases in the prison population, as has been experienced in most Western jurisdictions, including Australia and New Zealand.<sup>32</sup>

---

<sup>29</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report No 34 (2016) (*The Role of Victims of Crime in the Criminal Trial Process 2016*).

<sup>30</sup> Tamar Dinisman and Ania Moroz, ‘Understanding victims of crime: The impact of the crime and support needs’ (Victim Support, 2017).

<sup>31</sup> For an argument about the need to take into account public ‘mood’ or emotions, and to ‘be sensitive to different political and social cultures’ see Arie Frieberg and W.G. Carson, ‘The limits to evidence-based policy: Evidence, emotion and criminal justice.’ (2010), *Australian Journal of Public Administration*, 69 (2), 152-164

<sup>32</sup> E. Baldry, D. Brown, M. Brown, C. Cunneen, M. Schwartz and A. Steel, ‘Imprisoning rationalities.’ (2005). *Australian & New Zealand Journal of Criminology*, 44(1), 24–40;

Potential exists for members of the public to confuse offence seriousness with harm caused and to have unrealistic expectations that sentences will reflect an individual victim's experience of harm. Sentencing involves the balancing of multiple considerations, including: the offender's prospects for rehabilitation; community safety; deterrence; and the aggravating and mitigating factors particular to the offender and the offence.

Consideration of victim impact is only one small part of this process. In addition, community perspectives can differ considerably to that of police and criminal justice professionals;<sup>33</sup> can change over time; and can be unduly influenced by media commentary on high-profile cases. To minimise these risks, and to allow for data to be collected on the wider harms flowing from crime, beyond that experienced by direct victims, the CIJ recommends that feedback from the public should be sought via a representative community survey.

## Conclusion

The development of a CHI for Victoria has the potential to enhance our understandings of crime prevalence and trends. It also has the potential to lead to misinterpretation of crime statistics which can be used to support historical assumptions about victims and certain types of offending, and by doing so, entrench bias and disadvantage. Given the significance of the measure and the potential for its broader application, it is essential that the tool itself is evidence-based and is grounded in what is known from research and practice.

Given awareness of the limitations of existing CHIs, the development of a CHI for Victoria represents an opportunity to marry the two emerging fields of crime victimisation research and crime harm measurement to create a more robust and sophisticated tool. We encourage the DJCS to draw on this existing knowledge and on lessons from the recent Victim Services Review; research conducted as part of the CIJ's study for the OPP into communication with victims; and the department's Common Complex Clients Project, to proceed from a basis of greater understanding of victim experience and the wider context of offending in a subsequent phase of this project.

Centre for Innovative Justice

7 February 2020

---

<sup>33</sup> Some studies have found a high degree of consensus between police and community views, while others have found disparity, with one study finding that the public rated the seriousness of the offence of burglary much more highly than police did. It is interesting to note that in the consultations undertaken by the CSA, the opposite occurred. See footnote 6.