

# Law and Justice

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## 1. Introduction

In this module we look at different ways people talk about ‘law’ and ‘justice’.

We look at some current suggestions for dealing with crime—whether it be more police, different kinds of policing, zero tolerance, longer sentences, more prisons, different kinds of prisons, or diversionary conferencing.

We also look at what the community can do to help support people who suffer as a result of crimes, and their families. We discuss prison and the role of punishment and rehabilitation for convicted criminals.

The topics can be lively. As with all the other modules, the time you take on any of these pages is really for the group to decide.

You may also be interested in inviting speakers to come along to future sessions—for example, a local police officer, an officer from probation and parole, a speaker from a victims of crime group, or a volunteer from a prisoner/families aid organisation. Make sure you plan sufficiently far ahead so that the speakers can be available. Try to get a range of different opinions. Be prepared to challenge your present ideas.

## 2. Different ways people talk about law and justice

### Discussion starter

- Where did you get your ideas about right and wrong?
- Can you remember any moment when your ideas about right and wrong changed?
- How ‘law-abiding’ would you say you are?
- How ‘fair’ or ‘just’ are you? Is it the same as being ‘law-abiding’?
- How just is our society? Whose responsibility should it be for ensuring there is justice in our country?

There are different systems of law throughout the world.

In Australia we have a system based on English ‘common law’, where judges rely on past ways of deciding cases (precedent) and on what parliament sets down in acts of parliament (legislation).

Many cultures rely on the local community to settle differences. For example, in a Melanesian country like Papua New Guinea, if there has been domestic violence then both sides of the family are likely to meet, together with the married couple, and have a bold and frank discussion spelling out the behaviour that is expected.

In a multicultural country like Australia, we can expect that many people have grown up in other systems of law and justice. Even our system has changed over time—England can no longer overrule Australian laws as it once could. When Australia was settled by the English, rules based on military law were introduced. Before that, of course, Aboriginal law existed, which was bound up in relationships and spiritual and cultural connections with the land.

So different systems of law and justice can be found across time and space.

**Discussion starter**

- Who decides to change—or keep—parts of our legal system? How can we influence these decision-makers?

**3. Principles to protect our freedom**

**Discussion starter quiz**

Should this principle be in our legal system?		Yes	No
1.	<b>Habeas corpus:</b> If I am ever arrested, I can’t be kept in gaol without a trial; I have a right to go before a court to test whether my arrest was lawful.		
2.	<b>Presumption of innocence:</b> I will be considered innocent until the prosecution can show by proper evidence that I am guilty.		
3.	<b>The burden of proof is on the prosecution:</b> If someone wants to charge me with an offence, it’s up to them to show I’ve done it, not for me to show I didn’t.		
4.	<b>Beyond reasonable doubt:</b> The prosecution must prove beyond any reasonable doubt that I committed the offence.		
5.	<b>My ignorance of a law will be no excuse:</b> I cannot argue that I didn’t know about the law as a way of getting out of the charge.		
6.	<b>I have a right to one phone call:</b> If arrested, the police must allow me one phone call.		
7.	<b>I have a right to remain silent:</b> Beyond giving my name and address in certain situations, I don’t have to answer questions put to me by a police officer.		
8.	<b>I have the right to refuse my premises being searched by police unless they present a search warrant from a judge.</b>		
9.	<b>I have a right to refuse my body being searched by police</b> unless they have reason to believe I’m carrying illegal drugs, stolen goods or a prohibited weapon, or I’m under arrest.		
10.	<b>If I was to be charged with a criminal offence I am still entitled to be free unless there is a very good reason to detain me.</b> I am innocent until proved guilty, and should be allowed to get on with		

	my normal life until the court case begins (bail).		
11.	<b>I have the right to legal representation in a court hearing.</b> I have a right to have a lawyer speak for me in court, whether I can pay for the service or not.		
12.	<b>Until (and while) my case is being heard, I am protected from unfair media reporting.</b> My name and face will not be used, and I will not be pursued by the media for ‘a story’.		
13.	<b>The judge must stay fair and impartial in hearing the case.</b> The judge has to look equally at both sides of the case before deciding on a person’s guilt or innocence.		
14.	<b>I have an automatic right to a jury of my peers</b> —people from all walks of life, including people very much like me.		

Each of these principles is reflected in federal, state and territory law in Australia, to some extent. Indeed some rights have been created or enhanced by legislation. On the other hand, many of these principles are not enshrined in any ‘absolute’ sense. Some are subject to limitations and exceptions, often reflecting countervailing enforcement objectives.

The application of federal law to the right to make a phone call (6) when detained by police is a good example. At common law (judge-made law), there was no clear right to a telephone call. Federal legislation has made that right clear, where a person is arrested in relation to a federal offence. In fact, federal law gives a right to more than one phone call: there are detailed rights about communication with friends, relatives, legal advisers and others. However, these rights can be overridden in limited, specified circumstances: for example, if there are reasonable grounds to believe the person would abuse the right to make a telephone call to ‘tip off’ an accomplice or secure the destruction of evidence.

The right to remain silent (7) exists in the United States under their Bill of Rights, but within Australia the right is limited (for example, you must give your name and address to a police officer if you’re the driver of a vehicle, or a witness to an accident) and the right is further limited in several jurisdictions. You may have the right to legal representation (11) but that doesn’t mean you can necessarily afford a lawyer or be eligible for legal aid. The right to a jury (14) is generally restricted to more serious offences. Only a small number of all offences are tried before juries in Australia.

**Discussion starter**

- Did people in your group differ as to what principles they thought should operate in Australian law?
- Has any of this discussion changed your mind about what principles should be in our system?
- Sometimes these principles are used to get alleged wrongdoers off on technicalities. Do you believe ‘Better 10 criminals go free than one innocent Australian gaoled’?

**4. Has the right person been caught?**

**Discussion starter**    **Consider this scenario**

You are walking in a car park and you see a man in a blue singlet hitting a man in a blue suit.

- Has a crime been committed?
- What punishment would you be ready to recommend?

Spend some time talking it over as a group.

*Comment:* It's far too early to talk about punishment or penalty. That's because you need further information. You may need to know things like:

- Was the man hitting out of self-defence? You may have looked up in the middle of a fight, not the beginning. It needs investigating ...
- Did the man intend to hit the person or was he larking about—accidentally connecting a punch?
- What if the man in the suit was a hit-man and the man in the singlet was defending himself?

### **Get the facts**

You need to be sure you have the whole story. You need to check if witnesses are telling the truth or are remembering events accurately. You need to check that documents and other evidence are genuine. If you decide too soon—in the heat of the moment—and you miss relevant facts, you may do an injustice to someone. This is distinctly possible because you are relying on other people as witnesses to say what happened. The courts try to guard against innocent people going to prison on false, misleading or unsubstantiated evidence by having court practice rules to limit what can be discussed.

### **Discussion starter**

- Is anyone in the group comfortable talking about their experience as a witness? What was positive or difficult about the experience?
- Who should be allowed to speak at a trial? Anyone who has a view or only witnesses?

### **Fair trials and the media**

#### **.. Jackson fair trial worry**

THE judge in superstar Michael Jackson's child molestation case has conceded that intense media scrutiny makes his chances of getting a fair trial 'very difficult.'

The startling admission from Judge Rodney Melville came as media lawyers battled to win access to more explosive details of the celebrity case that prosecutors, defence lawyers and the judge want to keep under wraps.

'I'm being very careful, I'm following the law,' the judge said on Friday in response to a charge by media lawyer Theodore Boutros that a 'blanket of secrecy' had been thrown around the case.

'It is exasperating when the individual is known around the world,' the judge said. 'It makes it very difficult for the individual to get a fair trial.'

The comment came in response to a fresh call by Boutros, representing a group of media organisations, for more documents and details of the child sex allegations and probes against Jackson to be made public.

The lawyer vowed he would take his battle to uncover more details of the allegations against Jackson to the next level of courts.

‘My problem is that the secrecy has gotten worse and worse,’ he told reporters. ‘Both sides have gotten together to create this almost impenetrable veil of secrecy.’

The key document [that] media organisations want access to, is the sealed indictment that formally accuses the 45-year-old pop king of molesting a 12-year-old boy at his Neverland Ranch last year. The indictment was handed down by a grand jury in April, and Jackson pleaded innocent to 10 charges, including child abuse, conspiracy to abduct a child and administering alcohol to the boy to abuse him.

But details of the allegations and the testimony of key witnesses in the case have remained secret.

Prosecutors and the judge have been keen to keep as many details of the case as possible out of the media glare in order to protect the integrity of the trial and ensure a fair process for everyone involved.

Even Jackson’s defence team led by Thomas Mesereau, has opposed the release of many documents in the case, fearing a trial by media ahead of the legal trial, tentatively scheduled to start on September 13.

Mr Mesereau, meanwhile, revealed that he was poised to ask the judge to throw out the entire case against the beleaguered star.

He said he would file a ‘995 motion’ to throw out the case by Tuesday, ahead of Jackson’s next pre-trial hearing, expected July 9.

*Sunday Tasmanian 27 June 2004*

#### **Discussion starter**

- ‘Reporting a case before and during trial is very different from reporting the result of a trial.’ Do you agree or disagree with this statement? Why? Why not?

#### **Activity: How sure should we be?**

- Each person writes down on a blank piece of paper a percentage rating which shows how sure they believe the courts should be before convicting someone of a crime: for example, should the courts be 100 per cent sure before bringing a conviction? 90 per cent sure? 20 per cent sure? When everyone has decided and written down their answer, display your pieces of paper to the group and discuss why you came to your particular decision

## **5. Reporting crime**

Our criminal system deals only with cases which come to the notice of the police. Crime is not always reported to the police. Rates of reporting to police vary depending on the type of offence. For example, it appears that only 31 per cent of assault victims and 20 per cent of sexual assault victims report crime incidents. On the other hand, almost all (95 per cent) motor vehicle thefts are reported.

#### **Discussion starter**

- Why do you think people might not want to report crime incidents?

- What are the risks of not reporting a crime?
- How could people be encouraged or supported to report a crime?

...one of the greatest difficulties police face is the unwillingness of some community members to report incidents of crime. Often police are aware of problems in the community, they know that ... crimes are occurring, yet they are frustrated by the lack of information they receive that will assist them in dealing with these incidents.

*Chief Superintendent Bruce Johnston, NSW Police Service, 1999.*

#### **Discussion starter**

- How important is confidence in the police in encouraging people to report a crime?
- Imagine it is the festive season. A car full of revellers swerves across the road and plays 'chicken' with a bicycle rider, who is forced off the road, but is able to memorise the number plate. There are no other witnesses. Shaken by the experience, and concerned for other road users, the cyclist reports the matter to the police. The police visit the cyclist at home. They are sympathetic, but say it will be the cyclist's word against that of the driver of the car, so there is no point in pursuing the matter. Question: Are there (or should there be) any other options for the police?
- Should police time be focused more on catching criminals, mediating disputes, or preventing crime? What special skills are needed for each activity?

## **6. Bail and bail conditions**

It usually takes some time before a criminal case can be heard. For some people that can mean months and months locked up 'on remand'. That is why bail is important. If you are charged with a crime and get bail, you can avoid being put on remand. You must promise to appear at court to answer the charges. Being on bail means it's easier to keep your job and take care of your family. It also gives you a chance to prepare your case.

Our legal system operates on the principle that a person is innocent until proven guilty. A person has a right to be free unless there is a very good reason for the person to be detained (like the risks of re-offending, absconding, or destroying evidence).

Bail conditions can be applied, such as requiring the defendant to report to the police station at particular intervals, or surrender his or her passport. The Court may also require a surety before admitting a defendant to bail. This means that another person must guarantee the defendant's appearance in court by pledging a sum of money. The actual rules for bail vary between states and territories.

If bail is refused, the defendant will be locked up in remand until her or his court case. Some people have been known to wait many months in remand before their hearing. If they are found innocent of the charge, they are not compensated for their time in remand.

#### **Activity Who will you let out on bail?**

Split into groups of three or four, and go through the following cases, each group taking a number of cases. Your job is to decide whether or not to release the accused on bail, and whether there should be any conditions.

- Case 1:** A retailer is alleged to have sold cigarettes to minors—the fifth charge this year.
- Case 2:** A 21-year-old woman is charged with trafficking in heroin. It is her first arrest.
- Case 3:** There has been a pub riot between two rival criminal gangs. You have charged five of those involved with counts of assaulting a police officer and of affray (having a public brawl).
- Case 4:** A builder's labourer is charged with stealing equipment from a building site.
- Case 5:** A lawyer is charged with fraud involving his clients' trust accounts.
- Case 6:** Single-handedly a merchant banker appears to have lost \$50 million of her employer's funds by diverting funds to her gambling addiction.
- Case 7:** Someone with a string of bank robberies to his name is caught during a service station hold-up; his accomplices escape with the money and have not been traced.
- Case 8:** A 15-year-old is alleged to have hit a schoolmate with an iron bar, hospitalising the other youth. He is said to be bullying students on a daily basis.
- Case 9:** A man is charged with sexual assault involving penetration.
- Case 10:** A person of no fixed address is charged with possession of marijuana.
- Case 11:** A forest protestor is charged with trespass on Crown Land.

## 7. What the court room can tell us

### Activity Court visit

If possible, organise a visit by your group to your local magistrates court or supreme court. If you are all in paid work during the day perhaps a few of you can make it to a local court room in the early lunch hour, say from noon onwards, before the court rises. If possible, find time afterwards to go somewhere close (for example, a café or park nearby) to discuss your impressions, or meet again later.

- When were the courts built? What does the building look like from the outside?
- How did you feel walking in? Did you bow?
- Where did the magistrate or judge sit? What effect do you think that has on court room proceedings?
- Were there any insignia or words in Latin in the court room?
- Where do the lawyers stand? Is it easy to hear what they say and view their facial expressions?
- How easy did you find it to understand what was going on? Were there any procedures or jargon with which you were unfamiliar?
- How well do your impressions match courtroom dramas you may have seen on television or at the cinema? Was it more exciting or more dull?
- Pick and write down three words which would describe how the court room appeared to you. On a whiteboard combine everyone's words. What picture have you described together?
- From the protocol, language and architecture, can anything be said about the relationship of the citizen to the legal system?

## 8. Legal aid

If you need legal help and can't afford to pay for a solicitor, you may be able to get assistance from the Legal Aid Commission in your state or territory. In certain limited circumstances, the defendant (the person who is charged) may obtain free legal advice and representation. In most cases, to receive legal aid a defendant must be on low income, in danger of going to prison and have a reasonable chance of winning the case if properly defended.

Community Legal Centres (which are supported by a small group of staff and volunteers) are an important resource in terms of providing advice and referral in relation to legal aid.

### Discussion starter

- By rights, who should be entitled to legal aid?
- What do you consider appropriate grounds for receiving legal aid?
- Should a judge refuse to proceed if a defendant is unable to afford counsel (a lawyer)?

## 9. Police

The total expenditure by Australian governments on justice in 2002–2003 was about \$7.2 billion. The largest component was police services, 68 per cent, compared to corrective services (prisons etc.), about 21 per cent, and court administration, around 11 per cent.

### Discussion starter

- Does the mix of expenditure on police, prisons and courts seem right to you?
- How would you know if there were enough police on the beat in your area? If you had a choice between a police presence on your street and action on armed robberies, which would you choose?
- In your experience, how have police performed when you have needed them?
- Would you like your son or daughter to become a police officer? Why or why not?
- Has it been important to lift the educational qualifications required for entry into the police force?
- Thinking of the police that you've come across, did they come from the 'same mould' or did they represent the diversity of Australia's population? How does it compare, for example, with diversity in your own workplace? Is this issue important or unimportant to policing?
- You see a police officer on the street. Can you imagine wishing them well in their job? Why or why not? What could be done to give police more public support in their work? What could you do?
- Brainstorm the qualities you think a police officer should have. When you have completed a list, ask: Do we ask too much of the police?

## 10. Different kinds of policing

Policing has changed in the past 10 to 15 years.

For a long time the technologies of the car, the telephone and portable police radios have allowed police to focus on specific incidents—what is sometimes called the *incident-response model*. Now

new technology—computers, databases and forensic science—have revolutionised the way that the police can tackle individual crime. But technology cannot solve everything. There has even been some evidence that rapid response times have almost no effect on arrest rates or public safety.

At the same time there has been pressure for police to serve a role in *community policing*. According to this method, achieving good community relations becomes a (if not *the*) major police task. But how good community relations can be achieved in practice is less clear; most police services have stayed committed to the traditional incident-response model, while acknowledging the importance of communicating their message to the public, and being sensitive to community concerns.

Since the early 1980s, another model called *problem-oriented policing* has become popular. The police have been encouraged to move away from dealing with individual crime events in isolation, to spot overall patterns of crimes. Once these patterns are identified—nowadays assisted by technology such as computerised mapping of high-crime ‘hot spots’ and ‘hot times’—the police are in a good position to focus on prevention.

The emphasis is on prevention: while arrests are made they are not necessarily the main aim. Reducing the incidence of crime might be considered more important.

*Restorative community policing* is another trend. Rather than primarily concentrating on punishing the criminal, police focus is on fixing the harm that a specific criminal event has caused. The offender is encouraged to face their victim, and see the harm that has been done, through (supervised? Controlled?) ‘diversionary conferences’. It’s hoped these forms of ‘re-integrative shaming’ will make offenders less inclined to repeat-offend, and make victims and their families and friends more satisfied that justice has been done.

#### **Discussion starter**

- What do you think are the advantages or drawbacks of the various models of policing (incident-based, community relations, problem-oriented, restorative)? What evidence is there in your locality of these different models being used?
- List about five popular police and crime shows on television. What sort of approach to crime solving or prevention do the police take in each of these programs? How closely do you think they reflect the reality?

## **11. Zero tolerance**

#### **Discussion starter**

- What does ‘zero tolerance’ mean to you?

In New York, the authorities noted how much crime was made possible by offenders travelling on the subway. Apart from their other crime, usually these offenders did not pay a fare. By enforcing fare payment the authorities were able to block offenders’ ability to get around. The police also enforced laws for minor ‘quality of life’ offences such as public urination, washing windcreens at traffic lights and littering. Many of those people arrested for minor offences turned out to be wanted for more serious offences. The arrests for minor offences also appeared to have discouraged the carrying of firearms. Interest in this approach has been sparked by the fact that in the last five years crime has fallen by 3 per cent, and homicides by 12 per cent.

Out of this experience came the phrase ‘zero tolerance’. Zero tolerance originally meant focusing on lesser crimes and misdemeanours to catch those criminals doing bigger crimes.

It's not clear how easily zero tolerance can be applied in Australia. We do not have the same scale of urban crime problems, 'no-go' areas, or firearms possession.

Other factors may have operated in New York. Many crime rates (there is no one 'crime rate') were coming down throughout the country. In New York the lowering crime rate may have been due also to economic prosperity, the decline in the crack cocaine market, an ageing population and improvements in employment.

Nevertheless, the phrase has much popular appeal. Zero tolerance is often extended to mean a 'get tough with everything' approach. Police, politicians and the public sometimes use the term but mean something different.

#### **Discussion starter**

- What are the pros and cons of zero tolerance?
- One expert has warned: 'Indiscriminate strict law enforcement may break down the relationship of trust between the police and public that is so essential to effective law enforcement.' (Dr Adam Graycar, Australian Institute of Criminology, 4 February 1999). What did he mean by this statement? Could this apply to zero tolerance?

## **12. Sentencing**

Sentencing is the time at which a person found guilty of committing a crime is given their penalty.

#### **Discussion starter**

- In pairs, discuss your ideas about punishment. Where did these ideas first come from? Have you ever felt differently?
- In another pair, discuss your ideas about forgiveness. Where did these ideas first come from? Have you ever felt differently?
- As a group, discuss sentencing. What is your impression of the courts and the way judges sentence wrongdoers? Where do you get your information from? How dependent are we on the media?
- Examine some recent newspapers, including the editorials, for any items involving sentencing issues. Discuss in a group how the wording of these items could be changed to either make the sentencing seem (a) too weak or (b) too tough or (c) just right.

#### **The purpose of sentencing**

Traditionally, the purpose of sentencing has been to balance a variety of factors, including:

- deterring crime—by showing the community what will happen to them if they commit a criminal act and are caught
- restricting offenders (through incapacitation) to prevent further crime
- punishment—by demonstrating the community's disapproval of criminal conduct by imposing a penalty
- rehabilitation—based on the idea that it is possible, given the right conditions, to convert criminals into law-abiding citizens.

#### **Discussion starter**

- Are the factors discussed above realistic?
- Can sentencing of offenders realistically achieve these aims? What other purposes do you think sentencing should have?

### **Different kinds of penalties**

Depending on the state or territory, there are a variety of sentencing options available at each court level.

Critical factors considered by judges and magistrates include the seriousness of the offence and past offending history. Different kinds of penalties include:

- diversion (for example, from jail into a program)
- fine
- good behaviour bond
- probation order
- suspended sentence
- community service
- home detention
- periodic detention
- imprisonment

### **Activity**

- Find out about each of the above sentencing options. Which do you think have their place in today's legal system? Why or why not?

## **13. Prisons**

### **How many prisoners are in prison in Australia?**

According to the Australian Bureau of Statistics, as of June 2003 the prison population was as follows:

- There were 23,555 prisoners in Australia. The rate of imprisonment was 153 prisoners per 100,000 adults. The rate had increased since 2000 when it was 147 prisoners per 100,000 adults.
- Indigenous prisoners made up 21 per cent of the prisoner population in Australia and the imprisonment rate for Indigenous adults was 15 times the rate for the non-Indigenous population.
- In terms of sex and age, males made up 93 per cent of the total prison population. About 55 per cent of all prisoners were males aged between 20 and 34 years.

### **Discussion starter**

- Do you think imprisonment rates increase because of more crime, better policing, or higher reporting of crime?
- Imagine you are someone who needs to make regular prison visits. What would be the difficulties?
- Invite a member of a prisoners action group to come and speak to the group.

### **What is it like to be in prison?**

If you've never been to a prison, it may not be possible to easily convey what prison is like. If possible, invite a speaker from a prisoner support group.

### Activity

- Brainstorm words and phrases that come to mind when you think of prison. When you have finished the list, go to each item and ask: What is that impression based on? Is it a reliable source? How might I find out more about the conditions in prison?

Prisons differ. Many were built in the nineteenth century, for a much smaller prison population. Some have been built more recently to high-tech specifications. Whether they are dingy or fluorescent, they hold two things in common: the lock is on the outside of the cell door; and other people always have a say as to what prisoners do and when they do it.

Here might be a typical day in an average gaol. Allow for the fact that prisoners are put back into their cells well ahead of official time, in order that the last one is in their cell by the appointed time.

<b>7.00am</b>	<b>Rise</b>
<b>7.30am</b>	<b>Breakfast</b>
<b>9.00-11.00am</b>	<b>Access to exercise yards, welfare officers, education etc.</b>
<b>11.30am</b>	<b>Lunch</b>
<b>3.00pm-3.30pm</b>	<b>Dinner (this enables day staff to finish by 5 o'clock)</b>
<b>3.30pm-7.00 am</b>	<b>Locked in cells</b>

Conditions for prisoners vary between prisons. There are also different intensities of supervision between minimum and maximum security.

### Activity

- Find out the average size of a cell in the prison that is closest to where you live.

(If the prison is a long distance from you, imagine the impact such distances would have on families wishing to maintain contact with their imprisoned relative.)

Remand centres are separate from prisons because they serve a different purpose. Remand centres are for people awaiting trial who cannot obtain or cannot afford bail. They are considered innocent until proven guilty. They are not to be considered convicted prisoners but, due to overcrowding, some of those people placed on remand are housed in prisons, awaiting placement in a remand centre.

Of special concern is the high level of Aboriginal incarceration. According to the Australian Bureau of Statistics (*Prisoners in Australia 2003*), Indigenous people are much more likely to be imprisoned than non-Indigenous people (15 times the rate for the non-Indigenous population). Along with other social indicators (such as health, education and employment outcomes), these high imprisonment rates suggest that a crime prevention strategy should focus on the relevant risk factors.

### Discussion starter

- What is positive about the way our society treats prisoners? Are there any negatives?

- ‘You can judge a society by its prisons.’ Do you agree with this statement? What could we say about Australian prisons?
- How can we keep the prison system accountable to the community?
- Due to overcrowding, some of those people sent to remand are housed in prisons while awaiting placement in a remand centre. What are the risks involved in this practice? (Remember, these people are only alleged offenders—innocent until proven guilty.)

Another contentious issue is drugs in prisons. Many people are puzzled as to how drugs can get into prisons. A few observations are: (a) human ingenuity—after all, prisoners have a lot of time on their hands, in their cells, to think of ways; (b) even the most ‘impregnable’ electronic prisons built in the United States do not seem to be able to stop drugs being smuggled in; and (c) drugs are a way for some people ‘doing time’ to be temporarily ‘somewhere else’.

For these reasons, many prisons have drug counsellors to help prisoners work through their addictions or former addictions. Many prisoners are able to use their time in prison to get ‘clean’ and to prepare for life outside, without drugs.

If your group is interested in discussing drug-related crime issues, consider the *Drug-related crime* module.

#### **Discussion starter**

- What is the purpose of prison—punishment, public safety or rehabilitation of offenders? Why should society be interested in punishment, public safety and rehabilitation?
- ‘Criminals are sent to prison *as* punishment, not *for* punishment.’ What is meant by this statement? Do you agree with it?

#### **Futures? The electronic mega-prison (\$70–100 million)**

##### **Potential benefits**

- Prison officer staffing is cut significantly. The cost of staff is greatly reduced by high-tech methods of surveillance, including the use of cameras, sniffer dogs, and the bio-system of security-checking.
- The system will be electronically ultra-secure, yet visitors and professionals will be free to move through with ease.
- Such prisons will be capable of housing more than 700 inmates, with the potential for expansion.

##### **Potential problems, based on Australian experience**

- Officers and inmates soon become frustrated by the technology, having difficulty even performing simple tasks such as opening doors.
- There can be unrealistic and repeated delays in physically reaching prisoners for professionals providing psychiatric assessments, welfare, education or alcohol and other drug counselling.
- Preparation and delivery of food is slowed significantly.
- The size is contrary to the 1978 NSW Nagle Report which recommended, ‘Mega prisons ... should not be built ... Any new prison or any of the older prisons to be redesigned should cater for 200 to 300 inmates. Any smaller number is economically wasteful, any larger number does not permit proper knowledge and handling of the inmates.’
- Over-reliance on electronic aids as an alternative to officers on the ground becomes counter-productive. Prisoners lose social skills, leaving them unprepared for the world after release.

Prison officers can no longer observe so closely who's on edge and who isn't. It becomes harder to defuse conflict.

- If an officer is overpowered by an inmate, it can be seen on security camera, but the barriers prevent a response within 10 minutes.
- Similarly, if a prisoner attempted suicide by hanging it could take 10 minutes to reach them.
- The Nagle Royal Commission anticipated this in 1978 when the government was warned that 'Television (closed circuit TV) is an aid to the custodial officer and not necessarily a substitute for him'.

#### Discussion starter

- What do you see as the attractions of super-gaols using high-tech surveillance and controls?
- What are the risks?
- How might the \$70 million be otherwise used for crime prevention?

## 14. Probation and parole

A magistrate or judge may decide to place a convicted criminal under supervision, known as *probation*. A convicted person who does not fulfil the conditions of their probation, or who re-offends, has to appear back in court for breach of the probation order.

*Parole* occurs after someone has been sent to prison. A prisoner may serve a minimum period of sentence and then become eligible for parole, which is a conditional release. But parole is generally not an automatic right. The granting of parole is usually dependent on the prisoner's good behaviour. This incentive to behave well can make it easier for corrective services officers to manage prisons, apart from the actual benefit to the prisoner.

Depending on the resources given to probation and parole officers, convicted offenders can be assisted in the community with such as things as accommodation, family relations and employment.

The actual role of the probation and parole officer has varied over time. Some people believe the job works best when the officer has a roving brief and visits people in their home environment; others believe it should be a 'desk job' where parolees turn up for a half-hour interview.

#### Discussion starter

- What role should there be for probation and parole in crime prevention?

## 15. Diversionary conferencing

Diversionary conferencing has attracted widespread support because it is viewed as embracing the ideals of healing and restoration, empowering offenders, victims and families, conceiving of young people as integral members of a family and a community, and linking with traditional notions of Indigenous justice.

Diversionary conferencing offers offenders an alternative to being charged and attending court if they agree to discuss and resolve the offence. Rather than proceed with the formal criminal process, offenders who have acknowledged the offence are required to meet with their victims in the presence of family and community members or significant peers. The process is designed to produce an apology and perhaps some form of material redress.

These often highly emotional meetings take roughly 90 minutes (compared to around 10 minutes for

court cases). They usually address issues in this order:

1. what the offender did
2. the harm it caused
3. the worse harm it could have caused
4. ways to repair the harm
5. a written agreement between the conference participants, including what the offender will do to repair the harm.

The three hopes for diversionary conferencing are that:

1. both offenders and victims find conferences to be fairer than court
2. there will be less repeat-offending after a conference than after a court intervention
3. the public costs of providing a conference are no greater than, and perhaps less than, the costs of processing offenders in court.

There is anecdotal evidence that most victims find conferences 'fairer' than court. (we couldn't find a source for this statement) Evaluations of conferencing schemes have been undertaken in the ACT as part of the Reintegrative Shaming Experiments (RISE), and in South Australia through the South Australian Juvenile Justice (SAJJ) research. The New South Wales Department of Juvenile Justice is undertaking an evaluation of the *Youth Offenders Act* (1997). In 2000 the New South Wales Bureau of Crime Statistics and Research undertook an evaluation of youth justice conferencing.<sup>5</sup> The Australian Institute of Criminology has a comprehensive collection of articles on diversionary conferencing at [www.aic.gov.au/publications/lcj/family/index.html](http://www.aic.gov.au/publications/lcj/family/index.html)

#### **Discussion starter**

In pairs, discuss your impressions of and responses to diversionary conferencing.

- What do you like about the ideas in practice, as presented?
- What qualms, if any, do you have about diversionary conferencing?
- What would you need to know before you saw it being implemented as an alternative to court proceedings?

## **16. Victims of crime**

How do we in the community respond to people who have been victimised by a criminal act?

### **Crime After Crime: Repeat Victims Are The New Weapons In Police Campaign**

When Frank Morgan explains the difference between houses rated 'gold', 'silver' or 'bronze', he's not talking real estate values. The criminologist is explaining a British crime prevention project that has been emulated in Australia. In this context, gold means 'burgled several times'.

The project, done in the mid-'90s in Huddersfield, Yorkshire, was based on a concept that criminologists call 'repeat victimisation'—the phenomenon by which a relatively small proportion of people fall victim to a disproportionate number of crimes.

In Britain, 4 per cent of people are the victims of 44 per cent of crimes. In Australia, according to the Australian Institute of Criminology's first report on the subject, done in 1998, more than half of all property crimes occurred in just a quarter of all households,

while 41.3 per cent of people fell victim to two-thirds of all the personal assaults committed. One-in-four household robbery victims will be burgled again within the next year.

In the Huddersfield program, gold houses were fitted with high-tech security camera and alarm equipment, and visited daily by 'police watch', while possessions were marked with special chemicals that came off on robbers' hands. Silver houses, victims of one repeat burglary, received an alarm, a loan of temporary security equipment, and twice-weekly police watch visits. Bronze houses received a letter of advice, repairs and security upgrades. Burglary rates fell overall by 30 per cent and theft from cars dropped 20 per cent.

The project was repeated in Beenleigh, south of Brisbane, but only the rate of repeat burglaries fell.

According to Dr Adam Graycar, director of the Australian Institute of Criminology, the prevention of 'repeat victimisation' offences could radically cut the crime rate.

He says: 'It is a very important tool in crime prevention. If we randomly target 1000 previously unvictimized households, we can expect to prevent around 83 household burglaries and motor vehicle thefts. But if we select 1000 previously victimised households, we can expect to prevent around 287 crimes.'

The report showed that the most likely repeat victim of crime was a young male aged 15–24, while young women were more likely to be assaulted than older men.

'The stereotype of the little old lady who's been mugged several times doesn't reflect reality,' said Melbourne University senior lecturer in criminology Dr Adam Sutton. 'In fact, repeat victimisation dissolves the neat political division between offenders and victims. Some people who are chronically victimised are also involved in offending.'

In Britain, a succession of police and government projects have used the targeting and protection of potential victims as a measure to cut the incidence of burglary and domestic violence. In the latest anti-burglary program police in Liverpool are 'teaching' victims how to avoid becoming repeat victims.

In Australia, police programs in Queensland, New South Wales and South Australia have run local versions of the 'gold, silver and bronze' Huddersfield experiment. South Australian police have also recently set up a program aimed at cutting the incidence of domestic violence. It involves increasingly intense levels of police attention each time a call for help is received from the same woman.

According to criminologist Frank Morgan, who has helped evaluate the South Australian police projects, Australian police are, in general, less eager than their British counterparts to embrace the theory of 'repeat victimisation' as a crime prevention measure.

'It is difficult to persuade police to (adopt) something new, and they are oriented to offender-based processes ...'

At Melbourne University, a psychologist is studying crime victims to assess whether the treatment they received after the crime affects their chances of becoming 'repeat victims'.

Dr Grant Devilly, a senior lecturer in the university's department of criminology, has already done one assessment of the 35 people, mostly assault victims, who volunteered for the survey. The victims were questioned in detail about their state of mind, and about the kind of 'intervention'—counselling, intervention orders, or financial compensation—they received.

'We will follow them up in three months and then in two years,' says Dr Devilly.

'We don't know what increases or decreases the likelihood of revictimisation. We are still working on that,' he said. 'But if you are revictimised, problems (such as fear, anxiety, depression and phobia reactions) are likely to become chronic.'

## **ATTACKED**

Victimisation of Victorians 2000-2001 (crimes include robbery, car theft, and personal assault)

199,607 people were victims of crime once  
 23,414 people were victims twice  
 3741 were victims three times  
 870 were victims four times  
 274 were victims five times  
 270 were victims more than five times

- Repeat victimisation is highest in areas of highest crime
- If revictimisation occurs, it tends to do so soon after a previous incident
- The greater the number of previous victimisations, the more likely the victim will endure future crime

## **VICTIM #1**

Zak's 1976, mint condition, British racing green Kingswood station wagon had already been stolen twice. The third time, the 27-year-old consultant sprang the offender sitting in the front seat ready to drive off.

'I was out with a mate in South Melbourne near the casino and we realised that there was someone in the car. There was a bit of a stand-off and he just rolled up his tools that were neatly lined up on the bench seat of the car,' he said. 'It was pretty unnerving seeing someone else in your car. There could have been some sort of physical threat.'

The first time Zak's car was stolen was in the inner-city suburb of Collingwood. He thought he'd forgotten where it was parked.

'It just didn't occur to me that anyone would want to steal my car,' he said, 'I thought that only flashy cars get stolen.'

The second time the car was stolen from St Kilda, the day after the St Kilda Festival.

Zak is philosophical about the repeat theft of his car: 'It's an easy car to break into. I spend a lot of time in the inner suburbs of Melbourne, you just have to accept it.'

## **VICTIM #2**

'Jane' once found herself cornered in a room facing a man with a drawn sword. 'I

thought this could well be the end of my life,' said the 42-year-old mother of three. Jane is a repeat victim of domestic violence.

After taking her children and leaving an abusive 12-and-a-half-year marriage, two years later Jane found herself in a disturbingly similar relationship.

'Even though I knew I should have ended the relationship,' Jane said of her former husband, 'I couldn't because I needed some help.'

In Jane's view, her situation was not helped by the response of the police. 'I was in serious fear of my life and serious fear for the safety of my children and I was seeking help from the police and they put me in this category of whingeing woman, another domestic violence situation that they don't want to get involved in. To have to fight against them to achieve some sense of safety is just ludicrous.'

The idea of repeat victimisation is one that has played on Jane's mind. 'I really started to look at myself and think "what is it about me, I'm such an honest person",' she said. 'I'm a very soft, kind, compassionate person. Now, when I think about it all, I just feel it's easier for me not to get involved with men. I really don't think I'm strong enough to stand up to people like this.'

Although Jane has been the victim of two abusive relationships, she still talks about the strength she has gained from the experience of repeat abuse.

'I've learnt a lot and I feel very strongly about the issue of domestic violence and educating women about it,' she said.

But 'I still don't feel emotionally strong. I feel that I could very easily fall victim to this type of relationship again.'

*Sunday Age 10 March 2002*

During the 1990s the legal system began to acknowledge the need for more support for victims of crime. But the notion of 'victims of crime' can have different practical implications for different people, such as:

- state compensation payments having to be given to victims who have suffered criminal acts
- greater sanctions against offenders being demanded by people directly affected by crime
- requests for victim impact statements to be integrated into court proceedings
- recognition of the usefulness of diversionary conferencing in healing aspects of hurts felt by victims and their families.

#### **Discussion starter**

- What does 'victim of crime' mean to you?
- What do you think might be the potential impact of a range of crimes on a victim or their family? Consider examples such as burglary, sexual assault, injuries caused from a collision by a drunken driver and embezzlement.
- What are the arguments for and against having 'victim impact statements' introduced into the court system—even if these do not change the sentences judges hand down?
- Would it make a difference to your attitudes to sentencing if it was able to be shown that many long-term prisoners commonly have had

extremely traumatic childhoods?

- What does every victim have a right to expect from the rest of the community?
- What does every victim have a right to expect from their offender?
- What responsibilities does a victim of crime have to the community?

## Wind-up

The last part of each learning circle session is an opportunity to reflect on what has been learnt, evaluate how the session has gone, and allocate any tasks the group agrees need to be done before the next session. You might find it useful to sum up your discussion under the following headings:

### Difficult points

- Are there any areas where you need more information? You might like to invite a guest speaker or find more information from an expert group or government department. Don't forget local libraries, community groups and the Internet.
- Briefly summarise those areas where you have agreed to disagree. This will identify minority views as still being valid.

### Decisions

- Is there anything that the whole group has decided about your discussion?
- Is there anything you would like to do differently next time?
- Did you achieve what you had hoped?
- Is there any other action you want to take? This might include contacting your local council or politicians about an issue the group thinks important, or it might be sharing a meal or watching a video.

### Finally

- Remember to collect articles for a local media file.

## Additional Resources

### More information

Australian Bureau of Statistics Crime Statistics: *Crime and Safety*, April 2002 (released June 2003); *Recorded Crime - Victims 2003* (released 27 May 2004).  
ABS website: <http://www.abs.gov.au/>.

Australian Institute of Criminology has a wide range of information and statistics on law and justice at <http://www.aic.gov.au/>.

Attorney-General's Department, Criminal Justice Division  
<http://www.ag.gov.au/www/criminaljusticeHome.nsf>

For information about the Australian legal system and Australian legislation, see the Law and justice portal, maintained by the Australian Government Attorney-General's Department, Australian Law Online at <http://www.law.gov.au/>

For a directory of Australian Community Legal Centres see the Australasian Legal Information Institute's website at

<http://www.austlii.edu.au/au/other/clc/>.

Australian Law Reform Commission:

<http://www.alrc.gov.au/>.

Weatherburn, Don and Indermaur, David 2004. Public perceptions of crime trends in New South Wales and Western Australia. Crime and justice bulletin no 80

<http://www.agd.nsw.gov.au>

#### **Crime and race**

Ethnic Communities Council of NSW, *Ethnicity and Crime Under the Microscope (Dispelling the Myths) Forum Papers*, November 1998. Contact: ECC NSW, 221 Cope Street Waterloo NSW 2017, Ph (02) 9384 4900.

Poynting, Scott 2002. The *racialisation* of crime, paper presented to Beyond these walls: advancing Australia fairly seminar, 18 October 2002

<http://www.lawlink.nsw.gov.au/adb/aaf.nsf/pages>

Australasian Police Multicultural Advisory Bureau website

<http://www.apmab.gov.au/>

Mukherjee, S 1999, Ethnicity and crime: an Australian research study

<http://www.aic.gov.au/publications/ethnicity-crime/>

#### **Prisons and corrections**

*Corrections in Australia*

<http://www.aic.gov.au/research/corrections/>

*Private Prisons Information Action Kit*, People's Justice Alliance, PO Box 1567 Collingwood 3066, People's Justice Alliance, PO Box 1567 Collingwood 3066.

Papers from the conference organised by the Australian Institute of Criminology in conjunction with the Probation and Community Corrections Officers' Association Inc.

<http://www.aic.gov.au/conferences/probation/>

#### **Restorative justice**

Centre for Restorative Justice, Australian National University

<http://www.crj.anu.edu.au/>

*Restorative justice in Australia* for a listing of online resources on restorative justice and conferencing.

<http://www.aic.gov.au/rjustice/>

#### **Victims of crime**

*Restoration for victims of crime: contemporary challenges* (1999)

Papers from the conference organised by the Australian Institute of Criminology and the Victims Assistance and Referral Service

<http://www.aic.gov.au/conferences/rvc/>

*Victim assistance online: a comprehensive resource center*

<http://www.vaonline.org/>

(includes links to Australian sources)

### **Policing**

Australasian Centre for Policing Research

<http://www.acpr.gov.au/>

Grabosky, P N 1998, *Zero tolerance policing*

<http://www.aic.gov.au/publications/tandi/tandi102.html>

Police in Australia

<http://www.aic.gov.au/policing/>

Findlay, Mark 2004. *Introducing policing: challenges for police & Australian communities*. South Melbourne: Oxford University Press

Enders, Mike and Dupont, Benoit (eds) 2001. *Policing the lucky country*. Annandale NSW: Hawkins Press

### **Sentencing**

Potas, Ivan 2003. Circle sentencing in New South Wales: a review and evaluation. Sydney: Judicial Commission of New South Wales. *Monograph series (Judicial Commission of New South Wales)* no 22

Spigelman, James 2002. Fair criminal sentencing: let us be the judge. *Sydney Morning Herald* 31 February 2002

Schetzer, Louis and Sandor, Danny 2000. *Mandatory sentencing: why it is unacceptable: the impact of mandatory sentencing in the Northern Territory and Western Australia*. Sydney: National Children's and Youth Law Centre

ACT Department of Justice and Community Safety 2002. *Sentencing review: issues paper*. Canberra : JACS.

<http://www.jcs.act.gov.au/eLibrary/Sentencing%20Review/IssuesPaperSept2002.pdf>

### **Victims**

Victim Services New South Wales

<http://www.lawlink.nsw.gov.au/>

Justice Tasmania Victims Assistance Unit

<http://www.justice.tas.gov.au/>

Northern Territory Victims Support Unit

<http://www.nt.gov.au/>

Western Australia Department of Justice support for victims

<http://www.justice.wa.gov.au/portal/server.pt/gateway/>

ABS, Crime and Safety 2002, released 2003, p. 5.

The Law Handbook (WA) Third Edition, Sussex St Community Law Service, 1993.

Steering Committee for the Review of Commonwealth/state Service Provision 2004, Report on Government Services Volume 1: Education, Justice, Emergency Management. Productivity Commission: Canberra. <http://www.pc.gov.au/gsp/reports/rogs/>

Australian Bureau of Statistics 2004, Recorded Crime - Victims 2003. Australian Bureau of Statistics: Canberra.

Australian Bureau of Statistics, Prisoners in Australia 2003, released 2004, at <http://www.abs.gov.au>

Trimboli, Lily 2000. An evaluation of the NSW Youth Justice Conferencing Scheme. Sydney : BOCSAR  
<http://www.agd.nsw.gov.au>