



**Research for the
Office of the Chief Victims Advisor**

**The use of restorative justice
in family violence cases *with a focus
on the possibility of victims being
coerced or controlled to participate by
the persons who harmed them***

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Executive Summary

In 2020, the Office of the Chief Victims Advisor commissioned Artemis Research NZ Ltd to undertake a research study to explore key stakeholders' perspectives on if, and to what extent, coercion or control by perpetrators of family violence impacts on victims' decisions to participate in restorative justice with the perpetrator, and how they participate/share at the restorative justice conference.

This research study came about because both the Chief Victims Advisor and the Under-Secretary for Justice were concerned that there could be elements of coercion and control present in family violence dynamics for victims participating in restorative justice processes.

The research findings are based on interviews conducted with 20 key stakeholders between March and June 2020: 18 were with restorative justice stakeholders and two were with stakeholders from family violence support services. Seven were based in Kaupapa Māori organisations.

We conclude that a restorative justice conference going ahead because of pressure on a family violence victim from their perpetrator is unlikely in cases dealt with by specialist restorative justice practitioners with significant experience of working with cases of family violence. We feel confident that if a perpetrator was exerting pressure on the victim to participate in restorative justice, an experienced restorative justice facilitator of family violence cases would be able to ascertain this at the pre-conference stage and would not proceed to conference.

That is not to say that the risk of a victim being coerced or controlled to participate in restorative justice by a person who harmed them is not a real possibility. Stakeholders we interviewed identified several potential risk factors for victims of family violence participating in restorative justice processes, including when there is:

- a lack of information and/or poor-quality information about the victim and the offender (for example, no summary of facts, no criminal history details) in many of the referrals from the court to restorative justice providers
- the use of risk assessment forms for family violence cases by restorative justice practitioners that may not be fit for purpose
- a fee structure that incentivises restorative justice practitioners to press the victim to proceed with the restorative justice process
- a lack of relevant professional training and development opportunities for restorative justice practitioners.

For those harmed by family violence who do proceed to a restorative justice conference, the consensus among restorative justice practitioners was that victims were almost always able to participate in the conference to the extent they wanted to. Those less confident were supported to decide if they wanted to speak and what they wanted to say. They could write down ahead of time what they wanted to say, and then read it out at the conference, or ask their support person to do this for them.

Based on what restorative justice practitioners relayed to us, we estimate that over one half of family violence victims referred to restorative justice choose not to proceed to conference. In addition, for a much smaller proportion of family violence victims, practitioners intervene on their behalf not to proceed. Among practitioners' reasons for intervening and/or not proceeding to a conference were in cases where:

- they suspected coercion or collusion of victims and their seeming inability to say 'no'
- they knew or suspected violence was continuing
- the case involved a history of serious violence and/or safety concerns
- they could not establish the truth.

Suggestions for improvement to the use of restorative justice in family violence cases arising from the research include:

- conducting a review of the current restorative justice funding model to determine whether:
 - it incentivises restorative justice practitioners to proceed with restorative justice processes in family violence cases when it might not be appropriate to do so
 - It limits follow-up after the conference to ensure that action plans are completed due to a lack of funding
- a service designer investigating and co-designing exactly:
 - what referral information is needed by restorative justice providers at the early stage of the restorative justice process
 - how the information is most efficiently obtained and shared
 - how the information might be checked for accuracy through agreed quality standards
 - how the information might be shared with the restorative justice provider in a timely fashion
- increasing the number of opportunities for restorative justice facilitators of family violence cases to participate in relevant and ongoing training and professional development, including live supervision and cultural competency training
- reviewing the Ministry of Justice risk assessment forms asked to be used by restorative justice practitioners to determine the risk to the victim's or others' safety before a case proceeds to conference to ensure they are fit for purpose
- following the practice of the Family Violence Courts and allow more time for both proper assessment and completion of restorative justice processes, and for the offender to complete appropriate courses
- investigating the possibility of routine recording of restorative justice conferences in family violence cases so that the co-facilitators can be fully engaged in the facilitation and not distracted by note taking
- Investigating the possibility of providing restorative justice as an alternative to a court process in suitable family violence cases
- Providing additional funding to allow for more restorative justice to occur post-sentence which would:
 - allow the offender to complete sufficient rehabilitation to participate fully in the process
 - allow victims additional time to recover from trauma, especially in cases involving violence

- remove the incentive for offenders to participate solely to impact their sentencing.

A limitation of this research study is that it can only provide answers through a third party (i.e. representatives of restorative justice and family violence prevention services). We recommend further research be conducted directly with victims of family violence who have participated in restorative justice processes to verify the findings from this study of key stakeholders.

1 Introduction

Simply put, restorative justice is a process where victims and offenders meet to discuss the impact of an offence on the victim and how the offender may acknowledge and attempt to put right the wrongdoing. The process aims to give victims a voice in the criminal justice system and may enable them to receive answers, apologies, reparation, and potentially some healing. Participation is voluntary and often involves a facilitated meeting between the victim and offender.

While preventing reoffending is not the primary aim of restorative justice, there is clear evidence that restorative justice can reduce offending.¹

Restorative justice processes may be used in family violence cases. In Aotearoa New Zealand the processes almost always occur pre-sentence from referrals from the District Court.

The Ministry of Justice's updated '*Restorative Justice Practice Standards for Family Violence Cases*' recognise the additional safeguards and processes needed to deal with family violence cases safely, consistently and robustly.²

These Standards make clear that use of restorative justice processes in family violence will not always be appropriate, effective, or safe.

'The particular dynamics of family violence, including the power imbalances inherent to this type of offending, can pose significant risks to the physical and emotional safety of the victim. Family violence offending is often cyclical and reflects deeply entrenched attitudes and beliefs. Offenders may be more manipulative and have offended seriously and repeatedly. A one-off intervention, such as restorative justice, may, therefore, not be effective or safe.' (page 5)

And under the heading of 'Entrapment' the Standards warn:

'Services that depend on equal participation, such as restorative justice, must be approached with a solid understanding of the dynamics of coercive and controlling behaviour. In some situations, such an intervention will further traumatise and undermine the victim (who is unlikely to be able to meaningfully participate without the dynamics of power and control having been addressed), and, may increase the risks to her and her children.' (page 27)

Restorative justice facilitators who are endorsed to undertake family violence cases are considered to be family violence specialists (page 29).

Feedback from victims of family violence cases who have participated in a restorative justice conference with the offender supports the use of restorative justice in family violence cases.³ Victims of family violence cases surveyed between 1 January and 31 December 2017 who had participated in a restorative justice conference were more likely to say they were satisfied with the restorative justice process overall (87%) than victims of other types of cases (83%), and as likely to

1 New Zealand Government (2016). *Restorative Justice. Evidence Brief*. April 2016.

2 Ministry of Justice (2018). *Restorative Justice. Practice Standards for Family Violence Cases*. March 2018.

3 Gravitas Research and Strategy Ltd (2018). *Ministry of Justice – Restorative Justice Survey. Victim Satisfaction Survey 2018*. Report for the Ministry of Justice. September 2018.

recommend restorative justice process to others (85% compared with 83% - 84%). And victims of family violence cases were more likely to feel better from taking part in restorative justice (76%) than victims of other types of cases (67% - 70%).

Background

The Chief Victims Advisor and Under-Secretary for Justice were concerned that there could be elements of coercion and control present in family violence dynamics for victims participating in restorative justice processes.

In 2020, the Office of the Chief Victims Advisor commissioned Artemis Research NZ Ltd to undertake a research study to explore key stakeholders' perspectives on if, and to what extent, coercion or control by perpetrators of family violence impacts on victims' decisions to participate in restorative justice with the perpetrator, and how they participate/share at the restorative justice conference.

The findings are based on interviews with 20 key stakeholders: 18 were with restorative justice practitioners (including in a coordinator role) and two were with family violence support service practitioners. Seven key stakeholders were based in Kaupapa Māori organisations (see Appendix 1).

The research provides a descriptive look at each of the five main stages of the restorative justice process in family violence cases and describes key stakeholders' perspectives about what works well and what does not. We then look at how restorative justice practitioners of family violence cases work in with other family violence social services and vice versa. To conclude, we offer suggestions on how to improve the restorative justice process based on practitioners' comments.

Use of the term 'victim'

Some people who have experienced crime dislike being referred to as 'victims' and prefer to be referred to as 'survivors'. Others say the term 'victim' accurately conveys their experience of harm. Still others, including many Māori, want no label at all.

This report uses the term 'victim' for the following reasons:

- to maintain consistency with current Aotearoa New Zealand legislation (for example, the Victims' Rights Act 2002)
- most criminal justice system workers and stakeholders recognise the term.

It may be that through future consultation with those who have been victimised, we can find a better way to recognise all people who have been harmed by crime.

2 Stages of the restorative justice process

2.1 Referral received

According to the Ministry of Justice's (the Ministry's) practice standards for family violence cases,⁴ Stage 1 of the process involves a restorative justice provider receiving a referral and making an assessment as to whether it is appropriate to begin the restorative justice process in a family violence case by:

- reviewing the offender's criminal history (provided by the court)
- obtaining input from a child specialist where the primary victim is a child or young person.

In most instances, the District Court judge simply refers a family violence case to a restorative justice provider for the provider's initial assessment. Sometimes, if a restorative justice practitioner is present at the court – especially at a specialist family violence court - the judge may ask the restorative justice practitioner whether their service has the capacity to take the referral and/or whether they might see value in assessing its appropriateness.

Court registrars are tasked with inserting the personal and contact details of perpetrators and victims on referral sheets for the restorative justice providers. Where the restorative justice provider had a good working relationship with the court victim advisor, the advisor was reported to have been a useful source of additional victim information.

Restorative justice providers we spoke with have ongoing problems with either a lack of referral information, or of poor-quality referral information, about both the victim and offender, but especially about the victim. For example:

'Sometimes we have no victim contact details. Sometimes they don't even get the name right. So, if we can't contact the victim, there's no process. ... if we don't get the contact for our victims ... we've lost somebody in the process which could make victims hōhā with us.'

'Our biggest problem is that the information that comes through is inaccurate. It's missing vital information. [And] communication back to the court is challenging on every level you can think of ... The biggest bugbear for us is getting inaccurate information i.e. telephone numbers, addresses missing, inaccurate, missing information like the criminal histories which is very useful for our risk assessment. ... So many come through we actually have to bounce them back to the court saying incomplete referral.'

Even in the specialist family violence courts, some restorative justice practitioners still experienced 'an ongoing ... frustration' with the amount or quality of the referral information provided to them.

Restorative justice providers told us of having to introduce work-arounds whereby an office staff member (sometimes a facilitator) would base themselves at court so that they could push to get the referral information they needed.

4 From page 41 of the Ministry of Justice (2018) *Restorative Justice. Practice standards for family violence cases*. March 2018.

...The [restorative justice] person sits in court and speaks to the judge and meets with the lawyers and chases the people out of the court and gets their details ... We found that practice to be more effective than us just getting the electronic emails from the court.'

Some of the Kaupapa Māori restorative justice practitioners told us of working at the court in pairs with a whānau ora navigator colleague. This enabled the restorative justice practitioner to introduce their whānau ora colleague to the family members (victim and offender) and connect them with social services if that was what the family wanted.

While an offender's criminal history information was considered to be essential referral information, information about the number of Police call outs to a couple's address for family harm incidents was also considered very useful in assessing victim safety. For example:

'I think it's safer, because for some of the ones that look like they're going to be quite simple, you know, a window got smashed. Well, that's because they'd been fighting for like four days, and the police have come out six times in those four days. And the person had been told to leave for 24 hours and as soon as he came back, he was even more mad. So, it's safer if you have [callout information].'

To gather a full picture of the situation, it is important that the restorative justice practitioners receive as much information as possible about what the victim has experienced. For example, a restorative justice practitioner thought a victim impact statement could contain useful referral information.

Restorative justice providers also needed to know whether the court dates provided with the referral information were monitoring or sentencing dates since this impacted on whether they thought it feasible to complete the process in a timely fashion for court.

At least one restorative justice practitioner thought the entire process worked better in the specialist family violence courts.

'We have a ... therapeutic family violence court. So that is brilliant for us within restorative justice ... because within a family violence court, restorative justice is just one little process of a whole therapeutic intervention which is just brilliant. That supports it so well. When the offender has pleaded guilty the referral then comes to us which we screen.'

There was time pressure on restorative justice providers in some court locations, especially those that did not have a specialist family violence court operating. Some restorative justice practitioners reported they may only have six weeks in which to prepare for and hold a conference. For example:

'We only get six weeks to carry out the process and we have to provide our reports five days before the sentencing date, so actually we only get five weeks. So, if we can get [the referrals] straightway because we like to have three [pre-conference] meetings and then give them a week or two to decide [whether to participate in a conference].'

2.1.1 Proportion of cases assessed as not appropriate

We asked restorative justice practitioners to estimate the proportion of family violence cases they assessed on the documentation alone, as not being appropriate for restorative justice.

It was rare for restorative justice providers to turn down a referral for a family violence case on the papers alone. They told us they erred on the side of wanting to give family violence victims the opportunity to at least consider the option for themselves.

Restorative justice practitioners told us they only made a call to turn down a referral when *'the potential to retraumatise the victim is obvious.'* For example:

'We got some information about this guy that basically said he was still blaming her. It was pretty obvious. I don't know how we saw that. But there was just a lot of history - bang, bang, bang, bang, bang. Same victim, strangulation, high levels of violence, no responsibility. The guy was inside ... We had some documentation that talked about his lack of acknowledging what he had done and responsibility for what he had done, and that was relatively current to a long range of charges that he was also inside for.'

A Kauapapa Māori practitioner shared that they might turn down a referral after having had a conversation with a social service provider (such as Whānau Ora) about a particular family violence victim.

Some practitioners we spoke with argued that not to offer a family violence victim [and the offender] the opportunity to participate in restorative justice was a breach of victims' rights.

'... your question about the number of cases that I turn down on the papers ... I don't want to do that because as far as I am concerned it is the victim's right to access restorative justice. If I make the decision about whether or not she gets to do that, then I become part of the disempowering system that makes decisions on women's behalf. I am not prepared to do that.'

'[I understand there may be] coercion because this will get 25% off their sentence so they are going to make [the victims] do it. It is revictimising the victim. You can't deny in any process there could be a chance of that in a very small minority of that. You can't guarantee it. ... But for me to not [offer] restorative justice in family violence you are denying people an opportunity, and that outweighs that very small number that might be revictimised ... I am sold.'

A frustration expressed by one practitioner was of instances of Police or the court victim advisor making the decision for a victim not to proceed with the restorative justice process prior to the restorative justice provider having had the chance to offer that process to the victim.

2.2 Initial contact made

Stage 2 is about initial contact being made by the restorative justice provider with potential participants (both the person harmed and the person who caused the harm), informing them about the process, and securing their informed consent to proceed.

In family violence cases, the provider needs to be assured that the victim's willingness to proceed is given free from any power and control tactics of the offender and understands they have the right to veto any participants.

And both potential participants need to understand and agree to suitable support people also being present at the restorative justice conference.

It helped with a victim's engagement if a restorative justice practitioner could introduce the possibility of restorative justice to them through a quick conversation with them at court.

'A lot of these people are in relationships and a lot of these people want the relationship to continue ... So, if you have both parties [at court], ... sometimes I will take advantage of that and just say to the [victim]: 'Well this is what this is about. I am going to make contact with you at some stage. Would you be okay about me doing that?' That is good because at the initial contact they know who you are. They have picked up the vibe of whether this is somebody that they are going to be comfortable talking to or not. The whole thing is really about the relationships that you have with people.'

2.2.1 Initial contact with victim

Restorative justice coordinators and facilitators told us that the usual practice is for them to make initial 'formal' contact with the victim ahead of contact with the offender.

However, one Kaupapa Māori provider made an argument for contacting the offender first on the basis that the provider could then give the person harmed some indication about the offender's willingness to participate in the process, which in turn, helped with the victim's engagement.

... We actually like to contact the offender first, and that's probably coming from the social services side of it. If we can get offenders engaged and getting support prior to a restorative justice conference they're already on that pathway to making some better choices. The other reason we do that is ... one of the first questions [victims] ask us is 'Does he want to do it?' 'Does she want to do it?' 'Have you spoken to them?' 'What did they say?' And if we went to them with no answers, [victims would be] pissed off. 'So, what made you ring me then?' 'Who gave you my phone number?' 'Why did you think it was okay to call me?' So, we switched it. And I know it's not the norm ... but we have a better engagement when we can say to the victim 'I've had a conversation...' or 'There is an agreement to want to go through this process.'

2.2.2 Initial information and approach

Most commonly, restorative justice providers made initial contact with the person harmed by family violence by phone. Coordinators and facilitators told us they tried to keep the initial phone call short. They would introduce themselves, tell the person harmed a little about the restorative justice process, say with their permission they would like to meet with them and a support person, and explain why a support person is important.

'If I get the person on the phone then it is 'Look, we have had a referral from the court to do with Joe's charges. The court has asked us to see whether a restorative justice meeting might be helpful for you. Do you want to hear a little bit about what is involved? Or, 'Have you heard of restorative justice before?' 'Would you like to know what this is about?' So, I am asking permission to speak basically all the time ...'

'I preface those conversations with 'We are not part of the Courts, Corrections or the Police. We are a community-based agency.' Then we would say we can bring you together in conversation if you want to ... and there is absolutely no pressure. There is no pressure. You can change your mind if you were to take the next step which would be a face-to-face meeting with two of our facilitators. You can change your mind at any time about a meeting. So, really emphasise that they are in control of things and that we respect that.'

The restorative justice practitioner would then ask if the person harmed wanted to meet in person, and if so, set up a suitable time and venue. If they did not, the coordinator/facilitator would close the referral and inform the court.

Some practitioners texted ahead of their initial call to a victim in a desire not to take them by surprise and put them on the spot.

'If I am making a direct approach then I will text first. My text says: Hi, it is [X] here from [Y Restorative Justice Services]. Is it okay for me to call you about a possible meeting with me? That is all that is said. But they know that this is the question. There is the possibility of a meeting because I don't want that to be a shock when I am on the phone with them. I want their permission to contact them. I am not going to surprise them with it. Then if I don't hear back over 24 or 48 hours, I will send them another text and say: 'Could you let me know over the next 24 hours if you are interested in talking about this further? If I don't hear from you, I will let the court know that it is not appropriate for us to get involved.' By and large if I don't hear back from the victim, I will let it fall. I know that there are so many different circumstances that these people might be facing that could make it difficult.'

'What I would normally do, and now it has become my standard practice, is I usually get a cell phone number. So, I will normally send a text saying 'Hi I am [X]. I am contacting you about the charges against such and such. I am wondering when is a good time to ring about this?' So that is usually all I do. If I ring [without texting first] they won't answer the phone because they don't know the number. If I send a text, often I will get a text back saying 'Now is good or 3pm or something.' So, then I make the phone call and explain what this is about. You either get at that stage a pretty clear indication of 'No, I am not interested in talking to you about this. This person can fry in hell or whatever.' Or 'I would really like to sit down and talk to you about this.' So, then I would arrange for the facilitators to meet with this person.'

Less commonly, practitioners might post the victim a pamphlet (for a similar reason).

'It depends on the referral. Sometimes it might be better for a person to receive a pamphlet in the mail ... so that they can take their time to look at it and make contact with me when they're ready to. Rather than me just ringing and saying: 'Hey, how's things going? This is me. Want to do this thing?'

2.2.3 Assessing what a victim wants to happen next

The restorative justice practitioner needs to judge whether a victim actually wants to come to a pre-conference meeting and understands that they have the right to refuse.

While a person harmed by family violence may understand they have a choice as whether to continue with the restorative justice process, some practitioners reported victims may still not give them a definite 'no' at this point.

A Kaupapa Māori practitioner said that if a victim of family violence was ambivalent about the process, the practitioner would advise them to discuss this option with their whānau.

'How do you judge whether a victim is open to learning more? Well, you know what, it's that kōrero [by phone] and then we get them in for a hui. So, in their time they'll come in and

what we will do then is read the summary notes ... We explain the process again ... They might still be a little bit [ambivalent] so, what we will say is: 'Go and talk to your whānau ...'

A facilitator of a mainstream restorative justice service said a victim's tone of voice was an important factor in determining whether the victim truly wanted to come to a pre-conference. The facilitator was used to victims expressing doubts and listening sympathetically. He also acknowledged, though, that sometimes he encouraged the person harmed to hear more about their options and possible processes open to them. Some practitioners offer reluctant people the opportunity to meet with the practitioner, so the reluctant person can have all the information to make their decision.

'We tread a fine line between trying to sell the service, persuading people to come along because 'It is good for you' you know and just presenting the facts. 'Yes, that is what happens, this is what we do and this is what you say'. We err on the side of selling it. So, if a person is reluctant, we will take out those doubts and say 'Yes, I understand that you might feel pretty doubtful and that other people are telling you this is a total waste of time. Nonetheless, would you care to meet with us so that you can make an informed decision?' Now yes, it is a marketing exercise in some degree.'

Another facilitator recalled what actions s/they had taken when a person harmed by family violence had seemed ambivalent as to whether to proceed with restorative justice. Through a home visit s/they had been able to establish the person harmed did not want to proceed with restorative justice. However, the victim had agreed to accept a referral to a social services provider - which the facilitator viewed as a good outcome.

'In a recent case when a victim texted me back I felt that I wanted to see what was going on a little bit more. The offender was in prison so therefore I knew that immediate danger was okay. ... I told her I was coming to visit and she said that was okay. I went there and she wouldn't answer the door. Her four-year-old son answered ... So, we continued to talk by text and phone ... I did get permission from her, because she had a baby on the way, to see if she would accept [a social services provider]. She accepted a referral from them and so I did a referral [to a social services provider] and it went no further.'

And in another case, a Kaupapa Māori restorative justice provider explained their compassionate approach:

'We're not in a hurry to get to a pre-conference and we will spend 90 minutes or two hours if needs be to connect to that [victim] and her support person. If they are showing trauma ... we will stop what we are doing and we will work with that trauma, and then from that process we will talk to them about whether we should even continue or not. Quite often ... the woman decides she doesn't want to. ... It's about being present to what's in front of you. And not being in a hurry to tick the box ...'

Some restorative justice practitioners told us that sometimes victims felt pressured to make a decision as to whether to continue with the process based on wanting to do 'the right thing' by the person charged with having harmed them. Practitioners wanted to be able to reassure them that they could take the time they needed to decide, and had the option to say no.

'So, for a victim to have that extra time so there's no rush. They're not feeling like 'I've gotta hurry up and just say yes to doing this because he's going to go to jail if I don't do it. He's going to be mad at me ...' [Victims] need that time. And then they also need to see some positive results [of the offender on a violence prevention programme] - if that person sticks to it.

Some restorative justice practitioners said they really stressed the voluntary nature of a victim's participation in the process. For example:

'One of the things that I really stress is that this is a completely voluntary thing. 'There is no way in which you have to do this.' ... I would rather say: 'This is totally your choice here and leave them with the impression that they are the one that is making the decision than with them thinking like they have been coerced into a meeting ...'

2.2.4 Proportion of victims who did not want to continue

The proportion of people harmed by family violence who chose not to continue with restorative justice was best estimated by restorative justice practitioners at approximately 30 to 40 percent of those they had initially contacted.

Sometimes, a victim may initially agree to come to a pre-conference until it is made clear that having a support person present is a requirement of proceeding and then they will say no.

2.3 Pre-conference

According to the Ministry's practice standards, Stage 3 is the time at which the restorative justice facilitator undertakes separate pre-conferences with the victim and offender to assess their suitability for a conference. The facilitator must complete a conference risk assessment and document a conference risk plan that prioritises the views of victims as being best placed to identify risk.

For family violence cases, a decision to go to conference can only be made when:

- support is sufficient, screened as suitable, and accepted by both parties
- the victim is assessed as being free from the offender's coercive and controlling behaviours
- the offender is engaged or engaging in specific programmes/actions
- the risks of going to conference can be managed.⁵

Kaupapa Māori providers may incorporate cultural practices into pre-conferencing [and conferencing] but only if the victim and offender want this. For example:

'We have our own tikanga. We follow Te Arawa and we will do karakia if they want it. ... You know when you talk about coercion, so people seem to think because we're Māori that we're going to do karakia. That's only if the participants want it. And we might not necessarily do it, we may use kaumātua, someone of high standing in the community.

5 Ministry of Justice (2018) *Restorative Justice. Practice standards for family violence cases*, page 45.

2.3.1 Incorporating tikanga and other cultural practices into the process

Facilitators told us of wanting to respect Māori tikanga and other cultural practices as part of the process as part of creating a healing space.

Most Kaupapa Māori restorative justice providers told us they would ask the victim and offender whether they might like to start a pre-conference in any particular way – for example, with karakia. Facilitators might also mention that they intend to open and finish the hui with a karakia. (They don't tend to do full pōwhiri.)

For example:

'I always introduce the fact that I will open a conference with a karakia. If they say 'no' to it, then kei te pai. But I've not had anyone say 'no'. Oh, I did have one person ask if 'Is that praying to the Lord?' I said: 'Well, no, it doesn't have to be. It's about opening your space in the best way so that your kōrero can go well and then we finish in a good way.'

At the end of the day it was the victim's and offender's choice whether to have a karakia or not.

'In our conference I kind of leave it up to the participants as well. If they want to have a kōrero or start a particular way we'll do it their way. I'll do it their way basically. And finish their way.'

Facilitators might also offer the victim or offender the opportunity to provide the opening or closing karakia themselves. It was one Kaupapa Māori facilitator's experience that young Māori men might step up to close the conference this way.

'It's a funny one, eh, because everyone always go: 'No, no whaea, you can open it.' So I'll say to them: 'It's really difficult, I get that, so ka pai. I'm happy to open. But by the end of the kōrero I'm hoping that you're feeling really good because that's what this conference will do. It will put you in a really great space, then maybe you'll like to close for us. And often, especially with our young Māori males, they're my favourites, because they do. They want to close. The majority of them want to close it. He goes: 'Oh, I can't say it Māori. Can I say it Pākehā?' I say: 'You can say it in Chinese, whatever you want. It's your kōrero.'

Sometimes at these hui facilitators might do 'a bit of a mihi whakatau' as well.

Some Kaupapa Māori service providers mentioned making a cup of tea available. Some also offered kai. Again, it was up to what the participants might want. Some Māori participants were disengaged from their Māori culture and might want none of it.

One Kaupapa Māori service provider included the whole whānau in the process.

'It depends on the age [of the children]. So, I've managed some where the kids have been under ten where we've had the conference with the parents. Obviously, we've had some pre-work with the kids and then talked them into part of this space and said: 'Look, you need to express to whoever, mum or dad, how you felt. What did you do? What do you do when they argue?' They talk about, you know, I hide under the pillow. ... Yeah, that's really pretty powerful.'

One facilitator who had worked with some families mentioned having to drink '20 million coffees' at pre-conferences and conferences with them.

Another facilitator described how in conferences with participants the focus could be more on forgiveness than actually going back and talking about what happened.

2.3.2 Assessing a victim's readiness

We asked facilitators to describe what they were looking for at a pre-conference in terms of assessing a victim's readiness to proceed to a conference.

First, they said they needed to spend time with the person harmed - usually over several pre-conference sessions – to start to build a trusting relationship with them.

'We frame a whole lot of questions that are designed to find out where that person's heart is and what she is really thinking. ... We focus so much on building relationships ... If ... they get that you're tika and pono with what you're doing, then they're more likely to give you the information directly or indirectly that you need, eh? You know, it's not about being manipulative, it's just about being in a relationship and being honest to why we're there. ... We're in a face-to-face meeting ... we are open and we are honest people and they see that.'

It is about building a relationship ... It is not so much about a tick box type of approach. With family violence in particular we tend to do more than one pre-conference. It is not satisfactory to be able to just go in off one visit if it requires two or three or four, and sometimes it will because you have to include extended whānau in that and they often want to talk by themselves, or they come together, or they want to have another kōrero. Because the process is voluntary and it is about them making an informed decision. We have got to make an informed decision. ... You need to actually spend quite a lot of time and a lot of work doing that preparation. It is really time consuming. ... all the time you need to be assessing risk ...'

It could be more difficult for facilitators to build rapport with family violence victims where plea bargaining had occurred, effectively minimising the impact of the incident on them.

'I have had cases where people have said: 'Well actually he did this kind of assault and he has only been charged with this kind of assault ... then it is a difficult conversation ... Often, we can tell [there has been plea bargaining] because there have been bits whited out in the summary of facts. So, I will say 'Well, I notice there are a whole lot of gaps in here ... Is this really what happened?'

One Kaupapa Māori restorative justice provider said they would only approach the offender for a pre-conference if they thought the victim was sufficiently ready and there was a reasonable chance of proceeding to conference.

'Sometimes we're thinking maybe it's okay but we'll hold our judgement until we've met [the perpetrator], but we'll only meet him if we think there's a reasonable chance it'll go forward, because we don't want to put her in danger if she pulls out, you know, we're not trying to set people up to fail.'

One sign of readiness might be that the victim had discussed the possibility of participating in a conference with their friends and family. Another sign might be that the victim had considered the ins and outs of going to conference rather than simply saying 'yes' immediately to this.

'Some of the signs would be them saying, 'Yes, I want to be doing this, I've spoken with my friends and my family about this.' That would be a big one, like bringing in friends and family ... What else were we looking for? Maybe having time away to think about it properly, not just straightaway saying 'yes'. Sometimes people like to have a bit of time to think and process it and talk with people. That would be a big one.'

Facilitators said they were on the lookout for any evidence of the victim having been coerced to proceed. Also, for evidence of them having supports wrapped around them. For example:

'The first thing I am always looking for is coercion. So, are they feeling coerced? Also, what supports they have around themselves. So, are they supported by a victim support agency? Are they in counselling? Those sorts of things. How safe they are feeling in an ongoing sort of way? I check out whether there are children involved and were they present during the offending. What has been done to address their needs? If there is not enough support in there then I will link them in with places and check that they have actually engaged before I carry on with the process. I check out whether the relationship from their point of view has finished or whether they are thinking it is going to be an ongoing relationship. If it is ... an ongoing relationship then I will tolerate more risk ... because they are going to put themselves in that position anyway where they are going back to the other person.'

One facilitator said they had not encountered *'a lot of experiences where it seems like there is coercion in the background.'*

Some facilitators spoke of working very intuitively to come to a view as to a victim's readiness to proceed to a conference.

If [victims] are not ready, I think you get a bit of a sense actually they are not ready. You sort of pick it up maybe through hesitation or maybe sometimes it is the level of anxiety. You sort of learn to read people, don't you?

'You listen. You ask questions. How are you? Where are you at? Are you sleeping? It can be a really good indicator if you are hearing the wobble in a voice. You pick up different things from things in the way people say. ... People give you lots of clues and you just have to explore further. ... No two cases are the same.'

The Ministry's 'Risk assessment for family violence cases' form came in for some criticism as being too long and as not actually documenting the basis on which a facilitator came to their decision as to whether to proceed or not.

'I have got a questionnaire that is about as long as my arm. ... I put together a questionnaire that was really much based on the power and control wheel. I actually found that it was quite good. Then we got all this other [Ministry of Justice] stuff ... I have gone back to my questionnaire ... The information can still be transferred onto the Ministry one.'

'I think [the assessment forms] are bloody hopeless because there is no sense of what am I doing all this for? ... There is nothing that sort of holds those forms together that kind of explains your decision making which is what risk assessment to my mind is about articulating how you made a decision balanced with all of the factors, including appropriate liaison with other agencies.'

In one family violence court, the judge will not refer a family violence case to restorative justice until the offender has completed at least three quarters of an anger change group. Delaying the referral this way means the victim and the offender are more likely to be ready to engage with restorative justice.

'So, we want them to be engaged in services. We know there is definitely a difference ... and we have trialled all sorts of different things. There is a difference between [referring the case] immediately ... after an assault ... and doing a restorative justice down the line when the offender has done some learning. They are in quite a different space ... Because restorative justice for me foundationally is about the offender taking responsibility and creating a space to repair the harm, and for the victim obviously to have a voice and express whatever they need to. That is extremely important for victims I have met.'

2.3.3 Having the right support people

Facilitators spoke of the importance of having the right support people who could not only support the primary participants at the conference but afterwards as well.

'We also look to the support people for information. Support people are very, very important. The right support people make a difference between a conference going really well and the right support for victims and offenders afterwards or not.'

Facilitators thought social service practitioners could be an excellent choice as support people.

'They were all [of an 'Other' ethnicity] and they spoke no English at all, so we had a Spanish translator. We had a Women's Refuge support person there for the victim who spoke a little bit of Spanish as well. Yeah, that was really good. It couldn't go to conference because of this Covid-19 stuff. It was great to have another supporting agency there too, just so they knew at the end they will be able to talk about this, they'll be able to keep implementing the plan.'

One Kaupapa Māori restorative justice provider questioned the requirement to always have support people at conferences with whānau where there had been intergenerational violence.

'I'm never a hundred percent sold on this ... I think there's always exceptions to rules. Sometimes I don't believe that whānau is the best support. This cycle has been going on through three or four generations. How are we going to have the in-laws that have also been in family violence say: 'Oh, he's sorry, he's not gonna do that again, he promises.'

2.3.4 Proportion not proceeding to conference and why

Restorative justice practitioners estimated that anywhere from between one in four and one in two family violence victims did not proceed beyond the pre-conference stage.

Some victims changed their mind once they had learned more about what the process involved and would communicate their refusal to the restorative justice service. Some victims simply avoided further contact with the service, leaving phone calls and letters unanswered.

It was a facilitator's experience that couples with little previous or no previous history of violence were the most likely to engage, and proceed to conference. The more serious and more ongoing the violence, the less likely it was for the victim and offender to want to continue.

This facilitator also observed *'I would have a much bigger pick up of survivors that want to be involved in a restorative justice conference in a family violence case than I would in a standard case.'*

Facilitators explained that sometimes the failure to reach conference was for reasons outside the victim's control – such as their offender refusing to nominate a support person.

In addition, facilitators sometimes made a decision after pre-conferencing not to proceed any further. This was estimated to be in a much smaller proportion of cases (*'about five percent', 'two in the last six months'*).

Among facilitators' reasons for not continuing from a pre-conference to a conference were in cases where:

- they suspected violence was continuing
- they suspected coercion or collusion of victims and their seeming inability to say 'no'
- the case involved a history of serious violence and/or safety concerns
- they could not establish the truth.

For example:

'We had a case recently where we were ready to go to conference, we had the dates sorted. This guy doesn't have a big history but really full-on controlling behaviour. ... The young woman ... was pregnant. I just stayed in contact with the victim ... Because we were developing this relationship with her, she started just letting me know little bits of this behaviour are still continuing even between the pre-conferences and the conference. So, I did the unusual thing of canning it.'

'A lot of women I find struggle to say 'no', particularly to something that the court has called for and particularly something that they know is going to potentially help their ex-partner ... Some people really feel the need to justify why they are saying 'no'. I always try and kind of mitigate this ...'

'The case that I was talking about that I went shy on, that was really the situation where she had had dreadful abuse in her background. I think okay, maybe this was a better relationship but by golly what he did to her was really, really, nasty. So, I thought: 'Oh this is nuts [to proceed]'

'When we have two different stories. ... We have struck that. I sit there looking at these people and I think I have no idea who is telling the truth here. The truth is somewhere but I am not going to be able to tell ... so this is certainly not going [to conference].'

Not to proceed to a restorative justice conference was not necessarily seen as a failure by facilitators, especially those based in Kaupapa Māori services.

'Even though I say we don't get to conference, it doesn't mean it wasn't successful for them ... We're getting families through the door who wouldn't otherwise come to us. They're starting programmes. Mums who have got eight kids, beaten up for the last 20 years, all of a sudden they've got this kaimahi ... and they're learning things about their children. They're doing parenting programmes with their partner who never would have stepped forwards in a class with her ... Now, all of a sudden they get a different success.'

'So for me success isn't just do we have a conference or not. Is the person who has caused the harm starting to think differently or is the person who has been harmed making a new commitment to themselves and their whānau?'

Some restorative justice providers thought the fee-for-service funding model created the wrong incentives to proceed to conference. The funding model means that service providers are funded for a certain amount of pre-conferences and conferences. Some cases they may have spent a considerable time on did not make it to pre-conference – in which case they did not get paid. And they thought the model did not sufficiently take into account the time it took to perform some administrative tasks (such as chasing people who don't turn up etc). Such a model could mean facilitators might provide the wrong sort of encouragement to potential participants to stick with the process. Those who mentioned this, though, still would not proceed if they did not think it right for the participants.

'If it's not right to go to a conference ... even after getting the paperwork, calling a victim ... then I'm not going to do it. If it means we lose the contract, well then that's something I'll have to fight for ... Because we're a fee for service ... I can only charge the Ministry of Justice for a pre-conference with the victim and a conference. All that middle stuff that you do, all the hours on the phone, all the driving up and down the countryside to go and see them just because you haven't heard from them ... you can't invoice for all of that stuff'

Several other facilitators concurred that if they had any doubt, they would not proceed to conference.

'If in doubt just don't even if you can't entirely put your finger on what it is. You learn from the mistakes you make. I remember one situation. It was a horrible, horrible, assault. I was going along happily interviewing these people and then I suddenly thought: 'What am I doing?' So, I had to do a bit of back peddling. I didn't feel great about that, but there was no way it should have gone to a meeting.'

Co-facilitators may not always agree whether to proceed to conference or not. One facilitator recalled one such occasion, where his inner voice or intuition told him not to proceed. In the event the case was discussed among a larger group of facilitators and the group consensus was not to proceed.

'I had a gut feeling that this man, who was a very big fellow, and who recounted his act of violence very matter of factly, and it was pretty horrific. ... He was charming but I had a strong gut feeling that this man was a pathologically violent man. So, I declined to carry it on. My colleague disagreed with me ... So, we took it to the whole group ... The facilitators met around this table. I went nah. My colleague put her point of view. They made a determination that in their collective view we should not proceed. So that is how we resolved the issue. But it was nothing more on my part than a very strong intuition. ... the best of my past training has been to listen to that voice. Now, that is not a guarantee that it is right.'

People's intuition differs enormously. Even one person's intuition can vary I imagine from day to day. A completely unreliable method ... But much of our work is done intuitively from a movement of an eye to the turning of a head.'

Facilitators do not need to give a reason for declining to proceed with a conference. Facilitators were of the view that offenders were more likely than victims to be unhappy with such a decision.

'We have the right to say no even if both parties want to do it. So, if the person is not taking responsibility in our view we just say: 'not appropriate.' We don't ever give a reason and we explain that to them in the beginning that we are not going to give reasons so that people can't blame each other. So, we just say not appropriate. [Offenders] say: 'Well, did she say she didn't want to do it?' I say: 'Well I am not going to tell you what happened.' I just say the decision is it is not appropriate for restorative justice. Some of [the offenders] get a bit toey about that sometimes.'

2.3.5 Preparing a victim close in time to the conference

The facilitators spend some of the pre-conference time preparing the victim and offender for the conference. They need to take as much surprise out of the conference as they are able to.

Several described how they might go about preparing potential participants. For example:

'I ... say to people: 'We try and work on the basis of you go into this process knowing what is likely to happen as far as we can. If I go somewhere and I know what is likely to happen I am going to be much more relaxed than if I go in not having any idea.'

'You get to know [the victims], you get to know their body language. But what we might talk about in the pre-conference is, you know, if you're feeling something, you know him better than I do. If you see that he's changing or you hear a tone that I might not necessarily hear, then you know something's not right, maybe you might turn to face the window. Or maybe you might just put both palms of your hands on your knees, and that's a sign for me to jump in and say, 'Hey, how about we have coffee break? Would you like to go outside for a cigarette?' It's giving them some tools to use without having to use words as well.'

'[We say] when we are in the conference, this is what it is going to look like. This is what it is going to feel like. We are going to sit you here. We are going to sit you there. It is mandatory for us that [you] have support people ... so [you] have got witnesses. [You] are walking away with support people after the conference. ... We are asking ... questions around for instance 'Oh, the offender, are they going to give you a look that tells you just to say something a special way? Or is their body language going to tell you that you are going to be beaten up when you go home? ... What is a safe word? What is a word that we can call as facilitators and take control so that you are not at all in a position where you go: 'Oh my god I am stuck.' All of these things are discussed in pre-conference.'

2.4 Restorative justice conference

Stage 4 is the restorative justice conference itself. Conferences of family violence cases are co-facilitated. According to the Ministry of Justice's standards, the facilitators are to:

- review the conference risk management plan to ensure any unforeseen risk factors or incidents are assessed, mitigated, and documented

- assess the safety of participants throughout the conference
- reinforce the conference 'ground rules' with participants
- invite participants to discuss the offence, impacts and outcomes
- ensure that if an apology is offered
 - the focus remains on victim safety and offender responsibility
 - there is not expectation for the victim to accept the apology or forgive the behaviour
 - the apology is witnessed by the victim and others in the conference, including the offender's family or whānau and supporters.

One facilitator described how they laid out the ground rules at the conference.

'So, one person to talk at a time. I tend to try to lighten that by saying: 'It's good practice to be polite and listen to people even if you don't agree but the other reason is I'm writing the report and if you all talk at once I can't get it down.' So, I try to lighten it a bit by a comment like that.'

2.4.1 Encouraging victims to speak

We asked restorative justice practitioners how they supported victims to prepare to say what they wanted to say at a conference.

Some facilitators thought that pre-conference preparation was key. According to one facilitator it could take 'three or four' sessions with a victim before the victim was in the right space.

'We make sure they are really comfortable and able and confident to tell their story and say what they want to say, and are really clear about what they want to say.'

'We'll often in a pre-conference go: 'You know him better than we do. You'll know if he's full of shit.' So sometimes we'll come up with a sign or sometimes she'll go: 'No, I'll just say it.' So that really empowers her in the conference process to have a voice, whether it's some signal with us or whether it's overtly. It empowers her to go, 'I know this guy, I've been with him for 15 years, I know when he's speaking shit.'

While they encouraged victims to speak up, one also cautioned victims to think really carefully what they said to the offender at the conference, especially if they wanted to continue in the relationship. This facilitator advised victims:

'Double check in with yourself. Is it going to make things better or worse to be this open and honest with the person?'

Restorative justice practitioners may ask the victim at a pre-conference or the conference if she wants to speak first. It was one facilitator's view that: *'Often women are quite clear which way they want to go.'*

Commonly, facilitators suggested victims write their thoughts down and bring their notes along to the conference. Victims could read these notes out at the conference or ask their support person to do this for them.

'If [victims] are anxious we talk with them about the possibility of writing something down. If there are particular things that they want said ... [we encourage them] to actually write it down when they are feeling relaxed and comfortable at home. Then that way if they just lose their nerve completely, ... their support person could read that out for them ... I find if you let [victims] do that and you give people the permission to not speak if they don't want to speak ... what happens is they seem to relax as time goes on and then you find that they find their voice, but they need to be given permission to not have to [speak].'

It might be that they sit in silence for a while until the victim feels comfortable to speak.

The 'right' support people could be quite instrumental in determining whether the conference was successful or not. A facilitator recalled a mum and young teenage daughter case:

'I worked with a 13-year-old girl who had an amazing support [person]. ... Quite beautiful stuff shifted in the conference that we didn't even anticipate happening for the wider whānau ... I thought, given she was a child, that I would have expected more speaking from the adult support person. But [her support person] was so beautiful in the way that she related with this girl. This girl was very mature. She was able to, with the [her support person's] prompts say and go again to that other level.'

The facilitator might call a break if they notice the victim or offender shutting down or their body language changing.

'We got to one of those points in the conference. We said: 'Okay, we are sort of shutting down. How about you two go out and move a little bit, have a conversation and see if you can get something unlocked? Then come back and we will have another go.' We actually went to a way deeper place. Both parties shared some stuff that ... took it to a different level. It was very beautiful. Afterwards they were was like 'wow'. We both talked about stuff'

One facilitator objected to our line of questioning about how they encouraged the victim to speak up on the basis that it assumed the victim was female.

'This question has a huge assumption built into it that the victim is female ... that she will find this process daunting or off-putting, and that she may well be subject to very subtle forms of silencing or intimidation from the male partner. ... We don't have any problem with female victims speaking up. Some of them say: 'Don't call me a victim. I don't want to be thought of as a victim.'"

2.4.2 Conference plan and offender actions

In family violence cases, there is an expectation that there will be agreed offender actions coming out of the restorative justice process.

Facilitators indicated that the plan tended not to be especially detailed, with the agreed offender actions varying depending on when the conference is held relative to the actions the offender may have already taken to access a programme (violence prevention or alcohol and drug programmes) and/or counselling support. The actions might be minimal if, for example, the offender was well advanced in an appropriate programme at the time of the conference.⁶

6 Offenders could expect to be questioned at the conference about what they had learned from a programme and how they had applied it. And then hear reflections back from others present about whether they had observed them applying it.

It was ‘the magic’ or the ‘big shift’ that happened in the conference that appeared to matter the most to victims. Victims valued the offender making a genuine apology to them in a group setting with family and/or support people present.

‘With the victims, most of them are women. They tend to actually just be satisfied with the fact that he has come to the hui and he has said sorry ... The fact that he has come and fronted in front of everybody and said sorry [victims] tell me is huge, and then [offenders] actually following through for the first time ever going to alcohol and drug counselling. This is what a couple of them said to me. The fear is gone because they have already just gone and exposed it all in the RJ hui so there is no fear [for the offender] attached to going to alcohol and drug counselling.’

One facilitator recalled a conference she had co-facilitated of an ‘ugly assault that was almost a psychotic episode, drug and alcohol induced’ by a male on his partner. The couple had completed nine sessions of couple counselling. The judge had referred the case for restorative justice, and the person harmed had not wanted to proceed with it, but the judge had persuaded her to go ahead. She had been reluctant to nominate a support person, but eventually found someone to accompany her to the conference. When it came to feedback after the conference, the person harmed had said: ‘I never heard him actually own what he had done in that level of detail.’

The facilitator in this case explained that because the person who had harmed had experienced psychotic episodes, he had an unreliable memory of the event. At the conference he had shared what he could remember. ‘I did this. I did this and then I smacked her there. I remember this and I don’t remember that but I must have done it.’ The person harmed then had felt safe enough to express herself more deeply than she had been able to in the pre-conferences about the impact of the assault. The facilitator said clearly there had been a big shift during the conference. The couple had set clearer, healthier boundaries of ‘If you do this, then I am going to have to do that’ as part of their plan. The facilitator thought that because this couple had already completed nine sessions of couple counselling, they thought they had already talked about the incident, but they had not. It had been the conference that had enabled them to discuss the details of the incident.

Another facilitator recounted major change having happened in a particular case.

‘One case I did the woman had been married to him for 40 years. He had been violent all the way through just about. He is sitting in prison [on remand]. He does this group [work] and he comes into the room [for the conference] and he says ‘I get it. I now know it is not all about you. A lot of it is about me.’ She just burst into tears. Then they have a conversation, but the work has already been done really. They agree they will give it another try but they will take it slowly. He won’t come back and live with her straight away. He has got to prove he is walking the walk. All that sort of stuff.’

A facilitator explained that the plan for offender actions resulting from the conference helped ‘take the unknown away from the future.’ Regardless of whether the relationship had ended or was still intact, the conference provided an opportunity to discuss and plan how the victim and offender might manage the future.

‘Quite often there is a discussion about: ‘Well, if we bump into each other again when we are not meant to, how will we deal with that?’ What is the agreement around the kids? What is the agreement around family gatherings if they are still moving in the same whānau circles? So, it takes the unknown away from the future. ... Quite often people say: ‘Well I want to get

back in a relationship' so I will encourage them to explore to give them an idea of what does that journey look like. What does the person who has done the harm have to do? How do they have to show their behaviour has changed? What is the rule if they are asked to leave? They don't have to have the answers on the day, but it is getting them to think about those things. Quite often the person who has caused the harm just says: 'This will never happen again.' So, you say: 'Well, that is really good that you have that intention, but my experience is people don't plan to fail, they fail to plan. So, if you don't have some plans then you are much more vulnerable.'"

Facilitators shared instances of witnessing healing happening for the victim and offender within the conference. For example:

'You know, when the tears and the anger and the yuck is all coming out you know that my gosh I am so glad that we did this. They come out [of a conference] and they are exhausted, but they are all hugging each other, they are crying. They come out absolutely exhausted. ... There is a sense of peace ... I am a big believer, I am. Muru has been restored. They have been able to take a deep breath and it is left here. It ends now. We move forward. We have a karakia and it is done. Then I go home and sleep for 12 hours.'

One facilitator was of the view that sometimes the person who has been harmed claimed their power back possibly for the first time in their life.

A family violence specialist service practitioner told us of feedback from perpetrators about their healing they had experienced at restorative justice conferences.

[Offenders in prison on remand] talk about it when they come back [from a conference]. ... They are a kind of a bit of an emotional wreck ... but they are ... growing with it. They use words like: 'Wow it was like a big weight off my shoulder. It was so hard I was shaking, da da da. But at the end of it I felt light shoulders ... Or I had a big pain in my chest the whole time and afterwards I felt really trembly.'

One facilitator recounted that sometimes when they get to the end of a conference the couple might say something like: *'Well, we just hate the fact that this has happened but it has actually been the best thing for our relationship.'* It gives them the chance for some hard talking to happen and realise that they actually do not have the skills that they need to be able to manage their relationship in a better way.

2.4.3 Experience of needing to stop a conference

Facilitators who were queried about this reported that they had never, or had only very rarely (*'once or twice in two years'*) needed to stop a conference once it was underway.

One facilitator related that his only experience of needing to do this was once where the conference had been held in a prison and the offender had been affected by methamphetamine.

'Only once. [The offender] admitted to being on P in the prison. Astonishing. And he was becoming very agitated. I actually said 'look' and I asked him the question to confirm what I thought [that he was on P] and he confirmed it. I said: 'I think we ought to stop this' and they agreed with me.'

Another facilitator who had experience of stopping a conference, thought that did not mean it could not still have restorative elements.

'I had a really interesting case ... a woman who had been in a really violent relationship with a young child for a long time. She was isolated because they had moved from her home in the North Island. He was continuing to offend. It was a close call about whether to bring them together or not. ... He was just a total jack-ass. ... We stopped the meeting. But what happened out of that was he went and stayed somewhere else the night which was the agreement. She packed up her child and took him back to the North Island and never saw him again. ... [It] was actually a positive step for her because it finally let her give up hope that he was going to change. She [had] wanted him to change. The fact that he was so abusive in such a public way just let her know this was never going to happen. ... [It] gave her the courage to leave. So, for me that was still a good restorative process.'

Another facilitator recalled how they had got very close to stopping a conference, but had not, and it had a successful outcome.

'It was two brothers. A brutal, brutal assault. They were in their 30's. We actually had mum and dad in the room, plus a couple of ministers. I think we had three different faiths represented. [The brothers] were sort of warming up to going back to the place that they had been. ... I said to my colleague: 'I am sort of starting to feel some safety concerns here' and that was honest. I said to him: 'I am just wondering what the parents might be thinking at this point'. Then we took a break. Oh, my goodness at the end the brothers hugged and cried. Then the father said: 'I have never heard my boys talk about their feelings before'. They hadn't said a feeling word. When I passed in the report to the co-ordinator they go: 'What happened?' I am going: 'I don't know?' It shifted ... All they want to do is have a family BBQ with a table full of food and all the mokopuna and everybody there. That is what they wanted and they literally parked this other thing, this brutal, brutal assault.'

2.5 Post the conference

Following the restorative justice conference, the providers need to produce a conference report for the court, and undertake any monitoring agreed at the conference.

In family violence cases the provider's conference report must not include what was said by any participant during the pre-conference stage.

The provider is expected to follow-up with the person harmed and the person who caused the harm and to continue working collaboratively with other family violence specialist services to minimise the risk of re-victimisation/re-offending.

One Kaupapa Māori provider said that the fee-for-service funding model meant contact after the conference was limited to one or two phone calls. *'This is my number ... If you need someone I'm here. Reach out.'* This provider also spoke of their intention to follow-up on a couple of cases that had not gone to conference because of their concerns around the victims' safety. This was work the provider was not paid for.

And a coordinator of mainstream restorative justice services who described restorative justice as a short-term intervention perceived the monitoring role this way:

'Our role is to make sure that they are engaged in other support services, make sure that they are safe. Do they need anything? How do they feel after the conference? Feedback

that stuff and that is where we end, and other social services pick up. So, we are really clear about that.'

A Kaupapa Māori provider told us that follow-up could be made more difficult because some people tended to be transient.

2.5.1 Feedback from victims?

We asked restorative justice practitioners whether they had ever received any negative feedback from persons harmed about the restorative justice process, and if so, what reasons they gave.

Practitioners recalled getting very little negative feedback from persons harmed by violence. What little negative feedback there was from victims, was around four themes:

- about the length of time it had taken for the provider to contact a victim, for example:

'We weren't fast enough to make contact. That's actually our biggest complaint. He got taken to jail eight months ago. Where have you's been? Why has it taken so long? ...'

- about contacting a victim who had previously indicated to the court that they did not want to participate in the restorative justice process:

"I don't want to participate so why are you ringing me?' ... We've had that, sort of 'I told the court.'"

- about the content of the conference report:

'One I recall was a mum who was really mad at me because when I wrote the report it wasn't how she wanted it to be portrayed to the court. ... She felt I didn't portray her very well ...'

- about restorative justice within the criminal justice system:

'Recently I had really negative feedback ... Like, she was fuming. She felt pressured by the lawyers and by the court to do [restorative justice]. She was a really intelligent woman and she just said to me: 'If I say 'yes' then I've got to go through this really uncomfortable thing. And if I say 'no' he still gets [credit] that he wanted to do it.' And she said: 'So, either way I'm stuffed. Either way I'm going to suffer for this. What can you do?' I'm like: 'You don't have to do this. I will say that this is my decision, a facilitator's decision.' She said: 'The lawyer will still say: 'Oh, yeah, but my client wanted to do it. It must have been the victim [that didn't want to do the restorative justice process].' And like, what can I do for that? And she was like: 'This is not your fault. This is just the system's fault.'

One practitioner recalled only ever having got negative feedback from offenders. The practitioner recalled an offender who had made an official complaint through his lawyer about the conference report she had written.

'He didn't like the report because the judge tossed him out of the house again after letting him back in. It was a good move, let me tell you, a very good move for his children who were the victims.'

3 Where restorative justice works best and least well

All except one of the restorative justice practitioners we interviewed thought restorative justice had a place in family violence cases. For example:

'You have to offer it to anyone. You know family violence doesn't discriminate. If it was a one-off offence and you sat down and were able to have a really good hui and then from that ...you have put in an intervention and they know that they really don't want to go down that track again, then you have just stopped a cycle.'

The one practitioner who did not share this view said:

'We are living a lie. We are practicing hypocrisy. We are being paid to do things which can make no significant difference. That is the view I have come to. I cannot accept that and I do not do domestic violence anymore.'

3.1 Where restorative justice works best

There was no consensus among restorative justice practitioners as to the type of family violence cases in which restorative justice was thought to work best. It was thought to depend on the particular facts and circumstances of each case.

Two things the practitioners agreed upon. One was timing. The victim and offender needed to be ready to proceed. This was more easily achieved in those family violence courts that refer family violence cases once the offender is well engaged in a violence prevention programme (or similar) and is genuinely on a path to change.

The other was the importance of support people, especially family and whānau. For example:

'The different parties [in the meeting] all recognised that they could see the build-up for [the offender] prior to a blow, so they agreed that the partner could actually contact his father and say: 'Hey, I think he is building'. The father was then given permission to contact the son and say: 'Hey boy what is happening? Shall we meet up for a walk or for a cuppa?' They were going to work it out. So, that was really early warning sign action to support. There were wee ones in that family too. There was like 18 months and she was hapū at the time of the conference. So, that was critical to safety of children. It was really beautiful because the supports were there, and the openness.'

Some facilitators thought restorative justice worked well among couples who wanted their relationship to continue, and some others thought it worked well among couples who wanted to separate.

A few practitioners thought restorative justice could work particularly well in cases where there had been violence between a couple with children. For example:

'I had one actually ... where she wanted him out of prison because while the relationship was secondary, the impact on the kids of not having their dad in the lives was huge. Also, she wasn't getting a break ... In that conference it was interesting. At the second part we wrote the names of the kids down and we put them on the floor in the middle of the circle as we talked about how do we go forward from here. So those kids' needs were brought into the

room and prioritised as we talked about the plan to go forwards. ... It was a cross cultural one ... They talked about stuff that they normally wouldn't have talked about, how the wider whānau could actually step into support.'

One restorative justice facilitator thought the process had the potential to be a 'game changer' in cases of parents harming their child.

We have facilitated some RJ conferences where Dad had been done for hitting his child ... [The child] wasn't ready to meet Dad at the full conference so she had recorded herself about what happened, how she had felt, how scared she was, and everything. It was amazing to be 'able to bring that back to the Dad and say that she wants us to show you this and him actually hearing in her own words what his actions had done to her. He, a big huge man, crying and just said: 'You know that is just how my parents raised me.' I like that space because you are breaking habits. ... I think RJ has the huge potential to really be a game changer in that space...'

Facilitators also thought restorative justice processes worked well in genuine one-off incidents, in cases of situational violence, in cases in the lower to middle end of the family violence spectrum, and in cases with really complex dynamics.

Lastly, in this section, one facilitator thought the process offered promise post-sentencing to couples where there had been a long history of violence.

'I said to [a female victim]: 'Have you ever sat down with him and told him, with someone independent in there?' She said: 'No ... We have done all our separate courses, anger management and all that, but no one has ever brought us together.' I said to her: 'How would you feel about that?' I mean it is 25 or 30 years later. She said: 'I am tired, I would love to. Let's talk about it. I just want to say it.' I said: 'I bet you he wants to too. He is sick of being in prison. You know just say it, name it.' They were like: 'Oh my gosh X, that would just be a relief because I am just over it. We are tired.' So that is a post-sentencing one you see. ... together? ... I mean I get it. There were safety things over the years. He was really violent. I understand all that. But if they want [a restorative justice conference] and you can make it safe and they are willing to? Well why wouldn't you do it?'

3.2 Where restorative justice is least suitable

The majority of practitioners agreed that the parties both needed to want to go through the restorative justice process, and the offender needs to want to make some changes in order for it to have any chance of 'success'.

Most restorative justice practitioners we spoke with were very wary of taking cases involving high-end violence and/or deeply entrenched violence.

'High end family violence ... I had one come across my desk the other week where it was murder. ... We just deemed it not appropriate at this stage ... We had fears that the victim's family were going to kill the offender.'

'There are certainly some cases that come through where you just think this is so ridiculously high risk that why would we ever touch it? You know, every red flag under the sun.'

'The cases I didn't like were the cases where huge harm had happened. Normally it happens at the break-up of the relationship. Massive violence has happened where the victim has ended up in hospital ... the offender has self-harmed. Those cases I just won't touch them with a 10-foot pole. There is just too much stuff in that space. And a lot of the times one of the parties isn't ready to let go of the other and that is a dangerous space I think to work in.'

A couple of practitioners thought that restorative justice was unlikely to be appropriate where the perpetrator was in prison on remand. For example:

'I have questions whether we should be doing family violence RJ with men who are inside. For a number of reasons, one is the history and level of violence is usually significantly higher. Secondly, everything has to be done in a prison environment - pre-conference, conference, there's some real limitations to that. There's less ability to monitor what progress he's really making.'

And one practitioner mentioned that cases in which one or both parties had mental health issues presented real challenges in getting the right supports around them.

4 Working together with family violence support services

All restorative justice practitioners we spoke with were linked to family violence social services to a greater or lesser degree. All restorative justice practitioners had at least one link with a practitioner in the family violence sector.

The links with social service providers appeared to be stronger among Kaupapa Māori organisations that provided restorative justice in family violence cases than the equivalent mainstream ones.

And the linkages appeared to be strongest among those Kaupapa Māori and mainstream organisations offering both restorative justice services and social services (including Whānau Ora).

‘Within [Kaupapa Māori organisation] we have a social work service which we can then put the whole whānau into if they want it.’

Relationships were said to form more naturally between colleagues of organisations offering these dual services. Staff were able to more easily refer clients between services resulting in a more holistic wraparound service for their clients harmed by family violence or who had perpetuated it.

Where restorative justice practitioners were based within a dedicated restorative justice organisation, they needed to make more of an effort to develop and maintain links within the ‘very disjointed’ family violence social services sector where such services could be ‘hard to find’.

If, at the pre-conference stage, a restorative justice practitioner had safety concerns about a person harmed by family violence the practitioner would ensure the victim had a current safety plan and refer them to a social service provider (either mainstream and Kaupapa Māori) and almost always not proceed with a conference.

Restorative justice practitioners told us of also referring victims and perpetrators of family violence to social service providers post conference.

What was thought to provide the best outcomes for victims and perpetrators of family violence was for:

- the social services and restorative justice sectors to work more closely together
- timing the restorative justice conference so that the victim and perpetrator had already accessed support or attended a family violence prevention programme
- the social service practitioners closest to the victim and perpetrator to be present at the restorative justice conference as support people.

To quote a restorative justice key stakeholder:

‘The ideal would be to say actually follow the existing pathway where a woman might be getting education and support from a DV agency or through Refuge or wherever that support is coming, the man is on a DV programme, and then through the monitoring appearances at court, as they go through that programme then the notion of RJ gets introduced, and introduced then as a conversation with permission between the providers of RJ and DV. [The DV facilitators] know them better than a hell of a lot of other people when you have sat in a room with them for 20 weeks. Particularly if the woman’s worker is doing the effective work on the other side of the house and sharing bits of information in an appropriate way ... I guess to us it makes sense to say well we should actually try and bring those two things together where that expertise is tapped and positioning a restorative justice thing towards

the end of a DV programme. ... If a DV provider is saying well actually we think this guy is starting to front up and is starting to make some changes in his life around whatever has been diagnosed as the need for change, whether the alcohol and drugs, violence, combination of things, and then checking it out with the women's worker and say actually 'How is she feeling? What are things really like at home?' So, kind of doing a really proper risk assessment. Then at that point then looking at a restorative justice intervention on top of that. You know in a consenting way and a collaborative way between people in the sector doing that work ... A good conference would probably bring in some of the facilitators from the men's programmes, the women's education and support work, maybe even the Refuge people, family and whānau. So, our restorative conference, a key part of it, is actually getting the right people together ... who are the people that are nearest and closest in providing kind of circles of support around these individuals. ... I think that that points to some of the integration that we need to see happening in restorative justice. That would make a difference.

A key stakeholder who worked with male perpetrators in prison was strongly supportive of restorative justice conferencing in family violence cases. He observed:

'All my work is around self-responsibility ... It actually aligns itself with what restorative justice is about. ... It is so valuable for my guys that I am working with. ... It offers another experience or another action they can engage in, in which they can experience being sensitive to someone else's experience and also being sensitive to themselves and taking self-responsibility for what they do.'

5 Concluding remarks

The researchers were tasked with gaining some key stakeholders' perspectives on if, and to what extent, coercion or control by perpetrators of family violence impacts on victims' decisions to participate in restorative justice with the perpetrator, and how they participate/share at the restorative justice conference.

The design of the research was limited in that it can only provide answers to these questions through a third party (i.e. the key stakeholders). We would have needed to interview persons harmed by the violence for direct evidence.

Restorative justice providers told us of wanting to give family violence victims the opportunity to at least consider restorative justice for themselves and only rarely intervened before victims had had the opportunity to do so (section 2.1.1).

Restorative justice practitioners estimated that following their initial contact, around one third of family violence victims chose not to take up their offer (2.2.4). And of those victims who met with a provider pre-conference, another one third did not proceed to conference (section 2.3.4).

In total, therefore, a rough estimate is that over a half of family violence victims referred choose not to participate in restorative justice. We do not know whether such victims are subjected to coercion or control by the perpetrator to participate in restorative justice, but indirect evidence from restorative justice practitioners suggests victims are sufficiently strong to have been able to withstand that pressure.

For a much smaller proportion of family violence victims, restorative justice practitioners intervened at the pre-conference stage on the victim's behalf not to proceed with a conference. Among facilitators' reasons for not continuing to a conference were in cases where:

- they suspected coercion or collusion of victims and their seeming inability to say 'no'
- they knew or suspected violence was continuing
- the case involved a history of serious violence and/or safety concerns
- they could not establish the truth (section 2.3.4).

We conclude that a restorative justice conference going ahead because of pressure on a family violence victim from the perpetrator is most unlikely in cases dealt with by specialist restorative justice practitioners. We were very impressed with those specialist restorative justice practitioners of family violence cases we interviewed for their family violence knowledge, expertise, high ethical standards, and judgement in particular cases they recalled to us. We feel confident that if a perpetrator was exerting pressure on their victim to participate in restorative justice, such a facilitator would have been able to ascertain this at a pre-conference stage and have not proceeded to conference in such a case.

We do have some concerns, though, about the possibility of a conference going ahead because of pressure on a family violence victim from a criminal justice system in which restorative justice practitioners are funded on a fee-for-service basis, and from criminal justice professionals. Some facilitators we spoke to however said they were able to resist these pressures when needed.

'[We] provide a space for the victims of crime, not to push numbers, not to pacify courts, judges, lawyers, police, programme holders - we're there for victims of crime.'

For those family violence victims who proceed to conference, the consensus among restorative justice practitioners was that victims were almost always able to participate in the conference to the extent they wanted to. Those less confident were encouraged to write down ahead of time what they wanted to say, and then read it out at the conference, or ask their support person to do this for them.

Restorative justice practitioners told of us of feedback from victims and offenders about restorative justice services being, for example, *'the only organisation that is prepared to work with us about how we continue our relationship'*, and as providing one of the first opportunities for the person harmed and the person who caused the harm being able to sit down and work through their issues, whether it was to stay together or to part. To quote from another practitioner expressing similar sentiments:

'This is the first job that I have ever been able to do where there has been actually willingness for, I hate calling them offenders and victims, the person who has been harmed, and the person who is harming, to actually sit in a room together, kanohi to kanohi with his family, with her family, in a safe environment where they have got someone facilitating it and navigating the conversation. Not telling, not putting plans in place, but navigating the conversation that they can have together ... and really unpacking. Because family violence is a symptom. It is a symptom of underlying issues. ... what happened to him when he was three years old, what happened to her when she was ten years old. The environment that they grew up in. Those people, the whānau that are there, they are hearing that. Then they start having the conversations. Then some ownership is happening from the uncle to the offender. 'That is the first time I have heard you say that boy. I am really sorry. That was 25 years ago.' It is a wider holistic way ... You are lancing the boil. Not just on the family violence as a symptom but on a whole lot of what I call patu that has been festering for years ... Their whānau need to be a part of that as well. The victims I find, not all of them, but they love those men.... [Restorative justice] just works beautifully. ... I am absolutely convinced that is the best way, after all this time, to address family violence. Let's have a hui. Let's talk about the mamae and the sadness. Let's look how we can repair it, so that healing can happen. It is all about healing. ... Yes, it is restorative justice. Yes, it is guidelines under the Ministry but I don't see it like that. I see it as a healing process.'

5.1 Suggestions for improvements

5.1.1 Reviewing the current restorative justice funding model

Some restorative justice providers were critical of the fee-for-service component of the current funding model, with some saying it could mean some restorative justice practitioners put pressure on those family violence victims referred to proceed with the process when it might not be appropriate to do so.

'... RJ groups are going to be incentivised to proceed with conferences because that is what they are going to get paid for. If you don't deliver you don't get paid. That is the simple fact. So that gets in the way of sound professional judgements actually.'

'You've gotta get your numbers up ... why are we being forced into a model that creates pressure on facilitators and creates the possibility of dangerous practice?'

A related issue was that restorative justice providers were not funded to provide follow-up but sometimes they felt that it was necessary to do so for a victim's safety.

Follow-up may be requested and I see it as important but our cases have been closed and the reports have been sent to the Judge. Therefore, we no longer have that referral open, so 'how can we follow up? Yet I have been concerned enough personally on more than one occasion that voluntarily I will follow up and have kept in contact with victims because the restorative practices process has sort of triggered victims into unsafe situations'.

One provider whose services covered five courts was critical that the referral fee component of the funding model did not completely fund their travel costs among the courts.

At the time of interview (June 2020) one restorative justice provider complained of having not got a response from the Ministry of Justice as to whether it had been successful in the most recent procurement funding round. Fortunately, it was a large provider with some other contracts to keep it operating. It expressed concern, though, for smaller providers that it thought would struggle to remain viable.

5.1.2 Improving the quality of referral information

As noted under 'Stage 1' above, several restorative justice providers experienced an ongoing problem with either a lack of referral information, or of poor-quality referral information, from the court about both the victim and offender, but especially about the victim.

Issues with referral information include:

The biggest issue with us has been the disconnect between the information that comes through the court process, and what we get once we connect with the offender and the victim.'

'... We don't get given the criminal history a lot of the time. And so, I might have a referral for a guy that, yeah, the referral was only for something minor, but actually he's also being charge with some horrific offences and it would have been really good to know that beforehand. ... That would be a big one'.

'We would get a referral with no summary of facts. How can you have a conversation about an incident when you don't know what it's about? ... sometimes we get information which is out-of-date...'

We suggest this early stage of the restorative justice process be investigated further with the help of a service designer to agree exactly what referral information is needed (and what is 'nice to know'), which are the best information sources, how is the information most efficiently obtained and shared, how the information might be checked for quality etc. and shared with the restorative justice provider in a timely fashion.

5.1.3 Strengthening facilitator training and development

Organisation A was viewed by some facilitators as a professional organisation they needed to belong to, but that did not provide much professional development that was *'particularly directed or helpful towards my day-to-day work.'*

Organisation B trains and accredits facilitators of restorative justice conferences in family violence cases. One Kaupapa Māori provider questioned the relevance of the training to Māori facilitators.

'You know what the big thing for me is that I don't think the training is relevant to us as Māori. That's the biggest thing because we're having to follow a mainstream structure all the time. ... It's like, do we have to prove - this is what they were saying - do we have to prove that we're doing it right with our people? Because that's what it feels like. [The training is] not relevant to us as Māori.'

Another Kaupapa Māori provider thought *'the kaupapa Māori bit'* was missing. At least one non-Māori facilitator mentioned the need for more training in cultural competency.

A couple of facilitators of restorative justice conferences in family violence cases expressed concern about largely being left to their own devices post accreditation and called for the need for ongoing training.

'Yes, [you] get assessed but then it is 'See you later' ... That is not okay to me. I want to see a standardised training, continuous training in family violence ... even say three times a year that family violence facilitators are together and they are being trained.'

One facilitator observed:

'I think the accreditation process checks people have got enough skills to be safe but there is a whole lot of learning that people need to do if they are going to work in a more in-depth level in the restorative justice process.'

A Kaupapa Māori provider thought live supervision was a current gap.

'There's none of that with RJ. And while it's good that we do supervision - we do external supervision once a month - there's no live supervision.'

5.1.4 Reviewing the risk assessment forms

The Ministry of Justice's risk assessment forms came in for some criticism as being too long, not suitable for administering *kanohi ke ti kanohi* with a client, and more worryingly of not helping make the link between risk assessment and then making a decision based on risk. Some used other tools they thought worked better, transferring the information to the Ministry of Justice's form for compliance purposes.

'An 18-page risk analysis form cannot be done while you are facing a client on a face to face'...

'I think [the assessment forms] are bloody hopeless because there is no sense of what am I doing all this for? ... There is nothing that sort of holds those forms together that kind of

explains your decision making which is what risk assessment to my mind is about, articulating how you made a decision balanced with all of the factors, including appropriate liaison with other agencies.'

A related criticism was that practitioners did not receive any training on the use of the assessment form prior to its introduction.

We suggest reviewing the assessment form in light of these criticisms.

5.1.5 Investigating the routine recording of conferences

Some restorative justice facilitators of family violence cases told us of the conferences not effectively being co-facilitated since one facilitator was largely occupied with note taking for the conference report.

This was estimated to take a co-facilitator's attention '70-80 percent out of the room. So, it's not true co-facilitation. ... You can't do that when you're busy trying to write as many quotes as you can with bad handwriting like mine. I have such an issue with it. It's like so much gets missed. The quality of the mahi that we do gets highly compromised, I think, by not having two people who can be fully present.'

Another couple of practitioners thought the recording of conferences – with participants' permission - could largely solve this issue. It could be a safeguard for practitioners from participants who denied saying something in the conference report.

'It actually safeguards me as well because people can come back and say: 'That's not what I said, I didn't say that at all. That's not my wishes.' Well, actually it is. I used your words from the recording. Would you like to listen to it?'

We understand the recording of conferences has previously been discussed with the Ministry, with some practitioners uncertain as to the permissibility of the practice.

5.1.6 Becoming a more diverse workforce

Several of the key stakeholders we spoke with – both Māori and non-Māori - called for a more diverse workforce of restorative justice practitioners and one that was more representative of service users.

One restorative justice practitioner described the current workforce as comprising 'white, older women.'

'I am a white female, middle class. I am not doing this because of the money. The way it is funded is not sustainable to have a life and pay rent because of the inconsistency of cases coming through the courts. So, therefore, we are not getting the diversity of facilitators that would be helpful. I am Pākehā. ... There is a lot of white older women working in domestic violence but it is also a lot about how it is funded. So, the women, it is seen as a charity course.'

Another echoed a similar sentiment:

I really think it is time to change on so many levels and it is time for Māori and Pasifika to be way more visible in there. Speaking as a white European New Zealander, first generation, I think for us as an agency [we need to be] supporting the Māori and Pacific and Chinese 'members of our team so that they become more and more visible. ... That then the white European Pākehā part of the team is not the default. So, the default is the people of colour if you like. I think that is one way that we can begin to address this. I think that will enhance trust.'

5.1.7 Strengthening connections and funding

Some restorative justice practitioners and family violence prevention practitioners we interviewed agreed that the family violence sector – among and between government and non-government groups - needed to be more strongly connected.

'The agencies [offering family violence perpetrator programmes] are still kind of suspicious of us ... even counsellors. I heard a counsellor kybosh a [family violence] case.'

'I think a lot of agencies are still a little bit suspicious of us. I had one where the social worker came in and she grilled us because she was protective of her client. And ... at the end she was great.'

Stronger connections could lead to better working relationships based on a greater understanding of each other's roles and improved information flows (including of referrals for assessment of the appropriateness of restorative justice), ultimately benefiting service users.

A practitioner spoke of the risk of service users falling through the gaps where linkages between non-government providers were not strong:

'We need to link up. We need to all hold hands and do this together because at the moment we are all working quite separately, and information falls between the gaps. Then people fall between the gaps.'

Funding of support people (such as a Whānau Ora navigator or a perpetrator's anger management programme facilitator) from family violence prevention/social service providers to attend restorative justice conferences could serve to strengthen collaboration among restorative justice and family violence/social service practitioners.

'NGOs are not funded to come to a restorative justice conference which I think is a real shame. Sometimes you will get [support] people that will come if they have got more movement around their funding or the structure of the organisation or they are totally committed. I have had someone come on their day off to a conference.'

And the plans agreed at restorative justice conferences for family violence cases could be more easily implemented where appropriate support people participated in the conference.

A couple of restorative justice practitioners thought some Police officers and some judges needed to be better informed about the dynamics of family violence and/or use of restorative justice in family violence cases.

5.1.8 Prioritising readiness of participants for restorative justice over court timetables

Practice varied across Aotearoa as to the timeframes in which a conference needed to happen ahead of a sentencing date, a date which some restorative justice practitioners took as immovable. In some courts, restorative justice providers spoke of being referred possible family violence cases only three to four weeks prior to a perpetrator's sentencing date, regardless of the state of readiness of the victim or offender.⁷

'I think ... the court system where it is sort of still corralling people to do things within three or four weeks is all the wrong drivers.'

In some other courts, notably the specialist family violence courts, judges delay referring family violence cases for restorative justice until the perpetrator has almost completed a family violence programme (or equivalent). This means the perpetrator is more likely to be ready to engage with restorative justice. The victim is more likely to be ready to engage too. They will have had some time to have engaged in support services (if they wish) since the violent episode for which the perpetrator has pled guilty.

This practice of delaying referrals until the victim and offender are more likely to be ready to participate in restorative justice, places restorative justice within the third phase or resolution (or resolution) phase of Mike Cagney and Ken McMaster's model of intimate partner violence intervention work.⁸

It was one practitioner's view that the Ministry of Justice needed to lead a 'missing piece' of work that clearly articulated the intervention logic or pathway towards recovery for family violence victims and offenders. They would place restorative justice squarely on that pathway at Phase 3: resolution.

'The resolution bit is the place you should do RJ. ... Up to that point the man and the woman and that is generally the equation, you know they have done things in isolation. So, she has got her safety plan. He has got his safety plan. Now what the conference then gives them is the opportunity to develop their safety plan and the safety plan for those children and the family and the wider family. A good restorative conference, a key element of this, and this is a point of tension in RJ, is around bringing in wider family, whānau and community. Because there is the real safety plan. ... It is actually getting real people, the friends, the family, the neighbours. You know, who is going to be next door when they hear raised voices at 2am? Who is going to go and knock on the door and say hey Bill do you want to come next door and just sleep it off over here tonight? Now that is what real safety planning is about.'

We support the approach taken by judges in the specialist family violence courts of delaying referrals to restorative justice providers until victims and perpetrators are more likely to engage restorative justice and benefit from it.

7 One or two practitioners said they preferred to operate within such a timeframe.

8 Cagney M & McMaster K. (2013). *The next step. A resolution approach to dealing with intimate partner violence*. Ending Men's Violence Against Women and Children: The No To Violence Journal, Spring 2013, 29-50. Phase 1 of their model is the crisis phase where abusive practices are exposed and statutory and/or intervention services are engaged, and Phase 2 is 'individual interventions' usually in the form of education and support programmes.

5.1.9 Reducing the use of plea bargaining

A couple of restorative justice practitioners argued that victims' rights needed to be more central to court decision-making. Plea bargaining whereby the perpetrator pled guilty to a lesser crime only served to reduce the perpetrator's accountability and minimised the impact of the violence on the victim.

One practitioner explained it this way:

'The justice system colludes with offenders in minimising what has happened. Even if they wanted to plead guilty on the first appearance ... which every lawyer who represents them would stop them from doing that on the basis that you haven't got disclosure, you don't know what the police have got on you ... It is all about trying to mitigate the situation for the offender. So, the lawyer is all about reducing the impact and the severity of the offending, and then they collude with the police in striking a deal, you know, in that direction. Well, if you reduce this charge, we will plead guilty to that charge ...'

While the practice was thought to have considerably improved whereby the victim can be consulted before a plea bargain is accepted, this needs to happen in absolutely every case.

5.1.10 Investigating the case for use of restorative justice processes as an alternative to use of court processes

One restorative justice practitioner argued for an option for the use of restorative justice processes for family violence cases as an alternative to court processes. They thought this might encourage some victims and offenders to come forward to seek help with family harm who might otherwise not, and at an early stage.

'...In the sexual violence arena ... community referrals are funded. So, they get dealt with in a way that they don't go anywhere near the court. I think there is a real potential for that kind of work to be done in the family harm area as well because quite often people at harm won't present because they don't want the court involved or the police involved. ... It is an alternative that could happen earlier if that wasn't a court process. It [could be] ... often really, really, helpful I think.'

5.1.11 Offering restorative justice post-sentence

Currently, almost all of the Ministry's funding of restorative justice in family violence cases is in the pre-sentence space.

A small number of restorative justice practitioners were of the view that while restorative justice was not always appropriate pre-sentence for family violence cases, that did not mean it might not be appropriate post-sentence. These practitioners argued that restorative justice could be effective post-sentence with perpetrators who needed longer to address serious underlying issues such as a drug addiction, for example.

It was understood that some restorative justice conferences for some serious types of violent crime had been successfully held post-sentence in Canterbury, for example, but that the funding for such conferences was differently funded.

5.1.12 Other suggestions

Other suggestions key stakeholders made include:

- further funding for NGOs that work with children

'People who can really work with our children to give them peace to help make sure they are not coming up with crazy, off the wall, but understandable from their perspective, meanings on stuff. It is not their fault. People who work with addictions and domestic violence but can bring that perspective for children I think is huge ... Those kids are not being picked up by our system.'

- further funding to support long-term recovery

'...how can we help guys to not just do enough to get through the boxes but actually to acknowledge that this is a bigger picture? This is a longer journey. When I said often perpetrators have been victims it means doing work longer term. ... But are we sufficiently resourcing our men to get the support longer term so that they can continue the journey of change?'

- reinstating funding for the provision of free couple counselling
- introducing victim advocates to court *'to speak up for the women and say this is the only time that she has called the police but actually he has been to her house on four other occasions, and he has done this and this which the Police don't know about.'*
- having a more nuanced system response to family harm

'I think the idea that there is a clear offender and a clear victim is not helpful often. Quite often people will say to me: 'Well if the police had arrived 30 seconds later it would have been me that was throwing something at him rather than the other way around or vice versa.' So, it is a too simplistic ... It is almost always a very complex situation. ... But the system needs to blame one person in there, and have the other one be the victim. It is not a helpful dynamic in my view.'

- improving support for women who are perpetrators
- better supporting men who are survivors since they are likely to be reluctant to disclose for a whole range of reasons.

5.2 Suggestions for further research

In terms of future research needs, we suggest one or more studies be undertaken with those harmed by family violence to find out their views and experiences of restorative justice processes and outcomes, and a study to understand the professional development needs of the restorative justice 'ecosystem' (for example, facilitators, lawyers, prosecutors, judges, court staff) in the use of restorative justice in family violence cases.

5.3 In conclusion

We conclude that a restorative justice conference going ahead because of pressure on a family violence victim from the perpetrator is unlikely in cases dealt with by specialist restorative justice practitioners with significant experience of working with cases of family violence. We feel confident

that if a perpetrator was exerting pressure on the victim to participate in restorative justice, such an experienced facilitator would have been able to ascertain this at a pre-conference stage and would not have proceeded to conference in such a case.

That is not to say that the risk of a victim being coerced or controlled to participate in restorative justice by a person who harmed them is not a real possibility. Stakeholders we interviewed identified several potential risk factors for victims participating in restorative justice processes, including:

- a lack of information and/or poor-quality information about the victim and the offender (for example, no summary of facts, no criminal history details) in the referrals from the court to restorative justice providers
- the use of risk assessment forms for family violence cases to determine the risk to the victim's or others' safety before a case proceeds to conference that may not be fit for purpose
- a fee structure that incentivises restorative justice practitioners to press the victim to proceed with the restorative justice process
- a lack of relevant professional development opportunities for restorative justice practitioners.

We recommend further research be conducted directly with victims of family violence who have participated in restorative justice processes to verify the findings from this study of key stakeholders.

References

Cagney M & McMaster K. (2013). *The next step. A resolution approach to dealing with intimate partner violence*. Ending Men's Violence Against Women and Children: The No to Violence Journal, Spring 2013, 29-50.

Gravitas Research and Strategy Ltd (2018). *Ministry of Justice – Restorative Justice Survey. Victim Satisfaction Survey 2018*. Report for the Ministry of Justice. September 2018.

Ministry of Justice (2018) *Restorative Justice. Practice standards for family violence cases*. March 2018.

New Zealand Government (2016). *Restorative Justice. Evidence Brief*. April 2016.

Appendix 1 Methodology

During March to June 2020, providers of restorative justice services and of family violence safety and non-violence programmes were randomly selected from lists on the Ministry of Justice's website and emailed about the research study (with the information sheet on page overleaf).

The email asked that the recipient forward the email to colleagues who might be interested in participating in the research and for those colleagues to get in touch with the researchers with their preferences as to the time, date, venue and mode of the interview.

The research findings are based on interviews with 20 key stakeholders: 18 were with restorative justice stakeholders and two were with family violence programme stakeholders.

The eighteen restorative justice stakeholders comprised a mix of restorative justice facilitators (the majority of whom were accredited in family violence work), coordinators, and managers. Seven of these stakeholders were based in Kaupapa Māori organisations.

Their experience with restorative justice processes in family violence cases ranged from one year to over 10. About one third had a post-graduate qualification.

Two family violence programme stakeholders had supported restorative justice participants of family violence cases.

About half of the interviews were conducted kanohi ki te kanohi (in person), and about half were conducted by Zoom or phone. (Some of this was necessary due to government restrictions associated with the Covid-19 pandemic).

All interview participants first gave their informed consent to be interviewed. Consent was obtained in writing where the interview was conducted kanohi ki te kanohi (see consent form) or verbally where the interview was conducted by Zoom or phone.

The interviews were semi-structured based around questions in the interview guide. The interview guide was provided in advance of the interview where interview participants wanted this. A Māori researcher conducted most of the interviews with interview participants based in Kaupapa Māori organisations.

All interviews were audio-recorded with the interview participants' permission and the audio-recordings were transcribed for analysis.

The interview material was coded for key themes which were identified in an iterative way and through a combination of individual analysis (including by our Māori researcher) and analysis as a collective.

A limitation of the research study is that it can only provide answers through a third party, not directly by persons harmed by family violence.

Key stakeholders' perspectives on the use of restorative justice in family violence cases *with a focus on the possibility of victims being coerced or controlled to participate by the persons who harmed them*



The Office of the Chief Victims Advisor has commissioned Artemis Research to undertake a research study to explore key stakeholders' perspectives on if, and to what extent, coercion or control by perpetrators of family violence impacts on victims' decisions to participate in restorative justice.

Invitation You have been identified as a practitioner with specialist knowledge or experience of the use of restorative justice in family violence cases and we would like to invite you to share your knowledge, views and experiences with us in an interview setting.

What's involved? Taking part will involve meeting with a researcher for about an hour on your views of this topic. We are interested in learning your views of the use of restorative justice for particular groups of victims of family violence, including for Māori. We will also ask your views in what sorts of family violence does restorative justice work best, and areas for further practice improvement. We would like to digitally record the interview but will only do so with your permission.

Is this voluntary? Yes, participation is voluntary. You do not need to talk to us unless you want to. Also, you only have to answer the questions you feel comfortable with and you can end the interview at any time. You are free to withdraw any information provided, without giving any reasons, within two weeks of your interview.

Is it confidential? Yes, your responses will be kept confidential to the researchers working directly on this project. We may want to quote what you say to illustrate various points in our report. If so, your words will not be attributed to you personally, although with your permission we may link the quote to your role (e.g. restorative justice practitioner, family violence support services practitioner). We would discuss this with you and ensure any use of your role would not personally identify you.

What will be done with the information you provide? The information that you give us will be gathered together with feedback from other people and summarised into a report. The report will be given to the Office of the Chief Victims Advisor and shared with the Ministry of Justice's Policy Group for their consideration. Once the research has been completed, we can send you a summary of the findings.

Questions?

If you have any questions about the research, please contact Judy Paulin on 027 433 6484 / judy@artemis-research.co.nz

Key stakeholders' perspectives on the use of restorative justice in family violence cases *with a focus on the possibility of victims being coerced or controlled to participate by the persons who harmed them*



Your participation in this interview is your choice. What you tell the interviewer will be kept confidential. You can refuse to answer any specific question or stop the interview at any time without giving a reason. With your permission, the interview will be digitally recorded.

- I have had the chance to ask any questions about the research and I am satisfied with the answers I have been given.
- I understand that what I say during this interview will be confidential and will not be shared with anyone outside the research team.
- I understand that what I say may be included in the research report, but this will not include my name or anything that can identify me. With my agreement, however, my views may be linked to my role (e.g. restorative justice practitioner, family violence support services practitioner).
- I understand that any digital recording of interviews will be deleted and any other data destroyed within 3 years.
- I understand that the interviewer will provide me with a summary of the research findings at the end of the project (estimated to be August 2020), if I wish.

I _____ (name) consent to take part in this *Research Study on the Use of Restorative Justice in Family Violence Cases* on the basis of these understandings.

Signature _____

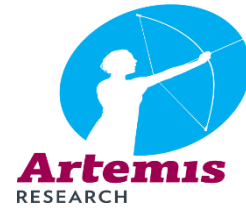
Email _____

Mobile _____

Date _____

Please tick if you wish to receive a summary of the findings at the end of this research.

Key stakeholders' perspectives on the use of restorative justice in family violence cases *with a focus on the possibility of victims being coerced or controlled to participate by the persons who harmed them*



Interview guide for practitioners of restorative justice & family violence support services

Role & relationships

- To begin, can you please provide an overview of your role in relation to the use of restorative justice in family violence cases.
- How many years having you been working in family violence?
- What training you have received to support you in your work?
- How closely do you work together with family violence support service practitioners/restorative justice practitioners? Do you see yourself as offering complimentary services? How often might you meet up?

Restorative Justice practitioners only

The following set questions are based around the five stages of the restorative justice process, from receipt of a referral to after the restorative justice conference.

Stage 1 Referral received

- About what proportion of family violence cases referred to you have you assessed on the documentation alone as not being appropriate for restorative justice?
- Can you please describe your reasoning around the most recent case that you assessed on the documentation alone that it wasn't appropriate for restorative justice? Was the possible coercion or control exerted on a victim by the person who harmed them a factor?

Stage 2 Initial contact made

- How do you make initial contact with an (adult) victim in a family violence case?
- What initial information do you provide about the restorative justice process?
- How do you judge whether a victim is open to learning more about the restorative justice process by coming along to a pre-conference meeting?
- How do you judge that a victim understands they have the right to refuse to proceed with restorative justice?
- About what proportion of victims refuse to proceed at this point?

Stage 3 Pre-conference

- At the pre-conference meeting, how do you go about making a judgement about
 - whether a victim is ready to participate in a restorative justice conference with the person who caused the harm?

- the victim's agreement to participate in a restorative justice conference is given free from any power and control tactics of the person who caused the harm?
- About what proportion of victims refuse to proceed to a restorative justice conference at the pre-conference stage? What reasons do they give?
- After the separate pre-conference meetings with the person who caused the harm and the victim, about what proportion of family violence cases do you assess as being inappropriate to proceed with a restorative justice conference? In what proportion of these cases is it because of concerns you have that the victim is being, or is likely to be, coerced or controlled by the person who harmed them?

Stage 4 Restorative justice conference

- What steps do you take to encourage a victim to speak up in the restorative justice conference with the person who caused the harm?
- How do you judge whether a victim is participating to the extent they want to and freely from any power and control tactics of the person who caused the harm?
- What sorts of tasks does the person who caused the harm typically agree to undertake in his plan?
- Have you ever needed to stop a conference short because of concerns about the person who harmed or their support person putting pressure on the victim? In your experience, in what proportion of cases has this happened?

Stage 5 Post the conference

- Have you ever had any negative feedback from a victim about the restorative justice process? What was that?
- Have you ever had a victim say in retrospect they felt pressured by the person who caused the harm to participate in a restorative justice conference?

Family violence support services practitioners only

- At what point may a victim/a person who caused the harm you're supporting be offered restorative justice? How does this work?
- Do you have any concerns about the possibility of a person who caused the harm pressuring a victim to participate in restorative justice (for the benefit of the person who harmed at sentencing)?
- If you did have such a concern, how would you raise it with the restorative justice practitioner?

All practitioners

- In your experience, in what sorts of family violence cases does restorative justice work best? (e.g. type of most recent offending physical/psychological/emotional/sexual etc, history/frequency/severity of offending, state of mind of the victim/perpetrator, etc)
- In what sorts of family violence cases does restorative justice work least well?
- Do you have any suggestions for practice improvements? What are these?

Any other comments?