



MINISTRY OF
JUSTICE
Tāhū o te Ture

Restorative justice standards for sexual offending cases

June 2013

Although all reasonable steps have been taken to ensure the accuracy of the information contained in this document, the Ministry of Justice disclaims any and all responsibility for any inaccuracy, error, omission, or any other kind of inadequacy, deficiency, or flaw in, or in relation to, the information; and fully excludes any and all liability of any kind to any person or entity that chooses to rely upon the information.

Published by the Ministry of Justice
2013 © Crown Copyright
ISBN xxx-x-xxx-xxxxx-x (print)
ISBN xxx-x-xxx-xxxxx-x (online)

Ministry of Justice
The Vogel Centre, 19 Aitken Street
DX SX10088, Wellington, New Zealand

T +64 4 918 8800
F +64 4 918 8820
E info@justice.govt.nz

W www.justice.govt.nz

Contents

| | |
|---|-----------|
| Part A: Introduction | 4 |
| New standards for dealing with sexual offending cases | 4 |
| Family violence in New Zealand | 5 |
| Scope of standards | 6 |
| Part B: The 2004 best practice guidelines | 7 |
| What is restorative justice? | 7 |
| Restorative justice in New Zealand | 8 |
| Introduction to 2004 principles | 9 |
| Part C: Restorative justice standards for sexual offending cases | 18 |
| Sexual and family violence in the community context | 18 |
| Sexual offending and restorative justice | 19 |
| New principles underpin the standards | 20 |
| Principle A | 20 |
| Principle B | 20 |
| Service design | 21 |
| Entry to service and referrals | 23 |
| Pre-conference | 23 |
| Sexual offending against children and young people | 26 |
| Conference preparation | 27 |
| Conference | 28 |
| Post-conference | 30 |
| Summary of process | 31 |
| Facilitator competencies | 33 |
| Competencies for working with children | 33 |

New standards for dealing with sexual offending cases

In 2004 the Ministry of Justice published 'Restorative Justice in New Zealand: Best Practice in New Zealand'. The principles, values and processes described in this publication have been used as best practice guides and have provided a framework for services across all referral types. The statement of restorative justice values and processes which formed the second half of the 2004 document is available on the Ministry of Justice website.

It was noted in the 2004 guidelines that 'the use of restorative justice processes in cases of family violence and sexual violence must be very carefully considered'. Risks and general principles of practice are identified, but no specific guidance given on how to safely manage referrals of this nature.

These new standards recognise the additional safeguards and processes needed when dealing with sexual offending cases. In order to maximise the chances of healing for all parties, and minimise the chance of the process itself inadvertently causing harm, further consideration needs to be given to the psychological needs of the victim/survivor and the person who caused the harm (hereafter referred to as the offender), the psychological components of the harming behaviour, its impact on surrounding community such as family and the impact of cultural beliefs about sexual violence.

Who are these standards for?

The Ministry of Justice contracts providers to deliver a range of pre-sentence restorative justice services. Providers wishing to work with sexual offending cases must be approved by the ministry to work with these referrals using accredited facilitators who adhere to the standards and best practice guidelines outlined in this document.

How to use this document

Part A provides an introduction to the new standards, an overview of family violence in New Zealand and defines the range of referrals covered under the sexual offending standards.

Part B replicates the principles from the 2004 practice document. It forms the basis for restorative justice practice.

Part C of the document is the new standards for working with sexual offending cases. The new standards include two new principles of practice and details of the service design, specifications and processes required.

As this document includes two different practice descriptions (the original guidelines and the new standards for family violence referrals), there will inevitably be duplication of some aspects of the process and explanations. The original guidelines are categorised under principles, the new standards follow more of a process description. The original 2004 practice document was not designed specifically with family violence in mind, and therefore if there are differences in approach or emphasis, the new family violence standards take priority.

Family violence in New Zealand

Family violence occurs between family members in families of all cultures, classes, backgrounds and socio-economic circumstances. More is known about the extent of intimate partner violence and child abuse than some other forms of family violence (such as elder abuse, abuse of disabled family members), and more is known about the extent of physical violence than psychological violence (including financial abuse). Intimate partner violence is heavily gendered with victims of partner violence, including serious partner violence, being predominantly women.

Only a small proportion of partner violence is reported to police. In 2008, 31 percent of partner offences against women and 16 percent of partner offences against men were reported to police (NZCASS 2009).

- The New Zealand Crime and Safety Survey 2009 (NZCASS 2009) found that 25 percent of women and 12 percent of men had been victims of partner confrontational crime at least once in their lifetime.¹
- In the year prior to the survey an estimated 85 percent of serious partner offences were against female victims (NZCASS 2009).

There are inextricable links between intimate partner violence and child maltreatment.

- Research suggests that in up to 75 percent of families where intimate partner violence occurs, child abuse will also be occurring.
- In 2010-2011, there were 96,627 children (aged 16 and younger) present, or usually residing with the victim, at family violence incidents attended by police.

Violence at home compromises children's safety and well-being and their ability to grow in to functioning adults. International evidence shows that children exposed to violence at home, but who are not directly maltreated, have similar negative outcomes as children who experience maltreatment.

¹ Ministry of Justice (2010) *The New Zealand Crime and Safety Survey 2009: main findings report*. Wellington: Ministry of Justice. Note that the prevalence and incident rate for confrontational offences by partners have been calculated using the total partnered population as the denominator.

Scope of standards

The standards are not intended to provide an overview of sexual offending, nor the specifics of treatment, interventions or therapy. Some background is given at times to provide a brief context for the standards.

For the purpose of these standards sexual offending:

- is defined in sections 127 – 144 of the Crimes Act 1961
- can include, but is not limited to, those acts that are deemed to be sexual in nature by the referring court or referring parties
- is assessed by the referring party and the service provider as suitable for a comprehensive team treatment approach.

These standards are not intended to cover the restorative justice services delivered under the police diversion scheme.

The ministry acknowledges the work of Project Restore² in the development of these standards. Much of the content of this document has been taken from the draft principles of best practice developed by the Project Restore practice group led by Kathryn McPhillips.

² Project Restore, a specialist restorative justice provider working with sexual offending, was commissioned by the ministry to provide a number of reports during 2011-12 on models of practice and outcomes for clients of their service.

Part B: The 2004 best practice guidelines

What is restorative justice?

Restorative justice is both a way of thinking about crime and a process for responding to crime.³ It provides “an alternative framework for thinking about wrongdoing”⁴ which, along with the values and principles underpinning this framework, suggests new ways of responding to offending and victimisation. Although restorative justice processes are not unique to Māori, they have strong alignment with Māori values such as reconciliation, reciprocity and whānau involvement.

There is no agreed definition of restorative justice processes. A number of definitions have been suggested, most of which focus on a process which involves all those affected by an offence and aims to repair the harm caused by the offending. The following is one of the many working definitions that have been developed:

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible”.⁵

There is no one way that restorative processes should be delivered. Instead, “the essence of restorative justice is not the adoption of one form rather than another; it is the adoption of any form which reflects restorative values and which aims to achieve restorative processes, outcomes and objectives”.⁶ Further discussion of the values, outcomes, and objectives of restorative justice is provided throughout this publication.

³ New Zealand Restorative Justice Trust (2000) *New Zealand Restorative Justice Practice Manual*, pg. 13

⁴ Zehr, H. (2002) *The Little Book of Restorative Justice*. Good Books, Intercourse, PA, pg. 5.

⁵ Zehr, H. (2002) *The Little Book of Restorative Justice*. Good Books, Intercourse, PA, pg. 37.

⁶ Morris, A. (2002) Critiquing the Critics: A Brief Response to Critics of Restorative Justice. *British Journal of Criminology*, 42: 596-615, pg. 600.

Restorative justice in New Zealand

The application of restorative justice principles and practices in New Zealand as a response to offending and victimisation began with the introduction of family group conferences for young offenders through the Children, Young Persons, and Their Families Act 1989. Over the 1990s, similar principles and practices began to be applied on an ad hoc basis to cases involving adult offenders. However, it was not until the passage of the Sentencing Act 2002, Parole Act 2002, and the Victims' Rights Act 2002 that there was any statutory recognition of restorative justice processes in the formal criminal justice system.

Together, these three Acts:

- give greater recognition and legitimacy to restorative justice processes
- encourage the use of restorative justice processes wherever appropriate
- allow (and require) restorative justice processes to be taken into account in the sentencing and parole of offenders, where these processes have occurred.

Although restorative justice processes can operate in a variety of ways at different stages in the criminal justice system, pre-sentencing conferencing of referrals from the district court and the police adult diversion scheme are the most common restorative justice processes in New Zealand. The majority of district courts now have access to restorative justice services.

Introduction to 2004 principles

The principles of best practice for restorative justice processes in criminal cases provide guidance for how restorative justice processes should be used in the criminal justice system. The principles were developed following a consultation process in 2003 with restorative justice providers, the judiciary, relevant nongovernment organisations and others working with, or participating in, restorative justice.

Care has been taken to ensure that the principles protect the inherent flexibility of restorative justice processes, but also provide clear guidance about the use of these processes in a safe and appropriate way. The eight fundamental principles that have been identified should always underpin restorative justice practice in criminal cases.

The principles focus on the use of restorative justice processes pre-sentence, and do not apply to the use of these processes after sentencing. However, the principles are likely to be broadly applicable to the use of restorative justice processes at any point in the criminal justice process, as well as in other sectors.⁷

The principles of best practice are part of a broader Ministry of Justice work programme to facilitate the continuing development of restorative justice processes in New Zealand. Principles of best practice for restorative justice processes in criminal cases

⁷ The principles do not apply to family group conferencing, which is legislated for in the Children, Young Persons, and Their Families Act 1989

1. RESTORATIVE JUSTICE PROCESSES ARE UNDERPINNED BY VOLUNTARINESS

Participation of the victim and offender must be voluntary throughout the restorative justice process

A restorative justice process cannot take place without the informed consent of the victim and the offender.

Neither the victim nor the offender should feel coerced into giving their consent and both have the right to withdraw consent at any time (including during a conference). Facilitators should end the process if either the victim or the offender indicates their unwillingness to continue. The offender's consent to participate is usually obtained before the victim is contacted.⁸

Both victims and offenders may seek independent advice before agreeing to participate.

Outcomes must be arrived at voluntarily and reflect the agreed view of the victim and offender

Outcomes must be developed and agreed by the victim and offender (as the primary participants) without coercion.

Facilitators must ensure that the victim and the offender understand what has been agreed to, including what is required for agreed outcomes to be completed. Reaching agreement on outcomes should not be the sole focus of the restorative justice process.

2. FULL PARTICIPATION OF THE VICTIM AND OFFENDER SHOULD BE ENCOURAGED

The victim and offender are the primary participants in the restorative justice process

Although there may be many other people who participate in the restorative justice process (for example, members of the community), the interaction between the victim and offender is at the centre of the process. Other participants should encourage the victim and offender to participate at a level at which they feel comfortable. For example, the victim or offender may prefer that a support person speak for them at certain times

Victims must determine their own level of involvement in the restorative justice process

While the offender's presence and participation in a restorative justice process is always required, victims should not be pressured to participate in the process or personally attend a conference. Although full participation by the victim is the ideal, some programmes allow restorative justice processes to proceed so long as the victim agrees to the process taking place and the victim's views are represented. If a victim does not wish to participate in a restorative justice process in any way, it should not take place.

Where a case involves multiple victims and offences, each victim must be given the choice about whether to participate in that process and, if so, whether they would prefer a joint or separate conference. That one victim does not agree to a restorative justice process taking place should not prevent a process being undertaken for other victims to address the harms caused by the offences

⁸ In many cases, victim advisers, who are responsible for informing the victim of the progress of the court case, will have informed the victim of the possibility of a restorative justice process when seeking their consent to pass their contact details on to the restorative justice provider.

committed against them. Facilitators should work these issues through with victims at the pre-conference stage (see principle 3).

The ‘community’ may be represented during the restorative justice process

What is meant by ‘community’ is likely to differ from case to case. It will most often include support people for the victim and offender (for example, a friend, family or whānau member or community support person) but could also include others affected by the offence. A balance is required between all relevant people attending the conference, and not overloading the conference or overwhelming participants.

Facilitators should always encourage victims and offenders to have support people present at the conference⁹. The attendance of community members at the conference should be discussed with the victim and offender at the pre-conference stage (see principle 3).

‘Professionals’ (police officers, probation officers, and defence counsel) may attend a restorative justice conference, but on a carefully prescribed basis’

Professionals have a significantly different role in a restorative justice process to that usually played in conventional court processes. They may (but are not required to) attend a conference. If they do attend, they may offer advice and support but are not parties to any agreement and should not dominate discussion.

Facilitators should discuss the attendance of ‘professionals’ with the victim and offender at the pre-conference stage (see principle 3). Consent of the victim and offender to their attendance may be required. Neither defence counsel, nor their client, should make direct contact with the victim before or after the conference (for example, to seek agreement to a restorative justice process taking place).

3. EFFECTIVE PARTICIPATION REQUIRES THAT PARTICIPANTS, PARTICULARLY THE VICTIM AND OFFENDER, ARE WELL-INFORMED

Participants in restorative justice processes must be well prepared for the conference

Pre-conference meetings should be held with participants, particularly the victim and offender. Participants will typically require information on the nature of the process, including:

- the procedures to be followed
- who will be there and ground rules
- realistic options for dealing with the offence
- the benefits and risks to them of participating
- limits to confidentiality
- their role and rights in the process.

The defence counsel, probation officer and police officer (if they plan to attend the conference) should also receive information about their role, and how this differs from conventional court processes.

Participants must have reasonable expectations of the process and outcomes

⁹ In the 2013 family violence Standards, victims and offenders must have support persons present at conferences unless there are exceptional circumstances

Participants must be realistic about what can be achieved through the restorative justice process. In particular, both victims and offenders must be aware that how a court ultimately deals with an offender may or may not reflect agreements made in a restorative justice process. Facilitators should discuss participants' expectations during the pre-conference meeting.

4. RESTORATIVE JUSTICE PROCESSES MUST HOLD THE OFFENDER ACCOUNTABLE

The offender must acknowledge responsibility for the offence before a case can be referred to, or accepted for, a restorative justice process

A case should not be referred to, or accepted for, a restorative justice process unless an offender has acknowledged responsibility for the offence. A plea of guilty, which may be accompanied by an agreed statement of facts, will provide the clearest indication of an offender's acknowledgement of responsibility.

It may sometimes be appropriate for a restorative justice process to be undertaken after an offender has changed their plea from not guilty to guilty. Providers and facilitators should be aware of, and put in place appropriate measures to mitigate, the additional risks to the victim and offender when restorative justice processes are undertaken in cases where a guilty plea has not been entered or when there has been a change in plea.

Agreed outcomes should provide an appropriate and realistic response to the offending

There are no outcomes that must always result from a restorative justice process. Instead, outcomes should reflect what participants think can be done to put right the offending. This will depend on a range of factors, including the needs of the victim and offender and circumstances of the offending.

Agreed outcomes should be fair, realistic, achievable, and credible, and be able to be completed within an identified, appropriate timeframe (in most cases, within a maximum of six months and in all cases as quickly as possible). When considering the extent to which any offer, agreement, response, or measure to make amends should be taken into account in an offender's sentence, the court must consider whether or not it is genuine and capable of fulfilment, and whether or not it has been accepted by the victim as expiating or mitigating the wrong (section 10, Sentencing Act 2002).

Where possible, therefore, these factors should be considered as agreements are reached.

To the extent possible, participants should try and ensure that agreed outcomes are not overly harsh or overly lenient. The court may be more likely to confirm agreed outcomes if they are not significantly out of line with current sentencing practice.

Agreed outcomes must be monitored

Conference participants should develop a conference plan that clearly identifies agreed outcomes and their timeframes and includes specific information on monitoring arrangements. The plan should be signed by the victim, offender, facilitators, and persons responsible for monitoring. If a judge receives an agreed plan that does not identify who is responsible for monitoring each agreed outcome, he or she may request that inquiries be made about the availability of such a person before deciding how that case should be dealt with.

Action should be taken when an agreed plan breaks down

The most appropriate way to address lack of compliance with a plan will largely depend on how the case has progressed through the court.¹⁰

Conference participants should discuss what action should be taken if a plan breaks down as well as the status of agreed outcomes if they are not reflected in the offender's sentence or in any other way that the court chooses to deal with the offender. The victim should always be informed if the plan breaks down.

The court should be informed about what took place in the restorative justice process

The restorative justice provider (or facilitator) should prepare a report on the restorative justice process before the case returns to court. The report should be as succinct as possible and provide an accurate reflection for the court of what took place. Although there is no standard format for these reports, basic information to meet the needs of the court will include when the conference was held, who attended and in what capacity, what process was followed (including pre- and post-conference), what outcomes were agreed and how these will be monitored.

The court should also be informed if the process only took place in relation to specific victims or offences in cases involving multiple victims. Care will always be required to protect privacy and confidentiality when preparing the report (for example, the victim's home address should not be identified). It will usually be the restorative justice provider's responsibility to ensure that the report is forwarded to the appropriate people (for example, the victim and offender, police prosecutor, offender's counsel, probation officer (if applicable), and victim adviser (if applicable)).

The restorative justice process should only respond to offences that are the subject of the original referral

Although offending disclosed at the conference that has not come to the attention of authorities before may be relevant to the appropriateness of an agreed plan,¹¹ it should not be specifically addressed in the current process.¹²

Some offences will be sufficiently serious (for example, violent or sexual offending or when someone's safety or well-being continues to be at risk) that the police should be informed. Participants, particularly the offender, should be aware that the police may be informed if other offending is disclosed. Where there are multiple victims, the restorative justice process should only address the effects of the offences committed against the victim(s) participating in that process.

¹⁰ For example, the conference may agree that certain outcomes will be completed before sentencing, the case may have been adjourned to allow a plan to be completed (e.g. under s10(4) of the Sentencing Act 2002), the offender may have been ordered to come up for sentence if called upon (under s110 of the Sentencing Act 2002), or agreed outcomes may have become part of an offender's sentence.

¹¹ For example, where the conference discovers that other offending has taken place to finance a drug addiction, the plan may also identify steps to address that addiction.

¹² If only because the victim(s) of that offending will not usually be present.

5. FLEXIBILITY AND RESPONSIVENESS ARE INHERENT CHARACTERISTICS OF RESTORATIVE JUSTICE PROCESSES

Restorative justice processes should be guided by restorative justice values

Best practice requires that particular steps always be undertaken in a restorative justice process (for example, a pre-conference meeting). Within those requirements, restorative justice processes should be flexible and responsive to the needs of participants, particularly the victim and offender.

Restorative justice values provide an underpinning framework within which flexibility and responsiveness can be exercised. These values include:

- physical and emotional safety of participants
- respect and dignity for all involved
- safeguarding of offenders' and victims' rights
- balance and fairness
- voluntariness
- transparency (of process and outcomes)
- empowerment of participants.

Restorative justice processes must be appropriate and responsive to the culture of participants

Facilitators should identify whether participants, particularly the victim and offender, would like particular cultural practices or needs to be accommodated within the restorative justice process. A range of strategies can be used to ensure that restorative justice processes respond to the culture of participants. These include:

- seeking advice from kaumatua, elders, or cultural advisers (who may attend a conference if necessary)
- using facilitators of the same ethnicity as participants
- ensuring that facilitators are aware of and know how to accommodate participants' cultural practices
- using an interpreter
- holding the conference at a culturally significant venue (such as a mārae)
- ensuring that participants are aware of cultural differences and how these may or may not be accommodated.

Although the victim's preference should usually prevail, discussion and negotiation will be required when the victim and offender are of different cultures or have different preferences about how their cultural practices or needs should be reflected.

Decisions about how the restorative justice conference will operate, including arrangements for when and where it will be held, should be responsive to participants

The arrangements for, and procedures at, a restorative justice conference should respond as much as possible to the wishes of participants, particularly the victim and offender. This includes the order of proceedings at the conference, the use of particular ceremonies such as karakia and the conference time and venue. There may sometimes be restrictions on the venue, for example, if the offender is in custody. Although the victim's preference should usually prevail, facilitators should try and resolve conflicts about these issues between the victim and offender through discussion and negotiation.

6. EMOTIONAL AND PHYSICAL SAFETY OF PARTICIPANTS IS AN OVER-RIDING CONCERN

Restorative justice processes should be safe for participants at all times

Participating in a restorative justice process has potential risks for the victim and offender that must be carefully managed. The restorative justice process should be discontinued at any time if the facilitators consider it inappropriate or unsafe to continue.

If a conference is adjourned or stopped, reconvening and continuing with the conference at a later date may be possible in some cases. Facilitators should discuss their concerns with participants at the time the concerns arise. The court will need to be informed if the process is discontinued.

The privacy and confidentiality of participants must be protected and respected to the extent possible

Personal information (for example, a victim's contact details or an offender's criminal history) is always private to the individuals concerned and must not be disclosed without their consent.¹³ Restorative justice processes always take place in private and the consent of participants will be required for non-participants (for example, observers such as media representatives) to attend.

Information about what occurred during the restorative justice process may be disclosed to non-participants but only with participants' consent. Facilitators must make participants aware of the limits to confidentiality before a conference is held. For example, judges may refer to the conference report in open court and the disclosure of other offending may be reported to the police. While there may be agreement before the conference to respect confidentiality, participants need to be aware that this agreement cannot be legally enforced.

Participants may require some form of follow-up after the conference

Follow-up with participants after a conference, particularly the victim and offender, will usually be required. This should be appropriate to the needs of the individuals concerned (and may therefore be minimal in some cases). Purposes of follow-up include:

- to gain feedback on the effectiveness of the process
- to check that conference plans are being carried out and to keep the victim or offender informed
- to ensure that both the victim and offender are 'okay' following the conference and determine whether either party requires support or assistance from other agencies.

Methods of follow-up can vary and may include a conference evaluation form, phone call, letter, home visit, and the convening of another conference. Other justice sector personnel (for example, the victim adviser) may also be in contact with the victim in accordance with their responsibilities under the Victims' Rights Act 2002.

¹³ The Privacy Act 1993 imposes a range of obligations on restorative justice providers in respect of the collection, storage, and use of personal information. This includes, for example, taking reasonable security safeguards to protect against loss, unauthorised access, use, modification or disclosure, and other misuse (section 6, information privacy principle 5).

7. RESTORATIVE JUSTICE PROVIDERS (AND FACILITATORS) MUST ENSURE THE DELIVERY OF AN EFFECTIVE PROCESS

Robust internal management systems are required that include appropriate and transparent procedures and processes¹⁴

Appropriate and transparent procedures and processes are required that:

- screen potential facilitators at the time of their initial appointment and select facilitators appropriate to the case that has been referred (for example, having regard to the particular circumstances and characteristics of the victim and offender)
- monitor the performance of facilitators and address performance issues
- ensure regular supervision and training of facilitators, including debriefing, peer review and professional supervision
- maintain the safety of participants and the provider
- manage complaints.

High-quality facilitators are critical to an effective restorative justice process

Facilitators should act in accordance with restorative values (see principle 5) and demonstrate the following competencies.

SKILLS

Highly developed communication skills (including an ability to maintain and encourage dialogue with a wide variety of people), an ability to manage strong emotion and conflict, and an ability to deal with diversity in terms of class, culture and gender.

KNOWLEDGE

A good understanding and knowledge of local cultures and communities (including the community services and organisations that may be useful in developing or carrying out the potential plan), an understanding of the criminal justice system and restorative justice processes, and knowledge of victim and offender issues (for example, potential trauma experienced by victims after an offence).

PERSONAL QUALITIES

Honesty, openness and accountability, integrity, respect for people including those who are different, the ability to be objective and not take sides, professionalism and self-awareness (including an ability to identify when they are not able to act impartially and to critique their own performance). Facilitators should not be aligned with the victim or offender, nor be an employee of a justice sector agency, for example, the Police. A co-facilitation model may be appropriate to enhance the safety and control of the conference, enable one person to facilitate while the other takes notes and prepares a draft conference plan, and to allow immediate debriefing after the conference.

Evaluation and review of restorative justice processes should be supported and encouraged

Formal evaluation of programmes (for example, to determine the effectiveness of different models and practices) should be supported and encouraged wherever possible. Restorative justice providers should also monitor their own practice on an ongoing basis, with a view to modifying and improving their practice where required.

¹⁴ These principles assume that restorative justice processes will be delivered by a provider group rather than a sole practitioner.

8. RESTORATIVE JUSTICE PROCESSES SHOULD ONLY BE UNDERTAKEN IN APPROPRIATE CASES

The use of a restorative justice process in a particular case must be carefully considered

A range of factors should be taken into account when considering whether a case is appropriate for a restorative justice process (for example, after a judge has adjourned a case to allow that possibility to be investigated). These factors include:

- the type of offence
- the willingness of the victim and offender to participate
- the participants' suitability, including their maturity and ability to participate effectively and in a voluntary capacity.

A case will proceed through conventional court processes if it is not considered suitable for a restorative justice process (or if either the victim or offender does not give their consent to the process taking place). The restorative justice provider should inform the court that a restorative justice process could not be undertaken, but not provide the reasons for this.¹⁵

The use of restorative justice processes in cases of family violence and sexual violence must be very carefully considered¹⁶

The use of restorative justice processes in family violence and sexual violence cases will not always be appropriate. The particular dynamics of family violence and sexual 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, in particular, 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 may therefore not be effective or safe.

Where a restorative justice process does take place, providers must ensure that facilitators possess the specialised skills and experience required to facilitate these cases and that additional safety and support measures are in place. Advice from those knowledgeable in responding to family violence and sexual violence should always be sought.

Particular consideration should be given to the appropriateness of restorative justice processes when the victim is a child or a young person

The age and maturity of the child or young person will often determine the appropriateness of a restorative justice process in a particular case and the extent of their participation (for example, very young victims may not attend the conference). Parents or caregivers should be fully involved in the process, including giving their consent to the process taking place, and participating with, or for, the child.

There will be inevitable power imbalances arising from an adult offender and young victim. Therefore, if a restorative justice process does take place, restorative justice providers and facilitators must take particular care to ensure that the child or young person is safe and supported and understands what is taking place.

¹⁵ Providing the court with the reason for a process not going ahead may place additional pressure on the victim and offender and be inconsistent with the voluntariness of the process. Relevant information about the offender's motivation may be included in pre-sentence reports, where appropriate.

¹⁶ New practice standards from 2013 determine process for delivering restorative justice service in family violence cases.

Sexual and family violence in the community context

Restorative justice is only one step in the process of change

Part of the unique experience of victims of sexual and family violence is their social isolation generally and, more specifically, from their family or whānau. Change in violent and abusive relationships is less likely to occur if wider family or whānau and community settings are not involved in helping the offending to stop¹⁷

For violence to stop, it may mean that:

- the deeply entrenched behaviours of the offender need to change
- the abusive relationship needs to be transformed
- significant and often long-standing harms need to be repaired.

A one-off restorative justice intervention is unlikely to achieve this degree of change. For these reasons, the ministry believes that the role of restorative justice in sexual offending cases is likely to be one step only in a much longer process. The process may also involve support and change programmes and services for victims, survivors and offenders. A range of other family and community supports may also be necessary. The length and extent of the process will depend on the nature and extent of the sexual offending.

Sexual offending is rarely an isolated incident.

Offenders are usually so entrenched in their cognitive distortions, beliefs and behaviours that they would struggle to fully accept responsibility and partake respectfully and safely in a restorative justice conference. Without access to treatment or intervention programmes there is a high probability the offender would resort to minimising, justifying or subtly blaming the victim/survivor. Once engaged in treatment the restorative justice provider and treatment provider can jointly plan restorative services. The offender has an opportunity to engage more fully in the process, the victim/survivor is at less risk of repeat victimisation, and the potential for the positive outcomes from the restorative conference are enhanced.

The power of myths

Many myths about sexual offending and the impact on victims are widespread in the community. For example 'she asked for it because she was...', 'she didn't tell her mother at the time so it must not have happened', 'I only touched her once, it was a mistake, and it's been 20 years, so she should be over it by now'. Restorative justice providers must be aware of the impacts of these myths on all parties, including the victim/survivor, supporters, other professionals and themselves.

¹⁷ Cheon and Regehr, 2006.

Sexual offending and restorative justice

The need for particular safeguards in restorative justice services exists whenever:

- a victim/survivor¹⁸ is vulnerable
- deception has been used in the perpetration or covering up of the behaviours that caused harm
- the behaviours that caused harm had a significant impact in causing great loss, significant destabilisation or trauma
- offending occurs in an ongoing or chronic fashion, and thus caused disturbance or distortion to the very development of a person, family or community
- culture distorts notions of shame and blame about the nature of the harm causing behaviour and its impacts
- the harm is caused to a person and is by its nature generally considered to be significant.

Sexual offending differs from many other offending in that:

- the veils of secrecy and shame that surround sexual violence mean that many of those close to the victim/survivor and the offender will not know the full details of offending or its impacts
- they have often left the victim/survivor isolated with the extent of the violence hidden from those around them.

And for those in ongoing relationships it:

- can often involve injury resulting from an on-going pattern of abuse whereas most other crimes are a single violent incident or are 'incident-focused', such as theft or destruction of property
- is often committed by someone close to the victim/survivor and within an ongoing relationship
- is committed in the context of ongoing crime of which feeling remorse and offering an apology are part of the pattern of abuse
- may be part of a pattern of family violence in a relationship characterised by power and control

¹⁸ Within the sexual violence sector in New Zealand, the use of the term victim/survivor is generally preferred to the use of 'victim'. The use of 'victim/survivor' in this document honours the work and values of that sector.

New principles underpin the standards

These new principles were developed to emphasise the particular needs of family violence or sexual offending participants in restorative justice services.

Principle A

The process is victim/survivor driven. It respects the right of the victim/survivor to hold the offender accountable. It recognises re-balancing of power between the victim/survivor and the offender as a key to victim healing.

Victim/survivor driven processes share a number of characteristics.

- A victim/survivor driven process is one followed due to victim/survivor motivation, rather than in response to pressures external to the victim/survivor, such as the justice system, families, or communities. This does not mean that the process cannot be initiated by another party or system.
- Victim/survivor needs drive the nature and pace of a victim/survivor driven process. The needs of the offender are also taken in to account, to respect that person and ensure that the restorative process can fulfil its potential
- In a victim/survivor driven process, victim/survivor wishes usually prevail if there is a conflict, such as over who can attend or choice of venue, but not where such prevailing would cause harm beyond that which could be considered to be a consequence of the other person's behaviour.

With a victim/survivor driven process the victim/survivor will experience choice, control and their needs being attended to.

Principle B

Processes are designed to maximise both the opportunity to experience a sense of justice and the chances for healing, and to minimise chances for harm.

For the victim/survivor, the experience of justice and healing occurs primarily through the provision of a safe and supported environment in which:

- they can talk about the harm caused to themselves and their community
- they receive genuine apology
- they negotiate for actions or behaviours that they would find restorative.

For the offender, healing and justice is promoted through the opportunity:

- to publicly take accountability for wrong-doing
- to make appropriate reparations for the harm caused
- to commit to action to prevent any further abuse.

When these processes are followed, the chances of harm will be minimised.

Service design

Providers must recognise:

- the **paramountcy of victim/survivor safety**
- that **specialist sexual violence knowledge skills and processes** are required for restorative justice processes to be a safe and effective process
- the need for **specialist professional supervision**.

A change in emphasis from standard restorative justice processes

When working with sexual violence clients the dynamics of the offending and prior relationships require in-depth assessment and follow up. Often the conference is the shortest piece of the service.

The quality of the assessment and intervention pre-conferencing will mitigate risk for all parties and largely determine the potential for safe effective conferencing and successful outcomes. These will most often involve ongoing treatment programmes for offenders and support services for victim/survivors.

A case management approach

A case management approach to service is required, with survivor and offender specialists working as a team with specialist restorative justice Facilitators. Ongoing practice reflection, planning and supervision of the team is needed to provide a structure of service that supports the needs of participants and is restorative in nature.

Grooming behaviours

A core component of sexual offending is the range of behaviour known as 'grooming'. Grooming behaviours can be very subtle and are used progressively over time to build the relationship with the victim/survivor and their friends or family. The grooming helps build a credible 'profile' for the offender (for example, helping out with childcare, 'befriending' those who are lonely, offering a 'listening ear', being the 'fun' person to hang out with).

The effect of grooming behaviour on the victim/survivor and on the family, friends and community allows the offender to maintain access to the victim/survivor, silences those affected and means that when the offending is named, the victim/survivor is unlikely to be believed.

Timing and pacing of service

Timeframes must be appropriate to the nature of sexual offending. Restoration of dignity and normal life functioning can be long processes for both the victim/survivor and the offender. Within this, the 'justice' component can in itself require time, being more likely to occur through a series of processes, meetings and conferences than a single event. For these reasons:

- the timing and pacing needs to be driven by victim/survivor capacity and offender capacity
- each process needs to be tailored to the needs, capacities and resiliency of all parties.

The re-establishment of victim/survivor choice and control

Re-establishing choice and control is a key to healing for victim/survivor. This means tailoring the restorative justice process to the needs of each case and maintaining a process that is victim/survivor driven.

The impacts of disclosure on others

The secrecy and shame that surrounds sexual violence mean that many of those close to the victim/survivor and the offender will not know the full details of the offending or its impacts. Finding this out in the context of a restorative process can be shocking and silencing, so it is important that respect is given to the significance of the information and that resources are available to assist families in dealing with this.

The role of support people

In a recent survey of restorative justice victim satisfaction¹⁹ it is worth noting that of the 19 percent who said they were scared to say what they really felt, only one (three percent) participant said they had a support person with them at the conference. It is not unusual for participants to say they 'have no-one suitable' to support them in a conference. Or that they would rather keep the details of the offending private and not be exposed to further shame. While these challenges are recognised, due to the particular nature of sexual offending, it is a requirement for at least one support person to be present at conferences for both the victim and offender.

The need for specialist professional supervision

The systemic impacts of sexual violence can also affect those assisting the victim/survivor and offender. There is a potential for participants to 'act out' feelings or roles associated with the sexual violence. Workers need to be well informed about psychological trauma, sexual offending and systemic therapy.

Dealing with sexual offending can be challenging and can invite collusion with stereotypes and minimisation. Beliefs about gender and culture and the individuals own knowledge and analysis of sexual offending will shape responses to each situation. Regular professional supervision is required as one way of reflecting on practice and maintaining health, well being and safe practice for the worker and the clients.

¹⁹ Restorative Justice: A survey of victim satisfaction; Ministry of Justice 2011

Entry to service and referrals

The ministry requires providers accepting a referral for sexual offending cases to demonstrate:

- established links with local community family violence and sexual offending specialist agencies
- a case management approach to service, with survivor and offender specialists who can work as a team with the specialist restorative justice facilitator
- a process for allocating referrals to appropriately accredited specialist sexual offending restorative justice facilitators.

Pre-conference

Informed consent guides the process

The pre-conferencing work sets the scene for what the offender needs to do to put things right. The victim and the offender are presented with a realistic picture of the possible restorative justice process and outcomes. Each step of the process continues only with the informed consent from both the victim and offender.

Thorough screening and prior casework (usually over several sessions) is required before proceeding to a restorative justice conference

Screening and assessment must focus on victim/survivor safety, not just on the wish or willingness of both parties to participate. The seriousness of the offence must be taken into account along with the ongoing contact and relationship that is likely between offender and victim.

Screening and assessment with offender

The offender must be able to take a high degree of responsibility for the harm they have caused through the abuse. To do this they must have some understanding of the cognitive distortions, minimisations and behaviours that have supported the offending and be willing and able to be in a room with the victim/survivor and supporters in a respectful way. They must be able to sustain themselves emotionally in that environment and have a reasonable degree of victim empathy as this will impact on their ability to show remorse and provide genuine apologies.

The assessment must consider:

- the offender's capacity and readiness to give a non-manipulative apology
- the offender's capacity to understand the impacts on the victim/survivor
- the risk to the offender's safety and the safety of others
- the offender's attitude, expressions of remorse and insight into their own behaviour
- the offender's level of responsibility for offending
- the offender's agreement to engage in assessment for treatment
- the offender's desire to put things right or repair the harm
- any history of attempts using restorative justice processes to resolve the offending
- the offender's ongoing psychological needs, including drug and alcohol abuse.

Unless there are exceptional circumstances, the restorative justice conference only proceeds if the offender agrees to engage in assessment for treatment programme alongside the restorative justice

process (most offender treatment programmes are unable to be accessed prior to sentencing so the assessment is likely to be post-conference).

Specialist preparation and support of the offender

Preparation, conference support and follow-up support to achieve outcomes should be provided from a specialist in the area of sexual offending. Few clients will be able to access specialist sexual offending treatment programmes pre-conference, so the role of the offender specialist in the restorative justice team is critical in preparing the offender. Even if the offender is in treatment, specific planning and preparation for the restorative justice process is required.

Working alongside the survivor specialist and with the team in the planning and preparation, the offender specialist is responsible for support and preparation of the offender, alongside the ongoing assessment and liaison with other services that will support moves to responsibility and safe behaviour.

The offender must be able to take a high degree of responsibility for the harm they have caused through the abuse. To do this they must have some understanding of the cognitive distortions, minimisations and behaviours that have supported the offending and be willing and able to be in a room with the victim/survivor and support persons in a respectful way. They must be able to sustain themselves emotionally in that environment and have a reasonable degree of victim empathy as this will impact on their ability to show remorse and provide genuine apologies.

The offender and survivor specialists must assess where they are in their ability to do the above and what is realistically possible in terms of shifting them to a place where they can achieve this and be 'safe' in the process with the victim/survivor.

Access to therapy for the victim/survivor

Sexual violence often results in various layers of 'wounding', some of which are not obvious until triggered or exposed through the healing of a different wound. The restorative justice process has the greatest chance of success if there is a supportive forum for the victim/survivor needs to be met.

If the victim/survivor has a well-functioning therapy relationship and there is good liaison with restorative justice providers, this can significantly improve the gains of the process. It can also assist in preventing restorative justice providers from taking up invitations to step over the line in to a counselling relationship with the victim/survivor. Such boundary overstepping can compromise the conference process as the provider then becomes a systemic player whose actions hold more valence for the victim/survivor or other participant than they should.

Specialist support for the victim/survivor

A separate specialist provider should provide support throughout the service (including conferences). This helps ensure that victim/survivor expectations are realistic and that the service is at an appropriate point in the healing process to enable constructive participation. The victim/survivor needs sufficient internal and external resources to undergo the emotional intensity of the process without harmful destabilisation.

The idea of multilayered support when they are fearful of the offender and scared to talk in depth about the offending behaviour is critical. It supports victim/survivors' agenda of attending to the elements of restorative justice that will be important to them, most particularly that there is no further offending.

A critical issue for many survivors in the early part of their healing is their fear that the offender will continue offending and then they carry that responsibility for the other survivors. They may not be assessed as ready in terms of capacity and resiliency but may still wish to proceed. In these cases, the victim specialist's role becomes much greater in terms of bringing the victim/survivor voice to the conference. If they do not wish to meet the offender they can provide that voice through a victim representative.

Specialist assessment, screening and planning with victims and survivors

The restorative justice provider needs to ensure that the victim/survivor's participation is well informed and genuinely voluntary. The victim/survivor needs the desire, strength and feeling of safety to talk in depth about the offender's abusive behaviours. They must feel safe outside the sessions, and feel able to terminate the sessions at any point. The extent of the victim/survivor's vulnerability and fear of the offender is a key determinant in the decision about suitability of proceeding.

The following should also be considered:

- the victim/survivor's consent to participate in a conference (or their genuine desire for a conference to proceed in their absence)
- the victim/survivor's views about what led to the offending
- the victim/survivor's attitude towards the offender and how they feel about meeting him or her
- what the victim/survivor hoped to achieve through the conference
- the level of contact the victim/survivor had with the offender
- whether the victim/survivor wanted to continue in any relationship with the offender
- the extent of the impact of the offence on the victim/survivor
- whether the victim/survivor was continuing to be offended against
- the victim/survivor's support structures, in particular in the family where the harmful behaviour was perpetrated by another family member.

Sexual offending against children and young people

Children and young people

The safety and needs of children and young people is paramount. Policies for managing risk and abuse of children must be in place, with clear processes for making statutory notifications. Any decision about involving children (either as the primary victim, or as a witness or affected party to the offending) must be taken with great care and specialist input from relevant child specialists.

Restorative justice providers must assess treatment options for perpetrators of child sexual abuse if the person is not currently engaged in treatment and there is a risk to other children.

Child victims may be represented at conferences by victim advocates or appropriate family or whānau members. Support and preparation for children and representatives is critical with particular attention being given to how information is gathered and exchanged with informed consent.

Where offending against children and young people is identified, or where the provider believes children may be at risk:

- progressing the referral must be deferred until all safety and risk issues are addressed
- Child, Youth and Family (CYF) must be informed.

Where CYF are already involved, planning and intervention must involve CYF case workers to determine appropriate processes and supports for children and family involvement.

To reduce risk to other children, restorative justice providers must ensure assessment for treatment for perpetrators of child sexual abuse if the person is not currently engaged in treatment.

Conference preparation

The following should be considered in the design and pacing of the process:

- type of meeting
- who is present
- what kind of preparation is required
- identification of any relationships that need strengthening prior to conferencing.

Conference participants should be screened

Potential conference participants and support persons must be screened to ensure the safety of all participants.

Exposure of sexual offending has impacts on wider family or whānau relationships. The degree of societal myth and high rates of victimisation in the community leaves the potential for participants to blame victims and collude with offenders. There is a risk of re-victimisation at the conference, and of retaliation afterwards, particularly where there has been a sense of injustice about the behaviour of one of the parties. Screening of participants and comprehensive safety planning will minimise this risk.

The screening process will include feedback to the victim/survivor and any decisions about who should participate will be made with the victim.

Preparation for all participants

Preparation should include information about the restorative justice process, discussion about the dynamics of sexual violence in general and to some degree the dynamics of the offence. This preparation phase may also include some small group meetings as key relationships are strategically built to increase the capacity of the group to use the conference process well.

Participants are contacted during key parts of the process to discuss further needs (such as after a family meeting or a conference).

Responses to such needs may include alterations to the planned pace or process, or referral to support services.

Conference

Support persons

Support persons must be present at conferences for both victim/survivor and offender.

Conferences (and other meetings) must be emotionally safe environments for the victim/survivor. Emotionally safe environments share a number of characteristics.

- It is acknowledged that most of the harm caused is emotional and psychological, so survivor safety in the process is paramount.
- Violence is not tolerated.
- Impartial facilitation is maintained while being able to intervene appropriately to counter the impacts of grooming. This may include encouraging and supporting the victim/survivor to challenge beliefs and behaviours based on grooming, or provision of information or challenge by victim/survivor and offender specialists on grooming behaviours present in conference process.
- The victim/survivor has a significant amount of control over the process, including the right to veto the participation of any potential participants.
- The long-standing distortions to family dynamics resulting from sexual abuse are challenged by others.
- Emotional safety is valued through requiring respectful communication practices, including protection of the right to speak.
- Participants are encouraged to take responsibility for adhering to the rules, and to monitor each other's communication.
- Specialist participants are sufficiently skilled in providing acute counselling interventions to contain any significant triggering of victim/survivor, offender, or other participant.

Apologies

An offender is not expected or required to offer an apology, but apologies may be a natural outcome of the process. If apologies are part of the conference, the focus should remain on victim safety and offender responsibility. The offender should not focus on asking for forgiveness or even for 'acceptance' of the apology – this places a further demand from the offender on the victim.

Any apology must contain a clear acceptance of responsibility, recognition and acknowledgement of effects on the victim. The offender may make a statement describing their plan to undertake the necessary steps (in terms of programmes, support, removal of their presence and so on) to initiate and maintain a change of behaviour. An apology should be witnessed by the victim and others involved in the conference, including the offender's own family or whānau and supporters. These factors may go some way to ensuring the apology is effective in breaking the cycle of offending and providing an opportunity for the offender to change in the future.

Agreed outcomes should be achievable, monitored and mediated

The use of deception and the betrayal of trust associated with sexual offending, means that if agreed outcomes are not kept, then the conference can cause further harm by exacerbating existing harm. This occurs in a context in which achieving agreed outcomes is not always straightforward for offenders. Goodwill in the context of the conference can lead to agreements that can be difficult to stick to in the reality of life and its other pressures. A level of reality testing of suggested agreements needs to occur.

Agreed outcomes should be fair, realistic, achievable, and credible, and be able to be completed within an identified, appropriate timeframe (in most cases, within a maximum of six months and in all cases as quickly as possible).

When considering the extent to which any offer, agreement, response, or measure to make amends should be taken in to account in an offender's sentence, the court must consider whether or not it is genuine and capable of fulfilment, and whether or not it has been accepted by the victim as expiating or mitigating the wrong (section 10, Sentencing Act 2002).

The restorative justice facilitator does not have a mandate or mechanism to require offenders to complete agreed outcomes. Their role is reserved to a monitoring and reporting role. Many agreements will include commitments that do not have a legal consequence for non-compliance. The victim/survivor needs to be clear at conference about what commitment is enforceable and what is not.

The restorative justice process needs to include processes for monitoring agreed outcomes. Providers must take responsibility for communicating with the victim about the progress on achieving these outcomes. This monitoring and reporting process will be time limited and linked to the length of time between conference and sentencing.

The following proposals should be agreed as part of the conference plan and report:

- contact with the offender and relevant service providers to determine if agreed outcomes and attendance at programmes and services is occurring
- contact with the victim/survivor (or via their supporter) to report on offender compliance with outcomes
- request for a delay (where possible) in sentencing until programmes and service agreements have been completed
- consequences for non-compliance of agreements; for community referrals the survivor will be informed of the option for police reporting if the agreements are not met.

Other victims and survivors

While the primary conference focuses on harm to the direct victims, there are often people indirectly affected by the harm; for example, people who were directly groomed to collude with the offending, people whose trust was betrayed, or people whose lives were significantly impacted through the need to deal with the impacts on the victims. These people that are indirectly affected by the offending might be acknowledged in the conference and with victim's permission, and may speak of the impact on them.

Post-conference

A critical part of restorative justice in family violence cases is the post-conference follow-through including:

- closing the loop with programme providers - to determine offender attendance at any treatment programmes and adherence to any other outcomes
- closing the loop with the wider family or whānau and the community - to determine whether the victim/survivor has the support of people in their social circle.

Providers will follow up on agreed conference outcomes

It is worth noting that victim surveys²⁰ link satisfaction to being contacted after the conference and to receiving updates on the offender's progress with the plan.

- Follow-up may include establishing a feedback loop between the treatment programme provider, the restorative justice provider and the victim/survivor, using existing specialist support workers.
- Follow-up may also include the option of the victim/survivor requesting a second conference at the end of the offender treatment programme. This can be particularly useful if there is an on-going wish for a relationship to continue between the victim/survivor and the offender, and gives the opportunity for clearer outcomes with the passing of time for both parties. At this stage the offender may be feeling more accountable for their offending and is more equipped to engage in outcome discussions. For example, family or whānau occasions where they agree to only attend when specifically invited.

Providers will follow up with the victim/survivor

The nature of the follow up may be direct with the victim/survivor or via a nominated support person or other specialist worker and will have been agreed as part of the conference planning and debriefing.

Providers will follow up with other conference participants and communities of interest

The nature of the follow up will be determined as part of the preconference planning, or as part of a conference plan.

Providers will follow up with offender and victim/survivor to seek feedback on the service

The process of feedback and who will seek the feedback will be agreed as part of the overall case planning and service design and will take in to account the particular needs of clients.

²⁰ Restorative Justice: A survey of victim satisfaction; Ministry of Justice 2011

Summary of process

A. Intake or assessment of referral

- Assess referral against eligibility criteria and begin case management allocation, planning and consultation with relevant specialists.
- Advise court if case not appropriate for restorative justice.
- Gain offender consent to assessment and possible referral to treatment.
- Ensure victim/survivor has given consent for information to be shared with referring agency.

B. Intake or assessment with offender for pre-conference process

- Fully assess offender willingness, readiness or capacity, and appropriateness for restorative justice process.
- Performs specialist risk assessment of offending, including past history, current behaviour, risks to victims, and risk to self and others.
- Plan safety to address risk factors and engagement with relevant treatment interventions where appropriate.
- Assess likely outcomes from holding a conference and whether there is any benefit for participants.
- Identify appropriate supporters and engage in process.
- Plan with offender and team ongoing structure and pacing of service.
- Link offender with other relevant services as appropriate.
- Inform of range of possible restorative processes that may be used to achieve outcomes desired.

C. Intake or assessment with victim/survivor for pre-conference process

- Fully assess victim/survivor willingness, readiness and capacity to engage in restorative justice process.
- Discuss what possible outcomes victim/survivor wishes to achieve and assess likelihood of achieving them; give victim/survivor a realistic picture of potential to achieve desired outcomes.
- Perform specialist assessment of victim/survivor, including past history, current behaviour, risks to victim and risk to self.
- Plan safety to address risk factors and engage with relevant treatment interventions where appropriate.
- Plan with victim/survivor and team the pacing and structure of ongoing supports and process.
- Identify suitable supporters and engage in process.
- Link victim/survivor with other relevant services as appropriate.
- Discuss range of restorative processes that could meet their identified needs and desired outcomes.

D. Pre-conference process

- Perform case management and planning with team.
- Continue pre-conference separate meetings with victim/survivor and offender to provide ongoing assessment, risk management, support and planning for conference, and treatment or other outcomes.
- Tailor restorative interventions offered to what is most likely to achieve desired outcomes, given victim/survivor and offender capacity and readiness, and keep victim/survivor informed of realistic expectations.
- Identify and plan for support persons' attendance at conference.
- Assess and prepare potential support people for planned restorative processes.
- Facilitate meetings between victim/survivor and support people when required
- If victim is not attending conference but is willing for conference to proceed, agree how victim will have their views effectively represented and be informed of the outcomes.

E. Conferences

- Facilitate the conference process or other restorative intervention agreed upon.
- Document notes of conference for report.
- Develop a conference plan as agreed by participants.

F. Post-conference

- Prepare a report on the restorative justice process.
- Follow up with victim/survivor and offender.
- File the report at court at least five days prior to the offender's scheduled sentencing date.
- Provide a copy of the report to the victim, offender (and their lawyer), police prosecutor, probation officer (if applicable), and victim adviser (if applicable).
- Monitor offender progress of agreed conference outcomes.
- Keep the victim/survivor informed of progress of offender in completing agreed outcomes.
- Advise victim/survivor of sentence.
- Provide information on or refer victim, or survivors or offenders to, other community services, if appropriate and agreed at the conference.
- Attend offender treatment review meetings where agreed to at conference and provide victim/survivor feedback on offender progress.
- Facilitate post-treatment restorative process or follow up conference when appropriate.
- Seek feedback from clients on service.

Facilitator competencies

In addition to the standard skills of restorative justice facilitation, it is expected that restorative justice facilitators of sexual offending services demonstrate the following skills and competencies:

- knowledge of the dynamics and effects of family violence
- knowledge of the dynamics and effects of sexual violence
- knowledge of the impacts on children of family violence
- knowledge of the social and cultural context of violence
- knowledge of the range of specialist services and agencies available to support victims, survivors and offenders in family and sexual violence cases, and commitment to utilising those services to support the victim/survivor and offender as part of the restorative justice process
- ability to undertake a family violence risk assessment of offenders, victim and survivors
- ability to formulate a safety plan for the conference participants and provide remedial action and support to reduce actual or potential harm as above
- ability to minimise risks of re-victimisation or threats of violence at the conference and following the conference by working collaboratively with sexual offending violence specialists
- ability to assess offender ability and readiness to engage safely and respectfully in restorative justice process
- prior knowledge and experience working with sexual violence; this may be from prior employment or experience, or gained by co-working with an (approved) restorative justice provider experienced in working with sexual offending cases
- use of regular professional supervision to manage personal and professional issues relating to working with sexual offending
- ability to work in a team of specialists and formulate appropriate case management plans.

Competencies for working with children

Before proceeding with any meeting or conference with children present (either as the primary victim, or as a witness or affected party to the offending), consultation with a child specialist will occur. Skills and knowledge required include:

- working knowledge of current relevant child protection legislation
- knowledge of the impacts that sexual or family violence can have on children
- knowledge of the social and cultural context of violence
- ability to engage effectively with children.



MINISTRY OF
JUSTICE
Tāhū o te Ture