

Restorative Justice Review:

Findings Report

Provider and Community Services, Ministry of Justice

July 2023

Foreword

Tēnā koutou katoa

Over the past two years, the Ministry of Justice has been conducting a procurement review of the Restorative Justice (RJ) service to ensure it meets the needs of people who participate in the service.

The review focused on hearing directly from people who had lived experience of RJ (offenders and victims) and key sector groups involved in the delivery of the service (Police, the judiciary, lawyers, court staff, service providers and kaupapa Māori service providers). This engagement enabled us to gain information and insights about what's working, and not working, from their perspective.

At the beginning of this review, we promised that the voices of all sector groups and people who have used the RJ service would form the basis of a findings report. I am pleased to report that this has happened, and you will see this within this Findings Report.

For me, this work has highlighted what a well-respected and valuable service RJ is to a wide range of people. Those who work in the restorative practice space are passionate and truly want to make, and do make, a positive difference in the lives of both victims and offenders.

It is important we look to the future through an innovative lens. This will ensure the relevance and longevity of the service, as we continue to meet the needs of the people who use the service. Work has begun on many of the recommendations already, while other recommendations will require additional thought, time and resource to fully consider.

The review would not have been possible without the help of the people and organisations across New Zealand who gave up their time to share their thoughts and experiences. We are grateful to everyone who participated in this work, and hope that this report serves as a snapshot of RJ at a point in time, and that all of those who have contributed to this report are able to see themselves in the information that has been captured. Your experiences have been invaluable in shaping our understanding of how the current service is doing and how it can improve.

Finally, I would like to thank the team that worked on this review and persevered throughout COVID-19, to document the views of all involved in RJ.

If you have any questions, please send them to RjServiceReview@justice.govt.nz



Carl Crafar

Chief Operating Officer

Executive summary

The Restorative Justice (RJ) service is funded by the Ministry of Justice (the Ministry). Participation is voluntary and involves adult participants¹ (victims and offenders) meeting to discuss the crime that has occurred and how harm can be put right.

What is the RJ review?

The RJ review (the review) was carried out in 2021 and 2022 and was designed to hear the opinion of participants and those in the sector who have a role in the delivery of the RJ service. The review focused on what these groups identify as the strengths and weaknesses of the current service, the barriers that may prevent people from knowing about or taking part in RJ, and recommendations on how they believe the service can be improved.

Findings and recommendations

The findings indicate that there are a number of existing strengths within the RJ service, such as, providing a safe space for victims, the professionalism of the facilitators being highly regarded and that RJ provides the opportunity to repair harm and show remorse. However, some barriers were also identified, such as, lack of promotion, timing, equity issues, or administrative barriers.

We asked about how the RJ service could be improved. We heard that there needs to be:

- more information about the RJ process for participants and the general public
- more flexibility, so that RJ can be explored earlier in proceedings or assessed as a post-sentence option
- education and training opportunities for agencies involved with RJ and ongoing professional development and improved family violence training for facilitators
- increased funding and resourcing for service providers to allow for a more flexible service delivery model
- a consistent presence of RJ service providers at court
- tailoring of conferences to better meet the needs of individual participants (giving them more say in how a conference is delivered)
- transparency about why some RJ referrals may not go ahead
- a review and simplification of the Practice Standards for family violence cases.

What next?

The valuable feedback and insights gathered provides a foundation for the Ministry to investigate options to improve the service, and the experience of all people who participate in the court system.

The Ministry is currently working on a number of the above recommendations. The Ministry also intends to set up a formal project in the new financial year that addresses those recommendations that require more thought, resource and time to consider. The Ministry will continue to keep you updated and involved.

¹We acknowledge that 'victim' and 'offender' are labels largely used by the Ministry, the court, and the RJ sector. Where practicable, this report collectively refers to 'participants'. However, references to 'victim' and 'offender' have been used where differences of experience between the two groups were noted and where quotes have been used.

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Introduction and methodology

The Ministry's role

The Ministry holds contracts with service providers throughout New Zealand to deliver the RJ service for the courts. In total, there are 24 Service providers that deliver RJ for standard and family violence cases, while one, Project Restore, is the national specialist provider who provides RJ services for sexual offending cases. The Ministry fully funds RJ, and attendance is free of charge for the participants.

The Ministry works closely with the service providers to ensure the smooth running of RJ, by monitoring and managing the contracts, and the relationship between service providers and the court.

RJ in the criminal justice system



RJ was incorporated into the Sentencing Act 2002, Parole Act 2002, and Victims' Rights Act 2002. A later amendment to the Sentencing Act in 2014 provided further support to the use of RJ in the criminal justice system.



The amendment requires court proceedings to be adjourned so that RJ can be investigated and, if appropriate, carried out prior to sentencing.

Core values and principles

The service has core values and best practice principles. These are upheld by RJ service providers and they form the basis of what it means to be 'restorative'. They are:

Values

Tika – we do things in the right way.

Pono – we are truthful, honest and sincere in our interactions with people.

Whanaungatanga – we develop relationships and work together.

Āhurutanga – we provide a place of warmth and safety.

Manaakitanga – we show respect, generosity and care for others.

Mana Motuhake – we enable people to achieve self-determination.

Aroha – we feel compassion, caring and empathy for others.

Principles

Participation is voluntary throughout the RJ process.

The victim and offender are central participants.

Understanding is key to effective participation.

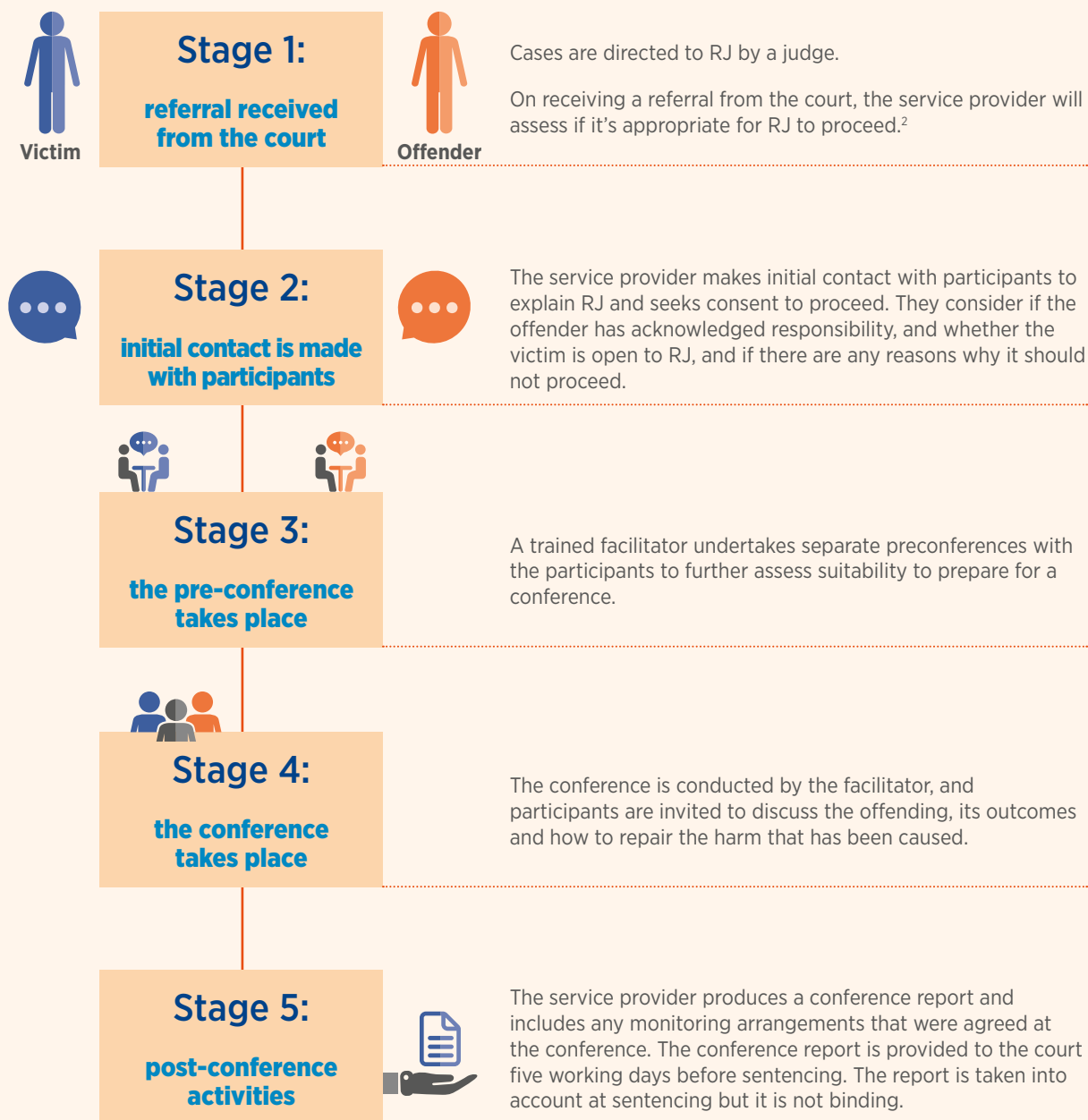
Offender accountability is key to the process.

Processes are flexible and responsive to the needs of participants.

Processes are safe for participants.



The stages of the RJ service



Resources that support delivery

The Restorative Justice Practice Framework (Practice Framework), the Restorative Justice Standards for Family Violence Cases (Practice Standards), and the Restorative Justice Standards for Sexual Offending cases were published in 2004, 2013, and 2013 respectively.³

These resources guide service providers and facilitators in their delivery of RJ.

²Majority of referrals originate from the District Court. A small proportion of referrals are also received from Police Adult Diversion Scheme (Diversion).

³The Practice Framework and the Practice Standards were last reviewed and updated by the Ministry in 2019.

The review

This review was an exploratory piece of work, within the context of the Ministry's procurement and contracting processes, to hear how the service is working⁴. The findings from this review are not intended to provide scientifically robust or generalisable data and some of the groups we engaged with had small sample sizes.

The review had a specific focus on identifying the:

- strengths and weaknesses of the RJ service funded by the Ministry
- common barriers that may prevent people from knowing about or taking part in the service
- recommendations for how the service can be improved.

Who did we involve?

We gathered feedback during a series of interviews, group hui and online surveys, conducted over the course of 2021 and 2022. Groups that participated were:

- RJ participants
- Ministry court staff (service managers, court victim advisors and court registry officers)
- judiciary (from both District and High Courts)
- kaupapa Māori service providers that deliver RJ⁵
- service providers (managers and facilitators) that deliver RJ
- providers who work with participants or service providers (such as family violence organisations or Victim Support)
- organisations that support RJ service provision
- New Zealand Police (police prosecution officers, diversion officers and any other interested New Zealand Police employee involved with RJ)
- lawyers and a representative body for lawyers.

⁴As part of best practice procurement, we need to periodically review our funded services to ensure that it is meeting its intent, and the need of the people who will access RJ.

⁵For the purpose of the Review, we applied the Government's progressive procurement policy 'Māori business' definition. This defines Māori businesses as one that has at least 50% Māori ownership, or is a Māori Authority as defined by the Inland Revenue Department.

How did we do it?

INTERVIEWS



We conducted interviews⁶ with:

- 34 participants (through Kantar Public)⁷
- 24 court staff
- nine members of the judiciary
- 17 representatives from kaupapa Māori service providers
- 18 representatives from service providers
- four representatives from the organisations that support RJ
- ten police from the Police Prosecution Services team.

Timeframe: August 2021 to July 2022

Method: in-person and online (due to COVID-19)

ONLINE SURVEYS



Two surveys were conducted for:

- court staff
- service providers
- kaupapa Māori service providers
- providers who may work with RJ participants
- organisations that support RJ service provision
- lawyers and a representative body for lawyers
- New Zealand Police.

Timeframe: the surveys ran from December 2021 to March 2022 and April 2022 to May 2022

Method: on-line

We received responses from:

- 19 court staff
- 140 facilitators
- 95 lawyers
- 25 police.

The survey response numbers represent both full and partially completed responses.

FOCUS GROUP



A focus group was held with three representatives from the Auckland District Law Society.

Timeframe: March 2022

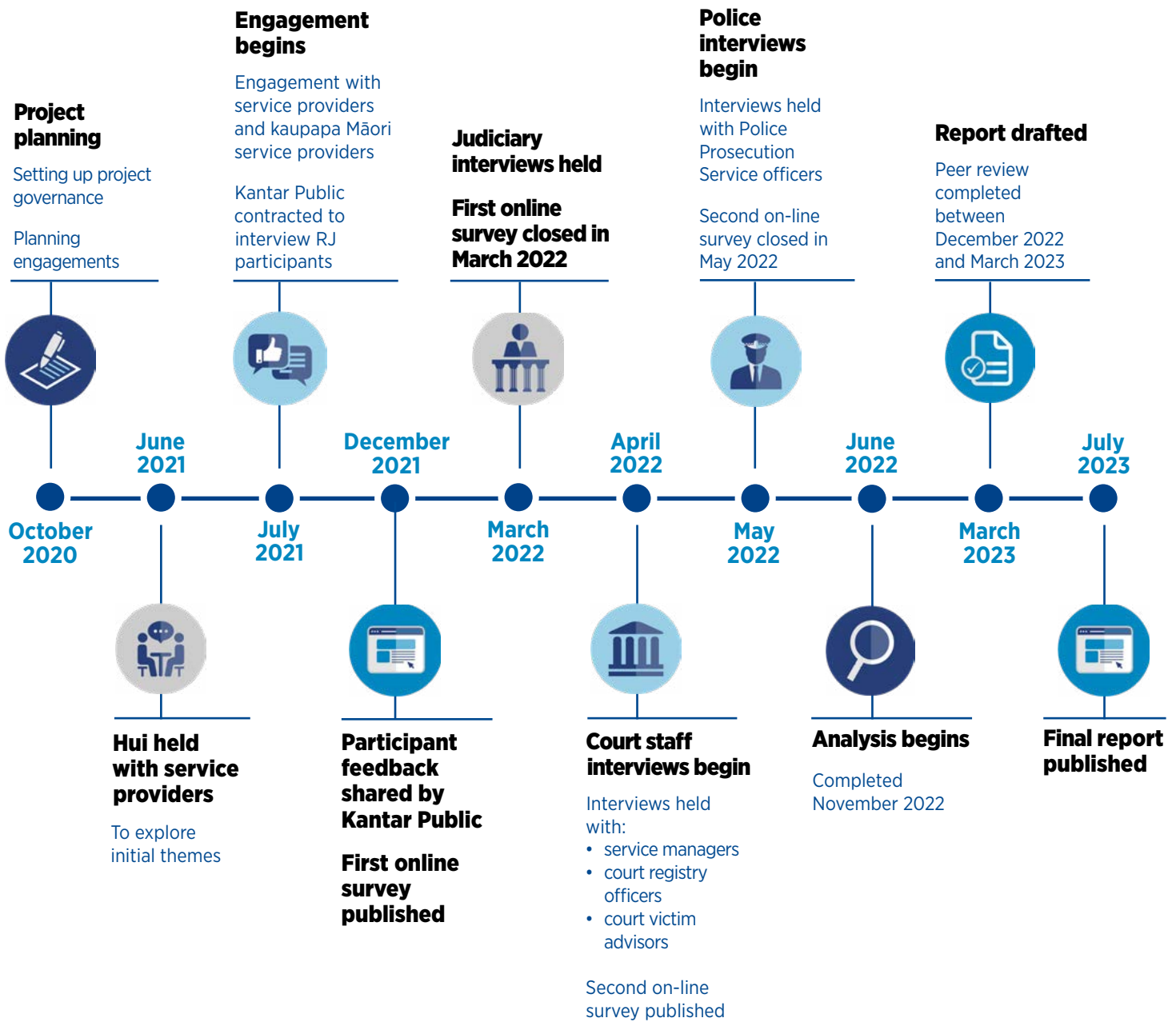
Method: on-line

⁶The interviews consisted of open-ended questions, probes and comments.

⁷The Ministry provided Kantar Public with 1146 contacts. The information included first name, last name, phone number, email, ethnicity, offence committed and reasons for not proceeding to conference (if applicable).

Timeline of activity

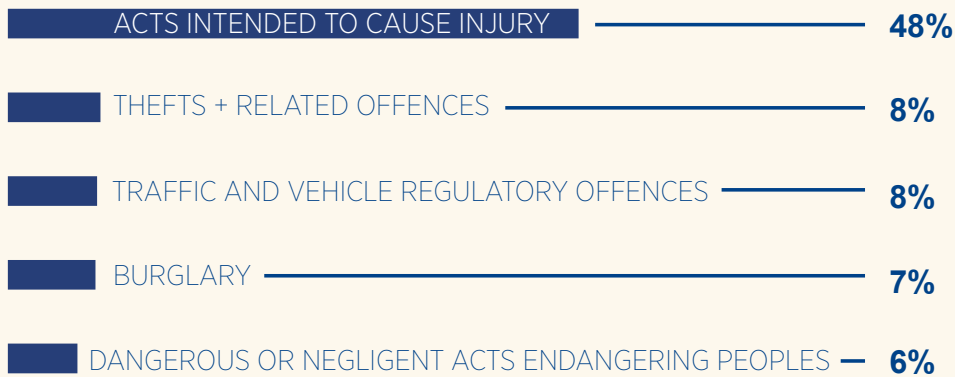
The timeline below summarises activities that took place for the review.



Snapshot of the current landscape of RJ service

This data provides a snapshot of the current RJ service and the context in which the review took place. The data is from the 2021/22 financial year.

Top Offences that lead to RJ:



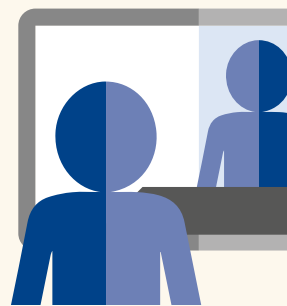
Where do refer



7695

cases were referred to RJ

(between 1 July 2021 - 30 June 2022)



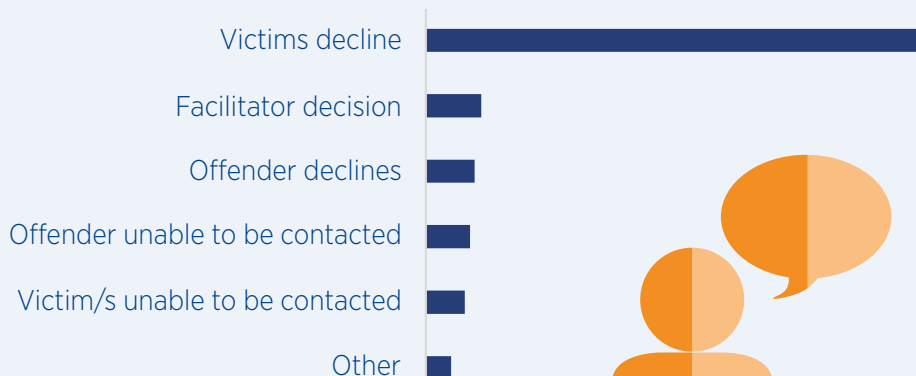
Pre-conferences



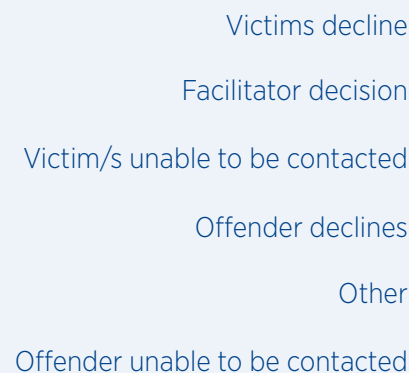
Co



Why do pre-conferences not go ahead?



Why do confer



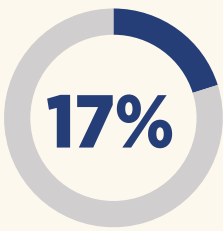
Referrals come from ?



2% through the **Adult Police Diversion Scheme**



1% through the **community**



of referrals are closed without having made contact with participants.

Referrals

2% are Family Violence cases

3% are Sexual Offending cases

Referrals not go ahead?



Offenders that participate



84% Male **16% Female**

Victims* that participate



51% Male **40% Female**

*9% reported as 'unknown'

Average duration of case

36 days



2% are Family Violence cases

3% are Sexual Offending cases

Referrals not go ahead?



1296 conferences

were delivered

(between 1 July 2021 - 30 June 2022)

77% of victims surveyed as part of the Victims Satisfaction Survey were at least fairly satisfied with the RJ conference they attended.



First impressions:

RJ is seen as healing and provides a voice for participants.

We asked the sector groups what they see as the purpose of RJ. We found that all sector groups spoke positively about RJ and believe it to be an essential service that provides a safe and supportive setting for participants to come together.

RJ sector's view

- **taking responsibility and apologising**
- **to participate to get answers**
- **empowering and acknowledging victims, by giving them a voice in the justice system**
- **healing and closure**
- **about providing a safe and supportive setting**
- **about understanding the impact on whānau**
- **for participants to express their views and learn from each other**
- **helping achieve positive outcomes**
- **helping prevent re-offending.**

Why do participants want to take part?

- **to participate**
- **to convey their side of the story**
- **to participate to get answers**
- **to express the impact of the offending and their hurt**
- **to own their mistakes**
- **to hold the offender accountable**
- **to gain closure**
- **to restore their self-image**
- **to avoid awkward situations in the future.**

What do participants think about RJ?



STRENGTHS

- facilitators are seen as highly knowledgeable and good communicators
- pre-conference itself can provide closure
- the process helps restore emotional wellbeing
- it is an opportunity for the victim and offender to meet
- offenders feel listened to
- mana is restored
- can also get access to other support (for example, counselling)
- provides an understanding of why offending took place
- able to share the wider effects of the offending (for example, explain the impact the offence had on family, whānau and community)
- when conference is kanohi ki te kanohi and involves whanaungatanga
- opportunity to repair harm and show remorse.



WEAKNESSES

- participants can feel dropped at the end of the conference
- low awareness and lack of clarity about the purpose of RJ
- feeling blindsided or caught off-guard during the conference
- lack of tikanga can inhibit success
- could not fully express themselves in the conference (because they did not feel comfortable, did not have the opportunity to or they were not able)
- feeling being stigmatised or invalidated.

Victims can feel:

- pressure or feel manipulated to attend by figures of influence (lawyers, court staff and facilitators)
- concern over their privacy and unwanted contact from offenders
- overwhelmed or not qualified to answer questions about reparation
- scepticism about the offender's sincerity.

Offenders can feel:

- pressure to attend by lawyers and/or service providers
- they cannot fully express themselves
- feeling rushed and/or blamed
- some offenders felt that they didn't get the recognition by the courts for being involved in the process.

In their words...



"With restorative justice, you can tell your truth, explain you are human. You get a chance to say this is why I did it –still no excuse, but you can apologise. There was a story behind my actions." - participant (offender)

"It seemed more beneficial to the offender. It felt like something their lawyer told them to do...not genuine." - participant (victim)

"It was rushed. One session to cover both parties expressing their sides, and then straight into resolutions. We needed more time to come up with solutions." - participant (victim)

"Gives you peace of mind and reminds you the other person is human." - participant (victim)



"A stressful, yet healing process." - participant (victim)

"I felt bad enough, but the Facilitator kept asking more of me once I had done my best...It didn't matter what I said, it wasn't enough." - participant (offender)

"It just made me feel like a piece of shit. I was more mentally scarred after the process than before...if they gave me the opportunity to do it again, I wouldn't." - participant (offender)

I left feeling really empowered. It was empowering to be able to confront him. I could move around my community again. I was pleased that that process was in place, because without that, I don't know that he would have had any understanding of who I was or what he had done to me." - participant (victim)

Victims who only attended a pre-conference

Why victims didn't continue to conference:



Emotional wellbeing - They had no desire to revisit the incident or open themselves up to being vulnerable, particularly where violence was involved.



Concern over how the offender would act - This was coupled with the uncertainty of the outcome.



Lack of any clear benefit - It was not clear to them how they would benefit from the process and it felt like a 'hassle'.



Facilitators didn't follow up with them - Some victims were interested but didn't hear anything from the facilitators after the initial conversation.



Logistical issues posed difficulties - Taking time off work or finding childcare made it difficult to attend a conference.



Didn't want to establish a relationship with the offender - They had no desire to establish any kind of relationship through RJ.

In their words...



"That phone call actually gave me a bit of closure... it turned into an hour mini-counselling session of how it affected me."

"They [facilitator] seemed to want to make us friends. I didn't want to develop a relationship with [offender]. That's the last thing I wanted to do!"

"[I said] if it's beneficial, and causes change, then yes I'm keen [to be involved]. But that was the last I heard from them."

"My husband would have been my support person and my son is only two years old... we have no childcare. It was not ideal to take [son] along or the extra effort of getting a babysitter for the day."

What do court staff think about RJ?



STRENGTHS

- the RJ process is easy to understand
- timeframes work well
- victims are able to get resolution
- facilitators seen as good communicators and collaborative.



WEAKNESSES

- RJ is not promoted enough
- victims need more support and more updates from service providers
- there can be a lack of remorse from offenders
- RJ is not suitable to deal with family violence or serious charges
- late communication from service providers about cases not going ahead.

Of Court staff who responded to the survey...



90%

agreed that it was easy for them to understand the RJ process.



74%

agreed that it was easy to engage with their local RJ provider.



90%

agreed that they had good relationships with other professionals involved in RJ.

In their words...



"When it is directed, it's about talking them (victims) through it again, such as what's going to happen, and that they will be contacted (by the service provider). It's empowering victims to become involved."

"Where the reports actually come in, they are normally very useful in terms of showing the views of the victim in the meeting. I haven't read a report where I have come away thinking 'gosh the court has wasted it's time on this!'"

"I do wonder about types of offending, and family violence and whether it's appropriate. I don't know how appropriate it is."

"A few of my clients often ring me saying they've been trying to get a hold of providers. It comes down to the facilitator being available at court, but also on the phone... It is about having information made available to them at the time, rather than in a week or two when it's out of mind."

What do the judiciary think about RJ?



STRENGTHS

- it is helpful for judicial decision making
- reports are mostly high quality
- specialist organisations such as Project Restore⁸ are highly regarded
- service providers appear to be delivering the service well.



WEAKNESSES

- the Sentencing Act 2002 legislation can lead to unnecessary referrals
- not suitable for all crimes of high violence, family violence and/or sexual offending
- it is underutilised - few cases actually progress to the conference stage
- service providers not specifying why RJ won't proceed is unhelpful for the judiciary and frustrating for victims
- wrap-around services are not always offered to participants by service providers
- service providers do not always contact participants in a timely manner
- court coordinators⁹ are vital but not present in all courts
- there is regional variation in the delivery of RJ with regard to service and report quality from service providers.



64%

of the judges interviewed agreed or strongly agreed that the current RJ service works well for the participants.



80%

of the judges interviewed agreed or strongly agreed that the current RJ service works well for the judiciary.



60%

of the judges interviewed thought that RJ is a well-known concept.

In their words...



"The quality of the people involved in Restorative Justice - my universal experience is that these are very skilled workers in this field."

"I can go to other district courts and see no engagement with Restorative Justice... the presence in court (of a service provider) is a very important, critical thing. It gets things underway in the room, on the day, at that time."

"Restorative justice can't really go ahead without victim present. But many simply can't be in the same room as the offender. Especially when they have been violently offended against."

"Restorative Justice here is basically non-existent for the number of requests that are made. We would have less than 5% completed. And that appears to me to be because they can't contact people."

⁸Project Restore are a national specialist service provider that deliver RJ for sexual offending cases only.

⁹Court coordinator is a reference to the service provider personnel who are present on court list days to support the flow of referrals and represent RJ. The Ministry requires that 90% of court list days are attended by a service provider representative unless agreed otherwise.

What do the kaupapa Māori service providers think about RJ?



STRENGTHS

- kaupapa Māori service providers deliver a culturally safe service to meet participants needs
- it helps victims – they leave feeling better and are grateful for the opportunity
- healing outcomes for offenders, empowering them to make better decisions
- can prevent re-offending
- there is value in bringing people together kanohi ki te kanohi.



WEAKNESSES

- does not address long-term therapeutic needs
- any wrap-around services or support offered by service providers is not funded by the Ministry
- can be a transactional process
- the Practice Framework and Practice Standards are ambiguous, and do not cater for Māori
- facilitator training is not flexible. There is limited course availability and it does not cater for Māori.

In their words...



"The marae has long looked at restorative justice in a whakamana approach. We've tried to steer away from staying in a victim and offender focus."

"A victim at court can attend, and wait but never be acknowledged in court. We talk to them, to kōrero, whakarongo, titiro. We look at our values here in restorative justice. We live and breathe this tikanga and pono."

"The Ministry needs to enable the support services... if the Ministry of Justice wants to get better outcomes then you need to invest into that."

"What does not work well is sometimes trying to fit action plans within court timeframes... no-one is going to deal with addiction in 30 or 60 days. Same as dealing with financial deprivation."

What do the service providers think about RJ?



STRENGTHS

- meets the immediate needs of participants
- it is a short-term intervention that can contribute to a victim's healing process
- pre-conferences can bring resolution even before going to a conference
- service providers hold connections with other organisations to assist with support services.



WEAKNESSES

- does not meet the long-term needs of participants
- no follow up on agreements made during the conferences. This requires additional funding and resources
- equity barriers cannot be addressed through RJ
- the timing does not allow for participants to process their trauma
- information is poor (or incomplete) from the courts
- the current Practice Framework and Practice Standards need updating and require a Te Ao Māori lens
- the Practice Standards are unnecessarily complex
- there are access and scheduling issues when organising facilitator accreditation
- minimal tikanga Māori and other cultural components of the training and accreditation
- the training and accreditation process can be difficult
- inconsistent professional supervision and quality assurance of facilitators across the country
- confirming contact details of the offenders or victims is an on-going challenge.

In their words...



"It can be very helpful for victims to understand why this happened to them and get a sense of who the offender was, and that reassurance as well around their own safety moving forward."

"I think pre-conferences are really really important and needs to be valued more and I think that's where most of the work actually happens."

"You can't solve major problems, particularly in the family harm arena. You can't solve major problems, recidivists, people who beat their partners and things, in the space of one meeting."

"The training has got gaps in the adaptability and flexibility, the cultural perspective."



What do the Police think about RJ?



STRENGTHS

- easy to understand
- provides a safe space for victims
- facilitators are experienced and have genuine interest in the process
- is a forum to find out about reparation possibilities
- six-week timeframe works well
- works best for low-level offending
- conference reports are helpful
- RJ and Diversion¹⁰ principles align
- can reduce re-offending when part of Diversion.



WEAKNESSES

- offenders are motivated by the sentencing discount, not genuine remorse
- process is dependent on an individual's willingness to engage
- there are some cases where it is not appropriate
- should not be mandated by legislation
- Police have limited knowledge due to lack of involvement with the service
- some police don't refer through Diversion, and are instead referring to Te Pae Oranga.¹¹



Only

36%

of Police surveyed indicated that they recommended or encouraged people to attend RJ more than 10 times in the last year.

In their words...



"Restorative justice brings it down to a community level – the level of the people. So discussions and feelings can be fleshed out, identified, and then looking to positively move forward."

"If there are victims involved then I like to have Restorative Justice involved wherever possible to hold offenders into account."

"Restorative Justice has gotten a bad rap with Police and victims as being a freebie for defendants to get a sentencing discount which motivates both to avoid Restorative Justice."

"When the (conferences) do occur I find they are not effective at creating solid tangible outcomes."

¹⁰Diversion is an 'out of court' process that was designed to provide first time offenders an alternative to receiving a conviction. Diversion occasionally includes RJ, where a police diversion officer explains the RJ process to the participants and makes a referral to the local service provider.

¹¹Te Pae Oranga are Iwi Community panels that deal with crime and prevent re-offending. Police partner with Iwi/Māori to deliver the panels using tikanga, kaupapa Māori and RJ practices. The principles of Te Pae Oranga are similar to RJ, with a focus on supporting participants who have offended, to help put things right.

What do the lawyers think about RJ?



STRENGTHS

- helps to lift an offender's burden by being able to apologise
- more valuable than just a sentence reduction
- easy for lawyers to understand
- easy for them to engage with local District Court.



WEAKNESSES

- not enough referrals progress to conference
- difficult to understand and navigate for participants
- more training needed for facilitators in regard to deciding the appropriateness of RJ
- facilitators can show bias against offenders or comment on an offender's plea
- case suitability should sit with court and the participants, not service providers or facilitators
- service providers do not explain why conferences don't go ahead.

In their words...



"As a lawyer, I want to stop my clients getting back in the system again. They need to hear and see the impact of their offending"

"It is too slow and ponderous. Justice delayed is justice denied."

"Facilitators sometimes don't have all the facts, are not legally qualified, and shouldn't determine which cases are suitable. Is the reason why Restorative Justice doesn't go ahead a reasonable, legitimate one?"

"Some facilitators are strict on lawyers not attending conferences. They should be able to attend without getting involved in the process, only as a support. It is important for lawyers to attend Restorative Justice events to enable them to better explain the process to their clients."

Barriers

The following section lists the common barriers that may prevent people from knowing about or taking part in RJ according to sector groups and participants.



Promotion

1. RJ is a relatively unknown concept

This could be a contributing factor why some participants do not take part in RJ.

"People may know the words but won't know what it is. They will have heard the term, but they wouldn't know about it." - judge

"I'd heard about restorative justice before, but I didn't really know anything about it." - participant (offender)

2. Participants rely on various sources to learn about RJ

There are multiple contact points for participants in the justice system when it comes to learning about RJ. This may contribute to a participant's confusion or misunderstanding of how the service is run.

Participants noted that they heard about RJ primarily through online searches, word of mouth or brochures.¹²

"I didn't know anything about it, so just googled it... there was some stuff on-line, but not a huge amount." - participant (victim)



Perception

3. There is a perception that RJ has more value to the offender

Some victims told us they didn't want to participate in the service because they hold a belief that the offender will receive a lighter sentence or a sentence discount.

"We face the constant battle of making defendants understand it's not only a discount in sentencing. It doesn't matter how many times their lawyers tell them that. It's very unfair on them, that they get that impression because it leaves them unprepared if they do attend for just how confronting it can be for them." - judge

"I was told by my lawyer I needed a glowing reference from Restorative Justice to help my case." - participant (offender)

"I think it shouldn't be part of sentencing. It should take place after sentencing has been done. Defendants are getting a discount for it, and this is a major motivation. If they were genuine about their remorse there would be something said prior to being charged, or shortly after being charged." - police

4. Influence of third parties

Each of the sector groups involved with the service have different understandings of what RJ is and who they believe will benefit from it.

"A lot of victims haven't had contact with the police before and their first contact is when a police officer tells them that the process will be crap. That's their impression of it. It happens a lot." - service provider manager

"I was pushed a lot by police to do this." - participant (victim)

¹²The Ministry has a brochure about RJ for participants, which can be supplied by court staff and service providers.



Emotional

5. Participants aren't always interested in taking part

Although cases are directed by the judiciary, RJ is a voluntary service, meaning that participants can choose whether they want to take part.

"I didn't really see any benefit for me. I'd already moved on... I didn't want to meet that person again... There was no good reason to put myself through it... why would I want to be vulnerable?" - participant (victim)

6. Not being emotionally prepared or fear of meeting with strangers

Feelings of stress and anxiety were reported by participants in both the lead up to, and attendance at, the conference.

Victims also reported being fearful of possible repercussions, concerned with unwanted contact from the offender, forms of backlash, being vulnerable, or being harmed further.

"On the day of the meeting [conference] I was terrified... shaking... I didn't want to get out of the car... I don't think it prepared me for coming face to face with him." - participant (victim)

7. Having the presence of a support person can be off-putting

Participants are required to have a support person in attendance for family violence conferences¹³. Service providers reported that participants can struggle with finding an appropriate support person to take to a conference.

Both victims and offenders reported that while they appreciated being able to bring a support person to the conference, there needs to be more clarity around the expectations of the role of the support person.

"We got there and his [support person] stood up and said she was going to talk on [victim's] behalf. It wasn't fair really, I thought I was going to talk to [victim], not [support person]. It really blindsided me." - participant (offender)

8. Perception that facilitators are not always impartial

Facilitators are required to be impartial, however lawyers and offenders both reported experiencing bias, scepticism, and prejudice against offenders during conferences. This can result in offenders discontinuing RJ after an initial meeting.

"I thought he [facilitator] was a real dick. The way he talked. He told me I needed to turn up for my own good, he kept calling me a silly sausage, he kept asking me the same questions, in a different way. It was really frustrating. I was just repeating myself. He made me feel really uncomfortable... was he trying to make me look stupid?" - participant (offender)



Timing

9. The timing of when RJ takes place is important

Having RJ positioned at the end of the court process can present issues for engagement. The court process is lengthy and there are frequent delays, so participants can feel reluctant to engage in a process that could extend their time in the justice system.

"Often people complain because someone has been charged a year ago and now I'm ringing them like nine months on and they are like thanks for bringing that up. You know, you've just rehashed all this trauma again." - kaupapa Māori service provider

10. The six-week timeframe for RJ to take place is unrealistic

When a case meets certain criteria they are referred to RJ. The case is then adjourned - usually for six weeks - for consideration of whether RJ is appropriate prior to sentencing. Service providers can feel pressured to complete meaningful engagement with participants, and still meet the time constraints set by the Ministry. Any delays to the process then impact court staff, who need to manage the changes to the adjournment and sentencing timeframes. We heard that this can be frustrating for the participants, court staff, lawyers and judiciary who are affected by the case progression.

"I'm not sure why it takes so long to set up a Restorative Justice conference, surely that timeframe could be pulled back? Delays add to the victim's anxiety." - court staff member

¹³Support people are mandatory for family violence cases and optional for standard cases.



Equity

11. Access barriers aren't always physical

The ability to access RJ is often determined by social equity barriers, such as poverty, income instability, disability, trauma and/or education levels. This can be pronounced for Māori participants who are over-represented in the justice, social, education and health systems.

I think equity starts from the judge - of who gets to access the service... They may not have had the opportunity to engage with education or employment... and when they stand in front of the judge they get judged on their appearance, how they speak, their command of the English language or another language, so it's not equitable at that first step. - service provider

12. Cost to attend

The cost of transport to the conference, having to be available during the day, finding suitable childcare, and taking leave from work are all financial barriers that prevent people from being able to take part.

"If they've got children in kindy, daycare and last minute they can't come to the meeting. I think just being flexible and you've got to show huge flexibility around those last minute things that crop up."
- service provider

13. The language can be off-putting

The language is full of legal jargon, which was hard for participants to understand at times. Labels are ill-fitting and did not represent how participants felt.

"I didn't feel like a 'victim'. I was just at the wrong place at the wrong time. Victim has such a negative connotation." - participant (victim)

"I didn't like being called a 'criminal'... it's such a harsh word, makes me sound like a nasty person... I'm not."
- participant (offender)

14. The location of the conference can be difficult to get right

Finding a neutral or culturally suitable location can be challenging for service providers.

"They came to my home... which is very personal. Meeting in a neutral environment would have felt more equitable." - participant (victim)



Administration

15. Contacting participants is difficult

For all sector agencies, contacting participants was recognised as a re-occurring problem and seemed to be a key reason for RJ not progressing further.

Participants may also have transient lifestyles, and there is a reliance on multiple parties (police, lawyers, court staff) to confirm the participant's correct contact details.

"Often by the time we get the papers from court, and by the time I ring them up, the phone's gone. They've got another phone, or they've lost that phone, or they've got no money on that phone. Getting in touch with people is a huge problem, and when we do get in touch maintaining contact is difficult, because they don't have anybody. They often live very transient lives and they're moving from house to house."
- service provider

16. Once RJ has finished, participants can feel abandoned

The RJ model is a short-term intervention, with service providers not funded to complete any after-care activities.

"[Facilitator] was a nice enough bloke and easy to deal with, but as soon as the meeting was over, he was done... wouldn't return my phone calls afterwards." - participant (victim)

17. RJ is not funded appropriately

RJ continues to have a limited scope and service providers are unable to address other issues in a participant's life that they may be struggling with because they are not funded for this.

"You [the Ministry] are wanting more for less... Everyone is tightening their purse since COVID-19. And people are having to dig within their own pockets." - service provider

18. The legislation can be a barrier

The judiciary are concerned the legislation can burden the service providers with 'inappropriate' referrals. Some of the service providers believe that the judiciary are not adhering to the Sentencing Act 2002 and are selecting what cases are referred.

"Some courts adhere to legislation Section 24 of the Sentencing Act, others do not. They are not being proactive in promoting Restorative Justice." - kaupapa Māori service providers

How can the RJ service be improved?

The sector recommendations have been categorised. Tier one represents recommendations that came through the strongest.

Tier one sector recommendations

Recommendation one: more information is needed for participants and general public

More information about RJ, that clarifies the process and better explains where it sits in the criminal justice system, needs to be available. More people would then know about the benefits of RJ, and incorrect or negative perceptions of the service may be reduced.

This could also include:

- greater clarity and communication around the role of the support person
- improved communication from service providers to help manage the expectations of participants
- more follow-up from facilitators once RJ has finished
- Ensuring victims do not feel pressured to participate.

*“There needs to be education on Restorative Justice in the community to get higher engagement.”
- court staff*

“It should be made clear that they don’t need to communicate or go through the Restorative Justice process if they don’t want to. That it is an option.” - police

Recommendation two: flexible timing of RJ so it can be explored earlier in proceedings or as a post-sentencing option

This means RJ would go ahead when participants are ready and willing, irrespective of court timeframes. This may lead to greater uptake from participants.

“Restorative Justice needs to be canvassed early with victims if they want to be involved. Having every case referred is a waste of court time and resources and only creates a back log for cases that actually want to go to conference.” - court staff

Tier two sector recommendations

Recommendation three: education and training opportunities for agencies involved with RJ to help increase promotion and uptake

There is an opportunity to work with the sector (such as lawyers, court staff and Police) to promote the service and enhance participants’ understanding of RJ. Police also recommended specific training in regard to Police using RJ as a part of Diversion.

“I don’t know if there is any scope for a campaign, whether that be advertising or something around Restorative Justice. There’s such an information gap around it, people haven’t heard or it [RJ] or they have heard about it but it’s something else.” - service provider

Recommendation four: increased funding and resourcing for service providers

Additional funding is needed to allow for a more flexible RJ model. This would allow for things such as:

- multiple pre-conferences to take place
- referrals for wrap-around service provision
- conferences to be tailored to participants with more culturally tailored and marae-based RJ
- exploration of post-sentence RJ
- the profile of RJ to improve.

“A little more pay would help those who would like to be in restorative justice as a full-time profession. At the moment, those of us who are able to facilitate are doing it in addition to our daily job.” - service provider

Recommendation five: a regular presence of service providers at court

This would mean information could be shared from the court in a timely manner with service providers. The service providers themselves may find it easier to contact participants, and they could encourage participation as a result of being more involved in the earlier stages of the court process.

“Courts could work more closely with the Restorative Justice provider groups so that communication is improved this would help delays when there is a difficulty getting information.” - lawyer

Recommendation six: tailoring of RJ conferences to meet participant needs

This could include things like:

- being flexible with the location, timing, and method of engagement
- giving participants more say in how the conference is run
- reimbursing participant expenses (such as time off work, travel, and childcare) to attend RJ
- an increase in the knowledge of tikanga Māori for all facilitators, so that they can facilitate conferences for Māori and non-Māori participants.

“There will always be that tension when you have two cultures coming together. A tailored approach (which would require more resources overall) is needed so that Restorative Justice can tailor their approach around who the participants are, what type of offending is involved, and what type of conference is appropriate.” - judge

Recommendation seven: provision for ongoing professional development of facilitators

Increase facilitator capability so they are equipped to deal with all people, particularly when taking on cases with family violence and sexual offending dynamics. This could also include:

- ongoing training and professional development opportunities
- developing career pathways and improved remuneration for facilitators
- culturally diverse training across a range of ethnicities
- practical learning that better represents ‘real life’ situations, such as cases involving death or gang violence.

“It’s only as good as the personnel who are the co-ordinators and who undertake the conferences. They need to be the right people, with the right training.” - judge

Recommendation eight: transparency on why RJ may not go ahead

This would mean service providers pass on more information to judges and lawyers about their reason for not progressing to conference. This would need to consider the privacy concerns of victims, however it would help the judiciary and lawyers to understand why a conference may not be appropriate, and whether RJ could be explored at a later date.

“When we get reports along the lines of ‘it’s not appropriate at this time’. It may be appropriate at some future time. Given the bigger picture of what we are trying to achieve (a more harmonious future) it would be useful to see that issue explored in more detail.” - judge

Tier three sector recommendations

Recommendation nine: the Practice Standards need to be reviewed and simplified

The Practice Standards for family violence cases are viewed as unnecessarily complex, particularly the risk assessment component. The risk and safety assessment involves a large amount of paperwork that can feel repetitive for participants, particularly if they are working with another community organisation (such as a family violence service provider).

More flexible requirements are needed, for instance not requiring both participants to have a mandatory support person present at conferences, and/or replacing individual safety plans with whānau safety plans.

“It’s not something I take much of an effort to read, now that I’ve done the training. I look at the Family Violence standards from time to time but, they haven’t changed in a while. They are long.” - service provider

Recommendation ten: improving family violence training for facilitators

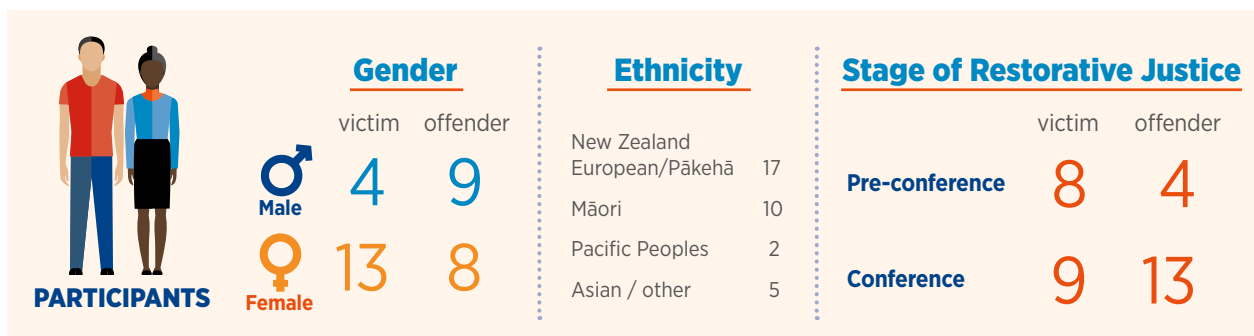
The family violence training is considered to be outdated. More specialist family violence training is needed given the complexity and nature of those cases.

“I think with family violence, ongoing training is really important. Sometimes it’s just an acknowledgment that you’re doing the right thing, but then other times you learn from just talking to people.” - service provider

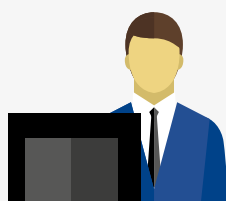
Appendix one: Who did we engage with?

Taking part in the review was voluntary. As a result, the information presented will not be representative of all those within a particular group.

Those that took part in the review were provided with an information sheet about the project and were required to provide consent prior to taking part in any interviews or discussions.



There were 10 interviews with 24 court staff. Interviewees were grouped by court location. The interviewees were a mix of:



COURT STAFF

- 7 court victim advisors
- 8 service delivery managers
- 9 court registry officers (including one High Court staff member)

the survey had 19 court staff respondents made up of:

- 4 court victim advisors
- 3 service managers
- 11 court registry officers.

Although these are distinct roles, we have used 'court staff' to refer to the above group when referencing common themes and quotes.



JUDICIARY

9 District Court judges and 2 High Court judges, from across New Zealand.



KAUPAPA MĀORI SERVICE PROVIDERS

There were seven interviews with representatives from kaupapa Māori service providers. A total of 17 people were interviewed. The interviewees were a mix of:

- 10 managers
- 6 facilitators
- 1 kaumātua.

Kaupapa Māori service providers were also invited to respond to the survey. As the responses were anonymised, they have been captured as part of the 'service providers' response (page 18).

Across 10 providers, the following people were interviewed:

10 provider managers, and

18 facilitators

Service providers that were interviewed all currently deliver RJ. Interviews were also held with representatives from the organisations that support the delivery of RJ across the country.

The online survey had 140 respondents that classified themselves as a 'service provider'.

Survey respondents that were categorised as 'service providers' included:

- **service provider managers**
- **facilitators**
- **co-ordinators**
- **board members**
- **Victim Support New Zealand staff**
- **service providers that deliver family violence services, including managers and facilitators**
- **'other' including survivor/victim specialist, clinical leader, governance practice leader and harmful behaviour specialist.**



Interviews were held with **10 police** from the Police Prosecutions team, located across New Zealand.

The survey had 25 police respondents. Survey respondents included police prosecution officers, diversion officers and any other interested New Zealand Police employee involved with RJ.



The survey had 95 respondents who were lawyers from across New Zealand. Of these:

19% lawyers who responded to the survey represented victims

70% represented offenders

11% represented both.

A focus group was held in early 2022 with representatives from the Auckland District Law Society (ADLS). All representative bodies for lawyers were approached to take part in the focus group. ADLS were the only group that took part.

Infographic data sources

The data sources for 'Snapshot of the current landscape of RJ service' on pages 10 to 11 are:

- the Resolution Management System (RMS). RMS is a reporting system used by RJ service providers and the Ministry. It is a live database which is subject to change as the data is updated and/or recoded
- the victim satisfaction rate referenced was taken from the RJ Satisfaction Survey Report, September 2021.

Caveats:

- all data sourced from RMS is from the 2021/2022 financial year (1 July 2021 to 30 June 2022) and was extracted on 6 September 2022
- 'other' is a category reported by service providers when the reason for closing a case is not available in RMS
- for the "Top Offences that lead to RJ" section of the infographic - where an individual may have multiple offence per person, only the most serious offence category is counted. This is based on data entered into RMS by service providers
- the average duration for a case to be completed was calculated by using the time-frame between the date that referral documents were received by the service provider, to the date the RJ conference report is filed with the court (as the closing date)
- the "case status" statistics referenced in the infographic (17% referrals closed without making contact with participants) represent the status of closed cases at the end of the 2021/2022 financial year. Cases that were canceled or still 'open' in RMS have not been included
- the reference to 1,296 includes cases where more than one conference (per case) has taken place.

Definitions

Adult Diversion Scheme – refers to the Diversion scheme operated and administered by the New Zealand Police (as described in the New Zealand Police Adult Diversion Scheme Policy, 2022)

Court staff – refers to the personnel who work at the court, including Senior Courts (High Court, Court of Appeal and Supreme Court) and the District Court. For the purpose of this report, ‘court staff’ collectively referred to service managers, court registry officers and victim advisors.

Conference – An RJ meeting between an offender and victim, which is conducted by a facilitator.

Conference report – a report submitted by the service provider to the court or Police Diversion Officer on a conference and its outcome. Service providers are required to offer the participants a copy of the final conference report and provide the report if requested.

Direction – when a judge refers a case to RJ if it meets certain legislative criteria.

Family violence – violence against a person by any other person with whom that person is, or has been, in a family relationship (as defined in the Family Violence Act 2018)

Facilitator – a representative of the service provider who is trained to facilitate RJ pre-conferences and conferences.

Māori business – For the purpose of the review, we applied the Government’s progressive procurement policy ‘Māori business’ definition. This defines Māori businesses as one that has at least 50% Māori ownership, or is a Māori Authority as defined by the Inland Revenue Department.

Offender – a person who has been convicted of an offence or who has pleaded guilty.

Participants – people who are involved in a RJ process including the victim, offender, support people and professionals.

Police diversion officer – a member of the New Zealand Police who assists in the operation of the Adult Diversion Scheme.

Pre-conference – a meeting between the facilitator and separate participants and their support people. Informed consent is gained, and an assessment on whether it is appropriate to proceed to conference is made by the facilitator.

Restorative Justice Practice Framework – means the documented Practice Standards, whakataukī, values and principles published by the Ministry that set out a common approach for RJ funded by the Ministry that is required to be applied in Standard cases.

Restorative Justice Practice Standards for Family Violence Cases – means the documented Practice Standards, whakataukī, values and principles published by the Ministry that set out a common approach for RJ funded by the Ministry that is required to be applied in family violence cases.

Service provider – an organisation contracted by the Ministry to deliver adult pre-sentence RJ services.

Standard case – means a referral that involves offending that is not Family Violence case or Sexual Offending case.

Referral – a case referred by the court, or Police Diversion Officer in writing, to the service provider.

Sexual offending case – means a referral to RJ involving:

- (a) offending of a sexual nature
- (b) an attempt to commit an offence described in (a) above
- (c) a conspiracy to commit an offence described in (a) above
- (d) being a party to an offence described in (a) above
- (e) an offender charged with being an accessory after the fact in relation to an offence described in (a) above.

Support people – whoever the participants have invited to support them through the RJ process, and whose involvement or presence has been agreed to by the facilitator and other participants. Examples include family and whānau, friends or community support person.

Victim – a person against whom an offence has been committed or who suffers physical injury, or loss or damage to property as a result of an offence (as defined in the Victims’ Rights Act 2002).



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