



RESTORATIVE JUSTICE

PRACTICE STANDARDS FOR FAMILY VIOLENCE CASES






He aha te mea nui o tea ao?

He tangata, he tangata,
he tangata

**What is the most important
thing in the world?**

It is people, it is people,
it is people



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Issues of the Restorative Justice Family Violence Practice Standards

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INTRODUCTION

What is restorative justice?

Restorative justice is a community-based response to crime that aims to hold offenders to account for their offending and, as far as possible, repair the harm they've done to the victim and the community.

Participation in restorative justice is voluntary and involves a facilitated meeting between the victim and offender.

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. During the 1990s, similar principles and practices were applied on an ad hoc basis to cases involving adult offenders. However, it wasn't 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 3 Acts:

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

An amendment to the Sentencing Act in 2014 provides further support to the use of restorative justice in the criminal justice system. It requires all cases that meet certain criteria to be adjourned for consideration of whether restorative justice is appropriate prior to sentencing.

Although restorative justice processes can operate in a variety of ways at different stages in the criminal justice system, pre-sentence conferencing of referrals from the District Court and the Police Adult Diversion Scheme are the most common in New Zealand.

Purpose of the family violence practice standards

To establish a common approach that ensures safe, consistent and robust restorative justice practice in New Zealand.

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

Where a restorative justice process does take place, these new standards recognise the additional safeguards and processes needed to deal with the case safely, consistently, and robustly.

Approach taken to develop the standards

These standards build on the work done by the Ministry and providers in 2013. They reflect the content and 'look and feel' of the new Restorative Justice Practice Framework, the work that has been done by the Government's Ministerial Group on Family Violence and Sexual Violence, and the recommendations in the Family Violence Death Review Committee's Fifth Report.

Reflects the restorative justice practice framework

In April 2017 the Ministry of Justice published the Restorative Justice Practice Framework ('the framework') to replace the 2004 Restorative Justice Best Practice in New Zealand. The new framework articulates the whakataukī, values, and principles for restorative justice and was developed with providers and Restorative Practices Aotearoa.

Builds on the 2013 and 2018 family violence standards

The Restorative Justice Standards for Family Violence Cases was released in July 2013. They were released after considerable consultation with, and input from, restorative justice providers and facilitators.

In developing the new standards in 2018, careful consideration was given to ensuring they reflected the most up-to-date approaches to risk assessment and safety planning while building on the work carried out to develop the 2013 standards. The standards were published as a living document for one year in 2018. They were updated in 2019 to incorporate provider feedback following one year as a living document.

Informed by the cross-government family violence work

The Ministry of Justice is part of a cross-government work programme aimed at reducing the devastating impact that family violence and sexual violence have on people and communities across the country.

To update the family violence practice standards, strong links were made to the work carried out by the Ministerial Group on Family Violence and Sexual Violence to develop the Workforce Capability Framework and the Risk Assessment and Management Framework.

The Risk Assessment and Management Framework, in particular, is a key project that seeks to create a common framework that professionals who work with those affected by family violence can use to determine the risk of violence, and prevent it from recurring and becoming more serious.

Responds to the Family Violence Death Review Committee reports

The development of the Practice Standards for Family Violence Cases responds to the Family Violence Death Review Committee Fifth Report. In particular, accommodation has been made for the recommendations for identifying family violence earlier, and keeping victims safer with a joined-up, effective system.

Supports the restorative justice training and accreditation standards

The Practice Standards for Family Violence Cases align with the specialist endorsement for working with family violence that is part of the training and accreditation of facilitators.

Meets the Ministry outcome agreement

The Practice Standards for Family Violence Cases meets the description of services set out in the Outcome Agreement between the Ministry of Justice and restorative justice service providers.

Who are the family violence standards for?

These standards are for Ministry of Justice-funded restorative justice providers and facilitators when working with referrals involving family violence. The family violence standards must be followed by all facilitators in all family violence cases.

The standards focus only on the use of restorative justice processes pre-sentence, because these are the services that the Ministry of Justice purchases. However, the framework can be broadly applied to the use of restorative justice at any point in the criminal justice process.

How to use this document

INTRODUCTION – this part of the document introduces the new standards.

PRACTICE FRAMEWORK – an overview of the framework and its whakataukī, values, and principles for all restorative justice cases.

FAMILY VIOLENCE PRACTICE STANDARDS – the standards are the same whether the referral is for a standard restorative justice case or one involving family violence, but additional requirements have been added which providers and facilitators will need to demonstrate when working with family violence.

SERVICE DESIGN AND DELIVERY – this includes the background material necessary to design and deliver services for restorative justice for family violence referrals. It includes:

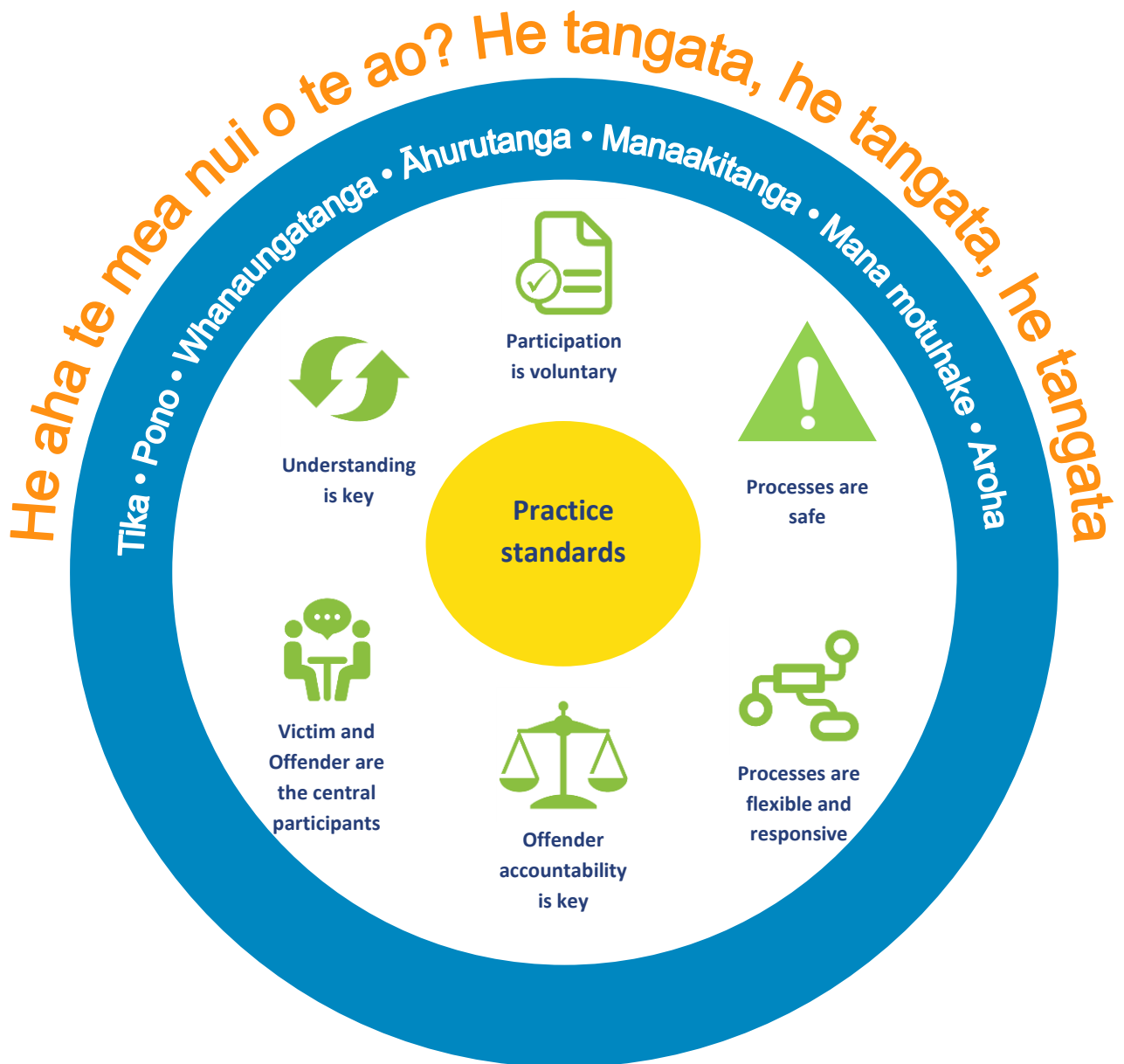
- *A common understanding of family violence* – a section to ensure providers and facilitators across the sector have a consistent and common understanding of family violence, risk factors, what defines ‘family’, the different forms of abuse that can take place, the effects of family violence on adult and child victims, and on parenting.

- *Risk assessment and management* – information for family violence-endorsed facilitators to carry out a comprehensive risk and safety assessment and identify and address safety and other needs.
- *Family violence in the community context* – to further provider and facilitator understanding of the context in which family violence occurs and the societal beliefs and values that can influence offenders, victims, participants, and providers.
- *Service design for family violence cases* – considerations providers should take into account when working with family violence cases. These are based on standard restorative justice processes, with an emphasis on support structures for those involved.

At the end of the document is **A QUICK REFERENCE TABLE** of the standards, the performance measures for standard cases, and the additional requirements for family violence cases.

PRACTICE FRAMEWORK

The restorative justice practice framework supports safe, consistent and robust restorative justice practice in New Zealand. The layers of the whakataukī, values, and principles wrap around the practice standards, and provide a foundation for facilitators to ensure restorative justice is safe for participants.



Te Tiriti o Waitangi

Te Tiriti o Waitangi, the Treaty of Waitangi, is the agreement New Zealand is built on. Signed by Māori chiefs and representatives of Queen Victoria at Waitangi in 1840, Te Tiriti is an agreement of how Māori and the Government of New Zealand will work together and the respect they will show each other.

The principles of Te Tiriti are reflected in the values, principles and standards of restorative justice practice in New Zealand. Collectively, the Ministry of Justice and restorative justice providers are committed to upholding the principles of Te Tiriti at all times.

Guiding whakatauki

He aha te mea nui o tea ao?

He tangata, he tangata,
he tangata

What is the most important thing in the world?

It is people, it is people,
it is people



Our values

Restorative justice practice is shaped by a number of core values. These values form the basis of what it means to be 'restorative'.



Tika

We do things in the right way

We do things 'with' people rather than 'to' or 'for' them. Restorative justice engages the people who have the problem, in solving the problem. By ensuring the people directly affected by the offence aren't treated as outsiders, restorative justice can achieve outcomes that other processes can't.



Pono

We're truthful, honest and sincere in our interactions with people

We are honest and have integrity in all that we do. Truthful speech is essential if justice is to be done. In restorative justice, truth entails more than clarifying the facts and establishing guilt within strict legal parameters; it requires people to speak openly and honestly about their experience of the offending, their feelings, and their moral responsibilities.



Whanaungatanga

We develop relationships and work together

We recognise that the restoration of social balance rests with the community, rather than individuals. Relationships between people are at the heart of restorative justice. While stressing individual freedom and accountability, restorative justice recognises the communal bonds that unite victim, offender and community.



Āhurutanga

We provide a place of warmth and safety

While restorative conversations can be difficult, we create safe spaces where people can express themselves without fear of being made to feel uncomfortable or unsafe on the basis of their race, culture, sexual orientation, gender, age, beliefs, status in society, or mental or physical ability. Children are taonga mokopuna, and we act in their best interests at all times. All people in a restorative justice conference have something valuable to contribute to the goals of the conference.



Manaakitanga

We show respect, generosity and care for others

We treat people respectfully, irrespective of who they are and where they come from. We build relationships between victims, offenders and communities through manaakitanga. The restorative justice process should uphold the mana and dignity of everyone present.



Mana motuhake

We enable people to achieve self-determination

All people require a degree of self-determination and autonomy in their lives. Restorative justice seeks to re-empower victims by giving them an active role in determining what their needs are and how these should be met. It also empowers offenders to take personal responsibility for their offending, to do what they can to remedy the harm they have inflicted, and to begin a rehabilitative and re-integrative process.



Aroha

We feel compassion, caring and empathy for others

No matter how severe the wrongdoing, we respond in ways that lend strength to those who are suffering and that promote healing and change.

Our principles

Six principles drive restorative justice practice, by guiding the activities and decisions of providers and facilitators. All providers and facilitators delivering restorative justice services should be familiar with these and their day-to-day decisions and actions should reflect them.



Participation is **VOLUNTARY** throughout the restorative justice process

Informed consent is always sought from participants, victims determine their own level of participation and all outcomes are arrived at voluntarily



The victim and the offender are the **CENTRAL PARTICIPANTS** in the restorative justice process

As the victim and offender are most affected by the offender's actions, they are the principal speakers and decision-makers at the conference



UNDERSTANDING is key to effective participation

Facilitators provide participants with high-quality information and work with them to ensure they know what to expect throughout the restorative justice process



Offender ACCOUNTABILITY is key to the restorative justice process

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



Restorative justice processes are FLEXIBLE AND RESPONSIVE to the needs of participants

Restorative justice processes can be tailored to meet the cultural, emotional, spiritual and health needs of participants



Restorative justice processes are SAFE for participants

Safety underpins all decisions made by facilitators and providers

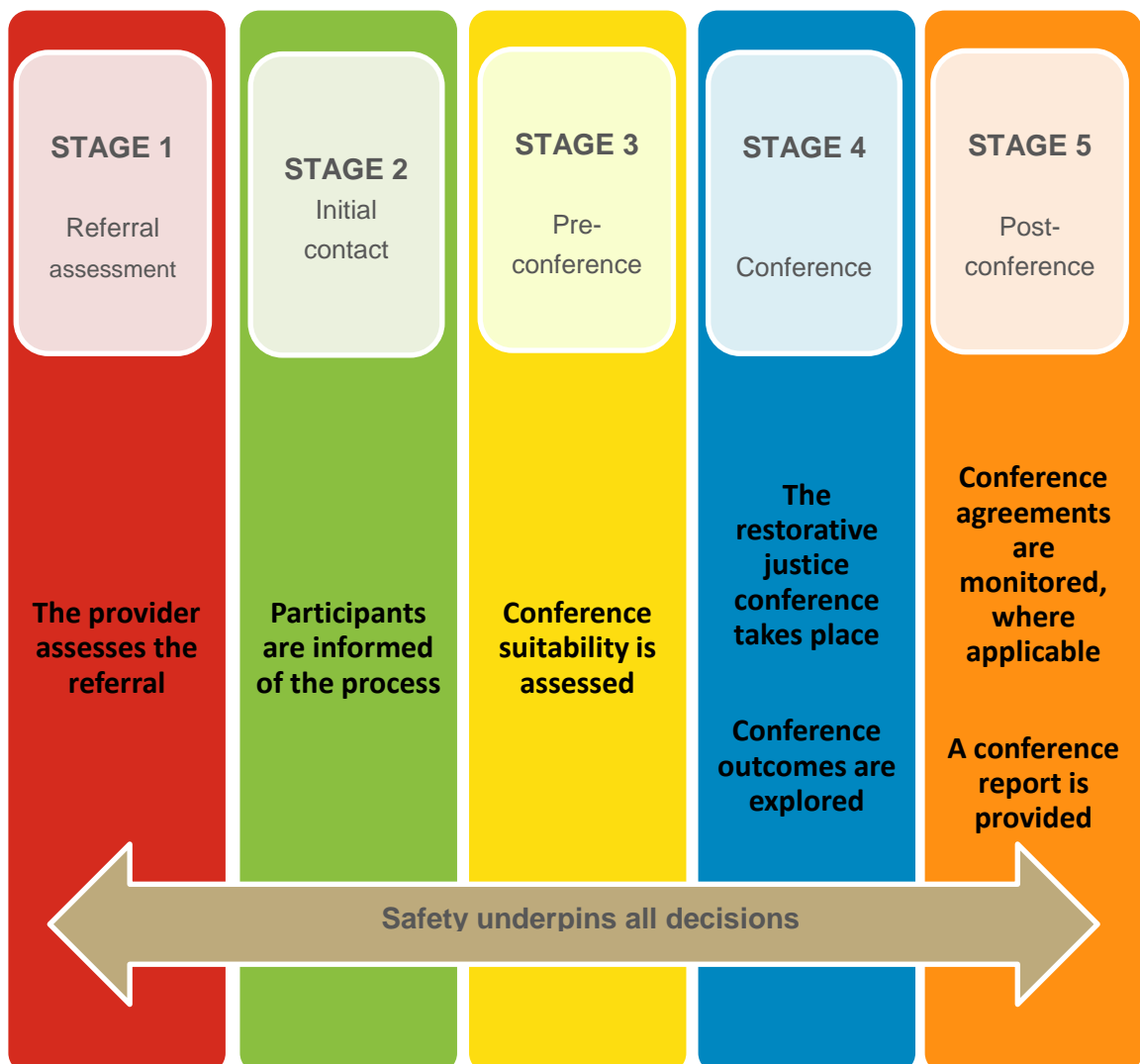
FAMILY VIOLENCE PRACTICE STANDARDS

The restorative justice practice standards are intended to support facilitators, providers and the Ministry of Justice in delivering restorative justice services. The whakataukī, values and principles are the basis of the standards. Ultimately, the purpose of the standards is to ensure that restorative justice services are safe, consistent and robust across New Zealand.

These family violence standards build on the core, generic standards and recognise the additional safeguards and processes needed when dealing with family violence. The standards must be applied to all referrals involving family violence.

While all standards must be met, providers and facilitators can adapt their processes on a case-by-case basis to meet the needs of the people involved.

The following graphic shows the stages of the process and the corresponding standards:



STAGE 1 Referral assessment

STANDARD 1 – The provider assesses the referral

The provider assesses if it's appropriate to begin the restorative justice process. The assessment should be based on whether:

- the provider has capacity to accept the case
- the offender has entered a guilty plea
- police and/or court information has been received (including participants' contact details and the summary of facts)
- documentation received as part of the referral indicates it would be appropriate to continue the restorative justice process.



FOR FAMILY VIOLENCE CASES, assessing whether it's appropriate to begin the restorative justice process must include:

- reviewing the offender's criminal history provided by the court
- where the primary victim is a child or young person, input from relevant child specialists is required.



FOR FAMILY VIOLENCE CASES, accepting a referral will also mean the provider being able to demonstrate:

- that it has established links with local community family violence specialist agencies
- a process for allocating referrals to accredited and family-violence endorsed facilitators.

STAGE 2 Initial contact

STANDARD 2 - Participants are informed of the process

The provider will get the informed consent from both the participants to proceed to the pre-conference stage¹. The provider will consider whether:

- the offender has acknowledged responsibility for the offence and is willing to hear about the harm done to the victim
- the offender is able and ready to engage safely and respectfully in the restorative justice process
- the victim is open to hearing more about the restorative justice process
- there are any reasons why it would be inappropriate to proceed.

If the victim is a child or young person, the facilitator must ensure they have a suitable support person throughout the restorative justice process, including attending the pre-conference and conference.

The provider will arrange the pre-conference meetings, including:

- encouraging attendance of suitable support people
- ascertaining any particular needs of the participants
- agreeing the venue, date and time.

FOR FAMILY VIOLENCE CASES, getting informed consent to proceed will also include the provider being assured:

- that the victim's willingness to attend is given free from the power and control tactics of the offender
- that the victim, including a child or young person who is the primary victim, understands they have the right to veto any participants.

FOR FAMILY VIOLENCE CASES, arranging pre-conference meetings will also include the provider explaining to participants that the presence of



¹ In exceptional circumstances, it may be appropriate to proceed to a pre-conference with a participant prior to contacting the other participant. These circumstances should be documented on the case file.

suitable support people is a requirement for family violence cases going through the restorative justice process.²

FOR FAMILY VIOLENCE CASES, children or young people under the age of 18 must never be used as support people.

² In exceptional circumstances, facilitators may use their professional judgement to allow a case to proceed. The rationale, risk, and mitigation for this decision must be documented in the conference risk management plan. There's no exception to the mandatory requirement where the primary victim is a child or young person.

STAGE 3 Pre-conference

STANDARD 3 - Conference suitability is assessed

The facilitator undertakes separate pre-conferences with the victim and offender, to assess suitability for a conference. There are 3 stages in the assessment process.

1. Participants, including the victim, offender and support people, must each give their informed consent that they will attend the conference. Informed consent is requested after:
 - all participants are given accurate information about the restorative justice process
 - the rules that will apply during the conference are explained to all participants and agreed to by them
 - privacy and confidentiality (and their limitations) are explained to all participants and agreed to by them
 - the facilitator encourages the victim and offender to bring support people to the conference³
 - providing information on how risk will be continually monitored
 - the facilitator being able to end a conference if there are any real or perceived threats to the safety of the victim or any other person.

If the victim is a child or young person, gaining informed consent will involve their caregivers, and providing an age appropriate level of information. It may be appropriate for a support person to represent the views of the child or young person on their behalf.
2. The facilitator then completes a conference risk assessment and documents a conference risk management plan that considers:
 - the suitability and capability of the participants, including emotional and health needs and any alcohol and other drug abuse
 - the victim's view of the offending and its impact



³ If the victim is a child or young person, the facilitator must ensure they have a suitable support person throughout the restorative justice process, including attending the pre-conference and conference

- the offender’s remorse and accountability
 - the offender’s ability to address the harm caused
 - any involvement of children and young people
 - the suitability of support people
 - the suitability of professionals.
3. Arranging the conference, including the needs of all participants, such as:
- cultural requirements
 - interpreter requirements
 - venues
 - timeframes.

The role and expectation of support people, professionals and observers, if they’re attending the conference, must be explained to and agreed with all participants.

FOR FAMILY VIOLENCE CASES:

Completing the conference risk assessment and documenting a risk management plan will also include:

- documenting a risk assessment with the victim which seeks to determine the likelihood they will experience future violence from the offender⁴
- documenting a risk assessment with the offender which seeks to determine the likelihood of their abusive behaviour recurring⁵
- a lethality/dangerousness assessment that looks for indicators that the offender is more likely to kill or severely injure the victim or any children⁶



⁴ See FV RJ: Victim risk and lethality assessment in the supporting resources

⁵ See FV RJ: Offender risk and lethality assessment

⁶ Lethality assessment is incorporated into the risk assessment supporting resources

- prioritising the views of victims as being best placed to identify risk
- formulating and documenting separate safety plans for both parties and any support people (if appropriate), including remedial actions and support to reduce actual or potential harm (where safety plans have been recently carried out by specialist providers, facilitators should review the plan and update it as required)⁷
- where the provider believes the safety of children may be at risk, the referral must be deferred until all safety and risk issues are addressed⁸
- linking participants to other family violence specialist services to minimise the risk of re-victimisation or threats of violence⁹
- screening potential support people to ensure the safety of all participants
- all documented conference risk management plans, risk assessments, lethality assessments and safety plans and any links made to other agencies should be kept on file¹⁰
- a decision to go to conference is made only when:
 - support is sufficient, screened as suitable, and accepted by both parties
 - the victim is free from the offender's coercive and controlling behaviours
 - the offender is engaged or engaging in specific programmes/actions
 - the risks of going to conference can be managed.

Where the decision is made to not proceed to conference, reporting to the court should be done in such a way that the victim isn't put at risk of re-victimisation.

⁷ See FV RJ: Safety plan for adult victims and FV RJ: Behaving safely plan for offenders resources

⁸ See FV RJ: Risk and danger response resource

⁹ See safety plan supporting resources for linking participant questions

¹⁰ See FV RJ: Case coversheet

STAGE 4 Conference

STANDARD 4 - The restorative justice conference takes place

The facilitator conducts the conference. The facilitator:

- reviews the conference risk management plan to ensure any unforeseen risk factors or incidents are assessed, mitigated, and documented in the plan
- assesses the safety of participants throughout the conference
- reinforces the conference's 'ground rules' with participants
- invites participants to discuss the offence, impacts and outcomes
- ensures that if an apology is offered as part of the conference –
 - the focus remains on victim safety and offender responsibility
 - that there is no expectation for the victim to accept the apology or forgive the behaviour
 - the apology is witnessed by the victim and others in the conference, including the offender's family or whānau and supporters.

FOR FAMILY VIOLENCE CASES, conducting the conference will also include the facilitator:

- recognising that risk is not static, and continually assessing for risk to inform decision making
- recognising that the victim is most at risk and in the best position to identify risk
- carrying out risk and lethality assessments where there is a significant change in the parties' circumstances or relationship, and updating safety planning as required
- allowing the victim the right to veto any particular participants
- involving an Oranga Tamariki (OT) case worker in planning and intervention if OT is already involved with a child/young person victim.



STANDARD 5 – Conference outcomes are explored

Conference outcomes must be:

- participant-driven
- understood by all participants

Where possible, conference agreements are SMART (specific, measurable, agreed, realistic and time-bound). Participants should agree on how the progress/completion of agreements will be monitored.

FOR FAMILY VIOLENCE CASES, there is an expectation that there will be agreed offender actions coming out of the restorative justice process. When there is no action, this is clearly outlined in the report to the judge.

The following proposals should be included as part of the conference agreements. That the provider will:

- contact the offender and relevant service providers to see if agreed agreements and attendance at programmes and services is occurring
- contact the victim (or through their support person) to report on offender progress with agreements.



STAGE 5 Post-conference

STANDARD 6 – Conference agreements are monitored, where applicable

The provider will undertake any monitoring agreed at the conference. The conference report will include all monitoring arrangements, specifically:

- what will be monitored
- who will do the monitoring
- how the monitoring will be done
- when the monitoring will end.

The provider will follow-up with participants after the conference, unless there are exceptional circumstances.

FOR FAMILY VIOLENCE CASES, monitoring conference agreements will also include the provider:

- recognising that risk isn't static, and continuing to assess for risk
- monitoring the agreed actions (including, where relevant, sharing information with the offender's programme/intervention provider)
- following up with the victim and offender
- having strategies in place to ensure monitoring will not put the victim at risk (for example, knowing what to do if the only accounts of the offender's change/lack of change is from the victim)
- primary victims who are children/young people must never be used as the only voice accounting for the offender's change
- updating safety planning/advice as required where there is a significant change in the parties' circumstances or relationship
- continuing to work collaboratively with other family violence specialist services to minimise the risk of re-victimisation/re-offending.



STANDARD 7 – A conference report is provided

The provider will ensure a report that is an accurate reflection of the conference is given to the court. The report must be of a high standard of spelling and grammar, and include:

- factual, relevant information
- a clear and logical order of events
- a summary of outcomes.

The provider must offer the victim and offender a copy of the final conference report, and provide the report if requested.

Where possible, the provider gives the court an update or progress report on the conference agreements before the offender is sentenced.

FOR FAMILY VIOLENCE CASES, the conference report must not include what was said by any participant during the pre-conference stage.



Underpinning the whole process

STANDARD 8 - Safety underpins all decisions

The provider will:

- contact the police or child protection agencies if there's a serious threat of harm, or where they reasonably believe a child or young person has been, or is likely to be harmed (whether physically, emotionally or sexually), ill-treated, abused, neglected or deprived
- ensure the best interests of children and young people underpin all decisions made
- undertake pre-conferences and conferences face-to-face¹¹
- use professional interpreters if required. If a facilitator decides to use a support person as an interpreter, the rationale and risk mitigation for this must be documented in the conference risk management plan. Children and young people must not be used as interpreters.



FOR FAMILY VIOLENCE CASES, there are significant additional safety considerations, steps, and processes. See for example:

- standard 2: screening potential support people as part of pre-conference
- standard 3: documenting risk assessments with the victim and offender; undertaking a lethality/dangerousness assessment; safety planning
- standard 4: continuing to assess for risk; carrying out new risk and lethality assessments where there is significant change (and updating safety plans accordingly)
- standard 6: continuing to assess for risk, and update safety plans as required; continuing to work with family violence specialist services.



¹¹ If there are **exceptional** circumstances, and the facilitator documents the rationale, risk and mitigation in the conference risk management plan, then:

- a pre-conference may be completed by phone or audio visual link
- a conference may be completed by audio visual link

SERVICE DESIGN AND DELIVERY

A common understanding of family violence

A common understanding of family violence,¹² how it can manifest in people who might present to professionals, and how to respond safely and effectively, allows all parts of the workforce to contribute to identifying and responding appropriately to family violence.

Understanding family violence

The dynamics of family violence are complex. Different understandings between practitioners in different 'parts' of the family violence system can reduce the effectiveness of actions practitioners may take. We know this lack of consistency contributes to poor and unsafe responses.

If intervention in family violence is to be effective, it's crucial that facilitators have a consistent and common understanding of the dynamics of family violence and how these present as risk factors. The basis for this understanding is provided in this section of the Practice Standards.

Attitudes to family violence

Violence in the home has, in the past, largely been seen as a private matter, the inference being it mainly involves people in dysfunctional relationships and is less serious than public violence. These attitudes still influence the way victims and perpetrators of family violence, and those around them, see themselves, and can inform the responses of social institutions and services which may:

- fail to acknowledge the seriousness of the violence, which might be a crime, and instead treat it as a 'problem' or 'relationship issue'
- give offenders an invitation to excuse or justify their behaviour
- individualise the 'problem' by ignoring the social, cultural, and historical contexts in which violence towards women, children, family and whānau occurs
- fail to use culturally inclusive principles and practices
- fail to focus on perpetrators stopping the violence or recognise how broader systems and attitudes collude with the offender and disempower victims and whānau

¹² This section is an extract from the Government's Family Violence Risk Assessment and Management Framework: A common approach to screening, assessing and managing risk. Focus Area 1: A common understanding. 2017. Wellington.

- inappropriately require the victim to take responsibility for the violence, blame the victim, minimise the harm, and expect the victim to address their own safety and that of their children.

Family relationships

Family violence is frequently grouped into 3 broad types: intimate partner violence (IPV), child abuse and neglect (CAN), and intrafamilial violence (IFV)¹³. Intrafamilial violence includes all forms of abuse between family members *other than* intimate partners or parents of their children, for example, elder abuse or sibling violence.

Relationships that may not immediately be thought of as 'family' relationships are included in the legal definition of 'domestic relationships'.¹⁴ For example, people who ordinarily share a household, such as flatmates, and people who share a close personal relationship, such as an elderly or disabled person and their carer. The Domestic Violence Act 1995 regards the nature, intensity, and duration of the relationship as key considerations in determining whether or not a relationship is 'domestic'.¹⁵

Family violence is different from other forms of violence. This difference stems from the complex emotional, social, economic, legal and cultural ties and obligations that exist among family members. These ties can make family violence particularly difficult to detect, report, and remedy.

Pathways to family violence vary, but violence and abuse is rarely limited to isolated instances. Family violence is usually an ongoing pattern of behaviour that controls, coerces, and causes victims to live in fear. If a victim has no access to money, or is isolated from all forms of support, it can strip them of any sense of autonomy and leave them without the ability to make their own choices about the relationship or its future.

The significance of any one particular episode can only be perceived when placed in the context of past abusive behaviours and the total effect these have on the victim. The cumulative effect of violence and trauma can have significant long-term implications for a victim's wellbeing.

Defining 'family'

Different communities have their own understanding of what constitutes family. These differences are recognised in the Domestic Violence Act 1995. The common defining factors of a family or whānau relationship is the degree of obligation and interdependency, and the level of autonomy each member can exercise over their own decisions and outcomes.

¹³ Family Violence Death Review Committee. 2014. Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

¹⁴ Domestic Violence Act 1995, section 4 *Meaning of domestic relationship*.

¹⁵ The Family and Whānau Violence Legislation Bill proposes continuing this definition, but under the heading of 'family' relationships, rather than the current 'domestic' relationships.

Gendered nature of family violence

Gender is a significant risk factor for victimisation and harm across all forms of family violence. The substantial majority of serious IPV is perpetrated by men against women. Young women are particularly vulnerable and their risk of becoming victims increases further if they have children. Women and men can experience IPV differently.

WOMEN	<ul style="list-style-type: none">• are more likely than men to experience severe physical and psychological harm• are far more likely to report experiencing severe harm as a result of IPV• report being significantly affected at twice the rate of male victims¹⁶
MEN	<ul style="list-style-type: none">• are significantly less likely to report violence against them• are significantly less likely, when they do report it, to have it taken seriously.

It's critical to consider the impact of gender as it applies to family violence cases, particularly in terms of the:

- ways that family violence is understood and explained
- actions taken to improve the safety and wellbeing of victims
- ways that practitioners work with men who perpetrate family violence.

Equally, there's a need to understand the many other factors that further disenfranchise people caught up in family violence such as racism, historical trauma, homophobia, and disability discrimination. People sit at the intersection of multiple hierarchies of disadvantage and privilege. The combination of gender, race and socio-economic status influences people's experiences of family violence in different ways.¹⁷

Forms of family violence

Not only physical violence

Family violence isn't only physical violence. It has a variety of different types or forms including those listed below. The categories described below are commonly used but aren't definitive. Some people control others in ways that don't fit these descriptions or that aren't, on the surface, violent, but they still deny the other person's right to autonomy and equality.

¹⁶ Gregg L, Morrison B, & Smith M. 2010. The New Zealand Crime and Safety Survey: 2009. Wellington: Ministry of Justice.

¹⁷ Family Violence Death Review Committee. 2016: p 48. Fifth Annual Report: January 2014 to December 2014. Wellington: Family Violence Death Review Committee.

People experiencing these types of abuse might see them as interchangeable, inseparable, or indistinguishable.

Psychological abuse

Psychological abuse has a legal definition in the Domestic Violence Act 1995 and includes intimidation, harassment, damage to property, threatening other forms of violence (physical, sexual or psychological), and financial and economic abuse. Psychologically abusing children also includes indirect abuse such as putting them at risk of seeing or hearing abuse of a family member.

Emotional abuse

Psychological abuse can also involve emotional abuse including behaviours such as playing mind games, manipulating someone by appealing to feelings of guilt, shame, and worthlessness, verbal putdowns and ridicule, non-verbal actions, such as withdrawal, refusal to communicate, and rude or dismissive gestures. Emotional abuse can be the most difficult form of abuse to identify.

Physical abuse

Physical abuse is any attack on another person's physical safety and bodily integrity: from hitting, kicking, strangling, burning, punching and assault with weapons through to murder. It includes physically harming children.

Sexual abuse

Sexual abuse is any actual or threatened sexual contact with someone without their consent, such as unwanted touching, exposure of genitals, making someone engage in a sexual act or view pornography against their will, and rape. An expectation of sex from another person after using violence is a form of sexual violence as the victim is unable to withhold consent for fear of further violence.

While some forms of sexual violence are criminal acts – for example, sexual assault and rape – other forms, such as using degrading language, are not.

Online abuse

Online abuse takes advantage of new technologies to stalk, harass, or intimidate someone and includes behaviours such as carrying out social media smear campaigns, tracking someone using technology, and sending unwanted explicit photos or messages or posting explicit pictures online of someone without their consent. These behaviours might be captured by the definitions of emotional, psychological, or sexual abuse, but may also be captured as a prohibited activity by the Harmful Digital Communications Act.

Financial abuse

Financial abuse includes not giving someone access to their share of the family's resources; expecting them to manage the household on an impossibly small amount of money and/or criticising or blaming them when they're unable to; monitoring their spending; and incurring debts in their name. It could also include preventing or restricting employment opportunities or access to education.

Social abuse

Social abuse is behaviour that limits, controls or interferes with another person's social activities or relationships with others, such as controlling/monitoring their movements and social contacts, isolating them or denying them access to families and friends. This might include a situation like a man frequently 'losing' the car keys or being late to look after the children when his ex/partner wants to do something he disapproves of.

Spiritual abuse

Spiritual abuse is any behaviour that denigrates a person's religious or spiritual beliefs or prevents them from attending religious gatherings or practicing their faith. It also includes harming or threatening to harm people using religious or occult rituals, or forcing them to participate in religious activities against their will.

The effects of family violence on victims

Family violence has short and long-term physical, emotional, psychological, financial and other effects on victims. Every victim is different and the individual and cumulative impact of each episode of violence depends on many complex factors. While each person will experience family violence uniquely, there are common effects of living with violence and living in fear.

The obvious physical effects of family violence are physical injury or death. Other effects on a victim's physical health include insomnia, chronic pain, reproductive health problems and post-traumatic stress disorder that are not necessarily the result of physical injuries. Women victims also have higher rates of miscarriage, and pregnancy is often a time when family violence begins or gets worse.

Cognitive effects of family violence include poor concentrations, confusion and intrusive thoughts or flashbacks about traumatic experiences. Victims are more likely to experience depression, panic, phobia, anxiety, sleep disorders, eating disorders and emotional problems. They have higher stress levels and are at greater risk of using minor tranquilisers and painkillers, abusing alcohol and other drugs, and attempting suicide.

Victims often can't act on their own choices because of physical restraint, fear and intimidation. Tactics used by perpetrators restrict the freedoms of victims, trapping them in the relationship through fear, isolation, guilt, and/or family obligations. Victims are frequently silenced and unable to express their point of view or experience. They often make the abuser's needs and feelings the constant focus of their attention as a survival strategy, and avoid asserting themselves at all costs. Some may live with the constant fear of further violation.

One of the most insidious effects of family violence is the damage it can do to a victim's perceptions over time – they often lose confidence in their own perception of reality. Some become habituated to their partner's behaviour, seeing it as normal or as something they deserve. This can lead victims to ignore or play down the violence. However, the behaviour is still violent or controlling, even if the victim doesn't recognise this. It's also still violent or controlling if victims manage to defend themselves and avoid some of the intended effects.

People experiencing violence are often socially isolated, including from their extended family and whānau. This isolation can be due to the abuser's controlling behaviour or the level of stress,

anxiety, shame, physical exhaustion, substance abuse, physical injuries and fear experienced by the victim.

Watching the effects of family violence on their children can be very damaging for a victim. Their ability to parent can be affected by the physical, emotional, and cognitive effects of family violence and the abuser's attempts to undermine their confidence. They may feel they are, or they may be, unable to protect their children.

The effects of family violence on children and young people

Family violence, particularly intimate partner violence, has considerable overlap with child abuse and neglect. Children can be both the direct victims of violence and indirect victims – witnessing or hearing violence against others, most likely a parent. Both forms of abuse have serious negative psychological and developmental consequences for children.¹⁸ Children exposed to family violence are at greater risk of poor life outcomes, including becoming perpetrators or victims of family violence as adults.¹⁹

Children and young people don't have to be physically present during family violence events to be negatively affected by it. Exposure to family violence can take the form of witnessing it, hearing it (for example, being in another room in the house), being aware of it, being used or blamed as a trigger for the violence, or seeing the consequences of it.

'More than two decades of international research definitively shows that infants, children and adolescents experience serious negative psychological, emotional, social, and developmental impacts to their wellbeing from the traumatic ongoing experiences of domestic violence.'²⁰

These impacts are often cumulative, and compound over time. Research also shows that family violence affects unborn children – it often starts or intensifies during pregnancy and is associated with increased rates of miscarriage, low birth weight, premature birth, foetal injury and foetal death²¹. Exposure to family violence doesn't pre-determine outcomes for children but it does influence them significantly – particularly when the exposure is in a child's early years. This is

¹⁸ Bagshaw D. & Brown T 2010. *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post 2006*. Canberra: Department of Attorney-General.

¹⁹ Families Commission and the New Zealand Family Violence Clearinghouse (June 5, 2013). *Children, child maltreatment and intimate partner violence: Research, policy and practice conference*. See: <https://nzfvc.or.nz/conference-2013>.

²⁰ Australian Domestic and Family Violence Clearinghouse. 2011. *The impact of domestic violence on children: A literature review*. Sydney: University of New South Wales.

²¹ Humphreys C, & Kiraly M. 2009. *Baby on Board: Report of the Infants in Care and Family Contact Research Project*. Melbourne. University of Melbourne.

partly because of the complex neuropsychological impacts of compromised attachment, and living in a state of heightened fear.²²

Infants and young children exposed to family violence are more likely to miss key developmental experiences. Because these milestones are foundational, this can have a cascading effect on their developmental progress.

The effects of family violence are different for every child and are mediated or filtered by other factors such as poverty or marginalisation on the basis of culture or race. The secondary effects of violence – for example, unstable housing, lack of access to education, poor access to ante- and post-natal care – can also have a significant impact on a child's safety and wellbeing.

Children's anger at the abused parents tend to increase with age. Older children and adolescents commonly see the abused parent as causing or being complicit in the violence or they blame the abused parent for 'failing' to protect them or not taking them away from the abusive situation.

As well as being at risk of severe physical injury and death at the hands of family members, children manifest physical symptoms of stress or distress – for example, bedwetting, stomach upsets, headaches and chronic illnesses. The immediate emotional effects of experiencing family violence tend to differ with age.²³ However, children demonstrate and articulate the impact of family violence in a wide range of behaviours and responses.

Understanding childhood abuse and neglect in a family violence context

Estimates put children who have witnessed IPV and who have also suffered childhood abuse and neglect (CAN) at 57%, compared to 11% for those who had not witnessed IPV.²⁴ Given this overlap, the Family Violence Death Review Committee asks that responses to child protection be placed in the context of family violence, with the understanding that:²⁵

- childhood abuse and neglect has a cumulative negative effect on a child's wellbeing and development
- we need to reframe our response to victims so we take a holistic response to trauma, abuse and wellbeing
- the decision to abuse a parent is a harmful parenting decision by the abuser and affects the adult victim's parenting ability/confidence

²² Perry B. 2002. Childhood experience and the expression of genetic potential: What childhood neglect tells us about nature and nurture. *Brain & Mind* 3: 79-100.

²³ Department of Attorney-General and Justice. 2012. *Towards Safe Families, A practice guide for men's domestic violence behaviour change programs*. Sydney: Department of Attorney-General and Justice, NSW.

²⁴ The National Survey of Children's Exposure to Violence I, 1990-2008 [United States] (ICPSR 35203).

²⁵ Family Violence Death Review Committee. 2016: Fifth Annual Report: January 2014 to December 2014. Wellington: Family Violence Death Review Committee.

- intergenerational harm has a negative impact on both adult and child victims, and requires an intergenerational response
- engaging with the abusive partner, challenging them to take responsibility for their behaviour, and supporting them to sustain behaviour changes is an effective path to prevent family violence recurring
- victim safety is dependent on taking collective action to stop the abusive behaviour and provide wrap-around support for all victims.

The effects of family violence on parenting

Understanding the effects of family violence on victims' and offenders' parenting and, just as importantly, on other people's perceptions of their parenting, is critical for any work to address a child's safety and wellbeing.

An abused person's parenting capacity might be undermined by the effects of violence, such as depression, anxiety or substance abuse. However, other less direct impacts of violence might be equally or even more detrimental. For example, being belittled or humiliated in front of a child can undermine the authority needed to parent confidently; needing to prioritise their own and their children's survival might make it difficult to provide the intensive involvement and engagement a distressed child needs.²⁶

Conversely, with resilience, many people continue to parent their children well under adverse circumstances. For some, their form of resistance to the violence is to live 'as normal' a life as possible.

Parenting by women victims of intimate partner violence

Restorative justice facilitators working with family violence cases have a responsibility to be cautious and respectful in how they discuss a victim's parenting and its impact on children.

Family violence can have significant impacts on a mother's ability to parent her children. It can reduce her ability to be emotionally available. It can undermine her ability to provide a safe and predictable environment for the children. In some cases, mothers may resort to physical discipline to protect their children from worse physical discipline from their father.

Women are often regarded as having primary – and sometimes exclusive – responsibility for children's health, wellbeing and developmental outcomes. This creates a social expectation that women will take responsibility for their children's exposure to violence. Failing to challenge and address an offender's behaviour and a victim's safety and recovery needs, may mean an opportunity is lost to support a mother to create a stable and safe home environment for her children.

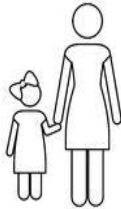
²⁶ *Cumulative harm: a conceptual overview*. Melbourne: 2007: Department of Human Services.

Children and mothers at risk

Men who abuse women are more likely to abuse children too – at approximately 7 times the rate of physical abuse than other men and at 6 times the rate for sexual abuse.²⁷

A wide-ranging literature review on women's parenting in the context of family violence identified several key themes and issues in the violence that fathers use against their partners and children.²⁸

TACTICS USED TO UNDERMINE WOMEN'S PARENTING INCLUDE:



- taking advantage of a woman's self-identity and identity as a mother to attack her confidence as a mother and undermine her relationship with her children
- preventing a woman attending to her baby, insulting her in front of her children, depriving her of sleep, dominating her attention and time so she has little of either to spend with her children, or otherwise making her physically or psychologically unavailable to parent
- using persuasive power and influence to induce children into abusing and belittling their mother
- repeatedly denigrating a woman's character and sense of worth with the effect of lessening the child's regard or respect for her
- undermining a woman's sense of parental authority by portraying her as incompetent and manipulating her ability to apply her parenting skills
- involving children in his acts of violence against his partner – for example by making the children witness the violence – as a means of deliberately adding to a woman's distress and trauma
- exercising control over conception and pregnancy (using rape, other forms of sexual coercion, and manipulating the use of contraception).

Children's relationships with a perpetrator father

The Safe & Together model seeks to shift our thinking about perpetrator fathers so they are held to the same parenting standards as mothers. This strengthens the safety and wellbeing of children by

²⁷ Bancroft, L. 2007. *Assessing and monitoring programs for men who abuse women*. lundybancroft.com/articles/assessing-and-monitoring-programs-for-men-who-abuse-women/ (accessed 10 November 2016).

²⁸ 'Bad Mothers and Invisible Fathers' Parenting in the context of domestic violence. Melbourne: 2009: Domestic Violence Resource Centre.

making it clear that it's the behaviour of the perpetrator that is putting the child at risk of being a direct or indirect victim of family violence.²⁹

Attitudes towards children

Children can be an important motivating factor for some men to seek help to stop their use of violence, but there's a need to be cautious about violent men's claims about the relationships they have with the children in their lives.

Research reviews found that men's construction of love and care for their children is based largely on the men's own needs and not the children's, and the children are presented as a possession or an 'investment' of the man.³⁰ They found that men tended not to acknowledge the impact of their use of family violence on their children.

Among perpetrators of family violence, there is a continuum of practice regarding optimal parenting. Research has found that the parenting styles of men who perpetrate violence are often authoritarian, inconsistent, manipulative, and self-centred with unrealistic expectations of the child's behaviour.³¹

Violence against a same-sex, transgendered, or intersex partner

International studies on the prevalence of family violence in LGBTIQ relationships indicate that rates are similar to those perpetrated by men against women in heterosexual relationships.³²

Although the effects of violence are similar for all those who experience it, there are some additional tactics of violence that have particular power because of homophobia and transphobia:

- threats to reveal sexual orientation, transgender, or intersex to a person's friends, colleagues, family or people in positions of power (for example, landlords)
- homophobic or transphobic insults
- playing down or denying family violence by saying it only happens in heterosexual relationships
- telling the person that support services are homophobic or only for female victims

²⁹ Safe & Together™. David Mandell & Associates, LLC. See: <http://endingviolence.com/our-programs/safe-together/safe-together-overview/characteristics-of-the-safe-and-together-model-suite-of-tools-and-interventions/>

³⁰ Hunt, M. 2010. Men, Family Violence and Parenting: A Program Analysis. A research paper submitted in partial fulfilment of the requirement for the degree of Master of Social Work. Caulfield: Monash University.
Bancroft, L. 2003. Why does he do that? Inside the minds of angry and controlling men. New York: Berkley Books.

³¹ Bancroft, L. 2002. The batterer as a parent. *Synergy*. 6(1): 6-8.

³² Brown, C. 2008. Gender-Role Implications on Same-Sex Intimate Partner Abuse. *Journal of Family Violence* 23: 457-462.

- attempting to normalise the violence by saying it's a feature of LGBTIQ relationships and lifestyles
- ridiculing or disrespecting a partner's gender identity or intersex, or using inappropriate pronouns
- withholding or threatening to restrict access to hormones, medications, medical treatment or support services.

Providers should commit to developing LGBTIQ-related capabilities and knowledge so they can communicate, engage, and practice in a way that respects sex, sexuality, and gender diversity.

Intergenerational violence

Intergenerational violence is a pattern of violence, abuse, and/or neglect that's repeated from one generation to the next in a family. In 2014, the government specifically recognised the problem of intergenerational violence in announcing an all-of-government approach to break the cycle of family violence.³³ The Associate Minister of Social Development stated:

We know that children who are exposed to family violence in their childhood are at greater risk of becoming perpetrators and victims of family violence in their adulthood – perpetrating the cycle. So we must work together to break the cycle.

In its review of family violence-related deaths in New Zealand between 2009 and 2012, the Family Violence Death Review Committee (FVDRC) noted a number of victims and perpetrators had experienced multiple forms of abuse as children. Victims had also frequently been abused in prior relationships and carried the effects of trauma into subsequent relationships.

Children living in families where family violence is occurring are frequently at heightened risk of physical harm from the perpetrator. In the FVDRC's 4 regional reviews where fatal injuries had been inflicted on children, all the abusive stepfathers had police-recorded histories of alleged abuse inflicted on multiple previous partners and/or physical abuse against children.³⁴ Fatal child abuse most frequently occurs in the context of family violence that's intergenerational in nature.

The overrepresentation of Māori in family violence deaths was of significant concern to the FVDRC, and its regional reviews revealed patterns of normalisation of violence within whānau. Māori women are especially vulnerable to the effects of family violence as they're often dealing with serious levels of victimisation and social entrapment, extreme economic deprivation, and high

³³ Turia, T. 2014. Breaking the family violence cycle. beehive.govt.nz/release/breaking-family-violence-cycle.

³⁴ Family Violence Death Review Committee. 2014. Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

levels of historical and intergenerational trauma. This affects the victim and their children (including the unborn), extended family and whānau, and support networks.³⁵

Māori men, including perpetrators of family violence, can also be victims of historical and intergenerational trauma. Most men who use violence have themselves been exposed to abuse and neglect in childhood with a continuum of exposure to violence into adulthood.³⁶ Trauma remains embedded in the whānau system until patterns of behaviour can be corrected by intervention.³⁷

Male victims

While the majority of victims of family violence are women, in a relatively small number of cases, women are violent towards their male partner in the context of an intimate relationship.³⁸ Although men are typically physically stronger than women, it does not necessarily follow that it is any easier for them to escape an abusive relationship.

In the restorative justice setting, facilitators will need to be mindful that:

- linking male victims with wider support services may be more difficult as abused men face a shortage of resources
- men are often reluctant to report abuse by women because they feel embarrassed, or they fear they might not be believed
- when they do report, men may face scepticism from the 'system', including from the police.

Women offenders

While most family violence offenders will be men, women offenders will also be referred by the courts. The effects of family violence are similar for all those who experience it, regardless of gender, sexuality, or sex diversity.

Violence used in response

Women's use of family violence against a male partner is sometimes in response to their partner's systematic ongoing use of violence against them. In some situations, women may use violence in self-defence to try to protect themselves or their children, resist their partner's violence, or retaliate

³⁵ Hall, A. 2015. An indigenous Kaupapa Māori Approach: Mothers' Experiences of Partner Violence and the Nurturing of Affectional Bonds with Tamariki. A thesis in fulfilment of the requirements for the degree of Doctor of Philosophy, Faculty of Health and Environmental Sciences. Auckland University of Technology.

³⁶ Family Violence Death Review Committee. 2016. Fifth Annual Report: January 2014 to December 2014. Wellington: Family Violence Death Review Committee.

³⁷ Hall, A. 2015. An indigenous Kaupapa Māori Approach: Mothers' Experiences of Partner Violence and the Nurturing of Affectional Bonds with Tamariki. A thesis in fulfilment of the requirements for the degree of Doctor of Philosophy, Faculty of Health and Environmental Sciences. Auckland University of Technology, at p 72.

³⁸ Australian Bureau of Statistics, 2006, *Personal Safety Survey*, Canberra.

against violence towards them. In other cases, women use violence to gain control over their partner in the same way that male offenders do.

Determining the predominant aggressor

The predominant (or primary) aggressor is the person who poses the most serious threat to ongoing safety. The term implies 2 aggressors, but in most situations, there's only one person using ongoing, systemic violence, with the other person reacting, resisting, responding, or using violence to protect themselves or their children.

It's broadly accepted that men are more likely to be identified as a primary aggressor and present a greater probability of engaging in continuing, severe, interpersonal violence which is coercively controlling and fear-inducing.³⁹ Such patterns of offending can reduce a victim's autonomy and ability to function, making it, in some cases, extremely difficult to leave a relationship.

Issues to explore when trying to determine which party is the predominant aggressor in order to assess risk are outlined below.

Relationship history – family violence isn't a series of isolated incidents affecting an individual victim. It's important to look at the pattern of abuse the perpetrator has used against multiple child and adult victims in current and past relationships

Context, intent, and effect – some behaviours may be used by victims to survive or in retaliation to violence and abuse. Identify any systemic use of power and control by examining: what happened before and after the violence took place; where the violence took place; what was the purpose of the violence; and what effect the violence had on the other person?

Decision making – who makes the decisions in the relationship? Primary victims are likely to report not being involved in family decision making and having their views/preferences disregarded.

Assertion of will – consider the extent to which each party makes compromises within the relationship when there are differing wants or needs. Does one person do what they want regardless of the other person's wishes?

Empathy – victims of family violence are likely to make excuses for and empathise with the offender. Offenders, on the other hand, are often unable to empathise with a partner's emotional experiences.

Entitlement – entitlement is an attitude created by a lack of empathy. It allows someone to assert their will over another person. Victims of family violence are less likely to demonstrate entitlement thinking and more likely to downplay any violence used against them.

³⁹ Wangmann, J. 2011. Different types of intimate partner violence: an exploration of the literature. Australian Domestic & Family Violence Clearinghouse. Issues paper 22. October 2011. Sydney, NSW.

Fear – behaviours become controlling when they instil fear. It can be helpful to explore the extent of a person's fear, what they're fearful of, and how the fear affects their day-to-day life.

Practice questions to help determine the predominant aggressor⁴⁰:

- Who is fearful of whom?
- Who in the relationship poses the most danger to the other?
- Who is looking to stop the violence/who is looking to avoid punishment?
- Who is at most risk of future harm?
- Who has motive to lie or retaliate?
- Whose story makes the most sense?
- Do the injuries/evidence support the story being told?
- Is there evidence of consciousness of guilt?
- Is there a history of domestic violence (as a perpetrator or a victim)?

Entrapment

The different forms of coercive and controlling behaviours used by abusers can trap women in their relationships and create dependency.

Entrapment can be intensified when men make their partners feel that they will not be able to survive as single parents, where there are cultural or religious norms about not leaving relationships, a man sponsoring a woman's entry into the country or when a woman has a disability and is dependent on a man to help with parenting.

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

It's essential that professionals remember it's perpetrators, not victims, who create the risk to children.

⁴⁰ Family Violence Death Review Committee. 2014. Fourth Annual Report: January 2013 to December 2013. Wellington. Family Violence Death Review Committee.

Risk assessment and management

Restorative justice facilitators who are endorsed to undertake work on family violence cases are considered family violence ‘specialists’.

They have family violence responses as a designated part of their job descriptions and can carry out a risk and safety assessment, and identify and address safety and other needs.

They are aware of the:

- characteristics to consider in determining the likelihood and severity of future violence
- actions to take when incidents have been assessed as requiring a referral to the Police or Oranga Tamariki (Oranga Tamariki Ministry for Children)
- factors that affect the safety and wellbeing of victims, families and whānau
- considerations for addressing safety
- supporting and facilitating engagement with services.

DEFINITIONS

RISK ASSESSMENT:

Risk assessment is usually a lengthy and detailed process allowing a full examination of someone’s world view, behaviours, circumstances, and interactions to begin to form a prediction about a person’s risk of being harmed or harming others. Risk assessment is both a static and dynamic process

Static risk assessment is a ‘snapshot’ of risk at a point in time. It determines the level of risk based on all available evidence up to the current period, a triangulation of the data available about an individual, and their behaviour, both historic and current.

Dynamic risk assessment recognises risk as dynamic, requiring ongoing review and consideration. It refers to regularly examining the changeable factors and situations. Situations may change rapidly so regular reviews are an essential part of managing and mitigating risk.

RISK MANAGEMENT:

Risk management covers the ways service providers, together with the wider family violence system, act (based on evidence and regular assessments) to ensure victims’ safety and to contain, challenge and change offenders’ behaviour from referral to sentencing.

Working with risk

Risk assessment, lethality or dangerousness assessment, and safety planning are core components of working with those affected by family violence. These components overlap, but they're not the same⁴¹.

Risk assessment is an ongoing, dynamic process, and continually informs both safety planning and risk management. It begins with a review of the court documentation and continues throughout the assessment process and on an ongoing basis, as circumstances change. All risk assessment should lead to some form of safety planning and action. Addressing the issue of ongoing safety for offenders and victims is a key aspect of safe delivery of working with family violence cases in a restorative justice setting from referral to sentencing.

What does 'ongoing safety' cover?

'Ongoing safety' refers to the protocols or processes to ensure that contact with the different parties and the courts addresses safety for all involved. This includes secure management of information and ensuring that information sharing minimises safety risks to a victim and any children. Service providers need to ensure their organisation has documented protocols or processes to cover ongoing safety, and that their facilitators follow them.

Addressing collusion

People who use family violence can be incredibly persuasive and subtle in the ways they downplay, deny, justify, and rationalise their behaviour. They can hold implicit beliefs about their partners that enable them to feel right and vindicated regarding their behaviours,⁴² and to perceive themselves as the victim in their interpersonal relationships.

Family violence offenders often attempt to find common agreement with their supporters and/or with facilitators. In some situations, the invitation to collude is direct and blatant – as in a sexist joke or stereotyped reference to their partners. At other times, it might be quite subtle, revealing itself through the offender's narrative about the events leading up to a particular situation.

Responding to invitations to collude can be highly complex. Skilled and experienced facilitators can identify invitations to collude and use good practice to respond in ways that address offenders' implicit beliefs and violence-supporting narratives.

Protection order status

A critical part of assessing and addressing ongoing safety will be that facilitators are aware, at all stages as to whether the participants are parties to a protection order. For family violence cases, the issues and ongoing safety needs of victims with no protection order are very different to those with access to this legal resource. The status of the parties may change during the course of the

⁴¹ Colorado Domestic Violence Offender Management Board 2010, Standards for Treatment with Court Ordered Domestic Violence Offenders, Colorado Department of Public Safety, p. E9.

⁴² Gilchrist 2009; Dempsey & Day 2011.

restorative process, with a temporary or final protection order being either granted by the court or withdrawn by the victim.

Beyond protection orders

Facilitators will also need to be familiar with the implications for victims, offenders, and their support people of a participant with Care of Children Act arrangements, any bail conditions, or trespass notices.

Risk assessment

Risk assessment seeks to determine the likelihood that the victim will be exposed to violence in the future. It takes into account:

- the presence or absence of evidence-based risk factors in both the victim and offender
- the victim's views about the level and nature of the risk
- the considered professional judgement of the facilitator.

Most participant's risks will change over time, and so assessment is best understood as a continuous process. Risk is not static and safety must be continually assessed. Facilitators should be aware of the risk factors, for which there's evidence to indicate increased risk of the recurrence of domestic violence,⁴³ and know what to do in response.

FACTORS INDICATING AN INCREASED RISK OF FUTURE DOMESTIC VIOLENCE

IF THE VICTIM:

- is pregnant or has recently given birth*
 - has ever verbalised or had suicidal ideas or attempted suicide
 - has depression or a mental health issue
 - is isolated
 - misuses or abuses alcohol and/or other drugs.
-

IF THE OFFENDER:

- used weapons in the most recent event*
 - has stalked or is stalking the victim*
 - has access to weapons*
 - has breached Protection or Police Safety Orders, bail conditions, or a trespass notice
 - has ever harmed or threatened to harm victim*
 - misuses or abuses alcohol and/or other drugs*
 - has ever tried to strangle the victim*
 - demonstrates obsession/jealous behaviour toward victim*
 - has ever tried to kill the victim*
-

⁴³ Adapted from Family Violence Risk Assessment and Risk Management Framework, Department of Human Services, 2006, Melbourne.

-
- uses controlling behaviours*
 - has ever harmed or threatened to harm or kill children*
 - is unemployed*
 - has ever harmed or threatened to harm or kill other family members
 - has depression or a mental health issue
 - has ever harmed or threatened to harm or kill pets/other animals*
 - has a history of violent behaviour (not domestic violence)
 - has ever threatened or tried to commit suicide*.
-

**IF THE
RELATIONSHIP IS
CHARACTERISED BY:**

- a recent separation
 - financial difficulties
 - an increase in severity/frequency of the offender's violence.*
-

Factors marked with an asterisk () indicate an increased risk of an adult or child victim being killed.*

Lethality or dangerousness assessment

Lethality or dangerousness assessment looks for indicators that someone is more likely to kill or attempt to kill or severely injure the victim or their children. It contributes to risk assessment, safety planning and risk management.

Family violence in a household increases the risk of serious injury or death to the people living in the household. Most often, the death will be because of the offender's physical violence against the primary victim. Sometimes, as a result of controlling victims, an offender will also injure or kill children, others, or themselves. The primary victim or their children may also injure or kill the offender as a response to the offender's violence. Sometimes, because of on-going physical, psychological, or sexual abuse, the primary victim or their children injure or kill themselves.

Assessment for risk of injury or death is difficult – dangerousness assessments aren't precise, scientific tools, but they do attempt to identify offenders who are **more** likely to kill victims. Carrying out an assessment of risk for injury or death is the responsibility of every specialist family violence facilitator, and should be conducted at regular intervals during the restorative justice process.

Carrying out a lethality assessment

A lethality assessment includes gathering as much information relevant to the lethality question as practicable. This may include information provided by the court as part of the referral, or it may be information on the participant's abusive behaviours gathered from the victim, support people, and agencies. No risk assessment tool is guaranteed to predict future behaviour, facilitators should be guided by their judgement in assessing the individual factors and how those factors interact.

Practice questions to consider in making the lethality assessment include:

- What is the offender's access to the victim?
- What is the pattern of the offender's abuse – frequency/severity of abuse, use and presence of weapons, strangulation event/s, threats to kill, hostage taking?
- What is the offender's state of mind – obsession with the victim, increased risk taking, ignoring consequences, depression, desperation?

- Are there any individual factors (of either the offender or the victim) that reduce behavioural controls – substance abuse, certain medications, mental health issues, brain damage?
- Are there any situational factors – separation, increased autonomy of victim, presence of other stressors?

Strangulation

The New Zealand Family Violence Death Review Committee has identified strangulation as a key lethality factor in the cases they have reviewed. The seriousness of these incidents is often minimised when victims report them, and may be referred to as ‘choking’ or having his/her hands around my neck, or not mentioned at all unless questioned.

Despite strangulation often being minimised in victim reports, investigations and prosecutions, it’s in fact extremely dangerous and potentially lethal. There is a fine line between a non-fatal and a fatal strangulation.⁴⁴

Affecting someone’s breathing through other means, such as suffocation or compressing someone’s chest, are related to strangulation and should also be considered key factors in the lethality question. To recognise the extreme seriousness of these behaviours, the Family and Whānau Legislation Bill proposes introducing a new criminal offence of “strangulation or suffocation”, with a term of imprisonment of up to 7 years.

Determining the level of risk

Once facilitators have gathered as much information as possible about the offender, victim, and support people, they will need to use their professional judgement to:

- analyse information gathered from sources such as court information
- analyse information gathered through conversation with, and observation of, the participants
- analyse information gathered from family and whānau.

In general, the greater the number of risk factors present, the greater the safety risk. The likelihood of risk factors recurring should also be considered.

Responding to risk

Responses to identified risk will vary according to the level or severity of risk.

Responses include the actions the facilitator and the provider organisation will take, as well as actions taken with the offender and victim. It’s important the response to risk attends to the safety of both parties. Where the risk is based on information supplied by the victim, the source of the information must not be shared with the offender.

⁴⁴ Page 98 Family Violence Death Review Committee 2014. *Fourth Annual Report: January 2013 to December 2013*. Wellington: Family Violence Death Review Committee.

Practice questions to help with risk assessment:⁴⁵

- Do I have sufficient information to fully understand the context of the violence?
- Does my risk assessment address the complexities of family violence risk?
- Where could I get more information?

Safety planning

Safety planning seeks to minimise risks of re-victimisation or threats of violence throughout the restorative justice process, if the facilitator judges the case should proceed.

Safety is a long-term collective process. Although facilitators are not responsible for the violence, they do need to be accountable for how they respond to it. Effective responses can create safety and restore dignity⁴⁶.

Facilitator role must be visible in safety planning

Whether working with family violence victims on a safety plan or with offenders on a behaving safely plan, facilitators must make their role visible. This should show how the restorative justice process will contribute to a joined-up systems approach to family violence.

In practice, this should form part of the safety conversation the facilitator has with each participant when formulating a safety plan/behaving safety plan: “If you don’t show up for the conference, I will be worried about you. Who can I call if I can’t get hold of you?”

Writing yourself into the plan could be take the form of: “Facilitator to contact participant’s mum [name and contact number] if they fail to show for conference”.

Practice questions to help place the safety of victims at the centre:⁴⁷

- Who is responsible for taking most of safety actions to maximise victims’ safety?
- Who is responsible for taking most of safety actions to curtail offenders’ behaviour?
- Does the safety planning match the level of risk/concern for the victim?
- Who else has eyes on the victim’s safety (who else is monitoring this)?
- Who else knows what I know?
- How could my current response be more integrated with other agencies?
- What additional support do I need and where can I access that?

⁴⁵ Integrated Safety Response. Reflective practice questions. 2016

⁴⁶ Family Violence Death Review Committee. 2016. Fifth Annual Report: January 2014 to December 2014. Wellington: Family Violence Death Review Committee.

⁴⁷ Integrated Safety Response. Reflective practice questions. 2016

Family violence in the community context

Providers of restorative justice services must consider the context in which family violence occurs⁴⁸

Societal beliefs and values will influence the offender, victim, other participants, and the provider. An understanding of the community context and experience of participants will support effective services.

Safeguarding participants

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

- a victim is vulnerable
- deception has been used in the perpetration or covering up of the behaviour that caused the harm
- the behaviours that caused the harm had a significant impact in causing great loss, significant destabilisation or trauma
- a harm-causing behaviour has been perpetrated in an ongoing or chronic fashion, and thus caused disturbance or distortion to the very development of a person, family or whānau, 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.

Why family violence is different

Family violence offending differs from other types of offending because it:

- has often involved injury resulting from an ongoing pattern of abuse whereas most other crimes are a single violent incident or are 'incident-focused', such as theft or destruction of property
- has often left the victim isolated, with the extent of the violence hidden from those around them
- is often committed by someone close to the victim and within an ongoing relationship
- is committed in the context of ongoing crime, of which feeling remorse and offering an apology are often part of the pattern of abuse
- may be part of a pattern of family violence in a relationship characterised by power and control.

⁴⁸ This part of the standards is an excerpt from Part C of the 2013 Restorative Justice Standards for Family Violence Cases.

Restorative justice is only one step in the process of change

Part of the unique experience of victims of family violence is their social isolation generally and more specifically, isolation from their family or whānau. Change in violent and abusive relationships is less likely to occur if wider family or whānau and community settings aren't involved in helping the offending to stop.⁴⁹

For violence to stop, it may mean deeply entrenched behaviours of the offender need to change and significant and often long-standing harms need to be repaired.

A one-off restorative justice service is unlikely to achieve this degree of change and will be one step only in a much longer process. This will potentially involve support and change programmes and services for the victims and offenders, together with involvement of a range of other family or whānau and community supports. The length and extent of the process will depend on the nature and extent of the family violence.

Intimate partner violence is rarely a 'one off' event. Offenders are usually so entrenched in their cognitive distortions, beliefs and behaviours that they're unlikely to be able to fully accept responsibility and partake respectfully and safely in a restorative justice conference without minimising or justifying their behaviour, or subtly blaming the victim. However, if the offender engages in a behaviour change programme:

- there is more chance the offender will engage in the restorative process
- the victim is at less risk of repeat victimisation
- the potential for positive outcomes from the restorative justice conference is enhanced.

The power of myth

Many myths about family violence, particularly intimate partner violence and the impact on victims, are widespread in the community. For example, 'she asked for it because she was ...', or 'if it was that bad, why didn't she leave?' Restorative justice providers must be aware of the impacts of these myths on all parties, including the victim, supporters, other professionals, and themselves.

⁴⁹ Cheon and Regehr, 2006.

Service design for family violence cases

The service design for working with family violence referrals is based on standard restorative justice processes, with an emphasis on support structures for those involved.⁵⁰

Providers must recognise:

- the **paramourcy of victim safety**
- that **specialist family violence knowledge, skills, and processes** are required for the restorative justice process to be safe and effective
- the need for **specialist professional supervision**.

When working with family violence clients, the dynamics of the offending and prior relationships require in-depth assessment and follow-up. The quality of the assessment and pre-conferencing will mitigate risk for all parties and largely determine the potential for safe, effective conferencing, and successful outcomes.

Timing and pace of service

Although court timeframes must be met, timing and pacing of the service must also take account of the capacity of the victim and offender. Timeframes must be based on the assessment with the offender and victim, and will vary according to the nature of the offending, the degree of harm caused, and the nature of the relationship.

Support people as a mandatory requirement

The new family violence standards make it a requirement for at least one support person for each of the victim and offender to be present at conferences. This mandatory approach is a stronger requirement than that for general cases, where the inclusion of support people is 'strongly encouraged'. The mandatory approach to including support people for family violence cases is due to the particular nature of family violence offending and the need to 'out' it from the shadows of it being seen as a private matter.

It isn't 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 inherent challenges are recognised, it will be up to the facilitator to ensure the main participants are aware of the importance of support people in these cases (for example, survey results show the only victims who reported feeling scared to say what they really felt in a conference were those without a support person).⁵¹

⁵⁰ This part of the standards is an excerpt from Part C of the 2013 Restorative Justice Standards for family violence cases.

⁵¹ Restorative justice: A survey of victim satisfaction; Ministry of Justice 2011.

Children and young people under the age of 18 must never be used as a support person for family violence referrals.

Exceptions to mandatory support people

There may be exceptional circumstances when a facilitator judges a conference should go ahead even though one of the parties doesn't have a support person. We anticipate that exceptions to the mandatory requirement will be extremely limited. Where support people aren't present, the facilitator must clearly document the exceptional circumstances and rationale for them not attending. 'Exceptional' circumstances might include:

Participant in prison

If one of the participants is in prison and it's clear from the pre-conference stage that no support person is available. This might be because of the expense of travelling to the prison, because they aren't allowed to enter the prison, or they are not willing to go to the prison.

The expectation would be that the facilitator works with the participant to accept another support person (for example, prison chaplain, NGO specialist worker). If no alternative is available, the facilitator may assess that it's still safe to proceed to conference. The reasons for no support person, options explored, and rationale for proceeding must be clearly documented.

Support person doesn't turn up for conference

Another example is if support people have been available for most of the restorative justice process, but then don't turn up on the day of the conference. The conference should only proceed if both parties, when interviewed separately, still want to proceed, *and* the facilitator is of the opinion that it's safe to proceed.

The documentation should reflect that the facilitator has already pre-conferenced or talked to support people, that they're suitable, and that they have a genuine intention to attend.

Cultural responsiveness isn't a sufficient rationale

Participants might be reluctant to nominate a support person because 'in our culture, private matters should be kept private'. This won't be a sufficient reason to proceed without support people.

Changing the attitudes and behaviours that have allowed family violence to continue is a priority for community action.⁵² Family violence can no longer be allowed to take place behind closed doors. This shift in attitude is reflected in the practice standard requirement for mandatory support people when working with referrals involving family violence.

This requirement recognises the communal bonds inherent in the restorative process and ensures that respondents are supported to change their behaviour and victims have someone to walk with them on their journey.

⁵² It's not OK Toolkit:areyouok.org.nz/assets/AreYouOK/Resources/Toolkit-book.pdf

What makes a support person 'suitable'

Facilitators should use their professional judgement and take a principles-based approach to what makes a support person 'suitable'. Ask, what is the purpose of support people for participants in a family violence case? For offenders, someone who is aware of and prepared to challenge behaviours and hold the offender to account. For victims, someone who can provide ongoing support and contribute to safety.

If a participant doesn't have a suitable support person, then one may be identified by the facilitator. It would be expected that this person has experience and knowledge of family violence dynamics, and is acceptable to the victim. It would be preferred if this person could support participants for the medium to long-term, not just for the one-off restorative justice event.

Children and young people

The safety and needs of children and young people is paramount. Providers must have policies in place for managing risk to and abuse of children, with clear processes for making statutory notifications.

Any decision about involving children in a restorative process (either as the primary victim, or as a witness or affected party to the offending) must be taken with great care and requires input from relevant child specialists.

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
- Oranga Tamariki must be informed.

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

The need for specialist professional supervision

Dealing with family violence requires ongoing decisions about safety and risk. It can be challenging and can invite minimisation and collusion with stereotypes. Beliefs about gender and culture and the individuals' own knowledge and analysis of family violence will shape responses to each situation. Regular professional supervision is required as one way of reflecting on practice and maintaining health, wellbeing, and safe practice for the facilitator and participants.

Supervisor requirements

The Ministry prefers that a supervisor has tertiary education in a relevant discipline (for example, the social sciences, psychology, or social work) as well as significant clinical experience and

knowledge of family violence. The supervisor may be a senior practitioner within, or outside, the provider organisation, but must not be in that person's direct line of management.

Supervision records of attendance must be retained by the provider.

Addressing practice issues through supervision

Practice issues that might be addressed in supervision include intervention styles, case-specific matters, and personal and political issues arising from the work. Quality supervision addresses:

- issues associated with identifying and responding to attitudes that support violence against victims and underpin abusive behaviour
- reflections on facilitators' own patriarchy, homophobia, racism, and other forms of privilege
- the facilitator's specific professional development needs
- opportunities for facilitators who work with family violence cases to talk about and address the emotional impact of their work on themselves and their relationships.

Clinical supervision is different to professional development

Clinical supervision is different in its intent and function to professional development, although both have an important place in the accountability and quality of service delivery. Clinical supervision offers facilitators a more structured and tailored opportunity to reflect on their casework, taking into account the specifics of their own work (and sometimes personal) context. Supervision may take place one-on-one or in a group.

To get the most from supervision, facilitators need to be very open and receptive to feedback, understanding that gendered, or other methods of power and control, are not always a reflection of them personally but, rather, of their society.

Clinical supervision is different to line management

Clinical supervision shouldn't be confused with line management. Clinical supervision provides an educative and supportive function. It's an opportunity to raise professional issues and gain further expertise through structured reflection of their own practice. On the other hand, line management focuses on day-to-day workplace and administration practices, planning and monitoring workload, and ensuring quality of work, health and safety, and time management.

Practice standards – quick reference guide

Standard 1 – The provider assesses the referral	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>The provider assesses if it's appropriate to begin the restorative justice process. The assessment should be based on whether:</p> <ul style="list-style-type: none"> • the provider has capacity to accept the case • the offender has entered a guilty plea • police and/or court information has been received (including participants' contact details and the summary of facts) • documentation received as part of the referral indicates it would be appropriate to continue the restorative justice process. 	<p>In addition, FOR FAMILY VIOLENCE CASES, assessing whether it's appropriate to begin the restorative justice process must include:</p> <ul style="list-style-type: none"> • reviewing the offender's criminal history provided by the court • where the primary victim is a child or young person, input from relevant child specialists is required. <p>In addition, FOR FAMILY VIOLENCE CASES, accepting a referral will also mean the provider being able to demonstrate:</p> <ul style="list-style-type: none"> • that it has established links with local community family violence specialist agencies • a process for allocating referrals to accredited and family-violence endorsed facilitators.
Standard 2 – Participants are informed of the process	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>The provider will get the informed consent from the participants to proceed. The provider will consider whether:</p> <ul style="list-style-type: none"> • the offender has acknowledged responsibility for the offence and is willing to hear about the harm done to the victim 	<p>In addition, FOR FAMILY VIOLENCE CASES, getting informed consent to proceed will also include the provider being assured:</p> <ul style="list-style-type: none"> • that the victim's willingness to attend is given free from the power and control tactics of the offender

<ul style="list-style-type: none"> • the offender is able and ready to engage safely and respectfully in the restorative justice process • the victim is open to hearing more about the restorative justice process • there are any reasons why it would be inappropriate to proceed. 	<ul style="list-style-type: none"> • that the victim, including a child or young person who is the primary victim, understands they have the right to veto any participants.
<p>The provider will arrange the pre-conference meetings, including:</p> <ul style="list-style-type: none"> • encouraging attendance of suitable support people • ascertaining any particular needs of the participants • agreeing the venue, date and time. 	<p>In addition, FOR FAMILY VIOLENCE CASES, arranging pre-conference meetings will also include the provider explaining to participants that the presence of suitable support people is a requirement for family violence cases going through the restorative justice process.⁵³</p> <p>Children or young people under the age of 18 must never be used as support people.</p>

Standard 3 – Conference suitability is assessed	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>Participants, including the victim, offender and support people, must each give their informed consent that they will attend the conference. Informed consent is requested after:</p> <ul style="list-style-type: none"> • all participants are given accurate information about the restorative justice process • the rules that will apply during the conference are explained to all participants and agreed to by them 	<p>In addition, FOR FAMILY VIOLENCE CASES, completing the conference risk assessment and documenting a risk management plan will include:</p> <ul style="list-style-type: none"> • documenting a risk assessment with the victim which seeks to determine the likelihood they will experience future violence from the offender • documenting a risk assessment with the offender which seeks to determine the likelihood of their abusive behaviour recurring

⁵³ In exceptional circumstances, facilitators may use their professional judgement to allow a case to proceed. The rationale, risk, and mitigation for this decision must be documented in the conference risk management plan.

<ul style="list-style-type: none"> • privacy and confidentiality (and their limitations) are explained to all participants and agreed to by them • the facilitator encourages the victim and offender to bring support people to the conference • providing information on how risk will be continually monitored • the facilitator being able to end a conference if there are any real or perceived threats to the safety of the victim or any other person 	<ul style="list-style-type: none"> • a lethality/dangerousness assessment that looks for indicators that the offender is more likely to kill or severely injure the victim or any children • prioritising the views of victims as being best placed to identify risk • formulating and documenting separate safety plans for both parties and any support people (if appropriate), including remedial actions and support to reduce actual or potential harm (where safety plans have been recently carried out by specialist providers, facilitators should review the plan and update it as required)
<p>The facilitator then completes a conference risk assessment and documents a conference risk management plan that considers:</p> <ul style="list-style-type: none"> • the suitability and capability of the participants, including emotional and health needs and any alcohol and other drug abuse • the victim's view of the offending and its impact • the offender's remorse and accountability • the offender's ability to address the harm caused • the involvement of children and young people • the suitability of support people • the suitability of professionals. 	<ul style="list-style-type: none"> • where the provider believes the safety of children may be at risk, the referral must be deferred until all safety and risk issues are addressed • linking participants to other family violence specialist services to minimise the risk of re-victimisation or threats of violence • screening potential support people to ensure the safety of all participants • all documented conference risk management plans, risk assessments, lethality assessments and safety plans and any links made to other agencies should be kept on file • a decision to go to conference is made only when: <ul style="list-style-type: none"> – support is sufficient, screened as suitable, and accepted by both parties – the victim is free from the offender's coercive and controlling behaviours – the offender is engaged or engaging in specific programmes/actions – the risks of going to conference can be managed.
<p>Arranging the conference, including the needs of all participants, such as cultural requirements, interpreter requirements, venues, timeframes.</p> <p>The role and expectation of support people, professionals and observers, if they are attending the conference, must be explained to and agreed with all participants.</p>	<p>Where the decision is made to not proceed to conference, reporting to the court should be done in such a way that the victim is not put at risk of re-victimisation.</p>

Standard 4 – The restorative justice conference takes place

Performance measures for standard cases	Additional performance measures for family violence cases
<p>The facilitator conducts the conference. The facilitator:</p> <ul style="list-style-type: none"> • reviews the conference risk management plan to ensure any unforeseen risk factors or incidents are assessed, mitigated, and documented in the plan • assesses the safety of participants throughout the conference • reinforces the conference’s ‘ground rules’ with participants • invites participants to discuss the offence, impacts and outcomes • ensures that if an apology is offered as part of the conference – <ul style="list-style-type: none"> – the focus remains on victim safety and offender responsibility – that there is no expectation for the victim to accept the apology or forgive the behaviour – the apology is witnessed by the victim and others in the conference, including the offender’s family or whānau and supporters. 	<p>In addition, FOR FAMILY VIOLENCE CASES, conducting the conference will include the facilitator:</p> <ul style="list-style-type: none"> • recognising that risk is not static, and continually assessing for risk to inform decision making • recognising that the victim is most at risk and in the best position to identify risk • carrying out risk and lethality assessments where there is a significant change in the parties’ circumstances or relationship, and updating safety planning as required • allowing the victim the right to veto any particular participants • involving an Oranga Tamariki (OT) case worker in planning and intervention if OT is already involved with a child/young person victim.

Standard 5 – Conference outcomes are explored	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>Conference outcomes must be:</p> <ul style="list-style-type: none"> • participant-driven • understood by all participants <p>Where possible, conference agreements are SMART (specific, measurable, agreed, realistic and time-bound).</p> <p>Participants should agree on how the progress/completion of agreements will be monitored.</p>	<p>In addition, FOR FAMILY VIOLENCE CASES, there’s an expectation that there will be agreed offender actions coming out of the restorative justice process. When there’s no action, this is clearly outlined in the report to the judge.</p> <p>The following proposals should be agreed as part of the conference outcomes. That the provider will:</p> <ul style="list-style-type: none"> • contact the offender and relevant service providers to see if agreed agreements and attendance at programmes and services is occurring • contact the victim (or through their support person) to report on offender progress with agreements.

Standard 6 – Conference agreements are monitored, where applicable	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>The provider will undertake any monitoring agreed at the conference. The conference report will include all monitoring arrangements, specifically:</p> <ul style="list-style-type: none"> • what will be monitored • who will do the monitoring • how the monitoring will be done • when the monitoring will end. <p>The provider will follow-up with participants after the conference, unless there are exceptional circumstances..</p>	<p>In addition, FOR FAMILY VIOLENCE CASES, monitoring conference agreements will also include the provider:</p> <ul style="list-style-type: none"> • recognising that risk is not static, and continuing to assess for risk • monitoring the agreed actions (including, where relevant, sharing information with the offender’s programme/intervention provider) • following up with the victim and offender • having strategies in place to ensure monitoring will not put the victim at risk (for example, knowing what to do if the only accounts of the offender’s change/lack of change is from the victim) • primary victims who are children/young people must never be used as the only voice accounting for the offender’s change • updating safety planning/advice as required where there is a significant change in the parties’ circumstances or relationship • continuing to work collaboratively with other family violence specialist services to minimise the risk of re-victimisation/re-offending.

Standard 7 – A conference report is provided	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>The provider will ensure a report that is an accurate reflection of the conference is given to the court. The report must be of a high standard of spelling and grammar, and include:</p> <ul style="list-style-type: none"> • factual, relevant information 	<p>In addition, FOR FAMILY VIOLENCE CASES, the conference report must not include what was said by any participant during the pre-conference stage.</p>

<ul style="list-style-type: none"> • a clear and logical order of events • a summary of outcomes. <p>The provider must offer the victim and offender a copy of the final conference report, and provide the report if requested.</p> <p>Where possible, the provider gives the court an update or progress report on the conference agreements before the offender is sentenced.</p>	
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Standard 8 – Safety underpins all decisions	
Performance measures for standard cases	Additional performance measures for family violence cases
<p>The provider will:</p> <ul style="list-style-type: none"> • contact the police or child protection agencies if: <ul style="list-style-type: none"> – there’s a serious threat of harm – where they reasonably believe a child or young person has been, or is likely to be harmed (whether physically, emotionally or sexually), ill-treated, abused, neglected or deprived • ensure the best interests of children and young people underpin all decisions made • undertake pre-conferences and conferences face-to-face⁵⁴ • use professional interpreters if required. If a facilitator decides to use a support person as an interpreter, the rationale and risk mitigation for this 	<p>FOR FAMILY VIOLENCE CASES, there are significant additional safety considerations, steps, and processes, such as:</p> <ul style="list-style-type: none"> • standard 1: that the provider has established links with local community family violence specialist agencies, and has a process for allocating referrals to accredited and family-violence endorsed facilitators • standard 2: screening potential support people as part of arranging pre-conference • standard 3: documenting risk assessments with the victim and offender; undertaking a lethality/dangerousness assessment; documenting safety plans

⁵⁴ If there are exceptional circumstances, and the facilitator documents the rationale, risk and mitigation in the conference risk management plan, then a pre-conference may be completed by phone or audio visual link or a conference may be completed by audio visual link.

must be documented in the conference risk management plan. Children and young people must not be used as interpreters.

- standard 4: continually assessing for risk; carrying out new risk and lethality assessments where there is significant change (and updating safety plans accordingly); linking participants to family violence specialist services
- standard 6: continue to assess for risk, and update safety plans as required, post-conference; continue to work with family violence specialist services.

APPENDIX – KEY RISK FACTORS

Some risk factors are associated with an increased likelihood or severity of future family violence.⁵⁵ The reasons listed in the following tables are intended to help facilitators build an understanding of why they are included when risk is being examined.⁵⁶

Factors marked with an asterisk (*) indicate an increased risk of an adult or child victim being killed.

Risk factors for adult victims	Reason why this is a risk factor
Is pregnant or has recently given birth*	Family violence often commences or intensifies during pregnancy and is associated with increased rates of miscarriage, low birth weight, premature birth, foetal injury and foetal death. Family violence during pregnancy is regarded as a significant indicator of future harm to the woman and her child.
Had a child in their arms when attacked*	Serious injuries to children can result when attacks occur while the victim is holding a child regardless of whether the offender deliberately intended to target the child.
Has ever verbalised or had suicidal ideas or attempted suicide	Suicidal thoughts or attempts indicate that the victim is extremely vulnerable and the situation has become critical.
Is isolated	A victim is more vulnerable if isolated from family, friends and other social networks. Isolation also increases the likelihood of violence and is not simply geographical. Isolation may also include systemic factors that limit social interaction or support and/or the offender not allowing social interaction.
Child has intervened/tried to intervene in the violence	Children are frequently assaulted when they intervene to defend or protect the victim.
Care of children issues and/or current family court proceedings	Offenders may use the children to have access to the victim, violence may occur during child contact visits or there may be a lot of fear and anxiety that the children may be harmed.
Children from a previous relationship in the household	The presence of children from a previous relationship can increase the risk of domestic abuse for the mother. The children can also get caught up in the violence and suffer directly.

⁵⁵ Campbell J 2003, 'Risk factors for femicide in abusive relationships: Results from a multi-site case control study', *American Journal of Public Health*, vol. 93, no. 7: 1089–1097. Campbell J 2004, 'Helping women understand their risk in situations of intimate partner violence', *Journal of Interpersonal Violence*, vol 19, no. 12: 1464-1477.

⁵⁶ This material is largely drawn from the *Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (2nd ed.)*. Department of Child Protection and Family Support (2015). Perth, Western Australia: Western Australian Government.

Risk factors present in offenders	Reason why this is a risk factor
Used a weapon in most recent event*	Use of a weapon indicates a high level of risk because previous behaviour is a likely predictor of future behaviour. A weapon is defined as any tool used by the offender that could injure, kill or destroy property.
Has access to weapons*	Offenders who have access to weapons, particularly guns, are much more likely to seriously injure or kill a victim than those without access to weapons.
Has ever harmed or threatened to harm the victim*	Psychological and emotional abuse has been found to be a good predictor of continued abuse, including physical abuse. Previous physical assaults also predict future assaults.
Has ever tried to strangle the victim*	Strangulation, suffocation, or otherwise restricting breathing is a common method used by male perpetrators to kill female victims.
Has ever tried to kill the victim*	Indicates a high level of risk as previous behaviour is a likely predictor of future behaviour.
Has ever harmed or threatened to harm or kill children*	Evidence suggests that where family violence is occurring, there is a likelihood of increased risk of direct abuse of children in the family. Children are adversely affected through experiencing violence directly and by the effects of violence, including hearing/seeing it or through living in fear due to a violent environment.
Has ever harmed or threatened to harm or kill other family members	Threats by the offender to hurt or cause actual harm to family members can be a way of controlling the victim through fear.
Has ever harmed or threatened to harm or kill pets or other animals*	A correlation between cruelty to animals and family violence is increasingly being recognised. Because there is a direct link between family violence and pets being abused or killed, abuse or threats of abuse against pets may be used by offenders to control family members.
Has ever threatened or tried to commit suicide*	Threats or attempts to commit suicide have been found to be a risk factor for murder-suicide.
Has or is stalking the victim*	Stalkers are more likely to be violent if they have had an intimate relationship with the victim. Stalking, when coupled with physical assault, is strongly connected to murder or attempted murder. Stalking behaviour and obsessive thinking are highly related behaviours.
Has breached a court order or Police Safety Order	Breaching a court order indicates the offender is not willing to abide by the orders of a court. Such behaviour should be considered a serious indicator of increased risk of future violence.
Is currently on bail or parole in relation to violent offences	Offenders with a history of violence are more likely to use violence against family members. This can occur even if the violence has not previously been directed towards family members. Other victims may have included strangers, acquaintances and/or police officers. The nature of the violence may include credible threats or use of weapons, and attempted or actual assaults. Violent
Has served a sentence or been released recently from custody in relation to violent offences	

Has a history of violent behaviour (not domestic violence)	men generally engage in more frequent and more severe family violence than offenders who do not have a violent past.
Misuses or abuses alcohol and/or other drugs*	Perpetrators of family violence can be more dangerous when they are under the influence of alcohol and other drugs.
Demonstrates obsession/jealous behaviour toward victim*	Obsessive and/or excessive jealous behaviour is often related to controlling behaviours and has been linked with violent attacks.
Uses controlling behaviours*	Men who think they 'should be in charge' are more likely to use various forms of violence against their partner.
Is unemployed*	Unemployment is associated with an increased risk of lethal assault, and a sudden change in employment status – such as being terminated and/or retrenched – may be associated with increased risk.
Has depression or suffers from other mental ill health	Murder-suicide outcomes in family violence have been associated with perpetrators who have mental health problems, particularly depression.
Has family members who pose a risk to the adult victim	In some cases there may be more than one abuser living in the home or belonging to the extended (victim or perpetrator's) family and community. This might also include female relatives.

Risk factors present in relationship	Reason why this is a risk factor
Recent separation*	For victims experiencing family violence, the high-risk periods include immediately prior to taking action, and during the initial stages of or immediately after separation. Victims who stay with the offender because they are afraid to leave often accurately anticipate that leaving would increase the risk of lethal assault. The data on time-since-separation suggests that the highest risk period is the first two months.
Escalation – increase in severity and/or frequency of offender's violence*	The offender's use of family violence occurring more often or becoming worse has been found to be associated with lethal outcomes for victims.
Financial difficulties	Low income and financial stress, including a gambling addiction, may be associated with increased risk for victims of family and domestic violence.

Professional judgement	Reason why this is a risk factor
The adult victim's is affected by mental ill health	Victims with a mental illness may become more vulnerable to family violence.
The adult victim misuses or abuses alcohol and/or other drugs	Victims may use alcohol or other drugs to cope with the physical, emotional or psychological effects of family violence; this can lead to increased vulnerability.

GLOSSARY

CONFERENCE – a restorative justice meeting between an offender and a victim (or a victim’s representative) which is conducted by a restorative justice facilitator.

CONFERENCE RISK MANAGEMENT PLAN – a document that:

- identifies potential sources of harm to the participants
- assesses the likelihood that something will happen
- considers the negative consequences should it do so
- determines specifically what will be done to mitigate these risks.

CONFERENCE REPORT – a report submitted by the provider to the Court or the Police Diversion Officer on a conference and its outcome.

DANGEROUSNESS ASSESSMENT – see lethality assessment.

ENTRAPMENT – the manner in which a perpetrator’s coercive control tactics inhibits a victim’s resistance to, or ability to escape from, family violence.

EXCEPTIONAL CIRCUMSTANCE – an unusual situation that is only likely to happen very infrequently

FACILITATOR – a representative of the provider who facilitates pre-conferences and conferences.

FAMILY VIOLENCE – violence against a person by any other person with whom that person is, or has been, in a domestic relationship (as defined in the Domestic Violence Act, 1995).

FAMILY VIOLENCE ENDORSEMENT – an endorsement of a facilitator that they demonstrate and maintain professional standards for practicing and providing family violence restorative justice services in a safe, competent and accountable manner.

INFORMED CONSENT – permission granted in full knowledge of the possible risks and benefits.

LETHALITY ASSESSMENT – lethality or dangerousness assessment looks for indicators that someone is more likely to kill or attempt to kill or severely injure the victim or their children. It contributes to risk assessment, safety planning and risk management.

MONITORING - checking the progress of the agreements made at the conference over the specified period of time.

OFFENDER - a person who has been convicted of an offence or who has pleaded guilty.

PARTICIPANTS - people who are involved in a Restorative Justice process including the victim, offender, support people and professionals.

PRE-CONFERENCE – a stage in the restorative justice process, which includes a meeting between the facilitator and the victim or the offender, usually with their support people, to gain informed consent and assess whether it’s appropriate to proceed to conference.

PROFESSIONALS – people who have been invited to attend the restorative justice conference due to their professional expertise and relationship with one or more participant, and whose involvement or presence has been agreed to by the facilitator and other participants. Examples of professionals include police officers, probation officers, social workers, teachers, mental health workers, counsellors, midwives, cultural advisors, Plunket nurses and addiction support workers.

PROVIDER - an agency contracted by the Ministry of Justice to deliver restorative justice services

REFERRAL - a case referred by the court or police diversion officer, in writing, to the provider.

RESTORATIVE JUSTICE - a process that provides opportunities for both victims and offenders to be involved in finding ways to hold the offender accountable for their offending and, as far as possible, repair the harm caused to the victim and community.

RESTORATIVE JUSTICE OUTCOME – an outcome of the restorative justice process, including:

- statements of apology or remorse from the offender
- any victim response to the offender's apology or remorse
- agreements made at the conference (e.g. to perform tasks, complete programmes, pay reparation)
- actions already completed since the offence
- victim views on offender sentencing.

A restorative justice outcome should not be a sentencing recommendation.

RESTORATIVE JUSTICE PROCESS – the process from when a case is first seen by the restorative justice provider to when the case is returned to court.

RISK ASSESSMENT – risk assessment seeks to determine the likelihood that the victim will be exposed to violence in the future

SAFETY PLAN – this can refer to the:

- planning ahead victims can do to try and keep themselves and their children safe from the abusive behaviour of the offender, or longer term for thinking about the steps to take to safely leave the relationship and stay safe
- strategies for an offender to use to help them maintain a safe, respectful lifestyle, and how to recognise signs and high-risk situations that could indicate they are entering a cycle of violence.

SCREENING – this refers to evaluating a person to determine their suitability for a role (e.g., as support person).

SERIOUS THREAT OF HARM – a threat that an agency reasonably believes is a serious threat having regard to all of the following (as defined in the Privacy Act, 1993):

- the likelihood of the threat being realised; and
- the severity of the consequences if the threat is realised; and
- the time at which the threat may be realised.

SUMMARY OF FACTS – a police document that summarises an account of the charges laid.

SUPPORT PEOPLE - whoever the victim and offender have invited to support them through the restorative justice process, and whose involvement or presence has been agreed to by the facilitator and other participants. Examples of support people include family and whānau, friends or a 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. In the case of a child or young person (under 17 years), the parent or legal guardian represents the victim. In these cases, the parent or guardian needs to be consulted. In the case of a person who has been killed or incapacitated, it's a member of the immediate family who is the victim (as defined in the Victims' Rights Act, 2002).

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