

Project Restore NZ



Project Restore
**An Exploratory Study of Restorative Justice and Sexual
Violence**

May 2010

Dr. Shirley Jülich

Dr. John Buttle

Christine Cummins

Erin V. Freeborn

AUT University
Private Bag 92006
Auckland 1142
New Zealand

<http://aut.ac.nz>

2010

Acknowledgements

We would like to acknowledge and thank those who contributed to this project – victim-survivors, offenders and Project Restore staff. In addition we want to acknowledge the honesty and openness demonstrated by Project Restore staff as they reflected on their practice.

Thank you to Fiona for not only her work on the mapping of Project Restore’s processes which is presented in Appendix 1, but also for her support to the research team.

Thank you, also, to Dr. Venezia Kingi of the Crime and Justice Research Centre at Victoria University, Wellington, for her peer review of this report.

Finally, thank you to the Ministry of Justice for providing the funding that enabled this exploratory study to be completed.

Executive Summary

This research project, commissioned by Project Restore and funded by the Ministry of Justice, analysed the restorative justice processes Project Restore uses to address sexual violence. The report provides information regarding the work of Project Restore a provider group using restorative justice to address sexual violence.

The aims of the report were to provide the following information:

1. The way Project Restore operates.
2. How Project Restore implements the best practice principles, as outlined in “Restorative Justice New Zealand: Best Practice” (Ministry of Justice, 2004).
3. The outcomes of Project Restore’s processes.

The research team was led by Dr. Shirley Jülich and Dr. John Buttle, senior lecturers from AUT University.

A brief literature review of sexual violence and restorative justice found that:

- The negative psychological and social consequences of sexual violence are well understood and well documented
- An understanding of the economic costs and consequences has been somewhat more recent
- The international literature asserts that the costs to victim-survivors, their families, and the broader society are significant
- A costing analysis of crime undertaken by the New Zealand Treasury (Roper & Thompson, 2006) indicated that one incident of sexual violence cost \$72,130.
- There is little research on operational programmes using restorative justice to address sexual violence.
- Project Restore is one of the few programmes internationally using restorative justice to address sexual violence.

Ethics approval was secured from the AUT Ethics Committee. All ethical and safety requirements were addressed.

The research project used qualitative methods such as interviews, focus groups and document analysis. This was supported by quantitative analysis to gain insight into the number of referrals received and conferences conducted by Project Restore.

Project Restore has placed much emphasis on pre-conference preparation and risk assessment. The practice model developed by Project Restore is a modified version of the conferencing model used by the New Zealand Court-Referred Pilot Programme for Restorative Justice, which has been expanded to include:

- A restorative justice facilitator who has an in depth understanding of the dynamics of sexual violence;
- Two community experts – a victim specialist and an offender specialist with an in depth understanding of restorative justice;
- A clinical psychologist who provides professional supervision, acts as a team leader, but has no contact with the stakeholders.

Project Restore has addressed a number of practice issues commentators have identified when using restorative justice to address sexual violence. These included:

- The power imbalance implicit in acts of sexual violence,
- Neutrality and impartiality of restorative justice facilitators,
- Equality for victim-survivors in restorative justice processes,
- The transfer of power to the community as demonstrated in the difficulties that arise when negotiating responses in communities shared by the stakeholders.

Project Restore has incorporated the principles of best practice developed by the Ministry of Justice, expanding these in the development of its model. Project Restore has demonstrated how restorative justice processes can provide a sense of justice in cases of sexual violence.

The outcomes of Project Restore's processes were identified as:

- Quantifiable outputs – completed conferences and agreements which included financial restitution, letter writing, community service or other social services
- Qualitative outcomes – reflected feelings about what participants gained from the process irrespective of whether a case progressed through to a conference such as justice, healing or restored family relationships.

The key recommendations of the research are:

- Secure an income stream, either through government funding or a contract with the courts to provide restorative justice services for sexual violence.

- Establish Project Restore as a specialist provider of restorative justice processes for cases of sexual violence.
- Establish a training capacity for facilitators that might work for Project Restore in the future.
- Raise levels of awareness in the courts about Project Restore.
- Initiate debate within the restorative justice field regarding report writing.
- Initiate debate within the restorative justice field as to what constitutes “success” for restorative justice processes.

Table of Contents

| | | |
|----------|--|-----------|
| 1 | Introduction | 1 |
| 1.1 | <i>Background to Project Restore.....</i> | <i>1</i> |
| 1.2 | <i>Project Overview</i> | <i>1</i> |
| 1.3 | <i>Structure of this Report</i> | <i>2</i> |
| 1.4 | <i>Terminology.....</i> | <i>2</i> |
| 1.5 | <i>Research Team</i> | <i>3</i> |
| | Dr. Shirley Jülich | 3 |
| | Dr. John Buttle | 3 |
| | Christine Cummins | 4 |
| | Erin V. Freeborn | 4 |
| 2 | Contextualising the Project..... | 5 |
| 2.1 | <i>Sexual Violence.....</i> | <i>5</i> |
| 2.2 | <i>Restorative Justice and Sexual Violence.....</i> | <i>7</i> |
| | Victim Offender Mediation or Dialogue Programmes..... | 8 |
| | Circle Processes..... | 8 |
| | The Conferencing Model..... | 9 |
| 3 | Methodology..... | 11 |
| 3.1 | <i>Ethics</i> | <i>11</i> |
| 3.2 | <i>Method.....</i> | <i>12</i> |
| | The Interviews..... | 12 |
| | The Interview Schedules | 14 |
| | Data Collection..... | 15 |
| | Data Analysis..... | 15 |
| 3.3 | <i>Limitations to the Research.....</i> | <i>15</i> |
| 4 | Project Restore..... | 17 |
| 4.1 | <i>The Way Project Restore Operates</i> | <i>17</i> |
| 4.2 | <i>Incorporating the Challenges into Practice.....</i> | <i>20</i> |
| | Power Imbalance | 21 |
| | Equality..... | 22 |
| | Neutrality and Impartiality..... | 22 |
| | Transfer of Power to the Community | 23 |

| | |
|--|-----------|
| Negotiated Community Response | 24 |
| Addressing the Concerns of Victim-Survivors..... | 25 |
| 4.3 <i>Summary of Cases Referred to Project Restore</i> | 25 |
| 5 How Project Restore Applies the Principles of Best Practice | 27 |
| Voluntariness | 27 |
| Full Participation | 31 |
| Preparation and Participant Expectations | 34 |
| Hold the Offender Accountable | 36 |
| Flexibility and Responsiveness..... | 38 |
| Emotional and Physical Safety | 45 |
| Deliver an Effective Process | 47 |
| Use in appropriate cases..... | 48 |
| 5.1 <i>Beyond the Practice Principles</i> | 49 |
| The Focus of the Restorative Justice Process | 49 |
| Desired Outcomes Differ | 50 |
| Non Participating Victim-Survivors | 51 |
| Limits to Confidentiality and their Impacts | 52 |
| Demands of the Court and their Impacts | 53 |
| 5.2 <i>The Outcomes of Project Restore’s Processes</i> | 54 |
| Quantifiable Outputs | 55 |
| Qualitative Outcomes | 56 |
| 5.3 <i>Non-Completion of Cases</i> | 58 |
| 6 Summary..... | 61 |
| 6.1 <i>Introduction</i> | 61 |
| 6.2 <i>Contextualising the Project</i> | 61 |
| 6.3 <i>Methodology</i> | 61 |
| 6.4 <i>Project Restore</i> | 62 |
| 6.5 <i>How Project Restore Applies the Principles of Best Practice</i> | 63 |
| 6.6 <i>Suggestions for Future Research</i> | 64 |
| 7 Recommendations..... | 65 |
| 8 References | 67 |
| 9 Appendices..... | 71 |
| 9.1 <i>Appendix 1: Process Mapping</i> | 73 |

| | | |
|-----|---|----|
| 9.2 | <i>Appendix 2: Mapping Project Restore to the Principles of Best Practice</i> | 83 |
| 9.3 | <i>Appendix 3: Confidentiality Agreement</i> | 95 |
| 9.4 | <i>Appendix 4: Consent Form</i> | 97 |
| 9.5 | <i>Appendix 5: Information Sheet</i> | 99 |

1 Introduction

1.1 Background to Project Restore

Project Restore, an incorporated society, emerged as a response to the frustration of victim-survivors of sexual violence who were pursuing justice in the conventional criminal justice system. Project Restore was inspired by the RESTORE programme in Arizona¹, United States of America, the research of Dr. Shirley Jülich² and counsellors from Auckland Sexual Abuse Help (ASAH) who have from time to time assisted victims to experience a sense of justice in other ways, such as civil cases and face-to-face facilitated meeting (Jülich, 2006). It is unique in that its formation has been driven by victim-survivors of sexual violence.

Project Restore operates across community agencies. Its services and practice models are the result of extensive collaboration between victim-survivor advocates, established community organisations such as Auckland Sexual Abuse HELP, SAFE Network, Rape Prevention Education (formerly Rape Crisis Auckland) Tiaki Tinana (the Māori programme within Rape Prevention Education), and other agencies working with victim-survivors and offenders. Project Restore personnel have worked closely with existing restorative justice providers to develop safe processes, based on New Zealand's conferencing model which is used in the adult criminal justice jurisdiction. It aims to provide victim-survivors with an experience of a sense of justice, support offenders to understand the impacts of their behaviour and facilitate the development of an action plan which might include reparation to the victim and therapeutic programmes for the offender.

1.2 Project Overview

As part of its commitment to restorative justice the Ministry of Justice has funded Project Restore to provide the following information:

1. The way Project Restore operates.
2. How Project Restore implements the best practice principles, as outlined in "Restorative Justice New Zealand: Best Practice" (Ministry of Justice, 2004).
3. The outcomes of Project Restore's processes.

¹ For more information on this programme refer to Koss, M. P., Bachar, K. J., & Hopkins, Q. C. (2003). Restorative justice for sexual violence: Repairing victims, building community, and holding offenders accountable. *Annals New York Academy of Science*, 989, 384-396.

² See Jülich, S. (2001). *Breaking the silence: Restorative justice and child sexual abuse* (PhD Thesis). Massey, Albany.

The design of the research project was a collaborative venture between representatives of the Ministry of Justice, Project Restore and the research team. A sub-committee was formed by Project Restore personnel to provide oversight to the project.

1.3 Structure of this Report

Section 2 contextualises the project by providing a brief background to sexual violence. It details the various models of restorative justice as a potential remedy for sexual violence. Section 3 details the ethical and safety issues, the methods used to gather data, and concludes with a discussion of the limitations of the research. Section 4 describes how Project Restore operates and outlines how Project Restore has addressed the challenges of using restorative justice to address sexual violence. This section concludes with a summary of the cases referred to Project Restore. Section 5 details how Project Restore applies the Principles of Best Government (Ministry of Justice, 2004). It also outlines how Project Restore has gone beyond these principles to provide safe restorative processes for all stakeholders that maximise the opportunity to experience a sense of justice. This section concludes with a discussion of the outcomes of Project Restore's processes. Section 6 provides and brief summary of the report and suggestions for future research.

1.4 Terminology

The language used by restorative justice is similar to that of the criminal justice system. The use of the term "victim" appears to have been adopted by restorative justice without any protracted debate in the literature, unlike the sexual abuse field, where there has been much discussion regarding the use of language and the transition from victim to survivor. An emerging trend in more recent reports on sexual violence has been to use the conjoint term "victim-survivor" (Lievore, 2005; Morrison, 2007; Neame & Heenan, 2003), in recognition that the use of either label alone is problematic, and does not account for all subjective experiences of sexual violence. By drawing on both, this acknowledges that a victim can "at one time be both a victim and a survivor" (Jülich, 2001, p. 26) and can either be male or female. This report will also refer to victims and survivors as victim-survivors. However, in some sections when reporting the work of others we will use their terminology to avoid any confusion.

Project Restore is a survivor driven organisation and this is reflected in all decision making processes and methods. One example is the language used. At Project Restore (and in most places in this report) the phrase victim-survivor is substituted for the simple use of victim. This language is powerful and representative of the

primary goals of healing and justice that Project Restore has. Practitioners in the field explain that the language is used to retain the empowerment conveyed by the word “survivor” and the outrage implied by the word “victim” (Koss & Achilles, 2008). Project Restore personnel continue this use because they do not want to forget the harms of the past but yet also want to help victim-survivors to be able to experience a sense of justice.

We use the criminological language “offender” to describe perpetrators of sexual abuse, who may be either male or female, and acknowledge that an offender so named in this report might not have been found guilty of sexual violence. We refer to the processes that Project Restore uses to deliver restorative justice as a restorative conference or restorative process. These terms are used interchangeably in this report.

Project Restore understands sexual violence as sexualised and gendered violence, a crime that is typically perpetrated by a more powerful person, usually male, on a less powerful person, usually female. Sexual violence incorporates a wide range of violations from rape to habitual sexual abuse that is fostered by inequality and abuse of power (Merry, 2009).

1.5 Research Team

Dr. Shirley Jülich

Dr. Shirley Jülich is a senior lecturer in the Centre for Business Interdisciplinary Studies and the Programme Leader at the Restorative Justice Centre, AUT University, Auckland, New Zealand. Her PhD investigated the complex relationship between the criminal justice system, restorative justice, and child sexual abuse from the perspective of adult survivors. In earlier years Shirley worked with at risk children and young people as a Group Worker with the Community Welfare Department in Western Australia. Although Dr. Jülich has led the research project, given her involvement in Project Restore as a founding member, she has had not been involved in the gathering of data or subsequent analysis. However, she has been instrumental in the leadership of the information gathering, writing and editing of this report.

Dr. John Buttle

Dr. John Buttle is currently a senior lecturer in the School of Social Sciences at Auckland University of Technology (AUT). Having gained his Ph.D. in Criminology from the Centre for Comparative Criminology and Criminal Justice in the School of

Social Sciences at the University of Wales, Bangor in the United Kingdom, he moved to New Zealand in 2003. His current research interests revolve around developing a more balanced understanding of police culture, and gaining greater understanding of police legitimacy as well as systems of police accountability. Dr. Buttle analysed the data for this report and contributed to writing and editing.

Christine Cummins

Christine Cummins has a B.A. Sociology Major from Auckland University. She is presently working towards a Masters in Health Science (Rehabilitation). Christine has worked as a research assistant for four years at AUT in the School of Rehabilitation and Occupational Studies. She has experience in both qualitative and quantitative methods. Other studies she is presently involved in include collaboration with Melbourne University validating a measure for Quality of Life for people after Traumatic Brain Injury, and Exploring a Therapeutic Exercise Programme for Women Diagnosed with Breast Cancer. Previous studies include *W.H.O. Quality of Life and Quality of Care Pilot Study*, *Return to work after Stroke*, and an *Evaluation of Vocation Rehabilitation under the Injury, Prevention, Rehabilitation and Compensation Act 2001*. Christine gathered data, spoke directly with participant of the study, and contributed to the writing and editing of the report.

Erin V. Freeborn

Erin Freeborn has a B.A. in World Religions from Wright State University in Dayton, Ohio, USA and a Master of Divinity from Boston University in Boston, Massachusetts, USA. Her Master's work focused on restorative justice and she has a certificate in Conflict Transformation from the Boston Theological Institute, Boston, Massachusetts, USA. She is a candidate for Juris Doctor 2010, from Northeastern University School of Law, Boston, Massachusetts, USA. Erin worked on this report as a legal intern for the Centre for Restorative Justice at Auckland University of Technology (AUT). She intends to use her M. Div. and J.D. in conjunction to help make the courts in the United States of America more restorative. For the current investigation of Project Restore, Erin contributed to the writing and editing of the final report.

2 Contextualising the Project

2.1 Sexual Violence

The psychological and social consequences of sexual violence that impact on families, communities and broader society have been well documented in the literature over many decades. An understanding of the economic costs and consequences has been somewhat more recent but a significant body of literature has begun to emerge over the last few decades attesting to the significance of these impacts on survivor/victims, communities and society.

While not generally considered an economic crime there are significant financial costs associated with sexual violence. These costs are incurred not only by the victim but also the offender their family and society. Direct individual costs which include legal fees and loss of income if an offender is prosecuted and for the victim, medical and welfare services to help with the physical and psychological effects of the abuse. These costs also affect their families. Such offences have a cost to society as it is charged with policing, providing a criminal justice system, court services, detainment as well as providing welfare and compensation provisions for victims. Loss of earnings for the individual also translates into loss of revenue for the economy. These costs are referred to as tangible in that they are visible and can be quantified.

Although it is not easy to place a value on the impact of suffering, pain and victimisation, sexual abuse carries intangible costs, which are much more difficult to quantify. These intangible costs are generally borne by the victim although society pays for the ripple on effect (Morrison, Quadara, & Boyd, 2007). These often-invisible costs relate to the long term health and well being of the victim and their family as well as the resultant lost productivity where educational or career opportunities have been lost.

The cost of sexual offending to families also goes beyond loss of income. Families are often dichotomised as a result of sexual violence when supporters side with either the victim or the offender, or avoid contact with each other (Morrison, 2007). The emotional and financial support that families can provide their members can also become split.

Overseas studies have attempted to quantify the costs of sexual offending making calculations to estimate the tangible and intangible costs. A North American study conducted by Koss, Koss and Woodruff (1991) determined that the medical costs for a victim-survivor of sexual violence during a one year period averaged \$US89 to \$US239 higher than those of patients who had not been subjected to sexual

violence. Two years later, in an additional study, Koss (1993) compared physician visits made by victim-survivors before and after sexual violence. She found that visits increased by 18% in the year of the sexual assault, 56% in the year following, and 31% in the second year following.

Miller, Cohen and Wiersema (1996), in their cost analysis of personal crime for North American victims, identified that the costs of sexual assault, an estimated \$US127 billion dollars per annum, were the highest of all crime. Their study estimated that each incident cost \$US87,000. The cost per victim was higher at \$US110,000 acknowledging that many victim-survivors are re-victimised. It should be noted that this study ignored the non-victim costs of crime, that is, society's response to crime. These include the criminal justice system, and other social costs such as the change of behaviour or security measures that could be undertaken by members of society who were concerned about crime.

In Australia, Mayhew and Adkins (2003) estimated that sexual offending in Australia cost A\$230 million or A\$2,500 per incident. However, this did not include mental health care so it is likely to be an under estimate given that mental health care is frequently identified as a large proportion of the total costs of responding to sexual offenses (Max, Rice, Finkelstein, Bardwell, & Leadbetter, 2004; Miller, et al., 1996). While Dubourg, Hamed and Thornes (2005), demonstrated that sexual offending in Britain was the second most expensive crime. Their calculations included costs relating to the physical and emotional impact on direct victims, health services, and lost output – the costs of victim/survivors taking time off work so that they can convalesce, or lost productivity due to impairment.

New Zealand studies are consistent with those from overseas. The New Zealand Treasury working paper entitled *Estimating the Costs of Crime in New Zealand* (Roper & Thompson, 2006), included in their calculation the cost of prevention and dealing with the consequences of sexual violence and revealed it to be the most costly sub category of crime costing NZ\$72,130 per incident. Studies investigating the prevalence of sexual offending in New Zealand estimate that between 9 - 20% of women are victims of sexual violence and 4-12% of men (Morris & Reilly, 2003). It is also widely acknowledged that these crimes are seldom reported to Police. Morris and Reilly (2003) estimated this reporting rate to be only 12%. A recent study commissioned by the Ministry of Women's Affairs designed to estimate the attrition in relation to adult sexual violation cases within the criminal justice system, estimated that nine in ten sexual violation offences are not reported to the police. This study found that between 13 and 17% of those cases reported to the police resulted in conviction (Triggs, Mossman, Jordan, & Kingi, 2009). This suggests that of

1,000 offences, 100 will be reported and of those reported between 13 and 17 will progress to a conviction.

Estimates indicate that many cases occur but few are reported and fewer are prosecuted. Studies have found various reasons that victim-survivors are reluctant to report to the police. Some have negative perceptions and doubt about the reliability of the system. Victims frequently express negative perceptions and experiences of traditional court processes and choose not to report sexual violence to the police (Jülich, 2001; Koss, et al., 2003). A further study commissioned by the Ministry of Women's Affairs investigating effective interventions for adult victim-survivors of sexual violence concluded that: "access to high quality and culturally appropriate services is essential for meeting survivors' crisis and longer term needs and for promoting recovery" (Ministry of Women's Affairs, 2009, p. xi). This study investigated formal and informal supports including restorative justice processes. While none of the participants interviewed had participated in restorative justice processes, the research highlighted the value survivors placed on expert interventions in promoting recovery (Kingi & Jordan, 2009). Because of the high costs of sexual offending to society and the individual, any intervention that assists recovery and healing for the victim has an economic value.

2.2 Restorative Justice and Sexual Violence

Restorative Justice gives victim-survivors an opportunity to experience a real sense of justice not often available within the traditional criminal justice system and is a process that adult survivors of child sexual abuse identified could provide them with a sense of justice thereby progressing their individual journeys of recovery (Jülich, 2001). Further, restorative justice gives society a real opportunity to address the harm that has been caused by sexual violence.

The literature is not supportive of the use of restorative justice within the area of gendered violence. Indeed, critics have cited issues relating to power that preclude the use of restorative justice with cases of gendered violence (Parker, 2004), arguing that adversarial systems would better serve victim-survivors of gendered violence (Hooper & Busch, 1996). Others have argued that the conventional criminal justice system is just as inadequate in rectifying power imbalances (Carbonatto, 1995; McElrea, 2004). Despite these debates, there are some programmes using restorative justice approaches to address sexual violence. This would indicate that those engaging with restorative justice as either victim-survivor or offender consider that restorative justice processes are appropriate for addressing sexual violence.

Victim Offender Mediation or Dialogue Programmes

A number of victim-offender mediation or dialogue programmes have been operating since the early 1970s across the United States. While not designed primarily to address sexual violence, these programmes facilitate direct meetings between victims and offenders of sexual violence, usually while the offender is in prison or just prior to release (Koss & Achilles, 2008). Consistently, evaluations of these programmes have reported high victim-survivor satisfaction, but it should be noted that sexual violence was not evaluated separately from other crime categories (Koss & Achilles, 2008). Use of the term “mediation” in the name of such programmes and reference to the “resolution of conflict” is problematic for crimes of sexual violence. As Koss and Achilles (2008) argued, crime is not a conflict to be resolved. Typically, sexual violence is a gendered crime and as such challenges the notion of any pre-existing equality. The mediation model and its associated practices of “getting to yes” (Fisher & Ury, 1983), “win-win”, “finding the middle ground” and the idea of a third party neutral facilitator (Boullé, Jones, & Goldblatt, 1998) are simply not appropriate. Such models merely ignore inequality, replicating the societal structures that foster the disempowerment of victim-survivors.

In Copenhagen, Denmark, counsellors at the Centre for Victims of Sexual Assault have been assisting victim-survivors to experiencing a sense of justice through informal communication between the victim-survivor and offender (Sten Madsen, 2004). This is achieved through written communication – letters and email – or face-to-face meetings. Although a formal evaluation has not been completed, two victim-survivors of three reported cases, appeared satisfied that they had at least been acknowledged (Koss & Achilles, 2008).

Circle Processes

The circle process developed in Canada and used by North American First Nations generally is recognised as restorative (Koss & Achilles, 2008; Pranis, 2005). The most documented programme of this type addressing sexual violence is Hollow Water’s Community Holistic Circle Healing programme. The community of Hollow Water had been subjected to intergenerational child sexual abuse over three generations (Sawatsky, 2009). Given that the majority of the community (estimated at 75%) was involved as either a victim or offender – or both – it was clear that conventional approaches to addressing sexual violence would not have any positive impacts on the community (Sawatsky, 2009). The programme was based on traditional values using community volunteers to provide traditional services.

Although circles as a model for justice are culturally appropriate, the programme has been critiqued both externally and internally (Koss & Achilles, 2008). These critiques

indicated that the programme has lost its early momentum and has become overshadowed by the conventional criminal justice system (Dickson-Gilmore & La Prairie, 2005; Koss & Achilles, 2008; Lajeunesse, 1993). However, Sawatsky (2009) argued that while the critiques might be well founded, they did not challenge the fundamental direction of the programme and the critics recognised that Hollow Water's programme was a powerful community based programme aimed at providing healing justice. As part of a reinvigoration process, traditional values forbidding payment for traditional services were reassessed. It is now recognised that the volunteer, charity model is unsustainable: workers need to be paid. However, resources are scarce. The funding for this programme has not increased despite a government commissioned cost-benefit analysis reporting that for every \$US2 spent in the Hollow Water programme \$US6 – \$US15 of direct costs would be saved.

The Conferencing Model

Initially developed in New Zealand and based on the family group conference of the New Zealand youth justice system, the conferencing model has become the predominant model for restorative justice in the adult criminal justice system of New Zealand.³ This model has been used by restorative justice provider groups to address most forms of gendered violence. The New Zealand Court-Referred Pilot Programme for Restorative Justice used the conferencing model in its programme, but while the pilot addressed moderately serious offending, such as aggravated robbery, it deliberately excluded domestic violence (Department for Courts, 2002). Sexual offences were excluded also as they attracted penalties outside of the pilot parameters (Department for Courts, 2002). However, provider groups have continued to address gendered violence outside of the pilot (Department for Courts, 2003). As the conferencing model spread to other countries various programmes, such as some South African restorative justice programmes, have included sexual violence in their case load (Koss & Achilles, 2008). Although little is known about the processes, safeguards and outcomes of these informal programmes, their very existence suggests some support for the use of restorative justice with sexual violence — if only by those referring cases and those agreeing to participate.

It should be noted that most restorative justice programmes using the conferencing model, have not been specifically designed to address sexual violence. Koss and Achilles (2008), in their recent review of programmes internationally, located only four such programmes, three of which are in the adult jurisdiction. These included

³ For more information on the conferencing model, see Morris, A., Kingi, V., Poppelwell, E., Robertson, J., & Triggs, S. (2005). *New Zealand court-referred restorative justice pilot evaluation*. Wellington: Ministry of Justice.

RESTORE in Pima County, Arizona, USA (Koss, 2006; Koss, Bachar, Hopkins, & Carlson, 2004), Phaphamani Rape Crisis Counselling Centre in Uitenhage, South Africa (Skelton & Batley, 2006), and Project Restore in Auckland, New Zealand (Jülich, 2006). To date, there have been no published evaluations on these programmes. However, an evaluation of RESTORE is forthcoming (Koss & Achilles, 2008). Anecdotal information reported by Koss and Achilles (2008) indicated that after 2 years of operation participation rates are 71% for victim-survivors and 84% of those offenders where victims agreed to enter the programme. Further, they noted that in some instances conferences have been convened without the victim-survivor's attendance, but in all such cases victim-survivors have given their permission for the conference to go ahead.

Clearly there are some restorative justice programmes operating internationally that are specifically designed to address sexual violence but there has been little evaluative information on operational programmes addressing gendered violence (Parker, 2004). Furthermore, as Daly (2008b) noted there are few jurisdictions in the world where it is possible to compare established and alternative justice responses to sexual assault, and so there is a paucity of evidence comparing the experiences of court and conference victims.

3 Methodology

The research project used qualitative methodologies such as interviews and the exploration of policy documents. Descriptive thematic analysis, (using grounded theory methods) was chosen as the main theoretical approach to the research because its exploratory emphasis facilitated questions led by those aspects of the participants' understanding that were most salient to them. This allows the researcher, and prospective audience, to fully appreciate and explore what the participant considered important about his or her experience of restorative justice. This is an inductive, methodology that allows the researcher to develop a theoretical account of the general features of a topic while simultaneously grounding the account in empirical observations or data (Glaser & Strauss, 1967). It allowed the researchers to develop rich descriptions of the experiences discussed, as the theory emerged from the verbal data (Glaser & Strauss, 1967). The data gained from audiotape recordings of the process was transcribed. This transcribed material along with the reports was analysed by the researchers and analysed for recurrent statements and themes. These themes were labelled and compared, the aim to seek similarities and differences among the data. Themes were developed into categories of interest and meaning, and finally into a key concept related to the area of interest. This informed the questions that were asked during the telephone interviews and the process was repeated. Data was collected until no new information emerged or the number of willing participants was exhausted.

3.1 Ethics

The research was designed to include an active protection of all participants and the researchers and was subject to ethics approval from the AUT Ethics Committee (AUTEC)⁴. The process of securing ethics approval from AUTEC commenced prior to February 2007. The nature of the research, its sensitivity and other complexities, was reflected in the complexity of the ethics application. Counselling services if required were available to research participants from the AUT Counselling Services.

Participants were provided with information about the project and they were advised that participation was voluntary and assured of confidentiality. All consent forms, transcriptions and tapes are held in locked storage. The researchers and the research assistant are the only people to have access to this material. In addition, participants were asked again at the beginning of the interview for their consent to participate. Permission to audio tape was also requested at this time. If the interview was audio taped, consent was recorded on tape. All participants were advised that

⁴ AUTEC 07/30 approved June 15, 2007

they did not have to answer any question they felt uncomfortable about, that they could stop the interview at any time or withdraw their information from the project up until the time analysis of the data commenced.

Ensuring confidentiality was more complex. Any identifying features were removed from transcripts and participants' names were not used in the report. The Project Restore team did not know which people agreed to be interviewed. While this maintained confidentiality for victim-survivors, offenders and their supporters, it was not possible to guarantee confidentiality to members of the Project Restore Team. The identities of the team are common knowledge in the restorative justice community. Team members were provided with copies of the transcripts and a copy of the draft report and given the opportunity to comment if they were inaccurate. They were also given the opportunity to read the report to ensure we had accurately represented the information they shared with the research team.

3.2 Method

The research aimed to elicit the participants' views and expectations of the process. As the research progressed, semi structured interviews were developed with questions acting as prompts to guide the conversation. Two groups were targeted for the interviews: 1) Project Restore personnel, 2) victim-survivors, offenders and their support people, and the community panel members who had attended restorative processes facilitated by Project Restore.

The Interviews

Interviews with Project Restore personnel concentrated on the implementation of the best practice guidelines (Ministry of Justice, 2004) in Project Restore's processes. Two members of the Executive Committee were interviewed face-to-face in interviews that each lasted approximately one hour. The clinical team of Project Restore opted to be interviewed in a focus group situation as opposed to one-on-one interviews. Their rationale for this was that the focus group emulated the way they worked in a model of collaborative and consensual decision making.

The first interview was conducted with Shirley Jülich as a pilot to develop an interview schedule. While Shirley Jülich has a long history with Project Restore and considerable experience of how restorative justice is employed in the context of sexual violence, her involvement with this research meant that it was inappropriate for this data to be considered as anything other than a means of constructing questions. Therefore, the data from this interview did not contribute to the findings of the report.

Project Restore chose the cases to be investigated and provided the researchers with names and contact details of participants who had agreed to take part in the research. All potential participants had previously signed consent forms at the time of the restorative process. Four cases were made available which provided 18 potential participants. Among this group were 4 victims (all female), 1 victim support person (male), 3 offenders (all male), 4 offender support persons (2 male, 2 female), 2 offender specialists (both male), 4 community panel members (all female). Contact phone numbers were provided for 13 of these. One offender from an early case was deceased. His support person was not contacted as it was considered inappropriate.

The researcher contacted the participants by telephone to introduce herself, explaining the purpose of the study, giving an outline of the proposed questions and reminding them that participating in the interview was entirely voluntary. The researcher explained that she did not know the details of the cases and only wanted to discuss their perception of the process. If the participants agreed, an interview time was set up. Participants had the option of being interviewed straight away or making other arrangements. A total of six interviews were conducted, in addition to the two focus groups that were convened with Project Restore's clinical team. Focus groups were comprised of:

- Restorative justice facilitator (female)
- Victim Specialist (female)
- Offender Specialist (male)
- Clinical Supervisor (female)

Interviews were conducted with the following people:

- 3 victims (female)
- 1 offender (male)
- 1 victim specialist (female)
- 1 offender specialist (male)

Of those who declined an interview: one offender and their support person felt the process was over, and two community panel members who had attended an early restorative process felt that they were unable to recall the specific restorative process and had nothing to contribute.

As many of the participants lived out of the Auckland area, telephone interviews were the most appropriate. Making initial contact with some people was difficult especially for earlier cases where contact details were out dated. For others who were initially willing to set up times for interviews, however, they were sometimes

not available at the arranged time and were reluctant to reschedule interviews. To avoid this happening the researcher was as flexible as possible and always prepared to record an interview once initial contact was made and consent to record the conversation was obtained.

Telephone interviews are effective because they provide a degree of anonymity and reportedly they allow for addressing sensitive issues (Shuy, 2001). However, the time spent acquiring data from telephone interviews tends to be a relatively short process. A telephone conversation is an incomplete form of communication; it lacks visual cues. Therefore, it is difficult to develop rapport so that interviewers can probe deeper.

The males in this study gave relatively short contributions to their interviews in comparison to female participants. The practice of giving short terse responses that tell little is described as minimising (Schwalbe & Wolkomir, 2001). Although it is difficult to generalise, Schwalbe and Wolkomir (2001) suggest that especially when discussing gender related topics men can feel threatened by the interview when a stranger controls the flow of the conversation. It is possible that the topic and the situation of a telephone interview from a female stranger with a list of questions – though loosely formed – made it uncomfortable for the men to disclose anything more than basic answers. In hindsight a different approach, such as face-to-face interviews with gender appropriate interviewers, may have been more successful in eliciting more meaningful responses.

The Interview Schedules

The interview schedule was designed to guide the interview and be flexible to reflect the individual participant's role in the process. These questions were based around expectations and perceptions of the process and included the facility to criticise the process. The following questions were used:

- What did you expect the process to involve?
- What did you expect to come out of the process?
- Did you perceive that the process was fair?
- Did you perceive that the process was safe?
- Do you still have contact with this person? How is that?
- Has the restorative justice process made that contact easier/or complicated it?
- For victims: What has/would provide you with a “sense of justice”?
- Following this conference do you have any suggestions for changing the process?

Prompts included statements such as: “Did this happen?” “How was that for you?” and “What was it in particular that did that?”

For the Project Restore personnel individual and group interviews, the focus of the questioning was on the implementation of the restorative justice values and the best practice principles. This included questions such as:

- How do you ensure the restorative justice values are underpinning everything that are doing?
- How is the demand for cultural appropriateness dealt with?
- How are the demands put upon you by the court balanced with the intention of having a survivor driven process?

Data Collection

Data was managed according to AUT’s Ethics Policy and aggregated in ways that protected individual participants. Only that data generated by the interview schedule was gathered.

Data Analysis

The data gathered from the interview process along with all other aspects of the analysis was conducted by John Buttle, a criminologist. This provided objectivity and a balance of perspective to the knowledge of Project Restore held by Dr Shirley Jülich.

3.3 Limitations to the Research

This research project has been limited by two factors beyond the control of the research team. The first was the small number of interviews conducted with both personnel and conference participants – victim-survivors and offenders. Project Restore has a small number of people working in the programme – a restorative justice facilitator, a victim specialist, an offender specialist and a clinical team leader. Given this small number, perspectives were to some extent limited. There were few interviews conducted with conference participants. Project Restore has received small numbers of referrals and has conducted even fewer restorative conferences. This is exacerbated by Project Restore’s limited capacity and resources. Therefore, the pool of potential interviewees was somewhat limited.

The second factor is that findings cannot be generalised to all victims and offenders of sexual violence who have experienced restorative justice processes. The sample was not random but purposive. Not all people wanted to be interviewed.

Those who declined to participate did not seem to be driven by any dissatisfaction with the process or Project Restore. It appeared as though they wanted to move past the event and not revisit it even if they felt they had experienced a sense of justice.

4 Project Restore

4.1 *The Way Project Restore Operates*

Project Restore accepts referrals from the District Court system in the same way that other restorative justice providers do. They also accept referrals from the community or self referrals directly from the victim-survivor or offender. In the instance of sexual violence or historical sexual violence these community referrals typically have not been reported to the police, or any other investigative authority. The processes Project Restore follows – referral to post-conferencing – have been analysed and are presented in more detail in a process map, accompanied by explanatory tables. See Appendix 1: Process Mapping (p. 73).

Until quite recently, in the Auckland District Court, the restorative justice court co-ordinator referred cases to the various provider groups. Late 2009, the Ministry of Justice entered into a contract with the Waipareira Trust to be the sole provider of restorative justice to the Auckland District Court. Project Restore does not have, or has ever had, a contract for delivery of service. There is no formal income stream and so they operate on the good will of community agencies and their employees such as ASAH and the SAFE Network, and to a lesser extent RPE and Tiaki Tinana.

To date Project Restore has been primarily funded by “one off” grants from various community funding sources both government and privately based. To offset the costs of service provision, offenders are asked to pay a contribution whether the case proceeds to conference or not. This contribution is not related to how far the case proceeds. The payment is not representative of the cost for service which Project Restore has estimated on average as \$3,800 per case for those that are conferenced and \$1,230 per case for those that do not result in a restorative process. The organisational costs are on average an additional \$1,300 per case. The lack of consistent funding makes it hard for Project Restore to plan for future initiatives because they have no means to predict the amount of revenue received or the effects of budgetary constraints. Despite the valuable work that they do, Project Restore is in urgent need of a reliable source of income.

Project Restore’s practice is based on the best practice principles developed by the Ministry of Justice (2004). Given the development of expertise in this field, Project Restore was funded by the Ministry of Justice to develop practice guidelines for the use of restorative justice and sexual violence. These guidelines⁵ have been mapped

⁵ The practice guidelines developed by Project Restore are available from Project Restore.

to the best practice principles developed by the Ministry of Justice (2004) to demonstrate their compatibility. See Appendix 2: Mapping Project Restore to the Principles of Best Practice (p. 83).

All referred cases are assessed by the Project Restore Clinical Team, which is comprised of the facilitator, and two community experts – the victim specialist, and the offender specialist. The facilitator is a trained restorative justice facilitator who not only has experience in working with criminal cases referred by the District Court system, but also has additional training and expertise in the complex dynamics of sexual violence. The victim specialist is a qualified counsellor with specific expertise and experience in the dynamics of sexual violence. To date, this person has been employed by ASAH as a sexual violence counsellor. The offender specialist is a qualified therapist working with men and women who sexually offend. If the victim-survivor was a child when the sexual violence occurred, a therapist from the SAFE Network is contracted as the offender specialist. If the victim-survivor was an adult when the sexual violence occurred, Project Restore contracts a therapist in private practice working with offenders who offend against adults.

The clinical team, which meets weekly, is supervised by a clinical psychologist who has no face-to-face contact with victim-survivors or offenders in the Project Restore programme. All cases are reviewed at the team meeting, new case files are introduced, preparatory work is reviewed, and restorative justice processes debriefed. The clinical supervision provides objectivity to all reviews and debriefing, providing checks and balances aimed at keeping all stakeholders safe. It is in these team meetings that decisions are made regarding acceptance of referrals, or whether a case will progress to a restorative process. New developments from case work are identified and documented for inclusion in Project Restore's policies and guidelines for working with sexual violence.

Following initial contact and receipt of a formal referral, each application is assessed for acceptance using criteria that include assessment of the following:

- Ability and readiness of the offender to demonstrate accountability
- Offender must agree to be assessed for treatment
- Offender must agree to enter treatment if it is recommended
- Victim must be willing to engage in the process without coercion
- Victim must be willing to share information and begin the preparation stage.

To be accepted the offence must fit within Project Restore's definition of sexual offence; in cases that are referred by the court the offender has entered a formal guilty plea to sexual offending, for self-referred cases the offender has admitted that

he has sexually offended. The existence of any timeframe restrictions which might have been imposed by the courts, also affects whether a case can be accepted. Acceptance of cases and case allocation also depends on resource availability including staff workload, the interventions that will be required during the pre-conference stage, and other time constraints placed on the case, participants or staff.

Once a case is accepted, a team is allocated and pre-conference assessment meetings are set up. These meetings include the victim specialist or offender specialist as appropriate, and the facilitator who engages independently with the victim and offender to assess their motivation and capacity to engage actively in the process. For the offender this means also assessing their capacity to accept responsibility, that no safety risk is currently posed and that the offender has agreed to engage in treatment. Project Restore's preference is that the victim-survivor is in a therapeutic relationship.

These pre-conference meetings play a crucial part in ensuring participants can give fully informed consent to participate in the process. Detailed information is provided to them about the conference process, the possible outcomes and emotional risks. Support people for the conference process are identified at this stage and they too are prepared for their participation in the restorative process. Part of this preparation includes sharing information about the dynamics and impacts of sexual offending and guidance as to the development of key support relationships. The number of pre-conference meetings, at least three, but might be more as the preparation is driven by the readiness of the victim-survivor or offender to participate in the restorative conference.

There are many decision points in the preparatory process. It is a step by step process and informed consent is gathered at each decision point. If the victim-survivor and the offender consent to continue, and the clinical team have assessed risk and readiness, the team begins to design the restorative process. At the same time the victim-survivor and the offender are coached and prepared for the upcoming restorative process. Support people are also coached in their ability to be effective allies. Any short term interventions identified as necessary to increase the conference's effectiveness are explored and undertaken, if necessary, at this point.

Planning for the actual conference follows this phase. Possible venues and dates are selected in collaboration with the victim-survivor and offender. The clinical team in their weekly review meetings identify the most appropriate process following intensive consultation with the stakeholders. Throughout the preparatory process it becomes clear as to what the process should look like. To date Project Restore has

used a modified version of the conferencing model as has been developed in New Zealand and used in the New Zealand Court-Referral Restorative Justice Pilot (Morris, et al., 2005). Conference participants include the victim-survivor and his or her supporters, the offender and his or her supporters, the restorative justice facilitator and the two community experts. The conference is audio-taped with permission of all participants to support the writing of accurate documentation. At times the restorative process uses a surrogate victim and when it does Project Restore refers to it as a panel process. However, this is the only difference between the panel process and the conference; both are facilitated by the restorative justice facilitator assisted by the victim and offender specialists.

Following the conference all outcomes are monitored by the two community experts – offender specialist and survivor specialist – to avoid any re-victimisation. Post-conference meetings are driven by the needs of the survivor-victim and the offender. Typically, contact is made by phone calls, but if face-to-face meetings are required these are conducted by the appropriate specialist. If the offender is appearing in court for sentencing, the victim specialist will contact the victim-survivor to inform them of the court date and will advise of court outcomes if he or she cannot attend. In the event that an offender does not complete the agreed upon actions the case is returned to the court for further action. For those cases that have been self-referred Project Restore would support the victim-survivor to pursue any other action that he or she would think appropriate. To date this has not been necessary. These offenders have completed their obligations.

4.2 Incorporating the Challenges into Practice

Unlike the early development of restorative justice processes which was practice led, Project Restore first engaged with various bodies of knowledge, including the separate fields of sexual victimisation, sexual offending and restorative justice. They also gathered information from researchers working at the intersection of restorative justice and sexual violence or gendered violence (Daly, 2002; Jülich, 2001; Koss, et al., 2003; Stubbs, 2002).

Project Restore has aimed to overcome the challenges in the literature thereby developing practice that negated these challenges. In particular, practice has aimed to provide a sense of justice as defined by the survivors of historic child sexual abuse who participated in the research conducted by Jülich (2001).⁶ When describing a sense of justice participating survivors needed the following:

⁶ In this section to avoid confusion, the survivors that contributed to the research of Jülich (2001) are referred to as participating survivors.

- To have their stories heard by witnesses in a safe forum based on equality – substantive equality,
- An acknowledgment of the difference between right and wrong,
- For the offender to take responsibility and demonstrate accountability,
- An experience of victimisation validated by offenders, bystanders and outsiders,
- To transform relationships so that they could co-exist with offenders in shared communities.

Although participating survivors identified restorative justice as a process that could provide an experience of justice they were sceptical at the thought of engaging with it themselves (Jülich, 2001). A number of practice issues were identified that would have to be addressed before victim-survivors of sexual violence could successfully engage with restorative justice. These included power imbalances, equality, neutrality, impartiality, transfer of power to the community, and a negotiated community response (Jülich, 2001, 2006, 2010b).

Power Imbalance

Although victim-survivors might want to confront the offender and have their say, they need to be ready to do so. Complicating this is the pre-existing relationship with the offender. It is easy for those who are unaware of the complexity of sexual violence to assume that it is a relationship based on equality. This is never the case in sexual violence, more often than not victim-survivors have been targeted merely because there was a pre-existing power imbalance.

In the case of historic child sexual abuse, survivors contributing to Jülich's (2001) research noted that offenders of child sexual abuse were master manipulators and participants in restorative processes might not appreciate just how manipulative these particular offenders can be. They expressed concern that restorative justice facilitators, with limited experience of the dynamics of sexual violence, would not be able to sufficiently support and empower victims to break down the constructs of denial or counteract minimisation of the sexual violence.

Participating survivors were concerned that the burden of responsibility for restorative justice to proceed would rest on victims (Jülich, 2001). They felt that this might be adding to the pressure victim-survivors could already be experiencing. They believed that restorative justice could proceed without the actual attendance of the victim-survivor. A victim-survivor spokesperson could attend in their place. Justice would be realised by the victim-survivor through the process of feedback. That is feedback on the conference itself and the monitoring of the conference outcomes.

Participating survivors acknowledged that restorative justice could produce benefits for victim-survivors, offenders and society (Jülich, 2001). They were concerned that the needs of victim-survivors to confront the offender could be exploited. They were also concerned that if facilitators lacked understanding regarding the dynamics of sexual violence, victims' truths would not be heard or understood. They were afraid that in the long term, restorative justice would merely replicate the patriarchal structures of the courts.

Equality

Given that a power imbalance exists between victim-survivors and offenders, the concept of equality is important to victim-survivors of sexual violence. Unless processes for justice can accommodate inequality it is unlikely that a sense of justice could ever be experienced. The challenge is to provide justice across two groups with very different needs – victim-survivors and offenders. There are two approaches to equality (Honderich, 1995). The first is to treat all people the same – formal equality or equality of access (Waring, 1996) – the second is to accommodate differences between people – equality of outcome or substantive equality (Barnett, 1997). Equality of access ensures that we are all equal in the eyes of the law; however, this does not guarantee equality of outcome, particularly for members of marginalised groups (Waring, 1996). Deeply entrenched power imbalances in our society are likely to preclude any formal equality let alone substantive equality for survivors of sexual violence. The second approach is to accommodate the differences between people by treating people differently according to their needs. Therefore, substantive equality or equality of outcome acknowledges that we might have to treat people differently if we are to provide a level playing field. It is this understanding of equality – substantive equality – that underpins CEDAW⁷, to which New Zealand is a signatory (Waring, 1996). Further, this notion reflects Aristotle's vision of justice, which was to "treat like people alike and unlike people unlike" (Freeman, 1994). Restorative justice, if it is to provide a safe forum ensuring substantive equality, needs to recognise and accommodate the impacts of victimisation and understand that the offender and victim-survivor might at times be treated differently.

Neutrality and Impartiality

The literature presents a confused picture on this issue. Some writers have advocated that facilitators should be neutral (Marshall, 1999), others impartiality (Jülich, 2009), or that facilitators should be sufficiently neutral so as to be perceived

⁷ The United Nations Convention on the Elimination of all forms of Discrimination against Women.

as fair (Bowen, 1998), but some have suggested that neutrality is neither possible nor desirable (Boulle, et al., 1998). It is quite possible that if New Zealand facilitators were to be asked what their role was, very many would answer that they were neutral, and would describe that as something like the neutral third party of conflict resolution.

Coker (1999) argued that restorative justice had never prescribed to the notion of a neutral facilitator. Restorative justice in itself is not neutral, an acknowledged wrong has occurred, the process aims to hold offenders accountable, and weaker parties are empowered to participate. More importantly, it is not possible to be neutral in a case which is addressing historic sexual violence, such as where a four year old child (now an adult) had been sexually violated by an adult male (Jülich, 2010a). Boulle et al. (1998) argued that it was more useful “...to distinguish between neutrality in the sense of disinterestedness...” (p. 19) and impartiality in the sense of “...evenhandedness, objectivity and fairness towards the parties during the mediation process” (p. 19). Howard Zehr spoke of balanced partiality and although he made no reference to substantive equality, practising balanced partiality as a facilitator is how substantive equality could be achieved.⁸

Restorative justice must avoid reframing gendered violence as a dispute, or mutualising it in anyway (Cobb, 1997). Therefore it must avoid the replication of patriarchal societal structures. Restorative justice facilitators must be prepared to intervene and challenge all explanations for sexual offending that are gender based, blaming the victim, minimising the behaviour or contributing to the construct of denial. Although the victim-survivor and offender might not be treated equally in the process, substantive equality (equality of outcome) is more likely to be achieved when the difference between the offender and victim is recognised and accommodated.

Transfer of Power to the Community

Participating survivors (Jülich, 2001) discussed this in terms of the transfer of power to the community of care or interest typically present at a restorative process and also in terms of the transfer of power to “voluntary” community groups. In both instances they were concerned that this could mean transferring the costs to the community. Fiscally frugal governments such as New Zealand, have been quick to

⁸ Personal communication, September 18, 2007, with Howard Zehr. He attributed the notion of balanced partiality to Dave Gustafson co-director of Community Justice Initiatives in British Columbia.

embrace restorative justice (Braithwaite, 1996). It is interesting to note that restorative justice emerged around the same time that neo-liberalism was beginning to inform public policy in New Zealand and other places. Neo-liberalism has had and continues to have profound impacts on public policy in New Zealand.

Participating survivors were sceptical that voluntary community groups could deliver reliable and consistent services throughout New Zealand (Jülich, 2001). There are some grounds for this concern. Restorative justice, more than 20 years after the first restorative conference was convened, is not providing full time employment for most of its facilitators. While facilitators are receiving some payment, the payment is minimal and insufficient to live on. Some Māori groups employ restorative justice facilitators to convene restorative justice processes as part of their contractual obligations to government. Aside from these facilitators, the role of a restorative justice facilitator is taken on in addition to regular paid employment. Participating survivors were concerned that this could mean more unpaid work for women; not only as facilitators, but also they were concerned that women could become the unpaid supervisors of offenders in their family system with the responsibility of keeping offenders and potential vulnerable victims safe (Jülich, 2001). Survivors, therefore, were not supportive of the transfer of power to the community without appropriate structures in place to ensure women and children were not further disadvantaged.

Negotiated Community Response

The concept of community was an important point for participating survivors (Jülich, 2001). Aside from comments regarding the differences between communities – such as different levels of ability and resources – participating survivors were concerned as to who would attend the conference. They noted that these were the very people who had enabled the sexual violence and consequently were unable to protect them (Jülich, 2001). Participating survivors had no reason to trust the community and they had little confidence that their community could contribute effectively to restorative justice processes. Further, they noted that the agreed outcomes of restorative processes might depend on the ability of the community of care or interest to support them. If sexual violence has been normalised in a family or social network, it will be difficult for those who have been subjected to the same dynamics as victim-survivors. For those who have had a different experience of the offender, it can be very hard to “repaint an image”. It is not unusual for family and social networks to become polarised and fractured into supporters of the victim-survivor and supporters of the offender. The more powerful party usually has the more supporters. Very often victim-survivors and offenders share the same community.

Irrespective of what happens to offenders, even if they are imprisoned, they will likely return to the same community as the victim-survivor.

Addressing the Concerns of Victim-Survivors

Project Restore has negated these concerns raised by participating survivors (Jülich, 2001). This has largely been achieved by the use of the community experts – the victim specialist and the offender specialist both of whom have specialised training in their particular fields of expertise – and a restorative justice facilitator who has an in depth understanding of the dynamics of sexual violence. Project Restore is not neutral but they are impartial, creating a safe environment for everyone is a priority and they do practice balanced partiality by intervening if explanations are gender based, blame the victim, minimise offending behaviour or contribute to the construct of denial. They are aware that communities are not always equal and often shared. Finally, the transformation of relationships, according to the needs of the victim-survivor, is a priority.

4.3 Summary of Cases Referred to Project Restore

For the duration of this study there were 29 referrals made to Project Restore of which only 9 conferences reached completion – two of these conferences focused on one case. This disparity between referrals and restorative justice conferences that reach completion is to some extent due to the rigorous processes by which each case is assessed by Project Restore with a view to ensuring whether it is safe or appropriate for those involved to take part in the restorative process.

Another reason for the disparity between referrals and the number of completed restorative conferences is that participation is at the discretion of those involved. During the time of this research Project Restore completed 20 pre-conference processes that prepared those involved to take part in the conference. For reasons of their own four offenders declined to be involved and 11 victims also declined to participate, two of these victims proceeded to report the crime to the police. At least three referrals did not proceed beyond initial enquiries about the restorative process. Given the time consuming nature of the preparation and the risk assessment that determine whether the individuals involved are ready to undergo the restorative process, it is not surprising that at the time of writing two cases were still in the process of being investigated and one was on the waiting list.

Despite the disturbing and traumatic nature of the sexual crimes that are referred to Project Restore, not all referrals have been reported to the police. Of the 29 referrals: 10 were community referrals, three were post-sentencing, and 16 were

pre-sentencing and of the nine completed conferences, three were community panel processes. Therefore, two inferences can be made in regard to the referral process which need further study to be substantiated. Firstly, there are a significant number of referrals from the community. This suggests that some families are reluctant to officially implicate alleged offenders because of the price the family unit will incur if a family member is incarcerated for what the majority perceives as a heinous sex crime. As noted earlier (page 6), studies have found that victims appear reluctant to report sexual violence to the police. Perceptions of police and the processes of the courts act as a deterrent to reporting (Jordan, 2004; Jülich, 2001; Kingi & Jordan, 2009). Self-referrals to Project Restore could indicate that victim-survivors want to address the victimisation they have been subjected to. Secondly, the court referrals are initiated by a guilty plea and conferences are convened before sentencing, as is typically the case for restorative justice in the New Zealand context. This suggests that there could be a perception that reports generated by the restorative process will provide otherwise unheard information that might advantage or disadvantage offenders. If this perception spreads, it may contribute to a reluctance on the part of offenders to participate in restorative processes.

5 How Project Restore Applies the Principles of Best Practice

The principles of best practice for restorative justice processes in criminal cases developed by the Ministry of Justice (2004) are as follows:

1. Restorative justice processes are underpinned by voluntariness.
2. Full participation of the victim and offender should be encouraged.
3. Effective participation requires that participants, particularly the victim and offender, are well-informed.
4. Restorative justice processes must hold the offender accountable.
5. Flexibility and responsiveness are inherent characteristics of restorative justice processes.
6. Emotional and physical safety of participants is an over-riding concern.
7. Restorative justice providers (and facilitators) must ensure the delivery of an effective process.
8. Restorative justice processes should only be undertaken in appropriate cases.

One of the aims of this research was to investigate and report on how Project Restore implemented the Ministry of Justice's principles of best practice. In the following section we describe how Project Restore implements these principles.

Voluntariness

While the voluntary nature of restorative justice has ensured that many referrals to Project Restore will not reach the final conference stage, informed consent on the part of all involved is deemed to be essential. After all, the ability to make decisions is considered a fundamental human right (United Nations Development Programme, 2009). The importance of voluntariness is probably best expressed by Project Restore personnel when they voiced their opinions about the differences between restorative justice and the conventional adversarial approach based on the Westminster system of jurisprudence.

When victim-survivors report to the police, they do so voluntarily and although they may believe they are making an informed decision, they are initiating a process over which they have little control. The same could be said of restorative justice. They enter into a process after they have been provided with sufficient information to give informed consent. As the following participant has noted it is impossible to predict the dynamics of a restorative process.

...how you give them informed consent when actually they don't know what's coming? I see with this whole court processes you don't know what you're

getting involved in until you go through it and how hard it is. So with the restorative justice side of it as I've worked, transparency is just paramount. (Participant 4: Project Restore)

Participants' understanding of informed consent went beyond gaining a person's permission or acquiescence to take part in the restorative process to a continual provision of information so that informed decisions could be made on an ongoing basis. Once a complaint has been made and the conventional system of justice has been initiated, victim-survivors do not have a formal role aside from the depersonalised role of witness for the crown. There is a lack of information sharing.

It's interesting when you think about what is informed consent in the justice system for survivors it doesn't actually, well it doesn't exist as a concept. (Participant 1: Project Restore)

...but the victim doesn't exist in the justice system by then they are a witness to the crown, they don't exist except for a victim impact report, which is like a slapped on later thing ... in that whole process nobody had to give their consent because they don't have a role. (Participant 3: Project Restore)

This is a stark contrast to the decision making role given to the victim throughout the restorative process. Based on a participatory model, all stakeholders have a role to play and are given the opportunity to make decisions about whether to continue. Ideally, all those participating in the restorative conference have at least that much power.

Those involved are given a platform to stand on and are expected to actually answer to where they're at and what they actually understand and I think that's quite dramatically huge and that is totally against any adversarial model it's a participatory model. And the focus is about trying to address the needs of the parties as best we can. We can't do everything but I think there is a much fuller appreciation of trying to address stage and positional needs and personal needs of the parties. (Participant 2: Project Restore)

As participant 2 mentioned, emphasis is placed on the needs of those involved as far as is possible or is deemed practical.

While it can be implied that there are considerable advantages to the participatory aspects of restorative justice, there can also be some drawbacks. This pertains to the fact that New Zealand has statutory requirements in which restorative justice processes are an adjunct or extra layer of justice for those cases that have been

referred by the courts. While the adversarial process might, in most court referrals, legitimise the process, there are times when the two different approaches clash. This has not gone unnoticed by defence lawyers who are rightly suspicious of restorative practices that encourage honesty, but which report back to the court with information that can be taken out of context and used against the accused.

...we have had lawyers tell offenders not to participate and I think there is that tension in there so in an adversarial system the goal is minimising the impact and the lawyers job is to minimise consequence on the offender and in restorative justice that is not an acceptable place to come from, it's about fully acknowledging responsibility so to bring that agenda in isn't compatible so you can see why lawyers would get so anxious because their clients are going to maybe admit to something instead of denying it, instead of tricking the world they're going to be honest. (Participant 3: Project Restore)

The influence lawyers have may account for the small number of cases that are referred to Project Restore. The apprehension voiced by defence lawyers about restorative processes would undoubtedly reduce the take up of any participatory process. This is beyond the control of Project Restore. Alleviating the concerns of defence lawyers would require the removal of the need for Project Restore to provide the court with a report of what had occurred during the conference. If the information disclosed at a restorative process could be legally protected, in the same way a therapeutic conversation between a doctor and patient is, then there would be a greater chance for honesty and full participation from the accused and restorative processes would gain more respect and referrals from defence lawyers.

Another aspect of Project Restore's role that needs to be considered is whether or not the usefulness of this organisation should be seen as a function of the number of restorative justice conferences that they have completed. A low completion rate can be seen as a function of voluntariness. Project Restore takes a very conservative approach to risk and readiness, information is provided throughout all stages of the process, and benefits are not overstated. It is not surprising, therefore, that the ratio of completed cases to referrals, is perhaps low. However, it can be argued that even the initial preparation can progress the healing process or at least empower some individuals enough for them to decide the best course of action for the future.

I think part of the importance of having that preparation at the beginning is saying it might be a possible outcome that it empowers them to make another decision so it's a decision point and holding them in that disappointment and frustration and anger that sits there. There was that one case that came in where we made the approach to the offender and he said

categorically no, he didn't want to be involved, so we went back and had a support session and [the victim-survivor] went off and made a statement to the police. She was annoyed and angry but also empowered to make another decision and take another path, and this person will be at that same place if he chooses not to engage. So coming into the process, we then support a particular pathway or they go off to another one. (Participant 3: Project Restore)

It is also possible that those who are only involved in the early stages of Project Restore's processes may benefit from advice that leads to other forms of intervention.

...and then we have the community safety aspect requiring the offender is assessed and enters treatment if necessary, and asking victims/survivors to have a therapeutic relationship to use to deal with any triggering and issues that arise through the process. So we have lots of scaffolding ... to hold up things and make sure we have addressed every little bit that we can identify. (Participant 1: Project Restore)

It must also be noted that outcomes, such as the ones described above, are only made possible if the process run by Project Restore is adaptive.

So it's not like one thing is decided and we just carry it out, it's what's they need now. So we are shifting and moving all the time to respond to need and that's both about safety but also about effectiveness of outcome because we want the most effective outcome. The model I guess ... is that moving and tailoring it. (Participant 4: Project Restore)

In short, it has been suggested by the participants that the process used by Project Restore is usually driven by the needs of those involved in the process.

Project Restore's processes are clearly underpinned by voluntariness, in that the participation of the victim and offender are voluntary throughout all stages of the process. The facilitator and community experts are alert to the subtle pressures that both the victim and offender may be subjected to and have demonstrated that as far as is possible they ascertain that all participation is voluntary.

Full Participation

The journey from the initial meeting between the stakeholder and facilitator to the final restorative process is a long one. Typically, one individual, usually the victim-survivor, is ready to undergo the process before the other.

Where is the entry point for restorative justice for a survivor and what does that mean in terms of the values and accountabilities? Often survivors are willing to enter before offenders are willing to take responsibility and accountability or it even it being spoken about, so it feels like it's a much broader project or restorative group than it is. (Participant 3: Project Restore)

Since Project Restore is a victim centred programme, their emphasis is on the victim-survivor and is guided by a strong concern for their rights. Project Restore also takes special care to make sure that the victim is not re-victimised or re-traumatised.

Our job in the restorative process has been turning that around so it is survivor driven and we've had some interesting cases where we have learned a lot on how to do that. One of the cases is where the survivor has said "well actually I don't want the restorative justice to be pinned on his sentencing so I am interested in him being sentenced and then if he's still interested then it might be something I might do but I don't want in any way for him to think that this is going to do him good, I want him to come wholly and willingly without any other things being pinned to it." That was in the face of all sorts of pressure from other parties to actually have the restorative justice conference. (Participant 3: Project Restore)

From the perspective of this participant at least some victims who express a need to be involved have a retributive view of justice even if this is just at the beginning of the process. This highlights that there is a fine line between seeking to resolve the harm done to someone and providing an avenue for retribution and to some people there may be no distinction between the two. However, this does highlight one of the moral dilemmas that face victim focused groups such as Project Restore.

Sometimes it appears as though the needs of victim-survivors and offenders can be matched. They both indicate that they want to participate in a restorative process. However, it is also the case that even if the victim might be ready, the offender may not.

Yes we've learned the need to pace it. We need to hold everybody until everybody is ready to meet. So in one case where the offender was willing and prepared to meet in a family meeting we had that family meeting and now a

year – eighteen months on we are going to have more of a conference style meeting as he's gone through treatment and has more victim empathy. The survivor will be prepared in terms of what she wants out of that next meeting which will be more of a restorative justice conference type meeting. The first meeting was a family meeting to assess and to get everybody else on board and to pass responsibility over and off the survivor's shoulders to the offender. (Participant 3: Project Restore)

There is more to full participation than just matching the needs of those involved and co-ordinating these different agendas in order to get everyone in the same room together.

When the restorative process is arranged it becomes very important that all of those involved are given room to express themselves. It is at this stage that the facilitator takes on an important role.

My primary role, a facilitator, is...I'm the person that invites each person to speak but I mightn't be the one that always deepens their participation. So that is slightly different, normally I would be responsible for all of those things, for deepening their level of participation and for ensuring that they had the opportunity to speak but I share some of that role. (Participant 1: Project Restore)

So the facilitator may steer the restorative process but does not control it. Instead, the facilitator shares with the group by encouraging deeper participation by all involved. It is also the role of the facilitator to seek consensus on what type of reparation is appropriate, if any, as the conference draws to its conclusion.

Well I write it up on the board as we come, my job is to pool the consensus of thinking into an action and then just describe it in a way that's clear and understandable in a specific SMART⁹ format and then make sure that everyone is agreeing to the wording and all those sorts of things, so the actual creating of the plan and the outcomes is my role. (Participant 1: Project Restore)

For those involved in the restorative process the ability to express themselves in an equitable manner is of paramount importance when considering the concept of full

⁹ SMART is a mnemonic that typically describes objectives or goals that are specific, measurable, achievable, relevant and timely.

participation. Indeed, this equity of views is important when considering how sexual transgressions can have a negative effect on the extended family.

Yes it was very fair, I mean I can't speak for the offender and how it was for him but I felt it was very balanced from every point of view that everyone had a chance to say how they felt and how the process was going for them and it was fair in that there was no blaming, I even felt that the offender was supported as well which I think is a good thing in terms of treatment and ongoing relationships within the family. (Participant 17: Victim)

While equity of expression is important for full participation to be realised some form of support is often needed for the victim and offender for this to be achieved. To this end a victim specialist supports the victim through the process, and advocates on behalf of the victim if necessary. This support can also educate, such as challenging and breaking down the constructs of denial that is often part of the sexual offender's attempts to cognitively distort what they have done, in an attempt to neutralise the psychological pain often associated with shame. In short, offenders often deny or play down the harm that they have done to others so that they can deal with feelings of shame and guilt. An offender specialist fulfils a similar role, advocating on behalf of the offender and supporting the offender to understand his actions and communicate in meaningful dialogue with the victim-survivor.

If someone is writing a letter of apology for example, it's helpful to have the victim specialist to have input into that letter before it gets given to the victim because it can be highly inappropriate otherwise. So what we discovered was that the victim specialist and the offender specialist actually needed to help the offender carry out their action plan actively, whereas in the past that would be a case of the facilitator just checking it. That level wasn't going to work. We had to have clearer boundaries around that because there are all sorts of confusion, and re-victimisation occurs if people don't do what they say they will do. We've learnt a lot about how important it is to do that well and how much involvement that requires from the specialist. (Participant 1: Project Restore)

This sort of specialised help was appreciated by victims of sexual abuse involved in the restorative process at Project Restore. The following participant indicated:

The victim specialist help kept me in the loop at every step, they consulted with me. If I wasn't feeling able to go to a meeting because the offender lives in some distance, she would go on my behalf. She allowed me to have what we kind of joked about as an emotional holiday where I had a break from all

the drama, which felt like it was weighing down on me for many years. So she was an advocate. What I really found helpful was that I felt part of a collective or a group of survivors in that as a woman who experienced sexual abuse as a child, I'm not alone. So I always felt supported. (Participant 17: Victim)

Without this level of support the victim-survivor might not have continued with the process and opportunities to experience a sense of justice would have been lost.

Project Restore's processes encourage the full participation of both victim and offender who are able to determine their own level of participation. The community is represented at all stages of the process. However, the victim and offender remain central to the process. Project Restore's development of the community expert role supports this principle of best practice and at the same time ensures that neither party is exploited.

Preparation and Participant Expectations

Most people start their journey through the restorative process with a certain set of expectations. To some extent these expectations will be modified during the preparations for the restorative process. Realistic expectations are necessary if a successful outcome is to be achieved. Therefore, in their preparation Project Restore personnel attempt to shape the participants' expectations into a more realistic format.

The first time I meet with them along with the specialist, and then they meet with the specialist if they need to, and then if I need to meet with them again, depending on the time frame, then I will meet with them again, pool them all together. In our preparation meetings we do little facilitated conversations usually with the non-offending parent and the victim, so that they can support them better in the process, or with family members who don't really understand, or are in denial around what actually happened, just to help them understand those dynamics of sexual offending and how it plays out in families. (Participant 1: Project Restore)

Participant 1 went on to explain the difficulties in providing an understanding of what had occurred for a family who probably did not share a consensus of perspectives or understandings in regard to such a sensitive topic as sexual abuse.

...in sexual violence we don't talk a lot about what actually happened, because that's quite difficult. So we have to figure out how we are going to describe what happened for the people that don't really know. So they might

come in thinking that what happened was quite different from what it actually was. So, for example, the victim talking with the non-offending parent about what happened ... with just the two of them in a facilitated conversation, so that when it comes to the conference that other person knows and understands more without us having to talk about it in the wider group. (Participant 1: Project Restore)

To some extent Project Restore has employed a level of social control over the process that is utilised with the intention of providing the best outcome for the victim and the families involved. This can be seen as an informal form of family therapy.

Some victims and their supporters might be seeking vengeance. Their willingness and, in particular, the willingness of their supporters, to participate in a restorative process might be driven by a deep need for retribution against the person who sexually assaulted them. Consequently their expectations might be incompatible with the values of restorative justice.

... that's one of the things that you are looking for because to go into such a process wanting retribution isn't going to give the kind of resolution that it's set up to do. So if somebody was at a point in their journey that they are looking for retribution then we would see there needed to be some work before the justice component could happen. So I guess there's an awareness of that, whether that screens it out 100% of the time would be another matter because there are ways that people hold anger in that may get triggered in ways that we can't even predict during a conference. You can't control it completely but if that was the dominant motivation somebody had we wouldn't be stepping straight into that conference. (Participant 4: Project Restore)

Therefore, the offender's preparation is focused on their motivations with the intention of assessing and/or changing any cognitive distortions about their culpability in regard to the crime. It is possible that some time may be spent during the pre-conference stage dispelling the offender's anxiety about participation in a process where he or she will have to face the victim of the crimes and must be accountable for their actions.

Yes the offender stuff is around readiness and motivation for their participation and it's also a journey in its own right as part of this arrangement, it's what I'm finding, it's step wise and staged. There are stages

*to it as well; it's certainly about assessing readiness in all the senses.
(Participant 2: Project Restore)*

Project Restore's experience shows that the preparation of the offender and victim is a time consuming and labour intensive process.

This practice principle is central to the model that Project Restore uses. The preparation of both the victim and offender is embedded in to their processes, ensuring that all parties have reasonable expectations of the process and its outcomes.

Hold the Offender Accountable

Given that the expectations of the victim are related strongly to their sense of emotional safety, the process by which the offender is held accountable is very important to the psychological needs of the victim. In regard to the offender, the first stage in being held accountable for their actions is the acceptance of their wrongdoing. For example,

*Coming to take full responsibility for your actions, that you actually have done something that you need to amend in some way, definitely it is about acceptance of your offending. It's definitely a key step in there. If they don't have that then it would totally preclude them from going further because there is no reason why they would want to participate in anything.
(Participant 2: Project Restore)*

However, accountability is not seen as an all or nothing concept but rather as a layered and multifaceted term. While a person can accept some aspects of their offending, they may not accept the harm that it has caused to the victim. It is even possible that admission of wrongdoing by the offender is accepted only on a superficial level when this acceptance needs to be deep and profound in order for the provision of true accountability.

...it's not a simple acceptance, it often can be part acceptance or acceptance for certain aspects of the problem. That's what I've found. So there's partial acceptance, not the full acceptance we work towards, that's what needs to be understood and overcome. What are the barriers on the way to that understanding? (Participant 2: Project Restore)

...he had apologised but on a level that wouldn't feel real to her because he didn't understand why he did what he did. So we then had a family meeting

where she could talk about the impacts and confront him about the harm, but we didn't allow him the opportunity to respond in the form of an apology because we felt that he actually needed to go away and learn more about what he did and come back. So now we are coming back and he's stepping up to the mark and saying this is why it happened, this is the thing that led me to offend and then fully take responsibility. (Participant 1: Project Restore)

The offender's ability to apologise to the victim is to some extent predicated on the level of understanding that is demonstrated in regards to the harm that they have caused.

I've been thinking about this, like, what is a real apology? One of the things that is crucial for me is that the apology is empathic to the impact. So you are not just saying "I did this", but your emotional tone and your apology understands the emotional impact on the other person in an empathic kind of a way. I think that's one of the things with the offenders that is important, that they have that capacity. (Participant 4: Project Restore)

Ensuring accountability often goes beyond just a verbal apology. Letters of apology can be written and financial reparations can be sought from the offender. Negotiating the future behaviour and relationship between the offender and victim can also be perceived as reparation.

Yes, for starters I have been asked to pay for some of that ... a thousand dollars and I've so far got five hundred dollars in the pot now. It was posted on Monday that's half way and in three weeks time I will endeavour to bank another five hundred dollars to pay that cost. (Participant 12: Offender)

To help ensure accountability, Project Restore initiates clearly defined action plans that reflect what participants think will put offending right. This also includes the provision of consequences if the action plan is not complied with.

One of the questions that is useful is whose role it is that they ensure that action plans take place, and that was a thing that we discovered that was different from how we would normally do it [in other restorative justice provider groups]. (Participant 1: Project Restore)

As has been noted above, writing letters of apology can be particularly fraught. It is useful to have the input of both the offender specialist and victim specialist to ensure that the offender's response is appropriate. Further, the offender might need support to carry out agreed actions. Project Restore is very clear in the action plans

that are developed as an outcome of the restorative process, with much attention to detail.

So registered mail ... because people said they had sent something and the person didn't receive it, so we said "ok it has to be registered mail" so we can prove it has been sent. (Participant 1: Project Restore)

The psychological safety of the victim is of paramount importance, therefore, it is necessary to monitor that the agreed reparations are not only made but done so in a way that cannot be construed as re-victimisation. On the one hand, this could be perceived as coaching of the offender which could question the sincerity of any apology or reparation; on the other hand, it could be seen as providing information about the victimisation process which will contribute to breaking down rape myths.

Project Restore's processes enable the offender to acknowledge responsibility for the offence. However, there might be several layers to acknowledging responsibility and as such an offender's understanding of the harm incurred is likely to deepen through engagement with the restorative process. The agreed outcomes are monitored and support is provided to the offender to ensure any actions on his or her part do not re-victimise the victim. Weekly team meetings enable each case to be monitored and so any break down in agreed outcome plans can be addressed in a timely manner. Reports are prepared and submitted to the courts as necessary. While the emphasis is on the case at hand, Project Restore is mindful of its obligations in relation to other serious offending and also the need to protect potential, vulnerable victims.

Flexibility and Responsiveness

Throughout the preparations and the restorative process there is a need for Project Restore to be responsive to the needs of all involved. Each individual case is different and requires a unique response. Furthermore, there are issues of cultural appropriateness and gender biases which further complicate Project Restore's ability to be responsive.

Perhaps the best example of the need for flexibility is expressed by the stated views of Participant 14.

...the person working for my side, they knew his story and they decided between them that it would be best if they didn't discuss his story with us and didn't share his story with us before the main face-to-face meeting. In hind sight I think that was not a good move because we went there prepared for

what we had to say but not to the point where he dropped this big shocking news concerning us. I feel that we could have dealt with that before we came face-to-face or as it happened. His news kind of took over, we had to have time out to get through that and I felt we could have dealt with that particular subject beforehand. (Participant 14: Victim)

Participant 14 went on to discuss Project Restore's attempts to be responsive.

It could have been the circumstances, because we were so split up and they [Project Restore] were working at a big handicap. I thought, getting us together and having those very swift in-depth meetings was good. I feel that they could have had more if they were able to, at least what three or four maybe four meetings with their victims. Because victims were having counselling on the side what they picked up from restorative justice they could go back to the counsellor and deal with more in-depth stuff. (Participant 14: Victim)

Participant 14 continued:

No, that would be the ultimate; that would be the final say if we had four months of meetings. A month with restorative justice and then have the face-to-face, but the logistics of our meetings was really hard. Those women [Project Restore] I don't know how much hours they had to put in extra to accommodate us, my sister was in the South Island and I'm in the North Island and they are right up in Auckland, and the other one coming from abroad; it was, they really put themselves out to get through this ... well that's what I think anyway. (Participant 14: Victim)

It is notable that, even with dedicated and well trained staff, Project Restore cannot always provide the sort of flexibility needed by those undergoing the restorative process. However, flexibility is often as important to those undergoing the process as their expectations.

It is also the case that extremely small and seemingly inconsequential aspects of the process can take on whole new levels of meaning for those involved. Participant 13 explained how important the venue and structure of afternoon tea can affect the restorative process.

...after the process was over, I felt that we should have been encouraged to take a break during it ... the ramifications of not taking that break were quite

big... because it was very intense. There was a break, but it was quite tricky. Because we come from a very small place, there was a lot of family stuff that we discussed during our lunch break, um, we should have been encouraged to break away and to go away and not do that ... it doesn't necessarily mean to say that the restorative justice people were at fault, but in hindsight we should have left the room, my sister and I to go and discuss what we had heard so far, just ourselves. (Participant 13: Victim)

While Project Restore can attempt to be flexible and responsive, the number of variables that influence social situations makes it hard to predict what will occur and this uncertainty increases in emotionally charged situations. In the situation described by Participant 13 above, the intensity could have been alleviated by a break that separated the victims from their family in order for them to take stock of what had occurred. However, this was a retrospective comment and if a break had have been requested at the time then Project Restore would no doubt have provided one.

Perhaps, a truly good example of Project Restore's responsiveness is expressed in the following discussion.

...there's situations where we tailor make what we offer because of where they're at. There was a case where the victim didn't want a face-to-face meeting but she wanted him to engage in the restorative justice programme ... she wanted him to be held accountable in that way and she wanted her voice to be heard in the process. So we chose to have a community panel process where she wasn't present but our facilitator read a letter and spoke about the impacts that [the victim] had directly shared with her. Otherwise there wasn't really any sureness that she [the victim] would ever be ready for a face-to-face process, but she was ready for this bit. He's now dead, so it was lucky that we got to have that before then. (Participant 1: Project Restore)

Project Restore has acknowledged that restorative justice need not be an actual physical meeting between victims and offenders when dealing with sexual violence because of the highly charged emotional implications of such crimes. Therefore, Project Restore was responsive in providing a process that allowed the victim to confront the offender through the victim specialist without actually being present at the time.

One of the principle components of being responsive involves an understanding of the societal assumptions held by Project Restore personnel. This requires a considerable amount of self reflection on the part of this organisation in order to

understand and challenge any inherent social bias within the group. One of the most notable influences is the mostly, but not exclusively, female makeup of Project Restore, which raises the possibility that there may be a gender bias influencing the process which could alienate male participants. This has certainly been perceived as a potential problem by some Project Restore personnel.

...it's tricky but we didn't have someone to offer, like if that young man had wanted a male victim specialist we didn't have one so he didn't get a choice. (Participant 4: Project Restore)

We have had one case where both the victim and offender were male and we didn't have a male victim person to work with the male victim, so that would be equally the same although it didn't feel like an issue, it could have been. (Participant 1: Project Restore)

While Project Restore personnel acknowledge the short supply of male facilitators and that there are occasions when an all female group can achieve adequate outcomes, there is still considerable support for the provision of male involvement, especially when it comes to being involved with advising offenders, who are usually male.

.... in general women understand how women think and men understand how men think and ... that's helpful to have all perspectives available or both perspectives, because there is a lot of "genderedness" in our thinking, just the world we live in is gendered in its structure. (Participant 4: Project Restore)

What I've experienced is its useful having women working with the survivors and we have had one case where we have had a woman working with the offender and it did become a gender imbalance so I have come to really appreciate having a male working with all the cases, if the offender is a male. I wouldn't like to do it now without a male presence. (Participant 3: Project Restore).

It must be noted that Project Restore does now have a male personnel involved in the offender support but that this was not a matter of design but rather one of serendipity. This male participant suggested,

For me it's just been how it is, I haven't really questioned it as being inappropriate, it seems to be the constitution of the group, I came along because I was in this role but my predecessor was a woman. So it just happens to be how it is, I think it adds some advantages but I don't think it's a

disadvantage if it was totally women, but it has advantages to have a small male perspective on the panel. (Participant 2: Project Restore)

While this may not be an issue for some, Project Restore aims for gendered balanced and would welcome a male presence, either as a facilitator, an offender specialist or as a victim specialist working with male victims. This would expose victims, offenders and their supporters to functional male role models. Further exploration is needed into the effects that the gender of the facilitator has on the victim within the context of the restorative process and its relationship to sexual violence.

Another consideration is cultural flexibility in a group such as Project Restore, which is constituted of people who mostly hold a Pakeha or white/Eurocentric worldview. This raises the possibility that Project Restore's usefulness to different cultural groups may be limited if they as a group are not perceived as culturally sensitive. This encourages Project Restore personnel to be sensitive to the concerns of ethnic and often marginalised groups; keeping in mind that the concept of culture goes beyond race. As Participant 1 stated:

I think if you used culture as not just racial but cultural as in all sorts of cultures, like with the case of the elderly person when we brought in Age Concern as a community representative so we got that cultural perspective resourced. So that is how we would do it, if we didn't have it in the staff we would bring it in via the community participants. I think with the Fiji Indian person we brought two Māori community people in, the victim was Pacific so there was some cross cultural understandings that they brought. (Participant 1: Project Restore)

While Participant 1 stated the importance of expanding cultural consideration to all forms of inclusivity, it is still important that a stakeholder in the restorative process has a community representative that knows their ethnic and/or religious culture, socio-economic background and their gender perspective. Due to Project Restore's staffing limitations, as well as the multitude of perspectives represented in the sexual violence arena, it is not feasible for Project Restore to retain cultural representatives. However, Project Restore is aware of this need and is willing to seek out the appropriate community representatives when the need arises. Unfortunately, like any pilot programme there are some lessons learned the hard way and Project Restore has had to learn to be acutely perceptive to cultural needs that may arise during the process for victim-survivors of gendered violence. One participant remembers some of the struggles that impressed upon Project Restore the importance of appropriate community representatives.

....ah we haven't had it in a way that we could have met with cultural sameness, if you know what I mean. Those from other cultures we've worked with have been from Africa and Fiji, so we couldn't meet with sameness. We met with the ways that we would be as sensitive as possible to be led by the client in their culture and be respectful and appreciative of the culture. (Participant 4: Project Restore)

There is a danger that cultural assumptions could be made. For example it could be assumed that the community values of Māori advisors are a sufficient means of providing cultural sameness with other Pacific Island cultures.

... one of the ways you connect with him is [through] similar whānau based cultures. The cultures are different but, he was able to work the way he would normally work as a Māori in terms of with the wider whānau with the Fiji Indian man ... because similar dynamics exist of expectations of the place of the man in the family and those kinds of things existed. So that was helpful but we hadn't done it for that, we hadn't for that particular reason. It was just who was available, it was luck. (Participant 4: Project Restore)

Project Restore's engagement with Māori in matters of marae justice have provided some challenges.

We have had one referral or an inquiry where the family wanted a marae justice process ... we talked about how we would respond to that and decided that we would engage with practitioners in the marae and have them lead the process ... we were talking about how we could manage to keep our values and their values intact, without giving our values away, because there is some differences in the way that marae justice would approach the situation from how we would. So we have talked about it and come up with a solution on how we would address it if we needed to but they chose not to enter into the process so we didn't actually live it, but we were ready to go. (Participant 1: Project Restore)

Since then I've been significantly challenged by Māori around some of those issues and I might think differently about it for the next one. I got my hand smacked for daring to think that restorative justice and marae based justice have anything in common and that while it might look like that to us Pakeha it's not how Māori necessarily see it. So I might think differently. (Participant 4: Project Restore)

Project Restore has experienced the danger of making cultural assumptions.

Do we gain enough information around cultural elements or aspects of the clients? I mean I talked about the island case in a meeting the other day in very general terms and was challenged by [a community agency's] Māori team around "Oh, you probably should have had a better understanding that there are likely to be Māori history and Māori blood within the island's population" ... that needed more thought, because we didn't recognise the cultural element until the clients were here. (Participant 2: Project Restore)

It may be impossible to provide adequate cultural coverage at all times because the appropriate cultural experts are often the most called upon to provide their knowledge, and all too often are not available to provide cultural guidance. Despite the limited access to adequately skilled cultural advisors, Project Restore has attempted to provide culturally appropriate processes. While this was not always as successful as they would have preferred, they are very aware of the necessity to deliver culturally appropriate processes and this is an integral part of their overall strategy. As is often the way when developing new services, many of the changes or achievements have occurred accidentally. In the future it may be prudent to take extra care to ensure that appropriate cultural representatives are available. The difficulty facing Project Restore is the lack of offender specialists throughout New Zealand that Project Restore can draw on. While there are therapeutic programmes that target those who sexually abuse children, there is no such similar programme for those who sexually assault adults. Thus there is no pool of expertise for Project Restore to draw on. However, Project Restore does have an in depth understanding of the culture of sexual violence. The comments made by the following victim-survivor, when asked about cultural sensitivity, highlight that culture is broader than ethnicity alone:

I don't think that's got anything to do with it. Abuse is abuse is abuse. It's a culture of its own. (Participant 14: Victim)

This raises some interesting issues in regards to the role Project Restore may have in the future. While there is considerable wisdom in Project Restore providing restorative justice services to those who have been victimised in this manner, there may be victim-survivors who are more comfortable with providers that better match their cultural affiliation. However, such providers might lack crucial knowledge in regards to the culture of abuse that surrounds sexual offending. In cases such as this Project Restore could be used as a consultant group or perhaps as expert trainers. Project Restore personnel have demonstrated their willingness to fulfil these roles. Consultation with other provider groups has occurred as has training in relation to raising awareness of the complexities of working within the sexual violence sector.

While there is a need for cultural representation, the overall flexibility and responsiveness of Project Restore has been well demonstrated. Project Restore puts much effort into developing a tailor made process for each case that is grounded in the values of restorative justice.

Emotional and Physical Safety

The emotional and physical safety of sexual violence victims is of paramount importance to Project Restore. Its personnel understand that the offender's denial or minimisation of the seriousness of his or her offending can be used to control social situations. This well documented behaviour can re-victimise the victim causing increased psychological harm. Therefore, for restorative justice to be successful, the victim must feel safe. As mentioned in previous sections, this involves the careful vetting of the offender's motives for his or her agreement to be part of a process that can involve a face-to-face situation with the victim. The participants explained that considerable attention is paid to the victim's preparedness to participate.

From the victim's side we tailor what we do rather than going "we are ready or not ready" in a black and white way. We are more likely to go "this is where you're at" so the things we are doing will make this process as psychologically safe for you as is possible. It might be pre-family meetings, it might be strengthening relationships with some of the other parties involved, or whatever seems appropriate. This is part of that survivor driven approach and this why the process takes so long. (Participant 4: Project Restore)

It would seem that rebuilding the victim's sense of safety is a process that requires understanding and sensitivity on the part of all involved and one that cannot be rushed.

Project Restore acknowledges that engendering a sense of safety in victims of sexual violence is mostly about building trust between the facilitators and the victim-survivor. It is important that victim-survivors trust the process because a large part of the psychological damage has been typically at the hands of people the victim-survivor has known well and should, under normal circumstances, be considered trustworthy and beyond reproach. This means that trusting people is not something that comes easy to victims of sexual violence. Therefore, Project Restore is very keen to maintain that trust by not making promises but rather by understanding that the development of trust is a process that is not only unfolding but also unsure what the next step might be.

...we've certainly reflected that if something is promised in the conference, if it doesn't happen then the whole process could set the person back further. One of the biggest "woundings" from sexual violence is trust in human beings and so they are actually putting themselves on the line to trust again, that something is going to happen, that this is real. So if that doesn't happen, if it doesn't get followed through it's incredibly damaging, so us needing to be quite proactive to make sure that whatever is agreed to at the table actually happens. So there is quite a bit of follow up. (Participant 4: Project Restore)

Project Restore stresses the importance of emotional safety for the victim but acknowledges that this is not always within their control. Despite intense preparation, a victim's expectations can remain unrealistic.

....and that's both about safety, which is the bottom line, but also about effectiveness of outcome. For me they are two sides of the same coin. To have emotional safety in the actual process, this can be so intense. So if people are triggered though it [the process] there will be follow up calls as well. It's always there at every step of the process, and we still can't guarantee it, like the case we were talking about, "yes she's going to be hurt by this because he's pulled out after all this time and it's not going to happen". But that's one of those things that we can't guarantee. (Participant 4: Project Restore)

Project Restore personnel emphasised that emotional safety of the victim is strongly related to his or her expectations of what the restorative process will provide for them.

Project Restore cannot predict what might happen within the restorative process – that is, the difference between what is anticipated and what actually happens. For example, if the outcome is not that which the victim hoped for, feelings can be intense. Even though the victim may be well informed, and the Project Restore team has provided a safe environment, how offenders – and indeed victims – act ultimately is outside of Project Restore's control.

The emotional and physical safety of participants is pivotal in Project Restore's programme. Risk analyses are conducted by the clinical team and cases do not proceed to a restorative process unless this team is confident that no further harm will occur. The professional team is led by a clinical supervisor – psychologist – who has no contact with the stakeholders which ensures that risk analyses are objective. However, Project Restore is aware that they cannot always control the process. Therefore, follow up after the restorative process is an important feature of their programme.

Deliver an Effective Process

Only a small number of interviews were conducted with those who have participated in the Project Restore programme. It is, therefore, inappropriate to comment on the effectiveness of Project Restore's processes in regard to its use with crimes of sexual violence. Furthermore, restorative processes claim to facilitate healing not only for the victim-survivor and his or her family, but also the offender. This is a particularly difficult concept to measure and effectiveness may be perceived on many different levels rather than making a definitive statement that restorative justice works or it does not. However, comment can be made about the levels of satisfaction felt by the victims, offenders and families who decided to take part in this study.

One participant expressed her appreciation for the process provided by Project Restore from the perspective of a victim and this statement was typical of the views expressed by the other victims interviewed in regard to their satisfaction with the process.

I mean Project Restore allowed an objective view point but was also very supportive. As a survivor I felt very supported, and it absolutely took the weight off my shoulders and gave me a break and a breather from something that was weighing me down for many years. So I feel that was addressed. The offender agreed to go through treatment through SAFE and I think that benefited not only him, I think he actually got a lot out of it, but everyone else in the family too. And having that communication allowing everyone to have a view point was valuable. I got to hear how it impacted on everybody individually and as a group and looking at our family dynamics from the outside looking in rather than kind of being stuck in relationships. I suppose being in that family it's hard to identify what's going on when you are mixed up in it all. So I felt like I gained a lot of strength, a lot of clarity. I just felt a lot lighter so that expectation of the family taking responsibility, absolutely I felt that. As a survivor I feel a lot better, I mean the process has been a couple of years now and it has definitely helped me. I also had counselling in the first year, the counselling actually led me to go to Project Restore, but I feel stronger and better as a person a wonderful outcome really. (Participant 17: Victim)

Levels of satisfaction also appeared to be positive from the perspective of the offender who was interviewed.

I think they [Project Restore] are a wonderful organisation, the manner that they have set up the victims and such, is a wonderful set up, it's private and

confidential in every respect and very respectful in every detail that I can mention. (Participant 12: Offender)

The statements of the victims and offender who participated in this study illustrate they have a high regard for the process that they have undergone and appear, at least in part, to have achieved some level of healing. However, a note of caution, many of the people who chose not to take part in this process possibly hold less positive attitudes towards the process. Further, not all victims and offenders who participated in Project Restore's restorative processes have been interviewed, so it cannot be assumed that all victims and offenders would share the same opinions.

The model used by Project Restore to deliver restorative processes ensures that this principle – Deliver an Effective Process – is more than adequately applied. The use of community experts and a clinical supervisor provide transparency and oversight to the various internal procedures and processes that this principle demands. The weekly team meetings provide ongoing evaluation and review of the programme and its effectiveness. Project Restore continues to gather data to enable future evaluations.

Use in appropriate cases

The nature of sexual offending requires a flexible approach to restorative justice processes and will only be successful if attempted in appropriate cases. The Project Restore team works within a collective team consciousness, which acts as a guide to structuring their processes. The clinical supervisor's role of monitoring and facilitating case review meetings works as a safety mechanism ensuring accountability for the facilitators. Restorative justice values assist in constructing the scaffolding which contains Project Restore's processes.

...it's very much a collective conscience having the four of us here representing our agencies and I agree that it helps keep it in balance and keeps it in momentum and allows some perspectives to be challenged, questioned and worked in a really critical way and it feels very collaborative. (Participant 2: Project Restore)

This collective consciousness frames debate and assists the team to have "robust conversations" (Participant 4: Project Restore) around what belongs where and the balance between a "justice intervention" and a "therapeutic conversation".

This principle acknowledges the need for a modified restorative justice process for sexual offending. Project Restore carefully screens all referred cases to identify whether the use of restorative justice is appropriate. The specific safeguards and support measures that this principle demands are evident at all stages of Project Restore's processes.

5.1 *Beyond the Practice Principles*

As part of the development of their practice model and practice principles, Project Restore has had to address a number of challenges to which solutions continue to be developed. These challenges were:

- What is, or should be, the sole focus of the restorative justice process?
- What if the desired outcomes of the survivor and offender differ?
- Is it possible to continue the process without the victim-survivor at the conference?
- What are the limits to confidentiality and how do those affect the process?
- How do the demands of the court affect the restorative process?

In this next section we explore these challenges further, demonstrating the thoughtful and reflective nature of Project Restore's development of practice.

The Focus of the Restorative Justice Process

The Ministry of Justice's best practice principles (Ministry of Justice, 2004) examines not only best practice but also values and processes. In relation to processes the authors state that "reaching agreement on outcomes [between the victim and offender] should not be the sole focus of the restorative justice process" (Ministry of Justice, 2004, p. 11). The question that they do not answer is "what is" or "should be" the sole focus of the RJ process?

Koss and Achilles (2008) in their review of published studies found that for victim-survivors to experience a sense of justice they needed to "tell their own stories about their experiences, obtain answers to questions, experience validation as a legitimate victim, observe offender remorse for harming them, receive support that counteracts isolation and self-blame, and above all have choice and input into the resolution of their violation" (p. 2). Koss and Achilles also explained that in order to meet these needs such programmes would involve processes that respect victim-survivors as "...autonomous persons, individualise both their needs and the appropriate community responses including avenues for offender accountability,

censure, and material reparation if desired, protect physical safety, reduce potential re-abuse, and maximize offender fulfilment of commitments” (Koss & Achilles, 2008, p. 2). Project Restore meets these challenges.

At Project Restore, the focus of restorative justice is creating an environment within which victim-survivors can experience a sense of justice. Although the understanding of justice will mean different things for different people, it will typically be such things as an apology, a demonstration of accountability by the offender, validation of the victimisation by the offender and community, or an offer of some sort of recompense. While forgiveness and reconciliation are often the aims of other restorative justice programmes at Project Restore these are not necessarily a priority. Project Restore personnel are aware that ongoing relationships within the family and social network are important for victim-survivors and so restorative justice is used to strengthen and transform these relationships as appropriate. They understand that not all victim-survivors will want to forgive the offender or reconcile with him. However, most will want to transform the relationship so that they can co-exist in any shared community.

Desired Outcomes Differ

It is possible for the victim-survivor and offender to enter the process with different intentions. For instance in cases that have been referred by the courts prior to sentencing, offenders may agree to a restorative process hoping the judge will view them favourably at sentencing. The victim-survivor’s agenda might be quite different. Such differing expectations at the outset do not necessarily lead to a failed conference. Experiencing the process could well lead to the development of important insights which could impact on future behaviour patterns. An offender could for the first time gain some understanding of the impacts his or her behaviour has had. There may be no recognition of this at the time of the restorative process, but later as he or she reflect on the process there may be some insights developed. Nevertheless, if the expectations of stakeholders vary significantly, there is a risk that victim-survivors could be re-victimised.

The primary focus of Project Restore is the safety of the victim-survivor. The preparation of the victim-survivor, the offender and intending participants helps to reduce the gap between the victim-survivor and offender’s goals. This preparation could mean therapeutic interventions for either the victim-survivor or the offender before Project Restore convenes a restorative process. If the preparation process does not lessen any gap, Project Restore will not risk the safety of the victim-survivor and a conference will not be convened. Needless to say there is the risk that an offender can say “the right things” and be assessed as ready to demonstrate

accountability. Facilitators with limited expertise and experience in the complexities of sexual violence could be manipulated by offenders well practised at maintaining constructs of denial. Project Restores' use of community experts minimises the potential for this to occur.

Non Participating Victim-Survivors

Principle 2 of the best practice principles urges full participation of both the victim and offender (Ministry of Justice, 2004). Indeed, it is generally assumed that the presence of a victim is a prerequisite for a process to qualify as restorative justice. Some commentators would argue that a restorative process cannot progress if the victim is absent (Bowen, Boyack, & Hooper, 2000). Others have noted the benefits of both parties having "...a direct experience of each other, to make their own judgements, to express themselves directly and to have a more meaningful and emotive experience" (Marshall, 1999, p. 27). However, the best practice principles acknowledge that the "...victim or offender may prefer that a support person speak for them at certain times" (Ministry of Justice, 2004, p. 12). While this comment may be intended for a support person who would speak on behalf of a victim in his or her presence, there has been some acknowledgement that a restorative process could progress if the victim's representative had direct and extensive understanding of the victim's experience and its impacts (Bowen, et al., 2000).

Project Restore has convened restorative processes in the absence of the victim-survivor, which they refer to as a panel process. The only difference between this process and the restorative conference is the absence of the victim-survivor at the actual restorative process. Project Restore has found that in some instances victim-survivors are adamant that they do not want to confront the offender, yet they want to experience a sense of justice. Or, a victim-survivor has wanted the offender to be called to account in a way that the conventional criminal justice system is unable to. In these instances a surrogate is chosen in consultation with the victim-survivor to represent him or her at the restorative process. The surrogate might be the victim specialist or a person whom the victim-survivor trusts, but it will be a person who has an intimate understanding of the victimisation process. In this way, the offender hears the pain and is exposed to the impacts of his actions. The victim-survivor does not have to be present to experience a sense of justice. For these victim-survivors it is enough that the restorative process has gone ahead, that the offender has been called to account and that there agreed outcomes. The sense of justice is realised in feedback regarding the process and the monitoring of outcomes. To date, the panel processes convened by Project Restore, have elicited a high satisfaction rate from both victim-survivors and offenders.

Limits to Confidentiality and their Impacts

The best practice principles emphasise that “the privacy and confidentiality of participants must be protected and respected to the extent possible” (Ministry of Justice, 2004, p. 17). Further protection is provided by The Privacy Act 1993 which imposes a range of obligations on restorative justice providers regarding the collection, storage and use of personal information. This includes, for example, taking reasonable security safeguards to protect against loss, unauthorised access, use, modification or disclosure, and other misuse.¹⁰

While restorative justice provider groups have a legal requirement to protect a victim-survivor’s contact details or an offender’s criminal history, there are limits to confidentiality (Ministry of Justice, 2004). For those cases referred by the courts, restorative justice providers are obligated to report back to the referring judge. These reports may be referred to in open court and any information discussed becomes part of the public record. Verbatim reports are usually provided to the court, so that a flavour of the restorative conference is conveyed.

Reports can create a number of problems; they can be misinterpreted, taken out of context or contain information that is either private or compromising and could be used unfairly against either the victim-survivor or the offender. Project Restore personnel have provided both verbatim and thematic reports to the courts. In one instance the traditional chronological report was substituted with a report that outlined the main themes discussed (Jülich, 2010b). The court accepted the report without comment, the victim-survivor said it was an accurate representation of the conference, but the offender said it was inaccurate. While thematic reports might better protect privacy and confidentiality, verbatim reports are not usually challenged by offenders.

Some restorative justice providers require participants to sign confidentiality agreements before a conference, even though they are not legally binding or enforceable, in the hope that signed documents would help show their agreement if the issue of confidentiality was tested in court. However, Project Restore recognises the fact that these documents are not legally enforceable and believes they present a false legal impression. Therefore, Project Restore does not require participants to sign confidentiality agreements before conferences. Project Restore personnel explain that the conference should be a “private conversation” and that participants should only share their experience of the conference and not what others have “said” at a conference. Intending conference participants are advised that the final

¹⁰ The Privacy Act 1993, Section 6, Information Privacy Principle 5

conference report is a court document which means that any of it can be read in the courtroom and thereby become part of the public record.

Project Restore has found that in self-referred cases offenders are more inclined to admit wrongdoing because no charges have been laid and there are no imminent prospects of criminal conviction or jail. Project Restore emphasises the lack of confidentiality and reminds offenders that victim-survivors can withdraw from the restorative process at any point and place charges with the police. Offenders are urged to seek legal advice before agreeing to participate. If the offender does choose to continue, Project Restore labels these conversations as “therapeutic interventions” with the expectation that conversations will be protected, although this is a protection that has not yet been challenged in court. Project Restore keeps limited information on self-referred cases to help protect confidentiality and privacy.

Demands of the Court and their Impacts

Working to court timeframes presents difficulties for all restorative justice providers. Time is needed to make an initial assessment, establish readiness on the part of both victim-survivor and offender and identify the risks. The courts grant restorative justice providers a four to six week window to complete the restorative process. If providers are unable to complete the work within the timeframe, they can return to the courts to request more time and, usually, more time is granted. This arrangement appears quite adequate for most crimes.

Sexual violence is different. More time is required. It is difficult to estimate at the outset what time extensions might be required. There is usually much therapeutic work that must be completed by both victim-survivor and offender. For a victim-survivor there are many other factors which must be examined before an encounter. In some cases counselling may be necessary to repair relationships within a family, before any preparation for a restorative process can commence. Project Restore recommends that offenders enter a therapeutic treatment programme prior to commencing any pre-conference preparation. The ideal time to commence preparation is towards the end of the treatment programme. Offenders need this time to understand why they offend, and the consequences of that offending. Without this understanding they cannot accept responsibility or demonstrate accountability. Since most sexual violence treatment programmes are twelve months long, this would require the courts to allow at least a year or year and a half for the restorative process to happen. Returning to the courts requesting time extensions adds costs to the process.

5.2 The Outcomes of Project Restore's Processes

All restorative justice processes create quantifiable outputs and qualitative outcomes, both are essential. Project Restore is no different. As part of the preparation process victim-survivors and offenders discuss their expectations in regards to possible, realistic outcomes. These are discussed and collaboratively agreed on within the restorative process. The following is a typical example of an outcome that is negotiated in a Project Restore's process. Information that would identify participants or place has been removed. Note that this is a small community.

1. Acknowledgement was made of the contribution by to the costs of this process. agreed to contribute \$1,000 to be paid to Project Restore New Zealand Inc. within three months unless a prison sentence occurs ... if so this will take longer to repay.
2. Acknowledgement of the need to raise public awareness of sexual abuse, prevention of and healing processes available for the [place] community. As a contribution towards this aim will discuss this with the [local health board] members and organise and support a working group to plan how this would be achieved.
3. agrees to speak up honestly about his offending and its impacts whenever an opportunity arises as a way of raising awareness and role modelling taking responsibility.
4. All present agreed they would like a "dealing with sexual abuse disclosure" training to be made available to educators and health providers at [location]. [Offender] and [offender support] will undertake to get this happening.
5. has written a letter of apology to and this will be passed to her by [victim specialist] when completed. This is to be done by [date].
6. In order for the above aims of the outcomes to occur ... all present would like the judge to consider a community sentence with access to a sexual offender treatment programme.

Typically, negotiated agreements facilitated by Project Restore will require the offender, to complete some sort of community service, to pay the victim-survivor a sum of money, or write the victim-survivor a letter of apology. Additionally, the offender will be required to attend some sort of therapeutic programme if it is appropriate. Outcomes, such as the ones outlined here, are relatively easy to evaluate. Completed conferences are counted, agreements are categorised and counted, information is gathered throughout the monitoring stage as to how the offender has completed the agreed outcomes and if the offender has completed the agreed outcomes. Performance can then be measured and included in funding bids.

Not all outcomes can be readily quantified. Indeed, the most valuable outcomes are qualitative. These are more to do with feelings, such as, experiencing a sense of justice, progressing a journey of recovery, re-uniting fractured or polarised families. This information is not readily available and it requires time to be realised. This has implications for evaluations and funding. Funding agencies all too often require the hard data of quantifiable outputs, those that can be readily measured. They might suggest that success is better measured by falling recidivism rates. However, given the costs of sexual violence, it is important to also measure the qualitative outcomes for the victim-survivor. This is particularly important when considering funding for a programme such as Project Restore's.

In the following section we discuss how participants understood the outcomes of Project Restore's processes.

Quantifiable Outputs

The following voices speak to some examples of quantifiable agreed outcomes of the conference processes. These selections are highlighted here to reflect how the offender can, as far as possible, make things right. Although conference decisions are not necessarily about money, financial restitution is often a part of the agreement. This is a difficult and sensitive area and one not taken lightly by Project Restore.

...[a conference decision is] always bound by capacity, there's an injustice in the fact that the cost versus the capacity is a challenge and the perception of the capacity, "I don't care how hard it is for him, I want him to feel it, to pay" versus if he agrees to something he can't deliver then you are only going to be re-victimising when he doesn't deliver. That's a hard one. (Participant 1: Project Restore)

Project Restore personnel understand that an unrealistic conference decision can be impossible for an offender to carry out. If a conference decision is not carried out then a victim-survivor will not experience justice and may perceive this as a further betrayal. If this happens the victim-survivor may lose confidence in the restorative justice process just like they did the conventional justice system. The advocates at Project Restore keep this concern in mind during their pre-conference work.

...talking to them about the possibility of some reparation and also seeding the idea that they just might not get it. That creates another whole injustice in itself, navigating that the whole thing is just. (Participant 3: Project Restore)

...we've certainly reflected that if something is promised in the conference, if it doesn't happen then the whole process could set the person back further ... one of the biggest "woundings" from sexual violence is trust in human beings ... so they are actually putting themselves on the line to trust again, that something is going to happen – that this is real. So if that doesn't happen, if it doesn't get followed through it's incredibly damaging, so us needing to be quite proactive to make sure that whatever is agreed to at the table actually happens – so there is quite a bit of follow up. (Participant 4: Project Restore)

While the focus of Project Restore is on repairing the harm rather than retribution its personnel noted the difference between compensation and reparation.

But it's not all about money either, it's been other things that they have wanted, like there was a letter in one case, what did she want? That he writes a letter to somebody else to say he now took responsibility ... So there was a letter there which was about justice and making things transparent within the family, so outcomes aren't just about money, they're about wider putting things right. (Participant 4: Project Restore Team)

The participants, when asked, had their own perception of the outcomes of the conference process. Participant 12, an offender appeared surprised that the conference outcome was more lenient than he had expected.

I didn't expect the leniency of the penalty after it was all finished with the restorative justice people. I think it was a wonderful way of the victims and the person such as I was, I am, to come together. (Participant 12: Offender)

Victim-survivors were not necessarily seeking retribution. While compensation or reparation might be valid, albeit symbolically, other forms of recompense are equally valid.

Qualitative Outcomes

Victim-survivors tend to be more concerned with addressing underlying causes of offending and hearing the offender admit guilt in front of important people in their family and social networks (Jülich, 2001). The kinds of benefits they pursue include restoration of family or social networks, relationships that have been transformed into new healthy relationships, changes in attitude, the development of new insights, or progression along a journey of recovery and healing.

Benefits identified by participants included the strength to speak about the incident and a better self image:

In the past being such a small place I have just kept quiet so to speak, but now that it's out in the open it's given me ... the strength more or less to say that I won't be quiet and that I can be truthful and honest about it because that is the truth, if you know what I mean? (Participant 13: Victim-Survivor)

The fact that the abuse was talked about and not kind of under the carpet and that it wasn't seen as my problem that it was seen as going back to the actions of the offender I felt like I had justice – yes. (Participant 17: Victim-Survivor)

A totally different experience of themselves in their community and their system and that changes things whether or not there's a conference at the end. (Participant 4: Project Restore)

Qualitative outcomes go beyond personal healing, they can also be understood on a different level, that is, those difficult to measure experiences that come together to contribute to an experience of justice. The idea of experiencing a sense of justice is a subjective concept and can mean different things to different people. One participant expressed satisfaction with a pre-sentence restorative process, when the case returned to court for sentencing she reported that judge's decision did not contribute to any experience of justice.

No, not after it went back to court and ... after the sentence was handed down NO. What do I think [would give me an experience of justice]? ... Probably the opportunity perhaps to have actually been in court and to have spoken directly to the judge maybe, this was all done on paper and the judge actually had no visual ... with the victims. (Participant 13: Victim-Survivor)

The comments of Participant 13 highlighted the complexity stakeholders experience when attempting to assess justice processes. In this instance, the victim-survivor is speaking to two processes: the restorative process of Project Restore in which the victim-survivor was included and the adversarial process of the courts in which the victim-survivor was not included. It is possible that the absence of a court experience, perhaps the absence of ritual, has impacted on this particular victim-survivor.

Participant 14 acknowledged that a sense of justice might not be immediate. This victim-survivor has highlighted that justice is a process which can be likened to the

journey that Daly (2008a) spoke of, but also that it is intertwined with the journey of recovery (Jülich, 2001).

I believe so, it hasn't come to fruition yet but I kind of made a statement to myself that as from that particular date of that face-to-face, my life must, it must turn around, it must get better, I must start living. I don't know, I'm not quite sure yet how that living takes place but consequently from ... that meeting I have moved into doing – going to the pool, I do not like the pool, I do not like the water and taking my clothes off etcetera but because I think of that meeting and because of what I'd said to myself and because of what the health nurse said – come on get a move on and move it, so I have done that for myself. (Participant 14: Victim-Survivor)

This comment demonstrates that recovery is not linear but is circular. Also that it might take some time before qualitative outcomes are realised. As previously noted, this has implications for evaluations, particularly those that might engage with stakeholders immediately following the restorative process. Some time might be required to reflect on the process before a determination can be made regarding its benefits.

5.3 Non-Completion of Cases

The Project Restore team could have turned down cases that on initial assessment were perhaps not suitable for restorative justice. Its personnel were aware that by choosing only those cases where the offender readily accepted responsibility and participated in offender programmes, the completion rate – the number of cases that have progressed through to a completed conference – would be higher than they are. However, by refusing such cases opportunities to help victim-survivors would have been lost.

If we didn't try the cases that we think a person might shift on then we probably wouldn't end up with so many cases that would fall over, but what I am also hearing that in the journey there's learning and value so we wouldn't necessarily not want them because of that ... Did the victim's needs get met even if ultimately they didn't get the end result that they had hoped for? Have they learnt and developed and strengthened themselves in their journey along the way? (Participant 1: Project Restore)

I think it's an important part of it, because which ever pathway they take, at the end of it they have gone through the process to clarify that and have got a lot of goodies along the way. (Participant 3: Project Restore)

For those cases that do not proceed to a restorative process there can still be positive qualitative outcomes, but ...

*You are talking about a totally different experience of empowerment.
(Participant 2: Project Restore)*

Those victim-survivors who have engaged with the process but for whatever reason have not progressed to a conference, have experienced or are likely to experience wider benefits. By engaging in the restorative process the victim has the opportunity to have their experiences brought to light. Further, the offender is given the opportunity to accept accountability and is offered treatment for the offending. If the offender cannot accept accountability or turns down the offer of treatment, the process cannot go ahead and so the case returns to the courts for sentencing. In the instance of a self referral, the victim might opt to report the sexual violence to the police. This is evidenced in the following comment:

*It's not just that victims learn things and consider things and do this and that, they are actually re-positioned in terms of their families and the abuse by being the driver for justice and whether that derails or not, that is a repositioning that's incredibly therapeutic, because it's usually a place they haven't been in their system, in the system in which the abuse occurred.
(Participant 4: Project Restore)*

Project Restore personnel related a case in which the victim-survivor self-referred to the programme. After some preparatory work with the victim-survivor the offender did not agree to participate in a restorative conference. Following another support session, the victim-survivor was sufficiently empowered to make a statement to the police. There is a danger that this case could be perceived as unsuccessful merely because it did not progress to a conference or other restorative process, yet it produced a successful outcome for the victim-survivor.

In discussing another case that did not proceed to a restorative conference, Project Restore personnel described how another victim-survivor achieved a successful outcome in that she experienced a sense of justice by being given the opportunity to talk about it, being heard and validated with the offender being held accountable:

She's been repositioned as a driver of justice for herself. (Participant 4: Project Restore)

That's right, because each time she'd disclosed it in the past she'd been labelled a trouble maker or she'd taken on the feeling that she was a trouble

maker. So now it's finally been picked up that [the offender] was the trouble maker and she wasn't, she'd been trying to tell over and over again, and it's been taken seriously ... she knows now, in her late forties, that she's not a trouble maker ... this should have happened a long time ago. (Participant 3: Project Restore)

This experience is not unique. Many victim-survivors of sexual abuse have been struggling with their story and have never been in a supportive position where their story is valued and uplifted. This is why Jülich (2001) argued that in order to experience a true sense of justice victim-survivors need an opportunity to tell their story and be validated and victim-survivors need the offender to take responsibility in front of witnesses. Sometimes a victim-survivor does not need a conference output in order to feel satisfied.

As stated above restorative justice can create quantifiable outputs and qualitative outcomes, both are important but one is easier to evaluate than the other. This is a common dilemma for restorative justice facilitators. Many realise the pre-conference process has value for participants but that it is difficult to demonstrate success if a conference is not held. One of the challenges for restorative programmes seeking funding is that they need to show how to quantify these qualitative successes in order to show that the programme is being successful. The founding members of Project Restore understood that by seeking "a sense of justice" they were using a complicated standard that would be difficult to measure.

6 Summary

6.1 Introduction

The research project was commissioned by Project Restore and funded by the Ministry of Justice.

The aims of the research were to provide information to the Ministry of Justice about Project Restore as follows:

4. The way Project Restore operates.
5. How Project Restore implements the best practice principles, as outlined in “Restorative Justice New Zealand: Best Practice” (Ministry of Justice, 2004).
6. The outcomes of Project Restore’s processes.

The project was lead by Dr. Shirley Jülich and Dr. John Buttle, senior lecturers from AUT University.

6.2 Contextualising the Project

This section contextualised the project by providing a brief background to sexual violence. It detailed the various models of restorative justice as a potential remedy for sexual violence. It found that:

- The negative psychological and social consequences of sexual violence are well understood and well documented.
- An understanding of the economic costs and consequences has been somewhat more recent.
- The international literature asserts that the costs to victim-survivors, their families, and the broader society are significant.
- A costing analysis of crime undertaken by the New Zealand Treasury (Roper & Thompson, 2006) indicated that one incident of sexual violence cost \$72,130.
- There is little research on operational programmes using restorative justice to address sexual violence.
- Project Restore is one of the few programmes, internationally, using restorative justice to address sexual violence.

6.3 Methodology

This section detailed the ethical and safety issues, methods used to gather data and concluded with a discussion regarding the limitations of the research.

The research was subject of a successful application to AUTEK in 2007. Privacy and confidentiality were assured for all participants of restorative justice processes. Project Restore personnel were provided with copies of their transcripts and a draft copy of the report for them check that they had been represented accurately.

The methods used to gather data included qualitative methods such as interviews, focus groups and document analysis. This was supported by quantitative analysis to gain insight into the number of referrals received and conferences conducted by Project Restore.

Interviews with 4 Project Restore personnel focused on the implementation of the best practice guidelines (Ministry of Justice, 2004). Interviews with 6 participants of 4 restorative processes focused on their experience of the process and Project Restore itself. Given the small number of participants results cannot be generalised to the broader population of victim-survivors and offenders.

6.4 Project Restore

This section detailed how Project Restore operates and how it has incorporated various challenges into practice. It concluded with a summary of the cases referred to Project Restore.

Project Restore has placed much emphasis on pre-conference preparation and risk assessment. The practice model developed by Project Restore is a modified version of the conferencing model used by the New Zealand Court-Referred Pilot Programme for Restorative Justice, which has been expanded to include:

- A restorative justice facilitator who has an in depth understanding of the dynamics of sexual violence;
- Two community experts – a victim specialist and an offender specialist with an in depth understanding of restorative justice;
- A clinical psychologist who provides professional supervision, acts as a team leader, but has no contact with the stakeholders.

Project Restore has addressed a number of practice issues commentators have identified as a challenge for restorative justice when it is used for sexual violence. These include:

- The power imbalance implicit in acts of sexual violence,
- Equality for victim-survivors in restorative justice processes,
- Neutrality and impartiality of restorative justice facilitators,

- The transfer of power to the community,
- Negotiating a community response.

These concerns have been negated by the use of community experts with an in-depth understanding of restorative justice and a restorative justice facilitator who has expertise in the complexities of sexual offending.

6.5 How Project Restore Applies the Principles of Best Practice

This section detailed how Project Restore applies the Principles of Best Government (Ministry of Justice, 2004). It outlined how Project Restore has gone beyond these principles to provide safe restorative processes for all stakeholders that maximise the opportunity to experience a sense of justice.

This section continued with a discussion of the outcomes of Project Restore's processes which are identified as:

- Quantifiable outputs – completed conferences and agreements which included financial restitution, letter writing, community service or other social services
- Qualitative outcomes – reflected feelings about what participants gained from the process irrespective of whether a case progressed through to a conference such as justice, healing or restored family relationships.

All restorative processes produce both quantifiable outputs and qualitative outcomes. Quantifiable outputs are relatively easy to measure, by maintaining accurate records so the numbers of completed conferences, types of agreements and completion of agreements can be counted, subsequently reported on and included in funding bids as tools for measurement. Qualitative outcomes are more to do with feelings, progression on journeys of recovery, an experience of justice, shifts in thinking and the development of insights. These are difficult to measure and could be overlooked when assessing success.

This section concluded with a discussion on cases that are not completed. Project Restore will not convene a process if safety is compromised. Non-completion of cases should not be interpreted as a failure. Much work takes place for victim-survivors, offenders and their supporters producing valuable qualitative outcomes.

6.6 *Suggestions for Future Research*

Good research raises as many questions as it answers and we have found gaps in the body of knowledge regarding sexual violence and restorative justice. We have found little authoritative commentary that addresses many of the practice issues we have raised in regard to the concerns of survivors of sexual violence. This may be because sexual violence has usually been deemed outside the boundaries of restorative justice pilots. It may also be due to the fact that sexual violence requires special resources and skill sets above and beyond typical restorative justice programmes. These issues aside, we need more research on how restorative justice can best interface with victim-survivors and offenders of sexual violence so that an opportunity to experience a sense of justice can be maximised.

We have already commented that Project Restore has received relatively few referrals. An evaluation could be conducted at a later date when more conferences have been completed. The current research project has assessed how Project Restore has applied the best practice principles developed by the New Zealand Ministry of Justice (2004). However, we need to identify relevant measures for success. Typically these have been reduced recidivism, completed conferences, or participant satisfaction. In light of the findings presented in this report, these might be inadequate. For instance, Project Restore has used a “sense of justice” as its guiding principle but this phrase has different meanings for different people. As discussed in this report, victim-survivors may reach this destination during the pre-conference stage and may never feel the need to participate in a conference. From the perspective of these people the restorative justice process was successful. However, from the perspective of a funding body, this would contribute to attrition rates and might not be counted as successful. We need research to identify other measures of success.

Finally, the model that Project Restore has developed and its associated practice guidelines could be evaluated to determine if they might be successful for crimes other than sexual violence.

7 Recommendations

We make the following recommendations but we note that the ability to action many of these recommendations will be dependent on funding.

1. Secure an income stream, either through government funding or a contract with the courts to provide restorative justice services for sexual violence. The high costs of sexual offending to society and the individual, suggest that any intervention that assists recovery and healing for the victim-survivor has an economic value. Unless a funding source is secured for Project Restore then it is likely that the organisation will not be able to continue in the long term.
2. Establish Project Restore as a specialist provider of restorative justice processes for cases of sexual violence. Project Restore has developed expertise and experience in working with sexual violence. Referrals could be made directly to Project Restore, or Project Restore could be contracted in a consulting role supporting other provider groups. Regular presentations at conferences will profile Project Restore as a leader in the field of sexual violence.
3. Establish a fee for service in both facilitating restorative justice processes and consultation for other provider groups addressing sexual violence.
4. Raise levels of awareness in the courts about Project Restore. This would help educate defence lawyers about the benefits for their clients if they were to participate in such a programme as well as raise awareness with judges so they might recommend cases to Project Restore.
5. Raise levels of awareness with other support agencies about Project Restore. This would help educate other professionals working in the area of sexual violence who are not involved with Project Restore.
6. Establish a training capacity for facilitators that might work for Project Restore in the future. Currently Project Restore is dependent on one restorative justice facilitator.
7. Ensure cultural appropriateness within service delivery. Culturally appropriate experts are not always available to work with specific cultural groups. However, a “cultural guide” could facilitate cultural safety.

8. Initiate debate within the restorative justice field as to what constitutes “success” for restorative justice processes. Project Restore is a survivor-driven agency, but, frequently, measures for success are offender-focussed.
9. Initiate debate within the restorative justice field regarding report writing. Reports have the potential to be misinterpreted outside of the restorative justice process and could be used to disadvantage the victim-survivor or the offender.

8 References

- Barnett, H. (1997). *Sourcebook on feminist jurisprudence*. London: Cavendish Publishing Ltd.
- Boulle, L., Jones, J., & Goldblatt, V. (1998). *Mediation: Principles, process, practice*. Wellington: Butterworths.
- Bowen, H. (1998). Making justice work. In J. Considine & H. Bowen (Eds.), *Restorative Justice: Contemporary Themes and Practice* (pp. 17-24). Lyttleton: Ploughshares Publications.
- Bowen, H., Boyack, J., & Hooper, S. (2000). *The New Zealand restorative justice practice manual*. Auckland: Restorative Justice Trust.
- Braithwaite, J. (1996). *Crime, shame and reintegration*. New York: Cambridge University Press.
- Carbonatto, H. (1995). *Expanding intervention options for spousal abuse: The use of restorative justice*. Occasional Papers in Criminology. New Series: No. 4. Institute of Criminology, Victoria University of Wellington. Wellington, N.Z.
- Cobb, S. (1997). The domestication of violence in mediation. *Law and Society Review*, 31(3), 397-440.
- Coker, D. (1999). Enhancing autonomy for battered women. *UCLA Law Review*, 1, 1-111.
- Daly, K. (2002). Sexual assault and restorative justice. In H. Strang & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 62-88). Cambridge: Cambridge University Press.
- Daly, K. (2008a). Entries and endings: Victims journeys with justice. In *Victims & Mediation Project* (pp. 15-36). Lisbon, Portugal: APAV - Associação Portuguesa de Apoio à Vítima.
- Daly, K. (2008b). Setting the record straight and a call for radical change: A reply to Annie Cossins on restorative justice and child sex offences. *British Journal of Criminology*, 48(4), 359-378.
- Department for Courts. (2002). *Facilitator training manual*. Wellington: Ministry of Justice. Retrieved from <http://www.justice.govt.nz/crj/manual/>
- Department for Courts. (2003). *Summary of submissions on draft principles of best practice for restorative justice processes in the criminal court*. Wellington: Ministry of Justice.
- Dickson-Gilmore, E. J., & La Prairie, C. (2005). *Will the circle be unbroken? Aboriginal communities, restorative justice, and the challenge of conflict and change*. Toronto: University of Toronto Press.
- Dubourg, R., Hamed, J., & Thorns, J. (2005). *The economic and social costs of crime against individuals and households 2003/04*. London: Home Office. Retrieved from [http://www.hm-treasury.gov.uk/d/1\(1\).pdf](http://www.hm-treasury.gov.uk/d/1(1).pdf)

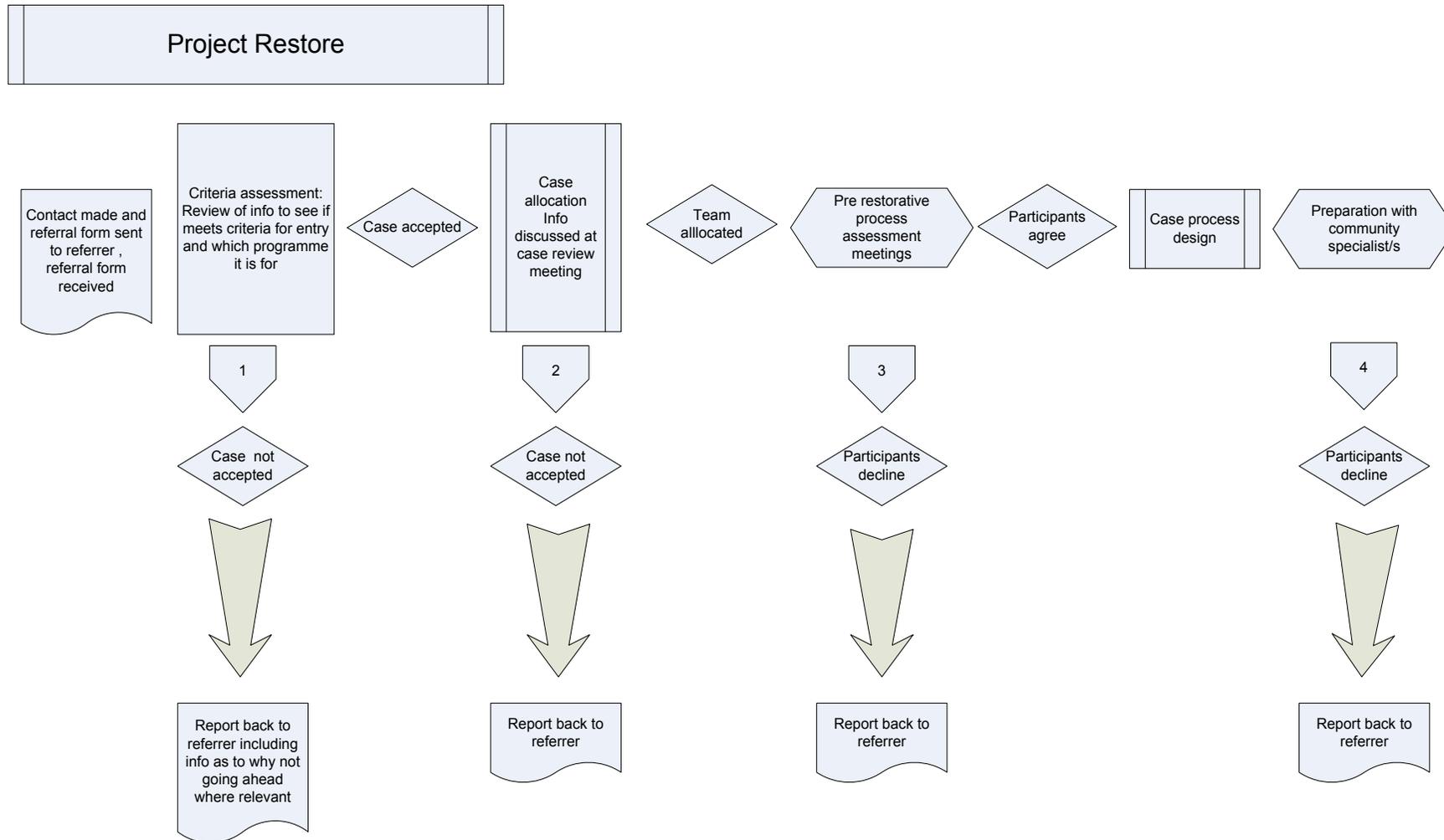
- Fisher, R., & Ury, W. (1983). *Getting to yes: Negotiating agreement without giving in*. New York: Penguin Books.
- Freeman, M. D. A. (1994). *Lloyd's introduction to jurisprudence* (6th ed.). London: Sweet and Maxwell.
- Glaser, B. G., & Strauss, A. L. (1967). *The discovery of grounded theory: Strategies for qualitative research*. New York: Aldine.
- Honderich, T. (1995). *The Oxford companion to philosophy*. New York: Oxford University Press.
- Hooper, S., & Busch, R. (1996). Domestic violence and restorative justice initiatives: the risks of a new panacea. *Waikato Law Review*, 4(1), 101-130.
- Jordan, J. (2004). *The word of a woman: Police, rape and belief*. New York: Palgrave, MacMillan.
- Jülich, S. (2001). *Breaking the silence: Restorative justice and child sexual abuse* (PhD Thesis). Massey, Albany.
- Jülich, S. (2006). Views of justice among survivors of historical child sexual abuse: Implications for restorative justice in New Zealand. *Theoretical Criminology*, 10(1), 125-138.
- Jülich, S. (2009, December 7-9, 2009). *Restorative justice and gendered violence: Can it deliver substantive equality?* Paper presented at the meeting of the Towards Restorative Justice: The Challenges, Promises and Processes of a New Paradigm, University of Sydney.
- Jülich, S. (2010a, March 24). *Paula's story: Justice and equality*. Paper presented at the meeting of the Taranaki Restorative Justice Symposium, New Plymouth.
- Jülich, S. (2010b). Restorative justice and gendered violence in New Zealand: A glimmer of hope. In J. Ptacek (Ed.), *Restorative justice and violence against women* (pp. 239-254). New York: Oxford University Press. Retrieved from <http://www.oup.com/us/catalog/general/subject/SocialWork/?view=usa&ci=9780195335484>
- Kingi, V., & Jordan, J. (2009). *Responding to sexual violence: Pathways to recovery*. Wellington: Ministry of Women's Affairs.
- Koss, M. P. (1993). The impact of crime victimization on women's medical use. *Journal of Women's Health*, 2(1), 67-72.
- Koss, M. P. (2006). Restoring rape survivors: Justice, advocacy, and a call to action. *Annals New York Academy of Sciences*, 1087, 206-234.
- Koss, M. P., & Achilles, M. (2008). *Restorative justice responses to sexual assault*. Retrieved January 3, 2010, from http://new.vawnet.org/Assoc_Files_VAWnet/AR_RestorativeJustice.pdf
- Koss, M. P., Bachar, K. J., Hopkins, C. Q., & Carlson, C. (2004). Expanding a community's justice response to sex crimes through, advocacy, prosecutorial, and public health collaboration: Introducing the RESTORE program. *Journal of Interpersonal Violence*, 19(12), 1435-1463.

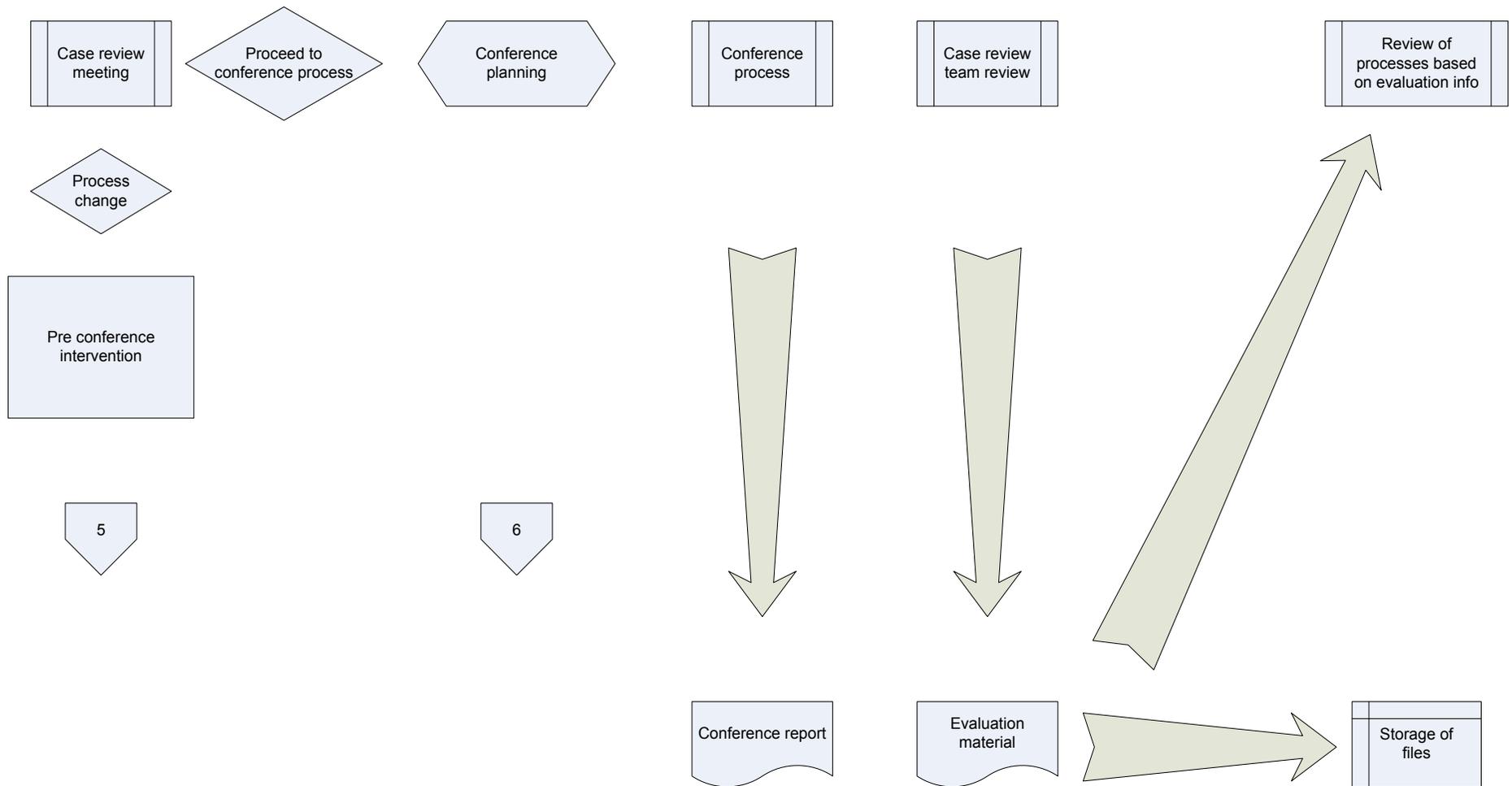
- Koss, M. P., Bachar, K. J., & Hopkins, Q. C. (2003). Restorative justice for sexual violence: Repairing victims, building community, and holding offenders accountable. *Annals New York Academy of Science*, 989, 384-396.
- Koss, M. P., Koss, P. G., & Woodruff, W. J. (1991). Deleterious effects of criminal victimization on women's health and medical utilization. *Archives of Internal Medicine*, 151(2), 342-347.
- Lajeunesse, T. (1993). *Community Holistic Healing Circle Healing Project: Hollow Water First Nation*. Ottawa: Corrections Branch, Solicitor General Canada.
- Lievore, D. (2005). *No longer silent: A study of women's help-seeking decisions and service responses to sexual assault*. Canberra: Australian Institute of Criminology for the Australian Government's Office for Women.
- Marshall, T. (1999). *Restorative Justice: An Overview*. London: Home Office, Information and Publications Group.
- Max, W., Rice, D. P., Finkelstein, E., Bardwell, R. A., & Leadbetter, S. (2004). The economic toll of intimate partner violence against women in the United States. *Violence & Victims*, 19(3), 259-272.
- Mayhew, P., & Adkins, G. (2003). *Counting the costs of crime in Australia*. Retrieved July 27, 2009, from <http://www.aic.gov.au/publications/current%20series/tandi/241-260/tandi247.aspx>
- McElrea, F. W. M. (2004, April 15-17). *Restorative justice: New Zealand perspectives - strengths and weaknesses*. Paper presented at the meeting of the Third Biennial Conference of the Australian and New Zealand Association for the Treatment of Sexual Abusers Conference, Auckland.
- Merry, S. E. (2009). *Gender violence: A cultural perspective*. Chichester, West Sussex, U.K.; Malden, MA: Wiley-Blackwell.
- Miller, T. R., Cohen, M. A., & Wiersema, B. (1996). *Victim Costs and Consequences: A New Look*. Rockville: National Institute of Justice, US Department of Justice.
- Ministry of Justice. (2004). *Restorative justice in New Zealand: Best practice*. Wellington: Ministry of Justice.
- Ministry of Women's Affairs. (2009). *Restoring soul: Effective interventions for adult victim/survivors of sexual violence*. Wellington: Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine.
- Morris, A., Kingi, V., Poppelwell, E., Robertson, J., & Triggs, S. (2005). *New Zealand court-referred restorative justice pilot evaluation*. Wellington: Ministry of Justice.
- Morris, A., & Reilly, J., (with Berry, S & Ransom, R). (2003). *New Zealand national survey of crime victims*. Wellington: Ministry of Justice.
- Morrison, Z. (2007). Caring about sexual assault: The effects of sexual assault on families, and the effects on victim/survivors of family responses to sexual assault. *Family Matters*, 76, 55-63.

- Morrison, Z., Quadara, A., & Boyd, C. (2007). *Ripple effects of sexual assault*. Melbourne: Australian Institute of Family Studies.
- Neame, A., & Heenan, M. (2003). *What lies behind the hidden figure of sexual assault? Issues of prevalence and disclosure*. (Briefing paper No.1). Melbourne: Australian Centre for the Study of Sexual Assault Retrieved from http://www.aifs.gov.au/acssa/pubs/briefing/acssa_briefing1.pdf
- Parker, W. (2004). *Restorative justice and family violence: An overview of the literature*. Wellington: Ministry of Justice.
- Pranis, K. (2005). *The little book of circle processes: A new/old approach to peacemaking*. Intercourse, PA: Good Books.
- Roper, T., & Thompson, A. (2006). *Estimating the costs of crime in New Zealand in 2003/2004*. Wellington: The Treasury.
- Sawatsky, J. (2009). *The ethic of traditional communities and the spirit of healing justice: Studies from Hollow Water, the Iona Community and Plum Village*. London: Jessica Kingsley Publishers.
- Schwalbe, M., & Wolkomir, M. (2001). Interviewing Men. In J. Gubrium & J. Holstein (Eds.), *Handbook of Interview Research: Context & Method* (pp. 203-220). Thousand Oaks: Sage.
- Shuy, R. (2001). In-Person versus Telephone Interviewing. In J. Gubrium & J. Holstein (Eds.), *Handbook of Interview Research: Context & Method* (pp. 537-556). Thousand Oaks: Sage.
- Skelton, A., & Batley, M. (2006). *Charting progress, mapping the future: Restorative justice in South Africa*. Pretoria, South Africa: Restorative Justice Centre and Institute for Security Studies.
- Sten Madsen, K. (2004). Mediation as a way of empowering women exposed to sexual coercion. *Nora, Nordic Journal of Women's Studies*, 12(1), 58-61.
- Stubbs, J. (2002). Domestic violence and women's safety: Feminist challenges to restorative justice. In H. Strang & J. Braithwaite (Eds.), *Restorative justice and family violence* (pp. 42-61). Cambridge: Cambridge University Press.
- Triggs, S., Mossman, E., Jordan, J., & Kingi, V. (2009). *Responding to sexual violence: Attrition in the New Zealand criminal justice system*. Wellington: Ministry of Women's Affairs. Retrieved from www.mwa.govt.nz/news-and-pubs/publications
- United Nations Development Programme. (2009). *The human development concept*. Retrieved January 18, 2010, from <http://hdr.undp.org/en/humandev/>
- Waring, M. (1996). *Three masquerades*. Auckland: Auckland University Press.

9 Appendices

9.1 Appendix 1: Process Mapping





1. Criteria for Acceptance

| | |
|----------|---|
| Offender | <p>Accountability: Offender acknowledgement of incident to an acceptable degree or if harm caused is subject of a criminal charge, guilty plea entered. If “found guilty”, need to balance victim’s needs to meet, over pre-sentencing conditions</p> <p>Consent to assessment & possible referral for treatment: Offender gives written permission to be assessed for (1) suitability for treatment (2) agrees to enter treatment if available or recommended (3) for liaison with SAFE/previous convictions history or any other treatment or assessment provider. Assessment referral made to SAFE Network or other provider</p> |
| Victim | <p>Victim has consented to information being shared with Project Restore victim adviser or arresting officer</p> <p>Willingness to engage: survivor is either actively seeking the process or, on explanation of the process</p> <p>Consent without coercion: the survivor decides that she/he would like to proceed to pre-conference preparation phase and this decision appears to have been made for her own reasons as opposed to pleasing the offender or other family members</p> |
| Offence | <p>Referral source: Consent of victim to contact on file</p> <p>Information: Referral is received and relevant information is gathered and form completed.</p> <p>Consent from offender: On file</p> <p>Type of offence: Sexual offending, identified victim & offender, no current safety issues between victim and offender,</p> <p>Programme identified: Programme fit defined: adult/adult, historical adult/child, youth/youth, criminal, community, youth programmes</p> <p>Capacity: Able to accept referral with timeframe restrictions</p> |

2. Case Allocation Planning

| | |
|-----------|--|
| Timing | <p>Is it criminal or community, is it pre-sentence or pre-release, is it youth or adult, is it historical adult/child or adult/adult</p> <p>Are there any court constraints, is panel process best pre-sentence, do any other interventions need to occur first</p> <p>Do we have available resources for programme chosen</p> |
| Resources | <p>Victim: How much preparation is required, is she/he in therapy, is liaison with therapist able to identify time required, any issues that will affect resilience, what support is available, referral to agency support.</p> <p>Offender: Is she/he currently in treatment, how much preparation needed to ensure accountability, is he aware of offending cycle, is a post-sentence or panel process more appropriate, what court imposed constraints do we have</p> |
| Programme | <p>Internal capacity Project Restore: Taken to allocation meeting for discussion whether to accept the referral or not</p> <p>Staff required: Victim representative, offender representative, facilitator, what time constraints affect availability, how is the process to be funded, which programme best suited e.g. panel or face-to-face, what interventions required and how much time involved.</p> |

3. Pre-Conference Assessment Criteria

| | |
|-----------------|--|
| Offender | <p>Internal and external capacity to engage productively in the process, including motivation and capacity to make an appropriate apology.</p> <p>Risk analysis: No current physical safety risks, harm to self or others</p> <p>Offender distortions: Assess offender’s current thinking about the harm caused in order to inform survivor preparation process.</p> <p>Motivation: Establish goals and desired outcomes, if appropriate restorative process recommended</p> <p>Support people: Establish important people in their community they would like to attend the conference, and gather contact details for these people.</p> <p>Consent to assess: Establish willingness to engage in assessment and treatment programme where appropriate and available.</p> <p>Consent: To progress to meet the requirements for fully informed consent</p> |
| Victim | <p>Internal and external capacity to engage productively in the process</p> <p>Likelihood of good outcome in terms of survivor’s internal capacity (including emotional resilience), goals and support, plan to address resilience in place</p> <p>Motivations established: Goals and desired outcomes realistic and appropriate to what conference process can deliver</p> <p>Support people: Identified, contact details available. Established important people in their community they want to attend the conference, supporters available</p> <p>Willingness to Engage in process without coercion by offender, lawyers, support workers, family members etc</p> <p>Consent: Fully informed consent thru provision of full information re possible conference outcomes & possible emotional risks.</p> <p>Engaged in therapeutic relationship: Counselling/psychotherapy as the conference process can open old or new material for emotional processing e.g. unexpected negative reactions from other family members, are they willing to re-engage with therapist for pre/post-process support</p> <p>Consent to share information with the counsellor or therapist: To assist with assessment of client’s emotional capacities, client preparation and emotional processing required as a result of the RJ process. Client engaged and good liaison relationship with therapist in place</p> |

| | |
|------------------|---|
| Community | <p>Family dynamics: Are there any complicated and conflict ridden family dynamics surrounding the participants, it may be advisable to limit participation in order to maximise conference effectiveness and protect emotional safety of the person harmed. Recommendations (informed by clinical judgements re family system) will be made to key participants. Continuation of the process dependent on satisfactory resolution of this issue.</p> <p>Supporters prepared by sharing information about the dynamics of sexual offending and its impacts on individuals, families and communities</p> <p>Healing or development of key support relationships: Encouragement to stand fully in the process, coaching on communication, exploration of desired outcomes, exploration of possible consequences, allowing/facilitating safe expression of pent up feelings to remove the obscuring effects of these in the work, Supporters able to give support required</p> |
| Process | <p>Liaison with court: Where court-referred, request for adequate deferral of sentencing. Due to the need for careful preparation, it is preferable that this is for a minimum of several months. Court remand available. Court notified of process chosen and time frames required for remand</p> <p>Process identified and tailor made to meet participants needs especially the victim, survivor driven criteria met</p> |

4. Process Design

Offender

Preparation included & completed:

Expectations, hopes and fears about the meeting

Offender's role during the meeting explored

Coaching offender on effective listening completed

Clarifying the offender community worker's role and the offender's response to that e.g. how would he feel about being interrupted or challenged

Questions about the process answered, info given fully informed consent given

Extent of offending explored, accountability identified

Current risk of self and other harm addressed

Mode of operation in offending explored and safety issues addressed

Ways in which offender still holds power over survivor or other family – "post-grooming" addressed and information shared with case review team, plan in place to respond in process design and delivery

Extent to which the offender understands his/her responsibility – acceptance without blame of others or circumstance

How the community supported his/her offending, how the community is supporting him/her to be safe explored and resources required noted in plan

Prepared to undergo assessment and treatment with SAFE or other appropriate treatment provider

Presentation of legal disclaimer to offender re the need to seek legal advice about any disclosures that they might make during the process, and the process we would follow if any disclosure indicates that a child is currently at risk from the offender.

Assessment by SAFE for programme completed and recommendations available to case review team and conference process

| | |
|--|---|
| <p style="text-align: center; writing-mode: vertical-rl; transform: rotate(180deg);">Victim</p> | <p>Pacing: Some survivors need longer process of preparation to allow them to do the associated emotional processing; others want it over with soon. Decision to proceed agreed between therapist, victim and survivor representative</p> <p>Preparation included & completed:</p> <ul style="list-style-type: none"> Clarification and articulation of goals, including whether is seeking an apology Strategies for handling residual offender/survivor dynamics explored and strengthened Provision of information for all legal rights to remedy and compensation Assessment of current risk of self harm & found to be safe for process |
| <p style="text-align: center; writing-mode: vertical-rl; transform: rotate(180deg);">Supporters</p> | <p>Survivor and offender nominated who they would like to be present, must be completed three weeks before conference to enable preparation time, each can object to other's support people if so desired, if disagreement, negotiation through Project Restore</p> <p>Project Restore may make recommendations taking into account need to be survivor-driven and oriented to survivor's emotional safety, alongside offender's need for support to enable fullest possible participation. It is recognised that it is possible that if agreement cannot be reached, conference may not proceed.</p> <p>The goal is to coach survivor's supporters to be effective allies in the conference and to prepare offender's supporters to be effective in the process of the conference, supporters ready</p> |

5. Intervention Criteria

| | |
|-------------------|--|
| Offender | Offender assessment reveals need for further preparation any relationship building needs identified and options explored |
| Victim | Survivor assessment identified intervention required: e.g. non offending parent relationship building, other family dynamics that may interfere with process success, options explored as to other processes e.g. panel process, one-on-one sessions, pre-conference family meeting |
| Supporters | <p>Mindful of boundary between family therapy and conference preparation</p> <p>Short-term interventions to increase effectiveness of the conference where appropriate, done in ways that support long-term strengthening of the family system to support person who was harmed, in line with what we know of the family dynamics surrounding sexual violence.</p> <p>Takes many sessions.</p> |

6. Conference Planning and Preparation of Team

| | |
|-------------------------|---|
| People Involved | <p>Facilitator will be an approved RJ facilitator and will be affiliated with Project Restore</p> <p>Survivor representative: Will be nominated by HELP, be Project Restore trained, and be a member of an appropriate professional body.</p> <p>Offender representative: Will be nominated by SAFE, be Project Restore trained and be a member of an appropriate professional body.</p> |
| Roles | <p>Role of the victim representative in the conference:</p> <ul style="list-style-type: none"> Providing information to the whole group Providing support to the survivor <p>Role of the offender representative in the conference:</p> <ul style="list-style-type: none"> Observe and monitor the perpetrator, and therefore will need to sit at least at right angles to the client to enable observation Interrupt the perpetrator where the client's response is inappropriate. Coach the offender clients, identify grooming and address in conference of occurs |
| Time & Place | <p>Venue criteria: Multiple spaces to allow withdrawal of one or more participants of the conference.</p> <p>Environment conducive to human calm and healing e.g. capacity to go outside, trees and garden, heating and lighting appropriate, appropriate seating to allow sitting all day, gendered toilets, privacy, resources available e.g. whiteboards and whiteboard markers, kitchen facilities</p> <p>Facilitator/ community panel members to collaboratively attend to seating arrangements – these should be survivor driven but allowing the offender the opportunity to nominate those persons closest to him. A day will be set aside, food to be provided – participants to bring a plate? Back up food taken. A person recording the day, or tape recording facilities and consents</p> |

9.2 Appendix 2: Mapping Project Restore to the Principles of Best Practice

The Project Restore team acknowledge that the Ministry of Justice (2004) principles of best practice provide a sound basis for the practice of restorative justice but recognise the need for additional safeguards which can be necessary when dealing with harm which has complex or chronic impacts such as sexual violence.

Project Restore's processes are based on the core values of restorative justice (participation, respect, honesty, humility, interconnectedness, accountability, empowerment and hope) and what is known of the dynamics and impacts of sexual violence. However, a few key differences include the provision of a process rather than one off intervention; extension of time frames; increased role of expert input; and the reduction in the open invitation to conference participation.

The structure and content of the Project Restore processes are responsive to the dynamics of sexual violence and its impacts. The culturally imbedded nature of myths about sexual violence, the significance and impacts mean that expert input is required in the preparation and facilitation of conferences.

The process is survivor driven. This is important, as a respect for the right of the survivor to hold the offender accountable, and to rebalance the power between the survivor and the offender and society. This occurs through the survivor experiencing choice, control and their needs being attended to.

The aims of the process are to contribute to healing for the survivor and the offender. For the survivor this occurs mainly through the provision of a safe and supported environment that allows them to speak about the harm caused to them, receive an apology and negotiate for actions which they would find restorative. For the offender, publicly taking accountability for the wrong doing, making appropriate reparations for the harm caused and committing to action to prevent further offending and promote healing.

Project Restore processes are designed to maximise the chances for healing and to minimise chances for harm. These processes contain the key elements of informed consent, expert assessment of survivor readiness, flexible processes that pace the process in line with the needs of the survivor, expert assessment of the offender, sufficient preparation for all participants which includes: discussion around the dynamics of sexual violence; access to therapy for the survivor; specialist support for the offender; support for participants from a perspective that is informed about sexual violence; agreed outcomes that are mediated, achievable, and monitored;

contact with participants that is maintained following key aspects of the process; and the process is psychologically informed.

Project Restore's timeframes are based on the nature of healing from sexual violence. The timing of the restorative process needs to be appropriate, and the pace and timing needs to be driven by the capacity of the survivor and the offender.

When utilising restorative justice processes for sexual offending against children there is an ethical responsibility to ensure the safety of the community and to reduce the risk to other children. Assessment for treatment for perpetrators of child sexual abuse is mandatory.

Where restorative processes for sexual violence are community embedded a shared understanding of the process, goals and needs can be achieved and other resources and services which may be needed are more accessible.

The guidelines developed by Project Restore have been mapped into the best practice principles developed by the Ministry of Justice (Ministry of Justice, 2004) to firstly, illustrate their compatibility and secondly, to demonstrate that for sexual violence Project Restore has determined that practice should extend beyond the best practice principles. This mapping is presented in tabular form (see Table 1). The extensions that Project Restore advocates are shown in text that is bold and italicised.

Table 1: Mapping Project Restore’s Guidelines into those developed by the Ministry of Justice

| Guidelines | Essential elements | Evidenced by |
|---|---|--|
| <p>Voluntariness</p> <ul style="list-style-type: none"> • In participation | <p>Informed consent – Survivor & Offender (S&O) Not obligatory to participate Right to withdraw S&O contribute</p> | <p>Participants advised of ability to withdraw consent at any time S&O offered independent advice prior to agreeing to participate</p> |
| <ul style="list-style-type: none"> • Outcomes | <p>Outcomes agreed and developed without coercion</p> | <p>Facilitator ensures S&O understand what is agreed to for expected outcomes to be completed (agreement of outcomes not sole focus)</p> |
| | <p>Focus on needs not compensation</p> | <p>Outcomes sometimes involve money but not always</p> |
| <p>Full participation</p> <ul style="list-style-type: none"> • S&O primary participants | <p>Interaction between S&O centre of process S&O participate at a level which they are comfortable S’s determine own level of involvement</p> | <p>S&O participation encouraged by others Full Survivor participation ideal but views can be represented If Survivor does not agree process should not take place</p> |
| <ul style="list-style-type: none"> • <i>Survivor driven</i> | <p><i>Survivor driven to rebalance power</i></p> | <p><i>Process done due to Survivor motivation</i> <i>Survivor needs drive pace</i> <i>Process negotiated but Survivor wishes prevail</i></p> |
| <ul style="list-style-type: none"> • Community represented | <p>Support people encouraged</p> | <p>Their presence discussed with S&O prior to conference</p> |
| <ul style="list-style-type: none"> • <i>Restricted participation</i> • <i>Restorative processes for</i> | <p><i>Reduction in open invitation to conference participation</i> <i>Participants are screened</i> <i>Participants are informed about dynamics of</i></p> | <p><i>Some people deferred from involvement</i> <i>Some involvement from others not considered front line</i> <i>Preparation towards conference may include small group meetings to strengthen relationships prior to conference</i></p> |

| Guidelines | Essential elements | Evidenced by |
|--|--|---|
| <p><i>sexual violence are community embedded wherever possible</i></p> | <p><i>sexual offending</i></p> | <p><i>Opportunities to disclose nature of abuse prior to conference</i></p> |
| | <p>Professionals should not dominate process</p> | <p>S&O consent to the presence of professionals (e.g. Police)</p> |
| | <p><i>Increased role of specialist input Community embedded</i></p> | <p><i>Working alongside services for survivor / offender Conference participants include these community representatives</i></p> |
| <p>Participants well informed</p> <ul style="list-style-type: none"> • Participants well prepared • Participants have reasonable / realistic expectations | <p>Pre conference meetings held to inform participants particularly S&O</p> | <p>S&O given information about nature of process, who included, procedures and ground rules Pre conference meetings take place Information provided about process</p> |
| | <p><i>Preparation, conference support and follow up support provided from a specialist in area of sexual offending</i></p> | <p><i>Appropriate professionals included throughout the process</i></p> |
| | <p><i>Specialist assessment of offender Readiness and capacity as well as current safety for self and others Specialist support for offender</i></p> | <p><i>Processes that include opportunities for the assessment of: Readiness to engage in treatment Capacity and readiness to give apology Capacity to understand impact on survivor</i></p> |
| | <p>Participants have realistic expectations of process</p> | <p>Participants expectations discussed (by facilitator) at pre conference meeting</p> |
| | <p><i>Specialist assessment of survivor readiness –</i></p> | <p><i>Processes that include opportunities for the assessment of: Readiness External</i></p> |

| Guidelines | Essential elements | Evidenced by |
|--|---|---|
| | <p><i>appropriate point in healing process, has sufficient resources to undergo process</i></p> <p><i>Access to therapy for survivor</i></p> | <p><i>and internal resources to avoid destabilisation</i></p> <p><i>Well functioning therapy relationship and good liaison with RJ providers</i></p> <p><i>Wanting justice different from retribution</i></p> <p><i>Flexibility around survivor readiness; Conferences stalled until survivor ready</i></p> |
| <p>RJ process hold the offender accountable</p> <ul style="list-style-type: none"> • Offender acknowledges responsibility for offence • Agreed outcomes provide appropriate and realistic response to offending • Agreed outcomes monitored • Action taken if agreed plan breaks down • Court informed of outcome of RJ process • RJ process responds only to offence specific to current process <p>• <i>Aims of process are to contribute to healing of</i></p> | <p>Plea of guilt, may include statement of facts</p> <p>Outcomes not out of line with current sentencing</p> | <p>Appropriate measures in place if guilty plea not entered</p> |
| | <p><i>Assessment for treatment for perpetrators of child abuse mandatory</i></p> <p><i>Safety of children paramount</i></p> <p><i>RJ providers accountable to wider community</i></p> | <p><i>Offender has received treatment or appropriate therapy for sexual offending</i></p> |
| | <p>Clear well defined outcome plan developed</p> <p>Agreed outcomes fair realistic achievable and credible, able to get completed in an appropriate time frame</p> <p>Outcomes reflect what participants think can be done to put offending right</p> | <p>Evidence of S & O input into action plan</p> <p>Action plan signed by S & O, facilitator and person responsible for monitoring includes consequences if plan breaks down</p> <p>Survivor notified if plan breaks down</p> <p>Facilitator responsible for report dissemination</p> |
| | <p><i>Outcomes are achievable monitored and mediated – important that agreed outcomes are met</i></p> | <p><i>Process for monitoring of agreed outcomes includes responsibility for communication with and support for O if agreements are not being met.</i></p> |
| | <p><i>Other survivors are acknowledged</i></p> | <p><i>Given opportunity to speak of harm caused to them or acknowledge accountability, may require own conference</i></p> |

| Guidelines | Essential elements | Evidenced by |
|--|--|--|
| <p><i>survivor and the offender</i></p> | <p>Addresses only the effects of offence committed against the survivor</p> | <p>Participants need to be aware that police may be informed if other offending disclosed</p> |
| | <p><i>Offender takes accountability for wrong doing and makes reparation for harm caused</i> <i>Survivor receives Genuine apology</i> <i>Negotiates for actions or behaviours survivor would find restorative</i> <i>Offender commits to actions to prevent further abuse</i></p> | <p><i>Survivor involved in negotiating and agreeing to outcome</i> <i>Offender admits wrong doing in actions and agrees to make reparations for actions</i> <i>Makes reparation – carries out promise</i> <i>Apology received</i></p> |
| <p>Flexibility and responsiveness</p> <ul style="list-style-type: none"> • Guided by RJ values • Appropriate and responsive to cultural values of participants • Proceedings responsive to participant wishes <p>• <i>Time frames based on nature of healing from sexual violence</i></p> <p>• <i>Processes are designed to maximise the chances for</i></p> | <p>Flexible and responsive to needs of S&O</p> | <p>Decisions about conference procedure responsive as much as possible to participants wishes- survivor wishes prevail but facilitators work to resolve conflict around such issues</p> |
| | <p>Restorative justice process guided by restorative justice values to ensure rights of participants respected and an emotional and physically safe process</p> | <p>Restorative justice values underpin framework within which flexibility and responsiveness exercised Process continues only with the agreement of participants</p> |
| | <p>Transparency of process and outcomes Empowerment of participants</p> | <p>Participants are well prepared about nature of conference procedure. Outcomes are negotiated and agreed upon by participants</p> |
| | <p><i>Specialist assessment of survivor needs in design and pacing of process</i></p> | <p><i>Specialist involvement in pre conference preparation</i> <i>Extension of timeframes to allow process of personal change</i></p> |

| Guidelines | Essential elements | Evidenced by |
|--|--|---|
| <p><i>healing and to minimise chances for harm</i></p> | <p><i>All participants contacted following key aspects of process to discuss further needs</i></p> | <p><i>On- going communication with all participants throughout process</i></p> |
| | <p>Restorative justice process appropriate and responsive to culture of participants</p> | <p>Advice sought from cultural advisors/ kaumātua if necessary. Use culturally appropriate facilitators / venue. Use interpreter if required, Ensure participants aware of cultural differences and how accommodated. Discussion and negotiation around procedure (e.g. use of karakia, venue and time of conference)</p> |
| | <p><i>Provision of a process not just a one off event</i></p> | <p><i>Process of assessments, meetings and preparation sessions over time to evolve process of restorative justice</i></p> |
| | <p><i>Processes are designed to maximise the chances for healing and to minimise chances for harm</i></p> | <p><i>Participants are screened for deeply held beliefs not constructive to the process and solutions sought for a way forward.</i></p> |
| | <p><i>Time frames based on nature of healing from sexual violence RJ process just part of healing journey – participants may not identify selves as “healed”</i></p> | <p><i>Responsive process with flexible time frames</i></p> |

| Guidelines | Essential elements | Evidenced by |
|---|--|---|
| <p>Emotional and Physical safety of participants</p> <ul style="list-style-type: none"> • Safe for all participants at all times • Privacy and confidentiality of participants • Follow up after conference | <p>Ensure physical and emotional safety of part. Manage potential risks</p> | <p>Violence not tolerated; Conference discontinued if facilitator considers inappropriate or unsafe to continue facilitators responsive to grooming and other aspects that contribute to re victimisation Facilitators discuss concerns as they arise</p> |
| | <p>Respect and dignity of all involved Safeguard V & O rights Balance and fairness</p> | <p>Facilitator establishes ground rules which are actively maintained throughout process. Confidentiality and privacy protected and respected to the extent possible</p> |
| | <p><i>Recognise and make provision to adjust power imbalances Long standing distortions to family dynamics challenged</i></p> | <p><i>Evidence of Survivor choices and control Facilitator prepared to counter impact of grooming and other ways to put down survivor Rules of engagement established at onset</i></p> |
| | <p><i>Respectful communication practices including protection of right to speak</i></p> | <p><i>Effective Facilitation process</i></p> |
| | <p><i>Specialist participants sufficiently skilled to provide acute counselling interventions to contain outbursts and the Impacts of disclosure</i></p> | <p><i>Skilled/ experienced/ qualified specialists</i></p> |

| Guidelines | Essential elements | Evidenced by |
|---|---|---|
| | <i>Process is psychologically informed – Understanding of trauma and V/O dynamics</i> | <i>Respect significance of disclosure and ensure resources available to assist families in dealing with it RJ providers are able to identify when being invited to collude with roles associated with sexual offending and therefore loose impartiality Adequate pre conference preparation to determine v/o issues</i> |
| | <i>Participants are screened</i> | |
| | Personal information not disclosed without consent | Information from conference not disclosed without consent of parties concerned Legal limits to confidentiality however |
| | Follow up Appropriate to needs of participants | – gain feedback on effectiveness, - check plans carried out, keep V/O informed, determine if S&O require further support |
| Deliver an effective process <ul style="list-style-type: none"> • Appropriate and transparent procedures & processes • High quality facilitators • Evaluation of process supported and encouraged | Robust internal management systems that include appropriate and transparent procedures and processes | Regular review process Internal and external Evaluation process which: Monitor performance; address issues, manage complaints Facilitators contribute to evaluations of RJ service |
| | High Quality impartial facilitators (who are not aligned with Victim or Offender or an employee of the justice sector) | Facilitators receive regular training and supervision |

| Guidelines | Essential elements | Evidenced by |
|--|--|--|
| | Facilitators act in accordance with RJ values | Demonstrate competencies: communication skills, manage conflict, community knowledge, cultural understanding, personal qualities of honesty openness respect for others. Maintain safety of participants |
| | Select facilitators appropriate to each case Co facilitation model may be appropriate | Flexible responsive processes |
| | <i>Facilitators keep to boundary of facilitation</i> | <i>Facilitators avoid taking up counselling relationship with survivor</i> |
| RJ only used in appropriate cases <ul style="list-style-type: none"> • Careful consideration of cases accepted • Careful consideration of family and sexual violence cases • Particular consideration given when survivor is child or young person • Structure and content of RJ | Take into account type of offence, willingness of S&O to participate, participants suitability , maturity ability to participate voluntariness | Don't proceed if doesn't meet criteria Proceeds through courts Inform courts RJ not proceeding |
| | Careful consideration of family and sexual violence cases | Power imbalances and Family dynamics attended to Additional safety and support measures in place |
| | <i>Take into account key aspects: Impact of myths ; Grooming; Impacts of disclosure; Power over</i> | <i>Impartial facilitation but able to intervene appropriately to counteract impact of these dynamics</i> |
| | <i>S&O supported from a perspective which is informed about sexual violence</i> | <i>Specifically skilled trained support services available and used by S&O</i> |

| Guidelines | Essential elements | Evidenced by |
|---|--------------------|--|
| <p><i>process and conference well informed of dynamics of sexual violence and its impacts</i></p> | | <p><i>Appropriate resources offered in terms of treatment and processing of impacts – beyond RJ process available to assist families dealing with the impact of disclosure</i></p> |

9.3 Appendix 3: Confidentiality Agreement

Confidentiality Agreement



For an intermediary or Research Assistant.

Project title: An Exploratory Study of Restorative Justice for Gendered Violence.

Project Supervisor: Dr Shirley Jülich & Dr John Buttle

Researcher: Christine Cummins

- I understand that all the material I will be asked to record is confidential.
- I understand that the contents of the Consent Forms, tapes, focus group notes, or interview notes can only be discussed with the researchers.
- I will not keep any copies of the information nor allow third parties access to them while the work is in progress or at any other time.

Intermediary's signature:.....

Intermediary's name:

Intermediary's Contact Details (if appropriate):

.....
.....
.....

Date:

Project Supervisor's Contact Details (if appropriate):

.....
.....
.....

Approved by the Auckland University of Technology Ethics Committee on June 15, 2007, AUTEK Reference number 07/30

Note: The Intermediary should retain a copy of this form.

9.4 Appendix 4: Consent Form

Consent Form

Focus Groups



Project title: An Exploratory Study of Restorative Justice for Gendered Violence
Project Supervisors: Dr Shirley Jülich and Dr John Buttle
Researcher: Christine Cummins

- I have read and understood the information provided about this research project in the Information Sheet dated 27 August 2007
- I have had an opportunity to ask questions and to have them answered.
- I understand that identity of my fellow participants and our discussions in the Restorative Justice Conference is confidential to the group and I agree to keep this information confidential.
- I understand that the restorative justice conference will be audio-taped and transcribed and that a research assistant will take notes.
- I understand that a researcher or research assistant will phone me to conduct a telephone interview.
- I understand that I may withdraw myself or any information that I have provided for this project at any time prior to completion of data collection, without being disadvantaged in any way.
- At the end of this project, or If I withdraw, I understand that while it may not be possible to destroy all records of the restorative justice conference of which I was part, the relevant information about myself will not be used and tapes or transcripts, or parts thereof, will be destroyed,.
- I agree to take part in this research, and understand that the data may be used in future publications and presentations in a professional or academic context in such a way that I cannot be identified.
- I wish to be sent a summary of the research findings (please tick one):
Yes No

Participant's signature:

Participant's name:

Participant's Contact Details:

.....
.....
.....
.....

Date:

Approved by the Auckland University of Technology Ethics Committee on June 15, 2007, AUTEK Reference number 07/30

Note: The Participant should retain a copy of this form.

9.5 Appendix 5: Information Sheet

Participant Information Sheet



Date Information Sheet Produced:

27 August, 2007

Project Title

An Exploratory Study of Restorative Justice and Gendered Violence

An Invitation

We invite you to take part in the evaluation of Project Restore's restorative justice programme. This research is being conducted by Drs Shirley Jülich and John Buttle of the Auckland University of Technology (AUT). You are under no obligation to participate in the research.

What is the purpose of this research?

- To evaluate the programme offered by Project Restore.
- To help Project Restore develop models of best practice in their work with restorative justice and gendered violence
- To inform the Ministry of Justice of the findings of this research project
- A report on the research will be provided to Project Restore and the Ministry of Justice. Articles and presentations will be written for publication in academic and professional journals or forums so that what is learned will benefit a wider group of practitioners. It will not be possible to identify you in any reports, presentations or articles written on the project.

How was I chosen for this invitation?

You have been chosen for this research because you are considering participating in a restorative justice conference facilitated by Project Restore.

What will happen in this research?

The restorative justice conference that you participate in will be audio-taped with your permission and notes will be taken by a note taker. Soon after the conference a research assistant will contact you and make arrangements for a telephone interview at a time that suits you. During the telephone interview the research assistant will ask you about your perceptions of the restorative justice conference.

What are the discomforts and risks?

We do not anticipate any discomforts and risks. However, talking about the conference could trigger some uncomfortable feelings. You could be concerned about confidentiality.

How will these discomforts and risks be alleviated?

- If you take part in this research, you have the right to:
- Ask any questions about the project at any time
- Provide information on the understanding that it is completely confidential and your information will only be seen by the researchers
- Refuse to answer any questions asked in the telephone interview
- Postpone or discontinue the telephone interview for any reason
- Withdraw from the project at any time without penalty
- Have your information removed from the project up until the data collection has been completed
- If you experience any discomfort after the telephone interview you will be referred back to your counsellor or your support person from Project Restore.

What are the benefits?

You may be contributing to the development of restorative justice as a model to address gendered violence.

How will my privacy be protected?

Any research assistants, note takers, or transcribers will sign a confidentiality agreement. Material on computers will be protected by a password that only the researchers, research assistant or transcribers know. After this it will be stored in a secure place at the Auckland University of Technology. At the end of the project all tapes and transcripts will be offered back to you. If you don't want them they will be destroyed.

What are the costs of participating in this research?

There will be no financial costs. There will be a half hour to one hour of your time for the telephone interview.

What opportunity do I have to consider this invitation?

You do not need to make any decisions about participating in the research until the restorative justice conference has been organised. This could be some weeks or even months.

How do I agree to participate in this research?

You need to sign the consent form which has been given to you with this information sheet and return it to your contact person at Project Restore.

Will I receive feedback on the results of this research?

Yes you will. On the consent form there is a space for you to indicate if you would like be sent a summary of the research findings.

What do I do if I have concerns about this research?

Any concerns regarding the nature of this project should be notified in the first instance to the

Project Supervisor, Dr Shirley Jülich, *shirley.julich@aut.ac.nz* or phone 921 9999 extn 5864.

Concerns regarding the conduct of the research should be notified to the

Executive Secretary, AUTEK, Madeline Banda, *madeline.banda@aut.ac.nz* or 921 9999 ext 8044.

Whom do I contact for further information about this research?**Researcher Contact Details:**

Dr John Buttle
john.buttle@aut.ac.nz
(09) 921 9999 extn

Project Supervisor Contact Details:

Dr Shirley Jülich
shirley.julich@aut.ac.nz
(09) 921 9999 extn 5864

Approved by the Auckland University of Technology Ethics Committee on June 15, 2007, AUTEK Reference number 07/30