



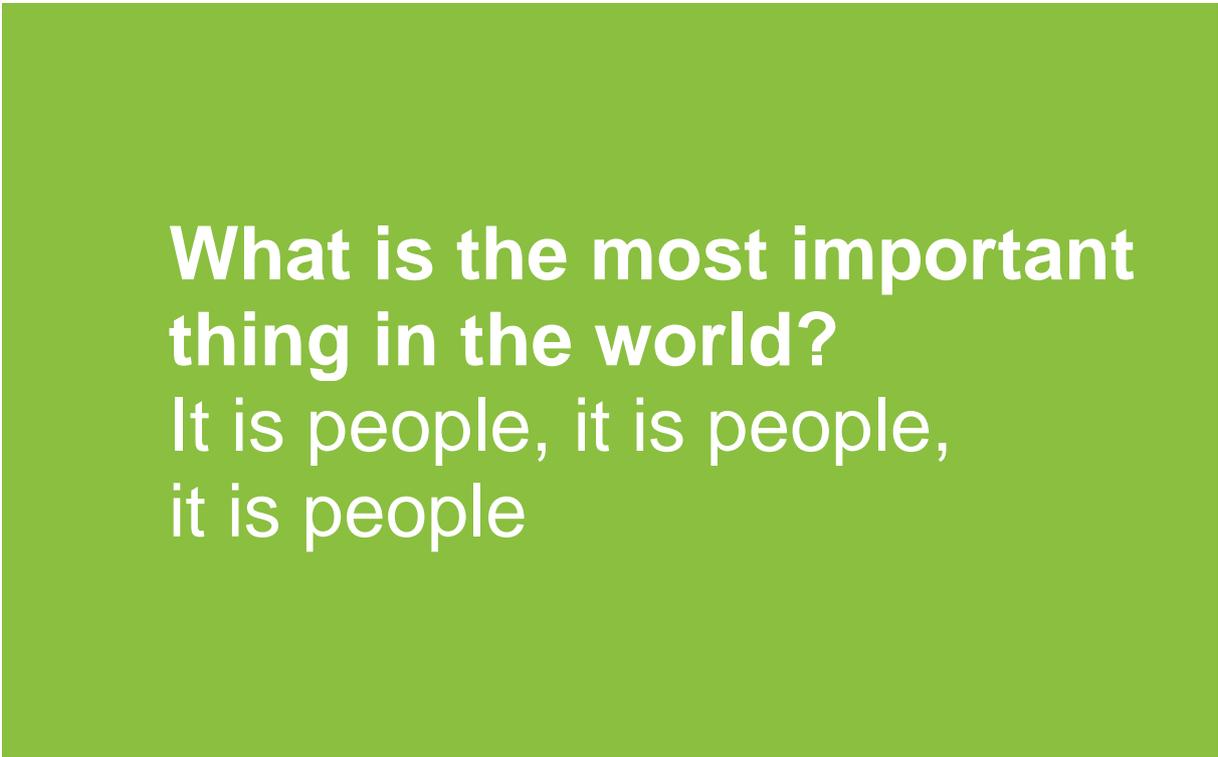
Restorative justice

PRACTICE FRAMEWORK





He aha te mea nui o tea ao?
He tangata, he tangata,
he tangata



**What is the most important
thing in the world?**
It is people, it is people,
it is people



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Issues of the Practice Framework

Issue 1: August 2017

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WHAT IS RESTORATIVE JUSTICE?

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

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

Restorative justice in New Zealand

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

Together, these three acts:

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

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

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

PRACTICE FRAMEWORK

Purpose

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

In 2004 the Ministry of Justice published Restorative Justice Best Practice in New Zealand. This included the Ministry's 'Principles of Best Practice' and the restorative justice providers' 'Statement of Restorative Justice Values'. The document noted that 'the use of restorative justice processes in cases of family violence and sexual violence must be very carefully considered'.

In 2013, Restorative Justice Standards for Family Violence Cases and Restorative Justice Standards for Sexual Violence Cases were developed that recognised the additional safeguards and processes needed when dealing with family and sexual violence.

The Restorative Justice Practice Framework ('the framework') is the whakataukī, values, principles and standards articulated here. The framework builds on the documents published in 2004, 2013, and 2017, updated to reflect changes in policy and practice.

The framework is supported by training and accreditation of facilitators, and the contractual relationship between the Ministry of Justice and restorative justice providers. Practice resources can be found on the Resolution Institute website at [resolutioninstitute/restorativejustice/resources](https://www.resolutioninstitute.org.nz/restorativejustice/resources)

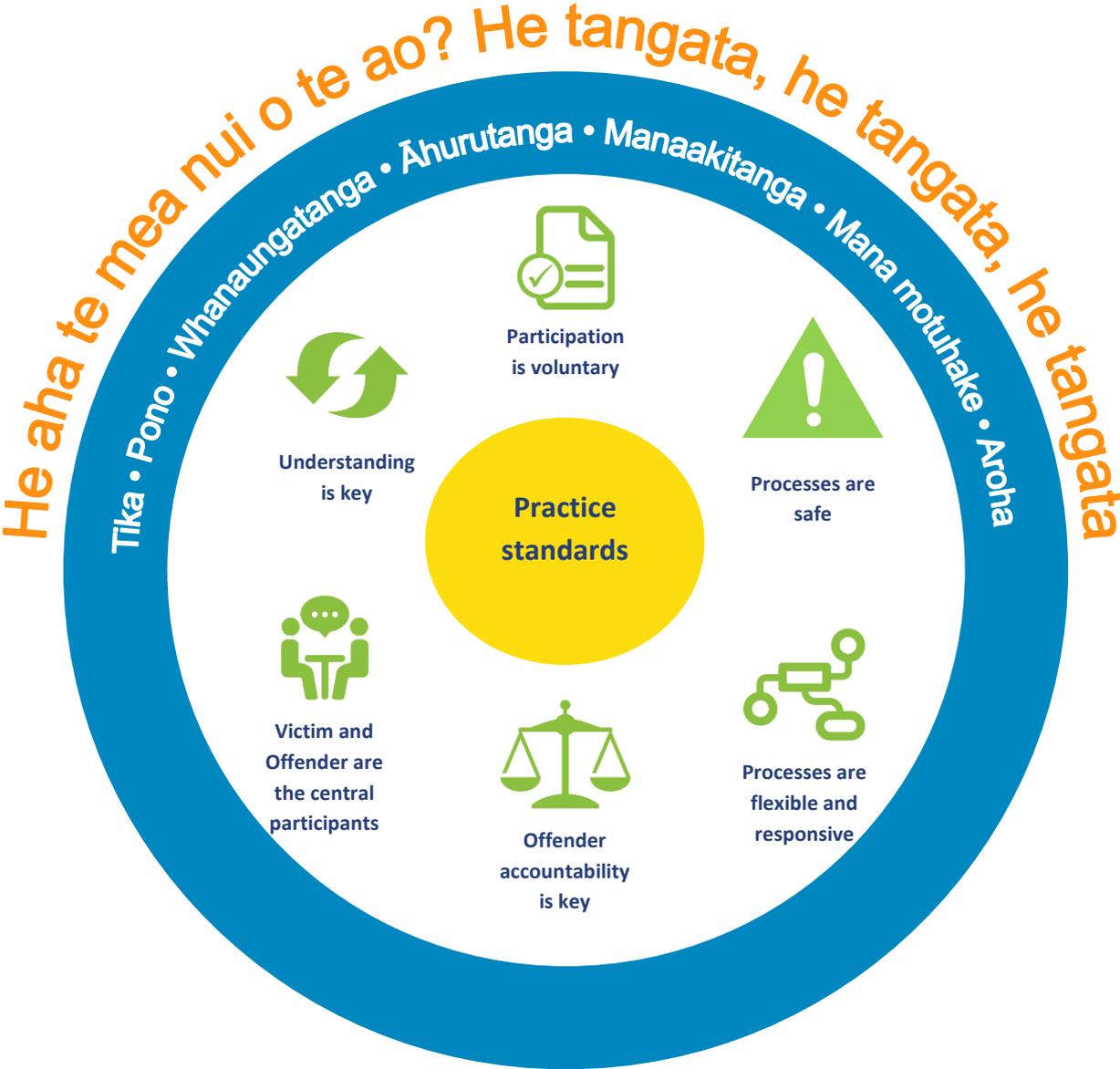
Who is the framework for?

The framework is for Ministry of Justice-funded restorative justice providers and their facilitators. The values, principles and standards must be followed by all facilitators in all cases.

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

PRACTICE FRAMEWORK

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



Te Tiriti o Waitangi

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

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

The framework is guided by the whakataukī

He aha te mea nui o te ao?

He tangata, he tangata, he tangata

What is the most important thing in the world?

It is people, it is people, it is people



Our values

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



Tika

We do things in the right way

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



Pono

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

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



Whanaungatanga

We develop relationships and work together

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



Āhurutanga

We provide a place of warmth and safety

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



Manaakitanga

We show respect, generosity and care for others

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



Mana motuhake

We enable people to achieve self-determination

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



Aroha

We feel compassion, caring and empathy for others

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

Our principles

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



Participation is VOLUNTARY throughout the restorative justice process

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



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

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



UNDERSTANDING is key to effective participation

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



Offender ACCOUNTABILITY is key to the restorative justice process

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



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

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



Restorative justice processes are SAFE for participants

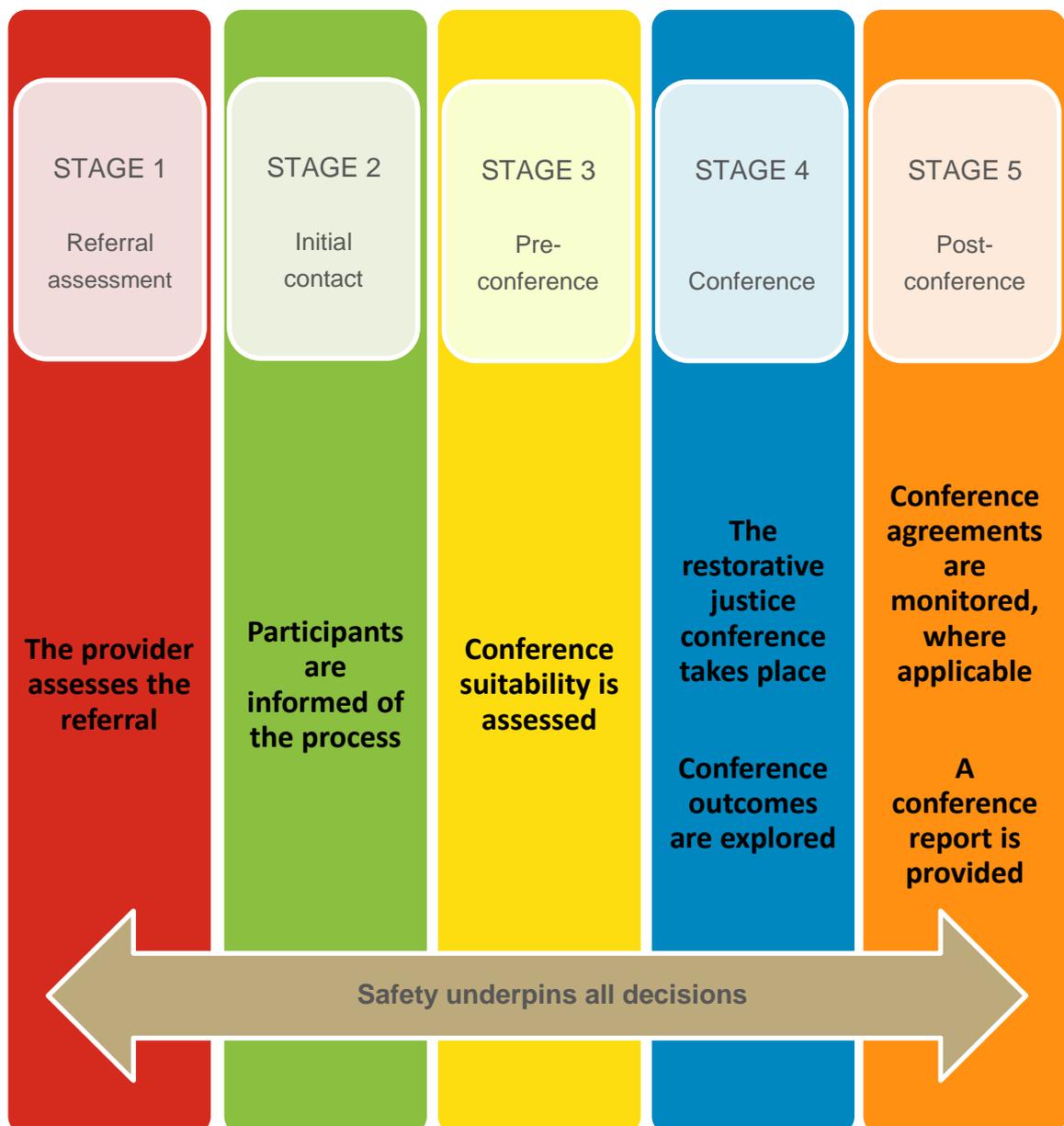
Safety underpins all decisions made by facilitators and providers

PRACTICE STANDARDS

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

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

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



STAGE 1 Referral assessment

STANDARD 1 – The provider assesses the referral

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

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



STAGE 2 Initial contact

STANDARD 2 - Participants are informed of the process

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

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

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

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

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



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

STAGE 3 Pre-conference

STANDARD 3 - Conference suitability is assessed

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

1. Participants, including the victim, offender and support people, must each give their informed consent that they will attend the conference., Informed consent is requested after:
 - all participants are given accurate information about the restorative justice process
 - the rules that will apply during the conference are explained to all participants and agreed to by them
 - privacy and confidentiality (and their limitations) are explained to all participants and agreed to by them
 - the facilitator encourages the victim and offender to bring support people to the conference²
 - providing information on how risk will be continually monitored
 - the facilitator being able to end a conference if there are any real or perceived threats to the safety of the victim or any other person.

If the victim is a child or young person, gaining informed consent will involve their caregivers, and providing an age appropriate level of information. It may be appropriate for a support person to represent the views of the child or young person on their behalf.

2. The facilitator then completes a conference risk assessment and documents a conference risk management plan that considers:



² If the victim is a child or young person, the facilitator must ensure they have a suitable support person throughout the restorative justice process, including attending the pre-conference and conference

- the suitability and capability of the participants, including emotional and health needs and any alcohol and other drug abuse
 - the victim's view of the offending and its impact
 - the offender's remorse and accountability
 - the offender's ability to address the harm caused
 - any involvement of children and young people
 - the suitability of support people
 - the suitability of professionals.
3. Arranging the conference, including the needs of all participants, such as:
- cultural requirements
 - interpreter requirements
 - venues
 - timeframes.

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

STAGE 4 Conference

STANDARD 4 - The restorative justice conference takes place

The facilitator conducts the conference. The facilitator:

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

STANDARD 5 - Conference outcomes are explored

Conference outcomes must be:

- participant-driven
- understood by all participants

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



STAGE 5 Post-conference

STANDARD 6 – Conference agreements are monitored, where applicable

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

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

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

STANDARD 7 – A conference report is provided

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

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

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

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



Underpinning the whole process

STANDARD 8 - Safety underpins all decisions

The provider will:

- contact the police or child protection agencies if:
 - there's a serious threat of harm
 - a person believes a child or young person has been, or is likely to be harmed (whether physically, emotionally or sexually), ill-treated, abused, neglected or deprived
- ensure the best interests of children and young people underpin all decisions made
- undertake pre-conferences and conferences face-to-face³
- use professional interpreters if required. If a facilitator decides to use a support person as an interpreter, the rationale and risk mitigation for this must be documented in the conference risk management plan. Children and young people must not be used as interpreters.



³ If there are **exceptional** circumstances, and the facilitator documents the rationale, risk and mitigation in the conference risk management plan, then:

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

GLOSSARY

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

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

CONFERENCE RISK MANAGEMENT PLAN

- a document that:

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

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

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

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

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

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

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

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

PRE-CONFERENCE – a meeting between the facilitator and the victim or the offender, usually with their support people, to gain informed consent and assess whether it is appropriate to proceed to conference.

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

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

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

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

RESTORATIVE JUSTICE OUTCOME -

an outcome of the restorative justice process, including:

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

A restorative justice outcome should not be a sentencing recommendation.

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

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

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

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

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

SUPPORT PEOPLE - whoever the victim and offender have invited to support them through the restorative justice process, and whose involvement or presence has been agreed to by the facilitator and other participants. Examples of support people include family and whānau, friends or a community support person.

VICTIM - a person against whom an offence has been committed or who suffers physical injury, or loss or damage to property as a result of an offence. In the case of a child or young person (under 17 years), the parent or legal guardian represents the victim. In these cases, the parent or guardian needs to be consulted. In the case of a person who has been killed or incapacitated, it is a member of the immediate family who is the victim (as defined in the Victims' Rights Act, 2002).

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