



Chief Victims Advisor
to Government

Research Report

**Victim-led
alternative
resolution
pathways**

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Executive Summary

In 2019 the Chief Victims Advisor published her report *Te Tangi o te Manawanui: Recommendations for Reform*. In this report she identified the need to:

‘invest in promising kaupapa Māori and Tauwi restorative and alternative resolution pathways, to better understand and improve existing alternative pathways for Māori and Tauwi victims of crime, and to use them to establish the foundation for long term and transformational change’ (Chief Victims Advisor, 2019a).

This current report is one of two pieces of related work commissioned by the Chief Victims Advisor to provide a foundational platform from which to progress this recommendation. Presented in this report are findings from a critical review of literature related to victim-led alternative resolution pathways (Part A). Working examples of Tauwi models operating here in Aotearoa New Zealand (Aotearoa NZ) along with others from overseas have also been identified (Part B). A second report by another author has focused on kaupapa Māori resolution pathways (Awa Associates, 2022).

Understanding key concepts

An important first step in this project was to review and clarify several central concepts.

An **alternative justice process** can refer to any mechanism, pathway or programme that differs in some way from the conventional offender-focused criminal justice response, however, this over-inclusiveness renders it somewhat unhelpful. To better distinguish between various alternative justice processes they need also to be described in terms of (1) their location and relationship to the Criminal Justice System (CJS) (either embedded *within* it or operating *outside/independently* from it); and, for those operating within the CJS, (2) the stage or entry point for referral (either pre-charge, pre-trial, pre-sentence or post-sentence).

A **victim’s justice needs** refers to the goals that a victim seeks from a justice response. For a justice process to be considered *victim-led*, the victim’s justice needs must be prioritised and addressed; as such, this is a key construct for the current project. The five justice needs (or justice interests) identified by Professor Kathleen Daly (2014, 2017) are most commonly referred to in the literature. These are:

- **Participation (including information)** – being informed of developments in a case; being made aware of options for engagement, and how decisions can be influenced; being able to discuss the offending in meetings with admitted offenders (and others); and being able to question and receive information about one’s own victimisation.
- **Voice** – being granted a meaningful audience to whom the story of what happened and its impact can be told.
- **Validation** – affirming that the victim is believed (acknowledging that offending occurred, and the victim was harmed) and is not blamed for the offending.
- **Vindication (of the law and the victim)** – affirming the offending actions were wrong, morally and legally.
- **Offender accountability/taking responsibility** – ensuring that offenders are called to account and held to account; upon admission or conviction, offenders must accept responsibility for their wrongful behaviour.

Finally, clarification is required around what is necessary for an alternative justice process to be considered **‘victim-led’**. This term is primarily applied to justice processes where the victim is *in control*

of the timing, pace, or proceedings (i.e., how the process is driven). It is often used interchangeably with the other terms such as ‘victim-centred’, ‘victim-focused’ and ‘victim-orientated’. These latter terms, however, are considered broader in scope, as they also apply where the *primary aims* are to address the victim’s justice needs, as opposed to those of the offender (i.e., offender rehabilitation).

The term ‘victim-focused’ was selected as the umbrella term in this report, and operationalised with criteria adapted from Bolitho and Freeman (2016), who distinguish between:

- **Victim-focused** – where the aim of the referral is to address a victim’s justice needs. The programme is designed to improve victims’ access to justice and cannot proceed without a victim present (or someone representing the victim) but can go ahead without the offender.
- **Balanced-focus** – where neither party’s needs are prioritised. The Programme aims to equally balance the needs of both parties and will not proceed without both parties present.
- **Offender-focused** – where the aim of referral is to address an offender’s behaviour. The programme is designed around reducing re-offending and offender rehabilitation. The programme may include victims but can proceed without a victim participating.

Another useful term recently introduced in this area is ‘**victim-inclusive**’. This can be used to describe offender-focused programmes, whose primary purpose is to achieve offender accountability and reduce reoffending, but which also supports the inclusion of victims in a manner that is responsive to their needs and wishes.

Alternative justice mechanisms

There is a growing consensus that more victim-led restorative and alternative justice options are required. However, there has been less progress in devising credible and meaningful options. At this stage, Restorative Justice (RJ) is the only well-known example.

To date, most investment and progress has been directed towards designing and implementing offender-focused alternative justice processes that operate either within or alongside the CJS (i.e., can be put in motion only after a report or notification of offending). In Aotearoa NZ these have included: alternative diversion processes such as the youth justice Family Group Conference (FGC), Te Pae Oranga-iwi Community Panels, and RJ through the Police Adult Diversion Scheme; other mechanisms occur pre-sentence and/or as alternative sentencing processes and/or alternative court models (e.g., pre-sentence RJ, and a number of specialist and therapeutic/problem-solving courts).^{1,2}

With the exception of one pre-sentence RJ option (provided by Project Restore), all alternative processes operating within the CJS in Aotearoa appear to be offender-focused.³ However, examples of victim-led models from overseas demonstrate the potential for offering victims genuine alternatives operating at multiple stages of the CJS, that focus on their needs, whilst protecting the rights of offenders, and simultaneously promoting community safety objectives. Common to all the

¹ These include the two Specialist Sexual Violence Court Pilots and at least eight problem-solving courts in Aotearoa NZ (e.g., the Family Violence Courts, Alcohol and Other Drug Courts, Young Adults List Court, New Beginnings, and Special Circumstances Courts, and the culturally inclusive Matariki Court, Te Kooti Rangatahi and Pasifika Courts).

² The latest innovation is Te Ao Mārama, a new court operating model being developed in partnership with local iwi and communities. The aim is to incorporate the best practices developed in the District Court’s solution-focused specialist courts into its mainstream criminal jurisdiction. The approach is to be whānau-centred and inclusive of victims.

³ Whilst offender-focused, these alternative processes can offer benefits to victims additional to what the conventional CJS may offer.

examples identified was a commitment from the outset to design and deliver a victim-focused programme.

Restorative justice (RJ) is the best-known example of an alternative justice process. RJ can be victim-led and delivered either within or outside of the CJS. An extensive body of evidence has accumulated on its impacts, and it has achieved the greatest level of progress in being recognised as an integral part of the criminal justice landscape, including here in Aotearoa NZ. RJ offers a number of potential benefits for victims in relation to the conventional CJS (e.g., enhanced ability to allow active participation, having a voice and being heard, seeking and obtaining answers to unresolved questions about the offending). In Aotearoa NZ, State funding and a proactive legislative approach has supported the successful development of court-referred pre-sentence RJ (typically offender-focused), which has become the dominant pathway to RJ processes. Fewer options (particularly funded ones) are available for victims who would like to participate but who wish to avoid influencing normal CJS outcomes for the offender, and at a time and pace that is right for them (e.g., post-sentence). Just two victim-led RJ programmes were identified in Aotearoa NZ, with another nine victim-led examples of overseas models (USA, Canada, Australia, Denmark), operating both inside and outside of the CJS.

Other less developed but promising examples of victim-led alternative justice processes include:

- the incorporation of **truth-telling mechanisms** into redress schemes or complaint mechanisms, providing an avenue for victims to tell their story, be listened to, believed, and receive formal acknowledgement of the harms suffered. One example was identified in Aotearoa NZ (now discontinued), and three current examples from Australia. Also of note is a proposal being considered in Victoria, Australia, for truth-telling mechanisms to be incorporated into their victims of crime compensation scheme.
- **alternative systems of reporting that** provide a victim-led mechanism for victims of sexual violence to disclose their victimisation to authorities (and have the opportunity to be connected with support services) without necessarily triggering a police investigation or formal inquiry. Two examples of these systems were found in Aotearoa NZ, one at a university and another used by the New Zealand's Defence Force. Unlike other jurisdictions (e.g., most States or Territories of Australia) there are no police managed alternative systems of reporting in Aotearoa NZ.
- and **civil law remedies**, which are increasingly receiving attention, with some victims of crime opting to use this approach to seek redress, often after having failed to have their justice needs met through the CJS. Two innovative examples were found where civil processes were adapted to better meet the needs of victims. Both applied strategies that aimed at reaching a satisfactory out-of-court resolution for victims, thereby avoiding the need for their participation in the formal adversarial civil proceedings.

Indigenous justice practices can, in the main, be considered as genuine, 'alternative' forms of justice. Those that operate independently of the conventional CJS tend to be more traditionally based approaches, while those within the CJS are often adaptations incorporating both traditional and mainstream cultural elements. An example of the latter are indigenous sentencing courts, which reflect a hybrid of State criminal procedures and indigenous customary law. The holistic and inclusive nature of indigenous proceedings mean that they are typically victim-inclusive, although less often victim-led.

Outcomes of alternative justice processes for victims

The evidence base examining the impact of justice processes on victims is slim. Most of the outcomes-type research in this domain is heavily focused on offender-related outcomes, usually re-offending rates. The extent of research in this area that does include victim-related outcomes is almost entirely restricted to examining the effectiveness of RJ. This research, some of which has utilised robust random-assignment designs, has demonstrated that victims attending Restorative Justice Conferences (RJC), compared to standard CJS processes, have significantly:

- higher levels of satisfaction;
- improved well-being and other measures of emotional restoration (e.g., feeling less fearful, reduced desire for violent revenge, reduction in post-traumatic stress symptoms);
- are more likely to receive an apology, and one that is perceived as sincere;
- and are more likely to receive financial restitution.

To build a more credible evidence-base, researchers are calling for research that compares the impact of different justice mechanisms on victims' justice needs (e.g., participation, voice, validation, vindication, offender-accountability). Research of this type is deemed necessary in order for victim advocates, policy makers and funders to be able to realistically assess and promote the relative merits of alternative mechanisms. Also recommended is a move away from simple 'victim satisfaction' as the sole measure of impact.

Implementation considerations

Meeting the disparate needs of victims, whilst maintaining the integrity of the rights of offenders and public interest concerns, is no easy task. A number of considerations can impact on the successful implementation of alternative justice processes from the perspective of the victim of crime:

Positioning in relation to the CJS – is an important victim-related implementation consideration. While there are advantages and disadvantages to each location choice, alternative processes outside of the CJS, or at later points within the CJS, appear more able to be victim-focused. For example, victims obviously need to participate to benefit, yet with the early-positioned alternative diversion schemes, less than half involve the victim. To be victim-led the victim needs to be in control of the timing and pace of proceedings, which can be difficult especially pre-trial or pre-sentence. Victims of serious crime can potentially experience the greatest benefits, this group is also more likely to want to avoid influencing CJS outcomes, and so are better matched to interventions post-sentence. Finally, victims who prefer not to report their victimisation to police, and/or do not want the offender prosecuted, clearly require justice processes that are fully independent of the CJS.

Victim safety – from the perspective of the victim, a critical implementation consideration is how to deliver an alternative process in a manner that ensures the victim's emotional and physical safety, before, during and after an alternative process like RJ. This is a particular concern for cases that involve victims of serious crime, or where there are complex interpersonal dynamics and power imbalances at play, such as with family violence and sexual violence.

Some jurisdictions have resisted the involvement in RJ for victims of family violence and/or sexual violence due to these safety concerns. Others, rather than denying their access, have opted to manage victim safety through deployment of certain safeguards (delivery by specialist providers with offence specific safety standards including careful screening for suitability). This approach has been adopted within Aotearoa NZ, which was one of the first jurisdictions to formally endorse the use of RJ without offence eligibility restrictions.

Addressing victim safety concerns is intrinsic to programmes that adopt a victim-led approach.⁴ Best practice examples include Aotearoa NZ's Project Restore for victims of sexual violence, and the approach to RJ with family violence cases adopted by the Victorian State Government in Australia.

Protection of privacy, confidentiality, and due process – for an alternative justice mechanism like RJ to be beneficial for all parties it is generally accepted that 'what is said and done' during the process should remain confidential. This allows all parties to express themselves honestly and freely during the RJ process, without fearing that what they say may be able to be used to their detriment in any subsequent civil or criminal proceedings.

Unlike some other jurisdictions (e.g., the Australian Capital Territory (ACT) and Canada), Aotearoa NZ has no legislation that explicitly protects the use of information disclosed in an RJ process from being admissible as evidence in other legal proceeding. Instead, providers and participants must rely on the principles of voluntary participation, confidentiality agreements, and informed consent (which presumably include an explanation on any limits to confidentiality).

Monitoring compliance with outcome agreements – benefits to victims from participating in alternative justice processes include the opportunity to have input into agreed outcomes such as an offender making amends (e.g., financial reparation to the victim), or a commitment to participate in treatment. For a victim to feel an offender has been held to account, and justice has been done, it is important that the offender carries through with any actions or outcomes agreed to. This is an area requiring further attention here in Aotearoa NZ and elsewhere, particularly in relation to alternative processes operating outside the CJS that face greater challenges in enforcing or monitoring compliance, as they often lack formal oversight or supporting legislation.

Facilitating victim access – this requires a range of options to be available that victims know about, and are empowered to select and request those that best suit their justice needs. Those entrusted with assisting victims with information and referrals must be sufficiently informed to be knowledgeable of all options available, and able to explain to victims their relative merits and likely suitability.

Understanding victims' needs, motives and barriers to participation – victim uptake rates of alternative justice processes tend to be low, compared to relatively high levels of interest. This suggests that more information is needed to understand which victims would like to obtain which forms of justice response, at what stage of the CJS, as well as what barriers to their participation exist. This is crucial for the design, planning, resourcing and - where necessary - targeting of victim-led alternative justice responses.

Future directions

Findings of this project make it clear that much work remains to ensure that victim-led alternative justice options are available to victims of crime. With the exception of a few pockets of innovation (e.g., Project Restore, the work of Victoria University's Student Interest and Conflict Resolution Team), the landscape in Aotearoa NZ and overseas continues to be dominated by offender-focused initiatives. As recommended by the Chief Victims Advisor, investment should now focus on providing alternative pathways aimed at addressing victims' justice needs. Below are high-level summary points and key principles that should guide future work:

⁴ Being victim-driven is a specific requirement in the Ministry's sexual offending practice standards (Ministry of Justice 2013), although less explicit in the family violence standards (Ministry of Justice, 2019b).

- **A suite of options is needed** – Aotearoa NZ’s (arguably) ‘one-size-fits-all’ approach fails to meet the justice needs of many victims of crime. The needs of one victim will differ from another, and can change over time; as such, a range of options should be made available that ideally would include (1) different types of alternative justice processes and (2) options that are positioned both outside of the CJS and at multiple entry points within (pre-charge/pre-trial, pre-sentence, post-sentence).
- **Continue victim-related reforms of CJS**– insofar as many victims will continue to wish that a prosecution proceeds through the courts, it is important that efforts to improve victims’ experience of the conventional justice system continue, alongside the expansion of victim-led alternative options.
- **Provide alternatives outside the CJS** The aim of alternative justice options should be about providing greater choice, not about diminishing or replacing the CJS – the current CJS, and new alternative justice options should be developed to operate both complementarily, and independently of each other. In this way more victims will have access to a justice option that suits their needs, and others can select a path or paths to enable them to experience a greater sense of justice.
- **Expand State sanctioned and funded alternative justice options** – Aotearoa NZ’s legislative approach and State funding of pre-sentence RJ is effective at facilitating victim access at this point in the CJS. This should be expanded to include other options for victims who would like to participate, but who wish to avoid influencing CJS outcomes for the offender, and at a time and pace that is right for them.
- **Provide flexible modes of delivery** – it is important any response made available can be tailored to the individual justice needs of each victim (e.g., offering a range of modalities to accommodate victims who prefer not to deal directly with ‘their’ offender).
- **Apply a ‘victims’ justice needs’ lens to service provision** – this perspective can be used to improve the responsiveness to victims of both conventional and innovative alternative approaches to justice for victims.
- **Provide victim-led approaches for gender-based crime** – the complex power dynamics and imbalances associated with sexual violence and family violence that can be cyclical in nature pose particular risks to a victim’s emotional and physical safety. In these circumstances a victim-focused approach is crucial to restore power to the victim and keep these victims safe.
- **Understand and communication the difference between *victim-inclusive* and *victim-focused* processes** – for victims to be able to make an informed choice over their participation, there needs to be a better understanding and more transparency around the primary aim of any justice process, i.e., whether it is victim-focused, offender-focused or designed with a balanced focus on the needs of both parties. **Develop alternative systems of reporting** – can enable victims to tell their story, be listened to, and to gain access to support options but without invoking a formal CJS response. For those victims not interested in engaging with the CJS, these alternative systems of reporting can also provide a pathway to access other means of addressing their justice needs such as a RJ process or truth-telling forum.
- **Provide a centralised gateway with specialised advice to facilitate access** – victims need an easily located central point where they can access information, support, reporting and justice options, and specialised advice as needed.
- **Develop a credible evidence base** - more research is needed on how best to address victims’ justice needs, to support and progress the work in this important area.

Part A – Critical review of relevant literature

1.0 Introduction

In 2019 the Chief Victims Advisor published her report *Te Tangi o te Manawanui: Recommendations for Reform*. In this report she identified the need to invest in promising kaupapa Māori and Tauīwi restorative and alternative resolution pathways, to better understand and improve existing alternative pathways for Māori and Tauīwi victims of crime, and to use them to establish the foundation for long term and transformational change (Chief Victims Advisor, 2019a). This was one of four high-level recommendations from the Chief Victims Advisor to Government in order to improve justice responses for victims.

This current report is one of two pieces of related work commissioned by the Chief Victims Advisor to provide a foundational platform from which to progress this recommendation. The terms of reference for this work were to conduct a critical review of relevant literature on victim-led alternative resolution pathways, and to identify and review existing models. This report focuses on international and Tauīwi Aotearoa models of victim-led alternative resolution pathways. A second report focuses on kaupapa Māori resolution pathways (Awa Associates, 2022).

2.0 Background to Chief Victims Advisor recommendations

The Chief Victims Advisor's recommendations for reform were presented to Government in December 2019 along with three other associated reports produced as part of the *Hāpaitia te Oranga Tangata – Safe and Effective Justice* (Hāpaitia) programme of work.^{5,6,7}

The Hāpaitia project was established by the Government in 2018 to improve community safety, and reform the way the justice system operates. The programme of work began with a Criminal Justice Summit to obtain the views and input from a wide range of interested parties. This in turn led to the establishment of Te Uepū Hāpai i te Ora – an Advisory Group to lead conversations throughout Aotearoa NZ on reforming the Criminal Justice System (CJS). To ensure the needs of victims were at the heart of any reforms, the Chief Victims Advisor held the 'Strengthening the Criminal Justice System for Victims Workshop' on 4-5 March 2019, conducted an online Victims Survey⁸ and collected direct feedback from victims from around the country. These activities formed the basis for the Chief Victims Advisor's recommendations for reform. A key element of this was the need for more victim-led alternative resolution pathways.

Recommendations for reform included in these three Hāpaitia reports targeted a range of issues, including the over representation of Māori throughout the CJS, high rates of imprisonment and re-offending, and that many of those caught up in the CJS are there partly due to unresolved issues related to their own experiences of abuse. The failure of the current CJS to meet the needs of many victims of crime was a strong theme to emerge across reports, with a general consensus that better access to improved alternative justice processes was one potential solution that could provide a more responsive justice experience for both Māori and Tauīwi victims of crime.

⁵ <https://www.justice.govt.nz/assets/Documents/Publications/turuki-turuki.pdf>

⁶ <https://www.justice.govt.nz/assets/Documents/Publications/d8s653-Inaia-Tonu-Nei-Hui-Maori-English-version.pdf>

⁷ <https://www.justice.govt.nz/assets/Documents/Publications/he-waka-roimata.pdf>

⁸ The Strengthening the Criminal Justice System for Victims Survey collected feedback from 620 respondents in February 2019 on what works and what does not work about the criminal justice system, and how it can be improved. See: <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/8dhfd3-Criminal-Justice-Victims-Survey-report.pdf>

The call for victim-led alternative resolution pathways builds on earlier recommendations to improve justice responses for victims (Ministry of Justice, 2009; Law Commission, 2015). Detailed proposals were developed for what these might look like specifically for victims of sexual offences (Law Commission, 2015; McDonald & Tinsley, 2011). Recommendations and proposals for reforming the criminal justice response for victims of crime in Aotearoa NZ are consistent with similar work underway in other countries (Centre for Innovative Justice, 2014; Victorian Law Reform Committee, 2016, 2021).

In fact, Aotearoa NZ has developed a reputation for leading the way in adopting, and legislatively supporting, the use of alternative justice processes, particularly in relation to restorative justice (RJ) (Centre for Innovative Justice, 2014; Connolly, 2010; Pfander, 2020; Strang et al., 2013). Examples include the introduction in 1989 of Family Group Conferences (FGCs) for young people who had committed offences, underpinned by the Children, Young People, and Their Families Act, 1989 (now the Oranga Tamariki Act, 1989), and legislation from the early 2000s to formalise the use of RJ in response to crimes committed by adults.⁹ Notably, this latter legislation created an opt out rather than opt in approach to the use of RJ pre-sentence, a step further than other jurisdictions (Jülich & Landon, 2017).

More recent justice sector initiatives have further expanded offender-orientated innovative justice solutions. Examples are:¹⁰

- **New Zealand Police** - including: (1) permanent funding of Te Pae Oranga (Iwi Community Panels) that use Tikanga, Kaupapa Māori and RJ practices to provide an alternative pathway to avoid Court for those committing low level offending (victims are invited to be part of the community panel); and (2) Reframe/Te Tārai Hou Strategy, launched in February 2021, a key component of which is to improve frontline resolution decision making and, where appropriate, expand the use of 'supported resolution pathways' to improve outcomes for victims, offenders and the community (New Zealand Police, 2021).
- **Courts** - the judicially led Te Ao Mārama is a new model for the District Court that will enable more solution-focussed courts, that better partner with Māori and the community. The aim is to mainstream the current pockets of therapeutic and problem-solving courts such as the Alcohol and Other Drug Treatment Court, the Rangatahi Court, and the Family Violence Court. The approach is to be whānau-centred and inclusive of victims.
- **Ara Poutama Aotearoa – Department of Corrections** - the new strategic direction, represented through Hōkai Rangi, which seeks to find new and alternative ways of doing things to achieve better outcomes with Māori and their whānau.

Whilst these initiatives suggest an increasing commitment to being inclusive of victims and can have benefits for victims over conventional criminal justice, early and current innovative approaches have largely been focused on enhancing opportunities for offender rehabilitation. Consequently, the recommendation of the Chief Victims Advisor and others is for innovative thinking to now be directed towards how to improve the justice response specifically for the victims of crime.

2.1 Rationale for expanding options for meeting the justice needs of victims

The rationale for development and implementation of specifically victim-led alternative pathways for justice centres around the inability of the current 'one-size-fits-all' approach to justice to sufficiently

⁹ Sentencing Act 2002 & 2014, Parole Act 2002, Victims' Rights Act 2002, Corrections Act 2004.

¹⁰ Some of these initiatives are victim inclusive but offender orientated, see section 2.2 for definitions.

meet the ‘justice needs’ of many victims of crime (see section 3.2 for specific details of what constitutes victim’s justice needs).

While it is important to recognise the current conventional CJS does meet the needs of, and is the preferred pathway to justice, for many victims (Clark, 2015; Wemmers & Canuto, 2002), the same system fails to meet the needs of many other victims of crime (Chief Victims Advisor, 2019a; Goodmark, 2015; Hargrave, 2020; Law Commission, 2015; Te Uepū Hāpai i te Ora, 2019ab).

This section expands on these arguments, explaining why more victim-led alternative resolutions are needed in order for (1) a greater number of victims to be able to access justice, and (2) to address the limits inherent in the current system so that victims can experience a greater sense of justice.

Providing justice for a greater number of victims

The conventional CJS, with its predominant pathway involving investigation by police and prosecution through the courts, is found to be failing in providing an adequate justice response to a great many victims of crime. As a consequence, many victims choose not to engage in the current system at all. For those who do engage, many complain that the ‘system’ fails to produce satisfactory resolutions. This is particularly the case where police and/or prosecutors determine that there is insufficient evidence to proceed, or where court rules around evidence seemingly stack the process in favour of a defendant being acquitted. Such experiences render genuine victims bereft of any means of obtaining acknowledgement of the harms inflicted upon them (McDonald & Tinsley, 2011).

An important rationale for developing alternative and/or complementary justice pathways is to ensure some of these victims have a viable avenue for getting their justice needs met.

An indication of the number of victims who might willingly opt for alternative justice options is provided by the New Zealand Crime and Victims Survey. The latest survey estimated that 30% of adults experience some form of criminal victimisation in a year, with a total 1.65 million offences committed during the previous 12 months. However, 75% of all offences were not reported to police; for sexual offences (many of which caused serious and traumatic impacts for victims) the rate of unreported crime was up to 92% of incidents (Ministry of Justice, 2021). This suggests a significant proportion of victims are currently accessing no formal justice in response to their victimisation.

Reasons for not reporting crime (and therefore not accessing justice) vary for different victims and for different types of offences (Ministry of Justice, 2021). Across all offence types, the most common reason reported was the matter was too trivial and not worth reporting (41%), however, other reasons given point to a lack of confidence in the effectiveness of the current system. This includes a belief that “police couldn’t have done anything” (21%), and “police would not have been interested” (13%). Many other victims reported fear of reprisals as a concern, along with the perception that “reporting would make things worse” (10%). Others explained their non-reporting in terms of not wanting “to get the offender into trouble” (8%).¹¹

The Chief Victims Advisor’s 2019 online survey provides further insights into victims’ views of how the current CJS falls short as a viable means of obtaining justice (Chief Victims Advisor, 2019b). A significant majority of the 620 survey respondents reported that the CJS “doesn’t keep them safe”

¹¹ Ministry of Justice (2021), <https://www.justice.govt.nz/assets/Documents/Publications/Cycle-3-Core-Report-20210611-v1.5-for-release.pdf>

(83%), “doesn’t provide enough support or information” (79%), and “does not listen to their views, concerns or needs” (77%).¹²

Findings based on representative samples of New Zealanders find fewer, but still a significant proportion of victims (49-60%)¹³ lack confidence in the effectiveness of the CJS (Colmar Brunton, 2016; Ministry of Justice, 2020a).¹⁴ Of note, both these surveys found that those who had experienced victimisation (and thus were more likely to have had direct experience with the CJS) held less favourable views of the system than those of the ‘average’ New Zealander.

In summary, a consensus emerges indicating that conventional CJS processes are failing to meet the justice needs for the majority of victims of crime. Providing a range of alternative resolution pathways has potential therefore to provide some victims with viable options that meet their justice needs.

Addressing limits of the current criminal justice system

The Chief Victims Advisor and others point out a CJS designed around the State holding offenders to account is inherently incapable of also addressing the complex needs of their victims (Centre for Innovative Justice, 2014; Chief Victims Advisor, 2019a; Herman, 2005; Keenan, 2017; Wemmers, 2020). At best, the current CJS means even those victims who pursue justice through it are likely to get only some of their needs met (Law Commission, 2015). The conventional system arguably is suitably designed to deliver some desirable outcomes: these include public denunciation of wrongdoing, recognition of the harm done to victims, and punishment for offenders (all of which hinges on success with the prosecution). However, other victim justice needs that are not typically delivered include: meaningful participation in the prosecution process; an opportunity to disclose the full depths of their victimisation; and receiving adequate validation of their (often traumatic) experiences.

Options to address these gaps are thus an important area of investigation, progress with which has begun to be made most evidently in the area of victims of sexual violence (Daly, 2011; Centre for Innovative Justice, 2014; Law Commission, 2015; MacDonald & Tinsley, 2011; Powell, 2015; Victorian Law Review Committee, 2021).

To a victim, a crime is experienced as intensely personal, yet under Aotearoa NZ’s common law model of justice the victim has no formal role in how the offence is dealt with and resolved. Under common law, a crime is treated as an offence against the State (or a violation of criminal law). As such, the State assumes responsibility for investigating, prosecuting, and sentencing of those who committed the crime, essentially ‘on behalf of’ the victims, and wider society. Unless called as a witness to provide evidence for the prosecution, victims have no formal role in the criminal justice process.

It can of course be argued that the State has a fundamental responsibility to protect its members. Further, the current system guards against the risk of vigilantism, and supports victims of crime who would otherwise be powerless to confront and challenge the person who victimised them. Nevertheless, many victims are left feeling marginalised, with their own perceived interests subsumed

¹² <https://chiefvictimsadvisor.justice.govt.nz/resources/survey-shows-criminal-justice-system-is-failing-victims/>. The majority (91%) of the 620 respondents were victims of crime, another 9% were victim advocates and people who work in the criminal justice system.

¹³ The 2019 New Zealand Crime and Victims Survey found only 40% of those victimised more than once, and 51% victimised once, reported having confidence in the effectiveness of the criminal justice system (Ministry of Justice, 2020); the 2016 Colmar Brunton survey found 50% of victims lacked confidence in the criminal justice system.

¹⁴ <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Social-wellbeing-and-perceptions-of-the-criminal-justice-system-FINAL-for-release-20201218.pdf>

within a process centred on society's wider interests. This raises important questions of how to achieve a better balance between the personal and the public aspects of criminal justice.¹⁵

The lack of opportunities for active participation by victims in the process is perhaps the main limitation of the current system (Chief Victims Advisor, 2019a; Christie, 1977; Keenan, 2017; Marinari, 2021). Victims have little or no say in whether to prosecute, the offences for which the offenders should be charged, and what the outcome should be. They are unable to stand in court and describe in their own words what happened, instead often being reduced to giving simple yes-or-no responses to questions. They are prevented from confronting the offender in order to understand why this happened to them. A victim's personal account of the impact is limited to their Victim Impact Statement, an option available only after the end of the court process, and in cases where the offender is convicted.

In some ways an adversarial CJS can be perceived as working against a victim's wishes and justice needs. As Herman (2005) suggests, the process can often be 'diametrically opposed' to the victim's interests. Examples illustrating this are outlined below:

- Early admission of guilt by the offender is invariably very important to victims; however, the CJS effectively encourages offenders to deny their offending thereby resulting in a lengthy trial, often scheduled months or even years after the offending. This can result in witnesses (including victims) dropping out, making it less likely that a guilty verdict is secured.
- The process discourages offenders from acknowledging responsibility, offering offenders a range of ways in which to reduce or evade facing consequences for their actions, such as through plea bargaining, the right to remain silent, and the ability to advance mitigating factors at the time of sentencing (Clark, 2015).
- As in the saying 'justice delayed is justice denied', the current adversarial system can be exceedingly long and drawn out, thwarting the victim's need to have the situation resolved and move on with their lives.
- Victims tend also to crave information and answers, to help them process what has happened to them; again, current processes can conspire to 'keep them in the dark', such as when guilty pleas are entered and no trial occurs, or when offenders exercise the right to remain silent (Bolitho, 2015).
- Validation and the need to be believed is important for victims, but the adversarial process of court hearings is widely understood not to constitute a 'search for the truth'. Instead, the witness/victim frequently finds their credibility being publicly challenged, an experience that can be re-traumatising for some (Keenan, 2017; Koss, 2010); further, until a guilty verdict has been reached, a judge cannot convey anything to a witness that indicates validation or sympathy for the victim, as doing so risks a mistrial being declared (Goodmark, 2015).
- Being victimised through crime results in many victims needing a restored sense of power and control over their lives; the court process however, with its complex rules and arcane procedures, requires them to submit to an experience that often feels disorientating, bewildering and disempowering (Herman, 2005).
- Many victims have a strongly felt investment in the outcome of the process, particularly where the offending occurred in the context of an on-going relationship; some, for example, might be concerned only for the offender to receive treatment to reduce the chance of further offending – yet in the current system a victim has no say in the outcome delivered (i.e., the nature of the sentence imposed), which may have limited, if any, focus on addressing the behaviour that led to the offending. Some victims are even deterred from pressing charges

¹⁵ <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20PP28.pdf>

due to concern that the outcome might be a long sentence, rather than some other form of resolution sought by the victim (Goodmark, 2015; Jülich, 2001; Keenan, 2017).

In summary, there are a number of reasons why alternate forms of justice can be seen as highly desirable. In relation to victims of sexual violence, Powell (2015) concluded that:

‘If we take seriously the notion that justice for many victim-survivors of rape is not only failed by our formal CJS, but that legal proceedings in their current form may in fact be ‘diametrically opposed’ to justice, then we are obliged I think to consider what alternative or innovative justice mechanisms and community-led practices might offer.’ (Powell, 2015, p.518).

Aotearoa NZ’s current criminal justice model can be characterised as offering a ‘one-size-fits-all’ approach, providing formulaic resolutions arrived at after an adversarial process where the victim has a heavily constrained role. Consequently, many victims would benefit from choices in their pursuit of justice – a suite of options from which they can identify the path or paths that best suit their circumstances, whilst yet protecting the rights of offenders and similarly promoting community safety objectives.

Addressing the justice needs of a greater number of victims is about increasing the range of options available, without necessarily replacing the current system. Arguably, the current pathway, and new, alternative options, could be developed as both complementary, and independent of each other.

It is also important that reforms of the conventional justice system continue, in order to increase the responsiveness of this system for those victims who choose this as their path to justice.

2.2 Aims and scope of this project

While there is a growing recognition that additional resolution pathways are needed, there has been less progress in devising credible and meaningful options. At this stage RJ is the only well-known example. Here in Aotearoa NZ, the Law Commission (2015) has laid out a fairly detailed proposal for an alternative process in relation to sexual offending consisting of a network of accredited providers, delivering a range of alternative programmes (including but not limited to RJ), with an independent body providing oversight of an accreditation framework. Apart from that, much of recent discourse merely rehearses the call for ‘strengthening and increasing access to alternative justice processes’ (Te Uepū Hāpai i te Ora, 2019b) and/or for investment in ‘promising restorative and alternative pathways, to better understand and improve them for victims’ (Chief Victims Advisor, 2019a).

This report aims to explore in detail what is meant by ‘victim-led alternative resolution pathways’. This will be achieved through a critical review of related literature and, importantly, the identification and review of examples of proposed or existing alternative resolution pathways, both overseas and in Aotearoa NZ. Central to the focus of this report are the ways in which identified alternative pathways are responsive to the justice needs of victims.

The terms of reference for the report are broad, potentially encompassing societal victimisation brought about by the State, or as a result of civil or inter-nation war; consequently, the scope has been restricted largely to alternative justice processes that respond to (i) criminal offending, and (ii) are applicable to individual victims of crime (rather than groups of society victimised by State or war crimes).

The primary aim is to identify and review victim-led alternative resolution pathways. While these receive most attention, also examined are ‘alternative’ offender-orientated processes. This allows a more rounded and complete picture to be formed and enables useful comparative analysis.

The objective also is to explore alternative resolution pathways that are applicable to general offending types, rather than specific forms of offences. Necessarily, however, the review frequently refers to processes relating to victims of sexual offending. This sub-group of victims has received the greatest attention in the literature in response to the significant and well-recognised challenges these individuals face in accessing justice through the conventional CJS.¹⁶ This has resulted in more progress being made in considering and developing alternatives for this group. In Aotearoa NZ this includes the proposal for an alternative process developed by the Law Commission (2015) mentioned above. Other work underway reflects the current Government's on-going commitment to the Law Commission's recommendations on improving justice responses for victims of sexual offences.¹⁷

It is also noted that, while the goal has been to identify and review as wide a range as possible of alternative justice mechanism types, RJ processes are by far the most predominant form, having received the most attention from researchers and achieved the greatest level of implementation. Consequently, the review reflects this reality in terms of relative coverage across the diverse forms.

2.3 Structure of the report

The report has been divided into two parts. Part A presents a review of relevant literature, while Part B outlines examples of alternative justice mechanisms in operation in Aotearoa NZ and overseas, with particular attention given to the extent to which each model is responsive to victims' justice needs.

The following sub-sections form Part A:

Section three attempts to operationalise some of the key terms used in this domain. This includes: clarifying who are considered victims of crime; what is meant by the term 'victim-led' in relation to resolution pathways; how victims' justice needs should be conceptualised; and what constitutes an 'alternative' resolution pathway. This section aims to create a conceptual framework within which different models of alternative or innovative justice processes can be understood. This includes discussion of whether, and how, services can be independent of, overlapping with, or complementary to conventional CJS processes.

Section four introduces the different types of alternative justice mechanisms that have so far been recognised, and their positioning in relation to the CJS, providing a general overview of the full range of mechanisms that can be considered as alternative resolution pathways.

Section five critically reviews available evidence on outcomes for victims as a result of their participation in alternative justice processes.

Section six considers some of the issues, pitfalls and challenges that have been identified related to the implementation of victim-led alternative resolution pathways.

Section seven, summarises the key points emerging from the literature together with key principles that should guide future work.

The second part of the report (Part B) brings together working examples of alternative justice mechanisms in operation in Aotearoa NZ and overseas, those that are independent of the CJS, and those integrated within. Processes identified as victim-led are highlighted in tables.

¹⁶ This type of offending is characterised by low rates of conviction in the courts, and many victims of such offences report being re-traumatised through participating in the conventional route.

¹⁷ This includes the recently passed Sexual Violence Legislation Act 2021 together with a raft of other operational improvements to the justice response to sexual offending.

3.0 Terminology and foundational concepts

This section outlines and operationalises some of the key terms relevant for the review. The terms ‘victim-led’ and ‘alternative resolution pathways’ are currently problematic because they are used by different people to refer to quite diverse and differing processes. To promote understanding within this domain, this section reviews and unpacks the terms - victims, victim-led and alternative resolution pathways. Also included in this section is consideration of what constitutes ‘victims’ justice needs’, a foundational concept for understanding how alternative resolution pathways may contribute to providing a more responsive justice process.

3.1 Victims of crime

A ‘victim of crime’ in Aotearoa NZ is defined in the Victims’ Rights Act 2002.¹⁸ It includes anyone who has had a crime committed against them, or has suffered physical injury, emotional harm, or property loss as the result of an illegal act. If this person is a child or young person, victim status extends to parents or legal guardians. Immediate family members can also be considered victims in cases where a family member has been killed or permanently disabled.

This legal framing, while clear and simple, can be problematic in several respects:

- **‘Victim’ can be a disempowering term** - for some people who have had crimes perpetrated against them, they prefer not to refer to themselves as ‘victims’. Instead, they identify with the terms of ‘survivor’ or ‘victim-survivor’. This is particularly common amongst people who have experienced sexual violence and/or family violence.¹⁹
- **Terminology differs according to context** – before prosecution the term ‘victim’ is appropriate, however, within the jurisdiction of the courts the applicable legal term for the same person is either ‘complainant’ or, in cases where the person gives evidence, ‘witness’.²⁰
- **Problems with binary categories** - the Hāpaitia project highlighted issues with the use of discrete categories of ‘victim’ and ‘offender’, where ‘victims’ and ‘people who offend’ can often apply equally validly to a single person, evident in repeated findings that many people subject to the CJS have previously suffered abuse and victimisation themselves. These binary terms thus over-simplify complex social and structural dynamics, limiting understanding of the person behind the label, and how they may best be supported (Chief Victims Advisor, 2019c; Te Uepū Hāpai i Te Ora, 2019b). This has led to calls to adopt terms ‘people who have been harmed’ and ‘people who harm’ as more appropriate.

Whilst acknowledging the validity of points above, the accepted (and simpler) terms of ‘victim’ and ‘offender’ are employed throughout this report, for ease of reference, consistency, and general understanding.

3.2 Victims’ justice needs or justice interests

After experiencing victimisation through crime it is often said that victims seek ‘justice.’ But what does ‘justice’ mean for victims? The term ‘justice needs’ is used to address this question and in broad terms refers to the goals that a victim seeks from a justice response. As such, a victim’s justice needs are an

¹⁸ <http://www.legislation.govt.nz/act/public/2002/0039/latest/DLM157813.html>

¹⁹ See Jülich (2020) for more in-depth review of appropriate use of varying terms in the context of restorative justice practice.

²⁰ For the person who committed the offence, at different stages of the justice system other terms are more accurate such as suspect, offender, accused, or defendant.

important foundational concept for this project.²¹ For a justice process to be considered victim-led, the victim's justice needs must be prioritised and addressed. It is important therefore to clarify what emerges from research as constituting the 'justice needs' of crime victims. Once established, these needs can also be used to assess the effectiveness of any alternative justice process in achieving victim-centred justice outcomes, in comparison to those delivered through conventional criminal justice. This section considers how justice needs sit in relation to other victim needs in the aftermath of a crime, then moves to detailing the specific needs considered to be victims' 'justice needs' (see Box 1).

Victims' justice needs are just one of a range of needs following a crime and for this project it is important to be able to differentiate between what are considered specifically *justice* needs from other victim needs (e.g., need for medical care). This is not to suggest that one set of needs are more important than another, and it is likely that an integrated approach will be ideal as a service delivery model (Chief Victims Advisor, 2019a; Victims Commissioner for England and Wales, 2016; Victorian Law Review Commission, 2021). However, when comparing the merits of different justice responses for victims (the aim of this report), it is important to more precisely analyse the degree to which justice needs are being met for victims.

The consequences of crime are variable both in type and severity of impacts experienced, differing according to offence type, the unique make-up of the individual, the relationship of the offender with the victim, and the length of time over which victimisation occurs (Daly, 2017; McGlynn & Westmarland, 2019; Mossman, 2012; Te Uepū Hāpai i te Ora; 2019a). The needs of those affected by crime, and their expectations of the CJS can also differ. Evidence points to the victim's ethnicity, religion, gender identity, disability and sexual orientation having a bearing on needs (Te Uepū Hāpai i te Ora; 2019a). Specific consequences of crime victimisation can include physical injuries, psychological trauma and other negative mental health outcomes, adverse effects of quality of life, and financial losses (Mossman, 2012). Many of the needs arising from these consequences are considered as 'survival needs' by Koss (2010) who distinguished these from a victim's 'justice needs' – that she described in general terms as a victim's innate motivation to right wrongs (Koss, 2010, p.221).

A victim's post crime experience will be dependent on the delivery of responses that meet their individualised support needs, information needs, therapeutic and recovery needs, as well as their justice needs. Many of which are included as a right in New Zealand's victims' rights legislation. Addressing all these needs is likely to involve a range of approaches which should all be considered in any reform work aimed at improving the responsiveness of the justice system to victims (Chief Victims Advisor, 2019a). However, for the purpose of this report, the focus is more specifically on justice needs.

This separation of a victim's justice needs from other needs, may be contentious. Some authors argue that needs associated with recovery and healing are inextricably linked to fulfilment of justice needs (Jülich and Landon, 2017), that experiencing a sense of justice is central to the recovery process (Jülich 2001, 2006, 2010). Others have suggested (e.g., Koss, 2010; Jülich & Bowen, 2015) that a victim's survival needs must be met before a victim will be ready and able to engage with justice-related concerns.

²¹ Other similar terms to victims' justice needs include victims' justice interests (Daly, 2014, 2017), victims' vision of justice (Herman, 2005) or victims' sense of justice (Jülich, 2006, Jülich et al, 2010).

On the other hand, Kathleen Daly is a strong advocate for a primary focus on victims' justice needs when the aim is to evaluate and understand justice mechanisms, noting that 'Rather than generally asking, "are victims satisfied with a justice mechanism?" ... or "do they receive greater psychological or therapeutic benefits from one than another?", we should ask instead, "does a justice mechanism have the capacity to address one or more victims' justice needs (or interests) and to what extent does it do so?"' (Daly, 2014 p. 387). It is this latter framing of evidence that Daly suggests will persuade victims, victim advocacy groups and policy makers on the value of alternative justice mechanisms (Daly and Wade, 2017).

In response to Daly's work, an emerging consensus suggests that research in this area should focus specifically on the 'justice' interests of victims. While victims' well-being needs remain important – and can be potentially affected by delivery of justice outcomes – separating out these two constructs conceptually is recommended (Daly, 2014, 2017; Keenan et al., 2017; Koss, 2010; Jülich & Landon, 2017; Wemmers, 2020).²²

A number of studies have sought to identify what victims' justice needs are by asking victims themselves what they are seeking when they look for a justice response to crime. Many of these studies have focused specifically on victims of sexual violence (Daly, 2014; 2017; Herman, 2005; Jülich, 2006; McGlynn and Westmarland, 2019) but study findings suggest considerable overlap in the nature of the needs across victims of diverse forms of crime (Bolitho, 2015; Centre for Innovative Justice, 2019b; Strang, 2002; Toews, 2006).²³

Thus, while there is generally more agreement than differences in justice needs identified across studies, variations occur in the number and nature of justice needs identified.²⁴ Those most commonly referenced are the five identified by Daly as part of her Victimisation and Justice Model (Daly, 2014, 2017)²⁵ – participation, voice, validation, vindication, and offender accountability.

Daly excluded needs included by others such as recovery and feeling safe, which she agreed are 'survival needs' as identified by Koss (2010). Some like Bolitho (2015) include receipt of information as a separate need, but Daly incorporates this into 'participation'. Others include prevention of further harm as a separate need (e.g., The Centre for Innovative Justice, 2019a), which arguably could be seen as part of holding an offender to account.

Daly refers to the identified needs as 'victim justice *interests*' rather than 'victim justice *needs*' in recognition that the victim is better understood, first and foremost, as a citizen, rather than simply someone who may have experienced psychological harm.²⁶ However, other researchers have found

²² Daly and Wade (2017) note that it cannot be assumed that when justice needs (or interests) are achieved, positive change in a victim's well-being will result.

²³ See Daly (2017) table 6.a.2 (page 127) for a summary of research that has identified victims' justice needs (or interests) in response to sexual violence from a victim's perspective.

²⁴ Bolitho (2015) confirmed seven justice needs (Relationships and safety, Empowerment, Information, Venting, Growing, Accountability, Meaning) adapted from Toews (2006) eight universal justice needs; the Centre for Innovative Justice (2019a) regularly uses the following seven based on research and experience working directly with victims (Voice, Validation, Information, Accountability, Relationships, Prevention, Resolution).

²⁵ Daly's Victimisation and Justice Model has three components, victims' justice needs, justice mechanisms, and contexts of victimisation.

²⁶ Some authors prefer 'victims justice interests' over 'victim justice needs' as the former allows for a broader analysis of victims' justice interests as 'citizens' as well as someone who may have experienced psychological harm (Daly, 2014, 2017; Holder, 2013). For example, interviews with victims who called the police, were found to have justice interests beyond their own, extending to those of the offenders and wider society (Holder, 2013 – cited in Daly, 2017).

the term ‘victims justice *needs*’ to be a closer fit to victims’ own narratives around what they seek in response to crime. These narratives seem to centre around a strong drive towards feeling that “justice has been done” (Bolitho, 2015; Centre for Innovative Justice, 2019; Marinari, 2021; Victorian Law Review Commission, 2016). Consequently, the term ‘victim justice needs’ is selected for use in this report. The Law Commission (2015) similarly adopted Daly’s five justice needs, finding that these provide a useful framework to undertake comparative analysis of conventional and innovative justice mechanisms from a victim’s perspective (Daly, 2014, p379).

Box 1. Victims’ justice needs (adapted from Daly 2017)

- **Participation (including information):** being informed of developments in a case; being made aware of options for engagement, and how decisions can be influenced; being able to discuss the offending in meetings with admitted offenders (and others); and being able to question and receive information about one’s own victimisation.
- **Voice:** being granted a meaningful audience to whom the story of what happened, and its impact can be told.
- **Validation:** affirming that the victim is believed (acknowledging that offending occurred, and the victim was harmed) and is not blamed for the offending.
- **Vindication (of the law and the victim):** affirming the offending actions were wrong, morally and legally.
- **Offender accountability - taking responsibility:** requiring that offenders are called to account and held to account; upon admission or conviction, that offenders accept responsibility for their wrongful behaviour.²⁷

Daly’s ‘Victimisation and Justice Model’, including the identification of these five victims’ justice needs provides evaluators with a tool to undertake comparative evaluations of conventional and innovative justice mechanisms across various programmes and countries.

As noted above, the extent to which these needs are a priority for any individual victim will vary, dependant on the interaction of a number of factors. A victim’s priorities, motivations and capability to seek justice can shift over time in response to their emotional readiness, new experiences, and understanding of justice (Jülich & Bowen, 2015; McGlynn & Westmarland, 2019). As noted earlier, for a justice response to be victim-led it *must be responsive to a victim’s individual justice needs*. For this reason, it has been noted that to meet a victim’s justice needs will require an assessment of the complexity surrounding their needs, a variety of models and services available for them to choose from, with a flexible model of delivery (Jülich & Landon, 2017; Keenan et. al., 2017).

3.3 ‘Victim-led’ processes

The terms of reference for this work relate to the review and identification of alternative resolution pathways that are ‘victim-led’. This relatively novel term requires clarification.

²⁷ Te Uepū Hāpai i te Ora (2019a) found strong support during their consultations for the need to hold to account those who harm others, but that views differed on what this meant in relation to the relative importance of punishment, rehabilitation, and/or restoration. It was noted all were legitimate, but they need to be properly balanced, as achieving one can work against another. For example, a sentence that punishes may do little to help rehabilitate an offender, and a sentence solely designed for rehabilitation may not provide adequate condemnation of the behaviour or healing for the victim.

In the course of completing this review, terms which included the word ‘victim’ were widely used, mostly in reference to RJ practice. These included the following examples (some of the sources cited used more than one of these terms within the particular document):

victim-led (e.g., Gavrielides, 2018); **victim-centred** (Centre for Innovative Justice, 2014, 2019a); **victim-focused** (e.g., Bolitho & Freeman, 2016); **victim-driven** (e.g., Ministry of Justice, 2013); **victim-orientated** (e.g., Wemmers, 2020); **victim-initiated** (e.g., Victims’ Commissioner, 2016); **victim-inclusive** (Victorian Department of Justice and Community Safety, 2021).

The following process descriptors appear helpful in identifying justice processes that are victim-led, and in understanding some of the more subtle differences among terms (as will hopefully be demonstrated in the following paragraphs):

- **Primary aims of process** – whether it was aimed primarily at addressing victims’ justice needs, vs the needs of the offender (including rehabilitation).
- **Instigation** – whether the victim is central to the process commencing, rather than being invited into something already in train.
- **Level of control over process** – the extent the victim has control over timing, pace, how the process is driven and the content of any concluding outcomes/agreements.
- **Presence of victim required** – whether a process can only proceed if the victim is present.

The descriptors above are somewhat overlapping but are helpful in clarifying the extent to which an alternative justice process is responsive to victims. The terms **victim-centred**, **victim-focused** and **victim-orientated** tend to be used interchangeably and could be considered umbrella terms covering all features. As will be seen in Box 2, the term ‘victim-focused’ has been selected as the umbrella term in this report.

The first process descriptor above (primary aims) is perhaps most useful in identifying an alternative justice mechanism as truly victim-focused. In her article on the responsiveness of RJ to victims, Jo-Anne Wemmers (2020) describes the attributes of a victim-centred model of RJ which she refers to as ‘reparative justice’.²⁸ In relation to the aims of the process, she suggests for it to be victim-centred it must focus on victims and their needs, and only secondarily changing the offender’s behaviour. As already noted, the majority of conventional criminal justice responses are offender-orientated, focusing on the offender’s culpability, rehabilitation and generally reducing the likelihood of recidivism.

Closely associated with the primary aims of a programme is the role played by each party. In terms of roles, in a victim-centred process, an offender is engaged in the process only to the extent they are helpful for the victim’s healing process. This contrasts with offender-orientated RJ (e.g., Family Group Conferences, and other police-led conferencing) where the victim’s role is merely instrumental and defined in respect of the offender (see also below – victim-inclusive programmes). In these offender-focused programmes it can be argued that the victim is ‘used’ in order to achieve a goal in respect of the offender (e.g., shaming the offender so as to elicit generalised empathy for victims, and thus promote rehabilitative goals).

Wemmers (2020) goes on to note that offender-focused RJ can still offer a number of benefits to victims over conventional criminal justice, but a victim-focused process would achieve greater benefits, and would likely attract more support from victim advocates. Wemmer’s analysis of RJ could

²⁸ Wemmers (2020) offers ‘reparative justice’ as an alternative to restorative justice, in order to differentiate a justice process that is intended to be victim-centred.

be criticised as prioritising the needs of one party over the other, which is at odds with the fundamental values of RJ.²⁹ Nevertheless, her operationalising of the related terms victim-orientated, victim-centred, and victim-focused is helpful in identifying ‘victim-led’ alternative justice processes.

The term ‘**victim-inclusive**’ has recently been offered by the Victorian Department of Justice and Community Safety (2021) in relation to RJ programs. The term is used to describe offender-focused RJ programs, whose primary purpose is to achieve offender accountability and reduce reoffending but also support the inclusion of victims in a manner that is responsive to their needs and preferences (Victorian Department of Justice and Community Safety, 2021, p.3). The term provides clarity and transparency for the intended role of a victim in an offender-focused programme, whilst also outlining good practice principles. In contrast, they also use the term ‘victim-centred’ to describe RJ programmes where all elements of the process, including the aims, revolve around the victim.

The second descriptor (victim as instigator) is a precursor to the actual process and perhaps has less value in categorising the focus of the justice mechanisms that follow. While some programme providers recommend that the process is initiated by the victims (Umbreit et al., 2006), a process initiated by another party including the offender can still be one that primarily serves victim’s needs and motivations (Ministry of Justice, 2013; Victims’ Commissioner of England and Wales, 2016ab).

The third descriptor (level of control over the process) is important, and particularly useful in outlining practice-related principles in relation to gendered offending. This attribute aligns generally with the terms ‘**victim-driven**’ and ‘**victim-led**’ (Law Commission, 2015; Ministry of Justice, 2013; United Nations, 2020). Ministry of Justice (2013) suggest a victim-driven process is one that is followed due to the victim motivation, rather than in response to external pressures such as agencies within the justice system, expectation of victims’ friends and families, or demands of the wider community. Having control over the timing and pace of the process is particularly important for victims, especially those whose experience involved high levels of trauma, such as victims of sexual assault. Further, it may take some time for a victim to recover sufficiently to be ready to engage in an alternative process such as RJ (Jülich & Bowen, 2015; Marinari, 2021; Zebel, 2017). This can be problematic when the alternative process is integrated into the CJS and constrained by court processing timeframes (e.g., pre-sentence RJ), and thus the timing of events is out of the victim’s control.

A further victim-agency attribute included in the Ministry of Justice (2013) practice guidelines (in relation to RJ for sexual offences), is that a victim’s wishes should usually prevail in the event of conflict over who should participate and choice of venue.

A final attribute that can be instructive in determining if a mechanism is victim or offender-focused relates to the required participation of either party. Whilst victims may be invited and encouraged to participate in an offender-focused process, those that can proceed without their participation (or someone representing them) are self-evidently not victim-focused process. Likewise, a process that can proceed without the participation of the offender (e.g., a ‘truth-telling’ process – see section 4.2) will not be offender-focused.

Three programmes recognised as being good models of a victim-led alternative approach to justice are Project Restore NZ, South Eastern Centre Against Sexual Assault (SECASA) (Melbourne) and Denmark’s Centre for Sexual Assault (see Part B-1a, 1d & 1e for more details). These exemplars of victim-focused

²⁹ See also Gavrielides (2018) for an alternative view, that argues it is not helpful to prioritise the needs of one party against the others, as they often have the same reasons for participating. For example, Gavrielides found the most important thing for both victims and offenders in the pursuit of justice is their empowerment through having a voice (either to explain what happened to them or to explain why they committed the crime). Gavrielides suggests it is more important for practitioners to attend to each parties’ individual needs.

and victim-led practice were developed directly in response to victim demand. All offer restorative practice responses to victims of sexual violence. Each model was initially trialled in response to requests from victims who had not had their needs met by the conventional justice system. Counsellors engaged with clients in these locations recognised that, for the victim to move on from their victimisation, a participatory role was needed that enabled them to meet and confront their offender, and to get answers to important questions.

Having outlined the various attributes of victim-led justice mechanisms, it should be noted that not all programmes will necessarily fall neatly into one or other of the above categories. Instead, a continuum exists relating to the degree to which the needs of the victim, offender (and in some cases community) is prioritised. Bolitho and Freeman (2016) used three categories to assist in their analysis of programme emphasis in relation to RJ programmes for child sexual abuse. They formulated easy-to-apply criteria that combines primary aims with participation requirements. These three categories have been borrowed here, along with slightly modified criteria, and used from here on in to describe the emphasis of a justice mechanism or programmes as seen below in Box 2.³⁰

Box 2. Operational definition of justice mechanism orientation and focus

- **Victim-focused** – the aim of referral is to address a victim’s need, the programme is designed to improve victims’ access to justice and does not proceed without a victim present (or someone representing the victim) but can go ahead without the offender.
- **Balanced-focus** – neither party’s needs are prioritised, the programme’s aim is to equally balance the needs of both parties and it will not proceed without both parties present.
- **Offender-focused** – aim of referral is addressing an offender’s behaviour, with the programme being designed around reducing re-offending and offender rehabilitation. The programme may include victims but can proceed without a victim participating.

3.4 Alternative resolution pathways

The key focus of this review is on options for alternative resolution pathways, with specific concern for the extent to which they are responsive to victims. The general term ‘alternative resolution pathways’ is the final concept that requires some review and definition. Other terms seemingly used interchangeably with alternative resolution pathways include alternative justice pathways, alternative justice response, alternative justice processes, alternative justice mechanisms – and various re-combinations of these words. Related terms that also appear in the literature include innovative vs conventional justice, formal vs informal justice, State-based justice vs community-based justice.

The notion of the central concept of ‘alternative’, immediately prompts the question “alternative to what?”. The range of possible references to ‘alternative’ mean people can often be talking past one another in their discussions of what is being called for. The term alternative can also be problematic if it conveys the impression these options are inferior, or of less importance to what has become recognised as conventional.

In the course of this review a number of conceptualisations were found employing the notion of ‘alternative’:

³⁰ A justice process may not always fit neatly into one of these three criteria and at times variations to these categories may be appropriate. For example, an additional category of ‘Whānau-focused’ might be more appropriate for Kaupapa Māori resolution pathways; whilst ‘balanced-focus’ might be extended to include consideration of a community’s justice needs; or be better framed as ‘mutual victim-offender focused’.

- **Alternative to conventional criminal justice** – this appears to be the broadest and most common usage of the term. However, it is applied to a great many pathways, processes and programmes simply because they differ in some way or another to conventional criminal justice i.e., the standard response to reported crime involving investigation by police and adjudication through mainstream court processes. As such it can refer to non-standard elements that have been introduced into the conventional CJS, or entire processes that are completely independent from it. Consequently, its over-inclusiveness renders it somewhat unhelpful as a frame for understanding different options.
- **Alternative models of justice** – this refers to different conceptions of justice per se, or different ways of ‘doing justice’. For example, RJ is often promoted as a standalone alternative to the retributive form which conventional CJSs embody (Braithwaite, 1989; Zehr, 1990). Other examples include Herman’s ‘Parallel Justice’ within which separate but equal processes operate to generate a justice response for victims and offenders (Herman, 2000, 2004).³¹ Similarly, ‘transformative justice’ is designed to provide communities with tools to create social change which can lessen the harms created by interpersonal violence (Goodmark, 2015). Te Ao Māori perspectives have promoted different understandings of justice based on restoration and reconciliation (see Awa Associates, 2022).

Regarding the use of ‘alternative’ within the conventional CJS, new and different programmes or mechanisms have been proposed to sit at different stages of the standard justice model:

- **Alternative to prosecution** – diversion programmes such as the youth justice FGCs³² or the more recent Te Pae Oranga – Iwi Community Panels.³³ These can occur both at pre-charge and post-charge stages.
- **Alternative sentencing processes** – either innovative or specialist criminal courts (sometimes referred to as ‘alternative courts’) such as the Matariki Court or Alcohol or Other Drug Courts,³⁴ or alternative adjunct justice processes to sentencing, such as pre-sentence RJ.³⁵
- **Alternative post-sentence processes** – for example RJ programmes operating either during a sentence,³⁶ or in the community as a response to historical offending.

In order to better distinguish between the various references and uses of the term ‘alternative’ in relation to justice processes, the following two variables were found to be helpful. Applying these additional descriptors as applicable can enhance understanding of the type of alternative justice processes being discussed.

- **location and relationship to the conventional CJS** – an alternative justice response may be operating:
 - 1) within the conventional CJS – either as an integrated process or complementary process running alongside.³⁷ These include alternative mechanisms where the

³¹ Parallel Justice is described as a framework for responding to crime with two separate parallel paths to justice—one for victims and one for offenders. It requires society not only to hold offenders accountable for the harms they have caused, but also to honour a separate social obligation to repair the harm caused by crime (see Herman, 2000; 2004, 2010).

³² <https://www.orangatamariki.govt.nz/youth-justice/family-group-conferences/>

³³ <https://www.police.govt.nz/about-us/maori-and-police/te-pae-oranga-iwi-community-panels>

³⁴ <https://www.districtcourts.govt.nz/criminal-court/criminal-jurisdiction/specialist-criminal-courts/>

³⁵ <https://www.justice.govt.nz/courts/criminal/charged-with-a-crime/how-restorative-justice-works/>

³⁶ https://www.corrections.govt.nz/resources/information_brochures/corrections_and_victims_of_crime_brochure

³⁷ Community-managed often refers to alternative processes delivered by community-based providers, but that are coordinated or at least still related to the conventional justice system.

referrals occur after engagement with the conventional justice system (e.g., diversion schemes), where a case might revert back if the alternative mechanism fails, and/or where outcomes from the alternative process are an integral part of the conventional process (e.g., pre-sentence RJ); or

2) outside the conventional justice system, alternative justice responses that operate completely independent from the State-based system. This also includes alternative processes that occur after conventional justice processing has been completed (e.g., most post-sentence RJ).

- **stage or entry point for referral** - for alternative justice mechanisms operating within the conventional CJS – their stage or entry point in relation to conventional criminal justice stages is particularly useful – either pre-charge, pre-prosecution, pre-sentence or post-sentence.

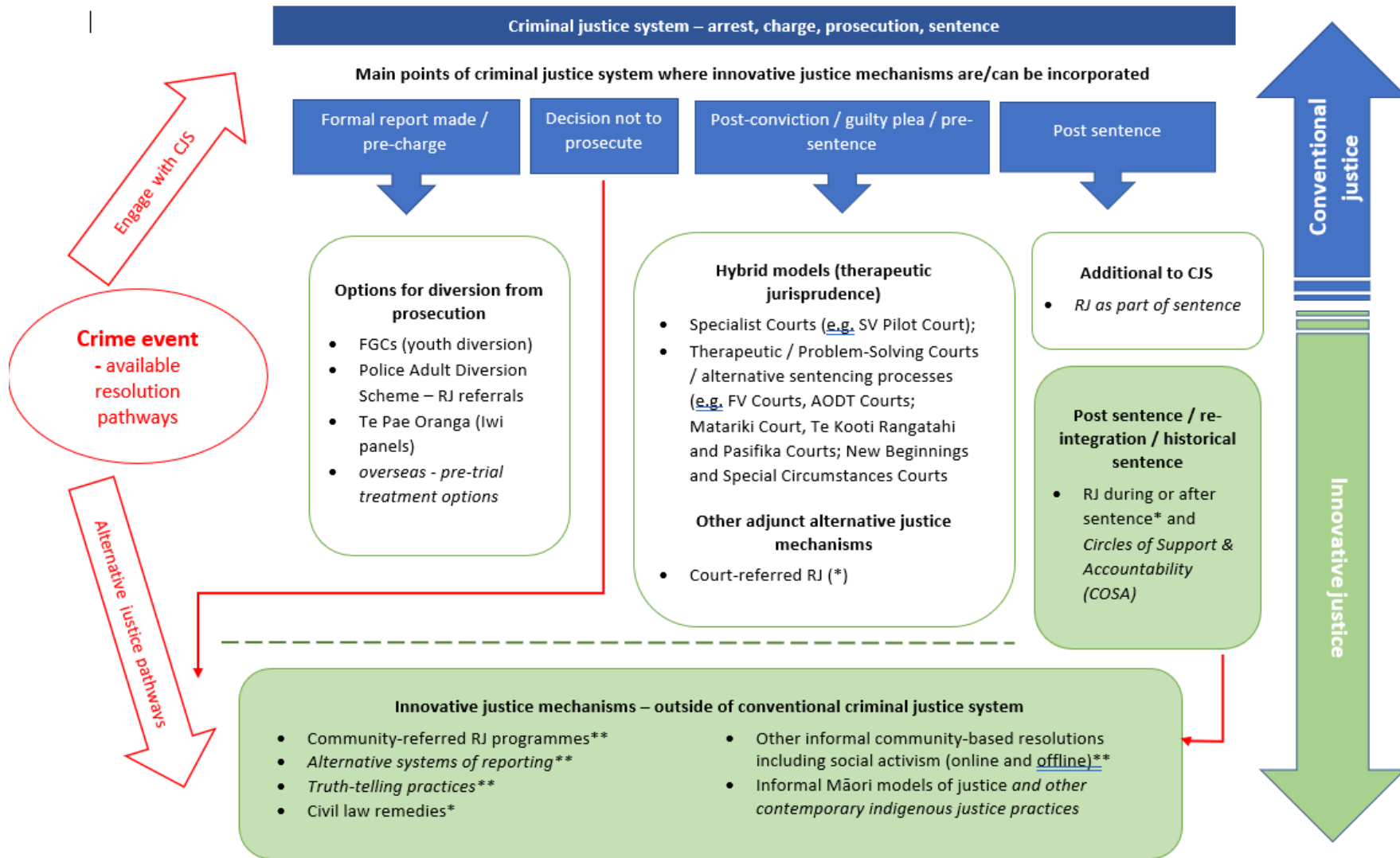
A final dimension offered by Daly (2014) in her Victimisation and Justice Model is the degree to which a justice mechanism might be considered innovative, conventional or a hybrid model between the two. In her model, Daly refers to ‘justice mechanisms,³⁸ that reside on a continuum from conventional to innovative.³⁹ She suggests the term ‘innovative justice mechanisms’ and ‘conventional justice mechanisms’ be considered ‘umbrella terms that hold a variety of justice mechanisms: they are not ‘types’ of justice, nor are they mutually exclusive’ (Daly, 2017, p.112). A justice mechanism may be purely innovative or conventional, however other responses like problem-solving courts are considered hybrid innovative-conventional approaches, while diversion programmes and court-referred RJ can be considered as innovative mechanisms that are complementary to the conventional justice system (as the option of re-entering the conventional criminal justice remains open). The latter examples illustrating how both types of justice mechanisms can be combined in one criminal case.

Figure 1 offers a framework for identifying and reviewing alternative justice processes that combines the various considerations raised above. This is the framework that will be used in Part B of this report.

³⁸ A justice mechanism is a justice response, process, activity, measure or practice – all of these terms could be used interchangeably (Daly, 2017, p.112).

³⁹ Innovative mechanisms are described as those that ‘do not rely solely on the standard tool kit of criminal procedure or justice practices, or those wedded to legal processes alone. They permit greater participation and interaction of the relevant parties. The processes are often more informal, although structured by rules and procedures’ (Daly, 2017, p.113).

Figure 1. Framework to review 'innovative justice mechanisms'



Key: Italics indicate examples available overseas, (*) denotes potential to be victim-led, */** degree mechanism likely to be victim-led

4.0 Types of alternative justice mechanisms

This section introduces the different types of alternative justice mechanisms (or alternative resolution pathways) that were identified in the course of this review. As noted in the introduction, there is a growing consensus that more victim-led restorative and alternative justice options are required, but less clarity around what the options might be. The aim of this section is to provide a general overview of the full range of mechanisms that should be considered as alternative justice pathways. Details of working examples of each mechanism appear in the final section of the report (Part B), although some examples are cited for illustrative purposes.

Those included are based on the broadest framing of alternative justice mechanisms including those that are independent of, integrated within, or complementary to, the conventional CJS and include both victim-led and offender-focused approaches.

While an abundant amount of literature was found describing specific alternative justice responses, particularly RJ, articles that considered multiple alternative approaches together were very few. The field has not developed sufficiently to produce general agreement as to what services should be included in any list of 'alternative resolution pathways'. This is disappointing, given the evident high levels of support for victims of crime, and recognition of their need for 'a suite of options' through which they can pursue justice (Chief Victims Advisor, 2019a; Centre for Innovative Justice, 2021; Daly, 2014; Keenan, 2017, Randell, 2021; Victorian Law Review Commission, 2021).

A helpful chapter on alternatives pathways was found in Tyrone Kirchengast's text on victims and the criminal trial (Kirchengast, 2016). This writer considers the rights and role of victims across the CJS and devotes a chapter to selected alternative pathways and what they can offer a victim. However, the most useful resources are reviews of alternative (or innovative) justice responses in relation to victims of sexual violence, of which there have been several in recent years (Daly, 2011; Centre for Innovative Justice, 2014; Law Commission, 2015; MacDonald & Tinsley, 2011; Powell et al., 2015; Victorian Law Review Committee, 2021). Interest in alternative justice responses for sexual violence victims responds to the significant and well-recognised challenges these individuals face in accessing justice through the conventional CJS.

Various types of alternative justice mechanisms were included across the sources reviewed, although most attention was given to RJ practices. This section draws on the above sources to describe the various options. Outcomes of these approaches (where available) are reviewed in section five and particular issues and challenges to their implementation in section six.

4.1 Restorative justice

Restorative justice without doubt has received the most attention as an alternative justice response. RJ has also been widely implemented, and thus achieved the most progress in being recognised as a legitimate and integral part of the criminal justice landscape, particularly in Aotearoa NZ. It emerged as a new response to crime in the late 1970s; it gathered momentum in the late 1980s and early 1990s particularly through the advocacy of writers such as John Braithwaite (1989), Howard Zehr (1990), and others.

While the historical roots of RJ are largely undisputed,⁴⁰ there is still debate over how it should be defined,⁴¹ with even its most experienced practitioners and leading scholars unable to articulate what a RJ system should look like (Gavrielides, 2021, p2). In addition to different conceptual understandings of what RJ is, discussions are further complicated by the diversity of approaches and practice modalities that have grown up under the RJ umbrella. The picture is further complicated by the fact that delivery occurs commonly both within and outside of the conventional CJS. Of particular relevance to this review are the differing viewpoints that exist in relation to the primary aims of RJ. For some its essence is in meeting the needs of victims, for others, improving offender rehabilitation and reintegration, or improving community engagements and safety. This section aims to traverse at a high level, the full range of RJ approaches, any one of which advocates may be referring to when they call for RJ to be used as an alternative pathway to justice.

A simple definition is offered by the United Nations whereby RJ is:

‘any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party’ (United Nations 2002, Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters Article 1 (3)).

An important difference between RJ and the conventional CJS is that RJ does not include any process aimed at establishing the facts of the offence, or where truth may lie in relation to each parties’ contribution to the incident. It is therefore applicable only in cases where an offender admits guilt to the offence as charged and/or is prepared to accept responsibility. Other differences to conventional justice are evident in some of the common themes used to describe the RJ process as a mechanism that:

- seeks to repair harms caused by the actions of offenders, by asking offenders to acknowledge the harms caused and commit to ways of redressing that harm;
- enables parties to resolve collectively how to deal with the aftermath of the offence and its implications for the future;
- holds offenders to account through reparation and rehabilitation with the aim of (re)integrating both offender and victim to their communities;
- reinforces social norms through social shaming, rather than a State-imposed sanction for offenders.

These translate into common practice principles, including voluntary participation of both parties, that the offender must accept responsibility and be held to account, that the needs of the victim remain central, and that the process is safe, respectful and confidential (United Nations, 2020).

Certain steps common to most RJ mechanisms include the following: careful preparation in advance of the meeting, including assessment of suitability of cases; ensuring a safe and productive RJ meeting, ensuring a meaningful outcome agreement is reached, and requirements for on-going monitoring of the agreement. Further, where RJ occurs within the conventional CJS, steps are taken to allow the sentencing process to take into consideration the outcome of the RJ process.

⁴⁰ Note, some scholars have suggested restorative justice stems from indigenous justice traditions. This is commonly disputed by indigenous academics (see Tauri, 2021 for a discussion).

⁴¹ Other definitions found in the literature vary based on philosophical understandings and whether there should be an emphasis on the process (active participation through dialogue) or the restorative outcomes such as reparation, victim recovery and offender reintegration (United Nations, 2020; Weitekamp, 2010).

In general, the following forms of RJ programmes are the most commonly recognised (Bazemore & Umbreit, 2001; Daly, 2017; Goodmark, 2015; Jantzi, 2001; United Nations, 2020):

- **Victim-offender mediation (VOM)**⁴² – the simplest form whereby the victim and offender engage in a discussion of the crime and its impact, facilitated by an impartial, trained third party. This form of RJ is common in the United States of America (USA) and across Europe.
- **Restorative justice conferences (RJC)** – these involve more parties than VOMs: in addition to the primary victim and offender, the conferencing model may engage other persons affected by the offence, such as family members, friends, community representatives and, depending on the model, the police or other professionals. All parties are brought together by an impartial individual who acts as a facilitator of the conference. This is the predominant model of RJ in Aotearoa NZ (e.g., FGCs, court-referred RJ, see Part B - 5.0 and 6.0 for more details).
- **Community justice panels** – a specific form of restorative conferences designed to provide a greater role for the community, this model encourages, but does not require victim participation. The community interests and safety are a central feature, addressed through a focus on offender reintegration or rehabilitation. The community panels have a significant role in developing, approving and monitoring an outcome agreement plan for offenders.⁴³ They tend to be used as diversion programmes for young offenders, or low-level adult offending (e.g., Te Pae Oranga – Iwi Community Panels (see Part B-5.0), or Project Turnaround in Timaru). A community panel adult diversion model was the first approach adopted in Aotearoa NZ.⁴⁴ There are also similarities to the Community Reparative Panels or Boards that operate in the USA.⁴⁵
- **Restorative circles** – Indigenous people have traditionally used ‘talking circles’ for decision making, spirituality, healing, sharing and teaching. The restorative circle represents completeness, inclusiveness and lack of hierarchy. This traditional form has been adapted for use within modern CJSs in a number of countries, and generally bring together a broader range of participants. They are commonly used in Canada and Australia to facilitate the sentencing process but can also be applied in community settings for a range of justice-centred purposes.

Having highlighted some of the commonalities of RJ practices, a clearer understanding of RJ also requires consideration of the diversity of viewpoints, practice modalities and approaches to RJ. Some important dimensions where differences emerge include:

- **Conceptual understanding** – in its broadest conception, RJ is viewed as a different ‘way of doing justice’, even a platform for total reform of criminal justice, while others have a narrower view, seeing it as one or many diverse types of service or mechanisms for promoting justice outcomes (Bolitho & Freeman, 2016; Maruna, 2011; Ministry of Justice, 2016a).
- **Focus or primary aims** – RJ can be differently weighted towards a ‘victim-focus’ (with primary aims focusing on victim justice needs), ‘offender-focus’ (primary aims around offender needs

⁴² Also referred to as Victim Offender Dialogue (VOD).

⁴³ For example, the Te Pae Oranga process concludes with a plan to make things right with support available to assist participants to complete their plan. The plan can include actions such as getting support to quit drugs and alcohol, getting a driver licence, a job or training, completing an anger management course, paying for damage (reparation), or hearing how victims were affected and apologising to them (see <https://www.police.govt.nz/about-us/maori-and-police/te-pae-oranga-iwi-community-panels>).

⁴⁴ In 1996, with the support of the Ministry of Justice’s Crime Prevention Unit, Aotearoa NZ introduced restorative justice processes into the adult jurisdiction. This initially took the form of three community panel adult diversion programmes (Paulin et al., 2005a).

⁴⁵ See for example <https://www.ojp.gov/pdffiles1/ojdp/184738.pdf>

such as offender rehabilitation) or ‘balanced’ (equally concerned with addressing victim, offender and community needs).

- **Relationship to CJS** – RJ can be delivered independently from the conventional justice system or be offered as an integrated (or complementary) process at any stage within the CJS.
- **Context and purpose** – it can be used as diversion for young offenders, to inform sentencing of eligible adult offenders, or post-sentencing as restorative reintegration programmes (such as the Circles of Support and Accountability for sex offenders). Similarly, it can be applied in the community to resolve conflicts and harm within families or other religious, educational or workplace settings. When used outside of criminal justice matters, the term ‘restorative practices’ is now more commonly used (Bolitho & Freeman, 2016).
- **Modality** – it can take a range of forms including the exchange of letters, reading of victim statements, the playing of pre-recorded statements, through to the more common practice of facilitated face-to-face meetings. Sometimes the facilitator meets with each party separately (referred to as ‘shuttle mediation’) to discuss matters of concern and forge an agreement on an outcome, so there is no direct contact between victim and offender.
- **Parties involved** – most commonly parties involved include the victim, offender and a facilitator. Variations include the presence of support people, representatives from the community, or someone representing the interests of a victim where that victim does not wish to participate directly. Some programmes require more than one facilitator, for example, Project Restore conferences involve a RJ facilitator and two community specialists: a sexual violence survivor specialist, and an offender specialist – this has been dubbed the ‘three-cornered stool’ model (Jülich and Landon, 2017, see also Part B-1a).⁴⁶ Another variation involves an offender meeting with a ‘surrogate’ victim (e.g., a victim of a similar but unrelated crime), or conversely where participation involves the victim but not the offender (Victim Impact Panels).⁴⁷

The breadth of possible conceptions, contexts of use, and diversity of practice modalities has led Daly (2017) and others to caution against thinking of RJ as a ‘type of justice’, but rather as a mechanism, comprising different modalities, for achieving key justice outcomes (Daly, 2016, 2017; Keenan, et al., 2017).

Some of the potential benefits of RJ for victims, normally unavailable to participants in the CJS, include the opportunity (adapted from Centre for Innovative Justice, 2014, table 3, p24):

- to take on the role of active participant in the justice process;
- to tell the offender directly the impact that the offending has had upon them;
- to seek and obtain answers in relation to unresolved questions about the offending;
- to repair the ruptured relationships with the offender, family or the broader community, where appropriate;
- and to have direct input into the outcome of the case, including an opportunity to request certain measures (e.g., financial compensation).

⁴⁶ A clinical supervisor is also a key part of the model providing professional supervision for facilitators but does not have contact with the victim-survivor of their communities.

⁴⁷ Victoria Family Violence Restorative Justice programme offers Victim Impact Panels to victims who do not wish to meet with their offender. The process allows a victim survivor to address a specific audience in a structured way to achieve similar aims of sharing their experience and the impact of family violence but without directly involving their perpetrator. They may speak to other perpetrators of family violence, members of their community, or representatives of the services and institutions they have been involved with in the course of their family violence journey (Department of Justice and Community Safety, 2017).

4.2 Truth-telling and truth-seeking mechanism

For some victims, a sense of justice can be achieved simply through the opportunity to ‘tell their story’. As noted in section 3.2, victims often express the need to tell their story in their own words, to be listened to and believed, and to receive formal acknowledgement of the harm done. Consequently, ‘truth-telling’ mechanisms, designed to achieve precisely that, can offer a valuable and potent alternative pathway to justice.

Truth-telling practices address some of the same justice needs as RJ (participation, voice and validation), but differ in how they typically operate. They can be structured to occur outside of the conventional CJS, and importantly can occur in the absence of the offender. As such they offer an alternative to those victims who would prefer not to meet with their offender (e.g., an offender is unwilling to take responsibility, or continues to be intimidatory) or who is unable to meet with the victim (e.g., offender is incapacitated, or has died). The process can be used in response to a range of harms and abuses, including some which would meet the definition of criminal offending (for example sexual offending).

Common characteristics of truth-telling practices include (see Centre for Innovative Justice, 2014; Victorian Law Review Commission, 2021):

- the ability to operate outside of the conventional justice system, they are victim-centred and are not contingent on offender participation, consent or acknowledgment;
- an opportunity for victims to tell their story in a safe and supported environment, and to communicate the impact of the offending to a body or a person of standing, such as a member of judiciary, a member of parliament or an expert panel; some forums may even be a conduit that enables a victim’s experiences to contribute to future policy reforms;
- a focus on affirmation and validation of the victim’s experience and formal acknowledgement of the harms suffered. (As noted above, in the conventional CJS a judge is unable to provide a victim validation before a verdict is reached without risking a mistrial, (Goodmark, 2015);
- the restriction of confidential or subsequent use of statements to ensure fairness to both victims and offenders.

There are at least three different applications of truth-telling mechanisms – truth and reconciliation commissions; royal commissions and inquiries, and where truth-telling mechanisms are incorporated within a specific institution’s response to employee disclosures and complaints or redress schemes.⁴⁸

The most commonly recognised models are truth and reconciliation commissions, with over 40 convened as national responses to recent war crimes and other widespread human rights abuses occurring across a society (Goodmark, 2015).⁴⁹ The work of these commissions is to investigate, gather evidence, create a public record of what occurred, and make recommendations about how to heal individuals and repair the fractures in wider society (Goodmark, 2015). They differ from conventional

⁴⁸ Some Victim Impact Panels could be considered to be a truth-telling mechanism as they enable a victim to share their experiences without the presence of the offender (see for example Victoria Law Victorian Restorative Justice for Family Violence Framework) <https://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>).

⁴⁹ For example, in Sierra Leone, in order to persuade the fighting factions to stop the carnage and commit to the peace process, a general amnesty was agreed to and a truth and reconciliation commission was set up which was tasked with addressing accountability. There are also various programmes to deal with crimes outside the CJS, on a case-by-case basis, through granting of amnesty in exchange for full disclosure (South Africa), arbitration and mediation between perpetrators and victims (Tunisia, Nepal, the Gambia), lenient sentencing (Colombia) and community reconciliation programmes (East Timor).

justice in that no formal punishment is imposed on those individuals identified as guilty of wrongs.⁵⁰ Given the nation-level scope of such endeavours, truth and reconciliation commissions are deemed to be outside of the scope of this review.

Truth telling is also a significant component of Royal Commissions and Inquiries. A good example is Aotearoa NZ's current Royal Commission of Inquiry into Abuse in State Care. The critical importance of inviting and supporting victims as they tell their stories is fundamental. Generally, multiple options for telling one's story are made available. This can include written public submissions with names withheld, confidential written submissions made to the panel and/or Commissioner, and oral evidence presented privately, or in public, to committee members. Undertaking such commissions is of course an extremely expensive and complex process, and they are available only for a fixed period of time. As such it is not a form of service delivery that can be proposed for routine use.

The final application of truth-telling processes is where they are used as part of a broader response to abuse occurring within specific institutions (including sexual abuse). Access in these cases is not time limited but is restricted to victims who have experienced abuse in the course of their involvement with these institutions. Two examples are responses to abuses occurring in relation to:

- **Religious institutions** - where truth-telling is a component of redress schemes (e.g., Receipt of a Direct Personal Response, as part of Australia's national 'restorative scheme' set up following the Australian Royal Commission into Institutional Abuse (see Part B-2d).
- **Other institutions including Defence forces, Police forces, and Sporting institutions** – where truth-telling can be part of the complaints resolution process to enable formal acknowledgement of abuse committed by and against its own staff (e.g., Restorative Engagement Programme available in Australia through the Office of the Commonwealth Ombudsman (OCO) - see Part B-2b).

Where RJ processes are combined with a truth-telling mechanism, the Centre for Innovative Justice (2021) refers to these as 'Restorative Engagement Programmes'. The Centre summarises their key attributes as follows:⁵¹

- Restorative Engagement Programmes draw upon elements of both RJ conferences and truth-telling mechanisms;
- they give complainants the opportunity to tell their story without being challenged and to be acknowledged and responded to by senior institutional representatives;
- they provide institutions with opportunities to learn about the circumstances and organisation-cultural issues which enabled the abuse to occur, and which may inform their prevention and response strategies;
- restorative processes provide opportunities for the institutional representative to offer an apology or expression of regret, something which appears to have significant benefits for the victim.

These approaches illustrate how a victim's need for validation and affirmation (as well as other needs such as prevention and relationships) can be addressed through processes which need not involve the offender. However, as noted above, access to truth-telling processes within these models is usually

⁵⁰ The widespread nature of the perpetration of the crimes (due to war or institutionalism) makes other forms of sanctioning less applicable (Law Commission, 2015).

⁵¹ <https://cij.org.au/cms/wp-content/uploads/2018/11/cij-submission-to-vlrc-january-2021.pdf>; Centre for Innovative Justice has designed restorative engagement programmes for organisations including the Transport Accident Commission, WorkSafe Victoria and the Coroners Court.

very limited based on either the timeframe they are available or the group of victims they are applicable to.

Increasing access to the benefits of truth-telling processes for victims of crime could be achieved if these processes were incorporated more broadly into victims of crime compensations schemes. This is currently being proposed and considered in the Victoria State of Australia. Officials there are currently re-designing their Victim Assistance Scheme that provides financial assistance to victims of violent crime. The Victorian Law Review Committee (2021) have recommended a truth-telling component be included in conjunction with a new category of 'non-financial recognition'.⁵² The proposal relates specifically to victims of sexual violence but there is recognition that it could be equally applicable to victims of violent crime also. Research conducted by Denise Lievore is cited, who found crime compensation schemes can be a viable forum within which victims are granted the opportunity to tell their story, and to have their experience acknowledged by a person in a position of authority (Lievore, 2005 cited in Victorian Law Review Commission, 2021).

4.3 Alternative systems of reporting

Systems of anonymous and/or restricted reporting offer victims of crime an alternative mechanism for disclosing their crime victimisation. Such mechanisms provide an avenue for victims to tell authorities what occurred, but without invoking police, court or institutional responses. Engaging in this system need not preclude the possibility of formal action if the victim changed their mind in the future. In most cases, alternative reporting mechanisms are one element of a broader organisational response system for people who experience abuse or victimisation. A number of such systems are operated by police, community support agencies, universities, and other State agencies such as defence forces. All those identified during the course of this review focused on disclosures of sexually harmful behaviour.

In Aotearoa NZ best estimates suggest only one in ten victims of sexual violence report their sexual violation to Police (Ministry of Justice, 2021). There are many reasons for this: they may fear their report will not be taken seriously; they may not want to go through the trauma of giving evidence at trial; some may not want the person who violated them to go to prison; others may wish to keep the matter private and avoid public exposure. Thus, a system of anonymous or confidential reporting can enable a victim to tell their story, and be listened to, and be provided with support options. In certain circumstances this may also lead to an offender being held to account as a result of cumulative intelligence gathering on that individual. Other public interest goals include better understanding of the prevalence and circumstances of sexual assault.

Confidential reporting is a good example of a victim-led mechanism, as the victim is in control of what happens to the information they disclose. While it varies across response systems, a victim may be able to choose if the disclosure is made confidentially or in some cases anonymously, and importantly if they change their mind at a later stage, are able to use their report to support a formal investigation. Usefully, such disclosures, made to a third party, with details recorded typically soon after that event and while recall was fresh, have value in supporting a successful prosecution.

⁵² The new category would provide recognition, acknowledgment and validation of a person's experience. It would include provision for: recognition statements; victim conferences; restorative justice referrals. Victims of crime would have a right to a written 'recognition statement'. This would acknowledge in a personalised way the effects of the crime and express the state's condolences. Victims of crime would also be able to request a private conference with the scheme decision maker or a deputy decision maker. This would ensure victims are given a voice.

These platforms have different names and attributes: alternative reporting, restricted disclosure, blind reporting, online reporting, confidential (or anonymous) reporting or informal reporting. While most refer to 'reporting', they typically involve confidential 'disclosures' to an institution other than the police (e.g., support agency, university, defence agency). Examples of where these alternative reporting mechanisms are used include:

- **Online reporting in community-based settings** – West Midlands Police in England and several States in Australia⁵³ have online sexual assault reporting options managed by police (see Part B-3d for more details). There is also one model where a community specialist sexual assault support agency manage an anonymous reporting Online App (e.g., SECASA in Victoria developed the Sexual Assault Anonymous Reporting App – known as SARA, (see Part B-3a).⁵⁴
- **University settings** – perhaps the most well-known example is the Callisto online platform used in the USA, described on the Callisto webpage as 'a serial sexual assault prevention and protection tool' (see Part B-3e).⁵⁵ Other universities like Victoria University of Wellington also have a confidential disclosure service as part of their overall response to sexually harmful behaviour (see Part B-3a).⁵⁶
- **Other institutional response systems** – e.g., defence forces in the USA, Australia and NZ, and the Victorian Police Redress scheme are examples where anonymous reporting or disclosures are a component of response systems for sexual misconduct including sexual assault. For example, in the Australian Defence Force, former or serving defence members can make a 'restricted disclosure' enabling them to access support to assist with their recovery without triggering an investigation (see Part B-3f).⁵⁷

The potential benefits for a victim and the community will vary based on the particular system but can include the following (see Daly & Bouhours, 2011; Powell, 2015):

- reporting is easier for victims;
- disclosing their experience can be healing for some victims and for some provide a form of closure;
- allows time for victims to seek and receive advice and decide whether to file an official complaint;
- securely stores a date stamped record of events whilst fresh in the mind of the victim;
- provides the opportunity to connect victims to appropriate support services to assist in their recovery without triggering a formal investigation;
- unless a formal investigation is initiated the identity of the alleged offender remains restricted, however this mechanism enables those responsible for managing the system to understand the prevalence of sexual assault, to gather intelligence and be alerted to repeat

⁵³ <https://www.abc.net.au/triplej/programs/hack/operation-vest-launched-to-deal-with-consent-allegations/13272276>

⁵⁴ This model has recently been discontinued.

⁵⁵ The identity of the alleged offender also remains restricted, this mechanism nevertheless enables command to understand the prevalence of sexual misconduct in particular units or locations
<http://www.mycallisto.org/#splashlearn>

⁵⁶ Students are made aware that there are three different processes with different purposes available to them - confidential disclosure, alternative resolution options/informal processes, formal complaint and reporting to police.

⁵⁷ These schemes appear to share similar features to complaints processes from other fields such as the health and disability sector in New Zealand where informal disclosures and formal complaints, and the process for dealing with each are treated differently, with formal apologies being one of a range of possible outcomes (see Mossman, 2020).

disclosures related to the same person, and/or similar patterns of offending, and high-risk locations;

- some systems enable a victim to be confidentially informed if another disclosure is made against the same offender so they can re-assess if they would like to pursue a joint investigation;
- de-identified information can be analysed and reported, to increase understanding of prevalence and circumstances of sexual assault.

There appears to have been limited research investigating the effectiveness of these response systems. Support is based largely on descriptive analysis and anecdotal evidence of positive feedback from victims.⁵⁸ Daly and Bouhours (2011) cite a case study of an anonymous report assisting in identification of a serial rapist in the USA. Not surprisingly, the concept also has its critics: at least one opinion piece was identified in which concerns were raised that potentially innocent citizens' names might be identified as offenders in police files based on an unsubstantiated and anonymous reports, and that the system could be used to target and discredit individuals against whom others held a grudge.⁵⁹

4.4 Post prison re-integration processes

A commonly cited example of an innovative or alternative justice process is the Circles of Support and Accountability (COSA) programme for high-risk sex offenders (Bolitho & Freeman, 2016; Centre for Innovative Justice, 2014; Daly, 2011; Law Commission, 2015). COSA is an example of an offender-focused mechanism aimed at reducing re-offending, that operates independently/outside of the conventional justice system (Centre for Innovative Justice, 2014). It has been implemented in multiple jurisdictions (Canada, USA, United Kingdom,, several European jurisdictions (and reportedly trialed in Aotearoa NZ).

There is a good evidence base on the effectiveness of COSA in reducing re-offending including sexual re-offending, which has likely contributed to the concept's widespread recognition and implementation (Dew, 2013; Wilson et al., 2009).

The COSA model is based on RJ principles (Wagner & Wilson, 2017) and informed by the Good Lives Model used in sex offender treatment (Ward & Steward, 2003). It employs therapeutic community-based practices to improve the likelihood of successful reintegration of sex offenders. The local community support operates with a 'core group' or 'circle' of trained volunteers who help participants to remain accountable for their behaviour.

The volunteers come from the local community and as such can include the victims of the sexual violence but these would be survivors of other unrelated offending (referred to as surrogate victims or survivor-volunteers). In the UK it was estimated 20-25% of COSA volunteers were survivors of sexual violence (Wagner & Wilson, 2017). Whilst this programme is clearly offender-focused, based on a small sample of interviews, Wagner & Wilson (2017) argue in some circumstances COSA might offer restorative potential to survivors of unrelated offending who volunteer.

⁵⁸ For example, media articles of the NSW's Operation Vest - that combined national conversations about sexual assault and an online petition with the pre-existing SARO system of informal reporting – cite it has resulted in overall rates of sexual assault reporting increasing by 54%, with informal reporting via SARO up 43%. <https://www.smh.com.au/national/nsw/admitting-guilt-is-difficult-how-sex-crimes-boss-wants-the-justice-system-to-change-20210427-p57mqr.html>

⁵⁹ <https://www.theaustralian.com.au/commentary/operation-vest-anonymity-courts-malicious-intent-blights-rule-of-law/news-story/1146b1f0004ef35786b89e407850b501>

4.5 Civil law remedies

The CJS is the sole route whereby a victim can pursue a criminal prosecution of an offender. However, the civil jurisdiction potentially provides an alternative pathway for victims to seek redress. While still a conventional legal process, the application of civil law to address unmet victims' justice needs in relation to criminal offending is arguably an example of innovative thinking.

In most countries, including Aotearoa NZ, a crime victim can make a claim for damages through the civil court system against an individual or an organisation. If successful they can be awarded financial compensation. This can be instead of, or in addition to, criminal prosecution.

A key difference between the criminal and civil law systems is the level of proof needed to establish guilt. In the criminal jurisdiction the standard is 'beyond reasonable doubt' whilst in the civil jurisdiction the test is the less stringent 'balance of probabilities'. This can be an advantage for victims of interpersonal crimes such as family violence, sexual offending and fraud, where the wrongdoing is difficult to prove 'beyond reasonable doubt' (Te Uepū Hāpai i te Ora, 2019a; Victorian Law Review Commission, 2021).

The civil legal system can offer victims a number of other advantages over the CJS. It enables the victim to have an active role in the process as a 'party to the proceedings', allowing for more control and choice (Godden, 2013; Godden-Raul, 2017; Victorian Law Review Commission, 2021). There is opportunity for victim voice, as victims must explain to the court the harms they have experienced (Godden, 2013). If the case is successful, the positive finding can provide vindication for the victim through the public acknowledgement of the wrong (Daly, 2011). Where damages are awarded, they are in proportion to the harm endured by the victim, which validates the victim's suffering.

There are, however, a number of significant limitations to this process (see Daly, 2011, Powell, 2015; Royal Commission into Abuse in Care, 2021; Victorian Law Review Commission, 2021). There are a number of legal barriers including time limits on laying a complaint (Royal Commission into Abuse in Care, 2021). The process, similar to the criminal justice process, is adversarial and as such can be a challenging and even re-traumatising experience for some victims. The burden of responsibility for pursuing the case shifts from the state to the victim, requiring significant emotional and financial resources (Wemmers & Canuto, 2002).⁶⁰ This can be particularly problematic if the offender has greater financial resources than the victim, and thus able to bring to bear more legal 'firepower' (Daly, 2011). Conversely, if the accused is not in a sound financial position, they will be unable to pay substantial damages awarded to the victim - for this reason it is more common for a victim to sue an organisation rather than individual (Bublick, 2006 cited in Daly, 2011). Finally, a case being settled through private mediation limits the opportunity for public acknowledgement, with the potential for some victims to feel like they have been 'bought off' (Centre for Innovative Justice, 2014).

In summary, as highlighted by survivor and lawyer John Ellis:

Litigation — speaking as a lawyer who practiced for 20 years — is an adversarial process. It is not a way to resolve disputes of this kind, but it was the only choice we were given at the time (Ellis and Ellis, 2014, p34).

Another potential route is to pursue civil proceedings through the Human Rights Review Tribunal. The tribunal's scope is limited to claims relating to breaches of the Human Rights Act 1993 (including sexual harassment and discrimination). The same standard of proof applies (balance of probabilities), but

⁶⁰ Victims are eligible for a legal aid grant that is means tested, but there is no guarantee they will not be asked to repay the grant if the case goes against them, or if the court decides not to write-off the debt as part of the settlement.

unlike the courts where victims frequently lose cases on technical grounds, the tribunal must rule according to the substantial merits of a case, without regard to technicalities. Another advantage is the ability for mediation processes to continue alongside active tribunal cases. If the tribunal finds a claimant's rights have been interfered with or breached, it can award a range of remedies such as for the defendant to make an apology, stop or correct the breach, provide training and/or pay compensation. However, the process has been described as chronically underfunded, resulting in delays that can stretch into years (Royal Commission in Abuse in Care, 2021).

A recent example of a victim who was successful pursuing a case through the Human Rights Review Tribunal was that of Jacinda Thompson who made a sexual harassment claim (that included attempted rape) against her abuser and his employer, the Anglican Church. She pursued this option after exhausting all other avenues including informal resolution through the Church and a criminal prosecution through police. While it took four years for a substantive hearing, the process did result in a public apology, financial compensation, and, of particular importance to the claimant, public validation of the wrongdoing.⁶¹

It is unclear how frequently civil law remedies are used in New Zealand as a justice-seeking pathway for victims of crime, but it is unlikely to be much, given the limitations of this approach which, in the eyes of those who consider it, may outweigh potential benefits. To improve its appeal to victims, and its effectiveness in delivering hoped-for outcomes, there have been suggested modifications. This has included the addition of RJ conferencing early in the process (Daly, 2011), and making provision for an investigation and 'opinion forming' process, that could encourage resolution through private mediation in cases where the complaint is found to have substance (Joychild, 2021, see Part B-4a).⁶² The Royal Commission in Abuse in Care has also recommended reforms to the Civil Law Process to reduce some of the barriers for use by survivors of abuse (Royal Commission, 2021). Finally, Part B also describes a trauma-informed alternative civil redress model for survivors of church-related abuse (see 4b, the Ellis Process).

4.6 Other informal (non-State) justice processes

Daly and others identify a number of 'informal' community-based justice processes that serve as alternative pathways to justice for victims (Daly, 2011; 2016; Powell, 2015). These sit squarely outside of the conventional CJS, offering an alternative to those who prefer to entirely avoid formal justice system responses (Goodmark, 2015). Unfortunately, not a great deal of information about these community-based responses is in the public domain, some of which operate 'under the radar' (O'Nolan, 2018). They include RJ conferencing facilitated by community-based providers and/or religious institutions, or resolutions implemented privately within extended families. These informal justice responses have received scant research attention (O'Nolan, 2018), therefore little or no empirical evidence exists attesting to their effectiveness for meeting victims' justice needs.

Other examples identified include:

⁶¹ See for example the case of sexual harassment by a priest heard through the Human Right Review Tribunal of 2021-nzhrt-39- Thompson v Van-wijk; <https://www.stuff.co.nz/national/crime/126318767/come-to-the-father-how-an-anglican-priest-groomed-and-abused-a-grieving-mum>

⁶² Personal communication, Frances Joychild QC 28 October, 2021 who was a human rights lawyer for the Commission during that time; details also taken from those outlined in the Report to Chief of Air Force by Frances Joychild QC following her independent inquiry into (1) historical sexual abuse, work place sexual harassment and bullying related to Robert Roper, and (2) contemporary New Zealand Defence Force systems and processes for handling such complaints – released as an Official information Act (2209) request.

- **Online spaces** - Madden (2021) and Powell (2015) introduce online technology including social media platforms as an informal justice response for victims of sexual violence. Madden (2021) presents an example of an Instagram account being used to provide open dialogue around sexual assault. The platform was found to ‘facilitate innovative justice’ by allowing victims to share their experiences and process emotions, receive validation, and read of other victims’ healing and growth.⁶³ Powell (2015) also included the #MeToo account that provided a forum for victims to share their stories. Some platforms enable victims to publicly ‘name and shame’ their abusers, while others prohibit such identification, aiming primarily to raise awareness of issues through victims sharing their stories (see Powell, 2015).⁶⁴ Powell cautions that the use of online spaces can be problematic or carries some risk for victims. The nature of communication technologies, in particular social media, means that there is no control over the audiences reached by these sites, or how those accessing the information will engage with the content. Further, there is the potential for significant injustice through violation of due process rights of accused persons (Powell, 2015).
- **Community-based justice forums** – were reviewed by Goodmark (2015) who was interested in examining how such examples might provide an individualised justice response for victims. Examples included justice dispensed by traditional leaders, religious leaders, local administrators with adjudicative or mediation functions, customary or community courts, and community mediators. Goodmark also outlines the potential of transformative justice initiatives that aim to improve a community’s ability to respond to harms (mainly IPV), provide communities with skills to address harms, and assess accountability on both the individual and community level. She gives the example of ‘Creative Interventions’ as a transformative justice project in California that has developed a number of tools and projects to address intimate partner abuse.⁶⁵ One such project is the Storytelling and Organizing Project (STOP) that collects stories of effective community engagement in response to specific incidents of intimate partner abuse, using these stories to inform others about how interventions can be carried out, and what lessons were learned.⁶⁶
- **Other informal community-based approaches** – identified by Daly (2011; 2016) include informal community-based RJ practices (see section 4.1), activist projects in civil society, ‘cultural performance’, memorials and other forms of commemorations, film, art, and literature.⁶⁷

4.7 Alternative mechanisms operating within the criminal justice system

In Aotearoa NZ, progress has been achieved in developing and implementing a range of alternative justice mechanisms that operate within the conventional CJS. These models occur within the statutory functions of the CJS, and fall within the jurisdiction of police, Courts and Corrections. Daly (2011, 2016)

⁶³ The American writer Chanel Miller told her story of being raped while she was unconscious, including the public outcry when the perpetrator (Brock Turner) received a relatively light sentence. Madden (2021) conducted a qualitative analysis of Chanel’s Instagram account (Know My Name). Madden described it as “an innovative justice platform” for herself and other participants by providing a virtual space to process emotions, model growth and healing, and offer validation and hope.

⁶⁴ Project Unbreakable resulted in over 2000 photographs of sexual assault survivors holding posters with quotes from their attackers. See <http://project-unbreakable.org/>

⁶⁵ *Tools*, CREATIVE-INTERVENTIONS, <http://www.creative-interventions.org/tools/> (last visited Mar. 2, 2015).

⁶⁶ See *Welcome to the StoryTelling & Organizing Project*, STOPVIOLENCEEVERYDAY, <http://www.stopviolenceeveryday.org/> (last visited Mar. 2, 2015).

⁶⁷ For example, where real experiences of a victimisation and its impact are played out but presented as a fictional story.

refers to these as hybrid conventional-innovative mechanisms, 'being firmly within the conventional response sphere' (Daly, 2011, p.11).

As illustrated in figure 1, there are several entry points for these alternative processes (pre-charge, pre-sentence, post-sentence), but all require a report of offending to police in order to be put into motion. These processes vary in the degree to which they are integral to the conventional justice system, or operate alongside in a complementary manner. While the more innovative responses can be 'victim-inclusive' and offer benefits to victims over conventional CJS, they tend to be offender-focused in their primary aims.

Many of those considered 'complementary' alternative processes, that operate alongside the CJS, typically relate to RJ processes (which has been reviewed above in section 4.1). These include where RJ processes are applied to pre-charge cautions, diversion (examples include family group conferences, adult RJ conferences, and community panels such as Te Pae Oranga), and at the pre-sentence stage (i.e., court-referred RJ).⁶⁸ It is possible for pre-charge diversion programmes to proceed without participation of a victim, whilst pre-sentence court-referred RJ is expected to proceed only with a victim's (and offender's) informed consent. In either case, the process works alongside the conventional CJS. With pre-charge diversion, if the process breaks down (e.g., offender does not comply with negotiated plan) the case can be diverted back into the conventional criminal justice process. Pre-sentence court-referred RJ is very much a part of the conventional CJS process, with cases always finalised through the court. For more details of these processes see sections 5.0 and 6.0 in Part B.

Also 'complementary' are post-sentence processes operating during an offender's sentence, although at this stage, unless they impact Parole Board decisions, they are effectively outside/independent of CJS. An example of these are the RJ conferences operating in NSW Correctional Service (see Bolitho, 2015, and Part B-1g). However, there are other post-sentence processes like Victim Awareness Programmes that are offender-focused. These involve victims of similar but unrelated crimes (i.e., surrogate victims) who volunteer to meet with an offender (or groups of offenders) with the aim of promoting offender insight into the harms caused to victims as a result of such offending (e.g., the Christian centred Sycamore Tree Project developed by Prison Fellowship International is a well-known example of such a programme, and ran for a while in Aotearoa NZ (for more details see the United Nations Handbook, United Nations, 2020).

Alternative justice processes that are more fully integrated into the conventional CJS include the innovative court models which are targeted at certain types of offending, or offenders. These remain offender-focused in their aims but because they are generally underpinned by therapeutic justice principles and a more holistic approach (Centre for Innovative Justice, 2014), they can also be victim-inclusive.

The Centre for Innovative Justice (2014) differentiates between specialist and problem-solving/therapeutic courts:⁶⁹

⁶⁸ This group also includes pre-trial diversion to treatment for adult sex offenders that was an alternative pathway for a time in Australia (e.g., NSW's Cedar Cottage) and has been considered in Aotearoa New Zealand (see Law Commission, 2015; MacDonald & Tinsley, 2011).

⁶⁹ The Centre for Innovative Justice (2014) also includes re-entry courts that operate similarly to problem-solving courts but are post release with a focus on increasing the likelihood of successful re-integration. They combine community-based support services, judicial supervision and case management approaches to encourage rehabilitation and reintegration. These courts do not operate in Aotearoa NZ, but similar functions are incorporated within problem-solving courts (e.g., judicial monitoring).

- **Specialist courts** – are limited to deal with a specific area of law – these include those operating in the civil jurisdiction like the Family Court, but also in the criminal jurisdiction, for example specialist sexual violence courts that operate in a number of jurisdictions.⁷⁰ There are currently two Specialist Sexual Violence Courts in Aotearoa NZ, dealing with all prosecutions of serious sexual violence which proceed to a jury trial in Auckland and Whangarei. Existing law is applied in the prosecution processes, but where possible specialist procedures have been incorporated with the aim of minimising the negative impact of the court processes on victims (see Gravitas, 2019).
- **Problem-solving or therapeutic courts** – are those focused on rehabilitation by addressing the underlying causes of recurrent offending. These typically operate after an offender has pled guilty but before sentencing. A multi-disciplinary team is convened to formulate a therapeutic approach to addressing the rehabilitation of offenders. The primary aim is to reduce re-offending, and to promote community safety (Centre for Innovative Justice, 2014) Examples in Aotearoa NZ include – Family Violence Courts, Alcohol and Other Drug Courts, Young Adults List Court, New Beginnings, Special Circumstances Courts, and the culturally inclusive Matariki Court, Te Kooti Rangatahi and Pasifika Courts.⁷¹

As briefly noted in Section 1.0, a new court operating model in Aotearoa NZ (Te Ao Mārama) is currently being developed and progressively rolled out. The aim is for the therapeutic and problem-solving approaches of these individual courts to be mainstreamed across all District Courts.

4.8 Indigenous justice practices

The domain of indigenous justice is continuing to develop in several countries as a source of innovative justice mechanisms (Daly, 2016).⁷² The use of contemporary indigenous practice as a means of delivering alternative pathways to justice for victims of crime in Aotearoa NZ is of particular significance to this project, being a key recommendation of the Chief Victim Advisor (Chief Victims Advisor, 2019a). For this reason, a separate stream of work dedicated to reviewing kaupapa Māori victim-led alternative resolution pathways has been commissioned from a team of kaupapa Māori researchers (see Awa Associates, 2022). This report is limited therefore to consideration of indigenous models in other jurisdictions that might have value in highlighting opportunities for additional victim-led alternatives to conventional justice.

There is of course no singular form of indigenous justice process, and it is beyond the scope of this report to review every traditional justice practice operating in different societies. Instead, this review is limited to some high-level observations concerning certain specific indigenous models that have received recognition in the literature, particularly those which have become established as alternative pathways within conventional CJSs.

In terms of understanding indigenous approaches that might be considered victim-led, it is important to recognise differing understandings of the role of a victim of crime within individual indigenous communities, and how this might contrast with views within western conventional justice systems. As

⁷⁰ The New York Sexual Offences Court is described to be a holistic combination of specialist and problem solving, carrying out adjudicating and sentencing roles but also functioning as re-entry courts supervising offenders on their release (Centre for Innovative Justice, 2014). See also Lopez & Koss (2017) for review of Specialist Sexual Offences Courts in South Africa.

⁷¹ For more details see <https://www.lawsociety.org.nz/news/lawtalk/issue-905/specialist-courts-their-time-and-place-in-the-district-court/>

⁷² Others refer to these mechanisms as traditional justice systems (Dinnen, 2009) or customary justice forums (United Nations, 2020).

a general rule, indigenous communities tend towards collectivist values; as described by Jantzi (2001), the justice response is one based on 'restoring balance' within the community following the rupture caused by the offending.⁷³ Jantzi suggests the needs of the victim, whilst part of the process, are not necessarily central. The principal outcome is the reintegration of the offender into the community and restoration of mana or balance within community relations. Meeting the victim's needs is primarily the responsibility of their extended family. In other words, the healing of the community comes first, and secondarily, or as a result, victim healing and offender rehabilitation (Jantzi, 2001, Law Commission, 2015). These collectivist values can create complications where the offending has involved family violence, with specific guidelines developed in some jurisdictions to ensure victim safety within a culturally appropriate framework.⁷⁴

For many people, the conventional CJS is not experienced as a safe or comfortable place within which to seek justice (Goodmark, 2015).⁷⁵ A common strength of traditional approaches is the provision of a more culturally familiar environment within which issues can be dealt with. The typically holistic and inclusive nature of proceedings can mean that they are often victim-inclusive, although perhaps less victim-focused. Many indigenous processes certainly enable the victim a participatory role in determining what the consequences should be for the offenders, along with other members of the community (Marchetti & Daly, 2017). Less favourably, however, a review of traditional approaches in eight countries in South East Asia and the Pacific by Dinnen (2009) found that where unfair treatment of women, children and other groups was inherent to a specific traditional culture, this was also evident in the traditional justice response.⁷⁶

In terms of the framework used in this review, indigenous justice practices are found operating both inside and outside of conventional CJSs of the wider society (Dinnen, 2009, Wood et al., 2021). Those located outside of the conventional CJS tend to be the most traditionally-based approaches, while those within the formal system are more likely to be adaptations incorporating both traditional and mainstream cultural elements. An example of the latter are indigenous sentencing courts, which reflect a hybrid of state criminal procedures and indigenous customary law (Marchetti, 2017).

Indigenous sentencing courts have in fact been implemented in multiple jurisdictions, mostly with the aim of providing a culturally meaningful justice outcome (Marchetti & Daly, 2017). These include those operating in Australia (e.g., Sentencing Circles, Forum Sentencing), Canada (Sentencing Circles) and the USA (Navajo Peace-Making Courts, Tribal Wellness Courts). Here in Aotearoa NZ we have Matariki Court, Te Kooti Rangatahi, and Pasifika Courts. In a similar fashion to other countries Aotearoa NZ also incorporates indigenous practices into pre-charge diversion programmes such as Te Pae Oranga Iwi Community Panels (see Part B-5.0).

The incorporation of indigenous approaches into the conventional CJS has received mixed views and provoked considerable debate. Some suggest indigenous sentencing courts are an example of innovative progress and a genuine attempt to provide more meaningful, inclusive, and effective justice responses (United Nations, 2020). However, others raise concerns over 'cultural appropriation', suggesting that such practices constitute a tokenistic treatment of traditional cultural values and

⁷³ <https://www.massey.ac.nz/~wtie/articles/vern.htm>

⁷⁴ See for example Whānau-centred approaches to address family violence (Hikitia and Associates, 2019).

⁷⁵ In this comment Goodmark (2015) is referring to people who have been abused including 'people of colour', immigrants, lesbian, gay, bisexual and transgender people.

⁷⁶ For example, there are common concerns that sexual abuse of children may be dealt with through customary processes that are focused on re-establishing relationships between families rather than addressing the needs of the victim. In some cases, girls who are raped or become pregnant due to under-age sexual activity may be forced to marry the men involved (Dinnen, 2009).

practices (Cunneen & Rowe, 2015; Gordon, 2019; Jackson, 1995; Tauri, 2014, 2021).⁷⁷ Gordon (2019), for example, points out the fact that locating indigenous practices within the conventional CJS means that these practices are made subservient to the State's requirements.

⁷⁷ Tauri (2021) is particularly critical of FGCs and restorative justice being described (and marketed) as indigenous approaches to justice. He cites Canadian research where the introduction of the FGC process promoted as an indigenous-based practice, had a negative impact on the local indigenous peoples' own attempts to reinvigorate their traditional justice institutions.

5.0 Outcomes of alternative justice processes for victims

This section reviews available evidence around the impact of alternative justice processes on victims. The evidence base is slim, as most of the research in this domain is focused on offender-related outcomes. Nevertheless, victim-related outcome indicators are beginning to be formulated by victim-focused researchers, and a small number of studies exist evaluating alternative justice processes from the perspective of the victim. As will be seen, the extant research in this area is almost entirely restricted to examining the effectiveness of RJ for victims. Despite this dearth of information, findings presented in this section can serve as examples of the types of victim outcome indicators that might be investigated to evaluate alternative justice mechanisms.

5.1 Challenges and limitations

There are several challenges to reviewing and presenting outcomes of alternative justice processes for victims:

Diversity of approaches - the first challenge is the diversity of alternative justice processes to be considered. As highlighted in the previous section, there are huge variations in how justice mechanisms operate, the degree to which they focus specifically on victims, and their relationship to the CJS.

Considerable diversity occurs even within generic models such as RJ, which encompasses a considerable range of approaches, as has already been detailed above in section 4.1. Grouping diverse mechanisms together to collectively assess impact on victims is not viable. Instead, the effectiveness of each must be considered separately.

In addition, the alternative justice interventions that victims experience frequently occur as an element of the conventional justice system (e.g., where a criminal prosecution is followed by a pre-sentence RJ conference, with sentencing and on-going monitoring occurring subsequently (Daly, 2017)). Untangling the effects of the alternative mechanism from other influences is a major challenge.

Outcomes assessed – the main focus of research on alternative mechanisms has been on offender outcomes such as recidivism. This includes research looking at the impact of certain variables like seriousness of crime, with the potential to unpack some of the complexity inherent in alternative justice mechanisms. The focus on offender outcomes reflects the primary focus of policy makers, who tend to be interested in reducing recidivism and whether new initiatives are cost-effective. Where victim outcomes have been included in studies, outcomes tend to be less robust, such as measures of victim satisfaction. Few studies are found where there is explicit focus on whether victims' justice needs have been met. As highlighted in section 3.2, this is precisely where the focus of research should be.

Small number of studies – a recent review by Gang et al. (2021) of RJ programmes for sexual and family violence offences concluded that, for many of the alternative justice mechanisms, there is either no research (including those operating 'under the radar', O'Nolan (2018)) or insufficient research to definitively assess effectiveness. Gang et al. (2021) found just one solitary study that met their inclusion criteria, and this was in relation to a programme that has been discontinued (Project RESTORE, Koss, 2014 see Part B-5a).⁷⁸

⁷⁸ Studies were eligible for inclusion in the review if the program being evaluated used restorative justice methods for sexual or family violence offences and these offences constituted at least 75% of cases; the program included direct or indirect communication between survivor and perpetrator; cases being evaluated

Small sample sizes – for some types of crime like homicide, the number of cases accessing alternative justice processes is small, limiting the type of analysis to case study reviews that do not support generalisable conclusions.

Make up of samples – finally the typical characteristics of those who participate in alternative justice processes limit generalisation to wider groups of victims. Firstly, participation by victims in alternative justice mechanisms is nearly always a voluntary process, creating a selection bias that can only be addressed via resource-intensive research designs such as randomised control trials. Further, in many jurisdictions access to many alternative pathways is restricted to victims of lower-level offending, offending by youth and/or other offenders willing to accept responsibility of their offending. This makes effectiveness comparisons between alternative justice processes and conventional criminal justice mechanisms problematic.

5.2 Current evidence base

The majority of outcome research on alternative mechanisms, including those located within the conventional CJS, has focused on offender measures, primarily re-offending rates. There are some practical reasons for this focus, given that some alternative justice mechanisms occurring within the conventional CJS can proceed without the involvement of a victim,⁷⁹ thereby limiting the ability to evaluate victim outcomes. Other challenges listed above means there is still a dearth of good information on the impact of alternative justice mechanisms from the perspective of the victim of crime. Clearly, greater priority given to inclusion of victim-outcome measures is warranted, as this would enable a more balanced and informed approach to decision-making (Keenan, 2017).

In reviewing the current evidence base on the effectiveness of alternative justice mechanisms to address a victim's justice needs, three categories of evidence emerge:

- i. Victim outcome measures not identified as justice needs (e.g., general satisfaction and wellbeing).
- ii. Descriptive analysis of the degree to which a particular alternative justice mechanism met victims' justice needs.
- iii. Comparative effectiveness of alternative justice processes to conventional justice processes on their ability to fulfil victims' justice needs.

Daly and others argue the above order of these three categories reflect their increasing value for victim advocates, policy makers and funders in terms of assessing the relative merits of alternative mechanisms, and thereby in fostering understanding of which justice mechanisms best address a victim's justice needs (Daly and Wade, 2017; Keenan et al., 2017).

5.1.1 *Victim-outcome measures (not identified as justice needs)*

This section reviews evidence of the impact of alternative justice mechanisms on general victim-outcome measures (i.e., not specific to justice needs, which are considered in the next section). These include evaluations of victims' general satisfaction with the process, and measures of emotional restoration and wellbeing.

Methodologically the best evidence comes from randomised control trials (RCT) that have looked at

had commenced (although not necessarily concluded); and the work was published in English in a peer-reviewed journal (Gang et al., 2021, p.186).

⁷⁹ Particularly cautionary and diversion initiatives and alternative court models.

the impact of RJ conferencing (RJC) on outcomes for both offenders (reducing recidivism)⁸⁰ and victims (principally reducing emotional harm and increasing a sense of fairness). These studies have also found outcomes that would be considered as victims' justice needs and are viewed in the 'comparative analysis', section 5.1.3. Evidence of the beneficial effect for victims from these RCT studies is consistent with those found in non-randomised research designs and other qualitative studies (see Ministry of Justice, 2016a for a review).

Due to the significance of these RCT studies to the evidence base, a few methodological details are warranted to assist with the interpretation of findings in relation to victim outcomes.

Box 3. Details of RCT studies on impact of RJ

- There have been at least 13 randomised control trials, completed in the United Kingdom (n=8), Australia (n=4) and the USA (n=1)⁸¹. Impacts have been collated in at least two meta-analyses (Sherman, et al., 2015; Strang et al., 2013). Collectively, over 2000 offenders and 1000 victims have participated in these studies (Sherman, et al., 2015).
- These studies compare the outcomes for victims and offenders that consented to participate in RJC prior to random assignment, with analysis based on 'intention-to-treat'⁸²
- All studies included at least one victim-outcome measure, however, measures of victim effects varied in type and detail across studies.⁸³ The most consistently reported measure was victim satisfaction.
- Together these studies highlight the diversity of RJC practices; they included cases involving both juvenile and adult offenders, and those responsible for a range of offense types, including burglary, serious assaults, vehicle theft, robbery and arson.
- The location and relationship of the RJC in relation to the CJS varied across studies: the four Australian studies and the one USA study looked at RJ delivered as an alternative to conventional justice (RJC as diversion from trial) and the eight UK studies looking at RJ as a supplement to usual justice processing (see Strang et al., 2013; Sherman et al., 2015).⁸⁴

⁸⁰ Outcomes for offenders include significant reductions in the frequency of repeat offending after two years, and high-cost effectiveness, in the UK studies. Moderator effects across and within experiments showed that RJC worked best for the most frequent and serious offenders. Other clear moderator effects were improved outcomes for poly-drug use and offense seriousness (see Sherman et al., 2015). Aotearoa NZ research has also found significant reductions in re-offending for those participating in RJ (see Ministry of Justice, 2016a).

⁸¹ The Australian research led by Dr Heather Strang consists of four experiments conducted on the Canberra Reintegrative Shaming Experiments, or RISE, while the studies conducted in the United Kingdom were evaluated by a team from University of Sheffield led by Professor Joanna Shapland.

⁸² Using 'intention-to-treat' tests more policy-relevant scenarios of both attempting RJC and completing RJC. This is important considering there are costs involved in each attempt, regardless of whether completed, and to understand the overall benefit of attempting to implement RJC (Strang et al., 2013). However, Johnstone (2017) notes that because this research is conducted with only those who have agreed to participate this research cannot tell us why victims (who may well benefit from participation) do not take part.

⁸³ The primary focus of most studies was to demonstrate the impact of RJ on offender recidivism. Some studies included only quasi-experimental (before and after) victim-outcome measures from only those who participated in the RJ (e.g., Strang and Sherman 2003; Strang et al. 2006). Results based on victims assigned randomly to the treatment and control group are limited to satisfaction with the process, material restoration, emotional restoration, desire for revenge, and post-traumatic stress symptoms (see for example Angel 2005; Angel et al. 2014; Shapland, et al., 2007; Strang 2002; Sherman et al. 2005).

⁸⁴ RJC included as an alternative to post-arrest diversion; and in addition to usual justice processing after a guilty plea in court, but before sentencing; as part of a noncustodial sentence if requested by a probation officer; and after a period of imprisonment prior to release from prison (see Strang et al., 2013).

Victim satisfaction

Evaluations that have measured the impact of justice mechanisms on victim outcomes have predominantly focused on measures of victim general satisfaction with the process. This can include how satisfied victims are with (1) how their case was handled and (2) how they were treated. Both of these perceptions are considered measures of procedural justice, where levels of satisfaction are typically associated with a victim's sense of being treated fairly and with respect.

Findings from a number of studies both in Aotearoa NZ and overseas have found that the majority of victims who participate in RJ programmes are satisfied with the experience (Gravitas, 2018, 2021; Hansen & Umbreit, 2018; Sherman et al., 2015; Strang et al., 2013):

- In their analysis of ten RCTs, Strang et al., (2013) found the effect of conferencing on victims' satisfaction with the handling of their cases was largely positive, and significantly higher than victims not participating in RJC.⁸⁵ For example, Strang (2002) found 69% of victims assigned to RJC were pleased with how their case was handled, compared to 48% of those where the case was prosecuted. For many this translated into a more positive view of the CJS, and feelings that their case had been treated fairly (Sherman, et al. 2005; Strang, 2002).
- Findings of increased satisfaction of RJC-assigned victims compared to court-assigned were found to still be evident ten years after the original measurement was taken (Strang, 2011).
- The Australian studies by Strang and colleagues also looked specifically at levels of dissatisfaction, including the extent to which victims reported feeling angry about their treatment. Higher levels of dissatisfaction were found amongst court process-assigned victims compared to RJC-assigned victims for both property crimes (29% vs 14%) and victims of violent crime (39% vs 24%).

These beneficial effects of participating in RJ for victims mirror those found consistently in Aotearoa NZ through victim satisfaction surveys. There have been four such surveys of victims participating in Ministry of Justice-funded RJ processes (see Ministry of Justice 2011, 2016b; Gravitas, 2018, 2021).⁸⁶ The most recent survey, conducted by Gravitas (2021), found that:

- most victims were at least 'fairly satisfied' with the RJC they attended (77%) and with their overall experience of RJ (76%);
- Pasifika victims (88%) had the highest overall levels of satisfaction with the process, followed by Māori (84%), with slightly lower levels among NZ European (76%).

The previous 2018 survey enabled comparisons of satisfaction for different types of conferences:⁸⁷

- Overall satisfaction was similar for standard conferences (83%, n=201), and for family violence conferences (87%, n=158) and sexual offending (83%) although the sample size for the sexual offending group was probably too small to support firm conclusions (n=6).

There has been a persistent finding across studies that a minority of victims report an unsatisfactory experience (Johnstone, 2017; Ministry of Justice, 2016a). The Ministry of Justice surveys provide some insights into this group of victims (approx. 12%). The following key reasons given for dissatisfaction were summarised by Gravitas (2021):

- victims felt information provided on the process contradicted what actually happened at the meeting;

⁸⁵ Statistically significant effect size was found across the 10 RCTs ($d=.327$; $p<0.05$).

⁸⁶ The 2021 satisfaction survey is currently being finalised.

⁸⁷ This was not possible with the 2021 survey due to Covid-19 impacting on the survey administration.

- it was too long between the offence and the first meeting;
- they felt the offender wasn't sincere in their apology; and/or
- the lack of follow-up (no feedback on what happened to the offender, the offender not doing what was agreed, and no follow-up with the victims to see if they needed further help or support).

Satisfaction is an important indicator of procedural justice and clearly there is now strong evidence of at least one alternative justice process (RJC) producing high rates of victim satisfaction. However, a number of criticisms have been raised if general satisfaction is the primary or sole indicator of outcomes for victims. For example, the measure does not provide information on more tangible outcomes for victims in terms of meeting their justice needs (Boliver, 2019; Godden, 2013; Daly, 2014). This is highlighted by Boliver (2019) who notes that victims can report satisfaction with the experience while at the same time reporting less positive feelings in relation to restorative outcomes such as putting the offence behind them, or having harm repaired. Another limitation of victim satisfaction as a measure of the effectiveness of alternative justice processes like RJ is raised by McDonald and Tinsley (2011). Only victims where 'their' offender has pled guilty (or at least takes responsibility) are eligible for RJ (and the studies). Yet many of these victims (who report high levels of satisfaction with RJ) would not have had to go through an adversarial court process (due to the guilty plea). Arguably, the victims who are not surveyed in terms of their satisfaction, are those who would benefit most from an alternative process (i.e., those who could use it to avoid the ordeal of the adversarial court process).

Well-being and other emotional restitution measures

Beneficial effects on the more tangible outcomes of emotional restoration and mental well-being have all been found to be significantly greater for victims participating in RJ compared to conventional court processes, based on findings from randomised control studies. In their analysis of 12 RCTS, Sherman et al. (2015) report that victims randomly assigned to attend RJ conferences (RJCs) vs standard court processing:

- were less fearful of repeat attack by the same person. For example, Strang (2002) found the RJC reduced the percentage of victims of violence and property crime who feared that the offender would revictimize them, from 18% to 5%;
- were less fearful the offender would attack another person, with a significantly higher percentage of court victims than RJC victims anticipating their offender would repeat the offence on another victim (55 percent vs. 35 percent);
- had significantly reduced desire for violent revenge against their offenders. For example, Strang (2002) found this reduced from 20% to 7% (and from 45% to 9%, for victims of violent crimes);
- and, similarly to the finding regarding victim satisfaction, demonstrated emotional restoration persisting over time. RJC-assigned victims of violent and property crimes had less emotional impact from the crime than court-assigned victims for at least 10 years after the arrest of their offenders (Strang et al., 2011).⁸⁸

Victims can also experience self-blame for a crime's occurrence, which can be a source of emotional harm; however, no significant main effect was found for this variable (Strang et al., 2013).

⁸⁸ After ten years, Strang et al. (2011) found RJ victims still had half as much anxiety about being revictimized as victims whose cases had been prosecuted (22 % RJ vs. 44 % court, $p = .00$); half as much anger about the crime (58 % RJ vs. 26 % court disagreed that they were still angry, $p = .01$); and half as much feeling of bitterness about the offense (75 % RJC vs. 38 % court disagreed that they still felt bitter, $p = .00$).

Finally, perhaps one of the more important finds to date (Sherman et al., 2015) is the finding that victim involvement in RJ can reduce post-traumatic stress symptoms (PTSS). Post-traumatic stress symptoms can occur following serious criminal victimization, and for some victims can have long-term debilitating impacts. A randomised control trial by Angel et al., (2014) found:

- UK robbery and burglary victims assigned to RJC, especially females, suffered much less post-traumatic stress than controls (overall 49 % fewer victims suffering clinical levels of PTSS among the RJC-assigned victims compared to controls). Where RJC was in addition to normal court proceedings, these victims were found to have reduced PTSS compared with the control-assigned victims, whose cases were dealt with by court alone ($d=.301$; $p<0.05$).

In Aotearoa NZ, similar but non-specific positive benefits have also been found for victims participating in Ministry of Justice-funded RJ programmes. In their survey of 365 victims (or their representative), Gravitas (2021) found that taking part in the RJ conference had a 'positive impact' on around two-thirds of victims, with 66% reporting they felt 'slightly better' or 'a lot better'.⁸⁹ Just six percent said the meeting made them feel 'slightly worse' or 'a lot worse'. This contrasts with earlier Aotearoa NZ research of youth justice FGCs by Maxwell and Morris (2003) however, who found a larger proportion of victims reported a negative impact (a quarter of victims who participated claimed to feel worse).⁹⁰ The authors pointed to deficits in training of the facilitators at that time, resulting in poorly run conferences as contributing to these adverse outcomes. The strong offender-focus in FGCs may also play a role (see section 6.1.1).

5.1.2 *Descriptive analysis of impact on victims' justice needs*

This focus on victims' justice needs is useful in understanding how alternative justice processes can address unmet justice needs, but also how the conventional justice system can be more responsive to victims. This section presents findings from five studies that have used the construct of victims' justice needs to assess the impact of alternative justice processes for victims. All five include accounts from victims and focus on the degree RJ mechanisms can meet their justice needs. More details of each programme can be found in Part B of the report.

Centre for innovative Justice (2019a) - The Centre for Innovative Justice recently designed and evaluated a victim-focused RJC pilot programme for people affected by motor vehicle collisions that resulted in death or serious injury (Centre for Innovative Justice, 2019a, see Part B-6d for more details). The conference could occur at any point in the CJS, or where no proceedings had taken place (e.g. where the offender died in the crash and therefore no prosecution was possible). Twenty-one referrals were made, of which 14 cases were accepted, resulting in two face-to-face conferences. Interviews with the victims who completed conferences found that participants reported a range of justice needs having been met, as they could:

- express themselves, and feel heard (voice);
- feel that the harm they had experienced was recognised and understood (validation);
- have questions answered by the offender via the process (information);
- feel that their participation would prevent the harm they had experienced from happening again (accountability and prevention);
- experience a sense of 'resolution' or 'closure'
- take part in a program that met their personal needs (participation);

⁸⁹ The two main ways victims identified that the restorative justice process had been beneficial were: that they felt they could move on/had got closure (26%); and they got to hear the offender's point of view and understand what happened (16%).

⁹⁰ Cited in McDonald & Tinsley (2011).

- change the way they related to or thought about the other RJC program participants (even where the people affected had not known each other before hand (i.e., relationship repair).

In some cases, both victim and offender participants were interviewed, and one offender stated that he ‘appreciated the opportunity’ to offer an apology and express his remorse (accountability).

The Centre for Innovative Justice concluded that the RJC experience was able to meet needs of participants that the traditional justice system was not able to address.

As noted above, there continues to be debate over whether RJ is appropriate for victims of serious offending. Interestingly, the Centre for Innovative Justice noted that, when a programme is designed around addressing victims’ needs (i.e., is genuinely victim-focused), questions of whether an offender is a suitable candidate due to the seriousness of the offending become less relevant as the victim’s needs, not the offender’s, are leading the process (Centre for Innovative Justice, 2019a).

Wagner (2013) - An earlier study by Wagner (2013) assessed ten previously published cases of RJ and sexual violence conferences with the aim of determining if victims’ four ‘healing and justice needs’ were met.⁹¹ This study provided analysis of victim outcomes more tangible than simple satisfaction with the process, but the combination of survival and justice needs meant that justice and well-being outcomes were not differentiated in the results. While convenience sampling restricts the generalisability of findings, the analysis is useful in showing the type of victim outcomes that can be produced in specific circumstances. Wagner concluded that all of the victims reported some beneficial effects consistent with achieving or fulfilling justice and/or healing needs. Reported benefits included:

- gaining a sense of empowerment and answers to ‘nagging questions’;
- acknowledgement by both the perpetrator, and sometimes other sceptical family members, of the harm inflicted by the perpetrator;
- relief from the fear of retaliation for reporting the assault/abuse;
- restoration of relationships with family;
- receiving an apology;
- being able to ‘let go and move on with life’.

Loff et al., (2019) - Another evaluation of a RJ programme (for victims of sexual violence) adopted a lens similar to that of Daly’s (2017) victim justice interests. Completed by Bebe Loff and colleagues from Monash University in 2019,⁹² this detailed evaluation examined a pilot RJ programme run by the SECASA in Melbourne, Australia (see Part B-1d). Whilst based on interviews with a small number of cases (n=8), the analysis drew out some tentative but interesting conclusions. The authors acknowledged the limitations of the small sample and suggested findings should be understood as ‘signposting areas for further investigation’ (Loff et al., 2019, p.40).

The SECASA pilot programme was a more structured version of the informal RJ conferencing that had been occurring for over 20 years in that State. The programme provided a targeted justice response for victims of sexual violence, with no restrictions with regard to the seriousness of the crime, or degree of concurrent or planned involvement in the traditional criminal justice process.⁹³ The drive behind the programme was to provide an alternative or supplementary justice response for victims

⁹¹ Wagner (2013: 21–22) combines Herman’s (2005) justice needs and Draucker et al.’s (2009) healing needs.

⁹² This evaluation study was funded through an Australian Criminology Research Grant.

⁹³ This includes current and historical sexual violence occurring within the context of family violence (intrafamilial).

where their justice needs had not or were unlikely to be met through the conventional system. This included those:

- whose cases would not proceed due to insufficient evidence;
- who had not made a report to the police;
- who feared the re-traumatising experience of court;
- involved in a family violence case who choose not to leave the relationship;
- with historic cases of abuse;
- those interested at the post-sentence stage following an offender's conviction (Loff et al. 2019).

The mixed-method evaluation included a review of case files, post conference survey data, and 29 potential referrals for interviews (between 2016-18).⁹⁴ Ten of the referrals proceeded through to conferences being completed. Interviews and surveys were successfully completed with eight victims and four offenders of these 10 cases. Evaluation measures centred on motivations for participation, satisfaction with the process, and perceptions of personal justice needs having been met.

Findings from the survey data were mixed, with the small sample size (n=8) obviously limiting interpretation. Some of the more interesting findings emerged from the interviews. The authors concluded that a victim-focused RJ process was most impactful in relation to changing how victims see themselves, rather than through healing or enabling them to 'put the experience behind them' (i.e., closure). In terms of justice needs the authors concluded the process was capable of meeting victims' justice interests as follows:

- **Participation and voice** – were the two strongest justice needs motivating victim to participate. Several victims expressed the desire to confront the person responsible with what they had done. The perception of 'taking charge' in this manner was seen as a factor in altering the victim's internal narrative. Authors suggested this 'exercising of voice' was best done in an environment that was able to accommodate the victim's wishes, and where they were made to feel completely safe. It was noted that traditional justice settings seldom provide this kind of opportunity. Through the RJ process, victims were observed to transition from being in a world in which they felt fearful and powerless, to one in which they felt a renewed sense of control. This appeared to be true irrespective of whether the offender took part in the processor not.

Other conclusions included a strong general endorsement of the process from victims who participated, and calls from the client group that the experience should be made available to others.

The importance of counselling support being delivered concurrently with the RJ experience was also noted by the authors. Such counselling was needed to protect the well-being of participants throughout the process.

More tentatively, the researchers concluded that the conference process appeared to work less well with those who were entrenched in relationships featuring recurrent family violence. Good outcomes were more common where cases involved parties whose relationships were more 'acquaintance-like'.

⁹⁴ This included 8 cases where no report was made to police, 9 cases where a complaint was made to police but the case did not proceed for a range of reasons, and 4 additional cases where a conviction had been obtained.

Overall, a victim-centred restorative process was shown to make a positive contribution to victims, especially in changing a victim's internal narrative from one of powerlessness to one where agency and a sense of being in control has been restored.

Bolitho (2015) - A larger and more comprehensive study by Bolitho (2015) used the Toews (2006) framework of 'universal' justice needs⁹⁵ in her mixed method evaluation of a post-sentencing, victim-centred RJ programme for victims and adult offenders convicted of serious crimes (VOC, Victim-Offender Conferences – see Part B-1g).⁹⁶ The programme operates under the jurisdiction of the New South Wales (NSW) Correctional Services Department. The study used a mixed method approach carried out over a five year period (between 1999 and 2013), enabling a large sample of completed conferences for inclusion (74 conferences completed). The study also included five-year follow-up data collection with 14 cases.

Bolitho used multiple sources of information to identify a victim's unmet justice needs at pre-conference, and their status post-conference.⁹⁷ Needs were considered unmet as they had persisted despite a guilty finding at court and sentencing, and despite the passage of time.

- **Pre-conference** - in all cases at least one unmet need could be identified. Bolitho found the victims were motivated by one or more needs such as to seek safety, to seek information, to speak and be heard, to vent emotion, to seek accountability, to feel empowered, and to be allowed to move forward in life. However, expectations of the process and/or the offender at the outset were often low.
- **Post-conference** – analysis suggested that in 95% of cases (70 out of 74 conferences), the majority of unmet needs identified for each case were met post conference. Those same individuals also described the conference as a positive experience. There were just two cases where participants reported being dissatisfied, and another two where the facilitators expressed specific concerns over the outcome.⁹⁸ Of 14 cases followed up five years later, the findings on impact were stable, with 13 out of the 14 remaining positive.

This study was able to demonstrate, using a large sample of victims, that a complementary post-sentence RJ process was able to address a range of victim justice needs that had been unmet through participation in the conventional CJS alone.

Julich and Landon (2017) - The final study was that of Julich and Landon (2017) who presented their findings from a retrospective review of twelve sexual violence cases referred to Project Restore in Aotearoa NZ (see Part B-1a). They used Daly's (2014) Victimisation and Justice Model to identify victim motivations and desired outcomes from their participation.⁹⁹ The study also looked at offender uptake of treatment programme referral. All cases were completed conferences that resulted from pre-

⁹⁵ Bolitho adapted the Toews (2006) framework to be applicable to victims' self-reported experiences and operationalised the following seven needs: *relationships and safety* (before, during, and after the VOC – e.g., once a prisoner is released); *empowerment* – standing up for oneself against the injustice of harm; *information* – understanding what happened and why; *venting* – the need to express feelings and emotion; *growing* – the need to be forward looking in life (not emotional locked); *accountability* – acknowledgement of harm done; *meaning* – 'desire for closure' – ability to make sense and move on.

⁹⁶ This programme is run by the Restorative Justice Unit (RJU) of the Corrective Services Dept of NSW and is the only state-sanctioned model of its kind in Australia. In terms of the seriousness of offending involved, just over half of the VOCs conducted related to cases where death had occurred including murder (26%), manslaughter (18%), and driving causing death (11%).

⁹⁷ One of the primary aims of the VOC programme is to address a victim's unmet justice needs, assisting in their identification through review of VOC records, in addition to interview data where available.

⁹⁸ Learnings from these cases were used to make improvements in practice going forward.

⁹⁹ Offenders were also interviewed to assess their motivations and perceptions of outcomes achieved.

sentence court referrals occurring between March 2011 and June 2012.¹⁰⁰ The 12 completed cases involved victimisations of adults and children.¹⁰¹ In nine cases the sexual violence had occurred in the last three years, in three cases the violence was historical.

The authors identified a range of justice needs as outcomes desired by victims. Findings indicated that the vast majority of these were reported to have been achieved through the facilitated RJC.¹⁰² Victims' justice needs identified, together with their rate of achievement, included:

- **Participation** – this was the most frequent justice need identified, with all 12 victims identifying at least one or more participation-related need including: wanting input into either negotiated outcomes, sentencing, and/or safety plans; wanting to have questions answered; and wanting to gain understanding of the person's offending cycle. All but the last of these was reported as 'achieved'.
- **Voice** – six victims reported that their strongest felt need was to 'tell their story', and five reported that they wanted to tell other participants of the impact of the sexual violation on their lives. In each case these outcomes were felt to have been successfully achieved.
- **Validation** – five victims wanted the harm they had experienced to be acknowledged. Another five wanted their relationship with whānau or family restored, with one victim desiring an improved relationship with the non-offending parent.¹⁰³ In the most part these needs were recorded as having been addressed.
- **Vindication** – five victims expressed a justice need related to vindication: four wanted an apology, in three cases they wanted a reparation agreement, and in one case the victim wanted the offender to experience a sense of loss as a form of consequence (not necessarily imprisonment). All identified needs were achieved as outcomes.
- **Accountability** – six victims wanted to see the offender accept responsibility, five wanted to 'hold the offender to account', and three wanted the offender to identify other victims who they had similarly harmed. Four out of the six who wanted to see the offender take responsibility achieved their goals, and all five cases where victims wanted the offender to be held to account achieved their desired outcomes. However, those who wanted the offender to confess to their other victims felt frustrated.

In this study, outcomes desired by victims that were not achieved tended to be ones that demanded the offender demonstrate responsibility and accountability (e.g. understanding the impact of their harmful sexual behaviour). It may be that the staging of RJs at pre-sentence (and thus prior to treatment) might have meant that some offenders had yet to develop the insights necessary for these types of outcomes to be achieved.

5.1.3 Comparative analysis (RJ compared to standard CJS)

Research that provides a comparative analysis of the impact of different justice mechanisms on victims' justice needs is clearly needed to develop a better evidence base within this field of interest.

¹⁰⁰ There were 39 referrals in total, with 12 cases resulting in a conference (31% completion rate). Of the 27 referrals that did not proceed, 13 related to the victim-survivor not wanting to participate, 2 cases were assessed as unsuitable by Project Restore's clinical team, 2 cases were resolved by other means, 2 were incomplete at the time of the file review, and no reason was specified in the further 8 cases.

¹⁰¹ Children under 12 years were represented by family members

¹⁰² A total of 87 individual justice needs were identified, each relating to one of Daly's five victims' justice needs. Of these, 81 were achieved (93%).

¹⁰³ Jülich and Landon extended the interpretation of validation to include restoration of relationships with family members as an indication that the victim had been believed.

As asserted by Daly ‘we need to see the value of different justice mechanisms and not be tied to just one’ (Daly, 2017, p.125).

A few studies were identified that provided this type of evidence. This included some of the specific findings of the RCT studies considered earlier, especially those with findings related to justice needs around ‘offender accountability-taking responsibility’ (Strang et al., 2013; Sherman et al., 2015). One qualitative review was also identified that used victims’ justice needs as the central framework for analysis (Daly and Wade, 2017). As intended by the authors, this latter study provides a workable example of the approach that is required in order to build a more credible evidence base around the value of alternative justice mechanisms for victims. Without studies providing a comparative analysis of justice mechanisms, Daly and Wade suggested:

‘...it will matter little that a substantial body of research on victims reaches the predictable conclusion that conventional criminal justice mechanisms often fail them. What victims, victim advocacy groups and policy makers will be persuaded by (and learn from) are comparisons of justice mechanisms.’ (Daly and Wade, 2017, p.144).

Offender accountability-taking responsibility

Offender accountability-taking responsibility is one of the core justice needs of victims identified by Daly (2014, 2017). RCT studies have compared outcomes for victims randomly assigned to RJC and standard court processing, where the outcomes of interest were whether an offender showed genuine remorse, and if victims received material restitution.

Receipt of an apology - the formal justice system provides little opportunity for offenders to apologise, particularly in person to the victim, yet for victims this can be an important justice need. Both the Australian and UK RCTs found significantly more victims assigned to RJC received an apology, and importantly one they perceived as sincere (Strang et al., 2013). For example, the Australian studies by Strang and colleagues found that while most victims wanted an apology (90%), not all got one, but significantly more of the victims who participated in the RJC did (72% compared to 19% of the court-assigned victims). The UK RCT studies with victims of more serious offending found even greater differences; for burglary victims (96% compared to 7% of court-assigned) and for robbery (100% compared to 14% of court-assigned victims). Importantly across both Australian and UK experiments, the RJC-assigned victims were more likely to receive apologies they perceived to be sincere (see Strang et al., 2013).¹⁰⁴

Material restoration –in the form of financial reparation is important for some victims, particularly victims of property crime.

In two of the Australian RCTs, Strang et al. (2013) reported that material restoration was not always of primary importance for victims, which they point out was just as well, given how few were awarded financial restitution in either RJC or through court proceedings. For example, of the 47% of court-assigned victims who wanted monetary compensation in recognition for the harm suffered, only 12% received it. Likewise, of the 38% of RJC-assigned victims who wanted money, a similarly low proportion (16%) received it (Strang et al., 2013).

¹⁰⁴ The Aotearoa NZ victim satisfaction survey asked victims if they felt the offender’s participation was sincere, 65% of those victims that participated in the survey agreed the offender was sincere in their participation (Gravitas, 2018).

One of the known weaknesses of many programs involving restitution however is that mechanisms to monitor compliance often don't exist, or fail, and there tends to be no follow-up or consequences in cases of non-payment by the offender.

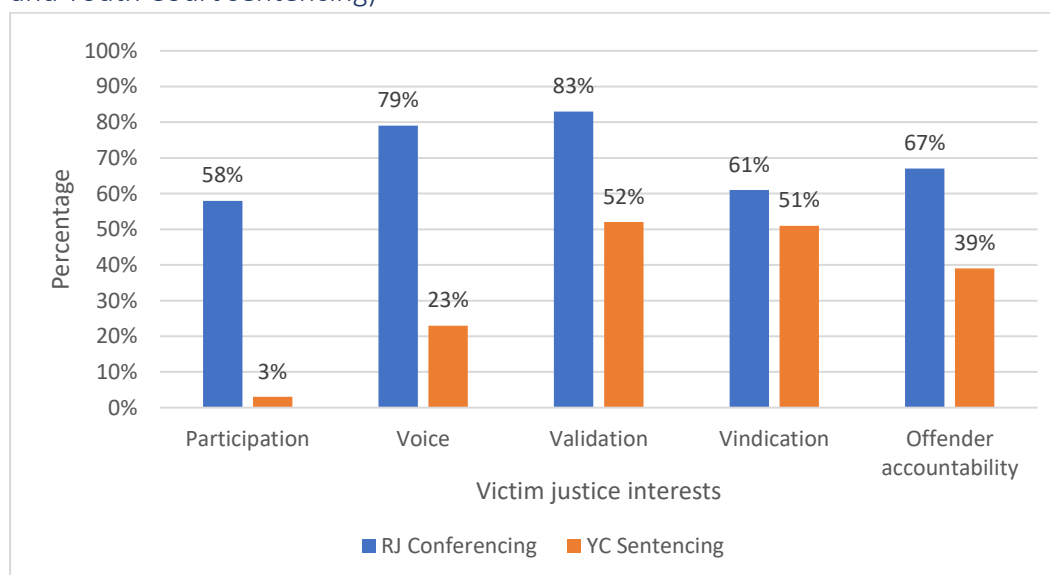
Victim justice needs as the primary construct

One study was identified that conducted comparative analyses where victims' justice needs were the central framework.

Daly and Wade (2017) – this study compared youth RJC and judicial sentencing through Youth Court in South Australia on their impact on meeting the justice needs of victims of sibling sexual abuse. Seventeen cases were analysed, six of which were finalised by diversionary youth justice conferences, and eleven sentenced in the Youth Court.¹⁰⁵ All but one of the offenders were male, and victims predominantly female. The mean age for offenders was between 14 and 14 ½ years and for victims, seven to nine years. A mixture of data was available for analysis including interview data with victims, their representatives and/or coordinators, police reports, re-offending data and, where applicable, sentencing notes.

Cases were analysed for the degree to which each of Daly's (2014, 2017) five justice interests were achieved (i.e., participation, voice, validation, vindication, offender accountability-taking responsibility – see Box 1 for further description). The authors computed a score for the extent each justice interest was achieved in the two justice mechanisms – RJC or Youth Court sentencing. Their findings are presented graphically in figure 2 (adapted from findings presented by Daly and Wade, 2017).

Figure 2. Degree victim justice needs are achieved by two justice mechanisms (RJ Conferencing and Youth Court sentencing)



As seen can be seen from the data in figure 2, this approach enables easy comparison of the two justice mechanisms under study. The RJC performed strongest for *voice* and *validation* (needs achieved in around 80% of cases) followed by *accountability-taking responsibility* (67%). Conferencing provided opportunities for victims (or their representatives) to have a speaking role in the process and

¹⁰⁵ Cases were drawn from larger datasets from at least three different research studies and analysed retrospectively for this study (see Daly and Wade, 2017 for details).

also to ask questions. Experiencing validation was assisted by conferencing enabling the impact of the offence to be made explicit.

The Youth Court sentencing performed best on measures of *validation* (52%) and *vindication* (51%), with the vindication score being close to that for RJ conferences (61%). Experiencing vindication was helped through the delivery of sentencing by a legal authority, with clear moments of censure and acknowledgement of the seriousness of the offending. However, *voice* and *offender accountability-taking responsibility* were weaker (25% and 40% respectively) and *participation* was almost nil for victims with Youth Court sentencing.

The analysis proceeded with an in-depth qualitative review of how each outcome had been achieved by the two justice mechanisms. This provided important insights into the strengths and limitations of each mechanism, and importantly enabled recommendations for how each could be improved in order for additional justice needs to be addressed.

Examples of recommendations for improvement included:

- **RJC** – (when used as a diversion or pre-sentence) – linking the negotiated outcome with the wrong and the harm suffered because of the offence and not moving too quickly to a focus on rehabilitating offenders. This could improve a victim’s sense of vindication and validation of harm done.¹⁰⁶
- **Youth Court sentencing** - Judicial officers could do more to recognise victims and their supporters in the court room and sentencing remarks could do more in describing the impact of the offence. This could improve a victim’s experience of both voice and validation.

The authors acknowledge the challenges of comparing justice mechanisms and offer their approach as a way to move forward even with typically ‘imperfect data’. They conclude that the aim of research should be to identify what some justice mechanisms can do better than others, and from this to re-think and transform a range of activities, both in legal settings and civil society, for ‘doing justice’ more effectively (Daly & Wade, 2017, p.163).

¹⁰⁶ There were two cases where disappointment was registered by victims either because their views were not taken into account, or because victims did not accept elements in the agreement.

6.0 Issues and challenges to implementing victim-led alternative justice processes

Meeting the disparate needs of victims, whilst maintaining the integrity of the rights of offenders and public interest concerns, is no easy task. This section reviews some of the victim-related issues and challenges to implementing alternative justice processes along with some suggestions on their remediation. This will include their positioning in relation to the CJS, factors impacting on a victim's physical and emotional safety, dealing with privacy concerns, facilitating access for victims, and ensuring that agreed outcomes are delivered.

As with other sections, much of the content of relevance for this section relates specifically to RJ. There have been a number of reviews and detailed proposals that have considered how alternative justice processes should be implemented (e.g., the Centre for Innovative Justice, 2014; Law Commission, 2015; MacDonald & Tinsley, 2011; Victorian Law Review Commission, 2021). Whilst these have all focused on responses to sexual offending, they also have relevance to victims of other crime. Highlighted in this section are the main implementation considerations that have been raised in these reviews. For the purposes of this report, this material is structured around considerations from a victim's perspective - how implementation impacts on:

- victim control over the timing and pace of the process (i.e., be victim-led, see section 3.2);
- addressing the justice needs of victims (i.e., victim-focused, see section 3.3).

6.1 Positioning of alternative justice processes in relation to CJS

The location of alternative justice processes - either outside of, or at various stages within the CJS – is one of the more important considerations from the perspective of the victim of crime. Below are summaries based on analysis of benefits and disadvantages of various positionings from the perspective of the victim. Some themes identified are relevant to more than one stage.

6.1.1 Pre-charge/pre-trial diversion

Alternative processes positioned pre-charge or pre-trial are often aimed at diverting offenders from the court process; they are mostly applied to minor offences and/or first-time offenders. Victims may or may not be consulted on the use of these processes to resolve their case, and they can and do proceed without victim participation. Examples in Aotearoa NZ include FGCs, Police Adult Diversion, and Te Pae Oranga (see Part B-5.0).

Two benefits for victims of crime were identified for this early positioning of alternative processes. Interestingly the first was highlighted by Mary Koss, a strong victim advocate:

- **Accessibility to a greater number of eligible victims (SV)** – in relation to victims of sexual violence, where high rates of attrition occur as cases progress through the CJS, the number of victims being available for alternative schemes diminishes at each stage (Koss, 2014). This was the reason why the USA-based victim-led RESTORE (for victims of sexual offending, see Part B-5a) was designed as a pre-trial diversion scheme.
- **Provides an alternative resolution** – some victims, particularly those where the offending was committed by family members, do not want the offender prosecuted (MacDonald & Tinsley, 2011). A RJ diversion at an early stage provides an option where the offenders can be held accountable, and plans put in place to reduce risks of re-offending, whilst avoiding prosecution.

However, concerns for victims were more frequently identified in relation to this positioning, including:

- **Low rates of victim participation** – as Johnstone (2017) notes, victims need to participate in a process (like RJ) in order to derive any benefit from it, but alternative processes at early stages of the CJS are commonly observed to proceed without involvement of the victim. For example, in youth justice FGCs, less than 50% of cases involve victims (Maxwell et al., 2004; Oranga Tamariki, 2020b),¹⁰⁷ and for adult schemes it can be as low as 20% (Hill 2002; Akroyd, et al 2016). Victim participation in decision-making is also severely restrained, with police prosecutors retaining almost complete control over referral decisions; similarly, the content and monitoring of plans usually sits within the domain of police, other agencies, community-panels and families.
- **Primary aims are usually not victim-focused** – diversionary mechanisms tend to be almost exclusively focused on the young person/offender, and achieving outcomes for them such as reducing re-offending and supporting reintegration into the community. While some victims are motivated to participate for altruistic reasons such as wanting to help the offender (Van Camp, 2017), others can feel their participation is co-opted into serving solely the offender’s rehabilitation (Wemmers, 2020).
- **Not victim-led** – this is particularly true for youth justice FGCs, where strict statutory time limits for holding FGCs dictate when the process occurs; victim availability or readiness to participate is unable to be accommodated (Oranga Tamariki, 2020b).
- **Pressure to participate** – a small but not insignificant number of victims report feeling coerced to participate in diversionary processes, either due to a felt sense of responsibility for the offender’s future, or because the process offers the sole option for receiving some form of restitution (Wemmers & Canuto, 2002). Some offenders may opt into the process as a means of avoiding prosecution (Laximinarayan, 2014), in which circumstances any professed acceptance of responsibility - which is critical to the process being meaningful for the victim – may not be genuine (Branham, 2021). Together, these issues risk making the system one that victims experience as revictimizing.

Advocates have identified ways whereby offender-focused pre-trial alternative justice programs can facilitate greater victim-inclusion while also ensuring that victim participation is safer and beneficial. Suggestions included:

- **Clear and ‘up-front’ communication of programme aims** – this ensures victims are able to make informed choice around their participation, and have realistic expectations around their role, and possible outcomes of the process (Johnstone, 2017; United Nations, 2020; Victorian Department of Justice and Community Safety, 2021).¹⁰⁸
- **Increased consultation with victims** – in the particular context of sexual offences (but relevant to other matters), the Centre for Innovative Justice recommends that the wishes of the victim should be a core consideration in guiding any decision about whether a matter proceeds as diversion (Centre for Innovative Justice, 2021).
- **Provide the offer without pressure to participate** – as highlighted by Marinari (2021) a genuinely victim-focused service would proactively enable victim choice, but not presume that victims’ interests can be addressed by RJ in all cases.

¹⁰⁷ With just 21% of victims attending the FGC in person (Spier & Gill, 2021).

¹⁰⁸ See the following media report of one victim very dissatisfied with the outcome of a Te Pae Oranga conference they participated in, having misunderstood the offender-focused aims <https://www.stuff.co.nz/national/crime/127347067/victims-feel-let-down-by-hawkes-bay-iwi-justice-process-over-demolition-of-old-family-home>.

- **Provide access to support for victims** – in offender-focused alternative processes like diversion-based RJs, a victim can feel ‘out-numbered’ by those present, and thereby feel pressured to support the offender and other offender-focused stakeholders (particularly youth justice FGCs); the provision of a victim advocate supporting the victim in such discussions would help reduce this kind of imbalance (Oranga Tamariki, 2020b).
- **Ensure community-based treatment is available** – as noted above, some victims report participating solely in order to assist with an offender’s rehabilitation (Van Camp, 2017). This outcome, however, is only realistically achievable where there is potential access to community-based treatment. The reality is that such options are limited (Centre for Innovative Justice, 2021; MacDonald & Tinsley, 2011).

6.1.2 Pre-sentence

In Aotearoa NZ, pre-sentence court-referred RJ is the predominant alternative justice process available to victims (see Part B-6.0). Legislation was amended in 2014¹⁰⁹ to require the court to adjourn proceedings following a guilty plea to allow RJ to be considered; the Judge was also required to take into account the outcomes of any RJ process in later sentencing of the offender. This has resulted in considerable increases in State funding to the RJ providers who deliver services at this stage of the CJS. This proactive legislative approach is frequently cited as an example of an effective means of promoting access to RJ (Banwell-Moore, 2022; United Nations, 2020; Victorian Law Review Commission, 2021). Other countries (Canada, Australia, United Kingdom) *allow for* sentencing to be deferred for RJ to be considered, but do not make it mandatory.

Below are some of the merits for victims of providing a mandated approach to alternative justice processes post-conviction and pre-sentence:

- **Increased opportunity for victim access** – RJ offered at this stage not only offers all eligible victims the opportunity to participate in RJ, but also increases the likelihood of an offender agreeing to participate, given that a ‘successful’ RJ process may positively influence subsequent sentencing. Relatedly, early RJ processes may make it more likely that reparative arrangements are agreed to by the offender, and are more likely to be complied with, which is of course in the interest of victims.
- **Available for victims of more serious crime** – no eligibility restriction is applied in Aotearoa NZ with respect to the type of offending,¹¹⁰ and some research suggests victims of more serious crime – who likely suffered the greatest emotional impact - can benefit the most from RJ (Centre for Innovative Justice, 2019a; Shapland et al., 2007).
- **Greater role for victim** – unlike pre-charge/pre-trial, RJs at pre-sentence do not proceed without the consent and expected participation of the victim.
- **Vindication through conviction already established** – RJ at this stage proceeds after formal recognition of the wrong has occurred (i.e., offender has been convicted). As such, RJ is providing an option for victims to address additional justice needs unmet through a conviction alone.

Whilst there appears to be a greater potential for positive benefits for victims at this stage over pre-charge/pre-trial options, there are also a number of identified concerns:

- **Risk of ulterior motive for offender participation** – where participation is taken into account in subsequent sentencing, there is a risk that some offenders may be motivated to ‘game the

¹⁰⁹ Sentencing Act 2002 & 2014, Parole Act 2002, Victims’ Rights Act 2002, Corrections Act 2004.

¹¹⁰ Although cases will only proceed after careful screening for suitability by RJ providers.

system' (i.e., participate in order to obtain a lighter sentence). Victims are usually extremely sensitive to the perceived sincerity of the offender, and an evident lack of sincerity is associated with dissatisfaction and feelings of revictimisation (Branham, 2021; Wemmers & Canuto, 2002).

- **Timing and pace not driven by victim needs** – the timeframe for pre-sentence RJ is not designed around victim emotional readiness. Particularly for victims of serious and violent crime, it is unlikely that sufficient time has passed for them to have recovered from the traumatic impact of their victimisation and feel sufficiently ready to participate (D'souza & Shapland, 2021; Jülich & Bowen, 2015; United Nations, 2020; Zebel, 2017). Further, RJ at this point usually occurs before an offender has received any treatment, the absence of which may mean they lack sufficient insights into their offending to participate meaningfully in the RJC (Chan et al., 2016; MacDonald & Tinsley, 2011; Marinari, 2021).
- **Primary aims not usually victim-focused** – while it is possible to deliver RJ at pre-sentence that is focused on a victim's justice needs (see Part-two-6.0 for examples), in the main the primary aims of processes at this stage are still weighted towards the offender (e.g. court-initiated referrals with requirements for a report to be provided to assist with the sentencing of the offender).
- **Reduced access to other pathways** – some victims object to the possibility that an offender could gain a sentencing benefit via participation in a RJ process (Centre for Innovative Justice, 2021). A victim could still choose to participate at a later stage, but in Aotearoa NZ the heavy emphasis on pre-sentence RJ has meant little funding exists to support conferencing at later stages in the process.
- **Final decision on outcomes can be dis-empowering for victims** – with RJ at pre-sentence, it is the Judge who has the final say on how the offender is sentenced. This can at times mean outcomes are at odds with what the victim wanted from the restorative process (Gordon, 2019).

Some of the opportunities for enhancing victim experience overlap with those identified above (e.g., importance of clear communication of programme aims to victims), others include:

- **Making it clear to victims the extent to which RJ outcomes will be considered at sentencing** – as recommended by the Centre for Innovative Justice (2021) and the Victoria Law Review Commission (2021) greater certainty for both parties could be provided if this was outlined in legislation. Whilst there is clarity in NZ legislation that the outcome of the process *will be* considered by the Judge, this does not extend to any guidance on the likely weight accorded to an offender's participation.¹¹¹ Whilst a complex task, analysis to provide more information on this to victims (even averages and/or outer ranges) might help a victim in making more informed choices around their participation.
- **Expand State-funded RJ at all stages of the CJS, and for those outside of CJS** – to ensure victims can access RJ at a time that accords with their personal sense of readiness and desire to engage.¹¹²

¹¹¹ Section 8 of the amended Sentencing Act 2002 states a Judge 'must' take into account any outcomes of restorative justice processes that have occurred. Interestingly Australian legislation in ACT does not make it mandatory – rather it states the Judge is not required to reduce the severity of any sentence (Crimes (Restorative Justice) Act 2004 (ACT) Section 32(f)(i)).

¹¹² See for example Part B-6b, 6c, where the availability of victim-led RJ is expanded through the state sanctioning, funding and provision of RJ at any stage of the CJS and for suitable cases outside of it.

6.1.3 Post-sentence

With priority given to pre-sentence alternative justice in Aotearoa NZ, post-sentence options for victims are less developed, and certainly less so than those in some other jurisdictions (see Part B-1g, 1h, 1i). Whilst the number of victims who express interest is typically quite small, post-sentence options can provide an important means of addressing unmet justice and recovery needs for these victims. Key considerations include:

- **Victims can participate without risking unintended CJS benefits for the offender** – this can be particularly relevant for victims of serious crime (e.g. victims of serious assaults, families of victims of homicide). Post-sentence restorative processes provide these victims with an opportunity to participate after the CJS process has been completed (United Nations, 2020) and thus minimise risks of offenders playing the system (although this risk remains in cases where an offender’s participation in RJ is included in submissions to the Parole Board).
- **Timing can be victim-led** – unlike pre-sentence, there are few court-imposed timeframes for conducting RJs (other than sentence expiry date). This means a victim can elect to participate at a time when they feel ready and able to participate meaningfully (Chan et al., 2016; United Nations, 2020). Importantly, there is also more time for preparation to occur to ensure a safe and effective process, as well as the offender being more likely to have benefitted from correctional rehabilitation (Miller and Iovanni, 2013, cited in Marinari, 2021).
- **Weighted towards victim-focused aims** – with formal CJS processing complete, outcomes from a restorative process can be more exclusively focused on addressing a victim’s unmet justice and recovery needs (Parvelka & Seymour, 2019; Wemmers & Canuto, 2002; United Nations, 2020). Potential benefits for the offender at this stage can still occur, but are more likely to be secondary to those for the victim.
- **Provide avenues for victims of serious crime** – as already noted in 6.1.2, victims of serious crime may experience the greater benefits from RJ but, as found by Zebel et al. (2017), victims of more serious crime become more likely to want to participate only after the passage of time (i.e., post-sentence).

The delayed timing of alternative justice processes at this stage, whilst associated with benefits for victims, was also related to the main concern identified:

- **Potential negative impact on victims approached who are not interested** – where post-sentence processes can be initiated by an offender, there is a risk that victims approached at this later stage, and who are not interested, may experience adverse impacts. For example, as noted by Wemmers and Canuto (2002), being belatedly approached to participate may bring back bad memories that add to the victim’s suffering and/or have no benefit for them. This may particularly be the case amongst those who have striven to put the victimisation experience behind them, and who had no felt desire or need to ever again encounter the offender. Little information is available on the impact on victims who are approached but who then decline, as most research focuses on those who participate. Just one older study was found that suggested a small proportion of victims (6%) found being approached an unpleasant experience.¹¹³

Options for maximising the interests of victims at this stage include:

¹¹³ See Hecke and Wemmers, 1992 cited in Wemmers and Canuto (2002).

- **Restricting the option solely to referrals initiated by the victim** – this would address the concerns raised above, and is the approach used in most Victim Offender Mediation programmes in the USA (see Part B-1i).
- **Incorporating RJ into other post-sentence victim services** – this would overcome informed consent issues and enable offers of RJ to be considered within the context of victim support services. See for example the Restorative Justice Unit in NSW, (Part B-1g), where the Victims Register is used to support victims in a case management-like function, within which additional or other service needs are identified, including requests from victims who wish to engage in some form of reparative dialogue with ‘their’ offender.

6.1.4 *Alternative processes operating outside CJS*

This section relates to alternative justice processes for victims who have not had formal involvement with the CJS.¹¹⁴ As such, options here offer an opportunity for victims to access justice that might not otherwise be available. This was the rationale behind the Law Commission (2015) proposal for an alternative justice process outside of the CJS for victims of sexual offending. The Law Commission’s comprehensive report traversed the many implementation issues, and little has changed over the years since to affect the relevance of these considerations.

In broad terms potential benefits of a community-based alternative process include:

- **Primary aims can be specified as victim-focused** – outside of the CJS there are fewer structural barriers to delivering a victim-focused process (Jantzi, 2001). Informal community-based referrals tend to be instigated by victims and their families, with an accompanying focus on outcomes relevant to them (e.g. meeting a victim’s justice needs, contributing to therapeutic outcomes, addressing treatment and safety concerns, and restoring family relationships (Chief Victims Advisor, 2020)).
- **Offers an alternative resolution option to prosecution** – for those victims who do not want to report their victimisation to police and/or do not want the offender prosecuted (e.g. where the offender is a family member, see also 6.1.1.) such options provide a justice mechanism that would otherwise be unavailable.

Many of the concerns raised about informal responses relate to public and offender interests rather than those of the victim. These include concerns that an informal response may hide potentially serious offending from public view and accountability (Law Commission, 2015; Victorian Law Review Commission, 2021); and that public safety may not be adequately protected through an informal response (especially where an offender represents an on-going risk to the community). In response to the latter concern the Law Commission relayed an argument put forward by Project Restore that, without an alternative mechanism, these matters would not otherwise enter the CJS. Consequently, for those who engage in this alternative process it will potentially reduce the risk for both the victim and the wider public (e.g. where provision of treatment for the offender is part of the outcome). This view aligns with the recommended approach in several Australian jurisdictions (e.g. Victoria and ACT)¹¹⁵ where there are clear protocols and guidance that an alternative process should not be used

¹¹⁴ Post-sentence processes also operate independent of the CJS (see section 3.4) but issues have been reviewed in 6.1.3.

¹¹⁵ In the Australian Capital Territory, a person can be referred for restorative justice before other options for dealing with an alleged offence are considered. However, the legislation provides that ‘the referral is to have no effect on any other action or proposed action in relation to the offence or the offender’. As a result, charges may still be filed or a prosecution continued regardless of a restorative justice process or outcome: *Crimes (Restorative Justice) Act 2004* (ACT) s 7(1)–(2).

instead of CJS (i.e., where police are deciding whether to charge or prosecute) but to supplement it (and not be available during a prosecution).

Another significant and complex issue associated with interventions positioned outside the CJS relates to the potential impact on any subsequent legal proceedings. When processes occur before a conviction, there is potential for participation in the process (and information shared during a restorative process) to be used to the detriment of parties in subsequent legal action. This issue is largely one affecting the offender, but there are at least three ways it could also affect - directly or indirectly - the victims (see section 6.2.2 below for more details):

- possible risks may influence the offender not to participate, thereby removing this as an option for a victim to achieve resolution;
- possible risks may hamper the offender's openness and honesty in the process, thereby reducing the likelihood of benefit to the victim;
- victims also face risks that statements disclosed by them are similarly used against them at a later stage, if they decided to subsequently pursue the case through CJS or civil proceedings.

However, perhaps the most significant victim-specific issue relates to the absence of any formal processes for delivery of quality and safe practice for victims (Keenan et al., 2017). These issues are dealt with more generally in the next section.

6.2 Other victim-related implementation issues

Below is a high-level summary of other victim-related implementation issues. It was beyond the scope of this report to review these in detail; however, the most frequently identified issues are noted, and their current relevance to Aotearoa NZ considered. Issues covered include victim safety, legal protections, monitoring outcomes, facilitating access and understanding victim-related supply and demand issues.

6.2.1 *Victim safety*

From the perspective of the victim, perhaps the most critical implementation consideration is how to deliver an alternative process in a manner that ensures the victim's emotional and physical safety, both before, during and after an alternative process like RJ.

The issue of safety is of particular concern in relation to: (1) victims of serious crime (Chan et al., 2016; United Nations, 2020); and (2) where complex interpersonal dynamics are at play such as with family violence and sexual violence (Centre for Innovative Justice, 2014; Victorian Department of Justice and Community Safety, 2017; Keenan, 2014). Victims of these serious crimes are more likely to have experienced severe emotional impacts and, for some, grief following a significant loss. The special needs of these victims must be carefully managed.

For victims of gender-based crimes (intimate partner violence and sexual violence), there are particular concerns that a restorative process may facilitate the continuation of intimidation and manipulation, whereby the dynamics of the reported violence come to be repeated, and the victim re-traumatised (Evans, 2021; Victorian Department of Justice and Community Safety, 2017). These power dynamics and imbalances make a victim-led, victim-focused approach even more crucial in order to restore power to the victim, and keep the victim safe (Jülich & Landon, 2017; Department of Justice and Community Safety, 2017; Evans, 2020).

In relation to family violence, risks to safety are associated with often cyclical patterns of behaviour, usually reflecting entrenched attitudes and beliefs and the offender's capacity to manipulate and control the victim. These dynamics pose particular risks and challenges (Loff et al., 2019). For this

reason, the Ministry of Justice (2019b) cautions against recommending RJ as a standalone intervention. Instead, RJ should be seen as one step in a longer programme of change.

Some jurisdictions have resisted the involvement in RJ of victims of more serious crime including family violence and sexual violence because of these safety concerns. Others argue that all victims should have the option of making an informed choice as to their participation (Keenan, 2017; Mercer et al., 2015). This latter argument is based on the rationale that denying victims agency and opportunity is disempowering and also at odds with victim's right to be informed of, and have access to, alternative services such as RJ (Branham, 2021; D'Souza & Shapland, 2021; Keenan et al., 2017; McGlynn et al., 2012).

Consequently, there is increasing consensus that it is preferable to manage victim safety through the implementation of certain safeguards, including the use of specialist providers and facilitators with offence-specific knowledge (Keenan, 2014; Law Commission, 2015; United Nations, 2020). Also important is official oversight of the quality assurance and safeguarding mechanisms including careful screening for suitability (Keenan, 2017; Law Commission, 2015).

This has been the approach adopted in Aotearoa NZ, which has been among the first to formally endorse the use of RJ without offence eligibility restrictions, including use in cases of family violence and sexual violence.¹¹⁶ This has included: (1) the development by the Ministry of Justice of specialist practice standards, with additional safeguards and processes for victims of sexual violence (Ministry of Justice, 2013) and family violence (Ministry of Justice, 2019b); and (2) oversight of a specialised approval process by the Ministry of Justice for facilitators to deliver these RJ services.

In addition to standard good practice principles (e.g., informed consent, voluntary participation, respect), safety-related elements include the importance of careful screening, accurate risk assessment, and intensive preparation for the conference. Facilitators also need to have demonstrated specialist expertise in managing the impact of trauma, understanding of offence-specific power dynamics, and ability to assess on-going risk. Screening requires acceptance that not all cases will be suitable, and that on occasions facilitators are required to identify and screen out those unsuitable (i.e., unsafe). Other risk prevention strategies include the use of risk management and victim safety plans, and access to on-going support before, during and after conferencing. Finally, a sufficiently flexible process is required that can, for example, respond to victims who wish to participate but without direct contact with the offender (see for example the range of options for victims of family violence provided by the Victorian Family Violence Restorative Justice Service, Part B-6b and Project Restore NZ, Part B-1a).¹¹⁷

Safety aspects covered by these elements are intrinsic to programmes that have adopted a victim-led approach to delivery. Being victim-driven is a specific requirement in the Ministry's sexual offending practice standards (Ministry of Justice 2013), although less explicit in the family violence standards (Ministry of Justice, 2019b). An example of a victim-led approach to RJ with family violence cases can

¹¹⁶ In the early 2000s four pieces of legislation were passed (Sentencing Act 2002, Parole Act 2002, Victims' Rights Act 2002, Corrections Act 2004) that had the effect of formalising the use of restorative justice in response to crimes committed by adults. With amendments in 2014, New Zealand legislation has provided that all criminal cases (subject to certain criteria) must be adjourned for restorative justice to be considered prior to sentencing, although parties can opt out if they do not wish to participate. No offence type is expressly excluded; very serious crimes including sexual offences and family violence can be referred for restorative justice conferencing.

¹¹⁷ Options can include victim only process where the victim may wish to hold an organisation to account, shuttle mediation (no face-to-face contact), or use a Victim Impact Panel or Community Panel (to address a specific audience without directly involving offender).

be seen in the Victorian Family Violence Restorative Justice framework (Victorian Department of Justice and Community Safety, 2017).

The use of RJ for cases involving family violence remains under close scrutiny. The Ministry of Justice monitors levels of satisfaction of family violence victims who participated in pre-sentence RJ, which to date has been high (see section 5.1.1, Gravitas, 2018).¹¹⁸ The Chief Victims Advisor also recently commissioned an independent review of RJ in family violence cases in Aotearoa NZ, with a particular focus on investigating the potential for victims to be controlled and coerced to participate by the offender (see Paulin et al., 2021). The authors concluded concerns over coercion and controlling behaviour were unlikely, so long as RJ services were delivered by specialist RJ practitioners with significant experience of working with cases of family violence. The adequacy of information to these providers to enable accurate risk assessment, and a fee structure that incentivises practitioners to encourage the victim to proceed with the process, were however flagged as issues requiring further investigation.

6.2.2 Protection of privacy, confidentiality, and due process

It is generally accepted that ‘what is said and done’ during an alternative process like RJ should remain confidential (United Nations, 2020; Victorian Law Review Commission, 2021), albeit with a few specific limitations.¹¹⁹ This is important in order to protect the legal rights and due process for offenders which, as outlined above, also has implications for victims. However, keeping matters confidential can be at odds with public safety interests.

The principle of confidentiality is designed to allow all parties to participate in good faith, to express themselves honestly and freely during the RJ process, without fearing that what they say may be able to be used to their detriment in any other civil or criminal proceedings (Centre for Innovative Justice, 2021).¹²⁰ However, the issues around legal privilege (to ensure confidentiality) are both complex and subject to change, depending on: the interests of different parties; the nature and extent of the offending; the possibility that more than one offender or victim is involved; and the positioning of the intervention in relation to the CJS. The Law Commission has reviewed these issues in detail in relation to an alternative resolution process for sexual offending and provided recommendations for legislative changes. These recommended changes (or the process itself) have so far not been progressed (see Law Commission, 2015).

In Aotearoa NZ there is no legislation that explicitly protects the use of information disclosed in an RJ process from being admissible as evidence in another legal proceeding. Instead, providers and participants must rely on the principles of voluntary participation, the signing of confidentiality agreements, and informed consent (that includes an explanation of any limits to the confidentiality). These measures, however, cannot guarantee confidentiality or privilege for any criminal offending the offender might admit to (Macdonald & Tinsley, 2011; Law Commission, 2015). For this reason, providers like Project Restore inform offenders that victims are able to withdraw at any time, are not

¹¹⁸ Overall victim satisfaction was similar for standard conferences (83%, n=201), and for family violence conferences (87%, n=158).

¹¹⁹ For example, where there is an immediate risk for harm to a person, where participants agree to disclosure or where statements or information may need to be disclosed in court for some purposes.

¹²⁰ Participation in RJ can be used to indicate guilt as an offender must have admitted responsibility to participate. Admissions of guilt or other disclosures during the process can be used as evidence in subsequent criminal or civil proceedings. If other legal proceedings were later pursued, an offender could be penalised twice. For a victim there is no guarantee that notes from a conference won't be subpoenaed and used against them.

restricted from pursuing a prosecution, and that they ought to obtain legal advice. Where an RJ process continues, Project Restore records the conversations as ‘therapeutic interventions’, with the expectation that conversations will be protected (see Jülich et al, 2010). However, protections afforded due to the designation of it being a ‘therapeutic intervention’ have yet to be tested in court, and without more concrete protections, legal advice would likely be that the offender ought not to participate (Law Commission, 2015).

Other jurisdictions have provided more clarity through legislation (as also recommended by the Law Commission, 2015). For example, Canadian federal legislation lays out the minimum procedural safeguards for the use of ‘alternative measures’ such as RJ in the adult jurisdiction, with similar conditions for ‘extrajudicial measures’ in the youth jurisdiction.¹²¹ These include: an offender’s right to access legal counsel before informed consent is obtained; the provision of evidential privilege against the use of admissions or confessions in subsequent criminal or civil proceedings; and the barring of subsequent punishment where a restorative agreement has been reached (or partially reached).

Similarly, in the Australian Capital Territory (ACT) there is RJ specific legislation (the Crimes (Restorative Justice) Act 2004) which specifies that: participation in RJ should not be deemed to signify an admission of guilt for the purposes of a criminal prosecution (section 20); criminal repercussions can follow for disclosing confidential information from the RJ process (section 64); and that statements made by an offender during RJ are not admissible in court if they relate to less serious offences (section 59).

6.2.3 Monitoring compliance with outcome agreements

One of the benefits to victims in participating in an alternative justice process is the ability to have input into agreed outcomes on how an offender can make amends. This can include paying financial reparation to the victim or making a commitment to participating in treatment (e.g. for harmful sexual behaviour, anger management, addiction therapy). However, for a victim to feel the offender has been held to account and justice has been done, it is important that the offender subsequently carries through with these agreed commitments.¹²²

There was evidence located that RJ processes are associated with higher rates of offender compliance with agreed outcomes than was achieved as a result of court-imposed orders (Latimer et al., 2005; Strang et al., 2013). However, whilst rates were higher with RJ, the majority of these victims who were promised monetary compensation in fact did not receive it (Strang et al., 2013).¹²³ This raises the question of how best to monitor and enforce compliance with actions agreed to following an RJ process. Unfortunately, no research was located that evaluated the effectiveness of different compliance methods.

Alternative processes operating outside the CJS face greater challenges in enforcing or monitoring compliance, given the lack (usually) of formal oversight, or supporting legislation. As such, those within the CJS appear better placed. Incentives for compliance are usually multiple, with the option remaining open of matters being referred back to the courts for disposal if agreed terms are not met. Further, the monitoring of agreements (and supporting offenders to adhere to them) is an integral part of most alternative diversion schemes like community-panel conferencing, as well as alternative

¹²¹ See Canadian Criminal Code, section 717(1) to (4) and Youth Criminal Justice Act (2002) section 10(2) to (5).

¹²² Offenders not doing what was agreed has consistently been found to contribute to victim dissatisfaction with pre-sentence RJ in Aotearoa (Gravitas, 2018, 2021).

¹²³ Of the 38 percent of RJC-assigned victims who wanted money, just 16 percent received it (Strang et al., 2013).

sentencing processes such as therapeutic/problem solving courts or sentencing circles used overseas (United Nations, 2020). Monitoring and compliance can also be enhanced where sentencing itself is deferred until completion of the terms of the agreement (United Nations, 2020; Victorian Law Review Commission, 2021).

In the ACT there are provisions in legislation mandating that RJ providers must inform the CJS referral agency if there has been significant non-compliance; it also enables the CJS agency to monitor compliance. However, the mechanisms to achieve this are not specified. Others have suggested if there is some form of oversight body (independent or government agency) for all RJ-related services, responsibilities could include the monitoring of compliance (Law Commission, 2015; Victorian Law Review Commission, 2021). However, as noted above, the effectiveness of any such monitoring processes or provisions has yet to be assessed.

In Aotearoa NZ, there is no legislation to enforce compliance of agreements resulting from community-based referrals (MacDonald & Tinsley, 2011). However, for pre-sentence RJ within the CJS there are mechanisms in place that can assist. For example, there are provisions in the Sentencing Act (2002) that a court must take into account any outcomes of the RJ at sentencing. This information is provided to the Court by a pre-sentence report prepared by the RJ provider. In the Ministry of Justice practice standards, it is specified that RJ providers should monitor conference agreements for a specified time period, and '*where possible*' the provider gives the court an update or progress report on the conference agreements before the offender is sentenced (Ministry of Justice, 2019a). Little information was located on how often agreements are completed before reports are supplied, or more generally the degree these measures are followed. A recent review of the use of RJ with family violence cases suggested there was insufficient funding (or time) to enable effective post-conference monitoring or follow-up by providers (Paulin et al., 2020).

6.2.4 Facilitating victim access

Facilitating access to those concerned is a common implementation concern. In the context of this report, this means informing and empowering the victim sufficiently to be able to make choices that best suit their justice needs (Centre for Innovative Justice, 2021; Marinari, 2021; Wemmers, 2017). This further requires: a range of options to be available; that victims know about these options; that they are able to request access to them; and that there are officials ready and able to receive requests and make referrals (Victorian Law Review Commission, 2021). These concepts are briefly reviewed below.¹²⁴

Availability of a suite of options

For a victim to be able to exercise choice on how to best to meet their particular justice needs, as has been highlighted in numerous places in this report, 'a suite of options' must be available. These options should include: (1) different types of processes (e.g., RJ, broader applications of truth-telling mechanisms, adaptations to civil justice processes, different ways to report crime, see section 4.0); and (2) be available at a range of 'entry points', both outside of the CJS but also at multiple stages within it (pre-charge/pre-trial, pre-sentence, post-sentence, see section 6.1 above).

In Aotearoa NZ options (particularly funded ones) are largely limited to offender-focused processes operating within the CJS, with pre-sentence RJ being the dominant entry point. Just a few pockets of victim-led alternative justice processes appear to be available, including RJ for victims of sexual violence and informal RJ for some university students (see Part 2, 1and 1b). In contrast some

¹²⁴ For a comprehensive review of barriers to accessibility of restorative justice for both victims and offenders including availability, legislation, exclusion criteria, attitudes, trust, awareness, cooperation, and costs see the work of Laxminarayan and colleagues (2014, 2015).

jurisdictions in Canada, Australia, England, and Wales provide victim-led RJ through the State sanctioning, funding and provision of RJ at any stage of the CJS and for suitable cases outside of it (see for example Part B-6b, 6c).

Some jurisdictions restrict availability through eligibility criteria. However, in Aotearoa NZ there are no formal exclusion criteria based on offence type, what is available is accessible to victims of all offence types including victims of family violence and sexual violence.

Information available to victims

Uptake of alternative justice options like RJ is impacted by information on such options being made available to victims (United Nations, 2020). A particular challenge is for information that is relevant not only to the differing justice needs for diverse individuals, but also can accommodate the reality that individuals' needs change over time (as highlighted in section 3.2). No specific service, or stage of delivery, will be good for all victims, but if victims know what is available, and how it can be accessed, they are more likely to seek engagement as and when they are ready.

Also helpful is the availability of specialist advice to support informed decision making by victims (Marinari, 2021). This notion is endorsed by those involved in delivering RJ for family violence in Victoria, Australia. In the framework that governs this service (see Department of Justice and Community Safety, 2017), it is acknowledged that many victims are unaware of alternative justice options like RJ, and 'most victim survivors will require assistance to understand and access' these options. The framework further cautions that open advertising and promotion of RJ services is likely to raise unrealistic expectations, and potentially lead to disappointment and further upset where a victim is unable to be accommodated within a programme (e.g. the offender is not willing to participate, or the case is assessed as unsuitable).

In Aotearoa NZ, there are two positive examples of legislative approaches that support the supply of this information:

1. The Victims' Rights Act (2002, s11) specifies that a victim *must* be provided with information about programmes, remedies and services (where services include participation in RJ processes). This mandate is applicable to all victims of crime as soon as they come into contact with a relevant agency in relation to their victimisation. This provision aims to provide equitable access to all victims; however, it is not legally enforceable, and the level of agency compliance is unknown (Mossman, 2020).
2. The adoption of proactive legislation (as discussed above) requires that all eligible victims are offered the opportunity to participate in pre-sentence RJ (and given information typically by an RJ provider on what this will entail). This proactive approach is considered effective in maximising rates of participation (Banwell-Moore, 2022; United Nations, 2020; Van Camp & Wemmers, 2016), but is currently limited to just one entry point (pre-sentence).

A working example of what appears to be an effective 'centralised gateway' approach for students who have experienced sexually harmful behaviour operates at Victoria University of Wellington (see Part B-1b, 3a). Here, the Student Interest and Conflict Resolution (SICR) team are the single point of contact for all concerns raised, providing personalised information to students on their reporting options and the range of associated resolution options (e.g. no action, advice, referral for support, informal RJ, behavioural management plans). It is a victim-led approach, within which the student retains control over decisions, including the option of changing their mind at a later date.

There appears to be no similar integrated approach to managing advice, information, reporting, and resolutions options for victims of crime more generally in Aotearoa NZ. The Victims of Crime

Information website¹²⁵ provides a range of important information but has no search function and is limited in its scope for interaction by users. The website has some information in relation to alternative justice options such as RJ, but only when operating within the conventional CJS (there is a link to information on pre-sentence court referred RJ in the 'After sentencing' section).¹²⁶

Essentially there are two main approaches for making information available to victims:

- **'No wrong door' approach** – ensuring information is available at any location that victims of crime are likely to access. For example, this might include an 'options talk' facilitated with victims at their initial entry into the CJS as a complainant or support agencies they contact in the community. This approach was recommended by the Victorian Law Review Commission (2021) in relation to RJ and sexual offending. They suggest everyone who reports an offence to police should be told about RJ as part of an 'options talk', with police working closely with victim advocates to decide who should provide the information. Victims would be free to reject the offer, but free also to take it up at a later stage if their needs change.
- **Centralised gateway for victims** – one that is well-publicised, easily found and equipped with the widest range of information on support, reporting and justice options. This could be a physical centre or hub (as described above or located within support agencies or sub-sections of police stations), or a dedicated phone (like VictimLinkBC),¹²⁷ that also operate as a website. The latter is recommended by the Victorian Law Review Commission (2021) who point to the Orange Door Website for victims of family violence as a good online model.¹²⁸ Another example of a web-based central gateway is the Callisto online platform in the USA for victims of sexual harm (see Part B-3e), where options are clearly presented to victims along with possible risks and benefits of each, to support informed decision making. The platform can then be used to connect the victim with the service or option they select (e.g. talk to someone, report an incident, engage in RJ, find other victims, talk to an attorney).

Willing and able to provide information and make referrals

Those entrusted with assisting victims with information and referrals to alternative justice processes must be resourced and equipped to do so. This means they must be sufficiently informed to understand options available, and able to explain their relative merits and suitability to individual victims (Centre for Innovative Justice, 2021).

Laxminarayan and Wolthuis (2015) identified a significant factor affecting accessibility (to RJ) in the lack of a 'restorative culture' – the prevalence of punitive, rather than therapeutic attitudes that are held by legal professionals within the CJS. As a result, many legal professionals fail to refer cases to RJ services despite their ability to do so.

In Aotearoa NZ, the legislative approach and State oversight of RJ not only helps foster the legitimacy of RJ, and confidence in it across the CJS (Law Commission, 2015; Pfander, 2020; Victorian Law Review Commission, 2021), but in the case of pre-sentence RJ effectively mandates the offer of RJ to victims in eligible cases. This approach ensures equal access to victims and limits the influence of personal views that people working in justice might have about the process (Victorian Law Review Commission, 2021). However, as section 6.2.5 below highlights, high rates of referral do not necessarily translate into high rates of uptake.

¹²⁵ <https://victimsinfo.govt.nz/>

¹²⁶ <https://victimsinfo.govt.nz/en/home/after-sentencing/#step-4>

¹²⁷ See <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/victimlinkbc>

¹²⁸ Another example given by the Victorian Law Review Commission is The Orange Door website for victims of family violence <https://orangedoor.vic.gov.au/>

Another tool for ensuring eligible victims are informed of their options is some form of administrative monitoring and oversight. For example, in Nova Scotia, Canada, the approach taken in relation to youth crime is to require a 'RJ checklist' to be filled out prior to the laying of a charge, and a requirement that the police formally record reasons why the restorative model has been rejected if formal charges are to be laid (Archibald, 2005).

Developing trusted relationships between RJ providers, victim support services, and criminal justice agencies is another means to strengthen referral pathways (Centre for Innovative Justice, 2021), although not necessarily an easy thing to achieve. This requires education and training on alternative justice processes like RJ to be widely available (Centre for Innovative Justice, 2021).

6.2.5 Understanding victim needs, motives and barriers to participation

A final implementation concern relates to the issue of supply and demand. The design, planning, resourcing, and targeting of victim-led alternative justice responses requires an understanding of the volume of victims who will opt for which type of response at each stage of the CJS. These estimates also require knowledge of the likely frequency with which victims encounter barriers to their participating (see Johnstone (2017) for a critical review).

A Ministry of Justice analysis in 2016 estimated that only about 6% of cases before the courts that are eligible for referral to pre-sentence RJ are actually referred by the courts (Ministry of Justice, 2016a). It is unclear if this proportion is a true representation of demand or if barriers exist for others who might otherwise be interested in considering RJ.

There is good evidence in Aotearoa NZ that the majority of victims who participate in pre-sentence RJ are satisfied with the process (Ministry of Justice, 2011, 2016b Gravitas, 2018, 2021). These same reports also collect useful information on victims' views on how their experience might be improved. However, there is not yet enough information specifically on whether, or to what extent, the RJ process met victims' justice needs, or whether victims who elected not to participate might have preferred RJ at a different stage, or an alternative justice response of a different type (e.g. one that did not involve direct dialogue with the offender).

Oranga Tamariki are currently engaging in a programme of work to understand barriers to victims' participating in FGCs (Oranga Tamariki, 2020ab; Spier & Gill, 2021).¹²⁹ However, this enquiry appears largely focused on making FGCs more effective in reducing offender recidivism, as opposed to being a more beneficial experience for victims.

Some other jurisdictions have access to nationally representative survey data on potential demand for RJ. For example, UK research in 2015 showed that 38% of the general public surveyed said, if offered, they would be potentially interested in RJ, with the figure rising to 46% for actual victims (Restorative Justice Council, 2015). Surveys in Canada also typically find high levels of public support for RJ (Department of Justice Canada, 2018).¹³⁰

One of the more challenging types of information to source, but also a key factor in understanding the extent of need, is the demand for an alternative justice process from victims who do not want to

¹²⁹ This has included some analysis of reasons for victims not attending, the most common being victims are unwilling (34%). Others included issues with contacting the victim (28%), or victims being unavailable to attend (23%), Spier & Gill, 2021.

¹³⁰ 80% of respondents agreed that criminal justice officials should be required to inform victims and the accused of the availability of RJ processes; 62% thought that RJ would provide the victim with a more satisfying and meaningful experience than the mainstream criminal justice system; and 87% indicated that victims should be able to meet with the offender(s) and tell them about the impacts of the crime if they wish to do so.

access justice via the formal route. Just one study was located that attempted to estimate this demand. This was based on the views of victims of sexual abuse who had elected not to report their sexual victimisation (Marsh & Wagner, 2015). This UK based study used convenience sampling to conduct an online survey on the views of the public compared to those of victims of sexual abuse (Marsh & Wagner, 2015).¹³¹ The majority of both samples supported the opportunity for victims to choose to meet with their offender in a conference setting (86% of public and 71% of victims). In terms of demand for RJ (relative to standard CJS processing), key findings include:

- 56% of victims indicated that they would like the opportunity for conferencing *in addition* to the standard CJS process;
- 30% said they would like the opportunity for conferencing as *an alternative* to going to court; of note, those who were the most likely to favour RJ as an alternative to court were victims who had chosen not to officially report their own assault;¹³²
- victims were slightly less persuaded regarding the potential benefits of meeting with their offender (35% of victims agreed it's likely to be beneficial vs 45% of public/non-victims).

This understanding of victim demand is important where resourcing is limited. To be effective (and sustainable) alternative justice processes like RJ must be properly resourced. In times of high demand, they may need to be targeted at those most in need (Chan et al., 2016; Koss, 2014; Loff et al., 2019).¹³³ As noted earlier, those who can benefit the most are likely to be those victims who have experienced greater emotional impact (Centre for Innovative Justice, 2019a; Chan et al., 2016; Shapland et al., 2007). However, for RJ to be effective and safe for these particular victims (e.g. serious crime and/or where there are complex interpersonal dynamics), it is also more resource intensive (Chan et al., 2016). It likely requires multiple risk assessments, cross-agency collaboration, lengthy preparation phases, and on-going specialist sources of support for both parties (D'Souza & Shapland, 2020). It could be that the demand from these types of victims is low (see Loff et al, 2019, MacDonald & Tinsley, 2011; Ptacek, 2017; Wemmers, 2017) and therefore costs manageable, but without accurate data on need or demand, this is hard to calculate.¹³⁴

Finally, designing an effective intervention is dependent on an understanding of victims' individual needs and preferences. Project Restore NZ has been cited frequently through this report, and recognised internationally as a best practice response to sexual offending that focuses on the needs of victims. Interestingly this programme was designed to address the specific limitations of the CJS that had been raised by victims (through empirical research), and other practice issues associated with a standardised approach to RJ (Jülich, 2001, 2006 cited in Jülich & Landon, 2017).

¹³¹ The web-based survey collected views from 121 community members, 40 of whom identified themselves as survivors of sexual violence.

¹³² 70% of survivors who reported their victimisation – were against the idea of RJ as an alternative – compared to a lower 45% of those who had not reported their victimisation.

¹³³ Even programmes with empirical evidence of their value like RESTORE (see Part B-5a) are unsustainable unless adequate funding can be secured (Koss, 2014)

¹³⁴ In their evaluation of SECASA, Loff et al. (2019) observed low rates of demand for RJ from victims of sexual violence. They noted SECASA saw approximately 2000 victim-survivors each year, yet only 29 referrals were received over two years. SECASA counsellors (who made the largest number of referrals) were expected to mention RJ as an option to all victims of sexual violence attending SECASA as one aspect of the standard 'options' talk, although it appeared this may not have always occurred.

7.0 Concluding remarks and future directions

The brief for this work was a critical review of relevant literature on victim-led alternative resolution pathways, including the identification of any working examples of *Tauiwi* models operating here in Aotearoa NZ or from overseas. A separate report has focused on kaupapa Māori victim-led alternative resolution pathways (Awa Associates, 2022).

The report began with the review and clarification of several concepts central to the project (who are considered victims of crime, what is meant by the term ‘victim-led’, how victims’ justice needs should be conceptualised, and what constitutes an ‘alternative’ resolution pathway). The operationalising of these concepts was an important first step in approaching the literature to be reviewed, given that these terms are often used to refer to quite diverse and differing concepts and processes.

The review then continued with an outline of different models of alternative justice processes that have so far been recognised, and their positioning in relation to the CJS. This was followed by a critical review of the (unfortunately, limited) evidence on outcomes for victims who participated in alternative justice processes. The review concluded with a consideration of some of the issues and challenges that have been identified in implementing victim-led alternative resolution pathways.

A second section of the report (Part B) identifies working examples of alternative justice mechanisms in operation in Aotearoa NZ and overseas, highlighting the few that are identified as victim-led.

At the conclusion of this project, it is clear much work remains to ensure that victim-led alternative justice options are available to victims of crime. With the exception of a few pockets of innovative work (e.g. Project Restore, the work of Victoria University’s Student Interest and Conflict Resolution team), the landscape in Aotearoa NZ and overseas is dominated by offender-focused initiatives. Below are a few summary points on the state-of-play and key principles that should guide future work. In keeping with the broad scope of the project, these points are similarly broad and high-level:

Most alternative justice processes are offender-focused – to date most investment and progress has been directed towards designing and implementing offender-focused alternative justice processes that operate either within or alongside the CJS. In Aotearoa NZ these include alternative diversion models (e.g. FGCs, Te Pae Oranga-Iwi Panels), specialist sexual violence courts and a range of therapeutic/problem-solving courts, and pre-sentence RJ. While some of these innovative approaches can be victim-inclusive, and offer some benefits to victims additional to what the conventional CJS may offer (e.g. opportunity for participation and voice), their primary aims relate to offender rehabilitation and reducing rates of re-offending.

Better understanding (and communication) is required of the difference between *victim-inclusive* and *victim-focused* processes – there needs to be a better understanding and more transparency around the primary aim of any justice process, i.e., whether it is victim-focused, offender-focused or if it has an equally balanced focus on the needs of all parties. Those offering ‘options talks’ with victims need also to understand the difference between a victim-focused option and a victim-inclusive, but offender-focused process. The primary aims must be communicated to victims, enabling them to make informed choices over their participation, and thereby reduce the risk of further harms arising as a consequence of unrealistic expectations. Victims who choose to participate in an offender-focused FGC, for example, should understand their role is primarily to assist the young offender in rehabilitation.

Victim-led alternative justice processes are possible, the delivery approach is key – whilst offender-focused models are dominant, this does not mean victim-led alternative approaches cannot also be an option. What appears key to achieving them is not the type of mechanism per se (e.g. RJ), but

rather the commitment to designing a victim-led approach to delivery. Examples of victim-led models were identified in Aotearoa NZ and overseas, some operating independent of the CJS and others at various stages within the CJS (diversion, pre-sentence, post-sentence). Most of these models involved restorative approaches, with progress most evident in the design of alternative approaches for victims of gender-based crime (either family violence and/or sexual violence). However, RJ programmes for victims of serious crime also exist, some post-sentence and others operating at stages within the CJS. Common to all these examples was the commitment from the outset to design and deliver a victim-focused programme. These few examples demonstrate the potential for offering victims genuine alternatives that focus on their needs, whilst protecting the rights of offenders and promoting community safety objectives.

A suite of options is needed – to be a victim-focused approach requires a victim to be able to choose from a range of available options, selecting the path or paths that they feel will best meet their justice needs. The needs of one victim will of course differ from the needs of another, and Aotearoa NZ's one-size-fits all approach to justice provides little choice and so will typically fail to meet the needs of many victims. A range of options should be made available that would include: (1) different types of processes (e.g., RJ, broader applications of truth-telling mechanisms, adaptations to civil justice processes, different ways to report crime); and (2) be available at a range of 'entry points', both outside of the CJS but also at multiple stages within it (pre-charge/pre-trial, pre-sentence, post-sentence).

Expand State sanctioned and funded alternative justice options – Aotearoa NZ's legislative approach and State funding of pre-sentence RJ is effective at facilitating access to victims at this point in the CJS. This should be expanded to include other options for victims who would like to participate but without influencing CJS outcomes for the offender, and at a time and pace that is right for them.

Provide legal safeguards – for restorative processes to be beneficial for victims and offenders it is important parties can express themselves honestly and freely, and that 'what is said and done' remains confidential. This is difficult to guarantee. At a minimum, parties should have access to legal advice to enable a fully informed choice around any participation; greater certainly could be provided through legislation (as used in some other jurisdictions) around how such information would be treated by a court dealing with charges relating to the harm or associated civil action.

Victim-related reforms of CJS need to continue – insofar as many victims will continue to wish that a prosecution proceeds through the courts, it is important that efforts to improve victims' experience of the conventional justice system continue, alongside the expansion of victim-led alternative options.

Alternative justice options should be about providing choice, not replacing the CJS – relatedly, it should be kept in mind that, for many victims the preferred pathway to justice will remain the pursuit of prosecution through the criminal courts. Expanding victim-led alternative resolution options is not about replacing the current system; rather the aim is to provide options, so that more victims can experience a greater sense of justice. The current CJS, and new alternative justice options should be developed to operate both complementarily, and independently of each other.

Flexible modes of delivery are required – an important characteristic of the victim-led justice processes identified through this review was the need for flexible approaches to delivery. Once contacted by a victim, providers should be able to tailor responses to the individual justice needs of each victim. This includes offering a range of modalities to accommodate victims who prefer not to meet with their offender (victim panels, shuttle mediation, exchange of letters, truth-telling forums) and variable options for reporting crime for victims who would like to make a report without

instigating a police prosecution or other formal investigation (allowing the option to remain open should they later change their mind).

Apply a ‘victims’ justice needs’ lens – there was little evidence in Aotearoa NZ of victims’ justice needs specifically being considered in the implementation or evaluation of justice responses for victims. Understanding what constitutes victims’ justice needs will improve both conventional and innovative alternative approaches to justice for victims. When victims’ justice needs are considered separately from other needs (e.g. therapeutic), it enables a more targeted planning and coordination of how the different needs should be addressed, and in what order.

Provide victim-led approaches for gender-based crime – the complex power dynamics and imbalances associated with sexual violence and family violence that are often cyclical in nature pose particular risks to a victim’s emotional and physical safety. In these circumstances a victim-focused approach is crucial to restore power to the victim, and keep these victims safe.

Alternative systems of reporting are required – providing alternative mechanisms for disclosing crime victimisation (such as sexual violence) can enable victims to tell their story, and be listened to, and to gain access to support options without invoking a formal CJS response (unless they choose otherwise at a later stage). For those victims not interested in engaging with the CJS, these alternative systems of reporting can also provide a pathway to access other means of addressing their justice needs such as a RJ process or truth-telling forum.

Provide a centralised gateway with specialised advice to facilitate access – understanding a victim’s diverse needs (therapeutic and justice), knowing what options are available, and which is best suited to address current and future needs, is complex. As such, victims are likely to need targeted assistance. Victims need an easily located central point where they can access information, support, reporting and justice options, and specialised advice as needed.

Develop a more robust evidence base - more research is needed to support and progress the work in this important area. This includes (but is not limited to) evaluation or research that:

- compares different justice mechanisms using victims’ justice needs as the central framework for analysis. It is important to move beyond simple ‘victim satisfaction’ as the sole outcome measure;
- provides a better understanding of what victims say they want (i.e., which victims, would like which type of justice response, at what stage of the CJS, and what are the barriers to their participation). This is crucial for the design, planning, resourcing and - where necessary - targeting of victim-led alternative justice responses. It is possible that those most in need in Aotearoa NZ (victims of serious crime) are the least catered for;
- explores if, and when, a victim-focused approach is more effective/necessary than a balanced or offender-focused method;
- provides descriptive data on how well key stakeholders understand what a victim-focused approach is, and how this differs from a ‘victim-inclusive’ but offender-focused approach;
- examines the extent of offender compliance with outcome agreements, and the factors that contribute to achieving higher rates of compliance.

Part B – Examples of working models of victim-focused alternative justice initiatives

This second part of the report provides working examples of alternative justice pathways operating here in Aotearoa NZ and overseas, with special attention given to models that have been determined as victim-led. The framework presented in Figure 1 (section 3.4) locates alternative justice processes in relation to the conventional CJS (i.e., either located outside or within) and is used to structure this section of the report.

Alternative justice processes – outside or independent of the CJS – presented first are mechanisms that are able to operate completely independently of the CJS (e.g., community-based referral mechanisms). Twenty-one victim-led/balanced modes are presented (7 from Aotearoa NZ, 14 from overseas) across the following four sections:

1. Community-based RJ
2. Truth-telling mechanisms
3. Alternative systems of reporting
4. Civil law remedies

Other community-based alternative justice processes not included are post prison re-integration programmes, of which just one programme was identified, the Circles of Support & Accountability (COSA). This is an offender-focused programme and has already been described in section 4.4. Also missing are informal community-based justice mechanisms. There were no models sufficiently developed found here in Aotearoa NZ or overseas that justified a description as a ‘working model’ (see section 4.6). This is not to say they do not exist, however a methodological approach other than a document review would be needed to identify and review them.

Inside or complementary to CJS – presented after the above models are those innovative or alternative justice processes that operate as an integral part of the CJS or as complementary processes, working alongside the CJS. Just five models were identified (one from Aotearoa NZ, and four from overseas, of which one is now discontinued). These are presented across the following three sections:

5. Pre-charge/pre-trial
6. Pre-sentence/other stages of the CJS
7. Post-sentence

A brief overview of all innovative alternative justice mechanisms operating in Aotearoa NZ is presented under each section (offender-focused and victim-led), this is to provide a more rounded view of current progress in providing alternative justice processes.¹³⁵ **Only models determined as victim-focused are highlighted and described in tables (and a few that are equally balanced towards victim and offender).** The examples highlighted do not represent a complete stocktake, rather they are models featuring most prominently in the literature.

To help locate models of interest, Table 1 below provides a directory of the victim-led/balanced models that have been reviewed and highlighted in tables throughout the remainder of Part B.

¹³⁵ See Box 2 in section 3.3 of Part A for definitions of processes that are victim-focused, balanced-focus, offender-focused.

Table 1. Summary table of victim-led/balanced models identified

| Alternative justice processes – outside/independent of CJS | | | | |
|--|----|--|---|--|
| 1. Community-based restorative justice | | | | |
| | ID | Name | Focus | Location |
| Aotearoa NZ | 1a | Project Restore NZ, recognised internationally as a ‘best practice’ model of victim-led RJ in cases of sexual offending | Victim-led (SV) | Auckland but accept referrals nationwide |
| | 1b | University-based RJ offered through a variable response system at Victoria University of Wellington’s Student Interest and Conflict Resolution (SICR) team | Victim-led (students, SV) | Wellington |
| | 1c | Te Kaupapa Whakaora, Edmund Rice Justice Aotearoa and partners – RJC offered post-sentence | Balanced (post-sentence) | Canterbury-based |
| Overseas | 1d | South Eastern Centre Against Sexual Assault (SECASA) - Informal RJ | Victim-led (SV/FV) | Melbourne, Australia |
| | 1e | Restorative dialogue - Centre for Victims of Sexual Assault | Victim-led (SV) | Denmark |
| | 1f | Campus PRISM Project - University-based RJ model | Victim-led (students, SV) | USA |
| | 1g | Victim Offender Conferencing (Restorative Justice Unit, NSW Correctional Services) | Victim-led (post-sentence) | NSW, Australia |
| | 1h | Restorative Opportunities Programme (Canadian Corrections Services) | Balanced (post-sentence) | Canada |
| | 1i | Victim Offender Mediation/Dialogue (VOM/D) and Victim Sensitive Offender Dialogue (VSOD) | Victim/balanced (post-sentence) | USA |
| 2. Truth-telling mechanisms | | | | |
| Aotearoa NZ | 2a | Confidential Listening and Assistance Service (2008-2015) | Victim-led (abuse in State care) | Nationwide - Discontinued |
| Overseas | 2b | Restorative Engagement Programme (Australian Defence Force) | Victim-led (Defence force, SV) | Australia |
| | 2c | Restorative Engagement and Redress Scheme (RERS) - Victorian Police | Victim-led (Police, SV) | Victoria, Australia |
| | 2d | Direct Personal Response – a response option of the Australian National Redress Scheme | Victim-led (institutional sexual abuse) | Australia |

| 3. Alternative systems of reporting | | | | |
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| Aotearoa NZ | 3a | Variable options for disclosing sexually harmful behaviour (Victoria University of Wellington) | Victim-led (students, SV) | Wellington |
| | 3b | Two track disclosure mechanism including 'restricted disclosures' (New Zealand Defence Force) | Victim-led (Defence Force, SV) | Nationwide |
| Overseas | 3c | Sexual Assault Anonymous Report (SARA) – Community Managed | Victim-led (SV) | Melbourne, Australia - Discontinued |
| | 3d | Examples of Australian, police-managed systems including NSW's Sexual Assault Reporting Option (SARO) | Victim-led (SV) | Australia |
| | 3e | Callisto - online sexual assault reporting platform for college campus | Victim-led (students, SV) | USA |
| | 3f | 'Restricted disclosure' mechanism (Australian Defence Force) | Victim-led (Defence force, SV) | Australia |
| 4. Civil law remedies | | | | |
| Aotearoa NZ | (4a) | Independent investigation and opinion forming process (previously used in Human Rights Review Tribunal cases) | Balanced/victim-led | Nationwide (discontinued) |
| Overseas | (4b) | The 'Ellis Process' - trauma-informed alternative civil redress model for survivors of church-related abuse | Victim-led (church-related abuse) | NSW, Australia |
| Alternative justice processes - inside CJS (integrated within, or complementary process alongside of CJS) | | | | |
| 5. Pre-charge or pre-trial diversion | | | | |
| | 5a | RESTORE (Responsibility and Equity for Sexual Transgression Offering a Restorative Experience) | Victim-led (SV) | , Arizona, USA (Discontinued) |
| 6. Pre-sentence / other stages of the CJS | | | | |
| Aotearoa NZ | 6a | Project Restore NZ (see 1a above) | Victim-led (SV) | |
| Overseas | 6b | Victoria Family Violence Restorative Justice Service (FVRJ) | Victim-led (FV) | Victoria, Australia |
| | 6c | Restorative Justice Scheme (Phase 3 - Family Violence and Sexual offences) | Victim-led (FV/SV) | Canberra, Australia |
| | 6d | Restorative Justice Conferencing Programme for serious motor vehicle collisions - Centre for Innovative Justice | Victim-led (serious injury) | Victoria, Australia |

Notes:

- Indigenous models are considered within this structure, although none identified as victim-led.
- Some programmes operate both within the CJS and independently from it (e.g., Project Restore NZ), this is indicated as applicable, with the programme described in just one table.

Alternative justice processes – outside or independent of the CJS

1. Community-based RJ

Community-based RJ can be initiated as self-referrals, or referrals by other community providers. These restorative processes occur with victims who for various reasons do not wish to report their victimisation to police, or who have had their complaint dealt with through the CJS but subsequently feel that certain other justice needs have not been met.

As the restorative service is delivered independently from the CJS, providers are able to tailor their approach as either victim-focused or with an equal balance between victim and offender needs.

This section includes community-based RJ as a response to behaviour that constitutes a criminal offence. Out-of-scope is a range of other ‘restorative practices’ that promote accountability and repair in relation to harmful but non-criminal behaviour (e.g. conflict resolution practices in schools, institutions, workplaces and communities).

Aotearoa New Zealand

It is understood that many of the accredited RJ providers throughout Aotearoa NZ, who provide court-referred, pre-sentence RJ services also provide informal community-based RJ processes if requested.¹³⁶ However, only two examples of community-based RJ were identified as clearly victim-led: (1a) Project Restore NZ, recognised internationally as a ‘best practice’ model of victim-led RJ in cases of sexual offending; and (1b) victim-led RJ, offered through a variable response system at Victoria University of Wellington’s Student Interest and Conflict Resolution (SICR) team.

There is also an example of a current post-sentence (prison) community-based RJ programme with a balanced-focus, (1c) Te Kaupapa Whakaora, Edmund Rice Justice Aotearoa and partners. This is included as an example of how victim needs can be addressed through a partnership approach with a dedicated victim advocacy group (Victim Support New Zealand).

Offender-focus models (for context - not included in tables) - a well-known offender-focused programme is the ‘Sycamore Tree Programme’ previously provided by Prison Fellowship New Zealand. This post-sentence community-based programme operated in Aotearoa NZ up until 2006. It was offered in Wellington (Arohata and Rimutaka prisons) and in Hawkes Bay Prisons but is now discontinued. A faith-based ‘Victim Awareness Programme’ for prisoners, offenders met victims of similar but unrelated crimes (i.e., surrogate victims) with the goal that they gained insight into the nature of the harms they have caused their victims. As such it is an offender-focused programme, with the involvement of surrogate victims serving primarily to assist with offender-rehabilitation goals. The programme still operates in other countries through Prison Fellowship International.¹³⁷

International models of community-based RJ (independent from CJS)

Six examples of victim-led community-based RJ models from overseas are highlighted below. These include two victim-focused services for victims of sexual offending with similarities to Project Restore NZ (1c, 1d). These models (including Project Restore NZ) deliver RJ combined with on-going counselling

¹³⁶ Personal communication Mike Hinton, General Manager, Restorative Practices Aotearoa, 29/10/21

¹³⁷ See provider website (<https://pfi.org/what-we-do/repair-broken-lives/sycamore-tree-project-justice-and-peace/>), Sycamore Tree Project was established in the USA in late 1990, since then it has been delivered in over 78 prisons across 25 countries including the USA, UK, and Australia. Research has found improved offender attitudes such as victim empathy and attitudes to offending (Feasey & Williams, 2009; Bakker, 2005), but limited evidence of reduced recidivism (Ministry of Justice (UK), 2013).

for the victim. Interestingly, these three programmes were initially developed on the request of victims seeking meetings with their offender to assist in their own recovery. Project Restore NZ was designed to be a dedicated RJ provider, while the other two offer RJ and a range of support services. These include a specialist sexual assault community-based provider (1d), The South Eastern Centre Against Sexual Assault (SECASA), and a rape crisis and forensic medical service located in a hospital setting (1e) Denmark's Restorative Dialogue Centre for Victims of Sexual Assault.

There is one example of an informal RJ model at universities and colleges in the USA which is described as victim-led and can extend to cases of sexual assault, (1f) The Campus PRISM Project. This model has similarities to that offered by (1b) Victoria University of Wellington, although they operate in a different legal framework.

There are also three examples of post-sentence RJ: one from Australia (1g); one from Canada (1h); and one from the USA (1i). One of these is victim-focused (1g). The offender is typically still under the management of the formal criminal justice system, but participation in RJ is intended as an independent process. Compared to services delivered within Aotearoa NZ, all three offer a more developed post-sentence RJ programme that is State funded and coordinated through the relevant government correctional services. These models are often applied to cases involving serious offending and, as concluded by Bolitho (2015) in her evaluation of (1g), show that 'it is possible to safely and usefully practice a victim-oriented RJ process for adult offenders convicted of crimes including murder, manslaughter, driving offences leading to death, and sexual offences' (Bolitho, 2015, p.274).

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| Note: Only models determined as victim-focused are highlighted and described in tables (and a few that are equally balanced towards victim and offender). |
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| Community-based RJ – AOTEAROA NZ | |
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| 1a | <p>Name: Project Restore NZ</p> <p>Location/status: Auckland-based but accept referrals nationwide; operating since 2005</p> <p>Orientation: Victim-focused (SV)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Both inside and out. Minority of referrals are community-based (5-30%),¹³⁸ majority are court-referrals pre-sentence after a guilty plea.</p> |
| | <p>Description: Project Restore NZ is a specialist response for victims of sexual violence (historical and recent offending). The programme accepts court-referrals but also referrals from the community organisations and self-referrals from the victim or offender (SV not necessarily reported to police but offender must be prepared to admit behaviour). A notable feature of this model is its tri-faceted (sometimes referred to as the ‘three-cornered stool’) approach to delivery. A multi-disciplinary team is involved that includes an expert advocate for each party (offender and survivor specialist) and a specially trained RJ facilitator; a clinical psychologist provides professional supervision to the team. A critical feature of the model is the stringent eligibility and assessment criteria, with focus on individual needs and circumstances. This model was inspired by the USA RESTORE programme, see (5a).</p> <p>State of evidence base: Qualitative analysis (Jülich et al., 2010; Jülich & Landon, 2014, 2017)</p> <p>Victim outcomes: Most recent qualitative evidence is based on review of 12 <u>pre-sentence cases</u> (inside CJS), but findings likely to be applicable to community-based referrals (Jülich & Landon, 2017, see also section 5.1.2). Study reviewed 12 cases and showed ability of programme to address unmet victims’ justice needs (e.g., participation, voice, validation, vindication, and accountability). In an earlier study Jülich et al. (2010) reviewed 29 referrals that resulted in nine completed conferences (3 x community-based). The small sample size makes conclusions on impact difficult, but some victims expressed a positive response (e.g., sense of justice, healing, and restored family relationships).</p> |
| 1b | <p>Name: Informal RJ (University-based)</p> <p>Location/status: Wellington, Victoria University of Wellington</p> <p>Orientation: Victim-focused (SV)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent (although other elements of response system can result in disclosures becoming formal reports to police).</p> |
| | <p>Description: RJ is one of a number of resolution options offered through Victoria University of Wellington’s Student Interest and Conflict Resolution (SICR) team (see also 3a).¹³⁹ The team responds to all types of threatening, inappropriate and/or concerning behaviour, which includes the full spectrum of sexually harmful behaviour. RJ is one of several <u>support</u></p> <p>State of evidence base: Descriptive (provider website)</p> |

¹³⁸ Exact proportion is unclear. Law Commission (2015) reported that when Project Restore began (over a decade ago) – approx. half of referrals were community-referrals – this proportion has fallen to 5% since the Ministry of Justice introduced funded court referrals. While Jülich & Landon (2017) reported 30% of referrals in 2011/12 were community referrals independent of CJS.

¹³⁹ Other resolution options include confidential informal reporting with no further action taken, advice and support, referrals to specialist support services, addressing concerns informal through behavioural management plans for example, or formal resolution through university internal complaints process or a report made to police.

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| | <p>options offered to victims and can be facilitated internally by the SICR team’s accredited RJ facilitators or through a referral to an external RJ provider.</p> <p>The overall approach is described on their website as survivor-led, ‘ensuring that the student who has experienced sexual harm has control over the decisions impacting them, including whether they want to report the incident to the police, report it to the University, seek medical help, or access other holistic support services’.</p> | |
| 1c | <p>Name: Te Kaupapa Whakaora (Edmund Rice Justice Aotearoa (ER) in collaboration with Victim Support NZ, Pathways Reintegration and Community Law)</p> <p>Location/status: Christchurch (launched in 2012)</p> <p>Orientation: Balanced-focus (although offender reports can be provided to Parole Board suggesting offender-focused in some cases)</p> <p>Proceed w/o victim: Unknown (it appears unlikely)</p> <p>Relationship to CJS: Outside/independent – post prison sentence, although if requested post conference reports can be provided to the parole board</p> | |
| | <p>Description: Te Kaupapa Whakarora provides post prison sentence RJ for typically serious offending. The partnership approach ensures both victims and offenders are supported. Victim Support provides support for victims through the process and can fund victims to travel if they live out of town. Referrals can be offender or victim initiated. Project aims, as per provider website, are directed at both parties and include healing the harm and assisting participants in moving forward after serious offending. Meetings can occur during or post prison sentence. A post conference report is completed and on request can be given to the parole board.</p> | <p>State of evidence base: Descriptive</p> <p>Victim outcomes: Article in newsletter reports on findings from one case study that included interviews with the victim, offender and facilitator. Victim gave accounts of a positive impact including healing.</p> |

| Community-based RJ – INTERNATIONAL models | | |
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| 1d | <p>Name: South Eastern Centre Against Sexual Assault (SECASA) pilot program</p> <p>Location/status: Victoria, Australia (started in 1994, current status unknown)¹⁴⁰</p> <p>Orientation: Victim-focused (SV)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Outside/independent, cases with CJS involvement (at any stage) are accepted but the process is separate and is not intended to run concurrently</p> | |
| | <p>Description: SECASA is a government funded, specialist provider for adult victims of sexual assault and family violence. As part of its support services, for over 20 years it has run victim-led informal RJ meetings for adult victims of sexual violence (for current, historic and intrafamilial SV; cases involving children are also accepted). These voluntary informal sessions developed into a more structured pilot commencing in 2016. The program aimed</p> | <p>State of evidence base: Evaluation study (Loff et al., 2019), see also online description by previous director Carolyn Worth.</p> <p>Victim outcomes: Mixed method evaluation using interviews, casefiles, and survey data. Based on 21 referrals that resulted in 10 completed RJ conferences. Interviews conducted with 8 victims and 4 offenders of</p> |

¹⁴⁰ The pilot programme has finished, and it unclear if this programme still operates on an informal basis. It was largely driven by the previous SECASA director Carolyn Worth; The SECASA centres themselves are still in operation in 9 locations including outreach services in a further three locations (Loff et al., 2019).

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| | <p>to address needs unmet through conventional justice, primarily intended to operate separately from the formal criminal justice system (e.g., providing an option to victims not intending to report to Police). However, referrals from those involved in the conventional CJS are also accepted. Structured conferences were run with concurrent counselling for both parties. Uniquely, the SECASA process can happen between the victim and perpetrator or between the victim and someone who has been complicit or exacerbated harm such as a family member or institutional representative.</p> | <p>completed cases. Key findings were the value of the process for enabling victims to participate and have a voice, for example many victims expressed the need to ‘confront’ the person who harmed them, and that doing so enabled them to enact control. Another tentative conclusion was that the process appeared better suited for offences involving acquaintances (e.g., date rape), rather than with entrenched and long-standing family violence.</p> <p>Authors noted the importance of conducting RJ alongside counselling to protect the well-being of participants, and that legislation and funding would be necessary to ensure accessibility and perceived value when taking place alongside more traditional criminal justice processes.</p> |
| 1e | <p>Name: Restorative dialogue - Centre for Victims of Sexual Assault Location/status: University Hospital of Copenhagen, Denmark. The Centre was set up in 2000, with restorative dialogue introduced in 2002 Orientation: Victim-focused (SV) Proceed w/o victim: No Relationship to CJS: Independent/outside¹⁴¹</p> | |
| | <p>Description: Victim-led, restorative dialogue between victims and offenders, mediated by one to two facilitators, usually via correspondence, but can be face to face. A particular aspect of this model is its delivery as a health response, through the hospital-based Centre for Victims of Sexual Assault. The Centre houses a multidisciplinary team and offers a range of services.¹⁴² Restorative dialogue is one aspect of the Centre’s services and is offered as part of its psycho-social treatment to assist in a victim’s recovery. Cases involve intensive preparation with all parties. Outcome agreements are not mandatory. Uniquely the process can, and often does, proceed without the offender participating, and is reportedly still able to achieve positive outcomes for the victims. Where an offender participates, they are not required to admit to committing an assault but a reasonable degree of consistency between a victim’s and offender’s descriptions of what happened is required.</p> | <p>State of evidence base: Descriptive (Madsen, 2004; Pali & Madsen, 2011) Victim outcomes: Madsen (2004) presented a powerful account of what occurs (see Lisa’s case involving correspondence with an offender who did not reply but nevertheless found the process empowering). Pali and Madsen (2011) report on a 2005 study where 16 victims were referred for RJ over a year, of which one-third of cases resulted in a face-to-face meeting. The authors note that as a health service, the Centre has no access to the offender and hence the process requires the victim to make initial contact with the offender. Overall, Pali and Madsen (2011) report mixed results, some women felt justice had been at least partially done, but others were left with the feeling that there had been no reasonable consequences, although all were satisfied with the process.</p> |
| 1f | <p>Name: Campus PRISM Project Location/status: Examples include The College of New Jersey, Rutgers University (New Brunswick Campus), University of Michigan, USA Orientation: Victim-focused (SV), although earlier references suggest while victim initiated, overall aims more balanced focus Proceed w/o victim: No (initiated following victim disclosure)</p> | |

¹⁴¹ For some of the Centre’s services, and for some cases (i.e., where the assault is reported) the centre works independently, but in collaboration with the Institute of Forensic Medicine and the police.

¹⁴² A team of doctors, nurses, psychologists and social counsellors provide medico-legal examination, medical treatment in the acute phase followed up by short- or long-term psychological treatment and social counselling.

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| | Relationship to CJS: Independent/outside, but legal proceedings in CJS can occur concurrently | |
| | <p>Description: A consortium of universities in Canada and the USA (Campus PRISM Project) promote the use of restorative conferencing, community circles, and prevention circles to address campus based sexual misconduct including sexual assault, with at least three universities now piloting this approach (see Orcutt et al., 2020 and Karp et al 2016). Orcutt et al. (2020) describe the framework as being one that focuses on the person who has been harmed, what their needs are, and how the person who harmed them can address those needs.¹⁴³ RJ is offered if the person who experienced harm chooses an informal resolution option.¹⁴⁴ This process is separate from legal proceedings, and careful protocols are applied to prevent prejudice to any concurrent or future civil or criminal proceedings.</p> | <p>State of evidence base: Descriptive, case studies Victim outcomes: Orcutt et al (2020) present anecdotal evidence of positive feedback from those harmed in relation to sexual misconduct cases. The effectiveness of this model of RJ in relation to other types of student misconduct was carried out by Karp and Sacks, (2014). Outcomes of student misconduct cases following 165 RJ cases were compared to those from 403 cases using standard misconduct processes, with cases taken from 18 college campuses. Similarly, high levels of satisfaction were found among harmed parties and consistent improvement in student offender learning and development when compared with traditional approaches.</p> |
| 1g | <p>Name: Victim Offender Conferencing (VOC), Restorative Justice Unit (RJU), operating within the NSW Correctional Services Department¹⁴⁵ Location/status: NSW, Australia since 1999 (only State sanctioned model of its kind operating in Australia) Orientation: Victim-focused (serious crime) Proceed w/o victim: No Relationship to CJS: Independent/outside – operated during prison sentence (65%), through community corrections services (25%) or community-based (15%)</p> | |
| | <p>Description: The RJU offers VOC alongside other services (e.g., managing a victim register, running internal workplace mediations and other restorative practices such as correspondence between victims and offenders and facilitation of family conferences). The objectives of the VOC are primarily focused around addressing unmet justice needs of victims. Referrals are accepted from victims, offenders and other parties speaking on their behalf (for example victim support groups, counsellors, and prison psychologists), but will only proceed if the victim agrees to participate and the offender is assessed as both eligible (post-sentence and without pending legal matters) and suitable (demonstrating some responsibility as assessed by the RJU). VOC involves extensive preparation, on average taking 11 months to complete before the conference itself is run (lasting 1-2 hrs). There is then a ‘debrief’ period of around 6 months, after which the case is closed.</p> | <p>State of evidence base: Evaluation – peer reviewed (Bolitho, 2015) Victim outcomes: This large scale mixed-method evaluation examined victims’ motivations for participation and whether these were achieved, using a victims’ justice needs framework (see also 5.1.2). In 95% of cases, the majority of articulated unmet justice needs were met, and participants were positive and satisfied by their VOC experience in both the short and longer term (five years later). Consistent motivations for victims to participate included to seek safety, to seek information, to speak and be heard, to express emotion, to seek accountability, to feel empowered, and ultimately to find a different meaning around the event that would better allow them to move forward.</p> |

¹⁴³ Earlier descriptions by Karp et al. (2016) indicate a victim-initiated approach but suggest a balanced focus that includes prevention circles, RJ conferencing and reintegration circles (based on the COSA model). However, the reintegration circles whilst based on an offender-focused model in the case of the PRISM model include support circles for survivors to help with their on-going recovery needs.

¹⁴⁴ The person who experienced the harm is presented with a set of options by the university regarding how they might proceed under applicable campus policies. This may include the harmed party requesting (1) an investigative resolution, which likely will include an investigation and a hearing; for conduct that might be criminal in nature, (2) choosing to make a report to law enforcement for criminal investigation; (3) both; (4) neither (e.g., no action or just a request for safety measures and/or supports); and/or (5) requesting informal resolution (see Orcutt et al., 2020).

¹⁴⁵ See also VOM offered by a community-based organisation, Community Justice Initiatives in British Columbia, Canada (<https://www.cjibc.org/>).

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| 1h | <p>Name: Restorative Opportunities Programme (ROP), Correctional Services of Canada, (CSC)</p> <p>Location/status: Through-out Canada (since 1992)</p> <p>Orientation: Balanced-focus (offender reintegration and victim justice needs)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside (participation in ROP is not intended to have any direct impact on an offender's sentence, CSC decisions and parole decision)</p> | |
| | <p>Description: The CSC is a federal government agency responsible for administering imprisonment sentences of two years or more. CSC offers VOM through the Restorative Opportunities Programme (ROP). Referrals are available from registered victims (or their representatives) as well as to non-registered victims who are impacted by the crime. Referrals from offenders are only accepted if supported by a correctional staff member. ROP is administered post sentence by accredited community providers contracted by CSC. Key features include voluntary participation at all stages of the process, extensive preparatory work, confidentiality to avoid influencing National Parole Board decisions, and highly trained mediators who are perceived as neutral by both parties. Most VOMs are conducted face-to-face, but indirect options, such as letters, video messages or the mediator relaying messages between the offender and victim, are also available. The programme is guided by a regulatory Commissioner's Directive</p> | <p>State of evidence base: Descriptive, annual reporting by CSC</p> <p>Victim outcomes: CSC website cites one-off evaluation studies showing high levels of victim satisfaction, increased control over their safety, and greater closure and improved well-being measures.</p> <p>Offender outcomes: CSC conducts annual evaluations of the ROP. The 2020/21 report presents figures on numbers of referrals (average annual referrals n=145,¹⁴⁶ 33% victim initiated), characteristics of offenders and re-offending rates. Other evaluations cited on website indicate ROP's have 'promise in reducing recidivism' and reduce revocation rates, particularly if VOM is delivered in community when offender was on conditional release.</p> |
| 1h | <p>Name: Offender Mediation/Dialogue (VOM/D) and Victim Sensitive Offender Dialogue (VSOD)</p> <p>Location/status: Various States in the USA including Ohio and Texas (since 1980s)</p> <p>Orientation: Balanced/victim focused (serious/violence crime) - victim-initiated, with balanced aims</p> <p>Proceed w/o victim: No (only victim-initiated referrals accepted)</p> <p>Relationship to CJS: Independent</p> | |
| | <p>Description: Various forms of VOM have been operating in the USA and Canada for many years (see Hansen & Umbreit, 2018 for a review) and have included some post sentence opportunities for cases of seriously violent crime including for families of victims of homicide. Models vary, but where they operate, they are State funded, and all victim-initiated (when victims voluntarily request a meeting with their convicted offender). Programme aims can vary, some programmes appear to have a balanced focus, others victim-focused. See for example VOMD offered through the Victim Services Division of Texas Department of Justice described as 'victim-centred'.</p> | <p>State of evidence base: Several peer reviewed evaluation studies (e.g., Umbreit & Vos, 2000; Umbreit et al, 2006; Umbreit et al., 2012)</p> <p>Victim and offender outcomes: 97% all victims and offenders were satisfied with the preparation, 77% of both parties were satisfied with the outcome, 85% of victims would recommend the program to others. 80% of all participants reported it had a 'profound effect' on their lives. The main stated reason for offender participation was to help the victim. See also Barrile (2015) and Umbreit & Vos (2001) for discussion on use of RJ with families of murder victims including with offenders facing the death penalty.</p> |

¹⁴⁶ Completion rates of referrals were unclear due to change in rates of referral and ability to conduct face-to-face VOM post pandemic.

2. Truth-telling practices

Truth-telling mechanisms are all victim-led processes and occur outside of the CJS and usually in the absence of the offender, with the focus more generally around holding a State agency – or the State itself - to account for facilitating or enabling the abuse to occur. While there are examples of standalone truth-telling programmes (Truth and Reconciliation programmes), it is more common for truth-telling mechanisms to be one element of a larger response system (e.g., redress schemes, complaint mechanisms).

Aotearoa New Zealand

Little was located on truth-telling mechanisms in operation in Aotearoa NZ. Included below are details of the now discontinued Confidential Listening and Assistance Service (2a). This service has partially informed a recommendation for the redress scheme that will follow the Aotearoa NZ’s current Royal Commission into Abuse in State Care. The Royal Commission has recognised the benefits for participants from discussing their abuse with someone in a safe and non-judgemental setting, such as their one-on-one sessions with commissioners (Royal Commission, 2021), and has recommended a similar listening service should be offered as part of the puretumu torowhānui (redress) scheme.

International models

International examples of truth-telling mechanisms detailed below are all from Australia. Two are ‘restorative engagement’ processes that have been incorporated within an institutional complaint mechanism, for defence force personnel (2b) and police (2c). Both are part of larger responses to address harmful sexual behaviour, including sexual assault. The Aotearoa NZ Defence Force has a similar complaints mechanism (see 3b) but has not yet included a truth-telling/restorative process as a resolution option. The third example is a restorative process that is part of a National Redress Scheme following the Australian Royal Commission into institutional child abuse (2d).

| Truth-telling mechanisms – AOTEAROA NZ | |
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| 2a | <p>Name: Confidential Listening and Assistance Service</p> <p>Location/status: New Zealand (2008 to 2015) - DISCONTINUED</p> <p>Orientation: Victim-focused (abuse in care)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside – but assisted with referrals to CJS</p> |
| | <p>Description: The Confidential Listening and Assistance Service (2008 to 2015) was set up as a time limited service, described as ‘a kind of Truth and Reconciliation forum’ (Henwood, 2015). The aim was to provide a forum for people harmed by their treatment in State care to come forward with their experiences and, in some cases, receive customised assistance (around 57% had been sexually abused). Key components of the services were (1) listening, (2) assistance accessing personal files, (3) counselling and (4) referrals to State agencies (including referral to Police for investigation and potential prosecution of criminal behaviour against individual abusers).</p> <p>State of evidence base: Evaluation (Henwood, 2015, Chair of Service)</p> <p>Findings: Over the 7 years it was in operation, 1100 people participated. Outcomes included 89 referrals made to Police, 687 referrals for counselling, 629 referrals to agencies to seek compensation and apologies. The final report noted participants’ accounts of valuing being heard; of having someone listen, in a non-judgmental and constructive way. These kinds of benefits cannot be underestimated. Many of the participants had not felt heard in State care. They felt relieved that now at last they have been heard.</p> |

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| <p>The listening part of the service was considered a key motivation for victims to participate, with many participants coming to the service because they wanted their story heard and to be taken seriously (Henwood, 2015). It was particularly important for them to be able to speak to an official body, chaired by a Judge, independently appointed, and supported by a 'neutral' Government Department.</p> | <p>Results of a client satisfaction survey suggested making a statement of truth about what happened to them, as well as the provision of counselling, helped to improve their emotional well-being (Henwood, 2015).</p> |
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| Truth-telling mechanisms - INTERNATIONAL models | |
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| 2b | <p>Name: Restorative Engagement Programme (REP) Location/status: Australia (the REP was formerly run through the Defence Abuse Response Taskforce (DART), from 2012 to 2016.¹⁴⁷ Orientation: Victim-focused (SV, Defence force personnel), Proceed w/o victim: No Relationship to CJS: Independent/outside</p> |
| | <p>Description: the Restorative Engagement Programme (REP) is a victim-focused programme that is described as a hybrid with features drawn from RJ and truth telling. It is an independent, external, and impartial mechanism for people to report historical and contemporary serious abuse in the Australian Defence Force (ADF). The programme was first trialled by DART (2012 to 2016) but is now available through the Office of the Commonwealth Ombudsman (OCO). It provides the opportunity for a victim to have their experiences heard, acknowledged and responded to by senior agency representatives. Conferences are expected to be a stand-alone intervention, but on occasion agreements may be reached for other actions to follow, with the Defence agency taking responsibility to ensure that follow up actions are completed.</p> <p>The REP is connected to the Defence Force's Restricted Disclosure process (see 3f below).</p> <p>State of evidence base: Descriptive Findings: The former REP run by the DART collated feedback from participants and administrative data (see final report, DART, 2016). Over four years, 600 REP conferences were completed. The overall conclusion was that REP has had a positive impact (examples of positive feedback from complainants, Defence representatives and facilitators are presented in the final report). In addition to a positive impact for victims, it was noted REP could contribute to cultural change in the Defence force as a result of the 'great impact participation in REP had had on Defence representatives, many of whom will comprise the next one or even two generations of Defence leaders. A key factor considered to contribute to the program's achievements was the training, experience, care and understanding of the facilitators, demonstrated in their effective preparation of the participants for their conference and skilfully managing what was often a highly emotional meeting (for more details see final report of DART https://apo.org.au/sites/default/files/resource-files/2016-09/apo-nid67232.pdf).</p> |

¹⁴⁷ DART dealt with claims of physical or sexual abuse, harassment or bullying by Australian Defence Force before 11 April 2011. It considered 2,439 complaints and found 1,751 to be within its scope and plausible. Over 600 REP conferences were completed over 4 years. Five options were available to complainants' reparation, counselling, REP, referral to police or referral to Chief of the Defence Force for consideration of possible administrative action. DART also offered reparation to victims and counselling (for more details see final report of DART <https://apo.org.au/sites/default/files/resource-files/2016-09/apo-nid67232.pdf>).

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| 2c | <p>Name: Restorative Engagement and Redress Scheme (RERS), (Victorian Police)¹⁴⁸</p> <p>Location/status: Victoria, Australia (2019, funded through to December 2023)</p> <p>Orientation: Victim-focused (SV, Police employees)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside – does not limit a victim from pursuing other civil or criminal proceedings</p> | |
| | <p>Description: The RERS is for Victoria Police employees (former and current) who have experienced workplace sexual discrimination or sexual harassment (including rape and sexual assault).¹⁴⁹ The Scheme is underpinned by victim-centric guiding principles, including victim safety, victim choice, control, consent, and confidentiality.</p> <p>The ‘restorative engagement’ is one option available to eligible participants through the RERS programme – other options include counselling and therapeutic services and a possible one-off financial redress payment. The scheme’s restorative engagement process offers victims the option to engage with a senior representative from Victoria Police (excluding any alleged perpetrator/s), to discuss their experiences, and raise concerns about their treatment. The process is also intended to raise awareness of organisational improvements and strategies to prevent others experiencing what the participant experienced. The senior Police representative has authority to act on the lessons from that experience. The process is confidential, anonymity can be accommodated through an indirect conference process.</p> <p>The RERS scheme is administered by the Department of Justice and Community Safety (DJCS) and is independent of Victoria Police. The standard of proof to be eligible for the scheme is ‘plausibility’,¹⁵⁰ lower than the criminal or civil standard.</p> | <p>State of evidence base: Descriptive (DJCS Annual Report, 2021)</p> <p>Findings: Since opening, more than 500 people have received support and/or counselling and over \$8 million in financial redress payments have been made. Information on the number of restorative engagement conferences was not reported. Participant feedback indicates that the Scheme is having a positive impact on their lives (Annual report of DJCS, 2021).</p> |
| 2d | <p>Name: Direct Personal Response (DPR) – part of the national redress scheme for people who have experienced institutional child sexual abuse</p> <p>Location/status: Australia</p> <p>Orientation: Victim-focused (institutional child sexual abuse)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside – separate from civil law process, but accepting an offer waves civil liability of institution (but not individual perpetrators)</p> | |

¹⁴⁸ See <https://www.vic.gov.au/redress-police-employees>

¹⁴⁹ The scheme was established in response to an independent review and was conducted by the Victorian Equal Opportunity and Human Rights Commission into sexual harassment in the workplace at Victoria Police.

¹⁵⁰ An account of an experience is plausible if there is enough information, supported by a properly witnessed statutory declaration, to reasonably satisfy a person undertaking an assessment that the behaviour occurred.

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| <p>Description: As part of the National Redress Scheme (NRS), eligible participants can access (1) counselling, (2) a redress payment, and/or (3) a DPR from the responsible institution.¹⁵¹ The NRS was established by the Australian Government in response to a key recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse.</p> <p>The DPR provides elements of a truth-telling process. In a DPR the victim can tell their story to a representative of the institution and receive an apology and an explanation of what the institution is doing to stop anyone else from being abused in the future.</p> <p>A DPR is a confidential process. Victims may request a face-to-face meeting, either individually or in a group, a written letter, a public apology, or other arrangements depending on their circumstances.</p> | <p>State of evidence base: Independent review</p> <p>Findings: Final report (second year review of NRS, Kruk, R (2021))</p> <p>Overall, the author concluded that the redress scheme (of which the DPR is part of) had failed in its vision to be ‘survivor-focused’ and needed a fundamental reset.</p> <p>In relation to the option of a DPR the review noted a low uptake (just 3.4% of all accepted offers of redress received a DPR).¹⁵² This was despite an initially high rate of interest from victims to pursue a DPR. Victims were then either reluctant to engage in the process, owing to reports of it causing considerable distress, or were confused about what is involved.</p> <p>The DPR was identified as one of the more problematic redress elements. Recommendations for improvement included greater oversight and reporting of uptake, and priority given to ways to increase uptake of DPR (such as offering better support to victims by providing dedicated liaison officers).</p> |
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¹⁵¹ To be eligible for the DPR service the victim must first make an application to the redress scheme and then receive and accept a redress offer. Accepting an offer releases the relevant participating institution(s), their officials, and any associates, from civil liability (but not the person or people who committed the abuse). For more details on the DPR scheme see also Section 4.4 of the second-year review report (Kurk, 2021).

¹⁵² This was far lower than the 28.8% uptake of the REP (see 2b) offered as part of the Defence Redress Scheme (Kurk, 2021).

3. Alternative systems of reporting (anonymous and restricted reporting)

Systems of anonymous and/or restricted reporting offer victims of crime an alternative mechanism for disclosing their victimisation. They provide an avenue for victims to tell authorities what occurred, but without any requirement that police/court/institutional action ensues. The option of ‘restricted disclosure’ is included within various complaints mechanisms, all those discussed below relate to disclosures by victims of sexually harmful behaviour.¹⁵³

Aotearoa New Zealand

Highlighted below are two alternative systems of reporting, a university system (3a) and one used by the New Zealand Defence Force (3b). Unlike some other jurisdictions there is no police-facilitated system of alternative reporting operating in Aotearoa NZ, although a proposal was considered a few years ago.¹⁵⁴

International models

Four international models of victim-led alternative systems of reporting are highlighted below. One (now discontinued) was developed and managed by a community provider (3c), others are examples of police-managed systems of reporting used in Australia (3d), Callisto, a university-based process in the USA (3e) and finally the institution-based mechanism for confidential disclosures used by the Australian Defence Force (3f), similar to that used by the New Zealand Defence Force (3b).

| Alternative systems of reporting – AOTEAROA NZ | |
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| 3a | <p>Name: Student Interest and Conflict Resolution (SICR) response system for sexually harmful behaviour (see also 1b)</p> <p>Location/status: Wellington, Victoria University of Wellington</p> <p>Orientation: Victim-focused (sexually harmful behaviour)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside - but option to enter CJS remains open</p> |
| | <p>Description: The University’s SICR team provide a variable response system for students (and staff) who have experienced sexually harmful behaviour (that includes sexual violence). This process is described as survivor-led, with ‘victim-survivors being in control of the decisions that affect them’. The SICR team are the single point of contact across the university for reporting or disclosing this type of behaviour. Disclosures and reporting options are managed through the carefully drafted Sexual Harassment Response Policy</p> <p>State of evidence base: Descriptive only, provider website, although administrative data is collected inhouse.</p> |

¹⁵³ Examples of truth-telling in other complaints mechanisms from other areas include the alternative resolution process operated through the Health and Disability Commissioner (<https://www.hdc.org.nz/making-a-complaint/>); and the Sports NZ’s anonymous and confidential reporting options as part of their Sport and Recreation Complaints Mediations Service (SRCMS) mostly responding to non-criminal recreational related complaints, issues or disputes, but can include complaints related to on or off field behaviour of a coach, volunteer, parent or sports person.

¹⁵⁴ As part of the Victim of Crime Life Event (VoCLE) initiative, in 2018 the Service Innovation team at New Zealand Police explored the feasibility of an alternative online reporting mechanism for survivors of sexual violence (see <https://www.digital.govt.nz/blog/introducing-the-victim-of-crime-life-event-initiative/>). This project did not proceed past the discovery phase.

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| | <p>and Procedures. These documents were created following consultation with staff and students that took place in May 2019.</p> <p>When contacted, the SICR team provides information on reporting options and what support is available. Contact can be made in person, by email, over the phone or via the online reporting tool, which includes an anonymous disclosure option.</p> <p>Reporting options include (1) confidential (or anonymous) disclosure the SICR team document concerns and offer information, advice and support but no formal action pursued (although the student may themselves chose to pursue this); (2) confidential disclosure with receipt of informal resolution (e.g. RJ); (3) make a formal complaint to be investigated by the university with respect to possible breaches of student or staff conduct policies; and/or (4) report the incident to the police (this is a separate, external process but students can be supported by the SICR team to do this).</p> <p>All information provided to SICR is treated as confidential and securely retained. De-identified information is reported to the University's Senior Leadership Team.</p> | |
| 3b | <p>Name: Restricted disclosure system – alternative way to report sexual assault (NZ Defence Force (NZDF), Operation RESPECT)</p> <p>Location/status: New Zealand (since 2016)</p> <p>Orientation: Victim-focused (SV within Defence Force)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent – but option to enter CJS remains open</p> | |
| | <p>Description: A 'two-track' reporting response to sexual assault along with a newly created Sexual Assault Response Team (SART) was established in 2016 as part of Operation Respect to provide a victim-focused response to Defence personnel who have been affected by sexual violence within the workplace.</p> <p>The two-track disclosure mechanism has distinct processes for unrestricted and restricted disclosures – (1) unrestricted disclosures are not confidential and are reported to NZDF command and require a formal investigation either by NZDF Military Police or NZ Police (depending on nature of incident and victim preference); and (2) restricted disclosures that enable a victim of sexual assault to confidentially access support services, and to do so without notification to NZDF command NZ Police. The SART team is intended as the first contact point providing immediate assistance for individuals seeking advice and support. Restricted disclosures are confidential but cannot be made anonymously. They may be converted to unrestricted disclosures by the victim at any time.</p> <p>For more details of the two-track reporting system see Appendix 4 of the independent review.</p> | <p>State of evidence base: Independent review (Teale & Macdonald, 2020)</p> <p>Findings: Independent review looked at the overall progress of Operation Respect to eliminate harmful and inappropriate sexual behaviour that included the effectiveness of the alternative reporting process.</p> <p>An increase in disclosures had been observed since the introduction of the two-track reporting system and SART. Between July 2016 and 31 January 2020, there were 190 disclosures of sexual violence incidents reported to the SART. Of those, 59 were restricted disclosures and 131 were made under the unrestricted disclosure route.</p> <p>The reviewers concluded while progress had been made challenges remain and made 44 recommendations for change. In relation to the alternative reporting mechanism, they found a 'code of silence' prevailed with many personnel not willing to raise a complaint or report serious issues such as sexual violence either because they fear the repercussions and/or do not trust the NZDF processes and systems. The SART team were found to be over-stretched and as employees of the NZDF their independence was questioned.¹⁵⁵</p> |

¹⁵⁵ A separate review of the SART model was conducted in 2018 (see Cording et al., (2018)).

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| | | The authors recommended the reporting process be provided by a trusted external and independent complaints channel (like that offered by the Defence Ombudsman in Australia) to receive, investigate, and remedy cases of harmful behaviour and sexual violence. See below (3f) for details of the process available through the Defence Ombudsman in Australia). |
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| Alternative systems of reporting – INTERNATIONAL models | | |
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| 3c | <p>Name: Sexual Assault Anonymous Report (SARA) – Community Managed (SECASA agency)</p> <p>Location/status: Melbourne, Victoria, Australia (2013 to 2020, now DISCONTINUED due to insufficient funding)</p> <p>Orientation: Victim-focused (SV)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside - but option to enter CJS stays open</p> | |
| | <p>Description: This was the only Australian system identified that was developed and managed by a community-based specialist SV provider in Melbourne (SECASA, see 1d). Individuals could make confidential, anonymous online reports to SECASA. Each person who reported was given the option of receiving a follow-up call from a counsellor from SECASA. De-identified reports were passed onto police. Analysis found SARA was handling 1200 reports a year, connecting around half with support.</p> | <p>State of evidence base: Descriptive (media reports)</p> |
| 3d | <p>Name: Other Australian systems (Police managed)</p> <p>Location/status: Most Australian States and Territories</p> <p>Orientation: Victim-focused</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Outside, pre-report (official), but option to convert informal report to formal one is a permanent option</p> | |
| | <p>Description: The most publicised police managed system is Sexual Assault Reporting Option (SARO) in NSW. An existing (but underutilised) online reporting tool was promoted in 2021 through Operation Vest. NSW police teamed up with consent activist Chanel Contos, and together with use of social media promoted the use of SARO. NSW police are currently considering extending the response system to offer RJ as a voluntary option for victims.</p> <p>Other systems include Queensland’s Alternative Reporting Option (ARO). The Australian Capital Territory (ACT) and Tasmania have ‘Information Reports’ available for victims who do not want to go through the court process but do want to record what</p> | <p>State of evidence base: Descriptive (media reports)</p> <p>Victim outcomes: Media reports based on police data indicate increased reporting by victims; overall sexual assault reporting up 54%, and informal reporting via SARO up 43%.</p> |

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| | happened with the police; other States have ‘informal reporting’, but their processes are less clear cut. ¹⁵⁶ | |
| 3e | <p>Name: Callisto - online sexual assault reporting platform for college campus</p> <p>Location/status: USA</p> <p>Orientation: Victim-focused (SV)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside. Confidential disclosure – with option to convert to formal police report if victim decides to at a later date</p> | |
| | <p>Description: Callisto was launched in 2015 on a single campus but since 2018 operates across dozens of campuses. The process is entirely victim-driven. An online platform provides a range of options for victims. These include creating a time-stamped record of what happened, and being connected with resources and support. Victims can be advised if ‘their’ offender is flagged as a repeat offender based on the system matching facility. Options are presented alongside information to enable victims to make informed choices. This aspect of the platform could be described as a centralised online ‘gateway’.¹⁵⁷ There have been concerns raised over potential security risks of information that is held online.¹⁵⁸</p> | <p>State of evidence base: Difficult to locate but some survey analysis (Callsito, 2017, cited in Rajan et al., 2018)</p> <p>Victim outcomes: It was reported that victims of sexual assault who used this online platform were five times more likely to report incidents than those who did not. In addition, victims using the platform reported incidents an average of four months after the incident in contrast to an average 11-month delay for victims not using the platform. Reporting an incident of sexual assault was significantly more rapid and likely when victims knew they were not the only victim of an assailant (Callisto, 2017 cited in Rajan et al., 2018).</p> |
| 3f | <p>Name: Restricted Disclosure (Australian Defence Force)</p> <p>Location/status: Australia – introduced on 2013 following are review of defence force handling of sexual assault</p> <p>Orientation: Victim-focused (sexual misconduct)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside, but with the option remaining open to progress investigation through the military justice system</p> | |
| | <p>Description: This alternative system of reporting is an example of an institution-specific confidential reporting process used by the Australian Defence Force. The option of ‘restricted disclosure’ was introduced in 2013 along with the Sexual Misconduct Prevention and Response Office (SeMPRO).¹⁵⁹ The restricted disclosure option empowers the victim to decide if, and when, a matter is reported for investigation by the Joint Military Police Unit, civilian police, or a commander or manager. It enables victims to access support without triggering an investigation, while they decide on their next steps. SeMPRO also acts as a central data point to analyse prevalence and identify specific trends or risk</p> | <p>State of evidence base: Descriptive only (SeMPRO website, annual reports)</p> <p>Victim outcomes: SeMPRO annual report provides only descriptive data on numbers of restricted disclosures made, education and awareness training delivered and support services delivered. In 2020/21 this included (1) support for those directly affected (n=159), (2) advice given (n=275), (3) debriefs and other mental health support to others affected but not directly impacted (n=12). From 2012 to 2016 the Defence Abuse Response Taskforce (DART) handled confidential disclosures of cases of abuse that occurred before 2011. If requested by a complainant, DART crime group would assess the case and</p> |

¹⁵⁶ See Centre for Innovative Justice (2014) and the following link for more details <https://www.abc.net.au/triplej/programs/hack/operation-vest-launched-to-deal-with-consent-allegations/13272276>

¹⁵⁷ Another example of an online platform that uses interactive online options to shape the advice on available options is the West Midlands Police [website](#). For example, they can select options such as ‘I have been sexually assaulted but don’t want to report it to police at the moment’, with the choice to add further details about themselves, such as ‘I do not speak English very well’ or ‘This happened more than once’.

¹⁵⁸ For more details see [https://en.wikipedia.org/wiki/Callisto_\(project\)](https://en.wikipedia.org/wiki/Callisto_(project))

¹⁵⁹ Victims can also make calls to the support team and remain anonymous.

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| <p>factors to enable targeted prevention and education strategies across Defence (see also the Restorative Engagement Programme (2b) reported above).</p> <p>Similar schemes operate in the USA defence force (through the Sexual Assault Prevention and Response Office which also includes a matching facility to detect serial offenders), Canadian Defence Force's Operation HONOUR and also the police force in Victoria Australia (Victorian Police Restorative Engagement and Redress Scheme (see 2c above) – which includes an anonymous reporting framework (online portal) – for police officers who have been abused/harassed by other police officers.</p> | <p>support complainant in referring matter to Police (8% of complaints were referred on to the appropriate Police authority, a similar number were referred to the Chief of the Defence Force for consideration of possible administrative or disciplinary action (DART, 2016)).</p> |
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4. Civil law remedies

Civil law remedies are increasingly receiving attention, with some victims of crime opting to use this approach to seek redress, often after having failed to get their justice needs met through the criminal justice system.

Models discussed below are adjuncts to the civil proceedings, designed to make the process more effective as an alternative means of redress for victims. The two models highlighted aim to reach a satisfactory resolution that avoids the need for formal civil proceedings. The first example (4a) is a proposal to incorporate an investigation and ‘opinion forming’ process, to encourage resolution through private mediation in cases where the complaint is found on the balance of probabilities to have substance. The second (5b) is a trauma-informed approach pioneered by lawyers (and survivors) in Australia where matters are resolved using legal principles but with the aim of avoiding the court process.

| Civil law remedies – AOTEAROA NZ | |
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| 4a | <p>Name: Investigation and opinion forming process (former process of Human Rights Commission)</p> <p>Location/status: New Zealand, (Human Rights Cases heard 1977 to 1993) – Process DISCONTINUED</p> <p>Orientation: Balanced-focus</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside - modification of civil justice system</p> |
| | <p>Description: The investigation and opinion forming process was part of the complaints process used by the Human Rights Commission (HRC) up until 1993.¹⁶⁰ During this time trained investigators resolved hundreds of sexual harassment complaints (even including incidents of sexual violation and rape considered sexual offending under the Crimes Act 1961) through a process of investigation, opinion forming and subsequent settlement meetings.</p> <p>If at the opinion forming phase the case was deemed on the balance of probabilities ‘to have substance’ both offender and victim were encouraged to resolve matters through a privately negotiated settlement, and thereby avoid a public and open court process (the independent opinion indicating the case had substance, which motivated offenders to settle out-of-court, whilst this route also allowed victims to avoid the hostile and potentially re-traumatising adversarial court process).</p> <p>State of evidence base: Anecdotal evidence (Joychild, 2017; 2021)¹⁶¹</p> <p>Findings: Statistics from HRC annual reports indicate between 1981 and 1993 the HRC used this process with more than 400 complaints, the majority of which were employment-related complaints of sexual harassment, and included matters covered by the Crimes Act such as sexual assault and rape (Joychild, 2017). The majority of these cases were settled privately after the opinion forming phase, with just a few having to be referred onto the standard legal process before the tribunal (Joychild, 2017, p.217).</p> <p>According to Joychild, complainants expressed empowerment through the process as they could participate in a resolution that held the offender to account, but in a way that was also meaningful to them as victims. They also valued the confidentiality and privacy of the process. (Details taken from an independent inquiry by Frances Joychild QC, (2017) into the New Zealand’s</p> |

¹⁶⁰ This model was removed under the Human Rights Act 1993 and replaced with a mediation only model. It is understood this was done to free up resources for policy development and educational activities.

¹⁶¹ Frances Joychild QC is a respected Barrister who practiced as a human rights lawyer for the Human Rights Commission during the time the ‘independent investigation and opinion forming’ process was in use (1977 to 1993). Joychild is a strong advocate for its use having seen first-hand its effectiveness in achieving early resolution for victims of sexual violation. She has also recommended it be incorporated into the New Zealand Defence Force military justice system for investigations of sexual misconduct (see Joychild, 2017, p.216); Model also explained in personal communication, Frances Joychild QC 28 October, 2021.

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| In cases where agreement isn't reached at that point, the case would then be referred to the standard open court civil prosecutorial process. | handling of sexual abuse, bullying and harassment complaints in relation to Robert Roper.) |
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| Civil law remedies - INTERNATIONAL models | |
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| 4b | <p>Name: 'Ellis Process', Ellis Legal, Lawyers and Advocates</p> <p>Location/status: Sydney, NSW (initiated prior to National Redress scheme, and continues to operate through Ellis Legal.)</p> <p>Orientation: Victim-focused (survivors of clergy abuse)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Independent/outside - separate/complementary process to civil justice system (described as extrajudicial, Ellis & Ellis, 2014)</p> |
| | <p>Description: The Ellis process is described as an alternate civil redress model for survivors of church-related abuse (Ellis & Ellis, 2014). It offers a non-adversarial, trauma-informed process for settling personal injury claims. It seeks to combine proper legal outcomes with therapeutic experiences that support long-term trauma recovery. Developed by husband-and-wife team John and Nicola Ellis, they combined their personal experiences of being victims of clergy abuse¹⁶² with their legal and psychotherapist backgrounds. Matters are resolved using legal principles but with the aim of avoiding the court process. If 'road blocks' occur, the formal legal route can be progressed – but alternative resolution continues to be sought.</p> <p>The process has its foundations in three conceptual areas: therapeutic jurisprudence (supporting recovery), the Conversational Model of psychotherapy (providing therapeutic interactions between lawyers and clients), and Trauma-Informed Care and Practice (TICP). There are aspects of truth-telling incorporated into how information related to the claim is gathered from clients (clients left with a sense of having been listened to, their experiences acknowledged, and their courage for speaking out to seek redress validated). A key aspect of the process is 'collaborative dialogue' but it is not considered a RJ process.¹⁶³ This involves lawyers listening carefully to clients and sensitively managing expectations; dialogue with the church entities involves translating for the client (whilst acting as a buffer for the client) and helping the church to understand the impact of abuse and resolution options. Clients are supported to engage with specialist trauma therapists if that support would be of assistance.</p> <p>State of evidence base: Descriptive (See Ellis & Ellis, 2014)</p> <p>Victim outcomes: Over six years (1998-2014) the 'Ellis Process' has been used to achieve meaningful redress for more than 300 victims. Intended outcomes are described as giving survivors of church-based sexual abuse greater autonomy, responsiveness, and satisfaction in seeking redress from the Church in a way that is restorative of dignity, agency, connection, and hope of recovery.</p> <p>NB: Separate from the Australian National Redress Scheme (see 2d) – however, if a National Redress Scheme offer is accepted, the survivor will also be asked to sign a statutory release. This means that a survivor will not be able to bring or continue any civil proceedings against the institution or its officials in relation to that abuse</p> |

¹⁶² John was abused by a Catholic priest as an adolescent, Nicola was a secondary victim as she supported John in seeking redress through Church processes and then legal processes.

¹⁶³ Clients are often not interested in restoring relationships with the church, so it is not a conciliatory process. Process described as 'restorative of the individual's sense of self-worth and self-respect', irrespective of whether there is any restoration of their connection with church personnel (Ellis & Ellis, 2014, p.38).

Alternative justice processes - inside or complementary to CJS

The remainder of Part B considers alternative justice processes that operate within the CJS, or alternative processes that are complementary, working alongside it. Only a few victim-led models were identified and are highlighted in tables, but other offender-focused alternative processes operating in Aotearoa NZ are outlined under each heading to provide context.

Without doubt the greatest investment and progress in Aotearoa NZ and overseas, has been in this area. With one exception (pre-sentence RJ provided by Project Restore NZ), none of these local innovative processes could be considered victim-led, as offender-focused objectives are central. However, the one Aotearoa NZ model and four other international victim-led models highlighted in this section, demonstrate the *potential* for alternative justice processes alongside and within the CJS to be victim-led. In terms of victim-led models, the one operating in Aotearoa NZ is pre-sentence RJ provided by Project Restore NZ, the operating model of which has already been described above (1a). Four international victim-led models are highlighted including one, now discontinued, that operated as pre-trial diversion RJ (5a), while the other three can accept case referrals at any point of the CJS (6b, 6c, 6d).

5. Alternative diversion processes (pre-charge or pre-trial)

No victim-led alternative diversion processes were identified in Aotearoa NZ. The three identified are all offender-focused (and therefore are not highlighted in tables but key details outlined below). These include:

- **Family Group Conferences (FGCs)** which have been operating as the mainstream youth justice process since 1989.¹⁶⁴ They provide pre-arrest diversion (Intention to Charge /ITC) FGCs, but also operate as a pre-sentence process at Youth Court (Court-ordered) FGCs¹⁶⁵.
- **RJ Conferences through the Police Adult Diversion Scheme** were first formally trialled in 1995 and are now available throughout Aotearoa NZ. RJs are delivered post charging but pre-trial, and if deemed successful Police can withdraw the charge.¹⁶⁶
- **Te Pae Oranga (Iwi Community Panels)** were first trialled in 2013 and have recently been granted permanent funding.¹⁶⁷ This is a pre-charge diversion option for low level offending for offenders over the age of 17 years who accept responsibility for their offending. The model combines Tikanga, Kaupapa Māori and community and RJ practices.

¹⁶⁴ All youth offending is dealt with through the FGC processes other than the most serious offending such as murder which is dealt with through the adult CJS.

¹⁶⁵ In 2020/21 around 40% of FGCs were ITC (diversion), 55% (pre-sentence court-ordered) and 5% were for children who offend. The proportion of ITC FGCs has declined over the last decade as the overall rate of youth crime had dropped, but the proportion of serious youth crime has increased. Personal communication, Social Research and Analysis team, Evidence Centre, Oranga Tamariki, (27/10/21).

¹⁶⁶ Early pilots were community-panel models of RJ. This option is now available throughout Aotearoa NZ delivered by Ministry of Justice approved RJ providers utilising a range of models and approaches.

¹⁶⁷ Te Pae Oranga is currently available in at least 17 locations and is expected to expand to over 30 in the next four years. The Te Pae Oranga process concludes with a plan to make things right with support available to assist participants to complete their plan. The plan can include actions such as getting support to quit drugs and alcohol,

All three would be considered offender-focused, with their primary aims being to hold offenders to account whilst also helping address underlying causes of their offending. All enable (and encourage) a participatory role for victims, but they can and (frequently) do proceed without victim participation, thereby clearly identifying them as 'victim-inclusive' rather than victim-focused (see Box 2, in Part A section 3.3 for definitions).

Unsurprisingly, evidence on the effectiveness of these alternative diversion processes has concentrated on offender-outcomes, particularly the impact on recidivism. Findings have been mixed, but in general all three of these alternative diversion mechanisms are considered effective in this regard (Maxwell & Morris, 2002; Maxwell, et al., 2004; Walton, et al., 2019). There has been less research on their effectiveness for victims, although, victims who have agreed to participate were found to have high levels of general satisfaction. For example, early research on FGCs found 80% of victims who participated reported generally high levels of satisfaction (Maxwell et al., 2004).¹⁶⁸

However, rates of victim participation in FGCs have remained low, with only around half of FGCs involving the victim as a participant (Maxwell et al., 2004; Oranga Tamariki, 2020b)¹⁶⁹; further, early research found 45% of victims did not perceive that the youth was genuinely 'sorry', 21% felt the process did not meet their needs, and 5% 'felt worse' as a result (Maxwell et al., 2004).¹⁷⁰ Comparable data in relation to rates of victim participation or other victim outcomes for RJ as Adult Pre-Trial Diversion or Te Pae Oranga was not located, although an early evaluation of Te Pae Oranga reported 'victim participation at panels was low', something identified as an 'area for improvement' (Akroyd, et al. 2016).¹⁷¹

Just one overseas example of a victim-led alternative diversion process was located: Mary Koss's programme RESTORE for sexual offending.¹⁷² Whilst now discontinued, this model demonstrated that it is possible to deliver a victim-led diversion programme that achieves positive outcomes for victims and offenders. Indeed, as Koss et al (2004) concluded 'perhaps the most significant aspect of RESTORE's procedures is that they permit attention to the healing of victims in the context of a program that is funded to reduce reoffending' (Koss et al., 2004, p. 1448).

getting a driver's licence, a job or training, completing an anger management course, paying for damage (reparation), or hearing how victims were affected and apologising to them (see <https://www.police.govt.nz/about-us/maori-and-police/te-pae-oranga-iwi-community-panels>).

¹⁶⁸ More recent evaluation appears to combine effects of RJ delivered as pre-trial diversion with that of pre-sentence RJC. Levels of victim satisfaction combined is around 85% (Gravitas, 2018).

¹⁶⁹ Oranga Tamariki is currently engaging in research to understand reasons for non-attendance, with the aim of addressing barriers and increasing participation rates (Oranga Tamariki Evidence Centre, 2020b).

¹⁷⁰ Early research found a third of victims felt worse (Maxwell and Morris, 1993).

¹⁷¹ The evaluation was only able to recruit one victim to be interviewed, who reported positive benefits (including the ability to have their say and get things off their chest, to get reparation, and to see the iwi panel process working effectively).

¹⁷² Cedar Cottage was another alternative process described as a pre-trial treatment programme for sex offenders. The programme operated in NSW, Australia, but is now discontinued. It was offender-focused although could not proceed without victim participation and concurrently aimed to assist victims through counselling (for more details see Goodman & O'Brien, 2014; Butler et al, 2012).

| Pre-conviction diversion – INTERNATIONAL models | |
|---|---|
| 5a | <p>Name: RESTORE (Responsibility and Equity for Sexual Transgression Offering a Restorative Experience)</p> <p>Location/status: DISCONTINUED, Arizona, USA (2003-2007)</p> <p>Orientation: Victim-focused (SV, first time adult offenders over the age of 18 years), although funded as an offender-focused rehabilitation programme</p> <p>Proceed w/o victim: No – but can be a surrogate victim if victim does not want to meet offender in person</p> <p>Relationship to CJS: Pre-conviction diversion (either pre-charge or post-charge)</p> |
| | <p>Description: RESTORE was developed as a demonstration (or pilot) programme, explicitly on feminist and RJ principles (Bolitho & Freeman, 2016; Daly 2011). The programme was developed to provide additional justice options for victims, designed around their justice needs and in response to high rates of attrition in the CJS. Referrals to the programme were at the discretion of prosecutors, with suitability then assessed by programme personnel before acceptance of referral. Participation was voluntary and importantly the offender needed to accept responsibility. Victims were supported prior to, during and after the dialogues to ensure their safety and wellbeing. If the offender failed to complete the programme as directed or reoffended the case was referred back to the prosecutor.</p> <p>The programme involved RJ conferencing cases built around four distinct phases: (1) referral and intake (process will not continue without both parties giving informed consent, both parties have access to legal advice at this stage); (2) preparation (separate process for both parties includes safety and support considerations, victim-led redress plan formulated); (3) face-to-face conference (culminating in finalising of redress agreement); (4) accountability and reintegration (12 months of monitoring concluding with an exit meeting).</p> <p>The programme is now discontinued due to failure to attract permanent funding after the pilot ended.</p> |
| | <p>State of evidence base: Evaluation study, peer reviewed (Koss, 2014)</p> <p>Victim outcomes: Koss completed a mixed method process and outcomes evaluation based on 66 referrals that resulted in 22 cases accepted, of which 20 conferences were held. Of these 20 conferences, 16 offenders successfully exited the programme (80%).</p> <p>Victims were motivated to participate in order to say how they were affected by the assault, to make sure that the responsible person did not do this to anyone else and to ‘take back power’.</p> <p>Victims reported high levels of satisfaction with their preparation, conference, and redress plan (particularly those who attended in person compared to surrogate victims attending on their behalf).</p> <p>A decrease in victims’ PTSD symptoms was observed (not statistically significant), where 82% of the 16 victims at intake met the diagnostic criteria for PTSD, compared with 66% post-conference.</p> <p>The majority of victims felt the conference was a success, although only half of the victims who attended viewed apologies received as ‘sincere’. However, the majority of victims who attended (83%), as well as the surrogate victims (70%) felt a sense of justice having been achieved.</p> |

6. Innovative approaches to sentencing

In Aotearoa NZ there has been considerable investment in alternative justice processes that occur at the pre-sentence stage and/or as an alternative sentencing process. This includes pre-sentence RJ and a range of innovative court models (specialist courts and ‘problem-solving’ courts).

Along with the two Specialist Sexual Violence Court Pilots there are now at least eight problem-solving courts in Aotearoa NZ. This category includes the Family Violence Courts, Alcohol and Other Drug Courts, Young Adults List Court, New Beginnings, and Special Circumstances Courts, and the culturally inclusive Matariki Court, Te Kooti Rangatahi and Pasifika Courts.¹⁷³ These courts do not fundamentally change the role of the victim within the court process, but some (e.g. the Family Violence Courts) aim to promote the safety of victims and connect them with support services (Allen & Clarke, 2021); the Sexual Violence Court has amended procedures to improve the experience (i.e., reduce the trauma) for victims who are required to give evidence (Gravitas, 2019); both courts also aim to reduce the time duration over which cases are heard.

These victim-related aims are important in removing barriers to victims pursuing justice through the courts. This in turn means that increasing numbers of victims are encouraged to seek and gain access through this route, however, whilst they aim to improve the experience of the victim, the role afforded to the victim differs little from standard court processes, and thus may offer few advantages in terms of addressing their justice needs. In contrast, RJ provides an alternative justice mechanism, allowing a participatory role for victims, the opportunity for a victim to explain how they have been affected by the crime, to receive an explanation and apology from the offender, and to contribute to the discussion of ways of redressing the harm.

The provision of pre-sentence RJ is the other significant alternative justice process that operates within the Aotearoa NZ CJS.

Legislation has been enacted to formalise the use of court-referred RJ, that created an opt out rather than opt in approach to the use of RJ pre-sentence.¹⁷⁴ This in turn has meant the referral process to pre-sentence RJ has become a well-developed pathway. At least one provider was identified that delivered a victim-led model of pre-sentence RJ for cases involving sexual offending: Project Restore NZ (described in 1a). However, due to the pre-sentencing positioning of the process (see section 6.1.2) the majority would be considered offender-focused in their primary aims.

Court-referred, pre-sentence RJ: is available throughout Aotearoa NZ, with providers contracted to deliver RJ at all district court locations (except the Chatham Islands). As such it is fully integrated within the CJS, with referrals received through the court process and RJC reports then supplied to Judges for consideration at sentencing.

- It is expected that pre-sentence RJ will involve the active participation of the victims. The Ministry of Justice Practice Framework (2019) describes RJ as ‘a facilitated meeting between the victim and the offender’. Separate pre-conferences are held with the victim and offender, to assess suitability for a conference. One of the pre-requisites for the process to proceed is that ‘all participants, including the victim, offender, and support people,

¹⁷³ For more details see <https://www.lawsociety.org.nz/news/lawtalk/issue-905/specialist-courts-their-time-and-place-in-the-district-court/>

¹⁷⁴ Sentencing Act 2002 & 2014, Parole Act 2002, Victims’ Rights Act 2002, Corrections Act 2004

must each give their informed consent *that they will attend* the conference'. A key principle underpinning the process is that victims determine their own level of participation and all outcomes are arrived at voluntarily (Ministry of Justice, 2019).

- In 2019/20 around 10,000 referrals were made, with around 1,700 conference completed (Ministry of Justice, 2020b).¹⁷⁵ There are around 23 community-based RJ providers contracted by the Ministry of Justice. Around seven are considered Kaupapa Māori providers; 21 of the providers offer both 'standard' RJ and RJ for family violence cases, one provider offers just standard conferences, and one provider only offers conferences for sexual violence offending (Project Restore NZ).¹⁷⁶ The Ministry of Justice only funds RJs although how these are delivered can vary across providers. Providers are required to be trained and accredited by the Resolution Institute and adhere to practice guidelines published by Ministry of Justice (2019a) with specific competences published for sexual violence cases (2013) and family violence (2019b). Project Restore NZ is the only provider clearly delivering a victim-led pre-sentence RJ.¹⁷⁷

There have been a number of studies looking at the effectiveness of pre-sentence RJ, most of which have focused on offender-outcomes, and the impact of RJ on recidivism. The most robust analysis published in 2016 by the Ministry of Justice (2016c), found RJ was associated with reduced recidivism.¹⁷⁸ Several studies over the years have also considered outcomes for victims (CJRC & Triggs, 2005; Kingi et al., 2008; Gravitas, 2018, 2021):

- The most recent Gravitas survey (2021) found 76% of 259 victims surveyed were satisfied with their overall experience; 66% reported that having taken part had positive impacts for them
- An earlier large-scale evaluation of the NZ court-referred RJ pilot (4 providers) interviewed 181 victims and 90 comparison victims, sourced from non-pilot site courts (CJRC & Triggs, 2005). This study also found high rates of victim satisfaction with the RJ process (92%), although satisfaction was lower for victims if reparation was unpaid or other agreements not completed and lower than that of pilot offenders. Satisfaction with the case outcome (i.e., sentence awarded) was higher for pilot victims who participated in RJ (two-thirds) compared to those who went through standard court processes without RJ (half).¹⁷⁹

As noted above, at least one of the 23 RJ providers delivered a victim-led model of RJ. Below are three other examples of victim-led approaches to RJ from overseas (all from Australia). Two are State-funded (6b, 6c) and the other a programme operated through a university-based centre. They relate to three types of offending – sexual offending, family violence and serious motor vehicle-related harms. All can occur at the any stage of the CSJ (including pre-

¹⁷⁵ According to the Ministry of Justice [2019/20 Annual Report](#) this figure was less than the previous year due to the COVID-19 lockdown period (Ministry of Justice, 2020b)

¹⁷⁶ Personal communication with Ministry of Justice, Provider and Community Services, 18/10/21

¹⁷⁷ No publicly available information was found on the delivery approach of other providers, most pre-sentence RJ is likely to be offender-focused, but some may provide more of a balanced-focus. There could be other providers delivering victim-led RJ that had not yet been documented.

¹⁷⁸ This study compared the reoffending rates of 4,373 adult offenders who completed a RJ conference (police or court referred) with 12,959 statistically matched controls. Key findings were that RJ was associated with a statistically significant reduction in four measures of re-offending including that reduce the rate of re-offending after 12 months (34% vs 39% of matched controls), but that the impact, whilst still evident, lessens over time.

¹⁷⁹ Actual figures not reported, just these proportions.

sentence) and two where there has been no involvement in the CJS (6b & 6d). They differ from the Aotearoa NZ approach in that they operate alongside the CJS (as opposed to integrated within) and are not intended to affect the concurrent CJS processes.

| Any stage of CJS (or outside of) – INTERNATIONAL models | |
|---|--|
| 6b | <p>Name: Victoria Family Violence Restorative Justice Service (FVRJ) ¹⁸⁰</p> <p>Location/status: Department of Justice and Community Safety (DJCS), Victoria, Australia (framework developed in 2017, pilot began in 2018)</p> <p>Orientation: Victim-focused (Family Violence)</p> <p>Proceed w/o victim: No (referrals only accepted from victims)</p> <p>Relationship to CJS: Complementary process – can occur at any stage of CJS or where there has been no involvement in the CJS – processes are independent of CJS</p> |
| | <p>Description: The framework and pilot programme were developed in response to a recommendation of the Victorian Royal Commission into Family Violence (2015). Developing a victim-centred approach was one of the founding principles. The framework describes how the FVRJ service operates, the victim-centred approach outlined has similarities to that used by Project Restore NZ.¹⁸¹ Currently it is the only State-funded and operated victim-centred service in Victoria.¹⁸²</p> <p>The primary aim is to deliver benefits to victims, where the nature and pace of engagement is driven by victim needs, and consideration of who may participate in a restorative conversation is guided by the victim’s preferences. Victim safety is a primary concern, with risk comprehensively assessed and managed throughout the process.</p> <p>Victims can choose the type of restorative interaction they would like, either: (1) RJ conference; (2) Victim Impact Panel (address a specific audience but without directly involving offender); (3) facilitated conversation; (4) variations of 1-3 tailored to victim need.</p> <p>The process is described as providing ‘integrated justice’, being one part of a larger justice system. It is a supplementary process, working in parallel with the CJS where ‘neither response should prevent or disrupt the other’.</p> <p>State of evidence base: Descriptive only. The framework includes a proposal that the programme be evaluated to improve the evidence base, but no publicly available evaluation information was identified.</p> |
| 6c | <p>Name: Restorative Justice Scheme (Phase 3 - Family Violence and Sexual offences)</p> <p>Location/status: Justice and Community Safety Directorate, ACT, Australia (SV and FV offences since 2018, other RJ since 2005)</p> <p>Orientation: Victim-focused (FV and SV)</p> <p>Proceed w/o victim: No</p> |

¹⁸⁰ A consultation process is underway to include the FVRJ Service in a larger Victim-Centred Restorative Justice Programme (Department of Justice and Community Safety (Victorian), 2021)

¹⁸¹ Project Restore NZ are acknowledged for their assistance in developing the framework.

¹⁸² FVRJ service practitioners are DJCS employees who work in teams to assess, prepare and facilitate restorative conversations

| | | |
|----|--|--|
| | Relationship to CJS: Complementary – criminal justice agencies can make referrals at any stage of the CJS (community-referrals are not to be eligible) | |
| | <p>Description: The RJU provides a range of RJ programmes. Since 2018 this has included a victim-centred option for victims of family and sexual offending. The RJU operates according to the Crimes (Restorative Justice) Act 2004 and has been in operation since 31 January 2005.</p> <p>The scheme is described as victim-centred prioritising the safety and interests of people who have been impacted by crime. Referrals are only accepted for matters being processed within the CJS (i.e., at point of police caution, in court at the pre-sentence stage, or post sentence).¹⁸³ Victims are supported to identify with whom they would like to have a restorative conversation, which may include family members, close friends, representatives of organisations or, in appropriate cases, the person responsible for using family violence against them. Professional supporters assist participants to be emotionally and psychologically prepared for the RJ process. RJ options include face-to-face conferencing, written or video exchanges.</p> | <p>State of evidence base: None located on Phase III victim-centred RJ for SV and FV. Earlier RCT studies on initial pilot (RISE) which was a diversion model for low-medium serious offences (Sherman & Strang, 2004). See section 5.2 for more details.</p> <p>Background: A pilot programme was trialled in 1994 (internationally recognised Reintegrative Shaming Experiment, RISE) with four RCT completed (see section 5.1.1.). Following positive evaluation findings of the pilot, the ACT government developed a strategy to expand availability of RJ throughout the CJS. Phase 1 was for less serious crimes by young offenders; Phase 2 was more serious crimes by young offenders and adults; Phase 3 expanded scheme to enable RJ in cases of SV and FV (previously excluded).</p> |
| 6d | <p>Name: Restorative Justice Conferencing Programme (RJC programme) – pilot for motor serious motor vehicle collisions</p> <p>Location/status: Centre for Innovative Justice (CIJ), Victoria, Australia (2015-mid-2018), a similar programme continues to be offered through Open Circle¹⁸⁴</p> <p>Orientation: Victim-focused (serious driving offences)</p> <p>Proceed w/o victim: No</p> <p>Relationship to CJS: Complementary process – can occur at any stage of CJS or where no proceedings had occurred – processes are independent of CJS</p> | |
| | <p>Description: CIJ designed and implemented a pilot RJC programme for people affected by motor vehicle collisions that resulted in death or serious injury in Victoria, where the offending driver was an adult.¹⁸⁵ RJC could occur at any point in the criminal justice system, or where no proceedings had taken place (e.g., where the offender died in the crash and therefore no prosecution occurred).</p> <p>The programme was victim-centred, required two-way communication (either through direct dialogue or exchange of letters to ensure questions could be answered and both sides could tell their story). The ‘process’ was deemed more important than ‘outcomes’, with serious injuries or death it was deemed unrealistic to assume harms could be repaired. The convenor was sufficiently qualified and skilled to assess and respond appropriately to the trauma effects associated with a motor vehicle collision.¹⁸⁶</p> | <p>State of evidence base: Evaluation report (Centre for Innovative Justice, 2019a)</p> <p>Victim outcomes: Interviews with a small sample of victims found positive outcomes (14 referrals were accepted). Victims reported the programme had met their justice needs in ways the formal justice system was not able to (Centre for Innovative Justice, 2019a, see section 5.1.2).</p> |

¹⁸³ A recent symposium on RJ for SV in The Australian Capital Territory (ACT), called for an expansion of the eligibility criteria to enable community-based referrals (see <https://regnet.anu.edu.au/news-events/news/8341/survivor-initiated-restorative-justice-pathway-justice-sexual-assault>).

¹⁸⁴ Following the success of the pilot, the [Open Circle](#) service was launched to conduct RJC with a range of crimes in the adult jurisdiction. Open Circle operates within the Centre for Innovative Justice (CIJ) at RMIT University.

¹⁸⁵ Pilot was developed and implemented through a grant from the Victorian Legal Services Board.

¹⁸⁶ It was noted that while the traumatic effect of a motor vehicle collision can be significant, it does not also involve the complex dynamics of sexual violence or family violence.

7. Post-sentence (within CJS)

There are relatively few alternative justice processes that operate post-sentence that can still be considered within, or complementary to, the CJS. Most effectively operate independently of the CJS and for this reason have been reviewed in section 1 (i.e., community-based RJ). The exceptions would be where an alternative justice process (such as RJ) is part of a sentence, impacts on Parole Board decisions, or other overseas innovative re-integration models such as Re-entry Courts.

In Aotearoa NZ the Department of Corrections is required to provide prisoners with access to RJ through the Corrections Act 2004. Where this occurs, the majority of RJCs are court-referred pre-sentence RJ for remand prisoners. These conferences are funded by the Ministry of Justice. Until recently there has been no funding for post-sentence RJ, other than a small number of requests from the Parole Board, however, in the last 12 months there has been a shift in direction with funding now available for referrals from other sources. These can include referrals from Probation Officers as well as Case Managers, Parole Boards, victims or whānau, community RJ providers and judges. To date referrals tend to be offender-initiated, and the victim only contacted after the suitability of the offender has been assessed and the RJ conference approved. Where post-sentence conferences are facilitated by the Department of Corrections, Ministry of Justice approved providers are used.

So far there has been no promotion of the opportunity for post-sentence RJ, but a new referral process has been developed and referral volumes whilst low are increasing. In the 7 months since 1 July 2021 there have been 38 new or carried over referrals, 8 were declined (offender assessed as unsuitable or ineligible or victim declined), 25 are in progress, 5 conferences have been completed.

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