

# A Community-Based Survivor-Victim Focussed Restorative Justice – A Pilot

Bebe Loff  
Bronwyn Naylor  
Liz Bishop

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# A Community-Based Survivor-Victim Focussed Restorative Justice – A Pilot

*I think there are so many women out there who will never report. I know some of them. They're never going to do that and so they'll end up being like my grandmother, being old and worried about who's at the door and it's not acceptable. So there needs to be an avenue to be heard and the court system is not a way to be heard.*

*And it was best, the best thing ever, really was. I've been different since.*

*I basically wanted to say, 'This is how you've been fucking up and these are the stories, and I know every bit of information about the stories. What do you think of this and what do you have to say to that?'*

*I wouldn't have been taken anywhere near as seriously and it would've been debated whereas in this thing, there was no debate, he just had to hear what I was saying.*

*I think that's the main feeling out of this work, is to just have a voice, and to let that person know that what they're doing is not okay.*

## Introduction

This is the final report of a study titled a Community-Based Survivor-Victim Focussed Restorative Justice Pilot and based at the South Eastern Centre Against Sexual Assault and Family Violence (SECASA) in Victoria, Australia. The study has been undertaken through a collaboration between the Michael Kirby Centre for Public Health and Human Rights at Monash University, the Graduate School of Business and Law at RMIT University and SECASA.

The study evaluates an innovative criminal justice response offered to survivor-victims (SVs) of sexual and family violence. SVs experiences are assessed through the lens of a “victims’ justice interests” construct developed by Kathleen Daly:

Rather than 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? The construct of victims’ justice interests contains some elements of procedural justice (i.e., aspects of participation and), but it encompasses more than respectful and fair treatment. It includes validation, vindication, and offender accountability ... elements that have been identified by others in the domestic criminal justice and transitional justice literatures as important to victims’ sense of (Daly 2014: 387).

Daly (2017) enlarges upon this construct defining justice interests in the following way:

Participation - “active participation in shaping the elements of redress, including optimal modes of implementation; being informed of negotiations and having a say (or vote) in ratifying a redress scheme (or settlement agreement); and understanding how the process works.”

Voice – “telling the story of what happened and its impact in a significant setting, where a victim-survivor can receive public recognition and acknowledgement.”

Validation – “affirming that the victim is believed (i.e. acknowledging that offending occurred and the victim was harmed) and is not blamed for what happened.”

Vindication – “vindication of the law (affirming the act was wrong, morally and legally) and vindication of the victim (affirming this perpetrator’s actions against this victim were wrong).”

Offender accountability – “calling alleged wrongdoers to account and holding them to account.”

We have latterly come to use the term innovative justice process’ as, like Daly, we find it more apt than restorative justice (definitions of which may be inconsistent and do not necessarily match the variety of cases we have investigated). We nonetheless rely on the more widely accepted term ‘restorative justice’ (RJ) in this report. We further concur with Daly’s view (1999) that blame can be a part of this innovative justice process.

SV participants in this study have all been victims of sexual violence. This was a recent occurrence for some. Others had experienced historical sexual violation. Some experienced sexual violence at the hands of an acquaintance. For others, it occurred in the context of family violence which uniformly involved other physical and/or psychological controlling and abusive behaviours.

Our study has attempted to garner the responses of SVs, and of persons deemed by the SV to be responsible for harming them (PRs), whom they wish to participate in a restorative process. Ultimately our aim has been to determine if the process under examination holds promise for adoption beyond the pilot. We conclude that it does have such potential.

## Background

Restorative justice (RJ) is an innovative justice response that can take many forms. One view holds that

Restorative justice is fundamentally concerned with understanding justice, just results, and just processes from a perspective animated by a concern to restore and establish peaceful, respectful and equal relationships (Randall and Haskell 2013: 521).

Another view, and the one adopted by us, is that this justice form, when applied to sexual and family violence cannot have, as its primary aim the restoration of mutually respectful, equal relationships. The reasons for this, if not immediately apparent, will become evident later in this paper.

More helpfully, Braithwaite (2014: 18) has proposed that practitioners of RJ adopt strategies intended to empathetically empower individuals to reclaim their voice and repair the harm that has been done to them. The skill involved is that of selecting the right strategies. He also suggests that evidence is required to refine, inform and improve the choices practitioners are making.

Although RJ approaches have been applied in a range of settings within and beyond the Australian criminal justice system, the application of RJ in cases of sexual violence remains controversial. Critics express concern about the potential for re-victimisation, manipulative and grooming behaviour by offenders, and the likely limited impact on offender attitudes. They see RJ as a soft option, taking place in a private environment instead of more publicly accountable criminal justice processes; processes with admitted problems that continue to be steadily addressed through reforms wrought by feminist activism. Others (Daly and Stubbs 2006; Strang 2002; Cameron 2006; Ptacek 2010). Koss (2013: 3) have expressed concern however, that such “[s]cholarly discourse on RJ for sexual assault has been hindered by lack of empirical data and is predominately conceptual and dialectic.”

Nonetheless alternatives to traditional criminal justice are needed, as the extent of reform required to respond comprehensively to sexual violence may be unachievable:

[d]espite 30 years of significant change to the way the criminal justice system responds to sexual violence, conviction rates have gone down in Australia ... but at the same time, increased criminalisation and penalisation of offenders is not likely to yield constructive outcomes ... Given the extent of reform to procedural, substantive, and evidentiary aspects of sexual assault legal cases, we may have exhausted its potential to change the response to sexual assault. We may need to consider innovative justice responses, which may be part of the legal system or lie beyond it (Daly 2011: 1).

Extensive reform of the substantive and evidentiary laws on rape has not, and arguably cannot, resolve the difficulties in meeting the burden of proof where there is no or little corroborative evidence. SVs remain reluctant to face the embarrassment, anxiety and trauma caused by the legal process. There continue to be significant attrition rates (only 10-15% of cases reported to police resulting in a conviction) (Daly & Bouhours 2010; Daly & Curtis-Fawley 2006; ALRC & NSWLRC 2010; Millstead & McDonald 2017). In response, others (Daly 2011; Naylor 2010; Strang & Braithwaite 2002; Koss 2006; CIJ 2014) have proposed that RJ processes be developed to address the needs of SVs of sexual violence. However, there are at present only a small number of RJ programs specifically designed to deal with sexual violence, and fewer still with published evaluations.

Existing studies also suffer from a number of limitations. In a recent review of research on RJ in cases of intimate partner violence, Ptacek (2017) states there is currently still little robust evidence about what is effective. He finds,

problems with small samples; poorly drawn samples that combine different practices, different locations, and different kinds of crimes; and confusing findings ... What do we know

from this literature about the outcomes of these practices for survivors and offenders? While there are suggestions of effectiveness in most of these studies, we actually know very little. (Ptacek 2017: 178)

Although rigorous research published in peer-reviewed journals has been conducted on RJ programs that respond to different types of sexual and family violence, these studies tend to focus on particular program features such as participant satisfaction, or outcomes such as recidivism and do not evaluate programs against their aims. Daly (2006), for example, has reviewed the operation of the South Australian Juvenile Justice Project under which police have the discretion to refer those aged between 10 – 17 years to family conferences. The conferences were found to be useful for sexual offences with benefits described as early admission of responsibility by the offender and attendance at treatment programs, which is linked with lower re-offending rates. However, these and similar findings have not diminished the controversy associated with the application of restorative justice processes in cases involving sexual violence for adults.

To the best of our knowledge, there has only been one *program evaluation* published in a peer-reviewed journal, Koss's evaluation of the 'Arizona RESTORE Program'. We examine it here as it yields results of relevance to this project. Although 'Project Restore NZ' is widely cited as an example of an RJ program for cases of sexual violence, we were unable to locate published peer reviewed research on that program. We describe it briefly below. Neither the Arizona program nor the NZ program is entirely community based.

The Arizona project was developed as a 'research-demonstration' study and is no longer in operation. (For a description of the Arizona RESTORE program see Mary P Koss, 'Restorative justice for acquaintance rape and misdemeanor sex crimes' in James Ptacek (ed), *Feminism, Restorative Justice, and Violence Against Women* (Sage, Thousand Oaks, CA, 2010) 218.)

The following description is drawn directly from a 2013 paper by Koss. The Arizona project was a pre-conviction diversion program and referral to it was at the discretion of prosecutors. These discretionary referrals were regarded as problematic as a restorative option was offered only in cases thought likely to prevail at trial. Perhaps, for this reason, there were an unusually high percentage of male SVs (6 of a total sample of 22 SVs were male). In addition, nearly half the cases had "languished" for more than a year after the crime before being referred by prosecutors. Most referrals were pre-charge, though some were post plea. Eligibility was limited to first time offenders. Prosecutors excluded "repeat sexual offenders, persons with police reports for domestic violence, or individuals with arrests for any crimes involving non-sexual forms of physical assault" (Koss 2014: 1632). Of the conferences held, there was an 80% completion rate.

Koss undertook a quantitative process and outcome evaluation of the Arizona program. Process data consisted of an examination of recruitment flow, consent rates, and conformance of conferences to guidance. Outcome data focussed on participants' self-reported reasons for choosing RJ, satisfaction with program components, procedural fairness, and completion rates. As noted, analysis was based on 22 cases where both the SV and 'person responsible' (PR) consented to participate in the program. The study involved 109 participants with a 92% retention rate.

Of those SVs who chose to participate in this program, 93% agreed at intake that they did so "to make the responsible person accountable." For 75% of PRs the program was selected to have an alternative to court and 95% agreed that "apologizing to the person I harmed" was a major reason they chose the program. Comparing intake for SVs with post-conference ratings, a feature that emerged as being more important than it had been at intake was "having the opportunity to express how the incident affected me" (Koss 2014: 1644). Ultimately the majority of PRs fulfilled all program requirements. The most satisfied group was SVs who had attended their conference. The study cautiously concludes that programs of this kind are feasible, can be conducted safely, achieve acceptable levels of satisfaction, and attain many of the envisioned outcomes.



Koss (2014: 1632) asserts that the stage at which an RJ option is to be offered “is significant because progressively fewer victims are eligible” as the legal process advances. It is for this reason that the project that is the subject of this paper had been designed to reach SVs who would not, or would no longer, participate in traditional criminal justice processes, as well as those who pursued traditional criminal justice to its conclusion.

Project RESTORE NZ has published its research on its website (<https://projectrestore.nz/research-papers/>). In their 2012 study (Julich & Landon), 12 files were reviewed from a total of 39 referrals during 1 March 2011 to 30 June 2012. Twenty-five of these referrals did not proceed to conference. Referrals were made by the police (6), crown prosecutors (3), public defenders or lawyers (11), judges (6) and the Probation Service (1). Other referrals came from counselling services (6), SVs who self-referred (2), and 4 were referred from other RJ providers. In the second study SVs, offenders and other participants from the first 12 cases and a further 4 cases, were surveyed. Ultimately 14 participants (3 SVs, 2 offenders and 9 others) completed or partially completed a survey.

Though involving small numbers, the studies found that SVs had achieved a “sense of justice” which is understood to have several components including being heard in a safe place; acknowledgement of wrongs and harms; holding the offender accountable and having the experience validated or witnessed by others. The project is also considered to have reached its goal of preventing repeated offences by PRs who were helped by the process to identify and address the underlying causes of offending.

The study findings stressed the need to continually monitor the process to ensure that it does not replicate the dynamics of the original violence. Some respondents were doubtful about the potential for the process to meet complex needs, which underlined the need for continual engagement with other services and processes that addressed practical issues in SV lives.

It is undoubtedly the case, therefore, that there is a dearth of reliable data upon which to form conclusions about the operation of RJ models for adults in cases of sexual violence.

A 2014 report (Joudo Larsen) for the Australian Institute of Criminology (AIC) details other concerns, historic and current, about RJ processes more generally. Notably, difficulties were identified with scaling up following pilot programs, caseload, safeguarding the rights of both victims and offenders, and the attention paid to indigenous and cultural differences. The AIC report finds, in response, that there has been consistency among victims in reporting satisfaction with RJ processes, offenders’ rights have not been violated, and effort has been made to increase the cultural relevance of programs, including the involvement of respected community members and elders. Current challenges are described as the extension of RJ processes (largely focussed on young offenders so far) to adults and for serious offences, and the achievement of ‘restorativeness’.

The present study seeks to further the availability of empirical data to inform decision-making.

## SECASA and the Restorative Justice Process it offers

The RJ process offered at SECASA will be outlined first. The evaluation study will be discussed in the following section.

### *SECASA*

SECASA commenced operation in 1977 and was the first government funded sexual assault centre to be established in Victoria. Since then SECASA has grown into a significant and complex organisation with centres in 9 locations and outreach services in 3 further locations. Among other services, SECASA provides

- A 24 hour crisis service for adults, children and non-offending family members for sexual assault and family violence
- Urgent medical care and follow up
- Confidential counselling and support for those who have been sexually or physically assaulted recently or in the past
- Legal advice and services in association with Springvale Monash Legal Service
- Assessment and treatment of problem sexual behaviour and sexually abusive behaviour in children and young people
- Community and professional education
- Advocacy

SECASA is a member of a group comprising all Victorian Centres Against Sexual Assault, which is a collective of non-profit, state government funded rape crisis centres. (See <https://www.secasa.com.au/services/>.)

### *RJ at SECASA*

SECASA had been offering RJ to clients who indicated, for various reasons, that they wished to be able to speak with the person who had harmed them, for over 20 years, but it had not been evaluated before the present study.

The SECASA process is entirely voluntary. There is no compulsion on any party to attend, nor are inducements offered. Nonetheless it is notable that those who have been identified as being responsible for having committed the harm do usually attend.


The availability of RJ is advertised on SECASA's website and at SECASA offices through posters on notice boards and pamphlets. In addition to referrals to the RJ facilitator made by SECASA counsellors, some SVs self-refer having read the information on the website or heard about the program on the radio. (Members of the study team were interviewed on radio, including 774 ABC, "Rape and forgiveness", The Conversation Hour, 6 March 2017 <http://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour/8309036>) Referrals have also been made by the police, other CASAs, a psychiatrist, religious organisations and the Department of Health and Human Services, Victoria. There is no restriction on who may refer SVs.

03 9928 8741 | secasa@monashhealth.org

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**Wise words**

Anyone who says sunshine brings happiness has never danced in the rain.  
Author Unknown

## Restorative justice program

For Female Survivors, Male Survivors

Tags: For Clients, Legal Information  
Author: South Eastern CASA

### What is restorative justice?

Restorative justice helps people who have been sexually or physically assaulted to communicate with the other people involved, about the harm that has been caused. The police and courts will not usually be involved.

If you have been affected by sexual or physical assault, and would like to talk to the offender, family members or anyone else involved, restorative justice may be able to help.

You can have a face-to-face meeting, or a different type of communication. A SECASA facilitator will help with the process.

### Interested in the program?

Please ask your SECASA counsellor for more information. You will be asked to complete a Restorative Justice Intake Form. Your counsellor will help you to identify:

- ▶ The harm that is to be addressed
- ▶ The person responsible for causing the harm
- ▶ Other people you would like to be involved
- ▶ The type of communication to be used
- ▶ The outcomes you want

★ ★ ★ ★ ★  
17 votes

To contact your nearest Centre Against Sexual Assault in Victoria phone the Sexual Assault Crisis Line on 1800 806 292 or Australia phone 1800 737 732  
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(<https://www.secasa.com.au/services/restorative-justice-program/> accessed 19 April 2018)

An SV will meet with the RJ facilitator. The facilitator will seek to understand the factual situation, provide information about the process, and ensure that the SV's expectations of the RJ intervention are realistic and not unduly optimistic. Questions from the SV are encouraged at every stage.

With support from the facilitator, the SV who seeks to participate in the RJ intervention will be asked to identify,

- The harm to be addressed by the process;
- The person responsible for causing the harm to be addressed through the RJ process (who could be directly responsible for the harm caused or complicit in its occurrence);
- Any other persons to be involved in the process;
- The means of communication to be adopted (face to face, written, a person acting as proxy for the SV, electronic and so on); and
- The desirable outcomes from her/his perspective.

The facilitator will advise the SV that the outcome may not be as they would wish.

Written information about the process and its risks, including potential legal risks where relevant, is provided to the participants. The facilitator is fully aware of the potential for manipulative or grooming behaviour on the part of the perpetrator. More will be said on this point later.

Although eligibility criteria for RJ were extensively debated in advance of the pilot, few restrictions have been imposed. SVs and PRs are screened to ensure they are suited to the process. For example, if the SV said she wished to verbally abuse the other party, she would be considered ineligible. A judgement is made about the mental state of the participants and their ability to participate in and benefit from the process. RJ may be delayed while potential participants are referred for counselling. What SVs seek from the process must be achievable and all participants (including any persons attending to support one of the parties) must agree to behave respectfully towards each other.

No restrictions have been placed on participation with regard to the seriousness of the crime or degree of involvement in the traditional criminal process. This restorative justice option accepts SVs at any stage of the justice process as well as those who have been advised that their cases will not proceed due to lack of evidence, those who have not made a report to the police, those who fear the re-traumatising experience of court, those in situations of family violence who choose not to leave, and historic cases of abuse – and those whose experience of the traditional criminal justice system has not provided them with the satisfaction they had expected. This has the advantage that it leaves the formal justice system intact, and it provides a justice response for those SVs whose needs the criminal justice system does not now meet.

Cases involving children are accepted (but children are not involved in the evaluation study).

In certain cases, RJ has been delayed at the request of police and, in one instance, until an appeal had been concluded. In one case where RJ was to take place in a prison, officials were concerned that a SECASA facilitator could appear biased in favour of SVs and required a 'neutral' facilitator.

# The Study

This intervention and study design is the culmination of 2 years of deliberation from a diverse group of key criminal justice system stakeholders, including police, prosecutors, the judiciary, forensic physicians, CASA Forum and others. Guidance was developed to ensure that the rights and safety of all participating parties was protected.

The study was funded by the Victorian Department of Justice and Regulation, the Australian Institute of Criminology, the Australian Communities Foundation and an anonymous donor. The Monash University Human Research Ethics Committee and the Monash Health Human Research Ethics Committee approved the study.

## Methods

This study design is non-experimental as the incorporation of a control group, receiving no intervention or an intervention that is assumed to be ineffective, was regarded as ethically problematic. This study adopts both quantitative and qualitative methods.

Study participants were adult (over 18 years of age), competent, English speaking and able to provide their informed consent. There were both male and female SVs and male and female PRs.

### *Quantitative Data Collection and Analysis*

The intended study sample for the quantitative arm was as close to the entire population of RJ participants as possible.

#### Data Collection from SECASA Records

Information related to SVs was collected from SECASA records. This includes age, postcode, referral source, single incident/ongoing abuse; and recent or historic offence. SVs were allocated a unique study number so that data collected from their SECASA records could be linked to their surveys, and interview data.

#### Justice Surveys

Surveys were administered to SVs and PRs at the end of their interviews. Surveys took approximately 15 minutes to complete. The surveys adopt a 5-point Likert scale to determine each party's views about each stage of the RJ process: why they took part, their preparation, how the process was carried out, and the outcome of the program. 'Victims' justice interests', utilising the framework identified by Daly (2017), are incorporated in the survey, for example "I was able to say what I wanted to say", "was believed", "I now don't blame myself for what happened to me", "Others participating in the process now understand the seriousness of what happened", and "The person/s who harmed me acknowledged what they did was wrong".

The surveys concluded with an open-ended question. However, the intention in so doing was to elucidate responses to prior survey questions rather than to generate a body of qualitative data requiring separate analysis.

### *Qualitative Data Collection and Analysis*

#### Interviews

In-depth interviews were carried out with SVs and PRs with their informed consent. Interviews used closed and open-ended questions, the latter designed to capture a comprehensive and detailed

understanding of the RJ process from different participants' perspectives. The focus of the interview was a series of questions about how SVs and responsible persons experienced the RJ process. Interviews lasted between 30 minutes and 1 1/2 hours.

For PRs, interviews probed why they agreed to participate; how they characterise the process (including the level of personal support provided to them, fairness of the process, the outcome and protection of their rights); whether their perceptions of their act/s, sexual violence and the SV have changed; whether they would act in the same way again; and whether they would recommend the process to others.

For SVs, a similar set of questions was asked. In addition, the project aimed to assess SVs' experiences through the lens of 'victim's justice interests'.

We sought to interview individuals from each participant category and as close as possible to the entire sample.

### Analysis

The methodology applied for the purpose of coding was that developed by Strauss and Corbin (1990). An inductive approach was adopted. NVivo software was used to assist data analysis. Interview data was transcribed and the three authors each studied all transcripts. Emerging themes or categories were discussed and transcripts re-read several times in light of newly identified themes, with this pattern of analysis repeated until the researchers were confident that all major themes had been identified.

### *Limitations*

Eight SVs and 4 PRs agreed to participate in this study. Thus, like the research that precedes this study, we have small case numbers, insufficient to draw strong conclusions but perhaps enough to point to fruitful areas for future research.

There was little uniformity among the cases. Even though this was a small cohort, the cases differed with respect to a number of indicators: historical or current abuse, single event or ongoing abuse, the age and background of the parties, acquaintance or familial sexual violence, single generation or intergenerational, whether a police report had been made or was likely to be, whether the case had been before the courts and there had been a conviction, whether the sentence had been served and so on. While this does provide insight into the range of cases that can be dealt with, it poses some difficulty for identification of themes and making generalisations.

### **Case Studies**

We, in discussion with conference facilitators, provide four case studies that reflect emerging categories of cases as revealed by the data (e.g. historic, intrafamilial, current). We also provide a case study describing an unsuccessful RJ process. The case studies incorporate features which appear typical within each category and rely on the combined circumstances of several cases so as to protect anonymity. The purpose of providing these case studies is to give the reader a feel for the variety of cases encountered.

### Susan

Susan heard about the SECASA RJ program on the radio in 2016 and rang SECASA. There was a family crisis and this triggered Susan's memories. Twenty years earlier her drama teacher had offered to help her rehearse her lines. Instead of helping her he raped her. Hearing the radio program, she realised she was absolutely furious about what happened. She decided to make a report to the

police. The offender by this time was 79 years old. There was a trial and he was found guilty, fined, and put on sex offender register for 7 years. Susan was disappointed and upset: she wanted to know why he had raped her and the trial didn't provide an answer to this question.

Shortly after the case had concluded, Susan contacted SECASA. The RJ facilitator met with her and advised her of what she might expect. Susan explained that she wanted the chance to have a conversation with the perpetrator and ask him the questions that she had been unable to as a child. She wanted to know why he thought it was okay to do what he did. She was also upset by comments of the defence barrister questioning her credibility. Susan decided she wanted time to think about whether she should proceed. After a couple of months during which she received some counselling, she decided she wanted to proceed.

The facilitator was able to contact the former teacher and phoned him to warn him that she would be sending a letter. She then wrote him a letter, the content of which was approved by Susan.

The facilitator met with the perpetrator and had a discussion about what happened. She assessed he was comfortable with going ahead and was aware of what Susan wanted. The facilitator wanted to make sure that, for example, he did not want to express anger about being dragged into court, but was satisfied that he was going to participate with respect.

During their face to face conference Susan told the perpetrator/her former teacher that he had no understanding of how the assault had hurt her. She said there were often times when what happened continued to come up in her thoughts, and that she had long wanted to be able to talk to him. He said he hadn't realised that something that happened so long ago was continuing to cause distress. He apologised.

At the conference, Susan recalled that the case had been heard in the Magistrates Court and that the defence counsel had attempted to discredit her and minimise what had happened. She had not realised that the Court tries not to jail people of his age. She had found the police to be supportive but the court case had dragged on and she had found it disturbing. She felt she was not the central person.

He said that he had also felt somewhat uncomfortable about some of the things suggested.

After the conference Susan said she was happy to have been able to have this meeting and finally speak her mind. The court case had left her feeling dissatisfied and upset. She said she didn't want compensation; she just wanted to talk to him.

For his part, the offender was thankful that he had had the opportunity to apologise.

### Margaret

Margaret comes from a large Catholic family. Margaret's grandparents have 6 children all but one of whom are married and have children. Margaret herself is one of 10 children. The offender is Margaret's uncle. He has a cognitive impairment but is high functioning, and with some assistance, he was able to go to a mainstream school. He was however sexually abused by a priest as an adolescent when at school. His life is now organised by one of his siblings.

He first sexually abused Margaret when she was 9 years old and this continued for some time. About eight years ago Margaret told her mother and her mother told the grandparents. It didn't take long before the whole family knew. Nonetheless family members agreed that they couldn't reject the uncle, and he continues to be invited to and goes to family events.

Over time Margaret has become increasingly annoyed about the family response, especially when she sees the uncle. She has started to 'act out' and to be rebellious in what is a conservative family.

She thinks the family does not understand how difficult it has been over the last 12 years. She does not want the uncle to go to jail, but she does want to tell her aunts and uncles how difficult it has been. Her mother, now separated from her husband, also periodically gets angry at her siblings.

A session was run at SECASA. It was complex, with nine adults in attendance. Two brothers, Margaret's uncles, chose not to be involved. Margaret prepared a written statement that described how distressing it was and her belief that the family just wanted the issue to go away, but that it would not do so. She said that she had stopped going to family events for Christmas, Easter and other holy days because he was always around. She asked why it was up to her to negotiate a response to what happened, when she was the one who was wronged. She pointed out that he was aware that what he was doing was wrong. She then asked if she could be warned in advance when he was going to be present at family events.

One of the couples was pleased that they had come. They apologised for causing her additional distress, and they explained their feeling of responsibility for him. As good Christians, they felt that they should not cast him out, but should assist him. Another couple had a similar response. One brother-in-law said he thought they should have taken action some time ago: he said that the issue was a cloud that was always present. One couple just wanted it to be dealt with so they did not have to go through the process every time there was an event. Margaret's mother said the family had taken more account of him than her daughter.

The family members then discussed how they should manage this. They agreed that in future Margaret would go to one event and he would go to the next. They are now clear that they can support him. Margaret is also clear that she doesn't want to talk about him anymore. Margaret was generally satisfied with the outcome.

The facilitator met with Margaret and her mother together and separately on a few occasions both before and after the conference. The facilitator then met with each of the couples.

At no stage did anyone, including Margaret or her mother consider going to the police. They all felt this was a family matter to be dealt with internally. The two uncles have remained uninvolved. Margaret's mother remains cross about having to contend with family dynamics in this tight closed family.

### Jane

Jane had been raped by a man in her social circle. She was seen by a forensic physician who collected medical evidence of the rape and gave Jane the morning after pill. Jane declined police involvement. Jane received crisis care and counselling from CASA Z within a week. CASA Z referred Jane to the facilitator at SECASA because Jane had said that she really wanted to talk to the offender.

Jane and the offender were all in the same tight social group. Everyone knew about the event: Jane had told her best friend who told others. They go to all the same parties, and Jane didn't want to withdraw from her social life.

The facilitator saw Jane and asked her what she wanted from the session. Jane said she was not thinking of collecting information for the police. What she wanted was to ask him why he thought this behaviour had been okay when Jane had said no, and to tell him that what he did has had consequences for her. By this time Jane had stopped work and was on sick leave. She had trouble sleeping and was not eating well. The rape had happened in her home and she needed to feel safe in her home again. Jane was now living with her parents.

The facilitator contacted the offender and set up a time to talk with him. He said quite a few people knew, and that people in their social group were being negative towards him, although one friend had been supportive.



A face to face conference took place at SECASA. The offender took responsibility for what happened. He apologised profusely for being terribly drunk and causing such distress. He was upset he had hurt someone he liked. He was also upset to discover that he was capable of doing something like this, and he wondered what else he was capable of when he was so drunk. He said he would see someone about his drinking. He wrote her a letter of apology, which he thought she would appreciate, and she valued his response.

Jane says that since the conference she has been feeling much more secure and in control of things. She has been able to go back to work.

### Mary

Mary had been referred to SECASA by her psychologist. Mary had grown up in a dysfunctional family where she had experienced physical abuse and controlling behaviour. Mary had been sexually abused between the ages of 6 and 14 by an uncle, her mother's brother. Mary had mentioned her uncle's behaviour to her mother, Fiona, who had either ignored her complaints or reprimanded her for making things up. Mary's parents eventually divorced.

Mary subsequently had 2 children, a girl of 4 and a boy of 7. Fiona was a regular visitor. Fiona started bringing her boyfriend to visit. They had recently moved in together. Occasionally Fiona would babysit Mary's children. After about a year, Mary's daughter came to Mary and asked why her nanna's boyfriend kept touching her private parts. He also asked her to touch his private parts.

Mary immediately reported this to the police. The police investigated but did not charge the boyfriend. Mary said that she didn't want her children to have any further contact with her mother. Fiona ignored Mary's request. Mary didn't know what to do, when her psychologist suggested RJ.

Mary wanted Fiona to apologise and acknowledge what had been done to Mary as a child and to agree to not to have anything to do with Mary's family until Mary said she could. Fiona was advised of this and agreed to attend a conference. During the conference, old patterns of behaviour re-emerged and things became heated. Fiona said that Mary had made up stories about her uncle and Fiona's boyfriend. She said it was lucky Fiona hadn't reported Mary's stories to the police or her uncle would be in gaol for doing nothing. Instead of reaching agreement on what should happen, Mary and Fiona's interaction was highly antagonistic and Mary became more upset than she had been previously.

Mary had since taken out an intervention order against her mother.

# Results

## The Sample

Recruitment to this study commenced in February 2016 and concluded in February 2018. Over the study period, 21 RJ case files were opened. In one case, the SV decided not to proceed. All SVs whose RJ process had concluded (n=10) were invited to participate in the research. In two cases, none of the parties (n=4) wished to participate in the study. Eight SVs and four PRs agreed to participate. One of the persons interviewed was the mother of the SV and wife of the perpetrator. This SV was under 18, so did not meet the selection criteria for inclusion in the study. Five PRs (there were two PRs in one case) did not consent to participate in the study. One person had participated in a conference as a support person, but then recounted her experience of sexual abuse with the same PR, did not wish to participate.

An understanding of this diversity in the cases is necessary in order to make sense of the results. In the study sample, three SVs were raped by acquaintances. In only one of these cases was a complaint made to the police. Although the perpetrator was arrested and questioned, the police did not pursue the matter further. Three SV's were sexually violated by their fathers. In two of these cases the perpetrators were sentenced to periods of imprisonment, and in one, the father had died. Two cases involved three generations of family members who had experienced family and sexual violence. In these cases, both SVs and PRs had been sexually violated and were highly antagonistic towards each other. In one case, the SV had been sexually abused as a child and her perpetrator had been convicted. More recently, another perpetrator within the SV's family had been convicted of sexually abusing the SV's child. In the other case of intergenerational sexual abuse, the original perpetrator, if still alive, may still be at large. These last two cases were the least successful from the perspective of the participants.

## Data Derived from SECASA Files

Although we were unable to collect data direct from all case files, as we did not have consent to do so, the SECASA facilitator was able to provide the following information with respect to the cases.

### Age of SVs

The youngest SV was born in 2002 and the oldest in 1955. There was no evidence of clustering at any particular age.

### Residence

There was no evidence of clustering with respect to where SVs came from. They were spread throughout SECASA's catchment area and, in the case of those SVs referred by other CASAs, beyond it.

### Source of referrals

Though most referrals were made by SECASA counsellors, referrals came from a variety of sources including individuals who had independently become aware of the program.

**Table 1: Source of Referrals**

Referral Source	Number of Referrals
Counsellor	9
Religious organisation	3
Self	2

CASA	2
DHHS	1
Psychiatrist	1
Police	1
Unclear (likely to be self)	2

#### Recent or Historic

In 6 of the 21 cases, the abuse had taken place recently.

#### Abuse by relative or by acquaintance

Twelve SVs were abused by family members and 9 by acquaintances.

#### Involvement of traditional criminal justice

A conviction was obtained in four cases. Complaints to the police were made in nine cases. Of these cases, in two the SVs decided not to proceed, in one the police decided not to proceed, in two the SVs are considering whether to proceed, in two there has been police involvement over time for a range of problems, in one a complaint has only recently been made, and in one the perpetrator had died. SVs did not report to the police in eight cases.

## Surveys

The results of the surveys completed by SVs and PRs are in Appendix 3. Given the small numbers, it would be unwise to place much weight on the results. The results are given for interest.

The survey instruments, modelled on those developed, tested and applied by Koss in her evaluation and amended in light of the local setting in collaboration with SECASA staff, worked well when piloted. However, when administering the survey, participants sought to qualify a number of their answers. We have included the qualifications made in Appendix 3. The survey was more readily applied to cases of sexual violence between acquaintances than to more complicated instances of family violence.

### *Survivor Victim Data*

The term SV is used here to refer to survivor-victims of acquaintance rape and FV to survivor-victims of family violence.

#### Motivation for participation

Being heard and having harms acknowledged emerge as strongest motivations to participate. Securing particular outcomes was less of a motivation for participation. Increasing the understanding of friends and families does not appear to motivate participation.

#### Preparation for the process

Participants felt well supported at the preparation stage and SVs found it particularly useful.

#### How the process was carried out

Participants were satisfied with the process and felt safe, believed and respected by the facilitator but not necessarily by others. Most felt that the PR heard what they had to say. There were mixed feelings about the extent to which the process had helped them be less angry and upset and more able to put the experience behind them. Nevertheless, all would recommend it to others in similar situations.

#### Outcomes

In terms of acknowledgement, apologies and safer futures outcomes were varied, mainly because some PRs were more co-operative and forthcoming than others.

Differences were observed between sexual and family abuse survivors:

- SVs were more concerned with concrete outcomes than FVs.
- SVs were more motivated by preventing the abuse of others than FVs.
- SV's benefited more from the assistance provided to them in formulating what to say to the PR.
- The process was more beneficial for SVs in assisting their ability to move on with life.

#### Note on comments

Respondents noted that not all improvements in wellbeing were attributable to the RJ process.

### *Persons Responsible Data*

#### Motivations

Motivations varied markedly with some PRs motivated by the desire to help the SVs and to put matters behind them. All wanted to somehow make things better. Some were seeking peace of mind.

### Preparation for the process

Participants generally felt supported at the preparation stage, with some reporting that the preparation had helped them to understand what would happen.

### Process

Although all participants felt that they were respected by the facilitator, some felt that they had not been heard or respected by other participants, some of whom were seen as behaving badly.

### Outcomes

There were mixed reactions to outcome questions, with some feeling it had a positive impact and others not. Better understanding of the effects of violence was achieved, but peace of mind was not. Nevertheless, all felt that justice had been served and would recommend it to others in similar situations.

## Interview Data – Survivor-Victims

The analysis of SV interview data will begin with the comments they make with respect to victims' justice interests outlined earlier: participation, voice, validation, vindication and accountability. Other matters will be addressed subsequently.

It may reasonably be expected that a person who has experienced a violent family setting in which s/he and others have experienced sexual and family violence over a lengthy period may feel differently about the usefulness of potential justice interventions than a person who has experienced a sexual violation by an acquaintance on a single occasion. These differences may equally be expected to impact on the reasons for the SV choosing RJ instead or in addition to a criminal justice response. Reference will be made to the SV's context where it is possible to do so without breaching the SV's privacy.

The eight SVs whose observations are discussed here were all involved in separate RJ matters at SECASA, and they are referred to as SV1 – SV8.

We are most grateful that the participants agreed to share their thoughts with us.

### *Participation*

Participation refers to the SV's ability to understand the restorative process and exercise influence over what is to be discussed, how the process is implemented, and nature of the outcome. By contrast to the criminal justice system where the role of an SV is reduced to little more than a witness, participation in this context aims to give the SV control over the structure, content, environment and outcome of the process. As an SV centred process, the basic requirements of the participation criterion were essentially met, though SVs experienced participation as a justice interest to varying extents. SVs generally expressed the wish to meet with PRs in an emotionally and physically safe space to achieve the aims they had articulated in advance.

SV1's daughter had been sexually abused by the daughter's father. The father had been charged and had left the family home. SV1 sought RJ in the interests of her children and the process was constructed to meet their needs. Although SV1 was unable to clearly articulate how she believed the process would benefit her children, she was firm in her understanding that it should be carried out for their benefit. The children were under 18 so could not be interviewed.

One of the issues that arose was that my younger daughter ... was so incredibly angry that she actually didn't know what to do with herself. And the reason for that was that her father just got ripped out of her life with no warning and she was not allowed to see him from one day to the next ... speak to him, have any contact with him and she wanted an opportunity to punch his lights out and that opportunity was not forthcoming. So, as I remember it revolved around her need to express anger towards him in order to move forwards. With the SV [the daughter who had been abused], ... she wanted to maintain a relationship with her father... His welfare is important to my children and this is actually all about my children.

In this case, a court order was required to enable RJ to take place. The process took place at the home of SV1 with the PR participating through skype. For SV1 preparation would ideally have included a clearer indication of how long the process would take. Unlike her experience with the criminal justice system, SV1 did not feel that information about the process was hidden from her. She recognised that the restorative justice process was a work in progress, but noted,

I think I'm a little bit stuck now with how long does this go for.

Some concerns were expressed with respect to the preparation SVs received, the waiting area and the room in which conferences were held, and some would have preferred more intervention or direction on the part of the facilitator. It should be noted that despite their concerns, all participants expressed a high degree of respect for their facilitators.

While some SVs had a clear picture of what they wanted to say to the PR, SV2 would have preferred greater consultation before the conference to enable her to determine what she wanted to achieve and how she wanted to put her message across to the PR.

I felt like before the actual meeting with the other person, I would've liked to have had a bit more preparation. I think I felt a bit isolated to do that by myself ... it would've been nice to have someone help me go through exactly what I wanted to say. Not word for word, but what ideas am I trying to put across? What is my reason for talking to this person? What is my reason? What messages do I want him to hear? And I felt like all of that planning I did by myself and it would've been ... but it still wasn't offered or it wasn't really checked in, it was just done.

Despite reading the available SECASA material about the process, SV2 indicated that she felt there had been a "gap in communication". Although she described her initial meeting with the facilitator in positive terms, SV2 expressed concern the presence of a support person had not been discussed:

I had read through the brochures that you could have a support person but that was never discussed. I never raised it but it was also never offered. It was never a discussion point. But I think that I probably wouldn't have anyway. I had pretty much decided already before I went there that I wouldn't, but I was considering maybe, but it was never offered by the facilitator.

SV 8 also felt that her preparation might have been more substantial:

I just sort of winged it. I wasn't really expecting anything, you know.

In contrast, SV4 was very happy with the preparation she received. Just prior to the conference when she felt quite nervous, SV4 felt reassured when the facilitator reminded her that she could stop the meeting at any time:

We had a couple of phone conversations to sort of get to know each other a little bit and organise a time to meet up. And because I work full-time, she was really flexible so that was really good, because I worked full-time and I have a family, that we met up on a Saturday, early to mid-afternoon. And so, in that period of time we discussed, you know, we went over some things from the past, things that have happened and whatnot. And then we went through and established an order of how the meeting should go, the type of questions that I wanted to ask or have answered and what I wanted from my dad, and sort of getting that order of how the meeting wanted to go, what I wanted from it and stuff like that. And then she went to [the PR] and his psychologist or psychiatrist or something that the prison had provided him with and went through things to give [the PR] an idea on what sort of things I was asking for ... It made me feel really assured that the situation was in safe hands and that the process, questions and what, you know, just making sure there was clarity of certain things made me feel, yeah, quite calm and confident that if this meeting did happen that it would be a safe environment, and to ensure that both [the PR] and I didn't feel attacked or scared.

Confidence in the facilitator was regarded as an important consideration. Though tempered with some reservations by some SVs, all SVs and all expressed a confidence in the facilitator. Although SV8 remarked, that "[the person] is a very good facilitator; her skills there are good", she also noted that PRs could be difficult to control:

[The facilitator] pulls it up and she tries to keep things on track where they should be but yeah, it all depends on the other party and if they were all good and well-behaved, well you wouldn't be where you are anyway.

SV3 would have preferred that the facilitator have greater involvement:

There was minimal involvement with the facilitator, and I would have, looking back in hindsight, I would have preferred probably more involvement from her. I felt that it was just a lot of him and I kind of talking ... I just didn't quite feel that her finger was on the pulse.

SV7 was of a similar view:

I thought what would happen was that the facilitator would formalise the meeting and state the rules, maybe each person have a say and then we get into it. That didn't happen. The facilitator handed it straight to me. I felt that the meeting wasn't set up correctly. It was daunting. I'm 55 and I cried for 5 minutes before I could speak ... [The facilitator] acted like a friend, not a counsellor or a facilitator.

As the PR in SV 5's case refused to participate, SV5 did not have a conference. However, she felt confident that if one were to have taken place, the facilitator would have handled it well.

I felt like she was very capable of dealing with him and that was a big thing for me, that I didn't know if, not everyone can come up against him, he's very charismatic. I felt like, you know she would be someone who wouldn't put up with any of that.

SV6 was a member of a family that had suffered decades of intergenerational violence. Her experience of the conference was coloured by her relationship with the PR who walked out before it had concluded. On several occasions SV6 noted that the facilitator was fantastic but drew attention to the difficulty of dealing with entrenched patterns of behaviour of the PR:

You know, she ran the session really well, and we had no, you know, she had no control over [the PR's] reactions ... I think, you know, [the facilitator] did a fantastic job in the capacity that she held at the time, you know, and to the best of her ability anyway. It's very hard to sit there with a manipulator [the PR] and not be sucked in. I kind of felt a little bit like she was being drawn in to that. But, you know, she's been in contact a couple of times since just to check up and make sure that everything was okay and I appreciate that. Yeah, and I don't think she could have done any more than what she did on the day, you know, the PR was just not going to budge.

Control over the physical environment was a significant factor for some SVs with several expressing concerns about the waiting room, the room in which the conference was conducted and access to and from the building. SV2 remarked,

I had a really big issue with the fact that I got to South East CASA, I don't know if I was a bit early or not but I got there and I was sitting in the waiting room and then he came and sat in the waiting room with me ... I think we were probably only sitting there for a couple of minutes but even just that moment of watching him walk in and sit down and I just avoided eye contact. It's just such an uncomfortable situation ... If they could've just taken me into a room straight off when I got there and then if he got there later and then when they're ready to join us together or whatever, when they're ready to have the actual conversations, but to have us sitting in the waiting room together was horrible.

SV 3 felt similarly:



It was awkward to begin within the waiting space, because I purposely rocked up a bit late so we didn't have to awkwardly sit in a room together and not talk. So when I first arrived it was just a bit strange ...

SV2's concerns extended to the room in which they met:

I thought the room was too small and it was set up so my chair was way too close to him. I felt like I had no personal space and I felt as if he was in reaching distance to me. But it was just too close. I would've liked some more space between us. I think the room itself was just a little bit cramped and I don't know if that's the only room that they had or for what reason it was but I felt the space between us was not enough. I felt like I was just too close to him. I pushed my chair back as far as it would go so that it was against the wall but it was still quite close.

SV8 described feeling quite vulnerable at various stages of the conference due to the proximity of the PR and the physical environment of the facilitation venue:

I didn't like being so close to the other party. I can possibly see security risks there – you've only got the facilitator. I think it would need to be done in a more secure environment in case things get a little bit out of control ... I thought it [the SECASA office] was a vulnerable environment because there was no other male in the building and you've got to come and go at the same time which gives room for conflict, you know, parking out in the street and things like that. Yeah, I don't know how they overcome that problem, but I felt vulnerable.

SV2 recounts her experience of anxiety at the start of the conference, and when the facilitator offered to get her a cup of tea.

The facilitator basically had said to me that she gave me the opportunity to speak, she said, "Go for it," pretty much. There wasn't a whole lot of conversation. But it's, we all know why we're here so, "Go for it." And I couldn't speak to start off with, I was quite shaky. I couldn't really breathe, it was probably a bit of a panic attack and at that point the facilitator asked me if she wanted to go get me a cup of tea, and I was just, "No! No, do not! Don't go! You can't leave me here! Just stay here." That scared me. I'm not scared of the person. I don't think that they would physically harm me ... once I started talking I was fine.

Significantly, SV7 stated that

It was intimidating as a man walking into an all female environment.

The conferences between SV1's children and the PR took place at regular intervals at her home over the entire period of the study, with the PR participating on skype. She remarked that,

It was never discussed how many times this would happen ... How long does it go on for?

With respect to the restorative process which successfully dealt with 'minor' issue in the context of a setting of complex intergenerational family violence, SV8 noted,

I didn't really expect anything from it. You know, I was very cautious about it because you go through so many things talking to so many different people and so many ... you know, I really didn't have any expectations really. I just went along to, you know, "I've got nothing to lose" sort of thing.

## *Voice/Validation*

Voice is the opportunity to describe what happened and its impact in a formal setting and receive acknowledgement. Validation gives content to the acknowledgement in that the SV is believed and not blamed. It is of note that few of the SVs sought validation and some firmly asserted in their survey responses, that they did not blame themselves for what happened. By contrast, voice was of critical importance to all SVs.

SV8, who had been involved in intergenerational family violence, expressed her wish to be heard and to understand why the PR did what he did.

I wasn't really expecting any response. I certainly didn't expect any apology. You don't get a chance to say what you want to say to that person. Things come to a head and then you end up in the system and the system takes over and there's intervention orders and in my case there was. So communication is cut and that's a good thing but in another way, you're left with all these unanswered questions. I've never spoken back to him, you know. I just wanted him to know what I thought and that was it. I didn't want to abuse him; I'm not that sort of person – I'm pretty laid back but he did what he did and like I said, because everything comes to a head. It's usually something bad and you end up in the system, you haven't got that grey area in between where you get to say, "Why? What was going through your head?" Not that I expected answers to those questions but I just wanted to say it to him in a matter-of-fact sort of way. You know, "This is the effect of what you've done". I'd say that was it really.

SVs 2, 3 and 5 were subject to sexual violence by acquaintances. All wanted the opportunity to meet with the perpetrator, with SVs 3 and 5 both using the word "confront" in relation to the perpetrator.

SV2 wanted her concerns to be taken seriously and to "have her say".

I actually was looking for a way to be able to have that discussion with the person who had assaulted me ... my intention for getting that session was for this person to hear me and get educated basically ... I was prepared for him to completely deny it and to walk away saying, "Well at least I tried." And that was all that I wanted, was to get that off of my shoulders, that I've done my duty and that I have informed him and that he now can't say, "Well I didn't know." 'Cause now he knows ... And I'd said while I was talking that I didn't really want anything from him and I didn't want to hear his side of the story and I didn't want to hear anything from him ... I don't feel like the conversation would've been taken as seriously in another setting. If I had contacted him independently and said, "Can we meet up to talk about this?" I wouldn't have been taken anywhere near as seriously and it would've been debated whereas in this thing, there was no debate, he just had to hear what I was saying.

SV3 identified that the main thing for her was to have a "voice":

I thought it was good that I got an opportunity just to first of all speak and say everything and for that to be heard. I think that's the main feeling out of this work, is to just have a voice, and to let that person know that what they're doing is not okay. So that's what I mainly got out of it ... But the process itself, I thought it was good. I firstly spoke and then the PR spoke and it was just a back and forth.

SV3 had attempted to raise instances of sexual violence committed by the PR on others in their social group. This had not been successful. SV3 stated,

I wanted to confront. So, the best place to confront this person was in a safe space where there's a qualified therapist ... I basically wanted to say, "This is how you've been fucking up and these are the stories, and I know every bit of information about the stories. What do you think of this and what do you have to say to that?"

While SV3 she felt like she said everything she needed to say and there was "a feeling of completion" on her end, "there felt like there was a big gap on his end". For this reason, she did not experience a sense of validation:

I didn't really feel completely validated in that way because, yeah, he kind of downplayed it and watered it down and—and didn't even really acknowledge it really.

SV7 sought a meeting with his siblings in order to receive some acknowledgement for what he had been through. He noted,

The meeting degenerated into a discussion and I didn't want that ... The meeting made me feel that I was on trial. [One sibling] didn't believe me and I felt she was let of the hook. No one asked her if she heard what I said ... [Second sibling] wanted me to speak and said I was courageous and encouraged me to keep going.

SV5 was violated by a person who is a public figure. Her primary motivation for seeking a restorative option was that "he needs to know" and "to hear what he had to say", in complete contrast to her experience of the criminal justice system where the PR had access to her statement but she had none to his. She explained,

First of all, I wanted to confront him, and really, he's beyond, he's really so arrogant that I don't know if he'd even would have a conversation ... I wanted his thought process of, blow by blow what was going on. And I wanted to be able to say, so when I did this, what did you do? You know, why did you do that? You know, that kind of thing ... I was a little bit dazed that there was an option like that.

The PR in SV5's case refused to participate. Although she had been aware that her "offer of a restorative was probably way out there for him", SV5 felt frustrated that the PR did not take up the offer:

I felt like I had my hands tied, really. I couldn't do anything more. And that was frustrating. Yeah. All hinged on whether he wanted to and that annoyed me.

SV4's father was about to be released from gaol. She had not seen him during his imprisonment and wished to make sure that he understood how what he had done had affected her. She wanted the meeting,

...just to make sure that he understood what I had gone through, what I had felt, what he'd missed. As well as this, we also recapped anything that possibly would have moulded his mind into thinking it was okay, you know, going through what happened in his past, even before I was conceived, in his teenage years.

SV4 was supported by her counsellor during the conference, which took place in gaol. The PR, her father, was supported by a psychologist. SV4 stated that she was able to participate in the way she wanted and was able to say everything she wished to say:

In the beginning when he first walked in, I couldn't look at him. I mean, I took one second glance at him and I had to look away because I was just like, "God, do I know this person? Do I recognise him?" It felt really weird. But as we sort of got more into it, we were talking

and were able to have eye contact ... I ... expected there to be a lot of tears and being choked up and having to constantly go in and out of the room for breaks to get where we ended up getting, but it ran really smoothly and the expectation was totally different than what I thought it was going to be.

SV4 asserted that she felt “validated”, that she had “absolutely” been able to say everything she wanted to say and that what she said had been heard:

That my opinion matters, that what I had to say mattered and that everyone was listening to me and taking it in and considering it.

In contrast, SV6 found the conference unsatisfactory. SV6 had been an SV of family violence as a child, and the PR had been complicit. SV6, now a mother herself sought to stop the PR from contacting her or her children. The PR’s partner had been convicted of sexually abusing one of SV6’s children, but the PR denied this had happened. SV6’s aim in seeking RJ was to “get the PR off my back”.

And I rang my counsellor in tears and I said to her, “The PR will not leave me alone,” and that’s when I was put into contact with the facilitator and mediation was arranged. Because, you know, we all thought that maybe a face to face conversation would be enough to give the PR the message. See, I’m torn between the blood tie. I don’t want to cut the PR out of my life, but I’ve got to protect my children.

Instead, during the conference the PR sought to obtain the SV’s agreement to see the children. The conference deteriorated and the PR walked out before the conference could be concluded.

### *Vindication/Accountability*

Vindication is confirmation that the PR’s actions are generally regarded as wrong, and wrong in relation to the SV. Accountability is concerned with holding perpetrators to account.

SV1 was clear that the intention of the process was “putting the blame where its meant to be”. She said of the PR who was eventually gaoled, that

He is deeply sorry for what he’s done. He’s never denied what he did. He shot himself in the foot about confessing lock, stock and barrel without a lawyer because that’s what he needed. It’s a lot of putting the blame where it is meant to be.

SV2 did not wish the PR to speak. Her aim was to “educate” the PR.

I just wanted him to know how I felt about the situation and that I was calling him on his shit basically. Saying what you did was wrong, what you did was sneaky, what you did was not okay and I’m telling you now that it’s wrong so you can’t turn around and say, “Oh well I didn’t know,” so it can’t happen again ... I didn’t want an apology or anything like that, I just wanted him to know ... I think he was as accountable as he could be in my situation. It would’ve been better if I could charge him and he would get officially charged for it but I just think that, that would be so slim chances (of being charged) and that wouldn’t particularly help the situation.

It was important to her that he was being called to account by an independent body that was supporting her.

There’s no way for him to argue his way out of that situation when CASA has called him. And CASA has brought him in to say this person is saying that you raped her and we’re supporting her.

SV2 advised the PR that she did not wish to see him again.

I just told him that I never wanted to see him again and if he sees me, I want him to walk away 'cause that's rational.

SV3 had a support person present who had also been violated by the PR.

The support person shared her story about how she was raped by him, and that broke him. Not that I wanted him broken ...

SV3 did not feel as if he was taking the same degree of responsibility in her case. Rather she felt that minimised the impact through a series of "little miniscule excuses".

He was owning to his actions with me, and saying he'd fucked up, which was great, but he didn't own to the severity of what I know [in respect of other women in their social group] ... and it just felt like he turned into the victim ... So it kind of didn't really have the best outcome because he just felt, yeah, that he'd been kind of bullied a bit. He got revealed but no one tried to, you know, force him into holding accountability or anything like that, it wasn't like, 'Hey this is what you're doing,' like it was just like, 'This is the scenario, this is what's happening; what do you think about it?' It was very gentle in that way, it wasn't like, 'You are ...' you know, you must be accountable for your actions,' and like, 'Hey, this is what I know to be true, this is what's been happening for me and this is what's happening to other women, what do you think about that?'

SV4 felt "vindicated."

I feel like he does have remorse and is trying to better himself. ... Many times I guess we went over what was going through his mind the first time anything happened, what was going through his mind and how he knew it was wrong ... how he wants to try and make it up, so he's always said, you know, he wants me to be sure that if I ever did need anything, whether it be help with servicing my car or I needed help with something, he wanted to make sure that I would be comfortable in feeling free to ask him for help if needed, without thinking that there's going to be strings attached ... I felt the PR was being as genuine and as open as what I was, and trying to be as honest as we both could, that I feel like he does have remorse and is trying to better himself.

However, SV4 was not expecting to achieve "closure":

before the meeting was sort of just about getting closure or clarification. I think with the closure part, it's been too long to get closure, it's been too long. I'll always sort of feel the same about the situation like, you know, it happened, whatever. ...

SV7 had different responses from two siblings participating in the conference.

Between me and [sibling] I felt lighter, I got it off my chest ... After the meeting, I felt some release. I spoke about something I wasn't able to speak about with my siblings. It was a small miracle we were there together.

SV5's conference did not proceed as the PR refused to participate. Nonetheless, the act of commencing this process, by contacting the PR to request a meeting, appears to have made an impact on SV5's state of mind. She had previously been "quite petrified of everything and really angry." SV5 had been raped by a second man who lives in another country. Emboldened by her experience of RJ, she confronted him.

The difference for me? And I don't know whether it was because I had now confronted both. I felt like I had done something about both of them ... I wanted to do something and then let it go. I wanted to, and that's the confrontation, like the, or the restorative with the PR, that's what I wanted to do. I wanted to forgive. To just let it go so it didn't hinge on my life anymore. I just had absolutely nothing to say to him and I shut the door and I went, mmm, I don't, do not care. And it was best, the best thing ever, really was. I've been different since.

### *Would they recommend the process to others?*

With some provisos, all SVs would recommend the process to others.

SV8 sought RJ to take the emotion out of her dealings with the PR. She was in favour of the process being offered to others, but under certain conditions. She stated with respect to her earlier abuse,

I read your paperwork on why you're doing it and I just want to say it can be a minefield for victims because you've really got to be in the right mindset and really understand what is going on and not be doing it through emotional or that, because depending on how extreme your abuse has been, you're not going to be psychologically right to be doing that. I know for me, for years, I just wanted to talk to him and the question "Why" and for me, that's all I was looking for an answer for because it just tears you apart and you just look at it and you think, "Well what the purpose of all of that?" But really, I would have wanted it early in the piece but in hindsight it wouldn't have been good for me and it wouldn't have been a good time to be doing that although I really desperately wanted that. I think you just need to be careful at what stage in the victim's recovery you're going to do that, if at all.

SV8 would recommend the process to others for "minor" matters. She further stated that SVs should be prepared for disappointment.

They should be prepared for nothing because you want answers, you want to try and reconcile in your head why that happened but them themselves, they don't even know themselves – they don't really give you an answer so you really have to be prepared for nothing ... I think victims shouldn't expect and "sorry" or anything – that's just not going to happen, or very rarely. They have to be able to face the perpetrator which may or may not be good for them ... I only see it as being valuable is maybe taking a bit of emotion and trying to tap into the common sense side of things with being able to just settle the behaviour down a little bit but in my opinion, it's only going to work for minor... not extreme abuse – it's not going to be good.

SV3 had incorrectly assumed that the process she experienced was funded. Her readiness to recommend the process to others was also conditional.

I would say it's an opportunity, if that person feels comfortable, for it can re-traumatise people of course I think, you know? Yeah, I'd say if they felt comfortable, if—like if they were in a position where there was a lot of unspoken words and if they were wanting to talk to the person who's crossing the boundaries, or their boundaries, yeah I would just say it's a safe space to speak, but it's not about offloading, it's not about, you know, blaming or shaming or having a screaming match, it's about the speaking openly in a safe space, in a neutral space about your problem ... My overall impressions? I think it's great that there is a system out there that offers this, and that it's got funding.

SV6 valued the opportunity to have a conversation with the PR with an unrelated person, the facilitator, present.

Well, I would recommend it because it's an opportunity to have a conversation where, you know, there's an unrelated person in the room and so therefore things are not likely to get

out of hand. You know, I mean, I can assure you that if it was just a one-on-one conversation between [the PR] and I and there was no one else in the room it would have got heated and quite potentially violent because I'm very angry. And although I'm not that way inclined, I think I could be pushed when it comes to my kids.

SV4 stressed the importance of preparation and the commitment of the PR.

It's just the fact that I guess in my situation I was lucky that all parties were committed and whatnot. I guess not everyone's situation will be the same, you know, some people may not be remorseful or ... accepting. So, I guess as long as, you know, there's an awareness that, not all outcomes are going to be good, you know, it still depends on the parties involved.

SV2 thought the process should be made widely available.

The program itself should be an option for everyone that goes to CASA, to every CASA. I think it should be an option to something that is available if that's a path that somebody's wanting to go down, it should be available to have that support, to have that conversation ... I think it would make a massive difference. It made a massive difference.

SV1's response was most poignant. SV1 would recommend the process only insofar as it benefits survivor-victims. Speaking of her daughter, she said,

It enabled her to live her life, it was a part of the process that stopped her taking her life.

## *Criminal Justice*

As already demonstrated, restorative justice enables victim's justice interests to be served in a way that the traditional justice system cannot. It fulfils participation, voice and validation in ways that are not possible in traditional criminal justice. SVs who had survived sexual violence perpetrated by acquaintances had other reservations about the criminal justice system.

SVs 2, 3 and 5 were not interested in pursuing a case in the traditional criminal justice system. SV3 also expressed the view that in some cases, perhaps involving young people who may be too embarrassed to talk about their sexual interaction, there may be different interpretations of what happened:

I don't believe in incarceration. I don't believe in punishing, I just feel with a lot of sexual abuse ... it's not black and white you know.

SV2 was concerned that the evidence in her case was not sufficiently strong:

Because it was just him and me there, so there was no witnesses, there's no evidence, that it was forced and I'd invited him into my house and we were drinking so I feel it was a pretty weak story, if it was to go and it wasn't something that I was prepared to go through at the time ... And just because it wasn't, what's the word, it wasn't aggressive so there was no evidence of that so it would've been a pretty hard case to prove and it would've just have been his word versus mine.

SV2 talked about the benefit of this process over court or having a conversation.

It definitely provided me with the opportunity and I don't think that, that could've happened in any other way. I think the only way that, that conversation could've happened and for me to have the confidence to have that conversation as honestly as possible, that it could only have happened through that process. I think that if either side go to court through it, it would've been manipulated and twisted quite a bit. It would've been breaking and pulling

things apart; it wouldn't have just been a conversation that this has happened. There would've been charging and just offences. And it's not really identifying what's happened; it's just fighting. And if I were to have the conversation outside of that setting, it would've been a difficult conversation to have depending on what was around and whether he would've listened properly outside of that situation as well whether it would've just been dismissed.

In SV5's case the PR had been arrested, questioned and released.

I already had this predisposition to want to confront. I really didn't have much faith in the legal system. I knew that it had happened so long ago and probably no evidence, all that, so but I thought he needs to know. It was that thing you just, he needs to know ... That was not my objective to, the whole idea of gaol time or a slap on the wrist as I saw it really was if it even got to that point. Or worse a not guilty even though I understand what that means.

SV1's experienced RJ as a transparent and accessible process in contrast with traditional criminal justice:

I didn't feel like they were hiding things from me which is how I felt with SOCIT [Sexual Offences and Child Abuse Investigation Team], where things were hidden from us.

SV5 had concerns with the traditional criminal justice system's response to and treatment of her. The perpetrator had been given access to her evidence but she was not permitted to know what he had said.

It [the police report] didn't represent me properly, so yes, so then the PR knew exactly what I thought of everything and I didn't know what he thought. So, I asked, I said to the police, do I get to hear any of this? Do I, you know, I know you've recorded it. Am I? No I'm not allowed to see anything and that drove me absolutely mental. So, now, to me, he has all the information and I only have half of it. And I think that spurred me on as well to seek the restorative because I wanted to hear what he had to say.



## Interview Data – Persons Responsible

Key themes emerging from the interviews with PRs are outlined here.

Two of the PRs interviewed (PR1 and PR2) had been acquaintances of the SVs and two (PR3 and PR4) had been parents of the SVs. The different relationships between the PRs and SVs may account for some of the differences in responses to interview questions.

We are most grateful that the participants agreed to share their thoughts with us.

### *Why Participate?*

It might reasonably be assumed that very few PRs would agree to participating in a voluntary RJ process, thus the motivations of PRs in this regard are of interest. When asked why he agreed to participate PR1 stated,

Because there hadn't been any previous communication and I just thought that that would help, so I was really keen to do that because there hadn't been any communication before and I thought that was actually making things worse or, I don't know, I just thought some communication would actually help ... I just thought that the longer that there was no communication the more entrenched in your own, in each other's versions of what happened, and I didn't think that was helpful. I thought that if we both, if I was able to just, if we were able to talk about some specific things that happened or didn't happen then ultimately, we would both feel better.

After being contacted by the facilitator, PR1 experienced a sense of relief:

I felt really good. I thought it was kind of exactly what I wanted. I thought I was really encouraged that it was SV that instigated it. Yeah, I just thought it was a good opportunity to help the situation by talking and then by having a mediator there; I thought that was good as well. But I was pretty encouraged by it and I was looking forward to it. Opportunity to clear things up, get both sides of the story ... [It] was better than what we currently had, which was kind of nothing.

PR2 had attempted to meet with the SV and another person to discuss what had happened, but it became apparent that an informal chat would not provide what the parties needed.

Predominantly I – well the simple answer is I was asked to. The more complex answer is I actually asked someone to initiate a conversation between me and the other persons. So there are three of us involved. And it initially was that the three of us were going to sit and talk about it, but then it became apparent that it was better to do it through a more formal process.

Initially it had just been that the two of us were comfortable to sit with that person, that mutual friend and talk through stuff. But then it became apparent that that was probably a dangerous way to deal with the situation, it was best to do it through a fourth party I guess.

PR3 had confessed to the police but, at the time of interview, had not yet been tried. An intervention order prohibited him from contacting his family. He became involved at the behest of his wife who sought a variation to the intervention order because of what she perceived to be the best interests of their children. The intervention order permitted contact between PR3 and the family as long as a 'mediator' was present.

PR3 stated

But considering nothing had happened for three years, it was an immense relief to have that mediation and to be able to continue talking to my daughters.

PR4's motivation was similar. An intervention order was in place prohibiting PR4 from having access to her grandchildren. She had been advised by a counsellor that this might be a way to engage with her daughter about the intervention order.

Well, I was open for anything. I was there when my [number] grand children were born, she couldn't give birth without me. And she used to contact me, or I'd contact her at least once a day, seven days a week and all of a sudden that came to a very abrupt stop.

## *Police Involvement*

PR1 was the only PR who had not had a complaint made against him to the police. In his case, the SV had formed the view that it was unlikely that a complaint to the police would be pursued. Although PR2 had been unhappy about his police interview, no charges were laid against him.

I had one police interview with someone presenting a body of lies to the police, which has upset me greatly, because it hasn't been an honest representation of our interaction. It has been deliberately phrased, and I suspect in conjunction with certain other people, to appear very different to what our interaction actually was, and what the conditions were.

## *Preparation*

All four PRs were broadly satisfied with their preparation for the conference, although their conferences did not necessarily proceed according to plan.

PR1 describes the preparation process in the following way:

Yeah, that was on a different day. That was maybe on like a Friday and then the three of us met on maybe the Monday I think. But yeah, I went out to see the facilitator by myself and it was really good, just [pause] having someone actually ask me what happened and talk to me about what happened was really good, and the way that the facilitator put it to me was that it was going to be, like the three of us would sit there and just have a conversation about what happened. So I felt really good about it.

PR2 felt a little differently about the preparation when he compared the preparation with what actually happened.

[The facilitator] explained what was expected to happen ... That we would meet and both sides would be heard about our particular situation ... I don't remember what else she might have said at the time, it was a bit traumatic for me. I was expecting it to be a relatively simple process, that it would be cleared up quickly. And that I thought I was in the right frame of mind to listen to what SV's concerns were, I was quite prepared to apologise for any misunderstanding on that. But that isn't actually what occurred. So from being positive about the experience I found the experience quite traumatic, and I've had issues with depression since then. So it's been quite a difficult and traumatic time for me as a result of that.

PR4 similarly identified a discrepancy between the preparation and what happened.

The facilitator said to me beforehand 'Now we're not going over old issues.' And I said fine, that suits me, fine, I don't want to go over old issues. I'm quite happy to move forward, that's what I do. And at the first opportunity my daughter basically points her finger at me

and says you did this, and you did that, and you should have done something else. And I thought why am I being crucified? This is not what we're here for. I want to see my grandkids. I don't want to talk about stuff that happened to you when you were nine.

### *Physical environment*

The relevant SECASA office is quite cramped and free space is not readily available. PR1 had this to say about the waiting area.

Me and the SV were both sat in the waiting room which was really uncomfortable. I kind of assumed that the facilitator would have organised for maybe the SV to get there before me because we hadn't spoken, and so the two of us, we sat in the waiting room for about 10 minutes ... I think that created a bit more tension as well in an already tense situation, so that was not ideal.

Given the level of antagonism between PR4 and her daughter, PR4 had expected that the process would occur with the facilitator moving between two rooms, one for her daughter and one for herself.

We went into this little room that was no bigger than a toilet, and the three of us were sitting in there so it was quite crowded ... I think the fact that we're all in the one room was probably a mistake. I think we should have been in separate rooms.

### *The Conference*

PR3 has participated in regular sessions during the study period. He was the only PR who seemed satisfied with the conduct of the RJ process. He describes the sessions in the following way.

Most of the mediation meetings revolved around being able to sit and just talk with my daughters on a day to day basis about what's going on in their lives ... Just normal fatherly, sorry, sorry. I'm sorry about that ... So for myself it gave me the chance to formally apologise to the SV. I mean I have apologised before ... we've discussed things. But it gave me a chance to apologise to her within a context of mediation. So that certainly was more the beginning bit. And now, we don't discuss that anymore. Because to a large degree we discussed a lot of this over the [time], if you know what I mean. It's not something new. I mean I've been sitting with the guilt for, for a very long time of what I've done and knowing what I did was wrong. And it's so difficult. So the mediation gives a chance as well to have a contact with my children, where based on the intervention order I could not have that contact with my children. So it's twofold. It's on the one part it's very personal and loving, and from that point of view, and on the other side it's the guilt, the remorse, the everything else, that just goes with saying I'm sorry and apologising.

Although PR1 was glad he had taken part in a conference, he had reservations about it. The SV in PR1's case was not interested in what PR1 had to say.

I mean basically the SV didn't want a conversation which was disappointing but I guess that's understandable. The way it was put to me was that it was more of a conversation, but then I think I read something that you sent to me that fit more in, but it was like it's an opportunity for the SV to just express herself, which was pretty much what it was ... I think in terms of intent and things like that, and I think just hearing, I think that the truth is in the middle, I think, and I don't know but, like I certainly felt that when I spoke to the facilitator by myself, I felt really confident that we were going to reach not a, like not a perfect outcome but we were going to end up somewhere in the middle, but the SV was really determined. And there were things like, just things that happened that maybe she didn't remember or

whatever, I just wanted the opportunity to just put that out there. I don't know. I think I was, I don't know, maybe I was optimistic I guess.

PR1 described his feeling in response to her comments.

I was really upset, I was really sad and I felt really sad for her and I felt, I was, yeah, I was just very, I felt, I was sorry and just to be involved in something that impact somebody like that was, I was just very sad for her.

PR2 was highly dissatisfied with the content of the RJ process for a number of reasons. In particular, the SV had sought to introduce discussion about other women in their social setting she believed PR2 had sexually assaulted.

I was looking for some closure between myself and the SV, and so I was expecting our discussion to be about us. In the discussion, we agreed that perhaps there was misunderstanding on both parts as to what had occurred, that it wasn't a denial that that's how she felt, but there has to be an understanding from her that that wasn't my intention. What the complicating factor was that the SV came in having said to the facilitator that she was just going to talk about us ... So I don't know who these people are, I don't know how many of these people are ... And so for me the process was – didn't have any resolution because I didn't feel that the SV was there to talk about her and I ... So the process itself just raised more concerns ... I didn't feel that she was open minded in hearing anything from me, because she was already convinced of everything.

PR4 became highly frustrated with the session and walked out.

I walked in, we walked in. We sat down. The facilitator said to me, well she said to the SV first what are you here for and I can't remember what she said but it was something about my [grandchild] and her quality of life and the family's quality of life and how she has to move and how she couldn't finish her course and said three times that she wasn't the victim. So I think she thinks she is. And then the facilitator asked me what I was there for, and I said I'm here because I want to see my grandchildren, I want to have a relationship with them and my daughter. And after that it just went spiralling down. It was almost like my daughter was standing over me with her finger in my face, accusing me of all sorts of things, a lot of which I hadn't done. So I found the whole process very disappointing.

## ***The Facilitators***

Generally speaking, the facilitators were highly regarded. To the extent that PRs expressed reservations they were largely related to what was seen as a non-interventionist style. PR2 stated,

But for me it didn't feel like it was pointed out that the SV was raising stuff which perhaps was to do with other people and therefore this wasn't the right place for that. The facilitator did say, you do seem to be confused about what it is, why you're here. But I think the process went for two hours, or more than two hours, and I actually didn't feel that it was very helpful for me. I just felt more attacked than I had. I was quite positive about it when I went in, and I was pretty devastated when I went out.

I think the facilitator said that if the SV had said what she was going to do, what she actually did, if she said that beforehand she would have said, you're not the right person, because this process isn't for you.

PR3 remarked,

The facilitator, in a lot of ways, is ... extremely respectful. She's there if I possibly start down a path of maybe not the correct questions, or discussions that should be happening. So she will interject at certain points and we have discussed that, myself and her as well, so I've asked her to do that. I've contacted her, and in fact on Friday, just to clarify some things that I wanted to talk to the SV about, but she advised me not to. So I did not discuss those two things with her. But she does, she's not there in the sense of "Well you've got to say that, and you've got to do that". Because she very much, when I say out of the picture, I know she's there, and I know she's present, very much like sitting in the background there. She's there, she's present, she takes notes, she listens in, et cetera, and she will, butt in is not the right word, interject if the conversation may go astray ... I think [the facilitator's presence] provides a security, I think for both parties it's definitely good to know that there's somebody there.

PR3 also described how the facilitator offered him support.

We've probably had about three or four conversations where I've called the facilitator up afterwards saying "I feel terrible about certain things" and she hasn't, she doesn't take any sides. She's just very fair. She's been supportive to me. I don't feel judged. I feel as a, I hate using this word but that's what I am, as a perpetrator, I don't feel judged by her, I feel supported and the conversations are always amenable and they're always, we might have a little bit of a laugh here and there, but I feel supported and extremely comfortable with the facilitator as a mediator. I don't know if it would be different with somebody else.

PR4 would have liked the facilitator to place more limits on her daughter's behaviour during the conference.

The facilitator could have said to the SV 'No, we're here to talk about your children, and you and the relationship with your mother.' And kept her on track, and she didn't do that ... When you get the SV in a room and she's got both barrels fully loaded, she's a little bit like her mother. No one gets a word in until she's finished ... The SV is a very headstrong person.

## *The Aftermath*

PR1 was pleased with the outcome of the conference for the SV, and glad he had participated. However, he felt that there were issues that had not been addressed satisfactorily and that misunderstandings remained. For example, they had not discussed how they would deal with mutual friends.

I mean at the end of it the facilitator asked the SV whether she felt like she could move on and the SV said she could, and that was really important. That's something. There's a couple of practical things that didn't get addressed or that didn't really get dealt with satisfactorily, like I thought we were going to discuss practical ways, we have a lot of mutual friends and stuff like that, and I just thought that there would be practical discussion about how to deal with that, and there wasn't. So that was a bit of a bummer, but yeah, I don't know, I thought that was part of the thing but that's okay. But it was fairly emotional, it was very emotional so I was pretty drained and sad and all that, but ultimately I'm glad I did it.

Not surprisingly, PR2 was less positive. Like PR1, he was also concerned about what to do with respect to their mutual friends.

[T]he only thing I could say is that the SV seemed to feel comfortable enough to give me a hug goodbye. So in that sense it was a positive. But since that event I'm still getting hassles from other people, I'm still getting people who don't know me trying to interfere with my social connections. ... So for me there hasn't really been any lessening of being persecuted. And I really don't know what it is that the SV said to anyone else, and I don't know what

anyone else is thinking, behaving because people who are not connected at all are feeling they have the right to go and interfere. And they probably think they're doing a good thing...

Having walked out of the conference, PR4 was quite distressed. She believes that their interaction made things worse between them.

It was mortifying. I actually got out of the street and I drove a little down the road and I sat on the side of the road and I howled ... I guess my daughter hates me ... I got to the stage where I sent her a text message because she just continued on in the text messages, and I said look I can't do this anymore, take care of yourself.

### *Would you behave in the same way again?*

The PRs who committed the sexual offences responded to this question in different ways. PR2 was of the view that what he had done to the SV was not "any kind of sexual assault". On the other hand, PR1 stated

No, it's the physical things that [SV] was doing that I took for consent, like I would not, I mean there would be, I guess further with that in terms of getting, of being verbal. But I mean look, would I do that again? I mean yeah, definitely not, but yeah...

### *Would you recommend the process to others?*

Interestingly, despite having various reservations, all of the PRs said they would recommend the RJ process to others.

PR1 thought that RJ was routinely offered to people in this context and was surprised to be told that this was a pilot program, despite the written information provided to him that had explained this. He thought it should be made available. He focussed largely on the potential benefit for SVs.

I guess as long as they understand that it's not really about them [the PRs], but yeah, I would, as long as they understand that, yeah...Well, I'm really grateful for the opportunity to have done it ... I'm really thankful that these things exist and that the SV had channels to go through. I'm grateful to the SV to have been in the position where she wanted to do it ... I think it's a really good thing ... I think there's massive potential for this to help people. As much as, as I say, I'm not, I guess I'll never, I wouldn't, overall, it didn't go as I'd hoped in my wildest dreams, but I still overall am really grateful for the opportunity.

PR2 focussed on the attitude of the participants.

Because if both parties go in to it with the right frame of mind it has potential to allow healing for both, and allow people to move on ... So it's not the process, it's whether or not we honour the process, which is important.

PR3 was extremely positive.

I would highly recommend this process to anybody who is in a similar situation, and I would actually recommend it to anybody who is an abuser, and has the ability and also possibly as well additional outside help to be able to confront and admit, and to be able to take responsibility for their actions, absolutely I would recommend it.

PR4's support for the process was conditional.

They'd [the PR and the SV] have to be in separate rooms ... [The process] might mend bridges. It might make things a bit clear to everybody participating. They might be able to reach an understanding and hopefully a nice outcome. That everybody gets what they want. There has to be guidelines. And where it's a parent and child, then if it looks like it might get out of hand and a bit frayed, then I would strongly suggest that it's done in separate rooms. Because it just made it worse, that's all that happened.

## *Grooming*

The potential for grooming or manipulation throughout the process is something that has been raised by critics of RJ in the context of sexual and family violence. Our observation during this pilot was that to the extent SVs were groomed, this had occurred in the years prior to RJ. The dynamic that operated in the relationship between the PR and SV before the violence was revealed continued. These statements from PR3 give a flavour of this.

And then we've been talking pretty much every Friday. The SV doesn't want to go three weeks without talking to me ... I'm still her father irrespective of what I've done, I'm still her father and I still love her very much and she loves me, and I know that.

I would be very disappointed if the frequency of meetings diminished. In fact, for example on Friday when I missed my Friday talk I felt dreadful. I feel privileged to be able to talk to my daughter once a week ... Obviously maybe not every form of abuse is without a lot of hatred and et cetera, et cetera, so this situation, I don't know. I don't know if it's different. It's my perception but it's not necessarily the truth, but that's my perception that this situation may be different. I don't know. I don't know So I don't know from say a situation where somebody beats somebody up and physically hurts somebody compared to what I did. I don't know.

## Discussion

The data highlight some important findings and also raise a number of questions. Further research will be needed before conclusions can be drawn with a high degree of confidence. The following discussion should however be understood as signposting areas for further investigation. One finding that does emerge strongly, though not unconditionally, is that all participants believe that a process similar to the one they experienced should be made available to SVs and the persons who have harmed them. Another finding made here on the basis of limited data, but reinforced by other studies, is that RJ for entrenched and longstanding family violence should be approached with extreme caution.

Earlier we noted that there is a dearth of high quality research and that the programs for which research is available are not necessarily comparable. Our sample was small, suitable for qualitative analysis although insufficient for quantitative analysis. Our sample was diverse, consisting of SVs who had suffered sexual violence by acquaintances and by family members. For some, there had been a history of family violence over at least three generations. The context of the RJ process varied greatly.

Referrals came from a number of sources, conferences were face to face and electronic, they occurred at SECASA and at other locations, the length of time devoted to preparation and conferencing differed dramatically, and parties were followed-up to different extents. However despite the small sample size, it did seem that cases of SVs and PRs coming from families in which there had been intergenerational family violence differed in significant ways from the other cases in the study. We will return to this point later in the Discussion.

Bearing in mind concerns about the strength of currently available evidence, we will discuss our findings and reference other empirical research investigating RJ for sexual and family violence where relevant. We recognise the need to be careful in relating this research to other studies. The type of offence for which RJ is offered may differ in important ways from the mix that is present in our sample. The versions of RJ adopted differ. Some programs adopt victim-offender mediation/dialogue/conferencing. Others offer family group conferencing, and some peace making and sentencing circles informed by First Nations Peoples' methods of dispute resolution and punishment.

Critically, most programs do not adopt an SV centred approach. In fact, RJ is ordinarily concerned with reintegrative shaming of an offender. This purpose comes through strongly in Joudo Larsen's (2014: 36) endorsement of RJ in the Australian justice environment:

What is certain is that where restorative justice is done well, it goes beyond what traditional responses can achieve and as a result, the potential impact upon individuals, communities and society is substantial. Restorative justice is about more than traditional notions of justice—it is about repairing harm, restoring relationships and ultimately, it is about strengthening those social bonds that make a society strong. Rather than pitting restoration against retribution and seeking to find the 'best' answer to addressing offending, restorative justice practices should be recognised as an additional response to offending; that is, restorative justice practices can be both 'an alternative to, or an extension of' traditional responses to criminal behaviour.

Other RJ programs responding to sexual and family violence receive referrals of PRs from traditional criminal justice system actors. For example, prosecutors may divert PRs to RJ prior to a hearing. The prosecutor may determine whether or not to proceed with the matter on the basis of the outcome of the RJ process. In other schemes, the perpetrator may have pleaded guilty to a charge of intimate partner violence and RJ is scheduled to take place prior to sentence. The perpetrator will indicate that he/she agrees to participate in an RJ process and the SV will then be asked if she/he is also



willing. A report of what took place during the RJ conference and its outcome may be provided to the sentencing judge, and the judge may take account of it in sentencing. Where this is done, it provides an inducement to the PR to participate. Finally, in some cases, the RJ process is initiated after imprisonment. Other settings may involve structures like peacemaking and sentencing circles adapted from justice practices of First Nations Peoples in Canada and the USA to deal with family violence in their communities.

In these RJ practices, although SVs do not participate unless they wish to and special care is directed towards their needs and safety, the focus is the perpetrator.

By contrast, the SECASA process is SV-centred. It accepts SVs who have not reported the crime to the police and SVs at any stage of the traditional criminal justice process. The process is guided by the SV's wishes. The SECASA process is entirely voluntary and there is no capacity to monitor or enforce promises that might be made by the PR. In fact, it was not necessarily expected that the PR would make any commitments, though some did. The form the conference might take is determined by the SV, and women who are experienced in the delivery of RJ facilitate the conferences.

## A Different Justice Experience

The SECASA process is not about the PR. Our findings also indicate that it is not necessarily about restoration or healing. It is not necessarily about closure. As SV4 stated,

I think with the closure part, it's been too long to get closure, it's been too long. I'll always sort of feel the same about the situation like, you know, it happened, whatever. ...

The process is not about 'repairing harm' if this is connected with 'restoring relationships' unless this is something the SV particularly seeks.

We found that this version of SV-centred RJ was about the SV being heard by the person identified by the SV as harming them. The process is initiated by the SV and is guided by her/his express aims and needs. The PR must be ready to acknowledge, at the very least, that the incident/s in question occurred in advance of any conference or exchange between the parties. The outcomes will be within the remit of the SV to determine, though they may be modified as the process progresses. As we found, SVs were not always clear about the outcomes they sought in advance of the conference.

The next section outlines findings for the cases involving sexual assaults between acquaintances. Cases involving complex and harmful intergenerational relationships will then be addressed.

## A Feminist Approach to Restorative Processes

There has been much written about the impact of rape and sexual violence on SVs. It is not controversial to suggest that sexual violence has the effect of making the victim feel that s/he is without worth. It can be a denial of personhood and agency, a negation of self, in a way that being punched in the face is not. If this is so, then one purpose of a justice response to these crimes should be to reinstate lost personhood and to affirm self.

Pali and Sten Madsen (2011: 60) say of the SV-initiated process that had operated in Copenhagen with a deliberately feminist approach,

The procedure provides women with a platform from which to address the men who assaulted them, directly or indirectly, while validating their desire for retribution and rehabilitation. Forgiveness and reconciliation is not the aim of the restorative dialogue, nor does it take place. The narratives that are exchanged, the questions asked and answered, the emotional expressions (of all kinds) that surface during the meeting do promote

conciliation with what happened. It is however important to recognise that the restorative dialogues are not a way to end or reach closure of a traumatic experience, nor an option for all women. But it is a step that some women find helpful to take in regaining meaning and dignity in their lives after a sexual assault.

Irrespective of whether SVs had reported the crime to the police, or the perpetrator had been convicted, or a sentence of imprisonment had been served, SVs involved in the SECASA RJ process sought first to be heard on their own terms and, secondarily, to gain an understanding of what the PR had been thinking. The justice interest of 'voice' stands out in this study as being of prime importance to SVs. SV2's emphatically stated intention was to 'educate' the PR about what he had done to her. This intent was reflected by other SVs, who stated they wished to confront the PR, or that they wished the PR to hear them. There is symmetry in seeking to regain voice when you have been so utterly silenced.

'Participation', understood as the ability to exercise a degree of control over the nature and content of the process, should also operate to support the reinstatement of a sense of agency, but was less frequently identified by the SVs as having this effect. SVs exercised some influence over the process. They identified the PR and anyone else who was to take part, whether the conference would be face to face or carried out in another medium, and where it would occur. However, SVs also described shortcomings with certain aspects of participation: the limited preparation some received, the non-directive nature of the facilitation in some cases, the waiting area and small meeting room that felt unsafe, and, for one, whether there was a time limit for the process (an issue that will be addressed further below).

The justice interests of validation and accountability were of less importance to SVs. Some SVs doubted whether apologies or expressions of remorse by the PR would be sincere. Interestingly, this did not delegitimise or devalue the worth of the process for them. Some stated that the PR had failed to properly acknowledge what they had done or what was at stake. One PR did not agree to attend. Even so, all SVs agreed that this process should be made available routinely to anyone who wishes to make use of it.

Some SVs did not wish to engage with the traditional justice system. Some believed, as a matter of principle, that imprisonment was an inappropriate response to the crime. Others believed (with reason) that the traditional justice system would be unlikely to offer a remedy, as insufficient evidence would be available to engender a police investigation or a conviction. Some for whom this was a matter of principle suggested other responses such as behaviour change programs.

Many of the SVs interviewed had received counselling and some had experienced the traditional justice system with perpetrators convicted and imprisoned. SVs had nonetheless remained fearful and dissatisfied. Their internal narrative had not altered. They continued to be the 'victim' and not the survivor. One SV used the word "petrified" to describe her way of being in the world, although her abuse had taken place years before. As SV5 noted

I think there are so many women out there who will never report. I know some of them. They're never going to do that and so they'll end up being like my grandmother, being old and worried about who's at the door and it's not acceptable. So there needs to be an avenue to be heard and the court system is not a way to be heard.

Indeed, SVs describe feeling fearful and unsafe while in the SECASA office, where, in reality, there was a considerably reduced risk of abuse re-occurring. Simply being in the same space as the PR triggers fear.

There appears to be a need to, as SV3 put it, speak the "unspoken words" to the person who has "crossed boundaries". These sentiments are echoed by SVs participating in the Copenhagen process, whose structure bears some similarity to SECASA process:

“It may be selfish, but I want him to feel what I’m feeling. I want him to have just one sleepless night so that he can get an idea of what it’s like.” (Camilla)

“I want him to know what he’s done to me. That he’s hurt me all the way in there where I thought I was invulnerable. He can’t feel my pain, but he needs to understand the way it has affected me.” (Cecilie)

“I’m interested in this not happening again. I want to ask him what the hell he’s going to do about it. I want to hear if he’s planning on living a life of celibacy or showing genuine regret and remorse in some way.” (Josefine) (Pali & Sten Madsen: 59).

Our SVs echo their Danish sisters:

I basically wanted to say, “This is how you’ve been fucking up and these are the stories, and I know every bit of information about the stories. What do you think of this and what do you have to say to that?”

I wouldn’t have been taken anywhere near as seriously and it would’ve been debated whereas in this thing, there was no debate, he just had to hear what I was saying.

I think that’s the main feeling out of this work, is to just have a voice, and to let that person know that what they’re doing is not okay.

Koss (2014: 1644) also found that the factor emerging as more important for SVs than it had been at intake was *“having the opportunity to express how the incident affected me.”* This outcome is difficult to achieve without support: the interaction with the person who committed the harm needs to occur in a safe place with a third party present. And it appears to make “a massive difference.” It is the content of this “massive difference” needs some unpacking.

Our interpretation of the findings is that the key change created by the restorative experience is about the taking back of voice, of control, of agency, of empowerment that enables one to exist without being constantly fearful of engagement with others. This is a rather large claim and further research is required to test it. Nonetheless, for some SVs whose experience of RJ met their needs, this description seems to capture the change that occurred. A transformation of the previous power dynamic seems to begin to take place once a decision is taken to contact the PR and during the SV-initiated RJ conference. The SV starts to make the transition from being the victim to being in a position of power in relation to the perpetrator. This interaction may enable the SVs’ internal narrative to move from one of fear to one about effecting a degree of control. Facing those who have caused you harm and saying what you wish to say to them, or exercising ‘voice’ in a safe, supportive setting, appears to be a key element in this process. The SV who had been raped in her own home was sufficiently empowered to ask the PR to leave if they should be at the same social gathering. The SV who had feared the impact on her once her father was released from gaol no longer held that fear. The SV who commenced the RJ process, but whose PR refused to attend, now felt confident of herself.

The experience of this last SV is mirrored by the experience of another SV in Copenhagen where all SVs actually bore the responsibility of inviting the PR to participate:

An essential part of the assessment undertaken by the facilitator is in anticipating the vulnerable situation of the woman ‘inviting’ the offender to a dialogue and the possibility of getting a rejection. Taking this initial step towards a dialogue is, however, a very empowering step for the woman, even if the journey, as can happen, ends here. No response from the offender is of course a great disappointment for the women, but the satisfaction of having done what was in their power to do remains with them.

“I felt a sense of inner tranquillity when I sent that letter, and if he doesn’t answer at least I know that I took action. I can look myself in the mirror and say that I did something. Just knowing that is a huge help. It’s a change in my normal pattern of emotional reaction and I feel really good about it.” (Pali & Sten Madsen 2011: 58).

Neither that study nor this included a long term follow-up arm, so we are unable to say whether the immediate effects of the process are lasting. A longer study with a larger sample that includes follow-up would be important in determining this.

## **Complex and Intergenerational Family Violence**

Our findings seem to indicate that the RJ process was most effective in cases involving one or two acts of sexual violence between acquaintances or in less ‘complicated’ cases. It may be more problematic in complex, entrenched, intergenerational cases of family and sexual violence, especially where the parties involved harbour significant levels of antagonism towards each other. In some cases, both the SV and PR may have suffered harm caused directly and indirectly by the same perpetrator/s. Violence may be a standard means through which family members deal with each other and this behaviour is repeated across the generations. Deciphering the purpose to be achieved in a restorative process may be difficult when there is a great deal of underlying history, a tangle of complex problems and anxieties and where each party may justly consider themselves to be a victim. Such cases will be extremely difficult to manage. SV8 used the word “minefield” to describe her situation. In these instances, extraordinary caution should be exercised before proceeding.

Other studies have expressed similar reservations in the context of intimate partner and family violence. A New Zealand Law Commission Report (2015) examines this question in some detail in respect of intimate partner violence. After reviewing the literature and the views of groups practicing RJ for sexual violence, the Report concludes,

We agree that it would help to continue building the evidence base, developing programmes, and building capacity so that there are providers with the understanding of the dual dynamics of both intimate partner and sexual violence.

They were however also reluctant to exclude “a significant group of people (mostly women) from the alternative process because the sexual violence they are subjected to is occurring in the context of intimate partner violence” (NZLC 2015: 147). They recommend that

Where sexual violence occurs within the context of intimate partner violence, and where the alternative process would put the victim at a risk of harm, those cases should be assessed as ineligible under the suitability assessment (NZLC 2015: 147).

## **Family violence: Counselling, Mediation or Restorative Justice**

RJ is not mediation. Mediation involves an impartial mediator who is able to support parties to come to a mutually determined agreement. Neither is it family counselling. Even so, certain cases may wrongly categorised, some may require a combination of responses and others may begin as RJ but, over time, reveal other issues that need to be addressed.

SV6 wished the PR to observe an intervention order. This issue might equally have been dealt with using another existing avenue. Another case began as RJ but, over time, other issues emerged. In this instance, a father had abused his daughter and the primary purpose of RJ (responding to the fact of the abuse and the anger), which was critical at the beginning, seemed to no longer be what was at issue between the parties. Instead, it was necessary for them to reconstruct a relationship that made sense given what had happened. In such cases, the facilitator needs to be attuned to what the purpose of the interaction has become and hand over to a suitably qualified person if they do not

have the necessary competencies. Fortunately, this was not an issue here, and the parties were able to continue to meet under the supervision of a person they had grown to trust. However, there did not seem to be explicit recognition that a transition of purpose had taken place.

This raises secondary issues: the importance of RJ for sexual violence to take place in a setting where counselling and other support services are available, and the importance of RJ facilitators being knowledgeable about sexual and family violence. A person seeking RJ may not be emotionally ready to participate, and new and unexpected issues may arise during the RJ process. Facilitators only trained in RJ may have difficulty in determining what sorts of supports are required by the SVs at various stages of the process. This was not a concern during the study as it was based at SECASA where the necessary services were readily available, the facilitators well informed and referrals made when needed. Others have remarked on the necessity of having ready access to therapeutic services (Julich & Buttle 2010). It is unclear whether the RJ process in a different setting that did not have the availability of these services or trained facilitators would place SVs at unnecessary risk of harm.

## The Person Responsible

Little consideration was given to the impact of the process being reviewed on the PR or to any transformative potential the process might generate. This RJ process was entirely voluntary, built around the needs and requirements of the SV, with few resources. In a program that was better funded, beyond the existing funding of the CASA, greater emphasis could be given to the PRs and the ways by which they might demonstrate accountability, monitoring of commitments made, and responses in cases where commitments remain unfulfilled, as well as examining reoffending rates, and transformational possibilities. Other studies of RJ programs for sexual and family violence (which tend not to be SV centred and may originate from a criminal justice system process) examined the impact of the process on the perpetrators, such as whether they demonstrate accountability for their behaviour (McMaster 2014; Kingi 2014; Julich et al. 2010), and whether they display reduced levels of reoffending post conference (Couture et al. 2001; Gross 1999: 41; McMaster 2014: 100). One study examined whether family group conferencing could enhance “family unity and member safety.” (Pennell & Burford 2000: 151).

The present study examined why PRs agreed to participate, how they found the process, whether their perceptions of their act/s, sexual violence and the SV had changed, whether they would act in the same way again, and whether they would recommend the process to others. Few PRs (n=4) agreed to participate in the evaluation study, so little can be said with a high degree of confidence.

Although participation in the SECASA RJ process was entirely voluntary, PRs do agree to participate. In this research, two said they participated in the RJ process because they wanted the opportunity to speak to the SV in a controlled setting, one because he was asked to, and one had their own (unsuccessful) agenda. Despite having reservations, all PRs interviewed stated that they would recommend the process to others. Some PRs would have preferred that the facilitator exercise greater control of their conference to enable them to make a greater contribution. In response to the question, ‘would you behave the same way again?’, all but one of the PRs indicated that they would not. Whether or not this speaks to the impact of the RJ process alone is not absolutely clear. The one PR who did not agree had been in frequent breach of an intervention order. This PR walked out of the conference before it had concluded.

At least two PRs in this study were deeply emotionally affected and the facilitator, in each case, felt obliged to contact them after the conclusion of the formal process to ensure that they were all right. PRs were very appreciative of this. This raises a question: in an SV centred process, to what extent can and should the needs of the PR be considered and addressed?

A facilitator, particularly one with training in psychology or a like field, probably has a duty to ensure that a distressed or troubled PR is referred for counselling. Given that it is predictable that some PRs

(like SVs) will experience emotional distress arising from the RJ process, it follows that account should be taken of this in setting up the process. The PR should at least be provided with information about the potential for emotional distress and a list of available services.

One SV indicated that her aim was to “educate” the PR and she was not interested in what he had to say. This may be a proper purpose, but a PR who is advised of this is unlikely to want to participate, although some who do feel genuine remorse might agree. In these circumstances, the facilitator might counsel the PR to bring a support person to the conference, and counselling services should be readily available.

Referral to behaviour change programs was also mentioned as a desirable outcome by some SVs who believed a punitive response, especially imprisonment, was inappropriate. There is debate about the value of behaviour change programs, and they may themselves be punitive in nature, however the possibility of this as one potential outcome of an RJ process is worth consideration. The PR’s right to consent or refuse to participate would of course be central.

## Safe Setting

The safety of the setting was an important issue in this research. Some of the participants reported that they did not feel completely psychologically and physically safe. SVs and a PR complained about the pre-conference arrangements where SVs and PRs might be waiting together. Some SVs also drew attention to the small size of the room in which the conferences took place, which increased their levels of discomfort. The primary purpose of SECASA is to provide counselling to SVs, for whom a more intimate room is likely to be more comfortable. However, other steps could be taken to address safety.

Parties need not be left with one another, or left in close proximity to one another, without the presence of the facilitator or another SECASA staff member. Attention could be given to the time at which each party is likely to arrive (staggering arrival times if necessary), where they will enter the relevant premises, waiting areas, the rooms in which the parties will meet, and the times at which parties leave to diminish the likelihood of the parties becoming distressed (or worse). A SECASA staff member could accompany parties to their modes of transport.

Some studies describe the care that is taken to protect the safety of participants. In one New Zealand program, a police officer is present to enhance a sense of safety (Kingi 2014). Rennie (2014:80) describes the safety measures adopted in another program, by the Mana Social Services Trust RJ program for intimate partner violence in New Zealand, where a report of what happened during RJ is provided for court:

Two facilitators usually attend the conference and the court coordinator often sits in to ensure everything goes smoothly. Facilitators are careful to check with victims about any support person nominated by a perpetrator to ensure undesirable associates are excluded from conferences. Victims are encouraged to bring whanau (*extended family or related community*) support to a conference as this reconnects the safety network around both the victim and her children ... The seating for the conference participants, particularly the victim and her support person, is usually discussed before the conference and they are taken into the conference room before the conference begins so that they can indicate where they would feel comfortable and safe, as well as where the perpetrator should sit. Times of arrival are also important. Victims are asked whether or not they want to arrive first and also whether or not they want a facilitator to accompany them out of the building at the end of the conference, while the perpetrator is detained. (Italics added)

## Preparation and the Conference

A critical aspect of an alternative justice avenue is the preparation of the parties, and their expectations of the conference itself. Some SVs and some PRs in this study felt insufficiently prepared for what was to happen and some felt that the facilitator could have intervened more during their conferences. No one would deny that participants should be assessed to be suitable candidates for RJ. At the very least, the SV should be psychologically ready for the process and express realistic aims, and the PR should be prepared to acknowledge what occurred and be willing to hear what the SV wishes to say. The degree of intervention by the facilitator will, to some extent, be a matter of their judgment but should also be discussed with the parties beforehand.

McMaster (2014) reviews a court related process where the PR must plead guilty before being offered the opportunity to participate in RJ. He describes the preparation of the PR:

It is critical that he agrees beforehand – and is held to it during the conference – not to use the conferencing as an opportunity to challenge the victim's account of her victimization. In other words, the nature of the offending will not be open for discussion in the restorative justice process. A fundamental requirement, therefore, is acceptance of responsibility for the offences as described by the victim (which might best be done via a written or verbal communication received early in the process before meeting the victim). This measure is to counter perpetrators' tendency to minimize their violence, blame their victims, and under-report the seriousness of their violence, the number of violent acts carried out, the extent of any sexual violence, their partners' injuries and their controlling behaviour generally. If the perpetrator strongly wishes to argue that there are distortions of fact in the victim's account, this effectively should preclude the case from a restorative justice conference, leaving it up to the court to adjudicate. His airing of any disagreements in the restorative justice session, even if they are justified, would subvert the process and render it ineffective to redress the power imbalance and fear felt by the victim (McMaster 2014: 100).

This is more restrictive than the SECASA process in which three of the four PRs did not accept all elements of the SVs' accounts. It is likely that the court setting and the potential benefits to the PR from participating in RJ (where the court may take the process and its outcome into account in sentencing) mean that they will be more willing to participate under these conditions.

McMaster also describes the preparation of the SV:

The facilitator will contact the victim, who at this stage may have already talked to the victim adviser. The facilitator will explain the restorative justice process, address safety issues and also empower the victim to choose for herself whether or not she participates. If the victim chooses not to do so, the conference will not go ahead. If the victim agrees, however, the facilitator will give her the option of bringing a support person to the conference, which the facilitator will then arrange. Our research showed that although victims were also unsure about what to expect, most remembered being asked whether or not they would like to bring a support person. Many declined this option. (McMaster 2014: 98)

It is of interest that despite the availability of greater resources at this agency than was available at SECASA, SVs stated they were still unsure of what to expect.

## Grooming

Concern is at times expressed that RJ in sexual assault cases can facilitate the grooming of the SV by the offender. Grooming is skilful manipulation of a child in order to produce a desired outcome. One PR interviewed appeared to have some difficulty in distinguishing between appropriate and inappropriate conversation with respect to his daughter. He continued to refer to himself as a loving father despite his abuse of his daughter. Recognition and management of grooming will be a key competence of a restorative justice practitioner in this area. Grooming in a restorative process is likely to be a continuation of the ways in which the SV and the PR ordinarily relate to each other and have done over a period of years. This predatory behaviour may manifest as charm directed towards



the SV, an expression of love and approval with the aim of building a trusting and a special relationship with the SV over time, with the intended result that the child succumbs to sexual violence. Without external intervention, a groomed child is likely to remain groomed and groomed behaviour may not easily be distinguished as it may manifest in ways that do not appear harmful.

Engaging with RJ, of itself, will not produce groomed behaviour in a person who is not already groomed. However careful judgments will need to be made about the manner in which any restorative interaction will occur, and when to intervene if communication between the parties appears to be reinforcing any previously identified damaging behaviour. Once again, lack of experience and insight into grooming and how it may be manifested, on the part of the facilitator, risks negating the value of the restorative process.

## **Interaction with the Traditional Criminal Justice System**

RJ and traditional criminal justice need not be conceived of as alternate processes. There is no reason why SVs should not seek both, as they seem to serve different purposes. As noted above, during the pilot RJ was delayed at the request of police and, in one instance, until an appeal had been concluded. A request to corrections officials that an RJ session be conducted in advance of a perpetrator's release was refused unless it could be conducted by a 'neutral' (non-SECASA) facilitator.

The restorative process demonstrably offered something to SVs in this study that traditional criminal justice was unable to provide. This was so both for SVs who had reported the crime to the police but whose cases proceeded no further, and for those who experienced a prosecution, a finding of guilt and the imposition of a custodial sentence on the perpetrator.

During the pilot, SVs were able to request that a restorative process be initiated at any point during the criminal process including during and subsequent to a period of imprisonment for the crime. This reflects a position of respect for SV agency and promotes the justice interest, participation. If this is to be instituted on a formal basis, legislative attention will be required in order to determine the ways in which the justice processes interact with each other including which process should take priority and the criteria that ought to inform this decision. Without legislative or regulatory guidance, it is likely that decisions made in traditional justice processes will prevail.

Depending on the nature of the RJ adopted in Victoria (if any) as a formal justice response, a number of questions will need to be considered. For example, are SVs' wishes to carry any weight when a determination is to be made about which process is to have priority? Who will be responsible for providing evidence to each justice process about the conduct of the other and determining which should have priority? Again, it seems highly unlikely that the views of an SV or restorative justice provider will prevail over those of a court, unless the views of the SV are explicitly placed at the centre of this conflict and this is what she/he prefers.

Likewise, if a PR is incarcerated, and an SV requests a restorative process to which the PR agrees, correctional services should be required to make every effort to enable restorative processes to take place, whether this be in a prison or other place of detention. This requirement would be subject to genuine security concerns.

Legislation might specify whether or not, or in what circumstances, what is said during a restorative process is permitted to be introduced as evidence in criminal proceedings. Legislation might also determine whether willingness by the person responsible to participate in a restorative process is to count as a demonstration of remorse.

Section 8(j) of the New Zealand Sentencing Act 2002 provides that,

In sentencing or otherwise dealing with an offender the court—



must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).

Section 10 requires the court to take account of any offer, agreement, response, or measure by the offender to make amends to the victim.

In Finland, the prosecutor has the discretion to determine whether a prosecution should proceed.

In 2005 every third prosecution office reported that they had at least on some occasions sent cases to mediation although they have beforehand also decided to take the case further to prosecution. Mediation was thus not seen merely as an alternative to traditional criminal justice system but rather as a complementary to it. In nearly all cases prosecutors waited for the *outcome* of the mediation meeting before making the decision to either drop the case or prosecute. However, only 10% of the offices announced that the prosecutor always waits for the *fulfilment* of the agreement before deciding on the charges. Over a third reported that they never wait for the fulfilment of the agreement prior making their decision. The success rate for mediation was estimated to be roughly 80%. Despite the lack of follow up most mediation sessions, approximately 90%, were estimated as resulting in the waiving of charges. According to the prosecutors, if the case is taken to court the fact that the case has been in mediation is always brought forward (Uotila & Sambou 2010: 199).

There is also the question of whether consequences should apply to a person responsible who fails to meet the commitments made by him or her (or them) during the process. The New Zealand Law Commission Report (2015: 178) recommended that

where a perpetrator participates in and completes the entire alternative process conducted by an accredited provider using an accredited programme, including fulfilling the conditions of any outcome agreement, there would be a bar to subsequent prosecution of the perpetrator in relation to the same incident of sexual violence against the same victim.

This statutory bar would not apply if the alternative process was not completed, if the terms of an outcome agreement were not fulfilled, or the perpetrator disclosed acts of sexual violence against other SVs or new disclosures concerning the same SV. Whether such a statutory bar should operate automatically or be subject to the discretion of the court would be a matter for debate. Project Restore noted that

there is a risk that perpetrators could manipulate an alternative process, and not be required to adopt the same level of accountability, if there is a possibility that they will not be prosecuted.

It is suggested that in cases where a restorative process reveals evidence of child abuse that the usual reporting requirements apply.

## Comment on the low numbers in this study

Before commencing this study, we had been advised that many SVs would seek to engage in the restorative process and it would be unlikely that we would have difficulty in recruiting the necessary number of participants for this evaluation study. This proved not to be the case. Ptacek (2017), quoted earlier, who conducted a review of existing research, finds that other studies also had difficulty in recruiting SVs and PRs. In our case, it is difficult to identify with any clarity why only a small number of SVs (n=21) availed themselves of this process over a 2-year period.

An obvious reason may be that the process is little known and it is not widely advertised. RJ is not a legally recognised option for sexual and family violence in Victoria. Knowledge of it is confined to a

small number of people. Thus, it would be surprising if there was general knowledge or acceptance of it as a legitimate justice option for these crimes.

There may be other reasons for the apparently limited interest in this RJ process. SECASA sees approximately 2000 SVs each year. Counsellors (who made the largest number of referrals) were expected to mention RJ as an option to all SVs attending SECASA as one aspect of the standard 'options' talk. However this may not have always occurred. It may be that RJ was mentioned, but was not well enough explained. It may be that RJ was sufficiently mentioned and well enough explained but that many SVs were not in a position to adequately comprehend what was said or its relevance to them. Perhaps the SVs were not interested. It is of note, then, that some SVs had stumbled upon information about RJ and self-referred.

## Conclusion

'Closure' and 'healing' are terms commonly used to describe the purpose of restorative justice. Neither of these terms accurately capture what occurred in RJ interactions that were judged successful in the eyes of SVs in this study. In this SV centred restorative justice process, SVs do not appear to either fully heal or put the experience behind them. What seems to change is how they see themselves.

Some SVs in this study expressed the need to 'confront' the PR with what he/she had done. The ability to take charge or enact agency, as entailed in the justice values of participation and, most particularly, voice, seem to be a critical factor in beginning to alter the SV's internal narrative. This exercising of voice is best done in an environment that is able to respond flexibly to the SV's wishes, and where they are and feel safe. Other justice settings do not provide this opportunity in quite the same way. SVs seem to transition from being in a world in which they feel fearful, to one in which their ability to enact some control is enhanced. This appears to be true whether the PR agrees to take part in RJ or not.

Even when court processes were complete and perpetrators gaoled, SVs in this study were left feeling dissatisfied and bereft. SVs wished to speak to the perpetrator in a manner that was not circumscribed by the laws of evidence and have their questions answered. They wished to speak in a setting that was responsive and where their credit was not challenged. This speaks to the justice values of voice and participation.

Some SVs do not believe that formal punishment, especially imprisonment, is a suitable response for the perpetrator's act/s. Some express a preference for offender behaviour change programs. Other SVs, whose perpetrators were at various stages of the traditional criminal justice process, wanted to participate in an RJ process because they saw in it a possibility to achieve something that neither traditional justice nor counselling could provide. For others, it was not about the perpetrator of the sexual violence, it was about those whom they regarded as complicit.

Some PRs are remorseful and able to recognise that they have caused significant harm. These PRs value the opportunity to respond to SV's wishes. Even when the PR is unable to participate in the restorative process as they would have wished, they are nonetheless glad that they have been able to make a positive contribution to the SV's wellbeing. These PRs state that they would not behave in the same way again.

This study suggests that restorative justice processes will be more readily and successfully engaged in cases involving acquaintances. It may be wise that services be developed for such cases to begin with, building on this to then establish a restorative process for cases arising in the context of family violence.

Providing RJ in a counselling setting minimises the potential for psychological damage to SVs (and PRs), providing an opportunity for secondary consultation to determine what psychological or other support may be required before, during and after the justice process. If these services are needed streamlined referrals are possible. Facilitators who understand sexual and family violence will be more likely to seek advice when needed and make appropriate referrals.

Legislation and funding will be necessary to enable restorative processes to realise their full potential and to establish their accessibility and relative weight when taking place alongside more traditional criminal justice processes.

Finally, and despite the legitimate concerns of some commentators about the potential shortcomings of restorative justice, this study found that the process is capable of meeting victims' justice interests. Beyond this, a victim-centred restorative process can make a positive contribution

to changing an SV's internal narrative from one of powerlessness to one where agency and a sense of being in control has been restored.

And it was best, the best thing ever, really was. I've been different since.

## References

Australian Law Reform Commission and NSW Law Reform Commission 2010, *Family Violence—A National Legal Response*. ALRC Report 114 & NSWLRC Report 128. Canberra: ALRC

Braithwaite J 2014. Evidence for restorative justice. *Vermont Bar Journal (Special Issue: Restorative Justice in Vermont)* 40(2): 18-22

Cameron, A 2006. Stopping the violence: Canadian feminist debates on restorative justice and intimate violence feminist engagement with restorative justice. *Theoretical Criminology* 10(1): 49-66

Centre for Innovative Justice 2014. *Innovative Justice Responses to Sexual Offending – Pathways to Better Outcomes for Victims, Offenders and the Community*. Melbourne: Centre for Innovative Justice, RMIT

Couture J, Parker T, Couture R & Laboucane P 2001. A Cost-Benefit Analysis of Hollow Water's Community Holistic Circle Healing Process. Ottawa: Aboriginal Peoples Collection, Native Counselling Services of Alberta

Daly K 1999. Does punishment have a place in restorative justice? Paper to Australia and New Zealand Society of Criminology Annual Conference, Perth, 28-30 September 1999

Daly K 2006. Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases *British Journal of Criminology* 46(2): 434-456

Daly, K 2011. *Conventional and innovative justice responses to sexual violence*. ACSSA Issues No 12. Canberra: Australian Institute of Family Studies <https://aifs.gov.au/publications/conventional-and-innovative-justice-responses-sexual-violence/export:1>.

Daly K 2014. Reconceptualizing Sexual Victimization and Justice, in Vanfraechem I, Pemberton A & Ndahinda F (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation*. London: Routledge: 378

Daly K 2017. Sexual Violence and Victims' Justice Interests, in Zinsstag E & Keenan M (eds), *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions*. London: Routledge: 108

Daly K & Bouhours B 2010. Rape and attrition in the legal process: A comparative analysis of five countries. *Crime and justice: An annual review of research* 39: 485-565

Daly K & Curtis-Fawley S 2006. Restorative justice for victims of sexual assault, in Heimer K & Kruttschnitt C (eds), *Gender and crime: Patterns in victimization and offending*. New York: New York University Press: 230

Daly K & Stubbs J 2006. Feminist engagement with restorative justice. *Theoretical Criminology* 10(1): 9–28

Gang D, Loff B, Naylor B & Kirkham M forthcoming. Evaluations of Restorative Justice Programs: Towards a Systematic Review

- Gross E 1999. Report submitted to US Department of Justice, *Evaluation/Assessment of Navajo Peacemaking*, 15 February, <https://www.ncjrs.gov/pdffiles1/nij/grants/187675.pdf>
- Joudo Larsen J 2014. Restorative justice in the Australian criminal justice system. AIC Research and Public Policy Series No 127. Canberra: Australian Institute of Criminology, <https://aic.gov.au/publications/rpp/rpp127>
- Julich S, Buttle J, Cummins C & Freeborn EV 2010. *An Exploratory Study of Restorative Justice and Sexual Violence*. Auckland: AUT University, <https://projectrestore.nz/research-papers/>
- Julich S & Landon F 2012. *Achieving Outcomes for Participants of Project Restore's Restorative Processes*. Auckland: Project Restore NZ Inc., <https://projectrestore.nz/research-papers/>
- Julich S & Landon F 2013. *Achieving Outcomes for Participants of Project Restore's Restorative Processes: The Perspectives of Participants*. Auckland: Project Restore NZ Inc., <https://projectrestore.nz/research-papers/>
- Kingi V 2014. The use of restorative justice in family violence: The New Zealand experience, in Hayden A, Lorraine Gelsthorpe L, Venezia Kingi V & Morris A (eds), *A Restorative Approach to Family Violence: Changing Tack*. Oxon: Ashgate: 145
- Koss MP 2006. Restoring rape survivors: Justice, advocacy, and a call to action. *Annals of the New York Academy of Sciences* 1087(1): 206–234
- Koss MP 2010. Restorative justice for acquaintance rape and misdemeanor sex crimes, in Ptacek J (ed), *Feminism, Restorative Justice, and Violence Against Women*. Thousand Oaks, CA: Sage: 218
- Koss MP 2013. The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes. *Journal of Interpersonal Violence* 20(10): 1–38
- Koss MP 2014. The RESTORE Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcomes. *Journal of Interpersonal Violence* 29(9): 1623–1660
- McMaster K 2014. Restoring the balance: Restorative justice and intimate partner violence in Hayden A, Gelsthorpe L, Kingi V & Morris A (eds), *A Restorative Approach to Family Violence: Changing Tack*. Oxon: Ashgate: 94
- Millsteed M & McDonald C 2017. Attrition of sexual offence incidents across the Victorian Criminal Justice System. Melbourne: Crime Statistics Agency
- Naylor B 2010. Effective justice for victims of sexual assault: Taking up the debate on alternative pathways. *University of New South Wales Law Journal* 33(2): 662–684
- New Zealand Law Commission 2015. *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes*. Report 136. Wellington: New Zealand
- Pali B & Sten Madsen K 2011. Dangerous Liaisons? A Feminist and Restorative Approach to Sexual Assault. *Temida* 14(1): 49-65
- Pennell J & Burford G 2000. Family group decision making: Protecting children and women. *Child Welfare* 79(2): 131-158
- Ptacek J (ed) 2010. *Feminism, restorative justice, and violence against women*. Oxford: Oxford University Press

Ptacek J 2017. Research on Restorative Justice in Cases of Intimate Partner Violence' in Renzetti C, Follingstad D & Coker A (eds), *Preventing Intimate Partner Violence: Interdisciplinary Perspectives* Bristol: Policy Press at the University of Bristol: 159

Radio National 2017. Restorative justice in sexual assault cases, *The Law Report*, 18 April  
<http://www.abc.net.au/radionational/programs/lawreport/law-report-18-april-2017/8435334>

Randall M & Haskell L 2013. Trauma-informed approaches to law: Why restorative justice must understand trauma and psychological coping. *Dalhousie Law Journal* 36: 501-533, 521

Rennie M 2014. *Titiro Whakamuri* – Looking Back: *Titiro Whakamua* – Looking Forward, in Hayden A, Gelsthorpe L, Kingi V & Morris A (eds), *A Restorative Approach to Family Violence: Changing Tack*. Oxon: Ashgate: 80

SECASA 2015. Services (13 May 2015) South Eastern CASES Centre Against Sexual Assault & Family Violence <<https://www.secasa.com.au/services/>>

Strang H 2002. *Repair or Revenge: Victims and Restorative Justice*. Oxford: Clarendon Press

Strang H & Braithwaite J (eds) 2002. *Restorative justice and family violence*. Cambridge: Cambridge University Press

Uotila E & Sambou S 2010. Victim-offender mediation in cases of intimate relationship violence - Ideals, attitudes, and practices in Finland. *Journal of Scandinavian Studies in Criminology and Crime Prevention* 11(2): 189-207

774 ABC 2017. Rape and forgiveness, *The Conversation Hour*, 6 March  
<http://www.abc.net.au/radio/melbourne/programs/theconversationhour/the-conversation-hour/8309036>

## **Appendix 1: Information provided by SECASA**

# Restorative Justice Program

**Has your sexual assault or family violence experience caused difficulties communicating with your family, extended family or person who hurt you.**

**Would you like a family conference or face-to-face meeting with family members or the person who hurt you.**

## **What is restorative justice?**

Restorative justice helps people who have been sexually or physically assaulted to communicate with the other people involved, about the harm that has been caused.

The police and courts will not usually be involved.

If you have been affected by sexual or physical assault, and would like to talk to the offender, family members or anyone else involved, restorative justice may be able to help.

You can have a face-to-face meeting, or a different type of communication. A SECASA facilitator will help with the process.

**Phone Carolyn Worth  
03 9928 8741 or 0414 538 275**

**South Eastern CASA**  
Centre Against Sexual Assault & Family Violence

MonashHealth



## Restorative Justice Pilot – Information for Applicants

### What is restorative justice?

Restorative justice is a process in which everyone involved in an offence communicates with each other about the harm that has been caused. The aim is to decide together how to deal with that harm, so the future can be better. The police and courts are not involved.

Restorative justice can bring about many things including:

- The offender is held to account
- The offender hears the victim's story – how the offence has affected their life
- The offender admits the harm they have caused to the victim and other people, such as the victim's family, and apologises
- The victim hears the offender's story, or why they may have committed the offence
- Relationships that had broken down because of the offence are restored
- The victim and other people involved may forgive the offender
- The offender may agree to do specific things that the victim wants.

As part of the process the victim decides the outcomes they would like, and has input into deciding the type of communication that will be used. This is usually a face to face meeting where everyone involved is present, or where the victim is represented by someone else.

Depending on the circumstances, the communication may also take place using email or traditional mailed letters, or online using software such as Skype.

### How did restorative justice come about?

The idea of restorative justice has been around for a long time. Many Indigenous and early European cultures used it in various forms. Our modern process began in the 1970s with victim-offender mediation programs in the US. In the 1990s New Zealand developed family group conferences to deal more effectively with youth offenders.

Restorative justice processes have often, but not always, achieved the outcomes sought by victims.

### Restorative justice and sexual assault

Restorative justice has not generally been used for sexual assault offences in Victoria. SECASA now offers a process to victims. Outcomes can be creative, for example:

- An offending uncle may no longer be invited to family dinners
- An offender may commit to doing an activity, such as attending counselling
- Where a mother had been unable to stop the father assaulting their child, the relationship between the mother and child may be restored.

Unlike a court hearing, the restorative justice process can be flexible and responsive to your needs. It will be carried out in ways that aim to make you feel safe.

### Who can apply for a restorative justice process?

The following people can ask for restorative justice to be carried out:

- Existing SECASA clients (please talk to your counsellor as a first step in applying)
- Other victim/survivors of sexual assault, who may or may not have sought counselling before

The pilot is open to people living in and outside SECASA's south eastern region. Face to face meetings will most likely be held at SECASA's East Bentleigh office and we are not able to offer meetings outside our region at this time.

### Who cannot apply?

We cannot carry out a restorative justice process on behalf of an offender (someone who has sexually assaulted someone else), or a family member of an offender.

### Why are we running a pilot?

Research from other areas of the law shows that restorative justice has helped people in moving on with their lives. SECASA is already carrying out the process for a small number of clients and several of our counsellors have been trained as facilitators.

During the pilot **Monash University** will carry out surveys and talk with participants who agree to be involved, about the helpfulness of the process for them. This evaluation will help us decide if restorative justice can be offered by all the CASAs in Victoria in future.

**Important: agreeing to be involved in the evaluation is voluntary for participants in the pilot.**

### What does the SECASA restorative justice pilot process involve?

The pilot process involves the following steps:

1. The applicant is asked to complete the SECASA restorative justice pilot intake form, (this is the application form):
  - As needed, a counsellor will assist you to fill out items on the form such as:
    - The harm that is to be addressed
    - The person responsible for causing the harm
    - Other people you would like to be involved in the process, including one or two support people:
      - A legal advisor/lawyer/solicitor cannot be a support person
    - The type of communication to be used
    - The outcomes you want
    - If you agree to being involved in the evaluation of the pilot by Monash University (this is voluntary)
2. SECASA will assess your application. If it is accepted you will be referred to a restorative justice facilitator who will be a specially trained SECASA counsellor:
  - Important: if you are an existing SECASA client, your regular counsellor will not be your facilitator. This is because restorative justice is separate from your on-going counselling.

3. The facilitator will:
  - Discuss the process with you, so you know what to expect
  - Support you while you arrange your restorative justice meeting:
    - Part of the process involves you contacting the other people you want to be involved, and inviting them to attend
    - The facilitator can help you decide what to say and the best way for you to make the contact (phone, email etc)
  - Talk with everyone you have invited, to make sure they are properly prepared
4. If you agree to take part in the pilot evaluation, a researcher from Monash University will contact you to talk about this. You will be asked to fill out two short survey forms at the start of the process and one at the end.
5. The facilitator will be there for a face to face or online Skype meeting. Whatever type of communication is being used, the facilitator will ensure that the rules of restorative justice are followed.

**The “rules” for the SECASA restorative justice process**

- Everyone takes part voluntarily – no-one can be forced
- Everyone will be fully informed about the process, its benefits, risks and potential outcomes
- Respect must be shown to everyone
- Protecting safety, both physical and emotional, is a priority. The facilitator will end the process if the safety of anyone taking part is put at risk
- Everyone must understand what is happening and why.

**Do you want to report the sexual assault to police or take legal action?**

Before you decide to take part in the SECASA restorative justice process, you must be reasonably certain that:

- You do **not** want to report to police
- You do **not** want the case investigated by police or taken to court.

Taking part in a restorative justice process may compromise a future prosecution related to the sexual assault. If you intend to take legal action then this process may not be appropriate.

**Interested in the SECASA Restorative Justice Pilot?**

If you are a SECASA client, talk to your counsellor if you would like to find out more about this pilot or apply for it.

If you are not a SECASA client please call our Administration Team: 03 9928 8741: say you are interested in the restorative justice pilot and give your name and phone number. One of our counsellors involved in the pilot will call to talk with you.

**This pilot is being carried out by SECASA and Monash University.**

## Can my client records be subpoenaed

In Victoria, this falls under the *Evidence (Confidential Communications) Act 1998*.

"The purpose of this Act is to protect from disclosure in legal proceedings confidential communications between the victim or alleged victim of a sexual offence and a medical practitioner or counsellor. The Act enables a court to order disclosure but specifies matters about which the court must be satisfied before doing so."

A communication may be made in confidence even if it is made in the presence of a third party if the third party's presence is necessary to facilitate communication or further the treatment or counselling process.

### Exclusion of evidence of confidential communications

Your client record cannot be used as evidence in a legal proceeding if it would disclose a confidential communication between you and your counsellor unless the court grants permission to bring it in as evidence.

In addition the party requesting the information must, not less than 14 days before the evidence is proposed to be brought into argument, give notice in writing of their intention to both you and your counsellor. The court may however waive this requirement.

When a subpoena for your records is received, you and your counsellor may make submissions to the court to argue that the information is a confidential communication. The court may order that the document be produced to inspect it but must not make the document available, or disclose its contents, to the person requesting the records.

### Restriction on granting the use of the communication as evidence

A court must not allow a party to bring into court as evidence confidential communications unless it is satisfied, on the balance of probabilities, that;

- (a) the evidence will, either by itself or in conjunction with other evidence, be sufficiently useful to prove something important in a trial; and
- (b) other evidence of similar or greater value concerning the matters to which the protected evidence relates is not available; and
- (a) the public interest in preserving the confidentiality of confidential communications and protecting you from harm is substantially outweighed by the public interest in admitting your records as evidence.

The court must also take into account the likelihood, and the nature or extent, of harm that would be caused to you if your records are allowed as evidence.

Whatever the court decides, it must state its reasons for giving or refusing to allow your records in as evidence. If the application for bringing the communication into evidence is refused, the court must not allow this to be known to the jury.

### Limitations on the legislation

This legislation does not prevent the evidence being brought into court if you, or if you are under 14 years of age, your guardian, gives consent for the records to be used as evidence.

It also does not protect information acquired by a registered medical practitioner by physical examination (including communications made during the examination) of you in relation to the sexual offence.

### How the court may try to reduce harm

If leave is given to bring your client records into evidence, the court may;

- (a) order that all or part of the evidence be heard in camera.
- (b) order the suppression of publication of all or part of the evidence given before the court,
- (c) make orders relating to disclosure of protected identity information as necessary to protect the safety or welfare of you or your counsellor.

## Appendix 2: Survey Instruments



## Restorative Justice Pilot Program: Survey – Victim/Survivor

Date: \_\_\_\_\_  
Participant ID# \_\_\_\_\_

### Instructions

Thank you for agreeing to fill out this form. There are 4 sections to complete.

1. Please read each statement. (Please note, "them" refers to the person or people who harmed you).
2. Decide if you 'Strongly Disagree', 'Disagree', 'Agree', 'Strongly Agree' – or if the statement is not relevant for you (not what you are thinking)
3. Write "X" in the box that matches your answer (choose only 1 option for each statement)

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>Why did you take part in this process?</b>					
1.	I wanted something to be done about what happened					
2.	I wanted to recover my sense of who I am, my sense of wellbeing					
3.	I wanted them to hear me					
4.	I wanted them to understand how what they affected me					
5.	I wanted them to acknowledge what they did					
6.	I wanted an apology					
7.	I wanted them to make things right					
8.	I wanted to understand why it happened					
9.	I didn't want this to happen to anyone else					
10.	I wanted my family/friends to understand what happened					
	<b>Preparation for this process</b>					
11.	I was well supported					
12.	I was happy with the answers to my questions					
13.	The information I was given helped me to understand what might happen during the process					
14.	I was satisfied with how the other people were asked to take part					
15.	The preparation helped me to work out what I wanted to say					

## Restorative Justice Pilot Program: Survey – Victim/Survivor

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>How the program was carried out</b>					
16.	I felt safe					
17.	I was treated with respect					
18.	I was listened to					
19.	The requirements I requested for the process were met					
20.	The facilitator treated everyone with respect					
21.	The people taking part treated each other with respect					
22.	I was able to take part in the way I wanted					
23.	I was satisfied with the behaviour of the participants					
24.	Some participants behaved badly					
25.	I was generally satisfied with the process					
	<b>The outcome of the program for you</b>					
26.	I was able to say what I wanted to say					
27.	I was believed					
28.	I now don't blame myself for what happened to me					
29.	Others participating in the process now understand the seriousness of what happened					
30.	The person/s who harmed me acknowledged what they did was wrong					
31.	In the end, the person/s who harmed me did not try to make excuses for what they did					
32.	In the end, I was given a sincere apology					
33.	I feel less afraid of the person/people who harmed me					
34.	This process has made a positive difference to my life					
35.	I feel less angry					
36.	I feel less upset					
37.	I can now put what happened behind me					
38.	I feel that justice was done					
39.	I would recommend this process to someone else					

## Restorative Justice Pilot Program: Survey – Victim/Survivor

What else would you like to tell us?

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End of form

## Restorative Justice Pilot Program: Survey – Person Responsible

Date:  
Participant ID#

### Instructions

Thank you for agreeing to fill out this form. There are 4 sections to complete.

1. Please read each statement
2. Decide if you 'Strongly Disagree', 'Disagree', 'Agree', 'Strongly Agree' – or if the statement is not relevant for you (not what you are thinking)
3. Write "X" in the box that matches your answer (choose only 1 option for each statement)

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>Why you agreed to take part in this process</b>					
1.	I was asked to					
2.	I wanted to apologise					
3.	I wanted to make things better					
4.	I wanted to help the person					
5.	I wanted to understand why the person was upset					
6.	I wanted to put this behind me					
7.	I wanted to get it over with					
8.	I wanted to get some peace of mind					
9.	I did not want the person to go to the police					
	<b>The preparation for this process</b>					
10.	I was well supported					
11.	I was happy with the answers to my questions					
12.	The information I was given helped me to understand what might happen during the process					
13.	I was satisfied with how the other people were asked to take part					
14.	The preparation helped me work out what I wanted to say					

## Restorative Justice Pilot Program: Survey – Person Responsible

Date:  
Participant ID#

### Instructions

Thank you for agreeing to fill out this form. There are 4 sections to complete.

1. Please read each statement
2. Decide if you 'Strongly Disagree', 'Disagree', 'Agree', 'Strongly Agree' – or if the statement is not relevant for you (not what you are thinking)
3. Write "X" in the box that matches your answer (choose only 1 option for each statement)

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>Why you agreed to take part in this process</b>					
1.	I was asked to					
2.	I wanted to apologise					
3.	I wanted to make things better					
4.	I wanted to help the person					
5.	I wanted to understand why the person was upset					
6.	I wanted to put this behind me					
7.	I wanted to get it over with					
8.	I wanted to get some peace of mind					
9.	I did not want the person to go to the police					
	<b>The preparation for this process</b>					
10.	I was well supported					
11.	I was happy with the answers to my questions					
12.	The information I was given helped me to understand what might happen during the process					
13.	I was satisfied with how the other people were asked to take part					
14.	The preparation helped me work out what I wanted to say					

## Restorative Justice Pilot Program: Survey – Person Responsible

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>How the process was carried out</b>					
15.	I felt safe					
16.	I was treated with respect					
17.	I was listened to					
18.	My requirements for the process were met					
19.	The facilitator treated everyone with respect					
20.	The people taking part treated each other with respect					
21.	I was able to take part in the way I wanted to					
22.	I was satisfied with the behaviour of the participants					
23.	Some participants behaved badly					
24.	I was generally satisfied with the process					
	<b>The outcome of the process for you</b>					
25.	Taking part was the right thing to do					
26.	I was able to say what I wanted to say					
27.	I better understand the effects of sexual assault/family violence					
28.	The process affected me in a positive way					
29.	I felt embarrassed by what I did					
30.	What happened wasn't my fault					
31.	I have more insight into how what I did affected the person					
32.	I believe justice was done					
33.	I now have peace of mind					
34.	I would recommend the process to someone else					



## Restorative Justice Pilot Program: Survey – Person Responsible

What else would you like to tell us?

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End of form

## Restorative Justice Pilot Program: Survey – Support Person/Community Member

Date:  
Participant ID#

### Instructions

Thank you for agreeing to fill out this form. There are 3 sections to complete.

1. Please read each statement
2. Decide if you 'Strongly Disagree', 'Disagree', 'Agree', 'Strongly Agree' – or if the statement is not relevant for you (not what you are thinking)
3. Write "X" in the box that matches your answer (choose only 1 option for each statement)

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>The preparation for this process</b>					
1.	I was well supported					
2.	I was happy with the answers to my questions					
3.	The information I was given helped me understand what might happen during the process					
4.	The preparation helped me to work out what I wanted to say					
	<b>How the program was carried out</b>					
5.	I felt safe					
6.	I was treated with respect					
7.	I was listened to					
8.	The facilitator treated everyone with respect					
9.	The people taking part treated each other with respect					
10.	I was able to take part in the way I wanted to					
11.	I was satisfied with the behaviour of the participants					
12.	Some participants behaved badly					
13.	I was happy with the level of support I was able to offer					
14.	I felt my presence was useful					

## Restorative Justice Pilot Program: Survey – Support Person/Community Member

		Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>The outcome of the process for you</b>					
15.	Taking part was the right thing to do					
16.	I was able to say what I wanted to say					
17.	I better understand the effects of sexual assault/family violence					
18.	I believe the process made a positive difference for me					
19.	I felt the person who was harmed benefitted from the process					
20.	I felt the person/s who caused the harm benefitted from the process					
21.	I feel that justice was done					
22.	I would recommend this program to someone else in the same situation					

**What else would you like to tell us?**

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End of form

## Appendix 3: Survey Results

## Survivor Victim Survey

The red figures represent the participants who had been sexually assaulted on one or two occasions by acquaintances. The black figures represent participants who had been subject to ongoing family violence.

		Comments*	Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>Why did you take part in this process?</b>						
1	I wanted something to be done about what happened			2	2	1 3	
2	I wanted to recover my sense of who I am, my sense of wellbeing			2	2 1	1 2	
3	I wanted them to hear me				1	4 3	
4	I wanted them to understand how what they affected me			1	1	4 2	
5	I wanted them to acknowledge what they did			1	11	3 1	?
6	I wanted an apology			2 1	1 2	2	
7	I wanted them to make things right		1	2 1	1	2	1
8	I wanted to understand why it happened			1	1 2	3	1
9	I didn't want this to happen to anyone else				1 1	1 2	2
10	I wanted my family/friends to understand what happened			2 2		1	11
	<b>Preparation for this process</b>						
11	I was well supported			1	2 1	2	11
12	I was happy with the answers to my questions	B			2 2	3	1
13	The information I was given helped me to understand what might happen during the process	B			2 2	3	1
14	I was satisfied with how the other people were asked to take part				2 1	1	2 2
15	The preparation helped me to work out what I wanted to say	B	1	1	2 1	1	1
	<b>How the program was carried out</b>						
16	I felt safe			1	2 2	1	
17	I was treated with respect				2 2	2	
18	I was listened to	F			3 2	1	

		Comments*	Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
19	The requirements I requested for the process were met				2 1	2	11
20	The facilitator treated everyone with respect				1 2	4	
21	The people taking part treated each other with respect			3	1 2	1	
22	I was able to take part in the way I wanted	B G		11	3 1	1	
23	I was satisfied with the behaviour of the participants			2 1	11	2	
24	Some participants behaved badly	H	11		2 1	1	1
25	I was generally satisfied with the process				3 2	1	
	<b>The outcome of the program for you</b>						
26	I was able to say what I wanted to say		1	1	3	11	
27	I was believed	G H	1	1	2	11	
28	I now don't blame myself for what happened to me	B F G H		1	2	1	1 2
29	Others participating in the process now understand the seriousness of what happened	B	1	1	1 2	1	
30	The person/s who harmed me acknowledged what they did was wrong	F		3	2	1	
31	In the end, the person/s who harmed me did not try to make excuses for what they did	H	1	1	1 2		1
32	In the end, I was given a sincere apology	H	3	1	11	1	
33	I feel less afraid of the person/people who harmed me	E G H	1		1	2 1	1
34	This process has made a positive difference to my life	E H	2		11	1	1?
35	I feel less angry	G		1 1	1	1	2
36	I feel less upset	B	2	1 1	1	1	1
37	I can now put what happened behind me		2	1 2	1		
38	I feel that justice was done		11	1	1	1	11
39	I would recommend this process to someone else	A G			1	5 1	

## Comments

A

39. There is an amazing need for RJ in regard the sexual assault. Although my perpetrator did not respond to my request for a session, I felt grateful it was an option and I felt empowered when offering it. I have been raped by two men, and without the option of bringing the second perpetrator to SECASA, I chose to fly to country where he now lives and confront him. It was a life changing experience for the better.

B

12. I didn't think the RJ process was going to give me anything, any insight. There were questions I had that I didn't know I had. Questions could be brought to my attention. I didn't know what to ask.

13. The information that was given to me helped me to understand the nuts and bolts of the process, but not the outcome.

15. The preparation didn't help me work out what I wanted to say, so the question isn't really relevant. I was in the conversation all the time.

22. I didn't want to participate.

28. I didn't blame myself for what happened.

29. Things were understood before RJ commenced, but the RJ made a difference to me because it made a difference to my kids.

36. I feel less upset but not because of RJ. I did work on myself before the RJ. There has to be a higher purpose to navigate through the journey.

C

No comment

D

General. In my case the main abuser is dead. He was a family member. He had two other family members maintain secondary abuse towards me. Mental, financial, physical, emotional and neglect. One of those two females is still alive. She continues to maintain the secondary abuse towards myself and to a degree my other living sister. In the RJ meeting she appeared supportive towards me. However, as the meeting unfolded I recognised her consistent mind control pattern that I would say the facilitator was unable to detect. Statements from her like 'all I've done is show love towards you' or 'I don't understand' or 'I never knew you had a problem with the abuser' are subtle warning messages 'that if I speak no one will believe'. At these moments, I felt a degree of fear. As the facilitator while managing a tense environment I believe missed an opportunity to stop and offer her a chance to explain what she actually means by those statements. I actually believe the facilitator had to manage a very awkward meeting. As I'd imagine the majority of these meeting would involve a male abuser and a female survivor. My story is one of family abuse and me becoming conscious later in life. I'd imagine it's not as common for a male to come forward let alone be able to articulate the story. (Copied as written by SV.)

E

33. Not sure.

34. Not sure.

General: I was lucky all the parties were committed. Others might not be remorseful. Not all outcomes may turn out well.

F

18. Listened to by facilitator not PR

28. Blames herself for what happened to her daughter (who was abused by mother's husband)

30. He pleaded guilty.

G

22. But didn't expect much.

- 27. By SECASA.
- 28. Took overdose.
- 33. Yes but not because of this.
- 35. Not angry to begin.
- 39. Only under some circumstances.

H

- 24. He was getting frustrated.
  - 27. Don't really know how to answer. He just didn't get it but I was believed by everyone else.
  - 28. Never blamed myself.
  - 31. PR downplayed his experience with SV.
  - 32. Maybe he gave me an apology ...
  - 33. There is less awkwardness.
  - 34. Indifferent.
- General: Behavioural change programs are required.

## Persons Responsible Survey

		Comments*	Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
	<b>Why you agreed to take part in this process</b>						
1	I was asked to	C		1		2	1
2	I wanted to apologise	A		1	1	1	1
3	I wanted to make things better					4	
4	I wanted to help the person					4	
5	I wanted to understand why the person was upset			2		1	1
6	I wanted to put this behind me		1	1	1	1	
7	I wanted to get it over with		2		2		
8	I wanted to get some peace of mind			1		3	
9	I did not want the person to go to the police		1		1		2
	<b>The preparation for this process</b>						
10	I was well supported				2	2	
11	I was happy with the answers to my questions	A		1	2	1	
12	The information I was given helped me to understand what might happen during the process	AB			2	1	1
13	I was satisfied with how the other people were asked to take part	A			2	1	1
14	The preparation helped me work out what I wanted to say	C			2		2
	<b>How the process was carried out</b>						
15	I felt safe			1	2	1	
16	I was treated with respect	A		1	1	2	
17	I was listened to			2	1	1	
18	My requirements for the process were met			2		1	1
19	The facilitator treated everyone with respect					4	
20	The people taking part treated each other with respect	B	1		1	2	
21	I was able to take part in the way I wanted to	C	1	2	1		
22	I was satisfied with the behaviour of the participants		1	2		1	
23	Some participants behaved badly	AB	2			1	



		Comments*	Strongly Disagree	Disagree	Agree	Strongly Agree	N/A
24	I was generally satisfied with the process			2	1	1	
	<b>The outcome of the process for you</b>						
25	Taking part was the right thing to do				1	3	
26	I was able to say what I wanted to say	A	1	1	1	1	
27	I better understand the effects of sexual assault/family violence				1	2	1
28	The process affected me in a positive way			1	1	1	1
29	I felt embarrassed by what I did	A	1		1	1	1
30	What happened wasn't my fault		1	2		1	
31	I have more insight into how what I did affected the person	B			1	2	1
32	I believe justice was done	ABC	1	1	1		1
33	I now have peace of mind		2	2			
34	I would recommend the process to someone else				1	3	

#### Comments

##### A

2. He had already apologised and didn't feel he had done anything.

11. He didn't have questions

12/13 He wasn't prepared for things. It went pear shaped. He felt he did? do sexual assault. His question was what did they think happened?

16. He had caveats on whether he was treated with respect.

23. SV was confused and was interfered with by people outside the room He didn't really behave badly.

26. Was able to say what he wanted to say for the most part.

29. He doesn't believe he assaulted her so is not embarrassed.

32. He doesn't know what has come out of this. No one has come forward. Nothing has changed. Others don't know what they are talking about. He can't defend himself. He can't clarify or apologise. He now has anxiety issues.

General. Felt ambushed and what was raised was not about people in the room. The process should have been followed. It sounds more negative to facilitator than he feels. She could have handled it better, but no animosity towards her. It was more complicated than it needed to be. Afterwards she followed him to the car and she rang him before she went on a trip.

##### B

12. More of a conversation.

20. Not abusive.

23. Slightly less than satisfied but not a complaint.

31. I sent a follow up email to SV about things she mentioned. She said they weren't kissing but they were, but he didn't say this. She has forgotten. He sent an email to facilitator to correct the record. I still feel like there are things to say.

C

1. Wife/mother organised.

14. I did a lot of preparation myself and with the psych.

21. I couldn't be there in person.

32. I am going through the criminal justice system.

General. What I did has been destructive to family, friends and community. I would like to see greater exposure to the general public. There is not enough exposure of at risk potential offenders. If he recognised issues in himself he would not have started. There should be a telephone line for people at risk of offending. If there was a way to reduce abuse ...

D

No comments