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Restorative justice conferencing for domestic and family violence and sexual violence: Evaluation of Phase Three of the ACT Restorative Justice Scheme

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Disclaimer

Please note that the opinions, comments and/or analysis expressed in this document are those of the authors and do not necessarily represent the views of the Justice and Community Safety Directorate and cannot be taken in any way as expressions of ACT Government policy.

Acronyms

ACT	Australian Capital Territory
CPV	Child-to-parent violence
CJS	Criminal Justice System
DFV	Domestic and family violence
DPP	Director of Public Prosecutions
FVRAT	Family Violence Risk Assessment Tool
FNGP	First Nations Guidance Partner
IPV	Intimate partner violence
J-SOAP II	Juvenile Sex Offender Assessment Protocol II
RJ	Restorative justice
RJU	Restorative Justice Unit

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Executive summary

Restorative justice (RJ) programs come in many forms, however they are all underpinned by a common theory or framework for addressing harm caused by crime through the use of restorative practice. RJ is defined as a justice mechanism or process whereby individuals who have been affected by a crime come together to acknowledge wrongdoing and the harm caused, and collectively resolve how to move forward (Braithwaite 1999; Marshall 1996; Zehr 1985). RJ conferencing in Australia has been used for decades as a response to offences involving young people, with the aim of preventing the escalation of offending by young people, and providing victims-survivors with the opportunity to have an active role in the justice process; to be heard, respected and have their experiences validated.

Since the 1990s, the potential benefits (and limitations) of RJ for supporting and responding to the needs of victim-survivors affected by more serious and complex offences, including sexual violence and domestic and family violence (DFV) has been discussed and debated by researchers, practitioners and advocates. Certainly, at the time of writing several RJ programs in Australia and internationally were receiving referrals for DFV and sexual violence matters and were engaging with victims-survivors and perpetrators of these offences. Further, a number of jurisdictions in Australia are considering or are in the process of implementing these processes. However, there is currently very limited research that has actually evaluated RJ processes for DFV and sexual violence matters. This means our understanding of the benefits of these processes for DFV and sexual violence victims-survivors and perpetrators, as well as the outcomes attributable to participation, is under-developed. Also, understanding of how these processes work in practice and can be adapted to suit the unique and complex nature of DFV and sexual violence matters is limited.

The ACT Restorative Justice Scheme – Phase Three

The Restorative Justice Scheme (the Scheme) in the ACT is administered by the Restorative Justice Unit (RJU) within the Justice and Community Safety Directorate of the ACT Government. The Scheme began as a diversion program targeted at young people reported to the police for their involvement in minor offences in the early 2000's (Phase One). Then in 2016 the Scheme was expanded to accept referrals for adult offenders and serious offences (Phase Two), and then again in 2018 to include DFV and sexual violence offences (Phase Three).






Methods

In 2019 the Australian Institute of Criminology (AIC) was commissioned by the RJU to undertake a process and outcome evaluation of Phase Three of the Scheme. The process evaluation examined the implementation of Phase Three, including the nature of activities and key outputs delivered as part of the Scheme, the efficiency and appropriateness of these activities and outputs, and the barriers to delivering the Scheme as intended. The outcome evaluation examined the overall effectiveness of Phase Three and the nature of outcomes that had been achieved for participating victims-survivors (referred to as persons harmed), offenders (referred to as persons responsible) and other people participating in conferences. Key outcomes that were explored as part of the evaluation were:

- Improved feelings of safety, support and wellbeing for persons harmed
- Improved understanding that the violence is not acceptable and serious for persons harmed and persons responsible
- Improved understanding by the persons responsible of the impact of their behaviour and that the persons harmed is not to blame

- decreased reoffending by the person responsible (during the lead up to the conference and post-conference).

To assess the operation and effectiveness of Phase Three of the Scheme, a range of quantitative and qualitative data were collected and analysed. This included interviews with stakeholders, persons harmed and persons responsible and support people participating in conferences, the analysis of post-conference surveys completed by persons harmed and persons responsible and support people, and the analysis of administrative data collected by the RJU, ACT Policing and ACT Corrective Services.

Evaluation methods		
	Interviews with Phase Three participants	16 Interviews were conducted with nine persons harmed, four persons responsible and three support people. Participants were asked about their expectations of the Scheme, how Phase Three differed from other criminal justice processes they may have participated in, any outcomes they could attribute to the Scheme, and areas for improvement
	Post-conference surveys	28 Surveys were completed by 10 persons harmed, nine persons responsible and eight support people approximately six weeks after they participated in a conference. Participants were asked about their experiences during the lead up to, during and after the conference, and their satisfaction with Scheme processes.
	Stakeholder interviews	47 stakeholders involved in the delivery and management of the Scheme participated in an interview. Stakeholders such as RJ professionals, support services, government and criminal justice system (CJS) representatives were asked about the implementation of Phase Three and how processes had been adapted for DFV and sexual violence matters, barriers to referral and any outcomes associated with the Scheme.
	Analysis of administrative data from the RJU	Administrative data maintained by the RJU was extracted for the November 2018 to August 2022 period. The data was analysed to examine characteristics of matters and individuals referred to Phase Three, the proportion and nature of matters that were and were not found suitable, and the number of conferences that took place.
	Analysis of administrative data from ACT Policing and ACT Corrective Services	Administrative data from ACT Policing and ACT Corrective Services was extracted for persons responsible who were referred to Phase Three and a matched comparison group to explore the impact of the Scheme on reoffending.

Key findings from the process evaluation

The process evaluation examined the processes involved in designing Phase Three and its implementation over the evaluation period. Overall there was broad agreement among stakeholders that there was a need for a program like Phase Three. Stakeholders supporting persons harmed recognised the Scheme provided a unique mechanism for persons harmed to have a variety of justice needs met in the aftermath of DFV and sexual violence victimisation. Similarly, stakeholders

whose role involved supporting persons responsible acknowledged the potential role of RJ in desistance processes, primarily by providing persons responsible with access to treatment services.

The finding that there was broad support for the Scheme among stakeholders was supported by the analysis of the administrative data. During the period November 2018 – August 2022, 162 cases were referred to Phase Three involving 208 persons harmed and 165 persons responsible. The most common case ‘type’ referred to Phase Three was family violence (e.g., child abuse, child-to-parent violence; $n=97$, 59.9%), followed by intimate partner violence (IPV; current partner) ($n=58$, 35.8%).



One in four participants ($n=21$, 24.4% of persons responsible and $n=30$, 25.9% of persons harmed) referred to the Scheme were found suitable to participate in a conference in Phase Three. Interviews identified that persons harmed were motivated to take part in Phase Three to confront the person responsible in a safe setting and have their experiences heard, to encourage the person responsible to get help or give back to the community, and to try and make sure that the person responsible would not reoffend. Many persons harmed were also motivated to participate in Phase Three as an alternative to formal criminal proceedings. This was particularly likely in situations where the person harmed wanted or had to have an ongoing relationship with the person responsible (e.g., in cases of child-to-parent violence).

I knew that he wouldn't be able to answer my questions with any depth or I wouldn't get any clarity. I knew that. It was more about me having a platform to say what I wanted to say.

(Person harmed, Sexual violence, 2021)

Although there was broad agreement that there was a need for Phase Three, there were some stakeholders who expressed a reluctance to refer matters to the Scheme. Concerns cited by stakeholders were often ideological in nature, with a small number arguing that RJ was a ‘soft’ option for perpetrators of DFV and sexual violence. Certainly, referrals for sexual violence offences was lower than expected ($n = 16$, 9.9%), which was attributed to referring agencies perceptions that RJ ‘privatised’ responses to sexual violence.

Another primary barrier to referrals were the, at times, significant delays associated with the allocation of matters to Phase Three (i.e., when a Convener was assigned to the matter). This was primarily attributable to RJU resourcing constraints. Referrals for Phase Three matters have been higher than expected and have taken more resources to respond to than envisaged at the time of rollout, when it was considered that existing resources could adequately respond to the increased case load.

Twenty-four conferences were held during the evaluation period, accounting for 14.8% of all matters referred to Phase Three. The small number of conferences was attributed in part to the COVID-19 pandemic and the associated restrictions on face-to-face meetings. Although the RJU provided options for online conferences, the majority of participants expressed a preference for in-person conferences. However, it was also noted that it took a long time to prepare for conferences as part of Phase Three. This was because of the complexity of these matters, as well as barriers to engaging persons responsible in suitable treatment and support services which was a requirement of their participation in the Scheme.

Scheme participants who took part in an interview reported that during the lead-up to the conference, they felt supported and respected by the Convener and had positive experiences

engaging with the Scheme. These findings were supported by the analysis of the post-conference surveys:

- 80% of persons harmed, 100% of persons responsible and 89% of supporters said they felt prepared for the conference
- 90% of persons harmed said they felt supported, and that they were treated fairly and respectfully during the conference
- 80% of persons harmed said they felt heard and were able to say what they wanted to say.

Distinctive features of Phase Three



Intensive risk assessment and case review requires additional oversight from senior convenors and leadership



Co-Convenor model where two Convenors are assigned to each DFV referral, as well as a Case Reviewer



Convenors actively look for evidence of a history of harm between the person responsible and the person harmed



Practice enhancements to further prioritise the interests and needs of the person harmed in recognition of increased risks and potential power imbalances (e.g. persons responsible will not be assessed for conference if the person harmed does not initially consent to participating)

Key findings from the outcome evaluation

The outcome evaluation was informed by interviews ($n = 16$) with Scheme participants, the analysis of post-conference surveys ($n = 28$), interviews with stakeholders ($n = 47$) and the analysis of administrative data from ACT Policing and ACT Corrections.

Persons harmed reported a number of outcomes associated with participation in Phase Three that aligned with theory around RJ's ability to respond to victim justice interests (Daly 2014; Bolitho 2015; Bachelor 2021). For example, the analysis of the interviews and post-conference surveys identified that many persons harmed felt safer as a result of participating in the Scheme. This was attributed to various mechanisms, including the development of tailored agreements at the end of conferences, the support of the Convenor during the preparation process, and being able to ask the person responsible questions about the violence and why it had occurred.

Further, other persons harmed said that the conference had been an integral part of their recovery journey, and had supported them to move on from the violence and its impact. This

I was just blaming myself a lot for what happened rather than blaming him. So it's like, I honestly had a very big weight lifted off me after the thing happened, because I knew it wasn't my fault anymore and I didn't see it as my fault anymore.

(Person harmed,
Sexual violence, 2022)

‘It had a positive impact on the trajectory of our relationships. It put us in a place where we could keep growing in our relationships, rather than being stalled and estranged from one another’.

(Person harmed, Family violence, 2022)

was primarily attributable to being able to speak about their experiences in a safe and supported environment, and to have those experiences believed and validated by other conference participants. Other outcomes identified by persons harmed included repairing relationships with family members, and improved understanding of the violence.

Interestingly, there was evidence that persons harmed could benefit meaningfully from participation in Phase Three in the context of varying levels of cooperation and accountability from persons responsible, provided participant

expectations were managed effectively by Convenors. In particular, even in situations where they did not believe that the person responsible was genuinely remorseful or committed to change, persons harmed still said that they had benefitted greatly from the process.

The evaluation also identified that Phase Three had a positive impact on the attitudes and behaviours of participating persons responsible. For example, all of the person responsible who completed a post-conference survey agreed or strongly agreed that because of the conference, they were committed to not offending again, that they understood how their actions affected people, and that they felt like they could move forwards. Further, the recidivism analysis found that adult persons responsible who participated in Phase Three had a lower rate of DFV reoffending compared to a matched control comparison group. However, there was no impact on recidivism of young people referred into Phase Three, who reoffended at a similar rate to a matched comparison group.

Conclusion and recommendations

To our knowledge this is the first published evaluation of a RJ program for both DFV and sexual violence. The evaluation found that Phase Three provided an important mechanism for persons harmed to seek redress in the aftermath of DFV and sexual violence victimisation, and for persons responsible to address the factors associated with their offending. The findings highlight key areas where further investment and support are required, and demonstrate there are significant preparation and processes involved in effectively delivering a program like Phase Three. This report provides insights and lessons that may serve as a guide for informing the development of future RJ programs in this space.

Recommendation 1	The Restorative Justice Unit should take steps to increase their capacity and shorten the wait-times to access the service.
Recommendation 2	Ongoing training should be provided to stakeholders involved in the delivery and operation of Phase Three.
Recommendation 3	Perceptions that RJ is 'soft justice' should be challenged and addressed among referring entities.
Recommendation 4	The development of referral guidelines and eligibility criteria beyond offence type and stage of CJS should be considered.
Recommendation 5	Clearer guidelines and training should be developed to improve understanding about the relationship between RJ and sentencing.
Recommendation 6	The RJU should work with relevant criminal justice agencies to increase post-sentence referrals to Phase Three
Recommendation 7	Investigate options to work with communities to encourage buy-in to Phase Three from First Nations and other culturally diverse participants.
Recommendation 8	The RJU should develop formal disengagement processes to support participants during the post-conference period.
Recommendation 9	Clearer guidance about how to work with clients where there is an intervention order should be provided to RJU staff.
Recommendation 10	The RJU should continue to collect data to facilitate ongoing evaluation and improvement.

Introduction

Restorative justice (RJ) has become a mainstay of many Australian and international jurisdictions' response to crime (Joudo-Larsen 2014). There are varying definitions of what makes a program truly 'restorative' and indeed program formats differ across and within delivery settings which include schools, universities and workplaces, and criminal justice systems around the world. Broadly, RJ may be understood as a process whereby persons who have been affected by an offence can come together, recognise what happened and the impact, and find a way to move forward (Marshall 1996; Zehr 2002). A review of the research evaluating RJ as a response to serious crime shows clear benefits for victim-survivors who participate, including reduced fear of future violence, less post-traumatic stress, and increased satisfaction and perceptions of procedural justice, compared to traditional criminal justice processes (Sherman et al 2015).

Interventions involving victim-offender mediation, circles and conferences are frequently identified as incorporating restorative principles. Restorative justice programs can be available through all stages of the criminal justice process, from pre-charge (i.e., diversion) to post-sentence. Although original iterations of these programs focused on early-career offenders—particularly juveniles—and low-level offences (e.g., property offending), there are now numerous examples of RJ programs that include more serious and complex offences, including sexual violence and domestic and family violence (DFV). In Australia alone, five jurisdictions currently provide options for sexual violence and DFV matters to be referred to RJ conferencing—the ACT, NSW, Queensland, South Australia and Victoria.

Historically, there has been hesitation about providing RJ in cases of gendered violence (including sexual violence and DFV; Daly & Stubbs 2006). Feminist advocates have raised a number of reservations related to the perceived assumptions of RJ, such as the existence of a shared value and belief system among community members, and scepticism about the extent to which the ideals of RJ are met in practice (Hudson 2002). Concerns raised by commentators about the appropriateness of RJ for sexual violence and DFV commonly include victim-survivor safety, perpetrator manipulation of RJ processes and convenors, pressure on victim-survivors to accept an apology, and the role of community and mixed loyalties when supporters for both parties are present (Daly & Stubbs 2006; Stubbs 2004). There are also concerns about the re-privatisation of responses to reducing violence against women in society, and arguments for the role and responsibility of the state to protect and denounce crimes of violence against women (Coker 1999).

The perceived need to provide RJ for DFV and sexual violence is a relatively recent development. In 2010, the Australian Law Reform Commission report reviewing legal frameworks for family violence did not recommend RJ as a potential response to DFV, nor did the Special Taskforce on Domestic and Family Violence in Queensland in 2015. However, providing DFV victim-survivors with the option of participating in appropriate RJ processes was recommended by the Victorian Royal Commission into Family Violence (2016). Recommendations to further explore and expand the availability of RJ for sexual violence have also been made as part of the Commonwealth Attorney General's Work Plan to Strengthen Criminal Justice Responses to Sexual Assault (2022-2027), the Women's Safety Justice Taskforce in Queensland (2022) and the ACT Sexual Assault Prevention and Response Steering Committee (2021).

This reflects a small but growing evidence-base demonstrating benefits associated with RJ in responding to DFV and sexual violence, as compared to conventional criminal justice processes. These include victim-survivors being given a say and the opportunity to actively participate in the justice process, the validation of victim-survivors views and experiences, offender accountability for their behaviour, flexible and adaptive processes and environments, and (if desired) relationship

repair (Daly & Stubbs 2006). Moore and Vernon (2023) further argue that the potential for RJ to repair relationships goes beyond the dyadic relationship between the victim-survivor and the offender, and extends to the relationship that all those directly affected by the crime have with their community and society more broadly, and perhaps most importantly, the relationship between those affected by a crime with the self/themselves.

Despite the considerable history of practice, in Australia and internationally, there is a concerning lack of rigorous evaluation studies that have examined the safety and effectiveness of RJ for sexual violence and DFV (see Appendix A for a brief review of the literature; Gang, Loff, Naylor & Kirkman 2019; Mills, Barocas & Ariel 2013). A recent review of the peer-reviewed literature found only one eligible study evaluating RJ for sexual and DFV offences (Gang, Loff, Naylor & Kirkman 2021). Considering the concerns raised by commentators about the potential for RJ processes to harm victims-survivors of DFV and sexual violence offences, as well as the ongoing use of these programs in Australia and internationally, there is an obvious need for further rigorous evaluation research to ensure that these programs are supported by strong evidence (Gang et al. 2019). This is particularly important considering the ongoing discussion about what RJ processes that include these matters should look like and how they can best contribute to positive outcomes for victim-survivors and the community.

The ACT Restorative Justice Scheme

The Restorative Justice Scheme (also referred to throughout this report as the Scheme) has been operating in the ACT since 2005. The Scheme, which is managed by the Restorative Justice Unit (RJU) within the ACT Justice and Community Safety Directorate, involves the delivery of RJ conferences for eligible matters referred at all stages of the criminal justice system. Conferences involve the victim-survivor (the person harmed) and the perpetrator (the person responsible) of a crime meeting in a safe and respectful space to discuss the harm caused by the crime, and to identify ways in which these harms can be repaired. Persons harmed and persons responsible may be supported by other parties, including service providers and advocates. Conferences are prepared and facilitated by highly trained Convenors employed by the RJU.

The Scheme operates in accordance with the *Crimes (Restorative Justice) Act 2004* (The Act). The Act outlines how the Scheme operates within the criminal justice system in the ACT, and includes information about referral pathways and timing, eligibility and suitability, RJ conferences and potential outcomes (or 'agreements'), and general administration. The Scheme is integrated into and supplements traditional criminal justice processes (i.e., arrest, court, sentencing, incarceration and parole processes). The Act allows for offences to be referred to the RJU at all stages of the criminal justice process, from arrest through to post-sentence. However, serious offences may only be referred after a perpetrator has pled or been found guilty in court, and 'less serious' offences may be referred at court prior to plea in exceptional circumstances (see section on Eligibility for further information). There are no limits on the number of times a person can be referred to the RJU.

Between 2005 and 2016, the Scheme was open to all offenders aged 10-17 years who had committed minor or less serious offences (e.g., property crime; Phase One). The program was then expanded in early 2016 to accept referrals for adult offenders and young people charged with serious offences (Phase Two). In November 2018, the Scheme was again expanded to include DFV and sexual violence matters (Phase Three). The parameters for Phase Three are set out in the *Crimes (Restorative Justice) Sexual and Family Violence Offences Guidelines 2018* (the Guidelines) issued under section 61 of The Act.

The objectives of the Scheme are set out in section 6 of the Act and apply to all three phases. In summary, the aims of the Scheme are to:

- enhance the rights and interests of victims
- have a system that brings together people harmed by crime in a safe environment
- facilitate referrals to restorative justice from criminal justice agencies
- ensure access to RJ at every stage of the criminal justice process without substituting or interfering with established justice processes.

The overarching aims of the Scheme are consistent with the foundational objectives of restorative practice: to do no further harm; to work *with* people; and, to set relations right (Moore and Vernon, 2023).

Structure of this report

In January 2020, the AIC was commissioned by the Justice and Community Safety Directorate (JACS) to undertake a process and outcome evaluation of Phase Three of the ACT Restorative Justice Scheme. This report outlines the findings from the evaluation, drawing upon a range of quantitative and qualitative research methods used to address the key research questions. The report is organised into a number of sections:

- an overview of the primary evaluation questions addressed by the process and outcome evaluation, along with the quantitative and qualitative methodology used in the evaluation
- a summary of key findings from a review of the implementation and operation of the Scheme, organised into five sub-sections:
 - the design and implementation of the Scheme
 - the referral of matters to the Scheme
 - pre-conference processes
 - conferences held as part of the Scheme
 - post-conference processes.
- findings from the analysis of qualitative and quantitative data relating to key outcomes that have been delivered by the Scheme, including:
 - feelings of safety and wellbeing for person harmed
 - feelings of being supported for person harmed
 - understanding that the violence is not acceptable and serious for both persons harmed and persons responsible
 - understanding by the person responsible that the person harmed is not to blame for the violence
 - understanding by the person responsible of the impact of the offence on the person harmed and others
 - reoffending by persons responsible (during the lead up to the conference and post-conference).
- conclusions from the evaluation and a number of recommendations to inform the future operation of the Scheme.

Methods

The process evaluation aimed to improve understanding of the activities that are being delivered as part of the program, including their implementation, and factors that impacted upon their delivery. The following research questions were examined as part of the process evaluation:

- How many matters were referred to the Scheme, resulted in client consent to participate and proceeded to conference since commencement?
- What were the characteristics of individuals and matters that had been referred to the Scheme?
- What factors impacted whether referred matters proceeded to consent being granted and then to a conference?
- What were the key processes and activities involved in the implementation and delivery of the Scheme and how well were they operating (e.g., referral pathways, assessment processes)?
- To what extent were Scheme participants satisfied with the processes associated with the Scheme, and the support they received?
- To what extent were processes and outputs delivered as part of the Scheme appropriate for the target cohort?
- How were conferences held as part of the Scheme delivered and how have conference processes been adapted to account for the unique considerations associated with sexual assault and family violence matters?
- To what extent are key stakeholders supportive of the Scheme?
- To what extent has the Scheme been implemented as intended?
- What are the main barriers or challenges to the effective implementation and delivery of the Scheme?
- How could the Scheme be changed to maximise both satisfaction with processes and outputs among participants, as well as likelihood of achieving associated outcomes?

The outcome evaluation is concerned with the overall effectiveness of the program and determining what outcomes (intended or unintended) have been delivered for persons harmed, persons responsible and other parties. Outcomes measured for persons harmed included increased feelings of safety and wellbeing, improved understanding that they are not to blame for the violence, and increased ability to move on from what happened. Outcomes measured for persons responsible included increased understanding of the impact of the violence on the person harmed and others, increased understanding that they are responsible for the violence, increased commitment not to offend again, increased ability to move on from what happened, and decreased re-offending.

To assess the operation and effectiveness of Phase Three, the AIC collected qualitative and quantitative data from a small number of sources. Mixed method approaches to evaluation have a number of benefits, including the ability to measure and quantify key outcomes as well as providing a more detailed explanation of findings. Also, mixed method approaches enable key findings to be examined from various viewpoints and angles. The methods employed are also consistent with previous evaluations of RJ informed processes conducted by the AIC, specifically the evaluation of alternative dispute resolution processes in the NSW Children's Court (Morgan, Boxall, Terer & Harris 2012), the evaluation of the Family Group Conferencing program managed by NSW Department of Families and Communities (Boxall, Morgan & Terer 2012), and the evaluation of Phase One of the Scheme (Broadhurst et al. 2018).

The scope and design of the methodology described in detail below was also informed by advice provided by the RJU. The evaluation questions that each research method will contribute to are outlined below in the evaluation framework in Table B1.

Interviews with Phase Three participants

A key component of the evaluation involved interviews with people participating in the Scheme, including those who did and did not go on to take part in a conference. This provided an important opportunity to engage with and evaluate the experiences of persons harmed, persons responsible and their families and supports. The purpose of the interviews was to elicit information from participants about:

- their expectations of the Scheme
- how the Scheme differed from previous interactions with traditional criminal justice system responses (e.g., going to court)
- what they gained from participating in the Scheme
- what they think has changed as a result of participating in the Scheme.

All persons harmed, persons responsible and support people who consented to participate in the Scheme, regardless of whether their matter proceeded to a conference, were invited via email to participate in an interview as part of the evaluation. Because participation in an interview was not limited to those individuals whose matter had proceeded to a conference, we were able to explore in more detail the reasons why the matter did not proceed and whether the benefits of the Scheme were limited to those people who had participated in a conference.

A total of 16 interviews were conducted with nine persons harmed (female = 7, male = 1, transgender male=1), four persons responsible (female = 1, male = 3), and three support persons (person responsible support $n = 2$, person harmed and person responsible support $n = 1$). Across the sample of interview participants, 12 were referred to the Scheme for a family violence-related matter (e.g., child-to-parent violence, sibling violence, child abuse), and two for sexual violence. There were no interviews conducted with participants in matters relating to IPV.

Respondents self-selected for inclusion in this component of the evaluation on the basis that they provided their consent to be contacted and/or interviewed by a researcher, either as part of the online survey (see below), or contact was facilitated through the Convenor assigned to their case. Interviews were conducted in person or over the phone, at least four months after the respondent exited the Scheme. The AIC provided \$50 to respondents who participated in an interview, to reimburse them for any costs associated with their participation.

Development of the schedule for interviews and survey questions was informed by consultation with the ACT RJU about the aims of the Scheme and the review of the relevant literature. In particular, the work of Daly (2014), Bolitho (2015) and Bachelor (2021) were particularly important for identifying the justice needs of persons harmed which informed the development of these tools. The justice needs, interests and goals identified in the literature constitute the foundation for examining new evidence around the capacity of RJ and other innovative justice mechanisms to meet the needs or interests of victims of crime engaging with such processes (Daly 2014). The evaluation of Phase Three builds on previous research (e.g., Jülich and Landon 2017) that has applied these frameworks to understand the experiences of persons harmed engaging with RJ in the context of DFV and sexual violence.

Analysis of post-conference surveys

Approximately six weeks after conferences were held, all participants were provided with the opportunity to complete a telephone survey administered by volunteers not affiliated with the RJU or the AIC. The survey included a number of questions about the respondent's experiences before, during and after the conference, and their satisfaction with any agreements and/or outcomes that may have been developed as a result. As part of the survey, participants could provide consent, or decline, to be contacted by the research team at a later date if they were also interested in participating in an interview.

A total of 28 post-conference surveys were completed by Scheme participants. This includes 10 persons harmed (female $n = 8$, male $n = 1$, transgender male $n = 1$), nine persons responsible (female = 2, male = 7) and eight support people (female = 5, male = 1, unknown = 2).

Among persons harmed who completed a post-conference survey, 6 were referred for family violence, 2 for IPV, and 2 for sexual violence. Persons responsible who completed a post-conference survey were referred mainly for family violence ($n = 5$) followed by IPV ($n = 2$) and sexual violence ($n = 2$). Supporters surveyed were referred for sexual violence ($n = 3$), family violence ($n = 2$) and IPV ($n = 2$).

Survey data was analysed to inform the process and outcome components of the evaluation. In particular, this data was used to assess the extent to which participants were satisfied with different aspects of the conference process, including safety protocols, supports provided to participants and feelings that they were listened to and respected.

Interviews with stakeholders involved in the delivery and management of the scheme

Interviews and focus groups were conducted with 47 stakeholders involved in the management and delivery of the Scheme (directly and indirectly). This included:

- RJ practitioners and experts – RJU support staff and Convenors, RJ academics, practitioner-academics and Convenors around Australia and New Zealand with experience facilitating RJ in the context of sexual violence and DFV
- Support service representatives – includes victim-survivor support service representatives as well as harmful sexual behaviour specialists, men's behaviour change specialists and other professionals supporting perpetrators of sexual violence and DFV
- Government/CJS representatives – includes law enforcement officers and staff, parole officers and corrections staff
- Legal professionals – includes judges, magistrates and lawyers.

The purpose of the interviews was to describe key activities involved in the delivery of the program and how existing processes may have been adapted for DFV and sexual violence cases, and identify and describe any barriers to the delivery of the program. Stakeholders were also asked to describe any outcomes that they believed could be attributed to the program.

The ACT is a small jurisdiction with a limited numbers of support services for persons affected by sexual violence. To increase confidentiality and to explore the representativeness of emergent themes, interviews were conducted with experts and practitioners in RJ in other Australian jurisdictions and in New Zealand. Individuals were approached to participate in an interview based on their experience and knowledge about the delivery of RJ for sexual violence and DFV-related

matters, as well as through recommendations made by other stakeholders interviewed as part of the evaluation.

All interviews and focus groups were conducted online via video or phone conferencing over a period of six months between October 2021 and March 2022.

Analysis of administrative data collected by the Restorative Justice Unit

The evaluation involved analysis of administrative data collected by the RJU to support the delivery of the program. These data were used to describe key activities and outputs delivered as part of the Scheme, including:

- the number of referrals that were made to the Scheme, and the proportion of referrals that proceeded to a conference being convened
- the characteristics of matters and individuals referred to the Scheme
- the characteristics of conferences held as part of the Scheme.

The administrative data were extracted for the period November 2018 (when Phase Three commenced) – August 2022 (hereafter referred to as the evaluation period). Two primary units of analysis were used to describe the findings from the analysis of the administrative data; cases and referrals.

Cases involved discrete matters referred to the RJU during the evaluation period which could comprise multiple persons responsible and persons harmed involved in an incident or episode of offending the subject of a police complaint. For example, in one case, a single person responsible could be referred to the RJU for an episode of offending involving a discrete incident of physical violence perpetrated against their parent (child-to-parent abuse) and property damage perpetrated against their sibling (sibling violence).

The second unit of analysis is referrals. A referral involves a unique person responsible or person harmed who is identified in a case considered by the RJU. Individual persons responsible and persons harmed may be the subject of multiple referrals to the RJU, in which case they would be counted multiple times.

Analysis of administrative data collected by ACT Policing and ACT Corrective Services

To determine the impact of the Scheme on reported reoffending, both during the lead up to the conference as well as afterwards, the AIC sought access to an extract of apprehension and custodial records for offenders who were referred to and/or participated in a conference held as part of the program, and a matched comparison group.

Apprehension records in the AFP's Police Real-Time Offence Management Information System (PROMIS) were provided for two cohorts:

- 150 persons responsible who were referred to Phase Three in between 1 November 2018 (the date on which Phase Three commenced) and 31 July 2022 (inclusive)
- a comparison group of 1,778 perpetrators who were apprehended for a DFV or sexual violence offence in the ACT during the same period but were not referred into Phase Three.

The cut-off date of 31 July 2022 left a minimum follow-up period within which to examine recidivism of five months (not accounting for any custody time).

Demographic and recorded criminal history data on these perpetrators were extracted from the PROMIS, with criminal history information spanning 1 January 2014 to 31 December 2022 (inclusive), while the entry and exit dates of all custodial episodes experienced by perpetrators during this period were extracted from ACT Corrective Services' administrative system. All offences were coded using the Australian and New Zealand Standard Offence Classification (ANZSOC; Australian Bureau of Statistics 2011). Domestic and family violence offences were identified using a family violence flag in PROMIS. Sexual offences were operationalised using the following ANZSOC codes;

- 0311 (Aggravated sexual assault)
- 0312 (Non-aggravated sexual assault)
- 0321 (Non-assaultive sexual offences against a child)
- 0329 (Non-assaultive sexual offences, not elsewhere classified)

Analytic strategy

For the purposes of this analysis, DFV and sexual violence recidivism means any apprehension for DFV and sexual violence offences after the reference date. For Phase Three persons responsible, the reference date is the date on which their referral was received by the RJU. For perpetrators in the comparison group, the reference date is the date of their first apprehension for DFV and sexual violence offences by police in the ACT during the period 1 November 2018-31 July 2022 (inclusive).

The follow-up periods within which DFV and sexual violence recidivism was examined, defined as the time perpetrators were free to offend in between their reference date and December 31 2022, varied across the sample. This variation depends not just on the reference date for each perpetrator, but the length of time they spent in custody during this period. Any time a perpetrator spent in custody was subtracted from their total observation period to derive an adjusted follow-up time (in days). The time to first reoffence for those perpetrators who did reoffend was similarly adjusted to account for time spent in custody.

To examine the impact of Phase Three on DFV and sexual violence recidivism, all persons responsible referred to the Scheme, regardless of whether or not they had participated in an RJ conference, were compared with the comparison group. This approach, essentially an intention-to-treat analysis, was used for three reasons;

1. During the evaluation period, only 25 persons responsible had participated in an RJ conference;
2. Persons responsible and persons harmed can still benefit in a number of ways from referral to Phase Three, even if referral does not result in an RJ conference; and
3. More broadly, limiting treatment groups to those who receive all components of an intervention can bias findings concerning the effectiveness of that treatment, or bias them further in non-randomised trials (Fergusson et al 2002), leading to less accurate estimates of the treatment's impact.

Critically, since perpetrators included in this analysis were not randomly assigned to Phase Three or standard responses, equivalence between the Phase Three and comparison groups in relation to important characteristics (e.g., criminal history, age, gender) cannot be assumed. As such, any raw comparison of these groups on recidivism outcomes will not be able to disentangle any effects of Phase Three referral from the effects of any other factors on which the groups systematically differ (e.g., age, prior offending). To address this, statistical matching was used to improve the equivalence, or balance, of the Phase Three and comparison group with respect to relevant covariates. This was achieved with entropy balancing, which reweights cases in a comparison group

to adjust its covariate distribution (i.e., means, variances and skewness) and match it to that of a treatment group (Hainmuller 2012). This provides a more accurate estimate of the counterfactual outcome for a treatment group (i.e., the outcome if they had not been exposed to the treatment), and therefore, a more accurate estimate of the average treatment effect. Entropy balancing has been shown to represent an improvement over other statistical matching methods, including propensity score and nearest neighbour matching, in terms of its ability to achieve better covariate balance and the greater efficiency with which it allows matching to be undertaken (Harvey et al. 2017; Zhao & Percival 2017).

The impact of Phase Three is examined in relation to three dimensions of DFV and sexual violence recidivism:

- the probability of any recidivism (i.e., prevalence);
- the number of recidivist offences (i.e., frequency of reoffending); and,
- the time taken to recidivate (i.e., time to first reoffence).

To control for the influence of other factors that may influence our outcomes of interest (reoffending), we estimated a series of logistic regression models to examine differences in the probability of any DFV and sexual violence recidivism between the Phase Three and comparison groups. Negative binomial regression models were used to examine differences in the number of recidivist offences between the two groups. The predicted probabilities of recidivism and estimated average number of recidivist offences for Phase Three and comparison groups, with covariates adjusted for using marginal standardisation (Muller & MacLehose 2014), were used to quantify the magnitude of Phase Three's impact on these dimensions of recidivism. Finally, survival analysis with Cox regression models were used to examine differences between the Phase Three and comparison groups regarding time to first reoffence, with cumulative reoffending probabilities and hazard ratios (HR) used to quantify the magnitude of Phase Three's impact on this dimension of recidivism.

The analysis proceeded in three steps:

1. Models were estimated comparing the Phase Three group with the unmatched comparison group.
2. Models were estimated comparing the Phase Three group with the matched comparison group.
3. Models were estimated to examine the differential impact of Phase Three on recidivism for young (10-17 years of age) and adult (18+ years of age) perpetrators. As part of this third step, matching was undertaken on both the intervention groups (Phase Three-comparison) and age groups (young-adult), and models include an interaction term for these variables.

All models included covariates on which matching has been undertaken to account for any residual differences between the groups (e.g., age). Along with the demographic and offending characteristics of perpetrators, these covariates included novel coronavirus disease 2019 (COVID-19) restrictions. The implementation of Phase Three overlaps with the outbreak of COVID-19 in Australia. Containment measures taken by the ACT and Federal governments to limit the transmission of COVID-19, which restricted people's ability to travel, gather, and undertake public activities, were introduced, strengthened and repealed in the ACT at various points throughout this period (ACT Government 2020a, 2020b, 2021; 2022 Barr & Stephen-Smith 2020). These measures were accounted for in the analysis with a variable that measured the intensity of these restrictions, with the pre-restriction period—1 November 2018 to 15 March 2020—taken as the baseline. Additionally, while groups were not matched on adjusted follow-up time (in days), this was also included as a covariate in the logistic and negative binomial regression models. Importantly, as

survival analysis, and its extension Cox regression, estimate time to recidivism as a function of follow-up time, variable follow-up times between perpetrators were already accounted for, and there was no need to include this as an additional covariate.

Limitations

As noted above, Phase Three commenced in November 2018 and the evaluation period was between November 2018 and August 2022, a period which included the outbreak of the coronavirus (COVID-19) in Australia. Like most client facing services, the RJU was impacted by the COVID-19 in its capacity to conduct day-to-day practice at varying times during the evaluation period. During COVID-19, the settings around client contact varied in accordance with the level of risk and ACT government policies and requirements. There were periods where face-to-face contact with participants was prohibited (such as during the March-May 2020 lockdown). During periods where face-to-face contact with participants has been permitted, Convenors have been required to complete a risk assessment and management planning process for each face-to-face client contact. During higher-risk periods they have also been required to seek the Director's approval for each contact. It is clear from the findings that COVID-19 negatively affected the rate of referrals from other agencies as well the capacity of the unit to conduct conferences in-person.

While all participants were provided with an opportunity to participate in an interview, the sample is not random as participants self-selected to take part, or were referred by the RJU. This may have resulted in oversampling of people with more positive or more negative experiences of the program reaching out to share their views.

It is a limitation of the research that there were no interviews with participants who were referred to Phase Three for an IPV matter. As a result, understanding of the effectiveness of the Scheme for IPV matters is limited, particularly with regard to non-heteronormative relationships. Future research should explore this further.

Further, given the small number of Phase Three conferences that took place, a relatively small number ($n = 28$) of post-conference surveys were completed and analysed. This is associated with a relatively small proportion of referred matters being found suitable in addition to the COVID-19 restrictions limiting the proportion of matters that were approved for conference resulting in a conference occurring.

Relatedly, while the intention was to observe 3-5 Phase Three conferences (and the same number of non-Phase Three conferences as a comparison) this could not be achieved. The AIC was only able to observe one Phase Three conference and two non-Phase Three conferences. The aim of observing conferences was to increase understanding of how conferences are conducted, how Convenors managed power dynamics between persons responsible and persons harmed, and the extent to which different conference participants were engaged in the process and actively contributing to discussions.

Ethical research

This research was approved by the AIC's Human Research Ethics Committee (HREC). The AIC HREC is registered with the National Health and Medical Research Council (NHMRC) to ensure that all AIC research is conducted according to the National Statement on Ethical Conduct in Human Research (NHMRC 2007).

The AIC acknowledges the devastating impact of violence on the health and wellbeing of individuals, families and communities. The research team carefully considered the potential impact of participating in the evaluation on the individuals and families who took part in Phase Three and who have thereby been affected by DFV and sexual violence.

In line with the RJ principle of do no further harm, the safety of research participants, including program stakeholders and especially program participants, was central to the design of this evaluation. This was balanced with the value of directly involving program participants in evaluation research, to ensure their views can be heard, and inform the further refinement and improvement of the program. Indeed, participation in research can be empowering for individuals, through being provided with a space to have their experience and views listened to and respected (Campbell et al., 2010; Langhinrichsen-Rohling, 2006).

Relatedly, all necessary steps were taken to consider the confidentiality of all research participants and to ensure that all research participants provided informed consent to participate in the project. Appropriate efforts were also made to safeguard the research team while conducting interviews with scheme participants and while observing conferences.

The design and implementation of Phase Three

Informed by a review of program documentation as well as interviews with stakeholders and Phase Three participants, the following chapter provides a summary of the history and philosophy underpinning Phase Three, and the processes involved in designing the program, as well as its implementation. Stakeholders involved in the delivery and implementation of Phase Three are discussed and their roles are briefly defined. An overview of the key features of Phase Three, including suitability assessment, case review, the co-Convenor model, and the process for situating the offence within a broader pattern of behaviour, is provided below.

Key features of Phase Three

As noted in the [introduction](#), although DFV and sexual violence matters have only been eligible for referral to the RJU since 2018, the Scheme had been operating in the ACT since 2005. Considering the historical use of RJ in the ACT, a key question we had as part of the evaluation was how the RJU had adapted or changed their existing processes for Phase Three matters, if they did at all.

Broadly speaking, the principles and processes underpinning the delivery of RJ are the same for Phase Three and non-Phase Three matters (i.e., Phases One and Two). For example, regardless of the nature of the matter, Scheme processes were characterised as voluntary and dialogue-based, and the justice needs of the person harmed were prioritised.

However, stakeholders interviewed as part of the evaluation noted that from the outset, there was an explicit recognition within the RJU and other agencies that existing RJ processes would have to be adapted to reflect the unique nature of DFV and sexual violence matters as well as the needs of persons harmed and persons responsible.

The evaluation identified a small number of key changes implemented by the RJU for Phase Three. Specifically:

- consultation and engagement with community-based DFV and sexual violence services
- intensive and ongoing suitability assessment processes
- case reviews conducted by a member of the leadership team
- the implementation of a co-Convenor model
- situating the referred incident within a broader pattern of behaviour.

Engagement with community-based DFV and sexual violence services

Prior to the commencement of Phase Three, the RJU ran a series of information sessions and stakeholder consultation workshops to engage with relevant local DFV and sexual violence support services. These sessions were held by representatives from the RJU and Project Restore (see In focus 1. Project Restore).

All relevant agencies were invited to attend the sessions to learn about Phase Three and to improve understanding of the use of RJ for DFV and sexual violence. According to stakeholders interviewed for the evaluation, these information sessions were motivated by an understanding that there may be some 'push-back' against the use of RJ for DFV and sexual violence matters for many of the reasons outlined in the introduction. As such, the consultation process aimed to increase buy-in from the DFV and sexual violence sector and alleviate any concerns they may have had about the RJ processes, as well as building positive working relationships between the RJU and the support services.

Building buy-in and relationships with the DFV and sexual violence sector was described by stakeholders as being important for a number of reasons. This includes increasing referrals to Phase Three, as well as facilitating persons responsible and persons harmed access to suitable [specialist support services](#).

Intensive and ongoing suitability assessment processes

For all referrals that are deemed eligible, the RJU conducts a safety and risk assessment prior to engaging with the person responsible and person harmed. For Phase Three matters, these risk assessment processes were described by stakeholders as being more intensive and involving the use of validated risk assessment tools; specifically, the Family Violence Risk Assessment Tool (FV-RAT; for DFV-related matters) and the Juvenile Sex Offender Assessment Protocol II (J-SOAP II; for sexual violence matters involving a juvenile person responsible; Prentky & Righthand 2003). See the chapter on [Pre-conference processes](#) for more detailed information about Phase Three suitability assessment processes.

Case reviews conducted by members of the leadership team

A case review is conducted by a Senior Convenor or the Director of the RJU for all Phase Three matters. The role of the case reviewer is to ensure that all processes have been adhered to (as outlined in The Act), provide additional risk assessment and ensure this is recorded appropriately, check on the safety plans, aid contact with stakeholders and provide guidance to Convenors.

The case review process was described in the following way by one interviewee:

We would have what's called a case review with a Senior Convenor and then we will lay out a plan... there might be feedback from them around, okay, now what do you need to do this?



In focus 1: Project Restore

Project Restore is a survivor-centred RJ program for sexual violence that has operated in New Zealand since 2005. The program was inspired by the RESTORE program in Arizona (USA) and accepts referrals through community and criminal justice pathways. Project Restore is similar to Phase Three in the rigorous risk assessment procedures, but it is distinct in its program model. While Phase Three has a co-Convenor model, Project Restore has a specialist clinical team model, comprised of an RJ specialist (facilitator), a victim-survivor specialist with expertise in sexual violence, and a harmful sexual behaviour (offender) specialist.

Or, have you thought about this? So we just work our way through it, and then depending on what the outcome is, from there we'll decide on who do we contact first (251021S, RJ Practitioner, 2021).

One practitioner described how it was important to conduct case review before reaching out to participants to make sure that they have all the relevant safety information that they need before making an approach:

Our first point of call before we reach out... is to try and get as much case information and safety information as we can. So that would be reaching out to domestic violence services and getting that information, or you know, if they have a case worker, basically trying to get in touch with their support system, that's always been quite successful in Phase Three matters (291021P, RJ Practitioner, 2021).

One stakeholder summarised case review as a 'fresh set of eyes to look at it from a risk perspective' (101121B, RJ Practitioner, 2021). Another stakeholder talked about the process of balancing the interests and needs of participants and risk assessment during case review:

On paper it looked so dangerous... And yet, when we let [the PH] know that the referrals' been made and how we're thinking we'll respond to it by just closing it down... [the PH] says yes, I want to do it, yes, I've got so much to say to [the person responsible] (RJ Practitioner, 212221Z).

Case review influenced decision making around the order of contacting the people involved and the timing for doing this. Therefore, case review is conducted before the matter reaches the suitability assessment phase.

Co-Convenor model

One of the distinguishing characteristics of Phase Three unlike previous phases of the Scheme was the requirement that a minimum of two Convenors were assigned to each referral. The decision to adopt a co-Convenor model for Phase Three was primarily to make the process safer for participants and Convenors by reducing the ability of persons responsible to manipulate people involved. The involvement of two Convenors means that more than one-person was engaging with the person responsible and the person harmed and receiving information about the incident and history of violence, interpreting what had occurred and could cross-check their interpretations against one another. As such, Convenors were encouraged to debrief with one another on a regular basis, which included discussing the motivations of the person responsible and looking for evidence of insincerity and attempts to influence.

Many of the stakeholders interviewed as part of the evaluation believed that the co-Convenor model was working well and had yielded a number of important benefits. As demonstrated in the below quotes, these benefits included providing Convenors with opportunities to debrief and share the emotional 'load' associated with DFV and sexual violence matters.

It reflects a lot of thinking that has gone on about what's important in this process to better and best ensure that this process is safe and strong and good... it offers the strength of more than one view on what's being said and heard by participants. It offers gender interpretations of the experiences... It offers consistent opportunities for reflection throughout the process... (111121AJ, RJ Practitioner, 2021)

You wouldn't want to have too many family violence or sexual offence matters or serious violence matters because it is intense, and it is challenging emotionally and psychologically, so

that's why the two-Convenor model is really vital... lots of opportunities to debrief and to have those unit conversations when things get difficult (211221AH, RJ Practitioner, 2021).

It was also agreed among stakeholders that the co-Convenor had minimised opportunities for persons responsible to manipulate the process. This said, one of the persons harmed who participated in an interview believed that despite the presence of two Convenors, the person responsible had been able to manipulate them both. In particular, the person harmed reported that the person responsible had been effective at making the Convenors believe that they were contrite and willing to be held accountable for their behaviours, whereas she thought that they were only telling the Convenors what they wanted to hear. Interestingly, the person harmed suggested that the person responsible had a personality disorder which made them very good at manipulating others and appearing genuine:

He potentially has antisocial personality disorder so he was very manipulative and he very much had convinced Restorative Justice that he'd completed their process and had met the outcomes that they were hoping to achieve... 'Sorry, you know, I've learnt my lesson' kind of thing. But [the person responsible] wasn't actually quite like that. I still don't think he's sorry for what he did (Person harmed, Family Violence, 2021)

When asked whether they felt that the Convenors held the person responsible accountable during the process, the same interviewee replied:

As best as they could, as best as they were manipulated to. It must be really tricky, because you've got a 13-14 year old who, when you don't know the history or the signs, even just subtle ones to look out for, it's very easy to be manipulated (Person harmed, Family violence, 2021).

However, none of the other persons harmed or support persons raised these concerns during interviews with the evaluation team.

Although the majority of stakeholders who had been involved with the delivery of Phase Three believed that the co-Convenor model had been working well, there were also a small number of drawbacks identified in relation to the co-Convenor model. As demonstrated in the below quote, this included tensions between the co-Convenors:

It's important to work with the co-Convenor so you can recognize, or someone else might be able to recognize when those things [manipulation by the person responsible] are happening. The flip side of that is, you know it can create tension between you and a colleague because you are both seeing different things. But I think we're all mature enough to be able to talk our way through that, and it just comes with experience as well... (251021S, RJ Practitioner, 2021).

In addition to tensions between Convenors, primarily attributed to differences in working styles and experience, stakeholders also suggested that the co-Convenor model was in part responsible for the delays associated with referred matters being allocated and proceeding to conference (discussed in more detail in [later sections](#) of this report).

Although stakeholders recognised the benefit of the co-Convenor model, several suggested that the involvement of multiple Convenor was unnecessary for all Phase Three matters. Rather than having one model for all Phase Three matters, some stakeholders said there was merit in different program models, especially for sexual violence matters. One alternative model that was raised by stakeholders was the approach taken by Project Restore. As described above, Project Restore involves a three-person team comprised of three 'specialists' including a sexual assault survivor specialist, a harmful sexual behaviour specialist and a RJ specialist. These specialists work together

to assess suitability and in close collaboration with therapeutic professionals who are also supporting participants alongside the process.

Some stakeholders suggested that in place of the current co-Convenor model, it would be useful to have the flexibility to work directly with specialist support services and experts whom participants and Convenors have rapport, during the suitability phase and at the conference:

I think we need to be broadening the circle, not just with participants but with professional guidance and practise as well... when you have an external provider in your space you really can open yourself up to, you know, coming back to reflective practise, but a shared skill set, shared learning... it's keeping me on my toes and I always want to be kept on my toes when it comes to domestic and family violence and sexual offending (21121R, Gov/CJS, 2021).

However, stakeholders supportive of the existing co-Convenor model cautioned about the risk that ideologies of specialists could negatively affect outcomes for participants and the extent to which they can benefit from the process. There was concern that this may lead to a lack of role clarity between professionals involved in the program, and that providing specialists with similar decision-making powers as Convenors may create imbalance through the process or result in Convenors' own specialised skills and expertise becoming less valued.

Regardless of the ideal model, all Convenors described working closely with specialist support services as an integral part of practise for all Phase Three matters. The majority of stakeholders agreed that the current co-Convenor model was working well, and that there was a history of beneficial collaboration between RJU and community-based DFV support services. However, stakeholders reported a need to improve relationships between the RJU and local sexual violence support services.

Situating the offence within a broader pattern of behaviour

Another key distinguishing feature of Phase Three (as distinct from Phase One and Two) was that Convenors were required to situate the incident referred to the Scheme within the broader context of the history of harm between the person responsible and the person harmed. For example, stakeholders suggested that ongoing and persistent patterns of coercive controlling behaviours were present in many (but not all) IPV matters referred to Phase Three. It was reported to the evaluation team that when there was evidence that the person responsible has been abusive towards the person harmed (or other people) in the past, that they would be encouraged to talk about this with Convenors during the suitability assessment phase, and to take responsibility not just for the incident that resulted in the referral, but the other behaviours as well.

When discussing historical abuse that may not have been reported, the focus was on the *pattern* of behaviour, rather than individual offences. This was because of limitations around the privacy of disclosures because of mandatory reporting requirements, as outlined in the Guidelines, the Act and the *Information Privacy Act 2014*. Participants were advised of these limitations and the potential consequences of making specific, detailed disclosures about previously unreported offences to Convenors in their dealings with the RJU (whether the matter proceeds to conference or not).

Stakeholders involved in the delivery of Phase Three

The RJU is comprised of a number of skilled professionals who were involved in delivering the program, particularly the Convenors, Team Leaders the First Nations Guidance Partner and the Operational Support Team.

Convenors

The main role of the Convenors is to manage a caseload of referrals and facilitate the restorative process. Restorative Justice Convenors involved in Phase Three typically had a tertiary qualification in criminal justice, psychology, social work or a related discipline. In the ACT, where a Convenor does not have a legal background, they must have received legal training to advise participants about their legal rights and their duties under the Act.

More specifically, Convenors duties included:

- information gathering and consulting relevant specialist services, agencies and professionals prior to contacting participants
- inviting people to take part in the Scheme and explaining what is involved
- communicating between participants, assessing their interests and needs
- assessing the suitability of participants to engage with the Scheme and participate meaningfully in the process
- identifying issues that should be addressed at the conference
- informing participants of their rights and responsibilities
- managing expectations of participants in the lead up to the conference
- determining an appropriate venue and time to do the conference
- facilitating the conference
- facilitating an agreement between participants.

Where there has been an incident or history of violence, the Convenors role was to work with participants to explore why the violence is being used, assess what could be done to stop the violence from happening in the future, and what needed to happen to recognise and address the harm caused and move forward.

Training of Convenors

All of the Convenors involved in Phase Three have experience delivering and managing restorative processes as part of Phase One and Two of the Scheme, as well as in other programs in Australia. In preparation for Phase Three, RJU Convenors engaged in a range of tailored and intensive training courses relevant to working with DFV and sexual violence matters. The primary training provided for RJU Convenors was the *Setting Relations Right training* run by Dr Alikki Vernon and Dr David Moore (*Positive Interaction*, Victoria) over 3 days in 2018 and 2019. The workshop provided a background to restorative practice applied across a range of contexts, including school, the workplace and the criminal justice system. The training is available to experienced Convenors extending their skill set, or skilled DFV and sexual violence practitioners who want to learn facilitation skills.

The *Setting Relations Right training* involves an overview of core practical theory of how to transform conflict into cooperation, using different group conference formats to deal with:

- a single incident of undisputed harm
- a sequence of poorly resolved incidents
- an issue of common concern
- a legacy of betrayal trauma.

The course provides information on how to tailor conference formats to DFV and sexual violence-related conflict, specifically cases involving historical harm. The training includes specific focus on managing interpersonal and group dynamics in a diversity of contexts involving DFV and sexual violence.

Other training provided to the RJU Convenors and staff are summarised below.

- 2016: Three days of training provided by Project Restore (New Zealand) on conducting RJ for sexual violence matters. The training involved education around sexual violence and RJ, followed by a step-by-step overview of relevant processes, preparation, assessment and facilitation procedures for delivering RJ for sexual violence matters.
- 2017: Four days of training on the use of RJ to address adolescent sexual offending provided by Youth Justice Queensland and Mater Family and Youth Counselling Service (QLD)
- 2018: A workshop on *Understanding Power, Privilege and Entitlement for RJ Phase Three*.
- 2018-2021: Monthly individual and group practice development sessions run by independent consultant Kate Milner (ex-NSW Corrective Services Restorative Justice Unit).

Leadership

The leadership structure of the RJU includes the RJU Director and the Team Leaders (senior Convenors and manager of the operational support team). The Director, whose role is described in the Guidelines, provides supervision to the Team Leaders, reports on the day-to-day operation of the Scheme to the Executive Branch Manager within JACS, and is responsible for all high-level administrative functions including compiling and responding to all cabinet and funding briefs.

The day-to-day operation of the Scheme is primarily overseen by the Senior Convenors, whose duties include:

- supporting the work of the Convenors and support staff
- approving suitability assessment outcomes, including the decision to proceed to conference
- reviewing matters before they are closed by the RJU to ensure that processes were consistent with relevant guidelines.

Senior Convenors also have their own case load of matters as well, and so are involved as co-Convenors for Phase Three matters. For matters involving a Senior Convenor, the Director will perform the duties outlined above.

Operational support team

The Operational Support Team is comprised of a Senior Operational Support Officer and database administrator (who is the team leader) as well as an Operational Support Officer. The team was also supported by a Waitlist Manager and a second Operational Support Officer at different points during the evaluation period. The Operations Support Team receives all referrals made to the Scheme and enters them into the Database. The team liaises with referring stakeholders and RJU staff as part of quality control processes, and ensure all referrals include the information required under the Act.

At various stages throughout the evaluation period a court liaison role was fulfilled by the Operational Support Officer who attended court multiple times per week to identify relevant matters that may be eligible for RJ. In accordance with s25 of the Act, the court liaison officer speaks to potential participants (persons responsible) at court and provide an explanation of RJ with the aim of facilitating a court referral to the Scheme.

First Nations Guidance Partner

The First Nations Guidance Partner (FNGP) is a support person who works with First Nations participants in the Scheme. The FNGP acts as an initial point of contact for First Nations clients, recognizing the barriers to engagement for First Nations peoples with government services, in particular those involved in the CJS. The support of the FNGP is offered to all persons harmed, persons responsible and their supporters who self-identify as First Nations throughout the restorative process, from initial contact to after the conference has taken place. Supports provided include facilitating transport to meetings, in-person support during meetings, referral to support services, and helping facilitate the completion of tasks included in any agreements that may come out of conferences.

More broadly, stakeholders reported that the FNGP also had an important role in providing culturally relevant information and guidance for the Convenor and the participant(s) to support the delivery of culturally respectful and appropriate processes. See the section on [suitability of Phase Three processes for First Nations participants](#).

Views of stakeholders about alternative justice pathways for DFV and sexual violence

There was strong support for Phase Three among representatives from various government and non-government organisations in the ACT. In particular, there was an acknowledgement among many stakeholders that RJ processes were more likely to achieve better outcomes for victim/survivors and perpetrators when compared to the traditional criminal justice system. As one stakeholder argued:

[The criminal justice system is] not primarily designed for victim justice. It's not a victim justice system. It's a criminal justice system... If your end outcome in half of your contested matters are not guilty, this can mean different things to different people but to the victim-survivor of a sexual assault, that is that I'm not believed. It's a very difficult and complicated process. So, we see that if you were able to deploy restorative justice for those people that are open to that as a process to progress their matter outside of the judicial system and have some form of a positive outcome for the victim-survivor then that's a good thing. It's just another option or a pathway that's available (31121W, Gov/CJS, 2021).

The views of stakeholders regarding the necessity of Phase Three and alternative justice options for victims-survivors of DFV and sexual violence was supported strongly by the interviews with persons harmed. For example, several person harmed we interviewed reported that their primary motivation for accepting the referral to Phase Three was because they did not want to criminalise the person responsible by pressing charges. Participants had various reasons for not wanting to press charges against the offender, for example if they were in the same family and pressing charges would have had direct negative consequences for family members.

...we made it really clear we want help. We were talking to the police saying we want help, we do not want anyone to be punished or our son [the person responsible] to be punished, it's not about that (Supporter, Family violence, 2022).

And that's when they said, "Restorative justice could be a better way," because the problem is not the incident on that date, the problem is the past two years that led to the incident. And they were very nice, the police, but they knew their limitation in a sense (Person harmed, Family violence, 2021).

Further, some persons harmed did not want to pursue pressing charges against the person responsible because they felt they could get more out of RJ compared to traditional criminal justice processes. As explained by one interviewee:

Honestly, I just saw [RJ] as a really good way to try and clear things up and just like, make sure that he gets the help that he needs because clearly there was an issue... I can get what I need rather than he gets punished and I have to continue sitting here wondering why he committed the offence in the first place and not get any closure on my situation (Person harmed, Sexual violence, 2022).

However, in other situations a traditional criminal justice approach was not possible due to the police deciding not to press charges for various reasons, particularly the perceived likelihood that a prosecution would be unsuccessful.

Summary

The ACT Restorative Justice Scheme began as a diversion program for young people and minor offences (Phase One) and was subsequently expanded to include adult offenders and serious crimes (Phase Two) and eventually DFV and sexual violence offences (Phase Three). The program is victim-centred, meaning that the process does not go ahead without the participation of the person harmed. A range of stakeholders are involved in delivering Phase Three, primarily highly skilled Convenors with interdisciplinary expertise who lead the program with the support of the team leaders, the First Nations Guidance Partner, and the operational support team.

The key difference between Phase Three and other types of matters is the additional steps involved in assessing suitability, particularly a more in-depth risk assessment procedure. There is also the need to situate the offence within a broader pattern of behaviour, which distinguishes Phase Three matters from other types of crime. The co-Convenor model was also introduced when the RJU began taking DFV and sexual violence matters to make the process safer for participants and to provide additional support to the Convenors themselves when navigating gendered violence.

Referrals to Phase Three

This chapter focuses on the referral stage of Phase Three. This includes a description of the processes through which the RJU received referrals to Phase Three, the characteristics of these referrals, and the main barriers to referrals being made and/or accepted.

Referral processes

Criminal offences can only be referred to the RJU by eligible statutory office holders, a power which has been variously delegated within entities. The statutory bodies that can refer to the RJU and to Phase Three are outlined in s22 of the Act, and include:

- ACT Policing
- Child and Youth Protection Services
- the Office of the Director of Public Prosecutions (DPP)
- ACT Magistrates Courts, including the Galambany Court, the Warrumbul Circle Sentencing Court and the Children's Court
- the ACT Supreme Court, including the Drug and Alcohol Sentencing List
- ACT Corrective Services
- the Sentence Administration Board
- the Victims of Crime Commissioner.

The RJU can also refer to itself. A victim-survivor or perpetrator of DFV or sexual violence may contact the unit and express interest in participating in the process. The RJU will then make efforts to determine at which stage of the criminal justice process the matter may be eligible for referral, and then contact the relevant statutory body to inquire whether this referral has been made. If eligible, the matter may then be referred by the relevant statutory body, or by the RJU itself.

The RJU also supports PH-initiated referrals made by Victim Support ACT, including where the referral is initiated by a community-based DFV and sexual violence support services, as long as the referral meets the eligibility requirements for inclusion in Phase Three (see below).

Each referring entity has legislated point(s) within the criminal justice process which they are able to make a referral to Phase Three. For example, ACT Policing can make a referral after the person responsible is cautioned or apprehended but before the matter has been referred for prosecution. The DPP can refer matters prior to the second mention. Magistrates and judges can refer matters after the second mention has begun, but before the end of a pre-hearing mention or case status inquiry for the offence; and again, after the person responsible pleads guilty to or is found guilty of the offence and before the end of the proceeding. Other entities, including ACT Corrective Services and the Sentence Administration Board can only refer matters to the Scheme once an offender has been sentenced.

Post-sentence referrals do not require a person responsible to know about the referral until it is reasonable to seek their consent. This allows for additional safeguards to be put in place for the person harmed prior to the involvement of the person responsible, and reduces the risk of manipulation or coercion at the early stages, especially for persons harmed who remain in contact with the offender. However, pre-sentence at sentencing stage, referrals require that persons responsible have consented to the matter being referred to RJ.

Once a matter has been identified for referral by an eligible statutory agency, the referring agent completes a form provided by the RJU which they provide along with any other relevant information (e.g., criminal history, statement of facts) to the RJU. Referring agencies can also make 'soft referrals' where individuals are provided with information (such as a pamphlet), or an information session from an RJU staff member about Phase Three, with a view to facilitate an eligible referral at a later stage if the person is interested.

Eligibility criteria

There are a few key eligibility criteria associated with Phase Three:

- the matter involves a DFV or sexual violence offence
- the person responsible consents to participate in the Scheme
- the referral is made by an eligible entity at the appropriate stage in the criminal justice process ([see above](#)).

More specific criteria relating to offence categories, participant type and stage of criminal justice system are outlined in Table 1. In order for persons harmed to participate in the Scheme, they must be at least 10 years old. Under s17 of the Act, if the person harmed is under 10 years old or is otherwise unable to participate safely and meaningfully (e.g., they have a significant cognitive impairment), an immediate family member (i.e., parent or sibling) can participate in their place as an advocate. A person responsible is eligible to participate in the Scheme if they either accept responsibility for the commission of the offence or if they are a young person (17 years old or younger) and they do not deny responsibility for the offence. Eligible persons responsible must also be at least 10 years old at the time of the offence.

Table 1: Eligibility criteria for referral to Phase Three, by person type

Person type	Eligibility criteria
PR (adult)	<ul style="list-style-type: none"> • Accepts responsibility for the commission of the offence (for serious or less serious offence) • Was at least 10 years old when the offence was committed, or was allegedly committed • Agrees to take part in RJ
PR (under the age of 18 years old)	<ul style="list-style-type: none"> • Accepts responsibility for the commission of the offence (serious offence) • Accepts responsibility for the commission of the offence or does not deny the offence (less serious offence) • Was at least 10 years old when the offence was committed, or was allegedly committed • Agrees to take part in RJ
PH (Person directly affected by the offence)	<ul style="list-style-type: none"> • Is at least 10 years old
Immediate family member of a PH	<ul style="list-style-type: none"> • The PH is under the age of 10 and/or incapable of adequately understanding or responding to the experience of the offence, and/or has died

Note: PH = Person Harmed; PR = Person Responsible

Note: The referring agency does not need to seek the person harmed's agreement to participate in restorative justice at the point of referral for the matter to be eligible. Standard practice is to seek consent from the person responsible as a first step. This provides the person harmed the choice to participate with the advantage of knowing whether the person responsible has consented.

Other eligibility criteria relate to the perceived 'seriousness' of the offence. As demonstrated in Table 2, 'serious' DFV offences are defined in the *Crimes (Restorative Justice) Act 2004* as those that are punishable by a term of imprisonment of more than 14 years (if offences relate to money or property) or 10 years (for any other type of offence). Serious sexual violence offences are defined under part 3 of the *Crimes Act 1900* (Cth) as those punishable by a term of 10 years or longer (see Table 2).

Serious DFV and sexual violence offences are not eligible for diversionary referrals, meaning they can only be included in Phase Three if the person responsible has been charged and pled guilty or been found guilty of the offence. Less serious DFV and sexual violence matters can be referred to Phase Three prior to the person responsible pleading or being found guilty, but only in exceptional circumstances. This may include matters where the offence attracts a low penalty; where the person harmed indicates that the incident and pattern of abuse has only had a minor impact on them (as disclosed by the person harmed independently of the person responsible); or there was a lack of premeditation and/or a history of relevant violent offending, such as in the case of a young offender who meets these criteria and is not denying responsibility for the offence.

Some stakeholders noted that classifying offences referred to the Scheme as serious or less serious could result in the harms associated with specific behaviours being underestimated, particularly when incidents formed part of a pattern of abuse between the person responsible and the person

harmed. RJU staff attempted to mitigate this risk by screening for historical harm and evidence of covert coercion and control within the relationship between the person responsible and the person harmed, as well as the presence of any overt and ongoing abusive behaviour. The process for situating the offence within a broader pattern of behaviour is described in [previous sections](#) of this report.

Table 2: Offences eligible for inclusion in Phase Three

Offence category	Offences covered	Criteria for referral/stage in the CJS
Less serious DFV	Punishable by a term of imprisonment of 14 years or less (if other offence is related to financial or property crime)	After plea or finding of guilt
	Punishable by a term of imprisonment of 10 years or less (if other offence)	Prior to plea or finding of guilt if exceptional circumstances exist
Less serious sexual violence	Punishable by a term of 10 years or less as per part 3 of the Crimes Act 1900	After plea or finding of guilt Prior to plea or finding of guilt if exceptional circumstances exist
Serious DFV	Punishable by a term of imprisonment of more than 14 years (if other offence is related to financial or property crime)	After plea or finding of guilt
	Punishable by a term of imprisonment of more than 10 years (if other offence)	
Serious sexual violence	Punishable by a term of more than 10 years as per part 3 of the Crimes Act 1900	After plea or finding of guilt

Characteristics of cases referred to Phase Three

During the evaluation period (November 2018 - August 2022), 162 cases were referred to Phase Three, involving 208 persons harmed and 165 persons responsible (unique persons harmed = 202; persons responsible = 160). While the majority of persons harmed ($n = 197$, 97.5%) and persons responsible ($n = 156$, 97.5%) were only referred to Phase Three once during the evaluation period, a small number were referred twice (persons harmed = 4 and persons responsible = 3) or three times (person harmed = 1 and person responsible = 1).

In the majority of cases referred to Phase Three, only one person harmed ($n = 123$, 75.9%) or person responsible ($n = 159$, 98.2%) were identified. However, two persons harmed were identified in 33 cases (20.4%) and 3-4 persons harmed were identified in 6 cases (3.7%). Meanwhile, two persons responsible were identified in 3 cases (1.9%). Similarly, 82.1% of cases referred to Phase Three only involved one identified offence ($n = 133$), while 15.4% ($n = 25$) involved two offences, 3 cases involved 3 offences and 1 case involved 4 offences.

The most common type of case referred to Phase Three was family violence (e.g., child abuse, child to parent violence; $n = 97$, 59.9%), followed by IPV ($n = 58$, 35.8%). Over the course of the evaluation period, only 16 sexual violence cases were referred to Phase Three, comprising 9.9% of cases (Figure 1).



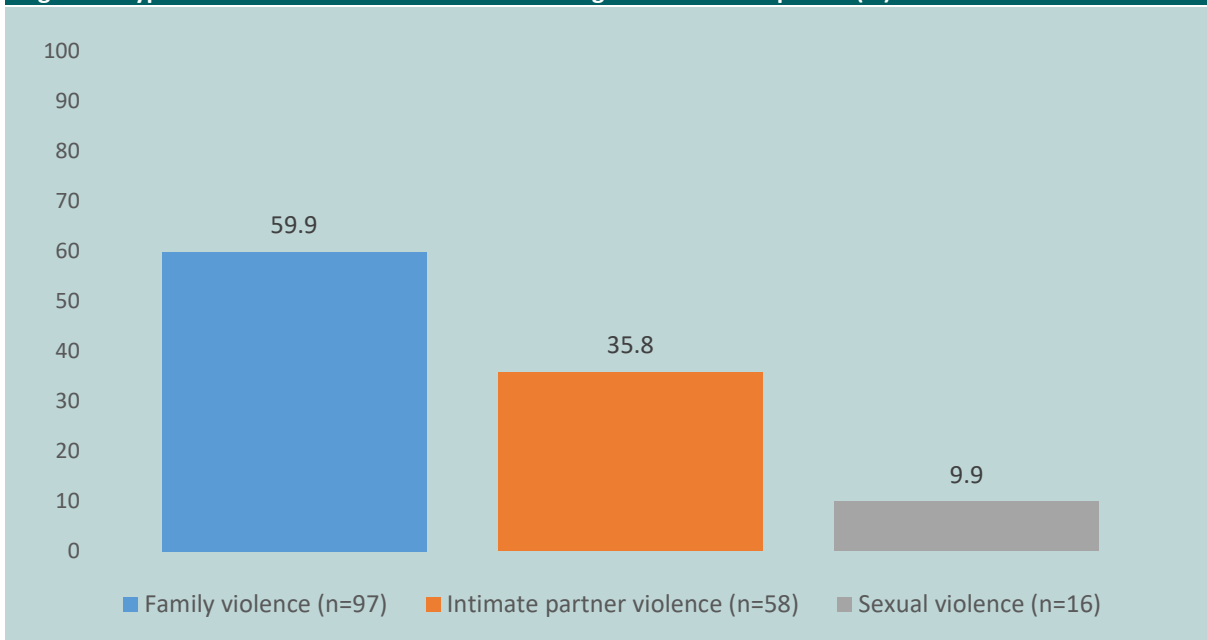
Methodological note

Two primary units of analysis were used to describe the findings from the analysis of the administrative data:

Cases = discrete matters referred to Phase Three. Could involve multiple persons responsible and persons harmed involved in an incident or episode of offending referred to ACT Policing

Referrals = unique persons responsible or persons harmed who is identified in a case considered by the RJU.

Figure 1: Type of case referred to Phase Three during the evaluation period (%)



Note: Total %age does not equal 100 because categories are not mutually exclusive.

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Looking at the nature of the referrals in more detail, overall the most common type of case referred to Phase Three was child-to-parent family violence (40.1%), followed by IPV involving current partners (24.7%), then sibling violence (13.6%). Among the sexual violence cases, it was most common for the persons responsible and persons harmed to be acquaintances (e.g., friends, work colleagues). In five sexual violence cases referred to Phase Three, the person responsible was unknown to the person harmed (i.e., were strangers; see Table 3).

Table 3: PH relationship to the PR, by DFV and sexual violence type (n=162)

	<i>n</i>	%
Intimate partner violence (n=58)		
PH is the current partner	40	24.7
PH is the former partner	18	11.1
Family violence		
PH is the parent	65	40.1
PH is the sibling	22	13.6
PH is the child	13	8.0
PH is the other family member	9	5.6
Sexual violence		
PH is an acquaintance (non-family member)	6	3.7
PH is a stranger	5	3.1
PH is the sibling	3	1.9
PH is the current partner	2	1.2
PH is the former partner	1	<1.0
PH is the child	0	0.0
PH is the parent	0	0.0
PH is the other family member	0	0.0

Note: Total cases does not equal 162 because categories are not mutually exclusive.

Note: PH Person Harmed; PR Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Among IPV cases referred to Phase Three, the most common offence identified was common assault (60.3%, *n* = 35), followed by property damage (32.8%, *n* = 19), assault occasioning actual bodily harm (22.4%, *n* = 13) and breaching protection orders (17.2%, *n* = 10). As shown in Table 4, a similar trend was identified for family violence cases; the most common identified offence was common assault (44.3%, *n* = 43), then property damage (41.2%, *n* = 40) and assault occasioning actual bodily harm (21.7%, *n* = 21). The most common offence identified for sexual violence cases was acts of indecency without consent (25%, *n* = 4). Further, 31.3% of sexual violence cases involved image-based sexual abuse-related offences, including the non-consensual taking of intimate images, non-consensual sharing of images, and threats to share images (*n* = 5).

Table 4: Legislated offence type, by DFV and sexual violence type

	<i>n</i>	%
Intimate partner violence (n = 58)		
Common assault	35	60.3
Damaging property	19	32.8
Assault (Actual Bodily Harm)	13	22.4
Contravene/Breach family violence/protection order	10	17.2
Acts endangering health	7	12.1
Use of carriage services to menace/harass/threaten	5	8.6
Threats to kill	4	6.9
Burglary	1	1.7
Procedural offences	1	1.7
Theft	1	1.7
Weapons	1	1.7
Family violence (n = 97)		
Common assault	43	44.3
Damaging property	40	41.2
Assault (Actual Bodily Harm)	21	21.7
Acts endangering health	6	6.2
Threats to kill	4	4.1
Contravene/Breach family violence/protection order	3	3.1
Burglary	2	2.1
Trespass	2	2.1
Weapon offences	2	2.1
Theft	1	1.0
Use of carriage services to menace/harass/threaten	1	1.0
Sexual violence (n = 16)		
Acts of indecency without consent	4	25.0
Acts of indecency with young people – under 16	2	12.5
Incest and similar offences – under 16	2	12.5
Indecent exposure	2	12.5
Image based sexual abuse - Intimate observations or capturing visual data etc	2	12.5
Image based sexual abuse - Non-consensual distribution of intimate images	2	12.5

Table 4: Legislated offence type, by DFV and sexual violence type

	<i>n</i>	%
Image based sexual abuse - Threats to distribute intimate images	2	12.5
Maintaining a sexual relationship with young person	1	6.3
Sexual assault in the third degree	1	6.3
Sexual intercourse without consent	1	6.3

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Characteristics of persons harmed and persons responsible referred to Phase Three

The majority of persons harmed who were referred to Phase Three were female (68.8%, $n = 139$), while three quarters of persons responsible were male (75.6%, $n = 121$). Where this information was available, approximately one in four persons harmed (23.1%, $n = 24$) and one in five persons responsible (18.7%, $n = 17$) were First Nations. The majority of participants referred to Phase Three were non-Indigenous however the proportion of First Nations participants referred to the scheme is clearly disproportionate to the proportion of First Nations people living in the Australian Capital Territory ($n = 9,544$, 2.1%).

Although the mean age of persons harmed referred to Phase Three was 27.7 years, one in three persons responsible were under the age of 18 at time of the offence which led to the referral (32.6%, $n = 52$). In comparison, the mean age of persons harmed was slightly older at 35.2 years old, and only 14.7% of persons harmed were under the age of 18 at time of the offence that led to their referral ($n = 21$).

Table 5: Characteristics of PH and PR referred to Phase Three

	PH (<i>n</i> = 202)		PR (<i>n</i> = 160)	
	<i>n</i>	%	<i>n</i>	%
Gender				
Male	63	31.2	121	75.6
Female	139	68.8	39	24.4
Indigenous status^a				
First Nations	17	18.7	24	23.1
Non-Indigenous	74	81.3	80	76.9
Age^b				
10-13 years	8	5.6	6	3.8
14-17 years	13	9.1	46	28.8
18-24 years	20	14.0	29	18.1
25-34 years	29	20.3	36	22.5
35-44 years	35	24.5	21	13.1
45-54 years	19	13.3	16	10.0
55-64 years	14	9.8	5	3.1
65+ years	5	3.5	1	<1.0
Mean (range and SD)	35.2 (10-76, 15.2)		27.7 (12-70, 12.8)	

Note: PH = Person Harmed; PR = Person Responsible

a: Information missing for 111 PH and 56 PR.

c: Information missing for 59 PH. In situations where the PH or PR was referred multiple times to Phase Three during the evaluation period, age at time of first referral was used. Age calculated at time of the offence.

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

As shown in Figure 2:

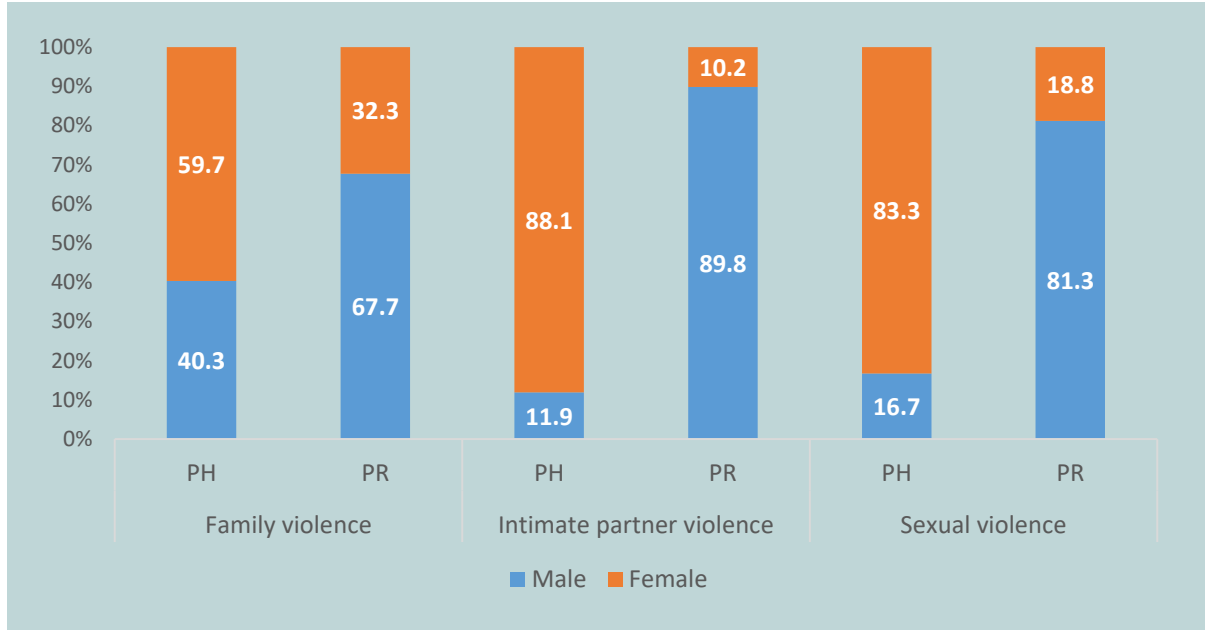
- 89.8% of persons responsible referred to Phase Three for perpetrating IPV were male (*n* = 53) and 88.1% of persons harmed were female (*n* = 52)
- 67.7% of persons responsible referred to Phase Three for perpetrating family violence were male (*n* = 67) and 59.7% of persons harmed were female (*n* = 80)
- 81.3% of persons responsible referred to Phase Three for perpetrating sexual violence were male (*n* = 13) and 83.3% of persons harmed were female (*n* = 15).

Looking at IPV matters referred to Phase Three, the majority of the relationships were heterosexual in nature – i.e., between a male and a female. In only one case was a male person responsible referred to the Scheme for IPV perpetrated against their male partner.

These findings are consistent with broader research which demonstrates that IPV and sexual violence is highly gendered, with the majority of victims-survivors being female and perpetrators male (Hulme et al. 2019). However, other research has shown that there are higher levels of gender

parity among perpetrators of family violence, particularly sibling violence and child-to-parent violence (see for example Boxall & Sabol 2021; Fitz-Gibbon et al. 2022).

Figure 2: Gender of PR and PH referred to Phase Three, by DFV and sexual violence type (%)



Note: PH = Person Harmed; PR = Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Administrative data (November 2018-August 2022), [Computer File]

Further, 23.8% ($n = 10$) of persons responsible and 16.7% of persons harmed ($n = 4$) referred for IPV identified as First Nations, as did 22.6% ($n = 14$) of persons responsible and 20.3% of persons harmed ($n = 13$) referred for family violence. Only one person responsible referred for sexual violence identified as First Nations, and no persons harmed referred for sexual violence identified as First Nations.

Referring agencies

The vast majority (90.7%) of cases referred to Phase Three during the evaluation period came from three agencies: the Magistrates Court (42.0%), ACT Policing (37.7%) and the Children’s Court (11.1%). This means that the majority of other eligible agencies either referred 0 cases (e.g., DFV and sexual violence services) or only referred a small number (e.g., The Supreme Court; see Table 6).

Table 6: Agencies that referred cases to Phase Three

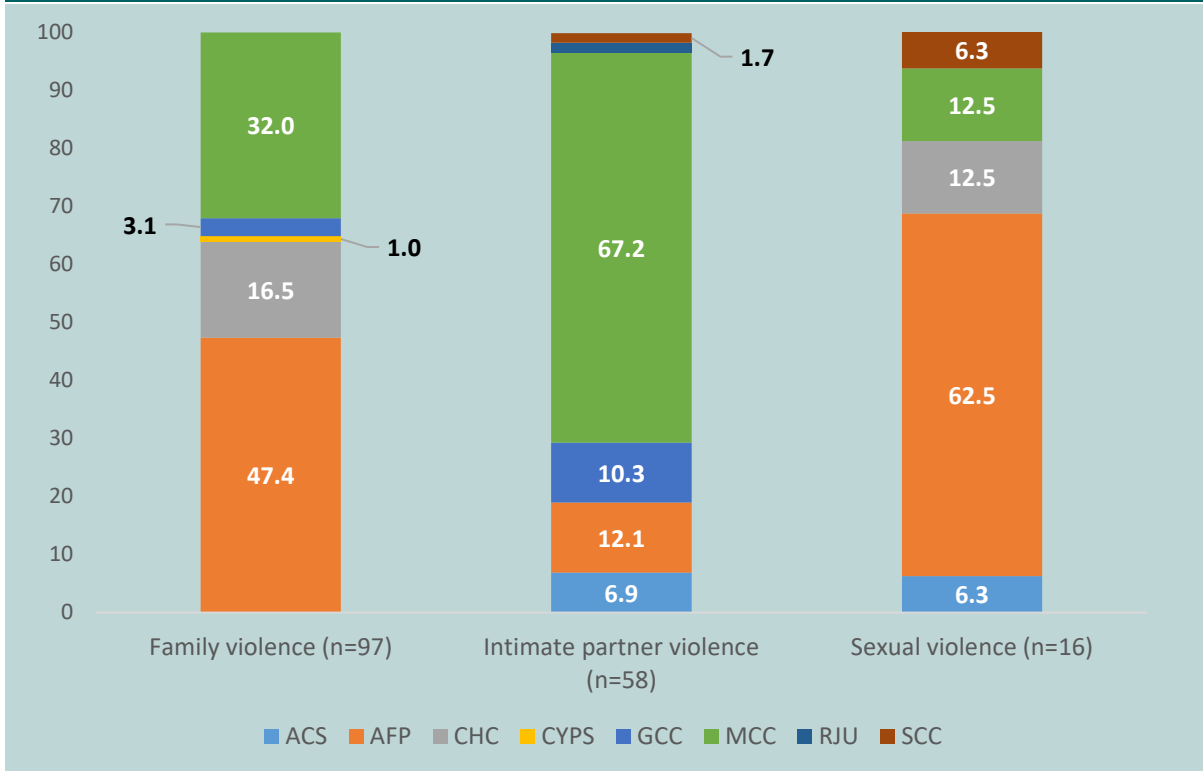
	n	%
Pre-charge		
ACT Policing	61	37.7
Pre-charge and post-charge (pre-sentence)		
Department of Public Prosecutions	0	0.0
Post-charge (pre-sentence)		
Children’s Court	18	11.1
Galambany Court	8	4.9
Magistrate’s Court	68	42.0
Supreme Court	1	<1.0
Post-sentence		
ACT Corrective Services	4	2.5
Sentencing Administration Board	1	<1.0
Youth Justice	1	<1.0
Pre-charge and post-sentence		
Restorative Justice Unit	1	<1.0
Victims of Crime Commissioner	0	0.0
Total cases	162	

Note: %age total may not equal 100 due to rounding

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

As shown in Figure 3, the Magistrates Court referred two thirds (67.2%) of IPV cases to Phase Three, but only referred 2 sexual violence cases (12.5%) and were responsible for 32.0% of family violence cases. Meanwhile, ACT Policing referred the majority of sexual violence cases (62.5%) and approximately half of family violence cases (47.4%). Finally, the Children’s Court did not refer any IPV matters to Phase Three, but referred 4 sexual violence cases (12.5%) and 5 family violence cases (16.5%).

Figure 3: Referring entity, by DFV and sexual violence type



Note: Cases do not equal 162 because categories are not mutually exclusive. ACS=ACT Corrective Services, AFP=ACT Policing, CHC=Children’s Court, GCC=Galambany Court, MCC=Magistrate’s Court, RJU=Restorative Justice Unit, SCC=Supreme Court

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Barriers to referrals

The analysis of the stakeholder consultations identified several factors which negatively impacted referrals to Phase Three. These were legislative barriers, uncertainty among stakeholders regarding what matters were suitable for the Scheme, philosophical and ideological barriers, safety barriers and administrative barriers.

Legislative barriers

The eligibility criteria for Phase Three requires that persons responsible charged with serious DFV or sexual violence plead guilty or are found guilty. In practice, this means that ACT Policing, who are responsible for a significant proportion of overall referrals to Phase Three, have been unable to refer serious sexual violence (and serious DFV) matters to the Scheme. However, the stakeholder interviews noted that serious sexual violence matters were also unlikely to be referred during later stages of the criminal justice process (e.g., sentencing) because of the high levels of attrition associated with these cases (see for example Bright et al, 2021).

In terms of sexual intercourse without consent, which is the vast majority of our work, we can't refer those to restorative justice... There's a threshold for the penalty provisions and sexual intercourse without consent are simply excluded from the referrals that police can make. The court can make a referral for sexual intercourse without consent, however, police cannot. So that's where we see a large number of our matters that do not progress to court are simply excluded from a restorative justice option by virtue of the fact that they aren't referred to court. (31121W, Gov/CJS, 2021)

Low referrals for sexual violence matters pre and post-sentence may similarly reflect the low levels of guilty pleas. As one stakeholder reflected:

A good proportion of child sex offenders that appear in front of us are deniers. They just simply deny that they did it. (11121Y, Gov/CJS, 2021)

Stakeholder uncertainty (and variability in opinion) about what matters are suitable for Phase Three

Interviews and focus groups identified that some stakeholders expressed confusion or were not confident in their ability to determine which matters were or were not suitable for referral to Phase Three. However, other stakeholders had very strong views about what matters should and should not be referred, and applied their own judgement and practice experience in these determinations. As such, when asked about what matters should be eligible for and referred to Phase Three, there was significant variation in the views of individuals, even within organisations.

Some stakeholders from eligible referring agencies were concerned about the subjective nature of referrals but recognised the complexity in establishing specific guidelines or criteria about which matters are suitable and which are not. They explained:

It's difficult to work out how we go about, in some objectively verifiable way, referring some matters and not referring others... that's the difficulty that we've encountered... how we achieve some sort of equitable objective measure for what we refer and what we don't refer. (31121X, Legal professional, 2022)

There may be some benefit to developing a series of basic guidelines to assist referring agencies in determining which matters are suitable for referral to Phase Three, outside of the basic eligibility criteria. Helpfully, a number of referring stakeholders across sectors were able to articulate 'red flags' associated with matters that they believed indicated unsuitability. These included:

- person responsible attitudinal problems such as denying, minimizing and victim-blaming
- the person responsible disputing a significant proportion of their reported behaviour
- the person responsible attempting to keep their behaviour secret
- person responsible personality factors such as the presence of narcissistic personality disorders, unmanaged serious substance use and mental health issues
- persons responsible involvement with organised crime
- ongoing violence within the relationship.

Further, some stakeholders also expressed concern about the inclusion of matters where there were risk factors associated with intimate partner homicide. For example, it was suggested that intimate-partner sexual violence matters carried a higher level of risk than sexual violence matters where the person responsible and the person harmed were not in a relationship (see below quote).

One point of significant debate between stakeholders was whether recidivist persons responsible (i.e., who had participated in Phase Three and subsequently reoffended) should be eligible for referral to Phase Three again. Views on this differed slightly across stakeholders interviewed and statutory agencies, influenced by their own ideologies and philosophical priorities.

Some stakeholders argued that recidivist persons responsible did not deserve another opportunity to participate in RJ as it had been proven to be ineffective. As one stakeholder succinctly argued; 'If it worked they wouldn't be recidivist' (21121V, Gov/CJS, 2021). However, other stakeholders

cautioned against excluding entire categories of offenders (i.e., recidivist persons responsible) as it could mean that person harmed who would benefit from participation could be excluded.

Other stakeholders held both views. Despite initially stating that they would never refer a repeat sexual offender to restorative justice, they went on to add that ‘it’s complicated and you need to look at it on a case by case basis, applying a generic rule to something that is complicated can be detrimental to the outcome of particular circumstances’ (31121W, Gov/CJS, 2021).

A similar view was expressed by stakeholders in relation to the exclusion of offences on the basis that they were more serious:

You gotta be very careful though because what society might say is at the lower end of a sexual assault can still have horrific impact on the victim... just because the courts or society see one as more serious doesn't mean it has less impact. So I think that's something that's gonna be quite difficult to navigate. (11121T, Gov/CJS, 2021)

Well, each case on its own merit. In broad general terms, suitability considerations are the priority, and in simplistic terms, can an offender over time demonstrate capacity or authentic willingness to attend at some meaningful level to the needs and interests of the person impacted. (111121AJ, RJ Practitioner, 2021)

As shown below, stakeholders agreed that the type of offence was not as important when determining eligibility as understanding the impact of the offending on the PH:

Stakeholder 1: If the victim is OK with it, I think we can start the [RJ] process

Stakeholder 2: Yeah, I agree... because obviously things impact on people in different ways and so you can't make a generalization that this particular sexual violence is, you know, would necessarily trigger this response, you know individuals are different in terms of their resilience levels, their ability to process things. Yeah, I think it would be too hard to sort of categorize on the basis of the nature of offense because it hits people differently. (Gov/CJS, 121121)

Perception that restorative justice is a ‘soft’ option

Stakeholder interviews indicated that some individuals viewed RJ as a ‘soft’ or lenient response to DFV and sexual violence matters. This in turn made some stakeholders reluctant to refer these matters to Phase Three. Certainly, some stakeholders said that persons responsible were primarily motivated to participate in RJ by self-interest, in particular, their desire to avoid court and/or also to achieve better sentencing outcomes. This perspective is demonstrated in the below quote:

...is restorative justice the way to go? I personally don't think so. Because I don't believe restorative justice really holds the offender accountable in these two situations. I personally believe that offenders agree to do restorative justice 'cause it looks good on paper... Don't get me wrong, you have some offenders out there and [RJ] has a major impact on them when they go and do these sorts of courses but we also have our long-term recidivist offenders who just do it to tick the box. (21121V, Gov/CJS, 2021)

The perception that RJ is a ‘soft’ option was used by several stakeholders to explain the lack of buy-in from some local sexual violence victim-survivor support services, and in turn, the low number of sexual violence matters that had been referred to Phase Three since its inception (see Figure 1). Although stakeholders typically reported collaborative relationships between the RJU and DFV support services, there was evidence of difficulty engaging with some specialist sexual violence services. One stakeholder observed:

We invited them to participate in training... to be on the journey with us. And for those that accepted that invitation to be part of that they then understood how it might work... that it was a respectful and reasonable thing to do if someone was interested in having that kind of process. (211221AH, RJ Practitioner, 2021)

Importantly, the stakeholder consultation process identified that lack of buy-in from specialist DFV and sexual violence victims-survivor support services is not unique to the ACT or Phase Three. One stakeholder reflected on the evolution of RJ from a place where it wasn't conceivable to be providing RJ for DFV and sexual violence, to growing acceptance that this may be a way forward. They explained how 'the movement to recognise these private crimes as public issues has realised, hold on, we can't arrest our way out of this' (RJ practitioner, 201221).

Interviews with stakeholders outside of the ACT revealed it is common for RJ programs to have difficulty engaging with local support services for a number of reasons. In particular, several stakeholders reflected on the legacy of long advocacy for sexual violence and DFV to be criminalised and taken seriously by law enforcement agencies, fears about re-privatization, competition for funding, ideological differences and the idea that perpetrators are beyond redemption. These concerns were frequently positioned as characteristic of the field more broadly:

I think there's still some challenges around whether or not it's appropriate to refer these types of matters to restorative justice... There's a general idea about where restorative justice is appropriate and we find that many people think it is not in the domestic violence and sexual violence space. (18322C, RJ Practitioner, 2022)

While the barriers to referral identified in this work reflect challenges discussed in the literature more broadly, one stakeholder explained how it is a 'false dichotomy' that there is a clear divide between those who 'believe in RJ' and those who do not. For example,

If you imagine restorative justice supporters and criminal justice supporters... they're not discrete circles. It's like a Venn diagram and there's this big space in the middle where both can occupy, and that's kind of where we have to be looking at. (31121X, Legal professional, 2021)

Other stakeholders argued that RJ can provide a higher level of accountability for offenders compared to traditional criminal justice processes. This is partly because in order to participate in the process, the person responsible must demonstrate evidence of insight and understanding into their offending or engagement with therapy and behaviour change interventions.

Some participants suggested that the perception that RJ does not hold perpetrators accountable may be attributable to a lack of understanding of the model and how it may contribute to desistance among persons responsible:

I think there's a perception among the community but also probably among advocates for victims of crime that the old model [of RJ], where it's a diversionary option, is letting people get off easily. Again, it's not a recognition of the real process and that that's actually a higher level of accountability in an RJ conference than there is with a guilty finding and a community corrections order for example. (251121AI, Support Services, 2021)

One victim advocate interviewed recognised the importance and potential of RJ in this space, but held the view that there were limitations in its applicability:

It's a space that can really teach people who don't understand the word consent. There is a difference between somebody not understanding what the word consent is to a person who is

just a sexual predator or a sexual abuser, and you learn those kind of differences working in that space. (11121L, Support Services, 2021)

This is consistent with the views of stakeholders described earlier in this report, that RJ processes may be most appropriate for cases that can be classified as 'less serious'. While it was recognised that "there is no such as thing as a non-serious sexual assault" (31121W, Gov/CJS, 2021) in this context 'less serious' was defined as incidents where the person responsible demonstrated a genuine lack of intention to hurt the person harmed, but recognised that they have harmed them.

Safety risks to persons harmed

A number of stakeholders observed that their own and others reluctance to refer matters to Phase Three was due to concerns about participant safety, primarily the safety of the person harmed. Many participants focused on the potential of Phase Three processes to re-traumatise persons harmed, particularly if they were involved in a conference where the person responsible was present. As observed by one stakeholder:

In relation to Phase Three, the concerns really lie around safety and how that's managed, so it's not just physical safety, but psychological safety... My good colleagues are really protective of their clients and super conscious of trauma and the impact of the trauma that clients have experienced and it is often hard I think when you're in that space to conceptualize how a victim can meet with the person who has perpetrated violence against them in a way that doesn't trigger their trauma or leave them open to being retraumatized. (251121AI, Support Services, 2021)

Practitioners from potential referring agencies were described by some stakeholders as making decisions on behalf of participants and 'protecting' them from even the choice to participate in Phase Three. However, other stakeholders reported that working with people who have experienced trauma is characteristic of working with people in the criminal justice system and should not be an automatic red flag:

So if we say that we have to empower people, how are you empowering people if you're not talking through what it is that could be possible for them? It may be that they don't want to meet the person at all, and that's fine... if we're truly saying we're working with people in this, then who is making the judgement about whether the person can make their own decisions or not? (16322A, RJ Practitioner, 2022)

There may be many things victims never become aware of because people have thought better about offering it in case it does further harm. So we often over-privilege safety, when we should just be looking at what's safe *enough*, how do we give all the information and talk about risks and potential benefits and then let other people make up their own minds. (211221AH, RJ Practitioner, 2021)

Other key concerns expressed by victim-survivor supporters related to the risk of persons harmed being manipulated into participating by the person responsible or others, and how power and control dynamics would be managed effectively. Some stakeholders discussed the risk that a person responsible, who may wish to try and restore the relationship, may manipulate the process to achieve that outcome and/or engage in coercive controlling and gaslighting behaviours. However, there was acknowledgement that an experienced trauma-informed Convenor who understands gender-based violence could do this work well:

I think an inexperienced facilitator could, I believe, easily leave space for any of those challenges to get in the way... they are legitimate fears but I guess I formed the view that a

really experienced facilitator that understands gender-based violence and understands trauma can manage those potentials and those dynamics. (251121AI, Support Services, 2021)

In addition to concerns about re-traumatisation, stakeholders identified a number of other potential safety risks associated with RJ. First, some stakeholders were reluctant to facilitate referrals to the Scheme due to their client's perceived service saturation. There was the view that participation in RJ may be too onerous for persons harmed and persons responsible in addition to the many other things they are engaged with: that it would be at best – unhelpful; and at worst – overwhelming.

Further, as demonstrated in the below quote, some interview participants from victim-survivor support services were also concerned about persons responsible being given access to information during the RJ process that might pose a threat to victim-survivors' future safety.

The exposure of information that might be keeping them safe, and that can be simple things like... 'even when I go to my gym class on Wednesday afternoon, I'm looking over my shoulder concerned that you know you're going to be there' and then all of a sudden information is divulged that Wednesday afternoon is gym afternoon... it is that potential that the process also disarms the safe-making mechanisms of the survivor in those engagements and information can be divulged in ways that has the potential to create harm. (281021N, Support Services, 2021)

Finally, some stakeholders reported that they weren't making referrals to Phase Three because their clients were in crisis and therefore believed they were unsuitable for referral. These clients were described as being unsafe, and needing to have basic needs met such as housing and finances to live independently. Addressing these needs was described as being the focus of practitioners' work, rather than referring participants to RJ.

The large volume of the clients that we have are not safe... I think it would be an anomaly for it to be a viable option. Often we're talking about people who are currently being surveilled [sic] by partners, potentially sitting in a hospital bed... often what they're looking for is immediate safety, they're looking for police intervention, they're looking for support with care and protection or support exiting the relationship, not negotiating an exit from the relationship but actually fleeing from violence. (281021N, Support Services, 2021)

Interviewees who worked with victims-survivors suggested that RJ may be viable once clients had reached a point of stability and their basic needs have been addressed (e.g., housing, safety). However, this was also described as a period when DFV and sexual violence services may have only limited contact with clients and so may not be able to refer them to Phase Three.

Concerns about disadvantaging persons responsible

Some stakeholders whose primary role was to support the person responsible recognised the potential of RJ to provide benefits for persons responsible but also raised concerns about how the process could also be experienced as traumatising:

One thing that I find RJ is really useful with is to deliver an understanding of the impact of what they've [the person responsible] done that they have never thought through before... where I think there is a real challenge in the family violence and sexual assault world is the potentially extreme level of trauma in the victim can be overwhelming for the victim and overwhelming, potentially, for the perpetrator. (9322M, Support Service, 2022)

Relatedly, a supporter of a person responsible talked about how emotionally challenging the process was for their son and felt that their efforts were not acknowledged by the Judge, and should have been reflected in sentencing:

Because he had to repeatedly talk about it, he had to repeatedly revisit it, he had to go over it and be confronted and he took all that in his stride and it was extremely difficult for him... I don't know if I would do that again because I don't know why someone would do that, other than I guess trying to make it right for the victim. Do you understand what I mean? As a parent it's very hard to make that decision, it's kind of like, you gotta make it right for someone because you did something wrong but there's gotta be a balance, you don't want to cause harm at the same time. (Supporter, sexual violence, 2022)

Others raised concerns about the potential negative impacts of participating in RJ for their clients. Under section 34(1)(h) of the Crimes (Sentencing) Act 2004 the legislation provides that a court must not increase the severity of a sentence it would otherwise impose if a person responsible declines to participate in RJ after being referred. However, a concern raised by stakeholders engaged with supporting persons responsible was that if they agreed to take part and then decided to withdraw, it would have an adverse impact on their case in court:

It's never gonna look good if they just suddenly say no to restorative justice, especially if it might look like they're just doing it to look good for court, which admittedly some are. (91121H, Legal Professional, 2021)

There was also the risk that by participating or even agreeing to participate a person responsible would be viewed as admitting guilt, when they might have a case to plead not guilty. Some stakeholders spoke about 'protecting' persons responsible from themselves because they 'might talk themselves into a hole' by 'saying something dumb' in the conference. Other stakeholders were worried that persons responsible would not be able to handle the negative views of victim-survivors and they would get angry, which then could translate into negative perceptions of criminal justice processes more generally and they will be even harder to engage.

In light of these concerns, stakeholders spoke about how they found it difficult to 'sell' the process to persons responsible they were working with, as the incentive to participate was not always immediately present. As one stakeholder reflected:

What are the benefits to them [the person responsible]? [If] I've done something terrible, I feel shame, all I want to do is bury that. Why would I want to go and have it all dragged out publicly? (9322M, Support Service, 2022)

Administrative barriers

Stakeholders identified a small number of key issues associated with the referral processes for Phase Three that they believed had acted as barriers to referrals being made to the Scheme. First, several stakeholders who had referred a matter to Phase Three during the evaluation period noted that delays had made them reluctant to refer other matters, particularly where the outcome was that the referral could not proceed to conference. Frustration with the delay was exacerbated by the lack of transparency and information provided by the RJU about why a referral wasn't proceeding to conference. Stakeholders whose referrals had been rejected described the process as very demotivating, particularly if they had spent significant time completing the referral and providing information to the RJU.

Similarly, the delays associated with matters being allocated to a Convenor and progressing to conference was also identified by stakeholders as an important barrier to referrals because of the perceived safety risks to persons harmed. As one law enforcement representative argued:

Because it can be quite a period of time, you don't want restorative justice referrals sitting there waiting to be actioned... There's also the risk of repercussion or if they are known to each other, the risk of a more serious incident occurring as a result of police being involved, which in family violence is a particularly big risk, and we're very careful in some of the matters that we have where we know that there's family violence going on. We know if we were to come in and we weren't able to do the job properly and put the person away, then we're placing that victim at considerable risk just by us being involved. (11121T, Gov/CJS, 2021)

Further, legal representatives reported that delays deterred persons responsible from wanting to participate in Phase Three as they often just wanted to have the matter dealt with quickly so they could move on. While the Court is not required to wait for the RJ process to be finalised, legal representatives interpreted that engaging in RJ meant deferring the court matter for an indefinite period of time. This was a disincentive for many persons responsible for whom an outstanding court process might be impacting other areas of their lives, such as their employment.

This being said, some stakeholders described that for some offences, persons harmed and persons responsible often benefitted from delays with RJ processes starting. This was attributed to participants having more time to process and heal from the trauma, and potentially being better prepared to participate in a conference. The reasons for the delays in allocation are described in-depth in the [next chapter](#) of this report.

Stakeholders reported more risk aversion around referring matters pre-court than referring matters post-sentence. This was related to the perceived safety of victims, the motivation of offenders, as well as practical considerations around resourcing. Some stakeholders, particularly those referring diversionary or pre-court matters, were concerned about inadvertently increasing the risk of harm to persons harmed by referring a matter to RJ instead of court. Some described not referring matters to the Scheme because they lacked confidence in what to refer when they were only provided with limited information about the matter.

Another administrative barrier to the referral of matters was the time taken to complete the referral. A number of stakeholders admitted that although they were supportive of Phase Three they had made only a small number or zero referrals because they did not have enough time to do so, and that it was an 'afterthought'. Some stakeholders reported doing soft-referrals, which was providing the persons responsible or persons harmed with some information about RJ (such as a brochure) and leaving it to them to follow up with the RJU. However, stakeholders described RJ as being frequently forgotten about, particularly once charges had been laid:

[RJ] gets brought up occasionally, not very often however... It's one of those things I suppose it gets lost so easily in, you know, taking instructions, running people through briefs, figuring out a plea and then you know you haven't thought about RJ because it's sort of parallel in a sense. (191121AB, Legal Professional, 2021)

The importance of having an RJ representative in the court as a visual reminder during hearings was noted by a number of stakeholders. Stakeholders who reported that they did not have the knowledge or time to complete referrals suggested that the RJU referral processes could be streamlined to reduce unnecessary steps. However, some of these interviewees also often recognised that their own agency processes could be simplified to facilitate more referrals to Phase Three.

Although there were varying views regarding the impact of wait-times on the willingness of persons harmed and persons responsible to participate in RJ, there was broad agreement that timing of participation should be in the control of the person harmed.

Summary

Eligibility for referral to Phase Three requires that the matter involve a DFV or sexual violence offence and that persons responsible provide informed, voluntary consent to take part. Referrals to Phase Three were possible at all stages of the criminal justice process, from diversion, through to sentencing and post-release. However, 'serious' DFV and sexual violence offences, can only be referred after a plea or finding of guilt, and there are specific points in the criminal justice process that eligible statutory agencies can refer.

Analysis of administrative data collected by the RJU show that ACT Policing and the ACT Magistrates Court refer the majority of cases to Phase Three, with ACT Policing referring the majority of sexual violence and family violence matters and the ACT Magistrates Court referring the majority of intimate partner violence matters.

Interviews with stakeholders identified a number of barriers to referrals, including the perception that restorative justice offers a lesser form of justice for persons harmed or that the RJ process carries unacceptable safety risks in the DFV and sexual violence context. There are also administrative barriers and delays that appear to impact referrals, and some stakeholders reported concerns about disadvantaging persons responsible, such as when they may have a case to plead 'not guilty'. However, many stakeholders also recognised that RJ is associated with higher levels of accountability for persons responsible. Further, concerns about stakeholders making decisions on behalf of participants and 'protecting' them from even the choice to participate was described as paternalistic and disempowering for persons harmed in particular.

Pre-conference processes

This chapter of the report describes the processes undertaken as part of Phase Three once a referral has been received by the RJU. This includes eligibility and suitability processes, and preparatory work undertaken by Convenors with the person harmed and person responsible (and any other participating persons) prior to a conference taking place.

Eligibility and suitability assessment processes

Once a referral is made to Phase Three, it is subject to a basic eligibility assessment by the RJU. This is a relatively straightforward process, involving a member of the RJU checking that the referral meets the eligibility criteria for Phase Three at time of entering it into the data management system. The decisions made by this RJU staff member is then reviewed by a senior member of staff.

If the referral meets the eligibility criteria and it is approved, the matter is then put on the waitlist pending allocation. The matter is allocated when two Convenors, and a Case Reviewer from the leadership team have capacity, which is determined during weekly case tracking meetings with RJU staff. The final approval of the allocation of a matter to the Convenors must be approved by a member of the leadership team. After allocation, the suitability phase is initiated.

As some time may have passed since the initial referral and case allocation, when the primary Convenor assigned to the matter first contacts participants, the aim is to determine whether they still wish to take part in the process. In Phase One and Phase Two matters (matters not involving sexual and family violence) the person responsible is contacted first with the aim of making sure that they are ready to engage with the process before contacting the person harmed and potentially doing further harm. In contrast, in Phase Three matters the person harmed is typically contacted first. This is in an effort to ensure that they are not being persuaded or coerced by the person responsible into taking part.

The allocated Convenors are then responsible for assessing whether the identified person responsible and person harmed are suitable to participate in Phase Three. There is a suitability form with a number of domains that Convenors need to consider. There are numerous stages involved in this process, including initial assessment and information gathering about the person responsible and person harmed; approaching the person harmed and person responsible to participate in the program and then ongoing assessment. The Case Reviewer (either a Senior Convenor or the Director) must approve the matter to before it can proceed to conference.

Initial assessment and information gathering

Once allocated, the Convenors review the information provided by the referring entity, and then start to gather additional information to inform their assessment processes. This involves:

- the Convenors speaking to the referring stakeholder about the referred matter
- the Convenors speaking to practitioners and staff from other agencies the person responsible and person harmed may be engaging with (eg. DFV or sexual violence services, police, mental health professionals and child protection agencies)
- the administration of the Family Violence Risk Assessment Tool (FVRAT; see In focus 2).

After speaking with the referring stakeholder and getting as much information as possible, Convenors then contact any other relevant stakeholders to gauge potential risks before contacting participants. For example:

Our first point of call, especially for all Phase Three matters before we reach out to the [person harmed] is to try and get as much case information and safety information as we can. So that would mean reaching out to domestic violence services and getting that information, or if they have a case worker, basically trying to get in touch with their support system. (291021P, RJ Practitioner, 2021)

Police were described as a valuable source of information for this purpose. Convenors compared the account given by the person responsible about their use of violence to information collected by the police, including prior police attendances and the statement of fact for the matter.

A key focus of this information gathering process is to gain a more in-depth understanding of the person responsible and person harmed, including their personality, relationship dynamics (if a relationship was present) and their likely willingness to participate in RJ. Another important consideration for Convenors during this information gathering process is whether there are any barriers to the person responsible and person harmed being able to provide informed and voluntary consent to participate in RJ. Factors identified by stakeholders that they believed could impact the ability of persons harmed or persons responsible to freely consent to participate in RJ included:

- financial dependence on the person responsible or person harmed
- cultural norms and expectations
- residency status (e.g., where one person's residency status in Australia is dependent on the other)
- language barriers
- ongoing Family Court processes and the care of children.

Although time-consuming, the initial assessment process was described by stakeholders as being crucial for ensuring that matters included in Phase Three were suitable, as well as developing a more detailed understanding of the broader context within which the offence referred to Phase Three may have occurred. For example, in one case a female person responsible was diverted by ACT Policing for a property offence perpetrated against her male partner. Upon examining the case closely, the Convenor became aware there was a history of violence in the relationship and the person harmed (the male partner) actually had been charged previously for violence against the person responsible:

There were just some things in the statement of facts that didn't quite fit, so we made further inquiries about what else had been happening within that relationship, and it was then that we've found that there had been earlier charges against the victim in this matter for perpetrating family violence. So of course, that sort of alerted us to the risks and the fact that this was almost a controlling thing to have her charged for [the offence] ... so then we did a



In focus 2: The FVRAT

The FVRAT is a risk assessment tool used by ACT Policing to assess the risk of DFV perpetrators reoffending against their intimate partners and family members. The tool is completed by frontline police officers at the time of responding to a DFV incident. It includes 10 items that are scored to identify the level of risk of reoffending associated with the identified perpetrator, as well as a series of red flag items (e.g., perpetrator mental health concerns, alcohol or drug abuse, signs of escalating violence) which, along with victim and officer judgments, inform decisions around safety planning (Dowling & Morgan 2020). A variation of the FVRAT is also conducted by Convenors as part of the risk assessment and safety planning process for each case.

risk assessment and took steps to find out as much information as we could about the safety of the offender, who in this case was also the victim. (101121B, RJ Practitioner, 2021)

Convenors said they were usually only able to assess the suitability of a matter for Phase Three once they had engaged directly with the person responsible and person harmed and even expressed a preference for this. For example, several Convenors reflected that 'on paper' a referral may look like it would be unsuitable for RJ but once they had spoken to the person responsible and person harmed and reviewed the information in detail, they determined it was actually appropriate.

Obtaining consent

As noted in earlier sections of this report, in Phase Three, Convenors approached the person harmed first to assess their needs and gauge their interest in the Scheme. However, as per the legislation, the consent of the person harmed is not a requirement for a referral to occur. In practice, persons harmed are usually informed about referrals, but often not in court or post-sentence context. As reflected in the below quote, one of the reasons behind contacting persons harmed prior to the person responsible was to ensure that persons responsible were not coercing them to participate:

Are they [the person responsible] using it as an opportunity to exercise control over that person and say "you will do this because it looks good for me"...For me the reason behind going to the victim first is to try and listen to them 'cause then they may have the option of whether or not they want to do it or not, as opposed to "my partner told me I have to do this". (251021S, RJ Practitioner, 2021)

Other stakeholders talked about the difficulty managing power imbalances in the context where one person involved has limited capacity to participate as related to cognitive or mental health problems. For example, some young people may not be able to understand what they are agreeing to, depending on their cognitive capacity.

Further, some stakeholders talked about the power imbalance between participants in family violence matters when one person involved is the carer for another, such as in the parent-child relationship. As one stakeholder noted:

It's very sensitive and quite complex given that there is a power dynamic with parent and young person as well, and what that looks like. It can have very real repercussions if that's also the address that you're being bailed to... (91121IG, Support Services, 2021)

It was also agreed that approaching the person harmed first was consistent with Phase Three being a victim-centred program; the person harmed determined whether the suitability process was initiated by either agreeing or disagreeing to participate in the Scheme. This said, some Convenors talked about how it had been challenging asking persons harmed to participate when they did not know the level of interest from the person responsible:

I don't want to be contacting a person harmed saying 'he's interested and wants to do this' and then I contact a person responsible and they're like, 'oh, I'm not interested anymore'. Because to an extent I'm re-traumatizing that victim because there was an expectation that something will come from this. (251021S, RJ Practitioner, 2021)

She's [the PH] determined she wants this to happen. She's so adamant that I'm actually worried the offender won't be interested. (RJ Practitioner, 211121Z)

Typically for Phase Three matters, if the person harmed expresses an interest in participating, the Convenor will then approach the person responsible to gauge their suitability for participating. If

both parties want to participate, Convenors will meet with them on an ongoing basis to describe the conferencing process and prepare them for participation.

Although the majority of persons responsible and persons harmed who were interviewed said that they had positive experiences during this initial engagement from the RJU, and were provided with sufficient detail about the RJ, one participant reported that they were not told about the consequences they faced for declining to participate. They said they had declined because they could not see the benefit of participating, however if they had known that they would subsequently be charged with a crime, they would have consented to participate:

Then I got contacted by the [RJU] with no real explanation of the end state of what that was to achieve, not really understanding that I was the offender, that I was a person of interest to the police... if you refuse an RJ process it gets given to the Magistrate straight away, saying the offender didn't want to take part in the RJ process, showed negativity towards it, etcetera. You get marked with a bad mark. (Person responsible, Family violence, 2022)

This quote echoes the concerns raised by stakeholders supporting persons responsible. However, it reflects some misunderstanding on behalf of the participant as details about why a person declines to participate (such as showing negativity towards RJ) are not communicated back to the referring entity. As previously outlined, the legislation (s34(1)(h) of the *Crimes (Sentencing) Act 2004*) is clear that declining to participate in RJ should not result in a more severe outcome than would otherwise have occurred. In this matter, the person responsible could have been charged with an offence regardless of whether RJ was available.

One support person for a person responsible said they felt there was unreasonable pressure put on them and the young person they were supporting to take part in Phase Three. They described feeling very overwhelmed dealing with the court process alongside restorative justice:

I guess the whole process is really overwhelming and I could see that [the person responsible] just didn't understand it at all, a 13-year-old. (Supporter, Family violence, 2022)

They had difficulty understanding the relationship between RJ and the court process, as there were additional offences after the referring incident. There was fear that RJ would negatively interfere with the legal outcomes for the young person responsible:

But really, in the game of things at the time, the Legal Aid solicitor is the only person who has a legal obligation to protect my granddaughter's best interests and Restorative Justice doesn't. (Supporter, Family violence, 2022)

The evidence provided here highlights that for many persons responsible and their supporters, providing consent for RJ is conceived in the context of calculated risk and competing interests.

Ongoing assessment

A key feature of suitability assessment processes is that they were ongoing during the period leading up to the conference. What this means is that a referral could be assessed as unsuitable at any stage, even if it had initially been assessed by the RJU as eligible and suitable. After the participants had agreed to take part, Convenors focused on assessing the justice needs of persons harmed, as well as and the readiness of the person responsible to take responsibility and be held accountable.

Assessing the justice needs of persons harmed

Stakeholders observed that despite significant variation across persons harmed and matters referred to the Scheme, persons harmed often had comparable justice needs. This was reflected by one RJ

Practitioner who described their experiences engaging with two very different persons harmed on separate matters who had similar motivations for participating in the Scheme:

These were very different victims, one who was very sort of sensitive, quiet yet determined about what she wanted. The other very outspoken, angry. But yeah, a lot of similarities in just that empowerment in being able to say 'this is what I want' and similarities in what they wanted: I want you to get counselling, I want to be assured that you're not going to do this again, I want to know that you actually get it. (101121B, RJ Practitioner, 2021)

Important justice needs identified by persons harmed included being given the opportunity to confront the perpetrator in a safe setting and talk about the behaviours and their impact on them, and have their experiences validated. Further, several persons harmed talked about wanting the RJ process to ensure that the person responsible were supported to address their behaviours so they would not use violence or abuse against the person harmed or anyone else in the future. One person harmed said that when they came into contact with RJ they had exhausted all other options and everyone had told them "we can't help you" (Person harmed, Family violence, 2021). They felt like participating in Phase Three was a last resort before their son would be charged with a serious offence and go into detention. Multiple people spoke about the difficulty of having to re-tell their story multiple times, only to be told by other services or the police that they couldn't help them:

The only option was juvie, and then we would have had to charge him for a more serious offence, which we could have, but then you don't come back from juvie...And that's why, by the time we met restorative justice, hope was very low because I had already tried help through my school, help through the therapy, help through camp, and it's like you talk, you tell your story billions of times, every time you restart your story...all that was draining and it led nowhere. (Person harmed, Family violence, 2021)

For other persons harmed and their supports, their justice need was more broadly focused on their entire family receiving support.

I had no idea what to expect. But then, when I read the pamphlet that I got from Restorative Justice, the fact that they can link you in with other services, I was all for it... I thought if this was a pathway to additional assistance, then I was all for that. (Supporter, Family violence, 2022)

Several persons harmed also spoke about wanting to understand why the person responsible had harmed them, by listening to their narratives and asking them questions. For example:

I had a lot of questions considering the offence, like why me of all people, why? Why did you choose me of all people to do this to? I had questions like that, like, was this something that was building up for a long time, did you have these feelings about me like for a long time then decided to act on them in a way that wasn't good, or was it just a 'spur of the moment thing' kind of questions. (Person harmed, Sexual violence, 2022)

However, stakeholders acknowledged that persons harmed occasionally had justice needs that could not be addressed through the RJ process. Convenors talked about how the management of expectations was important in these situations, and being transparent about what could be achieved through RJ and what could not. Similarly, in some cases, it became clear that the person responsible was not going to be able to provide answers to some or all of the questions that the person harmed wanted answers for. Convenors managed this by informing the person harmed about this and gauging whether they want to take part if those questions cannot be answered. For example:

Having the conversation with the victim to say, I don't know whether he's going to be able to answer all your questions, you still wanna go ahead? (101121B, RJ Practitioner, 2021)

As such, determining whether the justice needs of persons harmed can be addressed necessarily involved assessing whether the person responsible was able to meet these needs. This involved being transparent with persons responsible that the program was victim-centred. As one practitioner explained:

I think we're open with offenders from the start, you know that this is victim focused and we are going to protect their safety, and that it's going to be respectful, and that we are there to meet the needs of the victim. So that's an early opportunity for them to say whether they're willing to do that or not. (101121B, RJ Practitioner, 2021)

Assessing person responsible readiness to be held accountable

As noted above, an important factor that Convenors considered when determining the suitability of referred matters for Phase Three is whether the person responsible demonstrated a willingness to be held accountable for their behaviours. However, stakeholders had varying views regarding the extent to which persons responsible needed to demonstrate a willingness to be held accountable in order to be suitable for Phase Three, and what information could reliably indicate the willingness of a person responsible to be held accountable.

Although participation in Phase Three was voluntary, some stakeholders and persons responsible questioned whether it was truly voluntary when there could be significant consequences associated with non-participation. Interestingly, some participants saw this as problematic as it made it difficult to distinguish between genuine and selfish motivations to take part, whereas others saw this incentive to participate as a good thing because it motivated persons responsible to access support for their problems:

...it's kind of voluntary-mandatory. If you choose not to, there will be other consequences... [the person responsible] didn't want to go down the pathway of going to Court and all of those things, so he preferred that as an alternative. (Person harmed, Family Violence, 2021)

While the terminology of 'suitability' for participation was often used, a number of people interviewed said that it was more appropriate to talk about person responsible 'readiness':

We use the term suitability, perhaps a more respectful term is actually a person's readiness. Suitable yes, in that a person has to meet certain thresholds for us to be sure that we are running a safe process. But actually, all we are talking about is a person's readiness. (111121AJ, RJ Practitioner, 2021)

Similarly, another Convenor described their role as supporting participants as follows:

I'm not here to judge people... my job is to work with you to get you to a place where you can acknowledge and also hear the impact you've caused and be able to respond to that. (251021S, RJ Practitioner, 2021)

Some stakeholders attributed their own or others reluctance to refer cases to Phase Three because of concerns about person responsible readiness to accept responsibility for their behaviours, as well as concerns about their motivations for participation. In situations where the person responsible was not holding themselves accountable for their behaviours, there was a belief that RJ may contribute to the person harmed being re-traumatised. However, while acknowledging the above identified concerns, other stakeholders strongly refuted the idea that only persons responsible who

were willing to accept full responsibility for their behaviours were suitable for Phase Three. These stakeholders, including representatives from the RJU, argued that part of the pre-conference processes conducted as part of Phase Three focused on increasing person responsible accountability. Stakeholders talked about how perpetrator motivation can shift throughout the preparation process, particularly if they were engaging with other support services. This was consistent with the reflection of one person responsible interviewed, who reported that their motivations had shifted while participating in Phase Three:

I think at the start I was a slight bit sceptical, but early on that scepticism was gone, it didn't take long and I was engaged in completing RJ once I learned more about it. Once I participated in it a bit, I had no doubt about completing it. (Person responsible, Sexual violence, 2022)

The therapeutic skills of Convenors, particularly motivational interviewing, were identified by stakeholders as being critical in helping shift persons responsible along on their accountability journey. Further, stakeholders talked about how many persons responsible could not take full responsibility for what they have done until they had heard how their behaviour had impacted others.

Many stakeholders emphasised that as a victim-centred program, the needs of persons harmed were most important and should be prioritised above the level of responsibility taken by the offender. As noted by one stakeholder:

It might be that they [the victim] just want to voice the impacts and the effects on them and it doesn't matter the level or the threshold of responsibility an offender is taking. (141221AF, RJ Practitioner, 2021)

Several stakeholders suggested that some offenders may never be ready to be hold themselves accountable, and may be simply lying if they say they are. However, practitioners argued that as long as persons harmed were aware of the potentially limited extent to which the person responsible could meet their justice needs, such as in the context where people want questions answered and information rather than heartfelt and genuine remorse, there may still be benefit for persons harmed in participating in RJ:

The Convenor has always had the ability to decide that a conference can't go ahead, but we would not want to be impacting too heavily on the right of the victim to have their say in a process... if you're looking at what the expectations are and you've managed those expectations about what the likely outcome is gonna be, if both are in agreement about what that outcome is likely to be, and it's good enough for them, then who are we to stand in their way? (211221AH, RJ Practitioner, 2021)

The views of stakeholders were supported in-part by several persons harmed who participated in an interview. In particular, these persons harmed reflected that their primary motivation for participating in Phase Three was not to receive an apology from the person responsible, but to be able to communicate to the person responsible how their behaviour had impacted them and to find a way forward. From the perspective of person harmed, this did not necessitate a contrite person responsible, but simply someone who was willing to sit in the room with them and to listen. As one person harmed reflected:

I knew that he wouldn't be able to answer my questions with any depth or I wouldn't get any clarity. I knew that. It was more about me having a platform to say what I wanted to say. And whether he understood and comprehended that, I didn't care. I just needed to say those

things, air my grievances and get my money and walk away. And that's exactly what it provided me, a safe space to do that. (Person harmed, Sexual violence, 2021).

Importantly, the analysis of the participant interviews and the post-conference surveys demonstrated that persons responsible had various reasons for participating in Phase Three. Although several respondents reported that they participated in Phase Three to either avoid charges or improve sentencing outcomes, most reflected that they took part because it 'seemed like the right thing to do'. In particular, persons responsible said they wanted the opportunity to apologise and make amends to the person harmed. One person responsible who was referred through the Family Court reported the following motivations for taking part in Phase Three:

I did want to repair the relationship [with the person harmed] and, I don't know, do something, because I'm really not that violent person. It was just a bad time for both of us, and I didn't want it to affect our relationship. (Person responsible, Family Violence, 2022)

Further, two persons responsible who consented to participate in Phase Three but whose matter did not proceed to conference expressed disappointment about this outcome because they had wanted to apologise to the PH:

Honestly, if I couldn't say sorry, if I couldn't, I'd still probably still be sitting down, lying awake at night thinking about what I could have done differently, every single thing. I wanted to definitely say sorry, I knew that even if it wouldn't help with my court I feel like I'd still do it. (Person responsible, Sexual violence, 2023)

I wanted to communicate to [the person harmed] that I didn't want to hurt him or go after him or anything like that. I just wanted to show him that I'm not that person and I made a mistake. (Person responsible, Family violence, 2022)

Other participants reported wanting the matter to be 'resolved' or 'finalised', to 'move on' from what happened, and 'to get some closure' ($n = 4$):

To apologise. I was in a dark place and I wanted to finalise this. (Person responsible, Sexual violence, 2020)

It was the best way to move forward and repair the damage I had inadvertently [sic] caused". (Person responsible, Family violence, 2020)

Only one person responsible said they did it because they had to ($n = 1$). Without further information it is difficult to know what about the process led them to draw this conclusion.

Indicators of person responsible readiness

RJ practitioner stakeholders referred to a number of key indicators they used as evidence of person responsible being willing to acknowledge wrongdoing and accountability. These were:

- A person's willingness to hear the impact that their behaviour has had on others
- A person's 'openness' to having their behaviour 'heard' by their broader community of care, such as other family members
- A person's willingness to acknowledge a history or pattern of behaviour.

Stakeholders involved with perpetrator rehabilitation and parole also indicated relying on how much persons responsible 'walk the talk' in assessing readiness, such as their level of engagement with services and in their own recovery efforts:

There is a different language that is used when somebody is taking full responsibility than when they're just doing a shallow approach, you know it might be that they're not turning up to appointments or they didn't turn up to see their specialist [or] professional supporter. Well, if they're not turning up to see their professional supporter then that's not really showing a strong engagement and motivation. (211221AH, RJ Practitioner, 2021)

Interestingly, some stakeholders advised that the initial motivations of the person responsible for participating in RJ were not a particularly helpful indicator of their potential to participate meaningfully in the RJ process, or of the capacity of a person harmed to benefit from the process:

I've seen that happen through defense work, where the person has said, "yeah, we just sort of signed up because I thought that would look good, but in fact it was actually quite good to meet with the person and I got something out of it..." I would say that it would be foolish to refuse someone just because they're trying to get a benefit. Every person who's before a court and is about to be sentenced is trying to do everything that will look good for them. (281021K, Legal Professional, 2021)

These stakeholders described the importance of understanding where a person responsible was in their accountability journey, recognising that level of accountability and motivations for participating in RJ can change throughout the process, and as a *result of* the process.

Outcomes of suitability assessment processes

Overall, one in four persons responsible (26.4%) and persons harmed (23.2%) who were referred to Phase Three were assessed as suitable for participation and two in five persons responsible (38.9%) and persons harmed (43.7%) were found not suitable. Sixty persons harmed (34.7%) and 50 persons responsible (33.2%) were not the subject of a suitability assessment, primarily because the other party had been found unsuitable, meaning that the matter was not suitable for inclusion in the Scheme.

The most common reason for a person responsible being found unsuitable for Phase Three was that the RJU was unable to contact or locate them (33.9%), followed by the person responsible not wanting to participate (25.0%) (Table 7). Importantly, in only a small number of cases was the person responsible assessed as unsuitable because of their personal characteristics ($n = 1$), because they did not accept responsibility for their abusive behaviours ($n = 3$) or because they disputed the statement of facts or were pleading guilty to the offence that led to the referral ($n = 1$).

Similarly, the two most common reasons for persons harmed not being found suitable was that they did not want to participate (38.0%) and because they could not be contacted (21.5%). Although eight persons harmed (10.1%) were unsuitable because they did not want to have contact with the person responsible, in only two cases were safety concerns identified as a barrier to the person harmed participating. Further, 10.1% of persons harmed ($n = 8$) said they did not think they would benefit from participating in the Scheme.

This finding is important because it demonstrates that many persons harmed referred to Phase Three chose not to participate in the Scheme, and in many situations were able to communicate this directly to the RJU (i.e., said they did not want to participate, said they did not want to have contact, said they would not benefit etc). In other cases, persons harmed appeared to choose 'softer' options for communicating their decision not to participate, including not being contactable or not attending scheduled appointments. This finding, combined with the feedback from participants, may perhaps allay some of the concerns raised by researchers who have questioned whether victims-survivors of DFV and sexual violence may be coerced into participating in RJ by abusers and family members.

Table 7: Reasons individuals referred to Phase Three were not found suitable, by participant type

	PH (n = 79)		PR (n = 56)	
	n	%	n	%
Did not want to participate	30	38.0	14	25.0
Unable to be contacted/located	17	21.5	19	33.9
Wanted to move on and put matter behind them	9	11.4	3	5.4
Did not think they will benefit	8	10.1	7	12.5
Did not want contact	8	10.1	-	-
Found not suitable	-	-	4	7.1
Discontinued contact	4	5.1	4	7.1
Did not accept responsibility	-	-	3	5.4
Disputed statement of facts or pleading not guilty	-	-	1	1.8
Personal characteristics	2	2.5	1	1.8
Fearful for their safety	2	2.5	-	-

Note: Sample limited to PR/PH who were unsuitable for participation in Phase Three.

Note: PH = Person Harmed; PR = Person Responsible

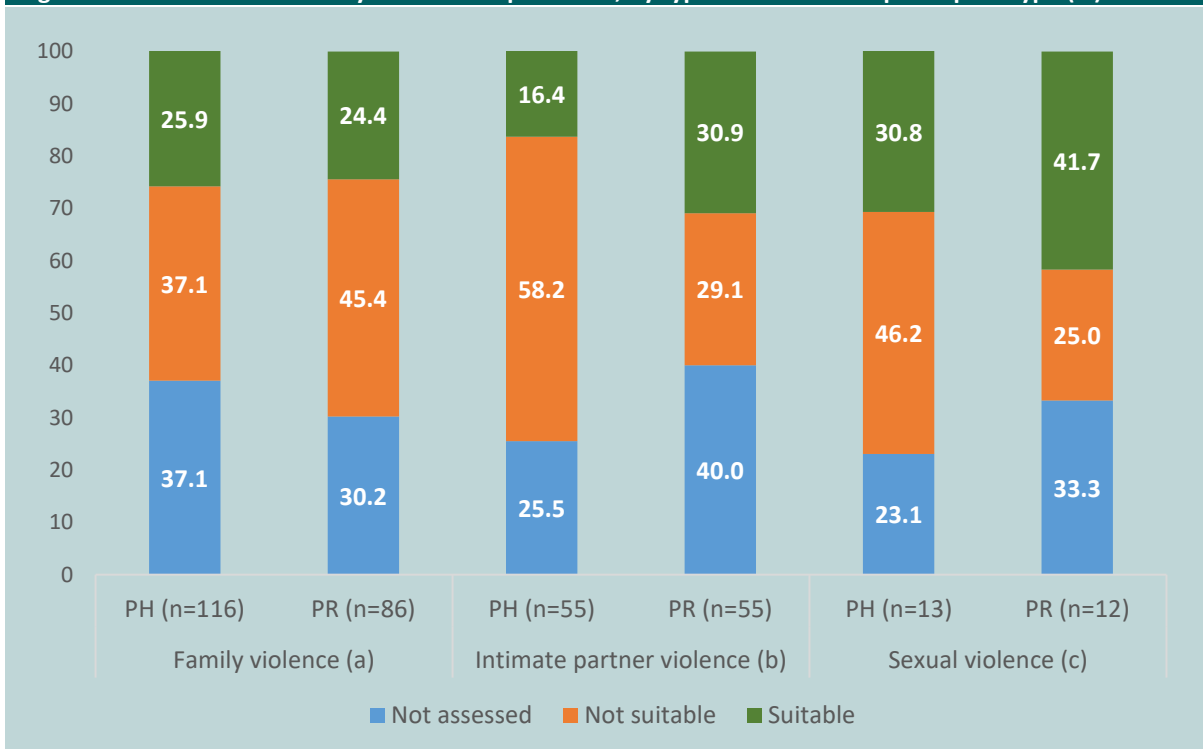
Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Characteristics of suitable matters and individuals

As shown in Figure 4:

- 1 in 4 persons responsible (24.4%) and persons harmed (25.9%) referred for family violence-related matters were found suitable for participation in Phase Three.
- 30.9% of persons responsible and 16.4% of persons harmed referred for IPV-related matters were found suitable.
- 41.7% of persons responsible and 30.8% of persons harmed referred for sexual violence-related matters were found suitable.

Figure 4: Outcome of suitability assessment processes, by type of referral and participant type (%)



Note: PH Person Harmed; PR Person Responsible

a: Excludes 4 PH and 4 PR whose assessment was pending at time of data extraction.

b: Excludes 18 PH and 13 PR whose assessment was pending at time of data extraction.

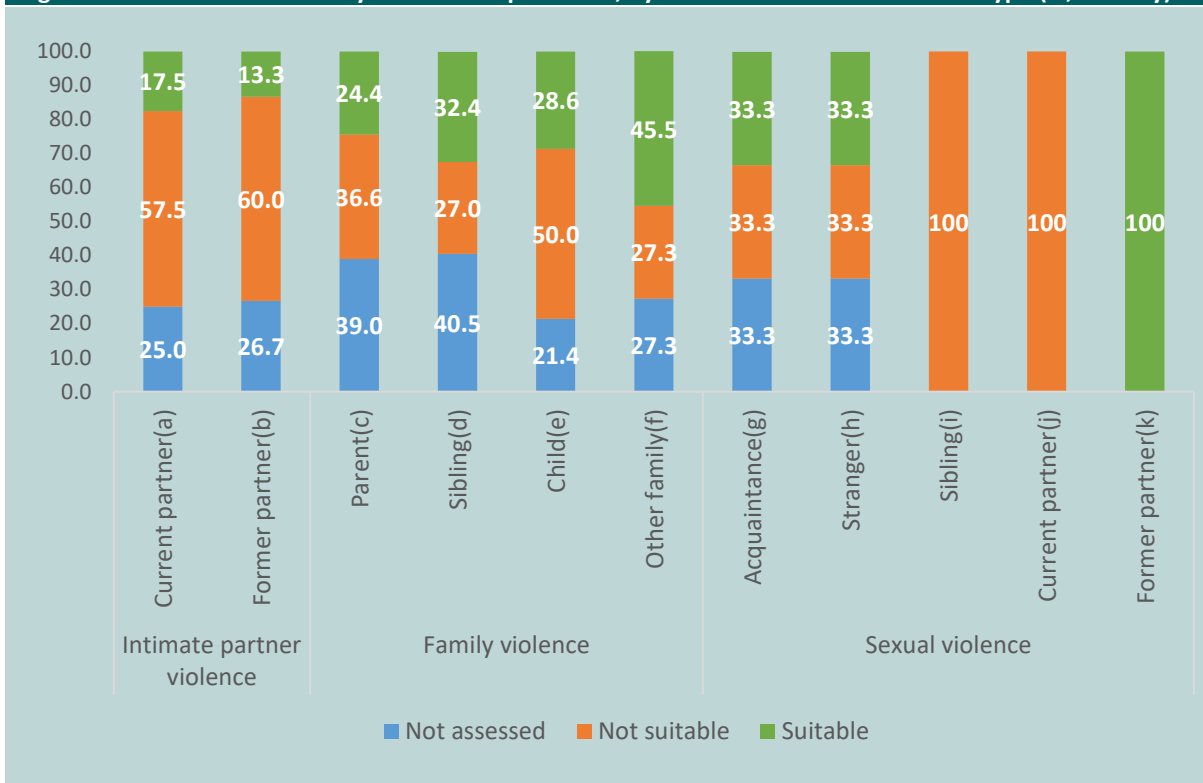
c: Excludes 5 PH and 4 PR whose assessment was pending at time of data extraction.

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

As shown in Figures 5 and 6, the proportion of referred persons harmed and persons responsible found suitable for participation in Phase Three varied by the nature of the matter, as well as the participant type. For example, a slightly larger proportion of persons harmed who were in a relationship with their abusive partner at time of the offence were found suitable ($n = 7, 17.5\%$), compared to those who were not longer in a relationship ($n = 2, 13.3\%$). A similar finding was identified in relation to persons responsible, with slightly more persons responsible still partnered with the person harmed being found suitable ($n = 13, 32.5\%$) compared to those who were not ($n=4, 26.7\%$), although overall a higher proportion of persons responsible than persons harmed were identified as suitable for these matters.

Further, only 24.4% of persons harmed ($n = 20$) referred for child-to-parent abuse were assessed as suitable, which increased to almost half (45.5%, $n = 5$) when the person harmed were other family members (e.g., grandparent). However, only 22.2% ($n = 2$) of persons responsible referred for family violence matters involving other family members were assessed as suitable. The number of sexual violence matters was too small to make inferences about trends in suitability assessment outcomes.

Figure 5: Outcome of suitability assessment processes, by DFV and sexual violence sub-type (% , PH only)



Note: Percentage totals may not equal 100 due to rounding. PH = Person Harmed

a: $n = 40$; Excludes 1 PH whose assessment was pending at time of data extraction

b: $n = 15$; Excludes 3 PH whose assessment was pending at time of data extraction

c: $n = 82$; Excludes 17 PH whose assessment was pending at time of data extraction

d: $n = 37$; Excludes 4 PH whose assessment was pending at time of data extraction

e: $n = 14$

f: $n = 11$

g: $n = 3$; Excludes 4 PH whose assessment was pending at time of data extraction

h: $n = 3$; Excludes 3 PH whose assessment was pending at time of data extraction

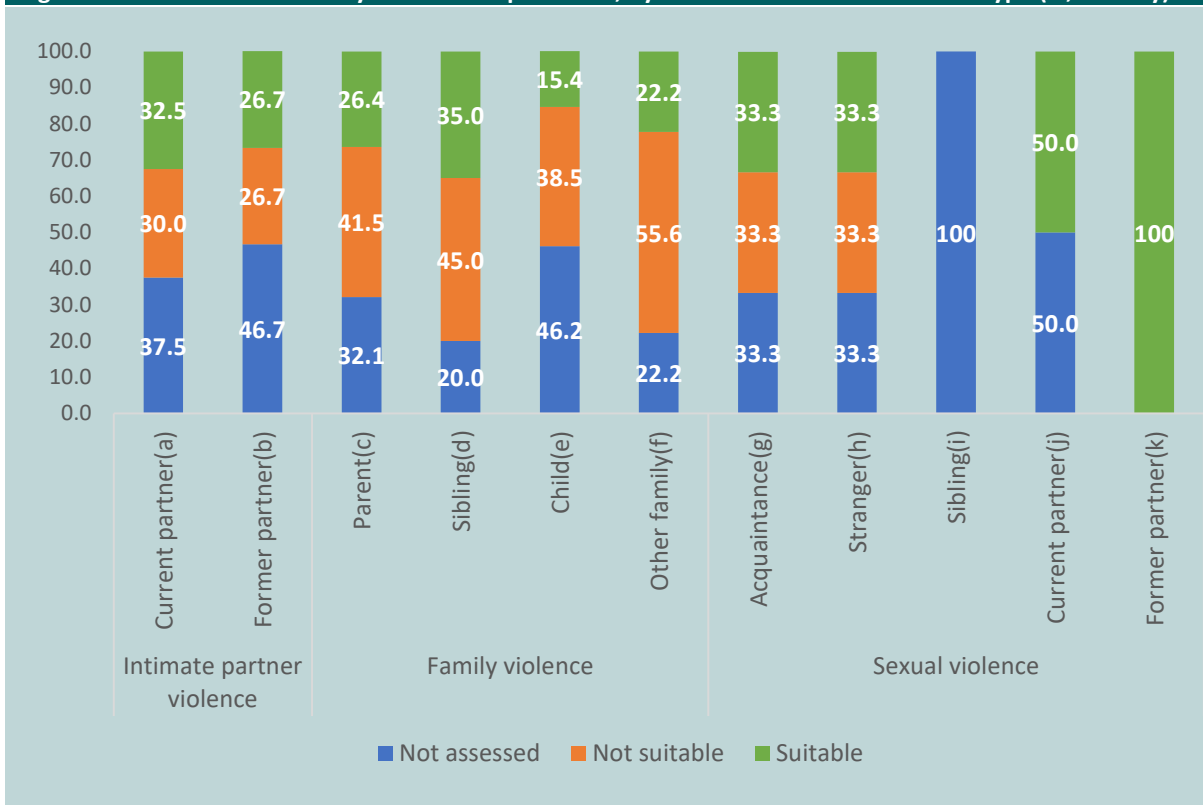
i: $n = 2$; Excludes 1 PH whose assessment was pending at time of data extraction

j: $n = 2$

k: $n = 1$

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Figure 6: Outcome of suitability assessment processes, by DFV and sexual violence sub-type (% , PR only)



Note: %age totals may not equal 100 due to rounding. PR = Person Responsible

a: n=40; Excludes 1 PR whose assessment was pending at time of data extraction

b: n=15; Excludes 3 PR whose assessment was pending at time of data extraction

c: n=53; Excludes 12 PR whose assessment was pending at time of data extraction

d: n=20; Excludes 2 PR whose assessment was pending at time of data extraction

e: n=13

f: n=9

g: n=3; Excludes 3 PR whose assessment was pending at time of data extraction

h: n=3; Excludes 2 PR whose assessment was pending at time of data extraction

i: n=2; Excludes 1 PR whose assessment was pending at time of data extraction

j: n=2

k: n=1

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Table 8 provides an overview of the sociodemographic characteristics of persons responsible and persons harmed who were assessed as suitable for participation in Phase Three, compared to those who were not. Overall, a comparable proportion of male and female persons harmed (20.7% vs 24.4%) and persons responsible (35.8% vs 37.1%) were found suitable to participate in Phase Three. Similarly, the proportion of First Nations and non-Indigenous persons responsible who were assessed as suitable was comparable (38.1% vs 31.6%). However, a much larger proportion of non-Indigenous persons harmed were assessed as suitable for participation in Phase Three, compared to First Nations persons harmed (38.7% vs 15.4%).

Table 8: Characteristics of PH and PR referred to Phase Three, by outcome of suitability assessment (%)

	PH (n = 208)			PR (n = 165)		
	Suitable	Not suitable	Not assessed	Suitable	Not suitable	Not assessed
Gender^a						
Male	20.7	39.7	39.7	35.8	41.3	22.9
Female	24.4	45.5	30.1	37.1	31.4	31.4
Indigenous status^b						
First Nations	15.4	61.5	23.1	38.1	38.1	23.8
Non-Indigenous	38.7	41.3	20.0	31.6	42.1	26.3
Age^c						
10-13 years	16.7	33.3	50.0	16.7	33.3	50.0
14-17 years	45.5	27.3	27.3	35.1	35.1	29.7
18-24 years	15.8	68.4	15.8	22.2	51.9	25.9
25-34 years	40.0	43.3	16.7	41.2	32.4	26.5
35-44 years	31.3	34.4	34.4	52.6	42.1	5.3
45-54 years	16.7	41.7	41.7	33.3	40.0	26.7
55-64 years	45.5	36.4	18.2	0.0	40.0	60.0
65+ years	20.0	20.0	60.0	100.0	0.0	0.0
Mean (range and SD)	37.7 (10-76, 16.8)	33.2 (11-69, 13.7)	34.5 (10-74, 15.0)	27.1 (12-59, 13.7)	27.8 (12-59, 12.3)	29.6 (13-70, 12.9)

Note: % age totals may not equal 100 due to rounding. PH = Person Harmed; PR = Person Responsible

a: Excludes 6 male and 21 female PH, and 15 male and 6 female PR whose assessment was pending at time of data extraction

b: Excludes 4 First Nations and 2 non-Indigenous PH, and 7 First Nations and 3 non-Indigenous PR whose suitability assessment was pending at time of data extraction. Excludes 114 PH and 78 PR whose Indigenous status was not provided.

c: Excludes 27 PH and 21 PR whose suitability was pending at time of data extraction, and 59 PH whose age was not provided.

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Preparing for the conference

After the suitability of the referral had been established and both the person responsible and person harmed provided consent, the allocated Convenors began preparing participants for the conference itself. As part of the preparation process, Convenors worked with the person responsible and person harmed to identify if anyone else should attend the conference. The role of other conference participants was primarily to support the person responsible and person harmed during the process (e.g., family members or support workers), or to provide essential information or context about the incident (e.g., the arresting police officer). However, participants may have also been other victims-survivors of the violence and abuse perpetrated by the person responsible, even if they were not identified as such in the incident that led to the referral. Several persons harmed who participated in an interview as part of the evaluation identified that the referred person responsible had also been abusive towards other family members. For example, in several matters involving child-to-parent violence, the person harmed (often the mother) reported that the person responsible had also been

abusive towards their siblings as well. In these situations, the Convenor would try to facilitate the participation of other abused family members in the conference if deemed appropriate.

The person responsible and person harmed often identified who they wanted to attend the conference to support them, but Convenors also had a role in identifying potential participants based on their understanding of the person responsible and person harmed and their support networks. Once identified, Convenors analysed the dynamics of individuals who would be attending the conference. If they believed there were any conflicts or issues associated with the attendance of a potential participant, they would recommend that they should not attend. In particular, if the Convenor felt that a potential participant was not in agreement with the goals and aims of the conference then they would not be allowed to come or the conference would not go ahead. However, as demonstrated in the below extract, Convenors could also work with conference participants to facilitate the involvement of these people in various ways to minimise their potential negative impact on the proceedings.

I made that decision independently because I was like, ok yeah, I can recognise that having her here won't be good for me... I made that decision and told it to the people at restorative justice and was like, hey, let my mum know to come only at the end so that she can still come and see me, she can still come and check in on the situation and give her input, but it's gonna be right at the end after we clear up everything important that I need to go through uninterrupted. (Person harmed, Sexual violence, 2022)

Both Convenors met with conference participants together. As noted in earlier sections of this report, the presence of two Convenors was seen as a useful mechanism for reducing the risk that Convenors would be manipulated by participants, and also allow for debriefing and interrogation of information provided.

Finally, when a case has been approved to go to conference, in the lead up to the conference the Convenor prepared everyone for what would occur on the day. One stakeholder explained their process for preparing a participant for the conference and why this was important:

Showing people the room, showing people the building. This is the door you're going to come in, this is the door he's gonna come in. You'll be sitting down here, he'll come in last... Any predictability, anything that you can plan for ahead of time I think is really important so that, you know, people harmed have as much control as they can, so if you don't want to sit there you can tell me beforehand, if this is going to make you uncomfortable... We can plan for that. (101121B, RJ Practitioner, 2021)

Stakeholders indicated that, in preparing for the conference, it was important to understand what everyone's 'story' about the incident was. Practitioners talked about how going over what would happen on the day of the conference in detail was a way to provide a trauma-informed process.

Time taken to proceed from allocation to conference

Although this information was not available in the administrative data, there was consistent feedback from stakeholders and participants that preparing for the conference took a long time, ranging between 6-12 months. This was primarily attributed to the:

- complexity of matters
- extensive information gathering and assessment processes undertaken by Convenors
- delays and barriers associated with engaging with persons responsible and PH

- delays and barriers associated with referring participants into specialist support services (if required – see below).

Convenors suggested that the lengthy preparation period was likely unavoidable because of the complexity of matters, and the need to ensure the safety of all participants. This was reflected back in one interview with a person harmed who said that while the process took a long time they did not perceive this to be a problem:

[it was] quite a big long process, because there is a lot of stuff to do... Of course it actually took quite a long time. But throughout the time and the process I was actually quite relaxed because it was giving me power. It's a slow and steady process but it's absolutely worth it. (Person harmed, Sexual violence, 2022)

However, other stakeholders and participants suggested that the lengthy preparation processes had been frustrating, and also potentially provided persons responsible with additional opportunities to influence and manipulate the person harmed. One stakeholder involved in supporting persons harmed said the following:

When we are being held accountable, we want to be given examples... time shifts and changes those things and the dynamics, let alone our recall, and can actually buy in to a pattern of gaslighting behaviour from a perpetrator. So in a family violence context, if you're talking about wanting to go through a restorative process with somebody who has been gaslighting you... the length of time is going to give you longer to self-doubt and self-question as well. (281021N, Support Services, 2021)

This section demonstrates recognition among some participants and stakeholders that this work is logistically difficult and that a slow and steady approach may have some safety benefits. At the same time, delays in case processing at referral and during the lead up to the conference can negatively impact on participation.

Trauma-informed restorative practice

Stakeholders described Phase Three processes as trauma-informed, and Convenors as skilled in responding to and mitigating trauma-related symptoms that could impact the ability of persons responsible and persons harmed to participate in the RJ process. For example, during the lead up to the conference, Convenors spent time with participants and asked them explicitly about their experience of trauma and any outward signs of distress the Convenor could look for to recognise if the participant had been triggered. The Convenor could also work with the participant to develop mitigation strategies to be implemented if this was observed, especially in a conference. One interviewee explained:

You make sure that you're clear about how that person can manage that level of distress, themselves and with others. And then where we would have a process intervention, so would it be helpful to have a break or time out? Or just to sit with this moment so you can catch your breath, and then we go on...

If there is a purpose in what the person is doing, we're working through that distress so that it's achieving something that they're saying they want to achieve... generally speaking, you have to modify what we can be achieved or not, rather than saying that this cannot happen as a kind of blanket statement. It may be that you scale back what you do. (16322A, RJ Practitioner, 2022)

Further, stakeholders said that Convenors engagement with participants was flexible and tailored to their needs. In particular, to manage symptoms of trauma some persons harmed and persons responsible benefitted from regular one-one-one meetings with Convenors, while in other situations participants preferred to have less contact because they were engaging with other services as well. The benefits of this flexible approach are described by one person harmed below.

Every time you talk about it, you're rehashing it and you're re-experiencing trauma. It is helpful but at a certain point it holds you back.... It would be a constant topic in my therapy sessions because it would be a constant thing in my life. In the end, [the Convenors] were lovely. I decided that – we decided together that I didn't need any more meetings until one more meeting before the conference... [The Convenors] were amazing the entire time but the timeline was not super-conducive to healing from a traumatic event. (Person harmed, Sexual violence, 2021)

Linking participants to specialist support services

As noted in earlier sections of this chapter, a primary motivation for some persons harmed to participate in Phase Three – and one of their identified justice needs – was to gain access to specialist support services. Facilitating persons responsible, persons harmed and families access to specialist support was identified as a crucial component of Phase Three. Following allocation, if participants did not already have access to adequate psychological support, they were supported to access them as part of their participation in the Scheme. Specialist support services included psychologists, counsellors, victim liaison workers, interpreters, culturally relevant persons and others.

The engagement of persons responsible with specialist services was viewed as necessary in many cases to ensure that persons responsible were able to engage in meaningful reflection ahead of a conference, to understand the underlying issues and causes of their action and build insight into how they can change those behaviours.

While some stakeholders viewed participation in Phase Three as most appropriate during periods of stability for participants, the interviews revealed that much of the Convenors role involved crisis response and bridging gaps in service access. For example:

That's probably one thing that we hadn't really considered when we were setting up the system was the level of crisis response that we would also be involved in, that there might be some gaps in the systems around services and access to services. The intensity and the amount of time [required for Phase Three] we always knew would be significantly more, but we probably didn't realize the level of crisis response that we would also be involved in. (141221AF, RJ Practitioner, 2021)

Further, interviewees emphasised that delays and participant attrition were also impacted by wait times for participants to access counselling and therapeutic services. As one stakeholder noted:

We do rely on those Community agencies, but again they have huge and long wait lists, so as we're preparing participants, you know there might be 10 week wait lists, so some of the obstacles that we do have is that keeping momentum and that motivation, so when there's delays with services, such as you know community services, we can lose people because we lose that momentum with those wait lists. (141221AF, RJ Practitioner, 2021)

For many participants, despite dealing with significant mental health problems, they did not want to seek additional support because they did not want to have to tell their story again:

I get comfortable with one person, and then it's time for them to leave, and then I feel like I'm going to have to re-run over and over and over the same stuff...And it's like, really, can't you just read the notes, and we can just go on from there? (Person harmed, Family violence, 2022)

Long waitlists for community and psychological support are a significant barrier outside of the control of the RJU. While part of the role of the Convenor is to facilitate access to relevant support services for participants, this can only be achieved if places are available at these services.

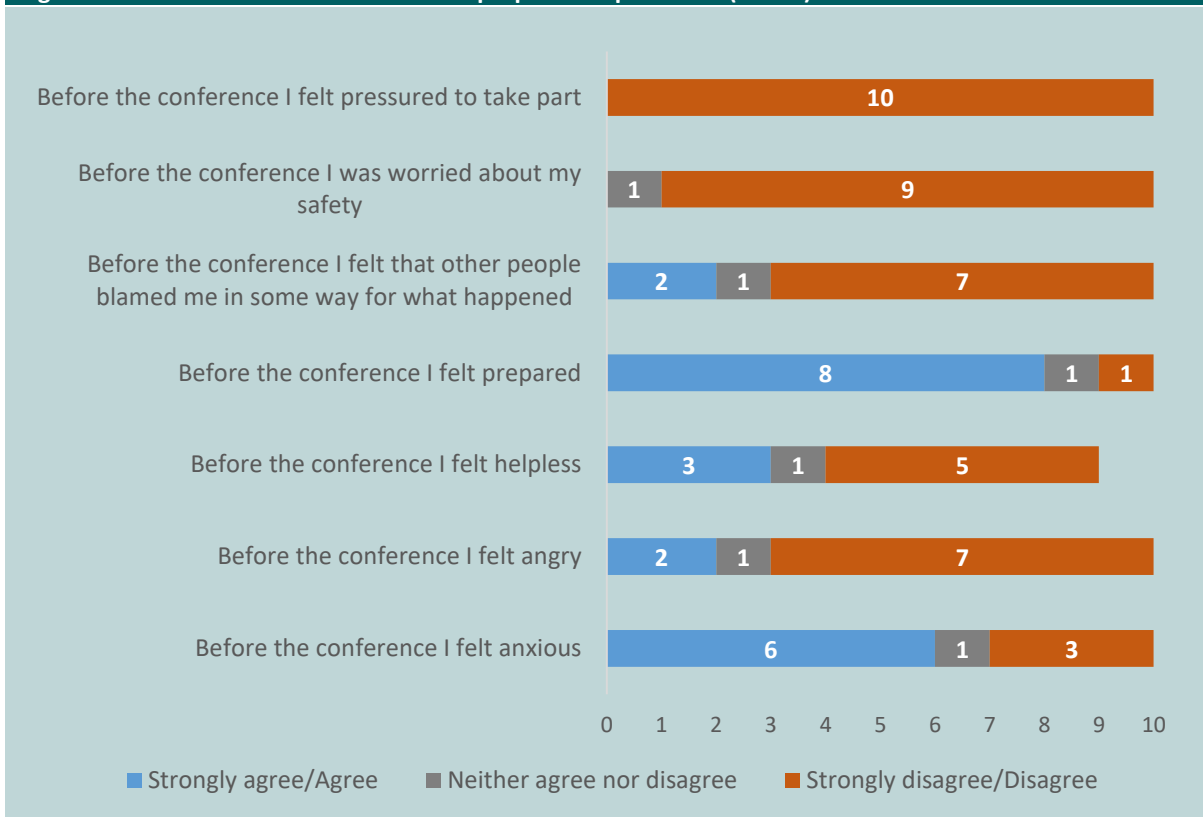
Appropriateness of conference preparation processes for participants

The interviews with Phase Three participants, stakeholder interviews and analysis of post-conference surveys demonstrated that conference preparation processes were working effectively, largely because of the skills of Convenors. Phase Three participants who took part in an interview consistently reported that prior to attending a conference (if a conference took place) they had a good understanding of how the conference would run, their role in the process and what the aims of the conference were.

Further, the analysis of the post-conference surveys demonstrated that 80% of persons harmed, 100% of persons responsible and 89% of supporters 'strongly agreed or agreed' that they felt prepared for the conference prior to attending. Further, as demonstrated in Figures 7 and 8, 100% of persons harmed and 78% of persons responsible 'strongly disagreed or disagreed' that they felt pressured to take part in the Scheme, and 90% of persons harmed and 100 % of persons responsible 'strongly disagreed or disagreed' that before the conference they had been worried about their safety. All persons responsible supporters reported feeling prepared for the conference and all but 1 said they were given enough information about their role in the process. No concerns about safety or being pressured to participate was reported.

All persons harmed supporters said they were given enough information about their role in the process and the majority reported feeling prepared for the conference. No concerns about safety were reported, however 1 supporter reported feeling pressured to participate.

Figure 7: PH satisfaction with conference preparation processes (n = 10)



Note: PH Person Harmed

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

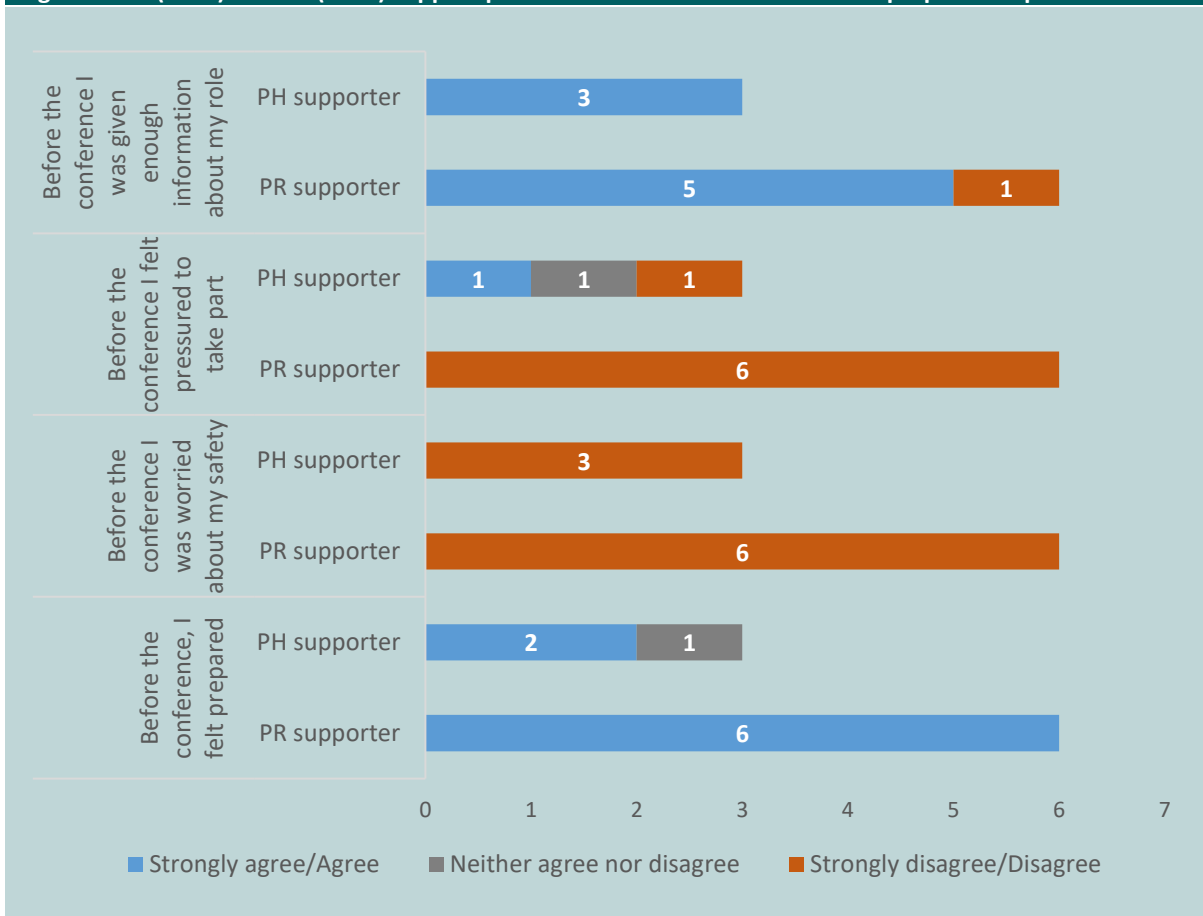
Figure 8: PR satisfaction with conference preparation processes (n = 9)



Note: PR Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Figure 9: PR (n = 6) and PH (n = 3) support person satisfaction with conference preparation processes



Note: PH = Person Harmed; PR = Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Suitability of Phase Three processes for CALD and First Nations communities

Stakeholders often spoke about the potential of RJ to divert First Nations peoples away from the criminal justice system, and for providing vulnerable persons responsible and persons harmed with access to specialist support services. RJ processes were also viewed as more culturally appropriate for First Nations communities than traditional criminal justice processes. Key Phase Three processes that were viewed as particularly appropriate for First Nations respondents was the focus on repairing harm to the person harmed as well as the community, flexible service delivery and ability to facilitate the involvement of family members, friends and elders in the conference.

A number of stakeholders who had participated in a conference reported positive experiences working with the RJU FNGP in terms of ensuring engagement and practice was culturally respectful:

The identified worker at the unit has been really great at engaging some of our young people and bringing them on board and using quite a culturally responsive framework to engage family and kin in that process. (91121IG, Support Services, 2021)

Further, Phase Three was viewed as potentially being more accessible to specific community groups who may be reluctant to engage with the traditional criminal justice system, due to histories of harms associated with system contacts. For example:

I feel hopeful and think it's really important for victim-survivors to have an option of engaging with the process in a way that doesn't rely on that [the traditional CJS]. I think particularly for queer, LGBTQ+ communities, Aboriginal Torres Strait Islander communities, other culturally diverse communities that have an understandably tenuous relationships with the criminal justice system... to have an option and a service that can meet that need, that doesn't require them to go through a criminal process, I think is so important. (18222M, Support Services, 2022)

Stakeholders recognised that there is a real and understandable lack of trust between some communities and government agencies which translated into a hesitation to engage with any justice related processes. For CALD and First Nations participants, stakeholders recognised the value of restorative justice to provide opportunities for accessing accountability outside of the traditional criminal justice system. For example, one stakeholder involved with supporting victim-survivors emphasised the potential benefits of RJ for people on a temporary visa who may be less likely to engage with the traditional criminal justice system because of concerns about deportation, as well as negative experiences engaging with the criminal justice system in their countries of origin. However, they cautioned that there are additional considerations of and complexities to engaging with Phase Three matters in these situations:

Where people are certainly not going to engage in criminal justice settings because of their visa status, as an example, I think restorative practices could be a really great insertion in that space. Except that there is such a power differential when you are talking about the perpetrator of violence being the person who you're being sponsored to be in the country, who you know holds status in the country and you do not. So, I think there's great opportunity, but I think we shouldn't be blinkered to the fact that this is a very complex power dynamic, particularly within marginalized population groups that might inhibit the usage of restorative justice. (281021N, Support Services, 2021)

However, several stakeholders agreed that the number of referrals for First Nations and CALD participants to Phase Three generally was lower than expected. Stakeholders attributed this to a range of factors. First, low referrals may be related to underreporting of DFV and sexual violence offences by these communities in the first instance due to distrust of authorities. Second, although positioned as an alternative to the traditional criminal justice system, several stakeholders, including those from First Nations communities, said that the RJU was seen as part of the criminal justice system because of its location within JACS. As such, referred First Nations people may be reluctant to engage with Phase Three because it was viewed as a criminal justice-related response. Third, it was suggested that because of systemic over-policing of First Nations communities, persons responsible may be viewed as unsuitable because they are recidivist. This is related to the point made earlier where some stakeholders were unlikely to re-refer someone who had been referred previously and had reoffended, as there was a view they did not deserve a second chance at engaging with restorative justice.

Summary

Before a matter could be found suitable for Phase Three, it had to pass specific eligibility criteria and be found suitable which was an ongoing assessment process. Convenors actively screened for evidence of coercion or control by the person responsible by gathering information and working in collaboration with relevant stakeholders such as police and support services. The risk assessment procedure was extensive and involved case review by a senior staff member for all matters.

Part of the ongoing assessment involved the Convenor working with the person harmed to identify their justice needs, and the extent to which the person responsible could respond to these needs.

Justice needs identified in interviews with persons harmed included holding the person responsible accountable for what they did, asking questions about what happened, and voicing the impacts of the crime.

About 1 in 4 participants referred for Phase Three were found suitable, however this differed according to the nature of the matter. For matters that were found not to be suitable, the most common reason was that the participant couldn't be contacted or they didn't want to participate. In preparing for the conference, the Convenor worked with the participants to familiarise them with the process, including who would be in the room and what would be discussed.

Some stakeholders were critical around delays during the preparation phase, however it was also accepted that some delays were a necessary outcome of safe practice. There was evidence of incongruity between the impact of delays and the delivery of trauma-informed practice for persons harmed. While some participants reported the delays were not conducive to healing, others said that the additional time was necessary and empowering for them. Irrespective of this, the majority of participants reported positive experiences of the preparation period including feeling prepared and being given enough information about their role in the process.

Conferences

During the evaluation period, 24 conferences were held for Phase Three matters. As shown in Table 9, five of the conferences were for IPV matters, 15 for family violence matters and 3 for sexual violence matters. One conference involved both an IPV and a family violence matter. Overall, a conference was held for 1 in 7 cases (14.8%) referred to Phase Three.

At time of data extraction, the vast majority of persons harmed and persons responsible who had been found suitable had participated in a conference. However, in the one case where the person harmed and person responsible had not participated in a conference because they were still in the process of preparing for it.

Table 9: Characteristics of conferences held as part of Phase Three, by referral type and relationship between the PH and PR

	n	%
Intimate partner violence (n = 6)	6	10.3
PH is the current partner	6	15.0
PH is the former partner	0	0.0
Family violence (n = 16)	16	16.5
PH is the parent	12	18.5
PH is the sibling	6	27.3
PH is the child	1	0.0
PH is the other family member	2	22.2
Sexual violence (n = 3)	3	18.8
PH is an acquaintance (non-family member)	1	16.7
PH is a stranger	1	20.0
PH is the sibling	0	0.0
PH is the current partner	0	0.0
PH is the former partner	1	100.0

Note: Total n does not equal 24 because categories were not mutually exclusive. PH = Person Harmed; PR = Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Conference processes

As discussed in the previous chapter, conferences were carefully planned and managed by Convenors. This included the development of a clear map for how the conference would be structured, as well as a script. The script was described as being helpful in providing participants with a shared understanding of how the meeting was going to go, and what topics would be discussed:

I like the script because I think it allows people to be prepared and it gives some sort of measure of predictability that people could know what they're going to be asked, and they able to prepare for that so they can give their best self, I suppose, or give responses that they're happy with. (101121B, RJ Practitioner, 2021)

Stakeholders described this planning as important for helping participants to prepare for the conference and giving them a clear idea of what to expect on the day. However, Convenors also agreed that they had to be flexible in how they ran the proceedings so they could adapt the process where necessary.

The standard script for a conference involved everyone telling their own story about the incident and what happened. This was the part where the offender should demonstrate accountability or acknowledge that they are responsible for the offence. The purpose of allowing everyone to tell their story of the same events was to develop a common narrative of what happened across the group:

It's a series of stages that you work through with some standard prompts to encourage people to relate their experience... as the facilitator, you're just gently guiding them for probably typically 70 or 80% of the actual meeting to paint this big picture. (RJ Practitioner, 2021, 201221)

Restorative justice theory suggests that 'successful' conferences are often characterised by a shift or turning point where conflict between participants transforms into cooperation through mutual understanding or a shared sense of solidarity (Moore & Vernon 2023; Rossner 2013). This may be indicated by high emotional intensity, followed by laughing, crying, increased eye contact, nodding or mirroring behaviours, demonstrations of genuine remorse, empathy, apologies and/or forgiveness (Rossner 2013). When all the relevant issues had been discussed and the group has collectively made sense of what has happened, participants are more motivated to work together to develop an agreement (i.e., a plan) for the person responsible to address the harm (Moore & Vernon 2023).

Delivery modes

An important finding from the evaluation was that the intervention was viewed as beginning from the point that participants provided initial consent and the first meeting between the Convenor and any participants involved. The program was comprised of all interactions between participants and practitioners, not just the group meeting(s) or conference(s) that may or may not take place. Particularly with more complex cases, it was important to be able to work flexibly and tailor the process according to the needs of the participants, particularly the person harmed.

Conference participants could attend a conference in-person and face-to-face or remotely such as via video or telephone conferencing facilities. A common indirect process was for there to be an exchange via email which may continue over some days, weeks or months. The convenors work with participants to provide appropriate support during this process, including being with the parties to read responses, assisting participants with processing these responses and determining whether or how they might respond. This has also been done in real-time, which can look a bit like a shuttle process. In some cases, persons harmed were not able to engage beyond providing a letter to the Convenor, such as their victim impact statement or a letter being provided to the person responsible to make a response to. Persons harmed also had the option to send an advocate on their behalf.

Giving participants different options for participating in the conference was identified by stakeholders as being an important feature of Phase Three. In particular, giving persons harmed the option to participate in the conference remotely was seen as important for persons harmed who

were concerned about seeing their abuser in-person. One practitioner spoke about a young person harmed in a sexual violence matter who wanted to participate but did not want to be there in-person. Instead, she expressed wanting the person responsible to write a detailed letter with an apology and an explanation of what they had learned through the process.

This said, some stakeholders identified significant safety concerns associated with conducting conferences online. Specifically, online environments made it more difficult for the Convenor to control the behaviour of the participants and their interactions with others:

I probably would never do a family violence conference online, I don't think it's safe. I just don't, depending on the level of intensity and that kind of stuff cause it's just too easy for someone to just – I don't want to talk to you anymore, computer off. As opposed to doing it face to face I can then provide support or if you know the person harmed becomes distressed or needs that level of support, how can I do that over a computer? (251021S, RJ Practitioner, 2021)

Analysis of the administrative data collected by the RJU identified that the majority of conferences conducted as part of Phase Three were in-person ($n = 22$, 91.7%). Meanwhile, 2 conferences involved 1 or more participants who were participating remotely using video or teleconferencing facilities. This may have been for a variety of reasons, including the participant not being available to attend in-person, the participant being unwell or preferring to do so.

Conference location

Stakeholders from the RJU reported that they are careful in selecting an appropriate location for conducting the conference. Convenors described holding conferences in a range of locations, from the RJU itself, to Correctional settings, parks and community centres. In some cases, conferences were held in people's homes but this was less common.

For victim-survivors and First Nations people in particular, stakeholders questioned suitability and cultural safety of conferences being held in correctional centres. One stakeholder working in a correctional setting described a case where they participated in a restorative conference that was held outside in an open area near water as that was where the young person would feel most comfortable.

Managing power dynamics and imbalances between participants

Stakeholders identified a number of strategies that Convenors used to manage power imbalances between persons harmed and persons responsible during conferences. For example, Convenors spoke about making sure that the number of supporters attending the conference for the persons responsible and persons harmed were similar, where possible. Stakeholders said that it changed the conference dynamic if one person had more supporters than another. Further, where possible Convenors held conferences in neutral settings (see above), such as the RJU offices or a community space.

Also, in recognition of the power imbalances between participants, Convenors were more involved in the discussions held as part of conferences conducted in Phase Three matters relative to Phases 1 and 2. This included more intervention from Convenors during the conference, including stopping the conference and going over things discussed during the preparation phase (agreements not to interrupt, minimizing of harm etc). Stakeholders reported that it was part of the role of Convenors to challenge conference participants if they denied, minimised or lied about the person responsible's behaviour and its impact on the person harmed and their family members. The extent to which

participants felt Convenors effectively managed this is captured in Figure 11 in the next section where person harmed experiences of the conference are summarised.

A practitioner spoke about how they managed pre-existing power dynamics and imbalances during the meeting between the person harmed and the person responsible in a family violence matter, to support the person harmed to achieve their justice need of being heard:

We had to pull him [the person responsible] up for talking over the top of her [the PH] and she said “that’s what always happens as soon as we start this discussion, this is what happens. He talks over me, I don’t get to speak”, you know? So, for her to be able to speak and get her story out, again, it’s about that validation, this is my experience, you know? And him having to sit there and listen to it. (101121B, RJ Practitioner, 2021)

However, one person harmed reported that they were “very appreciative of the support and check ins” however they felt that the person responsible “should have been pulled up when [they] started speaking during my opportunity” (Person harmed, Family violence, 2020).

Conference participants

As shown in Table 10 below, all conferences held as part of Phase Three involved at least one of the referred persons responsible. In all but one conference held as part of Phase Three, at least 1 person harmed participated. In eight conferences, 2-3 persons harmed participated in the same conference. In the 1 conference where no person harmed participated, they sent a proxy representative – an immediate family member.

In a third of conferences, at least 1 person harmed support person attended the conference (37.5%). In 2 conferences, there were 2-3 support people in attendance (8.3%). In comparison, in half of conferences at least one support person for the person responsible was in attendance (50%), and in 4 conferences there were 2-3 support people in attendance (16.7%). Support people were often the immediate family members, parents or guardians, friends as well as counsellors or support workers from services that persons harmed or persons responsible may have been engaging with.

Table 10: Conference attendees (n = 24)

	<i>n</i>	%
PH		
0	1	4.2
1	15	62.5
2-3	8	33.3
PR		
0	0	0.0
1	24	100.0
2-3	0	0.0
PH support person		
0	15	62.5
1	7	29.2
2-3	2	4.3
PR support person		
0	12	50.0
1	8	33.3
2-3	4	16.7
Average number of attendees (range, sd)	6.2 (2-18. 4.6)	

Note: PH Person Harmed; PR Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

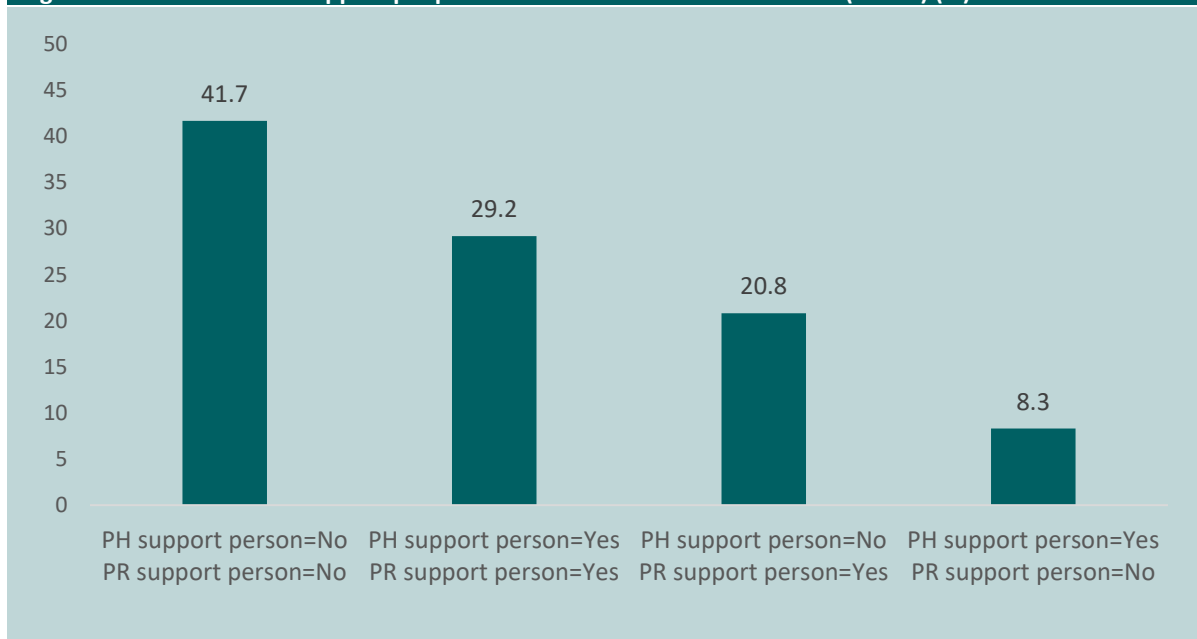
There was no limit on the number of participants who could attend a conference. However, stakeholders interviewed as part of the evaluation highlighted the importance that conferences were balanced in terms of the quality of the support available for participants. Overall, in 41.7% of conferences ($n = 10$), neither the person responsible or the person harmed had a support person in attendance at the conference. Further:

- in 5 conferences (20.8%), the person responsible had a support person while the person harmed did not
- in 2 conferences (8.3%), the person harmed had a support person while the person responsible did not

- in 7 conferences (29.2%), both the person responsible and person harmed has a support person (see Figure 10).

Also, of the 12 conferences where the person responsible had a support person, in 5 the person harmed did not have a support person. Unfortunately, from the data available it is not clear why support people were not in attendance at some of the conferences held as part of Phase Three. This is an area for future research.

Figure 10: Attendance of support people for the PR and PH at conferences (n = 24) (%)



Note: PH Person Harmed; PR Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme November 2018-August 2022, [Computer File]

Participant experiences of and satisfaction with conference processes

Persons Harmed

Seven of the 9 persons harmed who participated in an interview also took part in a conference. The majority of persons harmed interviewed reported positive experiences associated with the conference, including feeling supported, that they were given the opportunity to speak without being interrupted, and that their wishes were taken into consideration. Persons harmed described the conference as trauma-informed, where there was opportunities to break and check in with participants privately before continuing (Person harmed, Family violence, 2020). When asked what the Convenors did to support participants during the conference, one person harmed said the following:

The facilitators were great, and they didn't pressure [the person responsible] to stay but they helped to talk through what was going on for him. They'd even talk outside the room, they'd go out with him and talk to him, and then they'd come back in. They really facilitated the whole thing, I think, really well. (Person harmed, Family violence, 2022)

Other participants said the conference had given them a safe space in which they could talk about the incident and how it impacted them without being interrupted.

Yeah, because I would feel very unsafe if I went into a space with [the person responsible] alone, frankly. So, I'm glad that it was a space where it was heavily curated (Person harmed, Sexual violence, 2022)

It gave me an opportunity to say how it made me feel in a way that he wasn't going to interrupt me and he had to listen. Whereas, in the home setting if he didn't want to hear it, he would just walk away or distract himself or me with something else (Person harmed, Family violence, 2021)

As demonstrated in the below quotes, several other support people noted the benefit of the conference process being facilitated by a trained Convenor who was there to ensure everyone had a say and was heard:

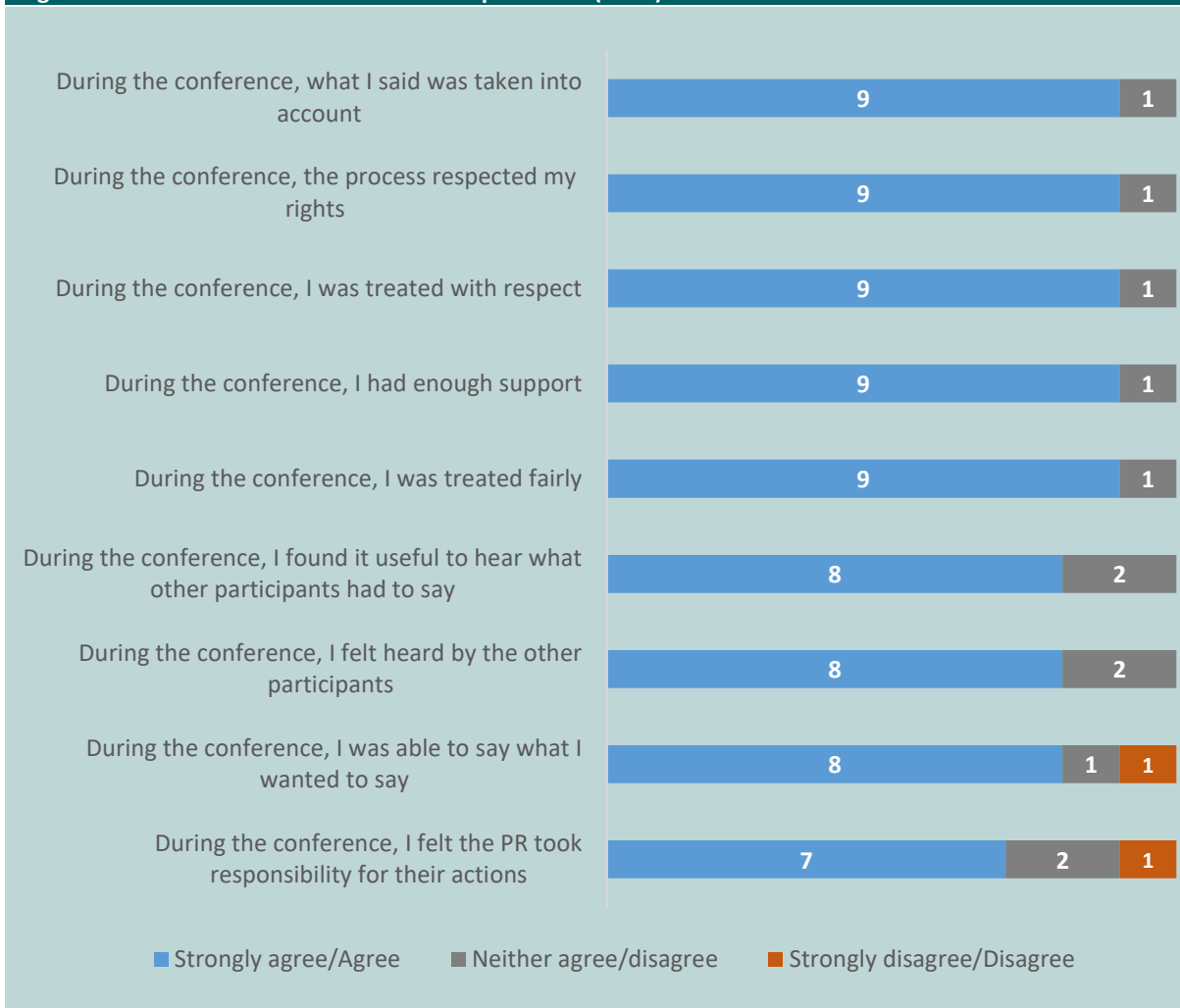
I think having people who are not family members who are objective and guiding is better. Especially in a situation like that. Guiding and listening... And I think that they are equipped to be asking the difficult questions or the underlying questions.

Often in a family situation, everyone is often more self-obsessed, whereas when you have somebody there who says, ok you said that, what do you mean by that? Trying to get more to the bottom of things. Not everyone has done a course in communication or counselling. (Supporter, Family violence, 2022)

The findings from the interviews were supported by the analysis of the post-conference surveys completed by persons harmed ($n = 10$). As outlined in Figure 11 below, the majority of persons harmed were satisfied with conference processes. For example, 90% of persons harmed 'strongly agreed or agreed' that they had been treated fairly and respectfully, and felt supported during the conference. Further, 80% 'strongly agreed or agreed' that they had been able to say what they wanted to say during the conference, and that they found it useful to hear what others had to say. This finding is particularly important considering that in most cases, the person harmed did not have a support person with them. This indicates that the Convenors were effective at ensuring that persons harmed felt heard and respected during the conference process, regardless of the presence of other parties to support the person harmed.

However, one person harmed who completed the survey 'strongly disagreed or disagreed' that they had been able to say what they wanted to during the conference. Further, while 70% of persons harmed 'strongly agreed or agreed' that the person responsible took responsibility for their actions during the conference, one person harmed said they 'disagreed' with this statement, and another two said they 'neither agreed or disagreed'.

Figure 11: PH satisfaction with conference processes (n=10)



Note: PH = Person Harmed

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Persons Responsible

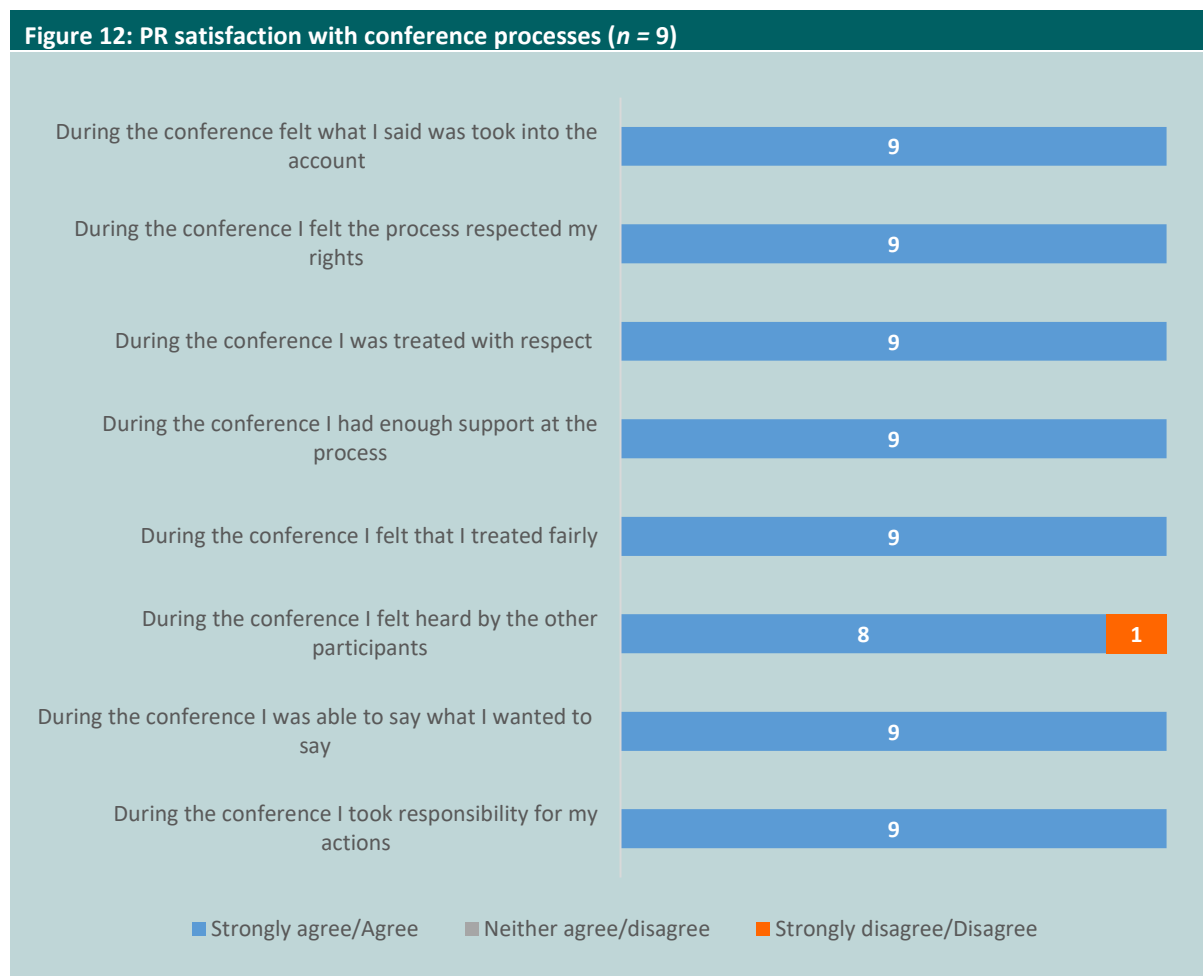
Four interviews were conducted with persons responsible, of which 2 participated in a conference. These 2 participants reported that they had different experiences participating in a conference. One person responsible reported that the conference processes had been appropriate and fair, and they believed it had been overall positive. This was despite the process also being challenging and confronting:

I feel like I was treated fairly and everyone was treated fairly and we were all given time to say, speak or talk, make amends, try and resolve the issues. I feel like it went very well, I feel treated well... I was more just worried how the victim was going, how they were feeling, because I don't feel like it might have been very pleasant of an experience seeing me again, but yeah. I do feel like it was a safe space to talk and I didn't feel pressured into anything, I didn't feel any sort of strain or stress in regards to the atmosphere. (Person responsible, Sexual Violence, 2023)

However, another person responsible reported that it had been too long since the incident for the conference to feel like it was relevant for them:

It [the conference] was six months later. We had already forgotten about it really... yes it was stupid, I did it, mum got angry, mum was sad. It was just awkward. (Person responsible, Family violence, 2022)

Figure 12 below provides a summary of nine persons responsible post-conference survey feedback about their satisfaction with the conference. As demonstrated, all nine persons responsible strongly agreed or agreed that they felt listened to, that they had been treated with respect and their rights respected, that they had enough support and they were treated fairly.



Note: PR = Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Agreements

Although not a requirement, an agreement may have been an outcome of the conference. Agreements were documents outlining specific actions or tasks that person responsible were required to undertake to repair the harm they had caused to the person harmed and to the community. Details about what needs to be included in agreements is outlined under section 51 (Nature of agreement) of the Act, including that agreements must be completed within a 6-month period. In some cases, agreements were used as legal documents that were provided to police; if

agreement tasks were not completed, they could influence police decisions about whether to charge a person responsible with a crime. However, in some situations, the conference itself may have satisfied the needs of the person harmed and so no further actions were necessary.

One participant described the agreement they came to as follows:

We had plenty of things [included in the agreement]. He [the person responsible] had to look for employment... He had to look for CIT options in catching up in maths or whatever or future course he could do, and even hygiene, he had to be clean, he had to not be aggressive. He had a lot of things. (Person harmed, Family violence, 2021)

The ability of the person responsible to achieve the terms of the agreement was viewed by stakeholders as an important indicator of their willingness to take responsibility for their actions and be held accountable. Common tasks included in agreements developed for Phase Three matters focused on the person responsible engaging in education and counselling, in an apparent attempt to stop the violence from happening again in the future. In many cases, tasks were focused on making reparations to the person harmed specifically. For example, offenders often agreed to write a letter of apology or reflection on their behaviour and what they have learned through the RJ process. In one sexual violence matter where the person harmed dropped out of university as a result of the incident, the agreement involved an undertaking that the person responsible would reimburse her for her university fees for the semester that she could not complete. Occasionally, tasks would involve making reparations to the community more broadly. For example, in one conference agreement, the participants agreed that the person responsible would volunteer in community service at a specified location, at least twice month across a total of 10 shifts, within a 6-month period. This is an example of an agreement task that is clear and easily measurable.

One person harmed gave an example of the agreement they came to after their conference:

[The person responsible] also had to go to counselling. And then, we decided that he was going to write a letter after the six-month period or whatever, which was going to go to [the Convenors] and then, I could decide whether I wanted to read it or I could just send it straight to my support person. (Person harmed, Sexual violence, 2021)



In focus 3: Agreements

In 62.5% of matters that proceeded to conference, an agreement was reached.

In describing the nature of tasks that could be included in agreements, stakeholders reported that they had to meet the following criteria:

- fair;
- reasonable;
- lawful;
- achievable;
- timely;
- measurable; and
- respect the dignity of the person who must complete it.

The ability of the persons responsible to achieve the terms of the agreement was viewed by stakeholders as an important indicator of their willingness to take responsibility for their actions and be held accountable.

100% of persons responsible and 78%^a of PH who completed a post-conference survey and said an agreement had been reached, 'strongly agreed or agreed' that the agreement was fair. One PH 'neither agreed or disagreed' with this statement, and one 'strongly disagreed or disagreed'.

Analysis of the RJU administrative data found that in 62.5% ($n = 15$) of matters where a conference was completed during the evaluation period, an agreement was developed. Very little information about the tasks included in these agreements was available in the administrative datasets, limited to high-level categories including victim compensation and offender community service. Overall, in only 1 case was the person responsible asked to provide the person harmed with monetary compensation. In half of agreements (57.1%, $n = 8$), the person responsible was required to complete some form of community service, ranging from 1 - 225 hours.

Among persons harmed who completed the post-conference survey ($n = 10$), 90% ($n = 9$) reported reaching an agreement at the end of the conference. When asked whether they felt the agreement was fair, 7 persons harmed (78%) 'strongly agreed or agreed', 1 (11%) 'neither agreed or disagreed', and 1 (11%) 'disagreed'. Among persons responsible who completed to post-conference survey ($n = 9$) all reported reaching an agreement at the end of the conference. All persons responsible surveyed (100%) reported that they understood what was in the agreement, and that they felt it was fair.

Since the commencement of Phase Three, there has been high levels of compliance with RJ agreements by persons responsible with 100% of agreement in sexual violence matters completed and between 89% and 92% of agreements in family violence matters completed (Justice and Community Safety Directorate 2021-2022).

Some convenors referred to the 'fridge-door' agreement which they used for goals that were discussed in the conference but were not suitable for including as a formal (legally binding) agreement. Fridge-door agreements were not monitored by the RJU or police, but rather informal agreements among participants moving forward. As observed by one RJ Practitioner:

The actual agreement is a binding document, so it needs to be something that we can measure, and is achievable and all those things. But something we have done with a couple of the youth ones is where we have what's called a fridge plan, where you just stick it up on the fridge and that might be ok, on Sunday nights we're going to have dinner together or we're going to play a board game or something like that. You know, how could I possibly monitor that in the legal sense? Whether or not they play a board game on Sunday night? (251021S, RJ Practitioner, 2021).

Fridge-door agreements were particularly relevant in the context of family violence matters where agreements may have included tasks that were difficult to monitor and measure, such as behaviours and relationships between families.

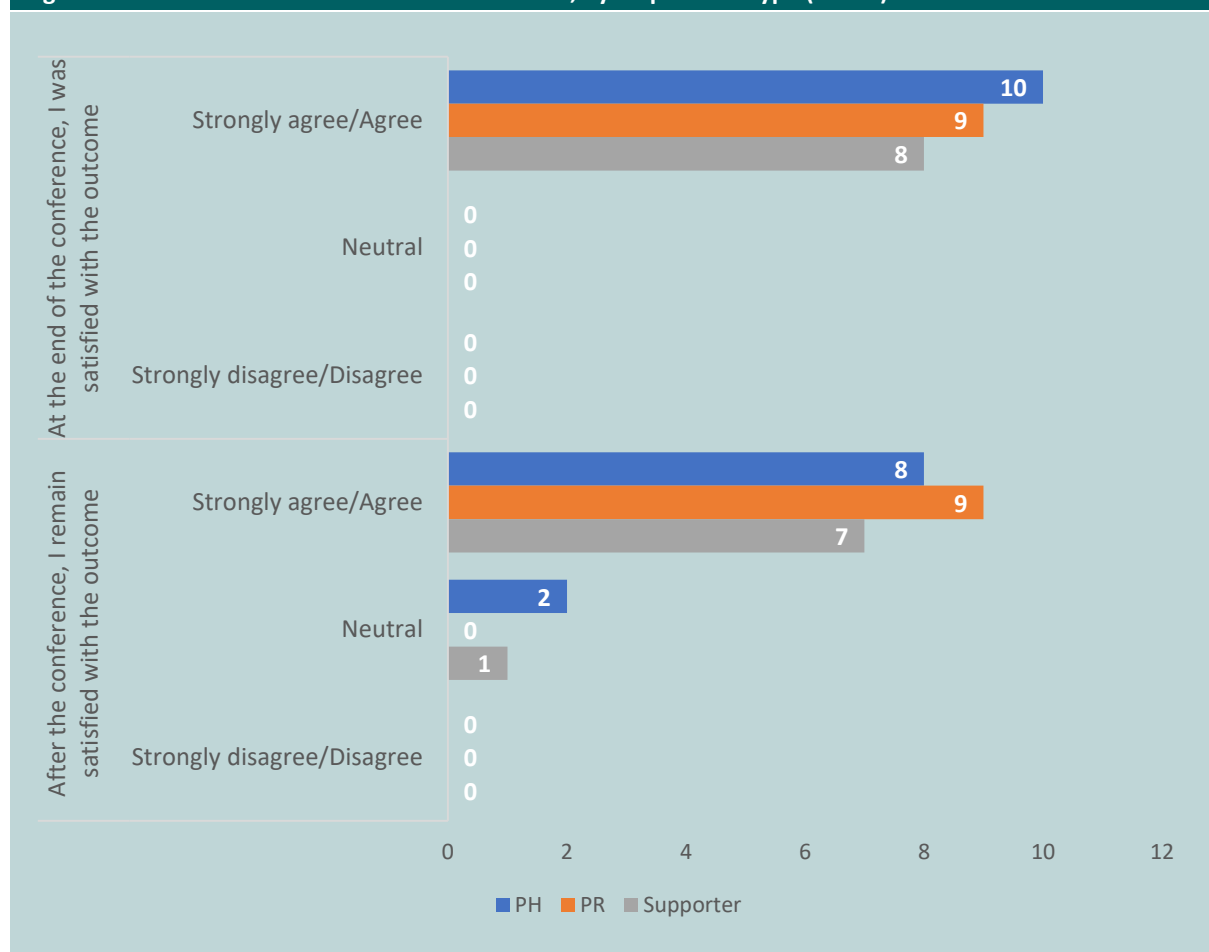
Satisfaction with conference outcomes

Participants who completed the post-conference survey were asked whether they were satisfied with the conference outcome at the end of the conference, and whether they were still satisfied with the conference at time of being surveyed. These questions were asked regardless of whether a formal agreement was recorded.

Among persons harmed surveyed, all ($n = 10$) reported feeling satisfied with the outcome at the end of the conference, and 80% reported that were still satisfied at time of being surveyed. All persons responsible ($n = 9$) reported being satisfied with the outcome, both at the end of the conference and at time of completing the survey. Among supporters who participated in a conference, all person harmed supporters ($n = 3$) and all persons responsible supporters ($n = 5$) reported being satisfied with the outcome at the end of the conference, and most persons responsible supporters ($n = 4$) remained satisfied in the aftermath except for one who moved towards feeling neutral about it. No

participants reported dissatisfaction with the conference at the end of the conference or in the aftermath.

Figure 13: Satisfaction with conference outcomes, by respondent type (n = 27)



Note: PH = Person Harmed; PR = Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Summary

Conference processes were carefully planned and managed by Convenors. Flexibility was important for managing complex cases involving violence and a history of harm between people known to each other. Participation was possible in a variety of forms and a single conference format was often viewed as insufficient for DFV and sexual violence matters. A number of stakeholders preferred a model involving a series of structured, planned meetings over time.

The co-Convenor model supported practitioners to manage power dynamics in the conference room. Survey feedback showed that the majority of participants were satisfied with the conference process.

Post-conference processes

Once a conference was finalised, Convenors followed up with participants directly afterwards and then again during the subsequent week. Usually this was described as a phone call or in-person catch up to talk about how participants were feeling, make sure they are okay and see whether they needed referral or support accessing additional services:

We do follow up with them, so that might be you do that hopefully within the week after to give them an opportunity to debrief or just speak about the experience during the conference. But also give them an opportunity just to breathe rather than do it the next day. (251021S, RJ Practitioner, 2021)

Aside from this post-conference follow-up meeting, stakeholders said ongoing contact with participants following the conference was rare. This was typically because of limited resources and the need for Convenors to dedicate their time to new cases. Some interviewees reported that some participants found it hard to disengage from the RJU and the relationship they had built with the Convenors because of the emotional intensity of the process:

You come in and talk about such personal times in their lives and take them through a really emotionally draining process, so people open their lives up to you. Sometimes yeah, they are a little bit like, oh so is this it? Will I not talk to you again? (291021P, RJ Practitioner, 2021)

Some practitioners similarly expressed frustration that they did not know how people were going after the conference. One person harmed said that while the Convenors checked in with them after the conference to see how they were going, they would have appreciated a longer follow-up meeting after the conference so that the Convenors could provide a summary of what happened to supporters who may have only attended part of the meeting. They explained:

There should have been more follow up for participants that came in later, after all the important stuff got cleared up, just a short summary of what was said and stuff like that. Because from what I can remember there wasn't really that, it was just like, oh here's what [the PH] has mandated here for [the person responsible] to do... I think that's one of my small criticisms about it. Because it's like, I am very bad at explaining things and it's even harder to explain things when you've just gotten out of a very stressful situation. (Person harmed, Sexual violence, 2022)

There may have been additional follow-up if there was a formal agreement in place, and/or if the matter was still proceeding through traditional criminal justice process. If there was a formal agreement, the RJU was required to monitor its implementation and collect evidence that actions included in agreements were being achieved. Such evidence could be written letters from organizations where a person responsible was doing community service, or a letter from support services who were engaging with the person responsible. Once this evidence had been provided, the RJU would confirm that the agreement had been achieved and report this back to the person harmed, the person responsible, and the referring entity. The report would then be sent to the referring agency who would finalise the matter or initiate the next steps in the criminal justice process.

In situations where criminal proceedings were ongoing, the RJU was required to provide a report to the court confirming the participation of the person responsible in Phase Three which was then used to inform the sentencing process. It was unclear from the evaluation whether there was a 'discount' provided to persons responsible who participated in Phase Three. The information provided in the report and considered by the Court was limited to whether a conference occurred, whether there

was a formal agreement recorded and compliance with the outcomes of the agreement. However, there was evidence that there was very little consistency in how Judges were considering participation in Phase Three as part of sentencing decisions, as well as the information that was being provided to persons responsible about this aspect of the Scheme.

One parent of a person responsible who was interviewed reported that their experience with RJ was positive and they received a lot of support from the Convenor. However, they said that despite the efforts of the young person responsible to engage with the Scheme and repair the harm experienced by the person harmed, their participation in RJ and the final report submitted to the court appeared to have no positive impact on their sentence. The participant was distressed and angry about this, particularly as the RJU report and other reports submitted by other experts to the court had been 'glowing':

Her report was glowing, said lots of wonderful things about him, said that she thinks it's an isolated incident, a one off, said that she thinks it's a lack of education, things like that. But the judge had the view of whatever she had the view of, and we got the outcome that we did. And I just don't understand that, I really don't... Why is there an RJ process if you're going to disregard the report? (Supporter, Sexual violence, 2023)

Debriefing

Debriefing was described by stakeholders as important for supporting both participants in the conference as well as RJU staff members facilitating the process. Stakeholders at the RJU described debriefing as key for supporting practitioners' mental health and wellbeing when dealing with complex cases, and reducing the risk of vicarious trauma. Debriefing was undertaken informally as well as through fortnightly peer supervision.

In relation to the emotionally intense nature of doing this work, one stakeholder referred back to the co-Convenor model and how it facilitated additional opportunities for debriefing:

That's why the two-Convenor model is really vital... lots of opportunities to debrief and to have those unit conversations when things get difficult. (211221AH, RJ Practitioner, 2021)

Some participants interviewed spoke about their continued engagement in behaviour change or therapeutic programs after the conference, which was seen as a vital source of support. One person harmed talked about how after the conference there was a smooth transition from the RJU and into a more intensive engagement with family group therapy. They talked about how they felt lucky to have 'had the right people' during their engagement with the Scheme and with family group therapy:

So restorative justice was stepping back, and then yeah, family group therapy was stepping in. (Person harmed, Family violence, 2022)

However, the above case was described by stakeholders as being an ideal that is oftentimes not achieved in Phase Three because of limitations around the accessibility of community-based support services like family group therapy that could engage with persons harmed and persons responsible once the conference was over.

Time and resource limited programs like the RJU need to have an end date. This was important for the program to keep working effectively with the people who are directly engaged, as well as for those who have been through the process so that they can move on with their lives. Indeed, a number of participants reported that they did not want or need any further contact with the RJU

after the conference because the conference had helped them move past what had happened and they wanted to keep looking forward.

Summary

For a victim-centred program, it is encouraging that all persons harmed were satisfied with the outcome of the conference. Some participants and stakeholders would have liked more follow up after the conference or closure of their case. A number of persons responsible maintained contact with therapy and support programs facilitated through RJ after contact with the RJU had ceased.

The impact of Phase Three

This part of the evaluation focused on describing the impact of the Scheme, and the outcomes that were delivered for persons harmed and persons responsible who participated in Phase Three. The outcome evaluation is informed by:

- interviews with Scheme participants
- analysis of the post-conference survey
- the analysis of administrative data from ACT Policing and ACT Corrections.

The first section will outline the outcomes for persons harmed, presenting evidence from the interviews ($n = 7$) and the post-conference survey feedback ($n = 10$). By definition, all participants who completed the post-conference survey participated in a conference, and the majority of persons harmed interviewed participated in a conference (7/9). The outcomes described below provide a summary of the findings from interviews with persons harmed who participated in a conference ($n = 5$ family violence, $n = 2$ sexual violence) and 10 persons harmed who completed a post-conference survey ($n = 6$ family violence, $n = 2$ IPV, $n = 2$ sexual violence).

The second section will present the feedback from persons responsible, including evidence from the interviews ($n = 2$) and the post-conference survey ($n = 9$). Out of the 4 persons responsible who were interviewed, 2 participated in a conference. One was related to an incident of sexual violence and the other persons responsible was referred for perpetrating violence against their family members (i.e., adolescent family violence). The other 2 matters did not proceed to conference because the person harmed did not want to participate. The analysis of the interview data therefore focuses on the two interviews where the person responsible completed the program (i.e., they participated in the conference). The survey feedback from persons responsible were related to cases primarily involving family ($n = 6$), followed by IPV ($n = 2$; current/former partner), and sexual violence ($n = 2$). The final section of this chapter will describe the findings from the recidivism (reoffending) analysis. Further information on the methods used to undertake this analysis is provided below.

Person harmed outcomes

The outcomes evaluation is concerned with the extent to which the Scheme has achieved outcomes for victim-survivors who participated in Phase Three. The research outcomes were determined in collaboration with the RJU and following a scoping review of the literature. Outcomes specific to PH include:

- increased feelings of safety and wellbeing
- improved understanding that they are not to blame for the violence
- an increased ability to move on from what happened
- increased likelihood of re-reporting violence if it happens again
- a reduction in victimisation
- any other outcomes.

Taken together, qualitative analysis of the evidence from the post-conference surveys and interviews revealed that persons harmed reported experiences of Phase Three that aligned with the outcomes summarised above. In line with established theory examining the justice-interests of persons harmed in RJ processes (Bachelor 2021; Bolitho 2015; Daly 2014) the outcomes described by persons harmed were separated into the following categories: information, participation and voice; safety and support; relationships; offender accountability; and closure.

Information, participation and voice

Past research highlights the importance of meaningful participation and the opportunity to have a voice in proceedings for belief in procedural justice (Bachelor 2021). Many persons harmed reported that as a result of participating in the Scheme, they felt validated and heard. For some participants, this was a direct result of being provided with an opportunity to tell the person responsible about the impact that the offence had on them, in a safe and controlled setting:

I felt heard, even though I didn't need my perpetrator to understand what I was saying. I just needed a space to say it. And I don't think I realised how helpful that was going to be to me. (Person harmed, Family violence, 2021)

The above quote also demonstrates that, for some persons harmed, 'feeling heard' was not dependent on the person responsible or others believing them. The act of simply being able to tell their story without interruption and in their own words was a helpful experience.

One participant said that the Scheme helped them to understand the violence more, primarily because they were given an opportunity to ask questions of the person responsible in the conference. This included questions about the motivations of the person responsible for 'choosing' them or whether the offence was planned. As demonstrated in the below quote, some persons harmed reported that receiving this information was beneficial for them, even when it was difficult to hear:

And I did get the answers, although they weren't answers I was looking forward to, I did get answers to why... I got the answers that I needed, even if they weren't the answers that I wanted. (Person harmed, Sexual violence, 2022)

This is consistent with prior research where victim-survivors saw RJ was their only way of 'finding out truths' where they were willing to engage even if there was no guarantee of such an outcome (Bolitho 2015: 267). However, in our study it was more common for the person harmed to want to express their own voice and the impacts of the offence rather than hear what the offender had to say. One person harmed reported that they did not believe the person responsible had enough insight into their behaviour to provide them with the information they needed. Despite this, they still wanted the opportunity to tell them how the offence had impacted their life, and found the experience of doing so to be cathartic:

I knew that he wouldn't be able to answer my questions with any depth or I wouldn't get any clarity. I knew that. It was more about me having a platform to say what I wanted to say. And whether he understood and comprehended that, I didn't care. I just needed to say those things, air my grievances and get my money and walk away. And that's exactly what it provided me, a safe space to do that. It did meet all my expectations and all my targets and it was a really positive experience, but going into it, I knew that I wasn't going to get any deep philosophical answers. (Person harmed, Sexual violence, 2021)

The views of persons harmed who participated in interviews were supported by the analysis of the post-conference surveys. Nine of the 10 persons harmed who completed the post-conference survey agreed with the statement 'During the conference I felt heard by the other people at the conference'. No persons harmed 'neither agreed nor disagreed' with this statement and only one person harmed 'disagreed'.

However, for other persons harmed, feelings of being heard was in part attributable to conference participants reinforcing that they were not to blame for what had occurred and believing their narratives. Six of the 10 persons harmed who completed a post-conference survey 'agreed' with the

statement 'Because of the conference I do not feel like people blamed me for what happened'. Another two 'neither agreed or disagreed' with this statement and two persons harmed 'disagreed'. Similarly, six of the persons harmed who completed a post-conference survey 'agreed' with the statement 'Because of the conference, I feel confident that other people believe me'. Three persons harmed 'neither agreed or disagreed' with this statement and one 'disagreed'.

Without additional information from participants, it is difficult to interpret the responses of the persons harmed who were neutral or disagreed with the above statements about feeling they were believed, and were not being blamed. It may be that this was not a justice need for those people (e.g., they felt believed prior to conference) as the overall feedback about the conference from these participants was positive.

Safety and support

Several persons harmed reported that participating in the Scheme increased their feelings of safety. Across persons harmed, there was significant variation in the mechanisms associated with the program which they attributed to this change. For example, as demonstrated in the below quotes, some persons harmed said the experience, expertise and training of Convenors made them feel safe and supported during their participation and after they had exited the program:

The team that worked with me were really dedicated, and I think they were well trained for the process. (Person harmed, Family violence, 2022)

I've never dealt with anyone like that before so it was all new to me. And I'm grateful that I got the right person making sure I was alright, my daughter was alright, my other daughter was alright. (Person harmed, Family violence, 2022)

Others talked about how the convenor helped them to manage their anxiety and stress while they were participating in the Scheme, which in turn made them feel safer:

It's like, [the Convenor] kept me safe, sort of thing, but in her own little way. I think I remember ringing her up, I don't know if it was once or twice, and having a chat with her about a couple of situations. Being able to talk to someone about it, instead of having to ring the cops all the time, yeah. (Person harmed, Family Violence, 2022)

One person harmed talked about how feelings of safety were facilitated through the tailored agreement they came to at the end of the conference. In particular, the agreement provided clear guidance around how she and the person responsible (her daughter) could achieve their shared goal of living together again in way that made the person harmed feel comfortable and in control:

She'd come over for a few hours or something, and then she'd go again. And then she'd like, gradually [be] coming back slowly, instead of coming back straightaway, just gradually coming back in small steps... working back in, the small steps, yes, that was so much better. (Person harmed, Family violence, 2022)

The above quote also demonstrates how for some persons harmed, feeling safe was intertwined with a sense of control and empowerment. For a number of persons harmed, the Scheme contributed to them feeling more in control right from the start of their engagement, when they were asked whether they wanted to participate in RJ in the first place. For these persons harmed, being given options about how the criminal justice system responded to the incident as well as their participation in these processes gave them a sense of agency and control that they had lost as a result of the violence. As one person harmed noted:

Honestly, I think that's what a lot of people need after that kind of thing right, is the ability to make decisions and the ability to have power and control within the situation, rather than it being something that's just done revolving around them but not their decisions and what they want. (Person harmed, Sexual violence, 2022)

Limited participation of victim-survivors is a classic critique of the conventional criminal justice system and it is something that innovative justice mechanisms frequently aim to provide (Daly 2011). As outlined previously in this report, victim-justice interests are diverse but often overlap and share similar characteristics. These findings highlight that justice interests may also influence each other, as evidenced by a relationship between meaningful participation in justice processes for persons harmed, and person harmed reported feelings of safety and support.

The findings from the interviews are supported in part by the post-conference surveys completed by persons harmed. As shown in Figure 14:

- 5 persons harmed (50%) 'strongly agreed or agreed' with the statement 'Because of the conference I am less concerned about my safety', and another three said they 'neither agreed nor disagreed' with the statement
- 6 persons harmed (60%) 'strongly agreed or agreed' with the statement 'Because of the conference I feel less anxious', and two said they 'neither agreed or disagreed'
- 6 persons harmed (60%) 'strongly agreed or agreed' with the statement 'Because of the conference I feel less helpless, and two said they 'neither agreed nor disagreed'.

However, 2 persons harmed 'strongly disagreed or disagreed' with these statements, indicating that the conference did not contribute to them feeling safer, less anxious or helpless. As discussed above, this finding may relate to the differing justice needs of participants as no participants raised safety concerns about the conference when prompted during the post-conference survey.

Relationships

Past research demonstrates that relationships and safety are closely aligned justice needs for persons harmed participating in RJ processes (Bolitho 2015). Consistent with the theory that RJ is a relational intervention, participants in the Scheme reported impacts in a number of relational contexts, primarily the relationship between the person harmed and the person responsible, and the relationships of persons harmed and persons responsible with their family or broader community of care (Moore and Vernon 2023). There was also evidence that in some cases, the intervention had the impact of transforming the relationship the person harmed had with themselves, or the incident(s) of violence, and how they saw themselves in the aftermath (see section on Closure below).

As noted in previous sections of this [report](#), some persons harmed were motivated to participate in the Scheme because they wanted to repair their relationships with the person responsible and other affected family members. This goal was particularly reported in cases where the person harmed had been subjected to violence perpetrated by their children or grandchildren. In these situations, the person harmed had clear emotional reasons for maintaining these relationships. In other cases, the reasons were more structural; for example, a person harmed said they were initially motivated to participate in RJ because the person responsible was their grand-daughter's father and so they were likely to have to see him in the future. For these persons harmed, participation in Phase Three was viewed as a 'circuit breaker', an opportunity to discuss not only the incident that led to the referral, but also the history of harm in the relationship and its underlying causes.

Several participants, said that the Scheme helped them to improve their relationships with loved ones that had become strained not only because of the incident, but also patterns of abuse that had preceded it.

...It had a positive impact on the trajectory of our relationships. It put us in a place where we could keep growing in our relationships, rather than being stalled and estranged from one another. (Person harmed, Family violence, 2022)

Since then things have been better, we are communicating... Everyone is aware they don't want to have a similar situation... I felt for our family it was important but I also wanted to make sure that our son wouldn't be becoming a violent person. That was important to me. (Supporter, Family violence, 2022)

One support person reflected that the conference encouraged everyone in the family to discuss the violence openly which in turn provided everyone with the opportunity to address these issues in a safe environment:

...things needed to be talked about and addressed, not to get to that level where either we are bottling up, or we are frustrated, or trying to actually listen more, finding out what's happening rather than zero to ten. (Supporter, Family violence, 2022)

While in a number of cases the conference played an important role in resetting relationships between the person responsible and person harmed, the preparation processes were also beneficial for achieving this goal. One person harmed described her relationship with her adolescent son (the person responsible) as having become strained and distant because of his abusive behaviours towards herself and her daughter which had occurred over a number of years. They would also argue frequently because he had stopped attending school and was smoking and drinking alcohol. By the time she had contacted the police for the first time, she was emotionally distraught and stressed, and wanted her son to live with his father. However, after being referred to the Scheme she and her son started to work with the Convenor who helped them to prepare for the conference. By working with the Convenor the person harmed also started to repair their relationship with the person responsible to the point where he was able to return home.

Another person harmed reported that her son [the person responsible] was hesitant to engage with the Scheme at first but then increased participation by attending meetings more frequently over time, as rapport grew with the Convenor. As the meeting attendance increased, so too did the slow process of the person responsible coming back to the family home:

The first six months when I was there with [the Convenor] he did not come in once, and then we had many, many meetings and eventually he came for one night, and week later two nights, and he started to come back a little here and there... I would never have been able to have him back if we didn't have those billion of meetings before. (Person harmed, Family violence, 2021)

This suggests that in this case, the program design aspect of Phase Three where repeated preparatory meetings over time was effective in repairing the relationship between the person harmed and the person responsible in this family. While repairing relationships is a controversial goal of RJ in some cases such as IPV, this research shows that it was a primary interest for persons harmed in cases involving adolescent family violence in particular.

Offender accountability

One participant, who was supporting her son (person responsible) and husband (PH) in a child-to-parent violence matter spoke about how it was important for the person responsible to recognise explicitly in the conference that their behaviour was unacceptable, and for the person harmed to hear and witness this:

I guess for the person harmed and the person responsible, it actually allowed them to talk about how it got to that and recognising what was wrong, the person responsible recognising that what he has done was absolutely wrong, but also then for the person who received that to actually hear it. I think otherwise the person who has been the victim might think the other person is thinking that's ok to be doing that. (Supporter, Family violence, 2022)

For a minority of persons harmed, a genuine apology from the person responsible was described as important to them. Some participants felt that by the time they had gotten to the conference the person responsible was genuinely sorry and they believed them when they expressed this in the room:

Final conference was a beautiful success... at the conference, it took over a year, but [person responsible] said "I'm sorry" and he meant it. (Person harmed, Family violence, 2021)

Contrastingly, one person harmed talked about how important it was for them to *accept* an apology from the person responsible to provide a sense of freedom and redemption for the person responsible and in turn help them all move on:

Because I wanted to forgive him. I live in a world where forgiveness is a really powerful thing... I think it was more for his benefit that he apologized so that then, when I said I accepted his apology, he could feel forgiven. When I had probably already forgiven him, he needed to accept that I'd forgiven him. But by apologizing and me accepting his apology publicly in that meeting, in the conference, that then gives him freedom. (Person harmed, Family violence, 2022)

This is consistent with other research which has suggested that RJ provides persons responsible with an opportunity to demonstrate and prove their redemption to others during the conference (Claes & Shapland 2016; Maruna 2016). This ritualised aspect of redemption may be reflected back to persons responsible through the acceptance of an apology or recognition of the efforts that the person responsible has undertaken to change their behaviours.

One participant who was unable to pursue their matter through the traditional CJS had initially wanted to pursue both RJ and the formal prosecution of their matter through the courts, however they reported being advised by police that RJ was their only option:

Honestly, what I wanted was both [court and RJ] at the same time, which they said happens sometimes, but I wasn't given that option. It did make me think that it was going to be a hand-holding bullshit sort of option, which it definitely wasn't. (Person harmed, Sexual violence, 2021)

The person harmed in this case spoke about how they didn't believe that the offender took full responsibility for their behaviour, and while the person responsible apologised, they didn't believe that they were genuinely remorseful:

He tried to apologise, and I called him out and I'm like, that's not an apology. You have to fully take responsibility, so there were a few times that – it was very clear that he didn't grasp quite

what he'd done. He was very sorry he'd been caught and very sorry that it had impacted his life, but I don't think he was sorry... I don't think he grew very much or spent very much time assessing his actions or those sorts of things. But it's victim-led for a reason and I got what I needed out of it, and that was always the most important thing. And it was very clear from [the Convenors] that that was the most important thing, which was super-helpful. (Person harmed, Sexual violence, 2021)

The finding that the person harmed did not need the person responsible to take full responsibility and accountability for them to be able to benefit from the process supports a limited literature supporting the use of RJ in such matters (Bachelor 2021). For the person harmed in this case, instead of a genuine apology it was more important that they had other justice interests met, such voicing the impacts of the crime and being recompensed for the financial consequences they suffered as a result.

Stopping the violence or trying to ensure the person responsible does not perpetrate the violence onto anyone else was a key reason for participating for a number of persons harmed. Several persons harmed achieved the goal of accountability by requesting that the person responsible engage in therapy and community service:

I think the other one was just like community service, like give back to the community a little bit because, it's like, [if] you're gonna take something from someone, in this case my innocence as a person, right, it's like I want you to give back to the community, like please just give something back to the rest of society. Because it's like you have taken a lot from society and from my faith in people and trust, so it's like you need to give something back. I think that was the only things I really asked for, was for him to give back to the world and to go get help, because that was what was important to me. (Person harmed, Sexual violence, 2022)

The findings here show that person responsible accountability differed based on the nature of the case and the individuals involved, person harmed interests and needs, and the capacity or readiness of the person responsible to be fully accountable for their behaviour. The evidence demonstrates that accountability is not a unidimensional construct but rather of a spectrum of willingness or readiness. This is consistent with previous research showing that RJ can deliver benefits for persons harmed in cases where offender willingness and cooperation vary, so long as persons harmed are informed, prepared and supported to achieve realistic justice goals (Bachelor 2021).

Closure and being able to move on

As demonstrated throughout the discussion so far, for many persons harmed the Scheme helped them to gain closure and move on from the incident and (if relevant) the previous pattern of abuse and violence. This was achieved through various mechanisms, many of them outcomes already discussed, including the person harmed feeling heard and believed, improving their understanding of the incident and behaviours, as well as repairing relationships. This theme relates to justice interests and goals of validation, empowerment, growing and meaning (Daly 2014; Bolitho 2015). One person harmed provided feedback in the post-conference survey about how participating in the conference provided them with the opportunity to move from a place of vulnerability to strength:

Opportunity to talk to him face to face, lift myself up. Did wonders for me and my confidence, part of healing process. (Person harmed, Intimate partner violence, 2020)

Particularly in the context of sexual violence, it is common for victim-survivors to feel ashamed or blame themselves for the violence that was perpetrated against them (Australian Bureau of

Statistics, 2021). One person harmed reported how the Scheme transformed this way of thinking and restored their sense of self and understanding that they were not to blame for the violence:

I was just blaming myself a lot for what happened rather than blaming him. So it's like, I honestly had a very big weight lifted off me after the thing happened, because I knew it wasn't my fault anymore and I didn't see it as my fault anymore. (Person harmed, Sexual violence, 2022)

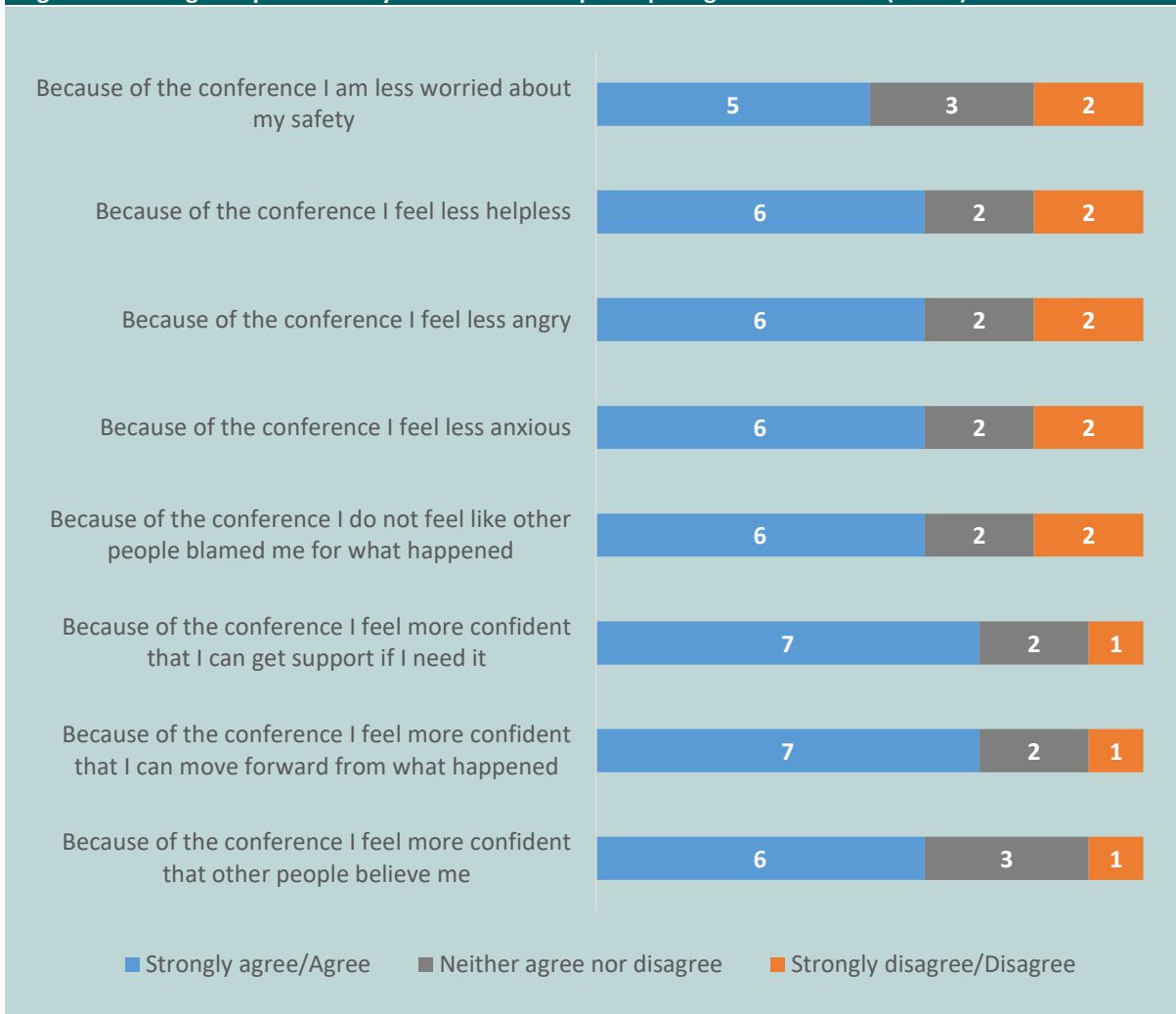
This is consistent with research showing that the process of meeting with the offender supports persons harmed achieve the goal of separating themselves from the incident, re-establishing a sense of control and seeing themselves differently (Bachelor 2021). Another person harmed spoke about how because they were able to say everything they needed to say in the conference, they were then free to move forward with their life and they did not need to talk about it anymore:

I felt great. It actually felt like a weight had been lifted off me. I just didn't have to deal with that anymore. It was finally done... [the Convenor] had asked me what my goal going in was, and my main goal was to say everything I wanted to say and walk out of the room feeling like I didn't have anything left that I needed to say on that whole topic. And that's exactly how I left that room. Our meeting went for about an hour or two and I got to say everything I wanted to say, and it was like a line under that part of my life. (Person harmed, Sexual violence, 2021)

Finally, other persons harmed reported that ensuring that the person responsible was engaging with support services helped them to move on from the incident and obtain closure. For these persons harmed, the belief that the person harmed was unlikely to offend again mitigated a lot of their stress and emotional distress. As one person harmed reflected:

I did genuinely want him to get help before he hurt someone else like how he hurt me. Because I wouldn't wish what he did to me on anyone else and because it's just not something that's good. I did get what I wanted from him which was answers and for him to go seek help. (Person harmed, Sexual Violence, 2022)

Figure 14: Changes experienced by PH as a result of participating in conferences (n = 10)



Note: PH = Person Harmed

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Taken together, the findings from the analysis of the interviews and post-conference surveys highlight outcomes for persons harmed relate to safety and support, expertise of the Convenors, the importance of the conference for validation and feeling heard, re-establishing a sense of control through decision making power, re-setting relations with others and the self, and providing a space for closure in the aftermath of trauma.

Although the previous analysis demonstrates that positive benefits and outcomes were achieved for many persons harmed who participated in the Scheme, as with any new program like Phase Three there is, as a starting point, a need to examine whether it does not make things *worse* for the people it is intended to help: victims-survivors of DFV and sexual violence offences and behaviours. Critically, all ten persons harmed who completed a post-conference survey reported that nothing negative had happened as a result of participating in the conference. Further, nearly all (90%, n=9) persons harmed said they would participate again and would recommend Phase Three to someone else.

Person responsible outcomes

The outcomes evaluation is concerned with the extent to which the scheme has achieved outcomes for persons responsible who participated in Phase Three. Outcomes specific to persons responsible include:

- Increased understanding of the impact of the violence on the victim-survivors and others
- Increased understanding of that they are responsible for the violence
- Increased commitment not to offend again (including abiding by orders)
- Increased ability to move on from what happened.

Taken together, the evidence from the two interviews and nine post-conference surveys completed by persons responsible who completed the scheme can be summarised under the three themes: increased understanding of the impact of their actions; access to supports; and impact of the scheme on reoffending.

Increased understanding of the impact of actions

There was evidence from the interviews and analysis of the post-conference surveys that participation in the Scheme increased persons responsible understanding of the impact of their behaviours on the person harmed and others. Certainly, one person responsible reported in the interview that while they wished they had never needed to go through the process in the first place, participating in Phase Three had “a positive impact” on them and helped them to understand the impact of their behaviour:

I learnt more about these sorts of cases and how victims can be affected by it. I hope that I never truly have to know how it affects them, but it does feel better to know just a little bit. I got definitely more understanding about these sorts of situations and the effects that they have on people. (Person responsible, Sexual violence, 2022)

The person responsible went on to suggest that the conference and experience of Phase Three as a whole, had made them think very carefully about what they had done and how to behave in future:

This entire process has been very eye opening, it made me a lot more careful about my actions [and] a lot more careful knowing the impact it has on people. I guess I have just become a lot more careful and a lot more of, I guess, a better person. If that makes sense. And I do feel like I am a lot more sympathetic, a lot more cautious with my actions than I was before the whole process. (Person responsible, Sexual violence, 2023)

The views of this person responsible were supported by the analysis of the post-conference surveys. All of the person responsible who completed a survey ‘strongly agreed or agreed’ with the statement ‘Because of the conference I understand how my actions affected people’ ($n = 9$).

However, 1 of the persons harmed questioned how much insight the person responsible in their conference had into their own behaviours, as they did not believe the person responsible had engaged with any consent education prior to the conference. As she noted:

He [the person responsible] has no understanding of consent. 12 months between offence and RJ. Thought RJ would have educated him and encourage to do course before RJ, understood a bit more around consent and working with him on this during preparation for the RJ. (Person harmed, Sexual violence, 2021)

Despite this, the person harmed still said she benefitted from participating in the conference greatly and would recommend it to others. When asked what they had gotten out of the conference, they said that being able to help the person harmed to resolve feelings around the event was something they had hoped to achieve by participating:

I feel like I was able to help resolve some of the stress that the victim was feeling. But I can never really know. (Person responsible, Sexual violence, 2023)

Accessing supports

Both person responsible interviewed said they benefited from engaging in counselling or with a support service alongside participation in Phase Three. For one person responsible, this participation in counselling was a task included in their agreement and at the time of the interview, had been participating regularly for six months. When asked about their experience with the counselling, they said:

It has been useful, I've been able to use that time to resolve some mental distress I was feeling from the issues and I was able to use it reflect upon myself as a person. It's been very helpful towards me. (Person responsible, Sexual violence, 2023)

The other person responsible who was interviewed similarly reflected very positively on their experiences of engaging with a local support program for boys and men which they believed had provided them with skills and tools to manage their mental health issues. It was their engagement with this program, which started after the incident, which they believed primarily contributed to their behaviour change, not participation in the Scheme itself. However, they did perceive the Scheme generally had a positive impact on their behaviours.

It probably helped a little bit in retrospect, subconsciously though. It was not like, oh this is helping me, I need to keep doing it. It was light improvements, not a major factor. (Person responsible, Family violence, 2022)

This is consistent with some literature showing that RJ may not have a positive impact on the behaviour of persons responsible (e.g., Piggott & Wood 2018). Instead, studies suggest that RJ supports behaviour change processes that have already commenced for persons responsible, and so provide a space for persons responsible to demonstrate that they have changed and are committed to maintaining their non-offending (Lauwaert & Aertsen, 2016; Robinson & Shapland, 2008). For some persons responsible, RJ can encourage change towards desistance through strengthening support networks whereas others (such as the participant quoted above) have already made the decision to change which this is partly evidenced through their engagement with RJ (Suzuki & Yuan 2021).

In summary, the feedback from interviews with persons responsible indicate a mixed response to the program. For those two persons who completed Phase Three, participated in a conference and volunteered for an interview, one reported experiencing more benefit than the other. Benefits reported by persons responsible included being able to apologise, listen to what the person harmed had to say and gain insight into the impact of their actions. Where there was a lack of impact, this was associated with indifference to the process, timing and delays.

Figure 15: Changes experienced by PR as a result of participating in conferences (n=9)



Note: PR Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

The impact of Phase Three on recidivism

The final component of the evaluation focused on the impact of the Scheme on reoffending among persons responsible. This analysis was informed by:

- interviews conducted with persons harmed, persons responsible and support persons
- post-conference surveys completed by persons responsible
- the analysis of administrative data from ACT Policing and Corrections extracted for persons responsible referred to the Scheme during the evaluation period and a matched control group.



Methodological note

The inclusion of recidivism as a goal of RJ processes is controversial, in part because the prevention of recidivism is a goal closely aligned with traditional criminal justice. However, numerous researchers have noted the potential impact of RJ on desistance processes, albeit as a ‘happy side-effect’ of these processes (Robinson & Shapland 2008:340) including for persons responsible who perpetrate DFV and sexual violence behaviours (Presser & Gaarder 2000). Further, as noted in previous sections of this report, one of the reasons why persons harmed choose to participate in the Scheme was to prevent the person responsible from being violent towards them, or anyone else, in the future. As such, recidivism was viewed by some persons harmed as a victim-centered justice goal. Finally, numerous evaluations of RJ programs have included information about its impact on recidivism (see for example Strang et al., 2013).

The person responsible in the family violence matter talked about how they have had “a pretty clean slate” since they participated in the RJ process. However, they attributed this primarily to their own

motivation and efforts to make changes to their behaviour and in their life, and their engagement with a local support program for boys and men, rather than the impact of Phase Three specifically.

However, one supporter said while the process had stopped the violence for the time being, they weren't convinced that the person responsible would not offend again in future:

In one part, going through that whole process, it's definitely stopped [the person responsible] from doing any more property damage, which I guess was one of the goals, but the other side of it and potentially, reoffending, whether it be that or something else, I would not be confident that he's over that hump yet. (Supporter, Family violence, 2021)

Several persons harmed reported that the person responsible had demonstrated accountability through participating in Phase Three and the related therapeutic supports. The mother of a young person responsible reported that there had been clear benefits from the conference but ongoing intervention with Phase Three would be helpful maintaining this:

He has been really good. There have been improvements, also we understand being a teenager and all that, but we haven't had an incident in any way like that. There might be some yelling happening or frustration but not in that way, it's been more, I feel like often it would be good to continue on with the meetings, just continuously have meetings (laughs). (Person harmed & person responsible supporter, Family violence, 2022)

Others similarly reported skepticism about the extent to which the short-term benefits would extend to long-term benefits. One person harmed said that she saw some real positive developments during and immediately after the conference, but noted the absence of broader supports from professionals who had specialist expertise in young people with challenging behaviours:

To think it's [the conference] all going to succeed on its own, is ludicrous. (Person harmed, Family violence, 2021)

Taken together, the feedback from the person harmed, persons responsible and their supports suggest that completion of Phase Three had an impact in stopping the violence from re-occurring. However, in some cases it was not clear whether this would extend beyond the short-term and after engagement with the program had ceased.

Descriptive statistics

Table 11 summarises the key characteristics of perpetrators referred to Phase Three and those in the comparison group. Most perpetrators in the sample are males (83%), non-First Nations (88%) and were 18 years of age or older when they committed their reference DFV and sexual violence offences (i.e., for the comparison group, the DFV and sexual violence offences they were apprehended for at their reference date, and for the Phase Three group, the DFV and sexual violence offences that led to their referral; 94%). Around half the sample had one or two reference DFV and sexual violence offences recorded, and only around one-tenth (12%) had seven or more reference DFV and sexual violence offences recorded. These offences were predominately committed during the COVID-19 pandemic. A large portion of the sample (58%) had no offences of any kind recorded prior to their reference DFV and sexual violence offences, and only 12% had 10 or more. Seventeen percent had DFV and sexual violence offences recorded prior to their reference DFV and sexual violence offences. One-fifth of the sample were in mid-to-late adolescence (i.e., 14-17 years of age) at their first recorded offence (21%), while a little under half were aged 18-24 years (22%) or 25-34 years (23%). The average adjusted follow-up period was a little over two years, albeit with a large degree of variation across perpetrators.

Significantly higher proportions of perpetrators in the Phase Three group were young and female, although adults and males still make up the majority. This may relate to perceptions that RJ is more suitable for female offenders, given evidence that female offenders who participate in a restorative justice conference are less likely to reoffend than their male counterparts (Hayes 2005). Importantly, groups also differed significantly on a number of indicators relevant to recidivism risk. Phase Three perpetrators were more likely to have committed their first recorded offences at a younger age, and were twice as likely to have a recorded history of DFV and sexual violence offending. Additionally, they have a longer average adjusted follow-up time—likely due, at least in part, to the higher proportion of young perpetrators in this group who are less likely to receive custodial sentences—and were more likely to have committed their reference DFV and sexual violence offences pre-COVID-19.

Table 11: Characteristics of PR, by cohort

	Overall (<i>n</i> = 1,928) % (n) or M (SD)	Phase Three (<i>n</i> = 150) % (n) or M (SD)	Comparison (<i>n</i> = 1,778) % (n) or M (SD)	χ^2 (df), <i>V</i> or <i>t</i> (df), <i>d</i>
Male	83 (1,597)	75 (113)	83 (1,484)	6.4 (1)*, 0.06
Non-First Nations	88 (1,697)	85 (128)	88 (1,569)	1.1 (1)
Adult (18+ years)	94 (1,818)	69 (103)	96 (1,715)	198.6 (1)***, 0.32
No. current DFV and sexual violence offences				37.1 (2)***, 0.14
1-2	47 (903)	71 (106)	45 (797)	
3-6	41 (795)	23 (34)	43 (761)	
7+	12 (230)	7 (10)	12 (220)	
No. prior offences (any)				2.2 (2)
0	58 (1,115)	59 (89)	58 (1,026)	
1-9	30 (573)	32 (48)	29 (525)	
10+	12 (240)	9 (13)	13 (227)	
Any prior DFV and sexual violence offences	17 (336)	31 (47)	16 (289)	21.8 (1)***, 0.10
Age of onset (years)				66.9 (5)***, 0.19
10-13	7 (131)	15 (22)	6 (109)	
14-17	21 (396)	41 (61)	19 (335)	

Table 11: Characteristics of PR, by cohort

	Overall (<i>n</i> = 1,928) % (n) or M (SD)	Phase Three (<i>n</i> = 150) % (n) or M (SD)	Comparison (<i>n</i> = 1,778) % (n) or M (SD)	χ^2 (df), <i>V</i> or <i>t</i> (df), <i>d</i>
18-24	22 (427)	17 (26)	23 (401)	
25-34	23 (446)	10 (15)	24 (431)	
35-44	16 (308)	9 (14)	16 (294)	
45+	11 (220)	8 (12)	12 (208)	
Total adjusted follow-up time (days)	814.2 (408.4)	968.3 (434.8)	801.2 (403.5)	-4.8 (1,926) ^{***} , 0.41
COVID-19 restrictions in effect at reference date				19.8 (3) ^{***} , 0.10
<i>Pre-COVID-19</i> 01/11/2018-15/03/2020	37 (720)	54 (81)	36 (639)	
<i>COVID-19 restrictions</i> 15/10/2021- 31/12/2023	25 (470)	18 (27)	25 (443)	
<i>COVID-19 restrictions</i> 16/03/2020- 11/08/2021	35 (675)	25 (37)	36 (638)	
<i>COVID-19 lockdown</i> 12/08/2021- 14/10/2021	3 (63)	3 (5)	3 (58)	

Note: PR Person Responsible

Source: Evaluation of Phase Three of the Restorative Justice Scheme, Post-Conference Survey (November 2018-August 2022), [Computer File]

Phase Three referral and recidivism

There are no significant differences between the unmatched Phase Three and comparison groups in the likelihood of DFV and sexual violence recidivism (Table 12 & Figure 16). However, the frequency of recidivist offences is significantly lower for the Phase Three group than the comparison group (IRR = 0.58, 95% CI = 0.38-0.89). The estimated average number of recidivist offences is 0.47 lower for Phase Three perpetrators (0.67, 95% CI = 0.40-0.93) than it is for those in the comparison group (1.14, 95% CI = 0.98-1.30) (Figure 17). This represents a 52% difference in the estimated average number of recidivist offences. There is no significant difference in time to recidivism between the Phase Three and comparison groups (see also Table 13).

Entropy balancing was used to reweight the comparison group and balance it with the Phase Three group on all covariates specified in Table 11, except for adjusted follow-up time. Diagnostic testing was undertaken post-matching to ensure that groups were sufficiently balanced on these covariates. While separate bivariate comparisons of matched groups on each covariate could be used to check this, there is a degree of exactness desired from statistical matching that such comparisons are ill-

suited to detect. Instead, standardised bias is used to quantify, as a percentage, the remaining difference between the Phase Three and comparison groups in each of these covariates, with zero percent meaning no difference (Rosenbaum and Rubin 1985). Subsequent to matching, the standardised bias reduced to less than 1% across all covariates, from 20% or more in most instances pre-matching. Further checks were undertaken of the distribution of entropy balance weights to ensure that covariate balance had not been achieved with a small number of heavily up-weighted comparison group cases. In such instances, these up-weighted cases exert a disproportionately large influence (Parish et al. 2017). Over 90% of entropy balance weights were less than 1, and the highest balance weight was about 3.5. This is markedly lower than the maximum weights of 20-30 recommended in the literature (Parish et al. 2017; McMullin & Schonberger 2022).

Results of the matched comparisons of perpetrators in the Phase Three and comparison groups are similar to those of the unmatched comparisons. Namely, perpetrators referred to Phase Three do not significantly differ from those in the comparison group in terms of their probability of recidivism or the time to recidivism, but do differ significantly in terms of the frequency of recidivist offences. Again, perpetrators referred to Phase Three, on average, have around half the number of recidivist offences as those in the comparison group (IRR = 0.58, 95% CI=0.37-0.91). The estimated average number of recidivist offences is 0.57 lower for Phase Three perpetrators (0.78, 95% CI = 0.52-1.04) than it is for those in the comparison group (1.35, 95% CI = 0.94-1.75). This represents a 59% difference in the estimated average number of recidivist offences.

A final test was undertaken to examine whether Phase Three referral has a differential impact for young and adult perpetrators. Entropy balancing was again used to achieve balance on the same set of covariates—except perpetrator age—between intervention (Phase Three-comparison) and age (young-adult) groups. Post-hoc diagnostic testing indicated that the standardised bias between these groups reduced to less than 1% across all covariates, while over 95% of entropy balance weights were less than 1, with the highest sitting at around 4.

The odds of young perpetrators referred to Phase Three recidivating are triple those of adult perpetrators referred to Phase Three (OR = 3.01, 95% CI = 1.03-8.81). However, there are no significant differences in the likelihood of recidivism between young and adult perpetrators referred into Phase Three and their age group counterparts in the comparison group.

Turning to the frequency of recidivist offences, the results suggest that the impact of Phase Three referral depends on perpetrator age. First, there is a significant difference between young and adult perpetrators referred into Phase Three in the number of recidivist offences they commit. Specifically, young perpetrators referred to Phase Three have almost 6 times the rate of recidivist offences as adult perpetrators referred to Phase Three (IRR = 5.80, 95% CI = 2.03-16.58). The estimated average number of offences is 0.87 higher for young perpetrators referred into Phase Three (1.40, 95% CI = 0.56-2.33) than it is for adult perpetrators (0.53, 95% CI = 0.30-0.77) referred into Phase Three. This represents a 90% difference in the estimated average number of recidivist offences. Meanwhile, adult perpetrators referred to Phase Three have one-third the rate of recidivist offences as adult perpetrators in the comparison group (IRR = 0.31, 95% CI = 0.19-50). The estimated average number of offences is 1.20 higher for adults in the comparison group (1.73, 95% CI = 1.17-2.29) than it is for adult perpetrators referred to Phase Three (0.53, 95% CI = 0.30-0.77). This represents a 106% difference in the estimated average number of recidivist offences.

Finally, the impact of Phase Three referral on time to recidivism does not depend on perpetrator age, although there is a notable but non-significant difference between adult and young perpetrators referred into Phase Three.

Table 12: Regression models predicting the likelihood, frequency and time to DFV and sexual violence recidivism for perpetrators across the Phase Three and comparison groups

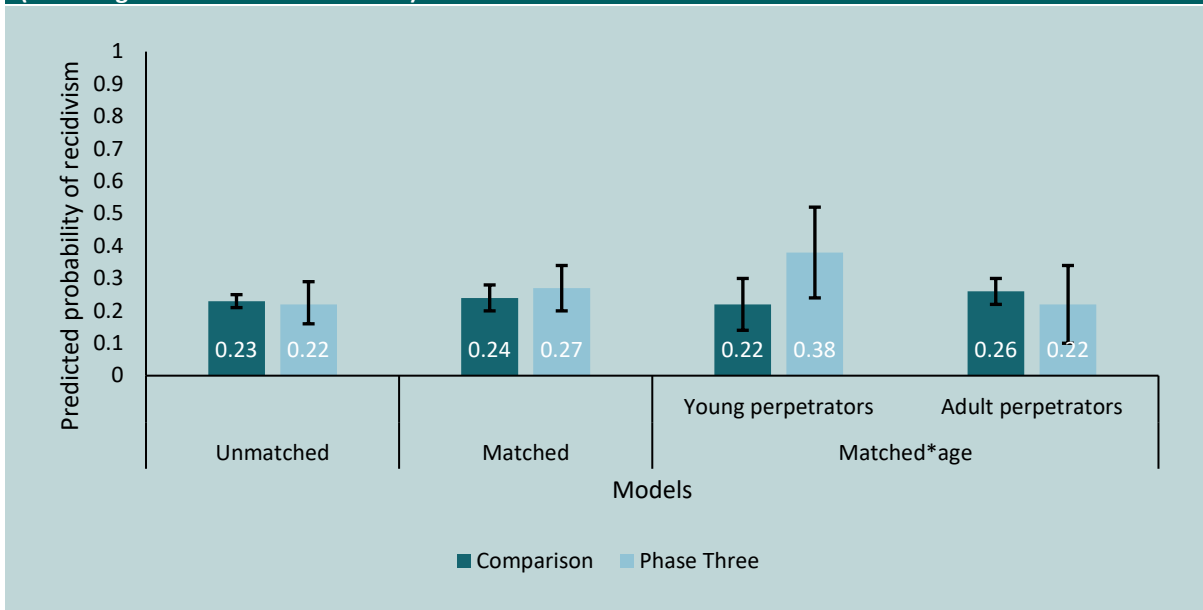
	Unmatched			Matched			Matched*age ^a		
	OR (95% CI)	IRR (95% CI)	HR (95% CI)	OR (95% CI)	IRR (95% CI)	HR (95% CI)	OR (95% CI)	IRR (95% CI)	HR (95% CI)
Phase Three referral (vs comparison)	0.93 (0.62- 1.41)	0.58 (0.38- 0.89)*	0.95 (0.69- 1.33)	1.21 (0.78- 1.90)	0.58 (0.37- 0.91)*	1.20 (0.83- 1.73)	0.78 (0.47- 1.30)	0.31 (0.19- 0.50)***	0.84 (0.54- 1.30)
Young perpetrators (vs adult perpetrators)	-	-	-	-	-	-	0.79 (0.33- 1.84)	0.46 (0.19- 1.14)	0.80 (0.40- 1.58)
Phase Three referral*perpetrator age	-	-	-	-	-	-	3.01 (1.03- 8.81)*	5.80 (2.03- 16.58)**	2.27 (0.93- 5.54)†

a: The inclusion of an interaction term for intervention and perpetrator age in these models changes the meaning of the intervention variable (Phase Three referral vs comparison). Statistics for Phase Three referral (vs comparison) in these models indicates the unique effect of Phase Three referral for perpetrators in the base category of the age variable (ie. adult perpetrators) only. Meanwhile, statistics for young perpetrators (vs adult perpetrators) indicate the unique effect of age for perpetrators in the base category of the intervention variable (ie. the comparison group) only. Statistics for the interaction term (Phase Three referral*perpetrator age) indicate the difference in the effect of Phase Three referral between young and adult perpetrators.

Note: † $p=0.10$, * $p=0.05$, ** $p=0.01$, *** $p=0.001$, OR=odds ratio, IRR=incidence rate ratio, HR=hazard ratio

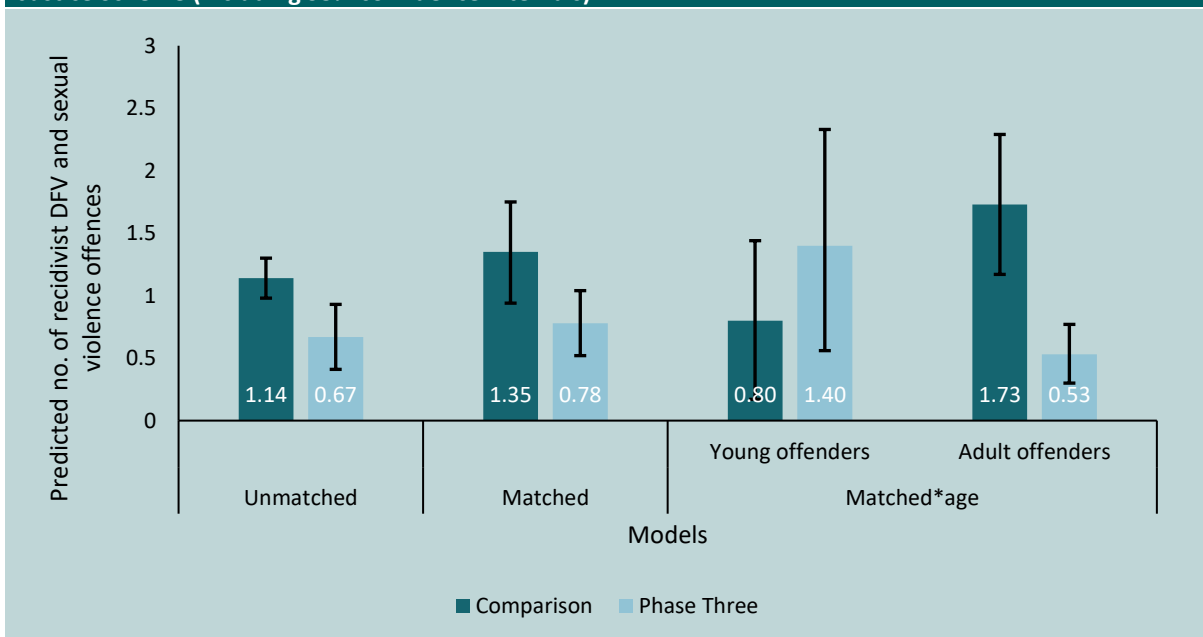
Source: ACT Government 2023 [dataset]

Figure 16: Predicted probabilities of DFV and sexual violence recidivism among DFV and sexual violence perpetrators who were and were not referred into Phase Three of the ACT's Restorative Justice Scheme (including 95% confidence intervals)



Source: ACT Government 2023 [dataset]

Figure 17: Estimated average number of recidivist DFV and sexual violence offences among DFV and sexual violence perpetrators who were and were not referred into Phase Three of the ACT's Restorative Justice Scheme (including 95% confidence intervals)



Source: ACT Government 2023 [dataset]

Table 13: Cumulative DFV and sexual violence recidivism probabilities for DFV and sexual violence perpetrators who were and were not referred into Phase Three of the ACT's Restorative Justice Scheme

	6 months	1 year	2 years
Unmatched			
Phase Three	0.13	0.17	0.26
Comparison	0.11	0.16	0.22
Matched			
Phase Three	0.12	0.17	0.26
Comparison	0.10	0.14	0.20
Matched*age			
Phase Three - adult	0.12	0.14	0.20
Phase Three – young person	0.15	0.24	0.41
Comparison - adult	0.13	0.16	0.22
Comparison – young person	0.10	0.15	0.21

Source: ACT Government 2023 [dataset]

On the surface, the results suggest that referral to Phase Three reduces the number of further DFV and sexual violence offences that perpetrators commit, but not their likelihood of committing any further DFV or sexual offences, or the time it takes them to do so. However, on further investigation, the results suggest that this effect is limited to adult perpetrators only. While referral to Phase Three does not appear to have a significant impact on DFV and sexual violence recidivism for young perpetrators relative to no referral, the results suggest that young people referred into Phase Three are more likely to commit further DFV and sexual violence offences, and to commit more DFV and sexual violence offences, than adult perpetrators referred into Phase Three. This is despite there being no differences in DFV and sexual violence recidivism between adult and young perpetrators in the comparison group.

Importantly, these findings should not be taken as suggesting that Phase Three referral has a criminogenic effect for young perpetrators, since there were no significant differences in recidivism between young perpetrators who were and were not referred into Phase Three. Rather, these results point to at least one of the following two conclusions;

- there are differences in the risk profiles of adult and young perpetrators referred to Phase Three
- there are differences in the management of adult and young perpetrators referred to Phase Three.

While statistical matching was used to account for common static risk factors for recidivism (ie. characteristics of criminal history and current offending), the analysis does not account for other important and dynamic risk factors, including alcohol and substance use, mental health issues, or the

nature and severity of offending, which could vary between adult and young perpetrators. It is also possible that differences in maturity levels between adult and young perpetrators mean that adults are potentially more likely to participate more actively and constructively in the Phase Three process.

Critically, it is probable that a larger proportion of young perpetrators were referred to Phase Three for violence against their family members (i.e., parents, siblings, extended family), while a larger proportion of adult perpetrators were referred for violence against current or former intimate partners. If this is so, one could expect many young perpetrators to continue to have contact with their victims in homes within which their offences occurred, while adult perpetrators are arguably more likely to have been subjected to Family Violence Orders and other legal and informal measures to keep them separated from their victims and their families. This is especially the case if referral to Phase Three is used more often as a diversionary measure to keep young perpetrators out of the criminal justice system, while running concurrent to more punitive policing and criminal justice responses for adult perpetrators. Consequently, there could be differences in the extent to which young and adult perpetrators referred to Phase Three are exposed to opportunities to recidivate.

Discussion

Key finding 1: Overall, there was broad support for the use of RJ as an alternative justice pathway for DFV and sexual violence matters, and an identified need for a program like Phase Three

There was broad agreement among people interviewed for the evaluation that there was a need for a program like Phase Three. Certainly, the need for the Scheme was evidenced by the large number of cases that were referred to the program during the evaluation period ($n = 162$).

Although stakeholders acknowledged the potential for Phase Three to reduce burden on the criminal justice system, the primary identified benefit of the Scheme was the prioritization of the justice needs and interests of victims-survivors of DFV and sexual violence-related behaviours and offences. The interviews with persons harmed found that many of their identified goals for participating in RJ fell outside the remit of traditional criminal justice processes. Common goals identified by persons harmed centered around their opportunity to participate in the justice process, particularly having a voice and feeling heard (telling their story and speaking their truth to the perpetrator in safe setting without being interrupted), and getting information (asking questions/getting answers from the person responsible). The justice-related goals of persons harmed who participated in Phase Three were largely consistent with those identified in the broader literature (Aertsen et al 2011; Daly 2017; Daly & Wade 2017).

As a trauma-informed and victim-centered process, Phase Three was compared favourably against traditional criminal justice processes which were characterized by stakeholders as offender-focused and 'side-lining' victims-survivors. The interviews with persons harmed and support persons suggested that many found conventional criminal justice processes confusing, rigid and punitive, while in other situations the person harmed believed that the police and other criminal justice representatives had minimized the abuse and its impacts by either choosing not to investigate the matter, downgrading subsequent charges or misidentifying the primary perpetrator. This is again consistent with the broader literature which has similarly identified that many victims-survivors of crimes, particularly DFV and sexual violence, report negative experiences engaging with traditional criminal justice systems (see for example Lawler & Boxall 2023).

Key finding 2: There were high levels of satisfaction with Phase Three processes among participating persons harmed and persons responsible

The analysis of the post-conference surveys and interviews identified high levels of satisfaction with Phase Three processes among participating persons harmed, persons responsible and support people. For example, the analysis of the post-conference surveys found that all but one surveyed person harmed 'strongly agreed' or 'agreed' that the RJ process had respected their rights, that they had been treated with respect and that they had been treated fairly. Further, 8 of the 10 surveyed persons harmed said they had been able to say what they wanted to say during the conference. As further evidence of the positive experiences of persons harmed and persons responsible participating in Phase Three, nearly all of the surveyed persons harmed and persons responsible said they would participate again and that they would recommend Phase Three to someone else.

Even in cases where the matter did not proceed to conference, Phase Three participants reflected positively on their experiences engaging with the program. In particular, participants described Convenors as being empathetic and non-judgmental, and being excellent communicators. Many persons harmed also observed that the Convenor had supported them to make decisions about how

and the extent to which they would participate in the process which they experienced as empowering.

Despite being relatively unexplored in previous research (Suzuki & Yuan 2021), the expertise and support of Convenors was identified as critical to the success of Phase Three. Some participants described family members who had perpetrated harm as being 'changed for the better' or even becoming 'a different person' since participating in Phase Three, attributing the shift to when the person responsible met the Convenor assigned to their matter. Other persons harmed emphasized the significance of the support they received from Convenors at such a stressful time in their life or feeling that the Convenor 'kept them safe' (Person harmed, Family violence, 2022).

However, it is important to acknowledge that a small number of Scheme participants, particularly persons responsible and persons responsible support people, were not satisfied with the processes associated with the program. In most of these cases, the negative experiences of participants appeared to be primarily attributable to a lack of understanding about the role of RJ in traditional criminal justice processes, including the extent to which participation in RJ could influence sentencing.

The *Crimes (Sentencing) Act 2005* is clear that a court must not increase the severity of a sentence because of a person's choice to participate or not to participate in RJ. Nevertheless, one person responsible who participated in an interview reported that they were not fully informed of the consequences of their decision not to take part in RJ (by the RJU or their legal counsel) and this then had negative consequences for them in court. Conversely, a person responsible support person reported the opposite problem where they were disappointed that participation and completion of Phase Three appeared to have no impact on sentencing.

Importantly, the lack of clarity around the ways in which RJ are integrated with traditional criminal justice processes is not specific to Phase Three. Instead, it is a challenge encountered by many jurisdictions where RJ are operating within and alongside traditional criminal justice processes (Ward & Langlands 2008). The findings from this research suggest there may need to be additional clarity around the information that is provided to and assessed by judges when sentencing individuals who have participated in alternate justice processes such as RJ. Further, it may reflect a lack of understanding or diversity in views on behalf of the judiciary about how RJ should be relevant to sentencing and as part of the broader conventional CJS process. For some persons harmed, the potential that participation in RJ would result in a lower sentence for a person responsible may be a disincentive for them to take part. This conflict is a challenge for all RJ programs to navigate and it is an area in need of further research.

Key finding 3: There were significant delays associated with the allocation of matters to Convenors which was frustrating and sometimes distressing for referred participants

A number of referring stakeholders raised concerns about the significant period of time that could elapse between referring a matter to Phase Three and when it was allocated to a Convenor. The long wait-times associated with allocation were primarily attributable to the demand for the Scheme exceeding supply, and Convenors lacking capacity to take on new matters. This was influenced in part by the shift to a co-Convenor model introduced for Phase Three, which meant that two Convenors had to be available for a matter to be allocated. However, the delays were also due to limited resources available to the RJU. In particular, when Phase Three was implemented, it was not anticipated that additional resources would be required to manage these referrals, in addition to referrals made through Phases 1 and 2. Stakeholders reported that there was no triage process at the RJU to manage referrals coming through all three Phases, noting that this would not be

appropriate. As one stakeholder reflected ‘How do you prioritise one referral over another? Do you prioritise the referral for the young Indigenous offender, the sexual violence matter?’ (RJ Practitioner, 2022).

Several Scheme participants who took part in an interview or completed the post-conference survey expressed frustration that after the referral it had sometimes taken months for their matter to be allocated and for them to be contacted by the RJU. Delays were distressing for some persons harmed who referred to wanting to move on from the offence and that not having a timeframe around allocation and then the conference itself acted as a barrier to this. Certainly, the analysis of the administrative data found that some persons harmed did not consent to participate in the Scheme when contacted by the RJU because they wanted to put the offence behind them and move on with their lives.

Key finding 4: The referral of sexual violence matters to Phase Three was much lower than anticipated

Despite acknowledgement among stakeholders of the limited capacity for the criminal justice system to address the needs of victim-survivors of sexual violence and the potential benefits of RJ for participating persons harmed, over the evaluation period only 16 sexual violence cases were referred to Phase Three. The low number of referrals for sexual violence matters was attributed to a range of factors. First, some stakeholders were reluctant to refer sexual violence matters because offenders were likely to be ‘deniers’ and repeat offenders, which they believed made the process potentially harmful for persons harmed.

Second, it was noted that the Scheme’s basic eligibility criteria was a significant barrier to the referral of sexual violence matters. Referrals to Phase Three are limited by the statutory agency, the type of offence and the stage of the CJS. Interviews with stakeholders indicated that while the largest proportion of sexual offences that are reported to police in the ACT are sexual intercourse without consent (Australian Federal Police 2021) these matters cannot be referred to Phase Three by police at the pre-charge stage because they are defined as a serious offence. However, because of the high levels of attrition associated with sexual violence matters through the criminal justice system (see for example Bright et al 2021), other entities were unable to refer these matters at later stages of the criminal justice system. Characteristic challenges of conventional justice processes that influence attrition of sexual violence cases include the focus on evidence and witnesses when victim-survivors frequently delay reporting and are often the only witness to the offence (Clark 2010). The risk that these enduring systematic barriers to justice for victim-survivors of sexual violence may be interfering with the likelihood they will receive access to alternative justice pathways like Phase Three requires closer attention.

Key finding 5: Phase Three was able to meet many of the justice-interests identified by persons harmed

Interviews and survey feedback provided consistent evidence that Phase Three was able to meet many persons harmed justice-interests and needs, particularly increasing feelings of safety and access to necessary supports, feeling heard, regaining a sense of control, and improving understanding of the crime. This supports the views of stakeholders in this study, and the literature more broadly, that victim-centered restorative processes serve an important purpose in society (Royal Commission into Family Violence 2016).

The mechanisms that explain ‘how’ the Scheme brought about change for participating persons harmed varied between individuals, the nature of the matter, as well as the individual justice goals of participants. For example, for some persons harmed the development of an agreement which

committed the person responsible to certain courses of action increased their feeling of control and ability to move on from the offence, whereas in other situations being able to speak their truth without being interrupted had a similar impact on them.

Beyond the immediate justice-related goals of persons harmed, there was evidence that the Scheme was effective in meeting other aims identified by persons harmed. In particular, some persons harmed described utilising the process as a ‘circuit breaker’, as a way of re-setting relationships between family members that may have become strained or estranged. Repairing relationships was a common goal identified by persons responsible and persons harmed who had a clear motivation to continue to have contact with each other, including in cases involving adolescent family violence. In these cases, Convenors engaged in restorative practice with different people in the family over time, usually for at least six months, to identify and address needs, working towards reducing conflict at the individual, interpersonal and group-levels (Moore & Vernon 2023). These cases highlight the interdisciplinary skill-base required by RJ professionals, who support both victim-survivors and offenders across legal, social and therapeutic spaces and who routinely navigate, negotiate and work with services and systems with conflicting priorities.

Interestingly, although it appeared that a common goal for referred persons responsible was to apologise and make amends, it was not identified by many of the persons harmed as an important goal for themselves. Certainly, several persons harmed even said that they would have at least questioned the sincerity of the apology offered by the person responsible during the conference. However, in one case the person harmed observed that although they had already forgiven the person responsible (their grandchild), the process of accepting the person responsible’s apology and giving forgiveness in a public setting (the conference) could provide the person responsible with freedom to move on from what happened. This is consistent with research demonstrating that dialogic forgiveness, achieved through genuine accountability, humanisation and gratitude, can be a mechanism of “how RJ works” (Hadar & Gal 2023; Suzuki & Yuan 2021). This may provide some insight into why the opportunity to apologise was so important for persons responsible referred to Phase Three.

Key finding 6: There was little evidence that persons harmed were pressured or manipulated into participating in the Scheme, or felt unsafe during the process

While there was a general agreement that there was a need for Phase Three as an alternative justice pathway, several stakeholders, particularly those whose role involved supporting and advocating for persons harmed, raised a number of concerns about the potential harms associated with these processes for persons harmed. Stakeholders raised concerns that persons harmed were vulnerable to being manipulated by the offender during the RJ process, including being pressured to participate in the first place. Another significant concern was that participating in RJ could make persons harmed unsafe. For example, persons harmed could be pressured to agree to particular outcomes (e.g., reconciliation) or to share information that may compromise their safety (e.g., their location). Further, it was suggested that RJ processes gave persons responsible access to the person harmed that they may not have otherwise, which could be distressing and traumatizing. These concerns, in combination with other referral barriers described in this report, meant that many victims-survivors affected by DFV and sexual violence who could have been referred – because they met the eligibility criteria for participation - were not provided with information about or the option to participate in Phase Three.

Concerns raised by stakeholders about the potential harms associated with RJ processes reflect the cautions of early scholars and advocates in the restorative justice movement (see for example

Stubbs 2002). However, the current evaluation found no evidence that persons harmed were being pressured or manipulated to participate in the Scheme. This was based on the analysis of the post-conference surveys, as well as the interviews with persons harmed. Further, the analysis of the administrative data identified that the most common reason that referrals did not proceed to conference was because the person harmed chose not to participate. Taken together, this evidence suggests that persons harmed referred to the Scheme were capable of making informed and voluntary decisions about whether they would or would not participate.

Scheme participants also gave consistent feedback that they did not feel unsafe during the lead-up to the conference, during the conference or afterwards. Certainly, as demonstrated in earlier sections of this report, participating in Phase Three contributed to many participating persons harmed feeling safer than they did previously. Persons harmed feelings of safety during their participation in the Scheme was, again, primarily attributed to the expertise and skill of Convenors in engaging with persons responsible and persons harmed, and their understanding of the risks associated with individual matters. RJ practitioners interviewed reported spending significant time conducting risk assessment, investigating power dynamics, gender roles and balance within the relationship (if one was present) and looking for evidence of coercion during the initial suitability assessment phase, as well as on an ongoing basis in the lead-up to the conference. Having an in-depth understanding of the history of harm was seen as particularly important for understanding the subtle ways that abusive behaviour may present in any relationship, during the preparation phase and in the conference room. The co-Convenor model was viewed by many practitioners and academics as helpful for identifying coercive and controlling behaviours, as two people were engaging with the participants and identifying potential 'red flag' behaviours. The co-Convenor model was also seen as a way to protect practitioners from being manipulated by persons responsible, and providing additional capability for debriefing and support.

Key finding 7: Suitability assessment involves balancing person responsible readiness with informed decision-making and the justice-needs of PH

According to the Act, a person responsible is eligible to participate in the Scheme if they either accept responsibility for the commission of the offence or have been found guilty of an offence. If the person responsible is a young person (17 years old or younger), they are eligible if they do not deny responsibility for the offence. However, the extent to which persons responsible needed to be willing to be held *fully* accountable for their behaviours to be suitable for Phase Three was a point of contention among stakeholders. A minority of referring stakeholders said for them to consider referring a person responsible, they would have to have admitted their guilt and expressed a sincere desire to make amends. They also expressed scepticism about offenders' reasons for participating in RJ, saying that they were just doing it to 'look good' and get a reduced sentence, rather than being genuinely motivated to repair the harm.

Interestingly, some stakeholders, particularly RJ practitioners and researchers, held the view that the person responsible who takes full responsibility for their behaviours at time of being referred was an ideal rarely observed in their practice. A number of referring stakeholders advised that the initial motivations of persons responsible for participating in RJ were not always indicative of their potential to participate meaningfully in the process, or more importantly, the potential of the person harmed achieve positive outcomes. The level of motivation a person responsible has to change and/or repair the harm can shift through the process, and importantly, *as a result of the process*. This is consistent with the broader RJ literature which describes these processes as having the potential to be 'transformative' (Braithwaite & Strang 2002; Claes & Shapland 2016; Maruna 2016). Instead, these stakeholders referred to looking for signs that the person responsible was willing to acknowledge wrongdoing. Indicators used by RJ practitioners to identify these individuals included

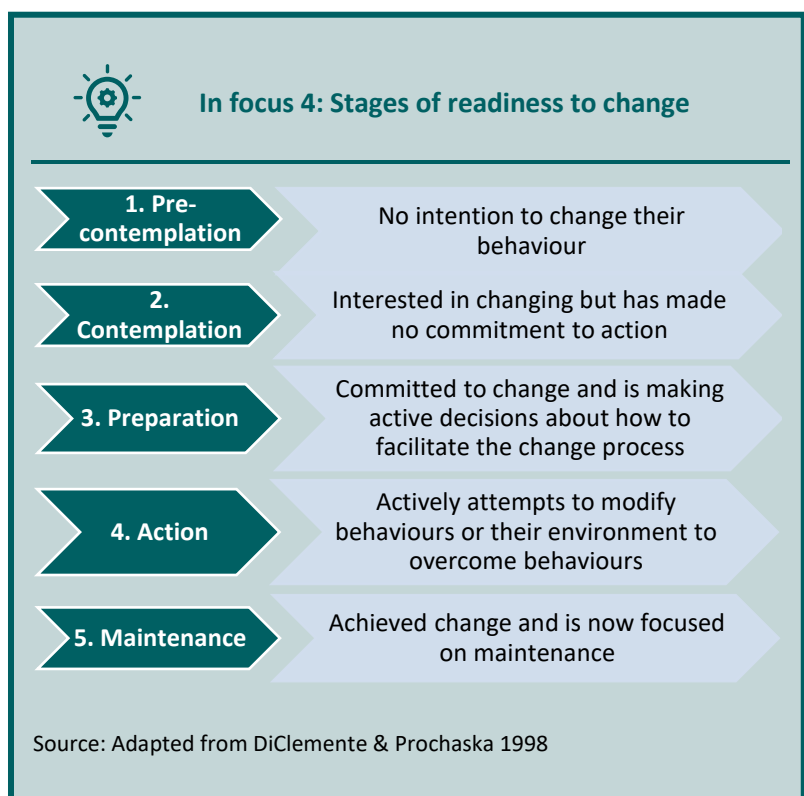
their willingness to hear the impact their behaviour has had on others, have their behaviour ‘heard’ and acknowledge a pattern of behaviour where there was one. This said, all of the stakeholders agreed that a person responsible who denied their behaviours and/or blamed the person harmed was not suitable for the program and should not be included.

The interviews with the two persons responsible who participated in a conference demonstrated that they both had positive experiences and became more committed to changing their behaviours, although they attributed different mechanisms to these changes. One person responsible (sexual violence) said they benefited significantly from participating in the Scheme, particularly as a result of their engagement with the Convenor and the conference. They described gaining more insight into their behaviour and the impact of their actions on the person harmed, extending to a commitment to change their behaviour in future. The other person responsible (adolescent family violence) reported that they had received minimal benefit from participating in Phase Three, primarily due to delays associated with the conference taking place. However, they did benefit from the professional support they received from a community organisation as part of their engagement with Phase Three.

One of the ways in which a person responsible may hold themselves accountable for their behaviours is to apologise to the person harmed. However, as noted previously, for the majority of person harmed, receiving an apology from the person responsible was not a primary motivation for participating in Phase Three. Even in situations where the person harmed said they either did not receive an apology or did not believe the sincerity of the apology that was offered, still identified that they had a positive experience participating in Phase Three and that they had achieved goals that were important to them. This included feeling heard and improved feelings of safety.

What this indicates is that rather than being focused on ensuring that persons responsible are contrite, apologetic and fully capable of taking accountability for their actions, that instead the focus could be on whether the person responsible would be able to support the person harmed to achieve their justice-related and other goals. This is consistent with previous research exploring how Convenors can meet the justice-goals of persons harmed in ‘challenging’ RJ cases (Bachelor 2021).

Offender cooperation takes different forms including the willingness to communicate with the victim and/or provide information, willingness or ability to listen, expressions of guilt, remorse or empathy for the victim, and willingness to meet the victim’s needs in other ways (i.e., reparation, compensation, attend rehab etc). A person responsible may be highly willing to cooperate in one way but unwilling or unable to cooperate in a different way. Detailed guidelines are available for RJ Convenors to safely support victims to achieve their justice goals in cases where the person responsible may not be taking full responsibility, but the person harmed, informed of this, still



wants to engage in RJ (Bachelor 2021).

This is not to suggest that persons responsible who deny the violence, minimise their behaviours and its impact, or blame the person harmed should be included in the Scheme. However, as demonstrated through the interviews with stakeholders and Scheme participants, persons responsible are not a homogenous group. Instead persons responsible who participated in Phase Three demonstrated a diversity of personalities and were at different stages of readiness to hold themselves accountable and to change at time of being referred into the program. Readiness to change (In Focus 4) is a concept central to the transtheoretical model of change (TTM), which describes the processes by which individuals stop their involvement in undesirable behaviours, including crime (DiClemente & Prochaska, 1998). In particular, TTM posits that individuals progress through a series of stages in order for change to occur, with each stage representing varying (but increasing) levels of motivation and willingness on the part of the individual to alter their behaviour and to take agentic action to bring about the desired change. The further along the continuum of stages an individual is, the more likely they are to desist. This framework could be a helpful tool for determining the extent to which persons responsible referred to the program are ready to engage in a process like Phase Three, and also the level of effort and additional resources that may be necessary to 'push' PRs forward in their journeys. This is primarily to support persons harmed access to RJ when they want to participate and would benefit from doing so.

Key finding 8: Very few matters were referred post-sentence, despite considerable support from stakeholders

Interviews with stakeholders and the analysis of administrative data consistently revealed that a very small minority of matters (<3%) were referred to Phase Three after an offender had been sentenced. Despite this, stakeholders interviewed reported positively on RJ at this latter stage of the criminal justice process, viewing this context as holding fewer risks such as concerns about the safety of persons harmed and the motivation of persons responsible. Stakeholders that can refer to RJ after an offender has been sentenced include Corrective Services ACT, the Sentencing Administration Board, Youth Justice and the Victims of Crime Commissioner.

There is evidence from the broader literature that persons responsible may be less motivated to participate in RJ processes after they have been sentenced (Shapland et al 2011). This may in part explain why there were only six referrals to Phase Three in the post-sentence context. However, stakeholders also reflected that the ACT Sentencing Advisory Board could do more to provide persons harmed and persons responsible with information about the Scheme. Certainly, a focus group with Gov/CJS stakeholders who participated in a conference conducted post-sentence reflected very positively on the experience and described it as beneficial for all the participants involved.

Cases classified as particularly 'high risk' may be most suitable for a post-sentence, highly controlled context. Consistent with other research, the evaluation suggested that many stakeholders and participants are most comfortable with RJ being offered for DFV and sexual violence matters after sentencing (Miller & Iovanni 2013). Indeed, one case that did not proceed to conference due to an unacceptable risk of harm provided an important reminder that RJ should be navigated extremely carefully in cases involving a history of significant violence.

However, some scholars maintain that there is not a particular stage of the criminal justice system where RJ is most suitable (Shapland et al 2011). This view was reflected by a number of practitioners in this study. These practitioners agreed victim-centered decision-making should be prioritised instead of making decisions based on assumptions about what a person harmed may want. For example, there are ways of meeting the needs and interests of persons harmed outside of the

narrow 'face-to-face' conferencing approach to RJ. Not all cases of DFV and sexual violence are suitable for a face-to-face RJ conference (high-risk or otherwise) and this is not the only form of participation in Phase Three. Other forms of participating including writing a letter or shuttle communication to have questions answered (see section on [Conferences Delivery modes](#)).

RJ offered through parole and corrective services prior to the release of an offender into the community after a period of incarceration has also been described as a safe way to negotiate how to manage this transition post-release. Previous research from NSW has found that some persons harmed are motivated to engage with RJ when a family member who harmed them is due to be released because they are concerned about their safety, retaliation or relations in the community (Bolitho 2015). It may be prudent to triage cases based on risk to the available resources and waitlist at any given time, given the significant time and resources such matters require. Certainly, it is worth making effort to increase referrals to Phase Three in this context.

Key finding 9: The engagement of persons responsible in support services was a key component of Phase Three, but accessibility was limited

Although not mandated, participation in therapeutic support was described as 'expected' for persons responsible participating in Phase Three. As such, many of the persons responsible referred to the Scheme were engaging with support services alongside their involvement with the RJU. This included mental health counselling, education about sexual violence and DFV, as well as community-based generalist supports like Men's Sheds. Agreement plans for Phase Three were also characteristically therapeutic in nature regarding the tasks agreed to complete. This may have involved completing a certain number of sessions with a clinical psychologist, or making a commitment to start or maintain their engagement with professional supports in the community.

Encouraging persons responsible to engage with formal support services had both rehabilitative and reintegrative aims. These supports can be critical in assisting individuals using DFV and sexual violence to challenge problematic cognitions and beliefs related to these behaviours, while also facilitating the development of networks of support outside of the RJU and the family unit (Marsh & Maruna 2016). Consistent with the literature, a number of Scheme participants reported extremely positive experiences engaging with external support agencies which were viewed as having an important role in their desistance journeys. Local men's services were described as particularly helpful for persons responsible.

However, the lack of specialist support and programs available for persons responsible who used harmful sexual behaviours and young people using violence in the home were notable gaps in service delivery in the ACT. Filling this gap were specialist clinical psychologists located outside of the ACT, non-specialist local clinical psychological services and community organisations providing counselling and general violence prevention programs offered through local men's services. This is a concern, given that research highlights that the use of experts in sexual offending and participation in targeted sex offender treatment programs are important conditions for achieving success when RJ is provided as a response to sexual harm (Bolitho & Freeman 2016). Community initiatives offering general violence prevention programs are important, however may not be sufficient as a sole intervention for people using harmful sexual behaviours in the long term.

Key finding 10: A key barrier to the referral of matters to Phase Three, particularly sexual violence matters, was the perception that RJ was a 'soft' option

A repeated theme that emerged from the evaluation was that RJ was viewed by some stakeholders as a softer or more lenient option compared to the traditional criminal justice system. Considering

that persons responsible referred to Phase Three post-charge are also participating in traditional criminal justice processes (i.e., court), this concern was primarily limited to situations where matters were referred pre-charge and so were diverted from the criminal justice system. In these situations, stakeholders (particularly police representatives) suggested that RJ did not do enough to punish the offender and in turn deter them from offending again in the future. As such, there was a perception among some stakeholders that previously referred, serious and sexual offenders would not be appropriate for (re)referral to Phase Three. RJ was often described as 'too good' for these offenders who were seen as 'lucky' to get the opportunity to do RJ, compared to conventional justice and punishment. Meanwhile, re-referring persons responsible to the Scheme was also seen as pointless, as evident by quotes like 'if it [RJ] worked they wouldn't be recidivist' (Gov/CJS).

These findings provide important insight into the beliefs underlying decisions about whether to refer an offender to Phase Three. One perception is that the process is 'too good' for some offenders because of what they have done. Another is that the primary purpose of RJ is to prevent recidivism, so people who have been reoffended after referral to RJ shouldn't be given another chance. Although the evaluation found evidence that the Scheme did reduce offending among referred persons responsible, particularly adults, it is important to remind ourselves that RJ is a victim-centred process, focused on satisfying individual justice-needs of persons harmed. Although one of these identified needs will likely be that the person responsible does not harm anyone else, other justice needs such as increased feelings of safety and control are just as important.

Interestingly, the evaluation found that some persons responsible found the RJ process to be quite punitive and confronting. This is in line with past research which shows that some offenders feel they have been punished more by RJ than by the traditional criminal justice system (Umbreit, Coates & Vos 2004). It's been suggested that RJ can ask more from offenders than the traditional criminal justice system because of the therapeutic nature of the process (Foley 2013). RJ requires persons responsible acknowledge their wrongdoing in a public setting and listen to the impact that their actions have had. Further, RJ requires the person responsible to provide evidence that they are working towards genuine accountability and remorse, including making agentic change and 'walking the talk' (121121AB, Gov/CJS, 2021).

Conclusion

This evaluation has demonstrated that Phase Three is working effectively overall, with the vast majority of participants reporting high levels of satisfaction with the Scheme and the service they received. The feedback from stakeholders engaged with the Scheme show wide recognition of its purpose and the need for alternative justice avenues for victim-survivors of DFV and sexual violence. This is demonstrated by the large number of referrals to the Scheme, where there is currently insufficient resourcing to meet the demand.

Traditional criminal justice and civil law responses such as arrest, incarceration and protection orders are insufficient on their own to respond to the challenge of DFV. Re-traumatisation and re-victimisation associated with criminal justice processes for survivors of sexual violence is well known. Many survivors of IPV and sexual violence have interests and needs that the traditional system simply cannot provide. For some families, there is a motivation to stay in contact, and the violence is the symptom of causes that require more than police intervention to resolve.

Most participants in Phase Three are at a point of crisis when they are referred. It was common for participants to enter into Phase Three after exhausting all other options, and then finding that the Scheme was able to fill the service gap they were experiencing: a relational intervention that could also respond to justice needs and facilitate referral to therapeutic services. This is particularly the case for DFV matters where there was often a motivation to repair the relationship as well as stop the violence from continuing. In the context of sexual violence, despite a small number of cases examined, persons harmed typically utilised the process as a mechanism for getting what they needed, empowering themselves and seeking closure.

The findings show that Phase Three has been able to deliver justice outcomes for victim-survivors that the traditional system cannot. These are varied and reflect the wider literature, while also building on the existing knowledge base. For example, outcomes such as information, safety and support, relationship repair, accountability and closure have been recorded elsewhere for the few existing RJ interventions like Phase Three (e.g., Jülich and Landon 2017). The evaluation highlighted the importance of the pre-conference preparation phase for a number of these outcomes, where Convenors assess what participants want from the process and communicate between them to determine whether a conference or related process will be suitable.

However, a novel finding from this research is that RJ for DFV and sexual violence can be safely and successfully delivered in the context of varying levels of offender accountability, without creating further harm. Some participants reported getting a lot out of the conference even though they didn't believe the offender was truly sorry or that they would ever understand the impact of their behaviour. This was particularly prominent among persons harmed in sexual violence cases. Critical for this approach to be successful is the effective management of expectations by Convenors during the preparation phase, and accurate assessment by Convenors about whether the needs and interests of the person harmed can be addressed by the person responsible in any particular case. This is an important finding because RJ is traditionally understood as a program where only persons responsible who demonstrates complete accountability, responsibility and remorse are considered suitable. Our findings suggest this is more an ideal than reality, and certainly that it is not always necessary for participants to benefit.

Alternative justice programs like RJ have great potential to address some of the shortcomings of the traditional system. However, this research highlights that some services and stakeholders were making decisions for persons harmed rather than providing them with the opportunity to participate. This suggests there is a need to encourage some stakeholders to support persons harmed agency to make informed decisions by providing them with all the information about their

options, including RJ where relevant. This is associated with the finding that there was a persistent view among some referring entities, particularly law enforcement, that RJ is a lesser reform of justice compared to the conventional criminal justice system. This indicates a need for educating referring entities about the justice needs of persons harmed that cannot be provided through the conventional criminal justice system. Interestingly, ACT Policing still referred more matters to Phase Three than most other referring entities, except for the Magistrates Court.

The main recommendations from the evaluation centre around additional resourcing to reduce delays, education and information sharing with the broader community around the benefits of the Scheme and its role within the broader CJS. Improving referrals for under-served groups (i.e., First Nations) and at particular CJS stages (i.e., post-sentence) are also important areas for development.

Recommendations

Recommendation 1: The Restorative Justice Unit should take steps to increase their capacity and shorten the wait-times to access the service

The findings from the evaluation indicated that the RJU should take steps to increase their capacity to provide a timely response to referrals to Phase Three, including providing additional resources. The significant harms associated with DFV and sexual violence-related behaviours, as well as the power dynamics and potentially significant histories of abuse between persons responsible and persons harmed, means that preparing Phase Three matters for conference is necessarily very resource intensive. In particular, the co-convenor model, which was viewed as necessary to prevent various potential risks associated with using RJ for DFV and sexual violence matters (e.g., manipulation of Convenor) has increased the resources necessary to manage referrals. However, several referring stakeholders reported that the wait-periods associated with the allocation of matters have acted as a barrier to referrals being made and to engaging persons responsible and persons harmed.

Relatedly, there was evidence that the intake and approval process after a matter is referred to the RJU should be reviewed. In particular, consideration of whether the number of 'steps' involved in approving a matter for conference can be simplified can assist in shortening wait-times. Importantly, streamlining the number of checks required for approval should not occur at the cost of the risk assessment procedures required for Phase Three.

The RJU should look at a range of options including increasing resources and streamlining processes. For example, the option for Convenors to manage a case without a co-convenor in suitable cases in very low risk matters. There should be an option for the Convenor and Case Reviewer to identify if a co-convenor might be required at a later stage depending on risk. Diversion from the co-convenor model should only be allowed where suitable grounds exist, such as where clients are experiencing service saturation and the primary Convenor will be working closely with already engaged support services. The decision would need to be made prior to allocation to impact wait-times. This will also help to free up resources in cases when it is not necessary or will be burdensome to have two RJU Convenors.

Recommendation 2: Ongoing training should be provided to stakeholders involved in the delivery and operation of Phase Three

Additional resources should be provided for an ongoing training program tailored to stakeholders involved in the delivery and management of Phase Three. This program should focus specifically on providing RJ in the context of DFV and sexual violence matters and cases involving historical harm. Regular engagement with professional development will support new staff and Senior Convenors, team leaders, operational support and the First Nations Guidance Partner(s) to deliver Phase Three consistently and with high fidelity to the ideals of restorative practice. Local support and community services should be provided with regular opportunities to receive information and guidance about when and how to facilitate referrals to Phase Three.

Recommendation 3: Perceptions that RJ is 'soft justice' should be challenged and addressed among referring entities

While there was broad support for RJ as an alternative justice response, there a need to address the pervasive belief among referring entities that RJ is a lesser reform of justice compared to the

conventional criminal justice system. Broadening stakeholder perceptions about the potential for RJ may be achieved through providing entities with:

- case studies and examples of matters where RJ provided a successful outcome for participants;
- the opportunity to engage directly with persons responsible and persons harmed who have participated in these processes; or
- the opportunity to observe a Phase Three conference (including recordings).

As part of these education processes, referring entities should also be provided with information about the justice needs of persons harmed that cannot be provided through the conventional criminal justice system.

Recommendation 4: The development of referral guidelines and eligibility criteria beyond offence type and stage of CJS should be considered

The evaluation found that some stakeholders would benefit from additional information to identify matters that are eligible and suitable for referral to Phase Three. The development of guidelines that are agency specific may be helpful in facilitating appropriate referrals, and reduce the administrative burden on agencies and the RJU associated with the referral of ineligible and unsuitable matters.

When sexual violence matters do not proceed to the point of prosecution by the DPP, there should be an opportunity for police to refer more serious offences to Phase Three, such as the offence of sexual intercourse without consent.

Recommendation 5: Clearer guidelines and training should be developed to improve understanding about the relationship between RJ and sentencing

The evaluation identified that there was a lack of clarity and understanding around how RJ participation could or should influence sentencing of participating persons responsible. This led to inconsistency in the advice provided to persons responsible by the RJU and their legal counsel, as well as inconsistency in how participation in RJ was taken into consideration by Judges. To address this, the RJU should develop a series of guidelines (or update/review existing guidelines) that are targeted at legal professionals in the ACT. These guidelines should provide clear information about:

- admissibility of information shared during conferences;
- the statement of responsibility and the implications of this for the person responsible when they have a case to plead not guilty;
- the nature of information provided to the court by the RJU about the PR's participation in the Scheme; and
- the extent to which participation in RJ may influence subsequent sentencing decisions.

Recommendation 6: The RJU should work with relevant criminal justice agencies to increase post-sentence referrals to Phase Three

Findings from the administrative data analysis and interviews with stakeholders show the proportion of referrals in the post-sentence context was very small. This is coupled with the finding from the interviews that stakeholders who have had experience with Phase Three in the post-sentence context have positive views on the program, and all agencies capable of referring after sentencing agreed that they could work to increase their referrals to Phase Three.

The views of stakeholders support prior research showing that the post-sentence context is particularly well suited high-risk and high-harm matters. The RJU should work collaboratively with criminal justice agencies that have direct interaction with convicted offenders to identify opportunities to provide suitable persons responsible and persons harmed with information about the Scheme and support their referral. In particular, the use of Phase Three in the lead-up to the release of a person responsible could be helpful for supporting persons harmed to feel safe once they are in the community.

Recommendation 7: Investigate options to work with communities to encourage buy-in to Phase Three from First Nations and other culturally diverse participants

Although the evaluation identified that the RJU currently have a number of mechanisms in place to ensure that their processes are culturally appropriate, the proportion of First Nations persons responsible and persons harmed who were found suitable to participate was much lower when compared to non-Indigenous participants. The evaluation identified that this was primarily due to First Nations persons choosing not to participate in the Scheme.

To increase buy-in from First Nations communities into Phase Three, the RJU should investigate options for engaging with these communities proactively (either directly or through other mechanisms) to identify barriers to engagement and strategies for mitigating these barriers.

Recommendation 8: The RJU should develop formal disengagement processes to support participants during the post-conference period

The RJU should develop formal processes to support participants to disengage from the Scheme once the conference has taken place. Noting that restorative justice is intended to be a short-term capacity-building response, disengagement processes should at a minimum involve supporting persons harmed to engage with other community-based support services to help meet their longer-term support needs.

As part of the disengagement process, consideration should be given to whether participants can be provided with an overview of what was discussed and agreed to in the conference, if requested. With consent of participants, there should be an option for Convenors to share this information with family members or supports seeking an overview of what occurred during the conference. Specific information, and how to communicate this (verbally or written) should be agreed upon with relevant participants beforehand. This is to minimise the number of times participants need to re-tell their story, in line with trauma-informed practice.

Recommendation 9: Clear guidance about how to work with clients where there is an intervention order should be provided to RJU staff

There is a need to consider revising the Act or the practitioner handbook for Phase Three to include guidelines about how to approach matters where there is an intervention order in place. This is because there was some evidence from the interviews with stakeholders and participants that indicated confusion around pursuing RJ in the context of an intervention order.

Amending an intervention order to include a condition allowing contact between the applicant and the respondent for the purposes of mediation, family dispute resolution or restorative justice is routinely granted by the Courts. Where this hasn't occurred, stakeholders described the current RJU process requiring the applicant (typically the person harmed) to apply to alter the conditions of the

protection order. However, some participants expressed confusion around whether they were asked to lift the order (rather than amend the order) to facilitate RJ.

While the evaluation did not find evidence of persons harmed being coerced by a person responsible to lift an order to participate, it is important to determine whether additional oversight here may provide additional protection for participants.

Recommendation 10: The RJU should continue to collect data to facilitate ongoing evaluation and improvement

A further evaluation should be conducted to examine the impact of any changes to the Act or Phase Three generally as a result of this evaluation. Future evaluation should measure the effectiveness of the process for Phase One, Two and Three cases to compare process and outcomes for different kinds of matters. Post-conference surveys should continue to be provided to all participants who complete the program. Participants whose matters do not proceed to conference should be followed up after a short period to time to provide feedback on their experience of the process. This allows for measurement of impact for people who don't make it to conference, as some may still benefit from the therapeutic nature of the process and others may have important feedback for improvement.

To facilitate the collection of additional information to evaluate the operation and effectiveness of Phase Three, a review of the current database should be undertaken to determine whether it is fit for purpose.

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All URLs correct as of June 2023

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Appendix A: Literature review

Efficacy of restorative justice programs for DFV and sexual violence

A 2014 international review of RJ programs for intimate partner violence (IPV) demonstrated high levels of diversity across programs (Ptacek 2014). While primarily available in the form of victim-offender mediation, family group conferencing and sentencing circles, the authors noted these approaches all shared common characteristics and goals. Restorative justice for IPV is being used in a multitude of different formats, with some programs including victim-survivors, offenders and the wider community, others including only victim-survivors and offenders, and some including only offenders or only victim-survivors (Ptacek 2014).

The review highlights that existing evaluations are limited by weak methodological designs (Ptacek 2014). The most comprehensive evaluation identified was the Family Group Decision Making program in Canada, a feminist (Duluth) informed, community-based response model for preventing future IPV (Pennell & Burford 1994; 2000). Of the 32 families that participated in a conference, two thirds said they were better afterwards, one fifth said there was no change, and 7% reported they were worse (Pennell & Burford 2005; Ptacek 2014).

Another international review of restorative justice programs for sexual assault operating in the CJS found fifteen programs that had been evaluated across thirty studies (Bolitho & Freeman 2016). The review found most (80%) are adult programs with exceptions for youth diversion in ACT and SA (Australia) and Northern Ireland. The authors noted that successful programs included specialisation in Convenor experience, vigilant eligibility and suitability screening, the use of experts throughout the process, perpetrator participation in treatment, flexibility to participant needs and appropriate timing for victim-survivor readiness (Bolitho & Freeman 2016).

A small-scale pilot study of four cases of sexual violence referred to the community-based victim-centred program operating in Victoria found that the process was able to meet victim-survivors justice needs (Loff et al., 2019). Further, an in-depth case study analysis ($n=3$) of restorative justice as a response to youth violence towards parents in South Australia (Daly and Nancarrow 2010). Mothers experiencing violence from their adolescent sons reported that conferences validated their experiences, particularly when other conference participants challenged the victim-blaming attitudes of offenders (Daly & Nancarrow 2010).

There is evidence that restorative justice conferencing can have particularly important benefits for victim-survivors and their families (Daly & Nancarrow 2010; Pennell & Burford 2002). These include preferences for restorative justice over conventional criminal justice processes and a reduced desire for violent revenge against offenders (Sherman and Strang 2007). In their evaluation of Project RESTORE operating in Arizona (USA), Koss (2014) found that victim-survivors of sexual assault were less likely to report symptoms of Post-Traumatic Stress Disorder after participating in a conference.

A smaller scale evaluation was conducted with the Project RESTORE program operating in New Zealand, a restorative justice process for sexual violence cases inspired by the program operating in the United States (Jülich & Landon 2013). Despite a small sample ($n=14$) almost all respondents indicated that the process met their justice needs such as having a voice, having offenders demonstrate accountability, and having their experience validated and acknowledged by those who harmed them (Jülich & Landon 2013; Daly 2014). In the post-sentence context, restorative justice may be associated with lower risk of victim-survivors receiving 'soft-justice', more time passed provides more opportunity for victim-survivors and offenders to engage in therapy, and there are fewer concerns for victim-survivor safety and for perpetrator manipulation of the process (Miller and Iovanni 2013; Miller et al., 2020).

Previous reviews have indicated methodological limitations regarding restorative justice recidivism research generally (Wilson et al., 2017; Smith & Weatherburn 2012). Difficulty establishing a direction of effect is related to significant variation in program models, methodological approaches (e.g., definition, analysis, measures and follow up periods for recidivism) and quality of evidence (Piggott & Wood 2018). Typically, programs for DFV and sexual violence are victim-focused so recidivism has not been a priority of previous evaluations. Evidence examining the impact of restorative justice in reducing DFV and sexual violence offending is lacking. A recent review of RJ programs for sexual violence among adults found only one evaluation and it did not examine reoffending (Gang et al., 2021). There is some evidence from Australia favouring RJ over court for young people charged with sexual offences however the differences were primarily explained by past offending (Daly et al., 2013). To date no Australian programs have examined the impact of RJ on DFV offending, however one US study found a reduction in future DV arrests and offence severity for an RJ program when combined with a men's behaviour change program (Mills et al., 2019).

However, there is evidence that participating in restorative justice conferences for family violence offending reduces *general reoffending*, compared to conventional criminal justice responses (Daly, Bouhours, Broadhurst & Loh 2013; Mills, Barocas & Ariel 2013). However, the power for restorative justice to reduce *sexual assault and DFV reoffending* specifically remains unclear. The cessation of sexual and family violence-related offending has traditionally been viewed as an offender-focused outcome. It is acknowledged that the ACT program is a victim-centric program and reducing recidivism is not the primary aim nor the metric through which success should be measured. However, program impacts on reducing reoffending have significant and positive implications for victim-survivors and community safety more broadly.

Using rigorous methodological design, a recent evaluation of the restorative justice program in the ACT operating between 2005-2016 found that young people referred to RJ were significantly less likely to reoffend in the follow up period (up to 10 years post conference) (Broadhurst et al., 2018). This is after accounting for the fact that young people referred to restorative justice were more likely to have more extensive criminal histories and be charged with violent crime compared to other young offenders with similar features in the region (Broadhurst et al., 2018). While promising, it is not known if the demonstrated benefits of the ACT program on reoffending extend to incidents and patterns of sexual assault and DFV and relationships characterised by significant histories of harm.

Taken together, the findings from the limited evaluation literature indicate that restorative justice processes may be of benefit to victim-survivors who have experienced sexual assault or family violence.

Appendix B: Evaluation framework

Table B1: Evaluation framework	
Research question	Research method
Process evaluation	
How many matters have been referred to the Scheme, resulted in consent being granted and proceeded to conference since commencement?	Analysis of administrative data collected by RJU
What are the characteristics of individuals and matters that have been referred to the Scheme?	Analysis of administrative data collected by RJU
	Analysis of administrative data collected by ACT Policing Interviews with stakeholders
What factors have impacted whether referred matters proceed to consent being granted and then to a conference?	Analysis of administrative data collected by RJU
	Analysis of administrative data collected by ACT Policing
	Analysis of post-conference surveys Interviews with stakeholders
What are the key processes and activities involved in the implementation and delivery of the Scheme and how well are they operating (e.g., referral pathways, assessment processes)?	Analysis of administrative data collected by RJU
	Analysis of post-conference surveys
	Interviews with stakeholders
To what extent are Scheme participants satisfied with the processes associated with the Scheme, and the support they received?	Interviews with individuals who participated in the Scheme
	Analysis of post-conference surveys
To what extent are processes and outputs delivered as part of the Scheme appropriate for the target cohort?	Interviews with stakeholders
	Analysis of post-conference surveys
	Observation of conferences
How are conferences held as part of the Scheme delivered and how have conference processes been adapted to account for the unique considerations associated with sexual assault and family violence matters?	Observation of conferences
	Interviews with stakeholders
	Interviews with Scheme participants
To what extent are key stakeholders involved in the implementation and delivery of the Scheme supportive of the Scheme?	Interviews with stakeholders

Table B1: Evaluation framework

Research question	Research method
To what extent had the Scheme been implemented as intended?	Interviews with stakeholders
	Analysis of administrative data collected by RJU
	Observation of conferences
	Analysis of post-conference surveys
What are the main barriers or challenges to the effective implementation of the Scheme?	Interviews with stakeholders
How could the Scheme be changed to maximise both satisfaction with processes and outputs among participants, as well as likelihood of achieving associated outcomes?	Interviews with stakeholders
	Analysis of post-conference surveys
	Interviews with Scheme participants
Outcome evaluation	
To what extent has the scheme achieved the following outcomes for victim-survivors who participated in the Scheme: <ul style="list-style-type: none"> • Increased feelings of safety and wellbeing; • Improved understanding that they are not to blame for the violence • Increased ability to move on from what happened 	Interviews with Scheme participants
	Analysis of post-conference surveys
To what extent has the Scheme increased the likelihood of victim-survivors re-reporting the violence if it happens again?	Interviews with Scheme participants
To what extent has the Scheme achieved the following outcomes for offenders who participated in the Scheme: <ul style="list-style-type: none"> • Increased understanding of the impact of the violence on the victim-survivors and others • Increased understanding that they are responsible for the violence • Increased commitment not to offend again (including abiding by orders) • Increased ability to move on from what happened 	Interviews with Scheme participants
	Analysis of post-conference surveys
To what extent has the Scheme resulted in a reduction in offending/victimisation?	Interviews with Scheme participants Analysis of Administrative data collected by ACT Policing and ACT Corrections
What other outcomes have been achieved as a result of the Scheme?	Interviews with Scheme participants
	Interviews with stakeholders

Table B1: Evaluation framework

Research question	Research method
What factors are associated with whether these outcomes were or were not achieved?	Interviews with Scheme participants Analysis of Administrative data collected by ACT Policing and ACT Corrections Interviews with stakeholders Analysis of administrative data collected by the RJU