

# **Harm, Justice, and Healing: The Case for a National Framework of Restorative Justice for Sexual Violence**

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Authored by Emilie Garcia-Dolnik, Laura Klein, and Sophie Loiselle

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## **List of Acronyms**

### ***RJ***

Restorative Justice

### ***CJS***

Criminal Justice System

### ***VS***

Victim-Survivor/s

### ***PR***

Person Responsible for Harm

### ***HR***

Human Rights

### ***RJU***

Restorative Justice Unit (ACT)

### ***VOCs***

Victim-Offender Conferences

### ***TYDU***

Tiwi Islands Youth Diversion Unit

### ***ALRC***

The Australian Law Reform Commission

### ***DJCS***

Department of Justice and Community Safety Victoria

### ***NMAS***

Australian National Mediator Accreditation System

## **Executive Summary**

Presently, there is no national legislative framework for the application of restorative justice (RJ) in sexual violence settings in Australia. Due to Australia's federal system, RJ opportunities are inconsistently available across states and territories, restricting access to victim-offender dialogue and rehabilitation throughout the criminal justice system (CJS). This report proposes the establishment of a national best practice framework, based on an extensive review of the literature. It will first consider the necessity of this exercise framed within the context of Australia's current state-based legislative frameworks, and international obligations. Given this environment, best practice standards will then be identified with relevant examples. The proposed legislative framework focuses on protecting, standardising, and empowering existing RJ structures, notably broadening the relevance of these processes for Indigenous peoples, children, and victims of crime with a human rights ethic.

## **Recommendations**

*Recommendation #1:* The creation and implementation of a national framework of RJ for sexual assault cases.

*Recommendation #2:* This framework should focus on empowering and strengthening existing community and legislated RJ programs.

*Recommendation #3:* Further consultation with stakeholders considering any intricate specifications.

## Introduction

This document affirms the necessity of an overarching national restorative justice (RJ) framework for sexual violence in Australia. RJ services, where they exist, are rarely equipped to cover sexual violence issues. At least 22% of women and 6.1% of men in Australia have experienced sexual violence since the age of 15 (Australian Bureau of Statistics [ABS] 2023). RJ is aligned with best practice responses for sexual violence.

RJ is multifaceted. Without guidelines for how these processes should operate, several risks can present for the person responsible for harm (PR) and the victim-survivor (VS). Legislating RJ is not the sole precursor to a successful process of healing and justice for VSs and PRs, but it is a necessary starting point to ensure consistency, accessibility, and safety for those who choose to participate.

RJ is a victim-centred approach to crime which focuses on restoring relationships: between PR and VS, between individuals and the community, and within oneself (Sardina & Ackerman 2022, pp. 25-26). This differs from criminal justice, which understands an offence as harm enacted against the state, rather than against the individual victim (Sardina & Ackerman 2022, p. 29). RJ can act as a diversion from the criminal justice system (CJS), as an additional form of justice for the VS after engagement with the CJS, or as a complement to criminal proceedings. RJ emphasises restoring power to victims through dialogue with PRs, while enabling PRs to take accountability for causing harm. RJ represents a paradigm shift away from retributive justice, which measures how much punishment is ‘deserved,’ towards measuring how much harm can be repaired (Office of the Special Representative of the Secretary-General on Violence Against Children [OSRSGVAC] 2013, p. 2)

A successful framework for RJ must be trauma-informed, recognising the ongoing impacts of trauma on all parties (Randall & Haskell 2013, pp. 517-518), to cause no further harm. This report will recommend

a flexible framework which is based on ideals of accountability, safety, and victim-centred justice, rather than one specific model of proceedings, which would limit the ability of RJ to tailor to the needs of individuals and communities.

A national framework for RJ must be intersectional, recognising how one's social positions alters their experiences of violence and justice (Crenshaw 1991). Members of marginalised groups, such as queer people, people with disabilities, and in situations of economic dependence, experience further barriers to justice after experiencing sexual violence (ABS 2023). These risk factors must be considered by facilitators.

RJ often meets 'justice needs' of both VSs and PRs that cannot be addressed by the CJS. Given that only one in seven sexual incidents reported to police proceed to a guilty verdict (Crime Statistics Agency 2021), and only 8% of female VSs reported their most recent assault to police (ABS 2023), the CJS often fails to promote the safety, empowerment, and accountability desired by VSs (Chan, Bolitho & Bergen 2015, p. 232). A 'successful' court proceedings may not meet VSs' needs of storytelling or validation of morality and innocence (Batchelor 2023). The justice needs of PRs can also be met through RJ, including their needs to: express their remorse and have it be acknowledged; gain insight into the harm they have caused; have their own traumas acknowledged; and experience personal growth and rebuild relationships (Toews & Katounas 2004, p. 109).

This report draws its findings from an extensive literature review. The limitations of the methodology employed in the report is due to the limited number of existing RJ frameworks in practice that cater to cases of sexual violence. As such, there is a lack of empirical scholarship and review of these processes. The report highlights the need for further scholarship to be developed in this area. Our research employs an interdisciplinary approach to derive inferences from a broad expanse of RJ-focussed academia.



This document will set out a possible vision for a national RJ framework. The report will begin by outlining existing state-based legislated RJ structures. It will continue with a discussion of challenges specific to Indigenous and Youth Justice, which warrant further consideration when constructing RJ policy. The report will provide a set of recommendations in accordance with evidence-informed practices based on existing frameworks and specific challenges in an Australian context.

## Section 1: Human Rights Frameworks and State-Based Legislation

### International Human Rights Frameworks

RJ has the advantage of being attentive to the Human Rights (HR) of victims, offenders, and their communities (Ward & Langlands 2008, p. 356). Underpinning the convergences of RJ and HR frameworks are four major points: the superiority of a flexible and informal justice system, the importance of victim participation, the prioritisation of the community, and the acknowledgement that cultural/social sensitivity is necessary to achieving justice (Ward & Langlands 2008, p. 364-368). RJ is the justice approach best suited to protect the rights and uphold the guiding principles stipulated in many of these frameworks, to which Australia is committed.

Victims of crime, under the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)*, have the right to express their views and concerns at appropriate stages in the criminal justice process. Currently, there is no national legislation relating to victims of crime, though there are some protections at the state level, including *The Charter of Victims Rights (NSW)* under *The Victims Rights and Support Act (2013)*.

The *Convention on the Elimination of All Forms of Discrimination Against Women (1979)*, recommends that sexual violence be defined as a crime against a person's bodily integrity and sexual autonomy. The *Beijing Declaration (1995)* acknowledges that sexual violence against women occurs as a result of embedded social values, cultural beliefs, and unequal power relations. RJ processes are a method by which these power imbalances can be restored.

While Australia is a signatory to these conventions, their stipulations are not fully realised within state-based legislation. Other human rights frameworks are discussed contextually further in Section 2.

## Australian Legislation

Australia currently has a patchwork of state- and territory- based RJ legislation, all with differing points of referral and eligibilities for sexual violence offences. Figure 1 details the differences in legislation for adult and youth offenders.

*Figure 1*

	Program Name	Legislation	Point of Referral	Eligibility for Sexual Assault Offences
<b>ACT</b>	Restorative Justice Unit (RJU)	Crimes (Restorative Justice) Act 2004	Any point in the CJS	Yes
<b>NSW</b>	Youth Justice Conferences	Young Offenders Act 1997	Post-warning and post-caution, as a last resort before court	No
	Victim-offender conferences	N/A.	Post-Sentencing	Yes
<b>VIC</b>	Youth Justice Group Conferencing	Children, Youth and Families Act 2005	Pre-Sentence	No
<b>QLD</b>	Youth Justice Conferencing	Youth Justice Act 1992	Any point in the CJS	Yes
	Justice Mediation Program	Dispute Resolution Centre Act 1990	Any point in the CJS	Yes
<b>SA</b>	Family Conferencing	Young Offenders Act 1993	Pre-sentence	Yes
	Port Lincoln Aboriginal Conferencing	Criminal Law Sentencing Act 1988	Pre-sentence	Yes

<b>WA</b>	Reparative Mediation  Victim-Offender Dialogue	State Administrative Tribunal Act 2004  The Office of the Commissioner for Victims of Crime in the Department of Justice	Post-conviction or pre-sentence	Yes
	Referral to Juvenile Justice Team (JJT)	Youth Offenders Act 1994	Police referral and sentencing option	Yes
<b>TAS</b>	Community Conference	Youth Justice Act 1997	Sentencing option	Not stipulated
	Victim-Offender Mediation	N/A	Post-sentence	Not stipulated
	Court-Ordered Mediation	Sentencing Act 1997	Pre-sentence	Not stipulated
<b>NT</b>	Youth Justice Conference	Youth Justice Act (2005)	Pre-sentence	Not stipulated

Australia has numerous international obligations to protect the rights of VSs and PRs in cases of sexual violence. *The National Plan to End Violence Against Women* notes that RJ can, “promote healing and provide victim-survivors with a validating engagement with the justice system” (Department of Social Services 2020, p. 63). The ACT and Queensland stand out in this table as jurisdictions with strong legal frameworks which provide RJ services for sexual violence.

The ACT’s RJU has been accessible for sexual violence since 2018. The RJU sits alongside the CJS, allowing VSs to access both restorative and traditional justice simultaneously. However, sexual offences are only eligible after a plea or finding of guilt, except in exceptional circumstances. Sexual violence conferences are conducted using a Co-Convenor model, limiting the ability of PRs to manipulate processes. The ACT model of RJ, although infrequently used for sexual violence due to eligibility constraints and low referral rates (Lawler, Boxall & Dowling 2023), represents a successful complement to the CJS.

In Queensland, RJ approaches are split into Youth Justice Conferencing and Justice Mediation Programs for adults. The accreditation process for facilitators involves specialised training in conferences of a sexual nature. Sexual violence accounts for only 3-5% of cases referred to RJ schemes. Offences can be referred to mediation at any point of the justice process.

Australia's international and national obligations are met unevenly in state-based legislation, which provides inconsistent access to RJ for sexual offences. Where sexual offences are eligible for conferencing at all, this is often not until the sentencing stage, and young people are excluded. Section 2 will consider the social implications of existing and prospective RJ processes, with a focus on protected groups.

## Section 2: Social Implications

### Restorative Justice and Indigenous Peoples

This section is guided by Australia's obligations under *The Declaration on the Rights of Indigenous Peoples (2007)*, which recognises that Indigenous peoples have the right to practise and revitalise their cultural traditions and customs, and emphasises government consultation before policy adoption. The current lack of RJ procedures in Australia's CJS forces assimilation and is not aligned with this obligation. Just efforts to include Indigenous cultural traditions and customs must involve RJ processes.

Low levels of sexual violence disclosure to authorities is a major barrier to Indigenous participation in criminal proceedings, and, by extension, RJ processes. This report will progress the idea of a national, culturally sensitive RJ model that encourages the comfortable engagement of Indigenous Australians. Indigenous VSs may choose not to report for any of the reasons expressed by the broader Australian public, as well as personal, historical and structural factors (Willis 2011 p. 2).

Personal barriers to reporting include perceived negative repercussions, stigmatisation, and ostracization from family and community members (Willis 2011, p. 4). These issues are exacerbated in remote communities where anonymity is difficult to maintain (Willis 2011, p. 4.) Scholarship identifies the roots of distrust in historical events such as the forced removal of children in the Stolen Generation.

Contemporarily, Indigenous women may worry that disclosure of victimisation will cause the removal of their children by social welfare officers (Willis 2011, p. 6). This fear is rooted in the disproportionate representation of First Nations children in the child protection system. Although Aboriginal and Torres Strait Islander peoples make up 3.8% of the overall population (ABS 2023), Indigenous children constitute 43.7% of children in out-of-home care (Productivity Commission 2023).

Aboriginal and Torres Strait Islander women may be up to three times more likely to experience sexual violence than non-Indigenous women (Mitra-Kahn, Newbiggin & Hardefeldt 2016, p. 20). Willis' (2010, p. 44) investigation found that, "service providers... in Indigenous communities across four Australian jurisdictions felt it unlikely or very unlikely that female sexual assault victims would disclose to police." Fear of criminal justice processes is a real and significant factor influencing the ability of Indigenous people to comfortably disclose abuse.

If a culturally inappropriate response is anticipated, this will compound an unwillingness to disclose to the authorities. As such, the task of forming RJ processes in a manner that respects the cultural sensitivities of Aboriginal and Torres Strait Islander peoples is intricate and complex, but highly necessary. No response to sexual violence can be considered just or appropriate if it is not intersectional and decolonial (Ribeiro 2021, p. 50). The values and needs of Indigenous people must be built into the processes of a national RJ framework for sexual violence. An example of this is discussed below, as well as in Focus Box 3.

***Focus Box:1***

**Tiwi Islands Youth Diversion Unit (TYDU) : An existing framework**

Recognised as a successful and effective service, the TYDU meets the majority of mediation and counselling needs across the Tiwi Islands (Rossingh 2014, p. 27). The TYDU adopts a model that brings together justice concepts based on Tiwi Island Skin Group cultural understanding of mediation, law, and justice systems, alongside the territory's western justice system (Rossingh 2014, p. 29). Reverend Dr Djiniyini Gondarra, a Yolgnu man from Galiwinku who is Co-Chair of the Mawul Rom Project, highlights the cultural importance of conflict resolution (Rossingh 2014, p. 24):

*Yolngu people understand this strong need to turn conflict to restoration as a sacred act of reconciling with not just the people who live around us; but also right back to our ancestors who all worked to*

*continue so our children's children can also live in the good fruits of what we do today.* (Rossingh 2014, p. 25).

The Ponki Mediation course is founded on these understandings, combining traditional Tiwi concepts of mediation with western techniques (Rossingh 2014, p. 27). The TYDU does not explicitly exclude discussions of sexual assault cases however, there is little reporting on its success or use in such circumstances. This report highlights this case study as an exemplar of culturally sensitive RJ processes, which provides a model to be emulated by a national framework attempting to inclusively construct an RJ system for sexual violence.

### **Restorative Justice and Youth Justice**

It is in the interest of society to ensure that children enjoy special rights and protections, especially in circumstances that involve potential contact with the CJS and RJ processes. Recognised throughout the literature, children are far more vulnerable to victimisation due to developmental immaturities (Pali et al. 2018, p. 14) . Specific procedural understandings have been developed in a number of jurisdictions outside of Australia, such as the European Union, that recognise this (Pali et al. 2018).

RJ processes are already available for young people in most Australian states and territories. In Victoria and NSW, sexual violence offences are explicitly excluded from youth RJ programs. The authors of this paper could not find any evidence to support this exclusion. An outlier is the ACT, where anyone over the age of 10 is eligible to participate in the RJU. Queensland and South Australia also have a history of admitting sexual assault cases to youth diversionary programs. The arbitrary deprivation of liberty and the risk of experiencing violence through incarceration are particularly detrimental to children (OSRSGVAC 2013, p. 29). *The Convention on the Rights of the Child (1989)* emphasises that all efforts should be made to divert young offenders and victims from the negative impacts of the CJS.



There are a not-insignificant number of sexual violence offences perpetrated by young people. In 2020, the majority of offenders recorded by police for sexual assault were between 15 and 19 years old (AIHW 2020, p. 8).

Empirical evidence demonstrates that RJ is effective for youth sexual violence offences. In Queensland, preliminary trends imply that restorative justice conferencing reduced recidivism for young offenders (Restorative Justice Evaluation Team 2018, p. 47). Sherman, Strang and Woods (2000, p. 12) found that the rehabilitative effect of diversionary RJ conferences for young offenders was strongest in violent crimes, which has positive implications for its ability to extend to sexual violence.

Individual case studies of victim-offender conferences (VOCs) for sexual violence further demonstrate that RJ has positive impacts on both young VSs and PRs. In Queensland, a VOC was initiated between a 13 year old female VS and a 16 year old male PR (Department of Child Safety, Youth, and Women [DCSYW] 2018, p. 11). The conference was successful, with the PR demonstrating remorse and accountability. Tangible positive outcomes for the VS included the PR agreeing to avoid her neighbourhood, acknowledging her right to feel safe, and agreeing to help repair her relationship with a mutual friend who had taken his side (DCSYW 2018, pp. 11-12). VOCs meet the justice needs of persons involved in youth sexual violence.

### **Restorative Justice and Family Violence**

The Australian Law Reform Commission ([ALRC] 2010) articulates the difficulties of applying RJ practices to cases of family violence, emphasising the need for careful thought and preparation. It is common for programs to exclude cases of family violence involving sexual offences (ALRC 2010). The ALRC (2010) finds RJ to generally be inappropriate in family sexual violence cases, due to power dynamics obfuscating the policy aims of RJ. Project Restore, New Zealand's national RJ program for

harmful sexual behaviour, carefully considers the suitability of cases in a familial context, in line with the recommendations of the Ministry of Justice (2004). RJ can be a suitable first option for family violence before further measures, such as out-of-home placements, are taken (Braithwaite & Ivec 2021, pp. 469-470). This gives autonomy back to families and limits institutional interference in the home.

### ***Focus Box 2***

#### **Restorative Justice for Victim Survivors of Family Violence Framework — Department of Justice and Community Safety Victoria (DJCS)**

In 2017, DJCS published a response to the Royal Commission into Family Violence, drafting a framework for the use of RJ practices in response to family violence. The Royal Commission report was released in 2016, recommending RJ as an additional service oriented to VS needs, recognising that traditional justice approaches were not fully suitable (DJCS 2017, p.3). It noted process options including group conferencing, victim-impact panels, facilitated conversation, and variations as best suited (DJCS 2017, p.17) The report further recommended that assessment processes be dynamic, transparent and clearly explained, involve and respond to the needs of VS (DJCS 2017, p.16) It specifically defined family violence as inclusive of sexual assault and sexually coercive behaviour (DJCS 2017, p.5).

### **Section 3: Best Practice Standards**

The recommendations made in this section will follow a trauma-informed practice framework. Our recommendations are guided by Transforming Justice Australia, a preeminent community organisation at the forefront of sexual violence casework and research. Their work is informed by the following Practice Principles (TJA n.d.):

1. Survivor-oriented
2. Trauma-responsive
3. Cultural accountability and intersectionality
4. Do no further harm
5. Narrative approach
6. Community-based work
7. Restorative process

Trauma-informed legal practices meet individual justice needs and may prevent further crime. Reducing recidivism is not a primary focus of RJ work. However, it is pertinent to note that sexual trauma is a leading risk factor for future sexual offending (Pycroft & Christen-Schneider 2021, p. 1), and the risk of sexual reoffending appears significantly lower for offenders that have accessed treatment (Sardina & Ackerman 2022, p. 20). RJ has a stronger deterrent effect for serious crimes, such as sexual assault (OSRSGVAC 2013, p. 22). Criminal justice is not trauma-informed, and may further victimise VSs (Sardina & Ackerman 2022).

#### **Mediator Training**

A standard of best practice mediation would include specific sexual assault case procedural training for RJ mediators. The Australian National Mediator Accreditation System (NMAS) (Mediator Standards Board [MSB] 2007) already exists as a framework to inform the practice and accreditation of mediators.

The Queensland accreditation process further involves specialised training for cases of a sexual nature. We recommend procedural training specific to sexual violence to be incorporated into mediator accreditation processes. Facilitators must have knowledge of how participants can manipulate people and processes, and be able to mitigate risks to emotional and physical safety (Training and Accreditation Policy Group 2004, pp. 33-35).

The NMAS outline the objectives and understandings a mediator needs to hold considering the intake procedures for potentiation cases. First and foremost is the determination of whether a mediation process is appropriate or if variations to normal procedures are required (MSB 2015). Specialised considerations for sexual violence to be made by facilitators include whether all parties give informed consent to participate, are willing to take accountability, and will not be further harmed by the process (Lawler, Boxall & Dowling 2023).

Further specifications need to be made in the context of youth and Indigenous peoples. Outside of the primary facilitator(s), every process involving Indigenous participants should include a point of contact of Indigenous background, or with a similar level of cultural knowledge. The ACT's RJU uses a First Nations Guidance Partner as a support person for First Nations participants, who is their first point of contact within the process. While this increases the inclusivity of conferences that go ahead, many Indigenous persons still choose not to participate in the scheme at all (Lawler, Boxall & Dowling 2023, p. 125). This could be mitigated by better integrating First Nations community engagement throughout the process, as exemplified in the example below.

***Focus Box 3***

**The Port Lincoln Aboriginal Conferencing Model (South Australia)**

The Port Lincoln Aboriginal Conferencing model provides a useful framework for RJ processes involving Indigenous persons. The program enables members of the Aboriginal community, Elders, service providers, and prosecutors to attend mediation and address harm done to the community and victim. This framework represents an attempt to create a culturally-sensitive model that better targets the needs of Indigenous victims and offenders. A pilot review of the program noted that the role of the Elder was to “support the defendant to take responsibility for their actions and to recognise the consequences of their behaviour,” as well as “advise, support, and, where appropriate, challenge the defendant” (Marshall 2008, pp. 4-14). Community trust is built primarily through Elder engagement (Marshall 2008). The report ends with the recommendation that Elders be supported with formal training in court procedures and conference aims (Marshall 2008, p. 20).

An overall positive response from stakeholders in the Pilot Program was recorded, and the program was made a permanent option in sentencing for Indigenous defendants in 2010. The prospect of Elder disapproval is an effective deterrent (Marshall 2008, p. iii). Most stakeholders were convinced this program would increase confidence in the CJS for Indigenous communities, through the meaningful incorporation and participation of community members and Elders.

### **Model Specifications**

The model should be victim-centred and trauma-informed. VOCs allow both the PR and the VS to separate their identity from the act(s) of violence, and re-conceptualise themselves as having agency and power (Batchelor 2023, p. 4899). Bolitho (2015, p. 274) proposes that VOCs create an emotionally transformative space through the process of “memory reconsolidation,” whereby emotions and memories are disrupted and replaced with healing narratives. Whilst VOCs are generally an appropriate process for sexual violence, a trauma-informed framework must be able to cater to individual victims’ needs. This requires flexibility in the exact nature of processes conducted, which could be circle-based, online,

facilitated through the exchange of letters, or even vicarious RJ conferences, which allow a surrogate SV/PR in cases where the actual parties to the offence cannot participate (Sardina & Ackerman 2022, p. 40). Figure 2 compares two models for conferences, aspects of which can be utilised in specific cases at the facilitators' discretion. A Triad Model includes a dedicated specialist for each participant, as well as an RJ specialist as an overall facilitator. A Co-Convenor model uses two facilitators who oversee the process holistically.

**Figure 2: Comparison of the RJU and Project Restore**

Model case study	Pros	Cons
Co-Convenor Model - RJU (ACT)	<p>A dual model reduces the ability for PRs to manipulate the process or the facilitators.</p> <p>PRs, VSs, and supporters have overwhelming positive views of the conferences (Lawler, Boxall &amp; Dowling 2023).</p> <p>Justice needs of SVs are generally met to a high degree (Lawler, Boxall &amp; Dowling 2023, pp. 82-83).</p> <p>PRs demonstrate empathy and understanding of the harm they had caused, and are committed to not offending again (Lawler, Boxall &amp; Dowling 2023, pp. 84-85).</p>	<p>There is up to 6-12 months' delay from case allocation to conference, which is a major factor in low referrals (Lawler, Boxall &amp; Dowling 2023, p. 69).</p> <p>Some VSs find it difficult to disengage after emotionally bonding with facilitators (Lawler, Boxall &amp; Dowling 2023, p. 89). This is an area where the RJU model is not trauma-informed.</p>
Triad Model - Project Restore (NZ)	<p>A similar model is recommended by survivor-scholars Sardina and Ackerman (2022, p. 38) as trauma-informed.</p> <p>Every participant has a dedicated specialist.</p> <p>Specialisation allows deeper knowledge and experience, which generally makes RJ processes more successful (Bolitho 2015).</p>	<p>The triad model could cause role confusion (Lawler, Boxall &amp; Dowling 2023, p. 29).</p> <p>Involving a third professional creates additional expenses.</p>

## **Model Specification for Indigenous Australians**

Model specifications must be built through close consultation with Indigenous communities. A self-determined justice response is a necessary step to create healing processes for Indigenous individuals. As highlighted above, there are some specific models (see Focus Boxes 2 and 3) to build upon, though not widely implemented or evaluated in the Australian context.

### ***Focus Box 4***

#### **Hollow Water Community Holistic Circle Healing Program**

The Hollow water First Nation from Manitoba Canada has been the centre of a novel RJ model, based on regional Anishinaabeg cultural values systems, first established in the 1980s. The Canadian Department of Justice (2021) outlines the program's goals: to foster healthy communities, based on the idea of reconciliation between offenders and victims of violence and abuse. The program emphasises a process of healing, integrated into the Community Holistic Circle Healing (CHCH) to achieve justice. To accomplish these goals, the community makes referrals to caseworkers. Caseworkers then hold healing circles for the victim and offender with the goal of reconciliation. The healing circle does not take place in a vacuum. The program staff foster strong community networks, with all community members seen as agents who assist in the communal healing process beyond the healing circle.

Funding for this program is provided by the Canadian Justice Department and Province level Manitoba Community Justice (Department of Justice Canada 2021). Program evaluations show the program to be cost-effective in comparison with offender incarceration (Department of Justice Canada 2021). Further achievements of the program include the revitalization of traditional knowledge among families. Challenges are also highlighted including dealing with the gap between the Canadian legal system's concept of justice and the Hollow Water First Nation.

## **Model Specifications for Youth and Family Violence**

There are a number of existing International and Australian-based frameworks and literature concerning the specific purpose of conducting RJ in an environment responsive to the needs of youth and family violence. For further information please see, Braithwaite and Ives's (2021) discussions on the Australian context, the Australian government's *National Framework for the Protection of Australia's Children* (2021), the European Union's *Practice Guide Implementing Restorative Justice with Children* (Pali et al. 2018) and the United Nations' *Promoting Restorative Justice for Children* (OSRSGVAC 2013). Overall, facilitators must use discretion to determine whether RJ is appropriate on a case-by-case basis, taking into account the participants' emotional maturity and ability to give informed consent, as well as any potential for manipulation and harm to be caused by others in the family unit.

## **Challenges and Solutions**

There are a number of challenges, especially legal, that can arise in a RJ process. Evidence admissibility of items disclosed in RJ proceedings, including apologies, is a concern not adequately addressed by existing frameworks such as the Civil Liability Act 2002 (NSW) (Vines 2013, p. 29). There is also tension between confidentiality and mandatory reporting requirements for a mediator to disclose particular forms of harm to authorities. This highlights an important tension between privacy, confidentiality, and legal and ethical responsibilities.

The standardisation of practice through a national framework can begin to address these challenges. A legislative framework can standardise best-practice procedures across every Australian jurisdiction, at any point in the CJS, and outside of it. A legislative framework has the ability to provide greater certainty and protection by removing barriers to participation in RJ programs, such as particular referral points or legal concerns.



Ultimately, embedding RJ into a national framework gives individuals greater choice in their pathway to justice and healing. A legislated framework can become an enabling tool when implemented in a flexible manner, as stressed throughout this report.

## **Conclusion and Recommendations**

This report makes the following recommendations based on an extensive review of the existing literature, which emphasises a victim-centred and trauma-informed approach to a national legislative framework for RJ in cases of sexual violence.

*Recommendation #1:* The creation and implementation of a national framework of RJ for sexual assault cases.

*Recommendation #2:* This framework should focus on empowering and strengthening existing community and legislated RJ programs.

*Recommendation #3:* Further consultation with stakeholders considering any intricate specifications.

The benefits of RJ in cases of sexual violence for victims, offenders, and communities are great; especially when understood as a tool to restore power and autonomy to those most impacted, while protecting and upholding human rights. The flexible, culturally-sensitive, and victim-centred nature of these processes broaden the scope of available options for SVs and PRs in the CJS and broader community. The development of a national framework will immeasurably help to heal trauma and repair relationships in Australian communities.

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