

Restorative Justice Service

Policy

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1. Introduction

1.1. Scope

This document provides an overview for the Corrective Services NSW Restorative Justice Service (RJS). The document should be read and complied with by staff and management of the RJS.

1.2. Purpose

This document is intended to set out the aims of the RJS, and to provide a policy framework for staff and management of the RJS.

2. Overview

2.1. The Restorative Justice Service

The RJS sits within the Victims Register and Restorative Justice Unit (VRRJU). It consists of a Practice Manager and Restorative Justice Facilitators. The RJS offers restorative justice (RJ) processes in a post-sentence context. The RJS has been in operation since 1999.

2.2. Purpose

The main purpose of a legal process is to provide the accused with an opportunity to defend the charges that have been laid against them and for the prosecution to prove, beyond reasonable doubt, that the defendant is guilty. The role of the judiciary in this is to ensure that sentencing laws are appropriately applied. However, even after this work has been completed, a host of other issues remain. In any situation in which people have been harmed, there will be a range of personal, relational, emotional and moral needs that arise, such as the need to offer or hear a sincere apology. The legal system is not primarily designed to address these elements.

For example, a person who committed a crime may have been *held* responsible by the criminal justice system insofar as they have been prosecuted and sentenced (passive responsibility). But the person who committed the crime may feel that they have yet to *take* responsibility for their actions (active responsibility). They have not had the opportunity to express their remorse or offer an apology to those who were directly or indirectly harmed by their actions. They may feel that they have yet to make amends for the harm and suffering they have caused.

Those who have been harmed by the offence may have a number of questions about matters that never came up or were never adequately explained within the investigation or the judicial process. They may need to talk freely and openly about the impact that this has had on their lives, without worrying about the legal parameters of what they can or cannot say. They may feel that their experience and their loss has still not yet been heard or acknowledged by the person responsible, and that they have yet to see any remorse or hear an apology. They may want to be reassured, in a direct way, that the person responsible will take steps to address the underlying causes of their criminal behaviour so that it will not happen again. These are the kind of needs that RJ is designed to meet.

Hence, the purpose of the RJS is to provide all those who are eligible with the opportunity to participate in a safe and voluntary RJ process after the legal matters relevant to the offence have been finalised. Thus, an RJ process may be held while the offender is serving a custodial sentence, under the supervision of Community Corrections (on parole) or after the offender's order has expired.

2.3. Restorative Justice

Restorative justice, as delivered by the RJS, seeks primarily to address the harm caused by a criminal offence. Specifically, RJ in this context is designed to enable a **person harmed** by a crime:

- to directly and constructively express to the person responsible for the offence their feelings (e.g. fear, anxiety, anger, loss, pain and grief);
- to explain to the person responsible how the crime has affected their lives;
- to ask questions and receive answers and insight which only the person responsible can provide; and
- to experience a sense of empowerment through a direct voice and participation in determining appropriate acts of reparation and accountability for the person responsible, and constructive acts of healing for themselves.

Restorative justice is also designed to provide the **person responsible** for the offence with an opportunity:

- to face the full human impact of their crime;
- to hear first-hand the depth of trauma experienced by the person(s) harmed by the offence, as well as their family and friends;
- to express remorse and offer an apology for their offence and its resulting impact;

- to answer questions that will assist the person(s) harmed to understand what happened and why; and
- to make amends for the harm done—to whatever extent possible—for example, by agreeing to reparative tasks and/or other acts of accountability.¹

3. Restorative Justice Processes

3.1. Participants

The RJS is designed to provide an opportunity for a specific range of participants to be involved in an RJ process, depending on their needs, wishes, risks (as assessed by the RJS), and availability. These include the following:

- **Person Harmed:** a person who has been directly or indirectly harmed or affected by the criminal offence.²
- **Person Responsible:** a person who has been sentenced for the crime.³
- **Support Person:** someone invited by the person harmed or the person responsible to support them in the process (e.g. a parent, carer, sibling, extended family, partner, friend, or professional working with them).
- **Observer:** anyone who attends an RJ process without participating, and whose presence is accepted by all the participants (e.g. a researcher).

3.2. Process Phases⁴

Once participants have been assessed as eligible, any subsequent RJ process will involve four phases. The time taken to complete any phase will be determined by the needs of participants and what will enable them to gain the maximum possible benefit in relation to the goals of restorative justice:

¹ These aims are adapted with permission from the Victim Offender Mediation/Dialogue Program, Texas Dept. Of Criminal Justice - Victim Services (Texas USA).

² A person harmed may accept that they were partly responsible; and a person responsible may wish to talk about how they were also partly harmed. RJ processes should incorporate these complexities, so long as all involved agree.

³ If a person responsible initiates a referral, but the person(s) harmed (and any representative) are not willing or able to take part in an RJ process, then the RJS may invite someone who has been harmed by the same type of offence to take part in an RJ process as a 'surrogate'. Likewise, if a person harmed initiates a referral, and the person responsible is not willing or able to take part, then, if the person harmed wishes, the RJS may invite a person who has committed the same type of offence to participate. In either case, this approach must be entirely voluntary, and assessed by the RJS as safe and beneficial for all those involved.

⁴ This sequence and the RJ process definitions below follow Brookes, D. R. (2009). *Best Practice Guidance*. Victorian Association of Restorative Justice. This *Guidance* is adapted from previous versions developed in Scotland and the UK.

Phase 1: The Facilitator and Co-facilitator⁵ meet with the person harmed and the person responsible separately to explain what is involved in the process. This gives them time to make sure that Restorative Justice is likely to meet their needs before agreeing to take part.

Phase 2: The Facilitator/s help participants to prepare before communicating with each other. This gives them an opportunity to think about what they want to say, how they want to say it, and what expectations they might have.

Phase 3: The participants communicate in a way that suits their needs and wishes. This can be done by meeting in person, or by exchanging information through the Facilitator/s.

Phase 4: If participants agree to a plan, then it is put into action. The plan may include reparative tasks, additional counselling, risk-minimising activities or behaviour programs⁶, or other mutually agreed activities⁷, so long as they adhere to RJ principles. The Facilitator/s can help participants keep to their agreements and arrange follow-up meetings or additional care and support.

3.3. Eligibility and Suitability

A participant is assessed as **eligible** for the RJS when the referral criteria (see §4.1) relevant to their role are satisfied. The RJS determines that a prospective participant is **suitable** when it has sufficient evidence that the following conditions are met:

1. The Facilitator/s can manage the risks, as identified via the following sources:
 - a. pre-existing documents to which the RJS has authorised access (e.g. the participant’s criminal history, mental health diagnoses, current stabilisation status, substance misuse and current treatment status, and physical or learning disabilities);
 - b. information shared by professionals working with the participant, subject to the participant’s consent (see §6.3) (e.g. suicidal thinking, vulnerability due to recent release from prison, security breaches, detachment from reality or delusions, paranoia, hallucinations); and/or

⁵ Every RJ case is assigned a Facilitator and a Co-facilitator. Both attend the first meeting with the participants in Phase 1, and any subsequent meeting between participants in Phase 3. The remaining work is usually undertaken by the Facilitator alone. This includes (a) a preliminary phone call or AVL to each participant to assess their interest/eligibility, (b) the preparation phase, (c) any information exchange in Phase 3, and (d) the follow-up.

⁶ Behaviour programs are only included if the person responsible is eligible and the program is in their case plan.

⁷ Participants may, for instance, wish to develop agreements that could serve to benefit others in similar circumstances - such as mutual commitment to crime prevention, assurance of personal safety, restorative justice advocacy, service to or within the community, and criminal justice reform.

- c. the Facilitator/s observations of the participant (e.g. displaying verbal or physical aggression, inappropriate motives, being manipulated or coerced into taking part by the other participants or family members, etc.).
2. Their understanding of the offence is not substantially different from the agreed facts accepted by the court.
3. Their motivations align with restorative justice values and objectives.
4. Their expectations are reasonable, and are likely to be met.
5. RJ is likely to be beneficial for them, and the other person.
6. They have the psychological strength to proceed.
7. They have an adequate support network in place.
8. They trust the Facilitators, the RJ process, and themselves.

3.4. Dialogue Topics

The objectives of RJ identified above (§2.3) are achieved by providing a ‘safe place’ in which all those involved have an opportunity to discuss the following three topics, with the assistance of trained Facilitators:

- (1) What happened (Facts).
- (2) How people were harmed (Consequences).
- (3) How the harm can be addressed (Future).

3.5. Process Types

The RJS delivers three main restorative justice processes, as well as a range of supplementary and alternative processes. These are briefly described below.

1. Restorative Justice Processes

There is evidence to suggest that direct communication is the most effective way of meeting the aims above (§2.3). However, the process used will be determined by the expressed needs and circumstances of participants. There may also be a mixture of RJ processes used. For instance, indirect communication may lead to direct communication.

Direct Communication

- **Conferences** are meetings attended by the person/s harmed, and person/s responsible, together with their respective support persons.
- **Face-to-Face Meetings** are attended only by the person/s harmed, and the person/s responsible. They are used where support persons would be unnecessary or unhelpful.

Indirect Communication

- **Shuttle Dialogue** involves the Facilitator acting as a 'go-between' to enable those harmed and those responsible to discuss the three topics above (§3.3) without meeting in person. This process is used where they cannot or do not wish to meet each other. Shuttle Dialogue still requires the participants to engage in assessment and preparation before any substantive communication takes place. The exchange can be carried out using letters, audio recordings or videos.

2. Additional Processes

The RJS also delivers a range of processes that are designed to serve either as a *supplement* to an RJ process (to enhance its quality and effectiveness), or as an *alternative* (where an RJ process is not suitable or possible). A process that is initially delivered as an alternative, may subsequently lead to an RJ process. This is most likely to be the case with the Apology Letter Bank and Protective Agreement.

Supplementary Processes

- **Restorative Circles (PH)** is designed to enable the person harmed and their family members and/or support persons talk together, using a circle format, about what happened, how they were harmed or affected, and what can be done to address the harm. This process is only offered if the person harmed has already committed to taking part in an RJ process. It can then take place either prior to or following the RJ process, or in cases where the RJ process is discontinued. Restorative Circles may also be used in cases where the person harmed and/or their family members wish to meet with the family members of the person responsible to engage in a restorative dialogue, but without the person responsible present.

- **Restorative Family Group Conferences (PR)** are meetings attended by the person responsible, family members who are considering supporting them upon release from custody, and professionals who are working with the person responsible and/or who can offer advice and guidance on programs or resources that may be available post-release. This process enables the ‘family group’ to talk about what has happened historically, how they have each been affected by the crime and its aftermath, and to reach an agreement that the person responsible will adhere to following their release. The person directly harmed by the crime does not attend this meeting. This process is made available to the person responsible only when they have already committed to taking part in an RJ process. It can take place either prior to or following the RJ process. The main aim of a Restorative FGC is to ensure that the person responsible is given a separate opportunity to address any family-related issues so that they are better able to focus on addressing the needs of the person harmed during the RJ process.

Alternative Processes

- **Protective Agreements** are voluntary non-enforceable agreements designed to help participants negotiate practical details in relation to unplanned or unintended contact after the prison release. The process offers a level of reassurance to those who are concerned about the potential for such contact, particularly where the person responsible for the offence is returning to a small community. It is most likely to be used in cases where there is insufficient time to engage in an RJ process before the prison release date.
- **Apology Letter Bank** gives a person harmed the opportunity to receive a letter of apology from the person responsible. Any letter of apology will first be screened by Facilitator/s. If it is not acceptable, it will be returned so that it can be rewritten in accordance with the guidelines provided.⁸ A person harmed may at any time enquire about whether a letter is available for them. If there is, they can then choose whether to receive the letter. The RJS will not inform the person responsible that their letter has been received unless it has permission from the person harmed. If no letter has been written, the person harmed can ask the RJS to notify them if a letter becomes available. The RJS will only notify a person harmed who has not yet made an enquiry that an apology letter is available for them if it can obtain sufficient evidence from a reliable source that it would be safe (non-traumatising) for the person harmed to receive this information (see §4.3 for more detail).

⁸ A written form of the guidelines will be provided to the person responsible. If there are language/literacy barriers, the Facilitators will present the guidelines via an AVL or in-person meeting or the use of a translator will be engaged.

- **Restorative Conversations (PR)** involve only the person responsible meeting with the Facilitator/s. This process aims to enable them to understand the impact of their actions, and take responsibility in a way that is consistent with this policy, such as by submitting a letter to the Apology Letter Bank. It is offered by the RJS only when the person responsible has initiated a referral, but the person harmed cannot be contacted⁹, is not eligible or suitable for RJ, or does not wish to take part in an RJ process.
- **Restorative Conversations (PH)** involve only the person harmed meeting with the Facilitator/s. This process aims to help them talk about their experience, discuss strategies for recovery and gain access to other support services. It is offered by the RJS only when the person harmed has initiated a referral, but the person responsible cannot be contacted, is not eligible or suitable for RJ, or does not wish to take part in an RJ process.

4. Referrals

4.1. Referral Criteria

The RJS will accept a referral only if:

- the referral offence has directly or indirectly harmed at least one person;¹⁰
- at least one person has been sentenced in NSW for the referral offence, and/or is serving a sentence (in custody or the community) or is now residing in NSW;¹¹
- the participating person(s) harmed and person(s) responsible are adults (18+), or will be accompanied by an adult/guardian;
- the offence did not involve domestic violence (see §4.4 for an explanation); and
- the offender is mentally capable of taking responsibility for their offence (see §4.5 for details).

⁹ The RJS determines that a person 'cannot be contacted' when it (a) cannot obtain their contact details, (b) the person expressly communicates that they do not wish to be contacted by the RJS (e.g. via a representative), or (c) they do not respond to a phone message, email and/or letter within a reasonable time-frame (typically, 1-2 weeks).

¹⁰ The RJS determines whether this criterion is met on a case-by-case basis, taking into account the nature of the offence, the Judge's Sentencing Remarks, any victim impact statement, and communication with the person who has referred themselves and self-identifies as a 'victim' or 'person harmed'.

¹¹ This criterion entails that the RJS will consider all referrals where (a) the person responsible is serving a sentence or residing in NSW, despite being sentenced in another jurisdiction; or where (b) the person responsible was sentenced in NSW, but is now serving a sentence or residing in another jurisdiction. Referrals will be considered where the person harmed is residing in another jurisdiction, but only if this criterion regarding the person responsible has been met.

4.2. Initiated by Persons Harmed

If a person harmed contacts the RJS to express their interest in taking part in an RJ process, the person responsible will not be told of this interest until it has been established that:

- (a) the person responsible meets the minimum eligibility criteria for an RJ process;
- (b) the person harmed has been assessed as suitable for and likely to benefit from an RJ process;
- (c) the person harmed has made an informed decision to proceed; and
- (d) the RJS has obtained good evidence from professional(s) who are working directly with the person responsible that it would be safe and beneficial to notify them at this time (see below).

In relation to precondition (d) above, the relevant professional(s) may provide evidence that (i) notifying the person responsible at this time is likely to have a counterproductive impact on their mental health, case management, behaviour change program, or reintegration into the community; or that (ii) the person responsible is, due to present circumstances, unlikely to be receptive to taking part in RJ or to be able to engage fully or appropriately in such a process. For instance, the person responsible may have just been released, and so is currently preoccupied with adjusting to living in the community, re-establishing family support, being supervised on parole, and so on. In such cases, the person harmed will be informed of the delay, without breaching confidentiality.

This precondition will ensure that the person harmed is not disempowered or frustrated by engaging in a process that is less than optimal or curtailed merely because the person responsible is not currently able to be fully engaged in or committed to the process.

4.3. Initiated by Persons Responsible

A person responsible may contact the RJS (either directly or through a representative) to register their interest in taking part in an RJ process. For reasons similar to those outlined in §4.2, the RJS will only approach the person harmed once it has been established that:

- (a) the person responsible meets the minimum eligibility criteria for RJ;
- (b) the person responsible has been assessed as suitable for and likely to benefit from an RJ process;

- (c) the person responsible has made an informed decision to proceed; and
- (d) the RJS has obtained good evidence from a reliable source that it would be safe and beneficial to notify the person harmed at this time (see below).

In relation to the precondition (d), the fact that a crime was sufficiently serious to warrant a sentence, especially if it involved severe violence¹², creates a prima facie assumption that the victim would be at grave risk of being retraumatized, distressed, disempowered or otherwise psychologically harmed if they were to be informed that the person responsible wished to communicate with them. Hence, the RJS will not proceed to contact the person harmed unless it has obtained evidence from a reliable source that is strong enough to outweigh or dispel this prima facie assumption.

This evidence might, for example, include public statements by the person harmed to the effect that they would be open to hearing an apology from the person responsible, or would like them to provide answers to questions they have about the crime. Such statements might be found in a media article, a Victim Impact Statement, a parole submission, and so on.

In cases where the RJS *has not* obtained sufficient evidence that it would be safe to approach the person harmed, then the RJS will explain the policy above to the person responsible. The RJS will also suggest to the person responsible that, if they wish, their register of interest can be kept on file in case the requisite evidence comes to light. The RJS will also offer the person responsible the opportunity to submit a letter to the Apology Letter Bank. If, at some stage, the person harmed contacts the RJS to express their interest in communicating with the person responsible in an RJ process, then their apology letter and/or register of interest are likely to contribute to the willingness of the person harmed to proceed with some form of communication.

There are two main reasons for this additional precondition:

1. It is internationally recognised as trauma-informed best practice that if the crime involved severe violence, any RJ-related communication should be initiated by the person harmed.¹³ The policy above differs from this practice only insofar as it allows for the possibility that not every person harmed will be retraumatized or otherwise harmed if they are informed about the person responsible's interest in

¹² 'Crimes of severe violence' include homicide, manslaughter, serious physical injury or trauma, sexual assault, child abuse, and so on.

¹³ This policy is almost universal in RJ programs that address crimes of severe violence, as indicated by the following recommendations: "Trauma-informed/responsive practice and experience have proven that survivors may feel that offender/defendant-initiated requests to meet and talk or to apologize can be intrusive, re-traumatizing, and contain risk of inappropriate self-interest." National Association of Victim Assistance in Corrections. *20 Essential Principles for Corrections-Based Victim Services - v. 2.0* <<https://www.navac.website/vod.html>>. "Victim sensitive offender dialogue in crimes of severe violence should be victim initiated." Umbreit, M. S., Vos, B., Coates, R. B., & Armour, M. P. (2006). Victims of Severe Violence in Mediated Dialogue with Offender: The Impact of the First Multi-Site Study in the U.S. *International Review of Victimology*, 13(1), 27-48.

RJ. Some may even welcome the opportunity. Hence, rather than implement a blanket prohibition against offender-initiated referrals, the RJS will assess each register of interest by a person responsible on a case-by-case basis.

2. This policy is designed to minimise the risk of reinforcing the interpersonal power imbalance experienced by most victims of crime. One of the most significant harms that result from victimisation is a loss of control.¹⁴ The RJS must therefore obtain clear evidence that the person harmed would be unlikely to experience an offender-initiated referral as intrusive, disempowering, disrupting, or a violation of some kind. There must, in other words, be good evidence that the person harmed is already open to and interested in the possibility of such communication, as in the kind of public statements mentioned above.

It is acknowledged that, for most offender-initiated referrals, it is unlikely that the RJS will be able to obtain the kind of evidence that would be required. Hence, given the trauma-informed policy above, the majority of referrals that lead to communication will be victim-initiated. However, this will not necessarily result in low case numbers or limited opportunities for offenders to engage in an RJ process that involves communication. An international survey found that ‘between 40% and 50%’ of victims would be interested in a restorative meeting with the offender.¹⁵ Hence, as the availability of RJ processes becomes more widely known across NSW, victim-initiated referrals are likely to increase exponentially.

4.4. Domestic Violence

A literature review has found that standard RJ processes are not sufficiently safe or effective in addressing domestic violence (DV).¹⁶ As a result, the RJS has made the decision not to facilitate DV matters. Hence, if either a person harmed or a person responsible in a DV case contacts the RJS about the possibility of any process that involves communication (including the Apology Letter Bank), they will be informed about this policy and the reasons for it. The Facilitators can, however, offer them an alternative process that does not involve communication (e.g. a Restorative Circle), but it is crucial that they do so with the support and advice of a professional psychologist or counsellor who has experience working with DV cases.

¹⁴ See, e.g., “For most victims/survivors, their loss of choice and control begins with the crime and often continues through the adjudication process. One of the most common and important objectives of the [RJ] process is to return to the survivor as much of a sense of ‘choice’ and of personal ‘control’ as is possible.” *Op. cit.* National Association of Victim Assistance in Corrections.

¹⁵ Wemmers, J. & Canuto, M. (2002). Victims’ experiences with, expectations and perceptions of restorative justice: a critical review of the literature. Ottawa: Department of Justice: 35.

¹⁶ For details, see Brookes, D. R. (2019). Restorative Justice and Domestic Violence. Available at SSRN: <https://ssrn.com/abstract=3756614>.

4.5. Forensic Patients

The following section concerns the eligibility of forensic patients for an RJ process:

1. Persons found unfit to plead.

- These are individuals affected by a serious mental illness, intellectual disability or brain injury and deemed unable to understand what is happening at trial, give their story or instruct their solicitor. Persons found unfit to plead may later be (i) found fit to plead, (ii) acquitted, or (iii) sentenced to a 'limiting term', which is based on the accepted facts surrounding the offence.
- Individuals sentenced to a limiting term are deemed unable to give their story or understand legal processes. Hence, they cannot be assessed by RJ Facilitators as able to understand or take part in RJ processes. So involvement in an RJ process is not appropriate.
- From the time a court finds someone unfit to be tried, there is a one year period during which they may be found fit to plead. If the individual is found fit to plead, tried for the offence they committed, found guilty and sentenced, then involvement in an RJ process, including a direct communication, may be appropriate and the usual assessment process should apply.

2. Persons found not guilty on the grounds of mental illness.

- These are individuals who, as a result of a mental health or cognitive impairment, they did not understand what they were doing or that what they were doing was 'wrong' by normal community standards, and were detained for the reason of public safety rather than punishment.
- As these individuals are not deemed responsible for the offence, involvement in any direct communication is not appropriate.
- Indirect communication may be appropriate, if there are constructive and helpful things that both the person harmed and the person responsible want to say to each other. A Restorative Conversation or Circle process with the person harmed alone could also be used.
- Assessment of referrals for any indirect exchange of information should be guided by the professional opinion of Justice Health staff or a treating psychologist, as to whether participation in any such process is appropriate and in the best interests of the individual.

3. Persons who were serving a determinate sentence but were subsequently found to be mentally ill and were transferred under a schedule to a psychiatric hospital.

- These are individuals who were deemed fit to plead and found guilty of an offence and were serving a prison sentence, but subsequently required involuntary hospital treatment. If an offender was not mentally ill when the crime was committed but is a forensic patient or Correctional Patient when the referral is made, then an RJ process may be appropriate.
- Referrals should be treated on their merits, and assessments should be guided by the professional opinion of Justice Health staff or a treating psychologist, as to whether participation in an RJ process is appropriate and in the best interests of the individual.
- If an offender became a forensic patient following imprisonment but is no longer a forensic patient at the time of referral, then involvement in an RJ process may be appropriate and the usual assessment process should apply.

4. Psychotic Forensic Patients / Offenders

- A forensic patient or any offender who is psychotic at the time of referral is not suitable for participation in an RJ process. However, if, in the professional opinion of Justice Health staff and CSNSW psychology staff, they are assessed as suitable for RJ when they are on medication, then they may be considered eligible for an appropriate RJ process.

5. Quality Assurance Framework

5.1. Support Structure for Facilitators

Due to the serious nature of the crimes that the RJS will be addressing, all RJ staff should have a heightened awareness of the potential impact upon the health and safety of Facilitators. There are two issues that can arise in this context:

1. Facilitating cases that involve crimes of severe violence can result in vicarious trauma. This occurs when the Facilitator is feeling in themselves the intense emotions experienced by the participants to a degree that they are traumatised themselves.

2. Listening to the participants may trigger the Facilitator's own memories of similar experiences in their past, or painful feelings that they have not yet resolved in their own lives.

To manage these situations, and to ensure the safety and effectiveness of an RJ process, the RJS must be a secure and supportive working environment for RJ service staff. This will include providing Facilitators with the following support structure. (The scope and purpose of these roles are explained in the more detail in *Appendix 8.1*.)

- **Co-Facilitator:** someone who can provide role modelling, ongoing learning and practical support to the RJ Facilitator, and preferably who has expertise in working with those affected by or responsible for crimes of severe violence. Co-Facilitators should always accompany the Facilitator to the initial suitability assessment meeting(s). If the case is sufficiently complex or there are safety concerns, they may also attend preparation meetings. They should also be present at any Conference or Face-to-Face Meeting. They must be fully competent to facilitate RJ processes.
- **Case Supervisor:** someone who is able to provide advice and oversight in individual cases, bring new ideas and a fresh perspective, and check that cases are progressing safely and appropriately. This includes supporting Facilitators to engage in self-care, which includes being self-aware and honest about their ability to work in this area or continue safely with a particular case.¹⁷ Case Supervisors must be fully competent to facilitate RJ processes.
- **Line Manager:** someone who can ensure that the RJ Facilitator has the support and resources to work effectively, but without getting involved in day-to-day case management details and decision making. This includes ensuring that Facilitators have regular and as-needed access to a clinical supervision (that is, a professional psychologist or counsellor who can support staff members who are working with clients under stress or distressed). In a larger RJ service, the Line Manager would not need to be an RJ Facilitator.

In the RJS, the Facilitators may also take on the role of Co-Facilitator and Case Supervisor. The Practice Manager will generally function as both a Case Supervisor and Line Manager, but depending on staffing capacity and their training, they may also take on the role of Co-Facilitator as well as taking active cases as a Facilitator.

¹⁷ Even if a case is momentarily disrupted, it will be better for all concerned if a Facilitator honours their own sense of what they need.

5.2. Additional Support for Participants

Restorative Justice is therapeutic, but it is not therapy. It is not equivalent to or a substitute for professional grief counselling, victim support services, offender behaviour change programs (e.g. substance misuse programs, sex offender programs, etc.). Restorative Justice has a unique and limited remit, which is to provide those seeking the opportunity to engage in a safe and voluntary dialogue for the purpose of addressing the harm caused by a crime.

However, this objective cannot be met in isolation from other connected issues, such as substance misuse, mental health issues, or debilitating grief. These matters will have a significant impact on the capacity of participants to engage in an RJ process safely and effectively. RJ Facilitators will not – and should not be expected to – have the resources or the expertise required to address these related matters. For this reason, the RJS will only implement an RJ process if Facilitators can be assured that, with the permission of the participants, a range of additional supports is in place. This includes the following types of support:

- **Professional Assessment:** Facilitators should, as early as possible and with the informed consent of the participant, contact and consult with professional psychologists, counsellors or program staff who have been or are currently working with each participant, so as to seek their views in relation to whether taking part in an RJ process is likely to be safe and beneficial for them. They are likely to have a more extensive understanding of the participant's needs and their ability to cope with aspects of the process, and so, unless there are extenuating circumstances, their support should be taken into account before proceeding with the case.
- **Psychological Support:** If a participant is not currently working with a professional psychologist, therapist or counsellor, Facilitators should ask the participants to consider arranging access to one for the duration of the RJ process, including the follow-up phase. Facilitators should offer the participant assistance to make such an arrangement where necessary. Participants may invite a psychologist, therapist or counsellor to any meeting, or to help them work through the preparation material.
- **Cognitive Impairment or Disability Support.** The RJS should make consensual, specific and effective adjustments to ensure that participants with a cognitive impairment or disability can fully participate in an RJ process without discrimination (see *Appendix 8.3, 2.3*). This may include the involvement of relevant professionals at every stage of the process, adjusting the standard procedures, developing contingency plans, educating other participants about cognitive impairment or disability, managing expectations, ensuring that augmentative or alternative communication systems are available, etc.

- Correctional Services Support:** The RJS does not *require* that a Case Manager, SAPO, Psychologist or Community Corrections Officer, or any other CSNSW employee attend any part of an RJ process. Moreover, to protect the privacy of participants and to encourage their openness and transparency, Corrections staff should, where possible, only have visual (not audible) access for the duration of any RJ meeting. However, if (a) the person responsible *requests* their presence as an observer or support person, or (b) the correctional facility and/or person harmed has security concerns, then – subject to their suitability, work-load negotiations, availability and time constraints – a CSNSW employee who took part in either capacity could be beneficial to the RJ process.
- Informal Support:** Facilitators should ensure that participants are able to access suitable support from family members or friends. This will normally involve asking the participant who they think would be most able to support them through the process. The Facilitator should then meet with these identified support persons in order to ensure that they understand the RJ process, to assess their suitability, and to discuss the kind of support they would be willing to offer, including potentially attending a Conference, helping them work through the preparation materials, and so on.
- Behavioural Change Program Support:** Facilitators should encourage the person responsible to engage in any relevant and available behavioural program prior to or alongside their participation in any RJS process.¹⁸ If the crime was a sexual offence, then if the person responsible is eligible for a sex offender program, and such a program is available to them, then, unless there are extenuating circumstances, they must have successfully completed this program, prior to any communication with the person harmed.
- Video/Audio Debriefing Support:** If requested by a participant, a Conference or Face-to-Face Meeting may be recorded by video/audio. Before proceeding, each request will require (a) a suitability assessment by the RJS team, in consultation with CSNSW Executive; (b) the signed consent of every person who attends the meeting; (c) authorisation from the facility in which the meeting is held; and (d) the availability of staff with the expertise and equipment to record and edit the video/audio. Only one copy of the video/audio will be kept in a secure location at the RJS office for a specified period of time as determined by the RJS team, which may vary depending on the case circumstances. Participants may arrange to view or listen to the recording with the Facilitators as part of their debriefing process. Any additional use of the recording will require the consent of all attendees and the CSNSW Executive.

¹⁸ In CSNSW, only persons responsible who are eligible for a program and have programs identified in their case plan can participate in programs. Facilitators will therefore review the case plan prior to having any such discussions.

5.3. Training

Before a staff member is assigned to facilitate a process offered by the RJS, they must have received appropriate training. There are two components of this training:

- **Facilitator Training:** Facilitators must have successfully undertaken a training course that covers both the RJ processes and the additional processes listed in §3.5. This course should have generic components, but it must also be specifically designed to be: (a) applicable to cases that involve crimes of severe violence, and (b) a post-sentence context, such as a prison setting. Course content that would only be appropriate for addressing less serious crimes in a diversionary context are not sufficient (e.g. where the preparation phase is minimal or even absent). See *Appendix 8.2* for a list of specifications any such course must satisfy.¹⁹
- **Ongoing Learning:** Facilitators should be given the opportunity to participate in training events or courses that are arranged or allocated in accordance with their specific learning needs. The aim is to enable them to continue developing in greater depth the knowledge and skills required to facilitate RJS processes safely and effectively in this context. See *Appendix 8.3* for the knowledge and skills with which Facilitators should aim to be equipped in this context.

6. Legal Issues

6.1. Legal Independence

The RJS should only proceed to arrange an RJ process after any ongoing or planned legal matters have been finalised. Such matters include any appeals, civil action, or any imminent State Parole Authority hearing. In addition, whether or not a person responsible successfully takes part in an RJ process should not have any direct impact on their sentence or security classification.²⁰ Nor should it be included or mentioned in any parole review hearing.

This policy is designed to ensure that the decision of the person responsible to take part in an RJ process, their conduct within that process, and the carrying out of any agreements are not motivated, even in part, by any potential legal benefits or

¹⁹ The Senior Manager may determine that an RJ Facilitator already has a suitable level of skills and experience in certain aspects of the role, and so may not be required to undertake training in those aspects.

²⁰ Participation for a person responsible is 'successful' when they complete the RJ process they agreed to undertake (including any Action Plan), and in a manner that was consistent with the aims and principles of RJ — insofar as it was in their power to do so and the process remained suitable for them.

advantage they might receive as a consequence.²¹ This policy should also minimise the possibility that participants, the RJS or its staff will be subpoenaed to produce or give evidence in any subsequent court hearing (see §6.2). In addition, the RJS will only proceed to facilitate an RJ process once any Apprehended Personal Violence Order or parole condition prohibiting contact and/or communication with the person harmed has either expired or been amended for the purpose of holding an RJ process.²²

6.2. Confidentiality

There is no specific legal protection of confidentiality for the RJS. It is subject to current legislation and processes outlining reporting, mandatory reporting and access via subpoena. A court will retain the right to require participants and the Facilitators to attend court to give evidence about disclosures made in the context of an RJ process or to subpoena documents that were mentioned or produced therein. This means that what someone says in an RJ process, or information that the RJS holds about them, could be used against them or taken into consideration in any subsequent legal matter pertaining to that particular offence.²³

Facilitators should therefore ensure that all participants are made aware of these risks and have taken legal advice prior to their participation. Facilitators must also ensure that each participant has reflected on the consequences of not acting in ‘good faith’ as they engage in the RJ process.

For example, if the person harmed intends to use the process merely to gather evidence for a subsequent legal remedy, it is likely that they will miss out on the kind of emotional healing and moral repair that could have otherwise resulted from an honest investment in the process. Likewise, if a person responsible admits to the person harmed that they committed the crime for which they have been sentenced, but then, in a subsequent legal hearing denies any responsibility for the crime, this is likely to undermine whatever benefits that had resulted from the preceding RJ process, as well as potentially revictimising the person harmed. Finally, participants should be informed about the personal and organisational damage that could result if they approach the media to speak about the RJ process without first seeking the consent of other participants and the RJS. (See §7 on the issue of media requests for interviews or access to an RJ meeting).

²¹ For an extended defense of this policy, see, e.g., Brookes, D. (2023). *Restorative justice and criminal justice: The case for parallelism*. The Hague, Netherlands: Eleven International Publishing.

²² If the prohibition is due to an additional parole condition (i.e. “25. The offender must not contact or communicate with the victim/s and/or victim/s families without the express prior approval of the [community corrections] Officer.” <<https://paroleauthority.nsw.gov.au/parole-in-nsw/parole-supervision/parole-supervision-conditions.html>>), then the requisite approval will need to be obtained. Alternatively, the person responsible or their officer may request SPA to vary or revoke the condition in question (see *Crimes (Administration of Sentences) Act 1999* No 93., Sect. 128.).

²³ Advice should be sought on responding to subpoenas from the Open Government Information and Privacy team and they can advise on relevant options at that time.

6.3. Consent

In the course of facilitating a process offered by the RJS, the Facilitators may need to collect personal and health information about participants, as well as share such information with the other participant(s), support person(s), and any associated professional(s), such as a counselor or therapist. To uphold and respect the privacy rights of the participants, and to ensure that the RJS is compliant with the NSW Privacy and Personal Information Protection (PPIP) Act and the Health Records and Information Privacy (HRIP) Act 2002, Facilitators should obtain express consent where required from participants to collect, use, and where required, disclose their information. The express consent should be sought at the point in time when information is collected and ideally reconfirmed before information is disclosed or shared. They should also ensure that participants are made aware of the RJS's information-handling practices.²⁴

To carry out these tasks, the RJS should employ the procedures below, which are designed to be consistent with the psychology and values of restorative justice, trauma-informed practice, as well as advice provided by Open Government Information and Privacy (OGIP), DCJ Legal.

- Facilitators should ask each participant if they consent to the sharing of specified items of information with the other participant(s), their support person(s), or the other participant's support person(s). Express consent is required for each piece of information that is to be shared.
- Facilitators should ask each participant for their consent to the collection of information about the participant from any support person(s) and/or any associated professional, such as a counsellor.
- Facilitators should always record in their case notes a participant's oral consent, non-consent or change in consent to the sharing of information, and make clear the specific information to which this applies.
- Facilitators should check the accuracy of information previously collected and to confirm that consent is still ongoing before it is shared, particularly where an extended period of time has passed.
- Consent should always be re-confirmed before a large or more sensitive disclosure is made to the other participant(s).

²⁴ To avoid inadvertent non-compliance with s. 18 and s. 19 of the PPIP Act and to avoid technical differentiation between "personal information" and "health information" the requirement of express consent should be applied to all disclosures of personal information (including health information). Express consent is "consent that is clearly and unmistakably communicated". The organisation "must have gone to the individual concerned and obtained an express consent that is precise as to the kind and, possibly, the exact contents of the information to which the consent relates". The obtaining of express consent may include "a handwritten signature, an oral statement, or use of an electronic medium or voice signature to signify agreement." (IPC Fact Sheet)

- Where consent is refused or withdrawn, or a more complex or nuanced consent is given, this should be confirmed in writing with the participant (e.g. by email) following the oral discussion with the participant.
- The RJS should obtain consent from a participant or seek legal advice for the purpose of determining whether there is a lawful justification for sharing information (e.g. for law enforcement) before information about the participant is used for a purpose other than to facilitate an RJS process, train Facilitators or evaluate the RJS.
- To increase awareness of how their information will be handled by the RJS, a Privacy Notice should be included in the information provided to participants who are engaging with or considering the RJS. Facilitators should ask participants to review this Notice in the early stages of the RJ process.
- Facilitators should be required to undertake (a) specific privacy training, delivered by the OGIP team, as well as (b) the DCJ Privacy and You training.

7. Media Requests

7.1. Requests for Interviews

The RJS will occasionally receive a request from the media to interview restorative justice participants and/or Facilitators.²⁵ Each request will be considered on its merit and the RJS will accommodate all requests that comply with the following policies.²⁶

1. The RJS will maintain a database of participants (both persons harmed and persons responsible) who have provided written consent that they are willing to talk to the media.
2. If there is a request by the media in relation to a specific case, the RJS may ask a participant if they are willing to speak to the media.
3. To protect the safety and authenticity of a RJ process, no interview regarding a specific RJ case may be broadcast or published until the RJ process has been completed.

²⁵ In relation to the possibility of participants taking the initiative to speak to the media, see §6.2.

²⁶ Adapted from Pali, B. (2007). Media Toolkit for Restorative Justice Organisations. Leuven: European Forum for Restorative Justice. https://www.euforumrj.org/sites/default/files/2019-11/media_toolkit.pdf

4. Any person responsible may not speak with the media without the written consent of the CSNSW Commissioner. In addition:
 - a person responsible in custody will require the written consent of the prison Governor in which they are currently held; and
 - a person responsible on parole will require the written consent of the Director of Community Corrections.
5. The RJS will not speak to the media about any specific or identifiable case without the consent of all the participants involved.
6. In cases where participants have given their consent, both the RJS and the participants must be given the opportunity to read or view any media report prior to publication so that they can correct or amend the content.
7. If the RJS or any participant has agreed to speak with the media, written agreements with the media outlet must be made in advance on:
 - the anonymity of participants and/or facilitators (see 8 below);
 - the opportunity to read and/or view the report before publication;
 - the items that will appear in the report (facts, figures, pictures, stories).
8. If a case is sufficiently high-profile that one or more participants are likely to be identifiable by the general public given the nature of the offence even if they are not explicitly named, then, unless the participants all agree to waive the condition of strict anonymity, any media request to interview either a participant or a Facilitator must be declined.

7.2. Requests to report on an RJ meeting

The RJS may accommodate a request from the media to report on or broadcast video about a RJ meeting only if it complies with the following policies:

1. No media outlet or journalist may attend and/or make a video/audio recording of any meeting involving a person harmed and/or person responsible that is facilitated by the RJS within the context of an RJ process.
2. Any broadcast or publication of material relating to a RJ meeting can only take place after the RJ process has been finalised. This precondition is made in order to ensure that the meeting is a 'safe place' in which they can be emotionally authentic and honest. The participants' knowledge that their behaviour and words may be broadcast or published in the media is likely to disrupt this principle.

7.3. Duty of Care

The RJS has a duty of care to all participants who take part in an RJ process. In relation to media contact, this duty requires that the Service adhere to the following policies:

1. The RJS must ensure that any participant who agrees to speak with the media has done so voluntarily, and not because they feel pressured to do so – for instance, by a journalist or out of respect for the Service.
2. If a participant has agreed to speak with the media, the RJS will, if the participant requests assistance, help them to prepare for the interview.
3. The RJS must ensure that it protects the safety and best interests of both the person harmed and the person responsible equally. One participant should not suffer any foreseeable disadvantage or distress because another participant has agreed to speak with the media.
4. The RJS must take into account the potential impact of media broadcasts or publications on persons harmed and/or persons responsible who were involved in the offence, but who have chosen not to take part in an RJ process. For instance, there may be cases where the person responsible has caused harm to multiple individuals, but only one has elected to take part in an RJ process. In such a case, if the media requests an interview with either the participants and/or the Facilitators, the RJS should first attempt to obtain good evidence from reliable source(s) that broadcasting or publishing such an interview would be unlikely to retraumatise or cause significant distress to any person/s harmed who did not take part in the RJ process (see §4.3). If no such evidence is forthcoming, then the media request should be declined. If, in such a case, an interview has already taken place, then the RJS should seek to prevent its broadcast or publication by whatever means available.
5. The RJS will inform all participants that the media may attempt to contact them on their own initiative. All participants will be informed that they have the right:
 - to say ‘no’ to a request to be interviewed;
 - to not answer questions directly or immediately, but instead take their time and contact the journalist later;
 - to ask the RJS to talk to the media on their behalf; and
 - to veto the broadcast or publication of any report by the journalist.
6. The RJS accepts that if they or any participant does not respond positively to a request, journalists may attempt to use other channels or approach participants independently. This should not prevent the RJS from adhering to the policies above and exercising its duty of care to all participants.

8. Appendix²⁷

8.1. Support Structure for Facilitators

1. Case-Supervision

The role of a case supervisor is to:

- 1.1 assess whether the supervised Facilitator is working in accordance with best practice, whether the case is progressing satisfactorily, and whether adequate risk assessment and mitigation strategies are in place;
- 1.2 identify, with the Facilitator, any instances where the Facilitator's skills or experience are insufficient to handle the sensitivity or complexity of the case, and in any such instance, to:
 - communicate this to the Facilitator;
 - help them identify how to secure the support needed to continue working the case (e.g. from a more experienced or specialist Co-Facilitator); or
 - refer the case on;
- 1.3 help the Facilitator to find new ideas and fresh perspectives on how to work cases, without disempowering them, and identify any ways in which their approach may need amending, by assessing whether they have:
 - put in place measures to manage all important risks and sensitivities;
 - selected an appropriate process for the participants and their needs;
 - included, as far as possible, all the stakeholders who need to be involved;
 - ensured that the process is focusing on the important issues;
 - ensured outcome agreements are realistic and do not have unintended consequences;
 - made the process consistent, if possible, with any context in which it is taking place (e.g. consistency of plans for completing the case with statutory timescales);
 - put in place arrangements, if necessary, to follow up any Action Plan and provide for any long term support needs of participants;

²⁷ Adapted from Brookes, D. R. (2009). *Best Practice Guidance*. Victorian Association of Restorative Justice.

- considered whether participants have any special needs and responded appropriately;
- 1.4 provide emotional and personal support to the Facilitator, including through:
- empathic active listening;
 - identifying when referral to further, independent sources of support, such as counselling services, may be appropriate, sensitively raising this with the Facilitator and assisting with a referral where necessary;
- 1.5 where the Case Supervisor is not the Facilitator's Line Manager, maintain a relationship with the Line Manager as agreed with the manager and the Facilitator, taking into account:
- the Facilitator's possible need for a degree of confidentiality in the supervision process;
 - the manager's possible need for general information on the quality of RJ processes for which they are responsible;
 - the need of participants in RJ processes, and the requirements of the law, for action to be taken if the Case Supervisor uncovers a serious risk of harm;
 - if there are serious concerns about the safety of the Facilitator's work, raise this with their Line Manager, and, if necessary in a particular case, to recommend that the case be closed or passed to another RJS staff member;
- 1.6 apply, wherever appropriate, restorative justice principles and facilitation skills in the supervision process.

2. Line Management

The role of a line manager is to:

- 2.1 have a general understanding of RJ principles and practice, including the ability to offer a definition of RJ that makes reference to:
- balancing the distinctive needs of persons harmed, persons responsible and communities;
 - RJ as a process;

- the aims of RJ and potential outcomes;
 - the emphasis on addressing and reducing harm;
- 2.2 articulate a strategy for sustaining and developing the use of RJ processes;
- 2.3 demonstrate a commitment to RJ principles and processes;
- 2.4 ensure that key stakeholders in the process understand the basic principles of RJ and why it is being used;
- 2.5 put in place the key resources for successful RJ processes to take place, which would include:
- ensuring a realistic balance between case-flow and time for quality work which responds to the needs of participants;
 - where possible, support required to monitor and complete any Action Plan;
 - partnership with other agencies, such as referral agencies or agencies that are working with participants or that are able to help participants complete any Action Plan;
- 2.6 ensure that key policies and procedures needed for successful RJ processes to take place are put in place, for example:
- a suitable risk assessment process for all Facilitators to use;
 - data sharing protocols with partner agencies, and a confidentiality policy;
 - clear definitions of roles and case referral arrangements between Facilitators and others in the service or organisation;
- 2.7 put in place quality assurance measures, including ensuring that:
- all Facilitators are trained to work in accordance with the procedures and best practice guidance in this document;
 - all Facilitators have access to the resources needed to develop and improve their practice, including through advanced training in RJ and professional development courses;
 - all sensitive and complex cases, such as crimes of severe violence or domestic violence, are referred to appropriately skilled and experienced Facilitators;

- Facilitators have access to both a Co-Facilitator and a Case Supervisor;
- information on outcomes of cases, for example feedback from some participants, is collected and used to inform and develop strategy and practice;
- restorative justice is accessible and sensitive to all sections of the community.

3. Co-Facilitation

The role of a Co-Facilitator is to:

3.1 consider, in discussion with the Facilitator and the Case Supervisor, whether a certain combination of Facilitators in any RJ process²⁸ is likely to result in better outcomes for the participants, for instance where at least one Facilitator:

- has specialist knowledge, for example, in mental health or child welfare;
- is from the same language or ethnic background as one or more of the participants;
- lives and/or works in the community where the incident or offence took place;
- has a characteristic that can minimise a power imbalance between participants (for example, a female Facilitator, supported by a male Co-Facilitator, could be used where gender issues surround the offence);

3.2 establish clarity about the role of the Co-Facilitator, which can include providing:

- *role modelling* and *case supervision* for a less experienced Facilitator;
- *ongoing learning* for the Facilitator, by helping them to reflect on what went well, what didn't go so well and other ways in which situations could have been handled;
- *practical support*, e.g. in an RJ conference the Co-Facilitator may (a) accompany participants who want 'time-out' or separate meetings; (b) welcome and bring in participants as they arrive; (c) write down the Action Plan, and read it back to the group to establish clarity; (d) help

²⁸ It is best practice for Co-Facilitators to accompany the Facilitator to the initial meetings, and in some cases to preparation meetings as well - particularly where safety issues are a concern.

with setting up the venue and providing refreshments; and (e) provide emotional support and de-briefing for the Facilitator;

3.3 assess how you will work with the Facilitator, which will include:

- sharing and reviewing with the Facilitator any preparatory work, ensuring that no sensitive or personal information about the participants is conveyed to the Co-Facilitator without their express permission;
- planning how you will distribute roles and tasks before, during and after communication or meeting with any participants;
- trying to anticipate what might go wrong and how you could support the Facilitator (e.g. if one of the participants leaves a meeting, will one of you follow them, and if so who, and with what aim);
- agreeing how you will communicate with one another and give feedback;
- discussing different working styles and agree how any differences of approach will be handled;
- exchanging feedback and debriefing each other, with assistance from a Case Supervisor if necessary;
- allocating any administrative or follow up tasks associated with the RJ process and, if any information about it needs to be passed on to others, deciding who will do this;
- ensuring there is clarity as to who is undertaking monitoring, supervision and feedback about completion to other agencies or to the person harmed;

3.4 ensure that the Co-Facilitator understands that the Facilitator takes the lead in any meeting with participants, which means that:

- the Facilitator's role in the meeting is to introduce, guide and close the discussion, and so the Co-Facilitator should in no way attempt to over-take or compete for this leadership role;
- the Co-Facilitator is there only as a back-up or support role, and should speak in any RJ meeting only if (a) they are called upon to do so by the Facilitator, (b) they assess that there is a major lapse in the Facilitator's judgment or a procedural error that requires immediate intervention, or (c) they are checking with the participants to ensure that they have written up the Action Plan accurately.

8.2. RJ Facilitator Training

The RJS may contract out and/or develop its own basic Facilitator training for any existing or prospective staff member that is taking the role of an RJ Facilitator. To provide staff members with the basic training required to facilitate all the processes delivered by the RJS safely and effectively, a course must be:

1. held over a minimum of 5 days (or 40 hrs), the length of time depending on the range of processes covered and the level of pre-existing skills, experience and knowledge of trainees;
2. involve a trainee group size that allows for sufficient input by and for each trainee, the recommended maximum size being 20 and the minimum 4;
3. is supported by the assistance of a co-trainer if there are more than 12 trainees, depending on the experience and expertise of the lead trainer;
4. is facilitated by a trainer that has (or co-trainers that between them have):
 - practice experience of facilitating at least 10 cases where (a) the RJ process involved direct communication and 5 cases involving indirect communication, and (b) serious crimes (e.g. drink driving fatalities) and crimes of severe violence (e.g. homicide);
 - a working knowledge of the RJS Referral Criteria and Protocols, the RJS Procedures and the RJS Best Practice Guidance;
 - demonstrated an ability to deliver training in accordance with these procedures and standards, as evidenced by trainee evaluations and peer-review processes;
5. enables trainees to acquire the knowledge and skills relevant to the type of cases that RJ Facilitators in the RJS will be expected to work on, which includes the trainer(s):
 - using a combination of theoretical and experiential learning techniques;
 - providing all trainees with written theoretical materials and employing the pre-existing procedural and practice-based materials developed and used by the RJS;
 - giving examples showing the reality of the processes delivered by the RJS, for example, descriptions of actual cases and video coverage of an actual RJ meeting and/or post-meeting reflections by participants, subject to obtaining their informed consent;

- providing constructive feedback to individual trainees, which includes identifying any concerns and recommending further training if needed;
 - ensuring that those who complete the course can initially shadow and then be shadowed by either the trainer or an experienced RJ Facilitator for as long as both feel is necessary;
 - making themselves available to trainees for on-going advice and consultation, where possible and appropriate.
6. allows trainees to provide an anonymous evaluation of the training event, which can then be:
- taken into account by the co-trainers as they reflect on and debrief with each other following the event, so as to improve future events; and
 - made available to potential trainees or organizations wishing to assess the quality or approach of the trainer, prior to arranging a training event.

8.3. Knowledge and Skills for RJ Facilitation

1. Core Knowledge

To have the core knowledge required to facilitate RJ processes within the RJS context safely and effectively, RJ Facilitators must be able to:

- 1.1 offer a definition of RJ, including reference to:
- persons harmed, persons responsible, and communities;
 - RJ as a process;
 - the aims of RJ, and potential outcomes;
- 1.2 articulate how restorative justice differs from other approaches, including:
- other disciplines, such as advocacy and counselling;
 - mediation and conflict resolution, that is, what difference it makes where a core aim of the process is to enable someone to take responsibility and make amends for a particular incident that has caused harm;
 - how as an approach to unacceptable behaviour it differs from other approaches, such as retributive and welfare-based approaches, mainstream criminal and youth justice responses;

- how, and in what ways, RJ aims to meet the needs of both persons harmed *and* persons responsible;
- 1.3 explain why and what it means to say that ‘RJ works’, with reference to a theoretical and evidence base;
- 1.4 demonstrate an understanding of the principles and values of RJ, and the implications of these principles for their own practice;
- 1.5 articulate the nature and impact of being harmed and the needs that may arise, including:
- the short-and long-term physiological, psychological and social impact for the person directly harmed and those close to them;
 - the factors which affect how individuals react to and recover from their experience, including previous harm done to them and the reactions of family and friends;
 - their need for safety, respect, recognition, choice, information, confidentiality, and an opportunity to have the harm addressed, materially and/or symbolically;
 - the services that may offer additional support during or as an alternative to an RJ process, and how to assist the persons harmed in accessing these;
- 1.6 articulate the underlying causes of behaviour that harms or affects others, the impact of being responsible for causing harm to others, and the needs that may arise, including:
- the short-and long-term impact of the incident for the person responsible, including the reactions of people around them, including police, family, and friends;
 - the factors which affect how people respond to their behaviour, such as previous harm done to them and family or peer-group attitudes.
 - their need for safety, respect, choice, information, confidentiality, an opportunity to learn from their experience and to address the material and/or symbolic harm they have caused;
 - the approaches or services that may help to address the underlying causes of their behaviour, and how to assist the persons harmed in accessing these;

- 1.7 develop an empathetic understanding of the experiences of all those who might participate in an RJ process;
- 1.8 describe the different types of processes that the RJS can make available, explaining their distinctive procedures, respective benefits and limitations, and the situations in which each process would be applicable;
- 1.9 demonstrate an understanding of the various different institutional and statutory contexts in which RJ could be applied;
- 1.10 demonstrate an understanding of the statutory or policy framework in which the RJS is offering RJ processes, including:
 - the RJS's referral protocols and criteria;
 - alternatives that may be available to individuals should they decide not to participate in an RJ process;
- 1.11 demonstrate a commitment to working in partnership with both statutory and voluntary sectors, including, for example, criminal and youth justice contexts, social work, schools, the police, and voluntary agencies that work with victims, offenders, children, young people and families;
- 1.12 identify methods of ensuring that RJ processes can be delivered in a way that is appropriate to the cultural identity and expectations of participants;
- 1.13 identify relevant methods for assessing and managing risk;
- 1.14 describe methods of encouraging the effective and active involvement of participants in RJ processes;
- 1.15 articulate the ground rules for behaviour and communication during RJ processes, including what they are, their purpose and why it is important to reinforce them and what to do if they are breached;
- 1.16 identify facilitation methods or strategies that will ensure the safety of those participating in RJ processes, including:
 - how to identify and overcome possible power imbalances that individuals might perceive;
 - how to identify signs that indicate harm or potential harm to individuals' emotional and physical well-being and the steps that should be taken;
 - how to balance the needs of each of the individuals within the process;
 - how to know when to make interventions to move the process along, and when to leave individuals to resolve issues for themselves;

- 1.17 explain why the supervision and monitoring of agreements and following-up with each individual involved after an RJ process can be important to their recovery process.

2. Core Skills

To have the core skills required to facilitate all processes delivered by the RJS safely and effectively, RJ Facilitators must be able to:

- 2.1 demonstrate effective communication skills, which includes the ability to:
- actively listen;
 - form questions that will achieve better understanding;
 - be aware of and read non-verbal signals;
 - summarise and reflect back;
 - use telephone communication skills;
 - give and receive feedback;
 - challenge constructively and positively;
 - enable participants to make their own choices;
- 2.2 create a 'safe place' for participants, which includes the ability to:
- build trust with all participants;
 - show sensitivity to diversity and difference;
 - ensure that participants have access to 'culturally safe' processes;
 - manage conflict and aggression;
 - assess imbalances of power, and act to redress imbalances;
 - be and remain impartial and demonstrate this to all participants through words and actions;
 - be aware of how the physical environment can affect the sense of safety, comfort and security felt by participants;
- 2.3 treat people fairly, without discrimination on the basis of gender, age, ethnicity, ability/disability, sexuality, culture, faith or history of causing or experiencing harm;

- 2.4 show respect for all participants, including their opinions and views;
- 2.5 record decisions and outcomes accurately, following RJS guidelines;
- 2.6 manage their work, which includes the ability to:
- plan their work;
 - show they are following a clear process with a particular case;
 - problem-solve and handle complexity;
- 2.7 maintain confidentiality, subject to the requirements of the law;
- 2.8 demonstrate self-awareness, which includes the ability to:
- be aware of their own prejudices and set them aside;
 - assess boundaries of their own knowledge, experience and confidence in handling each specific case;
 - recognise when to seek help where necessary;
- 2.9 demonstrate an ability to work productively with others, including the ability to:
- work as a Co-Facilitator when appropriate;
 - work as a team member with colleagues in the RJS;
- 2.10 demonstrate an ability to facilitate, in accordance with the relevant procedures and these best practice standards, the full range of processes that they are expected to deliver.

3. Advanced Knowledge

The two sections below set out the additional knowledge and skills that are needed to handle more sensitive and complex cases. These are cases in which risk assessment gives good reason to believe that (a) there is someone who has the motivation and ability to cause significant further harm, including emotional trauma, either during or outside the RJ process; and/or (b) there is someone who is particularly vulnerable to further harm, including vulnerability arising from the original incident. The knowledge and skills required for this kind of case are largely the same as those set out above, but are at a higher level.

To have the advanced knowledge required to facilitate complex and sensitive processes within the RJS context safely and effectively, Facilitators must be able to:

- 3.1 articulate how participants, or others, can cause harm either during or outside the RJ process, for example through:
 - references to sensitive aspects of the offence;
 - lack of acknowledgement or minimisation of the impact on the person harmed;
 - blaming the person harmed;
 - intimidation;
- 3.2 explain how participants can manipulate others to prevent them stating their needs and views, and how this can manifest itself in an RJ process;
- 3.3 convey how a pre-existing or ongoing relationship between participants can affect an RJ process, either increasing its benefits or providing opportunities for further harm to be caused;
- 3.4 explain how different kinds of offences can contain the elements in 3.1-3 above;
- 3.5 describe possible attitudes to sensitive and complex cases in the participants' communities, and explain how this may affect them and influence how they participate in the RJ process, especially if the case is widely known;
- 3.6 describe the long-term effects of sensitive and complex cases, and the implications for the length and timing of the RJ process, and for maintaining continuity of case handling;
- 3.7 explain the sources of vulnerability arising from the effects of sensitive and complex cases on those involved, the offending behaviour and relationships underlying these cases, and the implications for how to work with participants in an RJ process;
- 3.8 describe the legal measures and policies relating to such cases, for example on:
 - child protection and domestic violence legislation and regulations;
 - civil and criminal court measures of protection;
 - parole legislation;
 - inter-agency risk management arrangements;

- information sharing and the limits of confidentiality;
- legislation relating to Indigenous Australians;

3.9 list the range of specialist services and agencies available for those involved in sensitive and complex cases.

4. Advanced Skills

To have the advanced skills required to facilitate complex and sensitive processes within the RJS context safely and effectively, RJ Facilitators must be able to:

- 4.1 apply a more thorough initial and ongoing risk assessment than would be required for less complex cases, which would include:
 - a formal written risk assessment;
 - ensuring that any relevant specialist risk assessment tool is applied;
- 4.2 select appropriate measures to manage the higher level of risk in such cases, for example:
 - co-facilitating with a more experienced RJ Facilitator and/or one who has specialist knowledge in the relevant area;
 - close multi-agency working;
 - close contact with a Case Supervisor;
- 4.3 discern whether the nature of the offence requires contacting or meeting with the person harmed prior to approaching the person responsible – or *vice versa* – regarding the possibility of an RJ process;
- 4.4 judge especially carefully what information may be given to one participant about another, or to anyone else, given the implications for their emotional and physical safety - particularly where codes and code words can appear innocuous and be obvious only to the person harmed and the person responsible.

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