



Family Violence
Death Review
Committee

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Tēnā koutou katoa

Thank you for inviting the Family Violence Death Review Committee to comment on the Ministry of Justice's proposed practice standards. We commend the Ministry of Justice for its initiative in reviewing the 2013 practice standards in New Zealand for restorative justice (RJ) in family violence cases.

More time for feedback

We strongly believe that more time is required to provide feedback, given the importance of the task at hand and the potential harm that may be caused if we get such an important project wrong.

The advantage of having detailed and specific practice standards is that we can be assured that RJ is being practised in a safe manner in New Zealand and that it will not be instrumental in causing further harm to victims and failing to hold offenders to account.

If RJ providers are not able to accept a case under the standards then judges, lawyers and prosecuting authorities can be assured that it is because RJ cannot safely be practised in that case, and providers cannot be placed under further pressure to proceed.

Issues for further development

We have read a draft of the proposed practice standards and suggest that the following issues need further development:

1. We would point you to the accreditation standards for perpetrator programmes developed by RESPECT in the United Kingdom for an exemplar of what practice standards should look like. Essentially, they should detail the specifics of minimum safe practice, rather than make general or vague statements of practice/principle (please see pages 110 to 114 of our fourth report).
2. Standards need to include the requirement for RJ providers to be culturally responsive and for its providers to be culturally competent when working with Māori. Culturally responsive practice, as outlined in the FVDRC's third, fourth and fifth reports, is informed by the impacts of colonisation and its ongoing effects on many whānau today. This includes the recognition that, for many Māori entering the justice system, they are culturally disconnected from their whānau, hapū and iwi, and importantly the cultural values and practices that kept whānau, hapū, iwi and communities safe and free from violence.

Therefore, the RJ processes for Māori should include a cultural expert who has a sound understanding of the effects of violence within whānau and its intergenerational transmission.

3. When assessing whether RJ is “appropriate” and whether “the victim’s willingness to attend is given free from the power and control tactics of the offender” it is necessary to conduct a detailed assessment of the level of entrapment experienced by the victim (please see pages 34-54 of our Fifth report and unpublished article on entrapment). This requires an assessment of the history of the predominant aggressor’s coercive and controlling behaviours (including responses to any acts of resistance on the part of the victim), the history of institutional responses to victim’s help-seeking behaviours and any structural inequities that have exacerbated entrapment in this particular case. The practice standards should describe entrapment and detail the kind of assessment process that will be required as a minimum of safe practice in order to determine whether the victim’s consent can be freely given in their circumstances. The standards need to be explicit about how entrapment can operate in victim’s lives, across a range of cases. They should articulate clearly:
 - what questions should be asked
 - of whom
 - under what circumstances
 - what sources could be investigated
 - how long a thorough investigation might need to be

We do hold concerns about undertaking a facilitated process on a matter that could inherently involve ongoing coercion and abuse between the two parties involved, when one of the parties (the dominant party in the dynamic) is likely to benefit, perhaps perversely, from that process.

4. The minimum requirements for appropriate support persons for the primary victim and the predominant aggressor need to be specified. Support people should be those who have a close and ongoing relationship independently with both parties, along with agencies or professionals working with either or both parties, or their children. In the case of the predominant aggressor, they should be someone who will be aware of and is prepared to challenge abusive behaviours. They should be someone who the predominant aggressor respects and who will hold them to account. In the case of the victim, support people should be able to provide the victim with ongoing support and contribute to safety.
5. Practice standards need to specify the information required to make an assessment of the victim’s safety and be clear that these are the bare minimum standards. For example, the statement that the provider assesses the referral and “documentation indicates RJ is appropriate” needs to be explicit about what this means in the context of family violence. The information required by the provider (what and from whom) and the criteria used to inform the assessment in family violence cases must be clearly set out and needs to include (but not be limited to) criminal history, Police reports of all reported family violence, victim impact statements and details of protection orders.
6. Safety planning needs to be understood as a collective endeavour between the participants, provider group and others. It should be clear that a safety plan does not include a list of actions that the victim can take to keep herself and her children safe – that is, the responsibility should not be laid solely on victims for their safety and protection of the children (see pages 14 and 16 of the practice resources guide). The minimum

requirements of a proper safety plan should be set out (see pages 27-30 of our Fifth Report).

7. The FVDRC has been very clear that predominant aggressors must demonstrate remorse in behaviour change rather than words if it is to register as genuine contrition and an assumption of responsibility on their part. RJ should be predicated on a guilty plea and an acceptance of the summary of facts. Predominant aggressors who attempt to renegotiate the summary of facts or minimise, justify or blame shift their abuse during RJ processes have not demonstrated acceptance of responsibility and accountability. They have undermined the value of their guilty plea as a basis on which to proceed with RJ, and in these cases the process should be terminated.
8. Reports produced by the provider post conference are important documents that serve a dual purpose. Primarily they outline for judges, lawyers and prosecuting authorities' discussions throughout the RJ process and record agreed outcomes. They are also invaluable to counsellors, stopping violence services and other agencies working with victims, perpetrators and their children subsequently. Summarised reports filtered through the perceptions of the writer may not truly reflect what was said in the meeting. It is critical that these reports are clear and accurately capture discussion. This can best be achieved by reports that record verbatim the discussion, undertakings and commitments made so that offenders can be held to account in the future. The practice standards need to give some guidance on report writing in family violence cases to reflect this.
9. The practice standards should specify exactly what and how outcomes should be monitored. Monitoring needs to include whether or not the perpetrator has followed through on their agreed actions and whether or not they have discontinued their abusive behaviours. There should be specified consequences if they have not. There is no point in monitoring people if there are no consequences for a failure to comply with an agreement and no behaviour change. Accounts of change must be informed by the victim's views, but without other sources of information, there is a risk of re-creating the abuse dynamic. The practice standards should give guidance on how to do this safely. Adjournments for monitoring and completion of outcomes are a vital mechanism for the system to maintain oversight of the undertakings given. Failure to complete these can invite a different response from the justice system. This may need to be balanced with some victims' needs for a swift resolution of their case.
10. The standards need to better reflect the entangled nature of intimate partner violence, child abuse and neglect, and intra-familial violence. Where children are affected by the violence provision should be made for their experiences to be heard and their needs met (see pages 53-60 and 73 of our Fifth report). Conversely, when children are the victims, practitioners must consider and assess for coercive control operating in the adult parenting relationship. Children's voices must have an opening to be heard, and their safety must be the paramount consideration. Again, the standards need to be more explicit about how to do this. We understand that RPA is developing engagement processes for children and young people and we see this as an important consideration.
11. Risk needs to be understood as a dynamic state that the victim constantly faces throughout the RJ process, and risk assessments must inform every stage of the process. Risk needs to be conceptualised more broadly than the assessment of risk to decide if RJ proceeds. This is suggested by the reference to terminating the RJ conference if there is a perceived threat to the safety of the victim during the conference. Risk assessment resources need to support this process. If conferences do not proceed due to identified risk, the standards need to describe how this is to be reported to the Court, in a way that avoids implicating the victim. Whether or not a conference goes ahead, ongoing risk to the victim needs to

managed. Ongoing risk must inform agreed outcomes, otherwise the process could unintentionally produce unsafe outcomes. The victim and any children are most at risk and are in the best position to identify risk and their views need to be prioritised.

12. We consider that any standards need to be firmly embedded in organisational culture. FVDRC promotes a multi-agency, collaborative, systemic approach to practice and it is important that RJ is integrated with the family violence sector. We believe that there should be a standard for all organisations working in the family violence sector to demonstrate that they do work in this way. Examples of this could be regular attendance at local multi-agency meetings where case work can be discussed to ensure safety. The purpose of such a standard is to ensure safe practice and accountability through participation in a multi-agency system.
13. Language is critical and it is very important that this document does not contribute to the concealment of violence or diminish responsibility for it from the offender and unintentionally blame the victim. The documents need a thorough revision for inappropriately mutualising language for example, principle two of the six principles says “As the victim and offender are the most affected.....”(please see our article “Becoming Better Helpers”). There is also some incoherence in the discussion of family violence. The practice principles refer to “typologies” but do not explain what these are. The literature on typologies is still very controversial and whether there are typologies in fact is currently unresolved. On page 23, the assumption is made that when women use violence they use it with the same effect as men. Such an assertion overlooks gender roles and physical disparity in shaping people’s use of violence and lacks a footnote in support. It also contradicts international literature¹ that clearly asserts that some women use violence but are less likely to use coercive control. On page 28 the escalation in violence as a risk factor is considered under the heading of relationship, when it should be linked to the offender, so as not to hide the responsibility for the violence.
14. It is important to begin the thinking and design work needed to consider how these new standards are going to be implemented. There is a need to train, observe, give feedback to and mentor facilitators as they upskill in this area and present for assessment and reaccreditation. The accreditation of practitioners and organisations will need to be robust and well-resourced to ensure victim safety is not compromised by well-intentioned but unskilled workers. It should involve re-accreditation at a future date and a requirement to undertake professional training specific to family violence.

Whilst the Ministry of Justice is to be congratulated for beginning the process of developing practice standards, we believe the standards as they are currently drafted require significant further work if they are to set out the minimum standards for safe practice in this complex area. Without that further development the FVDRC will be unable to publicly support the standards. We would be happy to meet further to discuss any of the issues we have raised, and support the Ministry in this work as needed.

Ngā mihi



Chair
Family Violence Death Review Committee

¹ E. Stark, Coercive Control: How Men Entrap Women in Personal Life, New York, Oxford University Press, 2007.