

Issues Paper G

Sexual Offences: Restorative and Alternative Justice Models



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Introduction

- 1 This paper is for people who:
 - work in, or have experience of, the criminal justice system in relation to sexual harm
 - have experienced sexual harm, whether or not they reported it to police or participated in a criminal trial
 - have experience of, or ideas about, alternative justice models.
- 2 People who have been sexually harmed have various needs, such as to be acknowledged or to explain the effects of the harm.¹ Criminal trials may be able to meet some of these needs by holding the person responsible to account and officially acknowledging and denouncing sexual harm.²
- 3 But a trial is not designed to meet all these needs. In a trial, there are limits to the evidence that can be considered. The evidence of the person who reported the harm must be tested. For there to be a conviction, the evidence must put the case beyond reasonable doubt.
- 4 These rules make it difficult for a person who has experienced sexual harm to:
 - tell their story in full
 - have their experience heard and believed
 - have their experience officially acknowledged.³
- 5 Some alternative justice models may meet these needs better than the criminal justice system. They may also help people who are responsible for sexual harm take responsibility for their actions and get support to avoid offending again.
- 6 In this paper the Victorian Law Reform Commission asks if restorative, inquisitorial, or other alternative models should be adopted or extended in Victoria. If so, we want to hear about what these models should look like, and how they should work with the criminal justice system.

Issues Paper G is one of eight papers.
View them at https://lawreform.vic.gov.au/sex_offences_2020/issues_papers.
We encourage you to tell us your views on all the issues you are interested in.

Restorative justice

What is restorative justice?

- 7 Restorative justice allows the people affected by or involved in a crime to come together to repair its harms and 'to heal and put things as right as possible'.⁴
- 8 As part of restorative justice, someone who has experienced sexual harm can explain how it affected them and how they want the person responsible to make amends. Other people who were affected and the person responsible also have a voice in the process. The person responsible has an opportunity to take responsibility for what they have done, express regret, and commit to making amends.
- 9 Restorative justice can take different forms, including:
- victim impact panels (discussed below)
 - facilitated conversations between the person harmed and the person responsible
 - group conferences.
- 10 This section focuses on group conferences.
- 11 Successful conferences often have:
- a highly skilled facilitator or convenor
 - careful preparation
 - participant screening
 - the flexibility to respond to the circumstances of each case
 - variable formats, such as face-to-face or an exchange of letters.⁵

Table 1: Examples of restorative justice programs

Program	Description of program	Conduct covered	Relationship with criminal justice system
Department of Justice and Community Safety, Victoria, Youth Justice Group Conferencing	Following early pilots, established in legislation in 2005 and available state-wide in 2006. ⁶	Offending by people aged 10 to 18 years; not available for homicide, manslaughter or sexual offences.	Available after guilty verdict and before sentencing as part of the criminal jurisdiction of the Children's Court. Court must take participation in conference and outcome plan into consideration when sentencing. ⁷
Department of Justice and Community Safety, Victoria, Family Violence Restorative Justice Service	Pilot program established in 2017 in response to Royal Commission into Family Violence. ⁸	Family violence	Available alongside the criminal justice system. Cannot be used instead of a criminal prosecution or other civil justice processes. ⁹

(Table 1 continues next page)

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Program	Description of program	Conduct covered	Relationship with criminal justice system
South Eastern Centre Against Sexual Assault and Family Violence (SECASA), Victoria	Service available to SECASA clients for over 20 years. Program has no formal legal status. People who have experienced sexual harm or family violence can ask to be involved.	Sexual harm and family violence	No interaction with the criminal justice system. May occur even if there has not been a report to police. ¹⁰
Restorative Justice Unit, Australian Capital Territory	Following early pilots, established in legislation in 2004. The Restorative Justice Unit is a part of the ACT Department of Justice.	Initially limited to young people and less serious offences. Since 2016, includes adults and more serious crimes. Since 2018, includes sexual harm and family violence.	Available alongside the criminal justice system. In the most serious cases, restorative justice can only occur after the person responsible has been charged and has pleaded or been found guilty. Outcomes may be considered in sentencing. ¹¹ In less serious cases, if the person responsible participates in restorative justice, the police may decide not to file charges. ¹²
Project Restore, Auckland, New Zealand	Launched in 2005 as a community-based program. Project Restore is now governed by a charitable trust and is an official provider of restorative justice, receiving referrals from the courts.	Any sexual harm or harmful sexual behaviour	Any case can be referred for restorative justice following a guilty plea or finding; all District Court cases are referred for restorative justice after a guilty plea or finding if restorative justice has not already occurred. ¹³ Outcomes must be considered in sentencing. ¹⁴

- 12 Before a conference, the facilitator meets with all participants separately—sometimes many times—so that participants understand what is involved and can explain what they want from the process. This also allows the facilitator to exclude anyone who may abuse the process.
- 13 The person responsible for the harm must accept some responsibility before they can participate. However, they do not have to admit they are guilty of a crime.¹⁵
- 14 The aim is for participants to reach an agreement on what steps should be taken to prevent future harm and support healing, such as the person responsible providing reparation or addressing the causes of their behaviour.¹⁶

The value of restorative justice

- 15 Evaluations suggest that restorative justice can empower people and reduce the effects of trauma.¹⁷ The person harmed is encouraged to communicate their experience and needs in their own way and 'on their own terms'.¹⁸ This can restore their sense of agency and control.¹⁹
- 16 The Royal Commission into Family Violence supported restorative justice for family violence alongside the existing justice system.²⁰ This led to a pilot program (see Table 1). The Centre for Innovative Justice has trialled restorative justice in diverse contexts and supports its use for sexual offences.²¹ In its 2016 report, *The Role of Victims of Crime in the Criminal Trial Process*, the Victorian Law Reform Commission recommended introducing a staged restorative justice program, including for sexual offences in the later stages.²²
- 17 However, there are concerns about using restorative justice processes in relation to sexual harm:
- Sexual harm should be treated as a public rather than a private matter.²³
 - Protecting the rights of both the person harmed and the person responsible for sexual harm is a challenge.²⁴
 - The dynamics of the original harm may be repeated.²⁵
 - Restorative justice is difficult to manage in a context of cultural and linguistic diversity.²⁶
 - Restorative justice may not suit all cases.

Would restorative justice work for these kinds of sexual harm?

Historical child sexual abuse: The Royal Commission into Institutional Responses to Child Sexual Abuse recommended against introducing restorative justice for cases of institutional child sexual abuse.²⁷

Children who have been harmed: In the Australian Capital Territory, victims and eligible family members must be at least ten years old to participate in restorative justice.²⁸

Serious offences: In the Australian Capital Territory, restorative justice is only available for the most serious sexual offences if the person responsible has pleaded or been found guilty. The informal program run by SECASA in Victoria does not limit who can participate.

- 18 We want to hear if restorative justice should be available more widely, and if there are cases where it is not appropriate.

Question

- 1 Do you support adopting a restorative justice model for sexual offences? Why or why not?

You might want to think about:

- the value of these processes
- the challenges involved in ensuring the safety of those who participate
- cases where restorative justice would or would not be of value.

What should a restorative justice model look like in practice?

- 19 We would need to consider some key issues if a restorative justice model is introduced. These include:
- its relationship with the criminal justice system
 - who should run it
 - its guiding principles
 - how to make sure it works in practice.
- 20 Restorative justice processes can happen where there is no criminal justice process. They can also happen before, alongside, or after a criminal justice process (see Table 1).
- 21 The influence of restorative justice on the criminal justice process varies. In the Australian Capital Territory, a person may avoid a charge or receive a reduced sentence if they complete actions agreed at a restorative justice conference.²⁹
- 22 People have different views about whether restorative justice outcomes should influence the criminal justice process. Some believe that a person responsible for sexual harm should not receive an incentive to participate in restorative justice.³⁰ The person responsible may not engage meaningfully if they are motivated by the reward of a better criminal justice outcome.³¹ Others support taking participation in restorative justice into account in the criminal process.³²
- 23 Another question is where restorative justice should be located within government, and who should run it. Participants need to think of restorative justice as neutral, so it may not be appropriate for victim or offender program providers to manage restorative justice.
- 24 There may be benefits to having an independent organisation manage a restorative justice program, such as a Commission. On the other hand, there may be benefits to building on well-run programs that are already available.
- 25 Any model needs to be guided by principles. Best practice principles for restorative justice include that participation is voluntary, and everyone's safety and wellbeing are protected. In cases involving sexual harm or family violence, the concerns of the person harmed are at the centre of the process.³³ Table 2 sets out some best practice principles for use in cases involving sexual harm.

Table 2: Best practice principles for restorative justice in cases involving sexual harm

Best practice principles
Voluntary participation—no one is obliged or pressured to participate. ³⁴
All participants are protected from further harm—their safety is ensured.
The process centres on the needs and interests of the person harmed.
The person responsible accepts responsibility at the outset, at least to some degree.
Power imbalances are redressed. The dignity and equality of all participants is respected. ³⁵
The process is supported by appropriate resources and highly trained and skilled personnel, including people with specialist expertise in sexual harm.
The process is flexible and responsive to diverse needs and experiences.
A restorative justice outcome agreement is fair and reasonable, and the person responsible is able to carry it out. ³⁶
What is said and done during restorative justice is confidential, potentially with some exceptions such as where a participant indicates an intention to offend in the future. ³⁷
Transparency: participants are fully informed about all aspects of the process and potential outcomes; de-identified results are publicised to contribute to continuous program improvement. ³⁸
The process is part of ‘an integrated justice response’—it is not a stand-alone response; other criminal and civil justice options are available, as well as therapeutic treatment programs that the person responsible can be referred to as a condition of the restorative justice outcome agreement.
The process is supported by a legislative framework that sets out guiding principles, provides for implementation, and explains how restorative justice interacts with the criminal justice system and how restorative justice agreements will be monitored. ³⁹

- 26 Finally, there are practical concerns about how to implement restorative justice. It can be difficult to implement on a large scale. As each case is unique, it can be hard to manage the flow of cases.⁴⁰

Question

- 2 If a restorative justice model is adopted, what should its features be?

You might think about:

- when restorative justice can occur (for example, before, during or after a criminal prosecution; or at any stage in the criminal justice process)
- who should run it (for example, an independent Commission, a government department, or another agency)
- what best practice principles should apply
- how data on restorative justice outcomes should be collected to improve our understanding of sexual offending
- how referral processes should work (for example, should people harmed be able to request restorative justice? Should the police, the prosecution, or the courts be required to consider referring cases for restorative justice?).

Inquisitorial models

What is inquisitorial justice?

- 27 Unlike Australia and other jurisdictions based on the British system, most European countries have inquisitorial criminal justice systems.
- 28 In these systems, the prosecution and sometimes the judge participate in the investigation of the case. The judge is responsible for examining witnesses and determining the facts in a trial.⁴¹ There is no cross-examination. However, the parties or their lawyers can usually question witnesses after the judge has examined them.⁴²
- 29 Victims have a different role in inquisitorial systems. In some places, they can ask for issues they see as important to be investigated. During trials, victims have independent standing: they do not appear just as a witness for the prosecution.⁴³
- 30 In Germany, victims of serious offences, including sexual assault, can act as ‘auxiliary prosecutors’. A lawyer funded by the state can represent them and they can view the evidence before a trial. During the trial, they can question witnesses, object to questions, and make closing statements.⁴⁴ They can be present throughout the trial, even before they have given evidence.⁴⁵
- 31 Victoria’s criminal justice system is adversarial, but the Coroners Court has inquisitorial features. Coroners undertake investigations and may hold inquests into fires or deaths where, for example, the cause of death is unknown. They can compel people to attend a public hearing and provide information or evidence. Coroners do not judge criminal guilt but make findings and recommendations to prevent similar deaths.⁴⁶ Family members of the person who died may prefer this process to a trial, although they do not have an active role.

The value of an inquisitorial process

- 32 Inquisitorial systems may provide the person who has been harmed with more agency and influence over the investigation and prosecution of a case than adversarial systems. The New Zealand Law Commission found that it may also be easier in inquisitorial systems for the court to protect the interests of people harmed because the judge’s role is more active and less neutral.⁴⁷
- 33 However, others have criticised such systems as inefficient and bureaucratic. Some fear that inquisitorial systems do not give enough weight to the presumption of innocence.⁴⁸
- 34 The Royal Commission into Institutional Responses to Child Sexual Abuse received some submissions supporting an inquisitorial justice model for responding to the sexual abuse of children.⁴⁹ However, it did not support creating a separate criminal process for sexual abuse. Instead, it recommended reforming the adversarial system.⁵⁰

Question

- 3 Is there a role for an inquisitorial model or features for sexual offences? If so, what should this look like?

You might think about:

- its relationship with the criminal justice system
- the strengths and weaknesses of an inquisitorial model.

Speaking and being heard

- 35 We may need other ways for people to tell their story and be heard.⁵¹ In some countries, a person who has experienced or witnessed sexual harm can share their story through a 'victim impact panel'. The audience can include community members, organisational representatives and people responsible for sexual harm in other cases.⁵²
- 36 These processes do not need to include the person responsible for the sexual harm. Instead, they focus on the relationship between the person who experienced sexual harm and an institution or the broader community.⁵³

Question

- 4 Is there a role for new initiatives to enable people who have experienced sexual harm to tell their stories and have them acknowledged? Why or why not?

Aboriginal justice models

- 37 Recent research into violence against Aboriginal women calls for a move away from the adversarial criminal justice model towards 'collective processes of community healing'.⁵⁴ These collective processes might use some restorative justice principles, although whether they do so would need to be worked out within the Aboriginal community itself.⁵⁵
- 38 Victoria's Aboriginal family violence partnership is based on the principle of Aboriginal self-determination. It embraces collective and holistic healing processes.⁵⁶
- 39 Ways to respond to sexual harm against Aboriginal people include:
- culturally appropriate community avenues for reporting
 - a dedicated Aboriginal sexual assault legal service⁵⁷
 - the creation of Aboriginal-led sexual offence investigation units
 - alternative justice options other than, or in addition to, Koori court and the criminal justice system.
- 40 We want to hear your views on what works well with Aboriginal justice models, and what can be improved.

Question

- 5 Are there Aboriginal justice models that you think should be considered for sexual offences? If so, what are their strengths and weaknesses?

You might think about:

- programs or pilots that work well
- how to improve support or recognition for Aboriginal justice models
- any lessons from such models that could apply in other contexts
- what else is needed to respond effectively to sexual harm against Aboriginal people.

Other views

- 41 There may be other justice models that you would like us to consider. We encourage you to tell us how the model you support should work.

Question

- 6 Do you support another alternative justice model for sexual offences? How should it work?

You might think about:

- the strengths and weaknesses of the model
- which types of case the model is appropriate for
- when someone might participate (for example, where there is no criminal process or only after a criminal process has ended)
- what best practice principles should apply (for example, whether participation should be voluntary)
- who should run it.

Endnotes

- 1 Kathleen Daly, 'Reconceptualizing Sexual Victimization and Justice' in Inge Vanfraechem, Antony Pemberton and Felix Mukwiza Ndahinda (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Routledge, 2014) 378, 388; Haley Clark, "'What Is the Justice System Willing to Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (2010) 85 *Family Matters* 28.
- 2 On victim-survivor expectations of the justice system, see Haley Clark, "'What Is the Justice System Willing to Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (2010) 85 *Family Matters* 28, 29–30.
- 3 Ibid 32–34.
- 4 *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 137 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>; citing Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002) 37.
- 5 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 4 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>. See also *Crimes (Restorative Justice) Act 2004* (ACT) s 46. Some commentators have expressed a preference for the term 'innovative justice process' because of the multiplicity of definitions of 'restorative justice' and the range of practices to which the label is applied. See Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 2 <<http://www.naj2017.com/1729>>.
- 6 Masahiro Suzuki and William R Wood, 'Co-Option, Coercion and Compromise: Challenges of Restorative Justice in Victoria, Australia' (2017) 20(2) *Contemporary Justice Review* 274, 280; *Children, Youth and Families Act 2005* (Vic) ss 414, 415.
- 7 *Children, Youth and Families Act 2005* (Vic) s 416.
- 8 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 3 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>; see also *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 145 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.
- 9 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 3 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>.
- 10 In some cases, restorative justice has been deferred at the request of police, to allow a criminal prosecution to be completed before restorative justice occurs: Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 8 <<http://www.naj2017.com/1729>>.
- 11 *Crimes (Restorative Justice) Act 2004* (ACT) ss 6(d), 7(2), 16(3), 25(f)(i), 33(2).
- 12 ACT policing explain on their website that a potential advantage of restorative justice for offenders is that successful participation may lead to a decision not to file charges at all: Australian Federal Police, 'Restorative Justice Conferencing', *Australian Capital Territory Policing* (Web Page, 2016) <<https://police.act.gov.au/about-us/programs-and-partners/restorative-justice-conferencing>>.
- 13 *Sentencing Act 2002* (NZ) ss 24A, 25.
- 14 Ibid s 8(j).
- 15 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 7 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>.
- 16 Ibid 4. In the Australian Capital Territory, the enabling legislation for restorative justice specifies that 'a primary object' of a restorative justice conference is the formation of an agreement between the person harmed and the person responsible. The agreement must include 'measures intended to repair the harm caused by the offence': *Crimes (Restorative Justice) Act 2004* (ACT) ss 50, 51. For a different, process-oriented account of the aim of restorative justice, see Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 176 [7.244].
- 17 Centre for Innovative Justice, RMIT University, *It's Healing to Hear Another Person's Story and Also to Tell Your Own Story: Report on the CIJ's Restorative Justice Conferencing Pilot Program* (Report, October 2019) 3 <https://cij.org.au/cms/wp-content/uploads/2018/08/rmit_8691-rjcpp-report-web.pdf>; Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) <<http://www.naj2017.com/1729>>; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xxvii, 178 [7.252].
- 18 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 7 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>.
- 19 Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 48 <<http://www.naj2017.com/1729>>.
- 20 *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 135 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.
- 21 Centre for Innovative Justice, RMIT University, *It's Healing to Hear Another Person's Story and Also to Tell Your Own Story: Report on the CIJ's Restorative Justice Conferencing Pilot Program* (Report, October 2019) <https://cij.org.au/cms/wp-content/uploads/2018/08/rmit_8691-rjcpp-report-web.pdf>; Centre for Innovative Justice, RMIT University, *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* (Report, May 2014) <<https://cij.org.au/research-projects/sexual-offences/>>.
- 22 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 174–94, 189–94. In its report, the Commission said that restorative justice should only be available following a finding or plea of guilt, or following a decision by the DPP to discontinue a prosecution: 183 [7.283].
- 23 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 177 [7.249], 190 [7.320]. In relation to family violence, see: *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 135 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.
- 24 Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 5 <<http://www.naj2017.com/1729>>.
- 25 Centre for Innovative Justice, RMIT University, *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* (Report, May 2014) 67 <<https://cij.org.au/research-projects/sexual-offences/>>; 'History and Purpose', *Project Restore NZ* (Web Page, 1 October 2016) <<https://projectrestore.nz/history-and-purpose/>>; Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 5 <<http://www.naj2017.com/1729>>; *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4 138 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xxvi.
- 26 Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 5 <<http://www.naj2017.com/1729>>.
- 27 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Criminal Justice Report, August 2017) 189 <<https://www.childabuseroyalcommission.gov.au/criminal-justice>>.
- 28 *Crimes (Restorative Justice) Act 2004* (ACT) s 17.
- 29 In relation to charging decisions and restorative justice, see: Australian Federal Police, 'Restorative Justice Conferencing', *Australian Capital Territory Policing* (Web Page, 2016) <<https://police.act.gov.au/about-us/programs-and-partners/restorative-justice-conferencing>>. In relation to the effect of participation in restorative justice on sentencing, see *Crimes (Restorative Justice) Act 2004* (ACT) s 25(f)(i), (ii).
- 30 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 8 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>.
- 31 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 185 [7.296].
- 32 Centre for Innovative Justice, RMIT University, *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* (Report, May 2014) 67–8 <<https://cij.org.au/research-projects/sexual-offences/>>.
- 33 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 4 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 183 [7.278].

- 34 See, eg, *Crimes (Restorative Justice) Act 2004* (ACT) s 9.
- 35 *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ESC Res 2000/14, UN Doc E/2000/INF/2/Add.2 (15 August 2000) <<https://www.undocs.org/E/2000/INF/2/Add.2>>.
- 36 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 174 [7.244]. This principle is also a feature of the ACT legislation: *Crimes (Restorative Justice) Act 2004* (ACT) s 51(3), (4).
- 37 For an example of how confidentiality is applied in practice – and the limits on it, see *Crimes (Restorative Justice) Act 2004* (ACT) div 8.6, ss 59, 60. For a general discussion of confidentiality, see Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 184 [7.287]–[7.288].
- 38 Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 6 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>.
- 39 See, eg, Centre for Innovative Justice, RMIT University, *It's Healing to Hear Another Person's Story and Also to Tell Your Own Story: Report on the CIJ's Restorative Justice Conferencing Pilot Program* (Report, October 2019) 10 <https://cij.org.au/cms/wp-content/uploads/2018/08/rmit_8691-rjcpp-report-web.pdf>.
- 40 Bebe Loff, Liz Bishop and Bronwyn Naylor, *Community-Based, Victim-Centred Restorative Justice for Sexual Violence—A Pilot* (Report, July 2019) 5 <<http://www.naj2017.com/1729>>.
- 41 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Criminal Justice Report, August 2017) 181 <<https://www.childabuseroyalcommission.gov.au/criminal-justice>>.
- 42 Law Commission (New Zealand), *Alternative Pre-Trial and Trial Processes: Possible Reforms* (Issues Paper No 30, 14 February 2012) 55 <<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP30.pdf>>.
- 43 Ibid.
- 44 Ibid 69.
- 45 While it is lawful in Victoria for victims to be present in court before giving evidence (*Criminal Procedure Act 2009* (Vic) s 336A), in practice the defence generally applies for all witnesses to be excluded until required to attend to give evidence, and courts order accordingly. For discussion of the court's power to exclude witnesses, see: Judicial College of Victoria, '13.3 Ordering Witnesses out of Court', *Victorian Criminal Proceedings Manual* (Online Manual, 1 November 2019) <<https://www.judicialcollege.vic.edu.au/eManuals/VCPM/index.htm#27692.htm>>.
- 46 'Inquests & Findings', *Coroners Court of Victoria* (Web Page) <<https://www.coronerscourt.vic.gov.au/inquests-findings>>.
- 47 The New Zealand Law Commission noted, however, that the ability of judges to direct the process is not unfettered. Law Commission (New Zealand), *Alternative Pre-Trial and Trial Processes: Possible Reforms* (Issues Paper No 30, 14 February 2012) 67 <<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP30.pdf>>.
- 48 Ibid 54.
- 49 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Criminal Justice Report, August 2017) 182 <<https://www.childabuseroyalcommission.gov.au/criminal-justice>>.
- 50 Ibid.
- 51 This might also be referred to as truth-telling, see: Centre for Innovative Justice, RMIT University, *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* (Report, May 2014) 86–91 <<https://cij.org.au/research-projects/sexual-offences/>>; *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 141 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.
- 52 For international examples, see 'Restorative Justice', *Montana Department of Corrections* (Web Page, 25 August 2020) <<https://cor.mt.gov/Victims/Restorative>>; State of Texas, 'Victim Impact Panel', *Brazoria County* (Web Page, 26 August 2020) <<https://www.brazoriacountytx.gov/departments/adult-probation/victim-impact-panel>>. See also Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 4 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>. See also *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 4, 141 <<http://rcfv.archive.royalcommission.vic.gov.au/Report-Recommendations.html>>.
- 53 Centre for Innovative Justice, RMIT University, *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* (Report, May 2014) 86–8 <<https://cij.org.au/research-projects/sexual-offences/>>; Department of Justice and Regulation (Vic), *Restorative Justice for Victim Survivors of Family Violence* (Framework, August 2017) 4 <<http://www.justice.vic.gov.au/restorative-justice-for-victim-survivors-of-family-violence-framework>>. On the potential role of community-based forums see Leigh Goodmark, "'Law and Justice Are Not Always the Same": Creating Community-Based Justice Forums for People Subjected to Intimate Partner Abuse' (2015) 42(3) *Florida State University Law Review* 707, 732–46.
- 54 Harry Blagg et al, *Innovative Models in Addressing Violence against Indigenous Women* (ANROWS Horizons Research Report No 1/2018, January 2018) 6 <<https://www.anrows.org.au/publication/innovative-models-in-addressing-violence-against-indigenous-women-final-report/>>. This report is based on research into violence in remote Aboriginal communities but many of the report's conclusions are applicable in urban and regional settings.
- 55 The Centre for Innovative Justice cites Daly's criticism of the 'essentialist' nature of claims that restorative justice has 'indigenous roots': Centre for Innovative Justice, RMIT University, *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* (Report, May 2014) 68 <<https://cij.org.au/research-projects/sexual-offences/>>. See also the discussion in Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 193 [7.331].
- 56 Department of Health and Human Services (Vic), *Dhelk Dja: Safe Our Way—Strong Culture, Strong Peoples, Strong Families* (Agreement, October 2018) <<http://www.vic.gov.au/dhelk-dja-partnership-aboriginal-communities-address-family-violence>>; Department of Health and Human Services (Vic), 'Nargneit Birrang—Aboriginal Holistic Healing Framework for Family Violence', *VIC.GOV.AU* (Web Page, December 2019) <<http://www.vic.gov.au/nargneit-birrang-aboriginal-holistic-healing-framework-family-violence>>.
- 57 Djirra, Submission No 106 to House Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into Family, Domestic and Sexual Violence* (July 2020) <<https://www.aph.gov.au/DocumentStore.ashx?id=186ba985-fdc8-4df9-a58c-bec3b2a6bf02&subid=690999>>.