



**Restorative Justice for Cases of Sexual Violence: A Literature Review**

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**In collaboration with Brisbane Rape and Incest Survivors Support Centre (BRISSC)**

**About BRISSC:**

BRISSC (Brisbane Rape and Incest Survivor Support Centre) are a feminist, community-based, not for profit organisation based in Woolloongabba, Brisbane. They provide support for survivors of sexual violence, particularly women who are over the ages of 15, in which their services include counselling, community advocacy, education, training and phone support. BRISSC's collective of workers also provide group support with survivors of sexual violence in a community setting at their premises. This project, a literature review on restorative justice and sexual violence, stems from conversations with the BRISSC collective on research that would most benefit their organisation, specifically the importance of justice and healing within survivor communities.

## **Restorative Justice for Cases of Sexual Violence: A Literature Review**

Restorative justice (RJ) programs are increasingly being used for cases of sexual violence in the Australian criminal justice system, and have been applied in numerous settings. Specifically, the term ‘restorative justice’ broadly “encapsulates an alternative philosophy” for the application of justice procedures, and endorses an approach to the criminal justice system that is embedded in values concerned with respectful and equal relationships (Rogers & Miller, 2018 p. 168). Restorative justice programs, therefore, have become an important option for victim-survivors of sexual violence, as scholarship has reported women’s dissatisfaction with standard criminal proceedings for these cases (Miller & Hefner, 2013). It’s application, in these instances, needs to consider that ‘restoration’ and ‘justice’ cannot always be achieved. Particularly, for survivors of sexual violence (SV), previous literature has expressed concerns over the re-traumatising nature of restorative programs, its potential to create secondary trauma, and power imbalances, as well as impact their potential safety (Marsh & Wager, 2015). Due to the confronting nature of restorative justice procedures, the application of these programs to SV cases remains controversial and little research has evaluated their effectiveness, and more critically, the perspectives of victim-survivors (Gang, Loff, Naylor & Kirkman, 2019). For these reasons, identifying and documenting the current literature available on the topic of restorative justice and sexual violence is critical to understanding gaps in knowledge and the development of these programs for victim-survivors, in addition to any emotional and psychological outcomes of alternative processes.

This project will produce a narrative literature review which aims to address these issues, and present a more in-depth understanding of the current research that has evaluated restorative justice, and how they are conceptualised in terms of consent and sexual violence. Specifically, the purpose of this literature review is to inform organisations like BRISSC of the effectiveness of these programs for women who have experienced sexual violence, their outcomes and the potential benefits of conferences with trained and reliable moderators. In doing so, this paper will thematically narrow its review to literature that focuses primarily on sexual violence cases, outside of subjects such as domestic, or gendered violence. While many restorative justice programs and scholarship examine sexual violence in the scope of domestic, family and gendered violence, as sexual assault, rape and physical violence occurs in these domains, this review will attempt to effectively synthesise this key area of research outside these margins. This paper will contribute to the growing body of research on restorative justice programs by identifying significant gaps in Australian and international literature, and act as a guide for policy makers, researchers, practitioners, and organisations looking to understand contemporary work on restorative justice.

## Background

Restorative justice, is a recently new idea in discussions of criminal proceedings, having been popularised across the globe in the 1990s, due to early alternative justice movements and victim-offender mediation procedures (Daly & Hayes, 2001). Many academics, however, conceptualise this as a ‘modern’ restorative justice, as historically indigenous cultures have applied and embodied restorative justice epistemologies in their own communities for centuries (Walker, 2013). Western definitions explicitly outline it as an alternative form of ‘justice’, yet as many scholars have and continue to argue, it is rather made up of alternative justice mechanisms and involves an array of practices in stages of the criminal process for both victim-survivor and offender (Daly & Hayes, 2001; Walker, 2013; Gang, Loff, Naylor & Kirkman, 2019). Similarly, prevailing understandings of restorative justice tend to consider it within the narrow binaries of ‘restorative’ vs ‘retributive’ justice, in which contrast its approaches to conventional criminal systems of prosecution and conviction (Daly, 2016). To understand restorative justice processes for cases of sexual violence and other violent crimes, it is important to examine it outside holistic comparisons to ‘retributive’ justice, as its applications do not necessarily exclude criminal persecution and lead to ‘restorative’ outcomes such as healing or recovery.

One such definition, that Gang, Loff, Naylor and Kirkman (2019 p.1) apply to their evaluation of restorative justice (RJ) programs for sexual violence, emphasises a “repair of harms and of ruptured social bonds caused by crime, specifically relationships between crime victims, offenders and society... where the process allows parties to resolve collectively how to deal with the aftermath of the offence and its implications for the future”. As there are many competing descriptions of restorative justice, and its application to criminal cases, Gang, Loff, Naylor and Kirkman (2019) offer a victim-survivor centred understanding of restorative justice, one of which its philosophies focus on the relationships within criminal harms. Victim-survivor fixed models of restorative justice are crucial when there is the possibility of reintroducing trauma through victim-offender mediation, as the psychological and emotional consequences of sexual violence and effects on well-being are far-reaching and continual (Julich & Thorburn, 2017). Alongside this, research has advised that regular criminal proceedings, including the reporting, adjudication, trial and sentencing, for sexual crimes has been negatively experienced by women and led to a dissatisfaction with the justice system, which many victim-survivors have felt marginalized and unheard (McGlynn, Westmarland & Godden, 2012). Hence, Victim-survivor focused applications of restorative justice may be beneficial for sexual violence cases where women have felt a lack of acknowledgement, sense of justice, accountability for the offender’s actions and an absence of the validation of their experiences in the traditional court environment (Loff, Naylor & Bishop, 2019). Although these programs are not easily accessible across Australia, and there are limited evaluations of restorative justice programs, findings support their application in other criminal settings. For example, Daly and Hayes (2001) highlights that with RJ,

offenders feel a greater sense of justice regarding fair treatment and having the opportunity to confront their harms, as well as a greater respect for the law, and most importantly, victim-survivors feel a greater sense of justice in conferences than court proceedings. As much evidence has tended to stress the impact of restorative justice conferencing on the offender and rehabilitation, a feminist approach must be taken to ensure that victim-survivors experiences with these alternative systems are heard, and evaluated in future research.

### **Feminist and Gendered Approaches to Restorative Justice**

Feminist movements and scholarship have long been interested in discussions of the suitability of restorative justice processes for women that have experienced domestic, sexual, gendered or violent crimes (Julich & Thorburn, 2017). Feminist engagement in these controversial debates prioritises women's positioning under the criminal justice system, in which they identify the gendered and patriarchal history of women's reporting of crimes in the legal system, and its failure to consider women's accounts of violence (Daly & Stubbs, 2016). Gender, not only effects the individual experiences and positionalities of women, but also their involvement in the legal justice system as victim-survivors of sexual crimes being more likely to experience violence in their lifetimes (Milne, Brennan, South & Turton, 2018). Particularly, feminist research contends that women's experiences of sexual violence are repeatedly disqualified by the criminal justice system due to engrained gendered and patriarchal ideas of consent, rape, sexuality and the credibility of women's testimonies (Milne, Brennan, South & Turton, 2018). 'Rape myths' or sexual assault 'myths' are amongst these disqualifications, that are often used by defendants in court trials to: "undermine the complainant's credibility and suggest it was her behaviour that precipitated events...[and] are still routinely used in rape trials [whereby] if a complainant does not behave in accordance with stereotyped myths about expectations of 'virtuous' and 'restrained' female sexuality [it will be used] by the defence to suggest that this was not rape" (Milne, Brennan, South & Turton, 2018, p.20).

These relations of sexuality and gender in the courtroom have challenged the way in which we consider the nature of crime and justice, especially from a feminist standpoint that questions how 'justice' can be achieved in a patriarchal society. It is amongst these concerns that restorative justice measures are increasingly being considered for cases of sexual violence, as elements of the traditional court process are excluded and victim-survivor models place women at the centre of crime (Hopkins & Koss, 2005). Feminist concerns with restorative justice conferencing, however, continue to be conveyed and include the risks to victim-survivor's safety, manipulation by offender, victim-survivor participation, and the shift away from conceptualising sexual violence as a public issue (Pali & Madsen, 2011). Whereas, from a non-feminist and lay perspective, restorative justice may offer victim-survivors of sexual violence a space to engage in the criminal process, offender responsibility

and accountability, and community-based outcomes (Pali & Madsen, 2011). Incorporating both feminist and gendered perspectives, alongside victim-survivor concerns, into analysis and evaluations of restorative justice programs is imperative to understanding power and women's positioning in the criminal justice system. As well as this, collaborating with such feminist organisations like Brisbane Rape and Incest Survivors Support Centre (BRISSC) to produce this literature review, assessing women's safety and wellbeing is principally the most important priority.

## **Methods**

As this is a narrative review, undertaken to inform organisation BRISSC, a search process was employed that aimed to find the most current and important knowledge on restorative justice and sexual violence. To find materials, a web search was conducted through databases Google Scholar, Web of Science, Scopus, and JSTOR, alongside other internet searches to determine programs of restorative justice. This search restricted its analysis to papers, journal articles, book chapters and other scholarship that had been published from the years 2000 to 2020, as RJ is a relatively new approach to the criminal justice system. Within the database search, the terms "restorative justice", "alternative justice", "conferencing", "mediation", "RJ", and "sexual violence", "sexual assault", "sexual crimes", "sexual abuse", "rape", "gendered violence", "family violence", "SV" were applied. The terms gendered and family violence were included in the primary literature search as discussions of sexual violence are often merged into these areas of research. Alongside literature discovered through these databases, additional web searches were undertaken to find government and non-for-profit reports on this topic, and evaluations of restorative justice programs in countries like Australia and New Zealand. To increase the amount of relevant literature for this review, a snowballing technique was applied to locate additional scholarship that was referenced by sources found in the initial database search. Within the scope of this literature review, the analyses were limited to under 50 papers as it was achievable in the length of this report and the time available. Following the results of the literature search, outputs were coded into themes in *Endnote* software after careful readings and analyses of the scholarships findings/ key discussions.

## **Results**

Through the literature search, on such databases as discussed above, a total of 48 papers were found to be appropriately correlated to the topic of restorative justice and sexual violence. These included 33 journal articles, 11 government and research reports and 4 book chapters. Topics of restorative justice and sexual violence were addressed throughout these 48 papers, explicitly covering evaluations of restorative programs, theoretical applications of alternative justice, literature reviews, feminist engagement, and discussions on definition and purposes of RJ. Within these papers, a majority focused on countries for analysis such as the US, Australia, New Zealand, Ireland, Germany and

Norway, as they primarily include restorative justice programs in relation to sexual violence cases. Scholarship also tended to focus its analysis of RJ processes on feminist concerns of victim-survivors, its compatibility as an alternative justice mechanism for sexual crimes, victim-survivor experiences and outcomes, definitions of justice and harm, comparisons between court and conference cases, and offender convictions through RJ. An examination of these papers clearly determines that terms of gendered, family, domestic and sexual violence are used interchangeably in discussions of cases of sexual assault, and at times are unclear on their focuses in restorative justice evaluations. Particularly, the term 'sexual assault' is often applied as an 'umbrella' term for analysis of any sexually violent act or crime, including rape, assault, and sexual altercations, at times covering verbal sexual harassment. Indeed, the literature discovered covers an array of discussions concerning restorative justice and sexually violent crimes. Therefore, themes contained in these papers were categorised into three broad areas of research, to allow succinct investigation of central findings. These themes comprised of (1) Justice, (2) Dissatisfaction with the Court System, and (3) Restorative Justice Outcomes for Victim-Survivors. Firstly, I will summarize international and Australian restorative justice programs that were found in the literature search (see Appendix). Subsequently, I will present these themes of the broader literature on restorative justice and sexual violence, in order to determine the gaps in knowledge on these subjects.

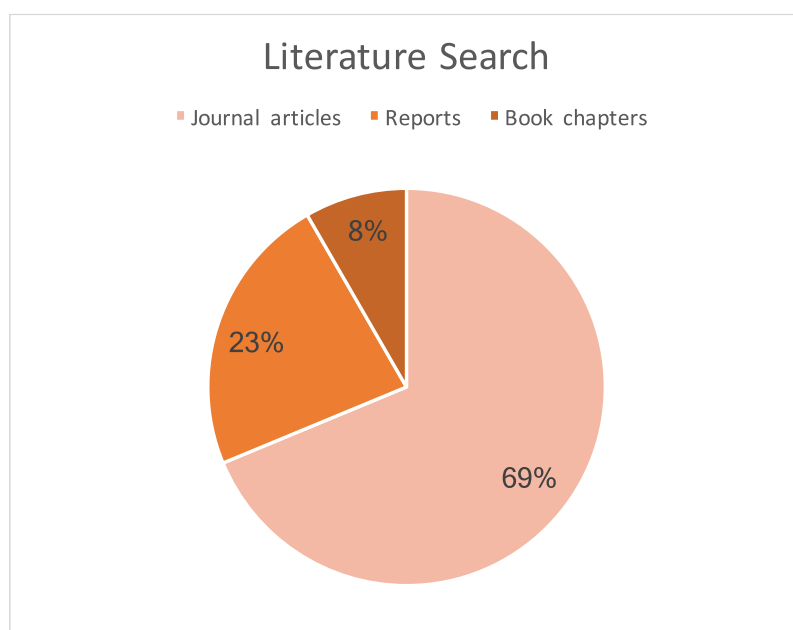


Figure 1. Percentages of literature type

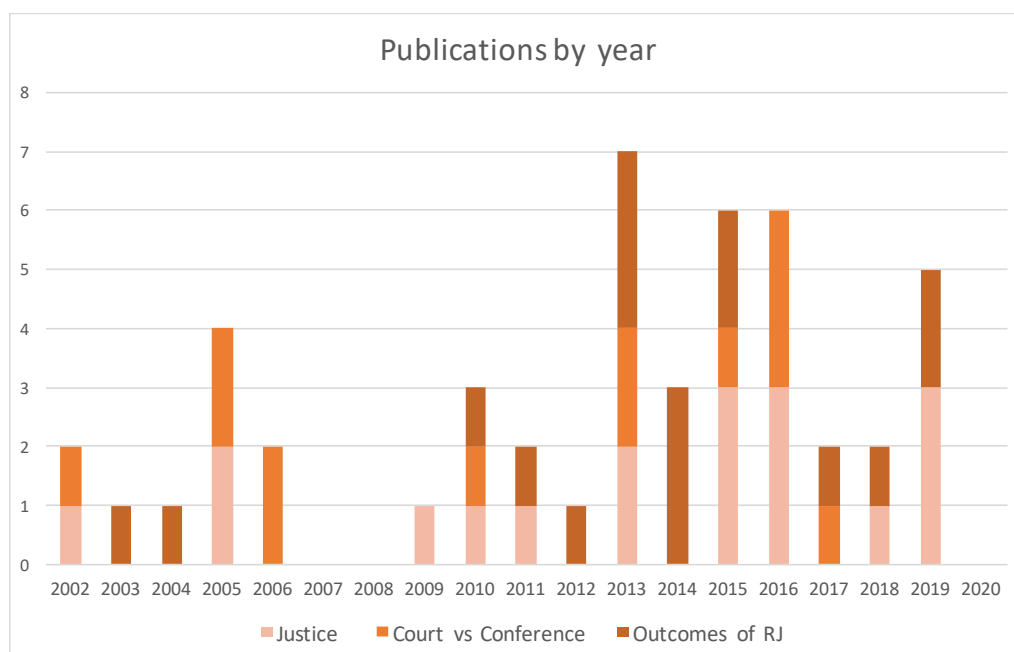


Figure 2. Publications by year for literature themes

## Literature Themes

### Theme 1: Justice

Victim-survivors' sense of justice is one of the most significant factors of the criminal conviction process, as there are unprecedented expectations that they will 'gain' a type of justice through offender prosecution. The narrative search located 'justice' as a recurring theme in much of the research on restorative justice and sexual violence, especially definitions of justice and its connotations. Specifically, there are many narratives of justice between victim and offender that are expressed throughout restorative justice literature. Scholars Bolitho (2015) and Daly (2016) have divided these factors into 'justice needs' and 'unmet justice needs' of the restorative conferencing process. Many restorative justice programs that are applied to cases of sexual violence have attempted to address these 'needs' through the conferencing process, by implementing frameworks for facilitators to identify and operationalise certain goals between victim-survivor and offender (Bolitho, 2015). Bolitho (2015) conceptualised these needs in her case-study of the Victim-Offender Conferencing (VOC) programme, accessible through the Restorative Justice Unit (RJU) of the New South Wales correctional service agency. VOC offers restorative programmes to diverse criminal cases, including those that involve sexual assault or violence, and comprises of a lengthy preparation period (a mean time of eleven months), conference between victim and offender, and a de-briefing phase that can spread across six months (Bolitho, 2015). The types of justice 'needs', Bolitho (2015) emphasises are relationships and safety, integral to the VOC process, empowerment, information, venting, growing, accountability, and meaning. Understanding of these different justice interests,



Bolitho (2015) argues, led to VOC successes as it satisfied some of victim-survivors needs in these terms.

Many other papers from the search output emphasise that a sense of ‘justice’ may not always be achieved, especially for cases of sexual violence, and that victims may conceptualise different meanings of justice dependent on their needs. Much like Bolitho’s (2015) model of ‘justice needs’, a study conducted by Julich (2006) found that victim-survivors of SV often described justice and recovery together as ‘interdependent’, including ideas of confrontation, being heard, gaining answers, and validation of experiences. Similarly, Julich and Thorburn (2017) indicate that victim-survivors of sexual violence have stated that validation, explanation and acknowledgement of harms are important factors of justice integral to ‘restoration’ in family and community settings. Whereas, other scholars such as Madsen (2004) argue that mediation through restorative conferencing programs can allow women to feel empowered through a meeting or communication with their offender, in which a sense of justice may take the form of emotional restoration, rather than lawful retribution. These varying conceptualisations of justice forms, have led some academics to reimagine victim-survivor’s perceptions of ‘justice’ itself, as McGlynn and Westmarland (2019) demonstrate through their term ‘kaleidoscopic justice’. Indeed, like other discussions on the diversity of the term justice, a ‘kaleidoscopic justice’ encapsulates justice as a ‘shifting pattern’, that is forever changing and evolving through individualised experiences (McGlynn & Westmarland, 2019). A ‘kaleidoscopic’ model of justice, involves indicators such as recognition, voice, prevention, connection, and retribution (McGlynn & Westmarland, 2019). According to Daly (2014), evaluating and questioning such varied definitions of ‘justice’, and what that might look like through restorative justice processes, is helpful to determine RJ practices ability to apply to cases of sexual violence. As stated: “Rather than asking, ‘are victims satisfied with a justice mechanism?’ ... or ‘do they receive greater psychological or therapeutic benefits from one than another?’”, we should ask instead, does a justice mechanism have the capacity to address one or more victims’ justice needs (or interests) and to what extent does it do so?” (Daly, 2014 p. 378).

### ***Theme 2: Dissatisfaction with the Court System***

Previous research has underlined that female victim-survivors of sexual violence report negative experiences with the criminal justice system, especially the court process, in which victim-blaming, insensitivities to victim-survivor trauma, and harmful attitudes are evident (Felson & Pare, 2008). Together with this, statistical evidence showcases that sexual and gendered violence cases have significantly lower conviction rates compared to any other crime in the court system (Felson & Pare, 2008). It is, therefore, not surprising that a dissatisfaction with the court system was a prominent theme in the literature on RJ options for victim-survivors of sexual violence, as many turn to alternative justice processes. The search also identified literature that explored comparisons between

court and conferencing procedures, particularly for victim-survivors that had experienced both, which was an important focus of victim-survivors' testimonies of the outcomes of their cases. While Miller and Hefner (2015) do not explicitly centre their analysis on sexual violence court and conferencing cases, they offer insights into the experiences of victim-survivors of a range of crimes, and RJ facilitators perceptions of the criminal justice system. Through interviews with RJ facilitators in Australia and the US, the authors determined that many recounted stories from victim-survivors that had felt courts suppressed their voices in the trial and witnessed inappropriate behaviours in their hearings, demonstrated by court stakeholders (lawyers, baristas etc) (Miller & Hefner, 2015). Amongst these factors, that essentially creates narratives of dissatisfaction with the court, were themes of injustice, victimization, secondary traumatisation, alienation and inequalities between victim-survivor and offender created in the courtroom (Miller & Hefner, 2015). In turn, these prominent accounts of the courtroom are some of the motivations for victim-survivors to seek out restorative justice programs and conferencing with previous offenders. Yet, as discussed elsewhere, court outcomes are significantly different for sexual violence cases, and experiences outlined by Miller & Hefner (2015) are broadly summarized for diverse criminal cases.

Alternative justice mechanisms are increasingly being considered for cases of sexual violence, as conventional criminal proceedings have shown to be ineffective at delivering responses to these crimes, and victim-survivors reporting dissatisfactions (O'Nolan, Zinsstag & Keenan, 2018). In an evaluation of the Arizona RESTORE pilot program, 75% of survivor-victims of sexual violence interviewed stated they had chosen this restorative option as it was an alternative to the conventional court system (Koss, 2014). This raises important questions regarding victim-survivor concerns for their cases progressing to court, together with the potential benefits of making restorative programs more accessible as an option alongside the traditional criminal justice system. Despite recent legal amendments in Australia, victim-survivors of sexual violence continue to emphasise a dissatisfaction with criminal procedures, as Daly (2011) states many stress a shortage of information on their cases, delays in the committal and trial, and feel underprepared and disappointed in the cases outcome. Much of the literature, moreover, identifies this dissatisfaction as apart of discussions of restorative justice, as several RJ programs adopt victim-survivor models whereby they permit a great deal of participation, engagement and voice that is hindered in the courtroom (Daly, 2011).

A small body of papers analysed variances in the potential outcomes for offenders, regarding how they may result in different convictions for court or conferencing systems. In cases of youth sexual offending in Australia, the reoffending rates were higher for those cases that went to court than those that participated in conferencing programmes (Daly, 2006). Additionally, evidence shows that court cases take twice as long to be finalized than in conferencing programmes (Daly, 2006). There are many restorative programs that, as some researchers have suggested, have the possibility to positively

impact both victim-survivor and offender, such as post-conviction reintegration schemes, community circle healing and conferencing (Daly, 2011). However, for this literature review, offender-focused evaluations and practices will not be explored further as the author holds a feminist standpoint to centre on victim-survivors.

### ***Theme 3: RJ Outcomes for Victim-Survivors of Sexual Violence***

The potential outcomes of restorative processes for victim-survivors are heavily debated, in which many scholars express concerns over dissatisfactions and expectations in conferencing processes with offenders of sexual crimes (O’Nolan, Zinsstag & Keenan, 2018). Particularly, there is much contention when it comes to emotional challenges and retribution for offenders (Hopkins & Koss, 2005). However, much of the literature found on the topic includes accounts and testimonies from victim-survivors of sexual violence whom have undertaken restorative processes, many concluding both positive and negative outcomes. Interestingly, in an empirical analysis by Marsh and Wager (2015) on the views of RJ programs for victim-survivors, around 70% of its participants agreed that all victim-survivors should be able to choose to have a conference with the offender, and over 60% believed it would be good to give victim-survivors the opportunity to ask offenders questions through writing or conference procedures. Indeed, having the option available to victim-survivors throughout the conviction process may be of benefit to the long-term healing and development of stability, as discussed in Julich, Buttle, Cummins and Freeborn (2010).

In an evaluation of RESTORE NZ restorative justice program, key positive outcomes were reported by victim-survivors regarding the strength to speak out, improved self-image, satisfactions with victim-survivor focused programs, and the feeling of having a ‘weight taken off the shoulders’ (Julich, Buttle, Cummins & Freeborn, 2010). One participant in their restorative outcomes program stated that: “In the past being such a small place I have kept quiet so to speak, but now that it’s out in the open its given me the strength more or less to say I won’t be quiet... that I can be truthful and honest about it” (Julich, Buttle, Cummins & Freeborn, 2010, p.57). Positive outcomes differed in conceptions of justice, as discussed elsewhere, yet a recurring finding from the literature discusses survivor participation and active acknowledgement as benefits of restorative justice programs. Individual contribution to victim-survivor justice pathways, in RJ conferencing, has been argued to offer women a sense of control and to be active participants in the decision-making process, which may allow women to reclaim power and their roles as ‘victims’ in traditional court hearings (McGlynn, Downes & Westmarland, 2016). Similarly, empirical evidence has determined that RJ conferences can be successful in reducing the amount of post-traumatic stress disorders in women whom have experienced violent crimes such as sexual violence (Strang & Sherman, 2015). Although many outputs in the literature search examine satisfaction and active participation as positive outcomes of RJ processes, only a select few compare these to the aims of the program and alternative

conferencing procedures, nor do they focus on the long-term effects on victim-survivors.

Additionally, recognition and validation of survivor's experiences regardless of the outcome is an important need for feelings of justice, and may not be significant changes (Pali & Madsen, 2011). As highlighted by Pali and Madsen (2011 p.60): "The procedure provides women with a platform from which to address the men who assaulted them, directly or indirectly, while validating their desire for retribution and rehabilitation. Forgiveness and reconciliation is not the aim of the restorative dialogue, nor does it take place".

There is a range of arguments that are made when considering the possible outcomes of RJ programs for victim-survivors of sexual violence, particularly by advocates and scholars interested in the well-being of women, in which they are divided on its capacity to produce further harms (Keenan, Zinsstag & O'Nolan, 2016). Such papers as Wager (2013) discuss the possibility of RJ conferencing to be disappointing and emotionally draining for victim-survivors, within communication between facilitator, victim and offender, expectations of the meeting and preparation with facilitators. 'Poor practices' of RJ, Wager (2013) identifies, can result in negative feelings of the conferencing process in which facilitators and support teams need to ensure that victim-survivors are given enough time, breaks, preparation and are informed of diverse scenarios that may arise in meetings with offenders. Feelings of being emotionally drained, after a restorative justice conference, also were apparent in a case study of child sexual abuse, in which a victim-survivor reported being 'dangerously unhinged' due to a resurfacing of past trauma (McGlynn, Westmarland & Godden, 2012). This survivor, yet, did report through reflection that ultimately, she had felt some changes after the process (McGlynn, Westmarland & Godden, 2012). The negative outcomes considered in the literature, primarily were theoretical and reflective on the potential for restorative justice processes to create issues of safety, grooming, victimisation, and power imbalances, and few had empirical evidence regarding these concerns for victim-survivor wellbeing. Several of these outputs, did however, stress that restorative programs or victim-offender conferencing will not be 'appropriate' for every case of sexual violence, and should be individually tailored to the victim-survivors needs and concerns. Moreover, to understand how RJ programs can be used and applied to cases of sexual violence, studies need to consider the potential benefits and harms for victim-survivors, as well as what that might look like for 'best practice' restorative alternatives.

## **Restorative Programs for Sexual Crimes**

### ***Project Restore- Restorative Justice for Sexual Violence, New Zealand.***

Project Restore offers restorative justice models for victim-survivors of sexual violence across New Zealand, and is one of the only restorative justice programmes that specialises in these cases.

Particularly, since its establishment in 2005, following the *New Zealand Victims' Rights Act 2002* that

underlines restorative justice conferencing, it has functioned alongside the Ministry of Justice to provide conferencing services to victim-survivors of sexual crimes (Julich, Buttle, Cummins & Freeborn, 2010). It works alongside community and non-for profit organisations focused on advocating for victims of sexual violence, through support services, educational workshops and the offering of restorative justice by Project Restore. According to the literature, project restore operates on ‘best practice’ principles, established by the Ministry of Justice, and includes: a focus on voluntary practice, encouragement of participation, informative communication, accountability, flexibility and contribution, safety of victim-survivors, and effectiveness (Julich, Buttle, Cummins & Freeborn, 2010). Following these principles, the model implements the use of an experienced facilitator in sexual violence cases, two community experts, each for a victim and offender, and a psychologist whom oversees the restorative conferencing process (Julich, Buttle, Cummins & Freeborn, 2010). Although there have been few recent reports that have evaluated these programs, surveys of victim-survivor experiences with restorative justice programs have found that 87% of victim-survivors of family violence, and four out of six victim-survivors of sexual violence were satisfied with the process (Ministry of Justice, 2018).

### ***RESTORE Program- Arizona, US.***

Initially, the restorative justice program RESTORE in Pima County, Arizona was intended as a secondary prevention method that was designed to decrease offender perpetration, working together with community support members and public health organisations (Ptacek, 2009). Yet, through RESTORE and restorative justice stakeholders, its purpose as an alternative program shifted its focus on assisting not only victim-survivors, but also offenders and the wider community impacted by the harm caused by the offence (Ptacek, 2009). The process of RESTORE’s conferencing scheme for sexual violence cases has been divided into four stages by Koss (2014), in which Stage 1 includes the referral and intake of new cases for the program. This first stage consists of an individual meeting with both offender and victim-survivor, where if the offender or responsible persons accepts the restorative direction, a psychosexual evaluation is made and if approved the process continues with RESTORE (Koss, 2014). Stage 2 involves the preparation for the conferencing meeting, for both victim-survivor and offender, to establish ground rules and address any safety concerns prior to the face-to-face conference, as well as a support network meeting with the victim-survivors’ friends and family (Koss, 2014). Stage 3, therefore, begins the conferencing meeting in which the victim-survivor, offender, and family and friends attending, are given the opportunity to express the personal impact of the offence (Koss, 2014). If the victim-survivor expresses they do not wish to attend the conferencing meeting, a spokesperson can be elected to represent them in the process (Koss, 2014). The third stage, the conference, finishes with the responsible person completing a required ‘redress’ plan document, that outlines the responsibilities and measures that will be taken for the offender to address their accountability, such as therapy, meetings, community service and monitoring by

RESTORE staff (Koss, 2014). These requirements are supervised for twelve months, as a part of the final stage of the RESTORE program. As Koss (2014) argues, these programs rely on pre-conditions of victim-survivor consent and admittance to the crime by offender, to continue. However, through Koss's (2014) evaluation of the former RESTORE program, it was concluded that it is possible to offer safe restorative justice options to survivors of sexual violence, in which desired outcomes and satisfaction needs can somewhat be met. Moreover, they must be committed to survivors of violent crimes, and acknowledge the importance of other justice mechanisms that may work alongside or in opposition to conferencing schemes (Koss, 2014).

### ***SECASA (Monash Health) Restorative Justice Program- Victoria, Australia.***

Previously offered by the Melbourne organisation South East Centre Against Sexual Assault (SECASA), was a restorative justice pilot program for victim-survivors of sexual violence, family violence and gendered violence through mediation, group, youth or community conferencing (Loff, Naylor, & Bishop, 2019). Loff, Naylor and Bishop (2019) offer an evaluation of the SECASA restorative justice response that was available for survivor-victims of sexual violence, using qualitative accounts of women whom had previously participated in RJ processes. Prior to the conferencing meeting, written communication or spokesperson stand in, being alternative options to the face-to-face procedure, facilitators would meet with the victim-survivor and discuss the case to understand its suitability to and the desired outcomes of the RJ program (Loff, Naylor & Bishop, 2019). Alike the programs offered by project restore in New Zealand, SECASA's restorative justice program has been a selected option for victim-survivors that have experienced dissatisfaction with the criminal justice system, cases that have not made it to court, closed cases, cases that have not been reported, and for family violence or long-term abuse cases (Loff, Naylor & Bishop, 2019). Through an analysis of SECASA's RJ program, examining diverse cases of sexual violence, Loff, Naylor and Bishop (2019) concluded that these programs were survivor-victim focused. They noted that restoration, healing or closure were not the intentions, but rather the program was about allowing survivor-victims to be heard by offenders so that they make take back agency, control, autonomy and a sense of empowerment. According to the findings of this paper, SECASA differed from traditional restorative justice applications through its prioritising of the survivor-victim model, in which survivor-victims led and guided the conferencing process alongside a facilitator (Loff, Naylor & Bishop, 2019). This evaluation of SECASA's victim-survivor centred restorative justice pilot program, for cases of sexual and family violence, contributes important knowledge on the outcomes of RJ processes, particularly for feelings of agency and being heard, and concludes that counselling RJ services may be best to reduce chances of harm to survivor-victims (Loff, Naylor & Bishop, 2019).

### ***Restorative Justice Unit-Canberra, Australia.***

Since the 2004 *Crimes (Restorative Justice) Act* and the 2005 *Restorative Justice Scheme*, implemented by the ACT government, Canberra has been working towards the initiative of becoming a ‘restorative city’ (ACT Law Reform, 2018). In 2018, amongst the schemes third phase of offering restorative justice alternatives in the criminal system, access to RJ options were extended to victim-survivors of sexual and family violence. Explicitly, the *Crimes (Restorative Justice) Act* outlines that victim-survivors may only participate in RJ conferencing if they are over 10 years old, and that cases are only accepted if the offender has expressed responsibility for the crime, yet this may include responsibility without pleading guilty to the offence (ACT Law Reform, 2018). Restorative justice options also include face-to-face conferencing, written or video exchanges, in which a restorative justice agreement or ‘plan’ must be made, much like the RESTORE redress scheme (ACT Law Reform, 2018). However, there is currently no evaluations or reports to date regarding this restorative justice systems application to cases of sexual violence, and outcomes for victim-survivors, which is necessary to understanding how a ‘restorative city’ may provide this service for victim-survivors of sexual crimes.

### ***The SAJJ Project- South Australia***

The South Australian Juvenile Justice Project consisted of research on the South Australian youth and juvenile conferencing schemes in place by the criminal justice system. Particularly, conferencing between victim and offender was established under the *Youth Offenders Act* of 1993, which entails that persons between 10 and 17 years can be recommended for conferencing (Daly, Bouhours & Curtis-Fawley, 2007). An in-depth study, conducted by Daly, Bouhours and Curtis-Fawley (2007), examined sexual assault and family violence cases that had undergone conferencing programs, in which 14 cases were analysed consisting of 6 family violence cases and 8 juvenile sexual violence cases. Though this analysis mainly focuses on youth victim-survivors, Daly, Bouhours and Curtis-Fawley (2007) provide interesting insights into family and victim-offender conferencing, mainly for youth impacted by sexual violence, and determined that conferences can be useful for victim-survivors whom had personal relationships with their offenders (Pali & Madsen, 2011).

### ***Family Violence Restorative Justice (FVRJ) Service- Victoria, Australia.***

The Family Violence Restorative Justice (FVRJ) Service began offering restorative justice options in 2018 through a pilot program for the Department of Justice and Community Safety. Explicitly, it was only offered as a pilot for an 18-month period, in which it is due to be evaluated for its continuation as a restorative justice option for survivor-victims of family sexual violence (Justice and Community Safety, 2020). To date, there has been no publically available assessments of this service.

## **Gaps in the Literature and Future Research**

Despite a growing body of literature on this topic in the last twenty years, there remains little knowledge about restorative programs for sexual violence. Though research has begun to address the possibility of applying restorative justice processes to cases of sexual violence, such as mediation or conferencing, much of the scholarship is theoretical and lacks empirical investigation. Particularly, the literature discussed throughout this review engages with diverse, often divided theories and principles of restorative justice's application to sexual violence cases. Examining the scholarship, it is clear that there is a lack of program evaluations of restorative justice, lack of indigenous and culturally specific conversations, and what that might look like in programs, and a shortage of discussions on consent. Alongside this, there is an absence of the voices of survivors of sexual crimes and their experiences with restorative justice programs, especially on long term psychological and emotional wellbeing, along with literature on sexual violence against queer, gender or sexually diverse people. The scholarship examined, did however, engage with knowledge on 'best practice' principles that have been applied in the limited restorative justice programs available, and the importance of guidelines in mediation and conferencing between victim and offender. Evidently, peer-reviewed research and evaluations is needed for this topic, and much of the literature centres on small sample sizes and satisfaction with programs, rather than survivor's experiences of meeting with offenders. Thus, future research is required to assess the compatibility of restorative programs to cases of sexual violence, especially how traditional approaches of conferencing, mediation and circle-healing could be applied to sexually violent crimes. Additionally, current programs must produce evidence of the implementation of restorative justice processes to sexually violent cases, and evaluate their outcomes. Furthermore, government, non-for profit and legal organisations should consider alternative justice mechanisms and the potentials of conferencing for survivors of violence, in which Australian policy will need to address its availability to the public.

## **Concluding remarks and Implications of Research**

The term 'restorative justice' is broadly defined as an alternative philosophy for the application of criminal procedures, such as the application of conferencing or mediation schemes. This literature review has explored the contemporary scholarship on restorative justice and its applications to cases of sexual violence, as well as examined empirical evaluations of restorative justice programs. In doing so, key themes were established from the body of research, and significant gaps were identified in evaluations and restorative justice's practice in sexual violence cases. These discovered themes, that of 'justice' meanings, dissatisfaction with the court system, and outcomes of restorative processes, highlight the different narratives and types of justice needs, which must be individually tailored in these programs. Additionally, this review has stressed a clear need for further options for criminal proceedings for survivors of sexual crimes, and the importance of support mechanisms throughout the



prosecution phase. Moreover, it showcases that outcomes of restorative justice are diverse, and may not lead to significant changes as 'restoration' suggests, except rather that victim-survivor focused models are the way forward. To conclude, researchers and community organisations have recently made meaningful contributions to the literature on restorative justice, establishing the ground roots of its possibilities as an alternative approach. There is, however, a pressing need for research in this area, particularly regarding sexual, family and gendered violence, that should be addressed further by legal institutions, policy-makers, counsellors and support workers.

## Bibliography

- ACT Law Reform. (2018). *Canberra-becoming a restorative city* (Reference. 5). Canberra, Australia: Justice and Community Safety.
- Daly, K., & Hayes, H. (2001). *Restorative Justice and Conferencing in Australia* (No. 186). Canberra, Australia: Australian Institute of Criminology.
- Daly, K., Bouhours, B., & Curtis-Fawley, S. (2007). *South Australia Juvenile Justice and Criminal Justice (SAJJ-CJ) Technical Report No. 4: In-Depth Study of Sexual Assault and Family Violence Cases*. Brisbane, Queensland: School of Criminology and Criminal Justice, Griffith University.
- Daly, K. (2011). *Conventional and Innovative Justice Responses to Sexual Violence* (No. 12). Melbourne, Australia: Australian Centre for the Study of Sexual Assault.
- Daly, K. (2014). Reconceptualising sexual victimization and justice. In I. Vanfraechem, A. Pemberton & F. Ndahinda (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation*. London: Routledge.
- Daly, K. (2016). What is restorative justice? Fresh answers to a vexed question. *Victims & Offenders*, 11 (1), 9-29. Doi: 10.1080/15564886.2015.1107797
- Daly, K., & Stubbs, J. (2016). Feminist engagement with restorative justice. *Theoretical Criminology*, 10 (1), 9-28. Doi: 10.1177/1362480606059980
- Felson, R., & Pare, P. (2008). Gender and the victim's experience with the criminal justice system. *Social Science Research*, 37 (1), 202-219. Doi: 10.1016/j.ssresearch.2007.06.014
- Gang, D., Loff, B., Naylor, B., & Kirkman, M. (2019). A call for evaluation of restorative justice programs. *Trauma, Violence, & Abuse*, 1-5. Doi: 10.1177/1524838019833003
- Hopkins, C., & Koss, M. (2005). Incorporating feminist theory and insights into a restorative justice response to sex offenses. *Violence Against Women*, 11 (5), 693-723. Doi: 10.1177/1077801205274570
- Julich, S. (2006). Views of justice among survivors of historical child sexual abuse: Implications for restorative justice in New Zealand. *Theoretical Criminology*, 10 (1), 125-138. Doi: 10.1177/1362480606059988

- Julich, S., Buttle, J., Cummins, C., & Freeborn, E. (2010). *An Exploratory Study of Restorative Justice and Sexual Violence*. Auckland, New Zealand: Ministry of Justice.
- Julich, S., & Thorburn, N. (2017). Sexual violence and substantive equality: can restorative justice deliver? *Journal of Human Rights and Social Work*, 2, 34-44. Doi: 10.1007/s41134-017-0029-0
- Justice and Community Safety. (2020). Restorative justice for victim survivors of family violence. Retrieved from <https://www.justice.vic.gov.au/fvrjservice>
- Keenan, M., Zinsstag, E., & O’Nolan. (2016). Sexual violence and restorative practices in Belgium, Ireland and Norway: a thematic analysis of country variations. *Restorative Justice: An International Journal*, 4 (1), 86-114. Doi: 10.1080/20504721.2016.1148466
- Koss, M. (2014). The RESTORE program of restorative justice for sex crimes: vision, process, and outcomes. *Journal of Interpersonal Violence*, 29 (9), 1623-1660. Doi: 10.1177/0886260513511537
- Loff, B., Naylor, B., & Bishop, L. (2019). *A Community-Based Survivor- Victim Focussed Restorative Justice- A Pilot*. Victoria, Australia: Criminology Research Advisory Council.
- Marsh, F., & Wager, N. (2015). Restorative justice in cases of sexual violence: Exploring the views of the public and survivors. *Probation Journal*, 62 (4), 336-356. Doi: 10.1177/0264550515619571
- McGlynn, C., Westmarland, N., & Godden, N. (2012). ‘I just wanted him to hear me’: Sexual Violence and the Possibilities of Restorative Justice. *Journal of Law and Society*, 39 (2), 213-240.
- McGlynn, C., Downes, J., & Westmarland, N. (2017) *Seeking justice for survivors of sexual violence: recognition, voice and consequences*. In Keenan, Zinsstag and Aertsen (Eds) *Sexual Violence and Restorative Justice* (p. 179-191). Abingdon, Oxon: Routledge.
- McGlynn, C., & Westmarland, N. (2019). Kaleidoscopic justice: sexual violence and victim-survivors’ perceptions of justice. *Social & Legal Studies*, 28 (2), 179-201. Doi: 10.1177/0964663918761200
- Milne, E., Brennan, K., South, N., & Turton, J. (2018). *Women and the Criminal Justice System*. Cham, Switzerland: Palgrave Macmillan.

- Miller, S., & Hefner, M. (2015). Procedural justice for victims and offenders? Exploring restorative justice processes in Australia and the US. *Justice Quarterly*, 32 (1), 142-167. Doi: 10.1080/07418825.2012.760643
- Ministry of Justice, 2018. *Ministry of Justice-Restorative Justice Survey*. Auckland, New Zealand: Gravitas Research and Strategy Ltd.
- O’Nolan, C., Zinsstag, E., & Keenan, M. (2018). Researching ‘under the radar’ practices: exploring restorative practices in sexual violence cases. *Temida*, 21 (1), 107-129.
- Pali, B., & Madsen, K.S. (2011). Dangerous liaisons? A feminist and restorative approach to sexual assault. *Temida*, 14, 49-65.
- Ptacek, J. (2009). *Restorative Justice and Violence Against Women*. New York, USA: Oxford University Press.
- Rogers, R., & Miller, H.V. (2018). Restorative Justice. In the Handbook of Social Control, M. Deflem (Ed.). Doi:[10.1002/9781119372394.ch12](https://doi.org/10.1002/9781119372394.ch12)
- Strang, H., & Sherman, L. (2015). The morality of evidence: the second annual lecture for restorative justice. *Restorative Justice: An International Journal*, 3 (1), 6-27. Doi: 10.1080/20504721.2015.1049869
- Walker, L. (2013). *Restorative Justice: Definition and Purpose*. In K. Wormer & L. Walker (Ed.), *Restorative Justice Today: Practical Applications* (pp. 2-11). Thousand Oaks: SAGE Publications.
- Wager, N. (2013). The experience and insight of survivors who have engaged in a restorative justice meeting with their assailant. *Temida*, 11-32. Doi: 10.2298/TEM1301011W