

Submission by Jonathon Rose: Justice Responses To Sexual Violence

Thank you for raising this important subject and this opportunity to comment.

About Jonathon (Jon) Rose

I’m a 67-year-old mostly retired person with a diverse background in the social welfare and health fields. I am commenting on this issue primarily on my role as coordinator and primary developer of resources in a national, 2013

[‘Advocacy Roles, Skills and Training Project’](#) (for victim-survivors of sexual violence) funded by the then Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) under the National Framework for Protecting Australia’s Children.

Preamble to the Terms of Reference

CONTEXT: Naming and cultural shift from offender focus to victim-survivor focus

The ‘criminal justice system’ has been defined as, “the system of law enforcement that is directly involved in apprehending, prosecuting, defending, sentencing, and punishing those who are suspected or convicted of criminal offenses.”¹ However, Prof. Dr. Christian Pfeiffer has describing a good criminal justice system, as one which should prioritise;

1. Reduce the number of victims of crime
 2. Care for and compensate victims of crime
 3. Ensure offenders (who are often also victims) are rehabilitated to not reoffend
 4. If unable to be rehabilitated, prevented from reoffending (prison, monitoring, etc)
- (Personal Communication)

i.e. shift language and a primary focus on the ‘criminal’, to a primary focus in on the ‘victim’.

Victim focus vs Offender focus

“I felt that the perpetrator was seen as ‘innocent until proven guilty’ but that I was seen as ‘a liar until proven truthful’” [NASASV Submission](#) (2023 pp 4-8)

Criminal Justice System	Victim-Survivor Justice System
Focus on Offender	Focus on Victims-Survivors
Witness for prosecution	A traumatised Person needing Supports
Criminal court conviction focused	A range of Justice Needs
Traumatising, expensive, poor outcomes measured in rate & type of convictions and sentences	Success measured by victim experiences, quality of support, outcomes for victims & offending rates

Recommendation: default to ‘Victim-Survivor Justice System’ in language, and intent

Deterrence Theory

The community, including victim-survivors, tend to believe a criminal conviction (particularly custodial sentences) will deter the offender and others from offending as well as to provide 'justice' (punishment) for the victim-survivor and the general community.

Sure (certain), Swift, Severe

For Sure caught, Swift negative consequence (punishment), Severity of punishment

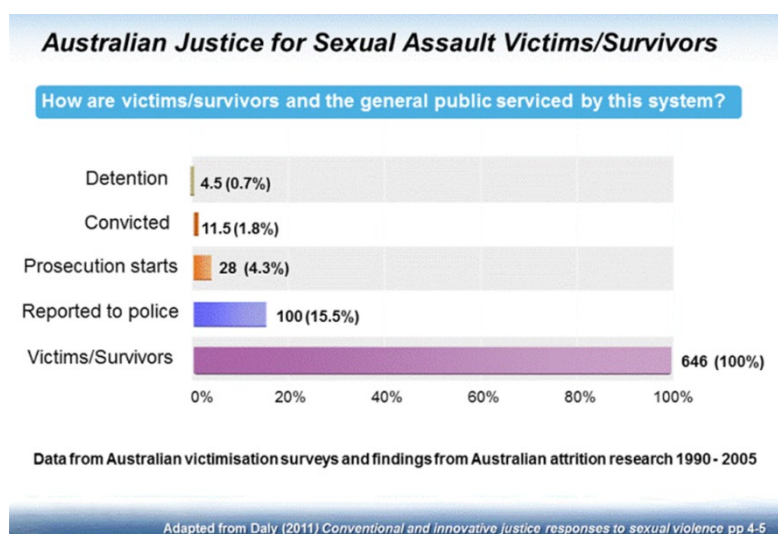
Severity tends to be the least effective & most expensive deterrent² and yet the one with most appeal to the general public and policy makers. This is likely a consequence of the majority adhering to Kohlberg's 'law and order' stage of moral development (vs anarchy and chaos) along with popular beliefs underpinning retributive justice,

"...wrongdoers deserve a punitive response proportional to their wrongdoing, even if their punishment serves no further purpose. This means that the retributivist position is not reducible to consequentialist considerations nor in justifying punishment does it appeal to wider goods such as the safety of society or the moral improvement of those being punished."³

It's the probability of an offender getting caught (sure, certain) and negative consequence happening immediately or soon after which has been shown to be the stronger deterrent.

This approach was highlighted by the Victorian Sentencing Advisory Council's [DiscuRsion Paper](#), Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders. However, due to lack of evidence at the time (2017) while the final [Report](#) recommended tightened timing and monitoring issues, the central approaches of Swift, Certain and Fair were not recommended. It may be time to revisit this in light of the overall failure of our current punitive approach and changes to the evidence in the last seven years.

The reality of relying on criminal convictions as a deterrent has the opposite effect. Most sexual violence offenders learn they can offend and get away with it, at least in terms of being criminally convicted. This likely increase their offending behaviour (see the chart below)



Of course, there are important primary prevention deterrents including teaching/promoting emotional intelligence, respect, consent, as well as protective behaviours, across various age groups, community vigilance in reporting etc. However, these are beyond the scope of this inquiry

**Recommendation: Shift focus from Severity of Punishment to Sure (Certain) and Swift
Revisit the use of Swift, Certain and Fair approaches in Family and Sexual Violence Cases**

Justice needs as identified by Victims-Survivors

In her interviews with adult victim/survivors of sexual violence, Hayley Clark (2010) identified from respondents five areas of justice needs: **information, validation, voice, control and outcomes**. These justice needs along with system experiences are summarised in the table below:

Table 1 Misalignment of participants' justice needs and system experiences	
Justice needs	System experience
Information	
Practical information about system processes and individual rights	Miscommunication, irregular and delayed communication, involvement of multiple system officials
To be kept informed about case progress	
Evidenced supportive practices and successful outcomes	Re-traumatisation from system procedures and low conviction rates
Validation	
Belief, sensitivity and empathy from system officials	A history of mistrust, prejudice towards victims of sexual assault, and inconsistent police practices
Status as a victim and survivor of a serious crime	Status as complainant and witness
Responses that acknowledge the seriousness of the crime and its impact on their life	A focus on "evidence" and detail of the offence rather than the context in which it occurred and the nature of the offending
To hold the perpetrator to account for his crimes	Low rates of police charges, high rates of attrition, high rates of not guilty pleas, low rates of conviction, high rates of successful appeals
Voice	
A forum to tell their story in their words to a supportive and receptive audience	A trial dictated by legal rules of evidence, with cross-examination grueling and often based on scrutinising personal credibility
The context and circumstances of the offending to be included in proceedings	A reconstruction of victims' narrative
	Relatively high rates of not guilty verdicts
Control	
Representation, consultation and decisions made in their best interests	No legal council—state prosecution, with decisions centring on the case rather than individual victims
Victim discretion to proceed with or withdraw the complaint	System decisions to proceed or discontinue
System accountability to proceed with their complaint through to prosecution	Reform efforts not centred on accountability in increasing prosecuting cases, victim/survivors' wellbeing
Outcomes	
Retribution and punishment	A majority of perpetrators undetected
An official record	Imprisonment and treatment orders as sentencing options but conviction rare
Safety and protection	Response options that do not prioritise victim/survivors' individual justice needs
Recognition that individual justice needs are diverse	

[CLARK, H. \(2010\)](#). "What is the justice system willing to offer?" Understanding sexual assault victim/survivors' criminal justice needs.

Further consideration of a 'victim-survivor justice system' need to prioritise these ALL these needs.

Summary of the Preamble

While I understand there is nothing new in this preamble, it aims refocus attention onto the primary justice needs of victims-survivors of sexual violence, as well as addressing some issues of deterrence. While this sets the scene for the rest of my submission, it also suggests a need to reorientate the community, professional, legal and political notions of 'Justice'.

Recommendation: Community campaign to reorient to a 'victim-survivor justice system'

Support and services available to people who have experienced sexual violence, from the period prior to reporting to the period after the conclusion of formal justice system processes;

Advocacy Role for Victim-Survivors of Sexual Violence

Background

My involvement in the [Advocacy Roles, Skills and Training Project](#) (for victim-survivors of sexual violence) was due to the work of [Natalie Hall](#), who was the then Director of the Gorge Jones Child Advocacy Centre, part of Parkerville Children and Youth Care. Natalie had returned from a Churchill Fellowship where she researched the [Independent Sexual Violence Advocacy \(ISVA\)](#) role in the UK and [Sexual Assault Victim Advocacy](#) in the USA as well as researching [multidisciplinary, multiagency facilities](#).

Her research and drive was central to the establishment and development of the [George Jones Child Advocacy Centre in Armadale](#), Perth (recently rebuilt and renamed as [George Jones Child, Youth and Family Centre](#) as well as another Child, Youth and Family Centre in Midland).

Advocacy Roles, Skills and Training Project for victim-survivors of sexual violence

This national project based within Parkerville Childrens and Youth Care was funded for nine months – 6 months to develop [core resources](#) including, 2 literature reviews on Advocacy [Roles](#) and [Skills](#), Advocacy role 19 [Standards](#), and a [Training Package](#). A brief brochure-like resource of [9 key domains](#) provides an overview. A reference group oversaw the development of all resources. Training package was delivered in several states across Australia over the next three months.

It was hoped the project would stimulate the development of this as

- a) A stand alone role as in the UK and USA as well
- b) An adjunct to other health and welfare professional roles in the same way brief interventions have been incorporated into non-specialist drug agencies.
- c) The Standards and 2 Literature reviews along with the training program we developed and links to training programs in the USA and UK would result in a nationally accredited course and units specialising in the advocacy role for victims-survivors of sexual violence.

Outcomes

Soon after Natalie Hall left working for Parkerville Children and Youth Care in 2015, the new Director was more involved in developing more [Multi-agency Investigation Support Teams](#) (MIST). The advocacy role [website](#) built by me as part of the project (not funded, but rather incorporated as a largely volunteered community service,) was no longer hosted within the Parkerville Child and Youth Services web site (despite my volunteering to regularly update it as a voluntary service). I still have not found an agency to host it despite a few attempts. This will be my last attempt to find a home for this valuable resource. If found, I will fully update it, otherwise it will be lost forever.

Many high-level recommendations but little action

Advocacy services in domestic violence, mental health, housing, disabilities are reasonably well-developed in Australia including nationally accredited courses which reflect employment in these areas.

Despite our work developing, training and promoting the advocacy role for victim-survivors of sexual violence and several high-level reports comprehensively recommending the development of this role, (see appendix 1) little funding has been allocated to progress this role and certainly besides our small 2013 training grant, I am not aware of any national funds allocated for this specific role.

Appendix 1 contains examples of recommendations include the Victorian Law Reform Commission Report, 'Improving the Justice System Responses to Sexual Offences' (2021) pp [250-262](#), Recommendation 45 and Royal Commission into Institutional Responses to Child Sexual Abuse [Vol 9 Advocacy, support and therapeutic treatment services](#) (2017)

More recently National Association of Services against Sexual Violence (NASASV) Submission primarily focuses on the development of this role. "[Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault](#)" (2023)

Action-based next steps

The action learning model includes review, plan, act, review... Similarly, stages of change model include precontemplation, contemplation, ready for action, action and maintenance.

There is now ample Australian and International evidence of the value of the Advocacy Role for Victims-Survivors of Sexual Violence to move into planning-action stages. Next steps should be;

1. Decide on the model of an Independent Sexual Advice Advocate (trained volunteers, paid staff, or a mixture) with a pre-determined plan to implement. (See also Appendix 1)
2. Consider using the public value in government [strategic triangle model](#) to assess, and where necessary, enhance, Legitimacy and Support and Organisational Capacity in order to successfully implement the public value model.
3. Develop costing and resource needs to progress this model
eg – on-line &/or face-face training, coaching and supervision
- administrative costs (stand-alone service or attached to another service)
- costing for both a pilot and the expected costing for a national rollout in anticipation of a successful pilot.
4. Good project management & implementation models such as that used in Queensland to progress previous sexual violence recommendations.

Some key elements of this role ([Click here](#) for more detail as well as Appendix 1 & 2 pp 11-12)

a) **End-to-end** all the needs rather than a focus on just criminal justice needs
(eg safety, medical, housing, provide options, emotional support, link to self-help, peer support, counselling, helps navigate the system)

b) **Role in coordinating**, connecting service providers

c) **Independent, directed by victim-survivor**, 'on their side'

d) **Training** & ongoing coaching & supervisory support

f) **Accessible** & Known

Recommendation: Action-based funding and progression of a National ISVA Role Project

Recommendation: Find a home to host the [Advocacy Role for Victims-Survivors of S.V.](#) web

The Silent Majority Project



In almost 9 in 10 incidents (87%, or 554,000), women who experienced their most recent aggravated sexual assault by a male in the last 10 years did not contact the police. Common reasons for this included women feeling like they could deal with it themselves (34%, or 189,000) or not regard the incident as a serious offence (34%, or 187,000). One in 4 women (26%, or 143,000) who did not contact the police also said it was because they felt ashamed or embarrassed about the incident.

Source Reference [Sexual Assault Australia](#)

If the intent is to provide justice to those who have experienced some form of sexual violence then innovative services need to cater to the justice needs (i.e. information, validation, voice, control and outcomes) of the vast majority who either don't tell anyone, tell a friend or family member or a generic health professional.

This service would need to be broad in scope and possibly include such things as

- Provide generic programs for school social services staff, GP, Health services, etc on screening for sexual violence, how to manage disclosures, mandatory reporting, emergency mental health first aid etc
- Develop online, apps and other resources (including things like episodes on popular tv shows like Home & Away) on how to support someone who has experienced sexual violence
- Develop online, apps and other resources for those who do not want to disclose to anyone
- Develop or enhance staff on telephone & chat support lines
- Promote the range of options for someone who has experienced sexual violence.
- Provide resources for protective behaviours for different age groups
- Develop resources and responses on what to do about the perpetrator
- Other innovations.

If done well, this will not only service this group, it may also improve reporting and may also reduce offending.

Recommendation: Scoping and Funding for The Silent Majority Project

Self-Help, Peer-Support Groups

In my limited experience with self-help groups for victim-survivors of sexual violence they have shown themselves to be one of the most valued services by victims-survivors. They provide a good deal of the information, validation, voice, control and outcomes justice needs as described by victims-survivors in a generally supportive, social setting.

While some self-help groups spring up spontaneously, others are facilitated by services, including women's services, men's services and sexual assault/violence referral centres.

Finding self-help groups

Some victims-survivors of sexual violence don't especially want to go through an agency, may have had bad experiences with professional counsellors/psychologists/social workers and just want to chat face-to-face or more anonymously online with victims-survivors.

Currently, while services like 1800RESPECT may be able to connect people to self-help groups, chat groups, etc, there is no central place which has a data set of various self-help groups that can be found through Google.

Recommendation: Develop and promote a data-base of self-help groups for victim-survivors of sexual violence making this available on various sites such as [Respect Support Services](#)

The Survivor Hub

Many self-help groups run on traditional lines, often with a professional facilitator running closed or open groups over a fixed or open time-frame in a room with chairs in a circle.

Newer groups such as The Survivor Hub has developed [MeetUps](#) across NSW and Victoria as face-to-face, as well as online MeetUps. A specialist trauma counsellor and/or social worker will also present to provide further support at most MeetUps.

This group is also present as private Facebook group as well as Instagram where they have a range of lived experience posts, resources and information.

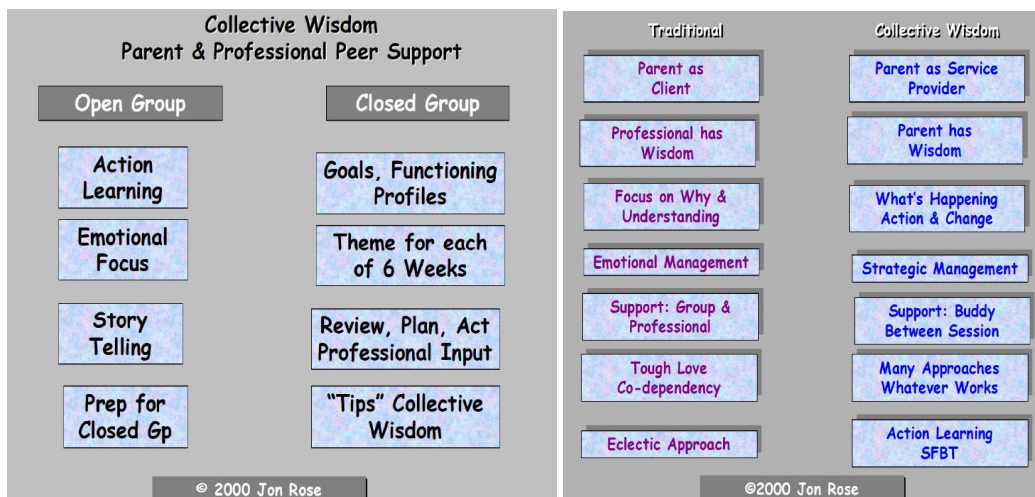
This seems like an excellent to

- a) Properly fund/resource to make it fully sustainable. Good will and volunteering can only last so long
- b) Consider replicating and/or expanding The Survivor Hub concept into other states (again with adequate resources to do so).

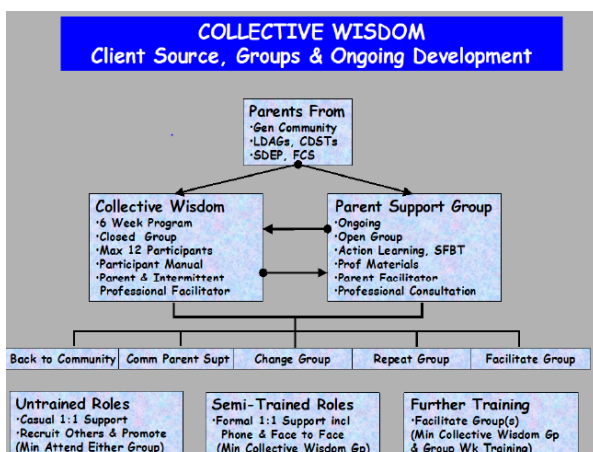
Recommendation: Better resource The Survivor Hub and consider expansion or replication into other states

Other models of self-help groups

I was involved in a professionally facilitated group called Collective Wisdom (attached as a PDF). It consisted two connected groups. The first was an open group, generally to allow people to ventilate and tell their stories make and get suggestions for each other and to feel supported. It also introduced some action learning methods. The second group was a closed group for a fixed period of time to work through specific issues tailored to their needs using 'goal maps' developed at a participants' separate session;



To some extent, it borrows some ideas from the processes used in Alcohol Anonymous processes whereby groups would initially be facilitated by professional counsellors, and later by volunteer facilitators who had been through the groups along with some brief additional facilitators training, orientation to a manual and intermittent growth model coaching. It also incorporated between session buddy telephone supports for those who wanted this.



While this program was designed for parents of their adult, drug using children, it is presented here to show how there are modified self-help groups. This one, a mix of a traditional open group and a closed group which connected the professional wisdom with the lived experience of applying what works for that particular person/family in their situation – which is subsequently shared with the group...


Alternatives to, or transformative approaches to, criminal prosecutions, including restorative justice, civil claims, compensations schemes, and specialist court approaches.

Survivor Initiated, Victim/Survivor Focussed Restorative Justice

As previously discussed, in our traditional, punitive, adversarial justice system, the victim/survivor is primarily seen as a witness for the prosecution. That is, the primary focus is on conviction and punishment of the offender.

Survivor initiated, victim/survivor focussed restorative justice aims to repair the damage caused by wrongful action and restoring, insofar as possible, the well-being of the victim/survivor in the first instance as well as others. Where the perpetrator is involved, the focus is on being held accountable, understanding the impacts on the victim/survivor, possible compensation for the victim/survivor, along with measures to prevent offending in the future.

Traditional legal consequences may also play a part in restorative justice processes pending the wishes of the victim/survivor.



Restorative justice v traditional justice system	
Traditional justice system	Restorative Justice
Crime is an act against the state	Crime is an act against another person and the community. Crime causes harm to individuals and communities.
Offender accountability defined as taking punishment	Accountability defined as assuming responsibility and taking action to repair harm
The people impacted are peripheral to the justice process	The people most affected by a crime or wrongdoing should be key to the resolution of the harm caused.
The offender is defined by deficits	The offender is defined by capacity to make reparation
Response focused on offender's past behaviour	Response focused on harmful consequences of offender's behaviour; emphasis is on the future

Picture Source [Webinar Video](#)

The article [Restorative justice after sexual assault](#) identifies three key mechanisms for addressing harm;

- a) victim/survivor voice,
- b) validation, and
- c) future planning.

Restorative justice has come to be associated with restorative justice conferencing (victim-offender mediation). However, the above article warns against a one-size-fits-all approach. Indeed, many victim/survivors do not wish to directly or even indirectly face their perpetrator. This and additional success factors for effective restorative justice factors have been listed below and are elaborated in the above linked article;

1. Robust assessment and screening
(ensure each participation is aware of and suited to the program)
2. Flexibility and responsiveness process (not one-size-fits-all)
3. Use of expert staff and facilitators. Thorough victim/survivor preparation
4. Voluntary participation

See the link below for more detail and insights on restorative:

[Click here](#) for *Restorative justice for sexual offences* (2021) a comprehensive review by the Victorian Law Reform Commission pp. 184-212 [Click here](#) or the html version.

Prioritise Civil Litigation over Criminal Litigation

In the broader sense of restorative justice, meaning to restore what's been damaged (i.e. 'you broke it, you fix it'). As such and in consideration of the Victorian Law Commission 2021 report, civil litigation is not only a secondary option should criminal proceedings not proceed or fail, but is likely to be a more attractive option to satisfy more of victims-survivors justice needs as described by victims-survivors. They tend to be more validated from the magistrate, have more control over proceedings and the outcome is more likely to be in their favour given the lesser

burden of proof and in the form of payment and possible other settlements directly from the offender to the victim-survivor. Together, this can be more of a healing process.

Feature	Criminal justice system	Civil system
Standard of proof to establish wrongdoing	Beyond resonable doubt	Balance of probabilities (a lower standard than "beyond reasonable doubt"
Role of the person harmed by the wrongdoing	A witness for the prosecution (the police or the Office of Public Prosecutions prosecute criminal charges on behalf of the state). the person harmed is not reperesented by a lawyer.	A party to the proceeding, who sues on their own behalf and usuall has their own lawyer to represent them.
Outcome	Verdict of guilty or not guilty (and if guilty a sentence might be served). Potential for public acknowledgement of the crime.	If there was assault or breach of duty of care: financial compensation. Potential for public acknowledgement of the wrong.

Source: *Sexual Offences: Civil Law and Other Non-Criminal Responses* Victorian Law Reform Commission

In order to make prioritise and enable civil litigation more common;

Recommendation: Public funding for Civil Litigation of Sexual Violence offenses and the State take responsibility for enforcing Orders and Settlements as per recommendations 41 and 42 of the above report and

The victim-survivor makes an informed choice about which path to take rather than be coerced into the criminal justice option.

By holding offenders to account in this way, besides better outcomes for the victim-survivor, there is likely a higher possibility of reduced reoffending as;

- a) The offender is more likely to face punitive damages
- b) The settlement may be inclusive of mandatory treatment
- c) Restorative justice conferencing may be involved
- d) The overall process is focussed not only compensating the victim-survivor, but also aiming to ensure the perpetrator behaves in a more positive way towards society regarding his/her crime.

Summary

The primary purpose of this submission, is to better cater for the justice needs of the majority of women who have experienced sexual violence. The vast resources invested in the traditional criminal justice system focussed on getting a sexual violence criminal conviction is failing victim-survivor and the general public. Reframing the language and intent of the justice system around victims-survivors and their justice needs as they have described them is not only likely to result in better justice outcomes for victim survivors, but also for the general public.

Importantly, it's time to put the many fine recommendations from this and previous reports into action. This will take funding, energy, and a robust system of tracking implementation.

Again, thankyou for your important work and contributions to this area of great need.

APPENDIX 1 VLRC Recommendation 45 Independent Sexual Violence Advocate

VLRC Improving the Justice System Response to Sexual Offences

Chapter 12 Supporting people who have experienced sexual violence (2021)

The Victorian Government should consult on and co-design a model of victim support that uses single advocates to provide continuous support for people who have experienced sexual violence across services and legal systems. These independent advocates should:

- a. provide information about justice options
- b. support them to understand and exercise their rights, including their rights under the *Victims' Charter Act 2006* (Vic)
- c. support their individual needs, including through referrals to services
- d. liaise with, and advocate for them to, services and legal systems.

The model of an independent advocate should:

- a. aim to empower those experiencing sexual violence
- b. enable advocates to provide holistic, individualised and specialised support, including specialised expertise and understanding of working with children and young people
- c. not depend upon a person's engagement with the criminal justice system
- d. give priority to people who are under-served and/or who face the most complex interactions between services and systems
- e. include diverse points of access to such support
- f. be co-designed with under-served communities and people who have experienced sexual violence
- g. include support and training for advocates
- h. include oversight of the scheme.

(Sept, 2021) [P. 262](#) (for more detail read from the bottom of [P. 250](#) - 262)

See next page for Appendix 2

Appendix 2: The 2017 Royal Commission into Institutional Responses to Child Sexual Abuse Vol 9 Advocacy, support & therapeutic treatment services

Vol 9 Advocacy, support and therapeutic treatment services

The focus on Advocacy in this 211 page final report of the Royal Commission, clearly highlights the need for a strong focus on the advocacy role and associated services for victim/survivors of sexual assault. Below are some quotes from the report help to explain this role:

"...we formed the view that advocacy and support functions are important components of an effective service system for victims and survivors. Well-implemented advocacy and support services can: help victims and survivors access resources and relevant information; help survivors connect positively with other survivors and families; aid in recovery from trauma; and decrease the risk of further abuse. Access to advocacy and support can also result in better mental health and other outcomes for victims and survivors and promote systemic improvements to service responses.

2.3.1 Facilitating responses to multiple needs

Advocacy can empower victims and survivors to navigate the complex range of services they may need. An effective advocate can assist a victim to access medical care, make a report to police, find a counsellor, attend education courses, join a local sporting club and raise awareness about matters affecting the victim..." [p. 44](#)

Advocacy and support services can assist victims and survivors to navigate systems for housing, health, education and social services. One study involving victims of sexual assault noted that the participants wanted a 'flexible and practical form of support' immediately after the abuse occurred. Several support services working with victims and survivors of child sexual abuse told us how advocacy and support met immediate needs, including:

- *emergency and ongoing housing*
- *financial issues, including assisting in dealing with Centrelink*
- *physical health issues, including dental and medical issues*
- *education, training and employment services and opportunities*
- *legal assistance, including dealing with police, attending court and making redress*
- *civil litigation claims.*

Research suggests that dedicated advocacy roles for victims of sexual violence 'assist people to connect to services they need ... and improve the support and experience of people who have suffered violence and trauma' [p. 46](#)

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Respectfully Submitted 24 May 2024
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[Redacted Signature]

<https://www.jonrose.info/advocacy/welcome.html>