



alannah & madeline
foundation



Review to improve victims' experience of summary criminal proceedings

Submission by the Alannah & Madeline
Foundation

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Executive summary

We welcome the commitment by the Department of Justice and Community Safety to improve the experience of victims participating in summary criminal proceedings in the Magistrates' and Children's Courts. This submission outlines the steps we believe are essential in order to strengthen victims' engagement in decision-making by prosecutors, court processes and support services in the lower courts, with a focus on children and young people.

Children and young people are victims of crime in their own right and the impacts on their wellbeing and development can be severe. However, their victimisation is often overlooked, and they lack a voice in the courts system. Young victims experience summary criminal proceedings which are structured around adult offenders. The proceedings often fail to take the experiences of children and young people adequately into account, and the supports available to them are limited. For example, the Victims Assistance Program typically works with parents instead; there is little opportunity or capacity to hear from and support children and young people themselves.

The failures of the justice system to listen and respond adequately to children and young people's experiences all too often hinders their recovery from the impacts of crime or even re-traumatises them.

Furthermore, traditional court environments have not been designed with the needs of children and young people in mind. Courts can be confusing, intimidating, distressing and even unsafe for children and young people. Multiple reviews have recommended changes to the design and function of courts to create more child-friendly environments and 'hold children in sight' at all times. We refer especially to Victoria's 2012 report of the Protecting Victoria's Vulnerable Children Inquiry and the 2016 report of the Royal Commission into Family Violence.¹ While positive steps have been taken, more work remains to be done to ensure that children are safe and supported at court.

We believe partnerships with specialist agencies would enable the courts system to provide a strong voice for children and young people, keep them safe and supported at court, and assist in their recovery.

Our Children Ahead program has extensive experience in working with children and young people who are victim survivors of crime and other forms of trauma. An intensive support and recovery program for children and young people aged 0-18 years, Children Ahead provides a dual service of individual, tailored therapy and comprehensive service system support. The program helps children to recover and build resilience; it strengthens the connections and networks around children (eg. family, school, community), and it helps to overcome system barriers so that children receive appropriate service responses. It also ensures that children and young people have a meaningful voice in decisions that affect their lives. Children Ahead has supported children and young people to attend court, give impact statements, and place Victims of Crime Assistance Tribunal (VOCAT) claims for victim compensation.

Meanwhile, our Cubby House model provides a physical space and support service for children and young people at court. This award-winning model, run in partnership with the Children's Court of Victoria and the Department of Families, Fairness and Housing (DFFH), operates at the Melbourne Children's Court and Broadmeadows Children's Court for children attending court who are in emergency care or otherwise in the care of DFFH. The Cubby House provides a secure, high-quality, for-purpose, child and youth-friendly space, with indoor and outdoor areas, spaces for play and resting, activities, snacks, and a calming atmosphere to reduce anxiety and fear. It is staffed by skilled and experienced youth workers who provide emotional support to children, help them understand what is happening, and help ensure that other professionals communicate appropriately with children. An evaluation found that the Cubby House model had significantly improved children's experience of spending time at court, significantly reduced the number of incidents involving children in court, and reduced tension in public waiting areas for both staff and members of the public.²

By adapting and scaling these effective approaches to other parts of the courts system, we believe very positive outcomes could be achieved, both for individual victim survivors and the courts system.

Recommendations

1. Update the narrow legislative definition of 'victim' to fully recognise the impacts on children and young people of exposure to crimes and their aftermath. At present, the Victims' Charter 2006 is translated into system and services responses in a way that is largely limited to adult victims. We need a broader definition and approach that recognises the severe impacts crime can have on children, including very young children, and the importance of early intervention to address these impacts.
2. Require demonstration of victim participation and involvement along the full criminal justice proceedings pipeline, including the involvement of young victims. To this end, we believe the following interventions would help to deliver a safe, age-appropriate approach:
 - Work with agencies which have expertise in trauma-informed and child-rights practice to build effective services to support children and young people to navigate the court system, cope with their experiences in court, and have a meaningful voice in police prosecutors' decision-making and court sentencing. Children and young people should also be engaged in the regular evaluation of these support services, to provide feedback on how they could be improved. Our Children Ahead program is one expert intervention which could be scaled easily to different points in summary proceedings (prior, during and post-court), in partnership with the Victim Assistance Program.
 - Build on lessons from the Cubby House model to improve spaces and staffing at court precincts to help keep children and young people safe and supported, prevent further traumatisation during their time at court, and better enable them to have their voices heard. For example, consider providing spaces in court complexes (separate and distinct from the Cubby House) which could be accessed by any family with children within the court population. These spaces should be safe, welcoming and child-friendly, with appropriately trained and experienced professionals on hand who can (with the parent's formal consent) provide short-term care to children as needed – for example, while the parent is providing instruction to a legal representative or accessing support services at court.
 - Ensure that the overall design of courts signals to children and their families that they are welcome there, including clear communication about the supports available, and child- and family-friendly design and aesthetics. Building design should also be sensitive to the needs and experiences of Aboriginal and Torres Strait Islander people and communities, recognising the impact of the Stolen Generations and the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice and child protection systems. These design improvements can be achieved through direct engagement with services that work with children who have experienced significant trauma, Aboriginal and Torres Strait Islander controlled community organisations, family violence services, and children and young people.
 - Support the growth of a clear, joined-up system to identify child victim survivors of crime from their first touch-point with the justice system and adequately support their recovery across all the relevant settings in their lives. These may include education and child protection as well as the justice system.

About us

The Alannah & Madeline Foundation is the leading national not-for-profit organisation working to protect children from the effects of violence and bullying.

We care for children who have experienced or witnessed serious violence; we reduce the incidence of bullying, cyber bullying and other cyber risks; and we advocate for the safety and wellbeing of children.

Our programs are in close to one third of Australian schools and more than 80 per cent of Australian public libraries. We also support 10,000 children in refuges or foster homes across the country every year through our Buddy Bags program.

We have reached more than 2.5 million children and their families nationwide since the Foundation started.

Why focus on children and young people?

We all want children and young people to grow up healthy, thrive, and make positive contributions to their community. But being exposed to crime and the criminal justice system can have serious adverse impacts on this. And all too often, children and young people are rendered invisible, not recognised or supported as victim survivors in their own right.

There are various scenarios in which a child can become a victim of crime.¹ Here, we focus on those crimes children and young people have witnessed or been exposed to that come before the court in summary criminal proceedings. Whether the summary offence matter is disorderly behaviour, assault, wilful damage to property, or breaches of intervention orders, it can have devastating impacts on children and young people who witness or are exposed to the event and its aftermath.

Even very young children are impacted by crimes and their aftermath, and early intervention to address these impacts is crucial. Assumptions such as 'Maybe they will need help later; they are too young now' do not fit with trauma-informed research and evidence.

Furthermore, children can experience secondary victimisation by the criminal justice system itself – for example, when women involved in summary proceedings have no choice but to bring their children to court with them. Courts can be crowded, confusing and intimidating. Children might spend time in areas without suitable amenities or comforts; they might have to be near family members who have harmed them; they might be exposed to upsetting talk or incidents; and they might not be appropriately supervised. There are strict rules, for example, about who can enter the court room; if a mother is giving evidence, children are required to be in a separate space in the court. Justice is supposedly served, but at the cost of further isolating and confusing a child victim of crime.

It is vital to recognise how much children's lives are shaped by services systems, such as the summary proceeding criminal justice system, which were built without taking children and young people's experiences into account. Too often, these systems hinder the attempts of children and young people to understand and recover from the impacts of crime – or worse, re-traumatise them.

The 2020 victim services review, *Strengthening Victoria's Victim Support System* (the 2020 Review), found that:

'failing to respond adequately to experiences of victimisation could set clients on trajectories that included repeat victimisation or offending...a more holistic response that recognizes the various impacts of crime victimisation and trauma therefore has the capacity, for some individuals and families, to intervene early in a pathway that, left unaddressed, can result in extremely high costs to the system through criminal justice involvements, child protection involvement, and the use of other acute service response, such as emergency department presentations and acute mental health.'³

There is a growing literature on children and young people as victims of crime, impacted by witnessing or being exposed to the sort of crimes dealt with in summary criminal proceedings. However, there is a shortage of comprehensive, large-scale data collection and research into the needs of children who are exposed to crime.

Furthermore, at present there is no clear, consistent, joined up approach for identifying and adequately supporting these victim survivors across the systems of justice, child protection and education.

¹ Examples are children and young people who have experienced sexual assault; whose parent has died as a result of murder within the family; whose parent has died as a result of crime in the community; or whose parent is involved in criminal acts.

As with other victim survivors, children and young people thrive best if they are well supported, experience justice being done for and with them, and receive resources to support their recovery and wellbeing from when they are first identified as victims. But there is more work to be done to reach these positive approaches.

Before we can develop an integrated service response, we need to change our thinking. It is not just about seeing the impacts on 'victim's' children⁴; it is about seeing children as victims in their own right and developing a service system which supports them as they start on their recovery journey.

Our advocacy is informed by our expertise in, and experience of, working with children and young people as victim survivors. In particular, we draw upon the therapeutic work of our Children Ahead program, which works with children and young people who have experienced trauma, often in relation to crime, and the subsequent impact on their lives of service responses, including courts.

We also bring our experience in operating two Cubby House spaces in the Children's Court. These are Australia's first responses to Justice's desire to improve for children and young people their experience of being part of a criminal justice system. Melbourne and Broadmeadows Children's Courts are the first to integrate infrastructural changes into building design to create safe, user-friendly places spaces for children and young people in the child protection system. The same design principles could be extended to other parts of the justice system.

Recognising and supporting victims of crime

The rights of victims of crime have been recognised in law and we have come to understand that victims' needs and experiences are diverse. A range of specialist services have developed and received significant investment, evolving to meet our growing understanding of the impacts of crime on victim survivors. There has also been real progress in resourcing courts, as seen in the Marram Ngala Gumbu and Family Drug Treatment Courts and establishing the Cubby House program as a result on inquiries such as the Cummins Report.⁵ Shepparton also provides a good example of court infrastructural changes that minimise re-traumatising victims through increased physical separation of victims and adult offenders while attending court for criminal proceedings, reducing opportunities for offenders to bump into, intimidate or influence a victim.

That being said, there are fundamental structural and system barriers that result in practices that do not reflect victim rights for any age.

A common theme for victim supporters involved in Victoria's summary criminal proceedings is their experience of a system strongly built around adult offenders, with little or no safeguarding of victim rights, and expediency achieved at the cost of victims. While lauding those justice professionals who work hard to hear the victim's voice in these proceedings, they describe infrastructure barriers and subtle through to noticeable practices and processes that undermine a systematic victim rights perspective.

It is also important to broaden our understanding and scope of who is a victim survivor. At present, children and young people are all too often invisible. If we see them as victim survivors in their own right, and listen to their experiences and ideas, we are more likely to develop services that meet their needs.

Our underpinning legislation has a narrow definition of 'victim'. In the Victims' Charter Act 2006 (the Victims' Charter), a victim is defined as a person who has 'suffered injury as a direct result of a criminal offence' (p4). Children and young people are likely to be interpreted as those others who are 'adversely affected by crime' (p3). While this legislation outlines key principles for victims and others adversely impacted by crime, its translation into system and service responses is largely limited to adult victims. We need a broader definition that recognises and responds to the impact on children and young people of crimes.

In the absence of formalised recognition of the lived experience of, and impact on, children and young people as victim survivors when such crimes are committed, Victoria's criminal justice proceedings system reflects the adult-focused view of victim survivors. Adding to this the daily reality of a deeply embedded adult-offender focus compounds the invisibility of children and young people and their experience.

We need policy, structural and service developments and funding investments that enable us to build an integrated service system that understands and responds appropriately to the needs of all victims, not just some of them as currently defined.

Victim involvement in decisions made by prosecutors

We know the long-term positive impact for victim survivors from their participation and involvement in responses set up to support them. Currently, summary criminal proceedings do not require prosecutors to undertake certain obligations outlined in the Victims' Charter, such as obtaining victims' views, so the fast pace to deal with high volumes is maintained.

Court attendance is often re-traumatising for victims as processes and practices are not built around their needs. For many victims, this is their first experience of court; it can be confusing and adversarial, with 'deals' made on the day, and decisions determined without their involvement. Trusted support persons whom the victim wants beside them are not allowed in court due to the limited list of court-approved persons. Too often it is left with victim support agencies such as the Victim Assistance Program (VAP) to explain what has happened, which they are not always well-placed to do.

We recognise that applicant practitioners operate in the Magistrates Court and specialist family violence courts: a very welcome development. However, their scope is necessarily limited, and they were not set up to work with children and young people as victims in their own right.

There are specific barriers to be overcome if children and young people are to have a meaningful voice in decisions made by prosecutors.

Firstly, it is important to recognise that there are many months – often longer – between when a crime first impacts a child or young person, and when the offender is dealt with at court. A 'study of the system' which maps the experiences of victims from their first touch point of the justice system through to the victim's day in court would identify many opportunities for improvement. Victims could be connected with trauma-informed agencies and child-centred expertise such as Children Ahead, to support them, help them navigate the justice system, ensure their voice is heard, and help prepare them for court.

Secondly, it is vital to recognise children and young people as victims of crime in their own right, whose views should form an integral and necessary part of information for police prosecutors to inform their decision-making and reasons for their decisions. To this end, a quick and necessary rule change is to ensure all decisions demonstrate victim input. If prosecutors are not well-placed to lead this work, then it is about building in appropriate services with new partners such as agencies or specialists with trauma-informed and child-rights expertise who can assist with obtaining such information to help the courts deliver considered, holistic and safe decisions. Safeguards in line with recent reforms to ensure only prescribed agencies with identified expertise can be established at the same time.

Furthermore, structural changes need to be made to court precincts so that children and young people are not further traumatised when they attend court. There are standards (eg. in Western Australia) which recommend an understanding of the psychology of architecture and the creation of user-friendly courts to help all people.

A good place to start would be to build on the lessons of our Cubby House model. The evaluation of the Cubby House found that an explicit focus on children and young people at court resulted in improved efficiency and productivity of court staff. It is also vital to include the voices of children and young people in the thinking and redesign along the full summary proceedings life cycle for this part of the justice system to reposition its delivery of just outcomes for all parties.

Victim participation in court decisions

Victim participation in court is limited, with the victim impact statement being their primary avenue to be heard. Too often, there is no such statement, a fact often not followed up by the bench or anyone else. Plea changes by the offender or new decisions by the prosecutor are made without recourse to any statement or view, even if the victim is in court at the time.

As noted, to understand the impact of crimes and their aftermath on children and young people, it is critical to listen to their views. They want to be asked about what might keep them safe and help in their recovery and dependent on their age. They have helpful contributions to make and often raise issues not thought about by the various adult parties. As we see in our working with children who are victims of crime, they also will have ideas about what kinds of supports best help them along the different phases of this part of the criminal justice system.

Agencies or specialists with trauma-informed and child rights expertise can assist in this process. It is standard practice, for example, for our Children Ahead staff to understand the impacts of crime on children and young people to then develop a tailored recovery plan with them. Children Ahead staff bring trauma-informed expertise and experience in listening to children and young people, including the negative impact on them when their voices are excluded from decisions that directly impact on their immediate and longer-term safety and wellbeing. Rather than current behaviours, Children Ahead focus on the trauma experienced as a result of children's exposure to violence in its many forms. Based on this knowledge, they have assisted young people with content for impact statements, have supported young people when attending court, and, with children and young people, have written VOCAT reports for their claims for victim compensation.

Support services for victims in lower courts

The variations in support across the different courts arguably result in variable justice to different court users. While there are different crimes before the courts, a study of the system will likely identify common needs for users at key points along the summary criminal proceedings life cycle, from pre-court, through the court experience, and to post-court. Integrated and coordinated responses are needed.

The Victim Assistance Program (VAP) is a primary victim support service, and while their work is invaluable, they face many challenges. VAP give many examples of practices and processes that limit their ability to support victims. These include huge variation across regions and metropolitan areas in when and how VAP is involved – especially egregious when they are sought in the week of court when the crime occurred many months ago – as well as the need to develop an on-off client relationship to fit their activity targets; their limited availability to victims due to court-imposed criminal and civil intersections; the undermining practices of some defence lawyers; and questioning of their seeking safe places for victims during COVID-19 to be supported when making their statements.

Furthermore, as the 2020 Review noted, there is currently 'no practice guidance or policy position on the role of the VAP in assessing how a victim's broader family has been impacted by a crime and responding to the needs of other family members, including dependents.' (p113).

Where children are involved, VAP work hard through a third party – the child's parents – and note that there is often no consultation or explanations for children and even young people. Our Children Ahead program is asked by VAP to support children and young people on their recovery journey, because they recognise the impact of these crimes on children as victims in their own right.

Children and young people adversely affected by crimes need similar service support as currently received by the current, more narrowly defined 'victim'. Victoria already has appropriate services such as Children Ahead which could fill this gap. Similar to VAP, responsibility for funding such services sits with Justice; it should not rely on philanthropy.

As noted above, the Children Ahead program has unique experience and expertise in working with children and young people who are victim survivors of crime. Its trauma-informed and child-rights approach and its dual service of individual therapy and service system support would make this program relevant and easily scalable to the different parts of the summary proceedings life cycle (prior, during and post court), to meet the identified needs of children and young people victim survivors.

It is also important to address infrastructure limitations that can re-traumatise victims. The Cubby House program is a successful example of a physical and support service to children and young people at court which could be easily translated to child victim survivors of crime. Cubby Houses are physically secure places for children and young people that give space to enable their voices to be heard. They are spaces separate from the public workings of the court and the adults who may influence them. The Cubby House program

shows the different outcomes we can achieve when we think about what matters for users (albeit another part of the justice system), what system and/or design processes can change, and what resources can best help children at this point in time.

We would welcome the opportunity to discuss any of these matters further with you. Please contact Ariana Kurzeme, Director, Policy & Prevention, ariana.kurzeme@amf.org.au.

¹ The Honourable Philip Cummins (Chair), Emeritus Professor Dorothy Scott OAM, Mr Bill Scales AO, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Melbourne, January 2012; Royal Commission into Family Violence, *Report and Recommendations*, Vol. 3, March 2016

² Effective Change Pty Ltd, *Project Report: Cubby House Evaluation*, June 2016

³ Centre for Innovative Justice, RMIT, *Strengthening Victoria's Victim Support System: Victim Services Review Final Report*, November 2020, p.115

⁴ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System*, p.49

⁵ Cummins et al, *Report of the Protecting Victoria's Vulnerable Children Inquiry*