

# Submission to the Victoria Law Reform System

Prepared by:

**Alannah & Madeline Foundation**

October 2017



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Foundation**

Keeping children safe from violence

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## Review of the Victims of Crimes Assistance Act 1996

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### Introduction

The Alannah & Madelaine Foundation is pleased to have this opportunity to present to the Review Panel. We have met with other industry colleagues during this process, including The Centre of Excellence in Child and Family Welfare and VCOSS and support their broader submission to the Reform Panel.

We have commented specifically on the need and rationale for expansion across Victoria of our holistic ongoing support (counselling and case management) **Children Ahead Program**. Currently we provide the only response to these silent, forgotten and sadly identified '*secondary victims of crime*'<sup>1</sup>.

Under the current definitions in the Act (1996), restitution (referring to orders) require a person to make restitution to restore or return something lost or stolen, or its equivalent to its rightful owner. We ask on behalf of childhood victims of crime how you might restore or return a stolen childhood?

Contained in this submission is evidence of the emotional and financial cost of cumulative and ongoing trauma often carried into adulthood by children who have been victims of crime.

### Alannah & Madelaine Foundation

The Alannah & Madelaine Foundation (the Foundation) is a voice for children who are victims of serious violence and / or bullying through prevention, advocacy and care. We run evidence based programs that counteract the impact of violence, educate people about the effects of bullying, and promote children's safety and wellbeing.

#### Our Mission:

The Alannah & Madelaine Foundation's Mission is keeping children safe from violence.

#### Our Vision:

The Alannah & Madelaine Foundation's Vision is that every child will live in a safe and supportive environment.

#### Our Values:

Caring, Friendliness, Valuing Difference, Including Others, Respect, Responsibility.

The Foundation passionately encourages the physical and mental health of vulnerable children through a range of specialised programs. This year the Alannah & Madelaine Foundation marks its 20<sup>th</sup> anniversary and we are proud to have helped more than 2 million children through our care, prevention and advocacy work.

Our programs are in more than 2,300 schools nationally and will be rolled-out to all 1,500 public libraries by the end of 2018.

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<sup>1</sup> Victims of Crimes Assistance Act 1996 and subsequent Victims of Crime Assistance Tribunal (VOCAT)

The Foundation supports more than 10,000 children in refuges or foster homes across Australia every year through the provision of Buddy Bags, with more than 72,000 having been distributed to date.

Our programs help children who are disadvantaged because of violence in their lives and care for children who are vulnerable through poverty, disability, or being part of an indigenous, refugee or CALD community where violence, bullying, cyber bullying and other cyber risks are serious issues.

Our program and strong advocacy make change happen.

### Alannah & Madeline Foundation Children Ahead Program

The Foundation has been operating the Children Ahead Program since 2008 to work intensively with children and young people who otherwise would not have received any help at all. The program offers case management and individualised therapy to rebuild and support the 'whole life' of children affected by violence as demonstrated in our case study.

Recent external reviews of the Children Ahead program reported: *"the proximity of the Children Ahead Program to evidenced best practice principles indicates it has substantial potential to positively impact the developmental course of children and young people who have experienced violence or trauma."*

During the period July 2016 to June 2017 VAP agencies supported 1,811 children as a result of crime, an increase on the previous twelve months. In 2016 the Foundation formalised a relationship with the Department of Justice and Regulation and funded Victim Assistance Programs to expand the much needed delivery of services to child victims of crime and violence.

Other than the availability of psychological or other counselling, there were no other available services whose model worked with children who had experienced (non-familial) violence and who could support both the trauma and case management needs of these children. Even for those families where there was family related violence, there were limited options for the recovery and support of children as most family violence services are focused on the needs of the abused woman (partner).

In order to fund the expansion of this piece of work the Foundation implemented a fee for service model to ensure that the most highly traumatised group of children from this pool of 1,800 could receive timely and intensive support to aid recovery. The fee for this comprehensive service combining intensive therapeutic intervention and case management is \$14,712 (ex GST) per child per annum.

This well-established positive program provides trauma informed whole of life case management; coordination of all systems with relational support and strong advocacy for childhood victims. With the support of government, the Foundation can offer this program across the state providing impressive cost saving efficiencies by using an established successful program, building protocols and linkages across known services and proposed service hubs.

The current maximum available award for primary victims is \$70k, with an average award of \$7,784. There is a limit to the pool for 'secondary victims' of \$100k. Is this sufficient to remediate the impacts of violence for children? The latest Department of Justice figures identify the total number of children supported by VAP agencies as a result of crime for the period July 2016 – June 2017 is 1,811 (rural 833 and metropolitan 978). This figure is grossly inadequate to meet the immediate support needs of children, let alone to address the longer term consequences of significant and frequently repeated violence.

There are currently no other services (bar the Foundation) in Victoria to support the recovery needs of children who are victims of crime. Evidence also stresses the need to extend the timelines of possible referrals to services to take into account the cumulative symptoms of childhood victims of crime as the developmental impact or symptoms of betrayal and shame may not emerge until children start school, reach adolescence or start reattaching to a trusted adult.

Current time limits in the Act (1996) are highly problematic for child victims. Accordingly, we request that the 2-year time limit for child victims be removed (Sections 52 & 54 of Act) (Perry 2005<sup>2</sup>; Cook, A. Spinazzola, J. Ford, J. Lanktree, C. Blaustein, M. Sprague, M. Cloitre, M. DeRosa, R. Hubbard, R. Kagan, R. Liautaud, J. Mallah, K. Olafson, E. & van der Kolk B. (2005)<sup>3</sup>; Miller, R. 2007b<sup>4</sup>; Cicchetti & Toth, 2000<sup>5</sup>)

Please see *Child Ahead Program Document attached to this submission.*

## **Alannah & Madeline Foundation Children Ahead Program Case study: Victims Assistance Program**

*To demonstrate the need for, and understanding of the level of violence and ongoing family trauma experienced by children as victims of crime we respectfully submit the following case study about "Edward".*

### **Edward, Aged 6**

Since birth, Edward's life was characterised by violence. His mother was subjected to daily beatings from her husband and mother in law.

Edward was three years old and in the bath when he witnessed the violent murder of his mother by his paternal grandmother. Edward was left alone with his grandmother and father until the subsequent arrest of the grandmother several weeks later.

Edward's maternal grandmother, Sue, was brought to Australia to assist his father in caring for him, but the violence was soon directed at her as well. After several months Sue found support and fled the home with Edward and has since become his primary and permanent carer.

With the support of their Church community, Sue soon settled into life in Australia and was committed to providing care and support to Edward. However, when Edward commenced school he displayed many indicators of extreme trauma. Edward was unable to follow simple directions, was unable to sit still, displayed significant anger and aggression towards teachers and other students and had no friends.

There were concerns expressed by teaching staff that Edward had undiagnosed autism, as he was very controlling in his play, could not cope with changes in routine, was highly ritualistic regarding simple activities (e.g. lining up pencils) and had difficulty understanding the view or emotions of others.

Edward was referred to the Alannah & Madeline Foundation's Children Ahead program by the Spencer St Victims Assistance Program and we commenced working with him in early 2017. With the support of interpreters, the Senior Clinician worked with Sue to understand the family history, to understand Edward's daily functioning and obtain a comprehensive assessment of his needs.

The Clinician also liaised closely with his school to understand his needs and develop a comprehensive plan for him. A Cognitive and Psycho-Social Assessment to understand Edward's functioning and assess whether he is on the Autism Spectrum was organised which demonstrated that whilst he displays characteristics of autism, his behaviour could equally be the result of extreme trauma.

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<sup>2</sup> Perry, B. (2005) *Maltreatment and the Developing Child: How Early Experience Shapes Child & Culture*, The Margaret McCain Lecture Series, The Center for Children and Families in the Justice System.

<sup>3</sup> Cook, A. Spinazzola, J. Ford, J. Lanktree, C. Blaustein, M. Sprague, M. Cloitre, M. DeRosa, R. Hubbard, R. Kagan, R. Liautaud, J. Mallah, K. Olafson, E. & van der Kolk B. (2005)<sup>3</sup> *Complex Trauma in Children and Adolescents*, *Psychiatric Annals*, vol. 35, no. 5, pp 390-398

<sup>4</sup> Miller, R. (2007b) *Cumulative Harm: A conceptual Overview*, Department of Human Services, Melbourne

<sup>5</sup> Cicchetti, D. & Toth, S. (2000) *Chronic and isolated maltreatment in a child protection sample: and children who are maltreated over a long period of time*. *Family Matters*, 70, pp 38-45



Therapeutic plans, as well as case management plans, were developed and work has commenced to:

- help Edward to learn about personal space - what it is, how it can change, who and where and what is appropriate.
- increase Edward's emotional vocabulary and begin to develop alternative strategies for managing conflict (instead of hitting, grabbing, pushing).
- role model with Kimochis or other therapeutic toys and games to introduce and develop skills around sharing, listening, asking, joining in, and showing empathy.
- use therapeutic tools and role modelling including books, cards and toys to help Edward develop a sense of how other children might feel.
- liaise with school staff to ensure Edward is getting the same message; sharing resources and suggestions to assist the school.
- develop therapeutic interventions with the school to manage his aggression and assist the development of positive learning and social opportunities.
- engage a speech therapist to support his expressive and receptive language.
- have weekly meetings with teaching staff to share information, strategies, tools and resources.
- link Edward to social and recreational activities in his community which are of interest to him. At this stage, Edward is interested in music and we are organising piano lessons.
- ensure Edward has the opportunity for positive social relationships by enrolling him in holiday activities each school holiday.
- conduct monthly catch ups with Grandma for sharing feedback and suggestions and to ensure that she has adequate support in caring for Edward and understanding his needs.

At the Foundation, we have many heartbreaking stories of children who need our help requiring ongoing case management and support to assist them to experience a childhood and have positive relationships based on trust - hopefully to transition more safely and capably into adulthood.

*"Victoria Police referred two children (5 and 7) to the Alannah & Madeline Foundation who had witnessed the brutal murder of their parents in the family home."*

*"Joseph (aged 14) was referred by the Children's Hospital. He had historic injuries sustained over a long period since the age of two leading to an acquired brain injury. He needed long term case management and support to manage his uncontrollable anger, difficulties with short term memory, concentration and problem-solving issues. He was alone, extremely sad and angry."*

We see our early intervention program as a low-cost intervention in a life stages model. As previously discussed, without appropriate and timely support, childhood victims of crime can develop a lifetime dependency on multiple adult systems such as Centrelink, Health and Mental Health, Justice and Drug and Alcohol systems.

### **Response to specific items in the Review of the Victims of Crime Assistance Act 1996 August 2017, Supplementary Consultation Paper, Victorian Law Reform Commission.**

Question 69 Chapter 15 page 209: Are there other models that would deliver assistance more effectively?

VAP coordinate delivery of the victims of crime assistance program through contracted community service organisations including practical supports or therapeutic interventions for victims of violent crime.

Victoria Police Victims Advisory Service provides a much needed 24-hour service assessment service. They do not provide a specialised trauma informed age specific ongoing case management service.

Child Protection deal with initial forensic investigations of child abuse referring out to community programs through Child First, or other early investigation programs. Often the children impacted by crime are not referred to CASA or Child Protection. If they are, it is often in adolescence when their pain based behaviour escalates and becomes a threat to themselves and those caring for them and possibly the community.

#### Issues with eligibility, Pages xviii XIX, items 16, 17, 20 & 22

- (16) The distinction between primary, secondary and related victims may not always reflect the victim's experiences of violent crime or account for their needs. The Foundation believes it currently can exclude children who hear, witness or are otherwise exposed to cumulative violence.
- (17) Children who witness violence are classified as secondary victims rather than primary victims under the Act.
- (20) The narrow definition of the act of violence under the Act does not recognise the harm experienced when children hear, witness or be exposed to forms of violence.
- (22) Likewise; the narrow definition of injury can be a barrier to the immediate and longer-term needs of children who are child victims.

#### Assistance available under the Victims of Crime Assistance Act Page XX Items 28, 29 & 30 (Chapter 6)

- (28) The maximum award for secondary victims is \$60,000 plus \$10,000 of special financial assistance. The maximum award for secondary victims and any one related victim is \$50,000, whereas;
- (29) There are three main categories of award for primary victims which include; expenses incurred or reasonably likely to be incurred; in exceptional circumstances, an amount for other expenses actually incurred or reasonably likely to be incurred to assist in recovery; special financial assistance. Expenses must be reasonable or reasonably incurred.
- (30) The maximum amount of financial assistance potentially available under the Act for primary victims is \$70,000. Even though the average award granted by VOCAT is much lower than the overall maximum available (\$7,784.00) the Foundation believes this amount is no longer viable or adequate to meet victim's needs.

#### Recommendations

- [i] The Foundation respectfully requests the Act be amended to identify children as primary victims, particularly in matters such as family violence.
- [ii] The Foundation requests the current definition of an act of violence be amended to recognise the harm experienced by children who hear, witness or are exposed to forms of violence.
- [iii] The Foundation asks for this amount to be increased to reflect immediate and ongoing needs, which in the case of children being primary victims could include housing, vehicle and other immediate and long-term needs and for the cost of these services to not be deducted from their award.
- [iv] The current narrow definition of injury be broadened to forego the need to establish an illness, and to embrace psychological, behavioral, interpersonal, social and spiritual needs.

#### Issues with time limits: page XXII Item 45 & 48

- (45) The review states "Furthermore while VOCAT must have regard to 'whether the applicant was a child at the time of occurrence of the act of violence and the application was made within a reasonable time after he or she reached 18, this provision is unlikely to assist child victims who may not identify or disclose abuse

until later in life. Recent research found some victims of child abuse took an average of 33 years to disclose the abuse.”

[48] We are pleased the Commission acknowledges that the two-year time limit should be increased or removed from the act.

### Recommendation

[i] The Foundation requests the time limits be removed and agrees that specific criteria should be developed for some victim groups – particularly children.

### Issues with sections 52 and 54 of the Act page XXIII Items 55-56

[52-54] The main issues in these items focus on what might constitute a reasonable time for reporting a criminal matter. Considering the balance of power issues involved with victims who are children, we respectfully request the review give considerable thought to these sections for the benefit of children.

### Recognising vulnerability Page XXXIV Items 18, 23 and 25

The Foundation agrees –

- that the Financial Assistance formula be amended to take into account the experiences of vulnerable victims, particularly children, older victims and victims with disabilities;
- that the definition of related criminal acts be amended in regard to cumulative harm of long term abuse and suggest; *“Cumulative harm refers to the effects of multiple adverse or harmful circumstances and events in a child’s life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child’s sense of safety, stability and wellbeing.”*<sup>6</sup>

### Chapter 7: Time limits for making an application. Is the time limit a barrier for victims of crime? Removing the application time limit. Items 27 -29

[27-29] Should some time limits be excluded from application time limits provisions entirely? Should some time limits start after a victim turns 18? Alternatively, should some components of victim support and financial assistance not have a time limit?

[i] The Foundation suggests the specific criteria developed for the time limits for some victim groups as outlined under sections 45-48 as discussed in this submission could be utilised in this section as well.

### PART 3: OPTIONS FOR BROADER REFORM: Needs of victims

#### Chapter 15: Approach 2: Is there a need for a different model?

*The Foundation respectfully refers to the rest of this submission regarding service provision and evidence supporting our response to Chapter 15.*

We applaud the acknowledgement by the Law Reform Commission of the importance of trauma informed legal practice, including for judiciary and court staff, and endorse the recognised need for the Magistrates’ Court to move towards a more trauma informed approach to all violence – particularly family violence and understanding children as primary victims of crime.

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<sup>6</sup> Cumulative Harm

## In closing

The Foundation feels that we can offer our established Children Ahead Program across the state providing considerable cost savings by utilising our well-established linkages and service networks to build protocols.

We would also be interested in working with the proposed community service hubs.

The Foundation has many other existing successful programs in regard to educating children - reaching over 2 million children since 1997. The Foundation's passionate commitment to the physical and mental health of children and their families is well evidenced by the provision of programs that counteract the impacts of violence, educate people about the effects of bullying and promote children's safety and wellbeing.

Our well established relationships could be leveraged to provide creative opportunities for educating children regarding crime, services for victims of crime, or for other matters as related to the operations of the Department of Justice and Regulation.

We thank you for the opportunity to submit this proposal to the Law Reform Commission and congratulate you on the work undertaken thus far. We would welcome an opportunity to discuss our submission with you at your earliest opportunity.



## APPENDIX 1

### FURTHER EVIDENCE TO SUPPORT SUBMISSION

#### United Nations Convention on the Rights of the Child

The United Nations Convention of the Rights of the Child<sup>7</sup>, which Australia is a signatory to, provides an underpinning framework for our work at the Foundation - articles 1 – 42 covering the rights and best interests of the child, protection, survival and development, and among many others the responsibilities of the state in their role of protecting children with articles 43 – 54 covering implementation requirements.

#### Supporting data

##### ACES Study: The CDC – Kaiser ACE Study<sup>8</sup>

The Adverse Childhood Experiences (ACE) Study<sup>9</sup> is one of the largest (international) investigations of childhood abuse and neglect and later life health and wellbeing. Kaiser Permanente originally conducted the research over two years (1995-1997) in two waves with 17,000 Health Organisation members who received physical exams and completed confidential surveys regarding their childhood experiences and current health status and behaviors.

The study continues providing ongoing data updates re morbidity and mortality data.

The ACE's Study pyramid visually demonstrates the impact of the identified childhood experiences, placing these on the base of the pyramid. As the number of ACE's increase so do the risks identified as the second level ACES leads to disrupted neurological development, the next social, emotional and cognitive impairment, then adoption of health risk behaviors, leading to disease, disability and social problems culminating in death. The ACE score, a total sum of the identified categories reported by research participants is used to assess cumulative childhood stress.

In Australia, over 400,000 women have experienced domestic violence by a partner during pregnancy (Cox, 2015). Close to 750,000 women had children in their care when they experienced violence by a former partner they lived with. More than three-quarters of these women (78%) said their children heard or saw the violence<sup>10 11</sup>.

Domestic violence and child maltreatment have traditionally been examined as separate entities. Research examining battered women populations in refuges has indicated the presence of domestic violence increases the likelihood of child maltreatment in the family<sup>12</sup>. The intergenerational transmission of violent behavior and of revictimisation are potential effects of witnessing violence as children unless the cycle is broken<sup>13</sup>.

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<sup>7</sup> UNICEF (2017) FACT SHEET, A Summary of the Rights under the Convention on the Rights of the Child, For every child Health, Education, Equality, Protection, ADVANCE HUMANITY

<sup>8</sup> CDC (2000) Centres for Disease Control & Prevention CDC 24/7.

<sup>9</sup> Kaiser ACE Study (1995-97) Center for Disease Control and Prevention

<sup>10</sup> Cox, P. (2015) Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012, Australia's National Research Organisation for Women's Safety

<sup>11</sup> The Lookout, (2016) Fact Sheet 7 – Family Violence Statistics Victorian State Government. [thelookout.org.au](http://thelookout.org.au)

<sup>12</sup> McKay 1994; Edleson 1999b; Giles-Sims 1985; Hughes 1988; Jouriles & Norwood 1995; Truedell, McNeil & Deschner 1986; Stark & Flitcraft 1988; Goddard & Hiller 1994; Stermac, Davidson & Sheridan 1995; Tomison 1995a; 1999) as cited in Tomison, A. 2000, Exploring Family Violence: Links between child maltreatment and domestic violence, Australian Institute of Family Studies, Australian Government.

<sup>13</sup> Tomison, A. 2000, Exploring Family Violence: Links between child maltreatment and domestic violence, Australian Institute of Family Studies, Australian Government.

Neurobiological research focusing on the long-term effects of *in utero exposure* to violence suggests newborns exposed to violence are born experiencing extreme stress predicting increased problems emerging at age 10. These are the hidden, silent children currently incorrectly defined as 'secondary victims of crime'<sup>14</sup>.

### Economic impact

The combined Australian health, administration and social welfare costs of violence against women have been estimated to be \$21.7 billion a year, with projections suggesting if no further action, costs will accumulate to \$323.4 billion over a thirty-year period from 2014-15 to 2044-45<sup>15</sup>. These figures will include the unrecognized secondary victims of crime who are now children.

Pegasus in partnership with ASCA (in their comprehensive analysis of the cost of unresolved trauma and abuse in adults in Australia <sup>16</sup>) estimated the costs of adults experiencing negative outcomes because of childhood violence and abuse to be \$7,525 dollars per person per annum leading to a total of \$7.8 billion annually.

This figure included only one known indicator of abuse as an adult including depression, mental illness 3,516,700 people; eating disorders 2,400,000; suicide and attempted suicide 2,614; and alcohol abuse 2,260,000. The authors state this is a conservative figure as many of the adults had a number of indicators. This research also states that based on the analysis of their report, large gains would likely accrue to Federal, State and Territory budgets if the public health challenge of childhood trauma and abuse were seriously and systematically addressed.

### Sanctuary Program as a blueprint for trauma informed organisations

The Sanctuary Model is a blueprint for clinical and organisational change which, at its core, promotes safety and recovery from adversity through the active creation of a trauma informed community. A recognition that trauma is pervasive in the experience of human beings forms the basis of the model focus not only on the people who seek treatment, but equally on the people and systems who provide that treatment.

This whole of organisation trauma informed model has been implemented in many organisations across Australia. For the last 20 years the Sanctuary Program has trained and assisted the required two-year implementation of their model across like organisations.

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<sup>14</sup> Campo, M. (2015) Domestic and Family Violence in pregnancy and early parenthood – overview and emerging interventions, Australian Institute of Family Studies, Australian Government

<sup>15</sup> Mouzos, J. (1999) Femicide: An overview of major findings, Australian Institute of Criminology, Canberra, pp.1-6 as cited in Our Watch, Understanding violence, Facts and Figures

<sup>16</sup> Kezelman, C., Hossack, N., Stavropoulos, P., & Burley, P. (2015) the Cost of Unresolved Childhood Trauma and Abuse in Adults in Australia, Adults Surviving Sexual Abuse and Pegasus Economics, Sydney.