

## Submissions to the Royal Commission into Family Violence

### Loddon Campaspe Community Legal Centre

#### The Centre

1. The Loddon Campaspe Community Legal Centre (LCCLC) has provided free legal assistance to central Victorians since it was established in 2005 after a sustained campaign led by the family violence service EASE (now Centre for Non-Violence), the Loddon Campaspe Centre Against Sexual Assault and the Advocacy and Rights Centre (now trading as ARC Justice). Those services recognised that among other needs, legal assistance for women experiencing family violence was a critical issue.
2. This submission addresses the questions in the Royal Commission's issues paper relevant to our service.

#### **Question 4: If you or your organisation have been involved in programs, campaigns or initiatives about family violence for the general community, tell us what these involved and how they have been evaluated.**

3. Family violence has historically made up about a third of LCCLC's casework, but this has increased to almost half of the Centre's current caseload. Without specific funding to provide those crucial family violence services - including duty lawyers at three (of the seven) courts in the region - the Centre sought a grant from the Legal Services Board in 2011. The aim was to expand the scope of our family violence services, but also to re-examine how the services were being delivered. The project incorporates a research project looking at whether women feel their needs are met by the legal process. The grant also provided capacity for us to work more closely and strategically with others in the sector, and create links with the health sector to support them to identify family violence and make good referrals.
4. The three-year project has entailed the following aspects, to which this submission is directed:
  - 4.1 A research project capturing the voices of the women and their first-hand experiences of seeking protection through the legal system;

- 4.2 Addressing the shortfall in legal advice and representation in the family violence jurisdiction;
  - 4.3 Engaging with the integrated service sector to support better and more effective responses for those experiencing family violence; and,
  - 4.4 Assessing the need for, and providing, community legal education to general practitioners, health and allied services on the identification of family violence and the referral paths.
5. The project has been independently evaluated by Dr Liz Curran of the Australian National University, evaluation attached. We draw the Commission's particular attention to the conclusions at pages 74-76.

**Question 8: Tell us about any gaps or deficiencies in current responses to family violence, including legal responses. Tell us about what improvements you would make to overcome these gaps and deficiencies, or otherwise improve current responses.**

6. LCCLC holds the view that assessing whether there are gaps or deficiencies in current responses necessitates speaking with those directly affected, and asking what they need. **'Will somebody listen to me?'** is a collection of stories told by women about escaping family violence. We formally submitted this report (in abridged and full format) to the Royal Commission on 5 May 2015 at the Bendigo sitting. The report (which can also be downloaded from our website at [www.lcclc.org.au](http://www.lcclc.org.au)) uses those stories to make demands of the government and service sector (including community legal services) to address systemic deficits that inhibit victim care and safety, and, perpetrator accountability. A precis of those findings follows.
7. 190 of the women supported by LCCLC to obtain intervention orders at the Bendigo, Echuca, Maryborough, Kyneton and Swan Hill Magistrates' Courts were surveyed about their needs and their experiences, and 27 participated in in-depth conversations further exploring their hopes, experiences, difficulties and outcomes, as presented in the report. Because of the localities of the women, the research drew out issues that are experienced by women in rural and regional locations.
8. The project sought to advocate new approaches to family violence legal assistance services that champion outcomes sought by women, as informed by their experiences. We refer the Commissioners to this report (attached), and provide below a summary of some of the difficulties faced by women. We refer the Commissioners to page 22 of the abridged form and 20 of the long form for a list of recommendations arising out of this report.

### What do women experiencing family violence need?

9. Our research asked the participants to identify what they sought out of the justice process, beyond the tangible output – an intervention order. Their highest priorities were:
  - 9.1 **Participation** – the decision making to be more in their hands, to be well informed and understand the justice system and processes, and justice to be affordable and accessible;
  - 9.2 **Voice** – to be heard, that the legal actors really listen and that those experiencing family violence are empowered to say what is their truth - they define clearly what is safety and justice for them;
  - 9.3 **Validation** – their feelings, behaviour and experiences to be understood; to be believed, not judged or made to feel ashamed;
  - 9.4 **Offender accountability** – that the offender acknowledges the harm he has caused, apologises, changes his behaviour and that the community and justice system monitors his behaviour and holds him accountable; and,
  - 9.5 **Restoration** – the justice process to be the beginning not the end; healing for the women and their children and their community.

### Experiences of the justice system

10. The experiences of our interviewees varied, but many identified shortcomings in the system designed for their protection. The role of the police was pivotal and had a profound impact on whether they felt heard. Some women felt police members trivialised controlling behaviours and focussed instead on physical violence. The women also described an inconsistent response from police, or low accountability, with respect to breach allegations. A significant proportion had given up on making reports about breaches because of this. Others crafted their own solutions, like moving town, to feel safer.
11. The women described arriving at court with little understanding of what to expect on their pathway through the system. Having access to consistent support from community agencies (including legal support) before, during and after court, was crucial to women deciding to pursue a legal outcome. Particularly given the rural context, concerns about privacy and safety at court was prominent in these interviews (discussed in detail below). Women are required to recount very private stories, and many described how this made them feel exposed. Having to repeat their story throughout the process also compounded that feeling of exposure.
12. There was also a strong theme in the data that women felt the system was not being monitored. Failures were not being addressed or taken seriously. Some also felt they did not have a voice in the

justice process. Our project researcher Carolyn Neilson has enabled many of the participants, through the research period and since, to access opportunities to speak to the media about their experiences and to take part in a violence prevention conference in Bendigo in 2014. Many said they would like to play a part in the training of the service providers, including police and court staff, to relay their experiences and show the best way to support someone through the system.

**Question 14: To what extent do current processes encourage and support people to be accountable and change their behaviour? To what extent do they fail to do so? How do we ensure that behaviour change is lasting and sustainable?**

13. The women had a very specific view of what amounts to 'offender accountability.' Few reported observing any change in the offender's controlling behaviour since the making of the order. A small number of women would have advocated punishment by imprisonment for their respective offenders. They felt that it was the only way of bringing safety to their lives because their offenders were not capable of rehabilitation.
14. Many women, however, did not wish offenders to be punished by imprisonment. They wanted a broad integrated response to family violence that sees a shifting of focus from women to offenders. They recommended that this response include early offender intervention, the offenders to hear and understand the impacts their violence has had on the women and their children and acknowledge the harm they have caused. It also includes facilitating offender engagement with relevant men's behaviour change programs and long-term monitoring and mentoring that addresses individual offender needs not to reoffend.
15. The women's greatest priority was feeling heard, and wanting the behaviour to stop. One woman gave a vivid account of such a turning point; "On that day when you had to stand up and the lady judge said ... she kind of quoted some of his messages or the theme behind his messages and the amount of texts and she said that that is a form of harassment. Do you understand that? When he had to say yes it hit him." From then, she saw a shift in his behaviour because, in her view, the offender had to hear and acknowledge the harm that had been caused.
16. The women in our research identified that complicity in the community is one of the factors allowing violence against women to continue. Some identified that they hoped the intervention order would bring community disapproval for the violent behaviour. During the interviews some women also identified concerns that through exposure their children may be more likely to continue the cycle of

family violence. The motivation to protect children incorporates current and future safety concerns. Engaging with community centres like church and sporting teams to address gender equity and family violence, to reinforce any behaviour change program or model, was identified as a key recommendation of the women.

17. Some of the women also identified restorative processes as potentially addressing their unmet needs. They described such a space and process where they thought they would have a better opportunity to be heard by the offender in a more empowering and less adversarial context. These women believed that this would potentially initiate a better process of offender acknowledgement of the harm they had caused; offender behaviour change; and subsequent restoration for the women, children and the offender. One woman had initiated her own process with the assistance of her general practitioner. They were clear that to engage in such a restorative process they would have to feel very safe, supported and empowered – the recent Centre for Innovative Justice reports on [restorative processes](#) and [family violence](#) describe such a victim-led approach. It should be noted that a minority thought it would not work for them at all, thus the threshold requirement that it be victim led.

### **RURAL AND REGIONAL SERVICES**

**Question 18: What barriers prevent people in particular groups and communities in Victoria from engaging with or benefiting from family violence services? How can the family violence system be improved to reflect the diversity of people’s experiences?**

**Question 19: How can responses to family violence in these groups and communities be improved? What approaches have been shown to be most effective?**

18. There are seven Magistrates’ Courts within the bounds of the region serviced through the LSB project. Prior to project funding we regularly attended three – Bendigo, Maryborough and Echuca (every second sitting). Our coverage increased to Kyneton and Swan Hill, as well as Kerang and Castlemaine on request. When the project is finalised on 30 June 2015, the Centre will not have capacity to continue those extended services without additional resources. Otherwise, for each regional court there is one Victoria Legal Aid funded duty lawyer available to provide duty lawyer services in *all* jurisdictions – criminal, family violence and child protection. For courts such as Echuca, [recently identified](#) as having by far the highest rate in family violence reporting in the state, this is patently inadequate and unfair.

19. Further to this immediate funding gap facing LCCLC, is the potential impact of a future Legal Assistance Sector National Partnership Agreement, which may impose a financial hardship test for clients assisted with Commonwealth funding. While this Agreement is presently under negotiation, one potential effect of the financial hardship provision would be to exclude women who are not financially disadvantaged from receiving representational services in family violence matters. Although this is said to exclude duty-lawyer services, it is likely to capture more substantive hearings and representation (such as contested hearings) that arise out of duty proceedings. Such a provision may unfairly penalise women from accessing free legal services (and benefiting from the associated continuity of service provision through to contest and beyond).

20. The issues identified by our duty lawyers in the courts we service include:

20.1 No safe waiting areas: At our headquarter court Bendigo there are no secure waiting areas for women. At Echuca and Swan Hill Courts there is a small area where all people with matters listed can sit. At Echuca Court there have been physical fights at least 3 times in 2015. There are no security staff, so in those instances Police fulfilling other roles (Prosecutors in some instances) are called on to intervene. Kyneton, Kerang, Castlemaine and Maryborough Courts have no waiting areas at all. People mill in the park, or squeeze into the court house on rainy days. Maryborough Court has no disability access.

20.2 No safety screening: No court in this region undertakes safety screening.

20.3 No confidential interview rooms: In Bendigo, Maryborough and Swan Hill Courts there are rooms available for duty lawyers to obtain instructions in a confidential environment. At Echuca, Kyneton, Castlemaine, and Kerang Courts the lawyer must 'make do.' On occasion LCCLC staff have used their cars to provide confidentiality. With increased demand, the need for updated facilities is urgent.

20.4 No respondent services: No court in this region provides support or referral information for those responding to intervention order applications. In our experience this compounds the antagonism between parties, but also leaves the respondent with little information about how to change their behaviour – which is the ultimate goal of the legislation.

- 20.5 [“Postcode justice”](#) with respect to the availability of mandatory participation in programs like Men’s Behaviour Change. Expansion of the applicability of the Act to allow Magistrate in any court to make this order would provide women in rural contexts access to outcomes currently available in select courts.
- 20.6 Inadequate Men’s Behaviour Change programs: Currently there is capacity for one group of 12 men for the region to participate in a MBC program. It is provided only in Bendigo so for those residing outside of Bendigo, this provides an additional disincentive to participation. Recently quoted in the [Herald Sun](#), waiting lists in metro areas are as long as twelve months – with far fewer programs in the rural and regional areas we would expect much longer waiting times.
- 20.7 No staggered listings or time certainty for early phase matters: At our regional court, Bendigo, all family violence matters are listed at 9.30, but there may be up to 60 matters listed. Many parties will inevitably be waiting for hours and possibly all day. The listings could be staggered so half were heard before lunch and half afterward. Although waiting is inevitable, this would lessen it somewhat.
- 20.8 No priority for family violence matters: In satellite courts *all* matters are listed at 9.30 on mention day. In-custody and Children’s Court matters are prioritised but family violence matters are not, despite the volatility of those matters. It is common that matters are otherwise called as they are ready. Therefore ‘non appearances’ may well be called (and often are) before family violence matters, as well as license restorations, and so on.
- 20.9 Appearance before Magistrate always required: A family violence matter rarely involves only one attendance at court. If there is difficulty serving the application, an adjournment is necessary. Unless evidence in support of an application for substituted service is required, the applicant does not need to attend this hearing. All matters that can be adjourned without any orders being made could be processed by a Registrar, unless one party is intentionally causing delays, then a Registrar may determine that it must be called before a Magistrate. This is routinely allowed for in the criminal jurisdiction.
- 20.10 The applicant must repeat her story: An applicant must swear, at the time of filing, that the contents of her allegations in support of the intervention order application are true and correct. It is usual practice that the Magistrates in our region will also require oral evidence in support of an application for an interim order, or prior to granting a final order if it is not by consent. Unless the allegations are unclear, that evidence is already sworn evidence and therefore fulfils the

requirements of the legislation. Where possible, it would be preferred that applicants be allowed to rely on that evidence rather than also having to provide further evidence in open court.

20.11 Competing for the duty lawyer: Duty services operate on a first-in basis – so if a woman has to drop her children at school, for example, she is likely to miss out. Family violence is a unique jurisdiction in which to appear unrepresented. The onus is on the applicant to adequately record her allegations in the application to meet the criteria of the legislation. Very few are supported by specialist agencies to do this, and no registry or court staff member in our region assists with the process, as occurs in other areas of the state. The applicant must also (usually) face the person she is trying to escape in the court room. We have observed Magistrates allowing cross examination during an ex-parte application for an interim order. We would imagine this may contribute to women dropping out of the process to avoid such confrontation.

20.12 No representation at Directions Hearings: Bendigo and its satellite Magistrates' Courts will not provide a contested hearing date until after the matter does not resolve at a directions hearing. A criteria of obtaining a grant of Legal Aid is that a contested hearing date is set. Victoria Legal Aid and private firms undertaking duty work will not provide representation at directions hearings. Therefore, at the first mention when a respondent indicates he will contest an application, both applicant and respondent are advised duty services cannot assist on the next occasion, and private solicitors generally will not provide assistance until a grant of aid is in place. Therefore there is no mechanism to get assistance for those who cannot afford representation. From our experience applicants that will not be represented may be too frightened to attend court. We have raised this issue with the Bendigo Registry and with Legal Aid and neither are willing to alter their policy.

20.13 Training for Registrars to identify risk: At the time of the introduction of the current legislation it is our understanding that Court staff were trained in the "Common Risk Assessment Framework" to better enable them to identify risk factors that correlate with mortality. We are told this does not occur any more. There are occasions when our staff have identified high risk allegations, like choking and threats to kill, in allegations and a registrar has not encouraged an applicant to seek an interim order.

20.14 Access to immediate protection: We have observed an inconsistency in the provision of a "Complaint and Warrant" where a Magistrate is not available to hear an application for an interim order. A woman might submit an application and explain that she believes there is an immediate risk but be told that as there is no Magistrate present she cannot make an application

for an interim order. As the research has shown, the moment when the woman is trying to leave the relationship is the most risky. In rural and regional areas access to firearms and physical isolation is greater - if an interim order is granted this will suspend a respondent's access to firearms. If women are left without that interim protection at this crucial juncture, this can only increase the risk they face.

20.15 Information availability at court: It is our observation that those submitting applications for intervention orders are only provided with a copy of their application which incorporates an information sheet at the rear listing other supports available. We believe there should be a positive obligation on registrars to point out that information, provide service brochures and also, if relevant, information accessible for those with low literacy. This would hopefully enable applicants to be aware of the legal process and their options, and possibly contact support services, prior to attending court at the first mention.

20.16 Positive impact of Family Violence Training on Magistrates: There has been a notable shift in our region of late in the practice and commentary or reasons provided by Magistrates. Some have cited family violence training they have been provided with. Examples are Magistrate's increased sensitivity to women who may be being coerced into revoking orders, or respondents citing lack of contact with their children as to motivation of an applicant despite no efforts being made by a respondent to obtain contact by consent or court order.

20.17 Access to mediation: the Dispute Settlement Centre provide free mediation in personal safety intervention order matters, both on site at court and at the Department of Justice offices. The Department's policy is that mediation is not available where there is an application for a family violence intervention order on foot. In appropriate matters, assessed on a case by case basis - for example at an applicant's request, this should be available for family violence matters.

20.18 Access to remote witness facilities: Bendigo Court is equipped to allow applicants to give evidence by video link. Women in other areas must travel to Bendigo. Given the availability of the technology allowing videoconferencing, as well as encryption of those communications, it would greatly assist women too frightened to attend court if access to remote facilities was expanded.

**Question 20: Are there any other suggestions you would like to make to improve policies, programs and services which currently seek to carry out the goals set out above?**

### **Prohibition on Publication**

21. Section 166 – 169 of the *Family Violence Protection Act 2008* contains provisions prohibiting the publication of information which might lead to the identification of parties to an intervention order or proceeding. The provision was designed to protect the applicant and witnesses in family violence intervention order proceedings, so that victims would not fear further traumatising from any publicity around their case which might identify them.
22. The Act contains an exception in section 169 where that publication may be in the public interest, and was also amended in 2013 to insert Part 8 Division 2 of the Act to allow publication where an applicant or ‘victim’ consents and the respondent has breached the intervention order. However, where there is no alleged breach, the restriction continues to apply.
23. We have found these provisions have prevented women from speaking openly about their experiences, and indeed calling for improvements to the system and greater accountability for perpetrators. For the purposes of the publication of our report we asked women to choose pseudonyms. It would have been too prohibitive to make an application under section 169 in each instance because separate applications would have to be made and each of the parties in the 27 proceedings would have to be served with those applications. We believe where a protected person or applicant is consenting to the publication of a proceeding, there should be no prohibition. Section 169 should be amended so that an application is only necessary where a protected person or applicant is not consenting to that publication.

### **Training for Health Practitioners**

24. A key arm of our project – and recognising [the link](#) between the prevention of family violence and health outcomes – as well as the pivotal role doctors and other health professionals play (second only to police) in identifying and responding to family violence as shown by the [Department of Justice 2012 data](#). We undertook a survey of local practitioners to assess the need for, and provide, community legal education on the identification of family violence and the referral paths.

25. 54 General Practitioners, psychiatrists, psychologists and counsellors responded to that survey. Only 15% of practices screened for family violence, and 63% indicated they would like to attend training about family violence.
26. Following these results the LCCLC conducted four GP training sessions. Each was evaluated (see the attached evaluation report). In summary, participants identified that undertaking the training had a positive impact on:
- 26.1 Identification of a growing need for health practitioners to identify those experiencing family violence;
  - 26.2 Understanding the role of the practitioner in identifying family violence;
  - 26.3 Understanding the impact of family violence on the wellbeing of patients;
  - 26.4 Knowledge of referral pathways, an confidence in making referrals; and,
  - 26.5 Identification of family violence intervention orders as an effective means of addressing a patient's immediate safety concerns.
27. The evidence is clear that family violence is the leading cause of morbidity and mortality for women under 45 – it is the LCCLC's view that health practitioners should view family violence as an entirely preventable health issue. A greater awareness of family violence among practitioners is essential to them playing a role in intervening and offering assistance. We would recommend the continuation of educational programs such as these that make local links between health practitioners and the legal and support services that can assist those experiencing family violence are continued.

**CONCLUSION:**

28. The data collected and collated by LCCLC strongly supports the need for consultation with those experiencing family violence on their needs and how we can better support them. There is a need for women to feel heard through the process, for perpetrators to be confronted by the impact of their behaviour, and there may be a role for this to be achieved more directly such as through a restorative process. Our participants also felt there can be a role for those who have experienced family violence in providing feedback to the monitoring and evaluation of the justice system response, and to participate in the training of police, court staff and service providers to provide that first-hand accounts of their needs.
29. It is also the view of the LCCLC that infrastructure at regional and satellite courts is no longer meeting the demand in this jurisdiction. Waiting rooms are cramped or non-existent, and privacy and safety is compromised. Service coverage is patchy, particularly for respondents. A Magistrate is often not

present in satellite courts and the Registry is not always providing interim protection to applicants in high risk situations. Service gaps also compound the risks for women in rural areas.



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