



‘Why didn’t you ask?’

Interim Project Report

October 2013



 **Ioddon campaspe
community legal centre**

A program of the Advocacy & Rights Centre Ltd

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The Loddon Campaspe Community Legal Centre
is a program of the Advocacy and Rights Centre Ltd

Background

Loddon Campaspe Community Legal Centre (LCCLC) was established in 2005 following a community campaign led by Advocacy & Rights Centre, Loddon Campaspe Centre Against Sexual Assault (LC CASA) and Centre for Non-Violence (formerly EASE, a specialist family violence service within the Loddon Campaspe area).

Family violence is a significant issue in the Loddon Campaspe region and since LCCLC opened it has been committed to responding to family violence. However, the demand for assistance greatly exceeds LCCLC's capacity to provide support.

LCCLC does not receive specific State Government funding to deliver in-court support to clients in family violence matters. Of the 13 CLCs that receive this specific State Government funding, three are in Rural, Regional, and Remote (RRR) areas (Ballarat, Warrnambool and Gippsland). The other three Victorian RRR centres (Hume Riverina, Murray Mallee and Loddon Campaspe) still provide legal assistance and support to clients in family violence matters, but use their generalist funds to do so. Loddon Campaspe's CLSIS data consistently shows high results for family violence or family violence-type categories. Intervention order related cases in 2012/13 accounted for approximately 46.5% of the centre's work; contrasted with Victorian state average of 35.5%. This variance between the centre's figures and the state average demonstrates that family violence is a specific need or focus of the centre and the community.

Since 2008 LCCLC has been campaigning for additional funding to support family violence prevention work. Examples of this are evident in LCCLC's 2008 report *Family Violence Legal Assistance Services in Central Victoria: Identifying and Responding to Unmet Need*.¹ The 2008 Report made a range of recommendations outlining priorities for LCCLC in responding to family violence, including the formulation of a comprehensive strategy for family violence legal assistance services for the region.

In 2011 LCCLC received funding through Victoria's Legal Services Board to target family violence in the region. The project *Why Didn't You Ask?* (focussing on hearing the voice of women that had experienced the family violence legal assistance process while aiming to improve their safety, social and health outcomes) gave LCCLC a real opportunity to dedicate the type of resources to this issue that are needed to respond to demand and to identify systemic improvements.

While LCCLC can make a compelling argument for comprehensive family violence legal assistance funding across the region as an end in itself (and strongly believes that additional funding is required beyond the expiration of the project period to maintain effective services), this is not the driving force of this project. The project is instead driven and differentiated by new approaches to family violence legal assistance services which experiment with and champion:

1. Outcomes
2. The voices of women
3. The health benefits of effective legal interventions

In LCCLC's experience none of these elements is given appropriate weight in the provision of general, mainstream legal services, especially in the RRR context and least of all the health benefits of effective legal interventions. There is an urgent need to invest in work that explores these key issues and build the knowledge and practice base into the future.

¹See www.lcclc.org.au/programs/law-reform/

Project Framework

LCCLC prioritises legal assistance to women who are experiencing family violence. Often victims of family violence have little idea about what options there are for their protection against family violence through the legal system, including what an intervention order could achieve for the safety of them and their children and what to expect from the legal process.

The provision of legal services is often geared to outputs (eg. intervention orders) with insufficient thought given to the views of clients themselves or outcomes such as safety, social well-being or health. The project aims to seek the views of clients regarding the appropriateness and effectiveness of legal interventions and their preferred outcomes. To gauge these things, LCCLC asks the question: *What is it that women who experience family violence actually want from the legal system during these experiences?* Through this process we aim to support the voices of clients to critique the legal system and the current solutions that it offers to women and children who experience family violence.

We are asking this question through conducting research into the outputs of legal intervention (eg. criminal charges, intervention orders, victims of crime applications) and comparing these to the preferred outcomes (e.g. improved health, safety, resilience, positive relationships) of women who have experienced family violence and have been assisted by LCCLC.

LCCLC has developed an in-court survey through consultation with a variety of stakeholders and have surveyed over 120 women as of September 2013. The interim data results from this project have provided an opportunity to highlight policy issues which have been identified and areas pertinent to the consultation being run by the Department of Justice.

Through the next phase of the project we will be conducting in-depth interviews with women that LCCLC have assisted who are willing to engage further in the project. The follow up interviews will seek to identify how the legal 'output' which had been achieved for them through the court process compares with their preferred 'outcomes' which they had identified in the survey.

Summary of Current Results

Increasing legal solutions that support outcomes preferred by women

A one-page survey has been developed and is being used in court with women applying for intervention orders under the Family Violence Protection Act 2008 (Vic).

The methodology for the in-depth interviews with women is currently being completed. Part of this process has involved consultation with, and consumer participation from, women who have experienced family violence. We sought feedback on the interview methodology before interviews are conducted with women who have received assistance from LCCLC for family violence matters. The aim of these interviews is to establish whether the intended benefits of the legal intervention reflects the experiences of these women.

Interim Results

120 surveys have been completed by women as of September, 2013. Data from the completed surveys has indicated a number of standout interim results.

In the first section of the survey women were asked to consider *"Today I came to Court because I wanted..."*. Out of the 13 questions asked in this initial section of the survey, the questions which ranked in the top 3 responses from women to be 'Very much' included:

- Over 90% of women wanted their concerns for safety to be heard and respected.
- Over 70% of women wanted to make their children safer.
- Nearly 70% of women wanted to begin to heal from the harm that has been caused.

Other significant responses included:

- Over 65% of women ranked 'very much' for his behaviour to be monitored. One woman added to the survey that "he should be forced to attend a behaviour change program".
- Nearly 65% of women ranked 'very much' for him to acknowledge the harm he has done.
- Just under 60% of women ranked 'very much' for him to be challenged about his behaviour.
- Over 50% of women selected 'very much' that they came to court to end or have closure on their former relationship.
- Over 50% of women also ranked 'not at all' in response to the response option *"To maintain my relationship but with boundaries for my safety"*; many women also provided information anecdotally to LCCLC to emphasise that they didn't want the relationship to continue at that stage. Notably, just over 20% of women ranked this response option as 'very much', with a further 10% of women selecting the response options 'somewhat' and 'neutral'.
- When women were asked to rank the option *"I wanted him to be punished"*, over 30% of women surveyed responded 'very much', with just over 20% ranking their response 'neutral' and over 20% 'not at all'.

There are some interim conclusions arising from these initial results. A large proportion of women have indicated that they wanted to heal from the harm which had occurred, women wanted their partner or former partner's behaviour to be monitored and a large proportion of women wanted their partner or former partner to acknowledge the harm he had done. It will be worthy of further exploration in follow up interviews with women when they had noted these three responses ranking highly in their motivation to come to court, and whether they had felt a sense of these three things being achieved through the responses they had experienced through the court and justice system. If women do not feel that their experiences have given them these preferred outcomes, it indicates a significant disconnect. It will be worth considering what other processes that could better achieve these outcomes might look like.

In the second section of the survey when women were surveyed after their matter had been heard in court, women ranked three questions highest ('very much') in their response to their experience at court.

- Over 70% of women ranked 'very much' that their lawyer listened to their concerns, and addressed them. A further percentage of women (25%) ranked their response 'somewhat' to this question.
- Over 65% of women stated that they 'very much' agreed that they would 'encourage someone in my position to go to court'.
- Over 65% of women stated that they agreed 'very much' that their lawyer was thorough, asked questions and explained options. A further 30% ranked this as 'somewhat'.

Further notable results also indicate:

- Women had varied responses when they were asked whether they felt that the Magistrate was receptive to their concerns for their safety (just under 50% stated 'very much', 20% stated 'somewhat', 20% were 'neutral', with 5% of women stating 'not really' and a further 5% selecting 'not at all').
- Over 40% of women felt respected and supported by police, and a further 25% felt 'somewhat' and another 25% were 'neutral'.

These interim results indicate that there are some opportunities for further development and improvement for women's experiences at court. It also indicates that for some women the pertinent question may not be, or only be, "*Why didn't you ask?*" but "*Why didn't you listen?*"

It is timely to consider whether there are other processes that could have helped, restorative or therapeutic processes for example, and the practices of lawyers working with women who experience family violence. Lawyers asking women who have experienced family violence questions such as "*Do you want an opportunity to speak?*" and "*What is it that you want out of today?*" may be approaches which could lead to an improvement of women's experiences during the court process.

Another question to consider is whether how safe women may have felt at court if they had been unrepresented or unsupported by a support service.

Improving the experiences of women

A key goal of "*Why didn't you ask?*" is to identify opportunities and strategies to drive changes in CLC practice to improve results in relation to the experience women who have experienced family violence have with lawyers. Beyond this we can also identify other opportunities and strategies for reform including improvements to the Court environment, the responsiveness of Magistrates, Court staff and Police, and the range of legislative options open under the Act itself. The following policy issues reflect both the issues raised through the interim survey results and the experience of LCCLCs court based workers.

1. Children on intervention orders

Some Magistrates appear to be in the practice of removing children from interim intervention orders, without the consent of the applicant or without an application to vary the order as is required by the Act. This has happened irrespective of whether a child has experienced family violence by a person towards them (s5 (1) (a) of the Act) or has heard, witnessed or otherwise been exposed to the effects of family violence (s5 (1)(b)).

Police prosecutors have advised LCCLC that if a child is subject to an act of family violence directly as defined within s5 (1)(a) and the child is not listed on the intervention order the respondent cannot be charged with a breach of that order. This is in conflict with the view communicated from the bench on many occasions that the order not to commit family violence against the protected person (where for example that person is not the child but a parent), that this alone is adequate protection and gives power to breach because family violence includes matters described in s5(1)(b) of the Act.

In LCCLC's experience there often appears to be a prevailing view that children on intervention orders unnecessarily 'muddy the waters' on parenting issues. In LCCLC's opinion this can effectively prioritise the abusive parent's relationship with the child over and above the safety of the child – a

view that is inconsistent with both the Act and the Family Law Act 1975 (Cth). This approach also fails to promote accountability for the respondent's behaviour, again inconsistent with the stated intention of the family violence legislation. Women have informed LCCLC of the implications the removal of the children from the order has had for them and their children. Some of these implications have included children being exposed to ongoing experiences of family violence from the respondent, including receiving text messages and phone calls from the respondent which verbally abuse the child and expose the child to further psychological impacts of violence. There are further opportunities for exploration of this in follow up interviews with women.

2. Impecunious parties not able to obtain representation for Directions Hearings

In this region the current practice of the Registry is only to provide a Directions Hearing date if a matter is not resolved at the first mention. A contested hearing date is only provided once the matter proceeds or is not resolved at the Directions hearing. Victoria Legal Aid requires a contested hearing date to be listed before an application for legal aid funding is considered.

Applicants and respondents who cannot afford representation therefore have no option but to self-represent at the Directions Hearing. Directions hearings require the provision of information and legal strategy that presents obvious challenges for a self-represented litigant. LCCLC is concerned that applicants may be too frightened to self-represent and so may withdraw their applications if they are without legal support. This places applicants at further risk when, for example, an interim order is cancelled at that point.

This issue has impacted on LCCLC which had, until this point, not undertaken Directions hearings because Victoria Legal Aid had historically funded clients to obtain representation if they otherwise met the VLA eligibility criteria. Without additional resources LCCLC cannot take on this role in the same manner that it provides its current duty lawyer services.

3. Registrars not adequately assessing risk with respect to immediate safety concerns

Court staff members are not currently undertaking the Common Risk Assessment Framework (CRAF) in a consistent manner in this region. As the CRAF is the basis of risk assessment decision making for family violence in Victoria, if a risk assessment is not undertaken it is questionable as to what basis victims of family violence are getting assessed for their safety needs and level of risk.

There have been a number of cases recently in which this has been highlighted and which a lack of understanding of indicators and risk factors for family violence (which the CRAF is designed to assist with) have not been assessed and has led to negative and unsafe outcomes for clients, including clients not receiving interim orders for immediate safety concerns.

It is imperative that as part of an integrated strategy and system to address family violence risk assessments are conducted well.

LCCLC recognises the limited resources of Court staff that operate in a busy environment. It also recognises the need to conduct risk assessments and process applications as expeditiously as possible. Given these constraints and needs how can risk assessments be conducted appropriately within the context of the administrative Court process, to the mutual benefit of the court and the client?

4. Court infrastructure issues

There are a numerous examples of how the physical court infrastructure is an inadequate and unsafe environment for women who are attending court for family violence matters in this region. Women have informed the LCCLC anecdotally of their fear of the proximity of the respondent at numerous locations. In many of the smaller courts in the region, there are no suitable waiting rooms for applicants or interview rooms which lawyers or support workers can utilise. In Kyneton there are no facilities to interview clients and at the Echuca court, lawyers and support workers have an option to use the police cells to interview women. If there are individuals remanded in custody, the police cells can not be used. LCCLC has had women experiencing family violence say that they feel like criminals when they are offered the cells as an option for a private and confidential interview with workers or lawyers.

Achieving timely, effective and appropriate legal services across the region.

Prior to the “*Why didn’t you ask project*” LCCLC provided family violence duty lawyer services at the three largest jurisdictions in the area: Bendigo, Echuca and Maryborough. LCCLC has now extended this service to Kyneton and Swan Hill. LCCLC collaborates with Murray Mallee Community Legal Service in Swan Hill in cross-referring clients and providing secondary consultation on any legal inquiries. Other courts within the Loddon Campaspe catchment area including Castlemaine and Kerang are provided on an ‘as needed’ basis.

As another extension on the delivery of legal assistance at targeted court sites, there is an ongoing development of a multi-disciplinary model for the integration of legal and social worker support to women who have experienced family violence and are clients of LCCLC.

A component of this has entailed the delivery of educational training sessions for lawyers of LCCLC and Goulburn Valley Community Legal Centre (GVCLC). These sessions have included opportunities for reflection and improvement upon current practice approaches when working with clients. The content of the training is based on the Common Risk Assessment Framework (CRAF) of which LCCLC’s Courtney Lucanto has completed Train the Trainer sessions. It has also highlighted further discussion on technology safety with women who have experienced family violence and avoiding collusion when working with perpetrators of family violence as clients.

Increasing the knowledge of health professionals concerning legal interventions and the health benefits of timely legal interventions.

LCCLC has utilised the Loddon Mallee Murray Medicare Local to provide the contact details for General Practitioners across Central Victoria and have sent surveys to 90 GPs. As of September 2013, we have received 23 survey responses from GPs. As this target is below our aim to have received 60 responses from health care providers, we are currently undertaking processes to recruit other health care providers to participate in the survey, including social workers, maternal child health nurses and psychologists.

- Initial results from returned surveys from GPs have indicated a willingness to attend free training that LCCLC have offered to facilitate for GPs on family violence and appropriate legal referral pathways. Training content is currently being prepared for this through the use of the Common Risk Assessment Framework (CRAF) in response to family violence.

- LCCLC researcher Courtney Lucanto has undertaken Train the Trainer training to be able to deliver CRAF based training content within the region, through coordination with Loddon Campaspe Regional Integration Coordinator for Family Violence.

Improved health outcomes for victims of violence through early identification and referral for legal interventions.

We have conducted a literature review regarding the status of academic evaluation of the impact of legal intervention on health and wellbeing. On review, and in consultation with local academic partners, at this stage we feel this research aspect of the project would greatly benefit from further funding to establish assistance with the development and evaluation of a health outcome assessment tool.

There are further opportunities for this area of research in relation to the training content which will be created to deliver on improved knowledge of health workers in identifying and responding to family violence.

Joined up services between relevant health, legal and social services

LCCLC currently participates in a number of strategies undertaken at a local level by family violence networks and projects. These include:

- Macedon Ranges Family Violence Prevention Network.
- Central Victorian Restorative Justice Alliance.
- Mallee Integrated Family Violence Advisory Group- Swan Hill Project Group.
- Preventing Violence against Women Regional Conference Reference Group.
Loddon Mallee Takes a Stand (LMTAS) through Women's Health Loddon Mallee:
LCCLC's Courtney Lucanto and Chris Casey are current facilitators of LMTAS training. LMTAS is based on the prevention of violence against women through running training for staff in businesses and organisations (including local government) to become bystanders in preventing violence against women.

Collaborative practice between social workers and lawyers within the RRR context

LCCLC is currently undertaking a literature review of collaborative practice between social workers and lawyers within the rural, regional and remote context in relation to family violence responses.

Appropriate, effective and increased legal assistance services to indigenous communities.

We have met with the Aboriginal Cooperatives in the regions we service and the local Indigenous Family Violence Regional Action Group to provide an introduction to our project and to gather feedback on how we can make our services more culturally safe and accessible to Aboriginal clients.

We have also delivered a will-making workshop with the assistance of State Trustees at the Bendigo District Aboriginal Cooperative (BDAC) earlier this year.

We have undertaken 7 Legal Education sessions at a variety of sites as of September 2013, including a Family Violence Awareness Forum through BDAC.

Increased knowledge of service users, service providers and the community generally about the range of legal interventions that can be used to address family violence.

This year LCCLC has delivered family violence and legal education at the following opportunities:

- Community Day, Swan Hill Grain Shed on 28/02/13.
- BDAC staff and clients on 01/03/13, 14/03/13, 04/04/13 and 19/06/13.
- Centacare Staff on 18/03/13.
- Swan Hill Child, Youth and Family Network on 19/03/13.
- Mallee Family Care staff on 19/03/13.
- Njernda staff and community members on 03/04/13 and 12/04/13.
- Tarrengower Women's Prison to female prisoners on 25/06/13.
- Macedon Ranges Police Service Area training day on 28/08/13.

LCCLC receives regular requests for Community Legal Education sessions to be delivered, particularly incorporating family violence as a topic of discussion and that this is likely to continue.