

ATTACHMENT 'CC 2'

This is the attachment marked '**CC 2**' referred to in the witness statement of **Christopher Leonard William Casey** dated: 31st July 2015.

Submissions to the Royal Commission into Family Violence

Loddon Campaspe Community Legal Centre

Goulburn Valley Community Legal Centre

1. The Goulburn Valley Community Legal Centre ('GVCLC') is a program of the Loddon Campaspe Community Legal Centre ('LCCLC'), itself a division of ARC Justice in Bendigo. The Centre was initially established as a part-time pilot project operated by staff travelling from Bendigo but has operated as a full-time service since late 2012 following a grant of \$200,000 in recurrent funding from the State Government through Victoria Legal Aid. It received a further funding boost when the Commonwealth Government allocated a further grant of \$100,000 per year over 4 years.
2. The Centre currently provides free legal assistance to residents of Greater Shepparton, Mitchell, Moira and Strathbogie Shires. While Benalla also lies within our catchment, we do not currently have the resources to service it. A major function of Centre staff is the provision of family violence duty lawyer services at Shepparton, Seymour and Cobram Courts. The Centre takes a strong therapeutic justice approach to all client issues and works proactively with a range of other local support organisations including the Family Violence Prevention Network, the Marion Community, Primary Care Connect, Family Care, the Family Relationship Centre and the Regional Information and Advocacy Council.
3. This submission addresses the questions in the Royal Commission's issues paper relevant to our service.

Question 1: Are there other goals the Royal Commission should consider?

4. Ensure that comprehensive data is collected by or on behalf of an appropriate Government agency so that the breadth of family violence activity in our community crossing boundaries of age, gender,

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ethnicity and culture, sexual orientation, and degree of domestic isolation is properly recorded and understood as the basis for systemic changes that must occur.

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.

5. Assisting parties involved in family violence proceedings has comprised a substantial part of the GVCLC's casework since it commenced full-time activity in 2012. Family violence and associated family law represent about half of our current workload. Our three generalist lawyers all attend local courts as duty lawyers and all provide additional support and advice to parties by appointment.
6. We take a strong therapeutic justice approach and refer applicants to crisis services for counselling and accommodation or to the Victoria Police Family Violence Unit for ongoing safety arrangements whenever applicable. We also work with respondents and encourage their engagement in relationship, parenting and behaviour change counselling.
7. We previously joined with the Family Law Pathways Network and the Family Relationship Centre to conduct Community Legal Education sessions in secondary schools but are now working with staff of the Marion Community to design and present similar sessions in primary schools.

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.

8. Our colleagues at the LCCLC recently released the report "*Will Somebody Listen To Me?*" which gives a voice to women escaping family violence. The report uses their 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. The major findings include:

What do women experiencing family violence need?

9. The 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 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. The project 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 because 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 be made 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 research participants 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 the 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 four Magistrates’ Courts within the bounds of the GVCLC service area. Only three are provided with dedicated family violence duty lawyer services – Shepparton, Seymour and Cobram. There is currently no service at Benalla despite it recording very high family violence statistics. Funding submissions have been made to Victoria Legal Aid for a further lawyer position including accommodation, administration and vehicle requirements, and we now await notification regarding our overall funding for 2015-2016. Apart from our service, each regional court has one Victoria Legal Aid funded duty lawyer available to provide duty lawyer services in *all* jurisdictions – criminal, family violence and child protection. The current situation in Benalla (and Wangaratta) is patently inadequate and unfair.

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

19.1 **No safe waiting areas:** At our headquarter court in Shepparton there is no secure waiting area for victims of family violence or their children. At best, they either sit in the Court Network office which is open to the rest of the waiting area or remain in the duty lawyer’s interview room. Neither Seymour nor Cobram have anywhere at all and victims either sit in the general waiting room or stand outside. At Cobram there is no interview room for the family violence duty lawyer and the waiting room can seat no more than half a dozen people. Interviews are generally

conducted on the benches in the park opposite the Court with no security at all. It is an impossible situation at best and beyond impossible when it is raining. Cobram has no disability access.

- 19.2 **No safety screening:** No court in this region undertakes safety screening.
- 19.3 **No confidential interview rooms at Cobram:** Interviews are conducted in the park or sometimes in the lawyer's vehicle if it is raining, leaving both client and lawyer vulnerable absent security. With increased demand, the need for updated facilities is urgent.
- 19.4 **Our service will assist respondents in Police applications and our lawyers encourage their engagement with appropriate services for counselling:** Unfortunately, our Courts are unable to mandate this engagement which we regard as essential if the risk to the current or a future partner is to be reduced. We would encourage the regular presence at Court of the various services that can provide respondents with assistance including general counselling, relationship and parenting advice, and emergency accommodation. The lack of immediate support often compounds the antagonism between parties and leaves the respondent with little information about how to change their behaviour – which is the ultimate goal of the legislation.
- 19.5 **"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 Magistrates in any court to make this order would provide women in rural contexts access to outcomes currently available in select courts.
- 19.6 **Inadequate Men's Behaviour Change programs:** There is insufficient capacity to adequately counsel offending men in our region.
- 19.7 **No priority for family violence matters: In satellite courts:** All matters are listed at 9:30 am 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 be called before family violence matters, as well as license restorations, and so on.
- 19.8 **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.

19.9 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.

19.10 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. Shepparton court has recently appointed a dedicated Family Violence Registrar which we regard as a very positive move which we would like to see replicated at the smaller courts. The applicant must also (usually) face the person she is trying to escape in the court room.

19.11 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.

19.12 Information availability at court: It has previously been our observation that those submitting applications for intervention orders were only provided with a copy of their application which incorporates an information sheet at the rear listing other supports available. We hope that this situation has been addressed at Shepparton by the recent appointment of a dedicated Family Violence Registrar, but are yet to see if this translates to better information at

the smaller courts where Magistrates are only available on limited days. There should be a positive obligation on all Registrars to point out that information, provide service brochures and also, if relevant, make 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.

19.13 Positive impact of Family Violence Training on Magistrates: Magistrates in our region show 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 via family law pathways.

19.14 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.

19.15 Access to remote witness facilities: Shepparton Court is equipped to allow applicants to give evidence by video link but access to the facility is directly adjacent the registry with no screening of the entry to improve security and confidentiality of those utilising it. Women in other areas must travel to Shepparton. 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 were 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

20. 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.

21. 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.

22. 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 the LCCLC report, women were 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

23. This is a key arm of our project – 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.
24. 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.
25. Following these results the LCCLC conducted four GP training sessions. Each was evaluated (see the evaluation report submitted by the LCCLC). In summary, participants identified that undertaking the training had a positive impact on:
- 25.1 Identification of a growing need for health practitioners to identify those experiencing family violence;
 - 25.2 Understanding the role of the practitioner in identifying family violence;
 - 25.3 Understanding the impact of family violence on the wellbeing of patients;
 - 25.4 Knowledge of referral pathways, an confidence in making referrals; and,
 - 25.5 Identification of family violence intervention orders as an effective means of addressing a patient's immediate safety concerns.

26. The evidence is clear that family violence is the leading cause of morbidity and mortality for women under 45 – 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.

Other issues/comments

27. All Courts need to be able to make orders mandating assessment and treatment of perpetrators as necessary, including the provision of urine screens. There needs to be increased funding also to respond to perpetrator issues: accommodation, psychological assessment and counselling, behaviour change programs and other services to deal with underlying issues. Behaviour change program providers are currently totally overwhelmed by referrals and need a huge injection of funds to be able to meet critical demands.
28. Crisis-accommodation and counselling services for victims need to be better funded so that they and their children aren't spending nights in motels or hotels where they continue to be vulnerable. Safety plans for victims and children in these circumstances are an essential consideration in any response.
29. Both Interim and Final Orders made in one State should be registrable in any other State as a matter of course. This requires coordination at a national level by COAG or SCAG.
30. Aggravated family violence should be proscribed as a crime by amendment of the *Crimes Act 1958* (Vic) in similar vein to the offence of stalking under s 21A.
31. Urgent, legally-aided family law assistance should be made available to low income victims so that parenting and property issues are determined with expedition.
32. Particular attention and consideration should be given to the rights of children and parties with intellectual impairment because of their special vulnerabilities whether as applicants, respondents or affected family members.
33. Structured education programs must be run in both primary and secondary schools so that children are able to recognise family violence in all its forms when it occurs and know how they can obtain help.

34. Trials into the effectiveness of the safeTcard[®] and similar innovative technology should be continued and a “bank” of such equipment made available through crisis centres for short-term placement with victims at risk of further violence.

CONCLUSION:

35. The “*Will Somebody Listen to Me?*” report 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.
36. 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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