

Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre

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Name of organisation Loddon Campaspe Community Legal Centre and Goulburn Valley Community Legal Centre

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Question 1

The Loddon Campaspe Community Legal Centre (LCCLC) and Goulburn Valley Community Legal Centre (GVCLC), provide legal services to clients in central Victoria. Many of our clients have interrelated issues involving family law, child protection and family violence. The experiences of our clients with the family law system are impacted by the regional, rural and remote (RRR) context of our catchment communities. Additionally, the majority of our clients experience multiple sources of disadvantage. This also affects their ability to access and navigate the family law system. This submission to the ALRC review into the family law system reflects the issues that arise for our clients. A modern system must provide for timely resolution of issues. The ALRC is aware of the delays involved in accessing the courts and that these are compounded when in a RRR environment. One of the impacts we have found has been the use of Family Violence Intervention Order (FV-IVO) proceedings to circumvent the family law system, particularly where individuals seek outcomes for property matters. This contributes to the pressures in the family violence courts. A modern family law system must provide avenues for timely resolution. A modern system must not preclude those without resources to obtain private legal assistance. Our services provide fee-free legal advice to people needing to access the family law system, but we have limited resources and do not have the capacity to provide casework support except in rare circumstances. A modern, client-centred system would be designed to assume individuals are self-represented and include other support systems to assist with equitable access and navigation throughout the process.

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The challenges raised in the issues paper are consistent with the experience of our clients. The barriers to accessing the family law system for those living in RRR communities are exacerbated by the cost of transport, particularly outside of the regional cities. There is also a lack of accessible legal advice due to conflict of interest and a shortage of law firms that provide legal representation in family law matters, particularly under a grant of legal aid. Clients with complex and multiple legal issues will be stretched financially to meet the demands of Courts and service providers, particularly if they live in the outlying areas outside of towns and regional cities. A lack of public transport in the regions means that clients have to arrange car transport which is costly. Our clients frequently become time poor and may have difficulties then with retaining their work or finding work as they have to commit to spending time travelling to the Courts and services. Some of these issues would be addressed by greater co-ordination of the legal systems involved and will be discussed under questions

31-33. Technological improvements and increased resourcing for outreach services, such as the LCCLC's Tipping the Scales program based in Maryborough, Victoria can improve access to services, reducing the need to travel to regional cities.

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The issues paper discusses the misuse of process as a form of abuse and raises, in the RRR context, the deliberate conflicting out of limited legal services. The experience of the LCCLC is that while conflicted out already limited services is certainly a challenge faced by some, it is not necessarily true that this is due to an abuse of process. Even were this the case, malice would be nearly impossible to prove. The reality for many families with experience of violence is an history of multiple court appearances, including for FV-IVO proceedings and criminal matters. The duty lawyer role at regional courts is shared by private, community and Legal Aid services. It is not uncommon for a potential client to have little to no knowledge of the lawyers and organisations from whom they have received legal services. Through accessing duty lawyer services offered to them on the day, as is their right, it is not uncommon to have representation from a different firm or organisation for each appearance. Legal services available in smaller communities can quickly be conflicted out, especially for women requiring family law assistance.

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Question 31

The following case studies apply to issues raised by questions 31, 32 and 33. Case Study 1: Background The client is the mother of three children and has experienced family violence over a chronic period of time (in excess of ten years). The perpetrator of the family violence was the clients de facto partner (and the father of the children). CLC Involvement The CLC has represented the client in family violence, family law (parenting), child protection and infringement proceedings with a good level of continuity as the same lawyer has assisted the client with each proceeding. The infringement proceedings were on foot due to the issues of family violence. Family Court parenting orders were in place prior to our involvement. We became involved when the mother attempted to seek protection for herself and her two youngest children by way of Family Violence Intervention Order (FV-IVO) proceedings. The FV-IVO proceedings were instituted against the father and the eldest child who live separately from the mother and two younger children This was the mother's fifth attempt to

seek a FV-IVO against the father. Previous applications were withdrawn due to the mother being unable to find appropriate legal support in the lead up to the Contested (Final) Hearing of each application. The family violence incident giving rise to the application for a FV-IVO eventually resulted in a Notice of Risk being filed in the Magistrate's Court and the Family Court parenting orders being suspended and interim orders put in their place. The Family Court proceeding was transferred from the Magistrate's Court to the Federal Circuit Court (FCC). The Magistrate presiding over the making of interim orders ordered an Independent Children's Lawyer (ICL). The CLC lawyer advocated for the engagement of an ICL. Family Violence Proceedings The Final (Contested) FV-IVO hearing was listed within 4 weeks of the first mention in the FCC. The father consented, without admission, to a FV-IVO for a 12 month period. The mother reported breaches of this order in the 12 months that followed. When nearing the 12 month anniversary of the FV-IVO, the mother applied to extend the order given the breaches, one of which occurred at Court. The father contested the extension. Family Court Proceedings The ICL who was appointed the day prior to the mention at the FCC suggested that both the mother and the father be psychiatrically assessed. The ICL questioned whether the family violence perpetrated by the father was driven by a) anger or b) something more pathological. The mother attended upon the assessment and no pathologies significant to the proceeding were diagnosed. The father did not attend the assessment. The mother's assessment was booked-in prior to the fathers. The mother, traumatised by the chronic nature of the family violence, found the ordering of the assessments perplexing given it were the father's behaviours that were in question. A child inclusive family assessment was later booked in with a report writer of the FCC. The mother and the two younger children attended this assessment. The father did not attend nor did the eldest child. The mother and two younger children were anxious and frightened at the thought of having to attend the assessment/court on the same day as the father and eldest child. This exacerbated the trauma they had already experienced and did so without useful information being gained in respect of the father's relationship with the children. It was, in effect, a one-sided assessment that caused further trauma. The mother attended the FCC on 4 occasions in 2017 from February to December. The father did not attend any of these court dates. The mother filed material prior to each of these court dates. The father did not file any material. Final Orders were made in December 2017. The mother anxiously waits to see if the father will make any further application given she has sole parental responsibility of the two youngest children.

Case Study 2: A client attended court to apply for an intervention order to protect herself and her children from family violence perpetrated by the children's father. She obtained an interim (short term) order protecting herself and her children from family violence, including a condition that the father not have contact with her and her children unless agreed to through mediation, lawyers or by another court order. Unfortunately, she had to move out of the family home as the father refused to leave, leaving our client effectively homeless. The client's son is in the care of the father. She approached police however they did not assist. She has reported her concerns to child protection whom are investigating. She wants her son back in her care however he did not want to return to her. After a week, child protection advised they are closing the case as they do not hold significant concerns for the child that would require state intervention. The client was left unsure about what to do or where to go to arrange for her son to be returned to her primary care or to arrange for contact between herself and the father. She attended the CLC for advice and was referred to mediation and a number of support services. She was assisted on an ongoing basis with her family law matter and FV-IVO matter. The client was at this point attempting to navigate three different jurisdictions, had multiple court commitments and appointments as well as trying to arrange accommodation and seek support for her experience as a survivor of family violence. This left her feeling overwhelmed and confused.

Case Study 3: A client presented for family law

advice to our service. The client has received a verbal direction from Child Protection that they have concerns for the other parent. The client does not know what contact, if any, child protection wants the child to have with the other parent. The client does not know where to go or what to do next. Question 31 How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported? Improved resourcing for Legal Aid and Community sector legal services As acknowledged in the issues paper, often individuals needing legal services across family law, family violence and child protection, will also have complex non-legal needs. More often than not, they will satisfy the strict access criteria set by Legal Aid and community sector legal practices. Demand for these services always exhausts supply. Legal services such as LCCLC and GVCLC have the expertise to provide services (usually with the one lawyer) across the three jurisdictions, which is an advantage for our clients. However, this is not always the case in private firms, and this is exacerbated by a RRR setting. Despite having the required specialist skills, our CLCs are not funded sufficiently to provide casework support in the vast majority of circumstances. Funding to increase the capacity of the community sector and Legal Aid to provide casework services would be of great benefit to clients with complex needs and experience of disadvantage. Improved resourcing for the courts to support families with complex needs - Recommend the implementation of an Applicant and Respondent Support Worker Initiative The Magistrates' Court of Victoria has implemented an Applicant and Respondent Support Worker initiative. This needs to be extended to the FCC particularly for those clients who have either experienced family violence or where it is known that there are contemporaneous proceedings on foot for Family Law and Family Violence Intervention Order matters. The Applicant and Respondent workers should either work across the jurisdictions or be equipped to be able to liaise with their equivalent in the state or federal jurisdiction. The workers should case-manage these complex client matters from a social work perspective. - Recommend (as an alternative to above) Specialist Family Violence Services to provide court support The mother described in Case Study 1 has engaged with a Specialist Family Violence Service in her region. Little in the way of Court support has been offered or extended to the mother by this Specialist Family Violence Service. If the ability to case manage were realised by an Applicant and Respondent Support worker, then Specialist Family Violence Service assistance at court would likely not be required. However in lieu of this, Specialist Family Violence Services should be appropriately funded and skilled to provide assistance when there are particularly complex Court proceedings on foot. - Recommend extension of social worker support alongside duty lawyer There is a pilot program where Victorian Legal Aid duty lawyers at Dandenon and Melbourne FCCs are supported by a social worker. Should this program have demonstrated benefits, its nationwide implementation should follow.

Question 32

The following case studies apply to issues raised by questions 31, 32 and 33. Case Study 1: Background The client is the mother of three children and has experienced family violence over a chronic period of time (in excess of ten years). The perpetrator of the family violence was the clients de facto partner (and the father of the children). CLC Involvement The CLC has represented the client in family violence, family law (parenting), child protection and infringement proceedings with a good level of continuity as the same lawyer has assisted the client with each proceeding. The infringement proceedings were on foot due to the issues of family violence. Family Court parenting orders were in place prior to our involvement. We became involved when the mother attempted to seek protection for herself and her two youngest children by way of Family Violence Intervention Order (FV-IVO) proceedings. The FV-IVO proceedings were instituted against the father and the eldest child who live separately from the mother and two younger children This was the mother's fifth attempt to

seek a FV-IVO against the father. Previous applications were withdrawn due to the mother being unable to find appropriate legal support in the lead up to the Contested (Final) Hearing of each application. The family violence incident giving rise to the application for a FV-IVO eventually resulted in a Notice of Risk being filed in the Magistrate's Court and the Family Court parenting orders being suspended and interim orders put in their place. The Family Court proceeding was transferred from the Magistrate's Court to the Federal Circuit Court (FCC). The Magistrate presiding over the making of interim orders ordered an Independent Children's Lawyer (ICL). The CLC lawyer advocated for the engagement of an ICL. Family Violence Proceedings The Final (Contested) FV-IVO hearing was listed within 4 weeks of the first mention in the FCC. The father consented, without admission, to a FV-IVO for a 12 month period. The mother reported breaches of this order in the 12 months that followed. When nearing the 12 month anniversary of the FV-IVO, the mother applied to extend the order given the breaches, one of which occurred at Court. The father contested the extension. Family Court Proceedings The ICL who was appointed the day prior to the mention at the FCC suggested that both the mother and the father be psychiatrically assessed. The ICL questioned whether the family violence perpetrated by the father was driven by a) anger or b) something more pathological. The mother attended upon the assessment and no pathologies significant to the proceeding were diagnosed. The father did not attend the assessment. The mother's assessment was booked-in prior to the fathers. The mother, traumatised by the chronic nature of the family violence, found the ordering of the assessments perplexing given it were the father's behaviours that were in question. A child inclusive family assessment was later booked in with a report writer of the FCC. The mother and the two younger children attended this assessment. The father did not attend nor did the eldest child. The mother and two younger children were anxious and frightened at the thought of having to attend the assessment/court on the same day as the father and eldest child. This exacerbated the trauma they had already experienced and did so without useful information being gained in respect of the father's relationship with the children. It was, in effect, a one-sided assessment that caused further trauma. The mother attended the FCC on 4 occasions in 2017 from February to December. The father did not attend any of these court dates. The mother filed material prior to each of these court dates. The father did not file any material. Final Orders were made in December 2017. The mother anxiously waits to see if the father will make any further application given she has sole parental responsibility of the two youngest children.

Case Study 2: A client attended court to apply for an intervention order to protect herself and her children from family violence perpetrated by the children's father. She obtained an interim (short term) order protecting herself and her children from family violence, including a condition that the father not have contact with her and her children unless agreed to through mediation, lawyers or by another court order. Unfortunately, she had to move out of the family home as the father refused to leave, leaving our client effectively homeless. The client's son is in the care of the father. She approached police however they did not assist. She has reported her concerns to child protection whom are investigating. She wants her son back in her care however he did not want to return to her. After a week, child protection advised they are closing the case as they do not hold significant concerns for the child that would require state intervention. The client was left unsure about what to do or where to go to arrange for her son to be returned to her primary care or to arrange for contact between herself and the father. She attended the CLC for advice and was referred to mediation and a number of support services. She was assisted on an ongoing basis with her family law matter and FV-IVO matter. The client was at this point attempting to navigate three different jurisdictions, had multiple court commitments and appointments as well as trying to arrange accommodation and seek support for her experience as a survivor of family violence. This left her feeling overwhelmed and confused.

Case Study 3: A client presented for family law

advice to our service. The client has received a verbal direction from Child Protection that they have concerns for the other parent. The client does not know what contact, if any, child protection wants the child to have with the other parent. The client does not know where to go or what to do next.

Question 32 What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children? Client-centred approach including timely access and streamlined pathways

The LCCLC and GVCLC call for a more streamlined approach to family law, including targeted referrals by frontline agencies that work with families with complex needs. It is highly desirable that the work of police, Child Protection and the Courts is coordinated to address the needs of families in one process and accessible and facilitated referral pathways between the different court jurisdictions are created. Where there are circumstances of family violence, timely access to the Family Courts can greatly improve the safety of children. Expedited access to mediation where there are child protection issues would enable parenting plans to be arranged. Authority to make orders across jurisdictions

Ideally, Courts would be able to act with authority to make orders in other jurisdictions, for example the FCC could make FV-IVOs. Multiple appearances on interrelated matters across Courts compounds the stress on all parties but especially the victims of family violence. In the first case study above, the Final (contested) FV-IVO hearing was listed within four weeks of the first mention in the FCC. Where family violence orders are in place or sought:

- courts should seek to physically separate victims of family violence from the perpetrators
- Courts need to be informed about and sensitive to safety concerns for children, as well as other individuals where a family law matter is complicated by family violence.

The mother and two younger children in Case Study 1 were anxious and frightened at the thought of having to attend the assessment and Court on the same day as the perpetrators of family violence. That the father ultimately did not attend only exacerbated the trauma already experienced by the mother and younger children, without any useful information being gained in respect of the father's relationship with the children.

- Court orders should be consistent across jurisdictions

In the first case study above, the interim parenting orders created the opportunity for the father to further perpetrate family violence against the mother and the two youngest children. The magistrate presiding over the making of the interim parenting orders should have been more mindful of the rich history of family violence experienced by this mother. A therapeutic 'do no harm' approach needs to be implemented in complex matters such as these. Resources for services

Resources to increase capacity in Legal Aid and the community legal sector to provide a greater level of service to more clients accessing family law, child protection and family violence systems would be beneficial. Additionally, an increase in resources to early intervention services may reduce the stress on the systems through prevention. These services are under greatest pressure and are the least accessible in regional, rural and remote communities.

Question 33

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Case Study 1:

Background The client is the mother of three children and has experienced family violence over a chronic period of time (in excess of ten years). The perpetrator of the family violence was the client's de facto partner (and the father of the children).

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separately from the mother and two younger children This was the mother's fifth attempt to seek a FV-IVO against the father. Previous applications were withdrawn due to the mother being unable to find appropriate legal support in the lead up to the Contested (Final) Hearing of each application. The family violence incident giving rise to the application for a FV-IVO eventually resulted in a Notice of Risk being filed in the Magistrate's Court and the Family Court parenting orders being suspended and interim orders put in their place. The Family Court proceeding was transferred from the Magistrate's Court to the Federal Circuit Court (FCC). The Magistrate presiding over the making of interim orders ordered an Independent Children's Lawyer (ICL). The CLC lawyer advocated for the engagement of an ICL. Family Violence Proceedings The Final (Contested) FV-IVO hearing was listed within 4 weeks of the first mention in the FCC. The father consented, without admission, to a FV-IVO for a 12 month period. The mother reported breaches of this order in the 12 months that followed. When nearing the 12 month anniversary of the FV-IVO, the mother applied to extend the order given the breaches, one of which occurred at Court. The father contested the extension. Family Court Proceedings The ICL who was appointed the day prior to the mention at the FCC suggested that both the mother and the father be psychiatrically assessed. The ICL questioned whether the family violence perpetrated by the father was driven by a) anger or b) something more pathological. The mother attended upon the assessment and no pathologies significant to the proceeding were diagnosed. The father did not attend the assessment. The mother's assessment was booked-in prior to the fathers. The mother, traumatised by the chronic nature of the family violence, found the ordering of the assessments perplexing given it were the father's behaviours that were in question. A child inclusive family assessment was later booked in with a report writer of the FCC. The mother and the two younger children attended this assessment. The father did not attend nor did the eldest child. The mother and two younger children were anxious and frightened at the thought of having to attend the assessment/court on the same day as the father and eldest child. This exacerbated the trauma they had already experienced and did so without useful information being gained in respect of the father's relationship with the children. It was, in effect, a one-sided assessment that caused further trauma. The mother attended the FCC on 4 occasions in 2017 from February to December. The father did not attend any of these court dates. The mother filed material prior to each of these court dates. The father did not file any material. Final Orders were made in December 2017. The mother anxiously waits to see if the father will make any further application given she has sole parental responsibility of the two youngest children.

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left her feeling overwhelmed and confused. Case Study 3: A client presented for family law advice to our service. The client has received a verbal direction from Child Protection that they have concerns for the other parent. The client does not know what contact, if any, child protection wants the child to have with the other parent. The client does not know where to go or what to do next. Question 33 How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved? As illustrated in the case studies above, our clients often need to navigate across the three jurisdictions. Improved collaboration and information sharing would be of great benefit. State child protection and family law State child protection are often reluctant to become involved in federal family law matters. State child protection do not generally assist with referrals to family law related services. State child protection will produce subpoenaed documents but will not often provide witnesses that can provide first hand evidence in a family law matter. In some cases, this would be very beneficial. In the third case study above, Child Protection were asking the client to withhold the child from the other parent due to safety concerns but did not provide the client with sufficient information or with a targeted referral for the client. Trauma-informed practice and family law Case Study 1 illustrates the impact of family violence and the legal processes associated with this on a parent. The father, in this case, manipulated the anxiety created by the family violence situation to argue against the mother in the Family Court and was often required to appear in the same court or at assessments where he would be in contact with the mother and children. Furthermore, the mother's assessment was booked in before the father's, despite it being his behaviours in question. A system with capacity to take a more sensitive and nuanced approach and demonstrate responsiveness to the traumatic effect of family violence on individuals and their children would prevent such situations.

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Other comments?

File

The results of this submission may be viewed at:

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