

**COMMISSION OF INQUIRY INTO QUEENSLAND POLICE SERVICE RESPONSES TO DOMESTIC
AND FAMILY VIOLENCE**

*Commissions of Inquiry Act 1950
Section 5(1)(d)*

STATEMENT OF CYBELE KONING

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| Name of Witness: | Cybele Koning |
| Date of birth: | [REDACTED] |
| Current address: | [REDACTED] |
| Occupation: | CEO & Principal Lawyer Caxton Legal Centre Inc |
| Contact details (phone/email): | [REDACTED] |
| Statement taken by: | Julie Aylward |

I, Cybele Koning, make oath and state as follows:

1. I am the CEO of Caxton Legal Centre Inc.
2. Caxton Legal Centre is Queensland's oldest community legal centre providing legal advice and social work support to disadvantaged clients including those experiencing domestic and family violence, family law issues and elder abuse.
3. On 24 June 2022, on behalf of Caxton Legal Centre, I forwarded a submission to the Commission of Inquiry. The evidence that I wish to give to the Commission is outlined in this submission.
4. I wish to correct paragraph 28(b) of the submission. Where it says "We cannot recall *an instance* where police took action where there was no allegation of physical and/or sexual violence", it should read "We cannot recall *many instances* where police took action where there was no allegation of physical and/or sexual violence".

A copy of the submission to the Commission from Caxton Legal Centre is attached as Annexure A.

OATHS ACT 1867 (DECLARATION)

I Cybele Koning do solemnly and sincerely declare that:

- (1) This written statement by me is true to the best of my knowledge and belief; and
- (2) I make this statement knowing that if it were admitted as evidence, I may be liable to prosecution for stating in it anything I know to be false.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Annexure A



24 June 2022

The Hon, Judge Deborah Richards
 Commissioner
 The Commission of Inquiry into Queensland Police Service
 responses to domestic and family violence
 PO Box 12264
 George St QLD 4003

Only by email: documents@qpsdvinquiry.qld.gov.au

Dear Commissioner

Re: Submission to the Commission of Inquiry into Queensland Police Service responses to domestic and family violence

Caxton Legal Centre Inc (Caxton) welcomes the opportunity to provide a submission to the Inquiry into Queensland Police Service responses to domestic and family violence.

Background

1. Caxton Legal Centre is Queensland's oldest community legal centre providing legal advice and social work supports to disadvantaged clients including those experiencing domestic and family violence, family law issues and elder abuse.
2. To prepare this submission, we have drawn from the experience of our clients and what they tell us about their interactions with police and from the experience of our lawyers and social workers who provide services to clients through a number of our programs:
 - Domestic Violence Duty Lawyer – court based legal advice for Respondents in the Domestic Violence Court, Brisbane Magistrates Court.
 - Seniors Legal and Support Service – legal and social work supports for older persons who are experiencing or at risk of experiencing elder abuse, including domestic and family violence
 - Older Persons Advocacy and Legal Service – a Health Justice Partnership with Metro South Health providing legal and social work supports for older persons who are experiencing or at risk of experiencing elder abuse, including domestic and family violence.
 - Family Law Duty Lawyer – court based legal advice provided five days per week at the Brisbane Registry of the Federal Circuit Court of Australia and Family Court of Australia.
 - Family and Advocacy Support Service – court based legal advice and social work supports for persons affected by domestic and family violence five days per week at the Brisbane Registry of the Federal Circuit Court of Australia and Family Court of Australia.
 - Family Law and Domestic Violence Advice and Casework program – day time and evening advices and casework. Our evening advices are delivered by volunteer lawyers.

Caxton Legal
 Centre Inc
 Unlocking the law
 ABN 57 035 448 677

1 Manning St
 South Brisbane
 4101 Queensland
 Australia

T 07 5214 6333
 E caxton@caxton.org.au
 P 07 3846 7483
 W www.caxton.org.au



This Centre is
 accredited by the
 National Association
 of Community
 Legal Centres

- Queensland Coronial Legal Service – state-wide service providing legal advice and representation to families involved in the coronial process including representation in inquest including in a number of recent inquests and non-inquest matters examining police response to domestic violence.
 - Men's Bail Support Program – An integrated lawyer/social worker program providing support to men with complex needs to apply for bail and remain on bail in the community. 35% of the clients in this program have domestic and family violence related offending.
 - Human Rights and Civil Law program – day time and evening advices and casework across a broad range of legal issues including policing with a focus on assisting persons experiencing domestic and family violence.
3. Clients who access our services are either court users or people who do not qualify for legal aid and cannot afford private legal services. Through our Seniors Legal and Support Service and Health Justice Partnership we assist clients who are victims of elder abuse as a form of domestic and family violence, including coercive control.
 4. In 2020-2021 Caxton assisted over 5,000 clients with advice and casework, of whom 34% were affected by domestic and family violence. Caxton is uniquely placed to observe the issues in question for the Inquiry through the lens of both the aggrieved and the respondent given that Caxton works intentionally with both groups.
- A: Whether there is, and if so, the extent and nature of, any cultural issues identified within the QPS relating to the investigation of domestic and family violence**
5. Through our work and in listening to the stories of our client we have formed the view that there are cultural issues within the QPS relating to the investigation of domestic and family violence.
 6. Our clients interact with police across Queensland. However, the highest proportion of our clients are in South East Queensland. The problems that our clients face in relation to the police response to domestic and family violence fall in to a number of broad categories (detailed below), are consistent and wide spread. The problems are experienced mostly by persons from diverse backgrounds and cultures.
 7. Inadequate responses to domestic and family violence by the QPS often result from the incorrect exercise of discretion by police officers when investigating domestic violence. It is likely that this falling stems from inadequate training, a lack of appropriate processes and procedures, misconceptions about the dynamics of domestic violence, and the underlying culture of the QPS.
 8. Having said this, there are notable instances where individual police officers provide insightful, appropriate, supportive responses which represent best-practice and ought to be regarded as DFV champions within the Service. A method for identify existing best DFV policing practices within the Service and the use of mentoring/peer supports from those individuals would be an effective use of resources to gain traction on improvements.

Policing Domestic Violence and Human Rights

9. Domestic and family violence is one of the most serious human rights violations in Australia. The impact of the involvement of Police in domestic and family violence matters cannot be understated, particularly where it can lead to further distress or inadvertent systemic abuse of the parties involved. A human rights-based approach puts the onus on police to ensure the realisation of a woman's/victim's rights to safety, autonomy and protection.
10. Police need to be fully equipped to understand the nuances of domestic and family violence with a human rights lens and what the impact of the human rights legislation means to policing. This means understanding that the legislation for domestic and family violence is human rights legislation in that it creates an obligation for police to engage in a proportionate balancing of the rights to protection and safety with the rights to participation and self-determined outcomes. It also means that when engaging with these laws, there needs to be some consideration about how they are advancing human rights principles. Police may not be equipped to ensure these human rights are realised because their role is as enforcers of the law and not necessarily to support families experiencing domestic and family violence in the way that is needed.
11. Caxton is not aware of how many and the nature of the human rights complaints (893 in 2020/21) received by the QPS that relate to their policing of domestic and family violence. In terms of police training, whilst it is acknowledged that the QPS has developed and delivered basic human rights training to its employees and reviewed existing policies and procedures for compatibility with the *Human Rights Act 2019*, the police OPM Issue 88 Public edition states, "The Human Rights Act (HRA) does not fundamentally change operational policing in Queensland." Respectfully, this is misconceived and ignores the opportunity to embed a properly articulated human-rights based policing framework which would provide the basis for better policing of domestic and family violence.
12. In order to address the cultural issues that exist within the QPS, QPS must fully embrace their obligations under the Human Rights Act and work to reframe the decision making of all police officers using a rights-based framework.

Human rights-principle – participation

13. Taking a human rights-based approach to policing of domestic violence means that police must ensure the maximum participation of victims in decisions being made about their safety including by way of supports that will guarantee greater participation. We have noticed patterns in our cases where:
 - a. Women or victims have been misidentified as the Respondent because the police have failed to use independent and/or qualified interpreters when interviewing the parties, sometimes relying on the other party or family member to interpret or translate for them.
 - b. Police have applied for a protection order based solely on the statement of one party because the other party did not have an interpreter (for both non-English speaking persons as well as persons with a hearing impairment).

- c. Both victims and alleged perpetrators have said the facts alleged in the application for a protection order have been misrepresented (either exaggerated or underrepresented) due to the lack of an interpreter being used.
- d. Police have failed to properly engage with an older victim complaining about familial violence especially where the alleged perpetrator is an adult child, an informal carer and/or there is suspicion/assertion of cognitive decline.
- e. Police have failed to properly engage with a victim or alleged perpetrator who has a mental health illness especially where it is assumed they do not have the capacity to give an accurate account of events.
- f. Victims who do not show the 'correct emotional response' have had their experiences discounted, trivialized and/or under-recorded.

Human rights principle – non-discrimination

- 14. A human rights-based approach requires the police not to discriminate against victims of domestic violence on the basis of their age, disability, gender, race or sexuality. This requires police to not only provide interpreters, but to demonstrate cultural awareness and sensitivity when dealing with women and all people from diverse groups.
- 15. A human rights-based approach also requires the police not to discriminate against victims on the basis of their postcode. Socio-economic status, level of education attainment, and employment or pension status can pose a challenge to unbiased policing responses.
- 16. A human rights-based approach to Aboriginal and Torres Strait Islander people requires not only cultural awareness and sensitivity but an understanding and acknowledgement of the systemic racism that has existed in our institutions, including in the Queensland Police Service (in its various forms) since colonisation and still exists.

Human rights principle – transparency and accountability

- 17. The Convention on the Elimination of Discrimination of All Forms of Discrimination against Women requires governments to exercise 'due diligence' to prevent and respond to domestic and family violence against women. This means that in enforcing domestic and family violence laws police must take reasonable and effective measures to address domestic violence. A human rights-based approach requires police to be transparent and accountable for the decision to apply or not to apply for a protection order including the reasons for certain conditions being sought or not sought.
- 18. The decision of police not to apply for a protection order can result in many forms of harm to the victim. Catton assists people, including very old people, to make a private application for a protection order in circumstances where police have failed to exercise 'due diligence' and take action in coercive controlling intimate partner and intergenerational violence situations. In these cases, it is our experience that there is no clear articulation of why the set of circumstances reported to police did not satisfy the threshold for taking action. There is no record of the balancing of the

proportionality test. There is no sufficient explanation provided to the victim and/or it is explained as a private family matter that police will not intervene in. There has also been a failure to provide sufficient referral options to parties to empower them to understand their rights to safety and access community, legal, health and other supports to mitigate the risk of family violence escalating. There is also no accountability for the decision.

19. Similarly, where there are two or more people showing violence towards the other and one person is selected as the primary aggressor and one person is selected as the persons most in need of protection, there is rarely any clear articulation of how that decision was made. This is especially so in LGBTQ+ relationships and relationships involving very young people.

Police Failure to Act

20. The most common complaint that we receive from victim/survivors of domestic violence is that police fail to act, fail to give an explanation to victim for any decision made not to take action, and when no action is taken due to a decision made about the circumstances, they fail to facilitate other supports.
21. The failure to act occurs at all stages of the domestic violence process.
22. Our clients report delays in police attending when they call for help, poor risk assessments and a failure to address safety needs when they do attend. They also report inappropriate responses including failing to charge a respondent for criminal offences and failing to investigate and failing to issue a PPN or apply for a domestic violence order.
23. Failure to act commonly arises for our clients where:
 - a. The parties are separated and there are concurrent parenting disputes;
 - b. The aggrieved is from a diverse background or has lower socio-economic status;
 - c. The aggrieved is an older person and the alleged perpetrator is a family member providing some care and/or living with the older person;
 - d. The relationship is non-heterosexual; or
 - e. The aggrieved is a male in a heterosexual relationship.

Case Study

Monica is a young mother who became a client following a referral from a social worker based at a women's refuge. Her husband had carried out acts of serious domestic violence throughout their relationship, including strangulation and sexual violence. One incident resulted in facial injuries that impacted her ability to consume food and drink. QPS had previously attended the home on 3 occasions but had not taken any action. The children were present each time.

Our lawyer liaised closely with the social worker who referred Monica to us. As a priority, we assisted with the drafting and filing of a Protection Order on Monica's behalf. During the first court mention, the presiding magistrate queried why QPS were not involved. Our lawyer highlighted the lack of QPS action in the past. The magistrate ordered QPS to urgently serve the Application on Monica's husband and suggested QPS take carriage of the matter. We obtained a Temporary Protection Order at the next mention. Several adjournments later, Monica's husband sought legal advice and indicated an intention to file a cross-application against our client. At this time, QPS advised they would assist in either application.

The Police Prosecutor then agreed to contact QPS's Vulnerable Persons Unit ('VPU') to assist Monica. We advocated to the Police Prosecutor on Monica's behalf to ensure that the VPU contacted her. In addition to detailing Monica's vulnerabilities to the Police Prosecutor, we regularly reached out to confirm whether Monica had been contacted as there was considerable delay in response times.

Monica's husband proceeded with filing a cross-application for a Protection Order against Monica. After multiple requests and robust advocacy, QPS agreed to assist with respect to Monica's application only.

24. It is also common for our clients to experience delays in police serving domestic violence orders and not informing the aggrieved that an order has been served. This delay can have devastating impacts as the case study of Mr M below demonstrates.

Case Study – Non-Inquest Findings into the death of Mr M

Caxton Legal Centre acted for Ms C in the Coroner's Investigation into Mr M's death.

Mr M died on 6 April 2015 as a result of stab wounds inflicted by Mr F, the former partner of Mr M's new partner Ms C. Ms C and Mr F had been in an intimate partner relationship for approximately 17 years. Mr F perpetrated domestic violence against Ms C for the entire length of their relationship.

A domestic violence protection order was first made with Mr F named as the respondent and Ms C named as the aggrieved in 2001. It remained in place until 2003 and in 2002 Mr F was convicted of contravening the order. A second protection order was made for 2 years in 2005. In 2007 Mr F was convicted of breaching that order. In March 2008 Ms C made a private application for a Domestic Violence Protection Order. The order was granted in April 2008 and Mr F was convicted of breaching the order in July 2008. In January 2011 Ms C made a further private application for a Domestic Violence Protection Order. In February 2011 a 1 year order was made. Mr F failed to comply with this order on a number of occasions but he was not charged with breaching the order.

Ms C continued to endure Mr F's violence but there were no further Domestic Violence Protection Orders in place until 2015. In February 2015 Ms C had commenced a relationship with Mr M. Ms C and Mr F shared two children. Ms C informed Mr F of her new relationship in an effort to control the manner in which Mr F learned of it. As she anticipated Mr F was angry as he had never really considered their relationship to have ended despite her making clear that it had. Ms C continued to have regular contact with Mr F because of their children. In January 2015 Ms C contacted police following an argument with Mr F. No domestic violence protection order was sought on her behalf at that time. On 23 February 2015 Ms C received a telephone call from Mr F who was angry about her new relationship. He threatened to kill Mr M's son and 'stab everyone else' if she pursued the relationship.

Ms C continued to have regular contact with Mr F because of their children. In January 2015 Ms C contacted police following an argument with Mr F. No domestic violence protection order was sought on her behalf at that time. On 23 February 2015 Ms C received a telephone call from Mr F who was angry about her new relationship. He threatened to kill Mr M's son and 'stab everyone else' if she pursued the relationship. After Ms C received this call Mr M called Policelink and reported what occurred. Mr M was told that Ms C would have to call herself to warrant any police intervention. Ms C then called Policelink. After some discussion it was decided that officers would attend on Ms C in the morning before she left for work at 7.30am to take a statement. The following morning at 8.20am Ms C contacted police link to establish when police would attend to speak with her. She was told that the incident log for the night before did not contain a tasking to take a statement but said that Ms C "only wanted advice on how DV orders work and the processes." Later that day Ms C attended court and applied for an urgent private protection order.

On 26 February 2015 Ms C obtained a temporary protection order. The order named Ms C as the aggrieved and her children, Mr and Mr M's son as person's in need of protection. The order prohibited Mr F from having contact with Ms C aside from as required in relation to their son. The order was served on Mr M on 27 February 2015. Later that same day Mr M called Policelink and reported that Mr F had already breached the TPO by sending harassing text messages threatening to harm him. Mr M told the officer that he and Ms C were very distressed, petrified and felt "they were being brushed off by the police."

...Cont.

Case Study - Non-Inquest Findings into the death of Mr M ...cont

On 14 March 2015 Mr M breached the domestic violence order and was charged for breaching the order the same day. Later that same day Ms C and Mr M reported to police that Ms C's son was in the care of Mr F and had called very distressed and that Mr F had turned up at Mr M's house with Ms C's son on the back of a motorbike. They had heard Mr F say 'Where is it? Is that where he lives?'. Police subsequently attended Mr F's premises to check on the welfare of Ms C's son. They did not contact either Mr M or Ms C to interview them with respect of their complaint or advise them of the action they had taken to check on Ms C's son.

On 18 March 2015 Mr M called Policelink and asked when officers would be available at the local police station. He was advised that the station did not open until 8.30am. Mr M told the officer that he was upset with the lack of assistance from local police and said that he and Ms C had attended the station on 14 March and were told that officers were too busy to respond to their concerns. On 19 March 2015 Ms C and Mr M attended the local police station to report breaches that occurred between 14 March and 19 March. The officer who charged Mr F with the breach on 14 March was tasked with investigating these additional allegations.

On 24 March 2015 there was a hearing of the temporary protection order and a permanent order was made. The permanent order had additional condition prohibiting Mr F from contacting or approaching Ms C or any other named person in the order. The named persons included Mr F's children.

On the evening of 6 April 2015 a police officer attended Mr F's premises and served him with the order. While serving the order the Constable informed Mr F that he was investigating further allegations of breaches of the temporary protection order and asked if Mr F would like to attend the police station during the following week to discuss them. Ms C and Mr M were not told by police that Mr F was going to be served or told that police were investigating breaches of the TPO. Approximately 1-hour after being served with the protection order Mr F went to Mr M's home, drove his vehicle into the front of the house and stabbed Mr M to death.

Not taking domestic violence seriously

25. It is common for our clients to tell us that they feel that police have dismissed their complaints of domestic violence as being not serious enough to warrant a response. It is very common for clients to tell us that police have not charged a respondent with breaching a domestic violence order because the breach was 'just a contact breach' or 'a trivial breach'.
26. Our clients also experience police victim blaming or justifying the behaviour of the respondent by reference to the conduct of the aggrieved. For example, one of our clients reported that in the context of an argument the respondent grabbed her and said "I just want to rip your pants off and fuck you right here." At the time they were in a public place. When our client reported this to the police, the officers she complained to said that the respondent might have thought the behaviour was acceptable because the aggrieved and respondent had recently been intimate. The police did not take any action against the respondent.

27. Our clients commonly report police responding more quickly and appropriately where they are clearly physically injured than they do when they are reporting coercive control and other non-physical domestic violence.
28. Domestic violence, outside of physical violence, is not well understood by police or responded to, especially in these situations:
- a. Economic abuse – police rarely identify this form of abuse and never seek orders that will provide economic safety for the aggrieved. This is a particular problem for women with children and older persons being abused by family members. There is, to our knowledge, no training provided to police about what orders police can seek under the legislation to provide for economic safety. There is a general reluctance to consider how police can respond to economic abuse and a fear that any steps taken to address this issue is straying into the family law/spousal maintenance/civil law jurisdiction.
 - b. Social isolation and neglect – where the aggrieved has a disability and/or care needs or where the aggrieved experiences social isolation as a part of coercive controlling behaviours, the policing response is underwhelming. Examples of social isolation/neglect are sometimes cited in an application for a protection order as an accompanying circumstance to physical violence. In the last five years Caxton has read over 5,000 applications for a protection order filed by police. We cannot recall an instance where police took action where there was no allegation of physical and/or sexual violence.

Misidentification of Person Most in Need of Protection

29. In all areas of our practice, but most commonly through our Domestic Violence Duty Lawyer service we assist women who have been mis-identified by the police as the respondent when in fact they are the person most in need of protection. In our experience, this mis-identification can occur even when police are aware of a history of violence by the male partner.
30. The prevalence of this issue is highlighted by the finding of the Domestic Violence Death Review Board (Board) that, in 44% of cases reviewed QPS had previously identified the female homicide victim as the respondent in a domestic violence related occurrence¹.
31. Women who experience intersectional disadvantage are most commonly mis-identified by the police as the respondent when they are in fact the person in most need of protection. The Board found Indigenous women were particularly likely to be misidentified as perpetrators, with victims being recorded as 'both respondents and aggrieved parties' in 'nearly all' of the cases reviewed.²
32. Research indicates that misidentifying victims as perpetrators can stem from a lack of understanding of how victims of domestic violence (particularly women) use self-defensive and retaliatory

¹ Queensland Domestic and Family Violence Death Review and Advisory Board, 2016-17 Annual Report, p 82

² Ibid.

violence.³ Failing to consider the surrounding context of violence can lead police to misidentify victims as perpetrators. This can be a consequence of viewing domestic violence through an incident-based lens, rather than placing it within a broader pattern of coercive control.

33. Many victim/survivors experience trauma as a consequence of domestic violence. This trauma can manifest in many ways, not all of which confirm to how victims are stereotypically expected to act. Police may misinterpret these behaviours as indicators of low credibility.
34. We regularly see Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse (CALD) backgrounds or who are deaf who have been misidentified as the respondent because they are unable to communicate with police in English or do not communicate in a way that police perceive a victim 'should' communicate.
35. Often the police will attend an incident and speak to the person who they can more easily communicate with. If this person is the true respondent (which it commonly is) police will not gain a full understanding of what has occurred.
36. It is very uncommon for police to arrange interpreters in order to appropriately communicate with parties at a domestic violence incident.
37. Police also do not support people to provide them with information in a way that is trauma informed or rights focussed. Often our clients are asked to tell the police what they have experienced in front of other people including children and the respondent.
38. We have also seen women mis-identified as the respondent because of their demeanour when police have attended. We have seen women who are very distressed and acting in self-defence as well as women who are not presenting as not distressed enough, mis-identified as a respondent.
39. Being misidentified as the respondent can have devastating and long-lasting impacts on women. Just some of the impacts that our clients have experienced include:
 - a. Children being removed;
 - b. Loss of employment;
 - c. Loss of Blue Card or Yellow Card;
 - d. Homelessness;
 - e. Self-harm and suicide attempts;
 - f. Loss of relationships of support;
 - g. In ability to access particular services; and
 - h. Impact on immigration or visa status.

³ Madeleine Ulbrick, 'Officer she's psychotic and I need protection: Police misidentification of the 'primary aggressor' in family violence incidents in Victoria' (Policy Paper 1, Monash University, April 2020) 12

Case Study

Margaret is deaf and Aboriginal. She has care of her grandchildren through Child Safety because her daughter had a drug problem. Her daughter, hoping to get custody back, made a bizarre report of violence against her which resulted in police coming out to the house, communicating only with the hearing daughter and taking out a Domestic Violence Order against Margaret. When Margaret tried to communicate with the police and gesticulate, they would see her waving her arms around and interpreted that as aggression.

The DVO triggered a notification to blue card who then revoked her positive notice. This caused child safety to take the kids off her and place them temporarily with her daughter (the kids' mum). Margaret went to court multiple times to get the DVO revoked. In the meantime, the kids ended up in general foster care.

Eventually when the DVO was removed, she got her blue card back and then the kids came back to her too, but it all took six months.

Case Study

Nikita initially attended at our Domestic Violence Duty Lawyer service as the Respondent to a police application, after an incident where she had accidentally cut her ex-partner, Bob, in self-defence while holding a bread knife. Bob had come to the house uninvited, kicked the front screen door in, and started an argument. He punched Nikita repeatedly in the presence of their two-year-old. Based on this same incident, Bob was charged and imprisoned for breach of a protection order that had been made against him a few months earlier naming Nikita as the Aggrieved. The order only contained conditions that Bob be of good behaviour and not commit violence against Nikita.

There had been a lengthy history of serious physical violence against Nikita by Bob, resulting in Nikita being hospitalised multiple times. Following long-term counselling, Nikita self-identified as a victim of the cycle of domestic violence. Under pressure and having been threatened by Bob that he would kill her if she took legal action against him, Nikita had previously been unwilling to seek the help of the police to obtain more conditions on the protection order. She had told the police that she did not want an order protecting her at all. Our service assisted Nikita to seek the dismissal of the police application against her and also prepared a variation application and successfully obtained extra conditions against Bob including not to approach within one hundred metres of Nikita and their child.

At that stage police were still unwilling to withdraw the application against Nikita and the matter was listed for final hearing. It was only after our service prepared and lodged affidavit material for Nikita, detailing how she was the person most in need of protection, that police finally withdrew the application against Nikita. It had taken a four-month court process to reach this outcome. Nikita informed us that it had taken her many years of counselling to reach a point where she had the strength to participate in a court process and that without the assistance of a lawyer she would not have opted to endure the arduous court process that resulted from her having been misidentified as a Respondent.

Falling to balance autonomy/self determination and protection when seeking orders

40. It is common that women present to us requesting that we assist to have a PPN or an order made after a police application is varied or revoked. Most commonly this is because the conditions imposed are extremely restrictive and do not align with the woman's wishes or her views about what is necessary to keep her safe.
41. In our experience, in some cases police impose conditions through a PPN or seek conditions on application to the Court, without proper consideration of the conditions that are actually necessary or desirable for the protection of the aggrieved.
42. The conditions which most commonly cause difficulty for our clients are non-contact conditions imposed in circumstances where both the aggrieved and respondent intend to continue their relationship or are family members.
43. These conditions can cause the aggrieved to feel aligned with the respondent against the police and the courts. The aggrieved is more likely to support the respondent in ignoring or contravening the order and feel less likely to contact police if they later need assistance.
44. In our experience aggrieved people who have been subjected to domestic violence know what will keep them safe and can tell police what range of conditions will best protect them. Police must take a human rights approach and allow victim/survivors to participate in decisions about the framing of conditions to be imposed.

Case Study

Lola is a Torres Strait Islander woman and mother of four, sought advice from Caxton Legal Centre's family law service in relation to a police application for variation to a Domestic Violence Order naming Lola as the Aggrieved and her partner as the Respondent. Her partner had made threats against her during an argument over a piece of chocolate cake, resulting in Lola phoning the local police station seeking a lift to a friend's home to escape the argument. Subsequently, the police sought orders that her partner not contact her or come within 100 metres of her. Lola was very distressed by this as she had no intention of discontinuing the relationship. She was already linked in with various local family support services and reported that she was not fearful of her partner.

Lola felt afraid to voice her views in court and feared that she would not be listened to. Caxton's lawyer represented Lola at court to advocate for her and support her to express her wishes. Lola appeared via telephone from her home town in Far North Queensland because the incident had been listed at a Greater Brisbane court house due to the incident having occurred while the parties were on holiday in Brisbane. On the basis of submissions made by Caxton, the Magistrate concluded that it was not necessary to make a blanket no-contact order. The Magistrate also ordered that Lola's partner could approach within 100 metres as long as Lola provided her consent in writing.

...cont

Case Study ...cont

Lola expressed appreciation and relief for the outcome which provided:

- Protection by way of standard good behaviour conditions and non-approach conditions if she needed to withdraw consent at any time she felt unsafe;
- The ability to continue the relationship with the no-contact orders dismissed – the aggrieved can often feel compelled to 'sneak around' behind a DVO with 'no-contact' conditions so as to avoid their partners being breached by police;
- Her voice had been heard to secure the safe arrangements that were suitable and appropriate for her circumstances and without having to go through what she considered to be traumatic, being forced to speak in court.

Dealing with respondents/perpetrators

45. We have significant experience working with respondents. We see these clients predominately in our Domestic Violence Duty Law Service and our Men's Bail Support Service.
46. We approach our work with respondents/perpetrators with a focus on safety of the victim/survivor and their children. The safety of victim/survivors relies on many systems working together to support ongoing safety and a more integrated response is more likely to lead to safer outcomes for victims/survivors.⁴
47. Currently, the primary mechanism by which police respond to domestic and family violence to ensure the safety of victim/survivors and to hold perpetrators to account is through the blunt instrument of charging perpetrators.
48. In our experience front line police, dealing with a large volume of domestic violence incidents are very poorly equipped to respond to perpetrators of domestic violence and achieve safety outcomes using a more integrated response.
49. Despite repeat offending of domestic and family violence, unsophisticated perpetrators of domestic and family violence are not moderating their behaviour based on knowledge of offences, associated lengths of sentences or predictions about how their behaviour may or may not land them in one or another category of offences.
50. There is growing recognition of the complex dynamics within abusive relationships whereby simple models of deterrence may undermine efforts to deter and protect⁵. There is widespread agreement

⁴ Griffith Criminology Institute, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport*, February 2017.

⁵ Awareness of increased penalties may deter victims/survivors from reporting incidents.

amongst researchers⁶ that achieving a long-term reduction in domestic violence requires increased investment in primary prevention.

51. There is compelling evidence that a focussed deterrence model⁷ may have success in reducing different forms of violence because instead of relying on traditional deterrence activities (prosecution and punishment) it relies on a highly structured approach to targeting offenders (and victims) and the actions taken under this approach influences deterrence behaviour more than punishment severity.⁸
52. We are aware of the work being undertaken by the QPS to look at more integrated service responses to domestic and family violence but in our experience, integrated service responses like the Vulnerable Persons Unit and Co-Responder models operating in some police districts do not capture the vast majority of domestic violence incidents which general duties police respond to. The concept of primary prevention and the limitations of taking an approach where accountability being obtained only through a criminal justice response is not filtering down to front line officers.
53. It is common for our respondent clients to have had multiple interactions with police prior to us speaking to them and to have never been offered a referral to any support agency. It is very rare for our clients to have had any intervention involving officers from the Vulnerable Persons Unit or to have had contact with support through a co-responder model.
54. The safety of victim/survivors cannot be assured unless the respondent/perpetrator is well supported to stop using violence.

Case Study – Inquest into the deaths of Doreen Langham and Gary Hely

Caxton Legal Centre represented the family of Gary Hely in the inquest into the deaths of Doreen Langham and Gary Hely. We note that at the time of writing this submission her Honour Magistrate Bentley had not delivered her findings but findings will be delivered on Monday 27 June 2022.

It was apparent from the evidence at the inquest that was very limited contact by QPS with Mr Hely in the period between 7 February 2021 (when Ms Langham first made a complaint to police about Mr Hely perpetrating domestic violence) and 22 February 2021 when Ms Langham and Mr Hely died.

...cont

⁶ Webster et al, *Australians' attitudes to violence against women and gender equality: Finding from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)*, 2018

⁷ Braga AA, Weisburd D & Turchan B, *Focused deterrence and crime control: An updated systemic review and meta-analysis of the empirical evidence* *Criminology and Public Policy* 17(1): 205-250, 2018. See also Abt T & Winship C, *What works in reducing community violence: A meta-review and field study for the Northern Triangle*. Washington, DC: United States Agency for International Development, 2016.

⁸ Kennedy DM, Kleiman MAR & Braga AA, *Beyond deterrence: Strategies of focus and fairness*. In N Tilley & A Sidebottom (eds), *Handbook of crime prevention and community safety*. Oxfordshire: Routledge: 157-182, 2017.

Case Study – Inquest into the deaths of Doreen Langham and Gary Hely

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The sum total of QPS interactions with Mr Hely during this period was:

1. A 90 second phone call made by a police officer on 7 February 2021;
2. A brief conversation (approximately 3 minutes) with a Constable on 11 February 2021 during the service of the Temporary Protection Order, during which the condition of the order was read, followed by a brief exchange as to the necessity for the order;
3. Patrols carried out by various officers in Ms Langham's neighbourhood looking for Mr Hely's vehicle.

No referrals were made on either of the occasions Police actually spoke with Mr Hely. While it cannot be assumed that Mr Hely would have accepted such referrals or the assistance he might have received through such a process, there is evidence that Mr Hely had previously undertaken behavioural counselling and had recently sought assistance from his GP for anger issues.

After service of the order there was no evidence that any officer had made any attempt to contact Mr Hely by telephone over the following 10 days, despite the numerous breaches of the order alleged by Ms Langham. This inaction on the part of QPS left Ms Langham in a position where she had to continually seek assistance in ensuring that she received the protection of the TPO. A further effect of this paucity of contact with Mr Hely was that he never became the focus of any kind of Police inquiry or investigation. The Police response was informed solely by individual officers' impressions of Ms Langham.

Greater efforts on the part of QPS to locate and engage with Mr Hely during that time would have served a number of purposes:

1. To give QPS a much greater opportunity to identify whether he posed a risk to Ms Langham; and
2. To increase the opportunities for referral to be made to support services; and
3. To increase perpetrator accountability by taking seriously and acting on breaches of the TPO.

During Cross-Examination at the inquest Professor Heath Douglas agreed that it was not inevitable that Mr Hely would kill Ms Langham. She acknowledged that there were similar patterns of behaviour with at least two previous partners, which had not led to homicide.

What can be drawn from the evidence in this case is that there were a number of points where intervention, either by police or through a referral process, may have had the effect of diverting Mr Hely from his obsessive and ultimately murderous focus on Ms Langham.

Elder Abuse

55. Older women and older persons in general have been given far less attention as victims of domestic violence. Many clients of our Seniors Legal and Support Service and Health Justice Partnership are victims to the patterns of controlling behaviour and emotional abuse that characterise coercive control within family relationships, in particular relationships with their adult children.
56. These patterns of coercive control take a variety of forms, including making someone believe they have cognitive decline when they do not; deliberately not providing medications; threatening neglect; threatening placement in aged care; threatening grandchild alienation; deliberately making an older person feel they are a burden and social isolation from friends and family.
57. Coercive control within the context of elder abuse and family relationships shares the same pattern of controlling behaviour as is present in intimate partner violence. Many of our clients are victims of years of coercive control by their adult children, often without any issues of physical violence and often concurrent with issues of financial or economic abuse. For a number of our older clients, many years of coercive control eventually culminate in an act of physical violence committed by a young, physically fit adult, against an older, physically frail person.
58. In addition to coercive control by adult children against their parents, our service assists older women who have been decades-long victims of coercive control within the context of intimate partner violence.
59. It is rare, in our experience, for an older person to make a report to police about family violence because of strong familial ties, fear of repercussions, guilt and sense of parenting failure, concern about grandchildren, dependency for care and reporting barriers (mobility, hearing impairment, poor health, frailty).
60. It is extremely concerning that when a report is made, police are not able to recognise that the domestic violence laws have been enlivened and take appropriate action. Our clients describe that their calls to 000 for urgent Police help left them with sole responsibility to uphold their rights to safety and little knowledge or capability to do so.
61. We wrote a Notice to Leave for another frail client in her eighties who reluctantly decided she could no longer cope with her abusive adult son, in spite of her instincts to support him after his failed marriage and his lack of a job. Local Police advised they couldn't flag her on their system as no offence had been committed and they wouldn't necessarily become involved in a trespass matter should he over-stay his deadline to leave despite the adult son having no legal right to remain in the premises.
62. In a similar situation when a different frail older client rang 000 and then Police Link asking for a protection order, she was told the verbal and emotional abuse and the theft of her food and belongings by her adult child and his partner did not amount to domestic violence and that she should write them a notice to leave and ensure they received it. She did this in great fear of their reaction to the notice to leave. Fortunately, when she needed to ring Police a few weeks later a

different officer immediately identified the issue as domestic and family violence and offered to assist.

63. This inconsistency of Police responses makes it hard to know if older people can rely on Police for protection against intergenerational family violence.
64. There is a particular need for there to be a sufficient mechanism for police to peacefully remove unwanted persons living with an older person. Caxton has assisted hundreds of older people in this situation and finds there to be either a gap in the law and/or a gap in policing when an older person does not want to be forced into a stressful process of applying for a protection order with ouster conditions. Instead, they just want someone to remove the unauthorised occupant using existing trespass laws. Police are concerned about the rights of the occupant under tenancy laws. Caxton has provided the QPS with a lengthy briefing note on how to devise a suitable police action to peacefully remove an adult child from an older person's home where coercive controlling behaviours are significantly impacting on the safety of the older person.
65. It is clear to us when we engage with police about the abuse of an older person that there is a dire need for police to undertake training with respect to noticing elder abuse and responding appropriately. The National Elder Abuse Prevalence Study released by AIFS in December 2021 reveals that 1 in 6 older people experience elder abuse. Caxton has developed training materials specifically for police and has offered to provide training in person or by way of on-line modules.
66. At the National Elder Abuse Conference held in Brisbane in 2019, the QPS committed to a national network of police focussing on responding to elder abuse. To our knowledge, the network, which would focus on good practice in police response to elder abuse, has not progressed.
67. The designated 'Elder Abuse' position in the VPU has seen at least 7 people in that role in the last 10 years, some only lasting for 3 months. The current incumbent is very engaged to the extent resources are allocated. The lack of resources allocated to respond to elder abuse represents a complete de-prioritisation of violence against older persons when compared with the significant resources being allocated to the protection of younger women and children.
68. The Public Advocate is currently undertaking round table discussions before making recommendations about options for Queensland's adult safeguarding regime. South Australia and New South Wales have already commenced their version of an Adult Safeguarding Unit. Some of those recommendations may have relevance to this Inquiry. The Commissioner may wish to have regard to how police services are being utilised in those jurisdictions to respond to violence against older person and persons with a disability including a cognitive disability.

Case Study

Jane is a disability support pensioner in her 60's who contacted Caxton Legal Centre in relation to domestic abuse by her adult daughter, Mandy. The abuse is attributable to Mandy's mental health issues which are undiagnosed and untreated. Mandy's behaviour has included verbal and psychological abuse, including false and malicious social media posting about Jane and her family.

Jane lives with her husband, Arthur, who is Mandy's stepfather. Both Jane and Arthur have received psychological treatment for stress caused by Mandy's behaviour. Jane takes prescribed medication to help her to cope with the psychological impact of Mandy's abuse.

Mandy moved in with Jane and Arthur after claiming she had escaped her allegedly abusive husband. It was later revealed that Mandy falsified the allegations against her husband. Jane later found out that Mandy had absconded from an interstate mental health facility in breach of an Involuntary Treatment Order. It was also revealed that the Family Court had granted the husband full custody of their children and ordered that Mandy have no further contact with them.

Mandy began to make menacing posts on social media against family members while living with Jane and Arthur. She also made fictitious allegations against Jane regarding abuse of children. Eventually Mandy moved out with another family member but continued the abusive behaviour towards Jane and other family members. QPS would not assist with making a domestic violence application on Jane's behalf at any time, despite numerous requests and attendances by QPS.

Caxton's Seniors Legal and Support Service (SLASS) initially provided Jane with assistance to file an application for a Domestic Violence Order ('DVO') in the local Magistrates Court against Mandy. The Court made a Temporary Protect Order.

Jane did not want to appear in court by herself and was suffering from anxiety and distress at bringing court proceedings against her daughter. A SLASS lawyer agreed to represent Jane and made arrangements for her to attend court by phone.

This raises issues around how police assess the need for their intervention in intra-family domestic violence, particularly between women.

Case Study

John, in his seventies, rang Police when his son had become enraged for an unknown reason and kicked in the client's bedroom door. Fearing for his life, the client rang Police. When Police arrived, they spoke first at length to our client's son and daughter-in-law, not to the person who had called them. When they eventually spoke to our client they asked him what he wanted to do without explaining to him what his options for action were. Our client, who had several serious health problems, ended up being taken by Police to sleep on the couch of a relative. They offered no further assistance.

B: How any cultural issues identified within QPS relating to the investigation of domestic and family violence have contributed to the overrepresentation of First Nations people in the criminal justice system

69. In our experience a disproportionate number of Aboriginal and Torres Strait Islander people are named on protection orders. 8.5% of our clients who are respondents to an application for a protection order identify as being Aboriginal and Torres Strait Islander. We know that many clients will not identify their Indigenous status due to fear of biased treatment therefore the statistic of 8.5% is an under-reporting.

70. In our experience there is also a disproportionate number of Aboriginal and Torres Strait Islander people charged with contraventions of protection orders and First Nations people are significantly more likely than non-Indigenous people to receive a sentence of imprisonment for a contravention of a protection order (we cannot obtain these figures from our data).

71. Aboriginal and Torres Strait Islander women are particularly overrepresented in this system. They describe to us:

- a. having to use violence to fight back in response to violence from partners and being interpreted by police as the primary aggressor;
- b. being reluctant to call police and viewing their use of violence as the only way to protect themselves in the absence of a trusted police response;
- c. having being victims of long-standing abuse including child sexual abuse and intimate partner abuse, they instinctively fight back in the hope of retrieving some sense of autonomy and breaking the cycle of fear and powerlessness;
- d. a lack of trusted support services they can turn to leaving them with the sense they have to take care of themselves by fighting back;
- e. experienced differential treatment at the policing-level where cross-applications were sought by police rather than one application for the person most in need of protection; and
- f. the regular occurrence of fights and resort to violence to resolve problems in their community

72. Developing response models that include intersectionality as the approach for policing of First Nations people who use violence in domestic and family relationships will be key to better outcomes. Of our First Nations clients who are respondents to a protection order application:

- a. 33% state they have a disability or mental illness (this will be under-reported in our experience);
- b. 80% experience financial disadvantage;
- c. 30% are young people (under the age of 25);
- d. 26% are single parents; and
- e. 6% are homeless.

73. Some of our mis-identified First Nations clients report no desire to challenge police action out of fear there will be consequences for their partners (they take the blame) who already are the respondent to a protection order.
- C: the capability, capacity and structure of QPS to respond to domestic and family violence, having regard to initiatives undertaken by the QPS in response to previous reports and events**
74. We commend the QPS for establishing the Domestic, Family Violence and Vulnerable Persons Command in March 2021. Having such a unit within the command structure led by an Assistant Commissioner indicates the importance of implementing better responses to domestic and family violence.
75. We understand the work is underway within QPS to implement Domestic and Family Violence and Vulnerable Persons Units (DFVVPUs) in all 15 police districts with the goal to move from internal/ad-hoc arrangements to a cohesive, overarching and well governed approach of best practice.
76. However, despite the implementation of DFVVP Command our clients still experience very different responses from the QPS depending on the region or policing district that they live in, even if that district has a DFVVP.
77. To our understanding each DFVVP operates under a Local Operating Procedure specific to that district. There are differences with in the DFVVPs as to:
- a. The level of resourcing;
 - b. The presence of detectives to investigate criminal conduct;
 - c. The roles and function of staff within the DFVVP;
 - d. Whether the DFVVP provides an audit and oversight function to general duties officers or whether they case manage matters or both.
 - e. Whether other service providers, such as domestic violence support service workers work in a co-response model with the DFVVP.
78. It is our view that the DFVVP should operate consistently across all 15 policing districts with the specific tailoring necessary to meet the needs of the community the particular DFVVP is targeting.
79. The inquest into the deaths of Doreen Langham and Gary Hely considered the functioning of the Logan DFVVP and the inquest into the deaths of Hannah Clarke, Aaliyah, Laianah and Trey Baxter and Rowan Baxter considered the functioning of the South Brisbane DFVVP. Her Honour Magistrate Bentley is set to deliver her findings in both these inquests in the week commencing 27 June 2022. We strongly recommend that the Commission closely examine the factual findings and any recommendations that her Honour makes in relation to this issue.

D: The adequacy of the current conduct and complaints handling processes against officers to ensure community confidence in QPS.

80. It is our view that the current QPS complaints handling process is wholly inadequate and erodes community confidence in QPS.
81. Our clients experience great difficulty in trying to progress complaints through the internal QPS complaints processes. Our clients are dissatisfied with the responses they receive to complaints and if we advise that they should make complaints about particular conduct they are often reluctant because of prior poor responses to past complaints. This is more so the case of First Nations clients.
82. Our clients do not have trust that the internal complaints processes are impartial or that they will receive a fair hearing of their complaint.
83. After making multiple complaints to the police about their failure to investigate acts of domestic violence one client told us, *"I will never go to them for anything to do with this [domestic violence] again, I have no trust in them at all. I'm not saying that they do not do good work, I will always respect the great things that they do. They save lives and my kids are still taught that police are good and can be trusted. It is just my personal experience has taught me that saving their own reputation is more important than saying sorry and helping to fix the problem. They could have helped me more to rectify the situation pretty much straight away and I wouldn't have gone crazy thinking I was being followed."*
84. When our clients do make complaints through the internal complaints processes the complaints are often found to be 'unsubstantiated' or found to not require further investigation because they relate to matters of 'customer service'.
85. We receive similar responses when we make complaints on behalf of our clients. We have also been told by Ethical Standards Command on a number of occasions that there is 'insufficient evidence to proceed any further' without explanation as to what investigation has taken place, evidence examined or opportunity to provide further information or evidence.
86. In order to ensure community confidence in QPS, the internal complaints process must be human rights compliant and respond to complaints quickly, thoroughly and transparently. The failure to respond to complaints quickly and appropriately in the context of policing domestic violence can have devastating impacts on safety, as the case study below demonstrates.

Case Study

Alicia had a temporary protection order in place when her ex-partner attended her house and violently assaulted her, in the presence of her children. Her allegations included a choking, but the respondent/defendant was only charged with assault occasioning actual bodily harm.

Alicia fled the house with her three children and was assured by police her address details would be kept confidential.

The respondent received a copy of the brief of evidence, having pleaded not guilty to the charges. The brief contained Alicia's new address. Despite being on bail and wearing an electronic bracelet, the respondent attended Alicia's house. She was petrified but nothing adverse occurred, with the respondent just boasting that the police had told him of her new address.

Alicia did not call the police as she believed the electronic bracelet would immediately alert the police (this is a common mistaken belief of complainants/aggrieved). Police attended over an hour later.

Alicia made a complaint to the police the following day about her address being provided to her ex-partner. She requested an investigation into how her the disclosure occurred. There was no acknowledgment of her complaint.

The respondent pleaded guilty. Alicia was told she would be notified of his sentence date. She was not. He received a short prison sentence but she was not notified of the outcome.

For her safety and the protection of her children, Alicia had no choice but to befriend her ex because he knew her new address and would turn up unexpectedly. For the sentencing, Alicia provided a character reference. She felt she did not have a choice. It was through this process she was able to obtain a copy of the court brief which confirmed the police had disclosed her address in the documents.

Despite providing police with evidence of their breach of privacy, the police still refused to acknowledge her complaint or take steps to remedy the breach.

It was not until she attended Caxton and a further complaint was made on her behalf that an apology and admission was received – more than 18 months after the breach occurred. The impact on Alicia has been far reaching and was compounded by the police's failure to acknowledge the breach and take steps to protect her safety promptly. It has significantly impacted her sense of safety for herself and her children, her ability to work, leave the home, retain relationships with friends and family and plan for the future. She cannot afford to move house again due to the current rental crisis and costs of moving (including breaking her lease and paying bond).

This submission was prepared by Klaire Coles, Director Coronial and Custodial Justice Practice and Cybele Koning, CEO. Please do not hesitate to contact Cybele Koning by telephone to [REDACTED] or by email to [REDACTED] if you have any questions regarding this submission or if we can be of any further assistance to the Inquiry.

Yours faithfully,



Cybele Koning
CEO
Caxton Legal Centre Inc.

