

**COMMISSION OF INQUIRY IN THE STATE OF QUEENSLAND
AT BRISBANE**

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

AFFIDAVIT OF DEBBIE HEWITT

I, Debbie Hewitt, solicitor, employed by the Women's Legal Service Queensland, [REDACTED]
[REDACTED] in the state of Queensland affirm and declare as follows:

1. I was admitted as a solicitor on 29 January 2007. From that date to 29 January 2017, I worked in private practice, usually as a Legal Aid preferred supplier in family law practice. A significant part of my private practice was representing women affected by domestic violence including representing clients in domestic violence trials as a solicitor advocate. I have been employed at the Women's Legal Service Qld (WLSQ) since 29 January 2017, as a domestic violence duty lawyer and domestic violence and family law lawyer. I am the Respondent Lawyer / Women as Respondent's lawyer at WLSQ.

Information about the Women As Respondents (WAR) program

2. The bulk of the women who contact WLSQ seeking domestic and family violence assistance are victims of domestic or family violence themselves, and are usually an aggrieved person in a protection order application. Most women who contact WLSQ are assisted by one of our duty lawyers. That assistance varies, and includes advice and at times, assistance with a legal task, like drafting a document, or assisting with referrals to other services. Generally, these women are able to access Legal Aid funding for assistance with their matters or fund a private lawyer themselves for their protection applications.
3. Respondents, however, cannot usually obtain a grant of Legal Aid for representation and are often financially disadvantaged by a controlling partner and unable to afford a private lawyer. There is nowhere for them to go if they are not able to represent themselves, or, they are forced to have to represent themselves in court because the duty lawyer service when provided at court does not cover appearing at the protection order hearing.
4. Based on our service delivery and identified client needs, WLSQ identified that there

Signed: [REDACTED]

Taken by: [REDACTED]

was a need for women as respondents to receive assistance, because women in need were being misidentified as perpetrators of domestic violence when they were in reality the ones most in need of protection.

5. In response to this, and the information coming out of the domestic and family violence sector, WLSQ established the WAR ("Women As Respondents") program, funded by WLSQ own internal fundraising, in September 2020.
6. Further information about the plight of women mis-identified as respondents was released in November 2020 by ANROWS in their report Accurately identifying the 'person most in need of protection' in domestic and family violence law - ANROWS - Australia's National Research Organisation for Women's Safety].
7. The WAR programme offers legal assistance and representation to women who are respondents in applications or who are respondents in cross-applications currently before the court. The WAR program has provided case work and assistance to women who WLSQ and I assessed being as mis-identified, and in fact the person who is most in need of protection. Our aim is to assist victims of high-risk domestic violence who are particularly vulnerable. Vulnerabilities include being from Culturally and Linguistically Diverse background, and/ or are suffering debilitating mental health issues like PTSD, anxiety and depression.
8. All of my case clients are from South East Queensland. I have given advice to other clients in other parts of Queensland.
9. A very small number of our clients through this program end up being identified by the Court as respondents, but almost all are not
10. The WAR program consists of one part-time solicitor with some secretarial support and occasional assistance from *pro bono* barristers.

What my role entails and my work

11. I receive referrals from within WLSQ from our solicitors who encounter respondents. I also receive referrals from our outreach programmes such as our duty lawyer service, prisons and health justice practice.
12. I make contact with the women and I offer telephone advice appointments to them. They are provided lengthy advice appointments during which I provide them with legal advice about the orders being sought and the options they have open to them. In that process, I get more information from them about their situation.
13. I am then in a position to determine if they are suitable for the WAR programme.
Women have met the criteria for involvement in the program if they are:

Signed:

Taken by:

- a. Actual victims of domestic violence
 - b. Vulnerable in another way due to their circumstances, living situation or language / cultural barriers, have mental health issues
 - c. Without resources to obtain private representation
 - d. In some other way unable to represent themselves, like being illiterate, high care responsibilities (children, aged parents).
14. If they meet the criteria and want the assistance, they become case clients. Case clients are provided with assistance and representation including preparing submissions to Police Prosecutions, drafting documents and affidavits, witnessing and filing documents, representation at mentions, issuing subpoenas as appropriate, representing the client at trial as a solicitor advocate or, occasionally, instructing *pro bono* counsel. I have limited *pro bono* counsel available so I limit them to clients with complex matters.

Data

15. Since the beginning of the WAR program in September 2020, I estimate having advised over 100 women and of those given case client assistance to approximately 35 women who meet the vulnerability criteria explained above. The outcomes include:
- a. Some have been dismissed and discontinued by Police Prosecutions (usually late in the proceedings);
 - b. Some matters are dismissed by the Magistrate. In some of these cases, Police Prosecutions offered no evidence as they had no discretion to withdraw the applications;
 - c. Some went to hearing and no orders were made having been successfully defended;
 - d. In some cases, where arguably if the client had gone to hearing, it is unlikely that orders would be made, Police Prosecutions have offered orders of short duration with only minimal conditions and my clients have agreed to consent without admissions to these orders;
 - e. Very few matters (2 or 3) have gone to hearing and my client having adverse findings against them and orders being made against them, or my clients were properly identified as perpetrators of domestic violence.

Difficulties faced in having a protection application withdrawn and role of Police Prosecutions

16. The bulk of the matters for WAR clients relate to police applications for Protection Orders, usually arising from Police Protection Notices ("PPN") issued by police from

Signed:



Taken by:



incident call outs, though some applications are private applications, often against women named as Aggrieved on Police applications.

17. The Police Prosecutions response to submissions regarding withdrawing a Protection Order application depends on the area and location of the incident where the matter occurred giving rise to the application, and the approach of the individual Police Station where the complaining Police Officer is based.
18. This creates difficulties in trying to achieve the best outcomes for my clients.
19. In one region, there is an inflexible blanket refusal to withdraw a Protection Order application made by Police no matter what the circumstances. More than one Police Prosecutor from that region has told me there is a directive to authorising Police Officers that no authorisation will ever be given for any applications to be withdrawn, and that all applications are followed through to trial regardless of the merit of the prosecution case. When hearing a matter in that region, on one occasion at trial the Magistrate indicated that unless the Police Prosecutor got immediate instructions to withdraw he would be entertaining an application for costs. On that occasion the Police did withdraw, though this is very rare.
20. In another region, Police Prosecutions do not withdraw their applications, but they file no evidence and then make no objection when we seek a dismissal because of the failure to file. They are acknowledging they are not able to withdraw a Protection Order application and are, instead, allowing filing dates to go by without filing any evidence, yet, in these cases all parties are having to front up to court so that the court can dismiss the application. This is not satisfactory, as it wastes resources, it traumatises my clients, and, also places them at risk because a Magistrate can still rely on the application itself, even if no further affidavits are filed, which placed my client at risk of adverse orders even if no additional evidence is filed by the prosecution.
21. In other regions, Police Prosecutions offer to "settle" if the respondent consents to orders with only mandatory terms for just one year or even for as little as 5 or 6 months. Traumatized respondents are readily persuaded to take these offers instead of going through the experience of cross-examination by the prosecutor. These orders made by consent do however, criminalise otherwise non-criminal behaviour and put them at risk of false allegations of breach when they become subject to an order.
22. In contrast to the above, in other regions, withdrawals happen routinely, though it is difficult to get Police Prosecutions to respond to written submissions alone, and they will usually only withdraw a matter after affidavits are filed. Often Police Prosecutions only resolve the issues on the day of the hearing or the day before, at the very last moment

Signed:



Taken by:



after we have spent time, and the client has gone through the process of preparing affidavits and the matter for hearing unnecessarily.

23. The mixed responses and lack of consistency in withdrawing unmeritorious Protection Order applications causes high levels of distress to my clients, it is resource intensive, and is detrimental to my vulnerable clients.

Systemic Issues Identified in the Women As Respondents program

Narrow Enquiry

24. Police enquires will concentrate on finding who is responsible for the incident they have been called out to, for instance, the scratch on his face, the smashed crockery, the clothes basket tossed onto a bed, they don't look at the full relationship.
25. Attending Police are incident based or event driven, in most cases responding to calls for assistance. Attending Police are not getting the full picture of the history of the relationship, the history of domestic and family violence, nor is a useful risk assessment undertaken which would involve the Police asking about behaviour over a period of time. Often conduct that would be described as 'coercive control' goes unrecognised, as does other features in the relationship. The narrow inquiry has the long term impact of isolating and frightening the victim, because they do not trust the Police to take their complaints seriously and act on them in the interests of their safety.
26. Police usually (but not always) get individual accounts from each party. A pattern I see occurring is that often more junior female Police Officers talk to the woman and the more senior male Police Officer talks to the man. The process of considering the evidence and making the decision about who is in need of protection is often made by the more senior male officer, with little or no reference to the more junior female officer.
27. Often Police will get an account from only the perpetrator, or from the perpetrator first which results in the Police framing of the incident being shaped by the perpetrator's account. The primary aggressor often presents as calm, reasonable, friendly and may have minor or superficial injuries.
28. I also notice that it is rare for Police to talk to neighbours as well, despite complaints coming from neighbours.

Traumatized victims failing to provide a coherent account

29. Police are often not getting a full picture of what happened from a distraught, sometimes injured, victim.
30. These non-comprehensive incident-based enquiries that often occur at the door step so

Signed:



Taken by:



to speak, and biases Police Officers to assess the situation without enough information about the relationship history and relationship dynamics.

31. I often see PPN's indicating that the respondent woman was taken to hospital to have injuries treated, but there is nothing properly documented to reflect how or why that occurred.
32. A traumatised victim can be unable to recall, or to communicate everything that has happened. In some cases they have concussions. A victim's inability to provide a calm, chronological account is seen as suspicious and an indicator of offending. A victim may be angry at being accused, especially when they have suffered injury, or a long history of abuse from the abuser. A victim may be labelled as being jealous or have some other reason for acting out or responding to the violence against her. A victim may be frightened of making disclosures because they anticipate further harm and escalation of the danger. Some victims have described being embarrassed at revealing what they have let perpetrators 'get away with doing to them'.

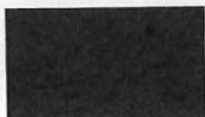
Traumatized victims may have developed mental health problems or self-medicate

33. Mental health is often negatively impacted by abuse and diagnosis of Post Traumatic Stress Disorder, anxiety, panic attacks and depression are common among my respondent clients.
34. These are conditions that are unlikely to cause violence and more likely to be caused by violence, but "mental health" is an umbrella category that Police see as an indicator of offending or risk for future offending, and adds to the misidentification risk.
35. Victims who suffer anxiety related illnesses or who are having panic attacks may respond poorly to Police who expect them to respond immediately to questions or directions.
36. Similarly, there are victims of abuse who use alcohol and other drugs as self-medication to assist with coping. Intoxication (and occasionally concussion mis-identified as intoxication) is seen as an indicator of offending.

Traumatized victims are not always seen to be "cooperative"

37. I have repeatedly seen this on body worn camera footage when the Police Officers are discussing the issues, but not so often in the documentation. Being uncooperative is seen as an indicator of offending, of having something to hide, which leads the Police to believe the perpetrator's account. The calm articulate perpetrator is easier to deal with and their version is often accepted over the victims.

Signed:



Taken by:



Victims of strangulation are still being disbelieved when no marks are visible

38. Strangulation is often still misunderstood by Police Officers. I repeatedly see police documents which say they couldn't see any marks on a female victim's neck or throat so they dismiss allegations of strangulation, and instead consider the woman to be a perpetrator because she has acted physically to defend herself. In one recent affidavit the Police Officers dismissed the woman's allegations that she was grabbed by the throat and took out a PPN against her because her younger, stronger adult son had a scratch (which in the photos was minor, only about 2.5 cm long on his arm, even though he had indicated that it was not from her, and he was not in fear).

Weaker victims sometimes use a weapon against a stronger attacker

39. These situations often involve women victims who reach a point of leaving or defending themselves. They do so because of extreme fear, and not because they are violent. Because they are usually physically smaller and weaker than their male abusers, when attacked the likelihood of a potentially lethal attack increases when victims leave or threaten to leave. These women sometimes resort to using, or threatening to use a weapon to defend themselves. This is often when they are being violently assaulted or strangled.

40. Because police responses are incident based and event based in their focus, they are trained in identifying the offender, to prioritise the use of a weapon as an indicator of offending, so that the woman with the knife, pliers, or the baseball bat used to defend herself (or even the use of her own fingernails) is identified as more dangerous than the man using strangulation or other physical violence. (see case studies below).

41. I have also seen the alleged violence my clients have been said to be committed exaggerated by the perpetrator (and then the Police) which results in my clients being misidentified as perpetrators. For example, I had a client who threw a basket of clean laundry onto her son's bed (the same one with the 2.5cm scratch) and she was told this was an act of domestic violence. And, in one matter that went all the way to trial, my client was in the kitchen using a knife to cut up vegetables when her partner attacked her from behind. He grabbed the knife and got cut on the inside of his hand. Police described this as she having "armed herself with a large kitchen knife" though she was holding it incidentally at the time she was attacked. They maintained this in the face of the "Aggrieved" supporting my client's account in the evidence that was led at the hearing.

Signed:



Taken by:



42. While these types of examples may be violence, when it is self-defensive, or reactive, it is not necessarily the kind of abusive conduct the legislation is meant to deal with, and its occurrence is not what should determine the person against whom a protection order is made, or a Police Protection Notice application is made.

Having decided who the offender is, the Police evidence (and later the Police Prosecutions) is often skewed to fit that decision

43. Police evidence is adapted and shaped to fit the pre-determined decision about who the offender is believed to be once that decision is made, whether unconsciously or not. Once made, it influences not only the dealings with the parties, but also that lack of willingness to withdraw a Protection Order application. See case examples below.
44. For example, in one incident the Police Officers interviewed an eye-witness, and on being told a version of events that matched my clients version, the police still did not accept that her partner was the aggressor and viewed my client as having a mental health issue. No formal statement was taken from the eye-witness. In this case the application was withdrawn on the day of trial.
45. In another case the perpetrator had pinned my client by the arm and leg in a doorway, and while she was pinned he burned her with a cigarette lighter. The PPN in naming her as respondent described this as *"the aggrieved has retrieved his cigarette lighter from his pocket and ignited the flame, holding it against the aggrieved's [sic] leg to scare her"*. As set out below, in this case, on their own evidence the perpetrator had lied. This is one of the case studies below.

Controlled, frightened victims are not forthcoming

46. Often victims are too frightened to call police so calls are made by abusers as part of the pattern of control or in response when a victim does push back or defend herself, or is perceived to dare to leave, or actually threaten to leave. The abuser is heard first and this impacts police framing of the incident. This occurred in one of the case studies below.

Other issues

47. I have also encountered the following additional matters in my work with the WAR program:

Signed:



Taken by:



- a. Police Prosecutors representing both parties in cross-applications so victims are being prosecuted as respondents by the same Police Officers who are representing them in the applications for orders to protect them;
- b. Police Officers telling respondents when they serve them with applications they "don't need to come to court", or providing incorrect legal advice about attending court;
- c. Police giving erroneous family law advice about property or parenting, including for instance the supposed "rights" they believe a father is entitled to, sometimes exacerbating the conflict situation or wrongly identifying a woman protecting her children as in the wrong.

Two illustrative cases common to my clients

Case Study 1 – CLIENT A

48. Client A had separated from her de facto. Both parties were on the lease. She agreed to let him remain in the house to pack his things over the weekend, while she stayed at her parents. Whilst he was packing up, he installed secret cameras, and he sent several text messages that began with "Come over for sex", and ended with "how about you come over and I rape you anally". He started cutting up her clothes and other personal belongings, and sent her pictures of these items. She went over to protect her belongings. She took a friend along for safety, and when they arrived he had locked the front door and tied twine around the door knob from the inside. She used her keys to unlock the door, and she held pliers which she tried to cut the twine with, however, he prevented her from fully opening the door. He pinned her arm and leg in the door, using his body weight against the door. It was alleged that she was waving the pliers in a threatening manner. She could not have used pliers in a menacing manner because there was a door between them. While she was pinned in the door, he used a cigarette lighter on her arm and leg (even on the police material in the PPN, he said he put the lighter on her leg he claimed to 'scare' her – concerning behaviour that attracted no concern by the court). He closed the door. She and her friend/s waited outside, in her car and allegedly 'mocking' him (noting this is conduct of the friends not of Client A that was alleged). He came outside, and turned on a hose, which soaked parts of the inside of her car. They both called the police. (The PPN itself alleged that he went out, one of the friends grabbed the sprinkler and it busted flooding the car. It was on the Police Officers own version in the PPN that it was the friends who caused this, yet Client A was the one blamed). Client A was ultimately nominated by police on a Police Protection

Signed:



Taken by:



Notice as a perpetrator of domestic and family violence. (Police Officers expressly said in the PPN that Client A had "escalated" the matter, and behaved in an intimidating manner by arming herself and refusing to leave. As set out above, this was not the appropriate view of what in fact occurred to warrant a PPN against her). Police assumed that she was attempting to "break in" to his home in circumstances where the home was hers and he was being allowed to be there to pack up his own possessions. The did not include any questions about the relationship. The Body Worn Camera shows her interactions with Police asking her why she did not move her car.

49. The true context of the relationship was that the relationship was one of 5 to 6 years duration, during which she had been subjected to extensive domestic and family violence. She was reluctant to talk about the abuse because of her profound shame and embarrassment at what she had "allowed him to do to" her. However, this was not considered by police, who even after the history of domestic and family violence was put into evidence via affidavits, wanted to press for a Protection Order. Once the matter was listed in court, and the full relationship set out in my client's material, the Police Prosecutions were also committed to pursuing a protection order against her, despite two magistrates indicating from the bench that the Police had the wrong respondent, and refusing to make a temporary order against her. It took WLSQ about 18 months to get to trial, and the matter was only withdrawn at court after the Magistrate threatened a costs order against the Police Service. My client was very deeply traumatised by the experience of domestic violence, and the police action thereafter.

Case Study 2 – CLIENT B

50. Client B was involved in a relationship with a man, who she considered to be a boyfriend, who moved into the same building apartment block as her. Somebody had scratched the word "slut" into a panel of his car and she was blamed. After arguments earlier during the day, and after an act of penile oral rape of her the night before, and her declining a threesome with his ex-partner, he became enraged and was yelling abuse at her. She went home and later heard noises outside her unit – he was on her balcony, smashing her pot plants and yelling and screaming. There are photographs of the damage caused. She was very afraid of him and his behaviour. She grabbed a baseball bat and opened the door. She told him to leave, but he laughed and came at her with a chair. He grabbed the baseball bat in her hand, but she hung on to it, afraid of what might happen if he could swing it at her. He tried to push her over the balcony using the baseball bat to lift her, then knocked her down and smashed her head and body into the floor saying he would kill her. She had photographs of bruises on her

Signed:



Taken by:



body. A neighbour intervened by yelling out and threatening to call the police. After he stopped the physical assault, he continued to say he'd get my client. He eventually left. She and a neighbour cleaned up.

51. Police turned up many hours later. She said she didn't want to speak to them because she felt sick. She was an indigenous person with a family history with police violence, and she also had a pre-existing anxiety condition that was exacerbated when they showed up. She was also afraid of his retaliation if she spoke to police (especially as he lived downstairs). The Body Worn Camera Footage showed that she was not cooperative. She was uncomfortable about having had the baseball bat in her hand, and the Police seemed to be focussing on who had the bat instead of why it was being used. She signed a notebook statement saying she did not wish to proceed with a complaint for him smashing the pots, or wilful damage or assault (though it is acknowledged it was not as comprehensive as her above statement). No-one turned their minds to the possibility that she could have a concussion or considered whether she could have any injuries. Police then spoke to him and he showed the police a couple of insulting texts from her. He told them that the word 'slut' had been carved in his car, which the police accepted without question that she had done. He accused her of coming at him with the baseball bat and trying to hit him. Coming back then to speak with Client B, she was questioned about the allegations and her unit was searched - the baseball bat was photographed. That day, after the police had left, he rushed at her again, threatened her and spat at her. When she tried to make a police complaint, the Police told her they would not be taking any complaints as she had been determined by the Police Officers who attended to be the aggressor.
52. Two days later, the neighbour who witnessed the attack and threats to kill, attended a police station and attempted to make a statement about the incident she had witnessed. The Police at the counter told her that she could not make a statement because the attending officer had not requested a statement from her at the time. She left her details and she was told she would be contacted by some one later. Two months later, Police obtained an informal interview from the neighbour who recalled that the Police Officer dismissing her account of the events due to the mental health of the woman. No formal statement was ever obtained and not notice provided to Client B that any information had been obtained.
53. My client was forced to apply for her own protection order despite the attack, the threats to kill, and the oral rape upon her. As part of the domestic and family violence proceedings she filed an affidavit that included photos of large dark bruises to her body

Signed:



Taken by:



and her QPS statement of his attack on her. No charges were laid for his conduct, despite her pursuing the complaint about the oral rape.

54. Per their affidavit material, the Police Officers made numerous attempts to contact the boyfriend who they considered was the aggrieved. Despite no contact, they persisted with the application. They relied on the "abusive nature of the text messages" that she sent him in their supporting affidavits (these contained no threats of harm, no threats of violence, no intimidation). Police Prosecutions persisted with the application even after affidavit material was filed. The application was withdrawn by Police Prosecutions the day at the hearing, after only providing notice they would withdraw on the day before.

All the facts and circumstances deposed to in my affidavit are within my own knowledge and belief, except for the facts and circumstances deposed to from information only, and my means of knowledge and sources of information appear on the face of this my affidavit.

Affirmed by the deponent at Brisbane this [4th day of July 2022

.....
DEBBIE ANN HEWITT

.....
WITNESS NAME
Solicitor

Signed:

.....

Taken by:

.....