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

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

STATEMENT OF LEWIS SHILLITO

Name of Witness:	**Lewis Shillito**
Date of birth:	[redacted]
Current address:	[redacted]
Occupation:	**Director of Criminal Law** **Aboriginal & Torres Strait Islander Legal Services**
Contact details (phone/email):	[redacted]
Statement taken by:	**James Coghlan**

I, Lewis Shillito, make oath and state as follows:

Professional Background

1. I studied law at the University of Tasmania, graduating in 2006.

2. Following my admission, I commenced working for the North Australian Aboriginal Justice Agency in Katherine in the Northern Territory.

3. Following this role, I relocated to Queensland where I worked with the Queensland Police Service ('**QPS**') as a civilian prosecutor for around 18 months.

4. In 2010 I commenced with the Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ('**ATSILS**').

5. I was admitted as a barrister in 2011 and continued as a criminal law practitioner with ATSILS until I was appointed as the Director of Criminal Law for ATSILS in 2016.

6. I have held this position since then – though spent the last 15 months working in Tasmania for the Tasmanian Aboriginal Legal Service as a Senior Criminal Lawyer and Acting Principal Lawyer.

7. ATSILS is a community-based organisation established to provide professional and culturally competent legal services to Aboriginal and Torres Strait Islander people throughout Queensland.

8. Our key areas of service delivery are:

   (a) Criminal law representation;

   (b) Family law representation and advice;

   (c) Civil law representation and advice;

   (d) Prisoner ThroughCare Services to address recidivism;

   (e) Law reform and community legal education;

   (f) Coronial and public sector monitoring; and

   (g) 24-hour assistance with police interactions.

9. As the Director of Criminal Law, I have a personal case load and I also assist practitioners employed by ATSILS throughout Queensland with their matters and various work issues. I also provide advice to our senior executive on matters of law and policy when called upon, and I represent our organisation in a variety of criminal justice stakeholder forums as delegate of our Chief Executive Officer.

ATSILS involvement with domestic and family violence matters

10. ATSILS' criminal law team assist people charged with breaches of Domestic Violence Orders ('**DVO**') and other offences – including offences particularised as domestic violence offences pursuant to Section 12A of the *Penalties and Sentences Act* 1992.

11. Our criminal law team assist such clients from the commencement of proceedings, that is first through our 24-hour phone line where a person can receive legal advice and in-person assistance where necessary when in the company of police facing charges or allegations such as this. We then assist clients at court initially on a duty lawyer basis and then if ongoing representation is sought, we can open a file and act as their ongoing legal representative, provided the client meets ATSILS' eligibility for assistance requirements.

12. ATSILS' family law team assist people seeking advice or assistance with matters including where they may be applicants or respondents to DVO's, or indeed where a person seeks assistance to apply for a DVO.

13. ATSILS' family law team can provide telephone advice to parties to DVO applications, including in circumstances where they may be in police custody for the purpose of an order

being made or served. They then can assist clients with DVO applications, both on a duty lawyer basis initially and, again subject to eligibility requirements being met, with us opening a representation file and acting throughout their matter up to and including a hearing to determine a DVO application.

14. ATSILS has a conflicts policy that addresses the circumstances in which we are able to assist prospective clients, generally speaking we would not act for a party to a DVO application if we are currently or have previously acted for the other party. Again, speaking generally we give priority to assisting the party who approaches us first, but we have priority assistance criteria in other cases whereby vulnerable clients, younger clients and woman are prioritised.

ATSILS' experience of police investigating and prosecuting domestic violence matters

15. ATSILS observes a wide range of experiences of our clients with QPS in relation to domestic violence matters – including investigations; interactions between police, including prosecutors, and witnesses or parties to DV matters; negotiations between our office and police prosecutions (and the Director of Public Prosecutions in relevant cases).

16. In our experience, at times the QPS first responding officers can have difficulties in identifying, or correctly identifying, the relevant offender in a DV interaction. When this occurs a common practice is to seek reciprocal DVO's against both parties, rather than to lay charges or to consider alternate steps to resolve the matter.

17. In such cases, it has been our experience that some police will provide advice to parties to the effect that if they do not wish to they do not need to attend court for the resolution of the DVO application, in circumstances where such advice is provided to clients who may not have an accurate understanding of the consequences of such an order being made this can have significant consequences.

18. I have also observed some stereotyping by responding officers in relation to the presentation of a victims at the scene and not presenting as the "ideal victim." It is usually most apparent on police body worn camera recordings however it is not something I have regularly seen. From what I have observed, for DV matters involving two first nations people, I have more often seen a general malaise or disinterest from responding officers.

19. We have also seen DVO applications and orders made with ouster conditions or those that have such an effect (such as no-contact or residential conditions) – both from a family home, and at times from an entire community. In circumstances where there may be a longstanding relationship and potentially children shared by the parties, such conditions (whilst obviously necessary or warranted in many case) can also if not properly considered have dramatic consequences for both parties, and can also inevitably lead to breach proceedings.

20. Our experience is that we are frequently approached by aggrieved's seeking to vary a DVO or police protection order because they wanted to be able to retain contact with the respondent; often where there may be children and shared care or support is needed. It frequently appears that a paternalistic and non-consultative approach is taken by QPS,

presumably out of a concern or for the welfare and safety of the aggrieved, that can have consequences such as those outlined above.

21. Investigations with respect to DV allegations are, in our experience, often lacking in care and consideration. This is seen in failures to speak with eye witnesses, perceptions of anti-police bias informing decisions either not to speak with witnesses or to prefer non-indigenous witnesses to indigenous ones, refusal to engage with witnesses after charges have commenced – a preference for simply summonsing witnesses (including victims) where it is understood they are or are likely to provide hostile evidence, and failures to consider, secure and obtain corroborative evidence such as medical records and CCTV footage.

22. Whilst it is obviously well understood the heavily time pressured and difficult circumstances in which QPS officers must operate, the above matters are most frequently seen in 'low end' breaches of DVO's, where more serious charges are also laid (for instance Assault occasioning bodily harm, wounding, grievous bodily harm, choking and murder or manslaughter) such investigations appear to be given greater input from more experienced investigators and though similar issues can and do arise, such are less frequent and there tends to be greater scope for such to be addressed during the prosecution process.

23. Further there is some inconsistency to this, but seeking to negotiate or resolve charges arising from DV breaches or related offences is very challenging. QPS prosecutors at times state that there is either a 'no negotiation' policy, or else treat consultation with investigating officers as determinative of their discretion with respect to charge negotiations or submissions to discontinue matters – irrespective of the merit of such submissions or proposals. I cannot comment extensively on whether this occurs when negotiating DVO conditions and orders however my understanding is that a dogmatic approach is often taken by the QPS in relation to contact conditions. If they are sought by the QPS, absent an aggrieved demanding it be removed, and, even then, QPS will not be open for those conditions to be removed.

24. This consequently impacts the advice lawyers need to provide to clients charged with such offences, and in our experience leads to more hearings being conducted than would otherwise need to occur.

25. In relation to contact with police by Aboriginal and Torres Strait Islander women, I have seen that some women appear to be reluctant to contact police and that DV incidents are frequently reported to police by neighbours or others, although plenty of reports do come from the victims themselves. This can lead to a history of less serious incidents not being reported until a "more serious" or violent incident has been reported however I have not observed any specific prevalence of this occurring.

26. I have also observed that frequently initial reports provided by ATSI women are impacted by gratuitous concurrence. Initial reports made are therefore not always accurate and police need to be extremely careful when taking statements or versions as to not lead victims or witnesses beyond what their actual account is – doing so complicates the proceedings that follow and can have the effect of undermining the credibility of the victim

or witness at a later hearing if such evidence is not maintained. The use of support persons, in culturally safe environments, could be beneficial to improve that process.

OATHS ACT 1867 (DECLARATION)

I, Lewis Shillito, do solemnly and sincerely declare that:

(1) This written statement by me dated 27 July 2022 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*.

[redacted] Signature

Taken and declared before me at BRISBANE this 27TH day of JULY 2022.

Taken By [redacted]

Justice of the Peace / Commissioner for Declarations / Lawyer