



## QUEENSLAND POLICE SERVICE STATEMENT OF WITNESS



Occurrence #: \_\_\_\_\_

Statement no.: 1Date: 02/08/2022**Statement of**Name of witness: LONGHURST David LeslieDate of birth: \_\_\_\_\_ Age:      Occupation: Police Officer**Police officer taking statement**

Name: \_\_\_\_\_

Rank: \_\_\_\_\_

Reg. no.: \_\_\_\_\_

Region/Command/Division: \_\_\_\_\_

Station: \_\_\_\_\_

**Statement:**

David LONGHURST states.

1. I am a Sergeant of Police, and my current role is Officer in Charge (OIC) of the Mount Isa Police Prosecutions Corps (MIPPC). I was sworn in as a police officer in July 2015.
2. I first arrived in Mt Isa as a trainee Prosecutor in July 2019. I have been the OIC for just over twelve (12) months and was acting in the position approximately six (6) months before that.
3. Prior to arriving in Mt Isa, I spent three (3) years a general duties officer in Moura. Prior to that I completed my first year in general duties in Rockhampton.
4. The MIPPC covers the Mt Isa Court Circuit (Mt Isa, Cloncurry, Julia Creek, Camooweal, Dajarra, Boulia and Birdsville). Mt Isa sits daily. Cloncurry sits once a month. The others sit every three (3) months except for Birdsville that sits once a year. The Mt Isa Court Circuit is presided over by the one Magistrate, at this time, HH Mac Giolla Ri.
5. MIPPC also covers Gulf Court Circuit (Normanton, Doomadgee, Mornington Island and Burketown). The circuit is once a month, which a video call over generally held twice a month. The Gulf Circuit is presided over by a Townsville Magistrate who normally swap every month or so.

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CONTINUED STATEMENT OF: **LONGHURST, David Leslie**

6. At the current time, the MTIPPC have three (3) sworn police officers, including myself prosecuting in Mt Isa. A further sworn officer is based in Normanton. There are three (3) current vacancies, all of which are civilian prosecutor spots.
7. When Gulf Circuit Court sits, a Prosecutor attends from Mt Isa and joins with the Normanton based prosecutor for the circuit.

**Observation and experience of Domestic Violence (DV) as a Prosecutor**

8. Other than a brief couple of months in Rockhampton while on the Prosecutors Training Course, I have only prosecuted in the MTPPC region.
9. I have found prosecuting DV matters to be persistent, difficult and a times deflating. However, I do find that in Mt Isa there is a driven group of persons and entities that in general are working together to make the best of a difficult situation and environment. These people and entities include, the legal fraternity, the Court, the Magistracy, Qld Police Service and the community justice group.

**Persistent**

10. The majority of persons that appear before either the Civil and Criminal Jurisdiction for DV related matters are indigenous Australians. On average, there are two (2) to three (3) persons in custody in Mt Isa on DV related offending. The offending ranges from violent offending to offences against the conditions of the order (no contact, not approach) often by consent of the aggrieved and without behavioural identifiers of domestic violence (s8 DFVPA).
11. In respect of civil applications, in Mt Isa, our DV civil call over is on a Wednesday. It is common to have 30-40 matters each week.

**Difficult**

12. Prosecuting DV in Mt Isa is difficult for several reasons. In a criminal context, it is often difficult to get Indigenous complainants to attend Court for any



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hearing, usually six (6) to eight (8) months after the incident. Often, in DV occurrences, the evidence relied upon is solely that of the aggrieved. During that time, a defendant has been sitting in custody awaiting hearing. The Prosecution are then faced with a challenge to either proceed to hearing and attempt to declare a vulnerable aggrieved hostile if they don't give evidence as per their previous statement or withdraw the charge resulting in a vulnerable indigenous person spending considerable time in custody, only to be released upon dismissal. Thankfully, the Prosecution and local solicitors engage in early and productive case conferencing to limit this occurring.

13. In respect of civil applications, due to the large amount of violent offending that occurs in Mt Isa, it is often the case that Orders are made with multiple restrictive conditions. As indicated, these conditions are often breached with the consent of the aggrieved. This has curbed somewhat recently due to conversations between all parties and agreement on restrictive conditions with an 'exception clause' that unless consented to by the aggrieved in writing and that the consent can be removed at any time. It is considered by the Prosecutions, and presumably by the Court, that by shifting the power and control balance of the relationship that the aggrieved is adequately protected,

Deflating

14. Indigenous incarceration is not the answer to battling domestic violence within the indigenous community. Unfortunately, however, imprisonment is inevitable for a large proportion of recidivist offenders. I have not heard of any behavioural change programs conducted within prison.
15. It is apparent that discretion and decision making does not occur within frontline police officers when it comes to DV in Mt Isa. I would suggest that this is the case because they are fearful of repercussions if something goes wrong and that they are fearful that those above them will not back their decision making. This has lead to more, 'technical' breaches being prosecuted and more cross order applications within the civil jurisdiction.

Prevalence of DV matters


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16. Most originating applications for a DVO are made by police. There are very few private originating applications. Applications to vary are a mix between police applications to either extend or vary conditions due to further offending or from aggrieved's seeking to vary conditions to allow contact with the defendant. Prosecutions often seek the presiding Magistrate utilise their discretion under s42 DFVPA to vary Orders upon the sentence of a DV criminal matter. Officers are provided information by prosecutions to ascertain the aggrieved's view on varying the Order at the time of the initial complaint. The officer puts that information at the bottom of the police brief (QP9).

Prevalence of Cross Orders

17. Cross orders are becoming more frequent. The allegations in cross orders generally involve alleged acts of violence. I find cross-orders difficult to Prosecute as there are competing messages within the DFVPA and the common law. The explanatory notes of the Act indicate that;

*During consultation, stakeholders reported a disproportionate number of cross-applications and cross-orders and expressed the concern that in many instances domestic violence orders are made against both people involved. This is inconsistent with the notion that domestic violence is characterised by one person being subjected to an ongoing pattern of abuse by another person who is motivated by the desire to dominate and control them. Both people in a relationship can not be a victim and perpetrator of this type of violence at the same time. A cross-application may be used by a respondent to continue victimising the aggrieved person, to exact revenge or to gain a tactical advantage in other court proceedings. Also, violence used in self-defence and to protect children can be misconstrued as domestic violence if a broader view of the circumstances is not taken.*

18. The only reference to this within the DFVPA that I can locate is that in s4(e)  
'Principle for administering the act'



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*(e) in circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified;*

19. In *SRV v Commissioner of the Queensland Police Service & Anor* [2020] QDC 208, Sheridan DCJ espouses

*[52] The principle in s 4 requires the court to identify the person most in need of a protection order. The Act does not require an order to be made in favour of that person, nor does it exclude an order being made against that person.*

*[53] The section which enables an order to be made requires that the court be satisfied of three things, namely the existence of a relevant relationship, an act of domestic violence by the respondent against the aggrieved and the necessity or desirability to protect the aggrieved from domestic violence. 14*

*[54] Although the Act requires applications and cross applications to be heard together, unless the court considers it necessary to hear applications separately for the safety, protection or well-being of the person named as the aggrieved in the original application, 15 each application is required to be considered separately and on its own merits.*

*[55] If both applications satisfy the requirements of s 37 then plainly orders should be made under both applications, even if the effect is to protect both parties to the relationship. There is no reason as a matter of principle and practicality why the legislature may not have intended that result. Indeed, the Act specifically envisages that there will be applications and cross applications.*

*[56] In the present case, the magistrate dismissed the cross application on the ground that the second respondent was most in need of a protection order. In doing so, the magistrate misdirected herself. The magistrate was required to, but failed to, consider each of the matters referred to in s 37 as they applied to the cross application by the appellant; and not decide the two applications on the basis of the principle referred to in s 4(2)(e).*

20. The difficulty arises about what advice to provide to front line officers and what submissions are suitable and reasonable. It is often conceded that respondents named in cross applications are the person in need of the most protection, however, this does not preclude them from being named. It is difficult, and in my opinion, borderline impossible for police officers to identify whether the aggrieved in the cross application is genuinely scared and in need of protection, or whether the application is being used as an act of intimidation and control.

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21. As discussed, there are a number of DV Orders containing no contact conditions within the MTIPPC division. There has been a shift away from absolute no contact conditions for those that have children together or wish for the relationship to continue to a condition enabling contact with consent which can later be withdrawn. The Prosecution agree that the shift is warranted and in the interest of justice and welfare.

Prevalence of DVO offences

22. Removing traffic enforcement related offending (drink driving and unlicensed driving), I would suggest that DV offending is approximately eighty percent (80%) of the criminal files. This is for both summary and indictable matters.

DVO offences in Custody

23. Similar to [23].

Trends or patterns of granting Bail for DVO

24. The majority of DV matters held in custody are in a 'show cause' position pursuant to s16(3) Bail Act 1980. The consideration for the Court is generally whether there are conditions that can mitigate risk of re-offending and ensuring the safety and welfare of any person. When persons are granted bail by the Court, they are always nearly given a no-contact condition to mitigate risk.
25. At times, persons apply for Murri Court Bail. Murri Court is run by the community justice group and involves weekly meetings at men's or women's group and involves elders of the community and member of the Church. It is often conceded by the Prosecution that Murri Court Bail is difficult to maintain an argument against due to known success of those that complete the program. The bail conditions are onerous and involve no alcohol. I find the Murri Court



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Program in Mt Isa a success and one of the only avenues of rehabilitation that I actively engages and assist Indigenous respondents.

**Level of engagement of parties in DFC process**

26. Without official numbers, I would suggest that 50% of respondents attend Court and approximately 20% of aggrieveds. The availability of both ATSILS and LAQ duty solicitors assists greatly in Mt Isa. There are a small amount, approximately less than 5% of matters that involve privately funded representation.

**Discretion to vary DVO or withdraw application**

27. The QPS OPM's indicate that only the OIC of Prosecutions or Inspector and above can withdraw an application. I consider each submission to withdraw applications on their merit. It is often that I will reach an agreement that if the respondent attends a behavioural course and shows true signs of behavioural change and does not breach a Temporary Order in the meantime (normally 4-6 months) that I will normally withdraw certain applications. This depends on the aggrieved's position, seriousness, previous history etc. I will get the input of the applicant officer and the OIC of the station for their input. However, I ultimately decide based on the information before me.
28. I follow a similar approach to applications to vary orders. These are filed by the aggrieved seeking less restrictive conditions most of the time. I will look at whether the respondent has affected any behavioural change, any breaches of the Order and any other relevant information. As discussed previously, I would generally not consent to an absolute variation of a condition, however, I am open to conditions with exceptions, again shifting the balance of power to the aggrieved.

**Specialist DV Court in Mt Isa**

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29. Mt Isa has a specialist DV Court. Unfortunately, I do not have anything to compare it against, having only worked in Mt Isa. The availability of a DV Registrar and both ATSILS and LAQ duty solicitors are valuable in Mt Isa.

**Gulf Court**

30. As indicated, Gulf circuit Court sits once a month in Normanton (Mon), Mornington Island (Tue) and Doomadgee (Wed). Hearing are then held on Thursdays and Fridays in one of those places. I am aware that ATSILS often send up two (2) solicitors to assist with both criminal and civil matters. LAQ send one (1) solicitor.
31. There is a video link call over for those in custody once a month for ATSILS and LAQ and private representation.
32. The circuit courts are often rushed due to the amount of matters and at times have run well past 6:00pm at night.

**Miscellaneous**

33. A frustration that I encounter is that in my opinion that Legislator and the Court's have not evolved into fully understanding and appreciating forms of Domestic Violence other than physical harm when it comes to sentencing. For example, behaviour including, not letting aggrieved's leave the house when they want to, or, taking and breaking the mobile phone of the aggrieved because she is threatening to call police is often summed up by the Sentencing Court words to the effect of "As it does not involve an act of violence it is not the most serious form of Domestic Violence." It is my opinion that this type of controlling behaviour is just as serious, with perhaps more underlying non-physical injuries to the Aggrieved, as physical violence.
34. I acknowledge the principles under the *Penalties and Sentences Act* 1992 that imprisonment is the last resort for offending that doesn't involve violence, however, I would encourage the Sentencing Court and Legislator to look at identifying and punishing accordingly to non-violent acts of Domestic Violence. I would suggest that s9(2A) be amended to include 'a domestic

  
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violence offence.' This is not to suggest that imprisonment is the ideal or most effective form of rehabilitation or deterrence to respondents, but to indicate to the offenders that seriousness of the offending and the expectation that non-violent forms of domestic violence are considered just as seriously as violent acts.



D.L.Longhurst

*Justices Act 1886*

I acknowledge by virtue of section 110A(6C)(c) of the *Justices Act 1886* that:

- (1) This written statement by me dated **02/08/2022** and contained in the pages numbered 1 to 9 is true to the best of my knowledge and belief; and
- (2) I make this statement knowing that I may be liable to prosecution for stating in it anything that I know is false

\_\_\_\_\_  
 Signed at Mount Isa this 2nd day of August, 2022  
(place) (day) (month) (year) Signature



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