

Part 2: Administration of legislation relevant to family and domestic violence, including particularly the *Restraining Orders Act*, by state government departments and authorities

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7 Violence restraining orders and their role in preventing and reducing family and domestic violence

7.1 Legislative basis for violence restraining orders

The *Restraining Orders Act*³³⁵ defines a VRO as an order that is made under the *Restraining Orders Act* imposing restraints of the kind referred to in section 13 of the *Restraining Orders Act*.³³⁶

Section 13 provides for the restraints that may be imposed by a VRO:

13. Restraints on respondent

- (1) In making a violence restraining order a court may impose such restraints on the lawful activities and behaviour of the respondent as the court considers appropriate to prevent the respondent —
 - (a) committing an act of abuse against the person seeking to be protected;
 - (aa) if the person seeking to be protected by the order is a child, exposing a child to an act of abuse committed by the respondent; or
 - (b) behaving in a manner that could reasonably be expected to cause fear that the respondent will commit such an act.

- (2) Without limiting the restraints that may be imposed, a court may restrain the respondent from doing all or any of the following —
 - (a) being on or near premises where the person seeking to be protected lives or works;
 - (b) being on or near specified premises or in a specified locality or place;
 - (c) approaching within a specified distance of the person seeking to be protected;
 - (d) communicating, or attempting to communicate, (by whatever means) with the person seeking to be protected;
 - (e) preventing the person seeking to be protected from obtaining and using personal property reasonably needed by the person seeking to be protected, even if

³³⁵ Other legislation in Western Australia that explicitly deals with family and domestic violence includes the *Criminal Code*, *Bail Act 1981*, *Criminal Investigation Act 2006* and the *Family Court Act 1997*. Other legislation relevant to family and domestic violence includes the *Sentencing Act 1995*, *Sentencing Administration Act 2003*, *Evidence Act 1906*, *Magistrates Court Act 2004*, *Criminal Procedure Act 2004*, *Criminal Injuries Compensation Act 2003*, *Victims of Crime Act 1994* and *Children and Community Services Act 2004*.

³³⁶ *Restraining Orders Act 1997 (WA)*, Section 3.

- the respondent is the owner of, or has a right to be in possession of, the property;
- (f) causing or allowing another person to engage in conduct of a type referred to in paragraphs (a) to (e).

Sections 11A and 7A of the *Restraining Orders Act* provide when restraining orders may be made, and who may make them:

11A. When violence restraining orders may be made

A court may make a violence restraining order if it is satisfied that —

- (a) the respondent has committed an act of abuse against a person seeking to be protected and the respondent is likely again to commit such an act against that person; or
- (b) a person seeking to be protected, or a person who has applied for the order on behalf of that person, reasonably fears that the respondent will commit an act of abuse against the person seeking to be protected,

and that making a violence restraining order is appropriate in the circumstances.

7A. Orders under this Act imposing restraints

An order imposing restraints may be made under this Act by —

- (a) the Magistrates Court hearing an application under section 25, 38 or 45;
- (b) the Children’s Court hearing an application under section 25, 38 or 45;
- (c) an authorised magistrate hearing a telephone application;
- (d) a court acting under section 63 or 63A; or
- (e) a police officer acting under Part 2 Division 3A.

The *Restraining Orders Act* also provides for:

- persons authorised to apply for a VRO and the process for doing so, by telephone (sections 17 to 24), or in person to a court (sections 25 to 30);
- procedures when an interim order is made and for hearings and final hearings of applications for a VRO (sections 40 to 44C);
- procedures for the variation or cancellation of VROs (sections 45 to 49A); and
- penalties for breach of a VRO (section 61) and repeated breaches of a VRO (section 61A).

Additionally, sections 4 and 6 of the *Restraining Orders Act* define the terms ‘family and domestic relationship’ and an ‘act of family and domestic violence’, as follows:³³⁷

³³⁷ These definitions are also discussed in section 3.1.

4. Term used: family and domestic relationship

- (1) In this Act –
family and domestic relationship means a relationship between 2 persons –
- (a) who are, or were, married to each other; or
 - (b) who are, or were, in a de facto relationship with each other; or
 - (c) who are, or were, related to each other; or
 - (d) one of whom is a child who –
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;
- or
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
 - (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.
- (2) In subsection (1) –
other personal relationship means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected the other person;
related, in relation to a person, means a person who –
- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
 - (b) is related to the person's –
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.

6. Terms used: act of family and domestic violence and act of personal violence

- (1) In this Act –
act of family and domestic violence means one of the following acts that a person commits against another person with whom he or she is in a family and domestic relationship –
- (a) assaulting or causing personal injury to the person;
 - (b) kidnapping or depriving the person of his or her liberty;
 - (c) damaging the person's property, including the injury or death of an animal that is the person's property;
 - (d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;
 - (e) pursuing the person or a third person, or causing the person or a third person to be pursued –
 - (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
 - (f) threatening to commit any act described in paragraphs (a) to (c) against the person.

The *Restraining Orders Act* also imposes obligations on state government departments and authorities to take particular action in cases of suspected family and domestic violence. These obligations affect WAPOL and DCPFS, and are discussed further in following chapters.

7.1.1 Violence restraining orders are a civil remedy for family and domestic violence

VROs ‘offer a civil law response to family and domestic violence.’³³⁸ VROs allow victims of family and domestic violence to apply for an order that ‘can impose conditions that restrict behaviour that would not otherwise be prohibited by criminal law.’³³⁹

Section 61(1) of the *Restraining Orders Act* provides that a breach of a VRO is a criminal offence and ‘it may be easier to prove a breach than the underlying offence to the requisite degree of proof.’³⁴⁰ VROs may therefore offer victims of family and domestic violence an avenue to the criminal justice process.

The key differences between VROs as a civil response to family and domestic violence and criminal proceedings are shown in Figure 20 below.

Figure 20: Comparison between VROs and criminal proceedings

	Violence restraining order – a civil response	Criminal proceedings
Purpose	To protect victim from future violence	To punish offender for past criminal conduct. Other sentencing purposes include: deterrence, rehabilitation, incapacitation, denunciation and restoration
Standard of proof	The balance of probabilities	Beyond reasonable doubt
Who initiates	Victim, authorised person, police, courts	Police/State Department of Public Prosecutions lay charges and/or prosecute
Outcome	Conditions placed on a person against whom the order is made (e.g. not to harass, not to approach victim)	On finding of guilt or conviction, offender is sentenced

Source: Adapted from Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, 8.31. p. 352.

³³⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. v.

³³⁹ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, p. 461, 11.124.

³⁴⁰ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, p. 470, 11.158.

7.2 Key principles for the administration of the *Restraining Orders Act*

7.2.1 The Response-based Practice Model for understanding and addressing family and domestic violence

In order to prevent and reduce family and domestic violence, and ultimately family and domestic violence fatalities, researchers, practitioners and policy makers have sought to understand the behaviour of perpetrators of the violence, and how these behaviours can be influenced. The research literature in this area has traditionally focused on the behaviour of victims and perpetrators within their relationship, with a particular emphasis on strategies that the victim can or should employ to stop the violence.

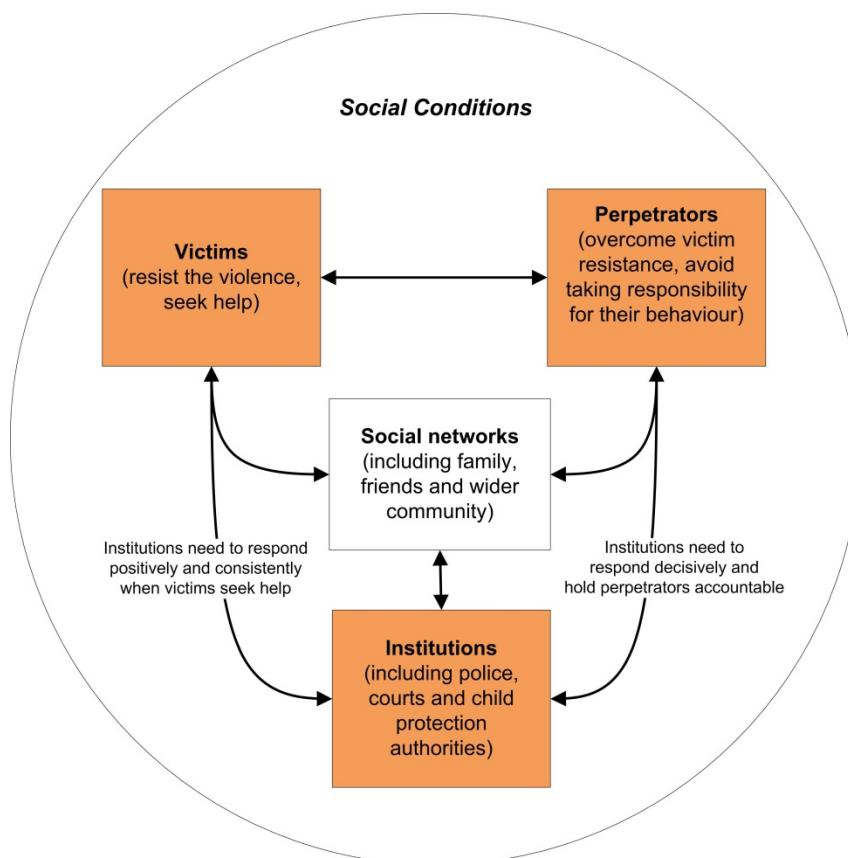
More recently, a model for understanding victim and perpetrator behaviour has emerged from the research literature and contemporary practice. This model, known as the Response-based Practice Model (**the Response-based Practice Model**) recognises that perpetrators' decisions to commit acts of family and domestic violence, and victims' responses to these acts of violence, are not done in isolation of their social conditions or of other parties.

With regard to other parties, perpetrators' decisions and victims' responses are connected to responses they anticipate and responses they receive from their familial and social networks, including family, friends and neighbours (referred to as the 'social network response'). They are also connected to responses they anticipate and responses they receive from institutions including police, courts, the judiciary, child protection authorities, refuges, the media, doctors, nurses and counsellors (referred to as the 'institutional response').

The Response-based Practice Model applied by the Office in this investigation is depicted in Figure 21 below.³⁴¹

³⁴¹ Section 7.2.1 text adapted from: Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice, Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012, by Ombudsman Western Australia, in discussion with people engaged by the Office with expertise in the area of family and domestic violence. See also: Brewin, C. R., Andrews, B, Rose, S, 'Gender, Social Support, and PTSD in Victims of Violent Crime', *Journal of Traumatic Stress*, vol. 16, no. 4, 2003, pp. 421-427; Brewin, C, Reynolds, M, 'Intrusive cognitions, coping strategies and emotional responses in depression, post-traumatic stress disorder and a non-clinical population', *Journal of Behaviour Research and Therapy*, vol. 36, no. 2, Feb 1998, pp. 135-147; Kessler, R, C, Price, R, H, Wortman, C, B, 'Social factors in psychopathology: stress, social support, and coping processes', *Annual Review of Psychology*, vol. 36, 1985, pp. 531-572.

Figure 21: The Response-based Practice Model as used in this investigation



Source: Adapted by Ombudsman Western Australia, from: Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice. Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012.

7.2.2 When victims seek help, positive and consistent institutional responses can prevent and reduce further violence

As discussed in Chapter 3, a victim of family and domestic violence may have experienced a large number of incidents and overcome significant barriers prior to seeking help formally from government agencies or specialist services. The Response-based Practice Model highlights that the actual and anticipated institutional response directly influences the likelihood that a victim will seek help to establish and maintain safety in the first instance, continue to seek help, and implement safety measures suggested by institutions, including enhancing the victim's own safety strategies.³⁴²

³⁴² Adapted from: Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012, by Ombudsman Western Australia, in discussion with people engaged by the Office with expertise in the area of family and domestic violence.

Conversely, victims who receive negative responses to disclosures of violence experience 'more intense and prolonged distress'³⁴³ and 'are less likely to report violence a second time.'³⁴⁴

The research literature also suggests that providing victims who seek help with appropriate 'information, support, advocacy and referral to other community supports can be crucial to women pursuing, rather than abandoning, efforts to access legal protection and can link them into the broader range of services that make up the coordinated response to domestic violence.'³⁴⁵ A 2013 University of Sydney study of women's experiences of VROs found that 'women are unlikely to be able to make constructive use of the law without the provision of support, advocacy and information ... contact with the legal system, often for the first time, can be overwhelming and frightening.'³⁴⁶ In Western Australia, the Auditor General has also found that victims who receive such support services are more likely to be successful in being issued with an interim VRO.³⁴⁷

7.2.3 Victims' decisions about how they will resist violence and protect themselves may not always align with the expectations of institutions; this does not mean that victims do not need, want, or are less deserving of, help

The research literature suggests that decisions made by victims about the strategies they will use to protect themselves may not always align with the way that institutions expect victims to behave.³⁴⁸ For example, the research literature identifies:

Protective strategies that frequently are recommended by family, friends, and social services providers include contacting the police, obtaining a restraining order, or seeking refuge at a friend or relative's home or at a domestic violence shelter. It is ordinarily assumed that these suggestions are successful at keeping victims and their children safe from violence. It is crucial to remember, however, that while these strategies can be effective for some victims of domestic violence, they can be unrealistic and even dangerous options for other victims. For example, obtaining a restraining order can be useful in deterring some perpetrators, but it can cause other perpetrators to become increasingly abusive and threatening. Since these recommendations are

³⁴³ Andrews, B, Brewin, C, R and Rose, S, "Gender, social support, and PTSD in victims of violent crimes", *Journal of Traumatic Stress*, vol. 16, no. 4, 2003, pp. 421-427.

³⁴⁴ The Australian Psychological Society Ltd, *Public Consultation: Family Violence Bill - Submission prepared for the Australian Government's Family Law Amendment (Family Violence Bill 2010) – Exposure Draft*, Melbourne, 2011, p. 7.

³⁴⁵ Laing, L, 'It's like this maze that you have to make your way through'. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 12.

³⁴⁶ Laing, L, 'It's like this maze that you have to make your way through'. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 12.

³⁴⁷ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 40.

³⁴⁸ For example, Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect, Washington, D.C., 2003, p. 28; Long, J, *Explaining Counterintuitive Victim Behaviour in Domestic Violence and Sexual Assault Cases*, American Prosecutors Research Institute's National Center for the Prosecution of Violence Against Women, Virginia, 2006.

concrete and observable, they tend to reassure people that the victim of domestic violence is actively taking steps to address the abuse and to be safe, even if they create additional risks. Furthermore, these options only address the physical violence in a victim's life. They do not address the economic or housing challenges the victim must overcome to survive, nor do they provide the emotional and psychological safety the victims need. Therefore, victims often weigh "perpetrator-generated" risks versus "life-generated" risks as they try to make decisions and find safety.³⁴⁹

A further issue raised by stakeholders is the perceived negative responses provided to victims who seek help from institutions and subsequently return to the relationship - a decision which does not align with the expectations of these institutions. This is despite the fact that the research literature identifies that victims of family and domestic violence typically undergo several shifts in their thinking prior to leaving their relationship permanently.³⁵⁰ On this point the research literature further identifies:

Many survivors go through several phases in the process of leaving. They may leave and return multiple times, each time learning new coping skills. As with divorcing women, these phases may involve cognitive and emotional "leaving" before the physical leaving.³⁵¹

During the investigation, stakeholders observed that:

Women returning to the relationship then have to contend with poor and adverse professional understandings of the leaving, returning, staying cycle and can be penalised, judged, shamed and subsequently isolated from formal and informal supports ... The average return rate is between 5 and 9 times. This is an issue that is under addressed and misunderstood as the service system is designed to support women leaving abuse rather than supporting women's decisions to return and stay in their relationships.³⁵²

The research literature similarly suggests that 'services for victims of domestic violence would be enhanced by a greater understanding of the change process by which [victims] come to leave or return to an abusive [partner].'³⁵³

³⁴⁹ Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 28.

³⁵⁰ Anderson, D, K and Saunders, D, G, 'Leaving an abusive partner: An empirical review of predictors, the process of leaving and psychological well-being', *Trauma, Violence & Abuse*, vol. 4, no. 2, April 2003, pp. 164.

³⁵¹ Anderson, D, K and Saunders, D, G, 'Leaving an abusive partner: An empirical review of predictors, the process of leaving and psychological well-being', *Trauma, Violence & Abuse*, vol. 4, no. 2, April 2003, pp. 164.

³⁵² AnglicareWA, personal communication, 30 March 2015.

³⁵³ Martin, A, J, Berenson, K, R, Griffing, A, S, Sage, R, E, Madry, L, Bingham, L, E and Primm, B, J, 'The process of leaving an abusive relationship: The role of risk assessments and decision-certainty', *Journal of Family Violence*, vol.15, 2000, p. 110.

7.2.4 By responding decisively and holding perpetrators accountable for their behaviour, institutions can prevent and reduce further violence

The discussion in Chapter 3 identified that perpetrators of family and domestic violence have a tendency to deny, rationalise or minimise responsibility for their violent behaviour, to avoid accountability.³⁵⁴

As identified in the Response-based Practice Model, a key factor influencing perpetrators is the response of both social networks and institutions to their actions, including the extent to which they are held accountable for their violence. The research literature has found that 'cultural and social norms are highly influential in shaping individual behaviour, including the use of violence.'³⁵⁵ Given this, 'one of the most effective ways to stop domestic violence is to make clear to abusers and potential abusers that society will not tolerate it.'³⁵⁶

To this end, 'the police response is not only vital for the immediate safety of the victim but also conveys an important social message about the way in which violence against women and children is regarded by society.'³⁵⁷ In addition, the criminalisation of family and domestic violence:

[S]eeks to introduce the standards and norms of non-violence in public places, and the means of enforcing and regulating these, into people's more intimate lives. Criminalisation attempts to insert the power and authority of 'the state' between a person prepared to use physical force and/or the threat of it, and the persons over whom such dominion and control is sought.³⁵⁸

The research literature further finds that 'criminal justice interventions are one of the few mechanisms available to victims for actually stopping the violence.'³⁵⁹ Research into 'the general and specific deterrent effects of police actions independent of substantive punishments'³⁶⁰ has identified that, for example, arresting perpetrators of domestic

³⁵⁴ Coates, L and Wade, A, "Telling it like it isn't: obscuring perpetrator responsibility for violent behaviour," *Discourse and Society*, Sage Publications, London, 2004, p. 7.

³⁵⁵ World Health Organization, *Changing Cultural and Social Norms that Support Violence*, WHO, Geneva, 2009, p. 3.

³⁵⁶ Clark, M, *Crime Begins at Home: Let's Stop Punishing Victims and Perpetuating Violence*, William and Mary Law Review, vol. 28, 1987, p. 279; Holder, R, *Issues Paper 3: Domestic and Family Violence: Criminal Justice Interventions*, Australian Domestic and Family Violence Clearinghouse, The University of New South Wales, 2001, p. 2.

³⁵⁷ Mitchell, L, 'Domestic Violence in Australia – an overview of the issues,' *Parliament of Australia*, Canberra, 22 November 2011, viewed 27 May 2014, p. 18, <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/DVAustralia>; Crowe, A, *Community Corrections' Response to Domestic Violence: Guidelines for Practice*, American Probation and Parole Association, Lexington, 2009, p. 37.

³⁵⁸ Holder, R, *Issues Paper 3: Domestic and Family Violence: Criminal Justice Interventions*, Australian Domestic and Family Violence Clearinghouse, The University of New South Wales, 2001, p. 1.

³⁵⁹ Holder, R, *Issues Paper 3: Domestic and Family Violence: Criminal Justice Interventions*, Australian Domestic and Family Violence Clearinghouse, the University of New South Wales, 2001, p. 2.

³⁶⁰ Travis, J and Visher, C, *The Criminalization of Domestic Violence: Promises and Limits*, U.S. Department of Justice, Washington, 1996, p. 11.

violence 'was consistently related to reduced subsequent aggression'³⁶¹ against their partners.

A recent inspection of the police response to domestic violence in the United Kingdom noted:

Domestic abuse crimes need to be addressed and investigated as seriously as other victim-based and violent crimes. Where there is sufficient evidence to provide a realistic prospect of conviction, and it is in the public interest, these alleged perpetrators should be charged and brought to justice through the criminal justice system.³⁶²

Engaging with perpetrators to promote accountability and prevent further violence

In addition to appropriate criminal justice responses as discussed above, a further way that institutions may seek to hold perpetrators accountable, and prevent family and domestic violence, is through engaging with perpetrators to change their behaviour, that is:

Educating perpetrators about the consequences of their actions, challenging them to accept responsibility, and assisting them to seek help in changing their behaviour, are seen as vitally important strategies to avert further offending.³⁶³

Currently in Western Australia, 'services that actively engage abusive men ... are mainly those associated with men's behaviour change programs and judicial and criminal responses at the high risk end of the continuum.'³⁶⁴

The research literature observes that the effectiveness of 'intervention programs has been the subject of much controversy, and the research evidence in this area is inconclusive'.³⁶⁵ The Law Reform Commission Final Report also noted the lack of evidence in this area³⁶⁶ and has accordingly recommended that 'the Department of the Attorney General, the Department of Corrective Services and the Department for Child Protection and Family Support undertake a review of the availability and effectiveness of programs for perpetrators of family and domestic violence across Western Australia'.³⁶⁷ The Law Reform Commission has further recommended that this review include:

³⁶¹ Maxwell, C, Garner, J, and Fagan, J, *The Effects of Arrest on Intimate Partner Violence: New Evidence From the Spouse Assault Replication Program*, U.S. Department of Justice, Washington, 2001, p. 2.

³⁶² Her Majesty's Inspectorate of Constabulary, *Everyone's business: Improving the police response to domestic violence*, HMIC, London, 2014, p. 98.

³⁶³ Australian Attorney-General's Department, *AVERT Family Violence: Collaborative Responses in the Family Law System, Prevention Strategies: Involving and Engaging Perpetrators*, Commonwealth of Australia, Canberra, 2010, p. 7.

³⁶⁴ AnglicareWA, *Acting to Interrupt Violence and Abuse Program (AIVA)*, Anglicare Western Australia, Perth, 2014, p. 5.

³⁶⁵ Australian Attorney-General's Department, *AVERT Family Violence: Collaborative Responses in the Family Law System, Prevention Strategies: Involving and Engaging Perpetrators*, Commonwealth of Australia, Canberra, 2010, p. 9.

³⁶⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Final Report, Law Reform Commission of Western Australia, Perth, 2014, p. 141.

³⁶⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Final Report, Law Reform Commission of Western Australia, Perth, 2014, p. 141.

- (a) consideration of the availability and effectiveness of such programs for Aboriginal perpetrators, perpetrators with disability, perpetrators from culturally and linguistically diverse communities, perpetrators in remote areas and perpetrators who are children;
- (b) consideration of the effectiveness of programs delivered as part of the metropolitan Family Violence Courts and the Barndimalgu Aboriginal Family Violence Court; and
- (c) consideration of the availability and effectiveness of such programs delivered in prisons and detention centres and as part of a community-based sentencing disposition.³⁶⁸

Recently, AnglicareWA has developed a model known as Acting to Interrupt Violence and Abuse (**AIVA**). The AIVA model seeks to act as an 'interrupter in the management of men who choose abuse [and] who enter the service system at multiple points of entry earlier'.³⁶⁹

7.2.5 Perpetrators may seek to manipulate institutions, in order to maintain power and control over their victims and to avoid being held accountable; institutions need to be alert to this

The research literature also identifies that perpetrators 'often try to manipulate the "system"'.³⁷⁰ For example, perpetrators may seek to manipulate state government departments and authorities, and maintain control over the victim, by:

- Threatening to call Child Protective Services ... and making actual reports that his partner neglects or abuses the children.
- Changing lawyers and delaying court hearings to increase his partner's financial hardship.
- Telling police she hit him, too.
- Giving false information about the criminal justice system to confuse his partner or prevent her from acting on her own behalf.³⁷¹

The research literature further suggests that perpetrators 'often appear charming and attentive to outsiders'³⁷² and also use their 'cunning' to 'prevent the ... system from reaching the goal of maximum accountability'.³⁷³ DCPFS has specifically identified the risk

³⁶⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws*, Final Report, Law Reform Commission of Western Australia, Perth, 2014, p. 141.

³⁶⁹ AnglicareWA, *Acting to Interrupt Violence and Abuse Program (AIVA)*, Anglicare Western Australia, Perth, 2014, p. 5.

³⁷⁰ Alabama Coalition Against Domestic Violence, *Why do Abusers Batter?*, Alabama Coalition Against Domestic Violence, viewed 14 April 2015, <<http://www.acadv.org/abusers.html>>.

³⁷¹ Alabama Coalition Against Domestic Violence, *Why do Abusers Batter?*, Alabama Coalition Against Domestic Violence, viewed 14 April 2015, <<http://www.acadv.org/abusers.html>>.

³⁷² Alabama Coalition Against Domestic Violence, *Why do Abusers Batter?*, Alabama Coalition Against Domestic Violence, viewed 14 April 2015, <<http://www.acadv.org/abusers.html>>.

³⁷³ Alabama Coalition Against Domestic Violence, *Achieving Accountability in Domestic Violence Cases: A Practical Guide for Reducing Domestic Violence*, Illinois Coalition Against Domestic Violence, Springfield, 2005, p. 4.

of ‘collusive practice’³⁷⁴ in its resource materials for officers engaging with perpetrators, observing that:

Men who perpetrate violence can be persuasive and subtle in the ways they downplay, deny, justify and rationalise their behaviour.³⁷⁵

DCPFS provides the following advice to its officers:

When you are trying to engage a perpetrator of family and domestic violence, it is very likely that he will try to get you to collude with his narrative about the violence, perhaps by:

- presenting as calm, collected and reasonable;
- presenting his (ex)partner as irrational, unreasonable or mentally ill;
- lying about or omitting known facts, or presenting a partial picture;
- claiming his partner is lying or fabricating evidence;
- claiming ‘the system’ is out to get him;
- speaking on behalf of his (ex)partner—especially if he is her carer;
- claiming the violence is mutual;
- acknowledging some wrongs while not accepting responsibility; or
- attempting to use humour or other forms of charm to win you over.

If you collude, you might reinforce the perpetrator’s violence-supporting narratives, at considerable cost to his family members.³⁷⁶

It is important that all state government departments and authorities who engage with perpetrators are aware of the risk of being manipulated. This is critical to preventing family and domestic violence as ‘[w]hen perpetrators are allowed to manipulate the system to avoid consequences, accountability is diminished ... [w]hen perpetrators come to see that insignificant or no consequences are likely, their ... behaviour is likely to continue.’³⁷⁷

7.2.6 By administering the *Restraining Orders Act* in accordance with nine key principles, state government departments and authorities will have the greatest impact on preventing and reducing family and domestic violence and related fatalities

To be effective, the administration of the *Restraining Orders Act* by state government departments and authorities will need to reflect the key concepts, or principles, identified in the research literature. These principles need to be reflected both when agencies are working separately and collaboratively. These nine principles are:

³⁷⁴ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013.

³⁷⁵ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, p. 47.

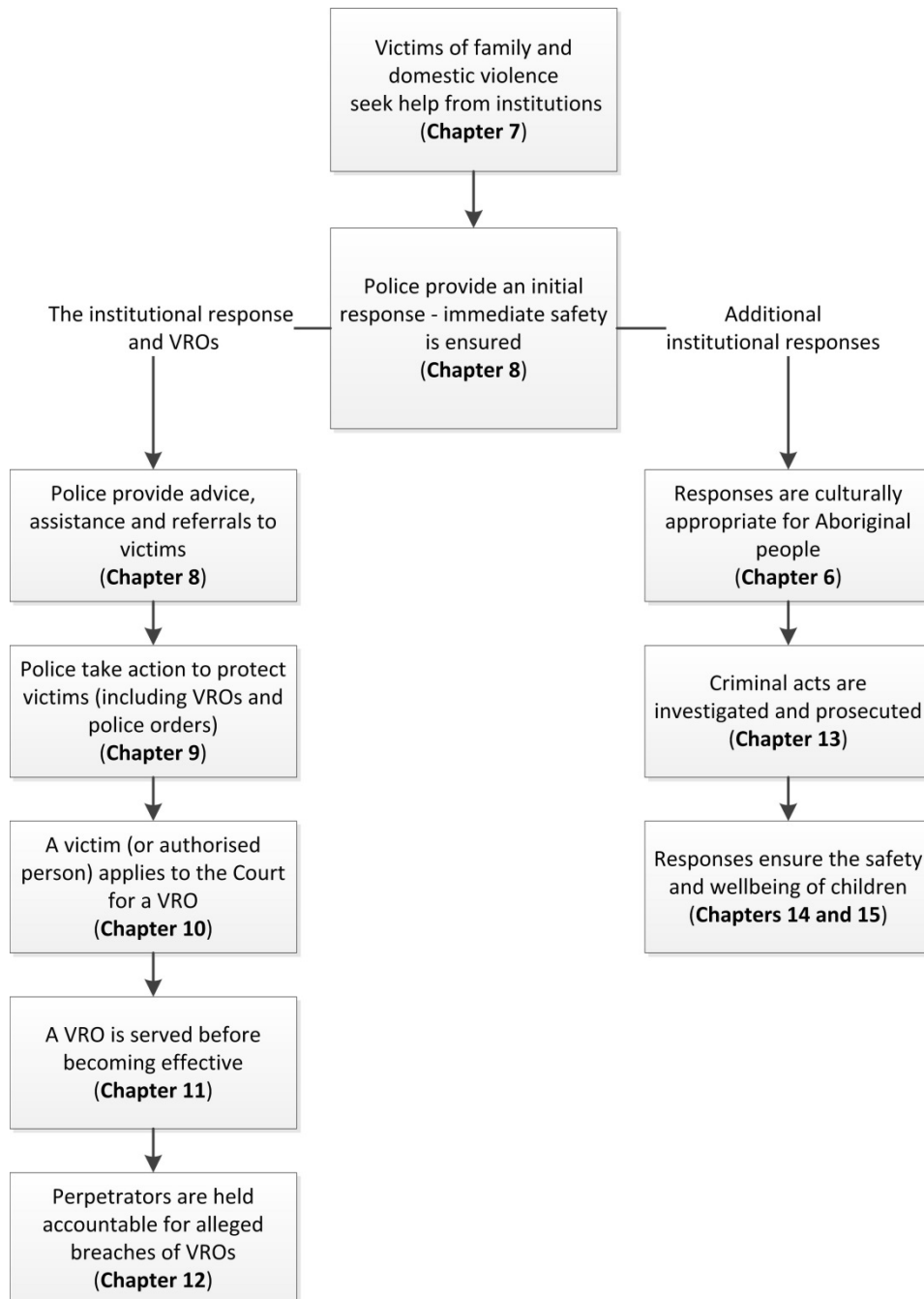
³⁷⁶ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, p. 48.

³⁷⁷ Alabama Coalition Against Domestic Violence, *Achieving Accountability in Domestic Violence Cases: A Practical Guide for Reducing Domestic Violence*, Illinois Coalition Against Domestic Violence, Springfield, 2005, p. 4.

- (i) perpetrators use family and domestic violence to exercise power and control over victims (as discussed in section 3.5);
- (ii) victims of family and domestic violence will resist the violence and try to protect themselves (as discussed in section 3.2);
- (iii) victims may seek help to resist the violence and protect themselves, including help from state government departments and authorities (as discussed in section 3.3);
- (iv) when victims seek help, positive and consistent responses by state government departments and authorities can prevent and reduce further violence (as discussed in section 7.2.2);
- (v) victims' decisions about how they will resist violence and protect themselves may not always align with the expectations of state government departments and authorities; this does not mean that victims do not need, want, or are less deserving of, help (as discussed in section 7.2.3);
- (vi) perpetrators of family and domestic violence make a decision to behave violently towards their victims (as discussed in section 3.4);
- (vii) perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others (as discussed in section 3.6);
- (viii) by responding decisively and holding perpetrators accountable for their behaviour, state government departments and authorities can prevent and reduce further violence (as discussed in section 7.2.4); and
- (ix) perpetrators may seek to manipulate state government departments and authorities, in order to maintain power and control over their victims and avoid being held accountable; state government departments and authorities need to be alert to this (as discussed in section 7.2.5).

For the purposes of the investigation, the Office has mapped the key steps in the administration of the *Restraining Orders Act* by state government departments and authorities. These are shown in Figure 22 below. Figure 22 depicts the use of VROs as a broadly linear process. However, the Office recognises this will not always be the experience of victims. For example, an act of family and domestic violence can occur while the system is responding to prior incidents. It is also important to recognise that all of the state government departments and authorities examined in this report have opportunities to provide an integrated response to family and domestic violence at each of these key steps, and it is not solely the responsibility of any one agency.

Figure 22: Key steps in the use of violence restraining orders examined in this report (and relevant Chapter of report)



8 Providing victims with advice and assistance regarding violence restraining orders

A victim's voice³⁷⁸

“...the police encouraged me to get a VRO so they could help me. Without it, it was hard for them to keep him away from me and the abuse would continue. They also advised me it could escalate matters, which in my case it did, the VRO and going to the police was a betrayal for my ex-husband. From my ex-husband's view “police are dogs and you don't go to the cops”.

The rage started with him threatening my workplace - that he would burn the building down. Then he smashed through the glass door at my rental, to gain entry as I hadn't arrived home yet. I was reporting that first breach at the police station. But my ex was looking for me ... I had so many missed calls from family, trying to warn me that he was looking for me.

The police that helped me, helped me to understand that he was not stopping and his behaviour was escalating. They also told me he had the means to carry out his threats. It was these opinions, from people I trusted, that forced me to stop ignoring what was happening. The signs were there and I heard the police when they told me I was at HIGH risk of being murdered.

I left Perth with my boys, quit my job, stopped contact with all my friends and family, and left. It was like jail for me and the boys those early months, we stayed in a house days and days and days until I could leave Perth.

My ex-husband was free. I know it's hard, but he was hunting me down, there were other events and threats he made ... and were made to me by people he knew ... I couldn't stop him and at the time neither could police.

The injustice I felt at the time was, why was I jailed and not him???”

³⁷⁸ This case study was provided to the Ombudsman's Office by a victim of family and domestic violence who was consulted during the investigation.

8.1 WAPOL's initial response to reports of family and domestic violence

As identified in Figure 22, when a victim of family and domestic violence reports this violence to WAPOL, it provides an initial response. This initial response can include:

- attending the scene of the violence;
- providing information and advice about VROs;
- asking the victim and the suspected perpetrator if they consent to WAPOL sharing their information with support and referral agencies; and
- applying for a VRO, or issuing a police order.

The importance of this opportunity has been identified in the New South Wales Police Force *Code of Practice*, as follows:

Any initial contact should never be undervalued in being able to set the scene for future police interaction with persons involved in domestic and family violence.³⁷⁹

8.2 Police officers are required to attend the scene of reports of family and domestic violence

8.2.1 Legislative requirements

Section 62A of the *Restraining Orders Act* provides:

62A. Investigation of suspected family and domestic violence

A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —

- (a) is a criminal offence; or
- (b) has put the safety of a person at risk.

³⁷⁹ New South Wales Police Force, *Code of Practice for the NSW Police Force Response to Domestic and Family Violence*, NSW Police Force, Sydney, November 2013, p. 24.

This requirement is supported by section 62B of the *Restraining Orders Act*, which provides:

62B. Entry and search of premises if family and domestic violence suspected

- (1) If a police officer reasonably suspects that a person is committing an act of family and domestic violence, or that such an act was committed before the officer's arrival, on any premises, the officer may without a warrant enter those premises and may remain in those premises for as long as the officer considers necessary —
 - (a) to investigate whether or not an act of family and domestic violence has been committed; and
 - (b) to ensure that, in the officer's opinion, there is no imminent danger of a person committing an act of family and domestic violence on the premises; and
 - (c) to give or arrange for such assistance as is reasonable in the circumstances.

8.2.2 Policy requirements

WAPOL's policies and procedures are set out in the COPS Manual. The COPS Manual provides:

Mandatory Scene Attendance

Members must, unless exceptional circumstances exist, attend the incident location of all complaints/reports where it is reasonably believed an act of family and domestic violence has been or may be committed.

Examples of exceptional circumstances are (but not limited to):

- the complaint/report has been proven to be false; or
- where the victim/s have left the scene and attended a police station; or
- immediate attendance may jeopardise the safety of a person.³⁸⁰

8.2.3 WAPOL complied with requirements to attend the scene of family and domestic violence in 96 per cent of incidents relating to the 30 fatalities

As identified at section 5.3, in 14 of the 30 fatalities there were no prior domestic violence incidents between the person who was killed and the suspected perpetrator recorded by WAPOL. In the 16 fatalities where WAPOL recorded a history of family and domestic violence between the person who was killed and the suspected perpetrator, WAPOL recorded 133 family and domestic violence incidents.

The Office examined WAPOL's records regarding these 133 family and domestic violence incidents to determine whether WAPOL attended the scene. Exceptional circumstances, as defined by the COPS Manual, were noted in 13 instances (for example, the victim attended a police station to report family and domestic violence which had occurred

³⁸⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4. pp. 9-10.

earlier). Of the remaining 120 family and domestic violence incidents, the Office identified that WAPOL attended the scene of 115 (96 per cent) of these incidents.

Further information regarding actions taken at the scene was available for 64 of the 115 incidents (recorded on a DVIR, discussed in more detail below). The Office identified that, in all of these 64 incidents, it was recorded that the violent incident had ceased and steps were taken to prevent the commission of further offences. In all of these 64 incidents, it was recorded that attending police officers also assisted victims, as well as other parties present, to obtain medical treatment when required.

8.3 WAPOL's policy requires police officers to identify whether reported incidents involve acts of family and domestic violence

After responding to certain types of incidents, WAPOL's policy requires police officers to submit an incident report. The incident report provides a written account of actions taken by police officers, including details of alleged offence/s, whether or not the suspected perpetrator was arrested and/or charged, as well as any orders issued and advice, assistance or referrals provided. In the case of family and domestic violence incidents, the COPS Manual requires a Domestic Violence Incident Report (**DVIR**) to be submitted:

Submission of Incident Reports

Incident Reports in relation to family and domestic violence incidents (DVIR) must be submitted prior to the end of the shift to ensure DV protocols can be initiated by the Family Protection Units without undue delays.³⁸¹

8.3.1 WAPOL correctly identified incidents as family and domestic violence and a DVIR was submitted 65 per cent of the time

As identified above, in the 16 fatalities where WAPOL recorded a history of family and domestic violence between the person who was killed and the suspected perpetrator, WAPOL recorded 133 family and domestic violence incidents. A DVIR was submitted for 87 (65 per cent) of these incidents. 75 DVIRs were submitted relating to these 87 recorded incidents of family and domestic violence (some DVIRs recorded responses to multiple incidents, for example incidents reported or responded to on the same day). These 75 DVIRs related to 13 of the 30 fatalities.³⁸² For the remaining 46 incidents, a general incident report was submitted, or the actions of attending police officers were recorded on WAPOL's Computer Aided Dispatch (**CAD**) system.

Where no DVIR was submitted, other actions in response to family and domestic violence incidents were not triggered, such as:

- the victim is not provided with a record of police attendance to be used as evidence in legal proceedings, for example to assist them in obtaining a VRO;
- a DVIR is not submitted and the incident is not assessed as part of existing multi-agency triage processes;
- no information is collected and recorded to inform future decisions; and

³⁸¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.3. p. 15.

³⁸² Three fatalities recorded domestic violence incidents between the parties but no DVIR was submitted.

- the incident is not recorded in WAPOL's Incident Management System as a family and domestic violence incident and cannot be included in future assessments of the history of family and domestic violence between the parties (including assessments regarding risk).

In addition, actions by other state government departments and authorities (and non-government organisations) in response to WAPOL referrals are not prompted to be undertaken.

Recommendation 7

WAPOL ensures that all family and domestic violence incidents are correctly identified, recorded and submitted in accordance with the *Commissioner's Operations and Procedures Manual*.

In order to analyse the actions taken by WAPOL in providing an initial response to family and domestic violence in the 30 fatalities, the Office examined the 75 DVIRs. The 75 DVIRs related to incidents which involved predominantly Aboriginal people who were killed, and suspected perpetrators who were Aboriginal people living in regional and remote Australia, as shown in Figure 23 below.

Figure 23: Demographic characteristics of people involved in the 75 DVIRs

Demographic characteristic ³⁸³	Number and percentage in the 13 fatalities	Number and percentage in the 75 DVIRs
Aboriginal person who was killed	10 (77%)	65 (87%)
Aboriginal suspected perpetrator	11 (85%)	69 (92%)
Regional Western Australia	3 (23%)	21 (28%)
Remote and very remote Western Australia	6 (46%)	43 (57%)

Source: Ombudsman Western Australia

It is important to note that the DVIRs examined by the Office relate to family and domestic violence incidents which ultimately resulted in a fatality, however, when an issue has been identified, it does not necessarily mean that the issue was related to the fatality.

³⁸³ The characteristics counted here relate to the characteristics of the persons in the fatal incident, not in each interaction. That is, the number of DVIRs involving persons in regional and remote Australia refers to the number of people who were killed in regional and remote Australia who were recorded at these incidents.

8.3.2 Changes to WAPOL's definition of 'family and domestic relationship' will narrow the scope of relationships for which a DVIR is submitted

In December 2013, WAPOL amended the COPS Manual definition of family and domestic relationship for which a DVIR will be required to be submitted. Specifically, the COPS Manual definition of 'family and domestic relationship' is now limited to intimate partners and immediate family members.³⁸⁴ The COPS Manual observes that the amended definition 'has distinct types of family and domestic relationships allowing a focus on persons who may potentially be subjected to ongoing coercive, controlling, behaviours as opposed to isolated incidents involving a "relative".'³⁸⁵

The Office notes that in the 30 fatalities, 27 fatalities would have met WAPOL's revised definition of 'family and domestic relationship' (90 per cent). Of the remaining three fatalities, one fatality recorded prior domestic violence incidents between the parties.

However, while the intention of the amended definition is to 'ensure that resources focus on the core group of victims ... especially women and children,'³⁸⁶ the risk exists that family and domestic violence occurring in other types of relationships will not be identified. This is of particular concern in cases of Aboriginal family violence, where the definition of family violence deliberately extends beyond these relationship types. Specifically, the concept of Aboriginal family violence is used:

... in relation to violence that occurs in Aboriginal and Torres Strait Islander extended kinship and family networks. These networks may include grandparents, uncles and aunts, cousins and other community and cultural relationships that aren't captured by the Western nuclear family model.³⁸⁷

On the identification of family and domestic violence in these broader relationship types, the COPS Manual notes that:

For family related incidents where members become aware that there appears to be patterns of behaviour facilitating coercion and control from one person to another, it is advisable to submit an incident report inclusive of the DVIR ... to initiate ... assessment and consideration of support and intervention.³⁸⁸

That is, the identification of family and domestic violence in other relationship types, including Aboriginal family violence, will rely on WAPOL conducting checks of prior records to identify and assess whether there is a history of reported family and domestic related incidents.

In addition, as previously discussed, a DVIR provides a written record of the actions taken by WAPOL in response to a domestic violence incident. Completion of a DVIR also

³⁸⁴ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.1.

³⁸⁵ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.1.

³⁸⁶ The Hon. Liza Harvey MLA, Minister for Police, Legislative Assembly, Parliamentary Debates (Hansard), 6 May 2014, pp. 2811b-2812a.

³⁸⁷ Our Watch, *Reporting on Family Violence in Aboriginal and Torres Strait Islander Communities*, Our Watch, Melbourne, September 2014, p. 11.

³⁸⁸ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.1.

prompts WAPOL to complete tasks consistent with the *Restraining Orders Act*, for example, making an application for a VRO or issuing a police order. The revised COPS Manual recognises that the amended definition differs from that in the *Restraining Orders Act* and observes that the COPS Manual definition 'does not override the legal definition'.³⁸⁹

For family and domestic violence incidents involving people in relationships other than intimate partners and immediate family members, the revised COPS Manual sets out alternative reporting methods, including the submission of an incident report if a crime has been committed, or the recording of relevant information on WAPOL's CAD system with no incident report required.³⁹⁰ However, it is not specified in the COPS Manual how compliance with the *Restraining Orders Act* will be ensured, and monitored, in the absence of a DVIR.

Recommendation 8

In implementing Recommendation 7, WAPOL considers its amended definition of family and domestic relationship, in terms of its consistency with the *Restraining Orders Act 1997*, and giving particular consideration to the identification of, and responses to, Aboriginal family violence.

8.4 When investigating reports of family and domestic violence, WAPOL has an opportunity to provide information and advice about violence restraining orders and seek consent to share information with support services

8.4.1 Legislative and policy requirements

Providing information and advice about VROs

WAPOL is not currently required by legislation or policy to provide victims with information and advice about VROs when attending the scene of acts of family and domestic violence. However, its attendance at the scene affords WAPOL with the opportunity to provide victims with information and advice about:

- what a VRO is and how it can enhance their safety;
- how to apply for a VRO; and
- what support services are available to provide further advice and assistance with obtaining a VRO, and how to access these support services.

³⁸⁹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.1.

³⁹⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.1.

Seeking consent to provide support and referral agencies with contact details of victims and perpetrators

The COPS Manual requires that, for acts of family and domestic violence involving people in a family and domestic relationship, WAPOL asks both victims and suspected perpetrators if they will consent to WAPOL sharing their information with 'support and referral agencies'.³⁹¹ WAPOL records on the DVIR whether consent was provided, and pass the DVIR to a multi-agency team, comprising representatives from WAPOL, DCPFS and non-government organisations, for triage, assessment and further action (this team is now known as the Family and Domestic Violence Response Team). Further action can include referral to Domestic Violence Outreach programs funded by DCPFS, which can assist with applications for VROs. DCPFS states that these programs provide:

...safety focused outreach to consenting victims and/or perpetrators of family and domestic violence identified on DVIRs. These important referral pathways increase the capacity of the service system to follow-up and support victims or perpetrators of family and domestic violence following a police callout. It is an important strategy for helping to manage the high number of DVIRs and demand for services.³⁹²

The research literature suggests that providing victims with information, advice, and referral to support services is critical to victims 'pursuing, rather than abandoning,' efforts to access legal protection.³⁹³ In particular, victims who receive such information and advice, and access support services are more likely to be successful in obtaining a VRO.³⁹⁴

8.4.2 WAPOL provided information and advice about violence restraining orders, and sought consent to share information with support services, in a quarter of instances where WAPOL investigated a report of family and domestic violence relating to the 30 fatalities

Providing information and advice about VROs

The Office examined the 75 DVIRs to determine whether, when responding to reports of family and domestic violence, WAPOL provided information and advice about VROs to victims and, if so, the nature of the information and advice provided. Of the 75 instances in which a DVIR was submitted, the DVIR recorded that WAPOL provided information and advice about VROs in 19 instances (25 per cent). These 19 instances can be broadly categorised as shown in the figure below.

³⁹¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV-1.1.4.3 Incident Management System (IMS), p. 16.

³⁹² Department for Child Protection and Family Support, *Family and Domestic Violence Response Team Evaluation Report: July – December 2013*, Department for Child Protection and Family Support, Perth Western Australia, July 2014, p. 5.

³⁹³ Laing, L, 'It's like this maze that you have to make your way through'. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 12.

³⁹⁴ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 40.

Figure 24: Information and advice about VROs provided to victims, as recorded by WAPOL in the 75 DVIRs

Information and advice provided	Number
Information related to a breach of a VRO was provided to the victim	5 instances
Information about VROs was provided to the victim	4 instances
The victim refused or did not want a VRO	4 instances
The victim was advised to obtain a VRO (in one of these instances the victim was referred to Victim Support Services via the Courts)	3 instances
The victim was seeking a VRO	2 instances
The victim was provided with outreach ³⁹⁵ to obtain a VRO	1 instance
The DVIR does not record that information was provided	56 instances
Total	75

Source: Ombudsman Western Australia

In a further three instances (not included in Figure 24), the DVIR recorded that the victim was referred to 'court support services'. Although VROs were not specifically mentioned in relation to these referrals, court support services can provide assistance with applications for VROs.

Recommendation 9

WAPOL amends the *Commissioner's Operations and Procedures Manual* to require that victims of family and domestic violence are provided with verbal information and advice about violence restraining orders in all reported instances of family and domestic violence.

DCPFS's Family and Domestic Violence Unit have developed a range of resource materials (discussed in detail in Chapters 14 and 15) which could be used as the basis for an 'aide memoire' for WAPOL, to guide the provision of verbal information and advice to victims of family and domestic violence about violence restraining orders.

In addition, WAPOL has developed a 'victim information card' in consultation with the Commissioner for Victims of Crime, which was rolled out in metropolitan and regional Western Australia in September 2015. The Commissioner for Victims of Crime (in DOTAG) could similarly assist with the development of an 'aide memoire' to guide the provision of verbal information and advice to victims of family and domestic violence.

³⁹⁵ In this instance, the Office's examination of other records indicated that the victim was subsequently visited at home by an outreach worker from WAPOL's Family Protection Unit, co-located with DCPFS.

Recommendation 10

WAPOL collaborates with DCPFS and DOTAG to develop an 'aide memoire' that sets out the key information and advice about violence restraining orders that WAPOL should provide to victims of all reported instances of family and domestic violence.

Bearing in mind that 87 per cent of the 75 DVIRs involved Aboriginal people who were killed in the 30 fatalities, as identified at section 8.3.1 above, the information and advice provided by WAPOL will need to be developed in consultation with Aboriginal Western Australians to ensure its appropriateness for family violence incidents involving Aboriginal Western Australians.

Recommendation 11

WAPOL collaborates with DCPFS and DOTAG to ensure that the 'aide memoire', discussed at Recommendation 10, is developed in consultation with Aboriginal people to ensure its appropriateness for family violence incidents involving Aboriginal people.

Seeking consent to provide support and referral agencies with the contact details of victims and perpetrators

The Office examined the 75 DVIRs to determine whether, when responding to reports of family and domestic violence, WAPOL asked victims and/or suspected perpetrators whether they consented to their information being shared with support and referral agencies. The Office identified that:

- WAPOL spoke directly to victims on 75 occasions (100 per cent), and sought consent from the victim to share information on 30 occasions (40 per cent); and
- WAPOL spoke directly to suspected perpetrators on 58 occasions (77 per cent) and sought consent from suspected perpetrators to share information on 17 occasions (23 per cent).

Recommendation 12

WAPOL ensures that both victims and perpetrators are asked if they consent to share their information with support and referral agencies, in accordance with the *Commissioner's Operations and Procedures Manual*.

8.5 Police orders have been introduced to provide victims with time to consider and seek a violence restraining order

8.5.1 Legislative requirements

The *Acts Amendment (Family and Domestic Violence) Act 2004* amended the *Restraining Orders Act* to allow police officers to issue police orders, as follows:

30A. When a police order may be made

- (1) A police officer may make a police order in accordance with this Division if the officer reasonably believes that the case meets the

criteria set out in section 20(1)(a) or (b) as if the order were to be a violence restraining order and —

- (a) if the officer reasonably believes that —
 - (i) a person has committed an act of family and domestic violence and is likely again to commit such an act; or
 - (ii) a child has been exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship and the child is likely again to be exposed to such an act;or
- (b) if the officer reasonably fears, or reasonably believes that another person reasonably fears, that —
 - (i) a person will have committed against him or her an act of family and domestic violence; or
 - (ii) a child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship, and that making a police order is necessary to ensure the safety of a person.

Generally, police orders place conditions on people to restrain them from being on or near the person's home or workplace, coming within a specified distance of another person, or causing or allowing another person to engage in this behaviour (section 30C(2)). As with court issued VROs, it is a criminal offence to breach a police order.

Police orders are intended to be a short term measure used to increase victim safety³⁹⁶ and to allow time for victims to access the courts to apply for a VRO. The *Restraining Orders Act* provides that:

30F. Duration of police orders

- (1) A police order —
 - (a) remains in force for 72 hours (or any shorter period specified in the order in accordance with subsection (2)) after it has been served on the person to be bound by it; and
 - (b) lapses if it is not served on the person to be bound by it within 24 hours of the order being made.
- (2) A period shorter than 72 hours may be specified in the police order if, in the opinion of the police officer who makes the order, that shorter period would be sufficient for an application to be made to a court under Division 3.

³⁹⁶ Western Australian Government, Department of the Attorney General, 2008, cited by Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, 9.10.

As noted by the (then) Attorney General:

These temporary orders can be used only in cases where police believe that the victim would be subject to further violence if they were to be left alone with the offender and when there is insufficient evidence for an arrest. Where the victim consents to the order being made and a little more time is needed, police will also have the power to issue an on-the-spot order, which would apply for longer than 24 hours. These orders will apply either until 5.00 pm on the next court sitting day or at the expiration of 72 hours, whichever occurs first.³⁹⁷

The rationale for 72 hour police orders with consent of the victim was described in the Second Reading Speech of the *Restraining Orders Bill* as follows:

The 72 hour orders are an innovation that were sought specifically by Aboriginal women who were part of the consultation process for the writing and drafting of this legislation and also as we consulted the communities to put in place our domestic violence action plan. Many women said specifically that they did not want their men to be incarcerated, although they wanted to be protected from violent behaviour. Therefore, the 72 hour order allows for a cooling-off period. It will allow for immediate support for these women and that can be followed up with an application for a longer term order if the threatened or actual violence has not been resolved or reconciliation has not occurred.³⁹⁸

As discussed in Chapter 6, this position is supported by the research literature, which also recognises that Aboriginal victims of family violence do not always wish to separate from their partner, and that separation is not always an appropriate or safe option. Frequently, Aboriginal women 'are much more likely to use refuges for immediate safety, particularly while men are intoxicated or enraged over a particular issue.' In particular, Aboriginal women 'very much wanted a place to be safe while the men were "out of control"'.³⁹⁹

8.5.2 Policy requirements

The COPS Manual reflects the legislative intent of the *Restraining Orders Act* and observes that '[i]n this respect, a Police Order bridges the period between police attendance at an incident and the next available court sitting'.⁴⁰⁰

³⁹⁷ The Hon. Mr J.A. McGinty MLA, Attorney General, Legislative Assembly, Parliamentary Debates (Hansard), 2 June 2004, pp. 3303c-3306a.

³⁹⁸ Western Australia, *Parliamentary Debates*, Legislative Assembly, 12 June 1997, pp. 4014 (R Parker), pp. 4015.

³⁹⁹ Gordon, S, Hallahan, K and Henry, D, *Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia, 2002, p. 86.

⁴⁰⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO- 1.0 Restraining Orders*, p. 6.

8.5.3 When responding to family and domestic violence relating to the 30 fatalities, WAPOL provided information and advice about violence restraining orders in 25 per cent of instances that police orders were issued

As noted at section 8.4 above, the *Restraining Orders Act* and WAPOL's policies do not set out the requirements for providing information and advice regarding VROs. This is also the case at the time a police order is issued, with no legislative or policy requirements requiring information and advice to be provided to the person protected by the order. However, when a police order is issued, WAPOL has a valuable opportunity to discuss the option of a VRO with victims and provide them with appropriate information and advice, as well as seek their consent to share their information with support services, as discussed in detail at section 8.4.

The Office examined the use of police orders in 71 of the 75 DVIRs (those which related to incidents occurring since the 2004 legislative amendments). The Office identified that a police order was issued at 22 of the 71 family and domestic violence incidents (31 per cent), which related to 12 of the 13 fatalities (92 per cent).

On the 22 occasions a police order was issued, the Office examined the associated DVIRs to determine whether information and advice was provided regarding VROs. The Office identified that VROs were discussed at five of the 22 incidents (23 per cent) as follows:

- VRO information or advice provided - two occasions;
- 'victim does not wish to apply for a VRO' - one occasion;
- VRO information provided to the victim and the victim was advised to attend their local Magistrates Court 'first thing' - one occasion; and
- 'victim provided with details of how to obtain a VRO, and advised a police order only provides time to get a VRO' - one occasion.

Recommendation 13

WAPOL amends the *Commissioner's Operations and Procedures Manual* to require that, if a police order is issued, it is explained to the victim that the order is intended to provide them with time to seek a violence restraining order, and also that victims are provided with information and advice about violence restraining orders in accordance with Recommendation 9.

8.6 Police officers are subjected to hostility and violence when responding to reports of family and domestic violence

8.6.1 Policy requirements

The COPS Manual mandates that:

The primary responsibility for police when responding to any incident is safety first. This includes the safety of attending police and persons who are present at the incident, especially children.⁴⁰¹

The research literature suggests that the role of police is challenging, in particular for frontline police officers responding to reports of family and domestic violence:

A responding officer is expected to keep the victim and their children safe; give them confidence in the policing response; assess future risk so that the force can keep them safe in the longer term; investigate the incident; and gather evidence to support a prosecution. It can be complex and sensitive work. In some cases, victims can appear to be uncooperative when in reality they may be terrified, being controlled by the perpetrator and in desperate need of support. Officers too can be under pressure due to the busy and varied nature of a response shift.⁴⁰²

In 2006, the New South Wales (**NSW**) Ombudsman reviewed police practices in responding to family and domestic violence (**the NSW Ombudsman's Report**). As part of its review, the NSW Ombudsman's Office conducted focus group discussions with police officers. In the focus groups, the NSW Ombudsman's Office 'asked police officers ... what goes through their minds when they are called to a domestic violence incident'⁴⁰³ and found that:

Almost all the officers in our focus groups responded that they had previously attended a domestic violence incident at which they or a colleague had been threatened or assaulted.⁴⁰⁴

The NSW Ombudsman's Report further identified that 'the potential for volatility is inherent in domestic violence matters, and in the past officers have been injured and even killed in the course of responding to them.'⁴⁰⁵

The Office's analysis of the 75 DVIRs identified instances where police officers recorded being treated in a hostile manner, threatened, and on some occasions physically assaulted.

⁴⁰¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.3. p. 8.

⁴⁰² Her Majesty's Inspectorate of Constabulary (HMIC), *Everyone's business: Improving the police response to domestic abuse*, HMIC, London, 2014, p. 11.

⁴⁰³ NSW Ombudsman, *Domestic violence: improving police practice: A special report to Parliament under s31 of the Ombudsman Act 1974*, NSW Ombudsman, Sydney, December 2006, p. 13.

⁴⁰⁴ NSW Ombudsman, *Domestic violence: improving police practice: A special report to Parliament under s31 of the Ombudsman Act 1974*, NSW Ombudsman, Sydney, December 2006, p. 13.

⁴⁰⁵ NSW Ombudsman, *Domestic violence: improving police practice: A special report to Parliament under s31 of the Ombudsman Act 1974*, NSW Ombudsman, Sydney, December 2006, p. 13.

8.7 The need for a multi-agency response to family and domestic violence

It is important that there are opportunities for victims to seek help and for perpetrators to be held to account at other points in the process for obtaining a VRO, and that these opportunities are acted upon, not just by WAPOL but by all state government departments and authorities. WAPOL has also recognised this issue, noting:

The increasing diversity of our community, lack of services in remote areas as well as the complexity of the issue means violence and violent offending cannot be solved by any one agency working in isolation.⁴⁰⁶

The following chapters of this report identify some of these opportunities for ensuring a robust institutional response to family and domestic violence, at points beyond the initial response by WAPOL, throughout the process for obtaining a VRO.

Recommendation 14

In developing and implementing future phases of *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, DCPFS specifically identifies and incorporates opportunities for state government departments and authorities to deliver information and advice about violence restraining orders, beyond the initial response by WAPOL.

⁴⁰⁶ Western Australia Police, *Frontline Policing Priorities*, viewed 25 August 2014, <<http://www.police.wa.gov.au/Aboutus/Strategyandplanning/tabid/1029/Default.aspx>>, p. 4.

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9 Taking action to protect victims of family and domestic violence

A victim's voice⁴⁰⁷

Nora was a victim of family and domestic violence, perpetrated by her ex-partner, Glen. Following an assault by Glen (for which he was subsequently convicted of Assault Occasioning Bodily Harm), Nora was hospitalised. Nora also experienced ongoing pain and trauma. Glen was imprisoned for this assault.

During his time in prison, Glen breached the VRO that Nora had obtained against him, making threats to kill Nora and her family. During this time, Nora received support from WAPOL, DOTAG's Family Violence Service, and non-government support organisations.

Shortly after his release from prison, Glen violently assaulted and killed his new partner (for which he was subsequently convicted). While WAPOL officers were attempting to locate and apprehend Glen, police officers took action to protect Nora. Triangulating Glen's phone signals, WAPOL identified that he had been in the vicinity of Nora's home. Urgently dispatching a police vehicle, police officers collected Nora from her home and made arrangements to keep her safe until Glen was apprehended.

Once Glen was apprehended, police officers identified that Nora's existing VRO against Glen would soon expire. Police officers, engaging with DOTAG's Family Violence Service, assisted Nora to apply for the existing VRO to be extended to a lifetime VRO on Nora's behalf, supplying all necessary information and evidence.

Nora expressed her sincere gratitude to police officers for their support. She said that the actions of police officers made her feel protected from Glen.

⁴⁰⁷ This case study is drawn from one of the 30 fatalities with information taken from WAPOL records (with names changed).

9.1 Police officers must apply for a violence restraining order, or issue a police order, after investigating reports of family and domestic violence (or provide a written reason for not doing so)

9.1.1 Legislative requirements

The *Restraining Orders Act* sets out requirements for police officers to take certain actions (including applying for a VRO) after investigating suspected family and domestic violence. Section 62C requires a police officer to take action as follows:

62C. Action to be taken by police officer after investigating suspected family and domestic violence

After an investigation referred to in section 62A, or after entering or searching premises under section 62B, a police officer is to make —

- (a) an application for a restraining order under section 18(1)(a) or 25(1)(b); or
- (b) a police order; or
- (c) a written record of the reasons why he or she did not take either of the actions set out in paragraph (a) or (b).

Section 62C was inserted into the *Restraining Orders Act* in 2004 by the *Acts Amendment (Domestic Violence) Bill 2004*. In the Second Reading Speech, the (then) Attorney General stated that ‘the Bill encourages our police, who are one of the community’s greatest resources in the fight against domestic violence, to get more involved, particularly in the restraining order proceedings.’⁴⁰⁸ In particular, the (then) Attorney General observed that:

Although the Bill only requires police to investigate an act of suspected domestic violence when that act is either a criminal offence or has put a person’s safety at risk, the Bill gives police stronger powers of investigation and entry and search, improves reporting procedures and protects them from liability in the event that an officer applies for a violence restraining order on behalf of a victim in good faith. Importantly, the Bill will also enable police attending violent domestic disputes to issue on-the-spot temporary restraining orders [police orders] to immediately remove violent offenders from the home for 24 hours. The victim’s consent is not required for this type of order. This is a practical action that will protect victims and hopefully interrupt the cycle of violence.⁴⁰⁹

⁴⁰⁸ The Hon. Mr J.A. McGinty MLA, Attorney General, Legislative Assembly, Parliamentary Debates (Hansard), 2 June 2004, pp. 3303c-3306a

⁴⁰⁹ The Hon. Mr J.A. McGinty MLA, Attorney General, Legislative Assembly, Parliamentary Debates (Hansard), 2 June 2004, pp. 3303c-3306a

9.1.2 Policy requirements

The COPS Manual specifies that police officers must:

Issue a Police Order or make application for a Restraining Order on behalf of the victim, or **if either action is not possible or appropriate** make a written record as to why an order or application was not made.⁴¹⁰ [Emphasis added]

The COPS Manual sets out the reasons for a police officer not to apply for a VRO or issue a police order as including:

- An arrest has been made; where bail has been refused or protective bail conditions have been put in place, and it is not considered that a restraining order is appropriate and/or the victim does not desire a VRO; or
- No criminal offence has been committed and the safety of involved persons is not at risk.⁴¹¹

The COPS Manual further identifies that, in relation to VROs:

Section 25(1)(b) of the *Restraining Order[s] Act 1997* allows a police officer to make an application for a Violence Restraining Order (VRO) on behalf of the person seeking to be protected ... If the member is satisfied, *an act of family and domestic violence has been committed or is likely to be committed which is a criminal offence or has put the safety of the person at risk, it will be incumbent on the member to make the Violence Restraining Order application.*⁴¹² [Original emphasis]

The COPS Manual also requires that in order to make an application for a VRO, police officers must have the consent of the victim.⁴¹³

9.1.3 Summary of actions taken by WAPOL in accordance with section 62C of the *Restraining Orders Act 1997*

The Office examined the 75 DVIRs to identify what actions were taken by WAPOL in accordance with section 62C of the *Restraining Orders Act*. The Office identified that four of the 75 DVIRs related to incidents prior to the 2004 inclusion of section 62C and were therefore excluded from the examination (Figure 25). The actions taken by WAPOL in response to the remaining incidents, and recorded in the remaining 71 DVIRs, are shown in Figure 25. Each of these actions are discussed in more detail in the following sections.

⁴¹⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4., p. 9.

⁴¹¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4., pp. 22-23.

⁴¹² Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, RO- 1.0 Restraining Orders, p. 26.

⁴¹³ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, RO- 1.0 Restraining Orders, p. 26.

Figure 25: Actions taken under section 62C of the Restraining Orders Act

An application for a VRO was made	0
A police order was issued	22
No order was made and a written reason was provided	40
No order was made and no reason was recorded	9
DVIRs that were not applicable (pre-2004)	4
Total	75

Source: Ombudsman Western Australia

9.1.4 WAPOL did not make any applications for violence restraining orders on behalf of victims of family and domestic violence relating to the 30 fatalities

The Office's examination of the 75 DVIRs identified that there were no instances in which WAPOL applied for a VRO on behalf of the person who was killed or the suspected perpetrator, although on one occasion assistance was provided with a VRO application sought by one person who was killed.

This finding was consistent with the Office's analysis of the state-wide data which identified that, during the investigation period, 21,237 applications for VROs were made in Western Australia. Of these, 37 applications were recorded as being lodged by a police officer on behalf of the person seeking to be protected.

The Law Reform Commission Final Report also observed the 'somewhat surprising'⁴¹⁴ low number of applications made by police officers in 2012, noting that:

During consultations [WAPOL] explained that applications for violence restraining orders by police are infrequent due to resourcing constraints.⁴¹⁵

The Law Reform Commission Final Report concluded that 'police should make applications on behalf of victims of family and domestic violence in far greater numbers'⁴¹⁶ and accordingly recommended:

That the Western Australian government provide sufficient resources to the Western Australia Police to ensure that police officers are able to actively and regularly make applications for family and domestic violence protection orders on behalf of a person seeking to be protected.⁴¹⁷

⁴¹⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 90.

⁴¹⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 90.

⁴¹⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 91.

⁴¹⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 91.

The *20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report on Gender Bias* also recognised the critical role that WAPOL serve in making applications for VROs, observing that:

Anecdotally, women reporting ongoing threatening behaviour are told that there is little that ... [WAPOL] can do and to "get" a restraining order, with little guidance about how to apply for the order ... shifting the responsibility to the police for applications for restraining orders will help manage the conflict between the victim and perpetrator of the violence.⁴¹⁸

9.1.5 In 31 per cent of incidents relating to the 30 fatalities, a police order was issued

The Office's examination of the 71 applicable DVIRs identified that there were 22 instances (31 per cent) in which WAPOL issued a police order.

The Office also analysed the use of police orders in the 378 family and domestic violence incidents involving the person who was killed and/or the suspected perpetrator for the 30 fatalities. The Office identified that 69 police orders were issued to protect or restrain either the person who was killed, or the suspected perpetrator. Sixty-two of the 69 police orders (90 per cent) were issued to protect or restrain Aboriginal people.

Police orders are being increasingly used to protect victims of family and domestic violence, particularly Aboriginal people

The Office's analysis of published data indicates that during the investigation period police officers issued 26,023 police orders.⁴¹⁹ The number of police orders issued has increased dramatically in the last four years, from 10,312 in 2009-10 to 17,761 in 2013-14 (a 72.2 per cent increase).⁴²⁰ WAPOL's *Annual Report 2014* further observes that police orders are 'increasingly utilised by frontline officers to deal with domestic incidents.'⁴²¹

Data concerning the use of police orders and VROs by Aboriginal people in Western Australia indicates that Aboriginal victims are more likely to be protected by a police order than a VRO. This is particularly the case in the state's Kimberley region, where 40 per cent of the population is Aboriginal.⁴²² In the Kimberley region, the number of 72 hour police orders issued in 2012-13 increased by over six times from the 2011-12 period, from 299 to 1,856. This increase in police orders was not accompanied by a comparable increase in

⁴¹⁸ Woman Lawyers of Western Australia (Inc.), *20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report*, Women Lawyers of Western Australia, Perth 2014, p. 385, 391.

⁴¹⁹ Department for Child Protection and Family Support, *Family and Domestic Violence Response Team Evaluation Report: July – December 2013*, Department for Child Protection and Family Support, Perth Western Australia, July 2014, p. 14.

⁴²⁰ Western Australia Police, *Annual Report 2014*, Western Australia Police, Perth, 2014, p. 15.

⁴²¹ Western Australia Police, *Annual Report 2014*, Western Australia Police, Perth, 2014, p. 15.

⁴²² The 2011 census identified that 13,918 (40 per cent) of the Kimberley's 34,794 residents were Aboriginal. Australian Bureau of Statistics, *2011 Census QuickStats: Kimberley*, ABS, Canberra, 2013, viewed 12 February 2015,

<http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/50804?opendocument&navpos=220>.

applications for VROs, with an increase of only 10 per cent (from 303 to 333) in the same period.⁴²³

The Law Reform Commission considered in detail the possibility of a police order serving as an application for a VRO. The Law Reform Commission summarised its analysis as follows:

The potential benefits of enabling a police order to serve as an application for a family and domestic violence protection order include the reduction of trauma and stress for victims, and the more active involvement of police in assisting victims in their applications. However, potential disadvantages include that some victims may be discouraged from seeking police assistance, and police may be discouraged from making police orders because of the associated workload involved in lodging the order as an application. Clearly, in the absence of additional resources, police will not be in a position to progress an application for a family and domestic violence protection order on behalf of the victim.⁴²⁴

The Law Reform Commission went on to note that:

If such resources are provided, the Commission strongly suggests that consideration be given to providing in legislation that, with the consent of the victim, a police order can be filed at court as an initiating application by police for an interim family and domestic violence protection order.⁴²⁵

Given the potential disadvantages identified by the Law Reform Commission, and in the context of the widespread use of police orders in relation to Aboriginal people, it is particularly important that Aboriginal people are consulted as part of any such considered legislative change.

During the course of the investigation, DOTAG has informed the Office that the State Government is currently considering its response to the Law Reform Commission Final Report. DOTAG further informed the Office that:

A detailed Drafting Options Paper (Family Violence Restraining Orders-Drafting Options Paper) is currently out with key State Government and community sector family violence response stakeholders for comment. This is a targeted consultation process on foundation aspects of the FVROs themselves (there will be other aspects included in the Bill, and further consultation will occur on these as required).⁴²⁶

⁴²³ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2013, pp. 27-29.

⁴²⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 85.

⁴²⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 86.

⁴²⁶ Department of the Attorney General, personal communication, 20 October 2015.

Taking into account the findings of this investigation, it is recommended that, as part of this consideration, DOTAG involve Aboriginal people in a full and active way and seek to have the process of consideration comprehensively informed by Aboriginal culture.

Recommendation 15

In considering whether legislation should provide that, with the consent of the victim, a police order can be filed at court as an initiating application by police for an interim family and domestic violence protection order, DOTAG should involve Aboriginal people in a full and active way at each stage and level of the process, and should seek to have the process of consideration comprehensively informed by Aboriginal culture.

Recommendation 16

DCPFS considers the findings of the Ombudsman's investigation regarding the link between the use of police orders and violence restraining orders by Aboriginal people in developing and implementing the Aboriginal family violence strategy referred to at Recommendation 4.

9.1.6 In 56 per cent of incidents relating to the 30 fatalities, no order was made or sought and a written reason was provided

As identified at section 9.1.3 above, the Office found that for the majority of the 71 applicable DVIRs (40 DVIRs, or 56 per cent) no order was made or sought and a written reason was provided instead. The Office examined these 40 DVIRs in further detail. The Office separately examined the written reasons recorded on DVIRs when the suspected perpetrator was arrested, as shown in Figure 26 below. The Office found that the most common written reason recorded was 'no consent and no safety concerns of involved persons' (13 occasions, 33 per cent). This is discussed in further detail below.

Figure 26: Reasons recorded on 40 DVIRs when a VRO was not applied for and a police order was not issued

Offender arrested	
Other	5
No consent and no safety concerns of involved persons	4
Offender arrested	4
Reference to bail conditions	5 ⁴²⁷
Victim did not want a VRO	1
A VRO is being sought by Police	1
Not applicable	1
Offender not arrested	
No consent and no safety concerns of involved persons	9
Other	5
No offence or nil offences	2
Order sought by victim	1
It was impractical to serve a police order at the scene due to concerns for officer and victim safety	1
Not proceeded with	1
Total	40

Source: Ombudsman Western Australia

In 77 per cent of instances where ‘no consent and no safety concerns’ was recorded, this was inconsistent with other information recorded at the scene

As identified in Figure 26, in 13 of the 75 DVIRs, the DVIR recorded ‘no consent and no safety concerns of involved persons’ as the reason for not making or seeking a VRO or police order. The Office identified that in 10 of these 13 instances (77 per cent) this written reason did not align with the narrative of events recorded elsewhere in the DVIR. In particular, the Office observed instances where no safety concerns were identified even though the DVIR recorded that:

- the victim described offences in their initial contact with WAPOL, including alleged physical violence (four instances);
- the victim was conveyed to hospital due to injuries resulting from the incident (three instances);
- the perpetrator had threatened to kill the victim (two instances); and
- the case was subject to WAPOL’s internal case management strategy for recidivist cases (one instance).

In two of the 10 instances listed above, the suspected perpetrator was arrested. In four of the 10 instances, the perpetrator had not been located by WAPOL.

⁴²⁷ Protective bail four instances and general bail conditions one instance.

In summary, the Office identified inconsistencies between section 62C of the *Restraining Orders Act* and WAPOL's administration of section 62C as set out in the COPS Manual. There were also gaps between the requirements set out in the COPS Manual and WAPOL's practice.

Recommendation 17

Taking into account the findings of this investigation, WAPOL reviews the *Commissioner's Operations and Procedures Manual* to ensure its consistency with section 62C of the *Restraining Orders Act 1997*.

Recommendation 18

Following the implementation of Recommendation 17, WAPOL complies with the requirements of the *Commissioner's Operations and Procedures Manual*.

Recommendation 19

WAPOL ensures that where an application for a violence restraining order has not been made, or a police order has not been issued, written records of the reasons why are recorded on each occasion.

Recommendation 20

WAPOL ensures that if 'no consent and no safety concerns of involved persons' is recorded as a reason for not making an application for a violence restraining order or making a police order, this is consistent with other information recorded in the associated Domestic Violence Incident Report.

9.2 WAPOL's policy provides that, instead of seeking a violence restraining order or issuing a police order, police officers can record that protective bail conditions are in place

9.2.1 Legislative requirements

Under Schedule 1, Part D, Clause 2 (2) of *the Bail Act 1982*, a judicial officer or authorised officer may impose bail conditions on an accused person. Bail conditions specified at clause 2(c) or (d), are for the purposes of ensuring that an accused does not endanger the safety, welfare or property of any person; or does not interfere with witnesses or otherwise obstruct the course of justice. These conditions are referred to as 'protective bail conditions'.

In the context of family and domestic violence, protective bail conditions are typically used to prohibit the perpetrator from contacting or approaching the victim and, similarly to VROs, often provide that:

... the accused is not to have any contact whatsoever with the victim of the offence ... not to approach the victim within a specified distance or not to remain on or attend at specified premises ... In addition, protective bail conditions may include a non-molestation condition; that is, that the accused is

not to behave in an offensive, intimidatory or emotionally abusive manner towards the victim of the offence.⁴²⁸

Schedule 1, Part D, Clause 2(2a) of the *Bail Act 1982* also requires that, before imposing protective bail conditions upon a perpetrator, a 'judicial officer or police officer is ... to consider whether that purpose would be better served, or could be better assisted, by a restraining order made under the *Restraining Orders Act 1997*.'⁴²⁹ This can occur pursuant to section 63 of the *Restraining Orders Act*, 'which enables a court exercising criminal jurisdiction to make a restraining order against a person who has been charged with an offence.'⁴³⁰ Of particular note, a 'restraining order can be made under this provision on the initiative of the court or at the request of a party to the proceedings'.⁴³¹

9.2.2 Policy requirements

As noted at section 9.1.2, the COPS Manual specifies that police officers investigating reported acts of family and domestic violence may record that they did not issue a police order or apply for a VRO in the civil court because 'an arrest has been made; bail has been refused or protective bail conditions are in place'.⁴³² This approach acknowledges that duplication of family and domestic violence respective criminal and civil proceedings may:

...result in re-traumatisation for victims who are required to repeat their accounts of violence; additional stress and time spent in court; impact the resources of the court, lawyers and other agencies; and delays caused by the adjournment of one legal proceeding to await the outcome of the other.⁴³³

However, as noted above, section 63 of the *Restraining Orders Act* provides that a restraining order can be made in a criminal court at the request of a party to the proceedings.⁴³⁴ This could include at the request of police prosecutors. The COPS Manual sets out the requirements of WAPOL's 'Prosecution Division' as including:

In all family and domestic violence related crimes (where there is a plea of guilty or offender is found guilty) make application to the court for a restraining order to be approved in the process.⁴³⁵

⁴²⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴²⁹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴³⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³² Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.

⁴³³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³⁵ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.2.1.

9.2.3 In four incidents relating to the 30 fatalities, the DVIR recorded the existence of protective bail conditions and a violence restraining order was not sought

The Office examined the 75 DVIRs to determine whether the existence of protective bail conditions was identified as a reason for not seeking or making an order. The Office identified that, of the 21 incidents where an offender was arrested, protective bail conditions were recorded as a written reason for not applying for a VRO or issuing a police order in four instances. However, in these four instances the DVIR recorded the following information:

- 'victim and mother advised to obtain a VRO';
- '[the suspected perpetrator] had entered into a bail undertaking to appear in court [earlier that day] ... Protective conditions included not to contact or attempt to contact [the victim],' and the incident was a breach of those conditions;
- 'DV and VRO advice given'; and
- 'VRO advice given, non-compliant'.

In a further instance, the written reason for not making an application for a VRO (or issuing a police order) was recorded on the DVIR as 'no consent and no safety concerns of involved persons'. On this occasion the suspected perpetrator was recorded as in the act of breaching their protective bail conditions at the time of the incident, and 'savagely beat'⁴³⁶ the victim. It was recorded elsewhere on the DVIR 'order considered, however pre-existing bail conditions exist'. The Office notes that the suspected perpetrator was arrested for these offences and was sentenced to a term of imprisonment.

9.2.4 Protective bail conditions do not always provide the same level of protection as a violence restraining order

Despite the similarities between protective bail conditions and VRO conditions, both the Law Reform Commission and the Australian Law Reform Commission have identified that protective bail conditions might not provide the same level of protection as a VRO.⁴³⁷ For example, the Australian Law Reform Commission has observed that protective bail conditions do not serve the same purpose as a protection order, and might not protect a victim adequately.⁴³⁸

⁴³⁶ Western Australia Police, Domestic Violence Incident Report (unpublished).

⁴³⁷ Law Reform Commission of Western Australia, *Court Intervention Programs: Final Report Project No 96*, Law Reform Commission of Western Australia, Perth, 2009, p. 97; Australian Law Reform Commission, *Family Violence - A National Legal Response*, Commonwealth of Australia, Sydney, 2010, viewed 12 January 2015, <<http://www.alrc.gov.au/publications/10.%20Bail%20and%20Family%20Violence/protection-through-bail-conditions-or-protection-order>>.

⁴³⁸ Australian Law Reform Commission, *Family Violence - A National Legal Response*, Commonwealth of Australia, Sydney, 2010, viewed 12 January 2015, <<http://www.alrc.gov.au/publications/10.%20Bail%20and%20Family%20Violence/protection-through-bail-conditions-or-protection-order>>.

Reviews of the *Restraining Order Act 1997* have expressed the view that:

Ideally, when a matter comes before the court on a first appearance, where it is a criminal offence relating to a domestic violence incident, then the court ought to be in a position to issue an interim violence restraining order on the basis of material facts presented to it by the prosecutor, in the same way that courts may make a determination that an accused should be refused bail or subjected to protective bail conditions which impose restraints of the same kind as may be imposed by a violence restraining order.⁴³⁹

However, the Law Reform Commission has identified that, in Western Australia, there has been an ‘underutilisation’⁴⁴⁰ of the courts’ discretion to grant a VRO under section 63 of the *Restraining Orders Act 1997* in relation to criminal charges for family and domestic violence offences, with ‘the total number of violence restraining orders made under section 63 of the *Restraining Orders Act* by the lower courts remain[ing] small (48 orders in 2010; 31 in 2011; and 21 orders in 2012).’⁴⁴¹

The Law Reform Commission Final Report determined that the ‘making of a violence restraining order should ideally be considered as a possible additional option to protective bail conditions’.⁴⁴² Accordingly, the Law Reform Commission Final Report recommended the following legislative changes, noting that ‘there should be a mandatory requirement for the court to consider whether an interim order should be made; however, the court must continue to be satisfied that the grounds for making an order have been established’.⁴⁴³

Making of interim and final family and domestic violence protection orders during criminal proceedings

In addition to s 63A of the *Restraining Orders Act 1997* (WA) as amended by [previous recommendation], the new Family and Domestic Violence Protection Order Act provide that:

1. If a person is charged with a specified offence, the court must consider whether it is appropriate to make an interim family and domestic violence protection order against the accused and for the protection of the alleged victim until such time as the charge is determined.

(a) The court may make an interim family and domestic violence protection order under 1 above:

⁴³⁹ Government of Western Australia, Department of the Attorney General, *A Review of Part 2 Division 3A of the Restraining Orders Act 1997*, Perth, 2008, p. 36; Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 147

⁴⁴⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴⁴¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴⁴² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴⁴³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 150.

- (i) if it is satisfied that there are grounds for making a family and domestic violence protection order ... ;
 - (ii) if it has considered the factors that are relevant ... ; and
 - (iii) the person who would be bound by the order and the person who would be protected by the order have been given a reasonable opportunity to be heard.
- (b) The court is not to make an interim family and domestic violence protection order if the person who would be protected by the order objects to it being made.
- ...

The Office's findings above support the proposals for legislative reform contained within the Law Reform Commission Final Report.

9.3 Responding positively and consistently to reports of family and domestic violence is likely to require more time than responding to other incidents

Police responses to family and domestic violence are different from the responses required for other incidents. A focus of the response to these other incidents is on timeliness. This focus on timeliness is reflected in WAPOL's Key Performance Indicator (KPI) for Effectiveness, 'average time to respond'.

When responding to incidents of family and domestic violence, however, attending police officers must achieve a number of critical tasks, in addition to ensuring the immediate safety of victims and their children, including:

- providing victims with advice and assistance to enhance their ongoing safety, for example advice regarding VROs;
- encouraging victims and perpetrators to consent to be contacted by support services;
- making an application for a VRO on a victim's behalf, or issuing a police order; and
- collecting evidence in support of criminal charges to hold perpetrators to account (where an offence has been committed, discussed in detail in Chapter 13).

To successfully complete these tasks, police officers may need to spend a lengthy period of time at the scene. This need has been suggested by WAPOL to be a contributor to not achieving KPI targets for time taken to respond:

The target for the average time taken to respond to priority 3 calls for police assistance in the metropolitan area was not achieved. This was due to a number of factors, including ... [a]n increase in the average time at scene mainly in the key risk situations of domestic violence incidents and persons at-risk.⁴⁴⁴

⁴⁴⁴ Western Australia Police, *Annual Report 2013: Make Every Contact Count*, Western Australia Police, Perth, 2013, p. 15.

In addition, WAPOL has suggested that, throughout regional and remote Western Australia, 'police are required to provide general and specialist services to regional and remote Aboriginal communities.'⁴⁴⁵ In this regard, WAPOL has observed that:

The number of people within these communities fluctuate and police are required to manage social problems such as alcohol, drug and substance abuse, family and domestic violence, youth at-risk and sexual abuse. These communities are placing an increased demand on police resources and require a unique style of policing with consideration of cultural practices.⁴⁴⁶

Recommendation 21

WAPOL considers establishing a Key Performance Indicator that relates to the quality of service as well as the timeliness of responding to family and domestic violence incidents to ensure a balanced approach is achieved.

The Office notes that on 22 October 2015, the Community Development and Justice Standing Committee tabled a report arising from its Inquiry into the methods employed by WA Police to evaluate performance. The report, *A measure of trust: How WA Police evaluates the effectiveness of its response to family and domestic violence*, makes 21 findings and eight recommendations including (at Recommendation 8) that WAPOL introduces 'formal performance measures related to its response to family and domestic violence...'.⁴⁴⁷

WAPOL is currently implementing Frontline 2020. Frontline 2020 has created 'Response Teams' and 'Local Police Teams'. WAPOL identifies that Response Teams are 'mobile officers who respond to priority calls for assistance and initial investigation ... dealing with priority tasks needing immediate response'.⁴⁴⁸ As a result, WAPOL anticipates that 'Local Police Teams are then freed up to pay longer and more consistent attention to local problems in their suburbs, particularly ongoing problems, which they otherwise would not be able to attend to'.⁴⁴⁹

WAPOL indicates that Response Teams will provide an initial response to reported acts of family and domestic violence.⁴⁵⁰ It is important that Response Teams will have an appropriate opportunity to continue the current provision, by police officers, of critical initial response and support to victims of family and domestic violence for the reasons identified at section 8.1 above.

⁴⁴⁵ Western Australia Police, *Annual Report 2013: Make Every Contact Count*, Western Australia Police, Perth, 2013, p. 28.

⁴⁴⁶ Western Australia Police, *Annual Report 2013: Make Every Contact Count*, Western Australia Police, Perth, 2013, p. 29.

⁴⁴⁷ Community Development and Justice Standing Committee, *A measure of trust: How WA Police evaluates the effectiveness of its response to family and domestic violence*, Legislative Assembly, Parliament of Western Australia, Report No.10, October 2015, p.xvi.

⁴⁴⁸ Western Australia Police, Improved Response, Investigation and Control, viewed 12 February 2015, <<http://frontline2020.police.wa.gov.au/Improved-Response>>.

⁴⁴⁹ Western Australia Police, Improved Response, Investigation and Control, viewed 12 February 2015, <<http://frontline2020.police.wa.gov.au/Improved-Response>>.

⁴⁵⁰ Western Australia Police, Improved Response, Investigation and Control, viewed 12 February 2015, <<http://frontline2020.police.wa.gov.au/Improved-Response>>.

Recommendation 22

As part of the implementation of Frontline 2020, WAPOL ensures that the creation of Response Teams continues to provide an appropriate opportunity for frontline police officers to provide critical initial response and support to victims.

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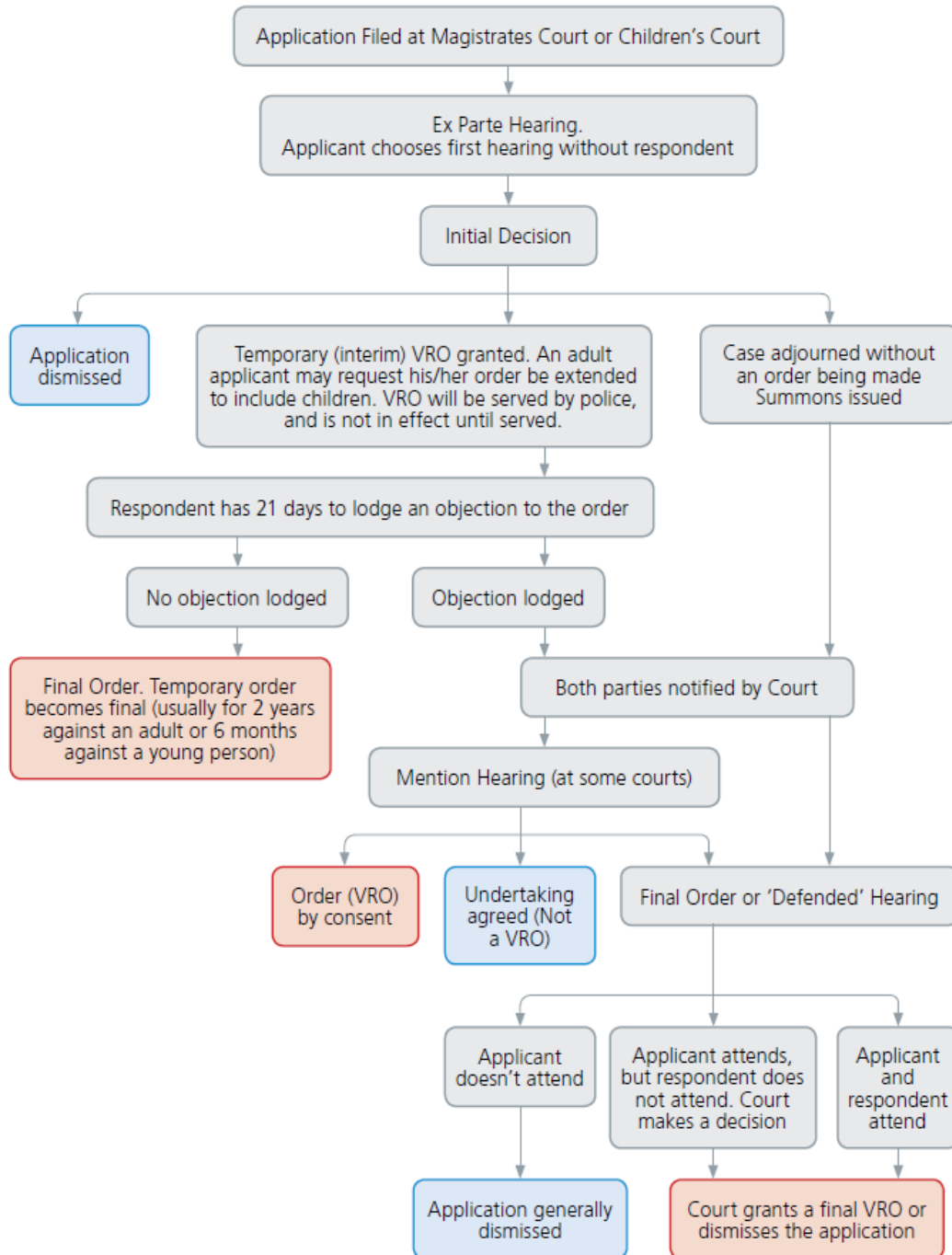
10 Applying for and obtaining a violence restraining order

10.1 The process for obtaining a violence restraining order

As identified in Figure 22 below, after reporting family and domestic violence to WAPOL, or at any other time, a victim of family and domestic violence has the option of making an application for a VRO. The process for obtaining a VRO is depicted in Figure 27 below.

The Office analysed data relating to all VRO hearings which occurred in the Magistrates Court and the Children's Court in the investigation period. It is important to note that the Office's analysis does not track individual VROs from the lodgement of an application to a final outcome. For example, a VRO application may have been lodged on the last day of the investigation period, or a final VRO may have been granted on the first day. The Office's analysis of the numbers of VROs at each stage of the process does, however, indicate patterns in the pathway for obtaining a VRO, for example, the probability that applications for VROs relevantly occurring during the investigation period progressed to final orders.

Figure 27: Process for obtaining a VRO



Source: *Breaching Safety: Improving the effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*⁴⁵¹

⁴⁵¹ Chung, D, Green, D and Smith G, et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women’s Council for Domestic and Family Violence Services, Perth, p. 25.

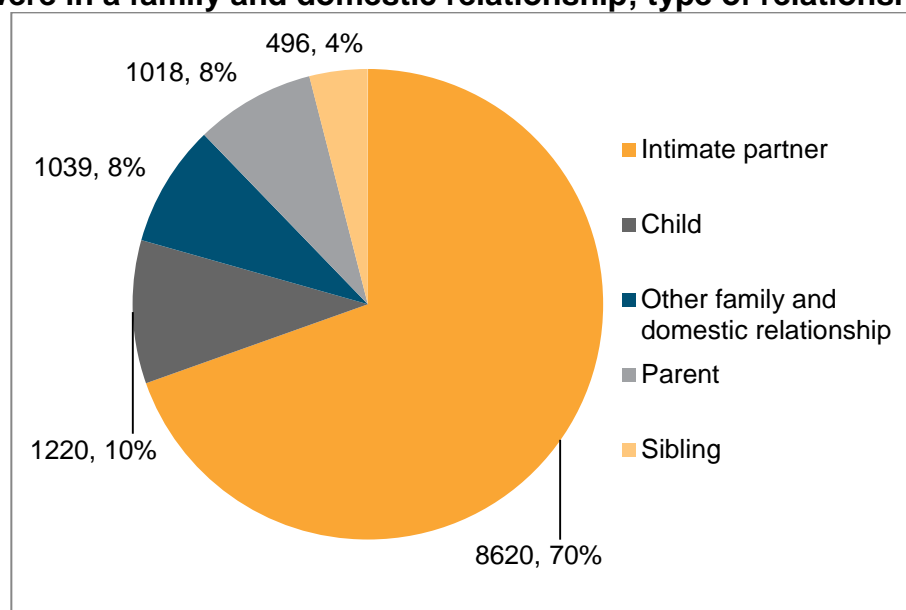
10.2 Applications for violence restraining orders

The Office analysed all VRO applications lodged in Western Australia during the investigation period to determine the number of applications for VROs, nature of relationships of the parties to the VRO, demographic characteristics of applicants and respondents, and the grounds on which VROs were sought. The findings of the Office's analysis are set out below.

10.2.1 Fifty-eight per cent of people seeking to be protected by a violence restraining order were in a family and domestic relationship with the respondent

In the investigation period, 21,237 applications for VROs were made in Western Australia. In 12,393 (58 per cent) of these applications, the applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent.⁴⁵² Figure 28 below shows a further breakdown of relationship types between the person seeking to be protected and the respondent, as recorded on the VRO application form. Of the 12,393 applications, 8,620 applications (70 per cent) identified that the person seeking to be protected was, or had been, in an intimate partner relationship with the respondent.

Figure 28: VRO applications lodged in the investigation period, where the person seeking to be protected and the respondent were in a family and domestic relationship; type of relationship



Source: Ombudsman Western Australia

⁴⁵² The person seeking to be protected may not always be the applicant, for example the applicant may be a parent or legal guardian of a child or a police officer.

10.2.2 Seventy-seven per cent of people seeking to be protected were female, and were, or had been, in intimate partner relationships with the respondent 74 per cent of the time

Gender

For the 12,393 applications in which the person seeking to be protected and the respondent were in a family and domestic relationship:

- 77 per cent (9,533) of all persons seeking to be protected were female; 74 per cent (7,100) of whom were seeking to be protected from a current or former intimate partner; and
- 70 per cent (8,620) of all persons seeking to be protected were seeking protection from a current or former intimate partner (Figure 29).

Figure 29: VRO applications in the investigation period, where the person seeking to be protected and the respondent were in a family and domestic relationship, by gender and type of relationship

Relationship between the parties	Females seeking to be protected	Males seeking to be protected	Gender unknown	Total
Intimate partner	7100	1431	89	8620
Child ⁴⁵³	753	452	15	1220
Other family and domestic relationship	718	312	9	1039
Parent	632	374	12	1018
Sibling	330	162	4	496
Total	9533	2731	129	12393

Source: Ombudsman Western Australia

⁴⁵³ This variable denotes relationship type and is not an indicator of age, that is, the person seeking to be protected is the son or daughter or stepson or step-daughter of the respondent but is not necessarily aged less than 18 years.

Ethnicity of applicants

When completing an application form for a VRO, the person seeking to be protected is asked to identify their 'ethnicity' from the following options:

- Aboriginal
- Torres Strait Islander
- Australian
- Arabic
- Indonesian
- Somali
- British
- Italian
- Turkish
- Chinese
- Maori
- Vietnamese
- Indian
- New Zealander
- Yugoslav
- Other (please specify)⁴⁵⁴

For the 12,393 applications in which the person seeking to be protected and the respondent were in a family and domestic relationship:

- 6,607 (53 per cent) of persons seeking to be protected identified that they were 'Australian';
- 2,374 (19 per cent) of persons seeking to be protected did not record their ethnicity;
- 743 (6 per cent) of persons seeking to be protected identified themselves as Aboriginal;
- 597 (5 per cent) of persons seeking to be protected identified themselves as Aboriginal and Torres Strait Islander;
- 407 persons seeking to be protected identified themselves as British; and
- 344 persons seeking to be protected identified themselves as New Zealander.

Of the 1,340 persons seeking to be protected who identified themselves as Aboriginal or Aboriginal and Torres Strait Islander:

- 1,181 (88 per cent) were female; and
- 879 (66 per cent) were, or had been in, an intimate partner relationship with the respondent.

10.2.3 Aboriginal and Torres Strait Islander people seeking to be protected cited similar grounds for seeking a violence restraining order to non-Aboriginal people

Reflecting sections 11A and 11B of the *Restraining Orders Act*, when a person makes an application for a VRO, they are also asked to provide details of the grounds on which the VRO is sought. As well as allowing applicants to provide written details of the respondent's behaviour, the VRO application form also provides four 'tick-box' options, as follows:

⁴⁵⁴ Department of the Attorney General, *Details For Application Sheet: Violence Restraining Order*, Department of the Attorney General, Department of the Attorney General, viewed 1 July 2014, <http://www.magistratescourt.wa.gov.au/R/restraining_orders.aspx?uid=8913-0425-7284-9400>.

Why do you need a violence restraining order? To prevent the respondent from:

- committing an act of abuse against the person seeking to be protected;
- behaving in a way that could reasonably be expected to cause fear that a person seeking to be protected will have an act of abuse committed against him or her;
- exposing a child to an act of family and domestic violence; or
- behaving in a way that could reasonably be expected to cause fear that a child will be exposed to an act of family and domestic violence.⁴⁵⁵

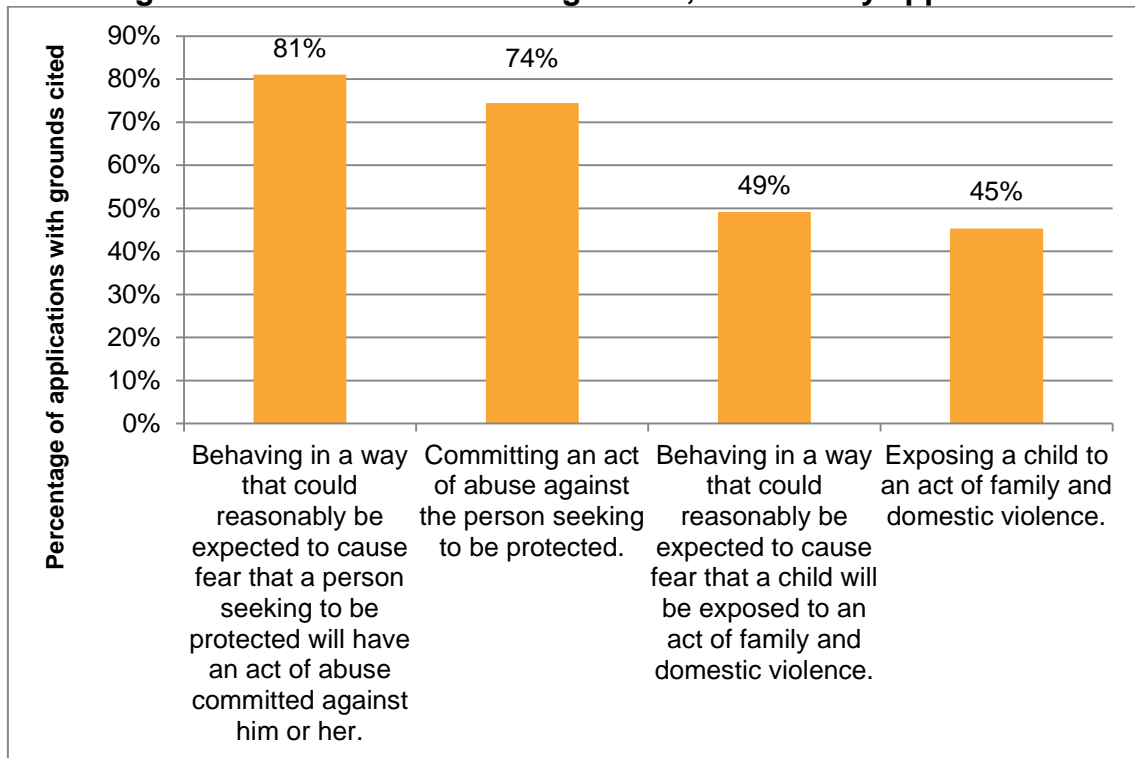
Applicants can tick more than one of the grounds listed. For the 12,393 applications where the applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent, there were 30,979 grounds selected. As shown in Figure 30 below, the grounds that were listed most often were:

- behaving in a way that could reasonably be expected to cause fear that a person seeking to be protected will have an act of abuse committed against him or her - selected on 10,049 applications (81 per cent); and
- committing an act of abuse against the person seeking to be protected - selected on 9,227 applications (74 per cent).

Fifty-five per cent (6,813) of applicants cited grounds relating to children. Of particular note, 45 per cent (5,611) of applicants cited exposing a child to an act of family and domestic violence as a ground for seeking a VRO. The response of state government departments and authorities to children who are victims of family and domestic violence is explored further in Chapters 14 and 15.

⁴⁵⁵ Department of the Attorney General, *Details For Application Sheet: Violence Restraining Order, Department of the Attorney General*, Department of the Attorney General, viewed 1 July 2014, <http://www.magistratescourt.wa.gov.au/R/restraining_orders.aspx?uid=8913-0425-7284-9400>.

Figure 30: Grounds for seeking a VRO, selected by applicants



Source: Ombudsman Western Australia

The Office identified that Aboriginal and Torres Strait Islander applicants sought VROs on similar grounds to non-Aboriginal applicants. The 1,340 Aboriginal and Torres Strait Islander applicants selected 3,328 grounds, as follows:

- 1,039 (78 per cent) selected 'behaving in a way that could reasonably be expected to cause fear that a person seeking to be protected will have an act of abuse committed against him or her';
- 1,031 (77 per cent) selected 'committing an act of abuse against the person seeking to be protected';
- 659 (49 per cent) selected 'behaving in a way that could reasonably be expected to cause fear that a child will be exposed to an act of family and domestic violence'; and
- 599 (45 per cent) selected 'exposing a child to an act of family and domestic violence.'

10.3 There are distinct differences in the use of violence restraining orders between Aboriginal and non-Aboriginal people

The Office's analysis has found that Aboriginal people are significantly overrepresented as victims of family and domestic violence, including that:

- during the investigation period, 33 per cent of all victims of domestic violence offences against the person were recorded by WAPOL as being Aboriginal;
- half of the people who were killed in the 30 fatalities were Aboriginal; and
- Aboriginal people who were killed in the 30 fatalities were more than twice as likely as non-Aboriginal people to be known to WAPOL due to domestic violence incidents involving themselves and the suspected perpetrator.

In contrast, the data set out at section 10.2 above indicates that during the investigation period 11 per cent of all persons seeking to be protected by a VRO, who were in a family and domestic relationship with the respondent, identified themselves as Aboriginal or Aboriginal and Torres Strait Islander (1,340 of 12,393 persons).

The Office's findings are consistent with the research literature which also suggests that 'Aboriginal women are less likely than their non-Aboriginal counterparts to apply for Violence Restraining Orders'.⁴⁵⁶ As one Western Australian study examining the use of VROs observed:

Throughout the time span of the research project it became apparent that, in general terms, Aboriginal women were reluctant to apply for Violence Restraining Orders. As previously mentioned, SCALES [community legal centre] personnel reported no VRO applications from Aboriginal clients, although they had Aboriginal clients who sought assistance on other matters. In addition to this, most research in this area ... clearly illustrates that Aboriginal women are less likely than their non-Aboriginal counterparts to seek legal help regarding domestic violence. This is most disturbing when it is acknowledged that Aboriginal women are forty five times more likely to be victims of family or domestic violence. Indeed, Aboriginal West Australians are over represented as both victims and perpetrators in incidents of domestic violence.⁴⁵⁷

Possible reasons for these differences in the use of VROs are explored below.

⁴⁵⁶ For example: Ferrante, A, Morgan, F, Indermaur, D, Harding, R, *Measuring the extent of domestic violence*, The Hawkins Press, Sydney, 1996; Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007; Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 6.

⁴⁵⁷ Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007, p. 9.

10.3.1 Aboriginal victims want the violence to end, but not necessarily always through the use of violence restraining orders

The research literature suggests that Aboriginal women 'are much more likely to use refuges for immediate safety, particularly while men are intoxicated or enraged over a particular issue.'⁴⁵⁸ In particular, Aboriginal women 'very much wanted a place to be safe while the men were *'out of control'*.'⁴⁵⁹ The introduction of police orders, a form of short term restraining order, was partly in response to the recognition that Aboriginal women may not wish to use VROs.⁴⁶⁰

More generally, with regard to the use of VROs:

The traditional view of using government intervention (including legal intervention) to override the power imbalances between the perpetrator and victims of violence is not necessarily embraced by Aboriginal people—particularly Aboriginal women.⁴⁶¹

The Law Reform Commission Final Report examined this issue in detail and observed that:

...not all victims of family and domestic violence can, or want to, end the relationship for a variety of reasons. Moreover, for many Aboriginal people, socio-economic constraints (eg, lack of alternative accommodation), cultural constraints (eg, connection to family and community) and geographical remoteness will mean that protection orders are simply not sought or, if they are obtained, the parties will continue to reside together or stay in contact.

It appears that the standard approach to violence restraining orders in the past has been to prohibit or significantly restrict contact between the parties. From the perspective of minimising the risk of future family and domestic violence, this is an understandable approach. However, the unintended consequences of this approach are significant. Some victims of family and domestic violence are likely to be discouraged from seeking a protection order in the belief that it will prevent them from continuing some form of contact with the perpetrator. Further, if a non-contact order is made and the parties intend to maintain contact, it is inevitable that breaches will occur and the person bound will be liable to criminal prosecution and punishment.⁴⁶²

⁴⁵⁸ Gordon, S, Hallahan, K and Henry, D, *Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia, 2002, p. 86.

⁴⁵⁹ Gordon, S, Hallahan, K and Henry, D, *Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia, 2002, pp. 86-87.

⁴⁶⁰ Western Australia, *Parliamentary Debates*, Legislative Assembly, 12 June 1997, pp. 4014 (R Parker), pp. 4015.

⁴⁶¹ Gordon, S, Hallahan, K and Henry, D, *Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia, 2002, pp. 86-87.

⁴⁶² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, p. 78.

With this in mind, the Law Reform Commission ‘decided that in determining the terms of a family and domestic violence protection order a more flexible approach should be encouraged.’⁴⁶³ The Law Reform Commission went on to recommend that ‘the circumstances of the relationship between the parties, including whether the parties intend to remain living together or remain in contact and the wishes of the person seeking to be protected in this regard’⁴⁶⁴ should be established as a relevant factor for consideration ‘when determining whether to make a family and domestic violence protection order and the terms of a family and domestic violence protection order’.⁴⁶⁵

During the investigation, knowledge of, and access to, VROs with these sorts of terms were raised by Aboriginal stakeholders as a strategy for increasing Aboriginal victim’s likelihood to use VROs as a protective measure. However, these stakeholders were of the view that most victims are not provided with information regarding VROs on such terms, and further, that VROs on such terms were discouraged by the courts.

10.3.2 The process for obtaining a violence restraining order is not necessarily always culturally appropriate for Aboriginal victims

The research literature further suggests that, if an Aboriginal victim does decide to seek a VRO, the process for obtaining one is not necessarily always culturally appropriate. In particular, the research literature suggests that, for Aboriginal victims, contact with police officers and [c]ourt experiences are marked by high levels of public scrutiny and shame, lack of access to information, lack of opportunity to participate fully in processes and decision making, and risk of being subjected to blame, discrimination and reprisal.⁴⁶⁶

The research literature suggests that, in relation to accessing VROs:

This barrier to using services needs to be understood against the context of the history of trauma and ongoing racism that many Aboriginal women continue to experience in interactions with ‘mainstream’ services... While it was not uncommon for women in this study to have delayed involving the legal system out of a sense of loyalty to their partners, this can be an even more difficult dilemma for Aboriginal women, given the history of Aboriginal-Police relations and concerns about deaths in custody...⁴⁶⁷

⁴⁶³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, p. 78.

⁴⁶⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, p. 78.

⁴⁶⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, p. 80.

⁴⁶⁶ Moore, E, *Not Just Court: Indigenous Families, Violence And Apprehended Violence Orders In Rural New South Wales*, University of Sydney, New South Wales, February 2002, p. 8.

⁴⁶⁷ Laing, L, *It’s like this maze that you have to make your way through’. Women’s Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 23.

The research literature further suggests of the VRO process:

The notion of, and the application process for, [v]iolence [r]estraining [o]rders is culturally inappropriate within many Indigenous communities ... it is recommended that policy and legislation in the area of domestic violence ought to be more responsive to the needs of, and less threatening to, Aboriginal people. In order to achieve this goal there should be extensive consultation and negotiation with Aboriginal communities to initiate the development of alternative methods of community and/or legal intervention in dealing with all aspects of domestic and family violence.⁴⁶⁸

10.3.3 Aboriginal people in regional and remote locations face additional logistical and structural barriers

The research literature suggests that '[r]ural Aboriginal women are inhibited from seeking help from family violence by [some of] the same factors that confront other Australian and rural women.'⁴⁶⁹ These factors can include lack of adequate access to formal services, including legal representation and courts.

During the investigation, a lack of access to services was also raised as a significant barrier by stakeholders representing Aboriginal people. Of particular note, these stakeholders identified that, in order to seek a VRO, victims may be required to travel for several hours to their nearest police station to access video conference facilities connected with the relevant court. They then face the risk that, in an emergency, police officers will be called away and they will not be able to make their application on that day. In addition to the logistical and financial burden this places on victims, it also requires victims to leave the support of their friends and family.

The research literature identifies strategies suggested by Aboriginal people to address these issues, including expanding the coverage of existing support services for Aboriginal people to currently unserved locations and increasing the use of closed circuit television to give evidence.⁴⁷⁰

During the course of the investigation, DOTAG has informed the Office that:

...key stakeholder collaboration already occurs across Government in the development of family violence policy, including under DCPFS Freedom From Fear Action Plan 2015. Structures are already in place in the State Government to support this, which includes the Family Violence Support Lists Oversight Group (led by the Chief Magistrate of Western Australia) and the Family and Domestic Violence Senior Officers Group.⁴⁷¹

⁴⁶⁸ Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007, p. v.

⁴⁶⁹ Moore, E, *Not Just Court: Indigenous Families, Violence and Apprehended Violence Orders In Rural New South Wales*, University of Sydney, New South Wales, February 2002, p. 6.

⁴⁷⁰ Moore, E, *Not Just Court: Indigenous Families, Violence and Apprehended Violence Orders In Rural New South Wales*, University of Sydney, New South Wales, February 2002, p. 10.

⁴⁷¹ Department of the Attorney General, personal communication, 20 October 2015.

Recommendation 23

DOTAG, in collaboration with key stakeholders, considers opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order, and ensures that Aboriginal people are involved in a full and active way at each stage and level of this process, and that this process is comprehensively informed by Aboriginal culture.

Recommendation 24

DCPFS, in collaboration with DOTAG, ensures that the development of the Aboriginal family violence strategy referred to at Recommendation 4 incorporates the opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order identified through the implementation of Recommendation 23.

10.4 Progression of applications for a violence restraining order

10.4.1 Applications for an interim violence restraining order frequently did not progress to a final violence restraining order

The Office analysed all VRO applications lodged in Western Australia in the investigation period to examine how many hearings were held relating to VROs, and the nature and outcomes of these hearings.

In the investigation period, the Magistrates Court and Children's Court held 41,229 hearings relating to VRO applications (including applications to vary or revoke VROs already in force). The vast majority of these hearings took place in the Magistrates Court (35,588 or 86 per cent).

Of the 41,229 hearings relating to VRO applications, 21,025 hearings (51 per cent) were first hearings that were held *ex parte*, that is, hearings where the respondent was not present and an interim VRO was sought. In the investigation period, 14,417 interim VROs were made by the courts.

In the investigation period, 6,351⁴⁷² interim VROs automatically became final VROs without returning to court. Although these orders are not a subset of the 14,417 interim orders, the data indicates that approximately 44 per cent of interim VROs automatically become final VROs without returning to court.

In the investigation period 5,819⁴⁷³ objections were lodged with the court. Again, although these orders are not a subset of the 14,417 interim orders, the data indicates that approximately 40 per cent of interim VROs are objected to and a further hearing is required.

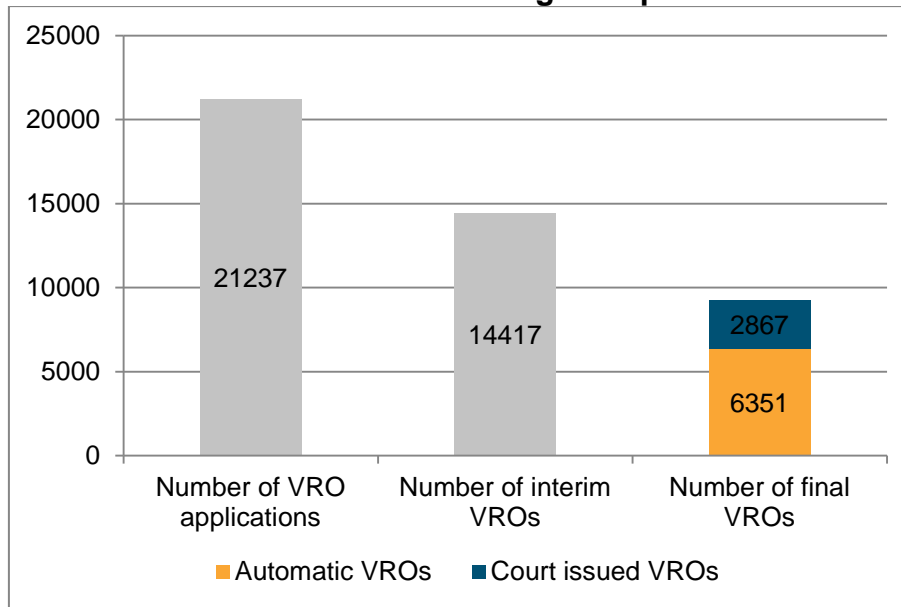
⁴⁷² It is important to note that these orders are not a subset of the 14,417 interim orders, although there is some overlap. This data refers to all interim orders which automatically became final orders in the investigation period, which may have been granted prior to the investigation period.

⁴⁷³ As above, it is important to note that these orders are not a subset of the 14,417 interim orders, although there is some overlap. This data refers to all objections to interim orders which were lodged in the investigation period, these interim orders may have been granted prior to the investigation period.

In the investigation period, the courts held 8,960 mention hearings and 5,674 final order hearings. A final VRO was granted as an outcome of 2,867 hearings.

Considered collectively with the 6,351 automatic final VROs in the investigation period, this indicates that approximately 43 per cent of all applications for VROs go on to become final orders (Figure 31).

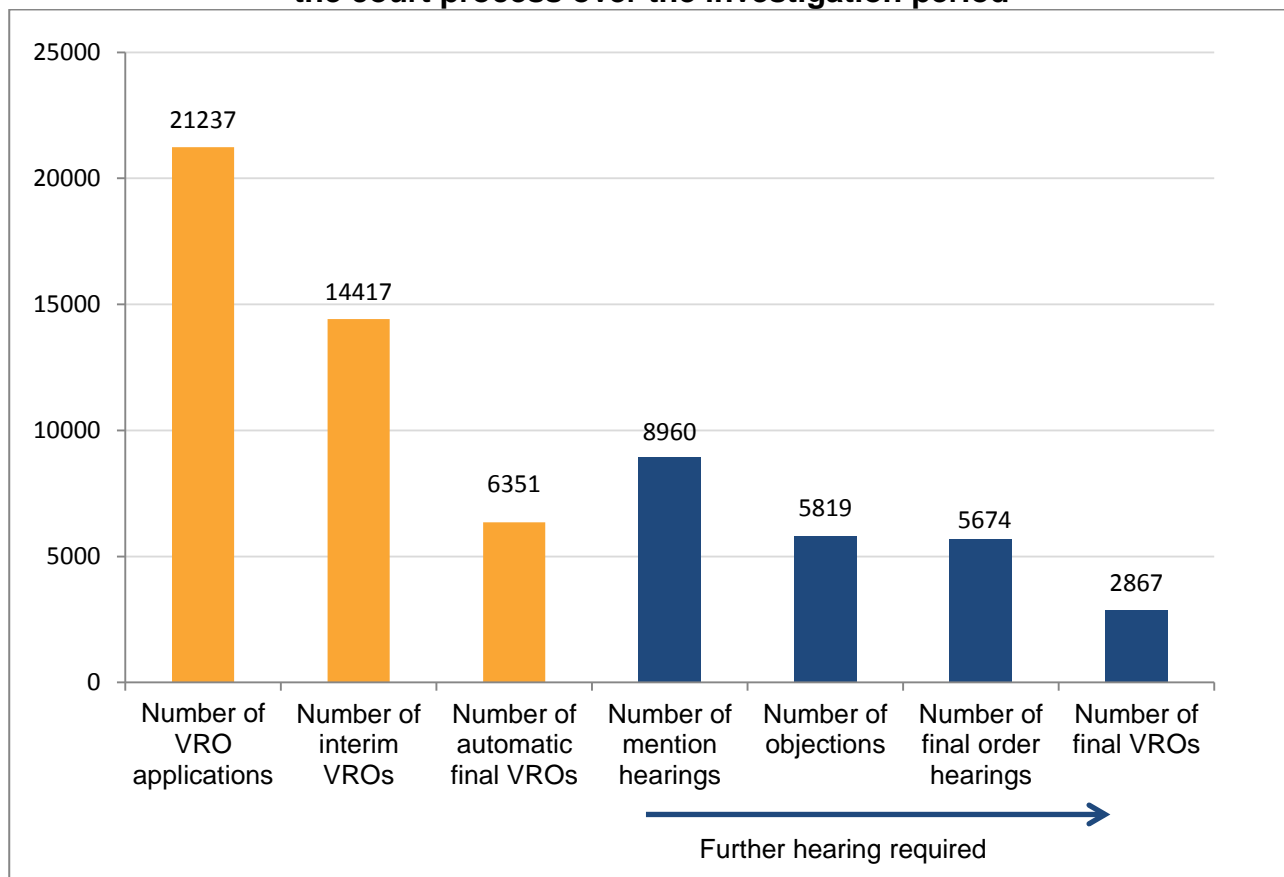
Figure 31: VRO applications and orders over the investigation period



Source: Ombudsman Western Australia

Figure 32 below shows the overall pattern of VRO court hearings and outcomes in the investigation period from applications, to interim VROs, progressing to final order hearings and final VROs. Through this analysis, the Office identified that if a further hearing is required an interim VRO is less likely to progress to a final order.

Figure 32: Patterns in VRO hearings and outcomes across the court process over the investigation period



Source: Ombudsman Western Australia

The most significant consequence of not progressing from an interim order to a final order is that persons who the court has otherwise determined meet the grounds for the granting of an interim VRO are no longer protected when the interim order ceases to be in place.

10.5 Reasons why a final violence restraining order is not obtained

The findings of the Office’s analysis set out above are consistent with the research literature, which has suggested that a large number of applications for VROs do not progress to a final VRO.⁴⁷⁴ They are also consistent with the Law Reform Commission Final Report, which formed the view that ‘in Western Australia there are significantly fewer final violence restraining orders made in comparison to interim violence restraining orders’.⁴⁷⁵

⁴⁷⁴ Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007; Laing, L, ‘It’s like this maze that you have to make your way through’. *Women’s Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013.

⁴⁷⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 81.

The Law Reform Commission has recommended that:

Review of the circumstances of making interim and final family and domestic violence protection orders

That the Department of the Attorney General conduct a review of the circumstances of making interim and final family and domestic violence protection orders including consideration of:

- (a) the number of interim family and domestic violence protection orders made in comparison to the number of final family and domestic violence protection orders made in a 12-month period;
- (b) the reasons why a final family and domestic violence protection order was not made after an interim family and domestic violence protection order had already been made ...⁴⁷⁶

The Office has further analysed the state-wide data, and considered the research literature, to identify possible reasons why interim VROs frequently do not progress to a final order, and the results of this analysis are set out below.

10.5.1 Processes associated with going to court can increase victim distress

The research literature suggests that ‘the confusion, frustration, and anxiety of the court process when applying for a domestic violence order may determine whether or not the victim will continue to pursue an order, or withdraw their application partway.’⁴⁷⁷ In particular, the research literature identifies the potential for court processes to increase victim distress, as follows:

Evidence suggests victims can be unnecessarily re-victimised when making applications for domestic violence orders ... it is possible for victims of domestic violence to be exposed to subtle, but potent tactics of control and power in court processes that can mirror the tactics of domestic violence perpetrators in private settings.⁴⁷⁸

The research literature further suggests that ‘[t]he adversarial approach of domestic violence order proceedings ... can have the effect of re-traumatising or revictimising vulnerable people’.⁴⁷⁹ In particular, applicants for VROs ‘have reported experiencing the following at court, in particular at final hearings’:⁴⁸⁰

- encountering the respondent in the court precinct;
- difficulty in obtaining experienced legal representation;

⁴⁷⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 82.

⁴⁷⁷ Victims of Crime Commissioner ACT, *Reforming The Framework For Applying For A Domestic Violence Order In The ACT*, Victims of Crime Commissioner ACT, Canberra, March 2015, p. 2.

⁴⁷⁸ Victims of Crime Commissioner ACT, *Reforming The Framework For Applying For A Domestic Violence Order In The ACT*, Victims of Crime Commissioner ACT, Canberra, March 2015, p. 1.

⁴⁷⁹ Victims of Crime Commissioner ACT, *Reforming The Framework For Applying For A Domestic Violence Order In The ACT*, Victims of Crime Commissioner ACT, Canberra, March 2015, p. 2.

⁴⁸⁰ Victims of Crime Commissioner ACT, *Reforming The Framework For Applying For A Domestic Violence Order In The ACT*, Victims of Crime Commissioner ACT, Canberra, March 2015, p. 2.

- delays in the matter being heard;
- aggressive cross-examination by barristers on behalf of the respondent to the order; [and]
- personal cross-examination by the respondent if not legally represented.⁴⁸¹

A victim's voice⁴⁸²

“A woman presented to the service reporting her husband of 12 years had physically abused her causing injuries to her face, including a black eye and swollen cheek. The woman lived in a remote location ... and had never previously reported physical, emotional or sexual abuse against her prior to this meeting.

The woman reported that the escalation and unpredictability of her husband's abuse towards her was becoming more dangerous and she feared for her life, and was seeking an immediate violence restraining order hearing as a matter of urgency.

The service staff and the woman attended court and the matter was listed to be heard the same day for a violence restraining order application.

The staff and the woman waited from 10am to 4:30pm. At 4:30pm the woman was advised by the clerk of court that the Magistrate would not be available to hear the victim's VRO application because his current hearing would not be finished until 7pm. The women were given an apology and asked to return the following day.

The following day the woman advised service staff that she did not have the strength to attend court and had no one to care for her children.

The service offered to find childcare and transport her to the courthouse. The woman declined all offers of assistance to enable her court appearance.”

⁴⁸¹ Victims of Crime Commissioner ACT, *Reforming The Framework For Applying For A Domestic Violence Order In The ACT*, Victims of Crime Commissioner ACT, Canberra, March 2015, p. 2.

⁴⁸² This case study was provided to the Ombudsman's Office by a non-government organisation which provides support services to victims of family and domestic violence.

These issues have been widely observed and the research literature also suggests that across Australia '[s]ubstantial research on legal responses to family violence recognises the need for significant reform to protect victims'.⁴⁸³ The issue of victim's experiences of the legal response is also explicitly identified in the National Plan, through 'National Outcome 5 – Justice responses are effective'⁴⁸⁴, which specifies:

Reforms to the justice system have improved links between criminal justice processes, services for victims and prevention programs. Despite these changes, the legal response remains inadequate for many women and their children. Under the National Plan work will be undertaken to improve the legal response to domestic and family violence and sexual assault, and to promote responses from criminal justice agencies.⁴⁸⁵

10.5.2 Requirements to participate in further court hearings may discourage victims from progressing to a final order

Requirements to attend further court hearings have been suggested as a reason victims may choose not to progress from an interim to a final VRO.⁴⁸⁶ This is consistent with the Office's findings set out at section 10.4.1 above.

The research literature has suggested that victims are more likely to withdraw from the VRO process if they have higher levels of dependence or isolation, coupled with limited support or advocacy,⁴⁸⁷ and if the victim has dependent children.⁴⁸⁸

During the investigation, stakeholders also cited instances where delays in court hearings and adjournments resulting in the need to return to court, had prevented or discouraged their clients from proceeding with a VRO application.

⁴⁸³ Victims of Crime Commissioner ACT, *Reforming The Framework For Applying For A Domestic Violence Order In The ACT*, Victims of Crime Commissioner ACT, Canberra, March 2015, p. 2.

⁴⁸⁴ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Australian Government, Canberra, February 2011, p. 2, viewed 4 February 2014, <<http://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children>>.

⁴⁸⁵ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Australian Government, Canberra, February 2011, p. 2, viewed 4 February 2014, <<http://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children>>.

⁴⁸⁶ Samantha Jeffries, Christine Bond and Rachael Field, 'Australian Domestic Violence Protection Order Legislation: A Comparative Quantitative Context Analysis of Victim Safety Provisions', *Current Issues in Criminal Justice*, vol. 25, no. 2, p. 623.

⁴⁸⁷ Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007, p. 3.

⁴⁸⁸ Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007, p. 3.

The Office conducted further analysis of all VRO applications lodged in Western Australia in the investigation period to determine how many hearings were required to obtain a final VRO (Figure 33). To do this, the Office analysed all hearings in the investigation period and reviewed its 'hearing number' in relation to the original application. This does not mean that the application was finalised at this hearing, but rather that at least this number of hearings took place. It should also be noted that the first hearing in the investigation period is not necessarily the first hearing of the matter.

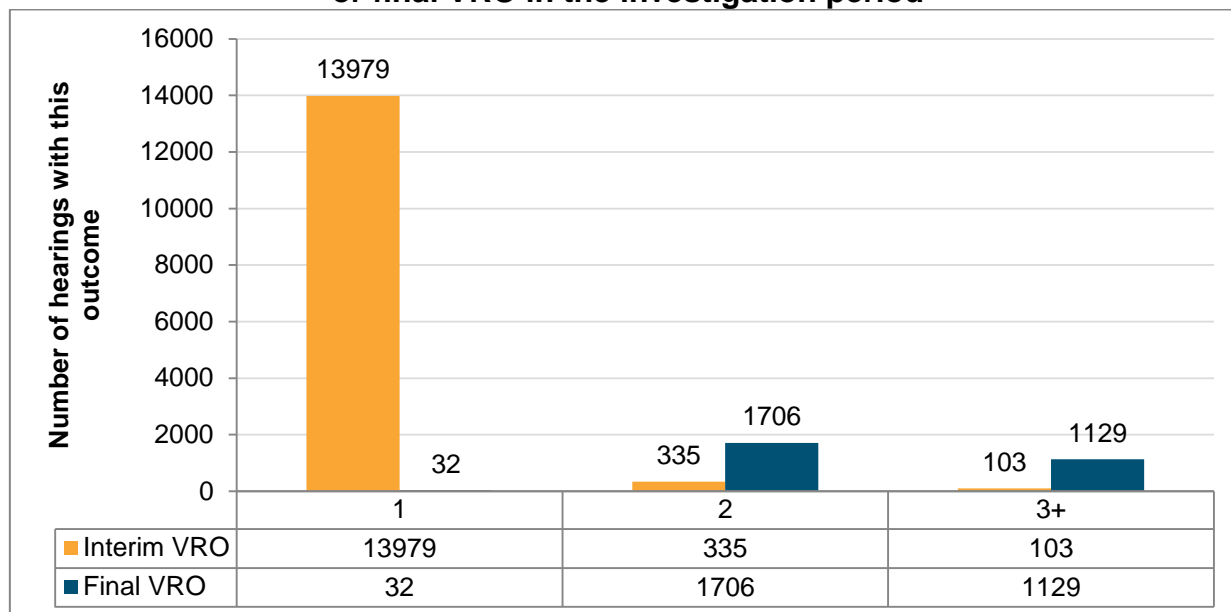
Figure 33: Number of hearings in the investigation period

Hearing number	Number of hearings
1	21150
2	11416
3	4895
4	2004
5	877
6	416
7 or more	471

Source: Ombudsman Western Australia

The Office also further analysed the pattern of multiple hearings through a review of hearing outcomes (Figure 34). The Office identified that, where the outcome of the hearing was the granting of an interim VRO, this occurred at the first hearing 97 per cent of the time. Where the outcome of a hearing was a final VRO, this occurred at the second hearing 60 per cent of the time and at a third or subsequent hearing 39 per cent of the time. This confirms that, while an interim VRO is likely to require victims to participate in only one hearing, progression to a final VRO is more likely to require victims to participate in subsequent hearings.

Figure 34: Hearing number with a hearing outcome of interim or final VRO in the investigation period



Source: Ombudsman Western Australia

10.5.3 Requirements to give evidence, and face the perpetrator in court, are considered by victims when deciding whether or not to progress their application

If the respondent to a VRO objects to an interim order a victim may be required to attend a further court hearing, where the respondent may be present, in order to obtain a final order. In Western Australia, the Office of the Auditor General found that, in many cases, victims will decide to withdraw their application:

The reason[s] most frequently provided in interviews by applicants and refuge workers for not proceeding with an application was a fear of confronting the aggressor in court or disclosing personal information publicly. In these cases the application was withdrawn after issue of interim orders and lodgement of an objection by the respondent.⁴⁸⁹

The Law Reform Commission Final Report also acknowledged the frequent reluctance of victims of family and domestic violence to give evidence in both civil and criminal proceedings due to an awareness that they may have to ‘fac[e] the perpetrator in court and ... re-liv[e] events’.⁴⁹⁰

The Law Reform Commission considered some of the legal issues contributing to this problem, in particular by examining the use of special witness provisions under the *Evidence Act 1906* and comparable provisions in the *Restraining Orders Act*.⁴⁹¹

⁴⁸⁹ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 17.

⁴⁹⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 152.

⁴⁹¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, pp. 152-154.

Notably, section 106R(3)(b) of the *Evidence Act 1906* provides that a person may be declared to be a special witness if, in the court's opinion, he or she would:

- (b) be likely –
 - (i) to suffer severe emotional trauma; or
 - (ii) to be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily,

by reason of age, cultural background, relationship to any party to the proceeding, the nature of the subject-matter of the evidence, or any other factor that the court considers relevant.

The Law Reform Commission Final Report observed that, currently, both section 106R of the *Evidence Act 1906* and regulation 10A of the *Restraining Orders Regulations 1997* (that allow for the use of closed circuit television or screening arrangements) are discretionary provisions that do not provide certainty for victims of family and domestic violence when giving evidence in court.⁴⁹² The Law Reform Commission therefore recommended:

That the new Family and Domestic Violence Protection Order Act provide that for the purposes of determining a family and domestic violence protection order application the strict rules of evidence do not apply⁴⁹³

...

That the *Evidence Act 1906* (WA) and the *Restraining Orders Regulations 1997* (WA) be amended to provide that victims of family and domestic violence related offences, applicants in contested family and domestic violence protection order proceedings and child witnesses in either proceedings be deemed to have special witness status unless the court is satisfied that the provision of special arrangements for the giving of evidence is unnecessary in the circumstances.⁴⁹⁴

The Office's findings support the proposals for legislative reform contained within the Law Reform Commission Final Report, which seek to enhance victim safety and reduce victim distress when participating in court proceedings.

10.5.4 Comments made in court can negatively impact upon victims

During the investigation, several stakeholders expressed the view that the degree to which judicial officers understand the dynamics of family and domestic violence has an influence on victims.

⁴⁹² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 152.

⁴⁹³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 107.

⁴⁹⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 153.

The Law Reform Commission Final Report also recognised this as an issue affecting victims, observing that:

...this lack of understanding may lead to inappropriate comments being made to victims of family and domestic violence and the negative experience may in turn discourage victims from seeking assistance from the legal system in the future.⁴⁹⁵

The Law Reform Commission explored this issue in the Law Reform Commission Final Report and made the following recommendations:

Recommendation 70
Judicial education programs

That the Western Australian government provide sufficient resources to enable the heads of jurisdiction in each Western Australian court to provide regular judicial education programs in relation to the nature and dynamics of family and domestic violence

...

Recommendation 72
Selection criteria for magistrates

That the Western Australian government ensure that the selection criteria for the appointment as a magistrate include as a desirable, but not essential, characteristic knowledge of the nature and dynamics of family and domestic violence and experience with legal issues concerning family and domestic violence.⁴⁹⁶

The potential benefits of judicial education have also been recognised at the national level, with Australia's National Research Organisation for Women's Safety observing in June 2015:

An important consideration in relation to the need for judicial education on domestic and family violence are reports of poor experiences of victims in the court process ... Educating judicial officers may also foster confidence in the community that the judiciary have consistent and transparent processes.⁴⁹⁷

Further, in August 2015, the Finance and Public Administration References Committee, in its report *Domestic violence in Australia*, made the following recommendation:

The committee recommends the Commonwealth Government, through the Attorney-General's Department and COAG, facilitate the training of all judicial

⁴⁹⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 175.

⁴⁹⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 177.

⁴⁹⁷ Wakefield, S and Taylor, A, *Judicial education for domestic and family violence: State of knowledge paper*, Australia's National Research Organisation for Women's Safety Limited, Sydney, New South Wales, June 2015, p. 7.

officers who preside over family violence matters, alongside the development of a national family bench book by June 2017.⁴⁹⁸

In Western Australia, in March 2015, the Hon. Chief Justice Wayne Martin AC observed that:

Continued victim support for court arrangements relating to family violence can only be expected if court staff and judicial officers are appropriately trained in the particular characteristics of family violence, and the issues which arise in cases of family violence, and best practice methodology in dealing with those issues ... in my view it will be essential for government to provide the necessary resources to enable appropriate training for all court staff and judicial officers who are likely to have any contact with the victims of family violence.⁴⁹⁹

The Office's findings support Recommendations 70 and 72 of the Law Reform Commission Final Report, as well as Recommendation 15 (that DOTAG explore the reasons why a final VRO was not made after an interim VRO had already been made). The findings of this investigation could assist in informing this review by DOTAG.

10.5.5 When an application for a VRO is dismissed

There were 41,229 hearings regarding VROs in the investigation period. An application for a VRO was dismissed or not granted as an outcome of 6,988 hearings (17 per cent) in the investigation period. In cases where an application for a VRO has been dismissed it may still be appropriate to provide safety planning assistance.

Recommendation 25

DOTAG, in collaboration with DCPFS, identifies and incorporates into *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, ways of ensuring that, in cases where an application for a violence restraining order has been dismissed, if appropriate, victims are provided with referrals to appropriate safety planning assistance.

⁴⁹⁸ Finance and Public Administration References Committee, *Domestic violence in Australia*, Commonwealth of Australia, August 2015, p. 129.

⁴⁹⁹ The Honourable Wayne Martin AC, Chief Justice of Western Australia, *The Importance of Victim Inclusive Practices to the Criminal Justice System*, Angelhands Victim Awareness Training Seminar, Maylands, 20 March 2015.

11 Serving violence restraining orders

A victim's voice⁵⁰⁰

Jess had recently separated from her defacto partner Gary, who perpetrated violence against her. Jess and Gary had been living together in a country town in Western Australia.

After leaving Gary, Jess commenced a drug and alcohol rehabilitation program in Perth. Jess attended a function with family and friends in Perth and Gary also attended. At the function, Gary was drinking, smoking cannabis and using amphetamines. Gary approached Jess and verbally abused her for not participating in using alcohol and drugs. Gary became increasingly agitated and slashed Jess across the upper arm with a knife.

Jess was taken to hospital and police officers visited her to obtain her statement. The police officers took photos of Jess's injuries and collected her damaged clothing. The police officers recorded on their incident report that they were unable to locate Gary. Jess informed the attending police officers that she would attend court as soon as possible to apply for a VRO. Two days later Jess was granted an interim VRO by the Magistrates Court.

The following evening Jess contacted police to report a breach of the VRO after Gary approached her and made verbal threats. Police officers explained to Jess that, as the VRO was yet to be served, the VRO was not enforceable and they could not charge Gary with the breach. The VRO was served on Gary six days later when he was located by police.

⁵⁰⁰ This case study is drawn from one of the 30 fatalities with information taken from WAPOL records (with names changed).

11.1 Timeliness of service of violence restraining orders

Bearing in mind the nine principles identified by the Office, service of VROs as soon as possible demonstrates to victims that institutions will provide them with help, and to perpetrators that they will be held accountable for their violence.

11.1.1 Legislative requirements

Once a court has made a VRO, section 8(1) of the *Restraining Orders Act* provides that an explanation of the order is to be given, as follows:

8. Explanation about orders to be given

- (1) Subject to this section, a court that makes a restraining order is to explain, as is appropriate, to —
 - (a) the person who is bound by the order; and
 - (b) the —
 - (i) person protected by the order; or
 - (ii) parent or guardian of that person, if the parent or guardian made the application for the order on behalf of that person,

who are in court when the order is made —

- (c) the purpose, terms and effects of the order, including that the order may be registered and enforced in another Australian jurisdiction; and
- (d) the consequences that may follow if the person who is bound by the order contravenes the order; and
- (e) the consequences that may follow if the person protected by the order —
 - (i) encourages or invites the person who is bound by the order to contravene the order; or
 - (ii) by his or her actions causes the person who is bound by the order to breach the order;

and

- (f) that the order must be varied or cancelled if the person who is bound by the order and the person protected by the order intend to have contact or reconcile with the other person; and
- (g) how the order may be varied, cancelled or extended; and
- (h) if the order is a violence restraining order, the effects of sections 14 and 62E relating to firearms; and
- (i) that counselling and support services may be of assistance, and where appropriate, the court is to refer the person to specific services.

Section 8(3) makes further provision for how this explanation is to be given if the person is not present in court:

- (3) If —
- (a) a person referred to in subsection (1)(a) or (b) is not present in court when the order is made; or
 - (b) it is not practicable for the court to give the explanation at the time the restraining order is made,

then the registrar is to cause a document containing the explanation to be —

- (c) in the case of subsection (1)(a), served on the person; and
- (d) in the case of subsection (1)(b), delivered to the person.

In practice, unless the person bound is present in court at the time the VRO is granted, the service of VROs is usually undertaken by police officers.

The Law Reform Commission Final Report notes that the *Restraining Orders Act* 'currently does not include any requirement for a violence restraining order to be served as soon as possible or within any set period of time'.⁵⁰¹ However, as observed by the Law Reform Commission, 'it is vital that the [VROs] are served on the person bound by the order as promptly as possible; the person bound is not required to comply with the order until he or she has notice of the existence of the order and its terms.'⁵⁰²

The Law Reform Commission Final Report accordingly recommends:

Recommendation 22
Service of family and domestic violence protection orders

That the new Family and Domestic Violence Protection Order Act provide that:

- (a) A family and domestic violence protection order is to be served personally on the person bound by the order as soon as possible.
- (b) If a family and domestic violence protection order has not been served on the person bound within 72 hours, the Western Australia Police are to apply to a registrar of the court within 24 hours for oral service to be authorised and the registrar may authorise oral service if satisfied that reasonable efforts have been made to serve the order personally.⁵⁰³

⁵⁰¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 93.

⁵⁰² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 93.

⁵⁰³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 94.

11.1.2 Policy requirements

The COPS Manual recognises that timely service of VROs is critical,⁵⁰⁴ requiring that:

The highest priority must be given to the service of Restraining Orders. A court issued interim, final and Telephone Violence Restraining Order (VRO) must be served **immediately**.⁵⁰⁵ [Emphasis added]

11.1.3 The average time taken to serve violence restraining orders in the investigation period was 29 days including outliers, and 14 days excluding outliers, and this time varied from less than one day to 658 days

The Office analysed the state-wide data relating to all VROs provided to WAPOL by the courts for service in the investigation period. It is important to note that these VROs were provided to WAPOL for service at different points in the investigation period, for example a VRO may have been provided to WAPOL and served on the first day of the investigation period or provided to WAPOL for service on the last day of the investigation period.

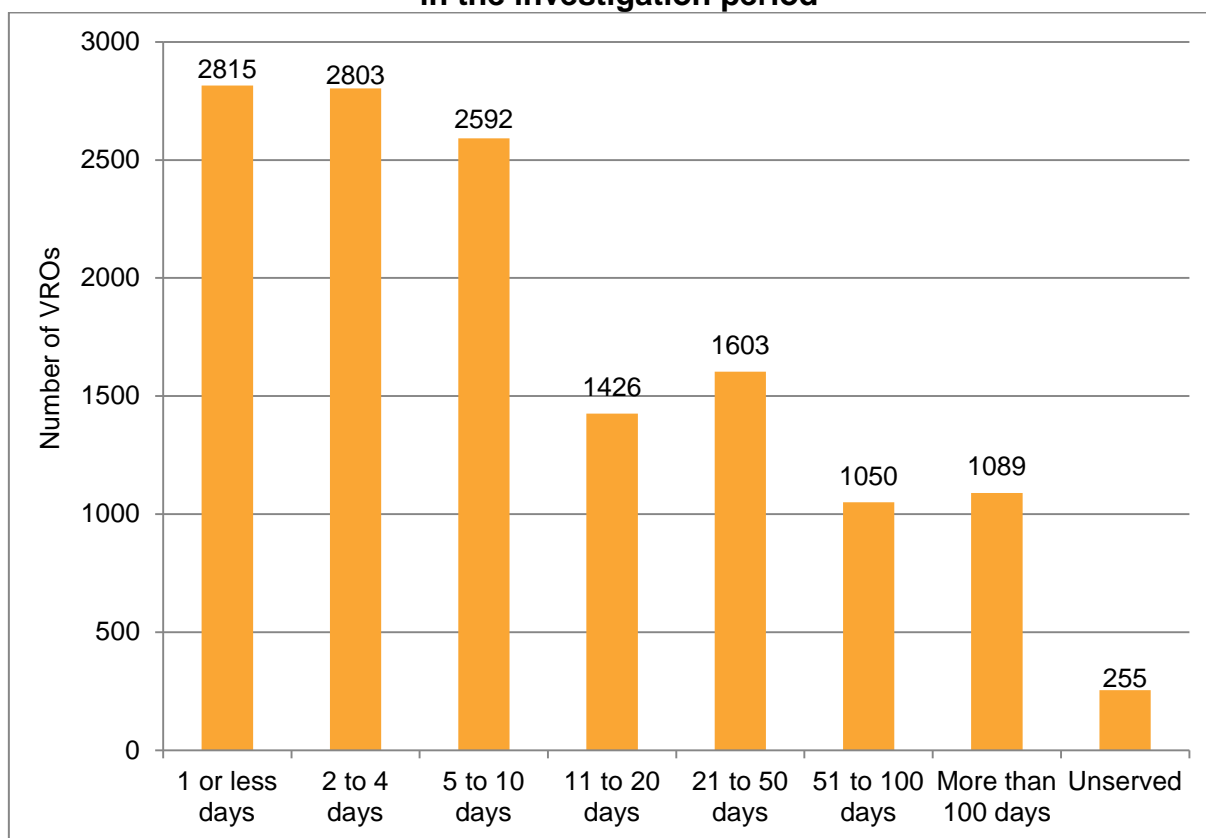
The Office's analysis of the state-wide data identified that, in the investigation period, 13,378 VROs provided to WAPOL by the courts were served, and the average time taken to serve these VROs was 29 days including outliers, and 14 days excluding outliers.⁵⁰⁶ The time taken to serve a VRO varied from less than one day to 658 days. Sixty-one per cent of all served VROs were served within 10 days. The number of VROs served within different time periods is shown in Figure 35 below.

⁵⁰⁴ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

⁵⁰⁵ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

⁵⁰⁶ Excluded outliers were violence restraining orders served on day 101 or after. Further detail is provided in Figure 36 below.

Figure 35: Time taken to serve violence restraining orders in the investigation period



Source: Ombudsman Western Australia

In 2002, the Office of the Auditor General examined the timeliness of service of VROs in Western Australia, in its report *A Measure of Protection: Management and Effectiveness of Restraining Orders (the OAG report)*. In this report, the Auditor General expressed concerns about delays in the service of VROs and recommended that WAPOL ‘monitor timeliness of service of orders and minimise delays in service of orders’.⁵⁰⁷ The Office has compared the state-wide data with the findings of the OAG report, as shown in Figure 36 below. This comparison shows that, since the OAG report, there has been an overall improvement in the average time taken by WAPOL to serve VROs, both overall and removing outliers. However, the percentage of VROs served within four days has declined over this time.

⁵⁰⁷ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 39.

Figure 36: Comparison of time taken to serve violence restraining orders

Measure	Ombudsman's finding for the investigation period	Office of the Auditor General's finding (using data for the period 1999 to 2001)
Percentage of all violence restraining orders issued that were served within 4 days	42%	58%
Average time to serve all violence restraining orders issued	29 days	44 days
Average time to serve, without including outliers ⁵⁰⁸	14 days	18 days

Source: Ombudsman Western Australia and Office of the Auditor General

During the investigation, stakeholders expressed the view that delays in the service of VROs were leaving victims at risk, particularly as victims often believed they were protected as soon as a VRO was granted by the court.

11.2 Methods of service of violence restraining orders

11.2.1 Legislative requirements

Section 55 of the *Restraining Orders Act* requires that, with some exceptions, VROs are to be served personally on the respondent, as follows:

55. Service of restraining order

- (1) A restraining order is to be served personally unless —
 - (a) the registrar has authorised oral service under subsection (2); or
 - (b) subsection (3) applies to the order.

If a VRO is not served personally, Section 55(2) of the *Restraining Orders Act* provides for the registrar (of the Court) to authorise oral service of a VRO 'if the registrar is satisfied that reasonable efforts have been made to serve the order personally.' Section 55(6) further specifies that '[o]ral service may be effected face to face or by telephone, radio, video conference or another similar method.'

⁵⁰⁸ The Auditor General noted that 'the average is impacted by a minority of orders where there is significant delay in service. A clearer estimate of service timeliness may be gained by looking only at orders served in 100 days' or less. To enable this comparison, the Office has also excluded orders served on day 101 or after.

11.2.2 Policy requirements

The COPS Manual⁵⁰⁹ requires that the court of origin be contacted to obtain authorisation for oral service within five days if the VRO has not been served.⁵¹⁰

The Law Reform Commission Final Report observes:

The Commission maintains its view that the preferred method of service should be personal service. It is essential that the person bound by the order is properly informed about the contents and consequences of the order. The provision of oral service via telephone has a number of potential difficulties including how police will verify that the person spoken to is in fact the person bound by the order. The Commission recognises that the Western Australia Police policy requires police to apply to the court for oral service after five days and believes that more timely service can be achieved by including a legislative requirement for police to apply for oral service after a specified shorter period of time and to include in the legislation that service is to be effected as soon as possible.

Recommendation 22

Service of family and domestic violence protection orders

That the new Family and Domestic Violence Protection Order Act provide that:

- (a) A family and domestic violence protection order is to be served personally on the person bound by the order as soon as possible.
- (b) If a family and domestic violence protection order has not been served on the person bound within 72 hours, the Western Australia Police are to apply to a registrar of the court within 24 hours for oral service to be authorised and the registrar may authorise oral service if satisfied that reasonable efforts have been made to serve the order personally.⁵¹¹

11.2.3 92 per cent of violence restraining orders served in the investigation period were served in person by WAPOL

The Office analysed the state-wide data to determine the primary methods of service of VROs. The Office identified that, in the investigation period, of the 13,378 VROs served:

- 13,014 VROs were served personally with 12,032 (92 per cent) of these served personally by police officers;
- 140 VROs were served by post;
- 128 VROs were served orally, all by WAPOL; and
- 96 VROs were served via 'substituted service'.

⁵⁰⁹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

⁵¹⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

⁵¹¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. 94.

The Office also identified that 6,300 VROs were served by WAPOL more than five days after the VRO was granted. However, of these 6,300 VROs:

- Ninety-seven per cent (6,141) were served personally; and
- Two per cent (111) were served via oral service.⁵¹²

The Office modelled the implementation of the Law Reform Commission's recommendation that, 'if a family and domestic violence protection order has not been served on the person bound within 72 hours, the Western Australia Police are to apply to a registrar of the court within 24 hours'.⁵¹³ If this had been applicable during the investigation period, WAPOL would have been required to apply for oral service for 63 per cent of served VROs, resulting in 8,450 applications to do so to the registrar of the court.

As noted at section 9.1.5, during the course of the investigation, DOTAG has informed the Office that the State Government is currently considering its response to the Law Reform Commission Final Report. DOTAG further informed the Office that:

A detailed Drafting Options Paper (Family Violence Restraining Orders-Drafting Options Paper) is currently out with key State Government and community sector family violence response stakeholders for comment. This is a targeted consultation process on foundation aspects of the FVROs themselves (there will be other aspects included in the Bill, and further consultation will occur on these as required).⁵¹⁴

In light of the Office's modelling, and the concomitant resource implications, as part of this consideration, DOTAG, in collaboration with WAPOL, could consider whether it may be appropriate to pursue amendments to the *Restraining Orders Act* so that, where a VRO has not been served on the person bound within 72 hours, and reasonable efforts have been made to serve the order personally, the VRO is deemed to be authorised for oral service. Legislative and administrative arrangements could be established to ensure that WAPOL keeps records that demonstrate that reasonable efforts had been made to serve the order personally prior to oral service, and that such records were periodically monitored and reported on by an appropriate agency.

Recommendation 26

DOTAG collaborates with WAPOL to consider whether it may be appropriate to pursue amendments to the *Restraining Orders Act 1997* so that, where a VRO has not been served on the person bound within 72 hours, and reasonable efforts have been made to serve the order personally, the VRO is deemed to be authorised for oral service, including considering establishing legislative and administrative arrangements to ensure WAPOL keeps records that demonstrate that reasonable efforts had been made to serve the order personally prior to oral service.

⁵¹² A further 44 VROs were served by post and four VROs were served via 'substituted service'.

⁵¹³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 94.

⁵¹⁴ Department of the Attorney General, personal communication, 20 October 2015.

11.2.4 The limited information available to WAPOL prior to serving a violence restraining order puts police officers and victims at increased risk

The research literature identifies that applying for a VRO can significantly increase the risk faced by victims.⁵¹⁵ Recognising that the service of a VRO can trigger safety issues, the COPS Manual specifies that certain checks are to be completed prior to the service of a VRO:

Prior to serving a VRO, exhaustive checks on the respondent must be conducted. Members are to pay particular attention to the existence of any violent history and access to firearms, licensed or otherwise ... Members serving Violence Restraining Orders are to be mindful of their safety and welfare, as the reactions of some respondents can be unpredictable...⁵¹⁶

In completing these checks, police officers rely on the information contained in the Incident Management System and the copy of the VRO provided by DOTAG to WAPOL for service. If the respondent and protected person have had little or no prior contact with WAPOL, police officers will have no or limited information to inform their approach to serving the VRO.

The Office's analysis of the state-wide data identified that, of the 21,237 applications for VROs made in the investigation period, only 5,236 (25 per cent) indicated prior attendance by WAPOL at a family and domestic violence incident (this was indicated by the applicant citing a WAPOL incident report as attached evidence). While it is possible the respondent and protected person may be known to WAPOL through other avenues, most frequently this will mean that WAPOL is likely to hold little or no contextual information regarding the respondent. Police officers and stakeholders representing victims noted that it would enable better risk identification and mitigation if the VRO provided by DOTAG to WAPOL for service was accompanied by information regarding:

- the relationship between the respondent and the protected person (particularly if they are in a family and domestic relationship);
- the grounds for the VRO;
- identifying particulars (full name, address, date of birth, telephone contact details) of both parties, as recorded by the protected person; and
- any relevant information regarding the history of family and domestic violence disclosed by the applicant when seeking a VRO.

The Office confirmed that the information listed above is provided by the person seeking to be protected on the VRO application form and is therefore readily available to DOTAG. This information would not only assist police officers in serving the VRO safely but would also be useful to inform further WAPOL responses to family and domestic violence between the parties. In addition, victims who are granted a VRO may have sought advice

⁵¹⁵ Buckley, M and Sheckler, C, 'Protective order just part of safety plan,' *South Bend Tribune*, Indiana, 9 June 2013, viewed 8 October 2014,

<http://www.southbendtribune.com/news/local/keynews/watchdog/protective-order-just-part-of-safety-plan/article_27c0b7de-e097-5875-b013-e2ffe56fd17d.html?mode=jqm>.

⁵¹⁶ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

from support services, such as DOTAG's Victim Support Service and/or Family Violence Service. With the consent of the victim, this information could also be used to assist WAPOL with their risk identification and mitigation and inform their future contact with the victim.

Recommendation 27

DOTAG collaborates with WAPOL to establish a process for providing WAPOL with the following information, together with the violence restraining order for service:

- the relationship between the respondent and the protected person (particularly if they are in a family and domestic relationship);
- the grounds for the violence restraining order;
- identifying particulars (full name, address, date of birth, telephone contact details) of both parties, as recorded by the protected person; and
- any relevant information regarding the history of family and domestic violence disclosed by the applicant when seeking a violence restraining order.

11.3 Explanation of violence restraining orders at the time of service

11.3.1 Legislative requirements

As set out at section 11.1.1, section 8 of the *Restraining Orders Act* requires that, when a VRO is made by the court, certain information is to be explained to the person bound and the person protected by the VRO. If the relevant person is not in court, then this explanation is to be provided at the time of service or when a copy of the order is otherwise provided to the parties. In practice, unless a VRO is granted in response to a telephone application, the person protected is usually present in court at the time the order is made. However, as described at Chapter 10, the person bound is usually not present in court.

While the *Restraining Orders Act* specifically provides that '[a]n order is not invalid merely because a person who should have been given the explanation referred to in subsection (1) was not given the explanation' (Section 8(4)), the research literature suggests that a lack of understanding of VROs can contribute to respondents breaching the VRO.⁵¹⁷

⁵¹⁷ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, pp. 17-18.

11.3.2 Policy requirements

The COPS Manual⁵¹⁸ quotes section 8 of the *Restraining Orders Act*, and notes that ‘the following section will apply to members serving VRO’s on respondents and in some cases where a TVRO⁵¹⁹ is granted, the person seeking to be protected’.⁵²⁰

11.3.3 Respondents may not comprehend information about violence restraining orders provided by police officers at the time of service

Alleged breaches of VROs in the 30 fatalities are discussed in detail in Chapter 12. However, of particular relevance, the Office identified that, of the 16 people in the 30 fatalities who were restrained by a VRO, nine were charged with breaching a VRO at some point (56 per cent). At the time the VRO was breached, some of the suspected perpetrators also allegedly committed violent offences against the victim, including assault occasioning bodily harm and unlawful wounding.

During the investigation, WAPOL and stakeholders, including non-government organisations conducting perpetrator programs, reported that police officers attempt to provide relevant information verbally to respondents as set out in the *Restraining Orders Act*. However, at the time of service, respondents can be unwilling or unable to digest this information. WAPOL and stakeholders reported that respondents may:

- refuse to engage with police officers at the time of service;
- have diminished capacity for some reason, for example, be intoxicated at the time of service; and/or
- dispose of, or destroy, their copy of the order (which contains critical information).

This issue was also highlighted by the Auditor General in his 2002 report which found that:

A verbal explanation of the order is provided by the police serving the order, but in many cases the respondent is not willing to listen to, or able to comprehend the details provided at this time.⁵²¹

⁵¹⁸ Western Australia Police, *Commissioner’s Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

⁵¹⁹ Telephone violence restraining order.

⁵²⁰ Western Australia Police, *Commissioner’s Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*.

⁵²¹ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 43.

11.3.4 Lack of perpetrator understanding of violence restraining orders contributes to alleged breaches of these orders

As identified above, at the time of service, respondents to VROs may not fully comprehend the information provided by police officers. In addition, respondents may require further information, for example regarding associated court processes and their legal options.⁵²² This lack of understanding and access to information may contribute to alleged breaches of VROs.⁵²³

In Western Australia in 2013, a study undertaken by DCPFS, Curtin University, Communicare and the Women's Council for Domestic and Family Violence Services (WA), interviewed men who had breached a VRO.⁵²⁴ The findings of these interviews were reported in the 2014 report entitled *Breaching Safety - Improving the effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence (the Breaching Safety Report)*.

The Breaching Safety Report found that the men who had breached a VRO reported that they had limited understanding of the court processes associated with a VRO and where to go for further information.⁵²⁵ This sometimes resulted in the men interviewed contacting their partners, with participants reporting that:

...there was not a lot of clarity about the court processes ... or how to find out about what would happen in the future. For some participants this manifested in a sense of isolation and for others this prompted their decision to contact their partners or former partners for various reasons despite knowing they were not meant to be doing so.⁵²⁶

⁵²² Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, pp. 17-18.

⁵²³ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, pp. 17-18.

⁵²⁴ Chung, D, Green, D and Smith, G, et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014.

⁵²⁵ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, pp. 17-18.

⁵²⁶ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, pp. 17-18.

11.3.5 A proactive contact and information service for violence restraining order respondents may contribute to reducing the incidence of alleged breaches and provide opportunities to manage associated risks

The Office's findings set out above indicate that a lack of perpetrator understanding of VROs, and associated court processes, may contribute to alleged breaches. Accordingly, alternative methods of providing information to VRO respondents could assist in reducing the incidence of alleged breaches. On this issue, the Auditor General observed in 2002 that:

The MoJ [former Ministry of Justice] six-month evaluation recommended that information brochures about restraining orders and associated issues be made available, particularly to respondents. This has not yet occurred in any of the localities visited.⁵²⁷

More recently, the Breaching Safety Report also examined alternative methods of providing information to respondents and found that, while two Western Australian courts have piloted information sessions for respondents to VROs, this was not a sufficient response, further finding:

There was a view that there also needed to be a proactive contact person for men who had been served with a VRO. This contact person could provide information as well as referrals to relevant agencies and would contact the respondent 24 hours after the police order or VRO was served.⁵²⁸

The Breaching Safety Report recommended that:

Current models of practice are enhanced with the addition of a proactive contact and information service for men who are VRO respondents. This would include a coordinating worker at local sites being responsible for contacting all respondents 24 hours after being served with a VRO to provide information, answer questions and assess risk. They would be the ongoing contact person for the respondent throughout the process. The contact and information service would include:

- Provision of telephone and face-to-face contact on a regular basis
- Provision of information about the processes and consequences of what is occurring
- Printed and web based information
- Referrals to relevant services
- Contact with relevant agencies where men are deemed to be high risk so that safety plans can be implemented and risk management strategies increased.⁵²⁹

⁵²⁷ Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 43.

⁵²⁸ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, p. 19.

⁵²⁹ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, p. 21.

The findings of this investigation support the implementation of evidence-based strategies to reduce the potential for alleged breaches, including those identified in the Breaching Safety Report.

Recommendation 28

Taking into account the findings of this investigation, DCPFS consults with key stakeholders to explore issues associated with the provision of information to respondents to violence restraining orders, whether these issues require a state-wide response, and the appropriate form of this response, for potential incorporation into future Action Plans.

11.4 WAPOL's administrative processes for service of violence restraining orders

11.4.1 Enhanced electronic records of attempts to serve would assist in timely service

If a VRO is not served immediately, the COPS Manual⁵³⁰ requires police officers to create an inquiry in its Incident Management System to detail the:

- Existence of the Violence Restraining Order
- Location of order
- Its accessibility 24 hrs⁵³¹

The COPS Manual also specifies that:

A running sheet must be attached to the [v]iolence [r]estraining [o]rder, which will clearly show - date, time, location, officer and details of all attempts to serve the order. This information becomes critical when a later application for substituted or oral service is made.⁵³²

The running sheet is a key source of information for the police officers responsible for serving and enforcing VROs, since it creates an electronic record of all attempts to serve the VRO and the current status of the VRO. In addition, if a victim contacts WAPOL for information about whether the VRO has been served, police officers refer to the running sheet for the most up to date information.

Currently, there is a limit to the number of characters which can be entered into the electronic running sheet. This limitation means that police officers cannot add new entries to the running sheet once the limit is reached. This issue is exacerbated as the Incident Management System automatically adds information (such as the details of the officer making an entry) on the running sheet whenever the running sheet is updated. Where the limit on entries to the running sheet has been reached, police officers are unable to access

⁵³⁰ Department of the Attorney General, *Restraining Orders, Version 1.1*, Government of Western Australia.

⁵³¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*, p. 37.

⁵³² Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, RO - 1.8 Service of Interim and Final Restraining Orders*, p. 37.

up to date information on the status of the VRO for their own purposes in serving and enforcing the VRO, and for the purpose of providing people seeking to be protected by the VRO with advice about its current status. During the investigation, WAPOL informed this Office that, as this occurs regularly, officers limit the information they record on the running sheet to avoid running out of space in future.

A minor administrative change to WAPOL's Incident Management System could significantly enhance the ability of police officers to access current and comprehensive information regarding unserved VROs, increasing officer safety and improving the information provided to victims.

Recommendation 29

WAPOL amend its Incident Management System to ensure all information relevant to a violence restraining order can be included on its associated running sheet.

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12 Responding to alleged breaches of violence restraining orders

As discussed at section 7.1, a VRO may restrain a perpetrator from doing certain things, including:

- being on or near the victim's home or place of work;
- being on or near a certain place;
- coming within a certain distance of the victim; or
- contacting, or trying to contact, the victim in any way.⁵³³

12.1 WAPOL's response to alleged breaches of violence restraining orders

12.1.1 Legislative requirements

Section 61(1) of the *Restraining Orders Act* provides that breaching a VRO is a criminal offence with a maximum penalty of a \$6,000 fine or two years' imprisonment, or both:

61. Breach of a restraining order

- (1) A person who is bound by a violence restraining order and who breaches that order commits an offence.

Penalty: \$6 000 or imprisonment for 2 years, or both.

As discussed at section 8.2, section 62A of the *Restraining Orders Act* provides:

62A. Investigation of suspected family and domestic violence

A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —

- (a) is a criminal offence; or
(b) has put the safety of a person at risk.

This includes alleged breaches of a VRO.

12.1.2 Policy requirements

Chapter 13 of this report discusses WAPOL's requirements to investigate suspected criminal acts of family and domestic violence. In summary, police officers are required to comply with WAPOL's 'pro-charge, pro-arrest and pro-prosecution'⁵³⁴ policy in relation to family and domestic violence incidents where evidence indicates that a criminal offence has been committed, including the offence of breaching a VRO.

⁵³³ *Restraining Orders Act 1997 (WA)*, Section 13.

⁵³⁴ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.2.

12.1.3 In the investigation period, there were 8,767 alleged breaches of violence restraining orders reported to and recorded by WAPOL; 83 per cent of the people accused of committing these alleged breaches were charged

The Office's analysis of the state-wide data identified that, during the investigation period, there were 8,767 alleged breaches of VROs reported to and recorded by WAPOL, with 5,424 associated victims and 3,753 associated alleged offenders (a single breach of a VRO can have more than one associated victim).

The number of alleged breaches per victim ranged from one to 233, with 419 victims (8 per cent) reporting that they had experienced five or more alleged breaches of a VRO. The majority of the 5,424 victims (3,499 or 65 per cent) reported one alleged breach during the investigation period, with a further 937 victims (17 per cent) reporting two alleged breaches.

During the investigation period, 3,099 of the 3,753 (83 per cent) people accused of committing the 8,767 alleged breaches of VROs reported to and recorded by WAPOL were charged with the offence of 'breach of violence restraining order'.

Of the 3,099 alleged offenders who were charged:

- 2,481 (80 per cent) were arrested;
- 581 (19 per cent) were summonsed to appear in court; and
- a warrant was issued for the remaining 37 (1 per cent) alleged offenders.

Submissions to reviews of the *Restraining Orders Act* conducted by the Law Reform Commission have argued that arresting persons accused of breaching a VRO, rather than summonsing them, promotes victim safety and enhances perpetrator accountability:

... summoning accused in ... cases [of breaching a VRO] 'undermines the safety of victims' and their confidence in the restraining order system ... issuing a summons rather than making an arrest may 'send the message to offenders that breaches are not serious'.⁵³⁵

... the practice of summonsing persons charged with family and domestic violence offences does not support perpetrator accountability because it sends a message that the offending is not viewed seriously.⁵³⁶

The state-wide data, discussed above, indicates a decrease in the proportion of charges for breaching a VRO initiated by summons, from 28 per cent in 2012.⁵³⁷

⁵³⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. 51.

⁵³⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 66.

⁵³⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 66.

12.1.4 WAPOL arrested and charged 75 per cent of people alleged to have breached a violence restraining order in the 75 DVIRs relating to the 30 fatalities

As discussed previously in this report, the Office analysed 75 WAPOL DVIRs related to 13 of the 30 fatalities with a recorded prior history of family and domestic violence involving both the person who was killed and the suspected perpetrator.

Four of the 75 DVIRs involved a reported alleged breach of a VRO and the suspected perpetrator was arrested on three of these four occasions (75 per cent).

In the remaining instance, the person protected by the VRO reported to WAPOL that a breach had allegedly occurred via SMS in the form of threats. WAPOL informed the victim that, as the mobile number sending the threats was not recorded as belonging to the alleged suspected perpetrator, they could not take action. WAPOL inquiries into this reported breach were ongoing at the time the person was killed.

Police responses to technology based alleged breaches of a VRO were considered by the Law Reform Commission's *Enhancing Family and Domestic Violence Laws: Discussion Paper*.

... the seriousness of some breaches may be being minimised by the justice system. Lawyers who act for victims of family and domestic violence explained that where breaches occur as a result of sending a text message, or message via social networking sites such as Facebook, the breach is often regarded by police and courts as a 'technical breach' ... this attitude fails to appreciate that stalking behaviour is a strong precursor to physical violence and may indicate a significant risk to the safety of the person protected by the order.⁵³⁸

The Law Reform Commission Final Report considered issues associated with the collection of evidence relating to family and domestic violence offences, including the difficulty faced by WAPOL in investigating and proving technology based alleged breaches of VROs,⁵³⁹ which led to the Law Reform Commission's recommendation that:

...the Western Australia Police should ensure that the full context and circumstances of any form of communication that breaches a protection order is included in the prosecution brief. This means that, in practice, the police should seek input from victims about their interpretation of the communication and its impact upon them.⁵⁴⁰ [Recommendation 9]

⁵³⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. 94.

⁵³⁹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, pp. 61 - 66.

⁵⁴⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 66 [Recommendation 9].

12.1.5 WAPOL viewed alleged breaches of a violence restraining order protecting a person who was killed in one of the 30 fatalities as consensual and informed the person to withdraw a violence restraining order protecting them

The Office also identified that, in one of the 30 fatalities, there was a series of instances in which WAPOL informed a person who was killed to withdraw a VRO as they viewed the alleged breaches as consensual. In these instances, the perpetrator was arrested and charged.

This issue was also raised by stakeholders who observed that victims may appear to consent, for example, to a perpetrator entering their home in an attempt to placate, rather than escalate, their behaviour.

Consent has not been a defence to a charge of breaching a VRO since 2004.⁵⁴¹ Additionally, section 61B(2) of the *Restraining Orders Act* currently provides that consent is not a mitigating factor when sentencing a person convicted of breaching a VRO:

In the sentencing of a bound person for an offence under section 61, any aiding of the breach of the order by the protected person is not a mitigating factor for the purposes of the *Sentencing Act 1995* section 8(1).

As the Law Reform Commission Final Report identified, it is important that police officers are assisted with a full understanding of the dynamics of family and domestic violence. On this point, the Law Reform Commission expressed the view that:

...more comprehensive and regular training should be undertaken by police. The importance of ensuring that all police officers (including those who may potentially respond to family and domestic violence incidents, deal with victims and perpetrators and establish internal policies in regard to family and domestic violence) are appropriately trained in relation to the contemporary nature and dynamics of family and domestic violence, as well as specific issues facing vulnerable groups in the community, cannot be underestimated.⁵⁴²

Accordingly, Recommendation 11 of the Law Reform Commission Final Report proposes changes to ensure police officers receive comprehensive and ongoing family and domestic violence training, including 'contemporary understandings of the nature and dynamics of family and domestic violence'.⁵⁴³ The Office's findings support this recommendation.

Recommendation 30

WAPOL ensures that all reports of alleged breaches of a violence restraining order are recorded and investigated in accordance with the *Restraining Orders Act 1997* and the *Commissioner's Operations and Procedures Manual*.

⁵⁴¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 117.

⁵⁴² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 73.

⁵⁴³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 73.

Recommendation 31

WAPOL ensures that it does not inform victims to withdraw a violence restraining order on the basis that alleged breaches are consensual.

12.2 Court outcomes and sentencing for breaches of a violence restraining order

The Australian Law Reform Commission, in its 2010 report *Family Violence – a National Legal Response* identified that, with regard to the sentencing of family and domestic violence offences, some penalties ‘trivialise the seriousness of family violence and send out a message of tolerance of family violence to the community’.⁵⁴⁴

In Western Australia, DOTAG’s 2008 report *A Review of Part 2 Division 3A of the Restraining Orders Act 1997*, observed that:

Offenders are being charged more by the Police however court sentencing is very lenient with offenders usually given small fines as can be seen by our tracking and monitoring of court outcomes at our local court.

Some of the penalties given to respondents for breaching were so insignificant that they did not act as a deterrent and made women feel like the order or the seriousness of the situation had been trivialised. ie. \$100 fine - ‘a speeding ticket costs more than that.’⁵⁴⁵

12.2.1 Legislative requirements

As discussed in section 11.1.1 of this report, under section 61 of the *Restraining Orders Act*, the maximum penalty for a person convicted of breaching a VRO is a \$6,000 fine or two years’ imprisonment, or both.

Where a person has been convicted of at least two offences of breaching a VRO within two years, a ‘presumptive penalty of imprisonment’⁵⁴⁶ is imposed by section 61A of the *Restraining Orders Act*:

61A. Penalty for repeated breach of restraining order

...

- (2) This section applies if a person -
 - (a) is convicted of an offence under section 61(1) or (2a) (the **relevant offence**); and

⁵⁴⁴ Women’s Legal Services Australia, quoted by the Australian Law Reform Commission, *Family Violence – A National Legal Response*, Australian Government, Canberra, 2010, viewed 3 September 2014, <http://www.alrc.gov.au/publications/%2012.%20Breach%20of%20Protection%20Orders/penalties-and-sentencing-breach-protection-orders#_ftnref205>.

⁵⁴⁵ Department of the Attorney General (WA), *A Review of Part 2 Division 3A of the Restraining Orders Act 1997*, Perth, 2008, p. 23, cited in Australian Law Reform Commission, *Family Violence – A National Legal Response*, Australian Government, Canberra, 2010, viewed 3 September 2014 <http://www.alrc.gov.au/publications/%2012.%20Breach%20of%20Protection%20Orders/penalties-and-sentencing-breach-protection-orders#_ftnref205>.

⁵⁴⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. 93.

- (b) has committed, and been convicted of, at least 2 offences under section 61(1) or (2a) within the period of 2 years before the person's conviction of the relevant offence.
- ...
- (5) Except as provided in subsection (6), if the person is not a child a penalty must be imposed on the person for the relevant offence that is or includes imprisonment.
- (6) A court may decide not to impose a penalty on the person that is or includes imprisonment or detention, as the case requires, if –
- (a) imprisonment or detention would be clearly unjust given the circumstances of the offence and the person; and
- (b) the person is unlikely to be a threat to the safety of a person protected or the community generally.
- (7) A court that does not, because of subsection (6), impose a penalty on a person that is or includes imprisonment or detention must give written reasons why imprisonment or detention was not imposed.

Section 61A was introduced as part of the *Restraining Orders Amendment Act 2011 (the Amendment Act)*, as part of a suite of amendments to the *Restraining Orders Act* and *Criminal Investigation Act 2006* that aimed to:

- ensure all domestic violence offences including breach of a VRO are included within the definition of “serious offence” in the *Criminal Investigation Act 2006*;
- prohibit the consideration of consent as a mitigating factor in a breach of a VRO;
- include a warning by the court in the granting of a VRO that the respondent not commit unlawful acts; and
- introduce a presumption for imprisonment for repeated breach of VRO offences.⁵⁴⁷

The (then) Attorney General, the Hon. Christian Porter, described section 61A as follows:

The government ... intends to introduce the concept of penalty escalation for repeated breach of a restraining order as is the case in New South Wales, Queensland, the Northern Territory and Tasmania. The clause essentially provides that when a person is convicted of a third breach of a restraining order, when the two previous convictions were within a specified time, the court should impose a term of imprisonment if the offender is an adult, or a term of detention if the offender is a juvenile. By virtue of subclause (6), this is not a mandatory requirement but, rather, a presumptive clause of imprisonment, unless the court believes the criteria in subclauses (6)(a) and (6)(b) are met. If this is the case, then subclause (7) requires the court to provide specific written reasons.⁵⁴⁸

⁵⁴⁷ Parliament of Western Australia, *Restraining Orders Amendment Bill 2011 Explanatory Memorandum*, viewed 20 September 2014, <<http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=306249EBC23B41E3482578B70022F063>>.

⁵⁴⁸ Western Australia, House of Representatives, Wednesday 22 June 2011, *Debates*, *Restraining Orders Amendment Bill 2011 Second Reading* pp. 4621c-4623a [2].

In March 2013 the Supreme Court of Western Australia, in the matter of *D'Costa v Roe*, overturned the sentence of a man who was imprisoned for eight months after receiving his third conviction for breaching a VRO, finding that section 61A did not apply.⁵⁴⁹

The relevant construction of section 61A was upheld by the Court of Appeal in June 2014.⁵⁵⁰ In the matter of *Roe v D'Costa*, the Hon. Justice Mazza set out:

In my opinion, s 61A(2) requires that the relevant offence in s 62A(2)(a) [i.e. the third breach of VRO] be committed after the offender has committed and after he or she has been convicted of the threshold offences referred to in s 61A(2)(b) and that the 'at least 2 offences' referred to in s 61A(2)(b) must be, within the two year period prior to the offender's conviction for the relevant offence, committed on separate days and the subject of convictions on separate days. This did not occur in the present case. Accordingly, s 61A(2) was not enlivened and the respondent [offender] was not subject to the presumptive penalty of imprisonment.⁵⁵¹

Subsequently, the Law Reform Commission Final Report noted that:⁵⁵²

...one of the matters that had been raised in the public domain prior to the Commission receiving this reference was the sentencing practices for breaches of violence restraining orders. Specifically, it was asserted that the 'third-strike' sentencing laws that were introduced in May 2012 to provide for a presumptive sentence of imprisonment for repeat offenders have not been effective.

...

The Commission considered s 61A of the *Restraining Orders Act* in detail in its Discussion Paper and noted that one perceived problem with the interpretation of this provision is that offenders are able to accumulate a very high number of charges of breaching an order and, by having these dealt with by a court on the same day, potentially avoid the presumptive sentence of imprisonment.⁵⁵³

It has been reported that the State Government is currently considering 'whether an amendment [is] necessary and whether any change should be made before legislation emerging from the Law Reform Commission report on its inquiry.'⁵⁵⁴

⁵⁴⁹ *D'Costa v Roe* [2013] WASC 99.

⁵⁵⁰ *Roe v D'Costa* [2014] WASCA 118.

⁵⁵¹ *Roe v D'Costa* [2014] WASCA 118, per Mazza JA at [52].

⁵⁵² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 115.

⁵⁵³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 115.

⁵⁵⁴ Banks, A, 'Violence Changes Loom', *The West Australian*, 11 June 2014.

12.2.2 Where a sentence was imposed for charges of breaching a violence restraining order, the most frequent sentencing outcome was a fine

The Office analysed the court outcomes and sentencing practices for alleged offenders charged with breaching a VRO within the 30 fatalities and within the state-wide data.

The Office's analysis of the state-wide data identified that, in the investigation period, the Magistrates Court and the Children's Court held 11,352 hearings relating to charges of breach of a VRO. Of these 11,352 hearings, 11,051 (97 per cent) were heard in the Magistrates Court.

The 11,352 hearings related to 8,147 charges and 2,676 alleged offenders. Of the 2,676 alleged offenders:

- 2,254 (84 per cent)⁵⁵⁵ were male;
- 859 (32 per cent) were recorded as Aboriginal;⁵⁵⁶
- the average number of charges of breach of a VRO per alleged offender was three;
- 1,415 offenders (53 per cent) were charged with one count of breach of a VRO; and
- nine offenders were each charged with more than 50 counts of breach of a VRO.

The Office examined the court outcomes of all charges of breach of a VRO.⁵⁵⁷ Of the 8,147 charges, 6,087 were finalised⁵⁵⁸ during the investigation period. The alleged offender was found guilty and a sentence imposed in 5,519 of the 6,087 finalised charges (91 per cent), as shown in Figure 37 below.

Figure 37: Outcomes of finalised charges for breach of a VRO

Outcome	Number of charges
Sentence imposed ⁵⁵⁹	5519
Charges dismissed	564
Other	4
Total	6087

Source: Ombudsman Western Australia

⁵⁵⁵ Gender was not recorded on 29 occasions (1 per cent).

⁵⁵⁶ Data provided by DOTAG recorded 'Indigenous status' for 2,593 alleged offenders.

⁵⁵⁷ It is possible that the alleged offenders were also charged with another offence that was dealt with at the same time as the breach of a VRO charge, that is, the outcome could take into account additional charges.

⁵⁵⁸ For this analysis, the Office counted individual charges as finalised if they recorded an outcome imposing a sentence, dismissing the charge, transferring the case to another court/agency or recording the death of an accused.

⁵⁵⁹ For 'sentence imposed' the Office counted charges where the outcome of the charge was a fine, order, imprisonment, suspended imprisonment, spent conviction, detention, no punishment, or no sentence.

Where an offender is found guilty, the court may impose more than one sentence, and a total of 9,378 sentencing outcomes resulted from the 5,519 convictions for breaching a VRO. The Office's analysis indicated that a fine was the sole outcome for 2,597 of the 5,519 charges where a sentence was imposed (47 per cent).

As shown in Figure 38 below, the most frequent sentence imposed for breaching a VRO was a fine, with 6,004 fines issued. Fine amounts ranged from \$10 to \$3,000. The second most common outcome was an order. These included Intensive Supervision Orders, Conditional Release Orders and Community Based Orders.

Figure 38: Sentences imposed on offenders convicted of breaching of a VRO

Outcome	Number of occasions
Fine	6004
Imprisonment ⁵⁶⁰	879
Community Based Order	622
No punishment ⁵⁶¹	578
Suspended imprisonment	489
Conditional Release Order	424
Intensive Supervision Order	378
Good behaviour bond	4
Total	9378

Source: Ombudsman Western Australia

The Office further analysed the sentencing outcomes relating to each of the 2,676 alleged offenders. Charges had been finalised for 2,328 of the 2,676 alleged offenders, with a sentence imposed on 2,173 offenders.

Again, the court may impose more than one sentence upon a convicted offender. The Office found that, of the 2,173 offenders convicted of breaching a VRO:

- 1,758 (81 per cent) were fined;
- 555 (26 per cent) were sentenced to an order, including Intensive Supervision Orders, Conditional Release Orders and Community Based Orders;
- 274 (13 per cent) were sentenced to a term of an imprisonment⁵⁶²; and
- 147 (7 per cent) were given a suspended term of imprisonment.

⁵⁶⁰ Including detention, if the offender was a juvenile.

⁵⁶¹ This includes no punishment orders, no sentence decisions and spent convictions.

⁵⁶² This includes sentences of detention if sentenced in the Children's Court.

12.2.3 Seven people involved in the 30 fatalities were convicted of breaching a VRO at some point prior to the fatality

Sixteen people involved in the 30 fatalities had been restrained by a VRO at some point in time. That is, the VRO was issued against them to protect someone else, either the person who was killed or another person. These 16 people were bound by 29 VROs.

Of these 16 people, nine (56 per cent) had been charged with breaching a VRO at some point. Five of these nine alleged offenders were charged on multiple occasions. Collectively, the nine alleged offenders who were charged with breaching a VRO were the subject of 67 breach of a VRO charges (45 charges related to one alleged offender).

Court proceedings were finalised during the investigation period for eight of the nine people charged with breaching a VRO. Seven⁵⁶³ of these eight people were convicted of at least one count of breaching a VRO. The Office's analysis identified that:

- Where the offender was convicted with one count of breach of a VRO and no other offence they received fines. This occurred for four offenders and the fines ranged from \$100 to \$800;
- One offender was sentenced to an 18 month term of imprisonment after being convicted of 45 counts of breaching a VRO;
- One offender was sentenced to a Community Based Order for a conviction of breaching a VRO, in conjunction with a conviction of going armed to cause terror; and
- Four offenders were sentenced to a term of imprisonment when convicted of breaching a VRO and another offence, as follows:
 - One offender was sentenced to two months' imprisonment for breach of a VRO, in conjunction with a damage charge;
 - One offender was sentenced to one month imprisonment for breach of a VRO, in conjunction with two charges of breaching bail;
 - One offender was sentenced to four months' imprisonment for breach of a VRO, in conjunction with convictions for obstructing a public officer, and 6 months imprisonment for breach of a VRO in conjunction with convictions of breach of bail and disorderly behaviour in public; and
 - One offender was sentenced to 12 months' imprisonment for breach of a VRO in conjunction with a conviction for unlawful wounding, and 12 months' imprisonment for breach of a VRO in conjunction with a conviction for assault occasioning bodily harm.

The Office's findings set out above are consistent with recent Australian research literature comparing sentencing outcomes for breaches of VROs, which suggests that offenders who receive a sentence of imprisonment for breach of VRO are more likely to have committed other offences in conjunction with the breach of VRO than offenders who breached the VRO only, as follows:

Compared with offenders in the non-prison group, a higher proportion of offenders who received a custodial penalty for the breach [VRO] matter ... had

⁵⁶³ This included six suspected perpetrators, and one person who was killed who had previously perpetrated family and domestic violence against the suspected perpetrator in their fatality.

5 or more prior court appearances (including prior offences for domestic violence (DV), assault and breach [VRO]), had 3 or more prior prison penalties and had breached two or more conditions of their order. Breaches resulting in prison also had a higher proportion of matters involving physical assault, property damage, psychological aggression and parties who had a history of violence.⁵⁶⁴

12.3 The effectiveness of violence restraining orders in preventing family and domestic violence, and fatalities

12.3.1 Violence restraining orders are more likely to be breached, and less likely to be effective, in high risk cases

Although there is some variation across studies, the research literature has generally demonstrated that ‘women with protection orders experience less violence and abuse from their (ex)partner compared to women who do not have a protection order’.⁵⁶⁵ However, debate continues with regard to the effectiveness of VROs in preventing and reducing family and domestic violence, as noted in the research literature:

The effectiveness of these orders [VROs] however, has been the subject of significant debate with many service providers and community members questioning whether they are a meaningful deterrent to men who use violence against their intimate partners, children and family members.⁵⁶⁶

The research literature further suggests that the effectiveness of VROs decreases as the risk to the victim increases, observing:

... [A restraining order] is most likely to be an effective protective action ... in cases where the risk is assessed as low to moderate.⁵⁶⁷

... [T]hose cases where a [restraining order] is most likely to be granted (where risk is assessed as high), are the cases in which it is least likely to offer any protection for the victim.⁵⁶⁸

⁵⁶⁴ Napier, S, Poynton, S, Fitzgerald, J, *Who goes to prison for breaching an Apprehended Domestic Violence Order? An analysis of police narratives*, NSW Bureau of Crime Statistics and Research, viewed 10 September 2015, <http://apo.org.au/files/Resource/bocsar_whogoesstoprisonforbreachinganapprehendeddomesticviolenceorder_sep_2015.pdf>.

⁵⁶⁵ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women’s Council for Domestic and Family Violence Services, Perth, 2014, p. 6.

⁵⁶⁶ Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women’s Council for Domestic and Family Violence Services, Perth, 2014, p. 4.

⁵⁶⁷ Strand, S, ‘Using a restraining order as a protective risk management strategy to prevent intimate partner violence’, *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

⁵⁶⁸ Strand, S, ‘Using a restraining order as a protective risk management strategy to prevent intimate partner violence’, *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

In identifying high risk cases, involving perpetrators who are more likely to breach a VRO, the research literature observes that '[o]nly recently have researchers begun to investigate ways to predict whether or not a violent partner is likely to violate a protective order.'⁵⁶⁹ However, the research literature suggests several factors which increase the risk of a VRO being breached, including:

- separation (in the case of intimate partners);⁵⁷⁰
- a perpetrator with a history of violence and crime;⁵⁷¹ and
- a perpetrator with a history of non-compliance with court imposed conditions.⁵⁷²

These factors, and their presence in the 30 fatalities, are explored in detail below. It is important to note that, while the research literature has identified several factors associated with increased risk, the absence of these factors does not necessarily mean that a VRO is unlikely to be breached or that a case is 'low risk'.

12.3.2 Eight people who were killed in the 30 fatalities intended to separate, or had recently separated, from the suspected perpetrator

In the 30 fatalities notified to the Ombudsman, 20 fatalities involved people in an intimate partner relationship. Information was available regarding the victim's intention to separate from their partner in 18 of these fatalities. Records indicated an actual or pending separation in eight of these 18 fatalities (44 per cent). In these eight fatalities, a VRO was in place at some point between the person who was killed and the suspected perpetrator on four occasions.

In the case of intimate partners, a VRO is often obtained when a victim is seeking to separate from the perpetrator. The research literature suggests that 'the period during which a woman is planning or making her exit, is often the most dangerous time for her and her children'.⁵⁷³

In these cases, the research literature suggests that applying for a VRO can increase, rather than decrease, the risk faced by victims:

People need to understand that when someone goes to get an order for protection, they are at increased and heightened risk because they're trying to break the control cycle... When the survivor sends that message, it heightens that risk and the likelihood of danger to them.⁵⁷⁴

⁵⁶⁹ University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 2.

⁵⁷⁰ Women's Aid, *Why doesn't she leave?*, Women's Aid Federation of England, Bristol, 2006.

⁵⁷¹ University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.

⁵⁷² University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 4.

⁵⁷³ Women's Aid, *Why doesn't she leave?*, Women's Aid Federation of England, Bristol, 2006.

⁵⁷⁴ Buckley, M and Sheckler, C, 'Protective order just part of safety plan,' *South Bend Tribune*, Indiana, 9 June 2013, viewed 8 October 2014,

<http://www.southbendtribune.com/news/local/keynews/watchdog/protective-order-just-part-of-safety-plan/article_27c0b7de-e097-5875-b013-e2ffe56fd17d.html?mode=jqm>, p. 3.

This is not to suggest that victims should not apply for a VRO, but rather that, in high risk cases, additional protective actions may need to be implemented to promote victim safety (as discussed in further detail in section 12.3.5 below).⁵⁷⁵

Separation has also been identified by the Ontario Domestic Violence Death Review Committee as a critical risk factor in domestic homicide cases:

Since its inception, one of the main goals of the DVDRC has been to identify critical risk factors associated with domestic homicides. One factor that has repeatedly surfaced is the risk of an actual or pending separation between the couple. In a review of 72 domestic homicides, an actual or pending separation was observed in 81% of the cases, with 56% (40) of these cases involving an actual separation and 25% having a pending separation.⁵⁷⁶

12.3.3 Eighteen of the 30 suspected perpetrators (60 per cent) had contact with the justice system at some point prior to the time when a person was killed

As discussed in section 5.5, in 18 of the 30 fatalities (60 per cent), the suspected perpetrator had contact with the justice system at some point prior to the time when a person was killed and had been on bail, on parole or an 'order',⁵⁷⁷ whilst in the community.

Further, 14 of the 30 suspected perpetrators (47 per cent) had been held in custody for criminal offences at some point prior to the time when a person was killed. The types of offences leading to these custodial periods included: manslaughter; aggravated assault; sexual assault; and unlawful wounding.

The research literature suggests 'that the abuser's criminal justice status can predict their likelihood of violating a protective order.'⁵⁷⁸ On this point, the research literature observes:

Several studies have found a connection between an abuser's history of violent crimes and protective orders, noting that between 65% and 80% of abusers had been charged with previous crimes prior to the protective order being issued...

Recent studies have found that multiple criminal arrests for any offense following the issuance of a protective order was associated with a higher likelihood of repeat domestic violence or protective order violations.⁵⁷⁹

⁵⁷⁵ Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

⁵⁷⁶ Office of the Chief Coroner Province of Ontario, *Sixth Annual Report of Domestic Violence Death Review Committee*, Office of the Chief Coroner, Ontario, 2008, p. 29.

⁵⁷⁷ This does not include VROs and police orders, which are examined separately in this report.

⁵⁷⁸ University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.

⁵⁷⁹ University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.

12.3.4 WAPOL recorded a suspected perpetrator as being in breach of an order or other protective conditions imposed by the court in 17 per cent of the 75 DVIRs relating to the 30 fatalities

As discussed in section 12.2.3, seven of the suspected perpetrators in the 30 fatalities had been convicted of breaching a VRO at some point prior to the time when a person was killed. The Office also found that in 13 of the 75 DVIRs (17 per cent), relating to fatalities with a recorded prior history of family and domestic violence, WAPOL recorded that the suspected perpetrator was in breach of an order or other conditions set by the court at the time of the incident. This included:

- breach of a VRO (four occasions);
- breach of bail conditions (protective bail on three occasions and bail on one occasion);
- breach of a police order (three occasions);
- breach of parole (one occasion); and
- breach of an Intensive Supervision Order (one occasion).

The research literature suggests that non-compliance with court imposed conditions is ‘a strong indicator that an abuser might violate a protective order’.⁵⁸⁰ In particular, one study of 220 male defendants convicted of a domestic violence-related offence identified that ‘the odds of recidivism for defendants who had two or more incidents of law enforcement preadjudication noncompliance were over seven times the odds of recidivism for defendants who had none’.⁵⁸¹

Arising from the identification of this link, the research literature suggests that perpetrator compliance with court orders should be monitored and used to inform risk assessments and safety planning for victims, as follows:

These findings indicate the potential value of documenting the frequency and type of noncompliance with court orders, especially in the area of law enforcement noncompliance and including these factors in the development of risk assessments for defendants under supervision. Our results also illustrate the importance of considering multiple sources of information on defendants’ noncompliant behavior and of communicating this information to all agencies that have a role in maintaining offender accountability and increasing victim safety.⁵⁸²

Considered collectively, the research literature suggests that VROs can be a useful protective mechanism for victims of family and domestic violence in all cases, however, in high risk cases, the research findings suggest that ‘criminal justice systems and police forces need to develop additional protective actions to effectively prevent future

⁵⁸⁰ University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 4.

⁵⁸¹ Kindness, A, Kim, H, Alder, S, Edwards, A, Parekh, A, and Olson, L, M, ‘Court Compliance as a Predictor of Postadjudication Recidivism for Domestic Violence Offenders’, *Journal of Interpersonal Violence*, vol. 24, no. 7, pp. 1228.

⁵⁸² Kindness, A, Kim, H, Alder, S, Edwards, A, Parekh, A, and Olson, L, M, ‘Court Compliance as a Predictor of Postadjudication Recidivism for Domestic Violence Offenders’, *Journal of Interpersonal Violence*, vol. 24, no. 7, pp. 1228.

[violence].⁵⁸³ Additional strategies that may be useful in high risk cases, and in the prevention of fatalities, are discussed below.

12.3.5 Additional strategies to prevent fatalities in high risk cases, including remanding a perpetrator prior to conviction

As described above, the research literature identifies that, in high risk cases, restraining orders, such as Western Australia's VROs, are 'insufficient if used alone, and need to be supported by additional protective actions from police or social services.'⁵⁸⁴ This is of particular importance in the prevention of family and domestic violence fatalities.

The research literature suggests that holding perpetrators of family and domestic violence in remand before trial is protective for victims, and can disrupt an 'escalating cycle of violence.'⁵⁸⁵ The research literature also notes that 'the period after arraignment is one of the most dangerous times for victims of domestic violence.'⁵⁸⁶ The detention of perpetrators further provides victims with 'time to relocate, save some money, and seek counselling and perhaps find a job.'⁵⁸⁷

Internationally, in Massachusetts, in order to assess whether the detention of a person is necessary to ensure the safety of any person or the community, a hearing is held. These hearings, termed 'dangerousness hearings,' can be requested by prosecutors and differ from standard hearings in Massachusetts, which determine bail 'based largely on flight risk ... [w]ith a dangerousness hearing, even defendants who have clean records can be held until trial if they are deemed to be a sufficient threat to their victims or to the community.'⁵⁸⁸ The benefit of a dangerousness hearing is that it 'automatically provides a different context for a judge to analy[s]e the evidence.'⁵⁸⁹ The Massachusetts Domestic Violence High Risk Team (a government-funded domestic violence homicide prevention program⁵⁹⁰) believes 'the dangerousness hearing is one of the most effective tools available'⁵⁹¹ to them.

⁵⁸³ Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

⁵⁸⁴ Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, p. 265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

⁵⁸⁵ Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

⁵⁸⁶ Marcotte, A, 'Could Massachusetts have stopped Jared Remy from allegedly murdering Jennifer Martel?', *Slate*, 19 August 2013, viewed 2 May 2014, <http://www.slate.com/blogs/xx_factor/2013/08/19/jared_remy_walked_out_of_court_and_murdered_jennifer_martel_could_he_have.html>.

⁵⁸⁷ Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

⁵⁸⁸ Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

⁵⁸⁹ Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

⁵⁹⁰ Marcotte, A, 'Could Massachusetts have stopped Jared Remy from allegedly murdering Jennifer Martel?', *Slate*, 19 August 2013, viewed 2 May 2014, <http://www.slate.com/blogs/xx_factor/2013/08/19/jared_remy_walked_out_of_court_and_murdered_jennifer_martel_could_he_have.html>.

⁵⁹¹ Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

Chapter 276, section 58A of the *Massachusetts General Laws* provides the legal framework for dangerousness hearings, allowing a judge to ‘hold a defendant accused of certain violent crimes without bail for 90 days, pending trial’.⁵⁹² This section specifies that:

If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial.⁵⁹³

Other jurisdictions have also recognised that there may be an escalation in the violence after a perpetrator is charged, necessitating the need for additional strategies.⁵⁹⁴

12.3.6 Consideration of deferral of bail or, in high risk cases in certain circumstances, a presumption against bail in Western Australia

The ALRC describes bail as:

...a decision on the liberty or otherwise of the accused, between the time of arrest and verdict. Bail is, in theory, ‘process oriented’, aiming to ensure that the accused re-appears in court either to face charges or to be sentenced. A decision to grant bail is made by either the police or the courts, and certain conditions or requirements may be attached to the grant.⁵⁹⁵

In Western Australia, ‘there is generally a pre-existing general presumption for bail’,⁵⁹⁶ that is, to release a person before trial (rather than a presumption against bail, to remand a person in custody before trial). However, in certain circumstances, legislative provisions may alter the presumption for bail, or include a presumption against granting bail for family and domestic violence offences, as in the case of a number of Australian states and territories.⁵⁹⁷

⁵⁹² Conley, D, *Domestic Violence Suspect Held After Dangerousness Hearing*, Suffolk County District Attorney Massachusetts, 5 April 2011, viewed 1 May 2014, <<http://www.suffolkdistrictattorney.com/press-office/press-releases/press-releases-2011/domestic-violence-suspect-held-after-dangerousness-hearing/>>.

⁵⁹³ Conley, D, *Domestic Violence Suspect Held After Dangerousness Hearing*, Suffolk County District Attorney Massachusetts, 5 April 2011, viewed 1 May 2014, <<http://www.suffolkdistrictattorney.com/press-office/press-releases/press-releases-2011/domestic-violence-suspect-held-after-dangerousness-hearing/>>.

⁵⁹⁴ For example, in 2014, the Louisiana House of Representatives passed House Bill 1142 (Act 318), known as ‘Gwen’s Law’, to allow the victim, alleged perpetrator, families and attorneys for both parties to present arguments at a hearing before bail is granted, to enable the judge to determine whether the accused might flee or inflict further harm.

⁵⁹⁵ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, pp. 411-412.

⁵⁹⁶ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 413.

⁵⁹⁷ In New South Wales and Victoria, people accused of certain specified family violence offences must “show cause” as to why their detention is unjustified in certain circumstances. In Queensland, bail must be refused if there is an “unacceptable risk” that the accused would endanger the safety or welfare of a victim of the offence. In the Australian Capital Territory, Northern Territory and South Australia, the presumption in favour of bail is removed for breaches of protective orders in certain circumstances. In Tasmania a person accused of a family and domestic violence offence is not to be granted bail unless release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child.

The relevant Western Australian legislation, the *Bail Act 1982*, currently does not include any general provision removing the presumption in favour of bail for family and domestic violence offences. However, the *Bail Act 1982* does contain a presumption against bail in cases where an accused is charged with a 'serious offence' while on bail or early release for another 'serious offence'⁵⁹⁸, which captures many family and domestic violence offences.⁵⁹⁹ Additionally, as observed by the ALRC:

The *Bail Act 1982* (WA) restricts the jurisdiction to grant bail in respect of breaches of protection orders [VROs] in urban areas.⁶⁰⁰

The ALRC Report considered 'the question of whether there should be a presumption for or against the granting of bail for crimes committed in a family violence context'⁶⁰¹ noting that some submissions supported a presumption against bail for family and domestic violence offences as a means of providing better protection for victims, while other submissions argued that such a presumption would 'unduly compromise the rights of accused persons'⁶⁰² or 'might act as a disincentive for victims to report offences'.⁶⁰³ The ALRC's concluding view was:

Crimes related to family violence are unlike many other crimes. For one thing, they are more likely to have a history—perhaps a long history—of fear, coercion and control ... All these factors suggest that a person who has committed a crime in the context of family violence might, if granted bail, be more likely to see the victim—and so endanger the victim—than a person accused of a crime against a stranger...

The Commissions do not, however, consider that the safety of women and children is best secured by creating a presumption against bail for all crimes committed in a family violence context. If, as some have submitted, a presumption against bail acts as a disincentive to victims to report family violence crimes, then the presumption might sometimes indirectly undermine the safety of victims. Some victims will also not want alleged offenders incarcerated – this appears to be of particular concern to some Indigenous persons. Furthermore, a presumption against bail for all family violence offences appears to deny unfairly the accused the presumption of innocence.⁶⁰⁴

⁵⁹⁸ *Bail Act 1982*(WA), Schedule 1, Part C, Clause 3A.

⁵⁹⁹ 'Serious offence' is defined in section 3 of the *Bail Act 1982* by way of reference to a list of offences in Schedule 2, which includes a range of assault offences under *The Criminal Code* and the offence of breaching a violence restraining order contained in section 61(1) of the *Restraining Orders Act 1997*.

⁶⁰⁰ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 415.

⁶⁰¹ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 411.

⁶⁰² Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 416.

⁶⁰³ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 417.

⁶⁰⁴ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 419.

In Western Australia, courts or judicial officers exercising jurisdiction to grant bail under the *Bail Act 1982* must have regard to the question of ‘whether, if the accused is not kept in custody, he may ... endanger the safety, welfare, or property of any person’.⁶⁰⁵ In some circumstances, the court’s consideration of this question regarding the safety of a victim when granting bail is informed by a ‘bail risk assessment report’:

The Family Violence Service of the Department of the Attorney General currently facilitates the preparation of written bail risk assessment reports for use in the specialist Family Violence Courts in the metropolitan area. These assessments are usually prepared after being requested by the court when a participant in the Family Violence Court program seeks a variation of protective bail conditions. They may also be prepared if requested by an external magistrate; however, the application to vary bail conditions will be transferred to and dealt with by the local Family Violence Court.⁶⁰⁶

Bail risk assessments ‘take approximately one to three weeks to be prepared and due to resourcing constraints only a limited number can be requested each week (usually one to two).’⁶⁰⁷ The Law Reform Commission examined sample reports and noted that bail risk assessment reports appear to include the following information, where applicable:

- Current protective bail conditions.
- Input from the victim (if the victim has agreed to be interviewed or contacted).
- A criminal history and court history check through the court database.
- History of violence restraining orders issued against the accused.
- Summary of the statement of material facts in relation to the current offences.
- Information from the Western Australia Police in relation to prior Domestic Violence Incident Reports (DVIRs).
- Information from the Department for Child Protection and Family Support in relation to the parties.
- Risk assessment score and associated comments.
- Information from the Department of Corrective Services.
- Recommendation from the Family Violence Service in relation to the proposed variation to protective bail conditions.⁶⁰⁸

During consultation with the Law Reform Commission, Magistrates ‘explained that the information contained in these reports is invaluable and the assessments appear to be widely supported by magistrates and many lawyers.’⁶⁰⁹ The Law Reform Commission concluded that ‘the approach undertaken in relation to bail risk assessment reports is vital

⁶⁰⁵ *Bail Act 1982* (WA), Schedule 1, Part C, Clause 1(a)(iii).

⁶⁰⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 117.

⁶⁰⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 136.

⁶⁰⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 117.

⁶⁰⁹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 136.

in terms of enhancing decision-making and maximising victim safety'⁶¹⁰ and made the following recommendation:

Funding for bail risk assessment reports

1. That funding be provided to the Family Violence Service (and other relevant agencies) to enable bail risk assessment reports to be prepared for the purpose of considering bail conditions for all family and domestic violence related offences, unless the accused does not object to the inclusion of full protective bail conditions being imposed (ie, that no contact at all is permitted between the accused and the victim).
2. That the use and effectiveness of bail risk assessment reports be monitored on an ongoing basis.⁶¹¹ [Recommendation 49]

The Law Reform Commission also considered 'that the *Bail Act* should expressly enable bail to be deferred for the purpose of considering what conditions should be imposed to protect a victim of a family and domestic violence related offence',⁶¹² recommending that:

Deferral of bail to consider conditions to protect a victim of Family and Domestic Violence

That section 9 of the *Bail Act 1982* (WA) be amended to provide that a judicial officer or authorised officer may defer consideration of a case for bail for a period not exceeding 30 days if he or she thinks it is necessary to obtain more information for the purpose of ascertaining what, if any, conditions should be imposed to protect a victim of a family and domestic violence related offence.⁶¹³ [Recommendation 50]

On 24 June 2015, the Hon. Michael Mischin, Attorney General, announced that specialised Family Violence Courts will be replaced with a 'new model of dealing with restraining orders and serious assaults which occur in a family setting',⁶¹⁴ under which:

...police, child protection officers and corrective services officers would be on hand to share what they knew about the circumstances that led to the charges, and other information that may shed light on risks to victims ... [and] courts would rearrange their case listings so that family violence restraining order breaches and serious assault matters would be heard on one designated day a week to ensure the victim support and other specialists were available.⁶¹⁵

⁶¹⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 137.

⁶¹¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 137.

⁶¹² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 138.

⁶¹³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 138.

⁶¹⁴ Government of Western Australia, 'Media Statements – New era for dealing with family violence in courts', viewed 24 June 2015, <<https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/06/New-era-for-dealing-with-family-violence-in-courts.aspx>>.

⁶¹⁵ Government of Western Australia, 'Media Statements – New era for dealing with family violence in courts', viewed 24 June 2015, <<https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/06/New-era-for-dealing-with-family-violence-in-courts.aspx>>.

Recommendation 32

DOTAG reviews the effectiveness of national and international models of deferral of bail, or in high risk cases in certain circumstances, a presumption against bail, having consideration to:

- perpetrator accountability;
- promoting victim safety; and
- the rights of defendants; and

makes recommendations for implementing any changes that arise from the review.

12.3.7 The use of Global Positioning System (GPS) tracking in high risk cases is being considered; this would require offenders to be charged and sentenced

One suggested strategy to increase victim safety and support the effective use of VROs is through utilising GPS tracking to monitor the movements of perpetrators of family and domestic violence, potentially including respondents to VROs. As observed by the Law Reform Commission:

Currently in Western Australia, GPS tracking is used for serious sex offenders under the *Dangerous Sexual Offenders Act 2006 (WA)*. Also ... GPS tracking is permitted for offenders subject to parole but it is not legislatively authorised for offenders subject to sentencing orders. There is also no legislative provision enabling GPS tracking of persons bound by a violence restraining order.⁶¹⁶

The use of GPS tracking and its potential application to perpetrators of family and domestic violence and VRO respondents was considered in detail in the Law Reform Commission Discussion Paper and Final Report. The Law Reform Commission 'expressed the preliminary view that GPS tracking should only be adopted for high-risk family and domestic violence offenders and only where it is part of a broader interagency case management approach in relation to victim safety.'⁶¹⁷

However, recognising the relatively recent introduction of GPS monitoring for dangerous sexual offenders, the Law Reform Commission identified 'that consideration should first be given to the effectiveness of the existing scheme for sex offenders'.⁶¹⁸ Specifically, the Law Reform Commission recommended that:

⁶¹⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, 2014, p. 144.

⁶¹⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, 2014, p. 144.

⁶¹⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, 2014, p. 145.

GPS tracking for family and domestic violence offenders and persons bound by family and domestic violence protection orders

1. That the Department of Corrective Services conduct a review of the effectiveness of the current GPS tracking system for dangerous sex offenders (including consideration of the number of offenders subject to GPS tracking, the cost of GPS tracking per offender, practical issues such as the incidence of deliberate and accidental interference with the electronic devices, the circumstances in which alerts are received by the monitoring unit, the effectiveness and timeliness of the response to those alerts, and any other relevant matter).
2. That following that review the Department consider whether the system should be extended to family and domestic violence offenders and/or persons bound by family and domestic violence protection orders and, if so, provide a reasonable opportunity for members of the public and interested stakeholders to provide their views on any such proposal.⁶¹⁹

In June 2014, the Hon. Michael Mischin, Attorney General, provided the following information to Parliament:

Legislation to support the imposition of post-sentence supervision orders with GPS tracking able to be imposed as a condition of such an order is being drafted by the Department of the Attorney General. It is anticipated that this legislation will be ready for introduction in the autumn 2015 parliamentary session.⁶²⁰

More recently, as discussed at section 4.6.2, DCPFS released the Freedom from Fear Action Plan, which contains the following Action:

Consider opportunities to increase the use of Global Positioning System (GPS) tracking to monitor high risk perpetrators of family and domestic violence

GPS tracking can be an important tool for promoting the safety and protection of women and children at high risk of harm, particularly those seeking to remain safely in their homes. Given the Government has already announced the introduction of legislation to allow post-sentence supervision including GPS tracking of serious family violence offenders, opportunities to increase access to, and use of this technology will be further explored.⁶²¹

⁶¹⁹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, p. 145.

⁶²⁰ The Hon. Mr M. Mischin MLC, Attorney General, Legislative Council, Parliamentary Debates (Hansard), 26 June 2014, p.4694c.

⁶²¹ Department for Child Protection and Family Support, *Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia Action Plan 2015*, Department for Child Protection and Family Support, Perth, 2015, p. 13.

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13 Investigating if an act of family and domestic violence is a criminal offence

13.1 Violence restraining orders are not a substitute for the pursuit of criminal charges

The research literature suggests that there are concerns that VROs are being used as ‘an alternative, more lenient legal response to domestic violence’⁶²² when criminal charges should also be laid:

Some commentators have expressed concern that protection orders have supplanted appropriate criminal justice interventions and provided an exit route for police unwilling to investigate or charge potential criminal offences ... [T]he development of a protection order regime has effectively ‘decriminalised’ domestic violence ... In practice, they argue, protection order legislation has been used ‘instead of’ rather than ‘as well as’, criminal laws, which has shifted attention away from criminal justice interventions.⁶²³

The risk of using VROs as ‘a replacement for assault charges, rather than the useful, protective supplement to criminal charges that they were intended to be’ was also identified in Western Australia in 1994 by the Chief Justice’s Taskforce on Gender Bias.⁶²⁴

Reasons why criminal charges may not be pursued include that ‘[s]ome family violence will not amount to a criminal offence; [violence restraining] orders generally offer a speedier response to violence and therefore speedier protection; and there is a lower standard of proof in civil protection order proceedings.’⁶²⁵ However, as the Australian Law Reform Commission has observed:

... [W]here there is an overlap between criminal and civil responses, the balance “is a delicate one, between providing a legal mechanism for protecting people who experience domestic violence, but not downplaying its significance by applying what is essentially a private law remedy”.⁶²⁶

Of the actions available to police when attending a domestic violence incident, arresting the perpetrator is not only considered an effective method of ‘keeping victims safe’ but of holding ‘perpetrators more accountable for their behaviour.’⁶²⁷ Research has also identified that arrest can also influence future decisions to engage in violent behaviour:

⁶²² Chief Justice’s Taskforce on Gender Bias, *Report on Gender Bias*, Chief Justice of Western Australia, Perth, 30 June 1994, p. 169.

⁶²³ Wilcox, K, *Recent Innovations in Australian Protection Order Law – A Comparative Discussion*, Australian Domestic & Family Violence Clearinghouse, The University of New South Wales, Sydney, 2010, p. 3.

⁶²⁴ Chief Justice’s Taskforce on Gender Bias, *Report on Gender Bias*, Chief Justice of Western Australia, Perth, 30 June 1994, p. 169-170.

⁶²⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 352.

⁶²⁶ Fehlberg, B, and Behrens, J, 2007, cited in Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Canberra, 2010, p. 353.

⁶²⁷ Braaf, R and Sneddon, C, ‘Arresting practices: exploring issues of dual arrest for domestic violence,’ *Australian Domestic & Family Violence Clearinghouse*, Sydney, 2007, p. 2.

Studies have also shown that arrest reduces recidivism. In Minneapolis, USA, Sherman and Berk (1984) found that arrest for domestic violence offences significantly reduced the likelihood of further violence, by over 50% more than other police responses (i.e. mediation, advice giving or ordering the perpetrator to leave). While replication studies in the US have indicated more modest results ... other research confirms the impact of arrest on recidivism. Campbell et al's. (2003) US study of 563 cases of domestic homicide and domestic physical abuse demonstrated that arrest was consistently related to reduced subsequent aggression against female victims and reduced the risk of femicide.⁶²⁸

In addition, responses such as police 'speaking to the victim separately from the perpetrator ... searching for evidence, and making arrests,' and generally treating victims with 'courtesy, respect, understanding, appearing concerned and listening' have also been associated with increased victim satisfaction.⁶²⁹ Research has identified that these behaviours 'reflect police taking the situation seriously, and being proactive at the scene.'⁶³⁰

As recently observed by Her Majesty's Inspectorate of Constabulary in its review of the police response to domestic violence:

Just as a first response officer's attitude to the victim can make a difference, the initial investigation at the scene, is critical to a successful prosecution.

Officers need to see beyond the incident they are dealing with and look at the wider context of the situation they find. Responding officers should start to **build the case on behalf of the victim rather than rely on the victim to build the case for the police.**⁶³¹ [Original emphasis]

Furthermore, '[w]here prosecutions are to be taken forward without the victim's involvement, it is even more critical that the initial investigation is rigorous and extensive.'⁶³²

⁶²⁸ Braaf, R and Sneddon, C, 'Arresting practices: exploring issues of dual arrest for domestic violence,' *Australian Domestic & Family Violence Clearinghouse*, Sydney, 2007, p. 3.

⁶²⁹ Paradine, K and Wilkinson, J, *Protection and Accountability: The Reporting, Investigation and Prosecution of Domestic Violence Cases*, HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary, London, 2004, p. 37.

⁶³⁰ Robinson, A, *The Cardiff Women's Safety Unit: A Multi-Agency Approach to Domestic Violence: Final Evaluation Report*, Cardiff University, Cardiff, 2004, p. 46.

⁶³¹ Her Majesty's Inspectorate of Constabulary (HMIC), *Everyone's business: Improving the police response to domestic abuse*, HMIC, London, 2014, p. 55.

⁶³² Her Majesty's Inspectorate of Constabulary (HMIC), *Everyone's business: Improving the police response to domestic abuse*, HMIC, London, 2014, p. 55.

13.1.1 Reviews by the State Coroner and WAPOL following the murder of Andrea Louise Pickett⁶³³

On 12 January 2009, Andrea Louise Pickett:

...was murdered ... by her estranged husband, Kenneth Charles Pickett (Mr Pickett). At the time of the murder a violence restraining order was in place intended to protect Andrea from Mr Pickett. In addition, at the time of the murder, Mr Pickett was on parole in respect of a charge that on 14 February 2008 he had made a threat to kill Andrea.⁶³⁴

Following Andrea's⁶³⁵ murder, the State Coroner conducted an inquest involving a number of state government departments and authorities, including WAPOL.⁶³⁶ The State Coroner made seven recommendations relating to Andrea's murder.⁶³⁷

Prior to the State Coroner's inquest, WAPOL had conducted an internal review that identified 'practices that needed to improve the way police responded to family and domestic violence incidents.'⁶³⁸ Of particular relevance to the Office's investigation, the WAPOL review identified concerns that:

...investigating officers had not taken ownership of the investigations and that prior to a decision being made that the file would be written off, contact had not been made with the District Family Protection Coordinator in order to obtain his opinion ... [and] all avenues of inquiry had not been explored, people central to the incidents had not been spoken to and investigations into alleged breaches of restraining orders had not been adequately conducted.⁶³⁹

⁶³³ The Law Reform Commission received a submission from Andrea's family during the consultation process for the Law Reform Commission Final Report. As stated in the Law Reform Commission Final Report, many of the issues raised by Andrea's family 'cannot realistically be primarily addressed through legislative reform and extend beyond the scope of this reference.' See: Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 6. With the permission of Andrea's family, the submission was forwarded to the Office by the Law Reform Commission and those aspects of the submission relevant to issues associated with violence restraining orders and their relationship with family and domestic violence fatalities have been considered by the Office as part of this investigation.

⁶³⁴ Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 3.

⁶³⁵ Western Australian State Coroner Alastair Hope, in the *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 3, stated that Andrea Louise Pickett 'at the request of the family will be referred to as Andrea in these reasons'. The Office has also respected this request throughout this section of the report.

⁶³⁶ Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 56-62.

⁶³⁷ Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 56-62.

⁶³⁸ Western Australia Police, *Response to Four Corners from Western Australia Police*, Perth, July 2012, p. 2.

⁶³⁹ Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, pp. 57-58.

Also of relevance to this investigation the (then) State Coroner, Alastair Hope, observed that:

Although the incident report refers to multiple witnesses it appears witness statements were only taken from Andrea and one other witness.⁶⁴⁰

The WAPOL review report made a number of recommendations, including that:

- Investigations [be] allocated to a specific officer and inquiries commenced at the earliest opportunity to ensure victim safety;
- All witnesses and nominated persons of interest [be] interviewed and the investigation was consistent with the agency's investigative practices; and
- Supervisors review all family and domestic violence incidents and where prime facie evidence exists offenders are charged with the relevant criminal offences ...⁶⁴¹

As a result of its internal review, WAPOL 'developed and put into practice the *WA Police Investigation Doctrine*' (**the Doctrine**).⁶⁴² The Doctrine describes investigative practices which WAPOL officers should employ when investigating allegations of family and domestic violence.

The Office has examined the investigative practices applied by WAPOL when responding to family and domestic violence perpetrated against people in the 30 fatalities, through an examination of the 75 DVIRs. The results of this examination are set out below. As discussed in section 8.3.1, the 75 DVIRs related to incidents which involved predominantly Aboriginal people who were killed, and suspected perpetrators who were Aboriginal people, living in regional and remote Australia. More particularly, 65 of the 75 DVIRs (87 per cent) related to an Aboriginal person who was killed in the 30 fatalities.

⁶⁴⁰ Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 7.

⁶⁴¹ Western Australia Police, 'Response to Four Corners from Western Australia Police, WAPOL, Perth, July 2012, p. 3.

⁶⁴² Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 58.

13.2 The investigation of family and domestic violence incidents involving people who were killed in the 30 fatalities

13.2.1 Legislative requirements

Section 62A of the *Restraining Orders Act* requires police officers to investigate acts of family and domestic violence as follows:

62A. Investigation of suspected family and domestic violence

A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —

- (a) is a criminal offence; or
- (b) has put the safety of a person at risk.

13.2.2 Policy requirements

The COPS Manual and the Doctrine provide officers with guidance for investigating acts of family and domestic violence, setting out requirements to gather evidence from a range of sources to enable an evidence-led prosecution.

The COPS Manual emphasises the importance of investigating and pursuing criminal charges, in addition to any use of VROs, in particular stating that:

The policy of the Western Australia Police Service in respect to intervention at family and domestic violence incidents is one of pro-charge, pro-arrest and pro-prosecution; where evidence exists that a criminal offence has been committed. Violence Restraint Orders and Police Orders are to be seen as additional safeguards and not as an alternative to the laying of appropriate charges.⁶⁴³

Of particular relevance to the investigation of family and domestic violence incidents, the COPS Manual specifies that:

When attending family and domestic violence incidents members are to pay particular attention to the early collection of evidence including (but not limited to):

- Comprehensive notes;
- A signed medical release;
- Statements - complainant, witnesses including children and any evidence of early complaint;
- Photographs - complainant's injuries, scene;
- Physical evidence - clothing, weapons, damaged property;
- "000" recordings.⁶⁴⁴

⁶⁴³ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.2.

⁶⁴⁴ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

The COPS Manual further specifies that '[t]he five key investigative strategies ... must be followed in accordance with the WA Police Investigative Doctrine'.⁶⁴⁵ The five key investigative strategies are a structured process developed by WAPOL to enable investigating officers 'to maximise the investigative opportunities, secure evidence and establish the truth. *The Five Key Investigative Strategies* are the means by which investigations should be conducted so that all potential avenues of inquiry are explored.'⁶⁴⁶

The Doctrine specifically recognises that interviewing witnesses is one of the five key investigative strategies and identifies different types of witnesses including:

- the victim;
- eye witnesses ('[d]irectly observed the offence'); and
- other significant witnesses ('[o]bserved an event prior to or post the offence which is classified as relevant evidence').⁶⁴⁷

The Doctrine also identifies 'suspects/persons of interest'⁶⁴⁸ as a separate investigative strategy, in particular setting out the following associated 'actions':

The development of strategies to trace, implicate or eliminate suspects including:

- Arrest plan
- Interview plan
- Covert investigation plan
- Assessment of evidence in particular identity and opportunity.

This includes method of arrest, obtaining suspect's account, establishing potential alibi, accessing intelligence held by internal and external agencies that may assist in identifying the offender or corroborating the offender's identity.⁶⁴⁹

The COPS Manual also notes that it 'is critical that statements from involved persons are obtained by police officers at the earliest opportunity.'⁶⁵⁰ The COPS Manual requires:

All involved persons should be sighted and interviewed regarding the incident and IMS [Incident Management System] interview panels updated accordingly. Should a decision be made not to interview a POI [person of interest], the reason must be fully explained and recorded in the running sheet.⁶⁵¹

⁶⁴⁵ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

⁶⁴⁶ Western Australia Police, *The Five Key Investigative Strategies*, WA Police Investigation Doctrine Extract, April 2010.

⁶⁴⁷ Western Australia Police, *The Five Key Investigative Strategies*, WA Police Investigation Doctrine Extract, April 2010.

⁶⁴⁸ Western Australia Police, *The Five Key Investigative Strategies*, WA Police Investigation Doctrine Extract, April 2010.

⁶⁴⁹ Western Australia Police, *The Five Key Investigative Strategies*, WA Police Investigation Doctrine Extract, April 2010.

⁶⁵⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1. p. 13.

⁶⁵¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.

13.2.3 During investigations involving people who were killed in the 30 fatalities, WAPOL did not gather evidence from all significant witnesses

The Office examined the 75 DVIRs to determine whether all witnesses required to be interviewed in accordance with the Doctrine were interviewed, namely, victims, eye witnesses, other significant witnesses, and suspects/persons of interest. As shown in Figure 39 below, the Office's examination of the DVIRs found that the victim was most likely to be interviewed (92 per cent), followed by the suspect/person of interest (73 per cent), with other significant witnesses least likely to be interviewed (48 per cent of 46 incidents where potential significant witnesses were recorded).

Figure 39: Recorded interviews in the 75 DVIRs

<i>Witness</i>	<i>Number and percentage interviewed</i>
Victim	69 (92 per cent)
Suspect/person of interest	55 (73 per cent)
Eye witnesses and other significant witnesses where applicable	22 (48 per cent of 46 applicable incidents)

Source: Ombudsman Western Australia

The Office further examined the 20 DVIRs in which the suspect/person of interest was not interviewed to identify whether the reasons for this were fully explained and recorded on the running sheet in accordance with the COPS Manual. The Office identified that the reason for the decision not to interview the suspect/person of interest was recorded on two running sheets. In the remaining 18 DVIRs information was recorded elsewhere in the DVIR as follows:

- in 14 of the 18 DVIRs, (78 per cent), the suspect/person of interest was not present when police attended the scene. In six of these 14 DVIRs (43 per cent), records indicated that action was taken to locate the suspect/person of interest. This included alerts placed on WAPOL's Incident Management System, police patrols and contact with other agencies;
- in 14 of the 18 DVIRs, (78 per cent), information was recorded to indicate that the suspect/person of interest would not be charged (for example, the following notes were made; 'no offence detected', 'insufficient evidence' and 'not proceeded with'); and
- in two of the 18 DVIRs (11 per cent), it was recorded that the victim did not want to disclose any offences and did not want action to be taken (in these two instances the incident had been reported to WAPOL by a party other than the victim).

Recommendation 33

WAPOL ensures that, when undertaking investigations in accordance with section 62A of the *Restraining Orders Act 1997*, and where required by the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*, police officers interview all witnesses, including victims, suspects/persons of interest, eye witnesses and other significant witnesses, and, should a decision be made not to interview a person of interest, the reasons should be fully explained and recorded on the running sheet.

13.2.4 During investigations involving people who were killed in the 30 fatalities, WAPOL took photographs of the victim's injuries as a means of gathering evidence in 44 per cent of relevant occasions

As noted above, the COPS Manual requires that police officers 'pay particular attention to the early collection of evidence including ... photographs [of the] ... complainant's injuries [and the] scene.'⁶⁵² Allegations of bodily harm were recorded in 46 of the 75 DVIRs (61 per cent). In one of the 46 DVIRs, it was recorded that there were no visible injuries to the victim. For the remaining 45 DVIRs, it was recorded that the victim's injuries had been photographed on 20 occasions (44 per cent). In the remaining 25 DVIRs, information was not recorded regarding the decision not to take photographs.

Recommendation 34

WAPOL ensures that, when undertaking investigations in accordance with section 62A of the *Restraining Orders Act 1997*, and where required by the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*, police officers take photographs of any arising injuries to the victim, with their consent, in accordance with the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*.

13.3 Detecting and recording offences, and laying charges at family and domestic violence incidents involving people who were killed in the 30 fatalities

13.3.1 Legislative and policy requirements

As previously discussed, section 62A of the *Restraining Orders Act* provides as follows:

62A. Investigation of suspected family and domestic violence

A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —

- (a) is a criminal offence; or
- (b) has put the safety of a person at risk.

WAPOL's policy position is set out in the COPS Manual and 'is pro-charge, pro-arrest and pro-prosecution; where evidence exists that a criminal offence has been committed'.⁶⁵³ Reflecting this, the COPS Manual requires that all disclosed offences are to be recorded in the DVIR, in accordance with National Crime Recording Standards:

Where offences are disclosed and there is no credible evidence to the contrary at the time of reporting, the offence must be listed on the IR [Incident Report] as per National Crime Recording Standards. This provides a common basis for

⁶⁵² Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

⁶⁵³ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.2.

recording offences according to the judgement of the police officer as distinct from evidentiary or prosecutorial reasons.⁶⁵⁴

The COPS Manual specifically recognises that victims may face difficulties in assisting police officers, including in the detection of offences, noting:

Fear of the perpetrator and future retribution is one of the most influential factors that may prevent the victim cooperating with police. Victims may not display obvious signs of fear. Victims of family and domestic violence have usually been subjected to intense attacks on their self-esteem, including constant criticism, name-calling, ridicule, degrading behaviour, and threats, and may find it difficult to assert themselves at the scene.⁶⁵⁵

With this in mind, the COPS Manual explicitly states:

Members are to take ownership of the decision to prefer a charge and not place the responsibility with the victim.⁶⁵⁶ [Original emphasis]

In addition, once an offence has been detected and recorded, the COPS Manual further requires that these offences are to be cleared as follows:

The only two clearance types to be utilised for domestic violence related offences are;

- Insufficient Evidence
- Offender Processed

Any other outcome considered can only be authorised by the Officer in Charge of the District Detectives Office and/or the District Family Protection Coordinator, following a thorough investigation...⁶⁵⁷

13.3.2 WAPOL detected an offence in 51 of the 75 incidents involving people who were killed in the 30 fatalities, and processed 29 offenders

WAPOL detected an offence in 51 of the 75 DVIRs (68 per cent). Where an offence was not detected, this does not mean an offence may not have been committed. For example, DVIRs which were closed as 'no offence was detected' included the following statements:

- The victim 'refused to state what happened' and was 'very anti-Police ... nil offence committed-DV only'; and
- 'She was very withdrawn and evasive when questioned by police ... there was no complaint received from the victim and no persons would assist with the investigation'.

After a fatality, as part of its internal review process, WAPOL also develops a timeline (**the Timeline**) which includes a record of all recorded incidents between the parties and WAPOL's response. The Timeline can include issues identified by WAPOL as part of this

⁶⁵⁴ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.3.

⁶⁵⁵ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.

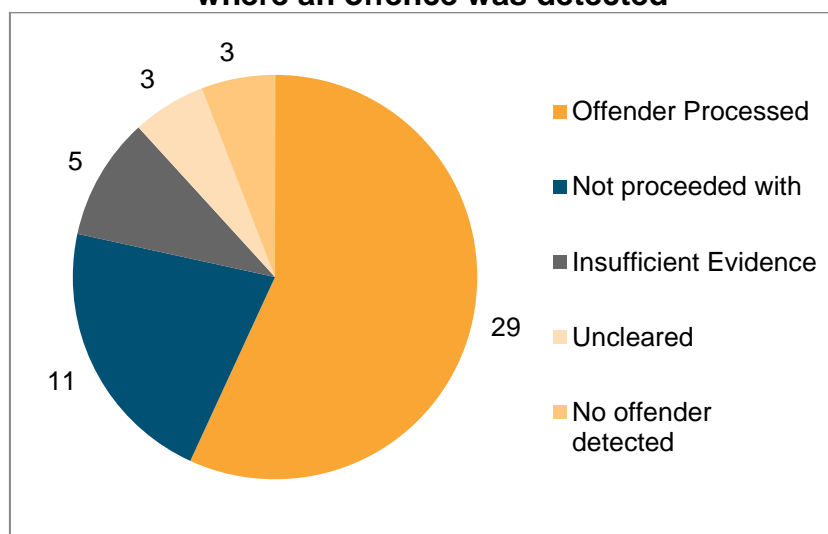
⁶⁵⁶ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

⁶⁵⁷ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

internal review. In several incidents recorded in the Timelines, WAPOL identified issues relating to not recording disclosed offences. In particular, WAPOL's internal reviews noted that records indicated that offences were disclosed when police were first contacted (for example 000 calls) but these offences were not added to the offence panel of the associated DVIR.

Overall, as shown in Figure 40 below, WAPOL complied with the requirements to clear offences as either 'offender processed' or 'insufficient evidence' in 34 of the 51 DVIRs where an offence was detected (67 per cent). An offender was processed (arrested or summonsed) on 29 of these 51 occasions (57 per cent).

Figure 40: WAPOL clearance type for the 51 DVIRs where an offence was detected



Source: Ombudsman Western Australia

As shown in Figure 40 above, in 11 of the 51 DVIRs where an offence was detected (22 per cent) the incident was cleared as 'not proceeded with'. In the Office's review of the 75 DVIRs, this clearance type was used to indicate that the victim of the offence did not wish to participate in the prosecution of the alleged offender. For example, the following information was recorded on a DVIR that was not proceeded with:

... [U]nless the victim assists police, and gives a full account of the circumstances prior to the injury being sustained, the enquiry cannot continue.⁶⁵⁸

Recommendation 35

WAPOL ensures that responses to family and domestic violence incidents record all offences disclosed in accordance with the *Commissioner's Operations and Procedures Manual* (including offences disclosed prior to attendance).

⁶⁵⁸ Western Australia Police, Domestic Violence Incident Report (unpublished).

Recommendation 36

WAPOL ensures that it takes ownership of the decision to prefer a charge and does not place the responsibility with the victim, in accordance with the *Commissioner's Operations and Procedures Manual*.

Recommendation 37

WAPOL ensures that all offences detected at family and domestic violence incidents are cleared in accordance with the *Commissioner's Operations and Procedures Manual*.

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14 The use of violence restraining orders to protect children from family and domestic violence

14.1 Number of children who experienced family and domestic violence related to the 30 fatalities

The Office identified that there were 30 children⁶⁵⁹ who experienced family and domestic violence associated with the 30 fatalities, as follows:

- Nine children who were either the person who was killed or the suspected perpetrator in the 30 fatalities:
 - three of the 30 people who were killed were children at the time of the fatal incident;
 - one of the 30 suspected perpetrators was a child at the time of the fatal incident (and was also recorded as experiencing family and domestic violence); and
 - an additional five adults (predominantly aged 18 years) who were killed or were suspected perpetrators in the 30 fatalities and who had experienced or were alleged to have perpetrated family and domestic violence as a child in the years immediately prior to the fatal incident, when they were aged less than 18 years.
- Twenty children were the child of the person who was killed and/or the suspected perpetrator; and
- One child was present at family and domestic violence incidents involving the person who was killed and the suspected perpetrator, but was not the child of the person who was killed or the suspected perpetrator, rather, a child who sometimes resided with the parties.

Of the 30 children who experienced family and domestic violence associated with the 30 fatalities:

- Eighteen (60 per cent) were male and twelve were female; and
- Twenty-one (70 per cent) were Aboriginal and nine were non-Aboriginal.

In this report, this group of 30 children is referred to as the **children involved in the 30 fatalities**.

⁶⁵⁹ Aged less than 18 years.

14.2 Impact of family and domestic violence on children

14.2.1 Family and domestic violence causes harm to children

The research literature suggests that 'children are not passive onlookers or unaffected bystanders'⁶⁶⁰ to family and domestic violence, with a significant body of research identifying that 'infants, children and adolescents experience serious negative psychological, emotional, social, and developmental impacts to their wellbeing.'⁶⁶¹ Evidence provided by Dr Robyn Miller to the Victorian Royal Commission into Family Violence further suggests that these negative impacts can include physical changes to the brain:

The development of a child's brain is highly influenced by the child's environment. Secure attachment contributes to the development of neural pathways that build the child's capacity to soothe, regulate emotions and contribute to healthy growth and development. Overwhelming stress, such as the trauma of violence, leads to neural pathways being established in the brain that are highly responsive to threat. Because children's physical, social, emotional and cognitive development is a cascading process that interacts with each domain in a complex and dynamic way ... family violence interferes with the basic building blocks of development.⁶⁶²

Research identifies that the impacts of family and domestic violence upon a child's wellbeing are serious, with one prominent meta-analysis, which reviewed 118 studies,⁶⁶³ suggesting 'that there is no measurable difference in outcomes (emotional, social, behavioural) between children who have been physically abused and children who have been exposed to family and domestic violence',⁶⁶⁴ as follows:

[C]hildren who *witness* violence experience the same level of negative psychosocial outcomes as children who directly experience physical abuse.⁶⁶⁵
[Original emphasis]

The effects of children's experience of family and domestic violence upon their wellbeing are wide-ranging, and have been found to include:

⁶⁶⁰ Department for Child Protection and Family Support, *The Impact of Family and Domestic Violence on Children*, Government of Western Australia, Perth, 2012, p. 1.

⁶⁶¹ Australian Domestic & Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review*, University of New South Wales, Sydney, 2011, p. 1.

⁶⁶² Royal Commission into Family Violence, Witness Statement of Associate Dr Robyn Miller, Royal Commission into Family Violence, 14 July 2015.

⁶⁶³ Kitzmann, K, Gaylord, N, Holt, A and Kenny, E, 'Child Witness to Domestic Violence: A Meta-analytic Review', *Journal of Consulting and Clinical Psychology*, vol. 71, no.2, pp. 339-352, cited in: Australian Domestic & Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review*, University of New South Wales, Sydney, 2011, p. 3.

⁶⁶⁴ Kitzmann, K, Gaylord, N, Holt, A and Kenny, E, 'Child Witness to Domestic Violence: A Meta-analytic Review', *Journal of Consulting and Clinical Psychology*, vol. 71, no.2, pp. 339-352, cited in: Department for Child Protection and Family Support, Family and Domestic Violence Background Paper, Government of Western Australia, Perth, 2012, p. 4.

⁶⁶⁵ Kitzmann, K, Gaylord, N, Holt, A and Kenny, E, 'Child Witness to Domestic Violence: A Meta-analytic Review', *Journal of Consulting and Clinical Psychology*, vol. 71, no. 2, pp. 339-352, cited in: Australian Domestic & Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review*, University of New South Wales, Sydney, 2011, p. 3.

[B]ehavioural problems such as aggression, phobias, insomnia, low self-esteem, and depression. Children exposed to domestic violence may demonstrate poor academic performance and problem-solving skills, and low levels of empathy. Exposure to chronic or extreme domestic violence may result in symptoms consistent with posttraumatic stress disorder, such as emotional numbing, increased arousal, avoidance of any reminders of the violent event, or obsessive and repeated focus on the event. Retrospective studies indicate that there may also be negative effects in adulthood, including depression, low self-esteem, violent practices in the home, and criminal behaviour.⁶⁶⁶ [footnotes omitted]

As discussed in Chapter 3, victim's responses, and forms of resistance, are not always obvious to outsiders and can be misunderstood. In the case of children, care needs to be taken to ensure that the ways in which children respond to and resist violence (for example, by being aggressive) are not misidentified as 'problems' with the child, rather than stopping the violence to which the child is responding as the primary concern.

14.2.2 Family and domestic violence often co-occurs with other forms of child maltreatment, which causes cumulative harm to children

In the Office's *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*, the Office noted that '[t]he research literature finds that different forms of child maltreatment, including family and domestic violence, sexual abuse, physical abuse and neglect, often co-occur'.⁶⁶⁷

As noted in the Office's *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*:

The research literature also identifies that 'as many forms of maltreatment co-occur and could have joint effects, their cumulative impact should not be overlooked.' The effect of experiencing multiple forms of child maltreatment is referred to in the research literature as **cumulative harm**, as follows:

Cumulative harm is the existence of compounded experiences of multiple episodes of abuse or 'layers' of neglect. The unremitting daily impact on the child can be profound and exponential, covering multiple dimensions of the child's life ...

Cumulative harm is experienced by a child as a result of a series or pattern of harmful events and experiences that may be historical, or ongoing, with the

⁶⁶⁶ Salcido Carter, L, Weithorn, L and Behrman, R, 'Domestic Violence and Children: Analysis and Recommendations,' *The Future of Children*, vol. 9, no. 3, 1999, p. 6.

⁶⁶⁷ Ombudsman Western Australia, *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*, Ombudsman Western Australia, Perth, 2014, p. 114, referring to Australian Institute of Family Studies, *Effects of child abuse and neglect for children and adolescents*, Australian Institute of Family Studies, Melbourne, 2010, viewed 25 February 2014 <<http://www.aifs.gov.au/cfca/pubs/factsheets/a146141/index.html>>.

*strong possibility of the risk factors being multiple, inter-related and co-existing over critical developmental periods.*⁶⁶⁸

In response to Recommendation 9 of the Office's *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*, that '[t]he Department for Child Protection and Family Support considers whether an amendment to the *Children and Community Services Act 2004* should be made to explicitly identify the importance of considering the effects of cumulative patterns of harm on a child's safety and development',⁶⁶⁹ in 2014, DCPFS proposed amendments to the definition of 'harm' in section 28(1) of the *Children and Community Services Act 2004* (**the *Children and Community Services Act***) to 'recognise the cumulative effects of harm caused by multiple types of abuse, or abuse over a period of time', as follows:⁶⁷⁰

Clause 28 [of the Children and Community Services Legislation Amendment and Repeal Bill 2014] amends section 28 [of the Children and Community Services Act]...

Subclause 28(2) amends the section 28(1) definition of "harm" in relation to a child, to mean "any detrimental effect of a significant nature on the child's wellbeing, whether caused by –

- (a) a single act, omission or circumstance; or
- (b) a series or combination of acts, omissions or circumstances;"⁶⁷¹

...

The *Children and Community Services Legislation Amendment and Repeal Act 2015* was assented to on 17 September 2015,⁶⁷² and, once proclaimed, will:

- Amend the definition of 'emotional abuse' in subsection 28(1) of the *Children and Community Services Act 2004* to include 'exposing a child to an act of family and domestic violence as defined in the *Restraining Orders Act 1997*';⁶⁷³

⁶⁶⁸ Ombudsman Western Australia, *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*, Ombudsman Western Australia, Perth, 2014, p. 114, referring to Miller R and Bromfield, L, 2010, as quoted by Price-Robertson, R, Rush, P Wall, L and Higgins, D, *Rarely an isolated incident: Acknowledging the interrelatedness of child maltreatment, victimisation and trauma*, Australian Institute of Family Studies, Melbourne, 2013, p. 7; Miller, R, *Cumulative harm: a conceptual overview*, Victorian Government Department of Human Services, Melbourne, 2007, viewed 26 September 2013, <http://www.dhs.vic.gov.au/__data/assets/pdf_file/0012/589665/cumulative-harm-conceptual-overview-part1.pdf>, p. 1.

⁶⁶⁹ Ombudsman Western Australia, *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*, Ombudsman Western Australia, Perth, 2014, p. 122.

⁶⁷⁰ Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 12.

⁶⁷¹ Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 12.

⁶⁷² Parliament of Western Australia, 'Children and Community Services Legislation Amendment and Repeal Bill 2014', viewed 27 October 2015, <<http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=B2D1BBF851044EF348257D5C00341011>>.

⁶⁷³ Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 12.

- Enable DCPFS to request or disclose information under section 23 of the *Children and Community Services Act 2004* relevant to ‘the safety of a person who has been subject to, or exposed to, one or more acts of family and domestic violence’;⁶⁷⁴ and
- Extend information sharing powers under the *Children and Community Services Act 2004* so that prescribed authorities may exchange information relevant to the wellbeing of a child or ‘the safety of a person who has been subjected to, or exposed to, one or more acts of family and domestic violence (as defined in section 6 of the *Restraining Orders Act*) with other prescribed authorities, certain non-government providers of social services and independent schools.⁶⁷⁵

14.3 WAPOL referrals to DCPFS regarding children who had experienced family and domestic violence

14.3.1 Legislative requirements

In recognition of the harm to children caused by family and domestic violence, statutory child protection authorities in most jurisdictions are routinely notified by police attending a family and domestic violence incident of children present at these incidents.⁶⁷⁶ In some jurisdictions, such reporting is a legislative requirement and is therefore mandatory.⁶⁷⁷ However, in Western Australia, mandatory reporting requirements are only in place in cases of suspected child sexual abuse.⁶⁷⁸

Although it is not mandatory for WAPOL to notify DCPFS of their attendance at family and domestic violence incidents involving children, section 129 of the *Children and Community Services Act* allows police officers to share information about any aspect of the wellbeing of a child with DCPFS, protecting them from liability if they are acting in good faith, relevantly providing:

129. Protection from liability for giving information

- (1) This section applies if a person acting in good faith —
- (a) gives information to the CEO or another officer about any aspect of the wellbeing of a child; or
 - (ba) gives information of the kind described in section 33A to the CEO or another officer; or
 - (b) gives information to the CEO or another officer for the purposes of, or in connection with, an investigation referred to in section 32(1)(d) or 33B(c); or

⁶⁷⁴ Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 8.

⁶⁷⁵ Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 10-11.

⁶⁷⁶ Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 77.

⁶⁷⁷ Australian Institute of Family Studies, Child Family Community Australia, *Mandatory reporting of child abuse and neglect*, Australian Institute of Family Studies, Canberra, August 2014, viewed 9 June 2015, <<https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>>.

⁶⁷⁸ Australian Institute of Family Studies, Child Family Community Australia, *Mandatory reporting of child abuse and neglect*, Australian Institute of Family Studies, Canberra, August 2014, viewed 9 June 2015, <<https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>>.

- (c) gives information to the CEO or another officer for the purposes of, or in connection with, a protection application or any other application to the Court under this Part; or
- (d) gives information to the CEO under section 40(6); or
- (e) makes a report under section 124B(1); or
- (f) notifies the CEO of an allegation in accordance with a requirement to do so under regulations made under the Child Care Services Act 2007.

(2) In giving the information or making the report or notification the person —

- (a) does not incur any civil or criminal liability; and
- (b) is not to be taken to have breached any duty of confidentiality or secrecy imposed by law; and
- (c) is not to be taken to have breached any professional ethics or standards or any principles of conduct applicable to the person's employment or to have engaged in unprofessional conduct.

(3) The protection given by subsection (2) also applies to a person who, in good faith —

- (a) performs a duty that the person has under section 124C(4); or
- (b) provides information on the basis of which —
 - (i) the information mentioned in subsection (1)(a), (ba), (b), (c) or (d) is given; or
 - (ii) a report is made under section 124B(1); or
 - (iii) the CEO is notified as mentioned in subsection (1)(f);

or

- (c) is otherwise concerned in —
 - (i) providing the information mentioned in subsection (1)(a), (ba), (b), (c) or (d) or causing the information to be provided;

or

- (ii) making a report under section 124B(1) or causing a report to be made; or
- (iii) notifying the CEO as mentioned in subsection (1)(f) or causing the CEO to be so notified.

14.3.2 Policy requirements

The COPS Manual requires that, where a police officer becomes aware of a child who is being exposed to an act or acts of family and domestic violence, they must take certain steps, which culminate in a referral to DCPFS. The COPS Manual requires that:

Safety of Children

- Members must consider the safety and well-being of children present at family and domestic violence incidents.
- All children should be sighted and their welfare checked.⁶⁷⁹

⁶⁷⁹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual, DV 1.1.4. Family and Domestic Violence Intervention and Investigation*.

The COPS Manual further requires that police officers are to detail ‘the full names and dates of birth of all children who usually reside with the named parties, indicating whether each child was present or not during the incident [and] details for all children present ...’⁶⁸⁰

Lastly, the COPS Manual requires that, ‘[w]here children are exposed or involved in a serious incident of family violence, officers must contact Crisis Care [a DCPFS helpline and counselling service] as soon as practicable to initiate DCP[FS] action.’⁶⁸¹

14.3.3 The Office identified that children were present, or usually resided with named parties, in 31 of the 75 DVIRs

As discussed in Chapter 8, the Office reviewed 75 DVIRs submitted by police officers. The Office identified that children were present, or usually resided with the named parties of 31 (41 per cent) of the 75 DVIRs, relating to nine of the 30 fatalities. The Office examined the 31 applicable DVIRs to identify actions taken by WAPOL to promote the safety of children, as required by the COPS Manual.

For these 31 applicable DVIRs, the Office identified that WAPOL:

- recorded efforts to sight and check the welfare of children in 12 DVIRs (39 per cent);
- recorded the full names and dates of birth of children who usually reside with the named parties, indicating whether each child was present or not during the incident, and details of the children, in 19 DVIRs (61 per cent); and
- referred this information to DCPFS in 19 DVIRs relating to eight of the 30 fatalities. Of the 12 DVIRs where a referral was not made to DCPFS, the Office identified that seven DVIRs involved a serious incident, including four incidents where a suspected perpetrator was charged, two incidents where a police order was issued, and one incident where the victim alleged her infant was assaulted (no charges were laid in relation to this incident).

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WAPOL complies with the *Commissioner’s Operations and Procedures Manual*, in particular, that for all children who are present or usually reside with parties to a family and domestic violence incident, police officers:

- ensure that all children are sighted and their welfare checked;
- record the details of the children; and
- where children are exposed to, or involved in, a serious incident of family violence, contact DCPFS.

⁶⁸⁰ Western Australia Police, *Commissioner’s Operations and Procedures (COPS) Manual, DV 1.1.4.3 Incident Management System (IMS)*.

⁶⁸¹ Western Australia Police, *Commissioner’s Operations and Procedures (COPS) Manual, DV 1.1.7 Children Exposed to Family and Domestic Violence*.

14.4 Good practice in responding to referrals regarding children who have experienced family and domestic violence

Australian and international research literature highlights a number of potential deficiencies in the way child protection authorities in both Australia and overseas, identify family and domestic violence. For example, international research has observed that child protection workers often ‘fail to identify or address’ family and domestic violence.⁶⁸² In particular, the Australian research literature observes practices including:

- assessments which ‘fail to mention family and domestic violence, in spite of this being the reason for referral or part of the investigation’;⁶⁸³
- family and domestic violence being identified ‘but named as something else, such as a “family conflict” or “marital argument”’;⁶⁸⁴
- ‘shifting the focus of assessment from [family and domestic] violence to mental health, alcohol abuse or other issues’;⁶⁸⁵ and
- ‘not recording incidents of domestic and family violence in case notes and assessment reports’.⁶⁸⁶

Failure to accurately identify that family and domestic violence is occurring in ways such as those outlined above ‘will lead to a child being placed at further risk with the violence continuing.’⁶⁸⁷ The research suggests, for example:

Without intervention and support, domestic and family violence can escalate. By ignoring or failing to identify the characteristics of violence within a family, and not holding the perpetrator accountable, it may appear that the behaviour is condoned.

This may result in the violence increasing in frequency, intensity and severity.⁶⁸⁸

Both large and small scale studies suggested an ‘ineffectiveness of ... response’ of child protection authorities to family and domestic violence, identifying that often little investigation or service response is undertaken and that ‘children living with domestic violence were less likely to be investigated by child protection workers but more likely to be re-notified.’⁶⁸⁹ For example, one study in the United Kingdom identified that:⁶⁹⁰

⁶⁸² Department of Communities, Child Safety and Disability Services, *Domestic and family violence and its relationship to child protection*, Queensland Government, Brisbane, October 2012, p. 28.

⁶⁸³ Humphreys, C, ‘Domestic Violence and Child Protection: Challenging directions for practice,’ *Australian Domestic & Family Violence Clearinghouse*, Issues Paper 13, May 2007, Sydney, p. 8.

⁶⁸⁴ Humphreys, C, ‘Domestic Violence and Child Protection: Challenging directions for practice,’ *Australian Domestic & Family Violence Clearinghouse*, Issues Paper 13, May 2007, Sydney, p. 8.

⁶⁸⁵ Department of Communities, Child Safety and Disability Services, *Domestic and family violence and its relationship to child protection*, Queensland Government, Brisbane, October 2012, p. 28.

⁶⁸⁶ Department of Communities, Child Safety and Disability Services, *Domestic and family violence and its relationship to child protection*, Queensland Government, Brisbane, October 2012, p. 28.

⁶⁸⁷ Department of Communities, Child Safety and Disability Services, *Domestic and family violence and its relationship to child protection*, Queensland Government, Brisbane, October 2012, p. 53.

⁶⁸⁸ Department of Communities, Child Safety and Disability Services, *Domestic and family violence and its relationship to child protection*, Queensland Government, Brisbane, October 2012, p. 20.

⁶⁸⁹ Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 85.

... [o]nly a small proportion of families notified received a service from children's social workers and most of these were already open cases. Police notifications triggered an intervention at the level of an initial assessment from children's services in only 5 per cent of cases. A high rate of repeat notifications indicated that domestic violence continued to be an issue in these families. Where families did receive interventions, it was likely to be at the safeguarding rather than the family support level.⁶⁹¹

The research also shows that generally 'very few families experienced enhanced services'⁶⁹² as a result of referrals for family and domestic violence, with only those at high-risk receiving services.⁶⁹³ In New South Wales, the 2008 Wood Special Commission of Inquiry into Child Protection Services identified that referrals for family and domestic violence, including reports from the police, were 'less likely to be considered urgent by [the Department of Community Services]' than other referrals.⁶⁹⁴ The same report identifies that a significant number of referrals for family and domestic violence were closed without 'secondary assessment,' and that family and domestic violence referrals 'were less likely to result in intervention' by child protection authorities, finding that, of 'more than 76,000 reports made in April 07/March 08 about a risk of harm from domestic violence as the primary reported issue, just over 5,000 were substantiated.'⁶⁹⁵

Research literature also suggests that the most effective method of protecting children from family and domestic violence is to work together in partnership with adult victims:⁶⁹⁶

How best can children be protected in households where domestic abuse is rife? It seems a simple question, but it isn't, and that's because the fate of children is inextricably linked with that of the victim, usually their mother. How services view and interact with her matters as much, and sometimes more than, whether they specifically engage with at-risk children in the family...⁶⁹⁷

⁶⁹⁰ Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 78.

⁶⁹¹ Stanley et al, cited by Laing, L & Humphreys C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 78.

⁶⁹² Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 85.

⁶⁹³ Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 85-86.

⁶⁹⁴ The Hon James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume 2, November 2008, Sydney, p. 699.

⁶⁹⁵ The Hon James Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, Volume 2, November 2008, Sydney, p. 699.

⁶⁹⁶ Mandel, D. *Connecticut Department of Children and Families Domestic Violence Consultant Initiative: A State Child Welfare Agency Response to Domestic Violence*, Department of Children and Families Domestic Violence Consultation Initiative, Connecticut, 2008, p. 23; Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 87.

⁶⁹⁷ Tickle, L, 'Domestic abuse: how can services protect children in violent homes?', *The Guardian*, Sydney, 9 February 2015, viewed 10 February 2015 from <<http://www.theguardian.com/social-care-network/2015/feb/09/domestic-abuse-protect-children-violent-homes>>.

14.5 DCPFS's response to referrals

14.5.1 Legislative requirements

Section 7 of the *Children and Community Services Act* requires that DCPFS must regard the best interests of the child as the paramount consideration. Section 7 provides:

7. Best interests of child are paramount consideration

In performing a function or exercising a power under this Act in relation to a child, a person, the Court or the State Administrative Tribunal must regard the best interests of the child as the paramount consideration.

In determining the best interests of the child, section 8 of the *Children and Community Services Act* requires DCPFS to take into account a number of factors, including the need to protect the child from harm. Section 8 relevantly provides:

8. Determining the best interests of a child

- (1) In determining for the purposes of this Act what is in a child's best interests the following matters must be taken into account —
 - (a) the need to protect the child from harm;
 - (b) the capacity of the child's parents to protect the child from harm;
 - ...
- (2) Subsection (1) does not limit the matters that may be taken into account in determining what is in the best interests of a child.

Sections 31 and 32 of the *Children and Community Services Act* provide the CEO of DCPFS with general powers and duties to inquire into, or safeguard, a child's wellbeing:

31. CEO may cause inquiries to be made about child

If the CEO receives information that raises concerns about a child's wellbeing, the CEO may cause any inquiries to be made that the CEO considers reasonably necessary for the purpose of determining whether action should be taken to safeguard or promote the child's wellbeing.

32. CEO's duties if action needed to safeguard etc. child's wellbeing

- (1) If the CEO determines that action should be taken to safeguard or promote a child's wellbeing, the CEO must do one or more of the following —
 - (a) provide, or arrange for the provision of, social services to the child and, if appropriate, a parent or other relative of the child;
 - (b) arrange or facilitate a meeting between an officer and any one or more of the following people —
 - (i) a parent or other relative of the child;
 - (ii) a person who is significant in the child's life;
 - (iii) a representative of a service provider;
 - (iv) a representative of a public authority,

- (c) for the purpose of developing a plan to address the ongoing needs of the child in a way that ensures the best outcome for the child;
- (c) enter into a negotiated placement agreement in respect of the child;
- (d) cause an investigation to be conducted by an authorised officer for the purpose of ascertaining whether the child may be in need of protection;
- (e) take, or cause to be taken, intervention action in respect of the child;
- (f) take, or cause to be taken, any other action in respect of the child that the CEO considers reasonably necessary.

14.5.2 Policy requirements

DCPFS may become aware of family and domestic violence when a person or ‘referrer’ contacts DCPFS to express concern about a child’s wellbeing. These contacts, and DCPFS’s immediate response to them, are the first step in DCPFS’s assessment and investigation process, and are recorded as ‘duty interactions’. The Casework Practice Manual outlines the duty interactions process as follows:

Duty interactions allow duty officers to assess the information they have received and ascertain what, if any, further information and assessment is needed to decide whether the Department has an ongoing role. During duty interactions the child protection worker must only:

- 1 clarify information with the referrer
- 2 check Department records, and
- 3 contact the person with parental responsibility.⁶⁹⁸

If the information obtained during a duty interaction is assessed as raising concerns about a child’s wellbeing, DCPFS may undertake further inquiries (known as ‘initial inquiries’) pursuant to section 31 of the *Children and Community Services Act*, to determine whether action should be taken to safeguard or promote the child’s wellbeing. The Casework Practice Manual provides that:

The purpose of conducting initial inquiries is to clarify the information received in duty interactions to assess whether the Department has an ongoing role.

Child protection workers should conduct initial inquiries when the Department may have a role based on the information received about concerns for a child’s wellbeing (includes the care, development, health and safety of the child) or where there is a concern about the parent’s capacity to protect, and inquiries need to be made about this child outside the Department, the parent or referrer.

Initial inquiries should not include sighting and/or interviewing the child to assess their safety and wellbeing. This should only occur once a decision has been made to undertake a safety and wellbeing assessment.⁶⁹⁹

⁶⁹⁸ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, ‘4.1 Assessment and Investigation Processes,’ DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

As outlined above, DCPFS may undertake a safety and wellbeing assessment following the completion of initial inquiries. In cases where the information provided during a duty interaction clearly indicates the need for DCPFS to have 'an ongoing role',⁷⁰⁰ initial inquiries may not be conducted and DCPFS may proceed immediately to a safety and wellbeing assessment. The Casework Practice Manual identifies that the purpose of a safety and wellbeing assessment is to clarify whether:

- the child has suffered significant harm, or is likely to suffer significant harm as a result of abuse and/or neglect
- the child's parents have not protected or are unlikely or unable to protect the child from harm or further harm of that kind
- a safety plan is required
- the wellbeing concerns are likely to place the child at risk of significant harm in the future if joint work is not undertaken with the family.

Harm to the child is defined in s.3 of the [CCS] Act as 'harm, in relation to the child, includes harm to the child's physical, emotional and psychological development'.⁷⁰¹

The Casework Practice Manual also identifies that, depending on the nature of the concern, a safety and wellbeing assessment should involve some or all of the following tasks, including:

- obtain parental consent to interview the child
- sight the child and/or interview the child
- assess the child's wellbeing and the impact of the alleged abuse on the child...
- interview the person alleged responsible for the harm with a focus on identifying plans they have to remedy or resolve the situation
- ensure the person alleged responsible is given the right of reply and receives information about opportunities to review the decision
- observe the child's environment, family functioning and behaviours
- assess for the presence or risk of cumulative harm
- explore the child and family's support networks
- interview individuals who have witnessed the alleged abuse or who are able to provide credible information to inform decision making
- obtain current and previous medical, health, developmental and/or psychological assessments and reports from other relevant sources
- undertake safety planning in collaboration with the parents, relatives, person(s) of significance in the child's life and the child, if appropriate...⁷⁰²

⁶⁹⁹ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '4.1 Assessment and Investigation Processes,' DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

⁷⁰⁰ Government of Western Australia, Department for Child Protection and Family Support, *Policy on Assessment and Investigation Process*, DCPFS, Perth, 2014, p. 2.

⁷⁰¹ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '4.1 Assessment and Investigation Processes,' DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

⁷⁰² Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '4.1 Assessment and Investigation Processes,' DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

During duty interactions, initial inquiries, and safety and wellbeing assessments, DCPFS has the opportunity to provide victims with information and advice about VROs, assistance with obtaining a VRO, and/or to make an application for a VRO on behalf of children experiencing family and domestic violence.

14.5.3 DCPFS also has a comprehensive framework of policies setting out how its workers should address family and domestic violence when responding to referrals

DCPFS has developed a framework of policy requirements and practice guidance setting out how its officers should respond during duty interactions, initial inquiries and safety and wellbeing assessments in cases where there is a possibility that family and domestic violence is occurring. This framework comprises:

- The Casework Practice Manual;
- *Family and Domestic Violence Policy 2012 (DCPFS Family and Domestic Violence Policy)*, endorsed by DCPFS's corporate executive in August 2012;⁷⁰³
- *Family and Domestic Violence Practice Guidance (Family and Domestic Violence Practice Guidance)*, including *Family and Domestic Violence Recording Guidelines*;
- *Perpetrator accountability in child protection practice: A resource for child protection workers about engaging and responding to perpetrators of family violence (Perpetrator Accountability resource materials)*,⁷⁰⁴ endorsed by DCPFS's corporate executive in 2013; and
- *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework* (referred to by DCPFS as the **CRARMF**).⁷⁰⁵

This framework is consistent with many best practice principles identified in the research literature concerning responding to family and domestic violence.

The *DCPFS Family and Domestic Violence Policy* recognises that family and domestic violence causes harm to children as follows:

Children have unique vulnerabilities in situations of FDV. Exposure to FDV causes serious emotional, psychological, social and behavioural harm to children, as well as placing them at increased risk of abuse and neglect.⁷⁰⁶

Identifying that family and domestic violence is occurring, based on the information provided through the duty interaction process, is the responsibility of DCPFS officers, with

⁷⁰³ Department for Child Protection and Family Support, *Family and Domestic Violence Policy 2012*, Department for Child Protection and Family Support, Perth Western Australia, August 2012.

⁷⁰⁴ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013.

⁷⁰⁵ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011.

⁷⁰⁶ Department for Child Protection and Family Support, *Family and Domestic Violence Policy 2012*, Department for Child Protection and Family Support, Perth Western Australia, August 2012, p. 1.

the Casework Practice Manual identifying that '[i]n every case referred to the Department, duty officers must identify whether family and domestic violence is an issue.'⁷⁰⁷

Not all referrals to DCPFS will clearly identify family and domestic violence even where this is occurring. The Casework Practice Manual highlights that referrals often have an underlying cause, as follows:

Family and domestic violence is often the underlying but hidden cause for client contact with the Department for Child Protection and Family Support (the Department), particularly in requests associated with crisis accommodation, financial assistance and information and referral. Family and domestic violence also has a high co-occurrence with all forms of child abuse and maltreatment, in particular neglect and emotional abuse.

Where family and domestic violence is present but not identified in child protection work, assessment of past harm and likely future danger to the child and adult victim is unlikely to be accurate, and the effectiveness of safety planning may therefore be compromised.⁷⁰⁸

DCPFS's *Family and Domestic Violence Recording Guidelines*, provided to DCPFS officers as part of Family and Domestic Practice Guidance, provide them with guidance about how to record family and domestic violence in DCPFS's electronic case management system, *Assist*.

The Casework Practice Manual identifies that, where a parent, or parents, of a child are experiencing family and domestic violence, duty interactions should be 'considered for a prioritised response.'⁷⁰⁹ In finalising a duty interaction, DCPFS officers are required to undertake an assessment and complete an 'outcome' field that reflects this assessment and reasons for either proceeding to take further action or closing a duty interaction. Possible outcomes of duty interaction assessments include:

- **'Family support'**: the DCPFS Casework Practice Manual identifies that:

Family support can be provided by child protection workers from duty interactions where there are insufficient child protection concerns for the Department to become involved, but families would benefit from accessing services to enhance the wellbeing of children. This should involve providing information to referrers or families on available support services such as:

- information on parenting support services
- information on counselling services to address family conflict

⁷⁰⁷ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '4.1 Assessment and Investigation Processes,' DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

⁷⁰⁸ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Family and Domestic Violence Screening and Assessment,' DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷⁰⁹ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '4.1 Assessment and Investigation Processes,' DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

- information on financial counselling services
 - accessing a one off service such as financial assistance
 - information on specialist family and domestic violence support services.⁷¹⁰
- **‘Not departmental business’** indicates that upon assessment, the matter has not been determined to be departmental business. In relation to outcomes of duty interactions concerning family and domestic violence, DCPFS’s *Family and Domestic Violence Recording Guidelines* specifically note that ‘the outcome of option of ‘Not Departmental Business’ should rarely be used in FDV cases as FDV is the Department’s business’;⁷¹¹
 - **‘Concern for child’** indicates that assessment of information in the duty interaction has resulted in a concern for a child;⁷¹²
 - **‘Other’** this includes outcomes including ‘financial assistance’ (where DCPFS received an application for financial assistance).

14.5.4 DCPFS received 686 referrals regarding the 70 children in the VRO sample

The Office identified children regarding whom the state-wide data indicated that:

- a VRO⁷¹³ was applied for in the Magistrates Court in the investigation period; and
- the grounds selected by the applicant in applying for a VRO included ‘exposing a child to an act of family and domestic violence’; and
- the applicant also submitted a DVIR number as evidence in support of the VRO application.

This identified a pool of 141 children. A random sample of 70 of the 141 children was selected, and these 70 children are referred to as the **70 children in the VRO sample**. The Office then examined DCPFS’s records concerning the 70 children in the VRO sample. Twelve of these children (17 per cent) were Aboriginal.

For the 70 children in the VRO sample, DCPFS recorded a total of 686 duty interactions over their lifetime.⁷¹⁴ The median number of duty interactions for each child was seven, however, a number of children were the subject of significantly more duty interactions, with

⁷¹⁰ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, ‘3.1 Family Support,’ DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilySupport.aspx>>.

⁷¹¹ Government of Western Australia, Department for Child Protection and Family Support, *Family and Domestic Violence Recording Guidelines* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 69.

⁷¹² Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, ‘4.1 Assessment and Investigation Processes,’ DCPFS, Perth, 2014, viewed 9 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/default.aspx>>.

⁷¹³ The VRO data obtained from DOTAG does not indicate whether the application relates to more than one person, that is, whether the applicant is also applying on behalf of any children.

⁷¹⁴ Where a duty interaction related to more than one child, this interaction was counted for each child. This is because *Assist* generated a duty interaction for each child, and on some occasions, different issues and outcomes were noted for different children.

one child being the subject of 51 duty interactions. The source of the referral in the 686 duty interactions is shown in Figure 41.

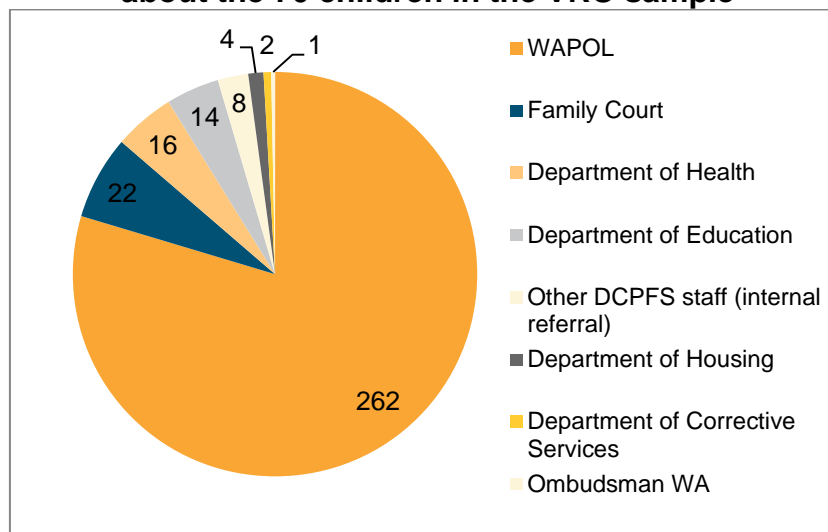
Figure 41: Source of referrals in the 686 duty interactions for the 70 children in the VRO sample

Source of referral	Number of duty interactions	Percentage of duty interactions
State government department or authority	329	48%
Family member	242	35%
Non-government organisation	41	6%
Unknown	42	6%
Member of the legal profession	11	2%
Member of the public	12	2%
Child care worker	8	1%
Child (subject of the duty interaction)	1	0.1%
TOTAL	686	

Source: Ombudsman Western Australia

As shown in Figure 41, 329 (48 per cent) of the 686 duty interactions about the 70 children in the VRO sample concerned referrals from state government departments and authorities. As shown in Figure 42 below, the majority of the referrals (80 per cent) by state government departments and authorities originated from WAPOL. As discussed at section 14.3 above, a WAPOL referral usually occurs when a copy of a DVIR is provided to DCPFS for assessment.

Figure 42: Source of referrals from state government departments and authorities about the 70 children in the VRO sample



Source: Ombudsman Western Australia

14.5.5 Of the 686 duty interactions about the 70 children in the VRO sample, the Office identified family and domestic violence in 467 (68 per cent) duty interactions; DCPFS identified this in 290 (42 per cent) duty interactions

Figure 41 identified that the DCPFS received 686 duty interactions about the 70 children in the VRO sample. The Office examined the 686 duty interactions and associated documents to determine whether DCPFS had accurately identified and recorded family and domestic violence.

Of the 686 duty interactions, 192 (28 per cent) were received prior to August 2012 and the remaining 494 duty interactions (72 per cent) were received from August 2012, after *DCPFS's Family and Domestic Violence Policy* and related materials were introduced.

The Office reviewed the information provided to DCPFS in each of the duty interactions to identify whether the information supplied to DCPFS as part of the referral identified family and domestic violence explicitly or implicitly in the subject matter. As an example, the Office identified family and domestic violence as an issue when a duty interaction recorded that a mother and her children were in a refuge seeking assistance, or a neighbour was reporting abusive arguments or violence. The Office identified that of the 686 duty interactions, information supplied to DCPFS identified family and domestic violence in 467 (68 per cent) duty interactions.

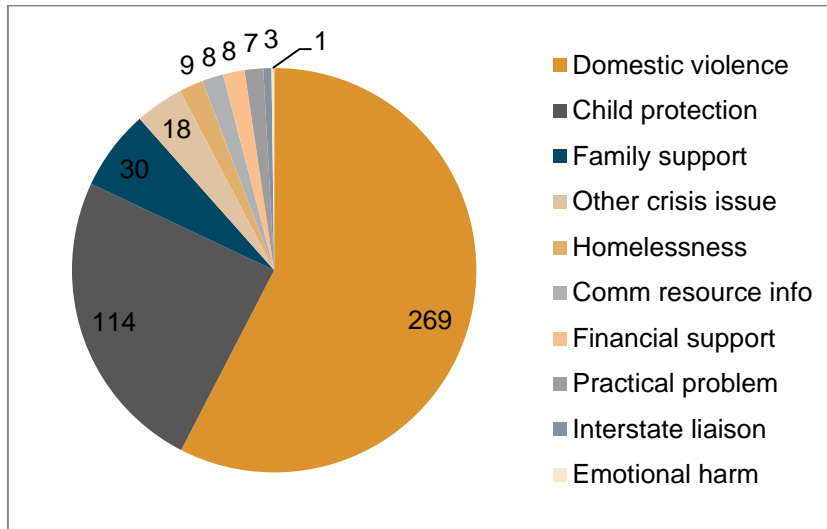
The Office found that DCPFS, however, had identified family and domestic violence in a total of 290 (42 per cent) of the 686 duty interactions, as follows:

- 'Domestic Violence' was identified in *Assist* as the 'Primary Issue' by DCPFS in 269 duty interactions; and
- 'Child Protection' was recorded in *Assist* as the 'Primary Issue' by DCPFS, with 'Family and Domestic Violence' recorded in 'Issue Details' for children in a further 21 duty interactions.

In addition, of the 686 duty interactions, there were 14 interactions (2 per cent) where it was not possible to identify from the records in *Assist* what information was provided to DCPFS, and what issues were present or identified.

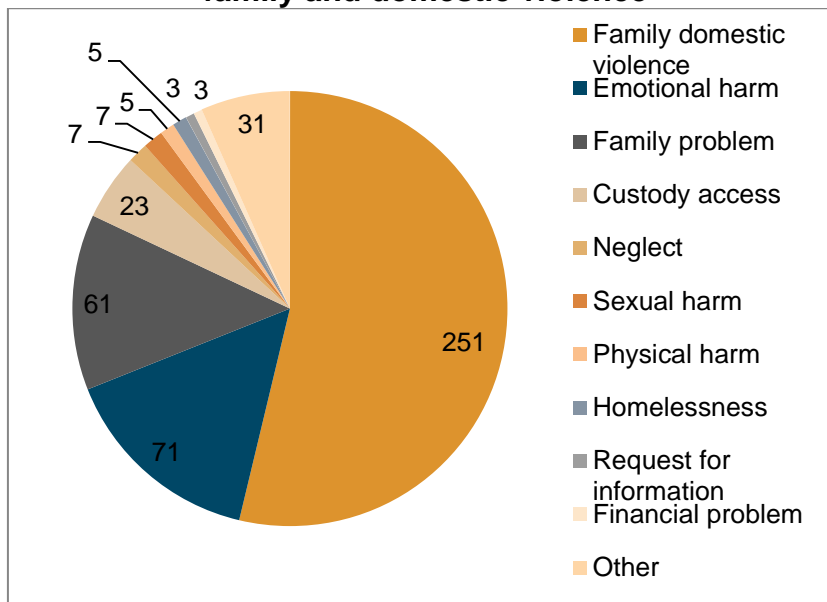
Figure 43 and Figure 44 below provide further details of the issues recorded by DCPFS where the Office had identified family and domestic violence.

Figure 43: 'Primary Issues' identified by DCPFS in the 467 duty interactions where the Office identified family and domestic violence



Source: Ombudsman Western Australia

Figure 44: 'Issue Details' identified by DCPFS in the 467 duty interactions where the Office identified family and domestic violence



Source: Ombudsman Western Australia
 Note: 'Other' includes issue details such as 'marital relationship' and 'parent-adolescent conflict'

Recommendation 39

DCPFS, in accordance with its Casework Practice Manual and *Family and Domestic Violence Policy 2012*, instructs child protection workers to review information provided for each referral to DCPFS, to identify if family and domestic violence indicators are present and record when family and domestic violence has been identified.

14.5.6 For 44 per cent of the duty interactions where DCPFS identified family and domestic violence, DCPFS concluded that this was ‘not departmental business’

As discussed above, DCPFS received 686 duty interactions about the 70 children in the VRO sample. The Office reviewed the outcomes of each of the 686 duty interactions to examine the outcomes selected by DCPFS officers for the duty interactions. For comparative purposes, the Office examined:

- the outcomes of the 290 duty interactions where DCPFS identified family and domestic violence in the ‘Primary Issue’ or ‘Issue Details’ fields; and
- the outcomes of the 396 duty interactions where DCPFS did not identify family and domestic violence in the ‘Primary Issue’ or ‘Issue Details’ fields.

The findings of the Office’s analysis are shown in Figure 45 below.

Figure 45: Outcomes for duty interactions where family and domestic violence was, and was not, identified by DCPFS

Outcome of duty interaction	Percentage of all duty interactions concerning the 70 children (n=686)	Percentage of the interactions where DCPFS identified family and domestic violence (n=290)	Percentage⁷¹⁵ of the interactions where DCPFS did not identify family and domestic violence (n=396)
Not departmental business	269 (39%)	129 (44%)	140 (35%)
Family support	207 (30%)	130 (45%)	77 (19%)
Concern for child	143 (21%)	23 (8%)	120 (30%)
Other (incl. financial assistance, blanks)	67 (10%)	8 (3%)	59 (15%)

Source: Ombudsman Western Australia

⁷¹⁵ Percentage does not add to 100 due to rounding.

Arising from this analysis, the Office identified that, of the 290 duty interactions in which DCPFS identified family and domestic violence:

- DCPFS recorded the outcome 'not departmental business' and closed the duty interactions in 129 instances (44 per cent). As discussed above, DCPFS's *Family and Domestic Violence Recording Guidelines* identify that 'the outcome of option of 'Not Departmental Business' should rarely be used in FDV cases as FDV is the Department's business';⁷¹⁶
- DCPFS recorded the outcome of 'Family Support' and closed the duty interactions in 130 instances (45 per cent). For comparison, of the 396 duty interactions where DCPFS did not identify family and domestic violence, DCPFS recorded the outcome of 'Family Support' in 77 instances (19 per cent); and
- DCPFS recorded the outcome of 'concern for child' in 23 instances (8 per cent). For comparison, of the 396 duty interactions where DCPFS did not identify family and domestic violence, DCPFS recorded the outcome of 'concern for child' in 120 instances (30 per cent).

Recommendation 40

When family and domestic violence has been identified during duty interactions, DCPFS complies with its *Family and Domestic Violence Practice Guidance*, which identifies 'the outcome of option of 'Not Departmental Business' should rarely be used in [family and domestic violence] cases as [family and domestic violence] is the Department's business'.

14.5.7 In 51 per cent of instances where DCPFS recorded 'Family Support' as an outcome, no information or support was provided

As identified in Figure 45 above, of the 290 duty interactions where DCPFS identified family and domestic violence in the 'Primary Issue' or 'Issue Details' fields, the outcome of 'Family Support' was recorded in 130 instances (45 per cent). On recording the outcome of 'Family Support', the Casework Practice Manual identifies that:

Family support can be provided by child protection workers from duty interactions where there are insufficient child protection concerns for the Department to become involved, but families would benefit from accessing services to enhance the wellbeing of children. This should involve providing information to referrers or families on available support services such as:

- information on parenting support services
- information on counselling services to address family conflict
- information on financial counselling services
- accessing a one off service such as financial assistance
- information on specialist family and domestic violence support services.⁷¹⁷

⁷¹⁶ Government of Western Australia, Department for Child Protection and Family Support, *Family and Domestic Violence Recording Guidelines* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 69.

⁷¹⁷ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '3.1 Family Support,' DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilySupport.aspx>>.

The Office examined the 130 duty interactions where DCPFS had identified family and domestic violence and recorded an outcome of 'Family Support' to determine what action was taken, as shown in Figure 46 below.

Figure 46: Information and support provided to victims, as recorded by DCPFS, in the 130 duty interactions where the outcome of 'Family Support' was recorded

Information recorded by DCPFS	Number of duty interactions
No contact with the family or a support service recorded	45
Assistance to obtain accommodation in a refuge provided	27
Referral to a support service or DCPFS recorded that a support service would contact the victim	19
Referral to the Family Court or DCPFS recorded that there was no role for Department as the matter is ongoing with Family Court	16
Multi-agency assessment (through a Family and Domestic Violence Response Team)	10
Advised to contact WAPOL	6
Home visit conducted	4
DCPFS spoke to the adult victim and offered information and support	3
Total	130

Source: Ombudsman Western Australia

Arising from this analysis, the Office identified that, for 67 (52 per cent) of the 130 duty interactions that were closed on the basis of 'Family Support', no information or support was provided. The Office identified that DCPFS:

- used the outcome of 'Family Support' to close interactions stemming from a referral of a DVIR from WAPOL, without any recorded contact with the family or recorded contact with a support service (45 duty interactions); and
- referred people to agencies not considered 'support services', including advising people to engage in (or continue engaging with) Family Court processes (16 duty interactions), or to request a welfare check from WAPOL (6 duty interactions).

Recommendation 41

When family and domestic violence has been identified during duty interactions, DCPFS complies with the Casework Practice Manual in providing 'Family Support', in particular that the provision of 'Family Support' involves the provision of information to referrers or families on available support services such as those listed in the Casework Practice Manual.

14.5.8 DCPFS did not proceed with further action in 271 (93 per cent) of the 290 duty interactions where DCPFS identified family and domestic violence as an issue

For each of the 686 duty interactions about the 70 children in the VRO sample, the Office examined next actions recorded by DCPFS. For comparative purposes, the Office examined:

- the outcomes of the 290 duty interactions where DCPFS identified family and domestic violence in the 'Primary Issue' or 'Issue Details' fields; and
- the outcomes of the 396 duty interactions where DCPFS did not identify family and domestic violence in the 'Primary Issue' or 'Issue Details' fields.

The outcome of this comparative analysis is shown in Figure 47 below.

Figure 47: Next actions for duty interactions where family and domestic violence was, and was not, identified

	Percentage of all duty interactions concerning the 70 children (n=686)	Percentage of the interactions where DCPFS identified family and domestic violence (n=290)	Percentage of the interactions where DCPFS did not identify family and domestic violence (n=396)
DCPFS did not proceed to further action:			
No further action	469 (68%)	259 (89%)	210 (53%)
Unable to proceed	21 (3%)	6 (2%)	15 (4%)
Other (includes blanks)	49 (7%)	6 (2%)	43 (11%)
DCPFS proceeded to further action:			
Initial inquiries	128 (19%)	17 (6%)	111 (28%)
Safety and wellbeing assessment	19 (3%)	2 (0.7%)	17 (4%)

Source: Ombudsman Western Australia

Note: The Office only counted recorded instances of initial inquiries or a safety and wellbeing assessment where the Office could identify documentary evidence.

Arising from this analysis, the Office identified that:

- DCPFS did not proceed with further action in 271 (93 per cent) of the 290 duty interactions where DCPFS identified family and domestic violence as an issue; and
- DCPFS proceeded to initial inquiries or safety and wellbeing assessment for 19 (seven per cent) of the 290 duty interactions where DCPFS identified family and domestic violence as an issue, compared to 128 (32 per cent) of the 396 duty interactions where DCPFS did not identify family and domestic violence as an issue.

Recommendation 42

Where family and domestic violence is identified, DCPFS, if required, takes action to assess and safeguard the wellbeing of children, including, where appropriate, progressing to intake, initial inquiries and safety and wellbeing assessments.

Recommendation 43

DCPFS monitors the percentage of duty interactions relating to family and domestic violence resulting in an outcome of 'concern for child' and progression to initial inquiries and safety and wellbeing assessments, in quarterly reports to its Corporate Executive, taking any appropriate action in relation to performance.

14.6 DCPFS's provision of advice and assistance regarding violence restraining orders

14.6.1 Policy requirements

DCPFS's *Family and Domestic Violence Practice Guidance* specifies that '[w]here a VRO is considered desirable or necessary but a decision is made for the Department not to apply for the order, the non-abusive adult victim should be given an active referral for legal advice and help from an appropriate service'.⁷¹⁸ The *Family and Domestic Violence Practice Guidance* also identifies that, where 'a VRO is being sought by a protective adult victim whose child is an open case to the Department, and the VRO will likely increase the safety of the child, Child Protection Workers should provide information to support the VRO application as appropriate'.⁷¹⁹

14.6.2 DCPFS assisted with two violence restraining order applications and provided one referral for help to obtain a violence restraining order regarding the 70 children in the VRO sample

For each of the 686 duty interactions about the 70 children in the VRO sample, the Office examined whether DCPFS provided the adult victims associated with these children with an active referral for legal advice or help from an appropriate service.

The Office identified that, in 154 (22 per cent) of the 686 duty interactions, VROs were mentioned in information provided to DCPFS by the referrer, or in DCPFS's assessment of the information. These duty interactions related to 57 (81 per cent) of the 70 children in the VRO sample. The way DCPFS recorded and responded to these 154 duty interactions can be broadly categorised as shown in Figure 48 below.

⁷¹⁸ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

⁷¹⁹ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

Figure 48: VRO information, advice and referrals provided to victims, as recorded by DCPFS, in the 154 duty interactions

	Number of duty interactions
Information referring to a VRO recorded in Assist with no record of advice, referral or other assistance provided:	
A VRO is currently in place	43
A person had requested advice and/or assistance to obtain a VRO	21
Police officers had encouraged the victim of family and domestic violence to apply for a VRO	15
WAPOL provided DCPFS with information concerning the breach of a VRO	14
A VRO was in place which had since expired	6
An interim VRO is in place, the respondent intends to object	5
A VRO was previously in place (no further detail recorded)	5
A VRO was previously sought, outcome not recorded	4
A VRO is in place with a former partner	3
A VRO was in place, the VRO has been withdrawn	2
Other information regarding a VRO was recorded (for example that protective bail was in place but there was no VRO).	12
Information or advice about VROs provided with no record of an active referral for legal advice and help from an appropriate service:	
WAPOL conducted a home visit	4
DCPFS conducted a home visit, DCPFS officers subsequently recorded that 'the mother was uncooperative,' and a VRO was not obtained at this time	2
DCPFS advised the adult victim to contact WAPOL	1
Information was provided to the adult victim regarding obtaining a VRO; no further information was recorded about the nature of the advice and no referrals were recorded	12
Advice about VROs and an active referral for help from an appropriate service provided:	
DCPFS referred the adult victim to the Safe at Home Program (a program to 'provide support for women and children experiencing domestic violence to stay in their housing, when it is safe to do so ... [and] can help ... with information about Violence Restraining Orders, financial options, parenting orders and other forms of support'). ⁷²⁰	1
Assistance with obtaining a VRO provided:	
DCPFS provided assistance to two adult victims to make an application for a VRO (DCPFS was not the applicant)	4
Total	154

Source: Ombudsman Western Australia

⁷²⁰ Women's Council for Domestic and Family Violence Services, *Safe at Home Program*, Women's Council for Domestic and Family Violence Services, Perth, viewed 9 June 2015, <<http://www.womenscouncil.com.au/safe-at-home.html>>.

In summary, the Office's analysis set out in the figure above indicates that DCPFS took steps to assist a victim to obtain a VRO in five instances, as follows:

- in one instance, DCPFS provided an 'active referral for legal advice and help from an appropriate service';⁷²¹
- in four instances, DCPFS assisted two adult victims to apply for a VRO by providing 'information to support the VRO application as appropriate'.⁷²²

14.6.3 DCPFS did not provide any active referrals for legal advice or help from an appropriate service to obtain a violence restraining order for any of the children involved in the 30 fatalities

The Office examined all records relating to the children involved in the 30 fatalities to determine whether DCPFS provided the adult victims associated with these children with an active referral for legal advice and help from an appropriate service. The Office identified that DCPFS recorded 387 duty interactions concerning the 30 children who were involved in the 30 fatalities.⁷²³ In 21 of these duty interactions (concerning 10 children), the Office identified that VROs were mentioned in information provided to DCPFS by the referrer, or in DCPFS's assessment of the information. This included instances where:

- information provided to DCPFS indicated that a VRO was in place. This occurred in 11 duty interactions, concerning six children. The Office observed that, in these instances, details of the VRO, including parties to the VRO, were not recorded by DCPFS;
- information provided to DCPFS documented that police officers had encouraged the victim of family and domestic violence to apply for a VRO. This occurred in three duty interactions concerning two children. In these instances, there was no evidence that DCPFS provided any information to the adult victim, including a referral for legal advice or help from an appropriate service;
- the person contacting DCPFS about a child requested advice and assistance to obtain a VRO. In two duty interactions concerning two children, there was no indication that any advice or assistance was provided. In a further two duty interactions concerning two children, the person was told to seek legal advice;
- DCPFS referred to the VRO it had obtained on behalf of the children (discussed further at section 14.7.4 below). This occurred in two duty interactions concerning two children; and
- information provided to DCPFS by WAPOL included information concerning the breach of a VRO. This occurred in one duty interaction for one child.

In summary, the Office was not able to identify any instance where DCPFS provided 'the non-abusive adult victim' or any person involved in the fatalities with an 'active referral for

⁷²¹ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders (in Family and Domestic Violence Practice Guidance)*, DCPFS, Perth, 2012, p. 74-75.

⁷²² Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders (in Family and Domestic Violence Practice Guidance)*, DCPFS, Perth, 2012, p. 74-75.

⁷²³ Where a duty interaction related to more than one child, this interaction was counted for each child. This is because *Assist* generated a duty interaction for each child, and on some occasions, different issues and outcomes were noted for different children.

legal advice and help from an appropriate service,' as identified in DCPFS's *Family and Domestic Violence Practice Guidance*.⁷²⁴

Recommendation 44

DCPFS complies with the requirements of the *Family and Domestic Violence Practice Guidance*, in particular, that '[w]here a VRO is considered desirable or necessary but a decision is made for the Department not to apply for the order, the non-abusive adult victim should be given an active referral for legal advice and help from an appropriate service'.

14.7 Application for a violence restraining order by DCPFS on behalf of a child

14.7.1 Legislative requirements

Section 11B of the *Restraining Orders Act* states that a VRO may be made for the benefit of a child if the court is satisfied that:

- (a) the child has been exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship and the child is likely again to be exposed to such an act; or
- (b) the applicant, the child or a person with whom the child is in a family and domestic relationship reasonably fears that the child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship,

and that making a violence restraining order is appropriate in the circumstances

Section 25 of the *Restraining Orders Act* enables an application for a VRO to protect a child to be made by a child welfare officer (in this report, we refer to these workers as DCPFS officers) as follows:

25. Application

- (1) An application for a violence restraining order may be made in person by —
 - (a) the person seeking to be protected; or
 - (b) a police officer on behalf of that person.
- (2) An application for a violence restraining order may also be made —
 - (a) if the person seeking to be protected is a child, by a parent or guardian of the child, or a child welfare officer, on behalf of the child; or

⁷²⁴ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

- (b) if the person seeking to be protected is a person for whom a guardian has been appointed under the *Guardianship and Administration Act 1990*, by the guardian on behalf of the person.

14.7.2 Policy requirements

DCPFS's *Family and Domestic Violence Practice Guidance* identifies the benefits of DCPFS applying for a VRO on behalf of a child, stating that:

Used in appropriate circumstances the taking out of a VRO by the Department on behalf of a child can assist in the protection of that child without the need for removal (intervention action) from his or her family home. An application made by the Department can avoid placing responsibility for the safety of the child on the adult victim, and/or holding the adult victim responsible for the perpetrator's behaviour.⁷²⁵

The *Family and Domestic Violence Practice Guidance* explicitly states that:

- Child Protection workers should consider seeking a VRO on behalf of a child if:
- The violence is likely to escalate and the children are at risk of further abuse; and/or
 - It would decrease the risk to the adult victim if the Department was the applicant for the VRO.⁷²⁶

The *Family and Domestic Violence Practice Guidance* additionally states that:

VROs are not designed or intended to replace the provisions and responses under the *Children and Community Services Act 2004* when child protection workers are investigating allegations of child maltreatment and/or initiating statutory action to protect a child.⁷²⁷

14.7.3 Of the 6,813 applications for violence restraining orders citing grounds relating to children during the investigation period, DCPFS had applied for 12 violence restraining orders on behalf of eight children

The Office analysed the state-wide data regarding all VRO applications made in Western Australia during the investigation period to identify whether the VRO was being sought on the grounds that children were experiencing family and domestic violence. Of the 12,393 applications where an applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent, the Office identified that 6,813 (55 per cent) cited grounds relating to children. This included:

- 6,092 applications where an applicant for a VRO cited the grounds of behaving in a way that could reasonably be expected to cause fear that a child will be exposed to an

⁷²⁵ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 73.

⁷²⁶ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 73.

⁷²⁷ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 75.

act of family and domestic violence, as identified in section 11B(b) of the *Restraining Orders Act*; and

- 5,611 applications where an applicant for a VRO cited the ground of exposing a child to family and domestic violence, as identified in section 11B(a) of the *Restraining Orders Act*.

The Office examined all 6,813 VRO applications made in the investigation period where an applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent, and where grounds were cited relating to children, to determine the number in which DCPFS applied for VROs on behalf of children. The Office found that DCPFS applied for 12 VROs on behalf of eight children in Western Australia during the investigation period.

In addition, as previously identified, the Office also examined records concerning the 70 children in the VRO sample, where an applicant had applied for a VRO in the Magistrates Court and where grounds selected by the applicant in applying for a VRO included 'exposing a child to an act of family and domestic violence.' None of the VRO applications in the VRO sample were made by a DCPFS officer.

DCPFS's *Family and Domestic Violence Practice Guidance* identifies that taking out a VRO on behalf of a child 'can assist in the protection of that child without the need for removal (intervention action) from his or her family home,' and can serve to assist adult victims of violence when it would decrease risk to the adult victim if the Department was the applicant. The Office further examined the eight VRO applications made by DCPFS in the investigation period to determine whether DCPFS made the applications in accordance with *Family and Domestic Violence Practice Guidance*. The Office was able to locate the records of five of the eight children for whom DCPFS applied for a VRO. The Office identified that:

- three children, siblings, were in the CEO's care under section 30 of the *Children and Community Services Act*, and resided in a family placement with their grandmother. DCPFS applied for a VRO on behalf of each of the children against their natural mother and father (a total of six VROs) following a family and domestic violence incident that occurred at the home of their grandmother; and
- two children, siblings, were in the CEO's care under section 30 of the *Children and Community Services Act*, and resided in a family placement with their grandmother. DCPFS applied for a VRO on behalf of each of the children against a third party, after this person physically assaulted both children.

The Office was not able to locate any evidence of DCPFS applying for a VRO during the investigation period to assist an adult victim to remain safe and together with their children.

14.7.4 DCPFS applied for a violence restraining order on behalf of two of the 30 children involved in the fatalities, however, this was not used as intended by DCPFS's policy

The Office identified that the 30 children involved in the fatalities were a part of 15 different family groups. The Office identified that DCPFS made an application for a VRO on behalf of two of these children, who were siblings. In this instance, DCPFS documents indicate that there had been 17 previous duty interactions concerning one of the children when

DCPFS became concerned about the welfare of the children and conducted a home visit, finding that 'there were no provisions found in the house to provide for the children's needs.' Following the visit, a decision was made by DCPFS to bring the children into provisional protection and care of the CEO without a warrant, under section 37 of the *Children and Community Services Act*, and place them in the care of their grandmother. DCPFS did not proceed with this action after the children's mother consented to the children residing with their grandmother. However, DCPFS decided to apply for VROs on behalf of the children against their mother, 'on the grounds the VRO will assist [Grandmother] to provide stable care to the children.'

Section 6 of the *Children and Community Services Act* identifies that the objects of the Act include:

- ...
- (a) to promote the wellbeing of children, other individuals, families and communities; and
- (b) to acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children; and
- (c) to encourage and support parents, families and communities in carrying out that role
- ...

As previously discussed, DCPFS's *Family and Domestic Violence Practice Guidance* also identifies that taking out a VRO on behalf of a child 'can assist in the protection of that child without the need for removal (intervention action) from his or her family home.'⁷²⁸ The Office's examination of records relating to the two children indicates that the VRO was not used in this way. Rather, this VRO prevented the children's mother from having access to her children.

Recommendation 45

In its implementation of section 18(2) of the *Restraining Orders Act 1997*, DCPFS complies with its *Family and Domestic Violence Practice Guidance* which identifies that DCPFS officers should consider seeking a violence restraining order on behalf of a child if the violence is likely to escalate and the children are at risk of further abuse, and/or it would decrease risk to the adult victim if the Department was the applicant for the violence restraining order.

14.7.5 DCPFS's officers may be discouraged from seeking a violence restraining order by advice from other parts of their own organisation

DCPFS's *Family and Domestic Violence Practice Guidance* sets out the internal approvals process for a DCPFS officer prior to lodging an application for a VRO as follows:

The decision for the Department to apply for a VRO on behalf of a child must be endorsed by the Team Leader and approved by the District Director... [W]here a final order hearing (e.g., a defended hearing) is required, the child protection

⁷²⁸ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders (in Family and Domestic Violence Practice Guidance)*, DCPFS, Perth, 2012, p. 73.

worker and the Department's Legal Officer (or contract solicitor) should both attend the full hearing.⁷²⁹

That is, the decision to apply for an interim VRO on behalf of a child can be approved, and the resulting court hearing attended, without DCPFS child protection workers obtaining legal advice or representation from the Department's Legal Officer. However, in reviewing DCPFS's records, the Office observed instances where DCPFS child protection workers had initially attempted to seek an interim VRO on behalf of children but had subsequently not proceeded with the application after being advised that, prior to applying for an interim VRO, they must first obtain advice from a solicitor and submit a written detailed briefing, including witness statements and available evidence. These requirements are inconsistent with DCPFS's *Family and Domestic Violence Practice Guidance*.

Recommendation 46

DCPFS instructs officers providing legal advice to child protection workers to provide advice that is consistent with the practice guidance regarding applications for violence restraining orders on behalf of children, in particular that 'child protection workers should consider seeking a VRO on behalf of a child if the violence is likely to escalate and the children are at risk of further abuse and/or it would decrease the risk to the adult victim if the Department was the applicant for the VRO'. [As identified at section 14.7.2 above]

Recommendation 47

DCPFS, through case reviews and case consultations, monitors, on an on-going basis, compliance with the practice guidance regarding applications for violence restraining orders on behalf of children.

⁷²⁹ Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders (in Family and Domestic Violence Practice Guidance)*, DCPFS, Perth, 2012, p. 74.

15 Actions by DCPFS to engage with adult victims and perpetrators of family and domestic violence in order to protect children

DCPFS can best protect children from family and domestic violence through engaging with adult victims and perpetrators of family and domestic violence. This engagement can promote a safe environment for child victims while also promoting adult victim safety and perpetrator accountability.

15.1 Screening and assessing the risks of family and domestic violence

15.1.1 Legislative requirements

As identified at section 14.5.1, the *Children and Community Services Act*:

- requires that DCPFS gives paramount consideration to the best interests of the child (section 7);
- requires DCPFS to take into account a range of factors, including the need to protect the child from harm, in determining the best interests of the child (section 8);
- specifies measures which may be taken by DCPFS to safeguard or promote a child's wellbeing, including:
 - making inquiries for the purpose of determining whether action should be taken (section 31); and
 - taking action if it is determined that action should be taken to safeguard or promote a child's wellbeing (section 32).

15.1.2 Policy requirements

The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework

The CRARMF was introduced in 2011 and sets out state-wide minimum standards for screening, risk assessment and responses to family and domestic violence. The Hon. Robyn McSweeney, the (then) Minister for Child Protection, in her foreword to the CRARMF stated that:

This Framework sets a minimum standard of screening, assessment and response for all services in WA, both specialist and mainstream. By setting a minimum standard, we can ensure that through risk assessment and risk management we are addressing the violence and offering greater protection to victims, including children.⁷³⁰

⁷³⁰ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

The CRARMF requires that:

All agencies, mainstream and specialist, are required to evaluate their existing family and domestic violence responses to ensure that they comply with the minimum standards outlined in this Framework.⁷³¹

In relation to the minimum standards of practice for screening for family and domestic violence, the CRARMF states that:

At a minimum, all mainstream services will be required to introduce family and domestic violence screening protocols into their standard intake procedures and ensure staff know appropriate referral pathways for clients identified as experiencing family and domestic violence.⁷³²

...

All agencies - government, non-government, mainstream or specialist - will screen for family and domestic violence as a part of their standard intake procedures. To do this, they will use a common tool (...the Common Screening Tool).⁷³³

...

These are the minimum standards of practice for screening.⁷³⁴
[Original emphasis]

The CRARMF specifies that, in relation to who should be screened:

It is intended that as many people as possible (particularly women) who present to a government or non-government agency for a service will routinely be asked family and domestic violence screening questions. Most will present for assistance in relation to a matter that is the core business of the service (a health or mental health issue, pregnancy, a parenting issue, a legal issue, a housing issue etc) and not primarily in relation to family and domestic violence. Without asking the screening questions, few of these women will be identified as victims.⁷³⁵

If the screening process identifies family and domestic violence, the CRARMF also sets out minimum standards of practice relating to risk assessments, requiring that:

⁷³¹ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

⁷³² Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 12.

⁷³³ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

⁷³⁴ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

⁷³⁵ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

... [i]f family and domestic violence is part of the agency's core business, they will conduct a risk assessment and depending on the outcome will make arrangements for safety planning, referral and case management as necessary.

...

Agencies that have a role in responding to family and domestic violence are required to use a common approach to risk assessment and ensure that key risk indicators are included in their risk assessment procedures.

...

The Key Risk Indicators ... must be incorporated into family and domestic violence risk assessments

...

These are the minimum practice standards for risk assessment.⁷³⁶

[Original emphasis]

DCPFS's Casework Practice Manual

Consistent with the CRARMF, DCPFS's Casework Practice Manual recognises the importance of screening for family and domestic violence, stating:

Family and domestic violence is often the underlying but hidden cause for client contact with the Department for Child Protection and Family Support ... particularly in requests associated with crisis accommodation, financial assistance and information and referral. Family and domestic violence also has a high co-occurrence with all forms of child abuse and maltreatment, in particular neglect and emotional abuse.

Where family and domestic violence is present but not identified in child protection work assessment of past harm and likely future danger to the child and adult victim is unlikely to be accurate and the effectiveness of safety planning may therefore be compromised.⁷³⁷

The Casework Practice Manual requirements for 'Family and Domestic Violence Screening and Assessment'⁷³⁸ also identify the CRARMF as one of the relevant 'Standards' and provide an electronic link for DCPFS officers to the CRARMF Common Screening Tool 'to support staff to undertake this process'.⁷³⁹

⁷³⁶ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 36.

⁷³⁷ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Family and Domestic Violence Screening and Assessment,' DCPFS, Perth, 2014, viewed 13 January 2015,

<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷³⁸ *Family and Domestic Violence Screening and Assessment*, DCPFS, Perth, 2014, viewed 13 January 2015,

<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷³⁹ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Family and Domestic Violence Screening and Assessment,' DCPFS, Perth, 2014, viewed 13 January 2015,

<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

The Casework Practice Manual also sets out procedures for staff in undertaking family and domestic violence screening and risk assessment ‘to provide early identification and timely responses to cases involving family and domestic violence.’⁷⁴⁰ The Casework Practice Manual relevantly identifies the following ‘Practice Requirements’:

- Child protection workers must screen for family and domestic violence **where indicators are present.**
- Screening for family and domestic violence should, where possible, be undertaken when the client is alone.
- When family and domestic violence is identified child protection workers must respond to the immediate safety concerns for the child and the adult victim.
- When family and domestic violence is identified, child protection workers must undertake an assessment of the risks to the child and the adult victim.
- If the child protection worker determines that there are no child protection concerns and no role for the Department, a referral for risk assessment and support must be made to a domestic violence service. This may include the Women’s Domestic Violence Helpline if services are not locally available.⁷⁴¹ [Emphasis added]

As identified above, the Casework Practice Manual requires that screening be undertaken ‘where indicators are present’.⁷⁴² This is inconsistent with the requirements of the CRARMF, that otherwise requires that ‘as many people as possible (particularly women) who present to a government or non-government agency for a service will routinely be asked family and domestic violence screening questions ... [and w]ithout asking the screening questions, few of these women will be identified as victims.’⁷⁴³ In other words, the ‘Minimum Standard for Screening’⁷⁴⁴ set out in the CRARMF is intended to reveal indicators beyond those that may otherwise be present. In this way, indicators are identified through the screening process, which ‘can identify when family and domestic

⁷⁴⁰ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, ‘5.1. Family and Domestic Violence Screening and Assessment,’ DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷⁴¹ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, ‘5.1. Family and Domestic Violence Screening and Assessment,’ DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷⁴² Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, ‘5.1. Family and Domestic Violence Screening and Assessment,’ DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷⁴³ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

⁷⁴⁴ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

violence is occurring in the absence of a positive or affirmative response to the screening questions.⁷⁴⁵

The Office also identified internal inconsistencies in the Casework Practice Manual's direction to staff about the requirement to undertake screening for family and domestic violence. Specifically, as identified above, the Casework Practice Manual identifies that DCPFS officers 'must screen for family and domestic violence where indicators are present.'⁷⁴⁶ However, elsewhere, the Casework Practice Manual identifies that the decision to undertake screening is informed by both the presence of indicators as well as the presenting issue, as follows:

When to screen for family and domestic violence

Professional Judgement

Child protection workers should make a professional judgement about when to screen for family and domestic violence – this judgement is informed by the presenting issue as well as the presence of indicators of family and domestic violence.⁷⁴⁷

Recommendation 48

DCPFS ensures that its Casework Practice Manual requirements for screening for family and domestic violence are both internally consistent and consistent with the 'Minimum Standards of Practice for Screening' in *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*.

15.1.3 During the 290 duty interactions where DCPFS identified family and domestic violence, DCPFS did not use the Common Screening Tool to screen for family and domestic violence, or assess the risks posed by family and domestic violence against Key Risk Indicators identified in *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*

The Office examined duty interactions and associated documentation for each of the 70 children in the VRO sample to determine whether DCPFS undertook, and recorded evidence of, family and domestic violence screening and risk assessment. As the screening and risk assessment process considers the family as a whole, the Office examined whether these tasks had been undertaken for each family at some point in time.

⁷⁴⁵ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 35.

⁷⁴⁶ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Family and Domestic Violence Screening and Assessment,' DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

⁷⁴⁷ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Family and Domestic Violence Screening and Assessment,' DCPFS, Perth, 2014, viewed 13 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

The 70 children in the VRO sample were a part of 46 families, with some families including multiple children.

The Office examined the information supplied to DCPFS as part of duty interactions associated with the 70 children in the VRO sample and found that, as discussed in section 14.5.5, DCPFS identified family and domestic violence as the 'presenting issue'⁷⁴⁸ in a total of 290 duty interactions, concerning children in 43 families.

The Office found that use of the Common Screening Tool, or of a risk assessment incorporating Key Risk Indicators as identified and required in the CRARMF, was not recorded for any children. The Office identified a reference to the CRARMF in one of the 290 duty interactions identifying family and domestic violence, where a matter was referred to a co-located Senior Family and Domestic Violence Officer 'in accordance with the Common Risk Assessment Framework.' No further details of this referral, or its outcome, were recorded.

For 30 families, the Office identified instances where DCPFS recorded that DCPFS staff appeared to have attempted to screen for family and domestic violence and assess risk, without utilising the Common Screening Tool or incorporating the Key Risk Indicators required by the CRARMF, as follows:

- instances where an incident had been triaged by a Family and Domestic Violence Response Team, but there was no evidence that screening or risk assessment took place by DCPFS (for children in 15 families);
- partial completion of an electronic 'Domestic Violence risk/behaviour factors' assessment form. The Office noted that in each of these instances, assessments were not finalised, with blank fields and single word responses populating the form (for children in 12 families);
- reference to the presence of risk factors in the assessment field of the duty interaction (for children in seven families); and
- instances where DCPFS assessed the impact of family and domestic violence upon children (not the adult victim) during intake or safety and wellbeing assessment (for children in six families).

Recommendation 49

Following the implementation of Recommendation 48, DCPFS complies with the requirements for family and domestic violence screening and risk assessment.

⁷⁴⁸ 'Domestic Violence' was identified in *Assist* as the 'Primary Issue' by DCPFS in 269 duty interactions. For children in a further 21 duty interactions, 'Child Protection' was recorded in *Assist* as the 'Primary Issue' by DCPFS, with 'Family and Domestic Violence' recorded in 'Issue Details'.

15.2 Undertaking safety planning with victims of family and domestic violence

15.2.1 Policy requirements

The CRARMF identifies that '[i]f risk is present, action (safety planning) is always required.'⁷⁴⁹ The Casework Practice Manual identifies procedures for undertaking safety planning, which 'should be considered and undertaken within the Signs of Safety assessment and planning process.' The Casework Practice Manual further identifies that, '[w]here family and domestic violence assessment has revealed likely future danger (risk) for the child and the adult victim, safety planning must occur', also stating:

- Safety planning must work towards managing the risks posed by the perpetrator and increasing the safety of the child and adult victim.
- Within the safety planning process, child protection workers should undertake personal safety planning with the adult victim and child (if age appropriate) and work in collaboration with other agencies to manage the identified risks.
- Child protection workers should use powers granted under the *Restraining Orders Act 1997* to apply, on behalf of the child, for a Violence Restraining Order (VRO) against the perpetrator if:
 - the violence is likely to escalate and the child is at risk of further abuse; and/or
 - it would decrease risk to the adult victim if the Department was the applicant for the VRO.
- If a case is identified as high risk to the child and adult victim, child protection workers should consider a multi-agency response...⁷⁵⁰

15.2.2 DCPFS did not undertake safety planning with any adult victims of family and domestic violence in relation to the 70 children in the VRO sample or the 30 fatalities

The Office reviewed all duty interactions and associated documents concerning the 70 children in the VRO sample to determine whether DCPFS undertook safety planning. The Office did not identify any instances where DCPFS undertook safety planning with adult victims of family and domestic violence associated with these 70 children.

The Office's further analysis identified references to safety planning for seven of the 46 families concerning the 70 children in the VRO sample. This included instances where:

- DCPFS assessment of a duty interaction indicated that safety planning was to be undertaken or had been undertaken by a Family and Domestic Violence Response Team but details of this safety plan were not recorded (in relation to three families);

⁷⁴⁹ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 59.

⁷⁵⁰ Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.2 Family and Domestic Violence Safety Planning,' DCPFS, Perth, 2014, viewed 20 January 2015,

<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/02FamilyandDomesticViolenceSafetyPlanning.aspx>>.

- a DCPFS officer had a telephone conversation with a victim of family and domestic violence, in which potential strategies were discussed (in relation to two families);
- DCPFS assessment identified an intention to undertake safety planning, or noted that safety planning had been undertaken, however details of a safety plan were not located in DCPFS records (in relation to two families);
- evidence of safety planning for the children was identified as part of proceedings to take the children into care, with the children in a family placement (in relation to one family).

The Office also reviewed the records of the 387 duty interactions in *Assist* and associated documents concerning the children involved in the 30 fatalities to determine whether DCPFS undertook safety planning with adult victims of family and domestic violence. The Office did not identify any instances where DCPFS undertook safety planning with adult victims of family and domestic violence associated with the children involved in the 30 fatalities.

The Office's analysis identified instances where DCPFS made reference to safety planning. This included instances where:

- DCPFS identified its intention to undertake safety planning with an adult victim, but evidence of safety planning was not identified or able to be located (in relation to two families);
- DCPFS referenced the adult victim's own safety plan (in relation to one family); and
- DCPFS referenced the term safety planning in relation to the informal placement of children, but evidence of safety planning was not identified or able to be located (in relation to one family).

Recommendation 50

Following the implementation of Recommendation 48, DCPFS undertakes safety planning in accordance with the Casework Practice Manual.

15.3 Engaging with perpetrators of family and domestic violence

15.3.1 Policy requirements

DCPFS's *Family and Domestic Violence Practice Guidance* states:

Perpetrators of family and domestic violence are very much in control of the behaviour and are ultimately the only ones that have the capacity to change the situation... Historically, responses to family and domestic violence have focused on securing the safety of the adult victim and child. It is now well established through research that a purely victim focus is not effective for achieving sustainable safety. Typically, the violence and abuse continue and/or the perpetrator forms a new relationship in which they continued to use violence, creating a new victim in need of protection... Good practice now advocates for an equal focus on securing the safety of the non-abusive adult victim and child and addressing the source of the harm – the perpetrator of the violence.

To improve the safety of the non-abusive parent and child and reduce the risk of re-offending, it is critical that the perpetrator is held accountable for their behaviour.⁷⁵¹

DCPFS's *Perpetrator Accountability resource materials* were published by DCPFS in 2013 and inform DCPFS officers about key issues and relevant practices concerning the importance of engaging with perpetrators of family and domestic violence, its impact on the safety of women and children, and how this can be achieved. This resource has been praised for its reflection of best practice, and its capacity for application in other jurisdictions.⁷⁵²

The *Perpetrator Accountability resource materials* identify the following forms of engagement that DCPFS should use in engaging with and holding perpetrators of family and domestic violence accountable for their behaviour:

Engagement by child protection workers takes many different forms, and will look different for each man. At minimum, it includes:

- assessment of the man and development of a case plan;
- seizing opportunities to talk with the man about his responsibility for his behaviour;
- supporting engagement and monitoring and managing risk via case management; and
- liaising with other professionals in the service and justice systems and taking an integrated approach to holding the man accountable for his violence.

It might also involve:

- talking with the man about the harm his behaviour causes his family members;
- referring the man to an MBCP (Men's Behaviour Change Program) and supporting his continued participation; and
- referring the man to other services that can assist him with issues that co-exist with the violence.⁷⁵³

The *Perpetrator Accountability resource materials* recognise that contact with perpetrators of family and domestic violence needs to be carefully managed, as it could pose a risk to adult victims, children, and DCPFS officers. The *Perpetrator Accountability resource materials* encourage DCPFS officers to assess whether interviewing the perpetrator presents any risk to themselves, and to '[c]onsider [their own] safety as well as that of the perpetrator's family members when deciding on avenue and format for the interview.'⁷⁵⁴

⁷⁵¹ Government of Western Australia, Department for Child Protection and Family Support, *Family and Domestic Violence Background Paper*, DCPFS, Perth, 2012, p. 5-6.

⁷⁵² Queensland Centre for Domestic and Family Violence Research, *CDF Re@der*, Queensland Central University, vol. 12, no. 1, December 2013, p. 17.

⁷⁵³ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, p. 44-45.

⁷⁵⁴ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, p. 54.

15.3.2 DCPFS did not use any forms of perpetrator engagement identified in its *Perpetrator Accountability resource materials* for anyone involved in the VRO sample or the 30 fatalities

The Office reviewed all of the duty interactions concerning the children involved in the 30 fatalities (387 duty interactions) and the VRO sample (686 duty interactions) to determine whether DCPFS engaged with perpetrators of family and domestic violence. The Office did not identify any instances where DCPFS utilised the minimum forms of engagement identified in the *Perpetrator Accountability resource materials* to engage with perpetrators of family and domestic violence, or to hold perpetrators accountable for their behaviour.

This finding is consistent with research undertaken into child protection agencies in the United Kingdom which indicates that, in intervening with families, '[s]ocial workers were less likely to engage with fathers or partners, who were usually the perpetrators of domestic violence, than they were with mothers and children.'⁷⁵⁵

In the absence of engaging with male perpetrators, social workers will focus on mothers' failures to protect children, and mothers are consequently allocated responsibility for controlling and managing male violence... Taking fathers/partners as a focus of intervention in their own right will also allow for more careful and complete assessments of the risks they pose to children and partners.⁷⁵⁶

Recommendation 51

DCPFS incorporates the minimum forms of engagement with perpetrators of family and domestic violence into the Casework Practice Manual, so that child protection workers are required to engage with perpetrators when it has been assessed as safe to do so.

Recommendation 52

DCPFS ensures that, following the implementation of Recommendation 51, DCPFS provides appropriate training in relation to the amended Casework Practice Manual.

15.4 DCPFS's policy framework for responding to Aboriginal family violence

15.4.1 Aboriginal children were overrepresented in the 30 fatalities and the VRO sample

Aboriginal children were overrepresented as children involved in the 30 fatalities, and in the VRO sample. They were also the subject of disproportionately more referrals to DCPFS than non-Aboriginal children.

⁷⁵⁵ Stanley, N, et al, *Children and families experiencing domestic violence: Police and children's social services' responses*, National Society for the Prevention of Cruelty to Children, London, 2010, p. 254.

⁷⁵⁶ Stanley, N, et al, *Children and families experiencing domestic violence: Police and children's social services' responses*, National Society for the Prevention of Cruelty to Children, London, 2010, p. 254.

As identified, 21 (70 per cent) of the children involved in the 30 fatalities were Aboriginal. Of the 387 duty interactions received by DCPFS about the 30 children involved in the fatalities, 349 (90 per cent) were about Aboriginal children.

Of the 70 children in the VRO sample, 12 (17 per cent) were Aboriginal. These Aboriginal children were the subject of 221 (32 per cent) of the 686 duty interactions received by DCPFS about children in the VRO sample, with DCPFS identifying family and domestic violence as an issue for each of the children. In examining the outcomes of duty interactions selected by DCPFS officers for these children, the Office identified that DCPFS assessed that duty interactions constituted a 'concern for child' on multiple occasions for 11 of the 12 Aboriginal children.

15.4.2 The CRARMF and *Perpetrator Accountability resource materials* address Aboriginal family violence

Policy documents, including the CRARMF (developed by DCPFS) and *Perpetrator Accountability resource materials*, specifically identify issues to consider when engaging with Aboriginal victims and perpetrators of family violence.

The CRARMF identifies that Aboriginal women and children are 'more vulnerable to experiencing violence,' and 'encounter unique barriers to disclosure and safety,'⁷⁵⁷ further examining some of the historical antecedents of family violence in Aboriginal communities. The CRARMF also identified a number of challenges that should be considered by practitioners '[w]hen considering safety for an Aboriginal woman experiencing family and domestic violence, particularly someone from a remote community'.⁷⁵⁸ As noted, the Office did not identify any instances where DCPFS implemented the CRARMF concerning children, including Aboriginal children, in the VRO sample.

DCPFS's *Perpetrator Accountability resource materials* also identify factors that should shape the work of DCPFS officers in their work 'to engage Aboriginal men,' and components of cultural safety 'that are particularly important in the context of child protection practice' when engaging with perpetrators of violence.⁷⁵⁹ As noted, the Office did not identify any instances in the 30 fatalities or the VRO sample where DCPFS utilised the minimum forms of engagement identified in the *Perpetrator Accountability resource materials* to engage with perpetrators of family and domestic violence, or to hold perpetrators accountable for their behaviour, including Aboriginal perpetrators.

⁷⁵⁷ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 26.

⁷⁵⁸ Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 27.

⁷⁵⁹ Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013, pp. 77-78.

15.4.3 The Casework Practice Manual, DCPFS's Family and Domestic Violence policy, and Family and Domestic Practice Guidance do not address Aboriginal family violence

In examining other components of the framework of policy requirements setting out how DCPFS should respond to family and domestic violence, the Office observed that the Casework Practice Manual, *DCPFS's Family and Domestic Violence Policy*, and *Family and Domestic Violence Practice Guidance* do not explicitly identify the issue of Aboriginal family violence, or how Aboriginal children may best be protected from harm in this context.

Recommendation 53

DCPFS sets out in the Casework Practice Manual, *Family and Domestic Violence Policy 2012*, and *Family and Domestic Violence Practice Guidance* how DCPFS responds to Aboriginal family violence and how Aboriginal children may best be protected from harm arising from family violence, within DCPFS frameworks developed to respond to Aboriginal families.

15.5 Implementation of DCPFS's policy framework will be critical to further improving DCPFS's response to family and domestic violence

The research literature observes that policy implementation issues are a common factor in child death and serious case reviews. For example, reviews similar to this investigation conducted in England⁷⁶⁰ have found that such failures are frequently due to a failure to utilise policies, guidelines and procedures, rather than the absence of such procedural guidance:

In spite of a raft of procedural guidance, practitioners and managers were often unclear about what they could or could not do, or should or should not do in these cases ... everyone seemed to be frozen into inactivity. In this context ... children remain unprotected.⁷⁶¹

Similarly, in South Australia, a review of child protection systems identified that significant efforts to develop policy and procedure were not resulting in improvements in responses to children:

Considerable work has been undertaken in the development of detailed frameworks, strategies, protocols and policies over recent years, many of which will bear similarity to recommendations made by this Review. However, many have been ignored, not implemented or partially implemented with no monitoring of implementation or outcomes. This has meant that the child

⁷⁶⁰ In England, 'serious case reviews' take place if abuse or neglect is known, or suspected, to have been involved and: a child has died; or a child has been significantly injured and there are serious concerns about how organisations worked together to safeguard the child; or the child dies in custody; or a child died by suspected suicide.

⁷⁶¹ Brandon, M, Bailey, S, Belderson, P, Gardner, R, Sidebotham, P, Dodsworth, J, Warren, C and Black, J, *Understanding serious case reviews and their impact: A biennial analysis of serious case reviews 2005-2007*, Department for Children, Schools and Families, London, 2008, p. 45.

protection system has not seen the incremental advancement that one would expect to see...⁷⁶²

This finding is consistent with the Office's finding that, while DCPFS has developed an extensive policy framework, this has not necessarily been fully implemented by DCPFS in its responses to family and domestic violence examined by the Office during this investigation.

Recommendation 54

Taking into account the findings of this investigation, DCPFS:

- conducts a review to identify barriers to the effective implementation of relevant family and domestic violence policies and practice guidance;
- develops an associated action plan to overcome identified barriers; and
- provides the resulting review report and action plan to this Office within 12 months of the tabling in the Western Australian Parliament of the report of this investigation.

⁷⁶² Government of South Australia, *A State Plan to Protect and Advance the Interests of Children*, Government of South Australia, Adelaide, 2003, p. 64.