

## 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 children<sup>659</sup> 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**.

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<sup>659</sup> 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'<sup>660</sup> 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.'<sup>661</sup> 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.<sup>662</sup>

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,<sup>663</sup> 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',<sup>664</sup> as follows:

[C]hildren who *witness* violence experience the same level of negative psychosocial outcomes as children who directly experience physical abuse.<sup>665</sup>  
[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:

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<sup>660</sup> Department for Child Protection and Family Support, *The Impact of Family and Domestic Violence on Children*, Government of Western Australia, Perth, 2012, p. 1.

<sup>661</sup> Australian Domestic & Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review*, University of New South Wales, Sydney, 2011, p. 1.

<sup>662</sup> Royal Commission into Family Violence, Witness Statement of Associate Dr Robyn Miller, Royal Commission into Family Violence, 14 July 2015.

<sup>663</sup> 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.

<sup>664</sup> 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.

<sup>665</sup> 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.<sup>666</sup> [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'.<sup>667</sup>

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*

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<sup>666</sup> 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.

<sup>667</sup> 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.*<sup>668</sup>

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',<sup>669</sup> 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:<sup>670</sup>

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;"<sup>671</sup>

...

The *Children and Community Services Legislation Amendment and Repeal Act 2015* was assented to on 17 September 2015,<sup>672</sup> 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*';<sup>673</sup>

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<sup>668</sup> 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](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0012/589665/cumulative-harm-conceptual-overview-part1.pdf)>, p. 1.

<sup>669</sup> 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.

<sup>670</sup> Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 12.

<sup>671</sup> Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 12.

<sup>672</sup> 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>>.

<sup>673</sup> 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’;<sup>674</sup> 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.<sup>675</sup>

## 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.<sup>676</sup> In some jurisdictions, such reporting is a legislative requirement and is therefore mandatory.<sup>677</sup> However, in Western Australia, mandatory reporting requirements are only in place in cases of suspected child sexual abuse.<sup>678</sup>

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

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<sup>674</sup> Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 8.

<sup>675</sup> Parliament of Western Australia, Children and Community Services Legislation Amendment and Repeal Bill 2014 Explanatory Memorandum, viewed 9 June 2015, p. 10-11.

<sup>676</sup> Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 77.

<sup>677</sup> 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>>.

<sup>678</sup> 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.<sup>679</sup>

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<sup>679</sup> 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 ...’<sup>680</sup>

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.’<sup>681</sup>

#### **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.

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<sup>680</sup> Western Australia Police, *Commissioner’s Operations and Procedures (COPS) Manual, DV 1.1.4.3 Incident Management System (IMS)*.

<sup>681</sup> 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.<sup>682</sup> 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’;<sup>683</sup>
- family and domestic violence being identified ‘but named as something else, such as a “family conflict” or “marital argument”’;<sup>684</sup>
- ‘shifting the focus of assessment from [family and domestic] violence to mental health, alcohol abuse or other issues’;<sup>685</sup> and
- ‘not recording incidents of domestic and family violence in case notes and assessment reports’.<sup>686</sup>

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.’<sup>687</sup> 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.<sup>688</sup>

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.’<sup>689</sup> For example, one study in the United Kingdom identified that:<sup>690</sup>

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<sup>682</sup> 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.

<sup>683</sup> Humphreys, C, ‘Domestic Violence and Child Protection: Challenging directions for practice,’ *Australian Domestic & Family Violence Clearinghouse*, Issues Paper 13, May 2007, Sydney, p. 8.

<sup>684</sup> Humphreys, C, ‘Domestic Violence and Child Protection: Challenging directions for practice,’ *Australian Domestic & Family Violence Clearinghouse*, Issues Paper 13, May 2007, Sydney, p. 8.

<sup>685</sup> 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.

<sup>686</sup> 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.

<sup>687</sup> 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.

<sup>688</sup> 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.

<sup>689</sup> 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.<sup>691</sup>

The research also shows that generally 'very few families experienced enhanced services'<sup>692</sup> as a result of referrals for family and domestic violence, with only those at high-risk receiving services.<sup>693</sup> 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.<sup>694</sup> 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.'<sup>695</sup>

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:<sup>696</sup>

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...<sup>697</sup>

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<sup>690</sup> Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 78.

<sup>691</sup> Stanley et al, cited by Laing, L & Humphreys C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 78.

<sup>692</sup> Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 85.

<sup>693</sup> Laing, L and Humphreys, C, *Social Work & Domestic Violence: developing critical & reflective practice*, Sage Publications, London, 2013, p. 85-86.

<sup>694</sup> 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.

<sup>695</sup> 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.

<sup>696</sup> 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.

<sup>697</sup> 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.<sup>698</sup>

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.<sup>699</sup>

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<sup>698</sup> 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',<sup>700</sup> 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'.<sup>701</sup>

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...<sup>702</sup>

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<sup>699</sup> 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>>.

<sup>700</sup> Government of Western Australia, Department for Child Protection and Family Support, *Policy on Assessment and Investigation Process*, DCPFS, Perth, 2014, p. 2.

<sup>701</sup> 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>>.

<sup>702</sup> 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;<sup>703</sup>
- *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)*,<sup>704</sup> 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**).<sup>705</sup>

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.<sup>706</sup>

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

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<sup>703</sup> 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.

<sup>704</sup> Government of Western Australia, Department for Child Protection and Family Support, *Perpetrator Accountability in Child Protection Practice*, DCPFS, Perth, 2013.

<sup>705</sup> 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.

<sup>706</sup> 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.'<sup>707</sup>

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.<sup>708</sup>

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.'<sup>709</sup> 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

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<sup>707</sup> 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>>.

<sup>708</sup> 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>>.

<sup>709</sup> 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.<sup>710</sup>
- **‘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’;<sup>711</sup>
  - **‘Concern for child’** indicates that assessment of information in the duty interaction has resulted in a concern for a child;<sup>712</sup>
  - **‘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 VRO<sup>713</sup> 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.<sup>714</sup> 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

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<sup>710</sup> 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>>.

<sup>711</sup> 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.

<sup>712</sup> 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>>.

<sup>713</sup> 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.

<sup>714</sup> 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.

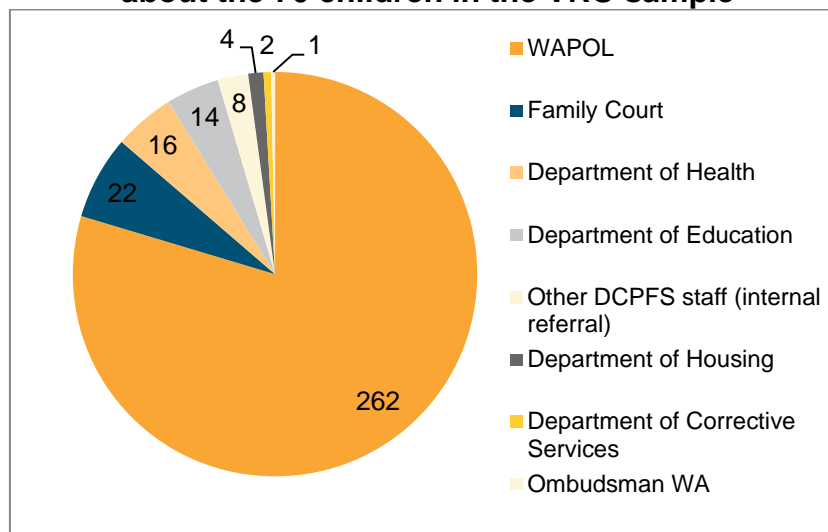
**Figure 41: Source of referrals in the 686 duty interactions for the 70 children in the VRO sample**

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%
<b>TOTAL</b>	<b>686</b>	

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.

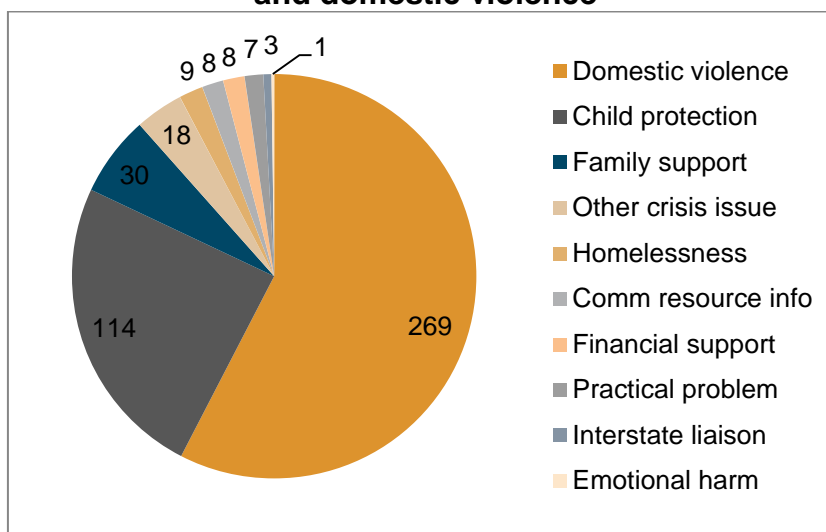
The Office found that DCPFS, however, had identified family and domestic violence in a total of 290 (42 per cent) of the 686 duty interactions, as follows:

- '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.

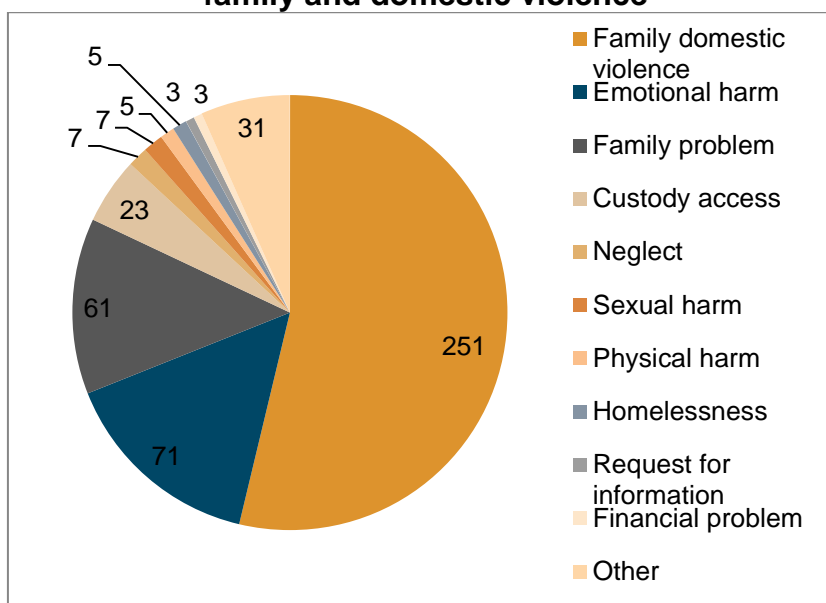
Figure 43 and Figure 44 below provide further details of the issues recorded by DCPFS where the Office had identified family and domestic violence.

**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**

<b>Outcome of duty interaction</b>	<b>Percentage of all duty interactions concerning the 70 children (n=686)</b>	<b>Percentage of the interactions where DCPFS identified family and domestic violence (n=290)</b>	<b>Percentage<sup>715</sup> of the interactions where DCPFS did not identify family and domestic violence (n=396)</b>
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

<sup>715</sup> 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';<sup>716</sup>
- 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.<sup>717</sup>

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<sup>716</sup> 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.

<sup>717</sup> 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
<b>Total</b>	<b>130</b>

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)
<b>DCPFS did not proceed to further action:</b>			
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%)
<b>DCPFS proceeded to further action:</b>			
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'.<sup>718</sup> 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'.<sup>719</sup>

### 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.

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<sup>718</sup> 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.

<sup>719</sup> 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
<b>Information referring to a VRO recorded in Assist with no record of advice, referral or other assistance provided:</b>	
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
<b>Information or advice about VROs provided with no record of an active referral for legal advice and help from an appropriate service:</b>	
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
<b>Advice about VROs and an active referral for help from an appropriate service provided:</b>	
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'). <sup>720</sup>	1
<b>Assistance with obtaining a VRO provided:</b>	
DCPFS provided assistance to two adult victims to make an application for a VRO (DCPFS was not the applicant)	4
<b>Total</b>	<b>154</b>

Source: Ombudsman Western Australia

<sup>720</sup> 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';<sup>721</sup>
- in four instances, DCPFS assisted two adult victims to apply for a VRO by providing 'information to support the VRO application as appropriate'.<sup>722</sup>

#### **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.<sup>723</sup> 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

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<sup>721</sup> 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.

<sup>722</sup> 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.

<sup>723</sup> 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*.<sup>724</sup>

**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

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<sup>724</sup> 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.<sup>725</sup>

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.<sup>726</sup>

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.<sup>727</sup>

### 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

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<sup>725</sup> 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.

<sup>726</sup> 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.

<sup>727</sup> 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.'<sup>728</sup> 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

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<sup>728</sup> 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.<sup>729</sup>

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.

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<sup>729</sup> 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.