

# 1 Executive summary

## 1.1 About the investigation

On 1 July 2012, the Ombudsman's office (**the Office**) commenced an important new role to review family and domestic violence fatalities. Through the review of family and domestic violence fatalities, the Ombudsman identified a pattern of cases in which violence restraining orders (**VROs**) were, or had been, in place between the person who was killed and the suspected perpetrator, or between the person who was killed or the suspected perpetrator and other parties. The Ombudsman also identified a pattern of cases in which VROs were not used, although family and domestic violence had been, or had been recorded as, occurring and state government departments and authorities had been contacted.

Accordingly, the Ombudsman decided to undertake an investigation into issues associated with VROs and their relationship with family and domestic violence fatalities, with a view to determining whether it may be appropriate to make recommendations to any state government department or authority about ways to prevent or reduce family and domestic violence fatalities.

The investigation had two aims. Firstly, arising from the work of the Ombudsman in reviewing family and domestic violence fatalities, the investigation aimed to set out a comprehensive understanding of family and domestic violence in Western Australia. Secondly, informed by this comprehensive understanding, the investigation aimed to examine the actions of state government departments and authorities in administering their relevant legislative responsibilities, including particularly the *Restraining Orders Act 1997* (**the Restraining Orders Act**), with a focus on VROs.

Throughout the investigation, the Office also considered if, and if so how, family and domestic violence affects different people and groups of people, in particular Aboriginal people (given the significant overrepresentation of Aboriginal Western Australians in family and domestic violence fatalities).

The following four state government departments and authorities, the subject of the investigation, were consulted:

- Western Australia Police (**WAPOL**);
- Department for Child Protection and Family Support (**DCPFS**);
- Department of the Attorney General (**DOTAG**); and
- Drug and Alcohol Office (which amalgamated with the Mental Health Commission on 1 July 2015).

The Office consulted relevant stakeholders regarding the results of the Office's analysis as well as engaging people with expertise in the area of family and domestic violence in relation to our analysis, draft findings and draft recommendations.

To undertake the investigation, the Office examined 30 family and domestic violence fatalities (**the 30 fatalities**) notified to the Ombudsman over a defined 18 month period (**the investigation period**). For each of the 30 fatalities, the Office received information

from state government departments and authorities, and from relevant courts. The Office also collected and analysed data from across Western Australia for the investigation period (**the state-wide data**). This data was provided by WAPOL, as well as the Magistrates Court and the Children's Court. The state-wide data was provided on a de-identified basis.

## 1.2 Understanding family and domestic violence

### 1.2.1 Definition of family and domestic violence

The Australian Bureau of Statistics has identified that there is 'no single nationally or internationally agreed definition'<sup>14</sup> of family and domestic violence and that 'different definitions may be specified in legislation or be required in different contexts and jurisdictions'.<sup>15</sup> Generally speaking, family and domestic violence occurs:

...when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other ... domestic violence can be exhibited in many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence.<sup>16</sup>

For the purposes of this investigation, in using the term 'family and domestic violence', the Office refers to the relationships and behaviours specified in the *Restraining Orders Act*. An act of family and domestic violence means one of the acts set out in section 6(1) of the *Restraining Orders Act* that a person 'commits against another person with whom he or she is in a family and domestic relationship'. Section 6(1) lists the following as acts of family and domestic violence:

- (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.

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<sup>14</sup> Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

<sup>15</sup> Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

<sup>16</sup> Dr Kerry Carrington and Janet Phillips, *Domestic Violence in Australia an Overview of the Issues*, eBrief, Parliament of Australia, Canberra, 7 August 2003, viewed 25 February 2014, <[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/archive/Domviolence](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/Domviolence)>, p. 1.

## 1.2.2 Perpetrators use family and domestic violence to exercise power and control over victims; victims of family and domestic violence will resist violence and try to protect themselves

The research literature consistently recognises that perpetrators of family and domestic violence choose 'when, where and how they use violence.'<sup>17</sup> The *National Plan to Reduce Violence against Women and their Children 2010 - 2022* notes that:

While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics **to exercise power and control** over women and their children, and can be both criminal and non-criminal.<sup>18</sup> [Emphasis added]

The research literature consistently identifies that victims of family and domestic violence will resist violence perpetrated against them and try to protect themselves and their children, and/or seek help.<sup>19</sup> How victims respond to, and resist, family and domestic violence depends on the dangers and opportunities of their specific circumstances. Victims may resist violence utilising both covert and overt strategies.<sup>20</sup> Perpetrators will also anticipate, and work to overcome, a victim's resistance in order to maintain power and control, for example, by threatening to kill the victim, or harm their children, if the police are contacted.<sup>21</sup>

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<sup>17</sup> Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

<sup>18</sup> 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>>.

<sup>19</sup> For example, Wilson, D, Smith, R, Tolmie, J and de Haan, I, *Becoming Better Helpers rethinking language to move beyond simplistic responses to women experiencing intimate partner violence*, Institute for Governance and Policy Studies, Victoria University of Wellington, New Zealand, February 2015; Burstow, B, *Radical Feminist Therapy*, Sage Publications, Newbury Park, California, 1992; Kelly, L, *Surviving Sexual Violence*, University of Minnesota Press, Minneapolis, 1988.

<sup>20</sup> Hayes, B, *Women's Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

<sup>21</sup> Domestic Violence Research Centre Victoria, *For families, friends & neighbours*, Domestic Violence Research Centre Victoria, Victoria, <<http://www.dvrcv.org.au/help-advice/guide-for-families-friends-and-neighbours>>; Domestic Abuse Intervention Project, *Power And Control Wheel*, Domestic Abuse Intervention Project, viewed 8 June 2015, <<http://www.theduluthmodel.org/pdf/PowerandControl.pdf>>.

## 1.3 Key findings and recommendations

### **Part 1: Family and domestic violence in Western Australia**

#### **1.3.1 In the investigation period, WAPOL recorded that they responded to 75,983 family and domestic violence incidents**

In the investigation period, WAPOL reported that they responded to 1,055,414 calls for assistance from the Western Australian public, and that 688,998 of these calls required police to attend to provide assistance. Of the 688,998 incidents attended by WAPOL, 75,983 incidents (11 per cent) were recorded by WAPOL as family and domestic violence incidents.<sup>22</sup>

In the investigation period, police officers detected 26,023 offences against the person at family and domestic violence incidents.<sup>23</sup> WAPOL recorded 24,479<sup>24</sup> victims for these 26,023 offences. The Office found that, of the 24,479 victims:

- 17,539 (72 per cent) were recorded as being female; and
- 8,150 (33 per cent) were recorded as being Indigenous.<sup>25</sup>

The research literature has also found that some groups of people experience higher rates of family and domestic violence, including: Aboriginal people; people from culturally and linguistically diverse backgrounds; people from regional and remote communities; women with disabilities; and gay, lesbian, bisexual, transgender and intersex people.

#### **1.3.2 WAPOL notified the Ombudsman of 30 people who were killed who were in a family and domestic relationship with the suspected perpetrator**

As identified at section 1.1, during the investigation period, WAPOL notified the Ombudsman of 30 people who were killed where the relationship between the person who was killed and the suspected perpetrator<sup>26</sup> was a family and domestic relationship, as defined by section 4(1) of the *Restraining Orders Act*.

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<sup>22</sup> The Office has used the term 'incidents' in its examination of data collected from state government departments and authorities as this is the term used by these agencies. The Office recognises that the use of this term may unintentionally appear to reduce the seriousness of, mutualise, and/or imply that the violence is a one-off, rather than ongoing behaviour.

<sup>23</sup> Offences against the person in domestic violence incidents may include homicide, sexual assault, assault, deprivation of liberty and threatening behaviour. Other offences may be detected that are not categorised as offences against the person, for example, offences related to property.

<sup>24</sup> It should be noted that a victim can be counted more than once during the reporting period and more than one victim can be linked to an incident involving multiple or single offences.

<sup>25</sup> The Office recognises that Aboriginal people prefer to use the word 'Aboriginal' rather than 'Indigenous' and this was raised during the Office's consultation with Aboriginal stakeholders. The Office has therefore used the word 'Aboriginal' unless directly citing agency data or the research literature.

<sup>26</sup> Throughout this report, when referring to all 30 suspected perpetrators, the word suspected has been retained. Where appropriate, when referring to individuals, or smaller groups of individuals, who have been convicted, the word suspected has been removed.

### **1.3.3 In 17 of the 30 fatalities (57 per cent), violence restraining orders involving at least one of the people involved in the fatality were granted at some point in time**

In 17 of the 30 fatalities (57 per cent), VROs involving at least one of the people involved in the fatality were granted at some point in time. A total of 48 VROs were granted between either the people involved in the fatality or one of the people involved in the fatality and a third party.

In six of the 30 fatalities, a VRO was granted at some point in time between the parties to the fatality. Of these six VROs:

- all six involved people in intimate partner relationships;
- three were in force at the time of the fatal incident;
- two were revoked by the person who was killed, one of these in the months before the fatal incident; and
- one had expired two months prior to the fatal incident.

In a further fatality, the person who was killed had applied for a VRO against the perpetrator of the fatal incident with the assistance of WAPOL but this was not granted by the court. A VRO was not in place at any point in time between the parties to this fatality.

Forty-two VROs were granted between the parties involved in the fatality and a third party, with the largest number of these (19 VROs or 45 per cent) protecting a third party from the suspected perpetrator in the fatal incident. This was because the suspected perpetrator of the fatal incident had previously perpetrated family and domestic violence against another person.

### **1.3.4 Aboriginal people are overrepresented, both as victims of family and domestic violence and victims of fatalities arising from this violence**

The findings of the Office's investigation identify that Aboriginal people are overrepresented, both as victims of family and domestic violence and victims of fatalities arising from this violence. While Aboriginal and Torres Strait Islander people make up 3.1 per cent of Western Australia's population,<sup>27</sup> the Office found that Aboriginal people comprised 33 per cent of victims of family and domestic violence offences and 50 per cent of the 30 fatalities in the investigation period. These findings are consistent with the research literature which identifies that Aboriginal people are 'more likely to be victims of violence than any other section of Australian society',<sup>28</sup> and that Aboriginal people

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<sup>27</sup> Australian Bureau of Statistics, '2011 Census Counts – Aboriginal and Torres Strait Islander Peoples', *Census of Population and Housing – Counts of Aboriginal and Torres Strait Islander Australians, 2011*, cat. no. 2075.0, ABS, Canberra, June 2012.

<sup>28</sup> Cripps, K and Davis, M, *Communities working to reduce Indigenous family violence*, brief 12, June 2012, Indigenous Justice Clearinghouse, New South Wales, 2012.

experience family and domestic violence at ‘significantly higher rates than other Australians.’<sup>29</sup>

The research literature identifies that concepts of family and domestic violence in Aboriginal communities are broader than mainstream definitions of domestic violence,<sup>30</sup> with the term ‘family violence’ better reflecting the experiences of Aboriginal people. Representatives of Aboriginal and Torres Strait Islander people, and women in particular, have identified that the ‘nature, history and context of family violence in Aboriginal and Torres Strait Islander communities is different to ... [that] in mainstream communities and populations.’<sup>31</sup>

In addition to the challenges faced by all victims in reporting family and domestic violence, the research literature identifies additional disincentives to reporting family and domestic violence faced by Aboriginal people. In particular, the research literature suggests that Aboriginal people ‘especially women, are dissuaded from approaching mainstream legal services ... [due to] [l]anguage barriers and the need for targeted, cultural sensitivity’.<sup>32</sup> These barriers to Aboriginal people seeking help mean that ‘Aboriginal women are increasingly vulnerable to the risks and effects of violence.’<sup>33</sup>

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<sup>29</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues, An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001 – 2006*, Human Rights and Equal Opportunity Commission, June 2006, p. 6.

<sup>30</sup> National Aboriginal and Torres Strait Islander Women’s Alliance, *Submission to the Finance and Public Administration Committee Inquiry Into Domestic Violence in Australia*, National Aboriginal and Torres Strait Islander Women’s Alliance, New South Wales, 31 July 2014, p. 5.

<sup>31</sup> National Aboriginal and Torres Strait Islander Women’s Alliance, *Submission to the Finance and Public Administration Committee Inquiry Into Domestic Violence in Australia*, National Aboriginal and Torres Strait Islander Women’s Alliance, New South Wales, 31 July 2014, p. 5.

<sup>32</sup> Law Council of Australia, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice*, Law Council of Australia, Canberra, 2009, p. 24.

<sup>33</sup> New South Wales Department of Health, *Aboriginal Family Health Strategy 2011-2016: Responding to Family Violence in Aboriginal Communities*, New South Wales Government, Sydney, 2011, p. 7.

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

**1.3.5 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**

The *Restraining Orders Act*<sup>34</sup> 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*.<sup>35</sup>

To be effective, the Office has identified that the administration of the *Restraining Orders Act* by state government departments and authorities will need to reflect the following nine principles:

- (i) perpetrators use family and domestic violence to exercise power and control over victims;
- (ii) victims of family and domestic violence will resist the violence and try to protect themselves;
- (iii) victims may seek help to resist the violence and protect themselves, including help from state government departments and authorities;
- (iv) when victims seek help, positive and consistent responses by state government departments and authorities can prevent and reduce further violence;
- (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;
- (vi) perpetrators of family and domestic violence make a decision to behave violently towards their victims;
- (vii) perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others;
- (viii) by responding decisively and holding perpetrators accountable for their behaviour, state government departments and authorities can prevent and reduce further violence; 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.

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<sup>34</sup> 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*.

<sup>35</sup> *Restraining Orders Act 1997* (WA), Section 3.

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

In 16 of the 30 fatalities, there was a recorded prior history of family and domestic violence involving the person who was killed and the suspected perpetrator. In these 16 fatalities, 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 *Commissioner's Operations and Procedures Manual (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 earlier). Of the remaining 120 family and domestic violence incidents, the Office identified that police officers attended the scene of 115 (96 per cent) of these incidents.

### **1.3.7 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**

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.

The research literature suggests that providing victims with information, advice, and referrals to support services is critical to victims 'pursuing, rather than abandoning, efforts to access legal protection'.<sup>36</sup> In particular, victims who receive such information and advice, and access support services are more likely to be successful in obtaining a VRO.<sup>37</sup>

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 all 75 domestic violence incident reports (**the 75 DVIRs**), submitted by police officers after attending a prior domestic violence incident involving the person who was killed and the suspected perpetrator. 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. Of particular note, 65 of the 75 DVIRs (87 per cent) related to an Aboriginal person who was killed in the 30 fatalities.

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<sup>36</sup> 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.

<sup>37</sup> 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.

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). In a further three instances, 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.

### **1.3.8 WAPOL did not make any applications for violence restraining orders on behalf of the person who was killed or the suspected perpetrator in the 30 fatalities**

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).

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.<sup>38</sup> [Emphasis added]

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 1). The actions taken by WAPOL in response to the remaining incidents, and recorded in the remaining 71 DVIRs, are shown in Figure 1.

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<sup>38</sup> Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4., p. 9.

**Figure 1: 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
<b>Total</b>	<b>75</b>

Source: Ombudsman Western Australia

The Office's examination of the 71 applicable DVIRs identified that there were no instances of a police officer applying for a VRO on behalf of the person who was killed or the suspected perpetrator, although one police officer did assist with one VRO application sought by one person who was killed.

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. Accordingly, the Office has directed a number of recommendations to WAPOL. These recommendations are Recommendation 17, Recommendation 18, Recommendation 19 and Recommendation 20.

### **1.3.9 In the investigation period, 21,237 applications for a violence restraining order were made in Western Australia**

The Office analysed all VRO applications lodged in Western Australia during the investigation period to determine the number of applications, nature of relationships involved, demographic characteristics of both applicants and respondents, and the grounds on which VROs were sought.

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.<sup>39</sup>

### **1.3.10 Where the person seeking to be protected was in a family and domestic relationship with the respondent, 77 per cent (9,533) of persons seeking to be protected by violence restraining orders were female**

The Office further analysed 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. Of these 12,393 applications, the Office identified that:

- 9,533 (77 per cent) of persons seeking to be protected were female;

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<sup>39</sup> 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.

- 8,620 (70 per cent) of applicants<sup>40</sup> identified that the person seeking to be protected was, or had been, in an intimate partner relationship with the respondent;
- 1,340 (11 per cent) persons seeking to be protected identified themselves as Aboriginal or Aboriginal and Torres Strait Islander; and
- 6,813 (55 per cent) of applicants cited grounds relating to children for seeking a VRO.

### **1.3.11 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 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'.<sup>41</sup>

Accordingly, it is recommended that DOTAG, in collaboration with key stakeholders, identifies ways of addressing the cultural, logistical and other structural barriers to Aboriginal victims seeking a VRO, and, in collaboration with DCPFS, incorporates these opportunities into the Aboriginal family violence strategy (Recommendation 23 and Recommendation 24).

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<sup>40</sup> The person to seeking to be protected may not always be the applicant, for example the applicant may be a parent or guardian of a child, a police officer, or a legal guardian.

<sup>41</sup> 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.

### **1.3.12 Applications for an interim violence restraining order frequently did not progress to a final violence restraining order**

As identified at section 1.3.9, in the period of the investigation, 21,237 applications for VROs were made in Western Australia. In the same period, 14,417 interim VROs were made by the courts. In the investigation period, 6,351<sup>42</sup> interim VROs automatically became final VROs without returning to court. A final VRO was granted as an outcome of 2,867 hearings.<sup>43</sup> 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.

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 summarised below:

- processes associated with going to court can increase victim distress;
- requirements to participate in further court hearings may discourage victims from progressing to a final order;
- requirements to give evidence, and face the perpetrator in court, are considered by victims when deciding whether or not to progress their application; and
- comments made in court can negatively impact upon victims.

The Office's findings support Recommendation 15 of the Law Reform Commission Final Report (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.

### **1.3.13 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 found that, during the investigation period, there were 8,767 breaches of VROs reported to WAPOL, with 3,753 alleged offenders recorded. During the investigation period, 3,099 of the 3,753 (83 per cent) alleged offenders were charged with the offence of 'breach of violence restraining order'.

Submissions to reviews of the *Restraining Orders Act* conducted by the Law Reform Commission have argued that arresting persons accused of breaching a VRO promotes victim safety and enhances perpetrator accountability. Of the 3,099 alleged offenders who were charged:

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<sup>42</sup> 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.

<sup>43</sup> It is noted that an interim order may also become a final order if it is not objected to, and these orders are not included in the court data.

- 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.

#### **1.3.14 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. 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.

The Office examined the court outcomes of all charges of breach of a VRO.<sup>44</sup> Of the 8,147 charges, 6,087 were finalised<sup>45</sup> 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).

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). The most frequent sentence imposed for breaching a VRO was a fine, with 6,004 fines issued.

#### **1.3.15 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'. However, the research literature further suggests that the effectiveness of VROs decreases as the risk to the victim increases.

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.'<sup>46</sup> However, the research literature suggests several factors which increase the risk of a VRO being breached, including:

- separation (in the case of intimate partners);<sup>47</sup>

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<sup>44</sup> 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.

<sup>45</sup> 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.

<sup>46</sup> 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.

<sup>47</sup> Women's Aid, *Why doesn't she leave?*, Women's Aid Federation of England, Bristol, 2006.

- a perpetrator with a history of violence and crime;<sup>48</sup> and
- a perpetrator with a history of non-compliance with court imposed conditions.<sup>49</sup>

These factors, and their presence in the 30 fatalities, are summarised below:

- eight people who were killed in the 30 fatalities intended to separate, or had recently separated, from the suspected perpetrator;
- eighteen of the 30 suspected perpetrators had contact with the justice system at some point prior to the time when a person was killed; and
- 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.

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'.

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 [violence].'<sup>50</sup> Additional strategies that may be useful in high risk cases, and in the prevention of fatalities, are discussed below.

### **1.3.16 Consideration of deferral of bail or, in high risk cases in certain circumstances, a presumption against bail in Western Australia**

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.'<sup>51</sup> This is of particular importance in the prevention of family and domestic 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.'<sup>52</sup> The research literature also notes that 'the period after arraignment is one of the most dangerous times for victims of domestic violence.'<sup>53</sup> The detention of perpetrators

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<sup>48</sup> 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.

<sup>49</sup> 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.

<sup>50</sup> 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>>.

<sup>51</sup> 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>>.

<sup>52</sup> Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

<sup>53</sup> Marcotte, A, 'Could Massachusetts have stopped Jared Remy from allegedly murdering Jennifer Martel?', *Slate*, 19 August 2013, viewed 2 May 2014,

further provides victims with ‘time to relocate, save some money, and seek counselling and perhaps find a job.’<sup>54</sup>

In Western Australia, ‘there is generally a pre-existing general presumption for bail’,<sup>55</sup> that is, to release a person before trial (rather than a presumption against bail, to remand a person in custody before trial). However, in a number of other Australian states and territories, in certain circumstances, legislative provisions may alter the presumption for bail, or include a presumption against granting bail for family and domestic violence offences.<sup>56</sup>

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’,<sup>57</sup> which captures many family and domestic violence offences.<sup>58</sup> Additionally, as observed by the Australian Law Reform Commission (**ALRC**):

The *Bail Act 1982* (WA) restricts the jurisdiction to grant bail in respect of breaches of protection orders [VROs] in urban areas.<sup>59</sup>

The ALRC 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’<sup>60</sup> 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’<sup>61</sup> or ‘might act as a disincentive for victims to report offences’.<sup>62</sup>

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<[http://www.slate.com/blogs/xx\\_factor/2013/08/19/jared\\_remy\\_walked\\_out\\_of\\_court\\_and\\_murdered\\_jennifer\\_martel\\_could\\_he\\_have.html](http://www.slate.com/blogs/xx_factor/2013/08/19/jared_remy_walked_out_of_court_and_murdered_jennifer_martel_could_he_have.html)>.

<sup>54</sup> Snyder, R, ‘A Raised Hand,’ *The New Yorker*, 22 July 2013, p. 38.

<sup>55</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 413.

<sup>56</sup> 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.

<sup>57</sup> *Bail Act 1982*(WA), Schedule 1, Part C, Clause 3A.

<sup>58</sup> ‘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*.

<sup>59</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 415.

<sup>60</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 411.

<sup>61</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 416.

<sup>62</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 417.

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’.<sup>63</sup> 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’.<sup>64</sup> 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.’<sup>65</sup>

It is recommended that 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 (Recommendation 32).

### **1.3.17 Violence restraining orders are not a substitute for criminal charges where an offence has been committed**

The research literature suggests that there are concerns that VROs are being used as ‘an alternative, more lenient legal response to domestic violence’<sup>66</sup> when criminal charges should also be laid.<sup>67</sup>

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.’<sup>68</sup> However, 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.’<sup>69</sup> Research has also identified that arrest can also influence future decisions to engage in violent behaviour.<sup>70</sup>

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<sup>63</sup> Bail Act 1982 (WA), Schedule 1, Part C, Clause 1(a)(iii).

<sup>64</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 117.

<sup>65</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 136.

<sup>66</sup> Chief Justice’s Taskforce on Gender Bias, *Report on Gender Bias*, Chief Justice of Western Australia, Perth, 30 June 1994, p. 169.

<sup>67</sup> 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.

<sup>68</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 352.

<sup>69</sup> Braaf, R and Sneddon, C, ‘Arresting practices: exploring issues of dual arrest for domestic violence,’ *Australian Domestic & Family Violence Clearinghouse*, Sydney, 2007, p. 2.

<sup>70</sup> Braaf, R and Sneddon, C, ‘Arresting practices: exploring issues of dual arrest for domestic violence,’ *Australian Domestic & Family Violence Clearinghouse*, Sydney, 2007, p. 3.

*Reviews by the State Coroner and WAPOL following the murder of Andrea Louise Pickett*

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.<sup>71</sup>

Following Andrea's<sup>72</sup> murder, the State Coroner conducted an inquest involving a number of state government departments and authorities, including WAPOL.<sup>73</sup> The Coroner made seven recommendations relating to Andrea's murder.<sup>74</sup> Prior to the 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.'<sup>75</sup>

The Office 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. As discussed in section 1.3.7, 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. Of particular note, 65 of the 75 DVIRs (87 per cent) related to an Aboriginal person who was killed in the 30 fatalities.

The Office examined the 75 DVIRs to determine whether all witnesses required to be interviewed in accordance with the *WA Police Investigation Doctrine* were interviewed, namely, victims, eye witnesses, other significant witnesses, and suspects/persons of interest. The Office's examination of the 75 DVIRs found that the victim was most likely to be interviewed (92 per cent of incidents), followed by the suspect/person of interest (73 per cent), with other significant witnesses least likely to be interviewed (48 per cent of incidents where potential significant witnesses were recorded).

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.'<sup>76</sup> 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

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<sup>71</sup> 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.

<sup>72</sup> 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.

<sup>73</sup> 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.

<sup>74</sup> 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.

<sup>75</sup> Western Australia Police, *Response to Four Corners from Western Australia Police*, Perth, July 2012, p. 2.

<sup>76</sup> Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

on 20 occasions (44 per cent). In the remaining 25 DVIRs, information was not recorded regarding the decision not to take photographs.

Accordingly, the Office has directed a number of recommendations to WAPOL. These recommendations are Recommendation 33, Recommendation 34, Recommendation 35, Recommendation 36 and Recommendation 37.

### 1.3.18 Family and domestic violence causes harm to children

The Office identified that there were 30 children<sup>77</sup> who experienced family and domestic violence associated with the 30 fatalities. In this report, this group of 30 children is referred to as the **children involved in the 30 fatalities**. Of these 30 children:

- Eighteen (60 per cent) were male and 12 were female; and
- Twenty-one (70 per cent) were Aboriginal and nine were non-Aboriginal.

The research literature suggests that 'children are not passive onlookers or unaffected bystanders'<sup>78</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>79</sup>

Research further 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>80</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>81</sup>

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.

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<sup>77</sup> Aged less than 18 years.

<sup>78</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>79</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>80</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>81</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.

In Western Australia, section 7 of the *Children and Community Services Act 2004* (the **Children and Community Services Act**) requires that DCPFS 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.

The *DCPFS Family and Domestic Violence Policy 2012* (**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>82</sup>

### **1.3.19 For 44 per cent of the duty interactions where DCPFS identified family and domestic violence, DCPFS concluded that this was 'not departmental business'**

The Office identified children regarding whom the state-wide data indicated that:

- a VRO<sup>83</sup> was applied for in the Magistrates Court in the investigation period;
- 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 (17 per cent) of these children were Aboriginal.

For the 70 children in the VRO sample, DCPFS recorded a total of 686 duty interactions over their lifetime.<sup>84</sup> 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.

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<sup>82</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.

<sup>83</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>84</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.

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). 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>85</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).

Accordingly, the Office has directed two recommendations to DCPFS. These recommendations are Recommendation 40 and Recommendation 41.

### **1.3.20 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 the 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.

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.

Accordingly, the Office has directed two recommendations to DCPFS. These recommendations are Recommendation 42 and Recommendation 43.

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<sup>85</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.

**1.3.21 DCPFS assisted with two violence restraining order applications and provided one referral for help regarding the 70 children in the VRO sample; 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**

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>86</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>87</sup>

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 Office's analysis 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>88</sup> and
- in four instances, DCPFS assisted two adult victims to apply for a VRO by providing 'information to support the VRO application as appropriate'.<sup>89</sup>

The Office also 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>90</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.

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<sup>86</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>87</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>88</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>89</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>90</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.

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 legal advice and help from an appropriate service,’ as identified in DCPFS’s *Family and Domestic Violence Practice Guidance*.

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.

Accordingly, the Office has directed a number of recommendations to DCPFS. These recommendations are Recommendation 44; Recommendation 45; Recommendation 46 and Recommendation 47.

**1.3.22 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 Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (CRARMF)* was introduced in 2011 and sets out state-wide minimum standards for screening, risk assessment and responses to family and domestic violence. 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.’<sup>91</sup>

The Casework Practice Manual requirements for ‘Family and Domestic Violence Screening and Assessment’<sup>92</sup> 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’.<sup>93</sup>

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<sup>91</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>92</sup> *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>93</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>>.

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. 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 DCPFS identified family and domestic violence as the 'presenting issue'<sup>94</sup> 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.

Accordingly, the Office has directed two recommendations to DCPFS. These recommendations are Recommendation 48 and Recommendation 49.

### **1.3.23 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 CRARMF identifies that '[if] risk is present, action (safety planning) is always required.'<sup>95</sup> 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.

The Office also reviewed the records of the 387 duty interactions in DCPFS's electronic case management system, *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.

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<sup>94</sup> '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'.

<sup>95</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, p. 59.

Accordingly, it is recommended that DCPFS ensures that, following the implementation of Recommendation 48, DCPFS undertakes safety planning in accordance with the Casework Practice Manual (Recommendation 50).

### **1.3.24 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 England<sup>96</sup> 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.<sup>97</sup>

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 protection system has not seen the incremental advancement that one would expect to see...<sup>98</sup>

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.

Accordingly, it is recommended that, 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 (Recommendation 54).

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<sup>96</sup> 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.

<sup>97</sup> 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.

<sup>98</sup> Government of South Australia, *A State Plan to Protect and Advance the Interests of Children*, Government of South Australia, Adelaide, 2003, p. 64.

## 1.4 Table of recommendations

### **Recommendation 1**

DCPFS, as the lead agency responsible for family and domestic violence strategic planning in Western Australia, in the development of Action Plans under *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, identifies actions for achieving its agreed Primary State Outcomes, priorities among these actions, and allocation of responsibilities for these actions to specific state government departments and authorities.....p.80

### **Recommendation 2**

In developing and implementing future phases of *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, DCPFS collaborates with WAPOL, DOTAG and other relevant agencies to identify and incorporate actions to be taken by state government departments and authorities to collect data about communities who are overrepresented in family and domestic violence, to inform evidence-based strategies tailored to addressing family and domestic violence in these communities....p.82

### **Recommendation 3**

DCPFS, in collaboration with the Mental Health Commission and other key stakeholders, includes initiatives in Action Plans developed under the *Western Australian Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, which recognise and address the co-occurrence of alcohol use and family and domestic violence. ....p.106

### **Recommendation 4**

DCPFS, as the lead agency responsible for family and domestic violence strategic planning in Western Australia, develops a strategy that is specifically tailored to preventing and reducing Aboriginal family violence, and is linked to, consistent with, and supported by *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*. ....p.115

### **Recommendation 5**

DCPFS, in developing the Aboriginal family violence strategy referred to at Recommendation 4, incorporates strategies that recognise and address the co-occurrence of alcohol use and Aboriginal family violence.....p.115

### **Recommendation 6**

In developing a strategy tailored to preventing and reducing Aboriginal family violence, referred to at Recommendation 4, DCPFS actively invites and encourages the involvement of Aboriginal people in a full and active way at each stage and level of the process, and be comprehensively informed by Aboriginal culture.....p.116

### **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*. ....p.137

**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. ....p.139

**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. ....p.141

**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.....p.142

**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. ....p.142

**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*. ....p.142

**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. ....p.145

**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. ....p.147

**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.....p.155

**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. ....p.155

**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*. ....p.157

**Recommendation 18**

Following the implementation of Recommendation 17, WAPOL complies with the requirements of the *Commissioner’s Operations and Procedures Manual*. ....p.157

**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. ....p.157

**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. ....p.157

**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. ....p.162

**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. ....p.163

**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. ....p.176

**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. ....p.176

**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. ....p.186

**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. ....p.194

**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.....p.196

**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. ....p.200

**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. ....p.201

**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*.....p.206

**Recommendation 31**

WAPOL ensures that it does not inform victims to withdraw a violence restraining order on the basis that alleged breaches are consensual. ....p.207

**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. ...p.222

**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. ....p.231

**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*. .....p.232

**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). .....p.234

**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*. .....p.235

**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*. .....p.235

**Recommendation 38**

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.

.....p.243

**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. ....p.255

**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’. ....p.256

**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. ....p.257

**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.....p.259

**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. ....p.259

**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’. ....p.262

**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. ....p.265

**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’.....p.266

**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. ....p.266

**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*.....p.271

**Recommendation 49**

Following the implementation of Recommendation 48, DCPFS complies with the requirements for family and domestic violence screening and risk assessment. ....p.272

**Recommendation 50**

Following the implementation of Recommendation 48, DCPFS undertakes safety planning in accordance with the Casework Practice Manual.....p.274

**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.....p.276

**Recommendation 52**

DCPFS ensures that, following the implementation of Recommendation 51, DCPFS provides appropriate training in relation to the amended Casework Practice Manual. ....p.276

**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. ....p.278

**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.....p.279