12 Responding to alleged breaches of violence restraining orders

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

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

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

12.1.1 Legislative requirements

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

> **61. Breach of a restraining order**
>
> (1) A person who is bound by a violence restraining order and who breaches that order commits an offence.
>
> Penalty: $6 000 or imprisonment for 2 years, or both.

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

> **62A. Investigation of suspected family and domestic violence**
>
> A police officer is to investigate whether an act of family and domestic violence is being, or has been committed, or whether an act of family and domestic violence is likely to be committed, if the police officer reasonably suspects that a person is committing, or has committed, an act of family and domestic violence which —
>
> (a) is a criminal offence; or
> (b) has put the safety of a person at risk.

This includes alleged breaches of a VRO.

12.1.2 Policy requirements

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

[533] *Restraining Orders Act 1997* (WA), Section 13.
[534] Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.2.

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

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

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

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

Of the 3,099 alleged offenders who were charged:

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

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

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

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

The state-wide data, discussed above, indicates a decrease in the proportion of charges for breaching a VRO initiated by summons, from 28 per cent in 2012.[537]

[535] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. 51.
[536] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 66.
[537] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 66.

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

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

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

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

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

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

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

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

[538] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, the Law Reform Commission, Perth, 2013, p. 94.
[539] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, pp. 61 - 66.
[540] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 66 [Recommendation 9].

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

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

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

Consent has not been a defence to a charge of breaching a VRO since 2004.[541] Additionally, section 61B(2) of the *Restraining Orders Act* currently provides that consent is not a mitigating factor when sentencing a person convicted of breaching a VRO:

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

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

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

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

Recommendation 30

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

[541] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 117.
[542] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 73.
[543] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 73.

Recommendation 31

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

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

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

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

> Offenders are being charged more by the Police however court sentencing is very lenient with offenders usually given small fines as can be seen by our tracking and monitoring of court outcomes at our local court.
>
> Some of the penalties given to respondents for breaching were so insignificant that they did not act as a deterrent and made women feel like the order or the seriousness of the situation had been trivialised. ie. $100 fine - 'a speeding ticket costs more than that.'[545]

12.2.1 Legislative requirements

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

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

> **61A. Penalty for repeated breach of restraining order**
> …
> (2) This section applies if a person -
> (a) is convicted of an offence under section 61(1) or (2a) (the ***relevant offence***); and

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

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

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

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

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

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

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

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

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

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

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

The relevant construction of section 61A was upheld by the Court of Appeal in June 2014.[550] In the matter of *Roe v D'Costa*, the Hon. Justice Mazza set out:

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

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

> …one of the matters that had been raised in the public domain prior to the Commission receiving this reference was the sentencing practices for breaches of violence restraining orders. Specifically, it was asserted that the 'third-strike' sentencing laws that were introduced in May 2012 to provide for a presumptive sentence of imprisonment for repeat offenders have not been effective.
>
> …
>
> The Commission considered s 61A of the *Restraining Orders Act* in detail in its Discussion Paper and noted that one perceived problem with the interpretation of this provision is that offenders are able to accumulate a very high number of charges of breaching an order and, by having these dealt with by a court on the same day, potentially avoid the presumptive sentence of imprisonment. [553]

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

[549] *D'Costa v Roe* [2013] WASC 99.
[550] *Roe v D'Costa* [2014] WASCA 118.
[551] *Roe v D'Costa* [2014] WASCA 118, per Mazza JA at [52].
[552] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 115.
[553] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 115.
[554] Banks, A, '*Violence Changes Loom*', The West Australian, 11 June 2014.

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

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

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

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

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

The Office examined the court outcomes of all charges of breach of a VRO.[557] Of the 8,147 charges, 6,087 were finalised[558] during the investigation period. The alleged offender was found guilty and a sentence imposed in 5,519 of the 6,087 finalised charges (91 per cent), as shown in Figure 37 below.

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

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

Source: Ombudsman Western Australia

[555] Gender was not recorded on 29 occasions (1 per cent).
[556] Data provided by DOTAG recorded 'Indigenous status' for 2,593 alleged offenders.
[557] It is possible that the alleged offenders were also charged with another offence that was dealt with at the same time as the breach of a VRO charge, that is, the outcome could take into account additional charges.
[558] For this analysis, the Office counted individual charges as finalised if they recorded an outcome imposing a sentence, dismissing the charge, transferring the case to another court/agency or recording the death of an accused.
[559] For 'sentence imposed' the Office counted charges where the outcome of the charge was a fine, order, imprisonment, suspended imprisonment, spent conviction, detention, no punishment, or no sentence.

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

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

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

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

Source: Ombudsman Western Australia

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

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

- 1,758 (81 per cent) were fined;
- 555 (26 per cent) were sentenced to an order, including Intensive Supervision Orders, Conditional Release Orders and Community Based Orders;
- 274 (13 per cent) were sentenced to a term of an imprisonment[562]; and
- 147 (7 per cent) were given a suspended term of imprisonment.

[560] Including detention, if the offender was a juvenile.
[561] This includes no punishment orders, no sentence decisions and spent convictions.
[562] This includes sentences of detention if sentenced in the Children's Court.

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

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

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

Court proceedings were finalised during the investigation period for eight of the nine people charged with breaching a VRO. Seven[563] of these eight people were convicted of at least one count of breaching a VRO. The Office's analysis identified that:

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

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

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

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

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

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

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

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

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

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

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

> … [T]hose cases where a [restraining order] is most likely to be granted (where risk is assessed as high), are the cases in which it is least likely to offer any protection for the victim. [568]

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[564] Napier, S, Poynton, S, Fitzgerald, J, *Who goes to prison for breaching an Apprehended Domestic Violence Order? An analysis of police narratives*, NSW Bureau of Crime Statistics and Research, viewed 10 September 2015, <http://apo.org.au/files/Resource/bocsar_whogoestoprisonforbreachinganapprehendeddomesticviolenceorder_sep_2015.pdf>.

[565] Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, p. 6.

[566] Chung, D, Green, D and Smith, G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women's Council for Domestic and Family Violence Services, Perth, 2014, p. 4.

[567] Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <http://dx.doi.org/10.1080/15614263.2011.607649>.

[568] Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <http://dx.doi.org/10.1080/15614263.2011.607649>.

In identifying high risk cases, involving perpetrators who are more likely to breach a VRO, the research literature observes that '[o]nly recently have researchers begun to investigate ways to predict whether or not a violent partner is likely to violate a protective order.'[569] However, the research literature suggests several factors which increase the risk of a VRO being breached, including:

- separation (in the case of intimate partners);[570]
- a perpetrator with a history of violence and crime;[571] and
- a perpetrator with a history of non-compliance with court imposed conditions.[572]

These factors, and their presence in the 30 fatalities, are explored in detail below. It is important to note that, while the research literature has identified several factors associated with increased risk, the absence of these factors does not necessarily mean that a VRO is unlikely to be breached or that a case is 'low risk'.

12.3.2 Eight people who were killed in the 30 fatalities intended to separate, or had recently separated, from the suspected perpetrator

In the 30 fatalities notified to the Ombudsman, 20 fatalities involved people in an intimate partner relationship. Information was available regarding the victim's intention to separate from their partner in 18 of these fatalities. Records indicated an actual or pending separation in eight of these 18 fatalities (44 per cent). In these eight fatalities, a VRO was in place at some point between the person who was killed and the suspected perpetrator on four occasions.

In the case of intimate partners, a VRO is often obtained when a victim is seeking to separate from the perpetrator. The research literature suggests that 'the period during which a woman is planning or making her exit, is often the most dangerous time for her and her children'.[573]

In these cases, the research literature suggests that applying for a VRO can increase, rather than decrease, the risk faced by victims:

> People need to understand that when someone goes to get an order for protection, they are at increased and heightened risk because they're trying to break the control cycle… When the survivor sends that message, it heightens that risk and the likelihood of danger to them.[574]

[569] University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 2.
[570] Women's Aid, *Why doesn't she leave?*, Women's Aid Federation of England, Bristol, 2006.
[571] University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.
[572] University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 4.
[573] Women's Aid, *Why doesn't she leave?*, Women's Aid Federation of England, Bristol, 2006.
[574] Buckley, M and Sheckler, C, 'Protective order just part of safety plan,' *South Bend Tribune*, Indiana, 9 June 2013, viewed 8 October 2014, <http://www.southbendtribune.com/news/local/keynews/watchdog/protective-order-just-part-of-safety-plan/article_27c0b7de-e097-5875-b013-e2ffe56fd17d.html?mode=jqm>, p. 3.

This is not to suggest that victims should not apply for a VRO, but rather that, in high risk cases, additional protective actions may need to be implemented to promote victim safety (as discussed in further detail in section 12.3.5 below).[575]

Separation has also been identified by the Ontario Domestic Violence Death Review Committee as a critical risk factor in domestic homicide cases:

> Since its inception, one of the main goals of the DVDRC has been to identify critical risk factors associated with domestic homicides. One factor that has repeatedly surfaced is the risk of an actual or pending separation between the couple. In a review of 72 domestic homicides, an actual or pending separation was observed in 81% of the cases, with 56% (40) of these cases involving an actual separation and 25% having a pending separation.[576]

12.3.3 Eighteen of the 30 suspected perpetrators (60 per cent) had contact with the justice system at some point prior to the time when a person was killed

As discussed in section 5.5, in 18 of the 30 fatalities (60 per cent), the suspected perpetrator had contact with the justice system at some point prior to the time when a person was killed and had been on bail, on parole or an 'order',[577] whilst in the community.

Further, 14 of the 30 suspected perpetrators (47 per cent) had been held in custody for criminal offences at some point prior to the time when a person was killed. The types of offences leading to these custodial periods included: manslaughter; aggravated assault; sexual assault; and unlawful wounding.

The research literature suggests 'that the abuser's criminal justice status can predict their likelihood of violating a protective order.'[578] On this point, the research literature observes:

> Several studies have found a connection between an abuser's history of violent crimes and protective orders, noting that between 65% and 80% of abusers had been charged with previous crimes prior to the protective order being issued…
>
> Recent studies have found that multiple criminal arrests for any offense following the issuance of a protective order was associated with a higher likelihood of repeat domestic violence or protective order violations.[579]

[575] Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <http://dx.doi.org/10.1080/15614263.2011.607649>.
[576] Office of the Chief Coroner Province of Ontario, *Sixth Annual Report of Domestic Violence Death Review Committee*, Office of the Chief Coroner, Ontario, 2008, p. 29.
[577] This does not include VROs and police orders, which are examined separately in this report.
[578] University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.
[579] University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.

12.3.4 WAPOL recorded a suspected perpetrator as being in breach of an order or other protective conditions imposed by the court in 17 per cent of the 75 DVIRs relating to the 30 fatalities

As discussed in section 12.2.3, seven of the suspected perpetrators in the 30 fatalities had been convicted of breaching a VRO at some point prior to the time when a person was killed. The Office also found that in 13 of the 75 DVIRs (17 per cent), relating to fatalities with a recorded prior history of family and domestic violence, WAPOL recorded that the suspected perpetrator was in breach of an order or other conditions set by the court at the time of the incident. This included:

- breach of a VRO (four occasions);
- breach of bail conditions (protective bail on three occasions and bail on one occasion);
- breach of a police order (three occasions);
- breach of parole (one occasion); and
- breach of an Intensive Supervision Order (one occasion).

The research literature suggests that non-compliance with court imposed conditions is 'a strong indicator that an abuser might violate a protective order'.[580] In particular, one study of 220 male defendants convicted of a domestic violence-related offence identified that 'the odds of recidivism for defendants who had two or more incidents of law enforcement preadjudication noncompliance were over seven times the odds of recidivism for defendants who had none'.[581]

Arising from the identification of this link, the research literature suggests that perpetrator compliance with court orders should be monitored and used to inform risk assessments and safety planning for victims, as follows:

> These findings indicate the potential value of documenting the frequency and type of noncompliance with court orders, especially in the area of law enforcement noncompliance and including these factors in the development of risk assessments for defendants under supervision. Our results also illustrate the importance of considering multiple sources of information on defendants' noncompliant behavio[u]r and of communicating this information to all agencies that have a role in maintaining offender accountability and increasing victim safety. [582]

Considered collectively, the research literature suggests that VROs can be a useful protective mechanism for victims of family and domestic violence in all cases, however, in high risk cases, the research findings suggest that 'criminal justice systems and police forces need to develop additional protective actions to effectively prevent future

[580] University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 4.
[581] Kindness, A, Kim, H, Alder, S, Edwards, A, Parekh, A, and Olson, L, M, 'Court Compliance as a Predictor of Postadjudication Recidivism for Domestic Violence Offenders', *Journal of Interpersonal Violence*, vol. 24, no. 7, pp. 1228.
[582] Kindness, A, Kim, H, Alder, S, Edwards, A, Parekh, A, and Olson, L, M, 'Court Compliance as a Predictor of Postadjudication Recidivism for Domestic Violence Offenders', *Journal of Interpersonal Violence*, vol. 24, no. 7, pp. 1228.

[violence].'[583] Additional strategies that may be useful in high risk cases, and in the prevention of fatalities, are discussed below.

12.3.5 Additional strategies to prevent fatalities in high risk cases, including remanding a perpetrator prior to conviction

As described above, the research literature identifies that, in high risk cases, restraining orders, such as Western Australia's VROs, are 'insufficient if used alone, and need to be supported by additional protective actions from police or social services.'[584] This is of particular importance in the prevention of family and domestic violence fatalities.

The research literature suggests that holding perpetrators of family and domestic violence in remand before trial is protective for victims, and can disrupt an 'escalating cycle of violence.'[585] The research literature also notes that 'the period after arraignment is one of the most dangerous times for victims of domestic violence.'[586] The detention of perpetrators further provides victims with 'time to relocate, save some money, and seek counselling and perhaps find a job.'[587]

Internationally, in Massachusetts, in order to assess whether the detention of a person is necessary to ensure the safety of any person or the community, a hearing is held. These hearings, termed 'dangerousness hearings,' can be requested by prosecutors and differ from standard hearings in Massachusetts, which determine bail 'based largely on flight risk … [w]ith a dangerousness hearing, even defendants who have clean records can be held until trial if they are deemed to be a sufficient threat to their victims or to the community.'[588] The benefit of a dangerousness hearing is that it 'automatically provides a different context for a judge to analy[s]e the evidence.'[589] The Massachusetts Domestic Violence High Risk Team (a government-funded domestic violence homicide prevention program[590]) believes 'the dangerousness hearing is one of the most effective tools available'[591] to them.

[583] Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <http://dx.doi.org/10.1080/15614263.2011.607649>.
[584] Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, p. 265, viewed 27 March 2014, <http://dx.doi.org/10.1080/15614263.2011.607649>.
[585] Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.
[586] Marcotte, A, 'Could Massachusetts have stopped Jared Remy from allegedly murdering Jennifer Martel?', *Slate*, 19 August 2013, viewed 2 May 2014, <http://www.slate.com/blogs/xx_factor/2013/08/19/jared_remy_walked_out_of_court_and_murdered_jennifer_martel_could_he_have.html>.
[587] Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.
[588] Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.
[589] Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.
[590] Marcotte, A, 'Could Massachusetts have stopped Jared Remy from allegedly murdering Jennifer Martel?', *Slate*, 19 August 2013, viewed 2 May 2014, <http://www.slate.com/blogs/xx_factor/2013/08/19/jared_remy_walked_out_of_court_and_murdered_jennifer_martel_could_he_have.html>.
[591] Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

Chapter 276, section 58A of the *Massachusetts General Laws* provides the legal framework for dangerousness hearings, allowing a judge to 'hold a defendant accused of certain violent crimes without bail for 90 days, pending trial'.[592] This section specifies that:

> If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial. [593]

Other jurisdictions have also recognised that there may be an escalation in the violence after a perpetrator is charged, necessitating the need for additional strategies.[594]

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

The ALRC describes bail as:

> …a decision on the liberty or otherwise of the accused, between the time of arrest and verdict. Bail is, in theory, 'process oriented', aiming to ensure that the accused re-appears in court either to face charges or to be sentenced. A decision to grant bail is made by either the police or the courts, and certain conditions or requirements may be attached to the grant.[595]

In Western Australia, 'there is generally a pre-existing general presumption for bail',[596] that is, to release a person before trial (rather than a presumption against bail, to remand a person in custody before trial). However, in certain circumstances, legislative provisions may alter the presumption for bail, or include a presumption against granting bail for family and domestic violence offences, as in the case of a number of Australian states and territories.[597]

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[592] Conley, D, *Domestic Violence Suspect Held After Dangerousness Hearing*, Suffolk County District Attorney Massachusetts, 5 April 2011, viewed 1 May 2014, <http://www.suffolkdistrictattorney.com/press-office/press-releases/press-releases-2011/domestic-violence-suspect-held-after-dangerousness-hearing/>.

[593] Conley, D, *Domestic Violence Suspect Held After Dangerousness Hearing*, Suffolk County District Attorney Massachusetts, 5 April 2011, viewed 1 May 2014, <http://www.suffolkdistrictattorney.com/press-office/press-releases/press-releases-2011/domestic-violence-suspect-held-after-dangerousness-hearing/>.

[594] For example, in 2014, the Louisiana House of Representatives passed House Bill 1142 (Act 318), known as 'Gwen's Law', to allow the victim, alleged perpetrator, families and attorneys for both parties to present arguments at a hearing before bail is granted, to enable the judge to determine whether the accused might flee or inflict further harm.

[595] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, pp. 411-412.

[596] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 413.

[597] In New South Wales and Victoria, people accused of certain specified family violence offences must "show cause" as to why their detention is unjustified in certain circumstances. In Queensland, bail must be refused if there is an "unacceptable risk" that the accused would endanger the safety or welfare of a victim of the offence. In the Australian Capital Territory, Northern Territory and South Australia, the presumption in favour of bail is removed for breaches of protective orders in certain circumstances. In Tasmania a person accused of a family and domestic violence offence is not to be granted bail unless release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child.

The relevant Western Australian legislation, the *Bail Act 1982*, currently does not include any general provision removing the presumption in favour of bail for family and domestic violence offences. However, the *Bail Act 1982* does contain a presumption against bail in cases where an accused is charged with a 'serious offence' while on bail or early release for another 'serious offence'[598], which captures many family and domestic violence offences.[599] Additionally, as observed by the ALRC:

> The *Bail Act 1982* (WA) restricts the jurisdiction to grant bail in respect of breaches of protection orders [VROs] in urban areas.[600]

The ALRC Report considered 'the question of whether there should be a presumption for or against the granting of bail for crimes committed in a family violence context'[601] noting that some submissions supported a presumption against bail for family and domestic violence offences as a means of providing better protection for victims, while other submissions argued that such a presumption would 'unduly compromise the rights of accused persons'[602] or 'might act as a disincentive for victims to report offences'.[603] The ALRC's concluding view was:

> Crimes related to family violence are unlike many other crimes. For one thing, they are more likely to have a history—perhaps a long history—of fear, coercion and control … All these factors suggest that a person who has committed a crime in the context of family violence might, if granted bail, be more likely to see the victim—and so endanger the victim—than a person accused of a crime against a stranger…
>
> The Commissions do not, however, consider that the safety of women and children is best secured by creating a presumption against bail for all crimes committed in a family violence context. If, as some have submitted, a presumption against bail acts as a disincentive to victims to report family violence crimes, then the presumption might sometimes indirectly undermine the safety of victims. Some victims will also not want alleged offenders incarcerated – this appears to be of particular concern to some Indigenous persons. Furthermore, a presumption against bail for all family violence offences appears to deny unfairly the accused the presumption of innocence.[604]

[598] *Bail Act 1982*(WA), Schedule 1, Part C, Clause 3A.
[599] 'Serious offence' is defined in section 3 of the *Bail Act 1982* by way of reference to a list of offences in Schedule 2, which includes a range of assault offences under *The Criminal Code* and the offence of breaching a violence restraining order contained in section 61(1) of the *Restraining Orders Act 1997*.
[600] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 415.
[601] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 411.
[602] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 416.
[603] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 417.
[604] Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 419.

In Western Australia, courts or judicial officers exercising jurisdiction to grant bail under the *Bail Act 1982* must have regard to the question of 'whether, if the accused is not kept in custody, he may … endanger the safety, welfare, or property of any person'.[605] In some circumstances, the court's consideration of this question regarding the safety of a victim when granting bail is informed by a 'bail risk assessment report':

> The Family Violence Service of the Department of the Attorney General currently facilitates the preparation of written bail risk assessment reports for use in the specialist Family Violence Courts in the metropolitan area. These assessments are usually prepared after being requested by the court when a participant in the Family Violence Court program seeks a variation of protective bail conditions. They may also be prepared if requested by an external magistrate; however, the application to vary bail conditions will be transferred to and dealt with by the local Family Violence Court.[606]

Bail risk assessments 'take approximately one to three weeks to be prepared and due to resourcing constraints only a limited number can be requested each week (usually one to two).'[607] The Law Reform Commission examined sample reports and noted that bail risk assessment reports appear to include the following information, where applicable:

- Current protective bail conditions.
- Input from the victim (if the victim has agreed to be interviewed or contacted).
- A criminal history and court history check through the court database.
- History of violence restraining orders issued against the accused.
- Summary of the statement of material facts in relation to the current offences.
- Information from the Western Australia Police in relation to prior Domestic Violence Incident Reports (DVIRs).
- Information from the Department for Child Protection and Family Support in relation to the parties.
- Risk assessment score and associated comments.
- Information from the Department of Corrective Services.
- Recommendation from the Family Violence Service in relation to the proposed variation to protective bail conditions.[608]

During consultation with the Law Reform Commission, Magistrates 'explained that the information contained in these reports is invaluable and the assessments appear to be widely supported by magistrates and many lawyers.'[609] The Law Reform Commission concluded that 'the approach undertaken in relation to bail risk assessment reports is vital

[605] *Bail Act 1982* (WA), Schedule 1, Part C, Clause 1(a)(iii).
[606] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 117.
[607] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 136.
[608] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 117.
[609] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 136.

in terms of enhancing decision-making and maximising victim safety'[610] and made the following recommendation:

> **Funding for bail risk assessment reports**
>
> 1. That funding be provided to the Family Violence Service (and other relevant agencies) to enable bail risk assessment reports to be prepared for the purpose of considering bail conditions for all family and domestic violence related offences, unless the accused does not object to the inclusion of full protective bail conditions being imposed (ie, that no contact at all is permitted between the accused and the victim).
> 2. That the use and effectiveness of bail risk assessment reports be monitored on an ongoing basis.[611] [Recommendation 49]

The Law Reform Commission also considered 'that the *Bail Act* should expressly enable bail to be deferred for the purpose of considering what conditions should be imposed to protect a victim of a family and domestic violence related offence',[612] recommending that:

> **Deferral of bail to consider conditions to protect a victim of Family and Domestic Violence**
>
> That section 9 of the *Bail Act 1982* (WA) be amended to provide that a judicial officer or authorised officer may defer consideration of a case for bail for a period not exceeding 30 days if he or she thinks it is necessary to obtain more information for the purpose of ascertaining what, if any, conditions should be imposed to protect a victim of a family and domestic violence related offence.[613] [Recommendation 50]

On 24 June 2015, the Hon. Michael Mischin, Attorney General, announced that specialised Family Violence Courts will be replaced with a 'new model of dealing with restraining orders and serious assaults which occur in a family setting'[614] under which:

> …police, child protection officers and corrective services officers would be on hand to share what they knew about the circumstances that led to the charges, and other information that may shed light on risks to victims … [and] courts would rearrange their case listings so that family violence restraining order breaches and serious assault matters would be heard on one designated day a week to ensure the victim support and other specialists were available.[615]

[610] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 137.
[611] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 137.
[612] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 138.
[613] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 138.
[614] Government of Western Australia, 'Media Statements – New era for dealing with family violence in courts', viewed 24 June 2015, <https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/06/New-era-for-dealing-with-family-violence-in-courts.aspx>.
[615] Government of Western Australia, 'Media Statements – New era for dealing with family violence in courts', viewed 24 June 2015, <https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/06/New-era-for-dealing-with-family-violence-in-courts.aspx>.

Recommendation 32

DOTAG reviews the effectiveness of national and international models of deferral of bail, or in high risk cases in certain circumstances, a presumption against bail, having consideration to:
- perpetrator accountability;
- promoting victim safety; and
- the rights of defendants; and

makes recommendations for implementing any changes that arise from the review.

12.3.7 The use of Global Positioning System (GPS) tracking in high risk cases is being considered; this would require offenders to be charged and sentenced

One suggested strategy to increase victim safety and support the effective use of VROs is through utilising GPS tracking to monitor the movements of perpetrators of family and domestic violence, potentially including respondents to VROs. As observed by the Law Reform Commission:

> Currently in Western Australia, GPS tracking is used for serious sex offenders under the *Dangerous Sexual Offenders Act 2006* (WA). Also … GPS tracking is permitted for offenders subject to parole but it is not legislatively authorised for offenders subject to sentencing orders. There is also no legislative provision enabling GPS tracking of persons bound by a violence restraining order.[616]

The use of GPS tracking and its potential application to perpetrators of family and domestic violence and VRO respondents was considered in detail in the Law Reform Commission Discussion Paper and Final Report. The Law Reform Commission 'expressed the preliminary view that GPS tracking should only be adopted for high-risk family and domestic violence offenders and only where it is part of a broader interagency case management approach in relation to victim safety.' [617]

However, recognising the relatively recent introduction of GPS monitoring for dangerous sexual offenders, the Law Reform Commission identified 'that consideration should first be given to the effectiveness of the existing scheme for sex offenders'.[618] Specifically, the Law Reform Commission recommended that:

[616] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, 2014, p. 144.
[617] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, 2014, p. 144.
[618] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, 2014, p. 145.

> **GPS tracking for family and domestic violence offenders and persons bound by family and domestic violence protection orders**
>
> 1. That the Department of Corrective Services conduct a review of the effectiveness of the current GPS tracking system for dangerous sex offenders (including consideration of the number of offenders subject to GPS tracking, the cost of GPS tracking per offender, practical issues such as the incidence of deliberate and accidental interference with the electronic devices, the circumstances in which alerts are received by the monitoring unit, the effectiveness and timeliness of the response to those alerts, and any other relevant matter).
> 2. That following that review the Department consider whether the system should be extended to family and domestic violence offenders and/or persons bound by family and domestic violence protection orders and, if so, provide a reasonable opportunity for members of the public and interested stakeholders to provide their views on any such proposal.[619]

In June 2014, the Hon. Michael Mischin, Attorney General, provided the following information to Parliament:

> Legislation to support the imposition of post-sentence supervision orders with GPS tracking able to be imposed as a condition of such an order is being drafted by the Department of the Attorney General. It is anticipated that this legislation will be ready for introduction in the autumn 2015 parliamentary session.[620]

More recently, as discussed at section 4.6.2, DCPFS released the Freedom from Fear Action Plan, which contains the following Action:

> **Consider opportunities to increase the use of Global Positioning System (GPS) tracking to monitor high risk perpetrators of family and domestic violence**
>
> GPS tracking can be an important tool for promoting the safety and protection of women and children at high risk of harm, particularly those seeking to remain safely in their homes. Given the Government has already announced the introduction of legislation to allow post-sentence supervision including GPS tracking of serious family violence offenders, opportunities to increase access to, and use of this technology will be further explored.[621]

[619] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, the Law Reform Commission, Perth, p. 145.
[620] The Hon. Mr M. Mischin MLC, Attorney General, Legislative Council, Parliamentary Debates (Hansard), 26 June 2014, p.4694c.
[621] Department for Child Protection and Family Support, *Freedom from Fear: Working towards the elimination of family and domestic violence in Western Australia Action Plan 2015*, Department for Child Protection and Family Support, Perth, 2015, p. 13.