

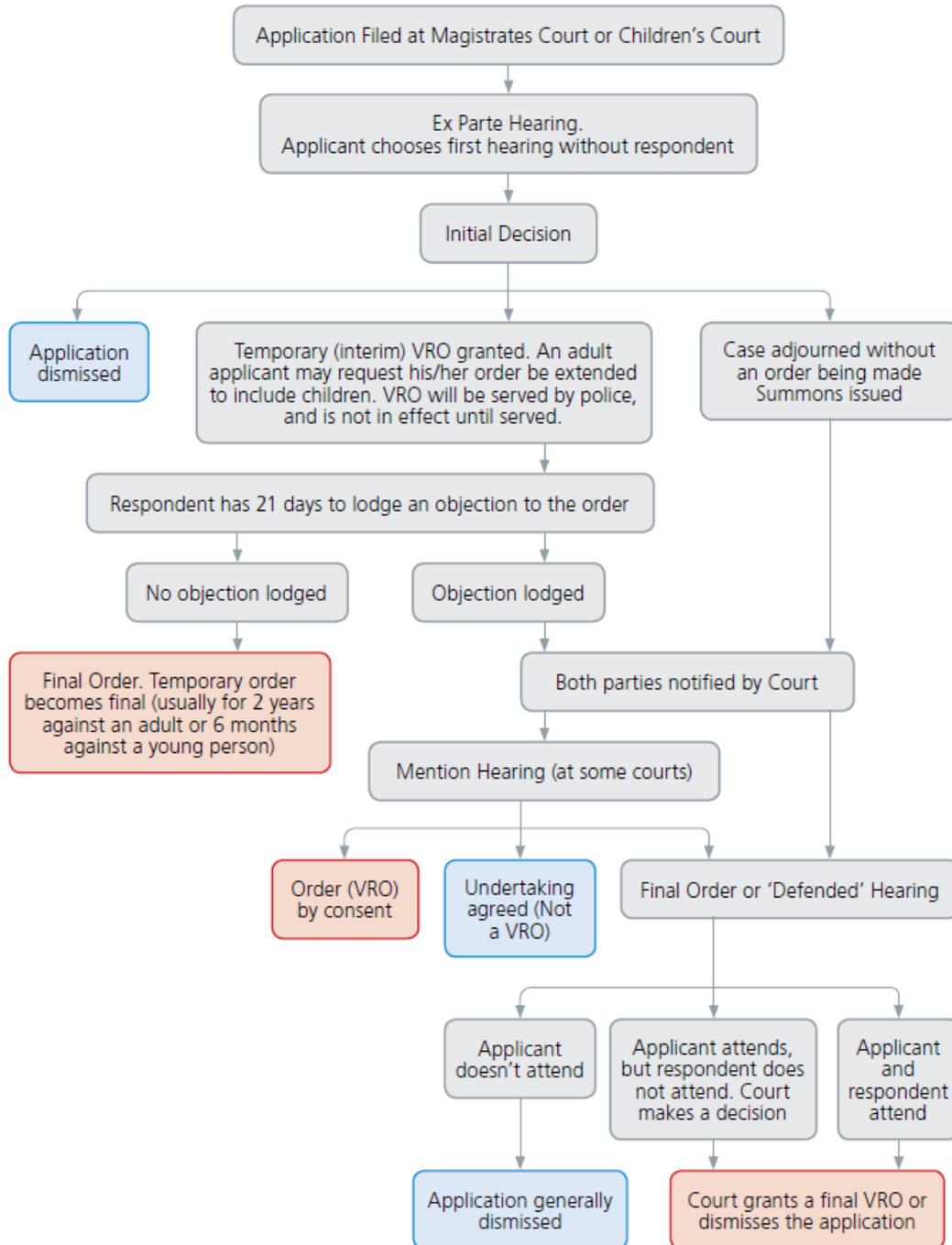
10 Applying for and obtaining a violence restraining order

10.1 The process for obtaining a violence restraining order

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

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

Figure 27: Process for obtaining a VRO



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

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

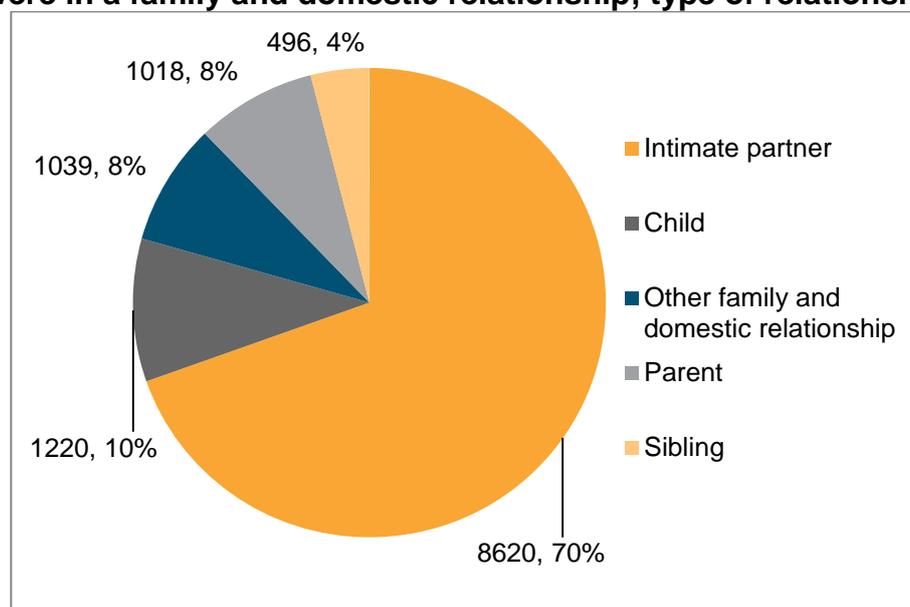
10.2 Applications for violence restraining orders

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

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

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

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



Source: Ombudsman Western Australia

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

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

Gender

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

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

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

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

Source: Ombudsman Western Australia

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

Ethnicity of applicants

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

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

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

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

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

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

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

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

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

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

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

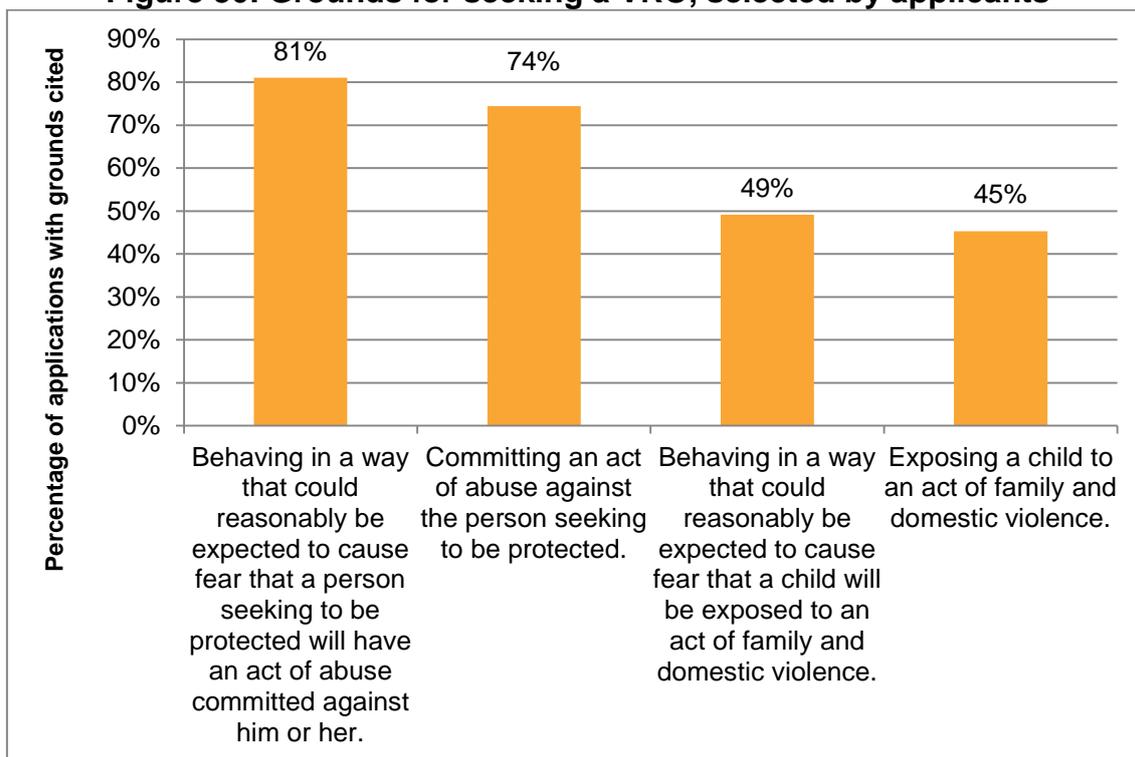
Applicants can tick more than one of the grounds listed. For the 12,393 applications where the applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent, there were 30,979 grounds selected. As shown in Figure 30 below, the grounds that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

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

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

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

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



Source: Ombudsman Western Australia

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

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

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

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

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

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

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

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

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

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

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

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

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

More generally, with regard to the use of VROs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The research literature further suggests of the VRO process:

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

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

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

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

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

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

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

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

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

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

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

Recommendation 23

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

Recommendation 24

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

10.4 Progression of applications for a violence restraining order

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

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

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

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

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

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

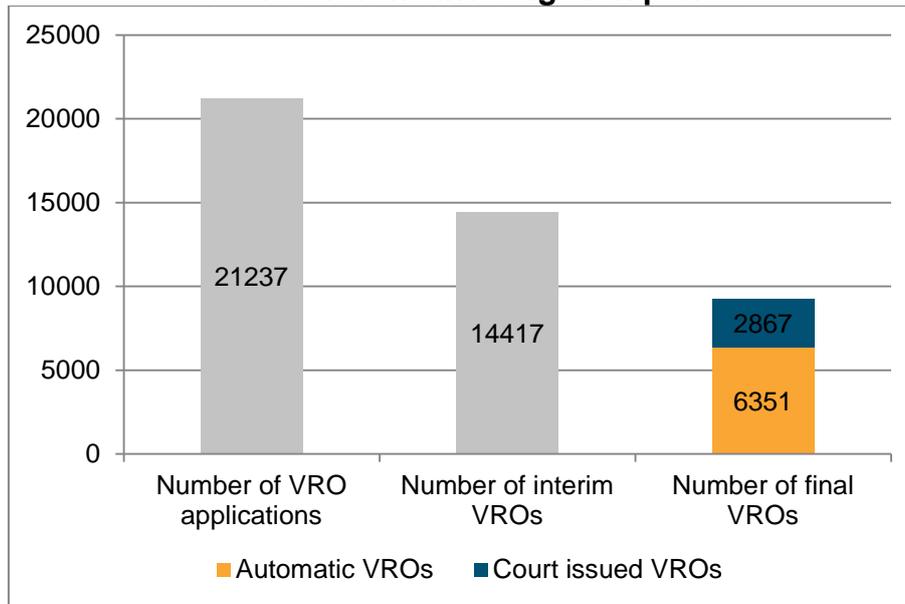
⁴⁷² It is important to note that these orders are not a subset of the 14,417 interim orders, although there is some overlap. This data refers to all interim orders which automatically became final orders in the investigation period, which may have been granted prior to the investigation period.

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

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

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

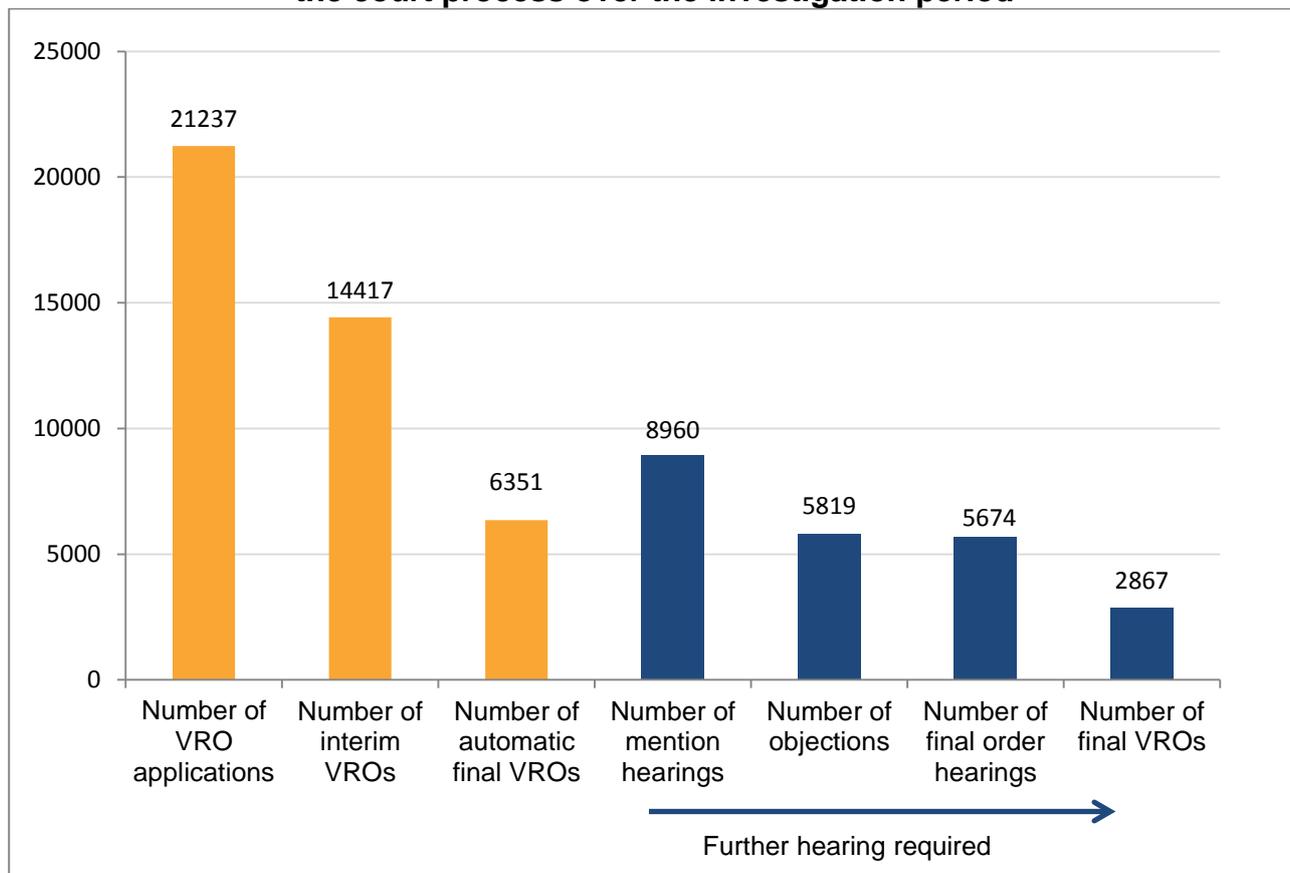
Figure 31: VRO applications and orders over the investigation period



Source: Ombudsman Western Australia

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

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



Source: Ombudsman Western Australia

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

10.5 Reasons why a final violence restraining order is not obtained

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

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

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

The Law Reform Commission has recommended that:

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

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

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

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

10.5.1 Processes associated with going to court can increase victim distress

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

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

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

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

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

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

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

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

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

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

A victim's voice⁴⁸²

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

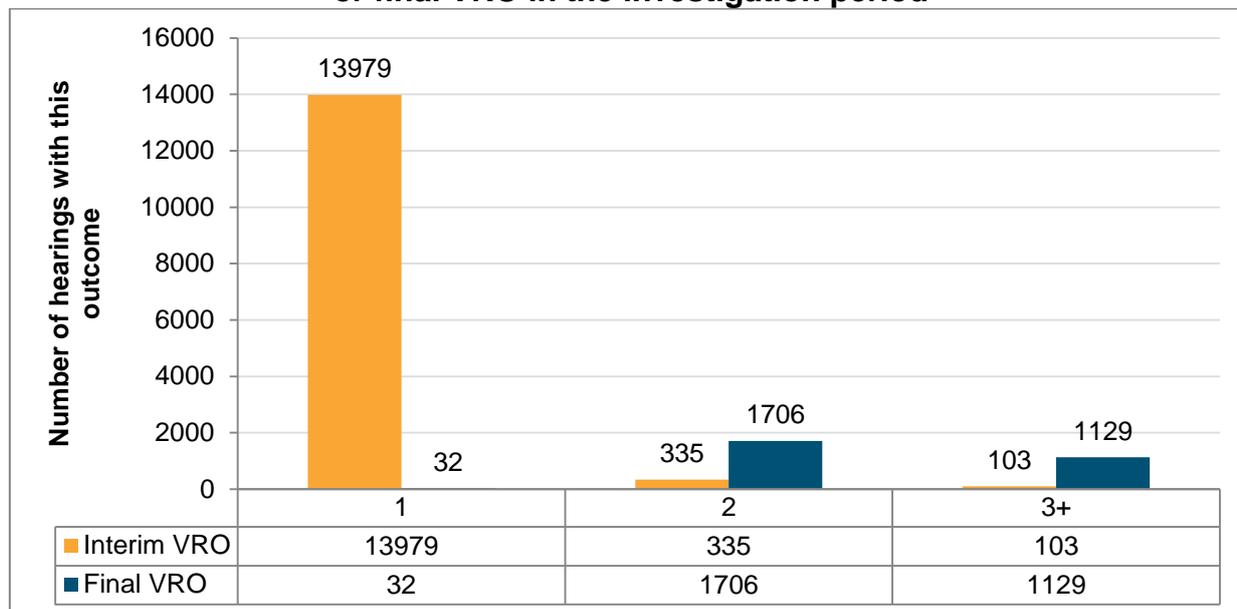
Figure 33: Number of hearings in the investigation period

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

Source: Ombudsman Western Australia

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

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



Source: Ombudsman Western Australia

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

10.5.4 Comments made in court can negatively impact upon victims

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

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

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

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

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

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

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

Recommendation 70
Judicial education programs

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

...

Recommendation 72
Selection criteria for magistrates

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

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

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

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

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

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

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

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

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

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

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

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

10.5.5 When an application for a VRO is dismissed

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

Recommendation 25

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

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

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