

2 About the investigation

2.1 The Western Australian Ombudsman

2.1.1 The Ombudsman

The Ombudsman is an independent and impartial statutory officer who reports directly to Parliament, rather than the government of the day.

2.1.2 The role of the Ombudsman

The Ombudsman has four principal roles derived from the Ombudsman's governing legislation, the *Parliamentary Commissioner Act 1971 (the Act)* and other legislation, codes and service delivery arrangements, as follows:

- Receiving, investigating and resolving complaints about Western Australian government departments and authorities, including local governments and universities;
- Reviewing certain child deaths and family and domestic violence fatalities;
- Improving public administration for the benefit of all Western Australians through own motion investigations, and education and liaison programs with public authorities; and
- Undertaking a range of additional functions, as set out in legislation, including inspection, monitoring, scrutiny and reporting.

2.1.3 The Ombudsman's family and domestic violence fatality review role

On 1 July 2012, the office of the Western Australian Ombudsman (**the Office**) commenced an important new role to review family and domestic violence fatalities.

Western Australia Police (**WAPOL**) informs the Office of all family and domestic violence fatalities and provides information about the circumstances of the death, together with any relevant information of prior WAPOL contact with the person who was killed and the suspected perpetrator. A family and domestic violence fatality involves persons apparently in a 'family and domestic relationship' as defined by section 4 of the *Restraining Orders Act 1997 (the Restraining Orders Act)*. More specifically, the relationship between the person who was killed and the suspected perpetrator is a relationship between two persons:

- (a) who are, or were, married to each other;
- (b) who are, or were, in a de facto relationship with each other;
- (c) who are, or were, related to each other;
- (d) one of whom is a child who —
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person;
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
- (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other (section 4(1)).

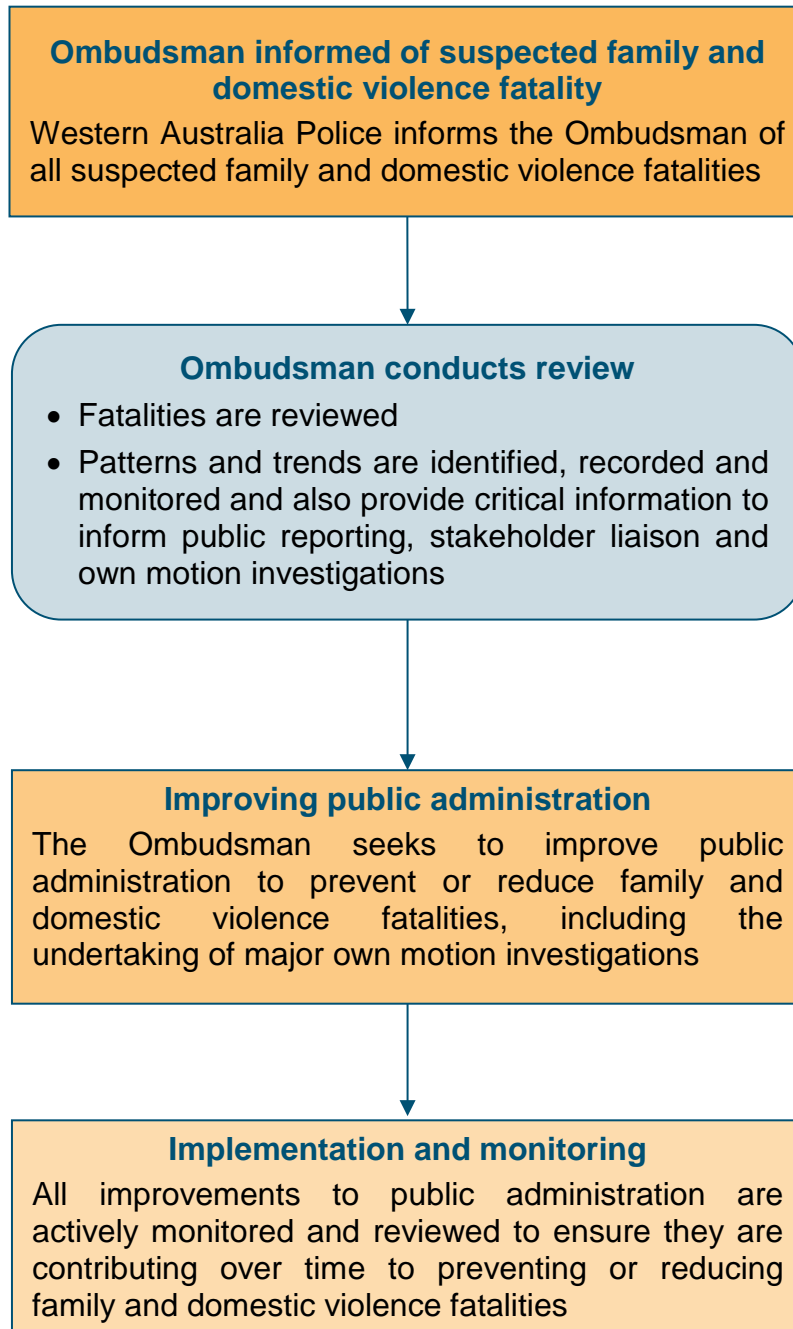
‘Other personal relationship’ means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected the other person. Related, in relation to a person, means a person who:

- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or
- (b) is related to the person’s —
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner (section 4(2)).

If the relationship meets these criteria, a review is undertaken. The extent of a review depends on a number of factors, including the circumstances surrounding the death and the level of involvement of relevant public authorities in the life of the person who was killed or other relevant people in a family and domestic relationship with the person who was killed, including the suspected perpetrator. Confidentiality of all parties involved with the case is strictly observed.

The family and domestic violence fatality review process is intended to identify key learnings that will positively contribute to ways to prevent or reduce family and domestic violence fatalities. The review does not set out to establish the cause of death of the person who was killed; this is properly the role of the Coroner. Nor does the review seek to determine whether a suspected perpetrator has committed a criminal offence; this is only a role for a relevant court.

Figure 2: The Family and Domestic Violence Fatality Review Process



2.2 About the investigation

2.2.1 Rationale

Through the review of family and domestic violence fatalities, the Ombudsman identified a pattern of cases in which violence restraining orders (**VROs**) were, or had been, in place between the person who was killed and the suspected perpetrator, or between the person who was killed, or the suspected perpetrator, and other parties. The Ombudsman also identified a pattern of cases in which VROs were not used, although family and domestic violence had been, or had been recorded as, occurring and state government departments and authorities had been contacted.

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

2.2.2 Aims and objectives

Aims

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

Objectives

The objectives of the investigation were to:

Family and domestic violence in Western Australia

- examine family and domestic violence;
- analyse the prevalence and incidence of family and domestic violence, with particular consideration of fatalities arising from family and domestic violence in Western Australia;
- consider if, and if so how, family and domestic violence affects different people and groups of people, in particular Aboriginal people (given the significant overrepresentation of Aboriginal Western Australians in family and domestic violence fatalities); and
- analyse the circumstances, patterns and trends of the family and domestic violence fatalities notified to the Ombudsman over a defined 18 month period (**the investigation period**), with a focus on the use of VROs associated with these fatalities.

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

- examine the legislation relevant to family and domestic violence, including particularly the *Restraining Orders Act*, and the requirements for state government departments and authorities as set out in the legislation, with a focus on VROs;
- for the investigation period, analyse how state government departments and authorities, working individually and collaboratively, administered the requirements of relevant legislation, including particularly the *Restraining Orders Act*, and associated policies, procedures and practices; and
- based on this analysis, determine whether it may be appropriate to make recommendations to any state government department or authority about ways to prevent or reduce family and domestic violence fatalities.

2.2.3 Methodology

To undertake the investigation, the Office:

- conducted a literature review;
- conducted consultation;
- collected and analysed information and data;
- developed a preliminary view and provided the preliminary view to relevant state government departments and authorities for their consideration and response; and
- developed a final view including findings and recommendations.

Literature review

The Office conducted a review of relevant state, national and international literature regarding family and domestic violence generally, as well as literature specific to both family and domestic violence fatalities and VROs. The information drawn from this review is referred to as **the research literature** throughout this report.

Consultation

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

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

The Office also consulted with courts, government and non-government organisations, including the following:

Courts

- Coroner's Court of Western Australia

Government

- Commissioner for Children and Young People
- Department of Aboriginal Affairs
- Department of Corrective Services
- Department of Local Government and Communities (Office of Multicultural Interests)
- Law Reform Commission of Western Australia
- Legal Aid Western Australia

Non-government

- Aboriginal Family Law Services
- Aboriginal Legal Service of Western Australia
- AnglicareWA
- Communicare Inc.
- Djinda Services
- Men's Advisory Network (MAN)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council Aboriginal Corporation
- Relationships Australia (WA)
- The Lucy Saw Centre Association Inc.
- The Patricia Giles Centre
- Women's Council for Domestic and Family Violence Services (WA)
- Women's Health and Family Services, including the Multicultural Women's Advocacy and Service
- Women's Law Centre of WA

Information collection and analysis

The Office examined 30 family and domestic violence fatalities notified to the Ombudsman in the investigation period (**the 30 fatalities**). For each of the 30 fatalities, the Office received information from state government departments and authorities, and from relevant courts. This information included:

- WAPOL's reports relating to all family and domestic violence incidents between the person who was killed and the suspected perpetrator (referred to as Domestic Violence Incident Reports or **DVIRs**);
- records regarding VROs and police orders issued to protect the person who was killed or the suspected perpetrator;
- records regarding VROs and police orders issued to restrain the person who was killed or the suspected perpetrator; and
- DCPFS records for children involved in, or present at, family and domestic violence incidents between the person who was killed and the suspected perpetrator.

In order to further examine the actions of state government departments and authorities, the Office also collected and analysed data from across Western Australia for the investigation period (**the state-wide data**). This data was provided by WAPOL, as well as the Magistrates Court and the Children's Court. The state-wide data was provided on a de-identified basis. The data related to:

- all family and domestic violence incidents attended by WAPOL;
- all applications for VROs lodged in the Magistrates Court and the Children's Court;
- all VROs issued by the Magistrates Court and the Children's Court;
- all VROs served by WAPOL; and
- all court hearings and outcomes for charges relating to breaches of VROs.

The Office analysed the information collected using qualitative and quantitative techniques. From this analysis, the Office developed draft findings and draft recommendations. The Office consulted relevant stakeholders regarding the results of this analysis as well as engaging people with expertise in the area of family and domestic violence in relation to our analysis, draft findings and draft recommendations.

Preliminary view

The Office provided relevant state government departments and authorities with the relevant parts of our draft findings and draft recommendations for their consideration and response.

Final view

Having considered the responses of state government departments and authorities, the Office prepared this final report of the investigation, including findings and recommendations, to be tabled in the Western Australian Parliament.

2.3 Terms used in this report

Throughout the investigation, including during consultation with stakeholders and the review of the research literature, the use of language has been raised as an important issue.

2.3.1 Family and domestic violence

Throughout this report, the Office uses the term 'family and domestic violence' to refer to the relationships and behaviours specified in the *Restraining Orders Act*. The definition of family and domestic violence is discussed in further detail at section 3.1 below.

Where the Office is specifically discussing family and domestic violence in relation to Aboriginal Western Australians, where appropriate, the Office has used the term 'family violence'. As part of this investigation, Aboriginal stakeholders have indicated to the Office that this is the preferred terminology, particularly as it recognises the importance of extended kinship and family networks to Aboriginal people. However, it is important to note

that ‘the use of this term [does] not obscure the fact that Aboriginal women and children bear the brunt of family violence’.⁹⁹

The Office recognises that the terms ‘family and domestic violence’ and ‘family violence’ can be ‘mutualising’,¹⁰⁰ that is, these terms could mean that everyone in a family, or a number of members of a family, were, or are, violent to each other. Where appropriate, the Office has included information about who perpetrated the violence, and who was the victim of the violence.

2.3.2 Victim and perpetrator

Throughout this report, the Office uses the terms ‘victim’ and ‘perpetrator’, which are commonly used in the research literature. These terms are also consistent with key national and state reports, for example the Council of Australian Government’s *National Plan to Reduce Violence against Women and their Children 2010 – 2022 (the National Plan)*¹⁰¹ and *Western Australia’s Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*.¹⁰²

2.3.3 Language and gender

The majority of the research literature and key national and state reports, including the National Plan,¹⁰³ are ‘often quite specific in their naming of family and domestic violence as primarily involving male perpetrators and female victims’.¹⁰⁴ However, ‘this is not intended to suggest that men are never victims or that women are never perpetrators’¹⁰⁵ of family and domestic violence.

⁹⁹ Department for Child Protection and Family Support, *Family and Domestic Violence Background Paper*, Government of Western Australia, Perth, 2012, p. 2.

¹⁰⁰ Coates, L and Wade, A, *National Crime Victims Awareness Week “Choose Your Words Carefully”*, Centre for Response-Based Practice Duncan B.C. Canada, PowerPoint presentation delivered in Ottawa, Canada, 19 April 2010.

¹⁰¹ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Australian Government, Canberra, February 2011, 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>>.

¹⁰² Department for Child Protection and Family Support, *Western Australia’s Family and Domestic Violence Prevention Strategy to 2022*, Department for Child Protection and Family Support, Perth, 2012.

¹⁰³ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Australian Government, Canberra, February 2011, 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>>.

¹⁰⁴ Australian Attorney-General’s Department, *AVERT Family Violence: Collaborative Responses in the Family Law System, Prevention Strategies: Involving and Engaging Perpetrators*, Commonwealth of Australia, Canberra, 2010, p. 5.

¹⁰⁵ Australian Attorney-General’s Department, *AVERT Family Violence: Collaborative Responses in the Family Law System, Prevention Strategies: Involving and Engaging Perpetrators*, Commonwealth of Australia, Canberra, 2010, p. 5.