

9 Taking action to protect victims of family and domestic violence

A victim's voice⁴⁰⁷

Nora was a victim of family and domestic violence, perpetrated by her ex-partner, Glen. Following an assault by Glen (for which he was subsequently convicted of Assault Occasioning Bodily Harm), Nora was hospitalised. Nora also experienced ongoing pain and trauma. Glen was imprisoned for this assault.

During his time in prison, Glen breached the VRO that Nora had obtained against him, making threats to kill Nora and her family. During this time, Nora received support from WAPOL, DOTAG's Family Violence Service, and non-government support organisations.

Shortly after his release from prison, Glen violently assaulted and killed his new partner (for which he was subsequently convicted). While WAPOL officers were attempting to locate and apprehend Glen, police officers took action to protect Nora. Triangulating Glen's phone signals, WAPOL identified that he had been in the vicinity of Nora's home. Urgently dispatching a police vehicle, police officers collected Nora from her home and made arrangements to keep her safe until Glen was apprehended.

Once Glen was apprehended, police officers identified that Nora's existing VRO against Glen would soon expire. Police officers, engaging with DOTAG's Family Violence Service, assisted Nora to apply for the existing VRO to be extended to a lifetime VRO on Nora's behalf, supplying all necessary information and evidence.

Nora expressed her sincere gratitude to police officers for their support. She said that the actions of police officers made her feel protected from Glen.

⁴⁰⁷ This case study is drawn from one of the 30 fatalities with information taken from WAPOL records (with names changed).

9.1 Police officers must apply for a violence restraining order, or issue a police order, after investigating reports of family and domestic violence (or provide a written reason for not doing so)

9.1.1 Legislative requirements

The *Restraining Orders Act* sets out requirements for police officers to take certain actions (including applying for a VRO) after investigating suspected family and domestic violence. Section 62C requires a police officer to take action as follows:

62C. Action to be taken by police officer after investigating suspected family and domestic violence

After an investigation referred to in section 62A, or after entering or searching premises under section 62B, a police officer is to make —

- (a) an application for a restraining order under section 18(1)(a) or 25(1)(b); or
- (b) a police order; or
- (c) a written record of the reasons why he or she did not take either of the actions set out in paragraph (a) or (b).

Section 62C was inserted into the *Restraining Orders Act* in 2004 by the *Acts Amendment (Domestic Violence) Bill 2004*. In the Second Reading Speech, the (then) Attorney General stated that ‘the Bill encourages our police, who are one of the community’s greatest resources in the fight against domestic violence, to get more involved, particularly in the restraining order proceedings.’⁴⁰⁸ In particular, the (then) Attorney General observed that:

Although the Bill only requires police to investigate an act of suspected domestic violence when that act is either a criminal offence or has put a person’s safety at risk, the Bill gives police stronger powers of investigation and entry and search, improves reporting procedures and protects them from liability in the event that an officer applies for a violence restraining order on behalf of a victim in good faith. Importantly, the Bill will also enable police attending violent domestic disputes to issue on-the-spot temporary restraining orders [police orders] to immediately remove violent offenders from the home for 24 hours. The victim’s consent is not required for this type of order. This is a practical action that will protect victims and hopefully interrupt the cycle of violence.⁴⁰⁹

⁴⁰⁸ The Hon. Mr J.A. McGinty MLA, Attorney General, Legislative Assembly, Parliamentary Debates (Hansard), 2 June 2004, pp. 3303c-3306a

⁴⁰⁹ The Hon. Mr J.A. McGinty MLA, Attorney General, Legislative Assembly, Parliamentary Debates (Hansard), 2 June 2004, pp. 3303c-3306a

9.1.2 Policy requirements

The COPS Manual specifies that police officers must:

Issue a Police Order or make application for a Restraining Order on behalf of the victim, or **if either action is not possible or appropriate** make a written record as to why an order or application was not made.⁴¹⁰ [Emphasis added]

The COPS Manual sets out the reasons for a police officer not to apply for a VRO or issue a police order as including:

- An arrest has been made; where bail has been refused or protective bail conditions have been put in place, and it is not considered that a restraining order is appropriate and/or the victim does not desire a VRO; or
- No criminal offence has been committed and the safety of involved persons is not at risk.⁴¹¹

The COPS Manual further identifies that, in relation to VROs:

Section 25(1)(b) of the *Restraining Order[s] Act 1997* allows a police officer to make an application for a Violence Restraining Order (VRO) on behalf of the person seeking to be protected ... If the member is satisfied, *an act of family and domestic violence has been committed or is likely to be committed which is a criminal offence or has put the safety of the person at risk, it will be incumbent on the member to make the Violence Restraining Order application.*⁴¹² [Original emphasis]

The COPS Manual also requires that in order to make an application for a VRO, police officers must have the consent of the victim.⁴¹³

9.1.3 Summary of actions taken by WAPOL in accordance with section 62C of the *Restraining Orders Act 1997*

The Office examined the 75 DVIRs to identify what actions were taken by WAPOL in accordance with section 62C of the *Restraining Orders Act*. The Office identified that four of the 75 DVIRs related to incidents prior to the 2004 inclusion of section 62C and were therefore excluded from the examination (Figure 25). The actions taken by WAPOL in response to the remaining incidents, and recorded in the remaining 71 DVIRs, are shown in Figure 25. Each of these actions are discussed in more detail in the following sections.

⁴¹⁰ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4., p. 9.

⁴¹¹ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4., pp. 22-23.

⁴¹² Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, RO- 1.0 Restraining Orders, p. 26.

⁴¹³ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, RO- 1.0 Restraining Orders, p. 26.

Figure 25: Actions taken under section 62C of the Restraining Orders Act

An application for a VRO was made	0
A police order was issued	22
No order was made and a written reason was provided	40
No order was made and no reason was recorded	9
DVIRs that were not applicable (pre-2004)	4
Total	75

Source: Ombudsman Western Australia

9.1.4 WAPOL did not make any applications for violence restraining orders on behalf of victims of family and domestic violence relating to the 30 fatalities

The Office's examination of the 75 DVIRs identified that there were no instances in which WAPOL applied for a VRO on behalf of the person who was killed or the suspected perpetrator, although on one occasion assistance was provided with a VRO application sought by one person who was killed.

This finding was consistent with the Office's analysis of the state-wide data which identified that, during the investigation period, 21,237 applications for VROs were made in Western Australia. Of these, 37 applications were recorded as being lodged by a police officer on behalf of the person seeking to be protected.

The Law Reform Commission Final Report also observed the 'somewhat surprising'⁴¹⁴ low number of applications made by police officers in 2012, noting that:

During consultations [WAPOL] explained that applications for violence restraining orders by police are infrequent due to resourcing constraints.⁴¹⁵

The Law Reform Commission Final Report concluded that 'police should make applications on behalf of victims of family and domestic violence in far greater numbers'⁴¹⁶ and accordingly recommended:

That the Western Australian government provide sufficient resources to the Western Australia Police to ensure that police officers are able to actively and regularly make applications for family and domestic violence protection orders on behalf of a person seeking to be protected.⁴¹⁷

⁴¹⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 90.

⁴¹⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 90.

⁴¹⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 91.

⁴¹⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 91.

The *20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report on Gender Bias* also recognised the critical role that WAPOL serve in making applications for VROs, observing that:

Anecdotally, women reporting ongoing threatening behaviour are told that there is little that ... [WAPOL] can do and to "get" a restraining order, with little guidance about how to apply for the order ... shifting the responsibility to the police for applications for restraining orders will help manage the conflict between the victim and perpetrator of the violence.⁴¹⁸

9.1.5 In 31 per cent of incidents relating to the 30 fatalities, a police order was issued

The Office's examination of the 71 applicable DVIRs identified that there were 22 instances (31 per cent) in which WAPOL issued a police order.

The Office also analysed the use of police orders in the 378 family and domestic violence incidents involving the person who was killed and/or the suspected perpetrator for the 30 fatalities. The Office identified that 69 police orders were issued to protect or restrain either the person who was killed, or the suspected perpetrator. Sixty-two of the 69 police orders (90 per cent) were issued to protect or restrain Aboriginal people.

Police orders are being increasingly used to protect victims of family and domestic violence, particularly Aboriginal people

The Office's analysis of published data indicates that during the investigation period police officers issued 26,023 police orders.⁴¹⁹ The number of police orders issued has increased dramatically in the last four years, from 10,312 in 2009-10 to 17,761 in 2013-14 (a 72.2 per cent increase).⁴²⁰ WAPOL's *Annual Report 2014* further observes that police orders are 'increasingly utilised by frontline officers to deal with domestic incidents.'⁴²¹

Data concerning the use of police orders and VROs by Aboriginal people in Western Australia indicates that Aboriginal victims are more likely to be protected by a police order than a VRO. This is particularly the case in the state's Kimberley region, where 40 per cent of the population is Aboriginal.⁴²² In the Kimberley region, the number of 72 hour police orders issued in 2012-13 increased by over six times from the 2011-12 period, from 299 to 1,856. This increase in police orders was not accompanied by a comparable increase in

⁴¹⁸ Woman Lawyers of Western Australia (Inc.), *20th Anniversary Review of the 1994 Chief Justice's Gender Bias Taskforce Report*, Women Lawyers of Western Australia, Perth 2014, p. 385, 391.

⁴¹⁹ Department for Child Protection and Family Support, *Family and Domestic Violence Response Team Evaluation Report: July – December 2013*, Department for Child Protection and Family Support, Perth Western Australia, July 2014, p. 14.

⁴²⁰ Western Australia Police, *Annual Report 2014*, Western Australia Police, Perth, 2014, p. 15.

⁴²¹ Western Australia Police, *Annual Report 2014*, Western Australia Police, Perth, 2014, p. 15.

⁴²² The 2011 census identified that 13,918 (40 per cent) of the Kimberley's 34,794 residents were Aboriginal. Australian Bureau of Statistics, *2011 Census QuickStats: Kimberley*, ABS, Canberra, 2013, viewed 12 February 2015,

<http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/50804?opendocument&navpos=220>.

applications for VROs, with an increase of only 10 per cent (from 303 to 333) in the same period.⁴²³

The Law Reform Commission considered in detail the possibility of a police order serving as an application for a VRO. The Law Reform Commission summarised its analysis as follows:

The potential benefits of enabling a police order to serve as an application for a family and domestic violence protection order include the reduction of trauma and stress for victims, and the more active involvement of police in assisting victims in their applications. However, potential disadvantages include that some victims may be discouraged from seeking police assistance, and police may be discouraged from making police orders because of the associated workload involved in lodging the order as an application. Clearly, in the absence of additional resources, police will not be in a position to progress an application for a family and domestic violence protection order on behalf of the victim.⁴²⁴

The Law Reform Commission went on to note that:

If such resources are provided, the Commission strongly suggests that consideration be given to providing in legislation that, with the consent of the victim, a police order can be filed at court as an initiating application by police for an interim family and domestic violence protection order.⁴²⁵

Given the potential disadvantages identified by the Law Reform Commission, and in the context of the widespread use of police orders in relation to Aboriginal people, it is particularly important that Aboriginal people are consulted as part of any such considered legislative change.

During the course of the investigation, DOTAG has informed the Office that the State Government is currently considering its response to the Law Reform Commission Final Report. DOTAG further informed the Office that:

A detailed Drafting Options Paper (Family Violence Restraining Orders-Drafting Options Paper) is currently out with key State Government and community sector family violence response stakeholders for comment. This is a targeted consultation process on foundation aspects of the FVROs themselves (there will be other aspects included in the Bill, and further consultation will occur on these as required).⁴²⁶

⁴²³ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2013, pp. 27-29.

⁴²⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 85.

⁴²⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 86.

⁴²⁶ Department of the Attorney General, personal communication, 20 October 2015.

Taking into account the findings of this investigation, it is recommended that, as part of this consideration, DOTAG involve Aboriginal people in a full and active way and seek to have the process of consideration comprehensively informed by Aboriginal culture.

Recommendation 15

In considering whether legislation should provide that, with the consent of the victim, a police order can be filed at court as an initiating application by police for an interim family and domestic violence protection order, DOTAG should involve Aboriginal people in a full and active way at each stage and level of the process, and should seek to have the process of consideration comprehensively informed by Aboriginal culture.

Recommendation 16

DCPFS considers the findings of the Ombudsman's investigation regarding the link between the use of police orders and violence restraining orders by Aboriginal people in developing and implementing the Aboriginal family violence strategy referred to at Recommendation 4.

9.1.6 In 56 per cent of incidents relating to the 30 fatalities, no order was made or sought and a written reason was provided

As identified at section 9.1.3 above, the Office found that for the majority of the 71 applicable DVIRs (40 DVIRs, or 56 per cent) no order was made or sought and a written reason was provided instead. The Office examined these 40 DVIRs in further detail. The Office separately examined the written reasons recorded on DVIRs when the suspected perpetrator was arrested, as shown in Figure 26 below. The Office found that the most common written reason recorded was 'no consent and no safety concerns of involved persons' (13 occasions, 33 per cent). This is discussed in further detail below.

Figure 26: Reasons recorded on 40 DVIRs when a VRO was not applied for and a police order was not issued

Offender arrested	
Other	5
No consent and no safety concerns of involved persons	4
Offender arrested	4
Reference to bail conditions	5 ⁴²⁷
Victim did not want a VRO	1
A VRO is being sought by Police	1
Not applicable	1
Offender not arrested	
No consent and no safety concerns of involved persons	9
Other	5
No offence or nil offences	2
Order sought by victim	1
It was impractical to serve a police order at the scene due to concerns for officer and victim safety	1
Not proceeded with	1
Total	40

Source: Ombudsman Western Australia

In 77 per cent of instances where ‘no consent and no safety concerns’ was recorded, this was inconsistent with other information recorded at the scene

As identified in Figure 26, in 13 of the 75 DVIRs, the DVIR recorded ‘no consent and no safety concerns of involved persons’ as the reason for not making or seeking a VRO or police order. The Office identified that in 10 of these 13 instances (77 per cent) this written reason did not align with the narrative of events recorded elsewhere in the DVIR. In particular, the Office observed instances where no safety concerns were identified even though the DVIR recorded that:

- the victim described offences in their initial contact with WAPOL, including alleged physical violence (four instances);
- the victim was conveyed to hospital due to injuries resulting from the incident (three instances);
- the perpetrator had threatened to kill the victim (two instances); and
- the case was subject to WAPOL’s internal case management strategy for recidivist cases (one instance).

In two of the 10 instances listed above, the suspected perpetrator was arrested. In four of the 10 instances, the perpetrator had not been located by WAPOL.

⁴²⁷ Protective bail four instances and general bail conditions one instance.

In summary, the Office identified inconsistencies between section 62C of the *Restraining Orders Act* and WAPOL's administration of section 62C as set out in the COPS Manual. There were also gaps between the requirements set out in the COPS Manual and WAPOL's practice.

Recommendation 17

Taking into account the findings of this investigation, WAPOL reviews the *Commissioner's Operations and Procedures Manual* to ensure its consistency with section 62C of the *Restraining Orders Act 1997*.

Recommendation 18

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

Recommendation 19

WAPOL ensures that where an application for a violence restraining order has not been made, or a police order has not been issued, written records of the reasons why are recorded on each occasion.

Recommendation 20

WAPOL ensures that if 'no consent and no safety concerns of involved persons' is recorded as a reason for not making an application for a violence restraining order or making a police order, this is consistent with other information recorded in the associated Domestic Violence Incident Report.

9.2 WAPOL's policy provides that, instead of seeking a violence restraining order or issuing a police order, police officers can record that protective bail conditions are in place

9.2.1 Legislative requirements

Under Schedule 1, Part D, Clause 2 (2) of *the Bail Act 1982*, a judicial officer or authorised officer may impose bail conditions on an accused person. Bail conditions specified at clause 2(c) or (d), are for the purposes of ensuring that an accused does not endanger the safety, welfare or property of any person; or does not interfere with witnesses or otherwise obstruct the course of justice. These conditions are referred to as 'protective bail conditions'.

In the context of family and domestic violence, protective bail conditions are typically used to prohibit the perpetrator from contacting or approaching the victim and, similarly to VROs, often provide that:

... the accused is not to have any contact whatsoever with the victim of the offence ... not to approach the victim within a specified distance or not to remain on or attend at specified premises ... In addition, protective bail conditions may include a non-molestation condition; that is, that the accused is

not to behave in an offensive, intimidatory or emotionally abusive manner towards the victim of the offence.⁴²⁸

Schedule 1, Part D, Clause 2(2a) of the *Bail Act 1982* also requires that, before imposing protective bail conditions upon a perpetrator, a 'judicial officer or police officer is ... to consider whether that purpose would be better served, or could be better assisted, by a restraining order made under the *Restraining Orders Act 1997*.'⁴²⁹ This can occur pursuant to section 63 of the *Restraining Orders Act*, 'which enables a court exercising criminal jurisdiction to make a restraining order against a person who has been charged with an offence.'⁴³⁰ Of particular note, a 'restraining order can be made under this provision on the initiative of the court or at the request of a party to the proceedings'.⁴³¹

9.2.2 Policy requirements

As noted at section 9.1.2, the COPS Manual specifies that police officers investigating reported acts of family and domestic violence may record that they did not issue a police order or apply for a VRO in the civil court because 'an arrest has been made; bail has been refused or protective bail conditions are in place'.⁴³² This approach acknowledges that duplication of family and domestic violence respective criminal and civil proceedings may:

...result in re-traumatisation for victims who are required to repeat their accounts of violence; additional stress and time spent in court; impact the resources of the court, lawyers and other agencies; and delays caused by the adjournment of one legal proceeding to await the outcome of the other.⁴³³

However, as noted above, section 63 of the *Restraining Orders Act* provides that a restraining order can be made in a criminal court at the request of a party to the proceedings.⁴³⁴ This could include at the request of police prosecutors. The COPS Manual sets out the requirements of WAPOL's 'Prosecution Division' as including:

In all family and domestic violence related crimes (where there is a plea of guilty or offender is found guilty) make application to the court for a restraining order to be approved in the process.⁴³⁵

⁴²⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴²⁹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴³⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³² Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.

⁴³³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 146.

⁴³⁵ Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.2.1.

9.2.3 In four incidents relating to the 30 fatalities, the DVIR recorded the existence of protective bail conditions and a violence restraining order was not sought

The Office examined the 75 DVIRs to determine whether the existence of protective bail conditions was identified as a reason for not seeking or making an order. The Office identified that, of the 21 incidents where an offender was arrested, protective bail conditions were recorded as a written reason for not applying for a VRO or issuing a police order in four instances. However, in these four instances the DVIR recorded the following information:

- 'victim and mother advised to obtain a VRO';
- '[the suspected perpetrator] had entered into a bail undertaking to appear in court [earlier that day] ... Protective conditions included not to contact or attempt to contact [the victim],' and the incident was a breach of those conditions;
- 'DV and VRO advice given'; and
- 'VRO advice given, non-compliant'.

In a further instance, the written reason for not making an application for a VRO (or issuing a police order) was recorded on the DVIR as 'no consent and no safety concerns of involved persons'. On this occasion the suspected perpetrator was recorded as in the act of breaching their protective bail conditions at the time of the incident, and 'savagely beat'⁴³⁶ the victim. It was recorded elsewhere on the DVIR 'order considered, however pre-existing bail conditions exist'. The Office notes that the suspected perpetrator was arrested for these offences and was sentenced to a term of imprisonment.

9.2.4 Protective bail conditions do not always provide the same level of protection as a violence restraining order

Despite the similarities between protective bail conditions and VRO conditions, both the Law Reform Commission and the Australian Law Reform Commission have identified that protective bail conditions might not provide the same level of protection as a VRO.⁴³⁷ For example, the Australian Law Reform Commission has observed that protective bail conditions do not serve the same purpose as a protection order, and might not protect a victim adequately.⁴³⁸

⁴³⁶ Western Australia Police, Domestic Violence Incident Report (unpublished).

⁴³⁷ Law Reform Commission of Western Australia, *Court Intervention Programs: Final Report Project No 96*, Law Reform Commission of Western Australia, Perth, 2009, p. 97; Australian Law Reform Commission, *Family Violence - A National Legal Response*, Commonwealth of Australia, Sydney, 2010, viewed 12 January 2015, <<http://www.alrc.gov.au/publications/10.%20Bail%20and%20Family%20Violence/protection-through-bail-conditions-or-protection-order>>.

⁴³⁸ Australian Law Reform Commission, *Family Violence - A National Legal Response*, Commonwealth of Australia, Sydney, 2010, viewed 12 January 2015, <<http://www.alrc.gov.au/publications/10.%20Bail%20and%20Family%20Violence/protection-through-bail-conditions-or-protection-order>>.

Reviews of the *Restraining Order Act 1997* have expressed the view that:

Ideally, when a matter comes before the court on a first appearance, where it is a criminal offence relating to a domestic violence incident, then the court ought to be in a position to issue an interim violence restraining order on the basis of material facts presented to it by the prosecutor, in the same way that courts may make a determination that an accused should be refused bail or subjected to protective bail conditions which impose restraints of the same kind as may be imposed by a violence restraining order.⁴³⁹

However, the Law Reform Commission has identified that, in Western Australia, there has been an ‘underutilisation’⁴⁴⁰ of the courts’ discretion to grant a VRO under section 63 of the *Restraining Orders Act 1997* in relation to criminal charges for family and domestic violence offences, with ‘the total number of violence restraining orders made under section 63 of the *Restraining Orders Act* by the lower courts remain[ing] small (48 orders in 2010; 31 in 2011; and 21 orders in 2012).’⁴⁴¹

The Law Reform Commission Final Report determined that the ‘making of a violence restraining order should ideally be considered as a possible additional option to protective bail conditions’.⁴⁴² Accordingly, the Law Reform Commission Final Report recommended the following legislative changes, noting that ‘there should be a mandatory requirement for the court to consider whether an interim order should be made; however, the court must continue to be satisfied that the grounds for making an order have been established’.⁴⁴³

Making of interim and final family and domestic violence protection orders during criminal proceedings

In addition to s 63A of the *Restraining Orders Act 1997* (WA) as amended by [previous recommendation], the new Family and Domestic Violence Protection Order Act provide that:

1. If a person is charged with a specified offence, the court must consider whether it is appropriate to make an interim family and domestic violence protection order against the accused and for the protection of the alleged victim until such time as the charge is determined.

(a) The court may make an interim family and domestic violence protection order under 1 above:

⁴³⁹ Government of Western Australia, Department of the Attorney General, *A Review of Part 2 Division 3A of the Restraining Orders Act 1997*, Perth, 2008, p. 36; Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 147

⁴⁴⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴⁴¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴⁴² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 134.

⁴⁴³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 150.

- (i) if it is satisfied that there are grounds for making a family and domestic violence protection order ... ;
 - (ii) if it has considered the factors that are relevant ... ; and
 - (iii) the person who would be bound by the order and the person who would be protected by the order have been given a reasonable opportunity to be heard.
- (b) The court is not to make an interim family and domestic violence protection order if the person who would be protected by the order objects to it being made.
- ...

The Office's findings above support the proposals for legislative reform contained within the Law Reform Commission Final Report.

9.3 Responding positively and consistently to reports of family and domestic violence is likely to require more time than responding to other incidents

Police responses to family and domestic violence are different from the responses required for other incidents. A focus of the response to these other incidents is on timeliness. This focus on timeliness is reflected in WAPOL's Key Performance Indicator (**KPI**) for Effectiveness, 'average time to respond'.

When responding to incidents of family and domestic violence, however, attending police officers must achieve a number of critical tasks, in addition to ensuring the immediate safety of victims and their children, including:

- providing victims with advice and assistance to enhance their ongoing safety, for example advice regarding VROs;
- encouraging victims and perpetrators to consent to be contacted by support services;
- making an application for a VRO on a victim's behalf, or issuing a police order; and
- collecting evidence in support of criminal charges to hold perpetrators to account (where an offence has been committed, discussed in detail in Chapter 13).

To successfully complete these tasks, police officers may need to spend a lengthy period of time at the scene. This need has been suggested by WAPOL to be a contributor to not achieving KPI targets for time taken to respond:

The target for the average time taken to respond to priority 3 calls for police assistance in the metropolitan area was not achieved. This was due to a number of factors, including ... [a]n increase in the average time at scene mainly in the key risk situations of domestic violence incidents and persons at-risk.⁴⁴⁴

⁴⁴⁴ Western Australia Police, *Annual Report 2013: Make Every Contact Count*, Western Australia Police, Perth, 2013, p. 15.

In addition, WAPOL has suggested that, throughout regional and remote Western Australia, 'police are required to provide general and specialist services to regional and remote Aboriginal communities.'⁴⁴⁵ In this regard, WAPOL has observed that:

The number of people within these communities fluctuate and police are required to manage social problems such as alcohol, drug and substance abuse, family and domestic violence, youth at-risk and sexual abuse. These communities are placing an increased demand on police resources and require a unique style of policing with consideration of cultural practices.⁴⁴⁶

Recommendation 21

WAPOL considers establishing a Key Performance Indicator that relates to the quality of service as well as the timeliness of responding to family and domestic violence incidents to ensure a balanced approach is achieved.

The Office notes that on 22 October 2015, the Community Development and Justice Standing Committee tabled a report arising from its Inquiry into the methods employed by WA Police to evaluate performance. The report, *A measure of trust: How WA Police evaluates the effectiveness of its response to family and domestic violence*, makes 21 findings and eight recommendations including (at Recommendation 8) that WAPOL introduces 'formal performance measures related to its response to family and domestic violence...'.⁴⁴⁷

WAPOL is currently implementing Frontline 2020. Frontline 2020 has created 'Response Teams' and 'Local Police Teams'. WAPOL identifies that Response Teams are 'mobile officers who respond to priority calls for assistance and initial investigation ... dealing with priority tasks needing immediate response'.⁴⁴⁸ As a result, WAPOL anticipates that 'Local Police Teams are then freed up to pay longer and more consistent attention to local problems in their suburbs, particularly ongoing problems, which they otherwise would not be able to attend to'.⁴⁴⁹

WAPOL indicates that Response Teams will provide an initial response to reported acts of family and domestic violence.⁴⁵⁰ It is important that Response Teams will have an appropriate opportunity to continue the current provision, by police officers, of critical initial response and support to victims of family and domestic violence for the reasons identified at section 8.1 above.

⁴⁴⁵ Western Australia Police, *Annual Report 2013: Make Every Contact Count*, Western Australia Police, Perth, 2013, p. 28.

⁴⁴⁶ Western Australia Police, *Annual Report 2013: Make Every Contact Count*, Western Australia Police, Perth, 2013, p. 29.

⁴⁴⁷ Community Development and Justice Standing Committee, *A measure of trust: How WA Police evaluates the effectiveness of its response to family and domestic violence*, Legislative Assembly, Parliament of Western Australia, Report No.10, October 2015, p.xvi.

⁴⁴⁸ Western Australia Police, Improved Response, Investigation and Control, viewed 12 February 2015, <<http://frontline2020.police.wa.gov.au/Improved-Response>>.

⁴⁴⁹ Western Australia Police, Improved Response, Investigation and Control, viewed 12 February 2015, <<http://frontline2020.police.wa.gov.au/Improved-Response>>.

⁴⁵⁰ Western Australia Police, Improved Response, Investigation and Control, viewed 12 February 2015, <<http://frontline2020.police.wa.gov.au/Improved-Response>>.

Recommendation 22

As part of the implementation of Frontline 2020, WAPOL ensures that the creation of Response Teams continues to provide an appropriate opportunity for frontline police officers to provide critical initial response and support to victims.