

Part 1: Family and domestic violence in Western Australia

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3 Understanding family and domestic violence

3.1 Definition of family and domestic violence

The Australian Bureau of Statistics has identified that there is 'no single nationally or internationally agreed definition'¹⁰⁶ of family and domestic violence and that 'different definitions may be specified in legislation or be required in different contexts and jurisdictions'.¹⁰⁷ Generally speaking, family and domestic violence occurs:

... when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other ... domestic violence can be exhibited in many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence.¹⁰⁸

For the purposes of this investigation, in using the term 'family and domestic violence', the Office refers to the relationships and behaviours specified in the *Restraining Orders Act*. Section 4(1) of the *Restraining Orders Act* defines 'family and domestic relationship' as 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; or
- (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(2) of the *Restraining Orders Act* further provides that:

- (2) In subsection (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

¹⁰⁶ Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

¹⁰⁷ Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

¹⁰⁸ Dr Kerry Carrington and Janet Phillips, *Domestic Violence in Australia an Overview of the Issues*, eBrief, Parliament of Australia, Canberra, 7 August 2003, viewed 25 February 2014, <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/Domviolence>, p. 1.

- (b) is related to the person's —
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.

An act of family and domestic violence means one of the acts set out in section 6(1) of the *Restraining Orders Act* that a person 'commits against another person with whom he or she is in a family and domestic relationship'. Section 6(1) lists the following as acts of family and domestic violence:

- (a) assaulting or causing personal injury to the person;
- (b) kidnapping or depriving the person of his or her liberty;
- (c) damaging the person's property, including the injury or death of an animal that is the person's property;
- (d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;
- (e) pursuing the person or a third person, or causing the person or a third person to be pursued —
 - (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
- (f) threatening to commit any act described in paragraphs (a) to (c) against the person.

3.2 Victims of family and domestic violence will resist violence and try to protect themselves

The research literature consistently identifies that victims of family and domestic violence will resist violence perpetrated against them and try to protect themselves and their children, and/or seek help.¹⁰⁹ The research literature further suggests that victims will consider and use a wide array of strategies. On this point, the research literature observes that victims:

...often use very creative methods to avoid and deescalate their partner's abusive behaviour. Some of these are successful and others are not. Victims develop their own unique set of protective strategies based on their past experience of what is effective at keeping them emotionally and physically protected from their partner's violence. In deciding which survival mechanism to use, victims engage in a methodical problem-solving process that involves analysing: available and realistic safety options; the level of danger created by the abuser's violence; and the prior effectiveness and consequences of previously used strategies. After careful consideration, victims of domestic violence decide whether to use, adapt, replace, or discard certain approaches given the risks they believe it will pose to them and their children.¹¹⁰

¹⁰⁹ For example, Wilson, D, Smith, R, Tolmie, J and de Haan, I, *Becoming Better Helpers: rethinking language to move beyond simplistic responses to women experiencing intimate partner violence*, Institute for Governance and Policy Studies, Victoria University of Wellington, New Zealand, February 2015; Burstow, B, *Radical Feminist Therapy*, Sage Publications, Newbury Park, California, 1992; Kelly, L, *Surviving Sexual Violence*, University of Minnesota Press, Minneapolis, 1988.

¹¹⁰ Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 28.

How victims respond to, and resist, family and domestic violence depends on the dangers and opportunities of their specific circumstances. Victims may resist violence utilising both covert and overt strategies.¹¹¹

Overt strategies used by victims to resist violence and protect themselves include:

- ‘openly challeng[ing] [the perpetrator’s] behavio[u]r’;¹¹²
- ‘accessing formal and/or informal help ... [t]hese are [overt] resistance strategies because the [victim] goes outside the relationship to assert her refusal to accept her [perpetrator’s] behavio[u]r’;¹¹³ and/or
- separating from the perpetrator, which can involve ‘a range of autonomous behavio[u]rs that directly challenge her partner’s control. Some of these behavio[u]rs include finding a home, getting a job, filing for custody of the children or obtaining a restraining order against [the perpetrator].’¹¹⁴

Conversely, some victims resist covertly.¹¹⁵ Covert resistance strategies used by victims can include ‘storing away personal objects or thinking about something else during an abusive incident, [these] are examples of a covert action that occurs without the [perpetrator] knowing about it’.¹¹⁶

On the use of covert strategies, the research literature observes that:

Victims are acutely aware that any defiant acts will be matched by an increase in the perpetrator’s violence ... [t]herefore, their actions are usually covert and unsuccessful in stopping the violence inflicted upon them ... agency and service records serve as a testament that victims’ acts of resistance are generally overlooked and unrecognised.¹¹⁷

¹¹¹ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹² Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹³ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹⁴ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 5.

¹¹⁵ For example, Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice, Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012; Brewin, C. R., Andrews, B, Rose, S, ‘Gender, Social Support, and PTSD in Victims of Violent Crime’, *Journal of Traumatic Stress*, vol. 16, no. 4, 2003, pp. 421-427; Brewin, C, Reynolds, M, ‘Intrusive cognitions, coping strategies and emotional responses in depression, post-traumatic stress disorder and a non-clinical population’, *Journal of Behaviour Research and Therapy*, vol. 36, no. 2, Feb 1998, pp. 135-147; Kessler, R, C, Price, R, H, Wortman, C, B, ‘Social factors in psychopathology: stress, social support, and coping processes’, *Annual Review of Psychology*, vol. 36, 1985, pp. 531-572, Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 25.

¹¹⁶ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹⁷ Wilson, D, Smith, R, Tolmie, J and de Haan, I, *Becoming Better Helpers rethinking language to move beyond simplistic responses to women experiencing intimate partner violence*, Institute for Governance and Policy Studies, Victoria University of Wellington, New Zealand, February 2015, pp. 27-28.

The research literature further suggests that some strategies used by victims may create the perception that the victim is also a perpetrator of violence, or not responding in a way that may align with expectations, for example:

- Fighting back or defying the [perpetrator]; ...
- Using or abusing substances as an “escape” or to numb physical pain.¹¹⁸

The research literature observes that:

Although these protective strategies act as coping and survival mechanisms for victims, they are frequently misinterpreted by laypersons and professionals who view the victim’s behavio[u]r as uncooperative, ineffective, or neglectful.¹¹⁹

3.3 Victims of family and domestic violence may seek help to resist the violence and protect themselves

In addition to the strategies discussed above, victims of family and domestic violence may disclose the violence to others in order to obtain support, advice, or assistance.¹²⁰ The research literature refers to such strategies as ‘help seeking behaviour’.¹²¹

The research literature divides help-seeking behaviour into two broad categories, informal and formal.¹²² Victims of family and domestic violence may seek help informally from people within their ‘social network including family, friends, neighbours or colleagues.’¹²³ Formal sources of help include institutions such as police and ‘professional services such as counsellors or crisis accommodation.’¹²⁴

The research literature consistently identifies that victims of family and domestic violence seek help informally from family and friends prior to seeking help formally. On this point, the research literature identifies that:

¹¹⁸Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 28.

¹¹⁹Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 29.

¹²⁰Gourash, 1978, quoted by Lumby, B and Farrelly T, ‘Family Violence, Help-Seeking and the Close-Knit Aboriginal Community: Lessons from Mainstream Service Provision,’ *Australian Family and Domestic Violence Clearinghouse*, Sydney, p. 1.

¹²¹In using the term help-seeking behaviour, research literature supports the view that victims engage in self-help by resisting violence and seeking safety and dignity prior to disclosing violence, and recognises that help-seeking does not necessarily first occur when a victim contacts authorities.

¹²²Richards, K and Lyneham, S, ‘Help-seeking strategies of victim/survivors of human trafficking involving partner migration,’ *Australian Institute of Criminology*, Canberra, 2014, viewed 30 May 2014, <<http://aic.gov.au/publications/current%20series/tandi/461-480/tandi468.html>>, p. 2.

¹²³Meyer, S, ‘Responding to intimate partner violence victimisation: Effective options for help-seeking,’ *Australian Institute of Criminology*, Trends and Issues: No. 389, Canberra, 2010, p. 1.

¹²⁴Richards, K and Lyneham, S, ‘Help-seeking strategies of victim/survivors of human trafficking involving partner migration,’ *Australian Institute of Criminology*, Canberra, 2014, viewed 30 May 2014, <<http://aic.gov.au/publications/current%20series/tandi/461-480/tandi468.html>>, p. 2.

Studies show that abused women turn first to those closest to them—extended family, friends, and neighbours—before they reach out to an organization or professional service provider. Relatively few access shelter services. And they seek out government institutions—police, courts, and child protection agencies—last.¹²⁵

Positive reactions to informal help-seeking have been found to encourage help-seeking from formal sources.¹²⁶

With respect to formal help-seeking, most recently, DCPFS identified that fewer than 25 per cent of women experiencing family and domestic violence contacted police or a specialist service.¹²⁷ Other Western Australian research literature further identifies that ‘of those women who experienced violence from their partner in the last 20 years, 80 per cent had not sought help from services at all. Only five per cent experiencing violence from a current partner reported the last incident to police.’¹²⁸ Research undertaken in New South Wales with victims of family and domestic violence who had already sought help from domestic violence services examined the reporting of violence to police. This research identified that, of the 300 victims interviewed, approximately half reported the most recent incident to police.¹²⁹ Of those victims who did not report the most recent incident of violence:

[T]he most commonly cited reasons were fear of revenge or further violence from the offender (13.9%), feelings of shame or embarrassment (11.8%), and a belief that the incident was too trivial or unimportant (11.8%). One in 10 (10.4%) respondents, however, stated that they had not reported the incident because they had previously had a bad or disappointing experience with the police. A further 7.6 per cent had not reported the matter because they thought the police would be unwilling to do anything about the violence.¹³⁰

¹²⁵Family Violence Prevention Fund, *Family Violence: Community Engagement Makes the Difference*, Family Violence Prevention Fund, San Francisco, 2002, p. 2.

¹²⁶Meyer, S, ‘Responding to intimate partner violence victimisation: Effective options for help-seeking,’ *Australian Institute of Criminology*, Trends and Issues: No. 389, Canberra, 2010, p. 1.

¹²⁷Department for Child Protection and Family Support, *Family and Domestic Violence Response Team Evaluation Report: July – December 2013*, Government of Western Australia, Perth, 2014, cover page.

¹²⁸Gordon, 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. 46.

¹²⁹Birdsey, E and Snowball, L, ‘Reporting violence to police: a survey of victims attending domestic violence services,’ *New South Wales Bureau of Crime Statistics and Research*, Crime and Justice Statistics, Issue Paper No. 91, October 2013, p. 1.

¹³⁰Birdsey, E and Snowball, L, ‘Reporting violence to police: a survey of victims attending domestic violence services,’ *New South Wales Bureau of Crime Statistics and Research*, Crime and Justice Statistics, Issue Paper No. 91, October 2013, pp. 5-6.

3.4 Perpetrators of family and domestic violence make a decision to behave violently towards their victims

The research literature consistently recognises that perpetrators of family and domestic violence choose ‘when, where and how they use violence.’¹³¹ Examples include:

- only hitting their partner in places where bruises won’t show;
- pausing in a tirade of verbal abuse to answer the door or the phone, and resuming it after the interruption;
- destroying items that have particular significance to their partner;
- imposing conditions on attendance at a social event, such as their partner not talking to other men; and
- whispering threats, rather than issuing them aloud where people outside the family might hear them.¹³²

The quote below, from a perpetrator interviewed in Victoria, illustrates the ability of perpetrators to be deliberate in their use of violence:

If someone knocked on the door when I was arguing with my wife, I could stop mid-sentence – I would instantly become MISTER NICE GUY. The second they left it was like turning a tape recorder back on – I could start EXACTLY where I left off.¹³³

Perpetrators will also anticipate, and work to overcome, a victim’s resistance in order to maintain power and control, for example, by threatening to kill the victim, or harm their children, if the police are contacted.¹³⁴

3.5 Perpetrators use family and domestic violence to exercise power and control over victims

The National Plan notes that:

While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics **to exercise power and**

¹³¹ Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹³² Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹³³ “George” in Victorian Health Promotion Foundation, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Victoria, 2010, p. 22.

¹³⁴ Domestic Violence Research Centre Victoria, *For families, friends & neighbours*, Domestic Violence Research Centre Victoria, Victoria, <<http://www.dvrcv.org.au/help-advice/guide-for-families-friends-and-neighbours>>; Domestic Abuse Intervention Project, *Power And Control Wheel*, Domestic Abuse Intervention Project, viewed 8 June 2015, <<http://www.theduluthmodel.org/pdf/PowerandControl.pdf>>.

control over women and their children, and can be both criminal and non-criminal.¹³⁵ [Emphasis added]

The Law Reform Commission of Western Australia (**the Law Reform Commission**) recently reviewed the definition of family and domestic violence contained in the *Restraining Orders Act* as part of a larger review 'to examine and report on laws concerning family and domestic violence.'¹³⁶ The Law Reform Commission expressed the view that 'the current definition of an act of family and domestic violence does not refer to common features of family and domestic violence, such as the presence of coercion and control.'¹³⁷ The Law Reform Commission also recommended that the definition of family and domestic violence in its proposed *Family and Domestic Violence Protection Order Act* expand the current definition of 'an act of family and domestic violence' in the *Restraining Orders Act* to recognise:

1. That **family and domestic violence** means any of the following conduct committed by a person (the first person) towards another person (the second person) with whom he or she is in a family and domestic relationship:
 - (a) physical or sexual abuse;
 - (b) damaging the second person's property, including injuring or causing the death of an animal;
 - (c) pursuing the second person or another person, or causing the second person or another person to be pursued –
 - (i) with intent to intimidate the second person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the second person;
 - (d) behaving in a manner that:
 - (iii) intimidates, coerces or controls the second person or is likely to intimidate, coerce or control a person in the second person's circumstances; and
 - (iv) adversely affects the safety or wellbeing of the second person or is likely to cause a person in the second person's circumstances to reasonably apprehend that his or her safety or wellbeing, or the safety and wellbeing of another person, will be adversely affected; or
 - (e) if the second person is a child, committing family and domestic violence against another person to which the child is exposed; or
 - (f) threatening to engage in any behaviour that is included in (a) to (e) above, or causing a third person to engage in behaviour that is included in (a) to (e) above.¹³⁸

¹³⁵ 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>>.

¹³⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 3.

¹³⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 40.

¹³⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, pp. 50-51.

3.6 Perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others

The research literature suggests that perpetrators of family and domestic violence will take steps to avoid being held accountable for their behaviour, including that perpetrators will attribute their behaviour to having “lost it,” “lost control”, or “just snapped”.¹³⁹ The research literature identifies, however, that violence is not the same as anger, and ‘while anger is an emotion, violence is a behaviour’.¹⁴⁰ A decision is made to perpetrate violence, and ‘most men who are violent towards their partners do not usually display similarly violent or abusive behaviour towards others.’¹⁴¹

The research literature also identifies that perpetrators may present the violence as mutual or joint, both to avoid responsibility and to shift responsibility to the victim. For example, describing violence as an “argument” or “retaliation”.¹⁴² Other attempts to minimise responsibility include “I was drunk”/“I was using drugs.”¹⁴³

However, as noted above, the research literature suggests that ‘few who use family and domestic violence are indiscriminately violent or controlling’¹⁴⁴ and, in reality, despite attempts to justify, mutualise, excuse, contextualise or lessen family and domestic violence by perpetrators, the violence is unilateral, and solely the responsibility of the perpetrator.¹⁴⁵

¹³⁹ Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹⁴⁰ Danny Blay, Manager, No to Violence Male Family Violence Prevention cited in: *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Victoria, 2010, p. 24.

¹⁴¹ Danny Blay, Manager, No to Violence Male Family Violence Prevention cited in: *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Victoria, 2010, p. 24.

¹⁴² 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. 11.

¹⁴³ Robinson, K, “Blame Shifting and Minimising: There’s no Excuse for Abuse,” The National Domestic Violence Hotline (US), 2013, viewed 27 August 2014 from <<http://www.thehotline.org/2014/01/blame-shifting-and-minimizing-theres-no-excuse-for-abuse/>>.

¹⁴⁴ Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹⁴⁵ Coates, L and Wade, A, “Telling it like it isn’t: obscuring perpetrator responsibility for violent behaviour,” *Discourse and Society*, Sage Publications, London, 2004, p. 5.

4 Family and domestic violence in Western Australia

4.1 Prevalence and incidence of family and domestic violence in Western Australia

4.1.1 Data sources

There are two primary sources of data for the prevalence and incidence¹⁴⁶ of family and domestic violence: population surveys and agency statistics.¹⁴⁷ Both have limitations. Population surveys rely on the disclosure, at the time of the survey, of violence,¹⁴⁸ while agency statistics reflect reporting of violence to the agency. Accordingly, neither source necessarily reflects the actual number of victims experiencing violence.¹⁴⁹

For these reasons, the research literature suggests the true prevalence and incidence of family and domestic violence is likely to be much higher than data sources suggest.¹⁵⁰

4.1.2 Population survey data

In relation to the prevalence of family and domestic violence, the most recent Australian Bureau of Statistics Personal Safety Survey (**Personal Safety Survey**) found that '[w]omen were more likely than men to experience violence by a partner.'¹⁵¹ In 2012, in Western Australia, an estimated 16.6 per cent of all women aged 18 years and over and 6.2 per cent¹⁵² of all men aged 18 years and over had experienced violence by a partner since the age of 15 years.¹⁵³

¹⁴⁶ Prevalence refers to the total number of people in the population who have ever been affected by family and domestic violence. Incidence refers to the number of people in the population who have been affected by family and domestic violence in the past 12 months.

¹⁴⁷ Chung, D, *Understanding the Statistics About Male Violence Against Women*, White Ribbon Australia, North Sydney, New South Wales, May 2013, p. 4.

¹⁴⁸ Chung, D, *Understanding the Statistics About Male Violence Against Women*, White Ribbon Australia, North Sydney, New South Wales, May 2013, p. 5.

¹⁴⁹ Chung, D, *Understanding the Statistics About Male Violence Against Women*, White Ribbon Australia, North Sydney, New South Wales, May 2013, p. 4.

¹⁵⁰ Marcus and Braaf, 2007, as cited in Urbis Pty Ltd for the Select Council on Women's Issues, *Literature Review on Domestic Violence Perpetrators*, Urbis Pty Ltd, NSW, September 2013, p. 4, viewed 22 January 2014, p. 4,

<<http://www.dpmmc.gov.au/women/publications-articles/safety-women/literature-review-perpetrators.cfm>>;

Chung, D, *Understanding the Statistics About Male Violence Against Women*, White Ribbon Australia, North Sydney, New South Wales, May 2013, p. 4; Department for Child Protection and Family Support, *Family and Domestic Violence Response Team Evaluation Report: July – December 2013*, Government of Western Australia, Perth, 2014, cover page.

¹⁵¹ Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, cat. no. 4906.0, ABS, Canberra, December 2013.

¹⁵² The Australian Bureau of Statistics notes that this estimate has a relative standard error of between 25 per cent and 50 per cent and should be used with caution.

¹⁵³ Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, cat. no. 4906.0, customised report, ABS, Canberra, December 2013.

The Personal Safety Survey surveyed women separately in each Australian state and territory in relation to the incidence of family and domestic violence.¹⁵⁴ In Western Australia, 1.5 per cent of women aged 18 years and over reported that they had experienced violence by a partner during the 12 months prior to the survey. Of men aged 18 years and over surveyed across Australia, 0.6 per cent reported that they had experienced violence by a partner during the 12 months prior to the survey (equivalent Western Australian figures are not available).¹⁵⁵

4.1.3 Western Australia Police statistics

In the investigation period, WAPOL reported that they responded to 1,055,414 calls for assistance from the Western Australian public, and that 688,998 of these calls required police to attend to provide assistance. Of the 688,998 incidents attended by WAPOL, 75,983 incidents (11 per cent) were recorded by WAPOL as 'domestic violence incidents'.¹⁵⁶

Over time, the number of family and domestic violence incidents reported to WAPOL has steadily increased, as shown in Figure 3 below. For comparative purposes, Western Australia's population grew by an average of 3 per cent per annum over the same period.¹⁵⁷

This does not necessarily mean that family and domestic violence incidents have increased to this extent over this time rather it means that that reporting to, and recording of these incidents by, WAPOL has increased to this extent.

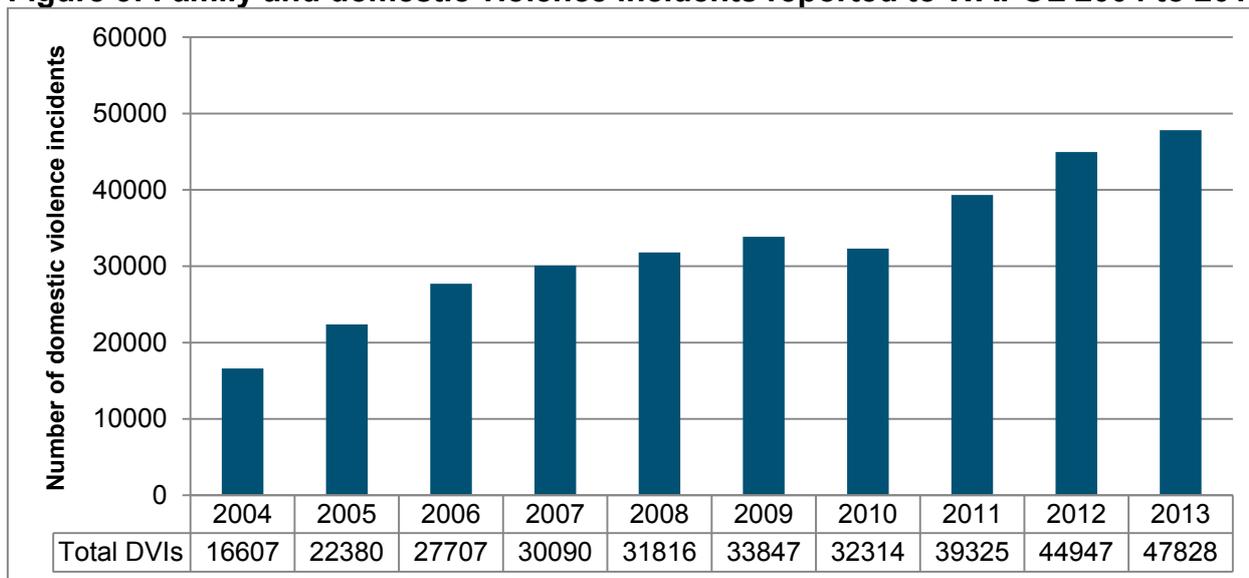
¹⁵⁴The Australian Bureau of Statistics notes that the 2012 Personal Safety Survey 'was designed to provide reliable estimates, for selected key estimates of interest, at the national level for men and women and at the State and Territory level for women.'

¹⁵⁵Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, cat. no. 4906.0, ABS, Canberra, December 2013.

¹⁵⁶The Office has used the term 'incidents' in its examination of data collected from state government departments and authorities as this is the term used by these agencies. The Office recognises that the use of this term may unintentionally appear to reduce the seriousness of, mutualise, and/or imply that the violence is a one-off, rather than ongoing behaviour.

¹⁵⁷Western Australian population data compiled by Ombudsman Western Australia from several published reports from the Australian Bureau of Statistics.

Figure 3: Family and domestic violence incidents reported to WAPOL 2004 to 2013



Source: Ombudsman Western Australia

WAPOL's records in its Incident Management System distinguish between 'domestic violence incidents (general)', where there is an act of family and domestic between the parties involved in the incident, and 'domestic violence incidents (crime)', where there is an act of family and domestic violence and police officers detect an offence has been committed. The process employed by police officers to investigate reports of family and domestic violence and gather evidence in support of charges is discussed in Chapter 13.

Of the 75,983 domestic violence incidents attended by WAPOL in the investigation period, police officers detected an offence in 36,608 incidents (48 per cent). WAPOL further distinguishes between 'offences against the person' and other offences.¹⁵⁸ During the investigation period, an offence against the person was detected at 20,480 domestic violence incidents.

4.2 Location of family and domestic violence incidents

The 20,480 domestic violence incidents in which police officers detected an offence against the person occurred throughout Western Australia. The Office found that:

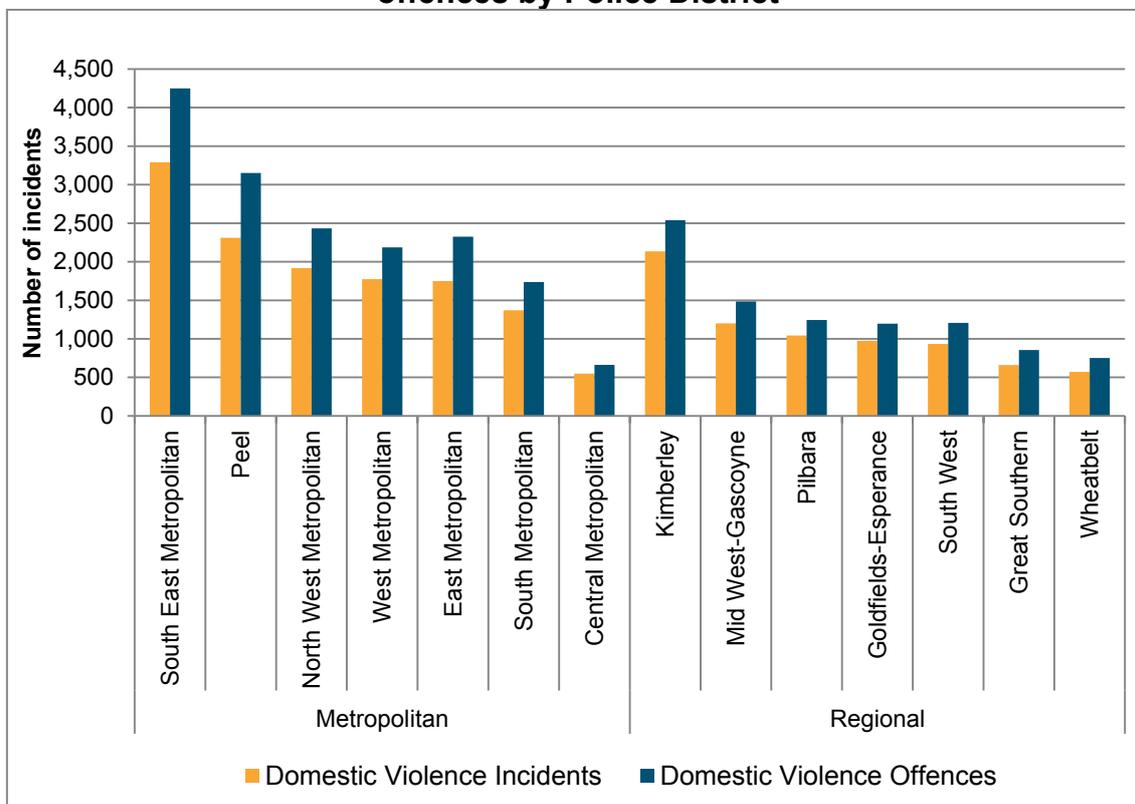
- sixty-three per cent (12,962) of domestic violence incidents occurred in metropolitan Police Districts and 37 per cent (7,518) in regional Police Districts (for comparison, the Australian Bureau of Statistics identifies that 78 per cent of Western Australia's population resides in the metropolitan area);¹⁵⁹ and

¹⁵⁸ Offences against the person in domestic violence incidents may include homicide, sexual assault, assault, deprivation of liberty and threatening behaviour. Other offences may be detected that are not categorised as offences against the person, for example, offences related to property.

¹⁵⁹ The Australian Bureau of Statistics refers to 'Greater Perth', an area the ABS notes contains not only the urban area of the capital city, but also surrounding and non-urban areas where much of the population has strong links to the capital city, through for example, commuting to work. The Office identified the 'Greater Perth' area as the closest equivalent ABS region to the metropolitan Police Districts. Australian Bureau of Statistics, *Population by Age and Sex, Regions of Australia, 2013*, cat. no. 3235.0, ABS, Canberra, August 2014.

- despite having the ‘lowest population of all of the regions in Western Australia’,¹⁶⁰ the Kimberley Police District had the third highest number of both domestic violence incidents and domestic violence offences (Figure 4).

Figure 4: Breakdown of domestic violence incidents and offences by Police District



Source: Western Australia Police and Ombudsman Western Australia

The research literature has found that the prevalence of family and domestic violence in regional and remote areas has ‘been given limited attention in Australia,’¹⁶¹ focusing on barriers that victims of family and domestic violence experience in seeking help and support. These barriers have been found to include ‘financial insecurity, dependency, and stress; a perceived lack of confidentiality and anonymity; and stigma attached to the public disclosure of violence’,¹⁶² ‘lack of transport options coupled with often poor telecommunications services’,¹⁶³ and ‘infrequent court hearings [along with] ... limited or no options regarding legal representation’.¹⁶⁴ In addition, stakeholders suggest that long

¹⁶⁰Department of Health, *Kimberley Health Profile*, Department of Health Western Australia, Perth, April 2012, p. 3.

¹⁶¹Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 3.

¹⁶²Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 3.

¹⁶³Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 3.

¹⁶⁴The Women’s Services Network, *Domestic Violence in Regional Australia, a literature review: A report for the Commonwealth Department of Transport and Regional Services under the Partnerships against Domestic Violence Programme*, Commonwealth of Australia, Canberra, 2000, p. 17.

distances and remote locations present a significant challenge in responding to family and domestic violence incidents and enforcing VROs.¹⁶⁵

4.3 Demographic characteristics of victims and perpetrators of family and domestic violence

4.3.1 Demographic characteristics of victims

The 20,480 domestic violence incidents in which police officers detected an offence against the person involved 26,023 offences. For these 26,023 domestic violence offences against the person, WAPOL provided further data regarding the characteristics of the victims, including their gender and 'ethnic appearance'.¹⁶⁶ WAPOL data relating to 'ethnic appearance' refers to a variable which is determined and recorded by police officers when completing incident reports. Police officers record ethnic appearance as 'Indigenous',¹⁶⁷ 'Non-Indigenous' or 'unknown'.

WAPOL recorded 24,479¹⁶⁸ victims for these 26,023 offences. The Office found that, of the 24,479 victims:

- 17,539 (72 per cent) were recorded as being female;
- 8,150 (33 per cent) were recorded as being Indigenous; including
 - 6,496 females; and
 - 1,625 males (Figure 5).

It is important to note that these figures include various forms of family and domestic violence in different relationship types, and do not represent only family and domestic violence perpetrated in intimate partner relationships.

¹⁶⁵Western Australia Police Service, *Strategic Policy on Police and Aboriginal People*, Western Australia Police, viewed 9 June 2015,

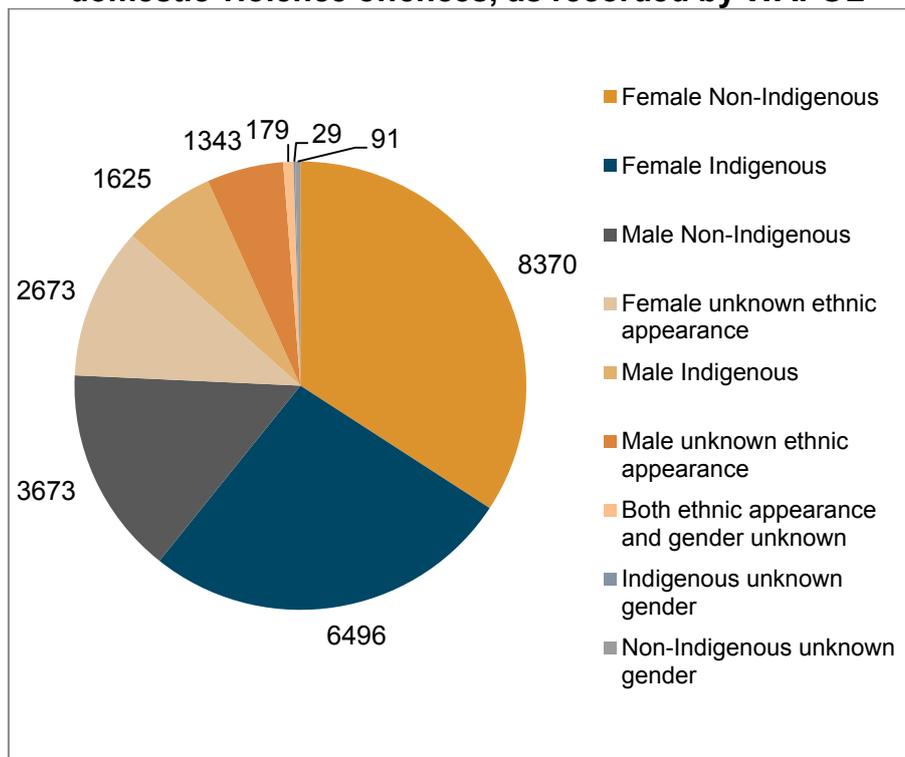
<http://www.police.wa.gov.au/Portals/11/PDFs/ServiceDelivery_Aboriginal_People.pdf>, p. 6.

¹⁶⁶This term refers to the name of the variable, as it is recorded in WAPOL's systems and the data WAPOL provided to the Office.

¹⁶⁷The Office recognises that Aboriginal people prefer to use the word 'Aboriginal' rather than 'Indigenous' and this was raised during the Office's consultation with Aboriginal stakeholders. The Office has therefore used the word 'Aboriginal' unless directly citing agency data or the research literature.

¹⁶⁸It should be noted that a victim can be counted more than once during the reporting period and more than one victim can be linked to an incident involving multiple or single offences.

Figure 5: Gender and ethnic appearance of victims of domestic violence offences, as recorded by WAPOL



Source: Western Australia Police and Ombudsman Western Australia

4.3.2 Demographic characteristics of suspected perpetrators

For the 26,023 domestic violence offences against the person, WAPOL also provided data regarding the characteristics of the suspected perpetrators,¹⁶⁹ including their gender and ethnic appearance.

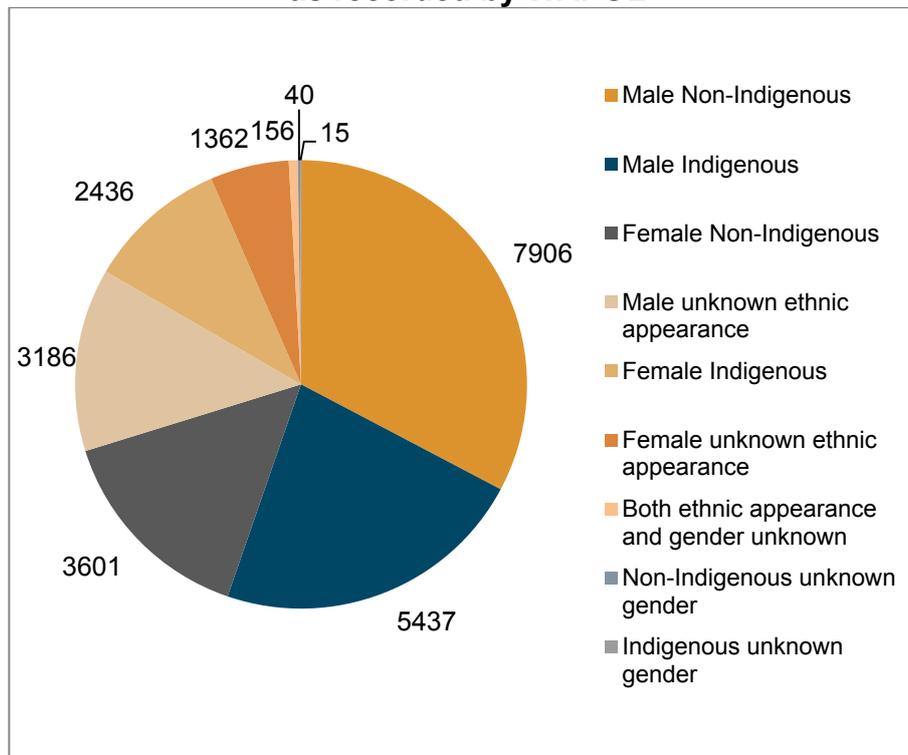
WAPOL recorded 24,139 suspected perpetrators for these 26,023 offences. The Office found that, of the 24,139 suspected perpetrators:

- 16,529 (68 per cent) were recorded as male; and
- 7,888 (33 per cent) were recorded as being Indigenous; including
 - 5,437 males; and
 - 2,436 females¹⁷⁰ (Figure 6).

¹⁶⁹ WAPOL refers to these people as 'Persons of Interest'.

¹⁷⁰ Fifteen suspected perpetrators were recorded as 'Indigenous ethnic appearance' and unknown gender.

Figure 6: Gender and ethnic appearance of suspected perpetrators of domestic violence offences as recorded by WAPOL



Source: Western Australia Police and Ombudsman Western Australia

4.4 Communities experiencing higher rates of family and domestic violence

The research literature has found that some groups of people experience higher rates of family and domestic violence, including:

- Aboriginal people;
- people from culturally and linguistically diverse backgrounds;
- women with disabilities; and
- gay, lesbian, bisexual, transgender and intersex people.¹⁷¹

The experiences of Aboriginal people are discussed in detail in Chapter 6. The experiences of other groups of people are discussed below.

¹⁷¹ For example, Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 33.

4.4.1 People from culturally and linguistically diverse backgrounds

In Australia, people from culturally and linguistically diverse (**CALD**) backgrounds¹⁷² can include those who are migrants, refugees, international students, unaccompanied minors,¹⁷³ and people on 457 (skilled) or partner visas.

The research literature has identified that people from CALD backgrounds may face higher rates of violence, due to, for example, 'low levels of language proficiency, different understandings of family violence, lack of familial and social support networks, and dependence on an Australian sponsor'.¹⁷⁴

Other factors include a 'lack of family ties in Australia, social isolation, a sense of obligation to stay in an abusive relationship, cultural shame and stigmatisation, and pressure to conform to cultural traditions of male dominance'.¹⁷⁵

The research literature further suggests that victims of family and domestic violence from CALD backgrounds are less likely to report family and domestic violence to police, or to access services, 'because of a perception that these services would not understand their particular situation and respond appropriately'.¹⁷⁶ Other barriers suggested by the research literature include:

- language barriers, including availability of 'culturally sensitive translator and interpreter support services';¹⁷⁷
- a 'lack of permanent residency and the fear of deportation',¹⁷⁸ particularly when a victim's residential or citizenship status is 'dependent upon maintaining their intimate relationship'¹⁷⁹ with the perpetrator;
- racism and social isolation;¹⁸⁰

¹⁷²The Office recognises that all people are culturally and linguistically diverse, including people from English-speaking backgrounds, however in this context the research literature describes the particular challenges faced by people from CALD communities as people from non-English speaking backgrounds.

¹⁷³Australian Centre for the Study of Sexual Assault, 'Supporting women from CALD backgrounds who are victims/survivors of sexual violence', *ACSSA Wrap*, no 9, 2011, p. 3.

¹⁷⁴Australian Law Reform Commission, 'Family Violence and Commonwealth Laws Community Information Sheet Culturally and Linguistically Diverse Communities,' Australian Law Reform Commission, Canberra, 7 February 2012, viewed 30 September 2014 <<http://www.alrc.gov.au/CFV-CALD>>, p. 1.

¹⁷⁵Richards, K and Lyneham, S, 'Help-seeking strategies of victim/survivors of human trafficking involving partner migration', *Australian Institute of Criminology*, Griffith, Trends & issues in crime and criminal justice no. 468, p. 4.

¹⁷⁶Morgan, A and Chadwick, H, 'Key issues in domestic violence,' *Australian Institute of Criminology*, Canberra, 2009, viewed 2 September 2014, <<http://www.aic.gov.au/publications/current%20series/rip/1-10/07.html>>, p. 5.

¹⁷⁷Morgan, A and Chadwick, H, 'Key issues in domestic violence,' *Australian Institute of Criminology*, Canberra, 2009, viewed 2 September 2014, <<http://www.aic.gov.au/publications/current%20series/rip/1-10/07.html>> p. 5.

¹⁷⁸Richards, K and Lyneham, S, "Help-seeking strategies of victim/survivors of human trafficking involving partner migration,' *Australian Institute of Criminology*, Griffith, Trends & issues in crime and criminal justice no. 468, p. 4.

¹⁷⁹Richards, K and Lyneham, S, "Help-seeking strategies of victim/survivors of human trafficking involving partner migration,' *Australian Institute of Criminology*, Griffith, Trends & issues in crime and criminal justice no. 468, p. 5.

- a lack of information about available services;¹⁸¹ and
- the possibility of not being believed, 'especially when the abuse is perpetrated by partners who may be respected members of the community'.¹⁸²

Women on Subclass 457 visas

The research literature recognises that people who are in Australia on temporary visas are particularly vulnerable to family and domestic violence as they may require a continued relationship with the perpetrator in order to stay in Australia.¹⁸³ The Australian Law Reform Commission (**ALRC**) identified that '[w]here charges of assault are brought against her partner and the woman's entry permit has expired, her residency status will be in limbo pending the outcome. Resolution may take considerable time and in the interim she may be without any financial support.'¹⁸⁴

To address this issue, the Australian Government introduced family violence provisions in the *Migration Regulations 1994 (Cth)*. As noted by the ALRC in its *Issues Paper Family Violence and Commonwealth Laws - Immigration Law* 'the family violence exception was introduced to address "community concerns that some migrants might remain in an abusive relationship because they believe they may be forced to leave Australia if they end the relationship"'.¹⁸⁵

The family violence provisions allow an applicant to obtain permanent residency without meeting other visa requirements, if their 'relationship has ended *and* they, or a member of their family unit, has suffered "relevant family violence" committed by the Australian sponsor'.¹⁸⁶ However, secondary holders of Subclass 457 visas (brought into Australia by a primary holder of a 457 visa) who have experienced family and domestic violence are unable to access these provisions.

During the investigation, the emergence of women on Subclass 457 visas as a particular group at high risk of family and domestic violence was raised by several non-government stakeholders. These stakeholders observed that victims of family and domestic violence on Subclass 457 visas would often refuse to engage with state government departments and authorities, including not reporting serious incidents to police, for fear of being

¹⁸⁰ Fisher, C, *Exploration of the Nature and Understanding of Family and Domestic Violence within Sudanese, Somali, Ethiopian, Liberian and Sierra Leonean Communities and its Impact on Individuals, Family Relations, the Community and Settlement*, Association for Services to Torture and Trauma Survivors, Perth, 2009, p. 22.

¹⁸¹ Australian Law Reform Commission, 'Family Violence and Commonwealth Laws Community Information Sheet Culturally and Linguistically Diverse Communities,' Australian Law Reform Commission, Canberra, 7 February 2012, viewed 30 September 2014 <<http://www.alrc.gov.au/CFV-CALD>>, p. 1.

¹⁸² Department of Child Safety, Practice Paper: *Working with people from culturally and linguistically diverse backgrounds*, Queensland Government, Brisbane, June 2010, p. 16.

¹⁸³ Australian Law Reform Commission, *Equality Before the Law: Justice For Women*, Australian Law Reform Commission, Canberra, 1994, p. 131.

¹⁸⁴ Australian Law Reform Commission, *Equality Before the Law: Justice For Women*, Australian Law Reform Commission, Canberra, 1994, p. 131.

¹⁸⁵ Australian Law Reform Commission, *Issues Paper Family Violence and Commonwealth Laws-Immigration Law*, Commonwealth of Australia, Sydney, 2011, p. 5.

¹⁸⁶ Australian Law Reform Commission, *Issues Paper Family Violence and Commonwealth Laws-Immigration Law*, Commonwealth of Australia, Sydney, 2011, p. 5.

deported from Australia. In addition, stakeholders informed the investigation that the perpetrators of the violence exploit the power they hold over these victims.

This issue has been identified as an area of concern by the Federation of Ethnic Communities Australia, in a submission to the Department of Immigration and Border Protection:

Secondary holders of a 457 visa who have experienced family and domestic violence are unable, even after two years of living in Australia, to apply for permanent residency under the family violence provisions. Their status as a secondary visa holder makes them reliant on their spouses or the primary holder of the subclass 457 visa. A secondary subclass 457 visa holder is only able to remain in Australia if their relationship remains intact – irrespective of their work [or] study status or other circumstances. This can be used as a method to control and manipulate dependents of the subclass 457 visa holder, particularly where visa holders threaten to withdraw sponsorship.

Moreover, victims of domestic violence on 457 visas who attempt to escape an abusive relationship find that they are ineligible for assistance, reinforcing the common threat from their spouse that they will be deported if they report instances of violence or go to authorities. In addition to the lack of legal protection, secondary applicants on 457 visas also lack the legal rights to access basic support and crisis services including social security, Medicare, legal assistance and public and community housing or refuge shelters if violence occurs or is reported. In these circumstances, this group of women are reluctant to leave the violent relationship and report the abuse to the police.¹⁸⁷

4.4.2 People with disabilities

The research literature indicates that '[w]omen with physical and/or intellectual disabilities are more likely than those without disabilities to experience [family and domestic violence]', and that 'women with disabilities continue to be at risk of being assaulted, raped and abused at a rate of at least twice that of non-disabled women, regardless of their age, race, ethnicity, sexual orientation or class'.¹⁸⁸

For women with disabilities who experience family and domestic violence, 'such violence is also likely to be more severe and continue for longer'.¹⁸⁹ Family and domestic violence perpetrated against women with disabilities may include:

... taking away a woman's wheelchair, or bathing her in very hot or very cold water, or rearranging the physical environment which increases the risk of injury to the woman with disability ... Other forms of abuse specifically perpetrated against women with disability include physical/chemical restraint;

¹⁸⁷Federation of Ethnic Communities Australia, *Submission to the Independent review of 457 visa programme*, Federation of Ethnic Communities Australia, Australian Capital Territory, May 2014, p. 3.

¹⁸⁸Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 5; Dowse, L, Soldatic, K, Didi, A, Frohmader, C and van Toom, G, *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia: Background Paper*, Women with Disabilities Australia, Hobart, 2013, p. 17.

¹⁸⁹Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 5.

over-prescribing of drugs; confinement; denial of services; blocked access to care; the threat of being institutionalised; withholding food, care and medication; denying access to information/education ... control of reproduction and menstruation ...¹⁹⁰

Research has found that there 'are major gaps in knowledge, policy and processes that will require significant resourcing in order to improve services to women with disabilities' when they are seeking help for family and domestic violence.¹⁹¹ However, advocates have suggested that 'if a woman with disability manages to escape, very few women's refuges ... are accessible or willing to accept a woman with disability (and her children).'¹⁹²

4.4.3 Gay, lesbian, bisexual, transgender and intersex people

Family and domestic violence in the gay, lesbian, bisexual, transgender and intersex (GLBTI) community is an area in which criminological and social science research has 'largely been silent',¹⁹³ with a 2006 survey also identifying that many Australians who identify as GLBTI consider family and domestic violence a 'hidden issue in the GLBTI community.'¹⁹⁴ For example, 'many GLBTI people do not identify family violence when they experience it because of a lack of recognition of its existence in same sex relationships.'¹⁹⁵

Notwithstanding this limitation, 'available evidence suggests that family and domestic violence is experienced at higher rates' by people in the GLBTI community.¹⁹⁶

The research literature further indicates that some forms of family and domestic violence are specific to GLBTI relationships, such as 'the abusive partner 'outing' or threatening to 'out' their partner to family, friends, colleagues or the general community.'¹⁹⁷

The research literature also identifies specific factors that GLBTI victims take into account when considering their options for seeking help. These can include:

- 'isolation from their support networks' and an awareness that 'acknowledging the existence of the violence may further feed any homophobia';¹⁹⁸

¹⁹⁰ Multicultural Disability Advocacy Association of NSW, *Violence Through our Eyes: Improving access to services for women from non-English speaking background with disability and carers experiencing violence project report*, Multicultural Disability Advocacy Association of NSW, NSW, February 2010, pp. 11-12.

¹⁹¹ Healey et al, 2010, cited in Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 5.

¹⁹² Multicultural Disability Advocacy Association of NSW, *Violence Through our Eyes: Improving access to services for women from non-English speaking background with disability and carers experiencing violence project report*, Multicultural Disability Advocacy Association of NSW, NSW, February 2010, p. 12.

¹⁹³ Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 3.

¹⁹⁴ Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, pp. 3-4.

¹⁹⁵ Pitt et al, 2006, cited in Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 4.

¹⁹⁶ Pitt et al, 2006, cited in Department for Child Protection and Family Support, *Western Australia Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection and Family Support, Perth, 2011, p. 31.

¹⁹⁷ Women's Health Victoria, cited in Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 4.

- intolerant or prejudiced responses from service providers;¹⁹⁹
- 'limited availability of suitable crisis accommodation options';²⁰⁰ and
- 'perceived prejudice from support services, health services, police and courts.'²⁰¹

4.5 Family and domestic violence legislation in Western Australia

The *Restraining Orders Act* includes provisions:

...specifically targeted at family and domestic violence (eg, a specific definition of family and domestic violence; violence restraining orders to protect children who have been exposed to family and domestic violence; police orders; and police functions in relation to family and domestic violence).²⁰²

The *Restraining Orders Act* also provides for 'restraining orders for other types of violence that occur outside a family and domestic relationship'²⁰³ as well as 'for misconduct restraining orders (generally for less serious forms of unacceptable behaviour) for persons in non-family and domestic relationships.'²⁰⁴ The Law Reform Commission of Western Australia has observed that:

In contrast to the position in Western Australia, there are four Australian jurisdictions with separate legislation for family and domestic violence restraining orders: Queensland, Victoria, Northern Territory and Tasmania. In these jurisdictions, different legislation exists in relation to orders for violent and other behaviour in non-family and domestic relationships.²⁰⁵

¹⁹⁸ Bartels, L, *Emerging issues in domestic/family violence research*, Australian Institute of Criminology, Australian Government, Canberra, April 2010, p. 4.

¹⁹⁹ Liang, B et al, 'A Theoretical Framework for Understanding Help-Seeking Processes Among Survivors of Intimate Partner Violence,' *American Journal of Community Psychology*, Vol. 36, Nos 1/2, September 2005, p. 77; Department for Child Protection and Family Support, *Western Australia Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection and Family Support, Perth, 2011, p. 31.

²⁰⁰ Department for Child Protection and Family Support, *Western Australia Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection and Family Support, Perth, 2011, p. 31.

²⁰¹ Department for Child Protection and Family Support, *Western Australia Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection and Family Support, Perth, 2011, p. 31.

²⁰² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 24. Other legislation in Western Australia that explicitly deals with family and domestic violence includes the *Criminal Code*, *Bail Act 1981*, *Criminal Investigation Act 2006* and the *Family Court Act 1997*. Other legislation relevant to family and domestic violence includes the *Sentencing Act 1995*, *Sentencing Administration Act 2003*, *Evidence Act 1906*, *Magistrates Court Act 2004*, *Criminal Procedure Act 2004*, *Criminal Injuries Compensation Act 2003*, *Victims of Crime Act 1994* and *Children and Community Services Act 2004*.

²⁰³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 24.

²⁰⁴ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 24.

²⁰⁵ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 24.

In July 2013, the Law Reform Commission received terms of reference from the Attorney General to review the laws concerning family and domestic violence, including the *Restraining Orders Act*, with a requirement to consider ‘the benefits of separate family and domestic violence legislation’.²⁰⁶

In 2014, the Law Reform Commission released the report of its review entitled *Enhancing Family and Domestic Violence Laws: Final Report (the Law Reform Commission Final Report)*. In this report, the Law Reform Commission ‘formed the view that separating legislation concerning family and domestic violence restraining orders from restraining orders in other contexts is, on balance, desirable’.²⁰⁷ The Law Reform Commission also proposed 73 recommendations directed towards six objectives for reform, as follows:

- ‘Enhance the safety of victims of family and domestic violence (and their children)’;²⁰⁸
- ‘Reduce family and domestic violence by increasing perpetrator accountability and improving the management of offenders’;²⁰⁹
- ‘Provide fair and just legal responses to family and domestic violence’;²¹⁰
- ‘Improve integration and coordination in relation to family and domestic violence in the legal system’;²¹¹
- ‘Increase knowledge and understanding of family and domestic violence within the legal system’;²¹² and
- ‘Maximise timely legal responses’.²¹³

²⁰⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. v.

²⁰⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. v.

²⁰⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 17.

²⁰⁹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 18.

²¹⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 18.

²¹¹ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 19.

²¹² Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 19.

²¹³ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 20.

4.6 Strategies for preventing and reducing family and domestic violence in Western Australia

4.6.1 *The National Plan to Reduce Violence against Women and their Children 2010-2022*

The National Plan was endorsed by the Council of Australian Governments (**COAG**) in 2011. The National Plan includes a definition of family and domestic violence²¹⁴ and 'provides the framework for action by the Commonwealth, state and territory governments'.²¹⁵ The 'central goals of the National Plan are to reduce violence against women and their children and to improve how governments work together, increase support for women and their children, and create innovative and targeted ways to bring about change.'²¹⁶

The National Plan sets out 'six national outcomes for all governments to deliver during the next 12 years. The outcomes will be delivered through four three-year action plans'.²¹⁷ Details of the strategies, key actions and responsibilities for achieving each of these six outcomes are set out in the National Plan.²¹⁸

More recently, on 28 January 2015, the Commonwealth Government decided to 'elevate the issue of violence against women and their children to a national level at the COAG'.²¹⁹ On 14 May 2015, the (then) Prime Minister, the Hon Tony Abbott MP, further announced that:

²¹⁴ 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>>, p. 2.

²¹⁵ 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>>, p. 10.

²¹⁶ 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>>, p. 10.

²¹⁷ 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>>, p. 10.

²¹⁸ 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>>, pp. 14-31.

²¹⁹ Prime Minister of Australia, the Hon Tony Abbott MP, *Advisory panel announced to reduce violence against women*, 14 May 2015, viewed 12 June 2015 <<https://www.pm.gov.au/media/2015-05-14/advisory-panel-announced-reduce-violence-against-women>>.

By the end of 2015, COAG will:

- agree on a national domestic violence order (DVO) scheme, where DVOs will be automatically recognised and enforceable in any state or territory of Australia;
- develop national standards for how we intervene against perpetrators and hold them accountable; and
- enact a national approach to dealing with online safety and the misuse of technology, so we can protect women against newer forms of abuse.

4.6.2 Western Australia's Family and Domestic Violence Prevention Strategy to 2022

Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities (the State Strategy) was released in 2012. The State Strategy sets out the state government's commitment to reducing family and domestic violence, identifying that it 'builds on reforms already undertaken through the *WA Strategic Plan for Family and Domestic Violence 2009-2013*'.²²⁰

DCPFS is the 'lead agency responsible for family and domestic violence strategic planning in Western Australia. This includes the development, implementation and monitoring of [the State Strategy] and contribution to the ... *National Plan to Reduce Violence against Women and their Children 2010-2022* ... Strategic planning is supported by a Family and Domestic Violence Senior Officers' Group',²²¹ comprising senior representatives from state and Commonwealth government agencies and the Women's Council for Domestic and Family Violence Services (WA). DCPFS's Annual Report 2012-13 confirms that DCPFS 'continues to be the lead agency for the implementation of both the [State] Strategy and the National Plan in the State'.²²²

The State Strategy states that it 'works within the national framework'²²³ and that '[e]ach three year phase of the [State] Strategy is aligned to the three year national Action Plans and will serve as the WA Implementation Plan for the *National Plan*. Annual *Achievement Reports* that outline current and planned initiatives will be developed over the life of the [State] Strategy'.²²⁴

²²⁰ 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, p. 3.

²²¹ Department for Child Protection and Family Support, *Family and Domestic Violence Strategic Planning*, Government of Western Australia, Perth, 2014, viewed 16 April 2015, <<http://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Pages/StateStrategicPlanning.aspx>>; Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 20.

²²² Government of Western Australia Department for Child Protection and Family Support, *Annual Report 2012-13*, Department for Child Protection and Family Support, Perth, 2013, p. 37.

²²³ 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, p. 7.

²²⁴ 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, p. 7.

The three phases identified in the State Strategy are:

- First Phase: Sustaining Change – strengthening the foundation and supporting further reform (2013-2016) (**the First Phase**);
- Second Phase: Consolidating Change – recognising achievements and assessing results (2016-19); and
- Third Phase: Achieving Change – continuing reform beyond the life of the [State] Strategy (2019-2022).²²⁵

The First Phase aims to identify:

...those actions [arising from the *WA Strategic Plan for Family and Domestic Violence 2009-2013*] that are delivering results, sustaining these changes, and moving into future phases through the identification of new and emerging issues.²²⁶

The State Strategy identifies three broad 'Primary State Outcomes to 2022'²²⁷ (**Primary State Outcomes**). However, unlike the National Plan (and for example, the *Western Australian Suicide Prevention Strategy 2009-13*²²⁸), the State Strategy does not identify how it proposes to achieve these stated outcomes, that is, it does not identify any action to be taken and which state government departments and authorities will be responsible for taking this action. As identified above, in the National Plan, these are set out in four three-year action plans.

The State Strategy states that there is provision for monitoring of outcomes after the conclusion of each three-year stage 'to measure progress toward the achievement of the outcomes of the [State] Strategy'.²²⁹ Reporting to 2013 occurred through the *State Strategy Achievement Report to 2013*²³⁰ which described progress against the now-expired WA Implementation Plan to 2013; a proposed monitoring and evaluation framework; a general approach to moving forward; and established key performance indicators.

DCPFS has identified that there will be further Achievement Reports.²³¹ However, in the absence of identified actions in the State Strategy for the First Phase up to 2016, it will not

²²⁵ 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, p. 6.

²²⁶ 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, p. 6.

²²⁷ 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, p. 7.

²²⁸ Government of Western Australia Department of Health, *Western Australian Suicide Prevention Strategy 2009-2013 Everybody's business* pp. 31-48.

²²⁹ 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, p. 10.

²³⁰ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Strategy to 2022 Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2014.

²³¹ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Strategy to 2022 Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2014, p. 2.

be possible to monitor or evaluate whether the First Phase of the State Strategy has been effectively implemented by state government departments and authorities.

The findings of the Office's analysis of the state-wide data and the 30 fatalities, set out in Part 1, and the Office's analysis of the administration of the *Restraining Orders Act*, set out in Part 2, indicate that there is scope for state government departments and authorities to improve the ways in which they respond to family and domestic violence. It is, therefore, proposed that Action Plans under the State Strategy identify in more detail actions for achieving the State Strategy's Primary State Outcomes, priorities among these actions, and allocation of responsibilities for these actions to specific state government departments and authorities, as occurs with the National Plan. The findings and recommendations of the Law Reform Commission Final Report and of the Office's investigation, set out in this report, could inform this work.

During the course of the investigation, DCPFS and DOTAG informed the Office that:

Western Australia's Family and Domestic Violence Prevention Strategy to 2022 (the Prevention Strategy) was released in 2012, following cabinet endorsement. The Prevention Strategy provides for a long term, across government framework for responding to family and domestic violence and is aligned to the *National Plan to Reduce Violence against Women and their Children 2010-22*. Implementation of the Prevention Strategy is guided by action plans that will be developed and implemented up to 2022. The *Freedom from Fear, Working Towards the Elimination of Family and Domestic Violence in Western Australia – Action Plan 2015* (the Action Plan) was released in September 2015 and has a specific focus on perpetrators of violence and abuse by increasing the quality, capacity and consistency of responses.

The Action Plan sets out 20 actions under five priority areas that include primary, secondary and tertiary prevention approaches. A number of initiatives included in the Action Plan focus on increasing the capacity and authority of the service system to hold perpetrators accountable for their violent behaviour. These include the introduction of new restraining orders specifically for family and domestic violence; the introduction of a new Family Violence Support List model in the Magistrate's Court; and exploring the use of GPS tracking for serious family violence offenders.

A number of actions presented in the Action Plan will require a longer term approach and may be continued in future plans, while others may be achieved within a shorter timeline. The Action Plan underpins a focus on family violence within Aboriginal communities and includes the *Safer Families, Safer Communities Kimberley Family Violence Regional Plan* (the Kimberley Plan).²³²

²³² Department for Child Protection and Family Support, personal communication, 19 October 2015; and Department of the Attorney General, personal communication, 20 October 2015.

Recommendation 1

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

Communities experiencing higher rates of family and domestic violence

The research literature set out in section 4.4 identifies that there are higher rates of family and domestic violence among certain communities in Western Australia. However, there are limitations to the supporting data, resulting in varying estimates of the numbers of people in these communities who experience family and domestic violence and a limited understanding of their experiences.

To address this issue, the State Strategy identifies that the First Phase will include 'work to establish the data collection framework ... [t]he collection of data will provide an evidence base and will assist in setting future directions over the life of the ... Strategy'.²³³ In reporting on this work, the State Strategy *Achievement Report to 2013* notes that:

A data working group was established in 2009 to work toward collecting data against key performance indicators of the *WA Strategic Plan for Family and Domestic Violence 2009–2013*. The working group is also identifying ways to improve the collection of data across the state. This work includes identifying areas of high priority which need to be further developed in order to improve our understanding of family and domestic violence in WA. Going forward, the data working group has nominated **sexual assault, child protection, drug and alcohol and mental health** as high priority areas for future development.²³⁴ [Emphasis added]

However, neither the State Strategy nor the *Achievement Report to 2013* identify any actions to improve the collection of data relating to different communities experiencing higher rates of family and domestic violence, for example through the collection of cultural, demographic and socioeconomic data.

At a national level, the collection of such data has been identified as an important priority. In May 2014 a *National Research Agenda to Reduce Violence against Women and their Children* was released by Australia's National Research Organisation for Women's Safety [ANROWS] in support of the National Plan.²³⁵ The *Achievements Report to 2013* observes

²³³ 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, p. 5.

²³⁴ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Strategy to 2022 Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2014, p. 18.

²³⁵ Australia's National Research Organisation for Women's Safety, *National Research Agenda to Reduce Violence against Women and their Children*, Australia's National Research Organisation for Women's Safety, New South Wales, May 2014.

that 'Western Australia contributes funding to [ANROWS] as a state partner'²³⁶ and the National Research Agenda was developed 'in consultation with stakeholders across Australia'.²³⁷

The National Research Agenda identifies several 'Strategic Research Themes' (**SRTs**) and notes:

Another common feature across all SRTs is the need for the research effort to focus on marginalised groups and under-researched populations. This is especially important for women and their children with particular vulnerabilities to violence and/or particular cultural or other requirements ... where appropriate, the research effort should target the following sub-populations across all four SRTs:

- Aboriginal and Torres Strait Islander women;
- rural and remote women;
- women with disability;
- younger women (18-24 year age group especially);
- older women;
- CALD women;
- GLBTIQ women;
- immigrant women (especially refugees);
- women without children; and
- children in the context of both domestic and family violence and adult sexual assault.²³⁸

Bearing in mind the focus of the National Research Agenda, the findings of the research literature and of the Office's analysis, set out in section 4.4, it is proposed that DCPFS, in collaboration with WAPOL, DOTAG and other relevant agencies, ensure that future versions of the State Strategy incorporate actions to collect data about communities who are overrepresented in family and domestic violence, to inform evidence-based strategies tailored to addressing family and domestic violence in these communities.

The Office further notes that, in November 2014, the Western Australian Department of Local Government and Communities (through the Office of Multicultural Interests) released a *Guide to cultural and linguistic data collection for the public sector (the Guide)* to 'assist State Government agencies to collect data relating to the cultural, linguistic and religious diversity of their clients'.²³⁹ The Guide observes that:

To facilitate effective planning and delivery of culturally appropriate services to Western Australia's culturally and linguistically diverse (CaLD) population, it is

²³⁶ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Strategy to 2022 Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2014, p. 16.

²³⁷ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Strategy to 2022 Achievement Report to 2013*, Department for Child Protection and Family Support, Perth, 2014, p. 16.

²³⁸ Australia's National Research Organisation for Women's Safety, *National Research Agenda to Reduce Violence against Women and their Children*, Australia's National Research Organisation for Women's Safety, New South Wales, May 2014, p. 19.

²³⁹ Department of Local Government and Communities, *Guide to cultural and linguistic data collection for the public sector*, Department of Local Government and Communities, Perth, November 2014, p. 1.

important that government agencies and other service providers have a clear understanding of, and relevant data on, the demographic, socioeconomic and cultural characteristics of their client base.²⁴⁰

The Guide 'provides suggestions and strategies for the collection of this data, including the use of standard variables ... to improve the quality and quantity of information collected, achieve consistency in data collection and enable meaningful comparisons to be made.'²⁴¹ The Guide could inform and assist the implementation of Recommendation 2 below.

Recommendation 2

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

²⁴⁰ Department of Local Government and Communities, *Guide to cultural and linguistic data collection for the public sector*, Department of Local Government and Communities, Perth, November 2014, p. 2.

²⁴¹ Department of Local Government and Communities, *Guide to cultural and linguistic data collection for the public sector*, Department of Local Government and Communities, Perth, November 2014, p. 2.

5 Family and domestic violence fatalities notified to the Ombudsman

5.1 Nature of relationship between people who were killed and suspected perpetrators

During the investigation period, WAPOL notified the Ombudsman of 30 people who were killed where the relationship between the person who was killed and the suspected perpetrator²⁴² was a family and domestic relationship, as defined by section 4(1) of the *Restraining Orders Act*.

In reviewing 'domestic homicides', the Australian Institute of Criminology (**AIC**) categorises these homicides according to the principal relationship shared between the person who was killed and the suspected perpetrator, as follows:

- *intimate partner homicide*—where the victim and offender share a current or former intimate relationship, including homosexual and extramarital relationships;
- *filicide*—where a custodial or non-custodial parent (including step-parent) kills a child (including *infanticide*, which is defined as the killing of a child under 1 year of age),²⁴³
- *parricide*—where a child kills a custodial or non-custodial parent or step-parent;
- *siblicide*—where one sibling kills another; and
- *other family homicide*—where the victim and offender are related by family, but are not otherwise classified above (such as a cousin, aunt, grandparent etc.).²⁴⁴

The Office has used these relationship categories to examine the relationships between the people who were involved in the 30 fatalities. The majority of the 30 people who were killed and the suspected perpetrators were in (or had previously been in) intimate partner relationships (20 fatalities or 67 per cent). As shown in Figure 7, this was particularly the case for females who were killed; for 83 per cent of females who were killed (15 of 18 females) their intimate partner or former intimate partner was the suspected perpetrator, compared with 42 per cent of males who were killed (5 of 12 males).

²⁴² Throughout this report, when referring to all 30 suspected perpetrators, the word suspected has been retained. Where appropriate, when referring to (otherwise de-identified) individuals, or smaller groups of individuals, who have been convicted, the word suspected has been removed.

²⁴³ This includes cases where a custodial or non-custodial parent (including step-parent) kills their son or daughter who is aged over 18 years.

²⁴⁴ Chan, A and Payne, J, *Homicide in Australia: 2008-09 to 2009-10 National Homicide Monitoring Program annual report*, Australian Institute of Criminology, Canberra, 2013, p. 5.

Figure 7: Relationship between people who were killed and the suspected perpetrators in the 30 fatalities

AIC category	Total
Intimate Partner Homicide	20
Filicide	4
Other Family Homicide	3
Siblicide and Parricide	3
Total	30

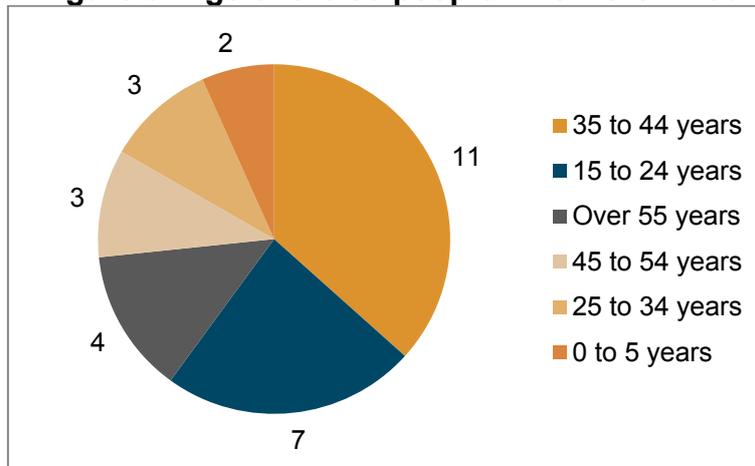
Source: Ombudsman Western Australia

5.2 Demographic characteristics of people who were killed and suspected perpetrators

5.2.1 Age

The average age of the 30 people who were killed was 36 years. As shown in Figure 8, over a third of the 30 people who were killed were aged between 35 and 44 (11 or 37 per cent). Three of the 30 people who were killed were children under the age of 18 years.

Figure 8: Age of the 30 people who were killed



Source: Ombudsman Western Australia

5.2.2 Sex

Among the 30 people who were killed, 18 (60 per cent) were female and 12 (40 per cent) were male (Figure 9). Of the 20 fatalities where the person who was killed was in an intimate partner relationship with the suspected perpetrator, three quarters of the people who were killed were female (15 or 75 per cent).

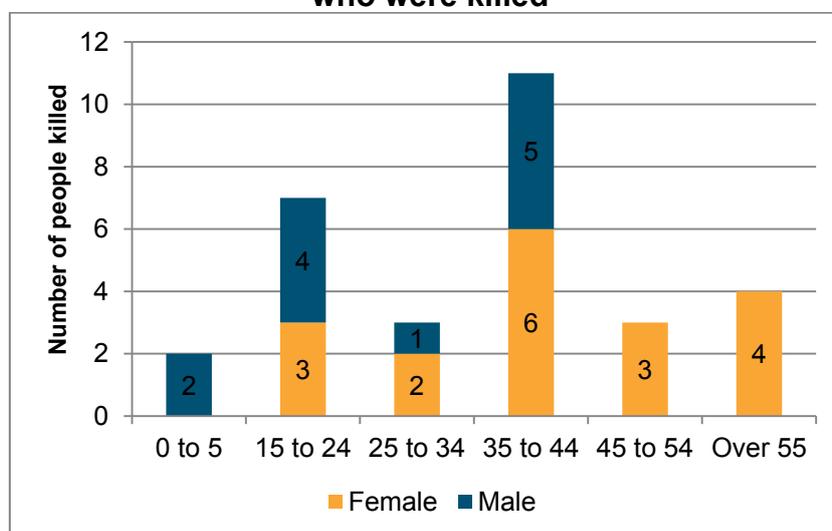
The proportion of females who were killed in family and domestic violence fatalities appears not to reflect the much higher proportion of female victims of family and domestic violence noted in the research literature.

This difference reflects the inclusion in the 30 fatalities of eight men who were killed in the following circumstances:

- Three men who were killed who are recorded in WAPOL records to have been perpetrators of family and domestic violence, and who were killed by the female victims of this violence (discussed further at section 5.3.2);
- Three men who were killed by their male relatives with no prior recorded history of family and domestic violence; and
- Two male children under the age of five who were killed by their male relatives.

As shown in Figure 9 below, people who were killed at a younger age (under 24 years) were more likely to be male (six of nine people who were killed or 67 per cent), while people who were killed over the age of 24 were more likely to be female (15 of 21 people who were killed or 71 per cent).

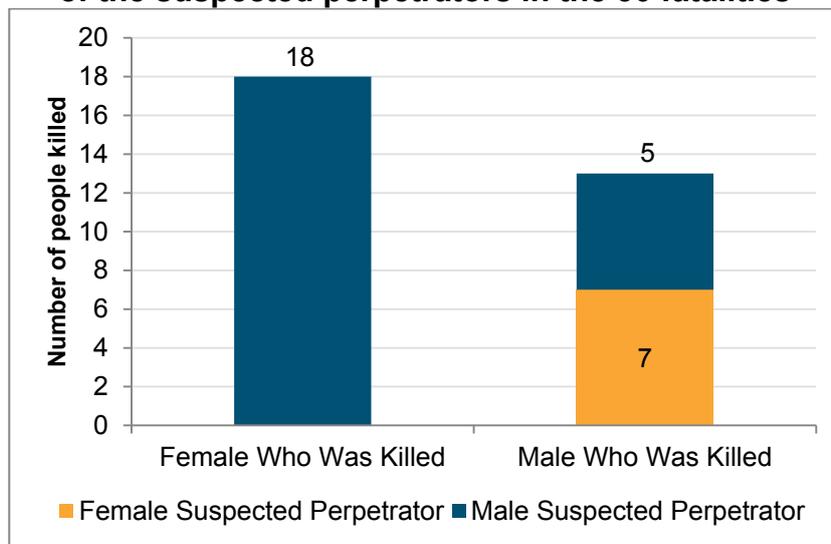
Figure 9: Age and sex of the 30 people who were killed



Source: Ombudsman Western Australia

The majority of the suspected perpetrators in the 30 fatalities were male (23 suspected perpetrators or 77 per cent). Five male perpetrators killed other males (Figure 10).

Figure 10: Sex of the people who were killed and sex of the suspected perpetrators in the 30 fatalities



Source: Ombudsman Western Australia

5.2.3 Region of residence

The Office analysed the postcodes of the usual residence of the people who were killed, using regions defined by the Australian Bureau of Statistics, and determined that:²⁴⁵

- fifteen people who were killed (50 per cent) were residing in a major city;
- two people who were killed (7 per cent) were residing in an inner regional area.
- three people who were killed (10 per cent) were residing in an outer regional area;
- six people who were killed (20 per cent) were residing in a remote region; and
- four people who were killed (13 per cent) were residing in a very remote region.

Taking into account the numbers of all people residing in each of these regions,²⁴⁶ people living in remote and very remote regions were overrepresented in the 30 fatalities (Figure 11). The mortality rates of people who were killed in family and domestic violence fatalities notified to the Ombudsman were as follows:

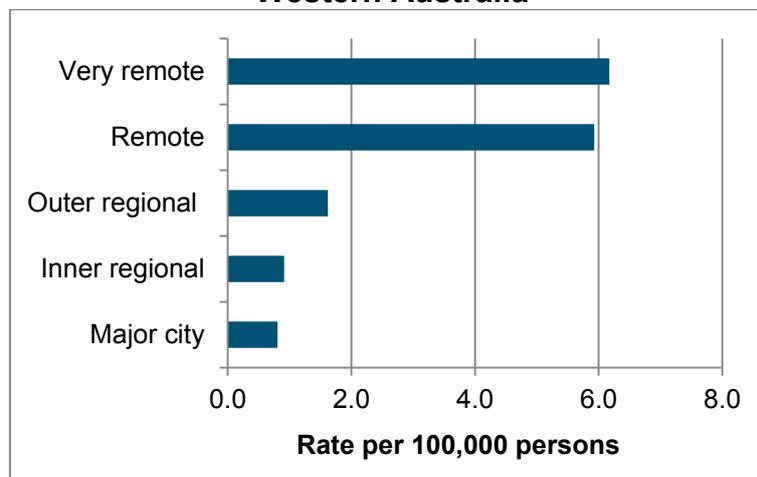
- 0.8 per 100 000 persons living in a major city;
- 0.9 per 100 000 persons living in an inner regional area;
- 1.6 per 100 000 persons living in an outer regional area;
- 5.9 per 100 000 persons living in a remote area; and
- 6.2 per 100 000 persons living in a very remote area.

The figures above indicate that rates of family and domestic violence fatalities increase as distance and remoteness from a major city increase.

²⁴⁵ Australian Bureau of Statistics, *Postcode 2012 to Remoteness Area 2011, Australian Statistical Geography Standard (ASGS): Correspondences*, Table 3, ABS, Canberra, July 2011.

²⁴⁶ Australian Bureau of Statistics, *Estimated Resident Population, Remoteness Areas [ASGS 2011]*, cat. no. 3218.0, ABS, Canberra, July 2012.

Figure 11: Rate of family and domestic violence fatalities, by area of residence in Western Australia



Source: Ombudsman Western Australia

5.2.4 Country of birth

Data obtained from DOTAG's Registry of Births, Deaths and Marriages indicates that, of the 30 people who were killed, 25 (83 per cent) were born in Australia and five (17 per cent) were born outside Australia in:

- New Zealand;
- Vietnam;
- Algeria;
- England; and
- Singapore.

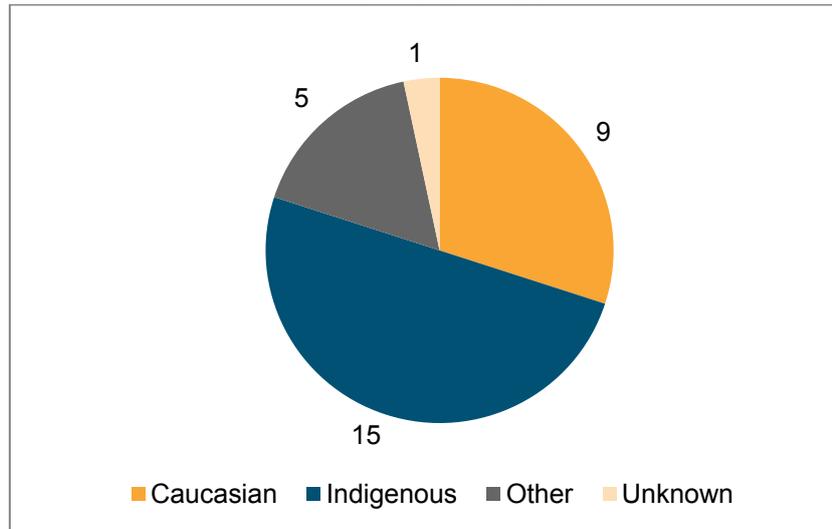
For comparison, the 2011 census identified that 33 per cent of people living in Western Australia were born overseas.²⁴⁷

5.2.5 Aboriginal status

The Office obtained information from the Department of Health regarding the ethnicity of all of the people who were killed and the suspected perpetrators in the 30 fatalities. The Department of Health records ethnicity as 'Caucasian,' 'Indigenous,' 'Other' and 'Unknown.' As shown in Figure 12, 15 (50 per cent) of the 30 people who were killed were identified by the Department of Health as being Indigenous.

²⁴⁷ Australian Bureau of Statistics, 'One-third of WA born overseas,' ABS, Canberra, 18 December 2013, viewed 9 February 2015, <<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/3412.0Media%20Release12011-12%20and%202012-13>>.

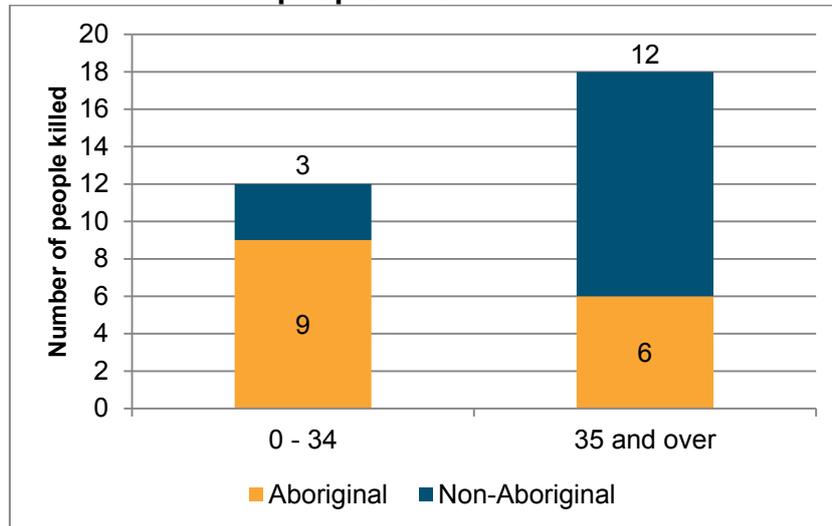
Figure 12: Aboriginal status of the 30 people who were killed



Source: Department of Health and Ombudsman Western Australia

There were distinct differences in the demographic characteristics of Aboriginal people who were killed when compared with non-Aboriginal people who were killed. Aboriginal people who were killed were generally younger than non-Aboriginal people who were killed, as shown in Figure 13, with Aboriginal people three times more likely than non-Aboriginal people to be aged 0 to 34 years, and non-Aboriginal people twice as likely as Aboriginal people to be aged 35 years and over.

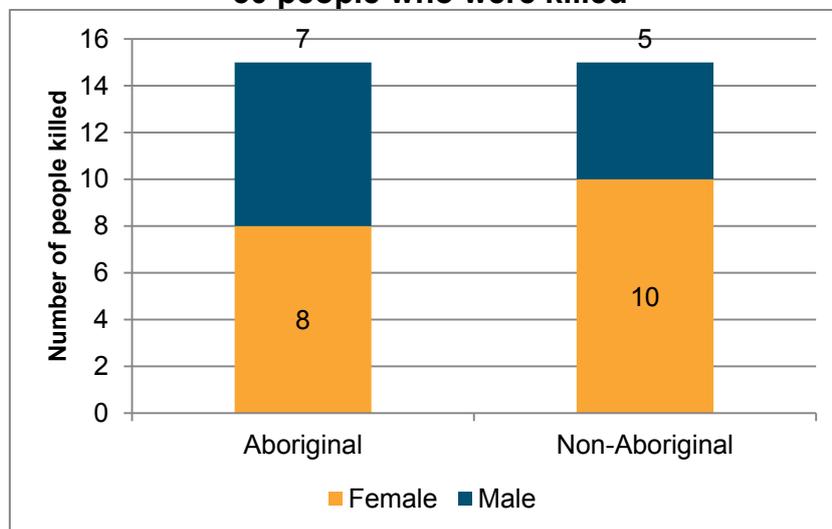
Figure 13: Age and Aboriginal status of the 30 people who were killed



Source: Ombudsman Western Australia

As shown in Figure 14 below, Aboriginal people who were killed were overrepresented, relative to their share of the Western Australian population, for both sexes.

Figure 14: Sex and Aboriginal status of the 30 people who were killed



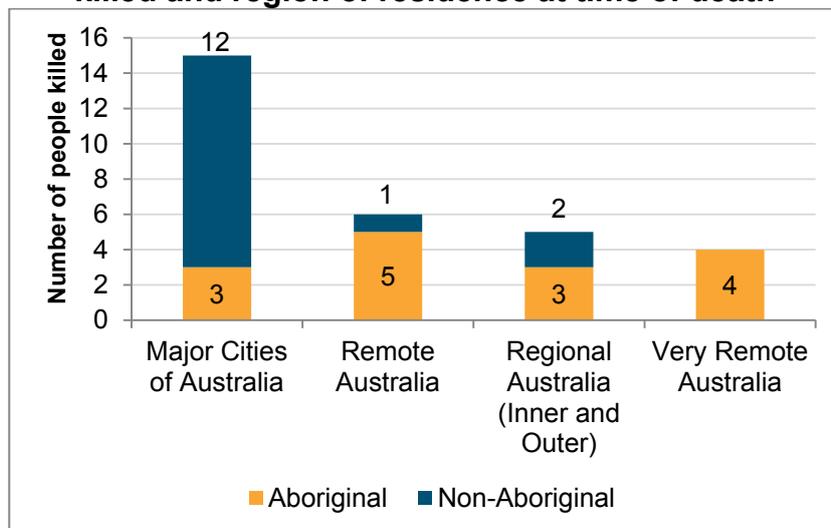
Source: Ombudsman Western Australia

As shown in Figure 15 below, Aboriginal people who were killed were more likely to reside in regional and remote areas. In addition, all of the people who were killed who resided in very remote Western Australia were Aboriginal, and 83 per cent of people who were killed who resided in remote Western Australia were Aboriginal. When considering these figures, it should be noted that:

The geographic distribution of the Indigenous population differs from that of the non-Indigenous population. In 2011, nearly all non-Indigenous people (98%) lived in non-remote areas, with 2% living in remote areas (compared with 79% and 21% of Indigenous people, respectively)... [however] just over half (55%) of the Indigenous population in Western Australia lived in *Outer regional, Remote* or *Very remote* areas.²⁴⁸

²⁴⁸ Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples 2015*, AIHW, Canberra, 2015, pp. 13 -15.

Figure 15: Aboriginal status of the 30 people who were killed and region of residence at time of death



Source: Ombudsman Western Australia

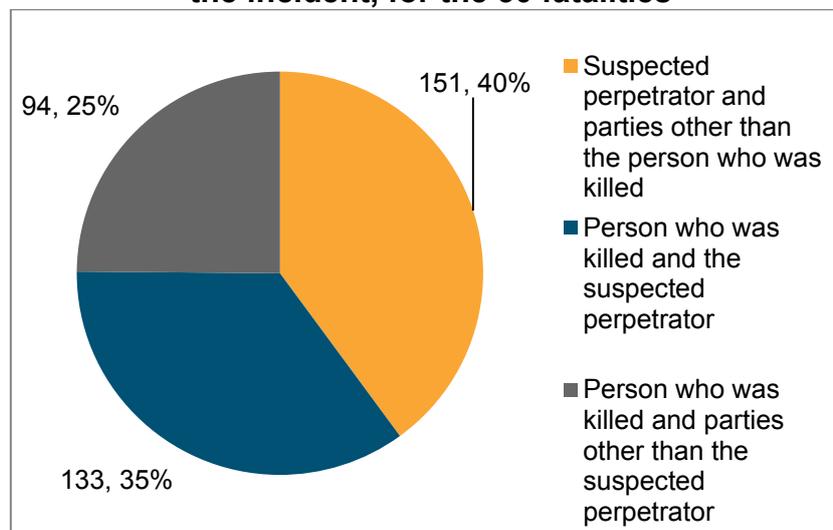
5.3 Prior history of family and domestic violence

As shown in Figure 16 below, WAPOL recorded a total of 378 domestic violence incidents involving²⁴⁹ the person who was killed and/or the suspected perpetrator for the 30 fatalities.²⁵⁰ Figure 16 indicates that the suspected perpetrator in the 30 fatalities was involved in 75 per cent of these 378 reported domestic violence incidents.

²⁴⁹ The Office uses the term 'involving' in this context as, in some instances, the person who was killed was recorded by WAPOL as the victim of violence in some incidents and the perpetrator of the violence in other incidents.

²⁵⁰ This includes incidents between the person who was killed and the suspected perpetrator, incidents between the person who was killed and a third party, and incidents between the suspected perpetrator and a third party.

Figure 16: Number of domestic violence incidents recorded by WAPOL, by relationship between the parties to the incident, for the 30 fatalities

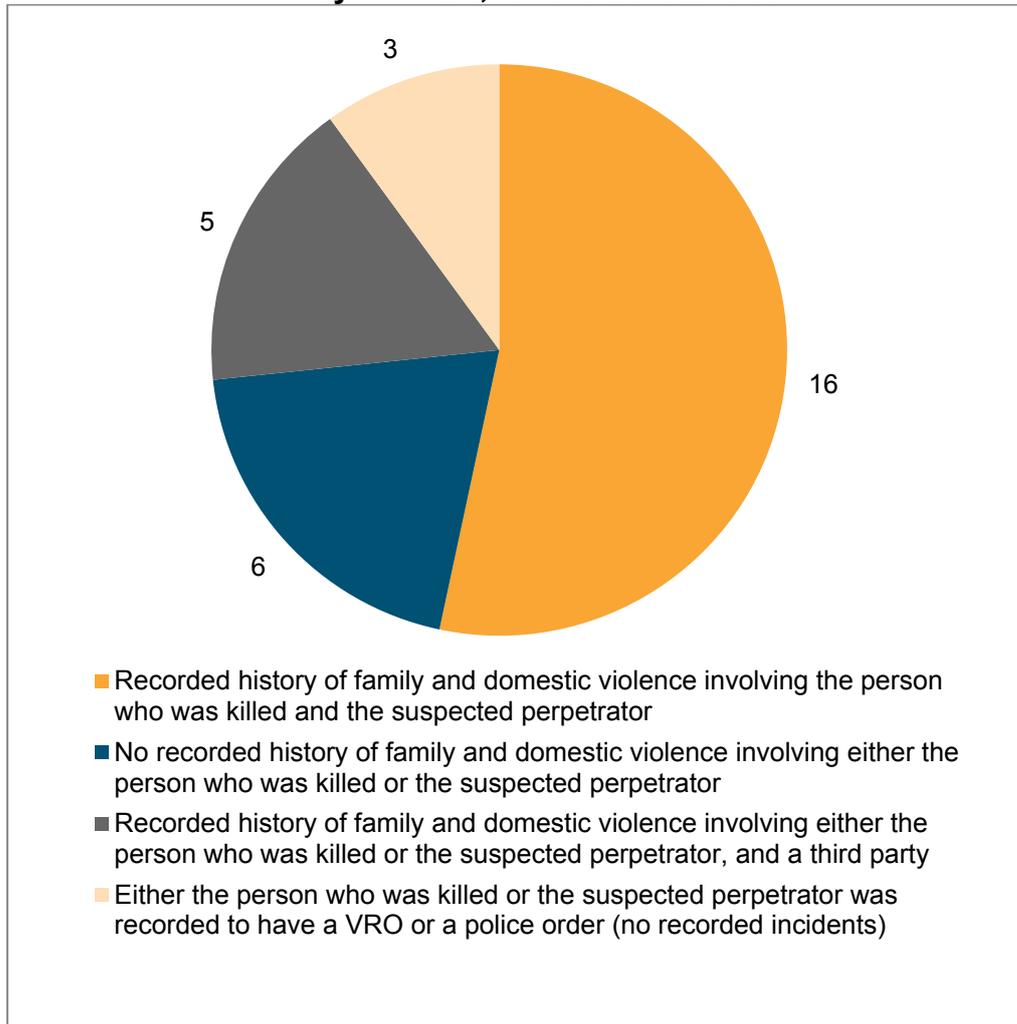


Source: Ombudsman Western Australia

The Office's further analysis of the 30 fatalities identified that:

- for 16 fatalities (53 per cent), there was a recorded prior history of family and domestic violence involving the person who was killed and the suspected perpetrator;
- for eight fatalities (27 per cent), there was a recorded prior history of family and domestic violence involving either the person who was killed and a third party, or the suspected perpetrator and a third party (with no recorded incidents involving the person who was killed and the suspected perpetrator);
- for six fatalities (20 per cent), there was no recorded prior history of family and domestic violence involving either the person who was killed or the suspected perpetrator (Figure 17).

Figure 17: Domestic violence incidents recorded by WAPOL, for the 30 fatalities



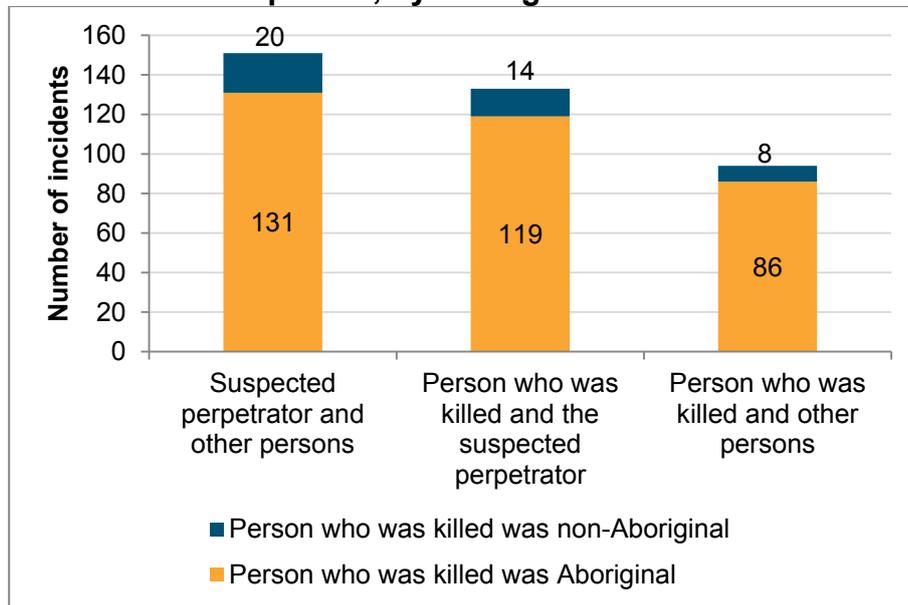
Source: Ombudsman Western Australia

5.3.1 Aboriginal status and prior history of family and domestic violence

Aboriginal people who were killed 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. As identified in Figure 17 above, in 16 of the 30 fatalities (53 per cent), WAPOL recorded a history of family and domestic violence between the person who was killed and the suspected perpetrator. In 11 of the 16 fatalities (69 per cent), the person who was killed was Aboriginal. In nine of these 11 fatalities (82 per cent), the person who was killed was the intimate partner of the suspected perpetrator.

In addition, for the 30 fatalities, WAPOL recorded a total of 378 domestic violence incidents involving the person who was killed, the suspected perpetrator and/or other parties. Where the person who was killed was Aboriginal, there were 336 domestic violence incidents recorded by WAPOL involving the person who was killed or the suspected perpetrator. This represents 89 per cent of the total 378 incidents, as shown in Figure 18 below.

Figure 18: Number of domestic violence incidents recorded by WAPOL involving the suspected perpetrator, the person who was killed and/or other parties, by Aboriginal status



Source: Ombudsman Western Australia

5.3.2 Perpetrators who had been a victim of family and domestic violence perpetrated by the person they killed

A review of the research literature suggests that ‘if incidents of extreme violence, such as homicide are considered, then men predominate as perpetrators (83%)’.²⁵¹ This was also true in the 30 fatalities, where, in cases involving intimate partners, 75 per cent of the suspected perpetrators²⁵² were male (15 of 20 fatalities).

The research literature further suggests that the majority of female-perpetrated homicides are committed against an intimate partner.²⁵³ Again, this was reflected in the 30 fatalities. Of the seven fatalities where the suspected perpetrator was female, five were in intimate partner relationships with the person who was killed.

Further analysis by the Office identified three fatalities in which the perpetrator was recorded as a victim of ongoing family and domestic violence, and more specifically, this violence was perpetrated by the person who was killed. All three of the perpetrators in these cases were female.

²⁵¹ Mouzos, J and Smith, L, *Partner violence among a sample of police detainees*, Trends and Issues in Crime and Criminal Justice, No. 337, Australian Institute of Criminology, Canberra, May 2007, p. 1; Brookman, F, *Understanding Homicide*, Sage Publications, 2005, Los Angeles, p. 162; This concept also discussed in Carcach, C and James, M, *Homicide between Intimate Partners in Australia*, Trends and Issues in Crime and Criminal Justice, No. 90, Australian Institute of Criminology, Canberra, July 1998, p. 5.

²⁵² Throughout this report, when referring to all 30 suspected perpetrators, the word suspected has been retained. Where appropriate, when referring to individuals, or smaller groups of individuals, who have been convicted, the word suspected has been removed.

²⁵³ Brookman, F, *Understanding Homicide*, Sage Publications, 2005, Los Angeles, p. 162.

The research literature suggests that female perpetrated family and domestic homicides frequently stem from ongoing issues of abuse²⁵⁴ and are often a direct consequence of these events, suggesting that 'most of these desperate acts take place while a violent or threatening incident is occurring'.²⁵⁵

The Australian Institute of Criminology further notes:

... women who are violent are more likely to be driven by frustration and anger rather than by a specific objective, and their violence is more likely to be committed in self defence, or in retaliation to provocation.²⁵⁶

The Australian Institute of Criminology has also found that 'sharp instruments are more commonly used in intimate homicide incidents where females kill males'.²⁵⁷ This was also found in research in the United Kingdom, where women were most likely to use a knife or sharp object.²⁵⁸

The Office analysed information relating to the three fatalities where the perpetrator was recorded as a victim of ongoing family and domestic violence, and this violence had been perpetrated by the person who was killed. There were several key features common across all three of these fatalities, many of which aligned with the findings of the research literature:

- the perpetrator was female and the person who was killed was male;
- the perpetrator and the person who was killed were Aboriginal and lived in outer regional or remote Australia;
- there was a recorded history of family and domestic violence attended by WAPOL and the perpetrator in the fatality was recorded as the victim in incidents in this recorded history;
- the perpetrator and the person who was killed were still in a current intimate relationship;
- the instances when a person was killed involved stabbing; and
- both parties were recorded as having consumed alcohol or used substances at the time of death. Records also indicated consistent alcohol and substance use by both the perpetrator and the person who was killed.

Of the three female perpetrators, two were found guilty of manslaughter, that is, guilty of unlawfully killing under such circumstances as not to constitute murder.²⁵⁹ The remaining female perpetrator was found guilty of unlawful assault occasioning death. All three have been sentenced to a term of imprisonment.

²⁵⁴ Carcach, C and James, M, *Homicide between Intimate Partners in Australia*, Trends and Issues in Crime and Criminal Justice, No. 90, Australian Institute of Criminology, Canberra, July 1998, p. 6.

²⁵⁵ Johnson, Michael P, *A Typology of Domestic Violence*, University Press of New England, Kindle Edition, loc. 1246.

²⁵⁶ Morgan, A and Chadwick, H, *Key issues in domestic violence*, Research in Practice, Summary Paper No. 7, Australian Institute of Criminology, Canberra, December 2009, p. 3.

²⁵⁷ Carcach, C and James, M, *Homicide between Intimate Partners in Australia*, Trends and Issues in Crime and Criminal Justice, No. 90, Australian Institute of Criminology, Canberra, July 1998, p. 3.

²⁵⁸ Brookman, F, *Understanding Homicide*, Sage Publications, 2005, Los Angeles, p. 164.

²⁵⁹ Section 280 of the *Criminal Code Act Compilation Act 1913* provides that '[i]f a person unlawfully kills another person under such circumstances as not to constitute murder, the person is guilty of manslaughter'.

The ongoing family and domestic violence experienced by the female perpetrators was taken into account in the court's sentencing remarks on all three occasions.

5.4 Use of violence restraining orders

In 17 of the 30 fatalities (57 per cent), VROs involving at least one of the people involved in the fatality were granted at some point in time.

A total of 48 VROs were granted between either the people involved in the fatality or one of the people involved in the fatality and a third party.

As shown in Figure 19, in six of the 30 fatalities, a VRO was granted at some point in time between the parties to the fatality, as follows:

- four VROs were granted to protect the person who was killed from the suspected perpetrator; and
- two VROs were granted to protect the suspected perpetrator from the person who was killed.

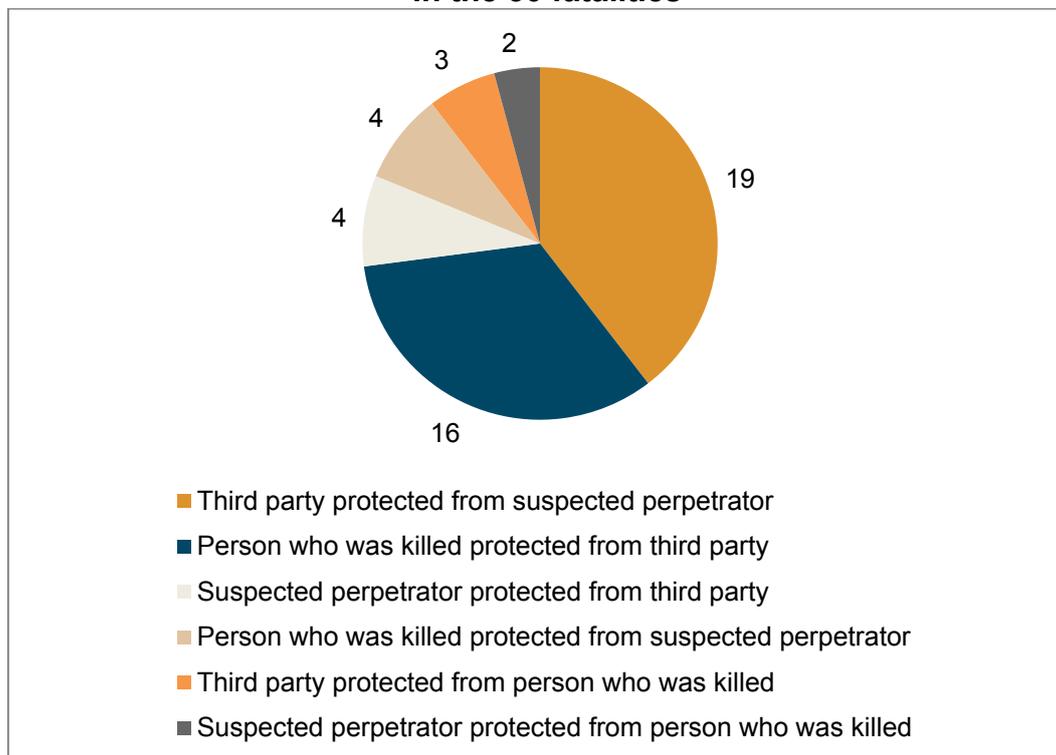
Of these six VROs:

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

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

As also shown in Figure 19, 42 VROs were granted between the parties involved in the fatality and a third party, with the largest number of these (19 VROs or 45 per cent) protecting a third party from the suspected perpetrator in the fatal incident. This was because the suspected perpetrator of the fatal incident had previously perpetrated family and domestic violence against another person.

Figure 19: The use of violence restraining orders in the 30 fatalities



Source: Ombudsman Western Australia

Use of violence restraining orders by Aboriginal people in the 30 fatalities

In the 30 fatalities, VROs were more likely to be used by Aboriginal than non-Aboriginal people, as follows:

- of the 17 fatalities where a VRO was granted at some point in time, 13 (76 per cent) involved an Aboriginal person who was killed;
- of the six VROs granted at some point in time between the parties to the fatality, four (67 per cent) related to a fatality in which an Aboriginal person was killed; and
- of the 42 VROs granted between one person involved in the fatality and a third party, 31 (74 per cent) related to a fatality in which an Aboriginal person was killed.

The Office's findings regarding the use of VROs by Aboriginal people in the 30 fatalities differs from its findings concerning state-wide applications for VROs by Aboriginal people. In summary, the Office found that, during the investigation period, 11 per cent of all persons seeking to be protected, who were in a family and domestic relationship with the respondent, identified themselves as Aboriginal or Aboriginal and Torres Strait Islander. This finding is discussed in further detail in Chapter 10.

For the 13 fatalities involving an Aboriginal person who was killed and where a VRO was in place at some point in time, WAPOL recorded a total of 273 domestic violence incidents involving the person who was killed, the suspected perpetrator and/or other parties.

5.5 Prior custodial history

Fourteen of the 30 suspected perpetrators (47 per cent) had been held in custody for criminal offences at some point prior to the time when a person was killed. The types of offences leading to these custodial periods included:

- Manslaughter;
- Aggravated assault;
- Sexual assault; and
- Unlawful wounding.

In 18 of the 30 fatalities (60 per cent), the suspected perpetrator had contact with the justice system at some point prior to the time when a person was killed and had been on bail, on parole or an 'order',²⁶⁰ whilst in the community, as follows:

- Bail and Protective Bail;
- Parole;
- Community Based Order;
- Intensive Supervision Order (and Intensive Youth Supervision Order);
- Supervised Release Order; and
- Conditional Release Order.

5.6 Family and domestic violence and the use of alcohol and other drugs

5.6.1 Alcohol and other drug use in the 30 fatalities

For the 30 fatalities, the Office examined whether alcohol use had been identified as a factor in relation to family and domestic violence incidents between the parties to the incidents, including at the time the person was killed.

In 19 of the 30 fatalities (63 per cent) the records of state government departments and authorities and the courts indicated that alcohol and/or other drugs had been used by the perpetrator immediately prior to the fatal incident. The details were recorded as follows:

- Ten perpetrators were recorded to have used alcohol (and no other drugs) immediately prior to the fatal incident:
 - Three perpetrators were recorded to have been 'drinking heavily' immediately prior to the fatal incident;
 - One perpetrator was recorded to have been drinking alcohol immediately prior to the fatal incident and in a state of 'extreme intoxication';
 - One perpetrator was recorded to have been 'drinking excessively' immediately prior to the fatal incident;
 - One perpetrator was recorded to have been drinking on the day of the fatal

²⁶⁰ This does not include VROs and police orders, which are examined separately in subsequent chapters of this report.

- incident, and was recorded to have a blood alcohol level in excess of 0.1 several hours after the fatal incident;
- One perpetrator was recorded to have been 'drinking excessively' and to have been 'heavily intoxicated' at the time of the fatal incident;
 - One perpetrator was recorded to have been 'intoxicated and had been drinking throughout much of the preceding day';
 - One perpetrator was recorded to have been drinking alcohol immediately prior to the fatal incident and was recorded to be in a 'state of intoxication'; and
 - One perpetrator was recorded to have been 'drinking alcohol on the night of the offence and [had] a history of problem alcohol use'.
- Two perpetrators were recorded to have used both alcohol and cannabis immediately prior to the fatal incident:
 - One perpetrator was recorded to have been 'drinking and smoking cannabis' and 'subject to the intoxicating effect of alcohol and drugs' immediately prior to the fatal incident; and
 - One perpetrator was recorded to have used alcohol and cannabis, and to be 'intoxicated' immediately prior to the fatal incident.
 - Seven perpetrators were recorded to have used drugs other than alcohol immediately prior to the fatal incident:
 - One perpetrator was recorded to have used heroin immediately prior to the fatal incident;
 - One perpetrator was recorded to have been 'heavily affected by cannabis' at the time of the fatal incident;
 - One perpetrator was recorded to have been 'smoking cannabis' immediately prior to the fatal incident;
 - One perpetrator was recorded to have been 'under the influence of benzodiazepines, then sought cannabis and methadone' immediately prior to the fatal incident;
 - One perpetrator was recorded to have killed 'in the context of delusions which were the product of a drug induced psychosis, and in the context of ... intoxication by voluntary consumption of methylamphetamine';
 - One perpetrator was recorded to have 'consumed methamphetamine ... [and] consumed cannabis ... [and was] under the influence of both substances at the time of the offence'; and
 - One perpetrator was recorded to have been 'under the influence of methamphetamine ... when [the perpetrator] committed the offence'.

The Office further examined the 19 fatalities where records indicated that alcohol and/or other drugs had been used by the perpetrator immediately prior to the fatal incident and identified that:

- In 10 of the 12 fatalities (83 per cent) where records indicated that alcohol had been used by the perpetrator, the person who was killed was Aboriginal. Eight of these 10 fatalities (80 per cent) occurred in remote or very remote Western Australia; and
- In five of the seven fatalities (71 per cent) where records indicated that drugs other than alcohol were used by the perpetrator, the person who was killed was non-Aboriginal. All seven of these fatalities occurred in major cities of Western Australia.

5.6.2 Alcohol use in prior family and domestic violence incidents

The Office also examined WAPOL records relating to family and domestic violence incidents involving the person who was killed and the suspected perpetrator, to determine if alcohol use was recorded.²⁶¹ As discussed at section 5.3, a prior history of family and domestic violence was recorded for 16 of the 30 fatalities. WAPOL produced 75 DVIRs relating to these 16 fatalities. Police officers recorded that the incident was 'alcohol related'²⁶² in 45 of these 75 DVIRs (60 per cent).

The Office separately examined the use of alcohol in family and domestic violence incidents involving Aboriginal people who were killed. Of the 75 DVIRs submitted by WAPOL, 65 related to an Aboriginal person who was killed. Police officers recorded that these incidents were 'alcohol related' in 42 of these 65 DVIRs (65 per cent).

5.6.3 The relationship between alcohol use and family and domestic violence

The research literature 'suggests there is a co-occurrence between alcohol consumption and/or substance misuse and episodes of [family and] domestic violence'.²⁶³ In 2012, the Personal Safety Survey identified that:

53% of women (917,200 out of the 1,716,300 women who had been physically assaulted by a male²⁶⁴) reported that alcohol or drugs had been involved²⁶⁵ in their most recent incident of physical assault by a male.²⁶⁶

²⁶¹ Other drug use is not routinely recorded on DVIRs.

²⁶² DVIRs contain a field for police officers to record if the incident is 'Alcohol Related'. This is determined and recorded by police officers investigating the incident.

²⁶³ Day, A, Chung, D, O'Leary, P, Justo, D, Moore, S, Carson, E, and Gerace, A, 'Integrated responses to domestic violence: Legally mandated intervention programs for male perpetrators', *Trends & issues in crime and criminal justice no. 404*, Australian Institute of Criminology, Canberra, December 2010, p. 4.

²⁶⁴ The relationship between the parties is not identified in the data.

²⁶⁵ The Australian Bureau of Statistics explanatory notes for this variable state: 'In the most recent incident of sexual assault, threatened sexual assault, physical assault and/or threatened or attempted physical assault. Alcohol or another substance was involved if the person or the perpetrator were under the influence of alcohol or another substance at the time of the incident or if the person believed alcohol or another substance contributed to the incident, for example, when the perpetrator was recovering from a hangover or the person believed that their drink had been spiked. Another substance - includes any mood altering substances, whether legal or not, e.g. marijuana, cocaine, rohypnol or methamphetamines', Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, cat. no. 4906.0, ABS, Canberra, December 2013.

Further Australian research conducted in New South Wales has also identified that:

41 per cent of all incidents of domestic assault reported to the police between 2001 and 2010 were alcohol related ... [b]etween 2000 and 2006, 44 per cent of intimate-partner homicides were alcohol related ... [and] [t]he overwhelming majority (87 per cent) of Indigenous intimate-partner homicides were alcohol related.²⁶⁷

Alcohol is also associated with increased severity of incidents, with research suggesting that:

...because of its impact on aggression the consumption of alcohol, either by the offender or victim, may increase the seriousness of a domestic violence incident, the severity of injuries and risk of death, with almost half of all intimate partner homicides found to be alcohol-related.²⁶⁸

The research literature also suggests that 'the evidence to date provides inadequate empirical support for the conclusion that alcohol and drug use are *causally* related to domestic violence' (as opposed to correlationally related).²⁶⁹ While 'the use of substances can lower inhibitions in turn leading to escalation of the frequency and severity of assault, however in most cases men who use violence while under the influence are also violent when not affected by drugs and/or alcohol.'²⁷⁰

Some research also identifies that 'the relationship between alcohol and domestic abuse is indirect and is a function of attitudes supporting the use of violence.'²⁷¹ For example, such research has reported that rates of family and domestic violence 'by men who supported the idea of hitting a partner but who rarely consumed alcohol had higher rates of actual violence than men who were heavy drinkers but did not approve of violence toward a partner.'²⁷²

In relation to Aboriginal people, the research literature regularly identifies alcohol as 'a significant risk factor associated with intimate partner and family violence in Aboriginal

²⁶⁶ Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, cat. no. 4906.0, ABS, Canberra, December 2013.

²⁶⁷ Mitchell, L, *Domestic violence in Australia – an overview of the issues*, Parliament of Australia, 2011, Canberra, accessed 16 October 2014, <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/DVAustralia#_Toc309798377>, p. 7, citing: Gretch, K, and Burgess, M, *Trends and patterns in domestic violence assaults: 2001 to 2010*, Issue paper, no. 61, NSW Bureau of Crime Statistics and Research, Sydney, 2011,

<[http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/bb61.pdf/\\$file/bb61.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/bb61.pdf/$file/bb61.pdf)>, p. 4.

²⁶⁸ Morgan, A and Chadwick, H, *Key issues in domestic violence*, Australian Institute of Criminology, Canberra, December 2009, p. 7.

²⁶⁹ Buzawa, E, Buzawa, C and Stark, E, *Responding to Domestic Violence*, Sage Publications, 4th Edition, 2012, Los Angeles, p. 99.

²⁷⁰ Women's Council for Domestic and Family Violence Services (WA), 'What is Domestic and Family Violence?', Women's Council, West Perth, viewed 16 October 2014, <<http://www.womenscouncil.com.au/what-is-domestic-family-violence.html>>.

²⁷¹ Buzawa, E, Buzawa, C and Stark, E, *Responding to Domestic Violence*, Sage Publications, 4th Edition, 2012, Los Angeles, p. 99.

²⁷² Buzawa, E, Buzawa, C and Stark, E, *Responding to Domestic Violence*, Sage Publications, 4th Edition, 2012, Los Angeles, p. 99.

communities'.²⁷³ As with family and domestic violence in non-Aboriginal communities, the research literature suggests that 'while alcohol consumption [is] a common contributing factor ... it should be viewed as an important situational factor that exacerbates the seriousness of conflict, rather than a cause of violence'.²⁷⁴

5.6.4 Strategies to recognise and address the co-occurrence of alcohol use and family and domestic violence

Consistent with the research literature discussed above, the National Plan observes that:

Alcohol is usually seen as a trigger, or a feature, of violence against women and their children rather than a cause. Research shows that addressing alcohol in isolation will not automatically reduce violence against women and their children. This is because alcohol does not, of itself, create the underlying attitudes that lead to controlling or violent behaviour.²⁷⁵

The National Plan particularly notes that:

The influence of alcohol on family violence is also of serious concern. More than 90 per cent of Aboriginal and Torres Strait Islander intimate partner homicides recorded in 2005-06 involved either the victim or offender, or both, being under the influence of alcohol. This compares to 39 per cent for non-Aboriginal and non-Torres Strait Islander intimate partner homicides.²⁷⁶

Accordingly, the National Plan recognises that it is a priority under the Indigenous Family Safety Program and supporting Agenda to 'develop innovative approaches to address alcohol abuse'²⁷⁷ in Aboriginal communities.

The research literature also suggests that in 'understanding risk factors for family violence, it is important to understand how factors that affect alcohol consumption also contribute to the increased risk of violence and severity of violence',²⁷⁸ further suggesting that the

²⁷³ Mitchell, L, *Domestic violence in Australia – an overview of the issues*, Parliament of Australia, 2011, Canberra, accessed 16 October 2014, pp. 6-7.

²⁷⁴ Buzawa, E, Buzawa, C and Stark, E, *Responding to Domestic Violence*, Sage Publications, 4th Edition, 2012, Los Angeles, p. 99; Morgan, A. and McAtamney, A. 'Key issues in alcohol-related violence,' *Australian Institute of Criminology*, Canberra, 2009, viewed 27 March 2015, p. 3.

²⁷⁵ 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>>, p. 29.

²⁷⁶ 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>>, p. 30.

²⁷⁷ 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>>, p. 7.

²⁷⁸ Foundation for Alcohol Research and Education, *National framework for action to prevent alcohol-related family violence*, Foundation for Alcohol Research and Education, Australian Capital Territory, p. 16, viewed 18 June 2015, <<http://www.fare.org.au/PreventAlcFV/>>.

increased availability of alcohol contributes to increases in family violence.²⁷⁹ Relevantly, the National Plan lists the following ‘[i]mmediate national initiatives’.²⁸⁰

Continue the **National Binge Drinking Strategy**.

Support local Indigenous communities to take action against alcohol supply where it is leading to high levels of violence through the new Indigenous Family Safety Program...

Support community-led solutions for addressing alcohol and substance abuse.²⁸¹

Also at a national level, strategies to address alcohol-related harm more generally are currently absorbed into the *National Drug Strategy 2010-2015 (the National Drug Strategy)*, which states:

The aim of the National Drug Strategy 2010–2015 is to build safe and healthy communities by minimising alcohol, tobacco and other drug-related health, social and economic harms among individuals, families and communities.²⁸²

A *National Alcohol Strategy 2016-2021* is currently being developed by the Intergovernmental Committee on Drugs (**IGCD**). In November 2014, the IGCD held a ‘National Stakeholder Meeting on Alcohol Related Violence and Harms’ which:

...provided an opportunity for stakeholders to work collaboratively with experts and governments across Australia in identifying opportunities to reduce the impact of alcohol related violence and harm. The IGCD has committed to using the outcomes of the meeting to inform its advice to Ministers on the specific issue of alcohol related violence and harms, and to also inform the development of the next iteration of a National Alcohol Strategy for 2016-2021.²⁸³

²⁷⁹ For example, Foundation for Alcohol Research and Education, *National framework for action to prevent alcohol-related family violence*, Foundation for Alcohol Research and Education, Australian Capital Territory, p. 16, viewed 18 June 2015, <<http://www.fare.org.au/PreventAlcFV/>>; See also, Royal Commission into Family Violence, *Witness Statement of Associate Professor Peter Graeme Miller*, Royal Commission into Family Violence, 15 July 2015.

²⁸⁰ Strategy 3.2, 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>>.

²⁸¹ 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>>, p. 15 and 21.

²⁸² Ministerial Council on Drug Strategy, *National Drug Strategy 2010–2015*, Commonwealth of Australia, Canberra, 2011, p. 5.

²⁸³ Australian Government Department of Health, *Alcohol Issues*, Australian Government Department of Health, Canberra, viewed 18 June 2015, <<http://www.health.gov.au/internet/main/publishing.nsf/Content/MC14-014845-alcohol-issues>>.

Priorities identified at this meeting include:

- ‘research to improve understanding of the relationship between alcohol and domestic violence’; and²⁸⁴
- ‘[d]evelopment and implementation of family support and treatment strategies’ including ‘combined substance abuse and domestic violence treatment’.²⁸⁵

The Office also notes that, in June 2015, the Foundation for Alcohol Research and Education (**FARE**) launched a *National framework for action to prevent alcohol-related family violence*.²⁸⁶ The FARE framework ‘propos[es] policies and programs that all Australian governments can implement which will have a tangible impact on reducing and preventing family violence.’²⁸⁷ In launching the framework, Rosie Batty, Australian of the Year and Founder of the Luke Batty Foundation, and Michael Thorn, Chief Executive of FARE stated:

Up until now, the role of alcohol has not been adequately recognised in national or state and territory plans and strategies to address the issue. This is despite the fact that alcohol is significantly implicated in family violence.²⁸⁸

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

The committee recommends that the Commonwealth Government consider the framework developed by the Foundation for Alcohol Research and Education (FARE) as part of the cross-jurisdictional work it is leading through COAG to ensure the development of an integrated and focused effort to reduce the role of alcohol as a contributing factor in cases of domestic violence.²⁸⁹

In Western Australia, the State Strategy does not mention or address alcohol and its relationship with family and domestic violence. However, the goal of the *Drug and Alcohol Interagency Strategic Framework for Western Australia 2011-2015 (the Framework)* is to

²⁸⁴ Australian Government Department of Health, *Intergovernmental Committee on Drugs (IGCD) National Stakeholder Meeting on Alcohol Related Violence and Harms 19 November 2014 Summary of Meeting*, Australian Government Department of Health, Canberra, viewed 18 June 2015, <<http://www.health.gov.au/internet/main/publishing.nsf/Content/MC14-014845-alcohol-issues>>, p. 3.

²⁸⁵ Australian Government Department of Health, *Intergovernmental Committee on Drugs (IGCD) National Stakeholder Meeting on Alcohol Related Violence and Harms 19 November 2014 Summary of Meeting*, Australian Government Department of Health, Canberra, viewed 18 June 2015, <<http://www.health.gov.au/internet/main/publishing.nsf/Content/MC14-014845-alcohol-issues>>, p. 3.

²⁸⁶ Foundation for Alcohol Research and Education, *Governments Urged To Act On Alcohol-Related Family Violence*, Foundation for Alcohol Research and Education, Australian Capital Territory, 17 June 2015, p. 1.

²⁸⁷ Foundation for Alcohol Research and Education, *Governments Urged To Act On Alcohol-Related Family Violence*, Foundation for Alcohol Research and Education, Australian Capital Territory, 17 June 2015, p. 1.

²⁸⁸ Foundation for Alcohol Research and Education, *National framework for action to prevent alcohol-related family violence*, Foundation for Alcohol Research and Education, Australian Capital Territory, viewed 18 June 2015, <<http://www.fare.org.au/PreventAlcFV/>>.

²⁸⁹ Finance and Public Administration References Committee, *Domestic violence in Australia*, Commonwealth of Australia, August 2015, p. 129.

‘prevent and reduce the adverse impacts of alcohol and other drugs in the Western Australian community’.²⁹⁰

As one of these adverse impacts, the Framework highlights ‘violence and family and relationship breakdown’ as a result of ‘problematic drug and alcohol use’.²⁹¹ The Framework has been endorsed by the state government departments represented on the Drug and Alcohol Strategic Senior Officers’ Group (including the Mental Health Commission and DCPFS).²⁹²

As the Government agency with lead responsibility for preventing and reducing the adverse impacts of alcohol and other drugs, the Mental Health Commission (formerly the Drug and Alcohol Office):

- ‘conducts a range of prevention and early intervention programs and services to... prevent and delay the onset of alcohol and other drug use...support environments that discourage risky use ... [and] support and enhance the community’s capacity to address alcohol and other drug problems’;²⁹³
- ‘provides information, advice and counselling and referral about alcohol and other drug use to the public through the telephone Alcohol and Drug Support Line, the Parent and Family Drug Support Line and the Working Away Alcohol and Drug Support Line;
- provides clinical and treatment services under the trading name Next Step Drug and Alcohol Services, including inpatient withdrawal, outpatient and pharmacotherapy services;
- provides funding and support for a comprehensive range of sobering-up, withdrawal, outpatient counselling and residential rehabilitation services, including specialist youth, women’s and family services, provided primarily by non-government agencies’;²⁹⁴
- ‘provides culturally secure workforce and organisational development programs for human service agencies and staff to respond effectively to Aboriginal people affected by alcohol and other drug use’;²⁹⁵ and
- ‘works closely with other government agencies, the non-government sector and community to ensure the ongoing implementation of appropriate programs and services’.²⁹⁶

During the course of the investigation, the Mental Health Commission informed the Office that:

The draft Mental Health, Alcohol and Other Drug Services Plan 2015-2025 (the Plan) outlines the overall intentions regarding service development of mental health, alcohol and other drug services over the next ten years.

²⁹⁰ Government of Western Australia *Drug and Alcohol Interagency Strategic Framework for Western Australia* 2011-2015, p 5.

²⁹¹ Government of Western Australia Drug and Alcohol Office, *Annual Report 2013-2014*, Drug and Alcohol Office, Perth, 2014, p. 94.

²⁹² Mental Health Commission, personal communication, 21 October 2015.

²⁹³ Government of Western Australia Drug and Alcohol Office, *Annual Report 2013-2014*, Drug and Alcohol Office, Perth, 2014, p. 21.

²⁹⁴ Mental Health Commission, personal communication, 21 October 2015.

²⁹⁵ Government of Western Australia Drug and Alcohol Office, *Annual Report 2013-2014*, Drug and Alcohol Office, Perth, 2014, p. 22.

²⁹⁶ Government of Western Australia Drug and Alcohol Office, *Annual Report 2013-2014*, Drug and Alcohol Office, Perth, 2014, p. 20.

An action of the Plan is to develop a comprehensive mental health, alcohol and other drug prevention plan. It is understood that there are a number of risk factors, including family and domestic violence which can contribute to the development of mental illness, alcohol and other drug problems that require consideration in the development of the Plan.

Additionally, the draft Plan highlights the need for mental health, alcohol and other drug services to deliver trauma informed care, which involves the provision of appropriate services for those who have experienced family and domestic violence.²⁹⁷

During the investigation, stakeholders have suggested that programs and services for victims and perpetrators of violence in Western Australia, including family and domestic violence, do not address its co-occurrence with alcohol and other drug abuse. Specifically, this means that programs and services addressing family and domestic violence:

- may deny victims or perpetrators access to their services, particularly if they are under the influence of alcohol and other drugs; and
- frequently do not address victims' or perpetrators' alcohol and other drug abuse issues.

Conversely, stakeholders have suggested programs and services which focus on alcohol and other drug use generally do not:

- address perpetrators' violent behaviour; or
- respond to the needs of victims resulting from their experience of family and domestic violence.

The concerns of stakeholders are consistent with the research literature, which identifies that:

Integrated and coordinated service models within the AOD [Alcohol and Other Drugs] and FDV [Family and Domestic Violence] sectors in Australia are rare. Historically, the sectors have worked independently of each other despite the long recognised association between alcohol misuse and FDV ... [even though] [i]ntegrated models of care are found for other co-occurring conditions.²⁹⁸

The research literature identifies the benefits of integrated service provision addressing the co-occurrence of family and domestic violence with alcohol and other drug use, to both victims and perpetrators of family and domestic violence.²⁹⁹

The Framework identifies '[i]ntegrated and coordinated services through effective partnerships and collaboration between the alcohol and other drug sector and key stakeholders'³⁰⁰ as a key outcome. During the investigation, the Office identified one

²⁹⁷ Mental Health Commission, personal communication, 21 October 2015.

²⁹⁸ Foundation for Alcohol Research and Education, *The Hidden Harm: Alcohol's impact on children and families*, Foundation for Alcohol Research and Education, ACT, 2015, p. 49.

²⁹⁹ Braaf, R. 'Elephant in the Room: responding to alcohol misuse and domestic violence,' *Australian Domestic and Family Violence Clearinghouse*, Sydney, 2012, p. 14-15.

³⁰⁰ Government of Western Australia Drug and Alcohol Office, *Drug and Alcohol Interagency Strategic Framework for Western Australia 2011-2015*, p. 11.

program in the metropolitan area, providing two places, to assist perpetrators of family and domestic violence with their abuse of alcohol and other drugs.

Given the level of recorded alcohol use associated with the 30 fatalities, it is proposed that DCPFS and the Mental Health Commission collaborate to include initiatives in Action Plans under the State Strategy which recognise and address the co-occurrence of alcohol use and family and domestic violence. The findings of this examination could potentially inform the development of these initiatives.

Recommendation 3

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

6 Aboriginal family violence

6.1 Aboriginal people are overrepresented as victims of family violence by a factor of 10

The Office's analysis in Chapters 4 and 5 identified that, while Aboriginal and Torres Strait Islander people make up 3.1 per cent of Western Australia's population,³⁰¹ Aboriginal people comprised 33 per cent of victims of family and domestic violence offences against the person detected by WAPOL in the investigation period (section 4.3.1) and 50 per cent of the people who were killed in the 30 fatalities (section 5.2.5).

The Office's analysis further identified that Aboriginal people who were killed 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 16 of the 30 fatalities (53 per cent) WAPOL recorded a history of family and domestic violence between the person who was killed and the suspected perpetrator. In 11 of these 16 fatalities (69 per cent), the person who was killed was Aboriginal.

The findings of the Office's analysis are consistent with the research literature which identifies that Aboriginal people are 'more likely to be victims of violence than any other section of Australian society',³⁰² and that Aboriginal people experience family and domestic violence at 'significantly higher rates than other Australians'.³⁰³ In addition, Aboriginal women are:

- '45 times more likely to be victims of [family] violence than their non-Aboriginal counterparts',³⁰⁴
- '10 times more likely to be victims of homicide and ... 35 times as likely to be hospitalised due to family and domestic violence-related assaults as other Australian females',³⁰⁵ and
- 'more likely to access emergency accommodation or [a] refuge'³⁰⁶ as a result of intimate partner violence.

³⁰¹ Australian Bureau of Statistics, '2011 Census Counts – Aboriginal and Torres Strait Islander Peoples', *Census of Population and Housing – Counts of Aboriginal and Torres Strait Islander Australians, 2011*, cat. no. 2075.0, ABS, Canberra, June 2012.

³⁰² Cripps, K and Davis, M, *Communities working to reduce Indigenous family violence*, Brief 12, June 2012, Indigenous Justice Clearinghouse, New South Wales, 2012, p. 1.

³⁰³ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues, An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001 – 2006*, Human Rights and Equal Opportunity Commission, June 2006, p. 6.

³⁰⁴ Goulding D, *The Role of Socio-Economic and Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family and Domestic Violence*, Centre for Social and Community Research, Murdoch University, Perth, 2007, p. v.

³⁰⁵ Ferrante, A, *Measuring the extent of domestic violence*, Hawkins Press, Sydney, 1996 and Australian Institute of Health and Welfare (AIHW): Al-Yaman, F, Van Doeland, M, and Wallis, M, *Family violence among Aboriginal and Torres Strait Islander peoples*, AIHW, Canberra, 2006, cat. no. IHW 17, cited in Department for Child Protection and Family Support, *Practice guidelines: Women and Children's Family and Domestic Violence Counselling and Support Programs, Western Australian edition*, Department for Child Protection and Family Support, Perth, 2013, p. 8.

As observed by the former Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma:

Family violence is abhorrent and has no place in Aboriginal or Torres Strait Islander societies. It is a scourge that is causing untold damage and trauma among Indigenous communities, to our women and children, and to the fabric of Indigenous cultures.³⁰⁷

6.2 Understanding Aboriginal family violence

The research literature identifies that concepts of family and domestic violence in Aboriginal communities are broader than mainstream definitions of domestic violence, with the term 'family violence' better reflecting the experiences of Aboriginal people.³⁰⁸ The former Aboriginal and Torres Strait Islander Social Justice Commissioner explored the concept of family violence in Aboriginal families and communities as follows:

Family violence involves any use of force, be it physical or non-physical, which is aimed at controlling another family or community member and which undermines that person's well-being. It can be directed towards an individual, family, community or particular group. Family violence is not limited to physical forms of abuse, and also includes cultural and spiritual abuse. There are interconnecting and trans-generational experiences of violence within Indigenous families and communities.³⁰⁹

Representatives of Aboriginal and Torres Strait Islander people, and women in particular, have identified that:

The nature, history and context of family violence in Aboriginal and Torres Strait Islander communities is different to domestic violence experienced in mainstream communities and populations. Aboriginal and Torres Strait Islander people continue to suffer the intergenerational effects of past welfare practices including the forced removal of their children and dislocation from their communities, country and culture, as well as experiencing higher levels of poverty and social disadvantage compared to other Australians. The combined

³⁰⁶ Morgan, A, and Chadwick, H, *Key issues in domestic violence*, Australian Institute of Criminology, Australian Government, Canberra, December 2009, viewed 18 February 2015, <<http://www.aic.gov.au/publications/current%20series/rip/1-10/07.html>>, p. 4.

³⁰⁷ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues, An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001 – 2006*, Human Rights and Equal Opportunity Commission, June 2006, p. 4.

³⁰⁸ For example, Australian Institute of Health and Welfare, *Family violence among Aboriginal and Torres Strait Islander peoples*, Australian Institute of Health and Welfare, cat. no. IHW 17, Canberra, viewed 10 September 2015, <<http://www.aihw.gov.au/publication-detail/?id=6442467912>>; Department for Child Protection and Family Support, *Family and Domestic Violence Background Paper*, Government of Western Australia, Perth, 2012, p. 2.

³⁰⁹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues, An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001 – 2006*, Human Rights and Equal Opportunity Commission, June 2006, p. 6.

effects of past practices and current disadvantages present extreme challenges to families.³¹⁰

The research literature observes a number of contextual factors contributing to the prevalence and seriousness of family violence in Aboriginal communities:

...[V]iolence against women within the Indigenous Australian communities need[s] to be understood within the specific historical and cultural context of colonisation and systemic disadvantage. Any discussion of violence in contemporary Indigenous communities must be located within this historical context. Similarly, any discussion of “causes” of violence within the community must recognise and reflect the impact of colonialism and the indelible impact of violence perpetrated by white colonialists against Indigenous peoples...A meta-evaluation of literature...identified many “causes” of family violence in Indigenous Australian communities, including historical factors such as: collective dispossession; the loss of land and traditional culture; the fragmentation of kinship systems and Aboriginal law; poverty and unemployment; structural racism; drug and alcohol misuse; institutionalisation; and the decline of traditional Aboriginal men’s role and status - while “powerless” in relation to mainstream society, Indigenous men may seek compensation by exerting power over women and children...³¹¹

6.2.1 Aboriginal victims of family and domestic violence and seeking help

In addition to the challenges faced by all victims in reporting family and domestic violence, the research literature identifies additional disincentives to reporting family and domestic violence faced by Aboriginal people, including:

Indigenous women continuously balance off the desire to stop the violence by reporting to the police with the potential consequences for themselves and other family members that may result from approaching the police; often concluding that the negatives outweigh the positives. Synthesizing the literature on the topic reveals a number of consistent themes, including: a reluctance to report because of fear of the police, the perpetrator and perpetrator’s kin; fear of “payback” by the offender’s family if he is jailed; concerns the offender might become “a death in custody”; a cultural reluctance to become involved with non-Indigenous justice systems, particularly a system viewed as an instrument of dispossession by many people in the Indigenous community; a degree of normalisation of violence in some families and a degree of fatalism about change; the impact of “lateral violence” ... which makes victims subject to intimidation and community denunciation for reporting offenders, in Indigenous communities; negative experiences of contact with the police when previously attempting to report violence (such as being arrested on outstanding warrants); fears that their children will be removed if they are seen as being part of an

³¹⁰ National Aboriginal and Torres Strait Islander Women’s Alliance, *Submission to the Finance and Public Administration Committee Inquiry Into Domestic Violence in Australia*, National Aboriginal and Torres Strait Islander Women’s Alliance, New South Wales, 31 July 2014, p. 4.

³¹¹ Blagg, H, Bluett-Boyd, N, and Williams, E, *Innovative models in addressing violence against Indigenous women: State of knowledge paper*, Australia’s National Research Organisation for Women’s Safety Limited, Sydney, New South Wales, August 2015, p. 3.

abusive house-hold; lack of transport on rural and remote communities; and a general lack of culturally secure services.³¹²

The research literature further suggests that Aboriginal people 'especially women, are dissuaded from approaching mainstream legal services ... [due to] [l]anguage barriers and the need for targeted, cultural sensitivity'.³¹³ The 2004 Gordon Inquiry outlined some of the challenges for Western Australian government agencies responding to Aboriginal family violence as follows:

Aboriginal women are also suspicious of involvement with justice and welfare agencies. They see aspects of the system – particularly prisons – as an aspect of the violence cycle which de-socialises, brutalises and de-skills their menfolk... There is a profound mistrust of social work agencies who may take the children away from a violent home, and there is still considerable suspicion of police involvement in domestic disputes.³¹⁴

These barriers to Aboriginal people seeking help mean that 'Aboriginal women are increasingly vulnerable to the risks and effects of violence'.³¹⁵

The findings of the Office's analysis regarding use of violence restraining orders by Aboriginal people are consistent with and support the findings of the research literature. The Office's analysis, set out in detail in Part 2 of this report, demonstrates that there are distinct differences in the use of VROs between Aboriginal people and non-Aboriginal people. By way of example, the Office's analysis of the state-wide data found that, in the investigation period, only 11 per cent of applicants for VROs identified themselves as Aboriginal or Aboriginal and Torres Strait Islander, even though Aboriginal people who were killed 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. That is, the relatively high level of contact with WAPOL by Aboriginal victims was not necessarily associated with Aboriginal victims accessing VROs to protect themselves and their children.

³¹² Blagg, H, Bluett-Boyd, N, and Williams, E, *Innovative models in addressing violence against Indigenous women: State of knowledge paper*, Australia's National Research Organisation for Women's Safety Limited, Sydney, New South Wales, August 2015, p. 13.

³¹³ Law Council of Australia, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Access to Justice*, Law Council of Australia, Canberra, 2009, p. 24.

³¹⁴ 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.

³¹⁵ New South Wales Department of Health, *Aboriginal Family Health Strategy 2011-2016: Responding to Family Violence in Aboriginal Communities*, New South Wales Government, Sydney, 2011, p. 7.

6.3 Strategies addressing Aboriginal family violence

6.3.1 The National Plan to Reduce Violence against Women and their Children

Outcome 3 of the National Plan expressly acknowledges the 'legacy of past [government social policy] failures'³¹⁶ and the need for collaboration so that 'Indigenous communities are strengthened',³¹⁷ stating that:

The *National Plan* is focused on supporting Indigenous communities to develop local solutions to preventing violence ... Given the significant disadvantage experienced by Indigenous Australians, this outcome focuses on strengthening Indigenous communities to better tackle family violence and sexual assault ... [through the following strategies:]

Strategy 3.1: Foster the leadership of Indigenous women within communities and broader Australian society...

Strategy 3.2: Build community capacity at the local level ... [and]

Strategy 3.3: Improve access to appropriate services.³¹⁸

Key actions and national initiatives related to each of these three strategies are also identified in the National Plan.

6.3.2 Victoria

In 2008, the Victorian Aboriginal community and the Victorian Government released *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities 10 year plan (Strong Culture, Strong Peoples, Strong Families)* to enable 'a strategic approach to address Indigenous family violence' with the following eight objectives:

- 1 **Cultural Safety:** Make Victoria a safer place for all Indigenous Victorians.
- 2 **Healthy Families:** Support strong, robust and healthy families that provide a safe nurturing environment.
- 3 **Education, Awareness, Prevention:** Intervene early to improve education, awareness and prevention of family violence.
- 4 **Safety for Victims:** Increase the safety of Indigenous families and individuals, especially women and children.
- 5 **Accountability:** Increase the accountability and personal responsibility of perpetrators of family violence within Indigenous communities.

³¹⁶ 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>>, p. 20.

³¹⁷ 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>>, p. 20.

³¹⁸ 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>>, p. 20-21.

- 6 **Healing:** Increase opportunities for healing for victims and perpetrators.
- 7 **Service Capability:** Increase the cultural competency and capacity of the service system to improve responses to Indigenous family violence.
- 8 **Research and Evaluation:** Improve the effectiveness and efficiency of responses to Indigenous family violence through ongoing research and evaluation.³¹⁹ [Original formatting and emphasis]

Strong Culture, Strong Peoples, Strong Families also identifies the following 12 '[k]ey elements of good practice for effective Indigenous family violence programs' to 'guide the design, development and delivery of programs and services within the 10 year plan'³²⁰ as it moves from 'a need for tertiary services to a stronger primary prevention focus'.³²¹

- 1 *Cultural grounding of programs*
- 2 *Community grounding/development of programs and inclusive community approaches*
- 3 *Composite programs, integration and holistic approaches*
- 4 *Engagement of men, women and children in programs*
- 5 *Ensuring the involvement of appropriate Elders*
- 6 *Self-empowerment and self-esteem as capacity building by-products*
- 7 *Examining inter-generational family history and cultural experience as a healing element*
- 8 *Culturally competent responses, including group approaches*
- 9 *Capacity building through networking partnerships and interagency collaboration*
- 10 *Information collection and dissemination*
- 11 *Training and skills acquisition*
- 12 *Flexibility and adaptability of programs*³²² [original formatting]

6.3.3 New South Wales

The New South Wales Aboriginal Family Health Strategy 2011-16: Responding to Family Violence in Aboriginal Communities, is structured around Aboriginal family and culture, and founded on an Aboriginal Family Health Model of Care. Core elements of this model include strategic leadership, effective service delivery, a culturally competent workforce, and a strong community capacity,³²³ and are informed by key principles including a

³¹⁹ Victorian Department of Planning and Community Development, *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities, 10 Year Plan, Second Edition*, State Government of Victoria, Melbourne, 2008, p. 32.

³²⁰ Victorian Department of Planning and Community Development, *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities, 10 Year Plan, Second Edition*, State Government of Victoria, Melbourne, 2008, p. 33.

³²¹ Victorian Department of Planning and Community Development, *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities, 10 Year Plan, Second Edition*, State Government of Victoria, Melbourne, 2008, p. 32.

³²² Victorian Department of Planning and Community Development, *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities, 10 Year Plan, Second Edition*, State Government of Victoria, Melbourne, 2008, p. 33.

³²³ New South Wales Department of Health, *Aboriginal Family Health Strategy 2011-2016: Responding to Family Violence in Aboriginal Communities*, New South Wales Government, Sydney, 2011.

whole-of-life view of health, self-determination, working in partnership, cultural understanding, and recognition of trauma and loss.³²⁴

The New South Wales Aboriginal Family Health Strategy 2011-16: Responding to Family Violence in Aboriginal Communities aims '[t]o reduce the incidence and impact of family violence in Aboriginal communities; to build the capacity and strength of individuals and communities to prevent, respond to and recover from family violence to nurture the spirit, resilience and cultural identity that build Aboriginal families.'³²⁵

6.3.4 Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities

Currently in Western Australia, there is no strategy solely aimed at addressing family violence experienced by Aboriginal people and in Aboriginal communities.

As discussed in Chapter 4, the State Strategy sets out the state government's framework for responding to family and domestic violence. The State Strategy identifies that, the previous (now expired) *WA Implementation Plan to 2013*, under 'Outcome 1: Prevention and Early Intervention,' included 'Action Area 1.4, Support and improve the links between Aboriginal organisations and government and community sector agencies working with family and domestic violence to provide a coordinated and integrated response.'³²⁶

Aboriginal stakeholders have identified that the State Strategy 'absorbs issues for Aboriginal people into the general statement of outcome prevention and early intervention, safety for victims and accountability'³²⁷ for perpetrators, and that '[t]his is of concern if the plan is to be effective, and more so if it is to be effective for those further marginalised by racism and other structural disadvantage.'³²⁸ These stakeholders have suggested that an Aboriginal specific strategy should be developed to respond to family violence experienced by Aboriginal people and in Aboriginal communities in Western Australia. For example, in its submission to the Federal Senate Inquiry into Domestic Violence in Australia, Aboriginal Family Law Services (WA) recommended that:

...a greater focus on the issue of family and domestic violence for Aboriginal people be adopted, and that this focus manifest in the form of a statewide strategy. An Aboriginal specific strategy would direct attention to the issues, people, solutions and resources required to make positive change. It would need to be driven by the community, in collaboration with government and

³²⁴ New South Wales Department of Health, *Aboriginal Family Health Strategy 2011-2016: Responding to Family Violence in Aboriginal Communities*, New South Wales Government, Sydney, 2011, p. 16.

³²⁵ New South Wales Department of Health, *Aboriginal Family Health Strategy 2011-2016: Responding to Family Violence in Aboriginal Communities*, New South Wales Government, Sydney, 2011, p. 15.

³²⁶ Department for Child Protection and Family Support, *Western Australia's Family and Domestic Violence Prevention Strategy to 2022*, Perth, 2012, p. 10.

³²⁷ Aboriginal Family Law Services, *Submission to Senate Inquiry into Domestic Violence in Australia*, Aboriginal Family Law Services, East Victoria Park, July 2014, p. 6.

³²⁸ Aboriginal Family Law Services, *Submission to Senate Inquiry into Domestic Violence in Australia*, Aboriginal Family Law Services, East Victoria Park, July 2014, p. 6.

non-government partners, and be a coherent and integrated approach. This would augment and inform the existing state strategy.³²⁹

The findings of the Office's analysis, set out in this report, strongly support the development of a separate strategy (linked to the State Strategy and consistent with, and supported by, the State Strategy) that is specifically tailored to preventing and reducing Aboriginal family violence. This case can be summarised as three key points.

Firstly, the findings of the Office's investigation, set out in Chapters 4 and 5, identify that Aboriginal people are overrepresented, both as victims of family and domestic violence and victims of fatalities arising from this violence.

Secondly, the research literature, discussed in this Chapter suggests a distinctive 'nature, history and context of family violence in Aboriginal and Torres Strait Islander communities.'³³⁰ The research literature further suggests that combating violence is likely to require approaches that are informed by and respond to this experience of family violence. This perspective has been expressed as follows:

Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender. The identity of many Indigenous women is bound to their experience as Indigenous people. Rather than sharing a common experience of sexism binding them with non-Indigenous women, this may bind them more to their community, including the men of the community.

Strategies for addressing family violence in Indigenous communities need to acknowledge that a consequence of this is that an Indigenous woman 'may be unable or unwilling to fragment their identity by leaving the community, kin, family or partners' as a solution to the violence.³³¹

Thirdly, the findings of the Office's investigation, set out in Part 2 of this report, demonstrate how the unique factors associated with Aboriginal family violence have resulted in important aspects of the use of VROs by Aboriginal people which are different from those of non-Aboriginal people. Barriers to the use of VROs by Aboriginal people are also discussed in further detail in section 10.3.

The findings of the Office's investigation, together with the findings of the Law Reform Commission Final Report, could inform the development of a strategy which is specifically aimed at addressing Aboriginal family violence.

During the course of the investigation, and as discussed at section 4.6.2, DCPFS and DOTAG informed the Office that the Freedom from Fear Action Plan, released in

³²⁹ Aboriginal Family Law Services, *Submission to Senate Inquiry into Domestic Violence in Australia*, Aboriginal Family Law Services, East Victoria Park, July 2014, p. 6.

³³⁰ National Aboriginal and Torres Strait Islander Women's Alliance, *Submission to the Finance and Public Administration Committee Inquiry Into Domestic Violence in Australia*, National Aboriginal and Torres Strait Islander Women's Alliance, New South Wales, 31 July 2014, p. 4.

³³¹ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues, An overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001 – 2006*, Human Rights and Equal Opportunity Commission, June 2006, pp. 6-7.

September 2015, 'underpins a focus on family violence within Aboriginal communities and includes the *Safer Families, Safer Communities Kimberley Family Violence Regional Plan* (the Kimberley Plan).'³³²

Recommendation 4

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

As identified at section 5.6.1, given the level of recorded alcohol use associated with the 30 fatalities, it is proposed that DCPFS and the Mental Health Commission collaborate to include initiatives in Action Plans developed under the State Strategy which recognise and address the co-occurrence of alcohol use and family and domestic violence. Similarly, a strategy tailored to preventing Aboriginal family violence should also incorporate strategies that recognise and address the co-occurrence of alcohol use and Aboriginal family violence.

Recommendation 5

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

6.3.5 An Aboriginal family violence strategy needs to involve Aboriginal people and be informed by Aboriginal culture

The findings of the Office's investigation strongly support that, although consultation with Aboriginal people is essential, a strategy specifically tailored to preventing and reducing Aboriginal family violence should also be driven by Aboriginal people, not just incorporate their views gained through consultation. The strategy must include and encourage the involvement of Aboriginal people in a full and active way, at each stage and level of the development of the strategy, and be comprehensively informed by Aboriginal culture. Doing so would mean that an Aboriginal family violence strategy would be developed with, and by, Aboriginal people, including 'Law People, Elders and Senior Aboriginal people'.³³³

This approach also reflects the right of Aboriginal people and communities to drive and participate in development, enshrined in Article 23 of the *United Nations Declaration on the Rights of Indigenous Peoples*, to which the Australian Government formally announced its support in 2009:

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous

³³² Department for Child Protection and Family Support, personal communication, 19 October 2015; and Department of the Attorney General, personal communication, 20 October 2015.

³³³ Hovane, V, "Dying to be heard": *Family Violence in Aboriginal communities and Implications for Fatality Reviews*, 7 November 2014, presentation to the 4th Australasian Conference on Child Death Inquiries and Reviews, Perth.

peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.³³⁴

Recommendation 6

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

³³⁴ Australian Human Rights Commission, *United Nations Declaration on the Rights of Indigenous Peoples*, Article 23, viewed 22 April 2015, <<https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>>.