



A report on giving effect to the recommendations  
arising from the *Investigation into issues  
associated with violence restraining orders and  
their relationship with family and domestic  
violence fatalities*

**Ombudsman Western Australia**  
Serving Parliament – Serving Western Australians

## About this Report

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Ombudsman Western Australia acknowledges Aboriginal and Torres Strait Islander people of Australia as the traditional custodians of this land. We recognise and respect the long history and ongoing cultural connection Aboriginal and Torres Strait Islander people have to Australia, recognise the strength, resilience and capacity of Aboriginal and Torres Strait Islander people and pay respect to Elders past, present and future.

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## Ombudsman's Foreword

As Western Australian Ombudsman, I undertake an important responsibility to review family and domestic violence fatalities. Arising from this work, I identified the need to undertake a major own motion investigation into issues associated with violence restraining orders (**VROs**) and their relationship with family and domestic violence fatalities.

On 19 November 2015, I tabled the *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (**FDV Investigation Report**) in the Western Australian Parliament. Through that investigation, I found that a range of work had been undertaken by state government departments and authorities to administer their relevant legislative responsibilities, including their responsibilities arising from the *Restraining Orders Act 1997*. I also found, however, that there is important further work that should be done. This work, detailed in the findings of the FDV Investigation Report, includes a range of important opportunities for improvement for state government departments and authorities, working individually and collectively, across all stages of the VRO process.

I also found that Aboriginal Western Australians are significantly overrepresented as victims of family violence, yet underrepresented in the use of VROs. Following from this, I identified that a separate strategy, specifically tailored to preventing and reducing Aboriginal family violence, should be developed. This strategy should actively invite and encourage the full involvement of Aboriginal people in its development and be comprehensively informed by Aboriginal culture.

Furthermore, the FDV Investigation Report identified nine key principles for state government departments and authorities to apply when responding to family and domestic violence and in administering the *Restraining Orders Act 1997*. Applying these principles will enable state government departments and authorities to have the greatest impact on preventing and reducing family and domestic violence and related fatalities.

Arising from my findings in the FDV Investigation Report, I made 54 recommendations to four government agencies about ways to prevent or reduce family and domestic violence fatalities. Each agency agreed to these recommendations.

Importantly, I also indicated that my office would actively monitor the implementation of these recommendations and report to Parliament on the results of this monitoring. Accordingly, I am now pleased to provide Parliament with 'A report on giving effect to the recommendations arising from the *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*'.

I am pleased that in relation to all of the recommendations, the relevant state government departments and authorities have either taken steps, or propose to take steps (or, in some cases, both) to give effect to the recommendations. In no instance has the office found that no steps have been taken, or are proposed to be taken, to give effect to the recommendations.

It is particularly pleasing that, in giving effect to the recommendations, important improvements have been achieved when compared to the findings identified in the FDV Investigation Report.

This report sets out the steps taken, or proposed to be taken, to give effect to the recommendations arising from the FDV Investigation Report, however, the work of my office in ensuring that the recommendations of the investigation are given effect does not end with the tabling of this report.

My office will continue to monitor, and report on, whether steps continue to be taken to give effect to the recommendations arising from the FDV Investigation Report. The next such report will be provided in my office's 2016-17 Annual Report.

## Important contact information

If you or someone you know is in immediate danger (adult or child) please telephone 000.

**The following services are available 24 hours a day, seven days a week:**

**Western Australia Police** Ph: 131 444 (in an emergency call 000) TTY: 106

**Women's Domestic Violence Helpline** Ph: (08) 9223 1188 or free call 1800 007 339

'The Women's Domestic Violence Helpline is a state wide 24 hour service. This service provides support and counselling for women experiencing family and domestic violence. This includes phone counselling, information and advice, referral to local advocacy and support services, liaison with police if necessary and support in escaping situations of family and domestic violence. The service can refer women to safe accommodation if required. A telephone based interpreting service is available if required.'<sup>1</sup>

**Men's Domestic Violence Helpline** Ph: (08) 9223 1199 or free call 1800 000 599

'The Men's Domestic Violence Helpline is a state wide 24 hour service. This service provides counselling for men who are concerned about their violent and abusive behaviours. The service can provide telephone counselling, information and referral to ongoing face to face services if required. This service can provide information about accessing legal advice, accommodation and other support services for people who have been served with a violence restraining order. Information and support is also available for men who have experienced family and domestic violence. A telephone based interpreting service is available if required.'<sup>2</sup>

**Crisis Care Helpline** Ph: (08) 9223 1111 or country free call 1800 199 008  
TTY: (08) 9325 1232

'Crisis Care is a telephone information and counselling service for people in crisis needing urgent help.'<sup>3</sup>

**1800 RESPECT** Ph: 1800 737 732

'1800 RESPECT is the National Sexual Assault Domestic Violence Counselling Service. It is a confidential online and telephone counselling, information and referral service available 24 hours a day, 7 days a week.'<sup>4</sup>

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<sup>1</sup> Department for Child Protection and Family Support, 'Women's Domestic Violence Helpline', viewed 27 September 2016, <<http://www.dcp.wa.gov.au/CrisisAndEmergency/Pages/Women%27s-Domestic-Violence-Helpline.aspx>>.

<sup>2</sup> Department for Child Protection and Family Support, 'Men's Domestic Violence Helpline', viewed 27 September 2016, <<http://www.dcp.wa.gov.au/CrisisAndEmergency/Pages/Men%27s-Domestic-Violence-Helpline.aspx>>.

<sup>3</sup> Department for Child Protection and Family Support, 'Crisis Care Helpline', viewed 27 September 2016, <<http://www.dcp.wa.gov.au/CrisisAndEmergency/Pages/CrisisCare.aspx>>.

<sup>4</sup> 1800 RESPECT, '1800RESPECT Background', viewed 25 October 2016, <<https://www.1800respect.org.au/about/>>.

**Kids Helpline** Ph: 1800 551 800

'Kids Helpline is Australia's only national 24/7 telephone and online counselling and support service specifically for young people aged between 5 and 25 years.'<sup>5</sup>

**1800 MYLINE** Ph: 1800 695 463

'A national relationships helpline for young Australians to talk to someone about the relationship issues they may be experiencing, or if they are unclear about where to draw the line between what is, or is not, a respectful relationship.'<sup>6</sup>

**The following services are available during business hours:**

**Legal Aid WA Domestic Violence Legal Unit** Ph: 1300 650 579

'Legal Aid WA's Domestic Violence Legal Unit advises and assists women with restraining order matters. Services include:

- speaking to the police and ensuring that appropriate criminal charges are laid against the person who has been violent or has threatened physical violence
- advising and assisting women to get restraining orders against the person committing domestic violence
- ensuring prompt service in the matters of restraining orders
- providing brief counselling, safety planning and referrals to relevant agencies when ongoing counselling and support is required
- representing women in court for restraining order hearings where legal aid has been granted
- providing initial advice and referrals on other matters, which may arise when trying to escape domestic violence. These may include family law, property law matters and criminal injury compensation.

For women who are non-English speaking, the unit can arrange for an interpreter to be present, free of charge...'<sup>7</sup>

**Women's Council for Domestic and Family Violence Services WA** Ph: (08) 9420 7264

'The Women's Council for Domestic and Family Violence Services is a state-wide peak organisation committed to improving the status of women and children in society'<sup>8</sup>, and offers Domestic Violence Outreach and Safe at Home Programs for women experiencing domestic and family violence.'<sup>9</sup>

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<sup>5</sup> Kids Helpline, 'About This Site', viewed 27 September 2016, <<http://www.kidshelp.com.au/grownups/about-this-site.php>>.

<sup>6</sup> 1800 MYLINE, 'Youth helpline', viewed 27 September 2016, <[http://genwire.net.au/youth\\_helplines/1800-myline/](http://genwire.net.au/youth_helplines/1800-myline/)>.

<sup>7</sup> Legal Aid Western Australia, 'Domestic Violence Legal Unit', viewed 27 September 2016, <<http://www.legalaid.wa.gov.au/LegalAidServices/specialist/Pages/DomesticViolenceLegalUnit.aspx>>.

<sup>8</sup> Women's Council for Domestic and Family Violence Services, 'About Us', viewed 10 October 2016, <<http://www.womenscouncil.com.au/>>.

<sup>9</sup> Women's Council for Domestic and Family Violence Services, 'About Us', viewed 27 September 2016, <<http://www.womenscouncil.com.au/projects.html>>.

**Djinda Services** Ph: (08) 9200 2202 or (08) 6164 0650

'Relationships Australia WA and the Women's Law Centre are working together to deliver Djinda Services. We provide support to Aboriginal and Torres Strait Islander women and children in the Perth metropolitan area affected by family violence and/or sexual assault. We are Aboriginal and non-Aboriginal women, mothers and sisters who care about the future of Aboriginal communities. We have personal and professional experience and understanding of family violence'.<sup>10</sup>

**Multicultural Women's Advocacy Service** Ph: (08) 9328 1200 / (08) 9227 8122  
TTY: 133 667 then 6330 5400

'The Multicultural Women's Advocacy Service promotes the safety of women, with or without children, from culturally and linguistically diverse backgrounds who have experienced or are at risk of domestic violence'.<sup>11</sup>

**QLife Telephone Counselling Line** Ph: 1800 184 527 (3:00pm – midnight, around Australia, everyday). Online chat: [www.qlife.org.au](http://www qlife.org.au)

'QLife provides nation-wide peer supported telephone and web based services to diverse people of all ages experiencing poor mental health, psychological distress, social isolation, discrimination, experiences of being misgendered and/or other social determinants that impact on their health and wellbeing. We help callers with a range of issues relating to sexuality and gender, including coming out, as well as more general issues, such as relationship problems. This service is often the first point of contact for people who are coming out, but it is available to anyone, no matter how they identify. Our service is also increasingly being used by the friends and family of GLBTIQ people and mainstream service providers who are seeking accurate information and referral options for their relatives, friends or clients. The service is *confidential* and staffed by trained peer volunteers'.<sup>12</sup>

### **Translating and interpreting**

'If you are assisting someone who does not speak English, first call the Translating and Interpreting Service (TIS) on 13 14 50 and they can connect you with the service of your choice and interpret for you'.<sup>13</sup>

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<sup>10</sup> Relationships Australia Western Australia, 'Djinda Services', viewed 27 September 2016, <<http://www.relationshipswa.org.au/services/Aboriginal-services/Djinda.aspx>>.

<sup>11</sup> Women's Health and Family Services, 'Multicultural Women's Advocacy Service', viewed 27 September 2016, <<http://www.whfs.org.au/services/whch/mwas>>.

<sup>12</sup> Living Proud Inc, 'QLife Telephone Counselling, Information and Referral Line', viewed 8 September 2015, <<http://www.livingproud.org.au/living-proud-services/community-services/phoneline/>>.

<sup>13</sup> Department for Child Protection and Family Support, 'Help and advice', viewed 8 September 2015, <<http://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Pages/Helpandadvice.aspx>>.

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# 1 About the report

## 1.1 The Western Australian Ombudsman

### 1.1.1 The Ombudsman

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

### 1.1.2 The role of the Ombudsman

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

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

### 1.1.3 The Ombudsman's family and domestic violence fatality review role

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

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

- (a) who are, or were, married to each other; or
  - (b) who are, or were, in a de facto relationship with each other; or
  - (c) who are, or were, related to each other; or
  - (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(1)).

Section 4(2) of the *Restraining Orders Act 1997* defines ‘other personal relationship’ as ‘a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected the other person’. ‘Related’, in relation to a person, means a person who:

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

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

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

## 1.2 *The Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*

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

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

The report of the findings and recommendations arising from the FDV investigation, titled *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities (the FDV Investigation Report)*, was tabled in the Western Australian Parliament on 19 November 2015. The FDV Investigation Report is available at [www.ombudsman.wa.gov.au/familydomesticviolencereport](http://www.ombudsman.wa.gov.au/familydomesticviolencereport).

If required, to assist the reading of this report, without further reference being required to the FDV Investigation Report, the Office has reproduced the Executive Summary of the FDV Investigation Report as Appendix 1 to this report and the recommendations arising from the FDV Investigation Report as Appendix 2.

### **1.3 A report on giving effect to the recommendations arising from the FDV Investigation Report**

#### **1.3.1 Objectives**

The FDV Investigation Report made 54 recommendations about ways to prevent or reduce family and domestic violence fatalities.

The objectives of this report were to consider (in accordance with the Act):

- the steps that have been taken to give effect to the recommendations;
- the steps that are proposed to be taken to give effect to the recommendations; or
- if no such steps have been, or are proposed to be taken, the reasons therefor.

#### **1.3.2 Methodology**

##### *1.3.2.1 Summary*

- First, the Office sought from the relevant state government departments and authorities a report on the steps taken to give effect to the recommendations arising from the FDV investigation;
- Second, where further information, clarification or validation was required, the Office met with the relevant state government departments and authorities;
- Third, for a number of recommendations, the Office conducted fieldwork, to collect further information regarding the steps taken to give effect to the recommendations;
- Fourth, the Office reviewed the information provided by the relevant state government departments and authorities, the information, clarification or validation provided in meetings and the information collected during fieldwork, and from this review, made draft findings;
- Fifth, the Office developed a draft report;
- Sixth, the Office provided the draft report to the relevant state government departments and authorities; and
- Seventh, the Office developed a final report.

##### *1.3.2.2 Methodology in detail*

###### 1.3.2.2.1 Reports from relevant state government departments and authorities

The Office requested the principal officer of the relevant state government departments and authorities, to which the Ombudsman had made recommendations in the FDV Investigation Report, to provide a report to the Ombudsman of the steps taken to give effect to the recommendations that had been directed to the relevant state government department or authority. The relevant state government departments and authorities being:

- Department for Child Protection and Family Support (**DCPFS**);
- Department of the Attorney General (**DOTAG**);
- Mental Health Commission (**MHC**); and
- Western Australia Police.

In providing the report to the Ombudsman, the principal officers were also requested to provide evidence regarding the steps taken. This evidence could include, for example, revised policies and procedures documents, executive management reports and internal audit reports. In addition, where further information, clarification or validation was required, the Office met with the relevant state government departments and authorities.

#### 1.3.2.2.2 Fieldwork

The Office conducted fieldwork to collect further information regarding the steps taken to give effect to a selection of recommendations arising from the FDV investigation. The Office collected and reviewed 77 Domestic Violence Incident Reports completed by WAPOL between 1 January 2016 and 30 June 2016 (seven Domestic Violence Incident Reports from each of the 11 Police Districts across Western Australia) (**the WAPOL sample**).

#### 1.3.2.2.3 Review of information provided and collected

The Office reviewed the information contained in the reports provided by state government departments and authorities, supporting documentation that was included with the reports and information provided during meetings with the state government departments and authorities. For a selection of recommendations, the Office further reviewed the information collected during the fieldwork.

#### 1.3.2.2.4 Draft report

The Office provided the relevant state government departments and authorities with the draft report for their consideration and response.

#### 1.3.2.2.5 Final report

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

## 2 Steps taken to give effect to the recommendations

**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.

### Steps taken to give effect to the recommendation

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- the *Freedom from Fear Action Plan 2015 (the Action Plan)*; and
- the *Safer Families, Safer Communities: Kimberley Family Violence Regional Plan 2015-2020 (the Kimberley Plan)*.

In its report, DCPFS relevantly informed the Office that:

DCPFS also launched the *Freedom from Fear Action Plan 2015 (Action Plan)* on 7 September 2015. It includes five priority areas with a number of actions under each. The priority areas are aligned with the Primary State Outcomes. A major initiative, and identified priority of the Action Plan is the *Safer Families, Safer Communities: Kimberley Family Violence Regional Plan 2015-2020 (the Kimberley Plan)* that has a specific focus on Aboriginal Family Violence.

The Office reviewed the Action Plan and found that it identifies 20 actions 'grouped under five priority areas that reflect a continuum from primary prevention through to tertiary intervention'.<sup>14</sup> Action 7 is to 'develop and implement a plan for the Kimberley region'.<sup>15</sup>

The Office also reviewed the Kimberley Plan and found that the Kimberley Plan's '2015-2016 Work plan'<sup>16</sup> contains four 'implementation priorities for 2015-2016', strategies and initiatives associated with each implementation priority, and a lead agency or agencies responsible for each strategy or initiative.

<sup>14</sup> Department for Child Protection and Family Support, *Freedom from Fear, Working towards the elimination of family and domestic violence in Western Australia*, Department for Child Protection and Family Support, Perth, Western Australia, 2015, p. 8.

<sup>15</sup> Department for Child Protection and Family Support, *Freedom from Fear, Working towards the elimination of family and domestic violence in Western Australia*, Department for Child Protection and Family Support, Perth, Western Australia, 2015, p. 10.

<sup>16</sup> Department for Child Protection and Family Support, *Safer Families, Safer Communities Kimberley Family Violence Regional Plan 2015-2020*, Department for Child Protection and Family Support, Perth, Western Australia, 2015, pp. 17-20.

**Accordingly, steps have been taken to give effect to Recommendation 1.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 1.

**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.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS, WAPOL and DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS, WAPOL and DOTAG provided a range of information in:

- reports prepared by DCPFS;
- a report prepared by WAPOL;
- meetings with WAPOL; and
- reports prepared by DOTAG.

In its reports, DCPFS relevantly informed the Office that:

DCPFS is committed to working with agencies to strengthen data collection across the state, strategies to undertake this include:

- The Family and Domestic Violence Data Working Group has been reconvened and has committed to explore opportunities to strengthen and improve data collection within existing resources in relation to safety and accountability. The group's Terms of Reference document outlines the responsibilities of the group including the exploration of methods to strengthen data collection across the state.
- An FDV Monitoring and Evaluation Framework aligning with the key outcomes under *Western Australia's Family and Domestic Violence Prevention Strategy to 2022* is under development. Building on evaluation measures at a whole of system level, the framework includes principles for good practice evaluation and outlines existing data sources that can serve as proxy measures for evaluating safety and accountability at different levels across the service and policy systems.

In its report, WAPOL relevantly informed the Office that ‘DOTAG will also collaborate with DCPFS and WAPOL to identify opportunities for improved data collection within the justice sector in relation to overrepresented groups...’.

In its report, DOTAG relevantly informed the Office that ‘DOTAG will continue to collaborate with DCPFS and WAPOL to identify opportunities for improved data collection within the justice sector in relation to overrepresented groups including as part of the implementation of new Family Violence Restraining Orders (as part of the overhaul of the *Restraining Orders Act 1997*).’

DOTAG further informed the Office that:

Data collection continues to be improved in this area, including recent work around a domestic violence flag for criminal matter data provided from WA Police. This will contribute to a better data set that will allow analysis to be performed at a deeper level (suggested by the Ombudsman). That is, DotAG has the ability to provide data in relation to DV that enhances the national ABS dataset to inform evidence based decision making. DotAG can do this on a community (location) basis. At the moment, the best data for over-represented groups is [data related to] indigenous [status]. At the restraining order application level DotAG [is] also now gathering reasonably accurate ethnicity data.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 2.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 2.

**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.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS and MHC inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS and MHC provided a range of information in:

- a report prepared by DCPFS;
- reports prepared by MHC;
- the Action Plan; and
- the Kimberley Plan.

In its report, DCPFS relevantly informed the Office that:

An action included in the first twelve month work plan [of the Kimberley Plan] is to work towards formulating partnerships between alcohol and other drug services, mental health services and family and domestic violence services.

Two forums will be held in the East Kimberley (Kununurra) and West Kimberley (Broome) proposed for August 2016 [which have now been conducted] to discuss a trial of an integrated intervention program for male perpetrators of family and domestic violence who are misusing substances; and ways to strengthen referral pathways, exchange information and knowledge (expertise transfer) and case collaboration between the family and domestic violence and alcohol and other drug sectors.

In its report, MHC also identified the two forums identified by DCPFS. MHC relevantly informed the Office that:

...Recommendation 3 is progressing as an associated responsibility under the Safer Families, Safer Communities Kimberley Family Violence Regional Plan (the Kimberley Plan). The Department for Child Protection and Family Support are the agency responsible for project managing the Kimberley Plan.

Consultation occurred with Mental Health Commission purchased services through the Kimberley Mental Health and Drug Service (KMHDS) and local family violence services who have been involved in forums to discuss the trial of an integrated intervention program for male perpetrators of family and domestic violence with alcohol and other drug (AOD) issues; and ways to strengthen referral pathways, exchange information and case collaboration. The KMHDS attended a Violence Restraining Order forum in Kununurra on 13 July 2016 and in Broome on 2 September 2016. The Substance Use and Family Domestic Violence forums scheduled for 8 September 2016 in Kununurra and 22 November 2016 in Broome will also have representation from KMHDS. It is expected that the forums will provide additional clarification for the implementation of Recommendation 3.

Furthermore, a key action of the Western Australian Mental Health, Alcohol and Other Drug Services Plan 2015-2025: Better Choices, Better Lives, is to deliver a comprehensive prevention plan. It is acknowledged that current programs to prevent and reduce AOD use contribute to preventing overall harms to the community, including family and domestic violence.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 3.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 3.

**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*.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- the Action Plan; and
- the Kimberley Plan.

In its report, DCPFS relevantly informed the Office that:

The Kimberley Plan includes working alongside Aboriginal communities, using a strong law and culture approach, to address the high incidence of family violence. Tjallara Consulting has been engaged to undertake this work including the development of a strong law and culture framework that will be considered for application across the state.

The Office reviewed the Kimberley Plan and found that its '2015-2016 Work Plan'<sup>17</sup> contains four 'implementation priorities for 2015-2016', strategies and initiatives associated with each implementation priority, and the lead agency or agencies responsible for each strategy or initiative. That is, the Kimberley Plan contains those elements that would be included in a strategy that is specifically tailored to preventing and reducing Aboriginal family violence.

DCPFS has informed the Office that the framework used to develop the Kimberley Plan will be considered for application across the state.

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<sup>17</sup> Department for Child Protection and Family Support, *Safer Families, Safer Communities Kimberley Family Violence Regional Plan 2015-2020*, Department for Child Protection and Family Support, Perth, Western Australia, 2015, pp. 17-20.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 4.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 4.

**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.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- the Action Plan; and
- the Kimberley Plan.

In its report, DCPFS relevantly informed the Office that, as for Recommendation 3:

Implementation of the Kimberley Plan is well underway. An action included in the first twelve month work plan is to work toward formulating partnerships between alcohol and other drug services, mental health services and family and domestic violence services.

Two Forums will be held in the East Kimberley (Kununurra) and West Kimberley (Broome) proposed for August 2016 [which have now been conducted] to discuss a trial of an integrated intervention program for male perpetrators of family and domestic violence who are misusing substances; and ways to strengthen referral pathways, exchange information and knowledge (expertise transfer) and case collaboration between the family and domestic violence and alcohol and other drug sectors.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 5.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 5.

**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.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- the Action Plan; and
- the Kimberley Plan.

In its report, DCPFS relevantly informed the Office that '[t]he Kimberley Plan is being implemented by working alongside Aboriginal people and organisations using a strong law and culture approach'. The Office reviewed the Kimberley Plan and found that it acknowledges 45 contributors, of whom approximately half are organisations representing the interests of Aboriginal people.

DCPFS has informed the Office that the framework used to develop the Kimberley Plan will be considered for application across the state.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 6.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 6.

**Recommendation 7:** WAPOL ensures that all family and domestic violence incidents are correctly identified, recorded and submitted in accordance with the *Commissioner's Operations and Procedures Manual*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL relevantly informed the Office that:

WAPOL will increase its focus on recording family violence incidents and will introduce a planned improvement strategy including the development of an expanded State Family Violence Unit. This will increase

strategic governance with legislation and policy requirements relating to family violence.

In meetings, WAPOL informed the Office that the planned improvement strategy referred to above involves a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function, which will ensure that family and domestic violence incidents are correctly identified, recorded and submitted in accordance with the *Commissioner's Operations and Procedures Manual*. WAPOL further informed the Office that results of the audits will be provided to Police Districts to stimulate improvement at the local level, and to the Corporate Executive of WAPOL to inform further management action. In addition, WAPOL informed the Office that two State Family Violence Unit staff will assist the Western Australia Police Academy to create an enhanced training package for recruit training, with a focus on the dynamics of family and domestic violence, coercion and control, and the importance of risk and behavioural factors. WAPOL further informed the Office that the State Family Violence Unit will also provide in-service training on the same topics and that one objective of these training initiatives is that police officers correctly identify family and domestic violence incidents so that the incidents can be recorded and submitted in accordance with the *Commissioner's Operations and Procedures Manual*.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 7.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 7.

**Recommendation 8:** In implementing Recommendation 7, WAPOL considers its amended definition of family and domestic relationship, in terms of its consistency with the *Restraining Orders Act 1997*, and giving particular consideration to the identification of, and responses to, Aboriginal family violence.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- reports prepared by WAPOL; and
- meetings with WAPOL.

In its reports, WAPOL informed the Office that:

Family violence incidents in relation to extended family members are recorded by WAPOL on a crime incident report when an offence has been detected. Other extended family incidents where no offence is established [are] concluded on the Computer Aided Despatch system.

WAPOL ha[s] not amended the definition of family and domestic violence relationships, although it has amended the recording mechanisms used by WAPOL. The amendment sought to focus WAPOL and other stakeholder efforts on the core group of intimate partner (past and present) and immediate family members to maximise joint agency responses and finite resources. WAPOL continue to comply with the requirements of the *Restraining Orders Act 1997* and investigate family violence incidents involving those family relationships.

...

WA Police provided advice to the Ombudsman's Office under the Commissioner's signature (dated 27 October 2015), that the policy decision to change the **recording** of family violence incidents was determined by the Corporate Board and related to capacity to provide an integrated response to victims of family violence. The language used in the policy document suggests it is a definition, and this will be rectified via a policy change. State Family Violence Unit are receiving three police personnel in September 2016 who will be tasked to align the language within the *Commissioner's Operations and Procedures Manual* to be consistent with the *Restraining Orders Act 1997*. In relation [to] family violence incidents involving extended family members, where police officers ... consider incidents involving this cohort should be shared with external partners, the policy provides that a DVIR [Domestic Violence Incident Report] should be submitted [Original emphasis].

The Office's review determined that the policy referred to in the above paragraph is the *Commissioner's Operations and Procedures Manual* entry that states:

For family related incidents where members become aware that there appears to be patterns of behaviour facilitating coercion and control from one person to another, it is advisable to submit an incident report inclusive of the DVIR ... to initiate ... assessment and consideration of support and intervention.<sup>18</sup>

In meetings, WAPOL informed the Office that it will:

- review the *Commissioner's Operations and Procedures Manual* to clarify that WAPOL has not amended the definition of family and domestic violence relationships, although it has amended the recording mechanisms used by WAPOL;
- review the WAPOL internal *Family Violence* policy and the *Commissioner's Operations and Procedures Manual* to ensure that they are consistent with the *Restraining Orders Act 1997*; and

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<sup>18</sup> Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.1.

- review the *Commissioner's Operations and Procedures Manual* to reinforce the requirement for police officers to consider creating a Domestic Violence Incident Report for incidents between extended family, where coercion and control are factors, including in circumstances of Aboriginal family violence.

In meetings, WAPOL also informed the Office that, for incidents where an offence is alleged or detected between extended family members, an incident report is still created. Although these incident reports are not subject to the same level of supervision as Domestic Violence Incident Reports, WAPOL informed the Office that all incident reports are subject to supervision, and intervention where necessary, by the Victim Support Unit or Family Protection Unit.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 8.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 8.

**Recommendation 9:** WAPOL amends the *Commissioner's Operations and Procedures Manual* to require that victims of family and domestic violence are provided with verbal information and advice about violence restraining orders in all reported instances of family and domestic violence.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL informed the Office that 'WAPOL will undertake this work as part of a broader review of the [WAPOL internal] Family Violence policy. It is expected this work will commence by July 2016.'

In meetings, WAPOL informed the Office that the review of the WAPOL internal *Family Violence* policy commenced in July 2016 with existing resources, and accelerated once the State Family Violence Unit received three further full time equivalent staff on 12 September 2016.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 9.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 9.

**Recommendation 10:** WAPOL collaborates with DCPFS and DOTAG to develop an ‘aide memoire’ that sets out the key information and advice about violence restraining orders that WAPOL should provide to victims of all reported instances of family and domestic violence.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL, DCPFS and DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL, DCPFS and DOTAG provided a range of information in:

- a report prepared by WAPOL;
- meetings with WAPOL;
- a sample of a *Family and Domestic Violence Information and Support card (Information Card)*;
- a report prepared by DCPFS; and
- a report prepared by DOTAG.

In its report, WAPOL relevantly informed the Office that ‘[t]he DCPFS will work with WAPOL and DotAG in the development of an aide memoire.’

In meetings, WAPOL informed the Office that it had developed an Information Card, for provision by police officers to victims and suspected perpetrators of family and domestic violence. WAPOL provided a sample of the Information Card. WAPOL also identified that the Information Card would be complemented by an aide memoire for police officers to refer to when providing the Information Card.

In its report, DCPFS relevantly informed the Office that ‘DCPFS is working in collaboration with WAPOL to explore opportunities to provide information and advice relating to violence restraining orders.’ DCPFS also relevantly informed the Office that the Information Card is ‘for police to provide to victims when they attend a family and domestic violence incident. This will be trialled in the Armadale/Cannington [police districts] for a three month period commencing 1 July 2016, with the view for a state-wide rollout at the conclusion of the pilot’.

In its report, DOTAG informed the Office that ‘DotAG understands that WAPOL is developing a specific Victim Information Card regarding family violence, in conjunction with a pilot it is conducting with DCPFS regarding triaging of family violence incidents through one of the Family [and] Domestic Violence Response Teams’. DOTAG also reported that ‘DotAG was asked to comment on draft text regarding relevant DotAG contact details for inclusion in this specific family violence Victim Information Card (in late May 2016)’.

The Office reviewed the Information Card and found that it provides a definition of family and domestic violence, and contact details for police and for support services that can provide information or assistance to people who 'are impacted by or know someone ... who may be involved in an abusive relationship', for example, DOTAG's Family Violence Service, Victim Support Service and Child Witness Service. The Information Card contains a range of key information and advice about VROs that WAPOL should provide to victims of all reported instances of family and domestic violence. WAPOL also proposes that the Information Card will be complemented by an aide memoire for police officers that sets out the key information and advice about VROs that WAPOL should provide to victims of all reported instances of family and domestic violence, when it provides the Information Card.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 10.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 10.

**Recommendation 11:** WAPOL collaborates with DCPFS and DOTAG to ensure that the 'aide memoire', discussed at Recommendation 10, is developed in consultation with Aboriginal people to ensure its appropriateness for family violence incidents involving Aboriginal people.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL, DCPFS and DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL, DCPFS and DOTAG provided a range of information in:

- a report prepared by WAPOL;
- meetings with WAPOL;
- a sample of a *Family and Domestic Violence Information and Support card (Information Card)*;
- a report prepared by DCPFS; and
- a report prepared by DOTAG.

In its report, WAPOL relevantly informed the Office (in relation to Recommendation 10):

The DCPFS will work with WAPOL and DotAG in the development of an aide memoire. This will be undertaken in collaboration with victims of family and domestic violence, including Aboriginal people, the Department of Aboriginal Affairs and other key stakeholders including the Aboriginal Family Law Service to ensure the information

provided is understood, useful and appropriate for incidents involving Aboriginal people.

In its report, DCPFS relevantly informed the Office that:

The Department is also working with DotAG to organise a Forum for stakeholders working in the judiciary in the East and West Kimberley. The Forum, scheduled for August 2016 will have a focus on discussing strategies to better inform Aboriginal people about violence restraining orders.

In its report, DOTAG relevantly informed the Office that 'DotAG understands that WAPOL is consulting in the manner contemplated by Recommendation 11 regarding development of this information product [that is, the Information Card]'

**Accordingly, steps are proposed to be taken to give effect to Recommendation 11.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 11.

**Recommendation 12:** WAPOL ensures that both victims and perpetrators are asked if they consent to share their information with support and referral agencies, in accordance with the *Commissioner's Operations and Procedures Manual*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- reports prepared by WAPOL;
- meetings with WAPOL; and
- the WAPOL sample.

DCPFS's *Family and Domestic Violence Response Teams* document was also relevant to this recommendation.

In its reports, WAPOL relevantly informed the Office that 'WAPOL [is] actively seeking to improve service delivery in relation to the obtaining of consent'

*Review of WAPOL's records*

The Office examined the WAPOL sample (seven Domestic Violence Incident Reports from each of the 11 Police Districts across Western Australia). The Office's review found that WAPOL recorded that it asked victims for consent to share their information with support and referral agencies on 61 of the 65 occasions where a victim was

identified (94 per cent), and asked suspected perpetrators for consent on 76 of the 93 occasions where a suspected perpetrator was identified (82 per cent).<sup>19</sup>

This represents an improvement in comparison with the Office's findings in the FDV investigation, namely that of the 75 Domestic Violence Incident Reports examined, WAPOL recorded that it asked victims for consent to share their information on 40 per cent of occasions where a victim was identified and asked suspected perpetrators for consent on 23 per cent of occasions where a suspected perpetrator was identified.

The Office notes that, in its reports, WAPOL also relevantly informed the Office that:

This increase in obtaining consent will be balanced with the capacity of partner agencies who form part of the Family and Domestic Violence Response Teams, in particular the non-government partners who provide support and referral services.

...

In late 2015 legislative changes to the *Children and Community Services Act 2004* enabled the DCPFS and government agencies to share information regarding family members exposed to acts of family and domestic violence. Consent is no longer required to refer any individual to further support services.

In meetings, WAPOL further informed the Office that a change in practice relevant to this recommendation will be introduced as part of the state-wide rollout of changes to the Family and Domestic Violence Response Teams operating model, currently being piloted and anticipated to commence state-wide in late 2016. WAPOL informed the Office that it will stop asking parties to family and domestic violence incidents for consent to share their information with support and referral agencies, and will instead rely on the changes to the *Children and Community Services Act 2004*, discussed in its reports above, to allow information sharing between agencies.

**Accordingly, steps have been taken to give effect to Recommendation 12.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 12.

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<sup>19</sup> In some instances, WAPOL identified both parties as a suspected perpetrator and did not identify a victim. In further instances, WAPOL identified certain parties as both a victim and a suspected perpetrator

**Recommendation 13:** WAPOL amends the *Commissioner's Operations and Procedures Manual* to require that, if a police order is issued, it is explained to the victim that the order is intended to provide them with time to seek a violence restraining order, and also that victims are provided with information and advice about violence restraining orders in accordance with Recommendation 9.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL relevantly informed the Office that 'WAPOL will undertake this work as part of a broader review of the [WAPOL internal] Family Violence policy... It is expected this work will commence by July 2016'.

In meetings, WAPOL informed the Office that the review of the WAPOL internal *Family Violence* policy commenced in July 2016 with existing resources, and accelerated once the State Family Violence Unit received three further full time equivalent staff on 12 September 2016.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 13.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 13.

**Recommendation 14:** In developing and implementing future phases of *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, DCPFS specifically identifies and incorporates opportunities for state government departments and authorities to deliver information and advice about violence restraining orders, beyond the initial response by WAPOL.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS; and
- DCPFS's *Family and Domestic Violence Response Teams* document.

In its reports, DCPFS relevantly informed the Office that:

DCPFS has been working with WAPOL and community sector family and domestic violence services in Family and Domestic Violence Response Teams since February 2013 to assess and respond to individuals and families subject to a police call out for family and domestic violence. These service responses offered include risk assessment, referrals, safety planning and providing information about Violence Restraining Orders.

With respect to Family and Domestic Violence Response Teams, between February 2013 and 30 June 2016, all Domestic Violence Incident Reports were referred to a Family and Domestic Violence Response Team for assessment, triaging and possible support for victims and suspected perpetrators (subject to WAPOL's 'discretion to not provide information about individuals without children if they judge that there will be no benefit from joint assessment and triage...' <sup>20</sup>). During this period, WAPOL's policy was to ask all victims and suspected perpetrators if they consented to share their information with support and referral agencies. It was intended that all parties who consented would receive contact from a support and referral agency.

DCPFS proposed changes to the Family and Domestic Violence Response Teams operating model (**the proposed FDVRT operating model**), to be piloted for three months from 1 July 2016, and with planned state-wide roll out at the end of 2016.

In its report, in relation to the changes to the Family and Domestic Violence Response Teams operating model, DCPFS relevantly informed the Office that:

In 2015, following a review of the operation of the FDVRTs it was agreed to refine the scope of operation to focus on escalating and high risk cases. This was as a result of the limited capacity for services to respond to the increasing demand.

To offer responses to all cases identified through a DVIR would require additional resourcing. The issues of increased demand, limited capacity to respond to the increasing reported cases of family and domestic violence and lack of resourcing can be identified as the driver for the way responses are currently designed, and it would be appropriate for this context to be used when benchmarking agencies against performance.

The introduction of a threshold will ensure agencies have the capacity to provide a response to those cases assessed as

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<sup>20</sup> Department for Child Protection and Family Support, Family and Domestic Violence Unit *Family and Domestic Violence Response Team Operating Procedures*, July 2013, <<https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/FDVRT%20Operating%20Procedures.pdf>>, p. 11.

medium and high risk. Cases that fall within category three, although not provided with a direct response are given referral information [the Information Card discussed at Recommendation 10] at a minimum and all DVIRs are still recorded for future reference. As presented in the guidelines for the Pilot, category two and three DVIR[s] may be elevated at the discretion of Police where assessment and research of the current incident and antecedents indicate concerning risk levels.

As part of the proposed changes, WAPOL will not be asking victims and suspected perpetrators if they consent to share their information with support and referral agencies. Instead, during its quality assurance process, WAPOL's Victim Support Unit will assign the Domestic Violence Incident Reports with a category rating (1, 2 or 3). Category 1 and 2 Domestic Violence Incident Reports will then be assessed and triaged (for category 1 Domestic Violence Incident Reports) or screened (for category 2 Domestic Violence Incident Reports). Depending on the outcome of this assessment and triaging, or screening, information about victims and suspected perpetrators may be provided to support and referral agencies (without consent being sought) for their follow up with the victim and suspected perpetrator, including information and advice about VROs. For category 3 Domestic Violence Incident Reports, no information about any victims and suspected perpetrators will be provided to support and referral agencies for their follow up or for the provision of information and advice about VROs.

**Accordingly, steps have been taken to give effect to Recommendation 14.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 14.

**Recommendation 15:** In considering whether legislation should provide that, with the consent of the victim, a police order can be filed at court as an initiating application by police for an interim family and domestic violence protection order, DOTAG should involve Aboriginal people in a full and active way at each stage and level of the process, and should seek to have the process of consideration comprehensively informed by Aboriginal culture.

**Steps taken to give effect to the recommendation**

The Office requested that DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, DOTAG provided a range of information in:

- reports prepared by DOTAG;
- DOTAG's *Family Violence Restraining Orders, Drafting Options Paper (the DOTAG Options Paper)* and correspondence from

- DOTAG to the Ombudsman Western Australia regarding the DOTAG Options Paper; and
- a meeting with DOTAG.

The following documents were also relevant to this recommendation:

- DCPFS's *Violence Restraining Order Forum – Program Agenda* documents for the 13 July 2016 and 2 September 2016; and
- a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order Forum.

In its reports, DOTAG relevantly informed the Office that:

There has been extensive consultation since 2013, including with Aboriginal people and legal and family violence response service providers who provide targeted and general services to Aboriginal people, regarding an overhaul of the *Restraining Orders Act 1997* as part of a comprehensive family violence response reform program. The issue of whether police orders should initiate a court application has been canvassed in this process.

In addition, consultation with Aboriginal people will consider not only legislative reform proposals but also policy and practice initiatives to improve 'fit' between local requirements and use of orders to enhance safety of those experiencing family violence.

DOTAG's Acting Director General further informed the Office that:

In developing a Bill to overhaul the *Restraining Orders Act 1997* in relation to family violence, the Department of the Attorney General conducted a consultation process on the detail of the drafting instructions for such a Bill, which included – as one input only - the 'Family Violence Restraining Orders Drafting Options Paper', which was a precursor to a detailed written and face to face consultation process. The matters canvassed in the written and face to face consultation process were not limited to those contained in the Family Violence Restraining Orders Drafting Options Paper, and included consideration of matters in this Recommendation 15. Participants in this process included the Aboriginal Family Law Service, Relationships Australia (which runs Djinda Services), and the Women's Council for Domestic and Family Violence Services.

In a meeting, DOTAG informed the Office that the way in which police orders interface with court processes was also considered at a round table discussion at a forum held in the East Kimberley (Kununurra) (the 13 July 2016 Violence Restraining Order Forum), and at a forum

held in the West Kimberley (Broome) (the 2 September 2016 Violence Restraining Order Forum).

On this point, DOTAG's Acting Director General informed the Office that:

DotAG (Commissioner for Victims of Crime) is attending 'VRO Forums' being led by DCPFS with local stakeholders, including Aboriginal people, in the East Kimberley and West Kimberley. The VRO Forums are conducting consultation regarding the issues in this Recommendation 15, and are part of the *Safer Families Kimberley Family Violence* project. The East Kimberley VRO Forum was held in Kununurra on 13 July 2016, and the West Kimberley VRO Forum ... took place in Broome on 2 September 2016.

In a meeting, DOTAG informed the Office that the discussion at the East Kimberley forum suggested that the idea of using a police order as an initiating application for an interim family and domestic violence protection order would be a negative driver for victims reporting family and domestic violence.

**Accordingly, steps have been taken to give effect to Recommendation 15.**

**Recommendation 16:** DCPFS considers the findings of the Ombudsman's investigation regarding the link between the use of police orders and violence restraining orders by Aboriginal people in developing and implementing the Aboriginal family violence strategy referred to at Recommendation 4.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- DCPFS's *Violence Restraining Order Forum – Program Agenda* documents for the 13 July 2016 and 2 September 2016;
- a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order Forum;
- the Action Plan; and
- the Kimberley Plan

In its reports, DCPFS relevantly informed the Office that:

The Department is working with DotAG to organise a forum for stakeholders working in the judiciary in the East and West Kimberley. The Forum, scheduled for August 2016

will examine the link between the use of Police Orders and VROs ...by Aboriginal people.

...

Documentation (on DCPFS file) outlines the following list of considerations for participants in preparation for the VRO Forum in East and West Kimberley. Considerations include:

- There is a lack of awareness regarding order types, conditions, the length of orders, ways to apply for VROs, and flexibility of options (remain living together, or vary/withdraw order conditions); and agency capacity to take out an order on behalf of adult and child victims (e.g. police and child protection staff).
- Information may be required by applicants, respondents, service providers, and community members to reduce misunderstandings.
- Information required may relate to - Police Orders, Interim VROs, Final VROs, Breaches of Orders, and how this may interact with Bail conditions.
- There may be a range of agencies who are able to provide community education sessions. Who are they?
- How can information be presented to each group (applicants, respondents, service providers, and community members)?
- How can we actively involve Aboriginal people in each s[stage] and level of the process, to ensure information provided is suited to the needs of Aboriginal individuals, families, and communities?
- How will we know if each group has understood this information?

The considerations clearly provide opportunity to discuss the relationship and uptake of Police Orders.

The Office reviewed DCPFS's *Violence Restraining Order Forum – Program Agenda* documents for both forums, which identified that:

The focus of these discussions is identifying strategies to:

- improve community awareness of VRO conditions (clients, service providers, and community);
- overcome barriers to individuals accessing VROs (fear of retaliation, system challenges, flexibility of VRO conditions);
- improve coordination of service responses to assist clients with VROs; and
- improve safety for adult and child victims through existing VRO conditions that may be under-utilised (PO; at interim VRO stage; final VRO; and post criminal offences).

The Office reviewed a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order Forum, and confirmed that it contained the discussion points quoted by DCPFS in its reports. The document also relevantly identified that:

...Aboriginal victims are more likely to be protected by a Police Order. This may offer immediate protections, but not medium or long-term protections.

...

Adult and child victims sometimes have difficulty accessing police, courts, legal advice, and support services – especially in smaller regional towns. This may be compounded by limited services, a need to travel / costs, adjournments, and a need to return to court.

In its report, DCPFS also relevantly informed notified the Office that:

The Kimberley Plan includes working alongside Aboriginal communities, using a strong law and culture approach, to address the high incidence of family violence. Tjallara Consulting has been engaged to undertake this work including the development of a strong law and culture framework that will be considered for application across the state.

The Office reviewed the Kimberley Plan and found that its '2015-2016 Work Plan' contains four 'implementation priorities for 2015-2016', strategies and initiatives associated with each implementation priority, and the lead agency or agencies responsible for each strategy or initiative. That is, the Kimberley Plan contains those elements that would be included in a strategy that is specifically tailored to preventing and reducing Aboriginal family violence.

DCPFS has informed the Office that the framework used to develop the Kimberley Plan will be considered for application across the state.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 16.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 16.

**Recommendation 17:** Taking into account the findings of this investigation, WAPOL reviews the *Commissioner's Operations and Procedures Manual* to ensure its consistency with section 62C of the *Restraining Orders Act 1997*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

The *Restraining Orders Act 1997* sets out requirements for police officers to take certain actions (including applying for a VRO) after investigating suspected family and domestic violence. Section 62C requires a police officer to take action as follows:

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

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

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

In its report, WAPOL relevantly informed the Office that:

Despite the legislative capacity for police officers to apply for a VRO in the civil court of the Magistrates Court, WAPOL... [does]...not have capacity to undertake the application, prosecution and subsequent management of violence restraining orders. WAPOL will amend the *Commissioner's Operations and Procedures Manual* accordingly.

WAPOL [will] incorporate this work as part of a broader review of the [WAPOL internal] Family Violence policy and legislative reform proposed for the *Restraining Orders Act 1997*.

In meetings, WAPOL informed the Office that the review of the WAPOL internal *Family Violence* policy commenced in July 2016 with existing resources, and accelerated once the State Family Violence Unit received three further full time equivalent staff on 12 September 2016.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 17.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 17.

**Recommendation 18:** Following the implementation of Recommendation 17, WAPOL complies with the requirements of the *Commissioner's Operations and Procedures Manual*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL relevantly informed the Office that 'WAPOL will undertake this work as part of a broader review of the [WAPOL internal] Family Violence policy... This work to commence July 2016.'

In meetings, WAPOL informed the Office that the review of the WAPOL internal *Family Violence* policy commenced in July 2016 with existing resources, and accelerated once the State Family Violence Unit received three further full time equivalent staff on 12 September 2016.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 18.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 18.

**Recommendation 19:** WAPOL ensures that where an application for a violence restraining order has not been made, or a police order has not been issued, written records of the reasons why are recorded on each occasion.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL relevantly informed the Office that 'WAPOL will undertake this work as part of a broader review of the [WAPOL internal] Family Violence policy... This work to commence July 2016'.

In meetings, WAPOL informed the Office that the review of the WAPOL internal *Family Violence* policy commenced in July 2016 with existing resources, and accelerated once the State Family Violence Unit received three further full time equivalent staff on 12 September 2016.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 19.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 19.

**Recommendation 20:** WAPOL ensures that if ‘no consent and no safety concerns of involved persons’ is recorded as a reason for not making an application for a violence restraining order or making a police order, this is consistent with other information recorded in the associated Domestic Violence Incident Report.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL;
- meetings with WAPOL; and
- the WAPOL sample.

In its report, WAPOL informed the Office that:

WAPOL have committed that inconsistencies between the reason recorded for a person not making [an] application for a violen[ce] restraining order or police order and other information recorded in the associated Domestic Violence Incident Report will be identified by immediate supervisors, or the Family Support Unit/Victim Support Unit as per the Family Violence Coordination Guidelines, Quality Assurance Checklist.

*Review of WAPOL’s records*

The Office examined the WAPOL sample. The Office’s review found that WAPOL recorded ‘no consent and no safety concerns of involved persons’ as a reason for not issuing a police order on 16 of the 41 occasions where no police order was issued (39 per cent). The Office identified that in four of these 16 instances (25 per cent), this written reason did not align with the narrative of events recorded elsewhere in the Domestic Violence Incident Report.

This represents an improvement in comparison with the Office’s findings in the FDV investigation, namely that in 13 of the 40 Domestic Violence Incident Reports where no order was made or sought (33 per cent), the Domestic Violence Incident Report recorded ‘no consent and no safety concerns of involved persons’ as the reason for not making or seeking a VRO or police order. The Office identified that in 10 of these 13 instances (77 per cent), this written reason did not

align with the narrative of events recorded elsewhere in the Domestic Violence Incident Report.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 20.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 20.

**Recommendation 21:** WAPOL considers establishing a Key Performance Indicator that relates to the quality of service as well as the timeliness of responding to family and domestic violence incidents to ensure a balanced approach is achieved.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL informed the Office that ‘WAPOL will develop a relevant Key Performance Indicator, which will require consultation with a number of internal areas within WAPOL.’

**Accordingly, steps are proposed to be taken to give effect to Recommendation 21.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 21.

**Recommendation 22:** As part of the implementation of Frontline 2020, WAPOL ensures that the creation of Response Teams continues to provide an appropriate opportunity for frontline police officers to provide critical initial response and support to victims.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- reports prepared by WAPOL; and
- meetings with WAPOL.

In its reports, WAPOL informed the Office that:

WAPOL is committed to providing an effective first response to reported family violence incidents, and the

obtaining of relevant risk information for a comprehensive triage by the Family and Domestic Violence Response Teams. This function has not changed since the implementation of Frontline 2020.

WAPOL further informed the Office that:

The Frontline 2020 webpage on the police intranet provides a series of Metropolitan Operating Model guidelines. The 'Family and Domestic Violence Incident Allocation Operational Guide' was created in December 2015 'To promote uniformity of procedures and best practice by Western Australia Police when managing the allocation of Family and Domestic Violence Incidents requiring secondary investigation.' These guiding principles are posted in order to maintain consistency in approach and ensure standards are maintained.

On 10 February 2016 a General Broadcast was issued to all police titled 'Change to operational strategy, commencing Monday 15 February 2016'. This broadcast announced the introduction within the Metropolitan area of a change [that] "...Local Policing Teams will be tasked exclusively to target offenders who commit the crimes of family violence, burglary, stolen vehicles and theft. This is in addition to the work already being done by the recently expanded Proactive Crime Teams. It is expected the prime LPT activity will be recidivist offenders responsible for the above crime types."

Further, the online magazine for police employees featured a headline article (*From the Line*, edition 560, 30 March 2016) 'Targeting priority offenders' which set out the Commissioners "...four [principal] priorities; domestic violence, burglary, theft of motor vehicles, and theft generally."

**Accordingly, steps have been taken to give effect to Recommendation 22.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 22.

**Recommendation 23:** DOTAG, in collaboration with key stakeholders, considers opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order, and ensures that Aboriginal people are involved in a full and active way at each stage and level of this process, and that this process is comprehensively informed by Aboriginal culture.

**Steps taken to give effect to the recommendation**

The Office requested that DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, DOTAG provided a range of information in:

- reports prepared by DOTAG; and
- a meeting with DOTAG.

The following documents were also relevant to this recommendation:

- DCPFS's *Violence Restraining Order Forum – Program Agenda* documents for the 13 July 2016 and 2 September 2016 forums; and
- a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order forum.

DOTAG's reports on steps taken to give effect to Recommendation 23 mirrored its reports on steps taken to give effect to Recommendation 15. With respect to Recommendation 23, DOTAG's reports relevantly informed the Office that:

Restraining orders legislation [is] a kind of legislation that is under continual review. Appropriate consultation processes with Aboriginal people, and processes of consideration being comprehensively informed by Aboriginal culture, will continue to be core to this ongoing review. In addition, consultation with Aboriginal people will consider not only legislative reform proposals but also policy and practice initiatives to improve 'fit' between local requirements and use of orders to enhance safety of those experiencing family violence.

The Office reviewed the DCPFS *Violence Restraining Order Forum – Program Agenda* documents for the 13 July 2016 and 2 September 2016 Violence Restraining Order Forums, which were organised in collaboration with DOTAG. The Office's review of the *Violence Restraining Order Forum – Program Agenda* documents identified that the 'focus of these discussions' included identifying strategies to 'overcome barriers to individuals accessing VROs (fear of retaliation, system challenges, flexibility of VRO conditions)',<sup>21</sup>

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<sup>21</sup> Government of Western Australia, Department for Child Protection and Family Support, 'Violence Restraining Order Forum: Wednesday 13 July 2016 Program', DCPFS, Perth, 2016; Government of Western Australia, Department for Child Protection and Family Support, 'Violence Restraining Order Forum: Friday 2 September 2014 Program', DCPFS, Perth, 2016.

The Office also reviewed a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order Forum, which posed the following questions for discussion:

**Question - Identify strategies to overcome cultural and community barriers to adult and child victims in obtaining a Violence Restraining Order**

Some considerations –

- Family and domestic violence requires a whole of community response.
  - Responding to diversity (may include language, culture barriers, gender, sexual identity, age, and disability).
  - Victims experience fear regarding the response from perpetrator, family and community.
  - Aboriginal women particularly can be dissuaded from approaching mainstream legal services; or from obtaining legal protections.
  - Adult victims from CaLD background are less likely to report to police or services because they think these services will not understand them or their situation, and they may fear deportation if they lack permanent residency.
  - Current legislative provisions allow for telephone applications, option to remain living together, VRO applied for on behalf of adult and child victims by police/DCPFS, VRO applied [for] by magistrate following criminal hearings; and varying order conditions versus withdrawal of VRO.
  - How can we work with individuals, families and community to better support victims?
  - How can we actively involve Aboriginal people in each s[stage] and level of the process, to ensure responses are suited to the needs of Aboriginal individuals, families, and communities?<sup>22</sup>
- ...

**Question - Identify strategies to overcome systemic barriers to adult and child victims in obtaining a VRO**

Some considerations –

- Adult and child victims sometimes have difficulty accessing police, courts, legal advice, and support services - especially in smaller regional towns. This may be compounded by limited services, a need to travel/costs, adjournments, and a need to return to court. This can also impact on time taken to serve VROs.
- Victims can find legal processes confusing and lack

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<sup>22</sup> Government of Western Australia, Department for Child Protection and Family Support, 'Table of questions for VRO forum, Department for Child Protection and Family Support, p. 1.

confidence navigating their way through the system.

- Victims have reported previous poor experiences with the criminal justice system including feeling unsafe throughout the process; the need to give evidence; the need to face the perpetrator in court; pressured to give evidence; discouraged by comments made in court; and perceived there to be a lack of fairness with penalties (e.g. fines and sentencing outcomes).
- Current legislative provisions allow for telephone applications, option to remain living together, VRO applied for on behalf of adult and child victims by police/DCPFS, VRO applied [for] by magistrate following criminal hearings; and varying order conditions versus withdrawal of VRO.
- What could be improved to support adult and child victims in Kimberley communities?
- How can we actively involve Aboriginal people in each s[stage] and level of the process, to ensure responses are suited to the needs of Aboriginal individuals, families, and communities?<sup>23</sup> [Original emphasis].

The Office's review identified that DOTAG collaborated with stakeholders in the Kimberley to identify cultural, logistical and structural barriers to adult and child victims seeking a VRO (several of which had been identified in the FDV Investigation Report) with a focus on Aboriginal victims. DOTAG has also sought feedback on how to ensure that Aboriginal people are involved in a full and active way at each stage and level of this process, and ensure that the process is comprehensively informed by Aboriginal culture.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 23.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 23.

**Recommendation 24:** DCPFS, in collaboration with DOTAG, ensures that the development of the Aboriginal family violence strategy referred to at Recommendation 4 incorporates the opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order identified through the implementation of Recommendation 23.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS and DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS and DOTAG provided a range of information in:

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<sup>23</sup> Government of Western Australia, Department for Child Protection and Family Support, 'Table of questions for VRO forum, Department for Child Protection and Family Support, p. 2.

- reports prepared by DCPFS; and
- a report prepared by DOTAG.

In its reports, DCPFS relevantly informed the Office that:

The DCPFS is implementing a five year Action Plan in the Kimberley, the Plan was launched in October 2015 and is due for completion in 2020. The issues relating to the complex barriers that exist for Aboriginal people in accessing support are being responded to in a number of ways including:

- Consultations undertaken by Tjallara Consulting in the development of a Strong Law and Culture Framework has provided valuable information that will be used to construct strategies to overcome the many complex issues identified through this process during the life of the Kimberley Plan.
- Outcomes from the VRO Forums held in East and West Kimberley are being collated and a number of actions will be developed to respond to the issues raised.

The Safer Families, Safer Communities Kimberley Family Violence Regional Plan was officially launched in October 2015, and Tjallara Consulting was not formally engaged until the end of December 2015, the expectation that these major issues will be overcome in such a short timeline is unrealistic.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 24.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 24.

**Recommendation 25:** DOTAG, in collaboration with DCPFS, identifies and incorporates into *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, ways of ensuring that, in cases where an application for a violence restraining order has been dismissed, if appropriate, victims are provided with referrals to appropriate safety planning assistance.

**Steps taken to give effect to the recommendation**

The Office requested that DOTAG and DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DOTAG and DCPFS provided a range of information in:

- reports prepared by DOTAG;
- a meeting with DOTAG; and
- reports prepared by DCPFS.

In its reports, DOTAG relevantly informed the Office that:

DOTAG, through the Family Violence Service, already refers victims who have had their application for a Violence Restraining Order refused to the appropriate organisation to assist with safety planning (such as the Patricia Giles Centre, Pat Thomas Memorial House or Lucy Saw Centre). Safety planning is an inherent part of the Family Violence Service's work. DOTAG will also investigate finding ways [to] assist those victims who choose not [to] use the Family Violence Service when applying for Violence Restraining Orders.

In a meeting, DOTAG informed the Office that, where the Family Violence Service had assisted an applicant to apply for a VRO, it would be aware that the application had been dismissed and would then assist the victim with safety planning.

DOTAG further informed the Office that:

A key policy driver of the work that DOTAG has led to develop the proposed 'Family Violence Restraining Order' is to create more capacity within the justice system (and service delivery in Government generally) for better targeted responses to victims of family violence. The status quo of violence restraining orders encompassing both 'general' violence and 'family violence' creates real inefficiencies in being able to target interventions and offers of support to applicants for restraining orders who are experiencing family violence.

Part of the implementation process for the proposed 'Family Violence Restraining Orders' will be identifying points of intervention for targeted risk management and offers of support to victims of family violence. The dismissal of an application for a Family Violence Restraining Order will be a point of intervention for information provision, and also for referral to potential pathways and options, for these unsuccessful applicants.

In its reports, DCPFS relevantly informed the Office that:

The DCPFS has developed and implemented a *Family and Domestic Violence Common Risk Assessment and Risk Management Framework* (CRARMF) for use across the service system. The CRARMF second edition was released on 27 November 2015 and provides minimum standards for screening, risk assessment, risk management, information sharing and referral.

...

The *Family and Domestic Violence Common Risk Assessment and Risk Management Framework* (CRARMF) is being used by an increasing range of

service providers. It is now included alongside service specifications for new family and domestic violence community sector service contracts managed by the Department for Child Protection and Family Support. Services using CRARMF would be responding to victims of family and domestic violence dealing with a number of issues, including applications for violence restraining orders.

Although DCPFS has no authority to mandate other agencies to use the CRARMF, the Department is supporting and promoting the use of the Framework through a range of training activities for government and community sector agencies to strengthen the provision of appropriate referrals and safety planning assistance to victims wherever they come into contact with the service system.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 25.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 25.

**Recommendation 26:** DOTAG collaborates with WAPOL to consider whether it may be appropriate to pursue amendments to the *Restraining Orders Act 1997* so that, where a VRO has not been served on the person bound within 72 hours, and reasonable efforts have been made to serve the order personally, the VRO is deemed to be authorised for oral service, including considering establishing legislative and administrative arrangements to ensure WAPOL keeps records that demonstrate that reasonable efforts had been made to serve the order personally prior to oral service.

**Steps taken to give effect to the recommendation**

The Office requested that DOTAG and WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, DOTAG and WAPOL provided a range of information in:

- reports prepared by DOTAG;
- DOTAG's *Family Violence Restraining Orders, Drafting Options Paper (the DOTAG Options Paper)* and correspondence from DOTAG to the Ombudsman Western Australia regarding the DOTAG Options Paper;
- a meeting with DOTAG;
- reports prepared by WAPOL; and
- meetings with WAPOL.

In its reports, DOTAG relevantly informed the Office that:

The issue of service of restraining orders in circumstances of family violence has been considered through the

following:

- The Law Reform Commission of Western Australia Project No. 104 (*Enhancing Laws Concerning Family and Domestic Violence*) Discussion Paper and Final Paper contain a list of people involved in consultation for this report, and people who made submissions.
- In developing a Bill to overhaul the *Restraining Orders Act 1997* in relation to family violence, the Department of the Attorney General conducted a consultation process on the detail of the drafting instructions for such a Bill (the Family Violence Restraining Orders Drafting Options Paper consultation process).

DOTAG's Acting Director General informed the Office that:

In developing a Bill to overhaul the *Restraining Orders Act 1997* in relation to family violence, the Department of the Attorney General conducted a consultation process on the detail of the drafting instructions for such a Bill, which included – as one input only - the 'Family Violence Restraining Orders Drafting Options Paper', which was a precursor to a detailed written and face to face consultation process. The matters canvassed in the written and face to face consultation process were not limited to those contained in the Family Violence Restraining Orders Drafting Options Paper.

...

A detailed consultation process has been conducted between DotAG and WA Police regarding the service of restraining orders as part of the development of a Bill to overhaul the *Restraining Orders Act 1997*. This consultation has included consideration of the matters in this Recommendation 26, including that DotAG circulated the Ombudsman WA data in relation to this Recommendation 26 to inform the following discussions between DotAG and WAPOL:

- On 22 February 2016, a round table meeting regarding service of FVROs; and
- On 4 April 2016, a meeting to discuss administrative processes of service, with some further discussion regarding service of FVRO provisions.

In its report, WAPOL relevantly informed the Office that:

DOTAG and WAPOL are currently working together to determine the most appropriate mechanism (legislative or administrative) to improve service of orders as part of the overhaul of the *Restraining Orders Act 1997* and the introduction of separate family violence orders... WAPOL is conducting its own internal review into the service of orders generally.

WAPOL are also having some consultation with the drafting options for the proposed Violence Restraining Order legislation...

**Accordingly, steps have been taken to give effect to Recommendation 26.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 26.

**Recommendation 27:** DOTAG collaborates with WAPOL to establish a process for providing WAPOL with the following information, together with the violence restraining order for service:

- the relationship between the respondent and the protected person (particularly if they are in a family and domestic relationship);
- the grounds for the violence restraining order;
- identifying particulars (full name, address, date of birth, telephone contact details) of both parties, as recorded by the protected person; and
- any relevant information regarding the history of family and domestic violence disclosed by the applicant when seeking a violence restraining order.

**Steps taken to give effect to the recommendation**

The Office requested that DOTAG and WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, DOTAG and WAPOL provided a range of information in:

- a report prepared by DOTAG; and
- a report prepared by WAPOL.

In its report, DOTAG relevantly informed the Office that ‘DOTAG will work with WAPOL on the necessary administrative changes as part of the implementation of the proposed changes to the *Restraining Order[s] Act 1997*.’

WAPOL reiterated DOTAG’s report and also informed the Office that ‘WAPOL will undertake this work as part of a broader review of the [WAPOL internal] Restraining Order policy.’

**Accordingly, steps are proposed to be taken to give effect to Recommendation 27.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 27.

**Recommendation 28:** Taking into account the findings of this investigation, DCPFS consults with key stakeholders to explore issues associated with the provision of information to respondents to violence restraining orders, whether these issues require a state-wide response, and the appropriate form of this response, for potential incorporation into future Action Plans.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- DCPFS's *Family and Domestic Violence Response Teams* document;
- DCPFS's *Violence Restraining Order Forum – Program Agenda* documents for the 13 July 2016 and 2 September 2016 forums; and
- a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order forum.

In its report, DCPFS relevantly informed the Office that '[t]he provision of information to respondents to VROs will be piloted in Armadale and Cannington commencing on 1 July 2016, with the view of statewide roll out.' In this report, DCPFS is referring to the pilot of proposed changes to the existing Family and Domestic Violence Response Teams operating model (**the proposed FDVRT operating model**).

DCPFS also relevantly reported that '[t]he Department is also working with DotAG to organise a forum for stakeholders working in the judiciary in the East and West Kimberley as an initiative of the Kimberley Plan. The forum will explore a number of issues relating to VROs, including the provision of information to both victims and respondents.'

The Office reviewed the DCPFS *Violence Restraining Order Forum – Program Agenda* documents for both forums, which identified that the 'focus of these discussions' included 'identifying strategies to improve community awareness of VRO conditions (clients, service providers, and community)...'.<sup>24</sup> The Office also reviewed a DCPFS document outlining questions and related considerations for the 13 July 2016 Violence Restraining Order forum, which stated that '[i]nformation may be required by applicants, respondents, service providers, and community members to reduce misunderstandings'.<sup>25</sup>

<sup>24</sup> Government of Western Australia, Department for Child Protection and Family Support, 'Violence Restraining Order Forum: Wednesday 13 July 2016 Program', DCPFS, Perth, 2016; Government of Western Australia, Department for Child Protection and Family Support, 'Violence Restraining Order Forum: Friday 2 September 2016 Program', DCPFS, Perth, 2016.

<sup>25</sup> Government of Western Australia, Department for Child Protection and Family Support, 'Table of questions for VRO forum, Department for Child Protection and Family Support, p. 3.

The Office's review of DCPFS's *Violence Restraining Order Forum – Program Agenda* documents and the document outlining questions for the forums found that steps have been taken to consult with key stakeholders to explore issues associated with the provision of information to respondents to VROs.

**Accordingly, steps have been taken to give effect to Recommendation 28.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 28.

**Recommendation 29:** WAPOL amend its Incident Management System to ensure all information relevant to a violence restraining order can be included on its associated running sheet.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL relevantly informed the Office that 'WAPOL has amended its Incident Management System Running Sheets for Violence Restraining Orders service... [to] allow unlimited [32,400] characters within Running Sheets'.

In meetings, WAPOL informed the Office that this amendment has been completed.

**Accordingly, steps have been taken to give effect to Recommendation 29.**

**Recommendation 30:** WAPOL ensures that all reports of alleged breaches of a violence restraining order are recorded and investigated in accordance with the *Restraining Orders Act 1997* and the *Commissioner's Operations and Procedures Manual*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL;
- meetings with WAPOL; and
- the WAPOL sample.

In meetings, WAPOL informed the Office that this recommendation will be addressed through auditing. WAPOL further informed the Office that there has been a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function to ensure that all reports of alleged breaches of a violence restraining order are recorded and investigated in accordance with the *Restraining Orders Act 1997* and the *Commissioner's Operations and Procedures Manual*. WAPOL informed the Office that results of the audit will be provided to Police Districts to stimulate improvement at the local level, and to the Corporate Executive of WAPOL to inform further management action. WAPOL further informed the Office that an extra uniformed officer will test compliance with the *Commissioner's Operations and Procedures Manual* as well as the relevant legislation.

*Review of WAPOL's records*

The Office examined the WAPOL sample. The Office's review found that a breach of a VRO was reported in nine of the 77 Domestic Violence Incident Reports, and WAPOL recorded that it had investigated 100 per cent of these nine reported breaches. WAPOL charged the suspected perpetrator with breaching a VRO in six of these nine incidents (67 per cent). In the remaining three incidents in which the suspected perpetrator was not charged, the evidence WAPOL obtained during its investigation suggested that no offence had been committed or that there were other circumstances that indicated that charging was not appropriate.

This represents a similar finding in comparison with the Office's findings in the FDV investigation, namely that four of the 75 Domestic Violence Incident Reports involved a reported alleged breach of a VRO and the suspected perpetrator was arrested on three of these four occasions (75 per cent).

In its report, WAPOL informed the Office that 'WAPOL will prioritise recording of offences in accordance with National Crime Recording Standards (NCRS) and compliance evaluated as part of a quality assurance process.'

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 30.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 30.

**Recommendation 31:** WAPOL ensures that it does not inform victims to withdraw a violence restraining order on the basis that alleged breaches are consensual.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL; and
- meetings with WAPOL.

In its report, WAPOL relevantly informed the Office that ‘...WAPOL will endeavour to prevent and correct with improved supervision’.

In meetings, WAPOL informed the Office that this recommendation will be addressed through a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function, which will ensure that any actions by police officers as identified in the recommendation are identified and addressed. WAPOL further informed the Office that results of the audit will be provided to Police Districts to stimulate improvement at the local level, and to the Corporate Executive of WAPOL to inform further management action. In addition, WAPOL informed the Office that two State Family Violence Unit staff will assist the Western Australia Police Academy to create an enhanced training package for recruit training, with a focus on the dynamics of family and domestic violence, coercion and control and the importance of risk and behavioural factors. WAPOL further informed the Office that the State Family Violence Unit will also provide in-service training on the same topics.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 31.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 31.

**Recommendation 32:** DOTAG reviews the effectiveness of national and international models of deferral of bail, or in high risk cases in certain circumstances, a presumption against bail, having consideration to:

- perpetrator accountability;
- promoting victim safety; and
- the rights of defendants; and

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

**Steps taken to give effect to the recommendation**

The Office requested that DOTAG inform the Office of the steps taken to give effect to the recommendation. In response, DOTAG provided a range of information in:

- a report prepared by DOTAG; and
- a meeting with DOTAG.

In its report, DOTAG informed the Office that '[it] is part of the core legal policy role of DotAG to advise on emerging issues regarding the development of the law relating to bail, and possibilities for reform.'

DOTAG further informed the Office that:

DotAG's view is that legal policy issues regarding bail must generally occur as a 'stand-alone' policy inquiry given the need for overall coherence in bail processes. Hence, the development of bail reforms in relation to family violence have occurred within DotAG in parallel with other work on family violence response. The Commissioner for Victims of Crime is closely involved with the development of bail reforms within DotAG, including how bail may contribute to the safety (or otherwise) of victims, including family violence victims.

Issues of victim safety (including family violence victim safety) and perpetrator accountability informed the development of the Bail Legislation Amendment Bill 2016, introduced into the Legislative Council by the Attorney General on 30 June 2016. This includes the provision in the Bill for victims['] views to be taken into account in bail applications in relation to serious offences. This is of particular relevance for family violence, as victims are often best placed to provide evidence regarding the risk posed by the accused person.

DOTAG informed the Office that reforms related to bail will be canvassed as part of amendments to the *Bail Act 1982*, and not as part of amendments to the *Restraining Orders Act 1997*.

**Accordingly, steps have been taken to give effect to Recommendation 32.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 32.

**Recommendation 33:** WAPOL ensures that, when undertaking investigations in accordance with section 62A of the *Restraining Orders Act 1997*, and where required by the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*, police officers interview all witnesses, including victims, suspects/persons of interest, eye witnesses and other significant witnesses, and, should a decision be made not to interview a person of interest, the reasons should be fully explained and recorded on the running sheet.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- meetings with WAPOL; and
- the WAPOL sample.

*Review of WAPOL's records*

The Office examined the WAPOL sample. The Office's review found that WAPOL classified 65 parties as victims in the 77 Domestic Violence Incident Reports. For 63 of these 65 victims (97 per cent) WAPOL recorded that it interviewed the victim. For a further victim (two per cent), WAPOL recorded that the victim refused to be interviewed. On the remaining occasion, police officers observed a breach of police order taking place while they were dealing with another matter, and the suspected perpetrator was charged without interviewing the victim.

The Office's review found that WAPOL classified 93 parties as persons of interest/suspected perpetrators in the 77 Domestic Violence Incident Reports. For 82 of these 93 suspected perpetrators (88 per cent) WAPOL recorded that it interviewed the suspected perpetrator. For a further seven suspected perpetrators (8 per cent), WAPOL recorded that the suspected perpetrator refused to be interviewed or was too intoxicated to be interviewed. Of the remaining four suspected perpetrators, WAPOL recorded that one was overseas, one could not be located and telephone calls were made unsuccessfully to another. No reasons were recorded for not interviewing the remaining suspected perpetrator.

The Office identified significant or eye witness(es) in 41 of the 77 Domestic Violence Incident Reports. For 20 of these 41 Domestic Violence Incident Reports (49 per cent), WAPOL recorded that it interviewed the witnesses. For a further seven Domestic Violence Incident Reports (17 per cent), WAPOL recorded either that it made attempts to interview the witnesses, that the witnesses refused to be interviewed or provide a statement, that there was already enough evidence to charge the suspected perpetrator, or that the witnesses' details could not be obtained.

This represents an improvement in comparison with the Office's findings in the FDV investigation, namely that WAPOL recorded that it interviewed the victim 92 per cent of the time, interviewed the suspected perpetrator 73 per cent of the time and interviewed eye witnesses and significant witnesses 48 per cent of the time.

In meetings, WAPOL informed the Office that this recommendation will be addressed through auditing. WAPOL further informed the Office that there has been a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function. WAPOL informed the Office that, as part of this audit function, an extra uniformed officer will test compliance with the *Commissioner's Operations and Procedures Manual* as well as the relevant legislation, and a detective will test investigative actions and compliance with the *WA Police Investigation Doctrine*.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 33.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 33.

**Recommendation 34:** WAPOL ensures that, when undertaking investigations in accordance with section 62A of the *Restraining Orders Act 1997*, and where required by the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*, police officers take photographs of any arising injuries to the victim, with their consent, in accordance with the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- meetings with WAPOL; and
- the WAPOL sample.

In meetings, WAPOL informed the Office that this recommendation will be addressed through auditing. WAPOL further informed the Office that there has been a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function. WAPOL informed the Office that, as part of this audit function, an extra uniformed officer will test compliance with the *Commissioner's Operations and Procedures Manual* as well as the relevant legislation, and a detective will test investigative actions and compliance with the *WA Police Investigation Doctrine*.

#### *Review of WAPOL's records*

The Office examined the WAPOL sample. The Office's review found that, of the 15 incidents where visible injuries were recorded, WAPOL recorded that photographs were taken of these injuries on nine occasions (60 per cent), and that the victim either refused consent or did not attend the police station for photographs on three additional occasions (20 per cent).

This represents an improvement in comparison with the Office's findings in the FDV investigation, namely that WAPOL recorded that it took photographs of the victim's injuries on 20 out of the 45 Domestic Violence Incident Reports (44 per cent) where bodily harm was alleged and there were visible injuries.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 34.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 34.

**Recommendation 35:** WAPOL ensures that responses to family and domestic violence incidents record all offences disclosed in accordance with the *Commissioner's Operations and Procedures Manual* (including offences disclosed prior to attendance).

#### **Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- meetings with WAPOL.

In meetings, WAPOL informed the Office that the Victim Support Unit undertakes a quality assurance process in relation to the recording of offences in Domestic Violence Incident Reports, applying the *Family Violence Coordination Guidelines, Quality Assurance Checklist*.

WAPOL further informed the Office that this recommendation will be addressed through auditing. WAPOL informed the Office that there has been a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function. WAPOL informed the Office that, as part of this audit function, an extra uniformed officer will test compliance with the *Commissioner's Operations and Procedures Manual* as well as the relevant legislation, and a detective will test investigative actions and compliance with the *WA Police Investigation Doctrine*.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 35.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 35.

**Recommendation 36:** WAPOL ensures that it takes ownership of the decision to prefer a charge and does not place the responsibility with the victim, in accordance with the *Commissioner's Operations and Procedures Manual*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- reports prepared by WAPOL; and
- meetings with WAPOL.

In its reports, WAPOL informed the Office that:

Where there is prima facie evidence, WAPOL will investigate and seek to charge an offender. The [Office of the Director] of Public Prosecutions Prosecuting Guidelines stipulate there must also be a reasonable prospect of conviction; and the matter is in the public interest to proceed. Where a victim does not provide evidence to support the preferring of a charge, or resists providing information to police, there are some difficulties for police in proceeding to charge. In those cases WAPOL endeavour to effect some other intervention that increases victim safety including issuing a police order, which does not require the consent of the victim.

WAPOL further relevantly informed the Office that:

Police will consider policy options to remedy conclusive language used by officers when finalising investigations if the matter is not to progress to a charge. Acknowledging that sometimes language used may appear victim blaming for the lack of sufficient evidence to proceed...

In meetings, WAPOL informed the Office that there has been a staffing increase for the State Family Violence Unit, to enable the State Family Violence Unit to undertake an audit function. WAPOL further informed the Office that, as part of this audit function, an extra uniformed officer will test compliance with the *Commissioner's Operations and Procedures Manual* as well as the relevant legislation, and a detective will test investigative actions and compliance with the *WA Police Investigation Doctrine*.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 36.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 36.

**Recommendation 37:** WAPOL ensures that all offences detected at family and domestic violence incidents are cleared in accordance with the *Commissioner's Operations and Procedures Manual*.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- a report prepared by WAPOL;
- meetings with WAPOL; and
- the WAPOL sample.

WAPOL further informed the Office that, in relation to this recommendation, '[w]ork has commenced with existing staff at the State Family Violence Unit in terms of governance and accountability that will be augmented in September 2016 with three additional Constables commencing work in the State Family Violence Unit enhancing the unit's ability to audit.'

*Review of WAPOL's records*

The Office examined the WAPOL sample. The Office's review found that WAPOL recorded that it cleared 41 of the 43 Domestic Violence Incident Reports in which offences were detected by WAPOL (95 per cent), in accordance with the *Commissioner's Operations and Procedures Manual* by using either 'offender processed' or 'insufficient evidence'.

This represents an improvement in comparison with the Office's findings in the FDV investigation, namely that WAPOL recorded that it complied with the requirements to clear offences as either 'offender processed' or 'insufficient evidence' in 34 out of the 51 Domestic Violence Incident Reports where an offence was detected (67 per cent).

In meetings, WAPOL informed the Office that the State Family Violence Unit is currently considering an amendment to the *Commissioner's Operations and Procedures Manual* to allow officers to clear offences using categories other than 'offender processed' and 'insufficient evidence'. WAPOL further informed the Office that the decision to limit clearance of family and domestic violence incidents to

the 'offender processed' and 'insufficient evidence' clearance types was designed to prevent placing the responsibility for preferring charges on the victim, as police officers were thereby directed to charge suspected perpetrators unless there was insufficient evidence to do so. WAPOL informed the Office that, after this policy was introduced, it presented some difficulties in practice, as the two clearance types did not allow for all relevant situations to be captured. In meetings, WAPOL confirmed that any reintroduction of further clearance types would still be underpinned by the same principle of not placing responsibility on the victim.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 37.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 37.

**Recommendation 38:** WAPOL complies with the *Commissioner's Operations and Procedures Manual*, in particular, that for all children who are present or usually reside with parties to a family and domestic violence incident, police officers: (i) ensure that all children are sighted and their welfare checked; (ii) record the details of the children; and (iii) where children are exposed to, or involved in, a serious incident of family violence, contact DCPFS.

**Steps taken to give effect to the recommendation**

The Office requested that WAPOL inform the Office of the steps taken to give effect to the recommendation. In response, WAPOL provided a range of information in:

- reports prepared by WAPOL;
- meetings with WAPOL;
- the WAPOL sample; and
- the *Commissioner's Operations and Procedures Manual*.

(i) Ensure that all children are sighted and their welfare checked

*Review of WAPOL's records*

The Office examined the WAPOL sample and found that WAPOL recorded that it sighted and checked the welfare of children on 22 of the 41 occasions in which children were present at an incident (54 per cent).

This represents an improvement in comparison with the Office's findings in the FDV investigation, namely that WAPOL recorded efforts to sight and check the welfare of children in 12 of 31 applicable Domestic Violence Incident Reports (39 per cent).

In meetings, WAPOL informed the Office that it would remind police officers of the importance of sighting and checking the welfare of children present at family and domestic violence incidents by way of a WAPOL-wide email broadcast of instructions.

In its reports, WAPOL further informed the Office that '[p]olice will consider methods of improving this requirement, including the potential for a statewide Broadcast to be issued reminding officers of their obligations.'

**Accordingly, steps have been taken and are proposed to be taken to give effect to part (i) of Recommendation 38.**

(ii) Record the details of the children

*Review of WAPOL's records*

The Office examined the WAPOL sample and found that WAPOL recorded details (including full names and dates of birth as per the *Commissioner's Operations and Procedures Manual*) for children in 38 of the 56 instances where children were present or usually resided with the parties (68 per cent).

This represents an improvement in comparison with the Office's findings in the FDV investigation, namely that WAPOL recorded details for the children on 19 of the 31 instances where children were present or usually resided with the parties (61 per cent).

In meetings, WAPOL informed the Office that it would remind police officers of the importance of recording details for all children who are present or usually reside with parties to a family and domestic violence incident by way of a WAPOL-wide email broadcast of instructions.

In its reports, WAPOL further informed the Office that '[p]olice will consider methods of improving this requirement, including the potential for a state wide Broadcast to be issued reminding officers of their obligations.'

**Accordingly, steps have been taken and are proposed to be taken to give effect to part (ii) of Recommendation 38.**

(iii) Where children are exposed to, or involved in, a serious incident of family violence, contact DCPFS

The Office's review found that WAPOL currently has no definition of 'serious incident' in relation to this entry in the *Commissioner's Operations and Procedures Manual*, which may contribute to a lack of clarity and consistency in the application of the entry.

In its reports, WAPOL relevantly informed the Office that:

WAPOL will amend policy to provide clarity in terms of what types of incidents would be considered ‘a serious incident’ in light of our expanded information sharing arrangements. WAPOL will undertake this work as part of a broader review of the [WAPOL internal] Family Violence policy.

**Accordingly, steps are proposed to be taken to give effect to part (iii) of Recommendation 38.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 38.

**Recommendation 39:** DCPFS, in accordance with its Casework Practice Manual and *Family and Domestic Violence Policy 2012*, instructs child protection workers to review information provided for each referral to DCPFS, to identify if family and domestic violence indicators are present and record when family and domestic violence has been identified.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- meetings with DCPFS;
- DCPFS’s Casework Practice Manual;
- DCPFS’s *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016; and
- DCPFS’s *Family and Domestic Violence Response Teams* document.

In its reports, DCPFS relevantly informed the Office that it introduced:

...new family and domestic violence practice guidance on 1 July 2016. The practice guidance has been developed to align with the changes to the *Children and Community Services Act [2004]* amendments introduced in January 2016 that recognises a child’s exposure to family and domestic violence is a form of abuse.

In the context of this recommendation, the Office identified that the ‘new practice guidance’ referred to in DCPFS’s report comprises:

- DCPFS’s Casework Practice Manual; and
- DCPFS’s *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

The Office reviewed the Casework Practice Manual, effective from 1 July 2016, and identified that the Casework Practice Manual relevantly provides:

FDV is a factor in the majority of child protection cases. Sometimes it is the primary reason for the referral, and at other times it is a factor contributing to or causing the presenting problem such as homelessness or neglect.

...

Duty interactions and initial inquiry

- Decisions about whether the Department has a role in cases where a child has been exposed to family and domestic violence (FDV), must be informed by the following:
  - likelihood that a child has suffered significant harm or is at risk of significant harm
  - likelihood that an adult victim has suffered significant harm or is at risk of significant harm
  - the age and vulnerability of the child
  - the perpetrator's pattern of behaviour including history, severity and frequency of violent and abusive tactics, and the presence of evidence based risk indicators (or red flags), and
  - factors impacting on the family which may increase risk or vulnerability such as mental ill-health, substance misuse, homelessness and adult victim vulnerability...<sup>26</sup>

In meetings, DCPFS also informed the Office that where a duty interaction has resulted in a 'child of concern' being identified, the Casework Practice Manual now explicitly requires that child protection workers must assume that family and domestic violence is a factor, and information must be sought to confirm or refute this assumption.

The Casework Practice Manual, effective as at 1 July 2016, requires that:

In all cases where a child of concern is identified including physical abuse, sexual abuse, emotional abuse-other and neglect, child protection workers must assume that family and domestic violence is a factor in the case, and seek information at the earliest opportunity to confirm or refute this assumption.<sup>27</sup>

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<sup>26</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Assessing Emotional Abuse – Family and Domestic Violence,' DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=153>>.

<sup>27</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '4.1 Assessment and Investigation Process' DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=186>>.

In its report, DCPFS informed the Office that:

...‘screening out’ applies a higher standard to child protection than what is outlined in the *Family and Domestic Violence Common Risk Assessment and Risk Management Framework*. The purpose of taking this frame/approach is to clearly identify to staff that family and domestic violence is a significant driver of demand for the Department, and is often present (in the forefront or background) of child protection notifications. The new practice guidance instructs workers to operate as if FDV is a factor in the case, until they determine otherwise. This point of view will influence their initial approaches to the family, and the information gathered. This approach does not lessen or diminish the need for proactive inquiry. The processes for ‘confirming’ whether or not family and domestic violence is a factor include searching history on Assist, searching history on the DVIR Triage Application and asking screening questions of the referrer or child’s mother...

**Accordingly, steps are proposed to be taken to give effect to Recommendation 39.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 39.

**Recommendation 40:** When family and domestic violence has been identified during duty interactions, DCPFS complies with its *Family and Domestic Violence Practice Guidance*, which identifies ‘the outcome of option of ‘Not Departmental Business’ should rarely be used in [family and domestic violence] cases as [family and domestic violence] is the Department’s business’.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- DCPFS’s Casework Practice Manual; and
- DCPFS’s *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

In its report, DCPFS relevantly informed the Office that:

DCPFS has changed its recording options in Assist (the DCPFS client database) to enable staff to select a more suitable option to replace ‘not departmental business.’ Staff will now be required to identify if a case has been assessed as ‘no further role’ for the Department. Staff will

be required to identify, as a next action whether a referral to support services has been offered. This will enable more accurate recording and reporting about outcomes of notifications to the Department and referral pathways to key services.

...

The Department only has a role in cases where there is information/indication that a child has suffered, or is likely to suffer significant harm. The threshold of significant harm is taken from the *Children and Community Services Act 2004*, definition of 'harm', which is "harm, in relation to a child, means any detrimental effect of a significant nature on the child's wellbeing, whether caused by —  
(a) a single act, omission or circumstance; or  
(b) a series or combination of acts, omissions or circumstances;..."

The Casework Practice Manual, effective as at 1 July 2016, requires that:

In all cases where a child of concern is identified including physical abuse, sexual abuse, emotional abuse-other and neglect, child protection workers must assume that family and domestic violence is a factor in the case, and seek information at the earliest opportunity to confirm or refute this assumption.<sup>28</sup>

**Accordingly, steps have been taken to give effect to Recommendation 40.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 40.

**Recommendation 41:** When family and domestic violence has been identified during duty interactions, DCPFS complies with the Casework Practice Manual in providing 'Family Support', in particular that the provision of 'Family Support' involves the provision of information to referrers or families on available support services such as those listed in the Casework Practice Manual.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;

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<sup>28</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual, '4.1 Assessment and Investigation Process'* DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=186>>.

- DCPFS's Casework Practice Manual;
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016; and
- DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan.

In its report, DCPFS relevantly informed the Office that '[u]nder the new practice guidance, in cases where it has been determined there is no further role for the Department, staff will be required to record the agency/service referred to and the purpose of the referral.' This change came into effect on 1 July 2016.

In the context of this recommendation, the Office identified that the 'new practice guidance' referred to in DCPFS's report comprises:

- DCPFS's Casework Practice Manual; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

The Office reviewed the Casework Practice Manual, effective as at 1 July 2016, and the *Emotional Abuse – Family and Domestic Violence Policy*, dated 1 July 2016, and did not identify the direction to staff.

The Office also reviewed DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan and identified that it instructs staff to record the agency/service referred to when they select the next action of 'Referral to support service,' as follows:

When 'Referral to support service' is selected as a next action, a pop up window will prompt recording in two fields of the task page – 'referred to' and 'task category.'<sup>29</sup>

The requirement to record the agency/service referred to in DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan currently only automatically applies when staff select the next action of 'Referral to support service'. This requirement does not yet automatically apply when staff select the outcome of 'Family Support.'

In this regard, this issue could be addressed through further changes to Assist. DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan relevantly provides, in relation to changes to Assist, that:

A range of changes to the way family and domestic violence is recorded in Assist are being progressed. The

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<sup>29</sup> Government of Western Australia, Department for Child Protection and Family Support, *Family and Domestic Violence Practice Guidance Implementation*, DCPFS, Perth, 2016, p. 7.

proposed changes will streamline recording options, particularly duty interactions, and promote a system that is clearer and more 'intuitive'.<sup>30</sup>

The Office notes that DCPFS's new recording outcome of 'Referral to support service' is now applicable in relation to referrals and DCPFS has proposed that DCPFS complies with the Casework Practice Manual in providing 'Family Support', in particular that the provision of 'Family Support' involves the provision of information to referrers or families on available support services such as those listed in the Casework Practice Manual.<sup>31</sup>

**Accordingly, steps are proposed to be taken to give effect to Recommendation 41.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 41.

**Recommendation 42:** Where family and domestic violence is identified, DCPFS, if required, takes action to assess and safeguard the wellbeing of children, including, where appropriate, progressing to intake, initial inquiries and safety and wellbeing assessments.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- DCPFS's Casework Practice Manual; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

In its report, DCPFS relevantly informed the Office that:

Under the new practice requirements, in cases where family and domestic violence is identified, child protection workers are required to form a judgement about whether a further assessment (Safety and Wellbeing Assessment) is required to assess emotional abuse – family and domestic violence. Child protection workers are required to record the outcome of screening on Assist, including a brief description of the screening process and the outcome.

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<sup>30</sup> Government of Western Australia, Department for Child Protection and Family Support, *Family and Domestic Violence Practice Guidance Implementation*, DCPFS, Perth, 2016, p. 3.

<sup>31</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '3.1. Family Support,' DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=190>>.

The Office identified that the 'new practice requirements' referred to in DCPFS's report arise from DCPFS's 'new practice guidance', which DCPFS informed the Office was introduced on 1 July 2016. In the context of this recommendation, the Office identified that the 'new practice guidance' comprises DCPFS's:

- Casework Practice Manual;
- *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016;
- *Guide to Family And Domestic Violence Screening*; and
- *Emotional Abuse Family and Domestic Violence Assessment Toolkit*.

The Casework Practice Manual, effective as at 1 July 2016, states that:

Duty interactions and initial inquiry

- Decisions about whether the Department has a role in cases where a child has been exposed to family and domestic violence (FDV), must be informed by the following:
  - likelihood that a child has suffered significant harm or is at risk of significant harm
  - likelihood that an adult victim has suffered significant harm or is at risk of significant harm
  - the age and vulnerability of the child
  - the perpetrator's pattern of behaviour including history, severity and frequency of violent and abusive tactics, and the presence of evidence based risk indicators (or red flags), and
  - factors impacting on the family which may increase risk or vulnerability such as mental ill-health, substance misuse, homelessness and adult victim vulnerability.
- Child protection workers must be cognisant that protectiveness of the adult victim is not sufficient reason for the Department to have no role when there is indication of significant harm to a child, or likely significant harm to a child.
- When a family presents on multiple occasions within a short period of time, the case must be intaked. If the case is not progressed to initial inquiry or safety and wellbeing assessment (SWA), a rationale for the decision must be recorded and approved by a team leader. At every subsequent contact the need to undertake further assessment must be reviewed.<sup>32</sup>

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<sup>32</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.1. Assessing Emotional Abuse – Family and Domestic Violence,' DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=153>>.

In meetings, DCPFS confirmed that DCPFS will progress from duty interaction to initial inquiries where a child has suffered, or is likely to suffer, significant harm.

The Casework Practice Manual, effective as at 1 July 2016, requires that:

In all cases where a child of concern is identified including physical abuse, sexual abuse, emotional abuse-other and neglect, child protection workers must assume that family and domestic violence is a factor in the case, and seek information at the earliest opportunity to confirm or refute this assumption.<sup>33</sup>

That is, the Casework Practice Manual now explicitly requires that, where a child of concern is identified, child protection workers must assume that family and domestic violence is a factor in the case and information must be sought to confirm or refute this assumption.

In meetings, DCPFS explained that this requirement reflects the Department's awareness of the likely presence of family and domestic violence in all instances where a concern for a child has been identified, and that it consequently requires all DCPFS staff to consider the presence of family and domestic violence even in cases where this was not the reason that the case progressed to initial inquiries.

In its report, DCPFS informed the Office (in relation to Recommendation 39) that:

...‘screening out’ applies a higher standard to child protection than what is outlined in the *Family and Domestic Violence Common Risk Assessment and Risk Management Framework*. The purpose of taking this frame/approach is to clearly identify to staff that family and domestic violence is a significant driver of demand for the Department, and is often present (in the forefront or background) of child protection notifications. The new practice guidance instructs workers to operate as if FDV is a factor in the case, until they determine otherwise. This point of view will influence their initial approaches to the family, and the information gathered. This approach does not lessen or diminish the need for proactive inquiry. The processes for ‘confirming’ whether or not family and domestic violence is a factor include searching history on Assist, searching history on the DVIR Triage Application

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<sup>33</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual, ‘4.1 Assessment and Investigation Process’* DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=186>>.

and asking screening questions of the referrer or child's mother...

DCPFS's *Guide to Family And Domestic Violence Screening* sets out that, once 'concern for child' has been identified, DCPFS will form a judgement about whether a safety and wellbeing assessment is required. Relevant to this recommendation, the *Guide to Family And Domestic Violence Screening* provides:

**THE DEPARTMENT[']S ROLE**

If family and domestic violence is identified, child protection workers must form a judgement about whether a further assessment (SWA) is required to assess emotional abuse – family and domestic violence.<sup>34</sup>

The *Guide to Family And Domestic Violence Screening* further provides that, after the screening is undertaken to inform this determination:

Child protection workers must record the outcome of screening on Assist. This should include a brief description of the screening process and an outcome such as:

- no family and domestic violence identified;
- family and domestic violence identified but no significant harm apparent; or
- concern for a child, emotional abuse - family and domestic violence (SWA required).<sup>35</sup>

In its report, DCPFS relevantly informed the Office (in relation to Recommendation 40) that:

The Department only has a role in cases where there is information/indication that a child has suffered, or is likely to suffer significant harm. The threshold of significant harm is taken from the *Children and Community Services Act 2004*, definition of 'harm', which is "harm, in relation to a child, means any detrimental effect of a significant nature on the child's wellbeing, whether caused by —  
(a) a single act, omission or circumstance; or  
(b) a series or combination of acts, omissions or circumstances;..."

**Accordingly, steps are proposed to be taken to give effect to Recommendation 42.**

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<sup>34</sup> Government of Western Australia, Department for Child Protection and Family Support, *Guide to Family and Domestic Violence Screening*, DCPFS, Perth, 2016, p. 2.

<sup>35</sup> Government of Western Australia, Department for Child Protection and Family Support, *Guide to Family and Domestic Violence Screening*, DCPFS, Perth, 2016, p. 2.

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 42.

**Recommendation 43:** DCPFS monitors the percentage of duty interactions relating to family and domestic violence resulting in an outcome of ‘concern for child’ and progression to initial inquiries and safety and wellbeing assessments, in quarterly reports to its Corporate Executive, taking any appropriate action in relation to performance.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- DCPFS’s *Family and Domestic Violence Response Teams* document;
- DCPFS’s *Family and Domestic Violence Practice Guidance Review*;
- DCPFS’s *Family and Domestic Violence Practice Guidance Implementation* plan and
- DCPFS’s *Emotional Abuse – Family and Domestic Violence Assessment Toolkit*.

In its reports, DCPFS relevantly informed the Office that:

The following performance indicator has been established and is reported quarterly to Corporate Executive. *‘Improved safety following a response to a Family and Domestic Violence (FDV) related interaction’*. This KPI has a target of 90 per cent. The KPI shows the percentage of people:

- who received a FDV service (intake); and
- did not receive another FDV related service (intake) within 12 months.

A number of comprehensive performance indicators have also been agreed by Corporate Executive with reporting due to commence in October ... The reason for the timeframes and six monthly reporting is related to the recording practice changes in Assist. As the recording of emotional abuse – family and domestic violence as a distinct abuse type was not introduced until 8 June, the commencement of reporting in October 2016 and at six monthly intervals was considered appropriate to allow for a critical mass of data to ‘grow’.

...

A number of performance indicators have been developed to monitor implementation of the new practice guidance including:

- Number of notification[s] for ‘emotional abuse – family and domestic violence’ or family and domestic violence.
- Number of intakes for emotional abuse – family and domestic violence, compared to other forms of abuse or neglect.
- Number of Safety and Wellbeing Assessments about emotional abuse – family and domestic violence and the next action (NFA, Child Centred Family Support, unable to proceed, intervention action).
- Substantiation rate, compared to other forms of abuse or neglect.
- Rate of re-substantiation following a SWA where harm was substantiated or harm was unsubstantiated, compared to other forms of abuse or neglect.
- Percentage of C[P]FS cases where the child did not enter care, compared to other forms of abuse or neglect.
- Number of VROs applied for by the Department (*data collection process still to be established*).
- Number of children brought into care where the substantiated harm was emotional abuse – family and domestic violence, compared to other forms of abuse and neglect.
- Of these, the number of children reunified within two years, compared to other forms of abuse and neglect.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 43.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 43.

**Recommendation 44:** DCPFS complies with the requirements of the *Family and Domestic Violence Practice Guidance*, in particular, that ‘[w]here a VRO is considered desirable or necessary but a decision is made for the Department not to apply for the order, the non-abusive adult victim should be given an active referral for legal advice and help from an appropriate service’.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- DCPFS’s Casework Practice Manual; and
- DCPFS’s *Emotional Abuse – Family and Domestic Violence Policy*, dated 1 July 2016.

In its report, DCPFS relevantly informed the Office that:

The new practice guidance [introduced on 1 July 2016] includes a specific CPM [Casework Practice Manual] about seeking VROs on behalf of children exposed to family and domestic violence. In circumstances where the adult victim decides to apply for a VRO, staff will be required to provide a warm referral to an appropriate support service.

The Office reviewed the Casework Practice Manual, effective as at 1 July 2016, and found that it states:

There are many services available to provide assistance to people seeking to obtain a VRO. When a child protection worker is involved/engaged with an adult victim of FDV who has indicated that they want to obtain a VRO for themselves and their child(ren), the child protection worker must offer a warm referral to a specialist support service. Referral options include:

- Family Violence Service (located at metropolitan courts)
- Victim Support Service (available in regional locations)
- Legal services including Community Legal Centres and Legal Aid, and
- Aboriginal Family Law Services.<sup>36</sup>

The Casework Practice Manual effective as at 1 July 2016 uses the word 'must' (rather than the word 'should' in the previous iteration of the Casework Practice Manual), which more clearly mandates the provision of a referral. The new requirement also specifies that the worker must offer a 'warm' referral ('[a] warm referral involves contacting a service provider with, or on behalf of, a person requiring a service. Warm referral includes an element of follow-up, in which the referring service provider confirms that the referral has been successful'<sup>37</sup>) rather than just 'providing a referral'.

In its report, DCPFS informed the Office of actions it has taken to improve compliance with the new practice guidance. These relevantly include:

- ...
- workshops with district directors, assistant district directors and SPDOs [Senior Practice Development Officers] to discuss the [Ombudsman's] findings and

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<sup>36</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual, '5.4 Violence Restraining Orders'* DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=151>>.

<sup>37</sup> Department for Child Protection and Family Support, 'Western Australian Family and Domestic Violence Referral Guide' viewed 11 October 2016, <<https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Documents/ReferralGuideJune2016.pdf>>, p. 2.

VROs;

- multiple case consultations with staff providing advice and support to obtain a VRO;
- integration of information about VROs and the responsibilities of staff, in the training program *Managing Child Protection Cases through the Children's Court (currently being delivered across all metro districts)*;
- inclusion of information about VROs in the face to face briefings promoting the new practice guidance (state wide);
- news of the day story about VROs (18 July 2016); and
- district offices supporting staff to participate in the 'walk in her shoes tour' at Magistrates Court (Mirrabooka and Crisis Care conducted dedicated tours, other districts have sent staff to the regular event).

**Accordingly, steps have been taken to give effect to Recommendation 44.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 44.

**Recommendation 45:** In its implementation of section 18(2) of the *Restraining Orders Act 1997*, DCPFS complies with its *Family and Domestic Violence Practice Guidance* which identifies that DCPFS officers should consider seeking a violence restraining order on behalf of a child if the violence is likely to escalate and the children are at risk of further abuse, and/or it would decrease risk to the adult victim if the Department was the applicant for the violence restraining order.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- DCPFS's Casework Practice Manual;
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

In its reports, DCPFS informed the Office that:

The new practice guidance includes guidelines for child protection staff to apply for a VRO on behalf of the children in circumstances where it is appropriate or safe to do so. The practice requirements include applying for a VRO on behalf of the child against the perpetrator if:

- The violence is likely to escalate and the child is at risk of further abuse;
- A VRO is considered to be a safe and suitable tool to support safety planning; and/or
- It would decrease risk to the adult victim if the Department was the applicant for the VRO.

In the context of this recommendation, the Office identified that the 'new practice guidance' referred to in DCPFS's report comprises:

- DCPFS's Casework Practice Manual; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

The Office reviewed the Casework Practice Manual, effective as at 1 July 2016, and found that it states:

In what circumstances should a child protection worker seek a VRO on behalf of a child?

Child protection workers should use the powers granted under the [*Restraining Orders*] Act (s.18(2)) to apply for a VRO on behalf of a child to protect them from exposure to FDV. Child protection workers should consider this option if:

- the violence is likely to escalate and the child is at risk of further harm, and/or
- it would decrease risk to the adult victim if the Department was the applicant for the VRO.<sup>38</sup>

The Casework Practice Manual that applied during the FDV investigation stated that:

Child protection workers should use powers granted under the *Restraining Orders Act 1997* to apply, on behalf of a child, for a Violence Restraining Order (VRO) against the perpetrator if:

- the violence is likely to escalate and the child is at risk of further abuse; and/or
- it would decrease risk to the adult victim if the Department was the applicant for the VRO. Refer to the related resource *Violence Restraining Orders*.<sup>39</sup>

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<sup>38</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.4 Violence Restraining Orders' DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=151>>.

<sup>39</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.2 Family and Domestic Violence Safety Planning,' DCPFS, Perth, 2014, viewed 20 January 2015, <<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/02FamilyandDomesticViolenceSafetyPlanning.aspx>>.

DCPFS also relevantly informed the Office that:

A comprehensive implementation and monitoring plan has been developed to support the new practice guidance. A monitoring report including baseline indicators will be produced each six months, together with outcomes from practice audits undertaken across districts.

DCPFS also relevantly informed the Office that:

- [DCPFS has undertaken] multiple case consultations with staff providing advice and support to obtain a VRO;
- Case consultations are conducted routinely, at the request of district offices;
- ...
- A family and domestic violence specific practice audit is planned to commence in the last quarter of 2016 (as outlined in the practice guidance implementation plan).

As identified at Recommendation 44, the Office's review found that DCPFS has taken steps in relation to a requirement for a warm referral, and compliance with this requirement. The Office's review found that these steps are also relevant to improving compliance with the new practice guidance in relation to DCPFS officers considering seeking a VRO on behalf of a child. In its report, DCPFS informed the Office that it will establish a new performance indicator (and associated data collection process) to monitor the number of VROs applied for by DCPFS.

**Accordingly, steps have been taken to give effect to Recommendation 45.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 45.

**Recommendation 46:** DCPFS instructs officers providing legal advice to child protection workers to provide advice that is consistent with the practice guidance regarding applications for violence restraining orders on behalf of children, in particular that 'child protection workers should consider seeking a VRO on behalf of a child if the violence is likely to escalate and the children are at risk of further abuse and/or it would decrease the risk to the adult victim if the Department was the applicant for the VRO'.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- DCPFS's Casework Practice Manual; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

In its reports, DCPFS informed the Office that '[u]nder the new practice guidance staff will be required to seek approval from their team leader when applying for a VRO on behalf of a child and must notify the Child Protection Legal Unit for support and information'.

In the context of this recommendation, the Office identified that the 'new practice guidance' referred to in DCPFS's report comprises:

- DCPFS's Casework Practice Manual; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

The Office reviewed the Casework Practice Manual, effective as at 1 July 2016, and found that it states:

Approval to obtain a VRO

The decision for the Department to apply for a VRO on behalf of a child must be approved by a team leader with notification to the district director. Once approved, the district must notify the Child Protection Legal Unit, for their information.<sup>40</sup>

DCPFS's *Family and Domestic Violence Practice Guidance*, examined by the Office during the FDV investigation, relevantly stated that '[t]he decision for the Department to apply for a VRO on behalf of a child must be endorsed by the Team Leader and approved by the District Director'.<sup>41</sup>

That is, the ability to approve an application for a VRO now resides with the Team Leader rather than the District Director. In its report, DCPFS informed the Office that '[t]his decision was deliberately made to reduce opportunity for case workers to be told that a VRO is not an appropriate course of action.'

In addition, in its reports, DCPFS relevantly informed the Office that it has taken the following steps to instruct those officers providing legal advice to child protection workers that they are to provide advice that

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<sup>40</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual*, '5.4 Violence Restraining Orders' DCPFS, Perth, 2016, viewed 21 September 2016, <<https://manuals.dcp.wa.gov.au/CPM/SitePages/Procedure.aspx?ProcedureId=151>>.

<sup>41</sup> Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74.

is consistent with the practice guidance regarding applications for VROs on behalf of children:

- Child Protection Legal Unit have a representative on the internal FDV steering committee responsible for developing and implementing the new FDV practice guidance;
- ...
- workshops with lawyers to discuss VROs (19 September 2014; 14 April 2016)...

**Accordingly, steps have been taken to give effect to Recommendation 46.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 46.

**Recommendation 47:** DCPFS, through case reviews and case consultations, monitors, on an on-going basis, compliance with the practice guidance regarding applications for violence restraining orders on behalf of children.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS; and
- DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan.

In its reports, DCPFS informed the Office that:

A comprehensive implementation and monitoring plan has been developed to support the new practice guidance. A monitoring report including baseline indicators will be produced each six months, together with outcomes from practice audits undertaken across districts. Baseline indicators include the number of VROs applied for by [DCPFS].

DCPFS also relevantly informed the Office (in relation to Recommendation 45) that:

- [DCPFS has undertaken] multiple case consultations with staff providing advice and support to obtain a VRO;
- Case consultations are conducted routinely, at the request of district offices;
- ...
- A family and domestic violence specific practice audit

is planned to commence in the last quarter of 2016 (as outlined in the practice guidance implementation plan).

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 47.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 47.

**Recommendation 48:** DCPFS ensures that its Casework Practice Manual requirements for screening for family and domestic violence are both internally consistent and consistent with the 'Minimum Standards of Practice for Screening' in *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- DCPFS's Casework Practice Manual; and
- *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework - Second edition (the CRARMF – second edition)*, launched on 27 November 2015.

In its report, DCPFS informed the Office that '[r]eferences to family and domestic violence screening in the Casework Practice Manual have been updated to promote consistency.' The Office's review found that DCPFS had also updated the CRARMF, and launched a second edition on 27 November 2015.

**Accordingly, steps have been taken and are proposed to be taken to give effect to Recommendation 48.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 48.

**Recommendation 49:** Following the implementation of Recommendation 48, DCPFS complies with the requirements for family and domestic violence screening and risk assessment.

**Steps taken to give effect to the recommendation**

Taking steps to give effect to Recommendation 49 was contingent upon DCPFS first taking steps to give effect to Recommendation 48. The Office has found that steps have been taken (and are proposed to be taken) to give effect to Recommendation 48 and, accordingly, the Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 49.

**Recommendation 50:** Following the implementation of Recommendation 48, DCPFS undertakes safety planning in accordance with the Casework Practice Manual.

**Steps taken to give effect to the recommendation**

Taking steps to give effect to Recommendation 50 was contingent upon DCPFS first taking steps to give effect to Recommendation 48. The Office has found that steps have been taken (and are proposed to be taken) to give effect to Recommendation 48 and, accordingly, the Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 50.

**Recommendation 51:** DCPFS incorporates the minimum forms of engagement with perpetrators of family and domestic violence into the Casework Practice Manual, so that child protection workers are required to engage with perpetrators when it has been assessed as safe to do so.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS;
- DCPFS's Casework Practice Manual; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016.

In its report, DCPFS relevantly informed the Office that:

The new practice guidance requires staff, where possible and appropriate to engage and respond to perpetrators of emotional abuse – family and domestic violence. This includes interviewing the perpetrator to inform safety and wellbeing assessments, identifying the perpetrator as the person responsible for the concern/harm in all recording including narratives, harm statements, danger statements

and safety goals and working with the perpetrator to challenge and change violent and abusive behaviours.

The Office reviewed the Casework Practice Manual and found that it includes the actions set out in DCPFS's report.

**Accordingly, steps have been taken to give effect to Recommendation 51.**

**Recommendation 52:** DCPFS ensures that, following the implementation of Recommendation 51, DCPFS provides appropriate training in relation to the amended Casework Practice Manual.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- a report prepared by DCPFS; and
- DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan.

In its report, DCPFS relevantly informed the Office that '[o]ngoing training and professional education is offered by DCPFS to all staff to support implementation of the Department's family and domestic violence practice guidance'.

The Office's review found that DCPFS's *Family and Domestic Violence Practice Guidance Implementation* plan identifies, at 'Appendix Two: Integrated FDV Training' that training in 'FDV assessment and safety plan; Engaging victims, perpetrators and children' will be part of the content of Signs of Safety training to be provided to all staff, after piloting in June 2016.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 52.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 52.

**Recommendation 53:** DCPFS sets out in the Casework Practice Manual, *Family and Domestic Violence Policy 2012*, and *Family and Domestic Violence Practice Guidance* how DCPFS responds to Aboriginal family violence and how Aboriginal children may best be protected from harm arising from family violence, within DCPFS frameworks developed to respond to Aboriginal families.

**Steps taken to give effect to the recommendation**

The Office requested that DCPFS inform the Office of the steps taken to give effect to the recommendation. In response, DCPFS provided a range of information in:

- reports prepared by DCPFS;
- DCPFS's Casework Practice Manual;
- DCPFS's *Emotional Abuse – Family and Domestic Violence Assessment Toolkit*;
- DCPFS's *Emotional Abuse – Family and Domestic Violence Safety Planning Toolkit*; and
- DCPFS's *Family and Domestic Violence Practice Guidance Review*.

In its report, DCPFS informed the Office that '[t]he new practice guidance is grounded in the Signs of Safety: Child Protection Practice Framework and the information, resources and materials developed for *Signs of Safety Aboriginal Way*.'

In the context of this recommendation, the Office identified that the 'new practice guidance' referred to in DCPFS's report comprises:

- DCPFS's Casework Practice Manual;
- DCPFS's *Emotional Abuse – Family and Domestic Violence Policy* dated 1 July 2016;
- DCPFS's *Emotional Abuse – Family and Domestic Violence Assessment Toolkit*; and
- DCPFS's *Emotional Abuse – Family and Domestic Violence Safety Planning Toolkit*.

In a further report, DCPFS relevantly informed the Office that:

Currently the following work is being undertaken within the Department to support engagement of Aboriginal children and families in Department processes:

- In 2016 DCPFS launched a new *Aboriginal Services Framework*.
- In 2015 DCPFS commenced work on a project titled *Signs of Safety Aboriginal Way*. This project includes multiple components and is focused on building the cultural competence of Department staff, as well as developing tools and resources that child protection workers can use to support culturally appropriate and

supportive engagement with Aboriginal children and families.

- In 2015 DCPFS commenced a pilot of *Getting Ready for Pre-Birth Planning* which includes specific resources and materials for child protection workers to support culturally appropriate and respectful engagement of Aboriginal parents during pre-birth planning.

...

- In 2015, DCPFS engaged Tjallara Consulting to develop community readiness and law and culture frameworks about Aboriginal family violence. Although this has been funded as part of the Kimberley Plan the findings will be adapted for child protection practice.

The Office reviewed DCPFS's *Emotional Abuse – Family and Domestic Violence Assessment Toolkit* and *Safety Planning Toolkit* and found that both documents state that:

The primary client in mind during the development of this resource is Aboriginal children and their families.<sup>42</sup>

The Office notes that the *Signs of Safety Aboriginal Way* project is still underway.

**Accordingly, steps are proposed to be taken to give effect to Recommendation 53.**

The Office will continue to monitor, and report on, the steps being taken to give effect to Recommendation 53.

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<sup>42</sup> Government of Western Australia, Department for Child Protection and Family Support, *Emotional Abuse – Family and Domestic Violence Assessment Toolkit*, DCPFS, Perth, 2016, p. 4.

**Recommendation 54:** Taking into account the findings of this investigation, DCPFS:

- conducts a review to identify barriers to the effective implementation of relevant family and domestic violence policies and practice guidance;
- develops an associated action plan to overcome identified barriers; and
- provides the resulting review report and action plan to this Office within 12 months of the tabling in the Western Australian Parliament of the report of this investigation.

**Steps taken to give effect to the recommendation**

The review report and action plan have been provided to the Office within 12 months of the tabling of the FDV Investigation Report, and will be reviewed by the Office and the results of this review reported on in the Office's 2016-17 Annual Report.

**Accordingly, steps have been taken to give effect to Recommendation 54.**

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**Table 1: Summary of findings by recommendation**

Recommendation		Recommendation	
1	Steps have been taken	28	Steps have been taken
2	Steps have been taken and are proposed to be taken	29	Steps have been taken
3	Steps have been taken and are proposed to be taken	30	Steps have been taken and are proposed to be taken
4	Steps have been taken and are proposed to be taken	31	Steps are proposed to be taken
5	Steps have been taken and are proposed to be taken	32	Steps have been taken
6	Steps are proposed to be taken	33	Steps have been taken and are proposed to be taken
7	Steps are proposed to be taken	34	Steps have been taken and are proposed to be taken
8	Steps are proposed to be taken	35	Steps are proposed to be taken
9	Steps are proposed to be taken	36	Steps are proposed to be taken
10	Steps have been taken and are proposed to be taken	37	Steps have been taken and are proposed to be taken
11	Steps are proposed to be taken	38	Steps have been taken and are proposed to be taken for part (i) and (ii). Steps are proposed to be taken for part (iii).
12	Steps have been taken	39	Steps are proposed to be taken
13	Steps are proposed to be taken	40	Steps have been taken
14	Steps have been taken	41	Steps are proposed to be taken
15	Steps have been taken	42	Steps are proposed to be taken
16	Steps have been taken and are proposed to be taken	43	Steps have been taken and are proposed to be taken
17	Steps are proposed to be taken	44	Steps have been taken
18	Steps are proposed to be taken	45	Steps have been taken
19	Steps are proposed to be taken	46	Steps have been taken
20	Steps are proposed to be taken	47	Steps have been taken and are proposed to be taken
21	Steps are proposed to be taken	48	Steps have been taken and are proposed to be taken
22	Steps have been taken	49	See recommendation 48
23	Steps have been taken and are proposed to be taken	50	See recommendation 48
24	Steps are proposed to be taken	51	Steps have been taken
25	Steps are proposed to be taken	52	Steps are proposed to be taken
26	Steps have been taken	53	Steps are proposed to be taken
27	Steps are proposed to be taken	54	Steps have been taken

Source: Ombudsman Western Australia

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# Appendix 1: Executive Summary of the *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*

To assist the reading of this report, without further reference being required to the FDV Investigation Report, the Office has reproduced the Executive Summary of the FDV Investigation Report.

## 1 Executive Summary

### 1.1 About the investigation

On 1 July 2012, the Ombudsman's office (**the Office**) commenced an important new role to review family and domestic violence fatalities. Through the review of family and domestic violence fatalities, the Ombudsman identified a pattern of cases in which violence restraining orders (**VROs**) were, or had been, in place between the person who was killed and the suspected perpetrator, or between the person who was killed or the suspected perpetrator and other parties. The Ombudsman also identified a pattern of cases in which VROs were not used, although family and domestic violence had been, or had been recorded as, occurring and state government departments and authorities had been contacted.

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

The investigation had two aims. Firstly, arising from the work of the Ombudsman in reviewing family and domestic violence fatalities, the investigation aimed to set out a comprehensive understanding of family and domestic violence in Western Australia. Secondly, informed by this comprehensive understanding, the investigation aimed to examine the actions of state government departments and authorities in administering their relevant legislative responsibilities, including particularly the *Restraining Orders Act 1997* (**the Restraining Orders Act**), with a focus on VROs.

Throughout the investigation, the Office also considered if, and if so how, family and domestic violence affects different people and groups of people, in particular Aboriginal people (given the significant overrepresentation of Aboriginal Western Australians in family and domestic violence fatalities).

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

- Western Australia Police (**WAPOL**);
- Department for Child Protection and Family Support (**DCPFS**);

- Department of the Attorney General (**DOTAG**); and
- Drug and Alcohol Office (which amalgamated with the Mental Health Commission on 1 July 2015).

The Office consulted relevant stakeholders regarding the results of the Office's analysis as well as engaging people with expertise in the area of family and domestic violence in relation to our analysis, draft findings and draft recommendations.

To undertake the investigation, the Office examined 30 family and domestic violence fatalities (**the 30 fatalities**) notified to the Ombudsman over a defined 18 month period (**the investigation period**). For each of the 30 fatalities, the Office received information from state government departments and authorities, and from relevant courts. The Office also collected and analysed data from across Western Australia for the investigation period (**the state-wide data**). This data was provided by WAPOL, as well as the Magistrates Court and the Children's Court. The state-wide data was provided on a de-identified basis.

## 1.2 Understanding family and domestic violence

### 1.2.1 Definition of family and domestic violence

The Australian Bureau of Statistics has identified that there is 'no single nationally or internationally agreed definition'<sup>43</sup> of family and domestic violence and that 'different definitions may be specified in legislation or be required in different contexts and jurisdictions'.<sup>44</sup> 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.<sup>45</sup>

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*. 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;

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<sup>43</sup> Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

<sup>44</sup> Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

<sup>45</sup> 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.apf.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/archive/Domviolence](http://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/Domviolence)>, p. 1.

- (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
  - (i) 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.

### **1.2.2 Perpetrators use family and domestic violence to exercise power and control over victims; victims of family and domestic violence will resist violence and try to protect themselves**

The research literature consistently recognises that perpetrators of family and domestic violence choose 'when, where and how they use violence'.<sup>46</sup> The *National Plan to Reduce Violence against Women and their Children 2010 - 2022* 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 control** over women and their children, and can be both criminal and non-criminal.<sup>47</sup> [Emphasis added]

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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

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<sup>46</sup> Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

<sup>47</sup> 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>>.

<sup>48</sup> 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.

<sup>49</sup> Hayes, B, *Women's Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

<sup>50</sup> 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>>.

## 1.3 Key findings and recommendations

### **Part 1: Family and domestic violence in Western Australia**

#### **1.3.1 In the investigation period, WAPOL recorded that they responded to 75,983 family and domestic violence incidents**

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 family and domestic violence incidents.<sup>51</sup>

In the investigation period, police officers detected 26,023 offences against the person at family and domestic violence incidents.<sup>52</sup> WAPOL recorded 24,479<sup>53</sup> 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; and
- 8,150 (33 per cent) were recorded as being Indigenous.<sup>54</sup>

The research literature has also found that some groups of people experience higher rates of family and domestic violence, including: Aboriginal people; people from culturally and linguistically diverse backgrounds; people from regional and remote communities; women with disabilities; and gay, lesbian, bisexual, transgender and intersex people.

#### **1.3.2 WAPOL notified the Ombudsman of 30 people who were killed who were in a family and domestic relationship with the suspected perpetrator**

As identified at section 1.1, 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 perpetrator<sup>55</sup> was a 'family and domestic relationship', as defined by section 4(1) of the *Restraining Orders Act*.

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<sup>51</sup> The 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.

<sup>52</sup> 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.

<sup>53</sup> It 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.

<sup>54</sup> The 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.

<sup>55</sup> 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.

### **1.3.3 In 17 of the 30 fatalities (57 per cent), violence restraining orders involving at least one of the people involved in the fatality were granted at some point in time**

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.

In six of the 30 fatalities, a VRO was granted at some point in time between the parties to the fatality. 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.

Forty-two 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.

### **1.3.4 Aboriginal people are overrepresented, both as victims of family and domestic violence and victims of fatalities arising from this violence**

The findings of the Office's investigation identify that Aboriginal people are overrepresented, both as victims of family and domestic violence and victims of fatalities arising from this violence. While Aboriginal and Torres Strait Islander people make up 3.1 per cent of Western Australia's population,<sup>56</sup> the Office found that Aboriginal people comprised 33 per cent of victims of family and domestic violence offences and 50 per cent of the 30 fatalities in the investigation period. These findings 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',<sup>57</sup> and that Aboriginal people experience family and domestic violence at 'significantly higher rates than other Australians'.<sup>58</sup>

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<sup>56</sup> 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.

<sup>57</sup> Cripps, K and Davis, M, *Communities working to reduce Indigenous family violence*, brief 12, June 2012, Indigenous Justice Clearinghouse, New South Wales, 2012.

<sup>58</sup> 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.

The research literature identifies that concepts of family and domestic violence in Aboriginal communities are broader than mainstream definitions of domestic violence,<sup>59</sup> with the term ‘family violence’ better reflecting the experiences of Aboriginal people. 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 ... [that] in mainstream communities and populations’.<sup>60</sup>

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. In particular, the research literature 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’.<sup>61</sup> These barriers to Aboriginal people seeking help mean that ‘Aboriginal women are increasingly vulnerable to the risks and effects of violence’.<sup>62</sup>

## ***Part 2: Administration of legislation relevant to family and domestic violence, including particularly the Restraining Orders Act, by state government departments and authorities***

### **1.3.5 By administering the *Restraining Orders Act* in accordance with nine key principles, state government departments and authorities will have the greatest impact on preventing and reducing family and domestic violence and related fatalities**

The *Restraining Orders Act*<sup>63</sup> defines a VRO as an order that is made under the *Restraining Orders Act* imposing restraints of the kind referred to in section 13 of the *Restraining Orders Act*.<sup>64</sup>

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<sup>59</sup> 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. 5.

<sup>60</sup> 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. 5.

<sup>61</sup> 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.

<sup>62</sup> 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.

<sup>63</sup> 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*.

<sup>64</sup> *Restraining Orders Act 1997* (WA), Section 3.

To be effective, the Office has identified that the administration of the *Restraining Orders Act* by state government departments and authorities will need to reflect the following nine principles:

- (i) perpetrators use family and domestic violence to exercise power and control over victims;
- (ii) victims of family and domestic violence will resist the violence and try to protect themselves;
- (iii) victims may seek help to resist the violence and protect themselves, including help from state government departments and authorities;
- (iv) when victims seek help, positive and consistent responses by state government departments and authorities can prevent and reduce further violence;
- (v) victims' decisions about how they will resist violence and protect themselves may not always align with the expectations of state government departments and authorities; this does not mean that victims do not need, want, or are less deserving of, help;
- (vi) perpetrators of family and domestic violence make a decision to behave violently towards their victims;
- (vii) perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others;
- (viii) by responding decisively and holding perpetrators accountable for their behaviour, state government departments and authorities can prevent and reduce further violence; and
- (ix) perpetrators may seek to manipulate state government departments and authorities, in order to maintain power and control over their victims and avoid being held accountable; state government departments and authorities need to be alert to this.

### **1.3.6 WAPOL complied with requirements to attend the scene in 96 per cent of prior family and domestic violence incidents relating to the 30 fatalities**

In 16 of the 30 fatalities, there was a recorded prior history of family and domestic violence involving the person who was killed and the suspected perpetrator. In these 16 fatalities, WAPOL recorded 133 family and domestic violence incidents.

The Office examined WAPOL's records regarding these 133 family and domestic violence incidents to determine whether WAPOL attended the scene. Exceptional circumstances, as defined by the *Commissioner's Operations and Procedures Manual (the COPS Manual)*, were noted in 13 instances (for example, the victim attended a police station to report family and domestic violence which had occurred earlier). Of the remaining 120 family and domestic violence incidents, the Office identified that police officers attended the scene of 115 (96 per cent) of these incidents.

### **1.3.7 WAPOL provided information and advice about violence restraining orders, and sought consent to share information with support services, in a quarter of instances where WAPOL investigated a report of family and domestic violence relating to the 30 fatalities**

WAPOL is not currently required by legislation or policy to provide victims with information and advice about VROs when attending the scene of acts of family and domestic violence. However, its attendance at the scene affords WAPOL with the opportunity to provide victims with information and advice about:

- what a VRO is and how it can enhance their safety;
- how to apply for a VRO; and
- what support services are available to provide further advice and assistance with obtaining a VRO, and how to access these support services.

The research literature suggests that providing victims with information, advice, and referrals to support services is critical to victims 'pursuing, rather than abandoning, efforts to access legal protection'.<sup>65</sup> In particular, victims who receive such information and advice, and access support services are more likely to be successful in obtaining a VRO.<sup>66</sup>

In order to analyse the actions taken by WAPOL in providing an initial response to family and domestic violence in the 30 fatalities, the Office examined all 75 domestic violence incident reports (**the 75 DVIRs**), submitted by police officers after attending a prior domestic violence incident involving the person who was killed and the suspected perpetrator. The 75 DVIRs related to incidents which involved predominantly Aboriginal people who were killed, and suspected perpetrators who were Aboriginal people, living in regional and remote Australia. Of particular note, 65 of the 75 DVIRs (87 per cent) related to an Aboriginal person who was killed in the 30 fatalities.

The Office examined the 75 DVIRs to determine whether, when responding to reports of family and domestic violence, WAPOL provided information and advice about VROs to victims and, if so, the nature of the information and advice provided. Of the 75 instances in which a DVIR was submitted, the DVIR recorded that WAPOL provided information and advice about VROs in 19 instances (25 per cent). In a further three instances, the DVIR recorded that the victim was referred to 'court support services'. Although VROs were not specifically mentioned in relation to these referrals, court support services can provide assistance with applications for VROs.

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<sup>65</sup> Laing, L, *'It's like this maze that you have to make your way through'*. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales*, University of Sydney, Faculty of Education and Social Work, New South Wales, 2013, p. 12.

<sup>66</sup> Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 40.

### 1.3.8 WAPOL did not make any applications for violence restraining orders on behalf of the person who was killed or the suspected perpetrator in the 30 fatalities

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

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

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

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

The COPS Manual specifies that police officers must:

Issue a Police Order or make application for a Restraining Order on behalf of the victim, or **if either action is not possible or appropriate** make a written record as to why an order or application was not made.<sup>67</sup> [Emphasis added]

The Office examined the 75 DVIRs to identify what actions were taken by WAPOL in accordance with section 62C of the *Restraining Orders Act*. The Office identified that four of the 75 DVIRs related to incidents prior to the 2004 inclusion of section 62C and were therefore excluded from the examination (Figure 1). The actions taken by WAPOL in response to the remaining incidents, and recorded in the remaining 71 DVIRs, are shown in Figure 1.

**Figure 1: Actions taken under section 62C  
of the *Restraining Orders Act***

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

Source: Ombudsman Western Australia

The Office's examination of the 71 applicable DVIRs identified that there were no instances of a police officer applying for a VRO on behalf of the person who was killed or

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<sup>67</sup> Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4., p. 9.

the suspected perpetrator, although one police officer did assist with one VRO application sought by one person who was killed.

In summary, the Office identified inconsistencies between section 62C of the *Restraining Orders Act* and WAPOL's administration of section 62C as set out in the COPS Manual. There were also gaps between the requirements set out in the COPS Manual and WAPOL's practice. Accordingly, the Office has directed a number of recommendations to WAPOL. These recommendations are Recommendation 17, Recommendation 18, Recommendation 19 and Recommendation 20.

### **1.3.9 In the investigation period, 21,237 applications for a violence restraining order were made in Western Australia**

The Office analysed all VRO applications lodged in Western Australia during the investigation period to determine the number of applications, nature of relationships involved, demographic characteristics of both applicants and respondents, and the grounds on which VROs were sought.

In the investigation period, 21,237 applications for VROs were made in Western Australia. In 12,393 (58 per cent) of these applications, the applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent.<sup>68</sup>

### **1.3.10 Where the person seeking to be protected was in a family and domestic relationship with the respondent, 77 per cent (9,533) of persons seeking to be protected by violence restraining orders were female**

The Office further analysed the 12,393 applications where the applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent. Of these 12,393 applications, the Office identified that:

- 9,533 (77 per cent) of persons seeking to be protected were female;
- 8,620 (70 per cent) of applicants<sup>69</sup> identified that the person seeking to be protected was, or had been, in an intimate partner relationship with the respondent;
- 1,340 (11 per cent) of persons seeking to be protected identified themselves as Aboriginal or Aboriginal and Torres Strait Islander; and
- 6,813 (55 per cent) of applicants cited grounds relating to children for seeking a VRO.

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<sup>68</sup> The person seeking to be protected may not always be the applicant, for example the applicant may be a parent or legal guardian of a child or a police officer.

<sup>69</sup> The person to seeking to be protected may not always be the applicant, for example the applicant may be a parent or guardian of a child, a police officer, or a legal guardian.

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

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

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

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

The Office's findings are consistent with the research literature which also suggests that 'Aboriginal women are less likely than their non-Aboriginal counterparts to apply for Violence Restraining Orders'.<sup>70</sup>

Accordingly, it is recommended that DOTAG, in collaboration with key stakeholders, identifies ways of addressing the cultural, logistical and other structural barriers to Aboriginal victims seeking a VRO, and, in collaboration with DCPFS, incorporates these opportunities into the Aboriginal family violence strategy (Recommendation 23 and Recommendation 24).

### **1.3.12 Applications for an interim violence restraining order frequently did not progress to a final violence restraining order**

As identified at section 1.3.9, in the period of the investigation, 21,237 applications for VROs were made in Western Australia. In the same period, 14,417 interim VROs were made by the courts. In the investigation period, 6,351<sup>71</sup> interim VROs automatically became final VROs without returning to court. A final VRO was granted as an outcome of 2,867 hearings.<sup>72</sup> Considered collectively with the 6,351 automatic final VROs in the investigation period, this indicates that approximately 43 per cent of all applications for VROs go on to become final orders.

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<sup>70</sup> For example: Ferrante, A, Morgan, F, Indermaur, D, Harding, R, *Measuring the extent of domestic violence*, The Hawkins Press, Sydney, 1996; Dr Dot Goulding, *The Role of Socio-Economic & Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family & Domestic Violence*, Centre for Social & Community Research, Murdoch University, Perth, 2007; Auditor General for Western Australia, *A Measure of Protection: Management and Effectiveness of Restraining Orders*, Auditor General for Western Australia, Perth, October 2002, p. 6.

<sup>71</sup> It is important to note that these orders are not a subset of the 14,417 interim orders, although there is some overlap. This data refers to all interim orders which automatically became final orders in the investigation period, which may have been granted prior to the investigation period.

<sup>72</sup> It is noted that an interim order may also become a final order if it is not objected to, and these orders are not included in the court data.

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

- processes associated with going to court can increase victim distress;
- requirements to participate in further court hearings may discourage victims from progressing to a final order;
- requirements to give evidence, and face the perpetrator in court, are considered by victims when deciding whether or not to progress their application; and
- comments made in court can negatively impact upon victims.

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

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

The Office's analysis of the state-wide data found that, during the investigation period, there were 8,767 breaches of VROs reported to WAPOL, with 3,753 alleged offenders recorded. During the investigation period, 3,099 of the 3,753 (83 per cent) alleged offenders were charged with the offence of 'breach of violence restraining order'.

Submissions to reviews of the *Restraining Orders Act* conducted by the Law Reform Commission have argued that arresting persons accused of breaching a VRO promotes victim safety and enhances perpetrator accountability. Of the 3,099 alleged offenders who were charged:

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

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

The Office analysed the court outcomes and sentencing practices for alleged offenders charged with breaching a VRO. The Office's analysis of the state-wide data identified that, in the investigation period, the Magistrates Court and the Children's Court held 11,352 hearings relating to charges of breach of a VRO. Of these 11,352 hearings, 11,051 (97 per cent) were heard in the Magistrates Court. The 11,352 hearings related to 8,147 charges and 2,676 alleged offenders.

The Office examined the court outcomes of all charges of breach of a VRO.<sup>73</sup> Of the 8,147 charges, 6,087 were finalised<sup>74</sup> during the investigation period. The alleged offender was found guilty and a sentence imposed in 5,519 of the 6,087 finalised charges (91 per cent).

Where an offender is found guilty, the court may impose more than one sentence, and a total of 9,378 sentencing outcomes resulted from the 5,519 convictions for breaching a VRO. The Office's analysis indicated that a fine was the sole outcome for 2,597 of the 5,519 charges where a sentence was imposed (47 per cent). The most frequent sentence imposed for breaching a VRO was a fine, with 6,004 fines issued.

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

Although there is some variation across studies, the research literature has generally demonstrated that 'women with protection orders experience less violence and abuse from their (ex)partner compared to women who do not have a protection order'. However, the research literature further suggests that the effectiveness of VROs decreases as the risk to the victim increases.

In identifying high risk cases, involving perpetrators who are more likely to breach a VRO, the research literature observes that '[o]nly recently have researchers begun to investigate ways to predict whether or not a violent partner is likely to violate a protective order'.<sup>75</sup> However, the research literature suggests several factors which increase the risk of a VRO being breached, including:

- separation (in the case of intimate partners);<sup>76</sup>
- a perpetrator with a history of violence and crime;<sup>77</sup> and
- a perpetrator with a history of non-compliance with court imposed conditions.<sup>78</sup>

These factors, and their presence in the 30 fatalities, are summarised below:

- eight people who were killed in the 30 fatalities intended to separate, or had recently separated, from the suspected perpetrator;
- eighteen of the 30 suspected perpetrators had contact with the justice system at some point prior to the time when a person was killed; and
- WAPOL recorded a suspected perpetrator as being in breach of an order or other protective conditions imposed by the court in 17 per cent of the 75 DVIRs relating to the 30 fatalities.

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<sup>73</sup> It is possible that the alleged offenders were also charged with another offence that was dealt with at the same time as the breach of a VRO charge, that is, the outcome could take into account additional charges.

<sup>74</sup> For this analysis, the Office counted individual charges as finalised if they recorded an outcome imposing a sentence, dismissing the charge, transferring the case to another court/agency or recording the death of an accused.

<sup>75</sup> University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 2.

<sup>76</sup> Women's Aid, *Why doesn't she leave?*, Women's Aid Federation of England, Bristol, 2006.

<sup>77</sup> University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 3.

<sup>78</sup> University of Kentucky, Center for Research on Violence Against Women, *Top Ten Series; Do Protective Orders Work? Who Violates Protective Orders the Most?*, University of Kentucky, December 2011, p. 4.

It is important to note that, while the research literature has identified several factors associated with increased risk, the absence of these factors does not necessarily mean that a VRO is unlikely to be breached or that a case is 'low risk'.

Considered collectively, the research literature suggests that VROs can be a useful protective mechanism for victims of family and domestic violence in all cases, however, in high risk cases, the research findings suggest that 'criminal justice systems and police forces need to develop additional protective actions to effectively prevent future [violence]'.<sup>79</sup> Additional strategies that may be useful in high risk cases, and in the prevention of fatalities, are discussed below.

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

As described above, the research literature identifies that, in high risk cases, restraining orders, such as Western Australia's VROs, are 'insufficient if used alone, and need to be supported by additional protective actions from police or social services'.<sup>80</sup> This is of particular importance in the prevention of family and domestic fatalities.

The research literature suggests that holding perpetrators of family and domestic violence in remand before trial is protective for victims, and can disrupt an 'escalating cycle of violence'.<sup>81</sup> The research literature also notes that 'the period after arraignment is one of the most dangerous times for victims of domestic violence'.<sup>82</sup> The detention of perpetrators further provides victims with 'time to relocate, save some money, and seek counselling and perhaps find a job'.<sup>83</sup>

In Western Australia, 'there is generally a pre-existing general presumption for bail',<sup>84</sup> that is, to release a person before trial (rather than a presumption against bail, to remand a person in custody before trial). However, in a number of other Australian states and territories, in certain circumstances, legislative provisions may alter the presumption for

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<sup>79</sup> Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, pp. 264-265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

<sup>80</sup> Strand, S, 'Using a restraining order as a protective risk management strategy to prevent intimate partner violence', *Police Practice and Research: An International Journal*, vol. 13, issue 3, p. 265, viewed 27 March 2014, <<http://dx.doi.org/10.1080/15614263.2011.607649>>.

<sup>81</sup> Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

<sup>82</sup> Marcotte, A, 'Could Massachusetts have stopped Jared Remy from allegedly murdering Jennifer Martel?', *Slate*, 19 August 2013, viewed 2 May 2014, <[http://www.slate.com/blogs/xx\\_factor/2013/08/19/jared\\_remy\\_walked\\_out\\_of\\_court\\_and\\_murdered\\_jennifer\\_martel\\_could\\_he\\_have.html](http://www.slate.com/blogs/xx_factor/2013/08/19/jared_remy_walked_out_of_court_and_murdered_jennifer_martel_could_he_have.html)>.

<sup>83</sup> Snyder, R, 'A Raised Hand,' *The New Yorker*, 22 July 2013, p. 38.

<sup>84</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 413.

bail, or include a presumption against granting bail for family and domestic violence offences.<sup>85</sup>

The relevant Western Australian legislation, the *Bail Act 1982*, currently does not include any general provision removing the presumption in favour of bail for family and domestic violence offences. However, the *Bail Act 1982* does contain a presumption against bail in cases where an accused is charged with a 'serious offence' while on bail or early release for another 'serious offence',<sup>86</sup> which captures many family and domestic violence offences.<sup>87</sup> Additionally, as observed by the Australian Law Reform Commission (**ALRC**):

The *Bail Act 1982* (WA) restricts the jurisdiction to grant bail in respect of breaches of protection orders [VROs] in urban areas.<sup>88</sup>

The ALRC considered 'the question of whether there should be a presumption for or against the granting of bail for crimes committed in a family violence context'<sup>89</sup> noting that some submissions supported a presumption against bail for family and domestic violence offences as a means of providing better protection for victims, while other submissions argued that such a presumption would 'unduly compromise the rights of accused persons'<sup>90</sup> or 'might act as a disincentive for victims to report offences'.<sup>91</sup>

In Western Australia, courts or judicial officers exercising jurisdiction to grant bail under the *Bail Act 1982* must have regard to the question of 'whether, if the accused is not kept in custody, he may...endanger the safety, welfare, or property of any person'.<sup>92</sup> In some circumstances, the court's consideration of this question regarding the safety of a victim when granting bail is informed by a 'bail risk assessment report'.<sup>93</sup> During consultation with the Law Reform Commission, Magistrates 'explained that the information contained in these reports is invaluable and the assessments appear to be widely supported by magistrates and many lawyers'.<sup>94</sup>

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<sup>85</sup> In New South Wales and Victoria, people accused of certain specified family violence offences must "show cause" as to why their detention is unjustified in certain circumstances. In Queensland, bail must be refused if there is an "unacceptable risk" that the accused would endanger the safety or welfare of a victim of the offence. In the Australian Capital Territory, Northern Territory and South Australia, the presumption in favour of bail is removed for breaches of protective orders in certain circumstances. In Tasmania a person accused of a family and domestic violence offence is not to be granted bail unless release of the person on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person or affected child.

<sup>86</sup> *Bail Act 1982* (WA), Schedule 1, Part C, Clause 3A.

<sup>87</sup> 'Serious offence' is defined in section 3 of the *Bail Act 1982* by way of reference to a list of offences in Schedule 2, which includes a range of assault offences under *The Criminal Code* and the offence of breaching a violence restraining order contained in section 61(1) of the *Restraining Orders Act 1997*.

<sup>88</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 415.

<sup>89</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 411.

<sup>90</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 416.

<sup>91</sup> Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC, Sydney, 11 November 2010, p. 417.

<sup>92</sup> *Bail Act 1982* (WA), Schedule 1, Part C, Clause 1(a)(iii).

<sup>93</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper*, Law Reform Commission of Western Australia, Perth, 2013, p. 117.

<sup>94</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 136.

It is recommended that DOTAG reviews the effectiveness of national and international models of deferral of bail, or in high risk cases in certain circumstances, a presumption against bail, having consideration to: perpetrator accountability; promoting victim safety; and the rights of defendants; and makes recommendations for implementing any changes that arise from the review (Recommendation 32).

### **1.3.17 Violence restraining orders are not a substitute for criminal charges where an offence has been committed**

The research literature suggests that there are concerns that VROs are being used as ‘an alternative, more lenient legal response to domestic violence’<sup>95</sup> when criminal charges should also be laid.<sup>96</sup>

Reasons why criminal charges may not be pursued include that ‘[s]ome family violence will not amount to a criminal offence; [violence restraining] orders generally offer a speedier response to violence and therefore speedier protection; and there is a lower standard of proof in civil protection order proceedings’.<sup>97</sup> However, of the actions available to police when attending a domestic violence incident, arresting the perpetrator is not only considered an effective method of ‘keeping victims safe’ but of holding ‘perpetrators more accountable for their behaviour’.<sup>98</sup> Research has also identified that arrest can also influence future decisions to engage in violent behaviour.<sup>99</sup>

*Reviews by the State Coroner and WAPOL following the murder of Andrea Louise Pickett*

On 12 January 2009, Andrea Louise Pickett:

... was murdered ... by her estranged husband, Kenneth Charles Pickett (Mr Pickett). At the time of the murder a violence restraining order was in place intended to protect Andrea from Mr Pickett. In addition, at the time of the murder, Mr Pickett was on parole in respect of a charge that on 14 February 2008 he had made a threat to kill Andrea.<sup>100</sup>

Following Andrea’s<sup>101</sup> murder, the State Coroner conducted an inquest involving a number of state government departments and authorities, including WAPOL.<sup>102</sup> The Coroner made

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<sup>95</sup> Chief Justice’s Taskforce on Gender Bias, *Report on Gender Bias*, Chief Justice of Western Australia, Perth, 30 June 1994, p. 169.

<sup>96</sup> Wilcox, K, *Recent Innovations in Australian Protection Order Law – A Comparative Discussion*, Australian Domestic & Family Violence Clearinghouse, The University of New South Wales, Sydney, 2010, p. 3.

<sup>97</sup> Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* the Law Reform Commission, Perth, 2014, p. 352.

<sup>98</sup> Braaf, R and Sneddon, C, ‘Arresting practices: exploring issues of dual arrest for domestic violence,’ *Australian Domestic & Family Violence Clearinghouse*, Sydney, 2007, p. 2.

<sup>99</sup> Braaf, R and Sneddon, C, ‘Arresting practices: exploring issues of dual arrest for domestic violence,’ *Australian Domestic & Family Violence Clearinghouse*, Sydney, 2007, p. 3.

<sup>100</sup> Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner’s Court of Western Australia, Perth, 28 June 2012, p. 3.

<sup>101</sup> Western Australian State Coroner Alastair Hope, in the *Inquest into the death of Andrea Louise Pickett*, Coroner’s Court of Western Australia, Perth, 28 June 2012, p. 3, stated that Andrea Louise Pickett ‘at the request of the family will be referred to as Andrea in these reasons’. The Office has also respected this request throughout this section of the report.

<sup>102</sup> Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner’s Court of Western Australia, Perth, 28 June 2012, p. 56-62.

seven recommendations relating to Andrea's murder.<sup>103</sup> Prior to the Coroner's inquest, WAPOL had conducted an internal review that identified 'practices that needed to improve the way police responded to family and domestic violence incidents'.<sup>104</sup>

The Office examined the investigative practices applied by WAPOL when responding to family and domestic violence perpetrated against people in the 30 fatalities, through an examination of the 75 DVIRs. As discussed in section 1.3.7, the 75 DVIRs related to incidents which involved predominantly Aboriginal people who were killed, and suspected perpetrators who were Aboriginal people, living in regional and remote Australia. Of particular note, 65 of the 75 DVIRs (87 per cent) related to an Aboriginal person who was killed in the 30 fatalities.

The Office examined the 75 DVIRs to determine whether all witnesses required to be interviewed in accordance with the *WA Police Investigation Doctrine* were interviewed, namely, victims, eye witnesses, other significant witnesses, and suspects/persons of interest. The Office's examination of the 75 DVIRs found that the victim was most likely to be interviewed (92 per cent of incidents), followed by the suspect/person of interest (73 per cent), with other significant witnesses least likely to be interviewed (48 per cent of incidents where potential significant witnesses were recorded).

The COPS Manual requires that police officers 'pay particular attention to the early collection of evidence including ... photographs [of the] ... complainant's injuries [and the] scene'.<sup>105</sup> Allegations of bodily harm were recorded in 46 of the 75 DVIRs (61 per cent). In one of the 46 DVIRs, it was recorded that there were no visible injuries to the victim. For the remaining 45 DVIRs, it was recorded that the victim's injuries had been photographed on 20 occasions (44 per cent). In the remaining 25 DVIRs, information was not recorded regarding the decision not to take photographs.

Accordingly, the Office has directed a number of recommendations to WAPOL. These recommendations are Recommendation 33, Recommendation 34, Recommendation 35, Recommendation 36 and Recommendation 37.

### 1.3.18 Family and domestic violence causes harm to children

The Office identified that there were 30 children<sup>106</sup> who experienced family and domestic violence associated with the 30 fatalities. In this report, this group of 30 children is referred to as the **children involved in the 30 fatalities**. Of these 30 children:

- Eighteen (60 per cent) were male and 12 were female; and
- Twenty-one (70 per cent) were Aboriginal and nine were non-Aboriginal.

The research literature suggests that 'children are not passive onlookers or unaffected bystanders'<sup>107</sup> to family and domestic violence, with a significant body of research

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<sup>103</sup> Western Australian State Coroner Alastair Hope, *Inquest into the death of Andrea Louise Pickett*, Coroner's Court of Western Australia, Perth, 28 June 2012, p. 56-62.

<sup>104</sup> Western Australia Police, *Response to Four Corners from Western Australia Police*, Perth, July 2012, p. 2.

<sup>105</sup> Western Australia Police, *Commissioner's Operations and Procedures (COPS) Manual*, DV 1.1.4.1.

<sup>106</sup> Aged less than 18 years.

identifying that ‘infants, children and adolescents experience serious negative psychological, emotional, social, and developmental impacts to their wellbeing’.<sup>108</sup>

Research further identifies that the impacts of family and domestic violence upon a child’s wellbeing are serious, with one prominent meta-analysis, which reviewed 118 studies,<sup>109</sup> suggesting ‘that there is no measurable difference in outcomes (emotional, social, behavioural) between children who have been physically abused and children who have been exposed to family and domestic violence’.<sup>110</sup>

Victim’s responses, and forms of resistance, are not always obvious to outsiders and can be misunderstood. In the case of children, care needs to be taken to ensure that the ways in which children respond to and resist violence (for example, by being aggressive) are not misidentified as ‘problems’ with the child, rather than stopping the violence to which the child is responding as the primary concern.

In Western Australia, section 7 of the *Children and Community Services Act 2004* (the **Children and Community Services Act**) requires that DCPFS must regard the best interests of the child as the paramount consideration. In determining the best interests of the child, section 8 of the *Children and Community Services Act* requires DCPFS to take into account a number of factors, including the need to protect the child from harm.

The *DCPFS Family and Domestic Violence Policy 2012* (**DCPFS Family and Domestic Violence Policy**) recognises that family and domestic violence causes harm to children as follows:

Children have unique vulnerabilities in situations of FDV. Exposure to FDV causes serious emotional, psychological, social and behavioural harm to children, as well as placing them at increased risk of abuse and neglect.<sup>111</sup>

### **1.3.19 For 44 per cent of the duty interactions where DCPFS identified family and domestic violence, DCPFS concluded that this was ‘not departmental business’**

The Office identified children regarding whom the state-wide data indicated that:

- a VRO<sup>112</sup> was applied for in the Magistrates Court in the investigation period;

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<sup>107</sup> Department for Child Protection and Family Support, ‘The Impact of Family and Domestic Violence on Children,’ Government of Western Australia, Perth, 2012, p. 1.

<sup>108</sup> Australian Domestic & Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review*, University of New South Wales, Sydney, 2011, p. 1.

<sup>109</sup> Kitzmann, K, Gaylord, N, Holt, A and Kenny, E, ‘Child Witness to Domestic Violence: A Meta-analytic Review’, *Journal of Consulting and Clinical Psychology*, vol. 71, no.2, pp. 339-352, cited in: Australian Domestic & Family Violence Clearinghouse, *The Impact of Domestic Violence on Children: A Literature Review*, University of New South Wales, Sydney, 2011, p. 3.

<sup>110</sup> Kitzmann, K, Gaylord, N, Holt, A and Kenny, E, ‘Child Witness to Domestic Violence: A Meta-analytic Review’, *Journal of Consulting and Clinical Psychology*, vol. 71, no.2, pp. 339-352, cited in: Department for Child Protection and Family Support, *Family and Domestic Violence Background Paper*, Government of Western Australia, Perth, 2012, p. 4.

<sup>111</sup> Department for Child Protection and Family Support, *Family and Domestic Violence Policy 2012*, Department for Child Protection and Family Support, Perth Western Australia, August 2012, p. 1.

<sup>112</sup> The VRO data obtained from DOTAG does not indicate whether the application relates to more than one person, that is, whether the applicant is also applying on behalf of any children.

- the grounds selected by the applicant in applying for a VRO included ‘exposing a child to an act of family and domestic violence’; and
- the applicant also submitted a DVIR number as evidence in support of the VRO application.

This identified a pool of 141 children. A random sample of 70 of the 141 children was selected, and these 70 children are referred to as the **70 children in the VRO sample**. The Office then examined DCPFS’s records concerning the 70 children in the VRO sample. Twelve (17 per cent) of these children were Aboriginal.

For the 70 children in the VRO sample, DCPFS recorded a total of 686 duty interactions over their lifetime.<sup>113</sup> The Office reviewed the outcomes of each of the 686 duty interactions to examine the outcomes selected by DCPFS officers for the duty interactions. For comparative purposes, the Office examined:

- the outcomes of the 290 duty interactions where DCPFS identified family and domestic violence in the ‘Primary Issue’ or ‘Issue Details’ fields; and
- the outcomes of the 396 duty interactions where DCPFS did not identify family and domestic violence in the ‘Primary Issue’ or ‘Issue Details’ fields.

Arising from this analysis, the Office identified that, of the 290 duty interactions in which DCPFS identified family and domestic violence:

- DCPFS recorded the outcome ‘not departmental business’ and closed the duty interactions in 129 instances (44 per cent). DCPFS’s *Family and Domestic Violence Recording Guidelines* identify that ‘the outcome of option of ‘Not Departmental Business’ should rarely be used in FDV cases as FDV is the Department’s business’;<sup>114</sup>
- DCPFS recorded the outcome of ‘Family Support’ and closed the duty interactions in 130 instances (45 per cent). For comparison, of the 396 duty interactions where DCPFS did not identify family and domestic violence, DCPFS recorded the outcome of ‘Family Support’ in 77 instances (19 per cent); and
- DCPFS recorded the outcome of ‘concern for child’ in 23 instances (8 per cent). For comparison, of the 396 duty interactions where DCPFS did not identify family and domestic violence, DCPFS recorded the outcome of ‘concern for child’ in 120 instances (30 per cent).

Accordingly, the Office has directed two recommendations to DCPFS. These recommendations are Recommendation 40 and Recommendation 41.

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<sup>113</sup> Where a duty interaction related to more than one child, this interaction was counted for each child. This is because *Assist* generated a duty interaction for each child, and on some occasions, different issues and outcomes were noted for different children.

<sup>114</sup> Government of Western Australia, Department for Child Protection and Family Support, *Family and Domestic Violence Recording Guidelines* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 69.

### **1.3.20 DCPFS did not proceed with further action in 271 (93 per cent) of the 290 duty interactions where DCPFS identified family and domestic violence as an issue**

For each of the 686 duty interactions about the 70 children in the VRO sample, the Office examined the next actions recorded by DCPFS. For comparative purposes, the Office examined:

- the outcomes of the 290 duty interactions where DCPFS identified family and domestic violence in the 'Primary Issue' or 'Issue Details' fields; and
- the outcomes of the 396 duty interactions where DCPFS did not identify family and domestic violence in the 'Primary Issue' or 'Issue Details' fields.

Arising from this analysis, the Office identified that:

- DCPFS did not proceed with further action in 271 (93 per cent) of the 290 duty interactions where DCPFS identified family and domestic violence as an issue; and
- DCPFS proceeded to initial inquiries or safety and wellbeing assessment for 19 (seven per cent) of the 290 duty interactions where DCPFS identified family and domestic violence as an issue, compared to 128 (32 per cent) of the 396 duty interactions where DCPFS did not identify family and domestic violence as an issue.

Accordingly, the Office has directed two recommendations to DCPFS. These recommendations are Recommendation 42 and Recommendation 43.

### **1.3.21 DCPFS assisted with two violence restraining order applications and provided one referral for help regarding the 70 children in the VRO sample; DCPFS did not provide any active referrals for legal advice or help from an appropriate service to obtain a violence restraining order for any of the children involved in the 30 fatalities**

DCPFS's *Family and Domestic Violence Practice Guidance* specifies that '[w]here a VRO is considered desirable or necessary but a decision is made for the Department not to apply for the order, the non-abusive adult victim should be given an active referral for legal advice and help from an appropriate service'.<sup>115</sup> The *Family and Domestic Violence Practice Guidance* also identifies that, where 'a VRO is being sought by a protective adult victim whose child is an open case to the Department, and the VRO will likely increase the safety of the child, Child Protection Workers should provide information to support the VRO application as appropriate'.<sup>116</sup>

For each of the 686 duty interactions about the 70 children in the VRO sample, the Office examined whether DCPFS provided the adult victims associated with these children with an active referral for legal advice or help from an appropriate service.

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<sup>115</sup> Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

<sup>116</sup> Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

The Office identified that, in 154 (22 per cent) of the 686 duty interactions, VROs were mentioned in information provided to DCPFS by the referrer, or in DCPFS's assessment of the information. These duty interactions related to 57 (81 per cent) of the 70 children in the VRO sample. The Office's analysis indicates that DCPFS took steps to assist a victim to obtain a VRO in five instances, as follows:

- in one instance, DCPFS provided an 'active referral for legal advice and help from an appropriate service';<sup>117</sup> and
- in four instances, DCPFS assisted two adult victims to apply for a VRO by providing 'information to support the VRO application as appropriate'.<sup>118</sup>

The Office also examined all records relating to the children involved in the 30 fatalities to determine whether DCPFS provided the adult victims associated with these children with an active referral for legal advice and help from an appropriate service. The Office identified that DCPFS recorded 387 duty interactions concerning the 30 children who were involved in the 30 fatalities.<sup>119</sup> In 21 of these duty interactions (concerning 10 children), the Office identified that VROs were mentioned in information provided to DCPFS by the referrer, or in DCPFS's assessment of the information.

The Office was not able to identify any instance where DCPFS provided 'the non-abusive adult victim' or any person involved in the fatalities with an 'active referral for legal advice and help from an appropriate service,' as identified in DCPFS's *Family and Domestic Violence Practice Guidance*.

The Office examined all 6,813 VRO applications made in the investigation period where an applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent, and where grounds were cited relating to children, to determine the number in which DCPFS applied for VROs on behalf of children. The Office found that DCPFS applied for 12 VROs on behalf of eight children in Western Australia during the investigation period.

Accordingly, the Office has directed a number of recommendations to DCPFS. These recommendations are Recommendation 44; Recommendation 45; Recommendation 46 and Recommendation 47.

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<sup>117</sup> Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

<sup>118</sup> Government of Western Australia, Department for Child Protection and Family Support, *Violence Restraining Orders* (in *Family and Domestic Violence Practice Guidance*), DCPFS, Perth, 2012, p. 74-75.

<sup>119</sup> Where a duty interaction related to more than one child, this interaction was counted for each child. This is because *Assist* generated a duty interaction for each child, and on some occasions, different issues and outcomes were noted for different children.

**1.3.22 During the 290 duty interactions where DCPFS identified family and domestic violence, DCPFS did not use the Common Screening Tool to screen for family and domestic violence, or assess the risks posed by family and domestic violence against Key Risk Indicators identified in *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework***

*The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (CRARMF)* was introduced in 2011 and sets out state-wide minimum standards for screening, risk assessment and responses to family and domestic violence. The Casework Practice Manual also sets out procedures for staff in undertaking family and domestic violence screening and risk assessment ‘to provide early identification and timely responses to cases involving family and domestic violence’.<sup>120</sup>

The Casework Practice Manual requirements for ‘Family and Domestic Violence Screening and Assessment’<sup>121</sup> also identify the CRARMF as one of the relevant ‘Standards’ and provide an electronic link for DCPFS officers to the CRARMF Common Screening Tool ‘to support staff to undertake this process’.<sup>122</sup>

The Office examined duty interactions and associated documentation for each of the 70 children in the VRO sample to determine whether DCPFS undertook, and recorded evidence of, family and domestic violence screening and risk assessment. As the screening and risk assessment process considers the family as a whole, the Office examined whether these tasks had been undertaken for each family at some point in time. The 70 children in the VRO sample were a part of 46 families, with some families including multiple children.

The Office examined the information supplied to DCPFS as part of duty interactions associated with the 70 children in the VRO sample and found that DCPFS identified family and domestic violence as the ‘presenting issue’<sup>123</sup> in a total of 290 duty interactions, concerning children in 43 families.

The Office found that use of the Common Screening Tool, or of a risk assessment incorporating Key Risk Indicators as identified and required in the CRARMF, was not recorded for any children. The Office identified a reference to the CRARMF in one of the 290 duty interactions identifying family and domestic violence, where a matter was referred

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<sup>120</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual, ‘5.1. Family and Domestic Violence Screening and Assessment,’* DCPFS, Perth, 2014, viewed 13 January 2015,  
<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

<sup>121</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual, ‘5.1. Family and Domestic Violence Screening and Assessment,’* DCPFS, Perth, 2014, viewed 13 January 2015,  
<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

<sup>122</sup> Government of Western Australia, Department for Child Protection and Family Support, *Casework Practice Manual, ‘5.1. Family and Domestic Violence Screening and Assessment,’* DCPFS, Perth, 2014, viewed 13 January 2015,  
<<http://manuals.dcp.wa.gov.au/manuals/cpm/Pages/01FamilyandDomesticViolenceScreeningandAssessment.aspx>>.

<sup>123</sup> ‘Domestic Violence’ was identified in *Assist* as the ‘Primary Issue’ by DCPFS in 269 duty interactions. For children in a further 21 duty interactions, ‘Child Protection’ was recorded in *Assist* as the ‘Primary Issue’ by DCPFS, with ‘Family and Domestic Violence’ recorded in ‘Issue Details’.

to a co-located Senior Family and Domestic Violence Officer 'in accordance with the Common Risk Assessment Framework.' No further details of this referral, or its outcome, were recorded.

Accordingly, the Office has directed two recommendations to DCPFS. These recommendations are Recommendation 48 and Recommendation 49.

### **1.3.23 DCPFS did not undertake safety planning with any adult victims of family and domestic violence in relation to the 70 children in the VRO sample or the 30 fatalities**

The CRARMF identifies that '[if] risk is present, action (safety planning) is always required'.<sup>124</sup> The Office reviewed all duty interactions and associated documents concerning the 70 children in the VRO sample to determine whether DCPFS undertook safety planning. The Office did not identify any instances where DCPFS undertook safety planning with adult victims of family and domestic violence associated with these 70 children. The Office's further analysis identified references to safety planning for seven of the 46 families concerning the 70 children in the VRO sample.

The Office also reviewed the records of the 387 duty interactions in DCPFS's electronic case management system, *Assist*, and associated documents concerning the children involved in the 30 fatalities to determine whether DCPFS undertook safety planning with adult victims of family and domestic violence. The Office did not identify any instances where DCPFS undertook safety planning with adult victims of family and domestic violence associated with the children involved in the 30 fatalities.

Accordingly, it is recommended that DCPFS ensures that, following the implementation of Recommendation 48, DCPFS undertakes safety planning in accordance with the Casework Practice Manual (Recommendation 50).

### **1.3.24 Implementation of DCPFS's policy framework will be critical to further improving DCPFS's response to family and domestic violence**

The research literature observes that policy implementation issues are a common factor in child death and serious case reviews. For example, reviews similar to this investigation conducted in England<sup>125</sup> have found that such failures are frequently due to a failure to utilise policies, guidelines and procedures, rather than the absence of such procedural guidance.<sup>126</sup>

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<sup>124</sup> Department for Child Protection, *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*, Department for Child Protection, Perth Western Australia, 2011, p. 59.

<sup>125</sup> In England, 'serious case reviews' take place if abuse or neglect is known, or suspected, to have been involved and: a child has died; or a child has been significantly injured and there are serious concerns about how organisations worked together to safeguard the child; or the child dies in custody; or a child died by suspected suicide.

<sup>126</sup> Brandon, M, Bailey, S, Belderson, P, Gardner, R, Sidebotham, P, Dodsworth, J, Warren, C and Black, J, *'Understanding serious case reviews and their impact: A biennial analysis of serious case reviews 2005-2007'*, Department for Children, Schools and Families, London, 2008, p. 45.

Similarly, in South Australia, a review of child protection systems identified that significant efforts to develop policy and procedure were not resulting in improvements in responses to children:

Considerable work has been undertaken in the development of detailed frameworks, strategies, protocols and policies over recent years, many of which will bear similarity to recommendations made by this Review. However, many have been ignored, not implemented or partially implemented with no monitoring of implementation or outcomes. This has meant that the child protection system has not seen the incremental advancement that one would expect to see...<sup>127</sup>

This finding is consistent with the Office's finding that, while DCPFS has developed an extensive policy framework, this has not necessarily been fully implemented by DCPFS in its responses to family and domestic violence examined by the Office during this investigation.

Accordingly, it is recommended that, taking into account the findings of this investigation, DCPFS:

- conducts a review to identify barriers to the effective implementation of relevant family and domestic violence policies and practice guidance;
- develops an associated action plan to overcome identified barriers; and
- provides the resulting review report and action plan to this Office within 12 months of the tabling in the Western Australian Parliament of the report of this investigation (Recommendation 54).

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<sup>127</sup> Government of South Australia, *A State Plan to Protect and Advance the Interests of Children*, Government of South Australia, Adelaide, 2003, p. 64.

## Appendix 2: Recommendations arising from the *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*

To assist the reading of this report, without further reference being required to the FDV Investigation Report, the Office has reproduced the recommendations from the FDV Investigation Report.

- **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.
- **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 over-represented in family and domestic violence, to inform evidence-based strategies tailored to addressing family and domestic violence in these communities.
- **Recommendation 3:** DCPFS, in collaboration with the Mental Health Commission and other key stakeholders, includes initiatives in Action Plans developed under the *Western Australia's 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.
- **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*.
- **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.
- **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.

- **Recommendation 7:** WAPOL ensures that all family and domestic violence incidents are correctly identified, recorded and submitted in accordance with the *Commissioner's Operations and Procedures Manual*.
- **Recommendation 8:** In implementing Recommendation 7, WAPOL considers its amended definition of family and domestic relationship, in terms of its consistency with the *Restraining Orders Act 1997*, and giving particular consideration to the identification of, and responses to, Aboriginal family violence.
- **Recommendation 9:** WAPOL amends the *Commissioner's Operations and Procedures Manual* to require that victims of family and domestic violence are provided with verbal information and advice about violence restraining orders in all reported instances of family and domestic violence.
- **Recommendation 10:** WAPOL collaborates with DCPFS and DOTAG to develop an 'aide memoire' that sets out the key information and advice about violence restraining orders that WAPOL should provide to victims of all reported instances of family and domestic violence.
- **Recommendation 11:** WAPOL collaborates with DCPFS and DOTAG to ensure that the 'aide memoire', discussed at Recommendation 10, is developed in consultation with Aboriginal people to ensure its appropriateness for family violence incidents involving Aboriginal people.
- **Recommendation 12:** WAPOL ensures that both victims and perpetrators are asked if they consent to share their information with support and referral agencies, in accordance with the *Commissioner's Operations and Procedures Manual*.
- **Recommendation 13:** WAPOL amends the *Commissioner's Operations and Procedures Manual* to require that, if a police order is issued, it is explained to the victim that the order is intended to provide them with time to seek a violence restraining order, and also that victims are provided with information and advice about violence restraining orders in accordance with Recommendation 9.
- **Recommendation 14:** In developing and implementing future phases of *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, DCPFS specifically identifies and incorporates opportunities for state government departments and authorities to deliver information and advice about violence restraining orders, beyond the initial response by WAPOL.
- **Recommendation 15:** In considering whether legislation should provide that, with the consent of the victim, a police order can be filed at court as an initiating application by police for an interim family and domestic violence protection order, DOTAG should involve Aboriginal people in a full and active way at each stage and level of the process, and should seek to have the process of consideration comprehensively informed by Aboriginal culture.

- **Recommendation 16:** DCPFS considers the findings of the Ombudsman’s investigation regarding the link between the use of police orders and violence restraining orders by Aboriginal people in developing and implementing the Aboriginal family violence strategy referred to at Recommendation 4.
- **Recommendation 17:** Taking into account the findings of this investigation, WAPOL reviews the *Commissioner’s Operations and Procedures Manual* to ensure its consistency with section 62C of the *Restraining Orders Act 1997*.
- **Recommendation 18:** Following the implementation of Recommendation 17, WAPOL complies with the requirements of the *Commissioner’s Operations and Procedures Manual*.
- **Recommendation 19:** WAPOL ensures that where an application for a violence restraining order has not been made, or a police order has not been issued, written records of the reasons why are recorded on each occasion.
- **Recommendation 20:** WAPOL ensures that if ‘no consent and no safety concerns of involved persons’ is recorded as a reason for not making an application for a violence restraining order or making a police order, this is consistent with other information recorded in the associated Domestic Violence Incident Report.
- **Recommendation 21:** WAPOL considers establishing a Key Performance Indicator that relates to the quality of service as well as the timeliness of responding to family and domestic violence incidents to ensure a balanced approach is achieved.
- **Recommendation 22:** As part of the implementation of Frontline 2020, WAPOL ensures that the creation of Response Teams continues to provide an appropriate opportunity for frontline police officers to provide critical initial response and support to victims.
- **Recommendation 23:** DOTAG, in collaboration with key stakeholders, considers opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order, and ensures that Aboriginal people are involved in a full and active way at each stage and level of this process, and that this process is comprehensively informed by Aboriginal culture.
- **Recommendation 24:** DCPFS, in collaboration with DOTAG, ensures that the development of the Aboriginal family violence strategy referred to at Recommendation 4 incorporates the opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order identified through the implementation of Recommendation 23.
- **Recommendation 25:** DOTAG, in collaboration with DCPFS, identifies and incorporates into *Western Australia’s Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, ways of ensuring that, in cases where an application for a violence restraining order has been dismissed, if appropriate, victims are provided with referrals to appropriate safety planning assistance.

- **Recommendation 26:** DOTAG collaborates with WAPOL to consider whether it may be appropriate to pursue amendments to the *Restraining Orders Act 1997* so that, where a violence restraining order has not been served on the person bound within 72 hours, and reasonable efforts have been made to serve the order personally, the violence restraining order is deemed to be authorised for oral service, including considering establishing legislative and administrative arrangements to ensure WAPOL keeps records that demonstrate that reasonable efforts had been made to serve the order personally prior to oral service.
- **Recommendation 27:** DOTAG collaborates with WAPOL to establish a process for providing WAPOL with the following information, together with the violence restraining order for service:
  - the relationship between the respondent and the protected person (particularly if they are in a family and domestic relationship);
  - the grounds for the violence restraining order;
  - identifying particulars (full name, address, date of birth, telephone contact details) of both parties, as recorded by the protected person; and
  - any relevant information regarding the history of family and domestic violence disclosed by the applicant when seeking a violence restraining order.
- **Recommendation 28:** Taking into account the findings of this investigation, DCPFS consults with key stakeholders to explore issues associated with the provision of information to respondents to violence restraining orders, whether these issues require a state-wide response, and the appropriate form of this response, for potential incorporation into future Action Plans.
- **Recommendation 29:** WAPOL amend its Incident Management System to ensure all information relevant to a violence restraining order can be included on its associated running sheet.
- **Recommendation 30:** WAPOL ensures that all reports of alleged breaches of a violence restraining order are recorded and investigated in accordance with the *Restraining Orders Act 1997* and the *Commissioner's Operations and Procedures Manual*.
- **Recommendation 31:** WAPOL ensures that it does not inform victims to withdraw a violence restraining order on the basis that alleged breaches are consensual.
- **Recommendation 32:** DOTAG reviews the effectiveness of national and international models of deferral of bail, or in high risk cases in certain circumstances, a presumption against bail, having consideration to:
  - perpetrator accountability;
  - promoting victim safety; and
  - the rights of defendants; andmakes recommendations for implementing any changes that arise from the review.

- **Recommendation 33:** WAPOL ensures that, when undertaking investigations in accordance with section 62A of the *Restraining Orders Act 1997*, and where required by the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*, police officers interview all witnesses, including victims, suspects/persons of interest, eye witnesses and other significant witnesses, and, should a decision be made not to interview a person of interest, the reasons should be fully explained and recorded on the running sheet.
- **Recommendation 34:** WAPOL ensures that, when undertaking investigations in accordance with section 62A of the *Restraining Orders Act 1997*, and where required by the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*, police officers take photographs of any arising injuries to the victim, with their consent, in accordance with the *Commissioner's Operations and Procedures Manual* and the *WA Police Investigation Doctrine*.
- **Recommendation 35:** WAPOL ensures that responses to family and domestic violence incidents record all offences disclosed in accordance with the *Commissioner's Operations and Procedures Manual* (including offences disclosed prior to attendance).
- **Recommendation 36:** WAPOL ensures that it takes ownership of the decision to prefer a charge and does not place the responsibility with the victim, in accordance with the *Commissioner's Operations and Procedures Manual*.
- **Recommendation 37:** WAPOL ensures that all offences detected at family and domestic violence incidents are cleared in accordance with the *Commissioner's Operations and Procedures Manual*.
- **Recommendation 38:** WAPOL complies with the *Commissioner's Operations and Procedures Manual*, in particular, that for all children who are present or usually reside with parties to a family and domestic violence incident, police officers:
  - ensure that all children are sighted and their welfare checked;
  - record the details of the children; and
  - where children are exposed to, or involved in, a serious incident of family violence, contact DCPFS.
- **Recommendation 39:** DCPFS, in accordance with its Casework Practice Manual and *Family and Domestic Violence Policy 2012*, instructs child protection workers to review information provided for each referral to DCPFS, to identify if family and domestic violence indicators are present and record when family and domestic violence has been identified.
- **Recommendation 40:** When family and domestic violence has been identified during duty interactions, DCPFS complies with its *Family and Domestic Violence Practice Guidance*, which identifies 'the outcome of option of 'Not Departmental Business' should rarely be used in [family and domestic violence] cases as [family and domestic violence] is the Department's business'.

- **Recommendation 41:** When family and domestic violence has been identified during duty interactions, DCPFS complies with the Casework Practice Manual in providing 'Family Support', in particular that the provision of 'Family Support' involves the provision of information to referrers or families on available support services such as those listed in the Casework Practice Manual.
- **Recommendation 42:** Where family and domestic violence is identified, DCPFS, if required, takes action to assess and safeguard the wellbeing of children, including, where appropriate, progressing to intake, initial inquiries and safety and wellbeing assessments.
- **Recommendation 43:** DCPFS monitors the percentage of duty interactions relating to family and domestic violence resulting in an outcome of 'concern for child' and progression to initial inquiries and safety and wellbeing assessments, in quarterly reports to its Corporate Executive, taking any appropriate action in relation to performance.
- **Recommendation 44:** DCPFS complies with the requirements of the *Family and Domestic Violence Practice Guidance*, in particular, that '[w]here a violence restraining order is considered desirable or necessary but a decision is made for the Department not to apply for the order, the non-abusive adult victim should be given an active referral for legal advice and help from an appropriate service'.
- **Recommendation 45:** In its implementation of section 18(2) of the *Restraining Orders Act 1997*, DCPFS complies with its *Family and Domestic Violence Practice Guidance* which identifies that DCPFS officers should consider seeking a violence restraining order on behalf of a child if the violence is likely to escalate and the children are at risk of further abuse, and/or it would decrease risk to the adult victim if the Department was the applicant for the violence restraining order.
- **Recommendation 46:** DCPFS instructs officers providing legal advice to child protection workers to provide advice that is consistent with the practice guidance regarding applications for violence restraining orders on behalf of children, in particular that 'child protection workers should consider seeking a VRO on behalf of a child if the violence is likely to escalate and the children are at risk of further abuse and/or it would decrease the risk to the adult victim if the Department was the applicant for the VRO'.
- **Recommendation 47:** DCPFS, through case reviews and case consultations, monitors, on an ongoing basis, compliance with the practice guidance regarding applications for violence restraining orders on behalf of children.
- **Recommendation 48:** DCPFS ensures that its Casework Practice Manual requirements for screening for family and domestic violence are both internally consistent and consistent with the 'Minimum Standards of Practice for Screening' in *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework*.

- **Recommendation 49:** Following the implementation of Recommendation 48, DCPFS complies with the requirements for family and domestic violence screening and risk assessment.
- **Recommendation 50:** Following the implementation of Recommendation 48, DCPFS undertakes safety planning in accordance with the Casework Practice Manual.
- **Recommendation 51:** DCPFS incorporates the minimum forms of engagement with perpetrators of family and domestic violence into the Casework Practice Manual, so that child protection workers are required to engage with perpetrators when it has been assessed as safe to do so.
- **Recommendation 52:** DCPFS ensures that, following the implementation of Recommendation 51, DCPFS provides appropriate training in relation to the amended Casework Practice Manual.
- **Recommendation 53:** DCPFS sets out in the Casework Practice Manual, *Family and Domestic Violence Policy 2012*, and *Family and Domestic Violence Practice Guidance* how DCPFS responds to Aboriginal family violence and how Aboriginal children may best be protected from harm arising from family violence, within DCPFS frameworks developed to respond to Aboriginal families.
- **Recommendation 54:** Taking into account the findings of this investigation, DCPFS:
  - conducts a review to identify barriers to the effective implementation of relevant family and domestic violence policies and practice guidance;
  - develops an associated action plan to overcome identified barriers; and
  - provides the resulting review report and action plan to this Office within 12 months of the tabling in the Western Australian Parliament of the report of this investigation.

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