

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

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Summary of presentation

- Background
- Methodology
- Part 1: Family and domestic violence in Western Australia
- Part 2: Administration of legislation relevant to family and domestic violence, including particularly the *Restraining Orders Act 1997* (**the Restraining Orders Act**), by state government departments and authorities
- Summary of recommendations
- Concluding remarks


Background

This investigation arose from the Ombudsman's responsibility to review family and domestic violence fatalities.



Methodology

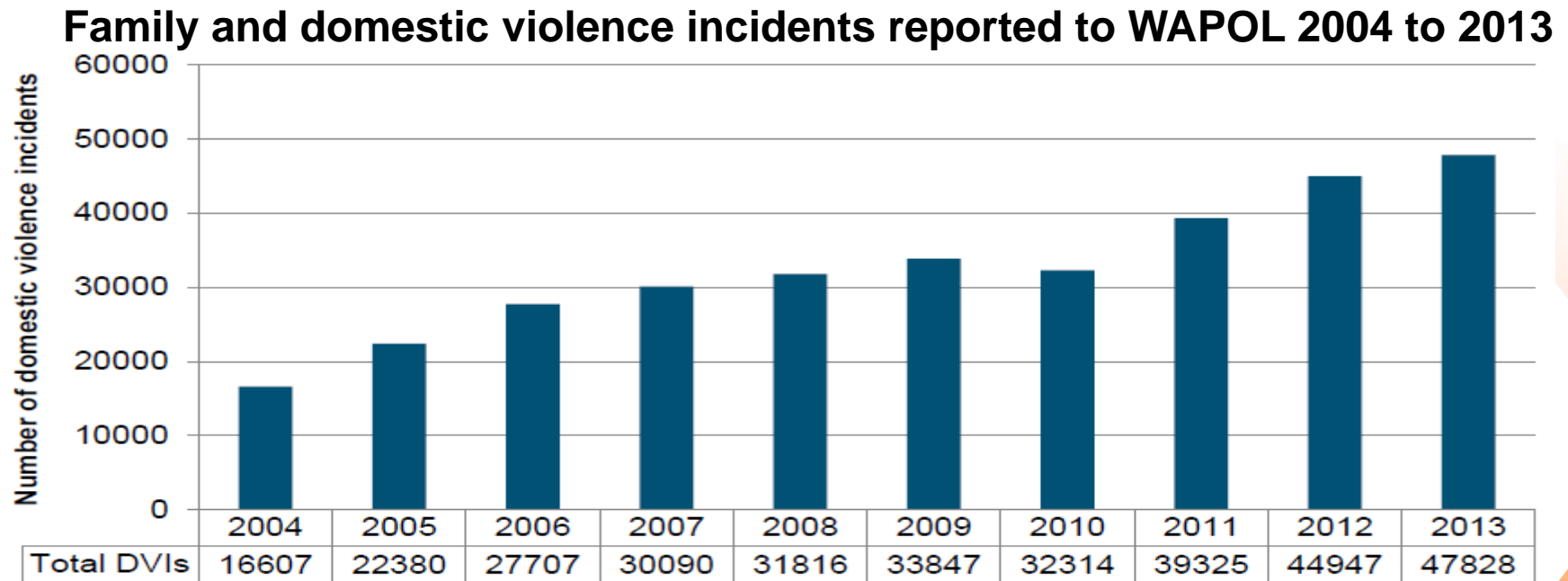
- The Office examined 30 family and domestic violence fatalities (**the 30 fatalities**) notified to the Ombudsman over a defined 18 month period (**the investigation period**).
- The Office also collected and analysed a comprehensive set of de-identified state-wide data for the investigation period (**the state-wide data**), regarding:
 - all family and domestic violence incidents attended, and all violence restraining orders (**VROs**) served, by Western Australia Police (**WAPOL**);
 - all applications for VROs lodged in, and all VROs issued by, the Magistrates Court and the Children’s Court; and
 - all court hearings and outcomes for charges relating to breaches of VROs.
- The investigation also included an extensive literature review and stakeholder engagement.



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

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Key findings: Family and domestic violence in Western Australia



Key findings: Family and domestic violence in Western Australia (cont.)

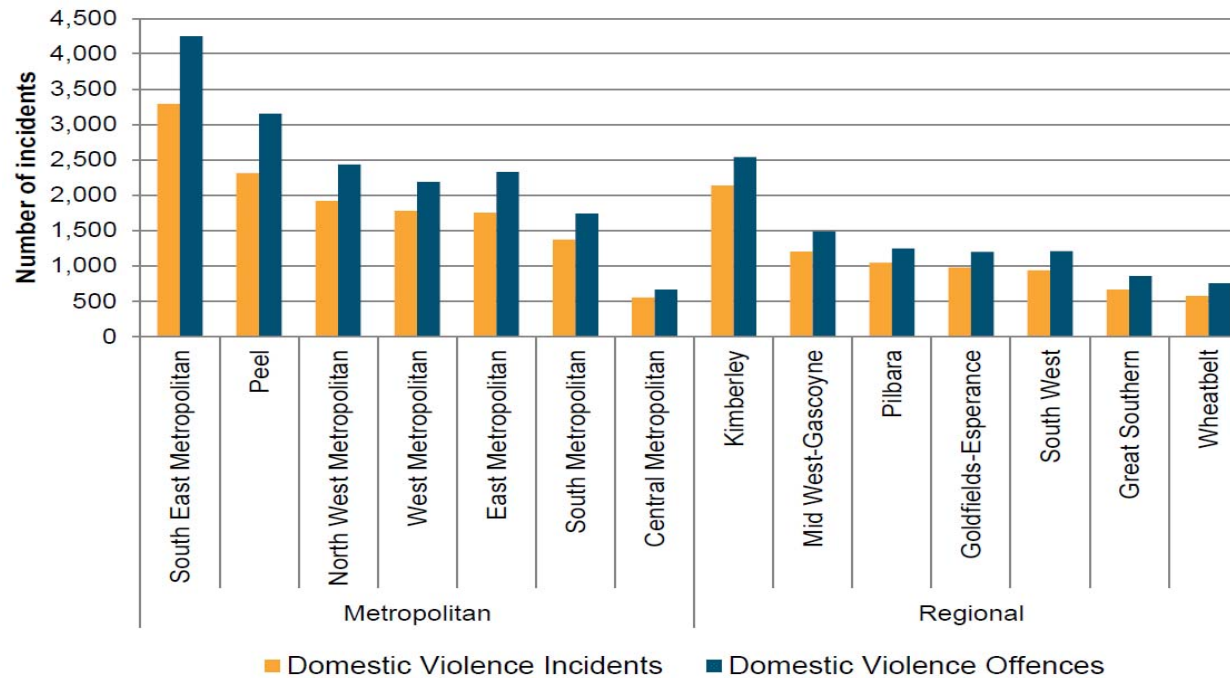
- In the investigation period, WAPOL reported that they responded to 1,055,414 calls for assistance from the public and that 688,998 of these calls required police to attend to provide assistance.
- Of the 688,998 incidents attended by WAPOL, 75,983 incidents (11 per cent) were recorded by WAPOL as family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

Key findings: Family and domestic violence in Western Australia (cont.)

- In 20,480 of these 75,983 incidents, an offence against the person was detected. For these 20,480 incidents, the Office found that:
 - 12,962 of these incidents occurred in Metropolitan Police Districts (63 per cent) and 7,518 in Regional Police Districts (37 per cent); and
 - despite having the lowest population of all of the regions in Western Australia, the Kimberley Police District had the third highest number of domestic violence incidents (and domestic violence offences).

Key findings: Family and domestic violence in Western Australia (cont.)

Domestic violence incidents and offences, by Police District



Key findings: Family and domestic violence in Western Australia (cont.)

- At the 20,480 incidents, police officers detected a total of 26,023 offences against the person.
- WAPOL recorded 24,479 victims for these 26,023 offences.
- 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.

Key findings: Family and domestic violence in Western Australia (cont.)

- The research literature has found that some groups of people experience higher rates of family and domestic violence, including:
 - Aboriginal people;
 - people from culturally and linguistically diverse backgrounds;
 - women with disabilities; and
 - gay, lesbian, bisexual, transgender and intersex people.
- However, there are limitations to the supporting data, resulting in varying estimates of the numbers of people in these communities who experience family and domestic violence and a limited understanding of their experiences.

Key findings: Family and domestic fatalities notified to the Ombudsman

- During the investigation period, WAPOL notified the Ombudsman of 30 family and domestic violence fatalities.
- Of these 30 people, 18 (60 per cent) were female and 12 (40 per cent) were male.



Key findings: Family and domestic fatalities notified to the Ombudsman (cont.)

- Of the 18 females who were killed:
 - eighteen (100 per cent) were killed by a male suspected perpetrator.
- Of the 12 males who were killed:
 - seven (58 per cent) were killed by a female suspected perpetrator;
 - five were in an intimate partner relationship with the suspected perpetrator. Three of these men are recorded in WAPOL records to have been perpetrators of family and domestic violence, who were killed by the female victims of this violence;
 - three (25 per cent) were killed by their male relatives with no prior recorded history of family and domestic violence; and
 - two (17 per cent) were male children under the age of five who were killed by their male relatives.

Key findings: Family and domestic fatalities notified to the Ombudsman (cont.)

- The Office's analysis of the 30 fatalities also identified that:
 - the majority of the suspected perpetrators in the 30 fatalities were male (23 suspected perpetrators or 77 per cent);
 - fifteen (50 per cent) of the 30 people who were killed were Aboriginal;
 - fifteen (50 per cent) of the 30 people who were killed were residing in a regional, remote, or very remote region of Western Australia, with remote and very remote regions significantly overrepresented;
 - in 16 fatalities (53 per cent), there was a recorded prior history of family and domestic violence involving the person who was killed and the suspected perpetrator;

Key findings: Family and domestic fatalities notified to the Ombudsman (cont.)

- 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);
- the average age was 36 years, with over a third between 35 and 44;
- fourteen of the 30 suspected perpetrators (47 per cent) had been held in custody for criminal offences at some point prior to the time when a person was killed and 18 (68 per cent) had contact with the justice system; and
- in 19 of the 30 fatalities (63 per cent) the records of state government departments and authorities and the courts indicated that alcohol and/or other drugs had been used by the perpetrator immediately prior to the fatal incident.

Key findings: Family and domestic fatalities notified to the Ombudsman (cont.)

- The research literature suggests there is a co-occurrence between alcohol consumption and/or substance misuse and episodes of family and domestic violence. Alcohol is also associated with increased severity of incidents.
- Programs and services addressing family and domestic violence:
 - may deny victims or perpetrators access to their services, particularly if they are under the influence of alcohol and other drugs; and
 - frequently do not address victims' or perpetrators' alcohol and other drug abuse issues.
- Conversely, programs and services which focus on alcohol and other drug use generally do not:
 - address perpetrators' violent behaviour; or
 - respond to the needs of victims resulting from their experience of family and domestic violence.
- The research literature identifies the benefits of integrated service provision.

Key findings: Aboriginal Family Violence

- The Office's analysis identified that, while Aboriginal and Torres Strait Islander people make up 3.1 per cent of Western Australia's population, Aboriginal people comprised 33 per cent of victims of family and domestic violence offences against the person detected by WAPOL in the investigation period and 50 per cent of the people who were killed in the 30 fatalities.
- 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.
- These barriers to Aboriginal people seeking help mean that 'Aboriginal women are increasingly vulnerable to the risks and effects of violence.'

Key findings: Aboriginal Family Violence (cont.)

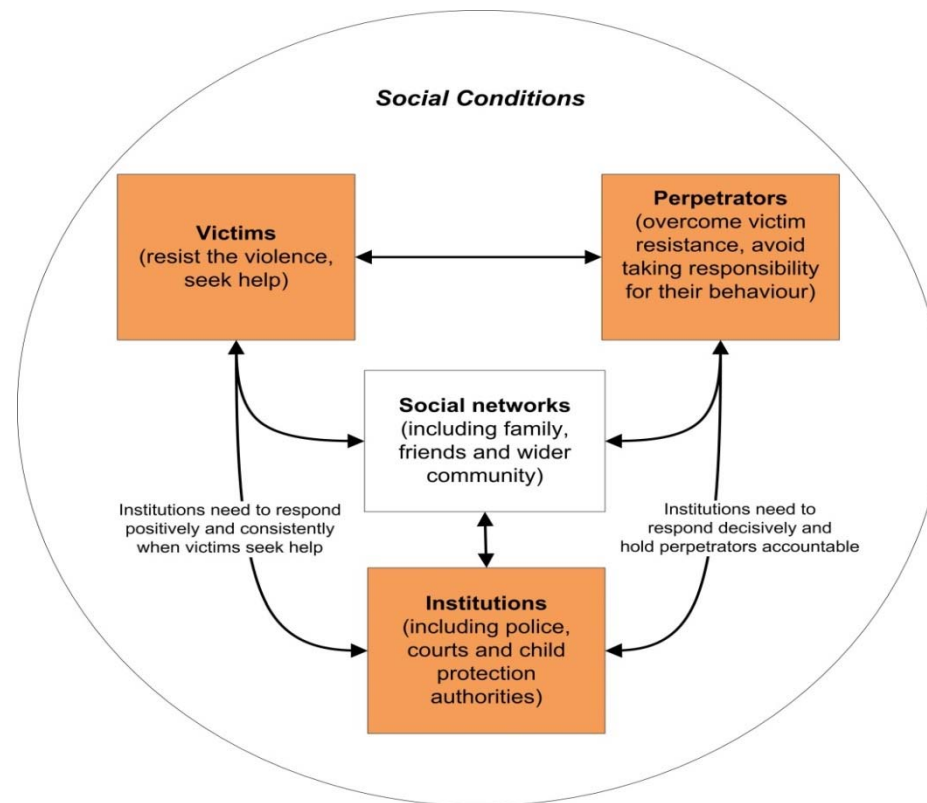
- The Office's analysis further identified that Aboriginal people who were killed were:
 - overrepresented, relative to their share of the Western Australian population, for both sexes;
 - more likely to reside in regional and remote areas. In addition, all of the people who were killed who resided in very remote Western Australia were Aboriginal, and 83 per cent of people who were killed who resided in remote Western Australia were Aboriginal;
 - generally younger than non-Aboriginal people who were killed, with Aboriginal people three times more likely than non-Aboriginal people to be aged 0 to 34 years, and non-Aboriginal people twice as likely as Aboriginal people to be aged 35 years and over; and
 - 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.

Key findings: Aboriginal Family Violence (cont.)

- Currently in Western Australia, there is no strategy solely aimed at addressing family violence experienced by Aboriginal people and in Aboriginal communities.
- Aboriginal stakeholders have identified that the State Strategy ‘absorbs issues for Aboriginal people into the general statement of outcome prevention and early intervention, safety for victims and accountability’ for perpetrators, and that ‘[t]his is of concern if the plan is to be effective, and more so if it is to be effective for those further marginalised by racism and other structural disadvantage’.
- The findings of the Office’s analysis, set out in the investigation report, strongly support the development of a separate strategy (linked to the State Strategy and consistent with, and supported by, the State Strategy) that is specifically tailored to preventing and reducing Aboriginal family violence.

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

Key findings: The Response-based Practice Model for understanding and addressing family and domestic violence



Key findings: Key principles for administering the *Restraining Orders Act*

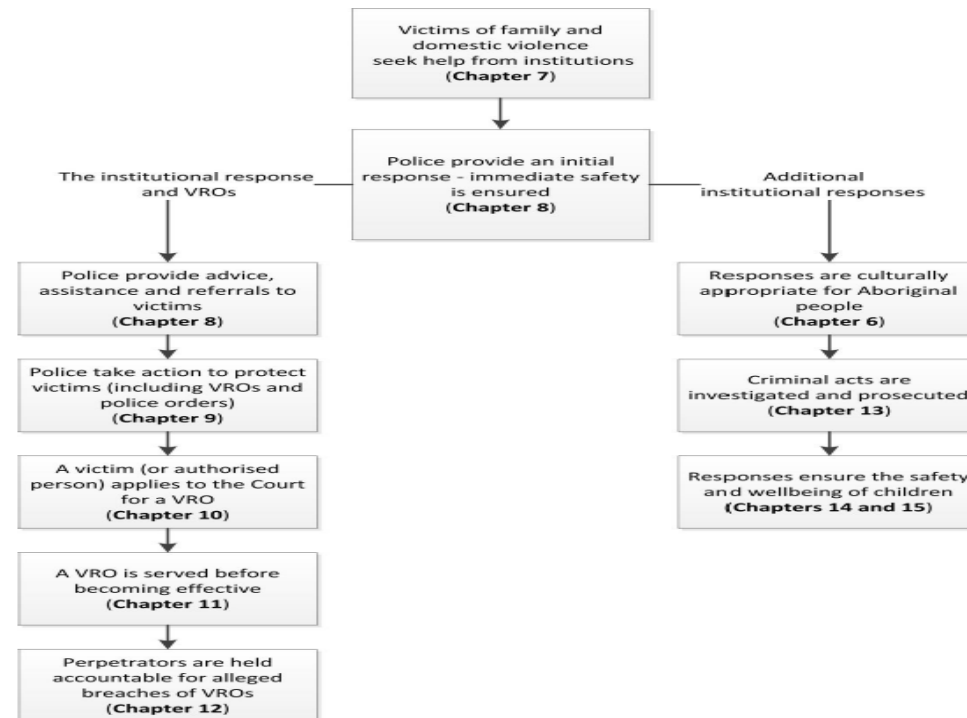
The investigation identified nine key principles for state government departments and authorities to apply when responding to family and domestic violence and administering the *Restraining Orders Act*. Applying these principles will enable state government departments and authorities to have the greatest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

- i. perpetrators use family and domestic violence to exercise power and control over victims (section 3.5);
- ii. victims of family and domestic violence will resist the violence and try to protect themselves (section 3.2);
- iii. victims may seek help to resist the violence and protect themselves, including help from state government departments and authorities (section 3.3);
- iv. when victims seek help, positive and consistent responses by state government departments and authorities can prevent and reduce further violence (section 7.2.2);

Key findings: Key principles for administering the *Restraining Orders Act* (cont.)

- 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 (section 7.2.3);
- vi. perpetrators of family and domestic violence make a decision to behave violently towards their victims (section 3.4);
- vii. perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others (section 3.6);
- viii. by responding decisively and holding perpetrators accountable for their behaviour, state government departments and authorities can prevent and reduce further violence (section 7.2.4); 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 (section 7.2.5).

Key steps in the administration of the *Restraining Orders Act* by state government departments and authorities



Key findings: WAPOL's initial response to reports of family and domestic violence

- In the 16 fatalities where WAPOL recorded a history of family and domestic violence between the person who was killed and the suspected perpetrator, WAPOL recorded 133 family and domestic violence incidents.
- WAPOL complied with requirements to attend the scene in 96 per cent of incidents.
- A Domestic Violence Incident Report (**DVIR**) was submitted for 87 (65 per cent) of the 133 family and domestic violence incidents between the person who was killed and the suspected perpetrator. For the remaining 46, a general incident report or CAD recording was made.
- 75 DVIRs were submitted relating to these 87 recorded incidents (**the 75 DVIRs**).

Key findings: Providing advice and assistance and sharing information regarding VROs

For the 30 fatalities it was recorded that:

- WAPOL provided information and advice about VROs in a quarter of instances where WAPOL investigated a report of family and domestic violence relating to the 30 fatalities (19 of 75 DVIRs).
- WAPOL did not make any applications for VROs on behalf of the person who was killed or the suspected perpetrator in the 30 fatalities.
- There were 22 instances (31 per cent) in which WAPOL issued a police order (of the 71 applicable DVIRs).
- In 56 per cent of incidents related to the 30 fatalities no order was made or sought and a written reason was provided.
- In 77 per cent of instances where 'no consent and no safety concerns' were recorded as the reason, this was inconsistent with other information recorded at the scene.
- The number of police orders issued has increased from 10,312 in 2009-10 to 17,761 in 2013-14.

Key findings: Applying for a VRO

- In the investigation period, 21,237 applications for a VRO 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. Of these 12,393 applications:
 - 9,533 (77 per cent) persons seeking to be protected were female;
 - 8,620 (70 per cent) applicants identified that the person seeking to be protected was, or had been, in an intimate partner relationship with the respondent; and
 - 1,340 (11 per cent) persons seeking to be protected identified themselves as Aboriginal or Aboriginal and Torres Strait Islander.

Key findings: Aboriginal Family Violence

- Aboriginal Western Australians are significantly overrepresented as victims of family violence, yet underrepresented in the use of VROs. More particularly:
 - thirty-three 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
 - eleven 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.

Key findings: Aboriginal Family Violence (cont.)

Possible reasons for these differences in the use of VROs include:

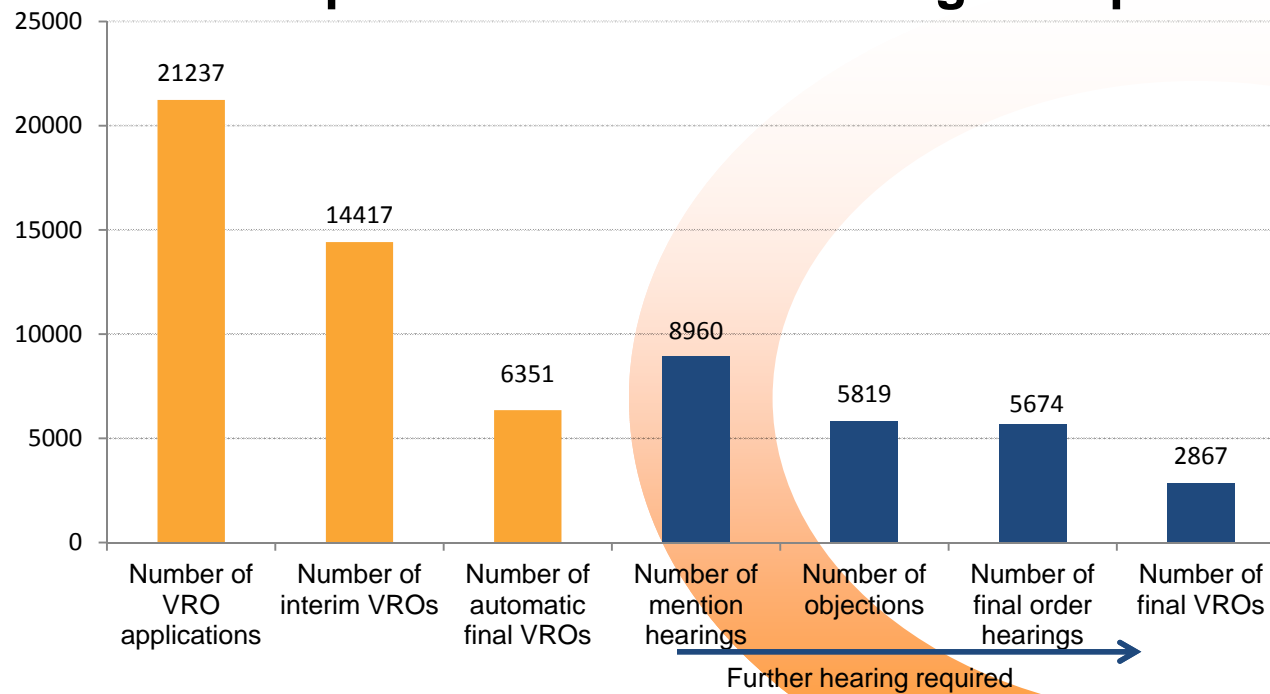
- Aboriginal victims want the violence to end, but not necessarily always through the use of VROs;
- The process for obtaining a VRO is not necessarily always culturally appropriate for Aboriginal victims; and
- Aboriginal people in regional and remote locations face additional logistical and structural barriers.

Key findings: Obtaining a VRO

- Applications for an interim VRO frequently did not progress to a final VRO in the investigation period:
 - 14,417 interim VROs were made by the courts;
 - 6,351 interim VROs automatically became final VROs without returning to court; and
 - a final VRO was granted as an outcome of 2,867 hearings.
- Considered collectively, this indicates that a total of approximately 43 per cent of all applications for VROs go on to become final orders.

Key findings: Obtaining a VRO (cont.)

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



Key findings: Serving VROs

- The Office identified that, in the investigation period, 13,378 VROs were served.
- 13,014 of these VROs were served personally, with 12,032 (92 per cent) served personally by police officers.

Comparison of time taken to serve violence restraining orders

Measure	Ombudsman's finding for the investigation period	Office of the Auditor General's finding (using data for the period 1999 to 2001)
Percentage of all violence restraining orders issued that were served within 4 days	42%	58%
Average time to serve all violence restraining orders issued	29 days	44 days
Average time to serve, without including outliers	14 days	18 days

Key findings: Serving VROs (cont.)

- The Office also identified that 6,300 VROs were served by WAPOL more than five days after the VRO was granted.
- The Office modelled the implementation of the Law Reform Commission's recommendation that, 'if a family and domestic violence protection order has not been served on the person bound within 72 hours, the Western Australia Police are to apply to a registrar of the court within 24 hours'.
- If this had been applicable during the investigation period, WAPOL would have been required to apply for oral service for 63 per cent of served VROs, resulting in 8,450 applications to do so to the registrar of the court.

Key findings: Responding to breaches of VROs

- During the investigation period, there were 8,767 alleged breaches of VROs reported to, and recorded by, 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'.
- 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.
- WAPOL arrested and charged 75 per cent of people alleged to have breached a VRO in the 75 DVIRs relating to the 30 fatalities.

Key findings: Responding to breaches of VROs (cont.)

- In the investigation period, the Magistrates and Children's Courts held 11,352 hearings relating to 8,147 charges of breach of a VRO, and 2,676 alleged offenders.
- Of the 8,147 charges, 6,087 were finalised during the investigation period. The alleged offender was found guilty and a sentence imposed in 5,519 (91 per cent) of the 6,087 finalised charges.
- The most frequent sentence imposed for breaching a VRO was a fine (ranging from \$10 to \$3000), with 6,004 fines issued (64 per cent of 9,378 sentencing outcomes). The second most frequent was imprisonment (879 occasions).

Key findings: Responding to breaches of VROs (cont.)

- VROs are more likely to be breached, and less likely to be effective in high risk cases.
- Several factors increase the risk of a VRO being breached, including separation, history of violence or crime by the perpetrator, or non-compliance with court conditions by a perpetrator.
- In the 30 fatalities:
 - 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.

Key findings: Responding to breaches of VROs (cont.)

- The Office's analysis identified that, in high risk cases, VROs may be insufficient if used alone and additional strategies may be useful.
- One such additional strategy is the consideration of deferral of bail or, in high risk cases in certain circumstances, a presumption against bail.

Key findings: Investigating if an act of family and domestic violence is a criminal offence

- VROs are not a substitute for criminal charges where an offence has been committed.
- WAPOL's policy 'is pro-charge, pro-arrest and pro-prosecution; where evidence exists that a criminal offence has been committed'.
- The Office's examination of the 75 DVIRs found that:
 - WAPOL detected an offence in 51 of the 75 DVIRs (68 per cent);
 - an offender was processed (arrested or summonsed) on 29 of these 51 occasions (57 per cent); and
 - the victim was most likely to be interviewed (92 per cent), followed by the suspect/person of interest (73 per cent), with other significant witnesses least likely to be interviewed (48 per cent of 46 incidents where potential significant witnesses were recorded).

Key findings: The use of VROs to protect children from family and domestic violence

- Research identifies that family and domestic violence causes harm to children.
- The Office identified that there were 30 children (aged less than 18 years) who experienced family and domestic violence associated with 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.

Key findings: The use of VROs to protect children from family and domestic violence (cont.)

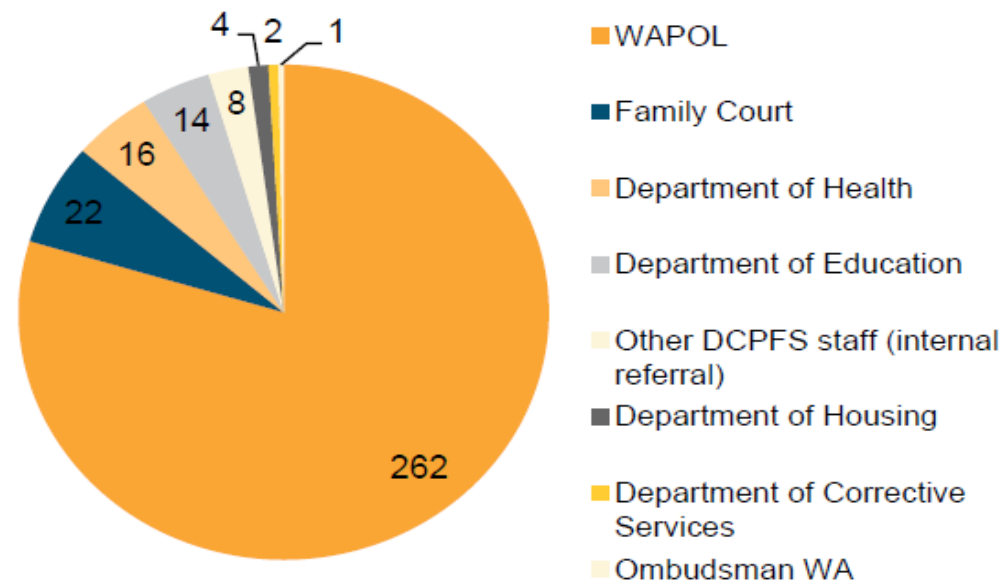
- The Office also identified children regarding whom the state-wide data indicated that:
 - a VRO was applied for in the Magistrates Court in the investigation period;
 - the grounds selected by the applicant in applying for a VRO included ‘exposing a child to an act of family and domestic violence’; 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**.
- Twelve (17 per cent) of these children were Aboriginal.

Key findings: The use of VROs to protect children from family and domestic violence (cont.)

- For the 70 children in the VRO sample, the Department for Child Protection and Family Support (**DCPFS**) recorded a total of 686 referrals (recorded by DCPFS as 'duty interactions').
- 329 (48 per cent) of the 686 duty interactions concerned referrals from state government departments and authorities.
- The majority of the referrals (80 per cent) by state government departments and authorities originated from WAPOL (a WAPOL referral usually occurs when a copy of a DVIR is provided to DCPFS for assessment.)

Key findings: The use of VROs to protect children from family and domestic violence (cont.)

Source of referrals from state government departments and authorities about the 70 children in the VRO sample



Key findings: The use of VROs to protect children from family and domestic violence (cont.)

- DCPFS has developed a framework of policy requirements and practice guidance setting out how its officers should respond in cases where there is a possibility that family and domestic violence is occurring.
- This framework is consistent with many best practice principles identified in the research literature concerning responding to family and domestic violence.
- This framework includes:
 - *The Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework; and*
 - *Perpetrator accountability in child protection practice: A resource for child protection workers about engaging and responding to perpetrators of family violence.*

Key findings: The use of VROs to protect children from family and domestic violence (cont.)

- Of the 686 duty interactions, the Office identified family and domestic violence in 467 (68 per cent) of duty interactions. DCPFS identified family and domestic violence in 290 (42 per cent) of duty interactions.
- The Office's analysis of the 290 interactions identified that:
 - for 129 (44 per cent) duty interactions where DCPFS identified family and domestic violence, DCPFS concluded that this was 'not departmental business'; and
 - DCPFS did not proceed with further action in 271 (93 per cent) of duty interactions where DCPFS identified family and domestic violence as an issue.

Key findings: The use of VROs to protect children from family and domestic violence (cont.)

- For the 70 children in the VRO sample 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; and
 - DCPFS assisted with two VRO applications and provided one referral for help regarding the 70 children in the VRO sample.
- The Office also identified that DCPFS did not provide any active referrals for legal advice or help from an appropriate service to obtain a VRO for any of the children involved in the 30 fatalities.

Key findings: The use of VROs to protect children from family and domestic violence (cont.)

- DCPFS's *Family and Domestic Violence Practice Guidance* specifies 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'.
- Of the 12,393 VRO applications where the applicant identified that the person seeking to be protected was in a family and domestic relationship with the respondent, 6,813 (55 per cent) cited grounds relating to children for seeking a VRO.
- The Office found that DCPFS applied for 12 VROs on behalf of eight children in Western Australia during the investigation period.

Key findings: Actions by DCPFS to engage with adult victims and perpetrators of family and domestic violence in order to protect children

- 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 Office reviewed all duty interactions and associated documents concerning the children involved in the 30 fatalities and the 70 children:
 - the Office did not identify any instances where DCPFS undertook safety planning with adult victims of family and domestic violence.
 - The Office did not identify any instances where DCPFS utilised any forms of engagement identified in its Perpetrator Accountability resource materials.

Key findings: Actions by DCPFS to engage with adult victims and perpetrators of family and domestic violence in order to protect children

- 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 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.
- 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.
- 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.

Summary of recommendations

- Arising from the findings of the investigation, the Ombudsman has made 54 recommendations about ways to prevent or reduce family and domestic violence fatalities:
 - twenty-six recommendations are directed to DCPFS;
 - twenty-two recommendations are directed to WAPOL; and
 - six recommendations are directed to the Department of the Attorney General.

Summary of recommendations (cont.)

- An important feature of the recommendations is that they recognise the criticality of collaboration between government agencies to address family and domestic violence fatalities, with eight recommendations specifically addressing collaborative responses between agencies.

Summary of recommendations (cont.)

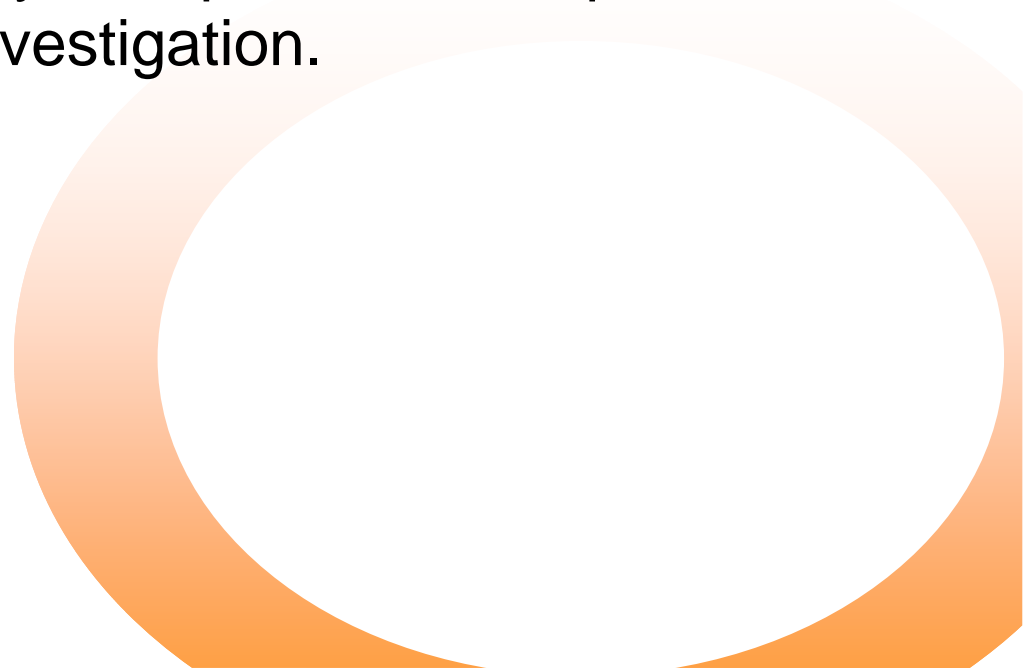
- Six recommendations concern *Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Creating Safer Communities*, including developing a strategy that is specifically tailored to preventing and reducing Aboriginal family violence.
- Eight recommendations relate to providing victims with advice and assistance regarding VROs.
- Eight recommendations relate to taking action to protect victims of family and domestic violence.
- Three recommendations relate to applying for and obtaining VROs.
- Four recommendations relate to serving VROs.
- Three recommendations relate to responding to alleged breaches of VROs.

Summary of recommendations (cont.)

- Five recommendations relate to investigating if an act of family and domestic violence is a criminal offence.
- Ten recommendations relate to the use of VROs to protect children from family and domestic violence.
- Seven recommendations relate to actions by DCPFS to engage with adult victims and perpetrators of family and domestic violence in order to protect children.

Summary of recommendations (cont.)

Each agency has agreed to these recommendations and has, more generally, been highly cooperative, responsive and positively engaged with our investigation.



Questions or comments?

Report is available at:

www.ombudsman.wa.gov.au/familydomesticviolencereport

For further information please contact:

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