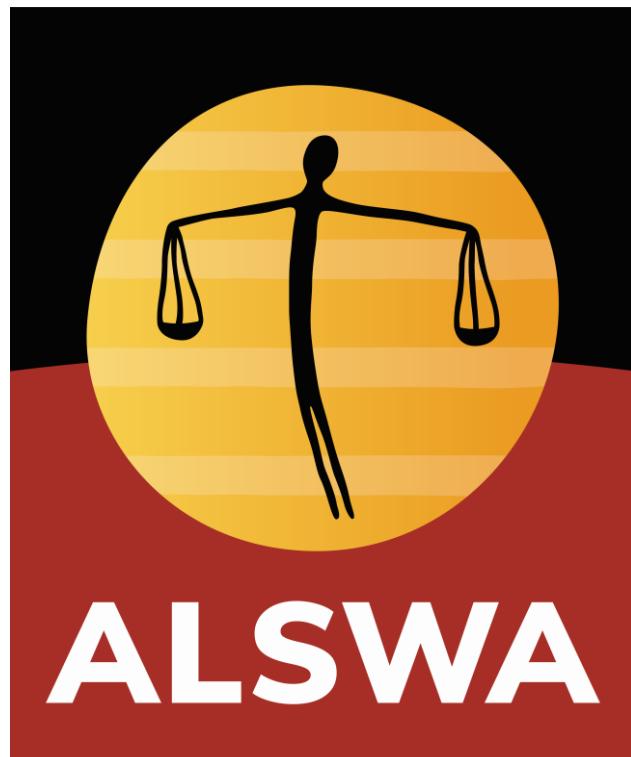


Aboriginal Legal Service of Western Australia Limited



Police Orders

Submission
November 2025

The Aboriginal Legal Service of Western Australia Limited acknowledges the Traditional Custodians of the land on which we all live and work, and pay our respects to their Elders past, present and emerging. We acknowledge and respect the continuing culture and contributions that our First Nations Peoples make to the life of this state and country.

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List of Recommendations

Recommendation 1

That there be an independent investigation into the current use of police orders by WA Police and the efficacy of their use.

Recommendation 2

That the *Restraining Orders Act 1997* (WA) be amended to empower judicial officers to vary or cancel a police order during the first hearing of a breach police order charge where it is considered appropriate to do so.

Recommendation 3

That an external oversight mechanism be put in place to monitor the use of police orders by WA Police, and that this body include at least one Aboriginal member.

Recommendation 4

That there be increased training for WA Police specific to FDV in Aboriginal communities and the experiences of Aboriginal women, and that this training be delivered by, or in close consultation with, Aboriginal Community Controlled Organisations to ensure it is culturally aware and informed.

Recommendation 5

That there be greater transparency regarding WA Police training specific to both FDV and cultural competency, including public reporting on the delivery of this training and measurements of its efficacy.

Recommendation 6

That data on the use of police orders by WA Police, monitoring of their use, and findings from reviews of their use be made public to ensure accountability.

1. EXECUTIVE SUMMARY

The Aboriginal Legal Service of Western Australia Limited ('ALSWA') submits that there is a critical need to investigate the efficacy of police orders and their use by the Western Australia Police Force ('WA Police') as a means of protecting victim-survivors of family and domestic violence ('FDV'). This is especially pertinent in relation to police orders issued against Aboriginal and Torres Strait Islander¹ women, who are particularly vulnerable to FDV in the community.

ALSWA analysed the cases of 38 Aboriginal women bound by police orders and submits that the findings of this analysis strongly suggest that there is a need to:

- (a) Identify and particularise the circumstances in which police orders are issued in police responses to FDV incidents involving Aboriginal people;
- (b) Determine the extent to which Aboriginal victim-survivors of FDV are misidentified as perpetrators and the contexts in which this occurs;
- (c) Investigate incidents in which Aboriginal people charged with breach police order appear to have been unnecessarily refused bail by police and detained in police custody; and
- (d) Ascertain the adequacy of the current monitoring and oversight of police orders.

This submission begins with an overview of the legislative intent of police orders, the provisions that enliven their use, and their relationship with the justice system more broadly. The findings of ALSWA's case analysis are presented alongside a select number of detailed case examples that highlight several issues with the current manner in which police orders are used and illustrate the circumstances in which these issues occur.

ALSWA draws from an established body of research to discuss these issues, as well as the practices that give rise to them, and subsequently identifies sources of underutilised information that could be used to inform efforts to improve policy and procedure. Ultimately, ALSWA submits that greater oversight is essential to ensuring that Aboriginal victim-survivors of FDV are not re-victimised or criminalised by police orders, and makes several recommendations for reform.

Recommendation 1: That there be an independent investigation into the current use of police orders by WA Police and the efficacy of their use.

2. ABOUT ALSWA

ALSWA was established in 1973 and is an Aboriginal Community Controlled Organisation. ALSWA is the lead provider of specialist legal advice, support services and advocacy for

¹ Throughout this document, the Aboriginal Legal Service of Western Australia Limited ('ALSWA') uses 'Aboriginal' to refer to Aboriginal and/or Torres Strait Islander people.

Aboriginal people in Western Australia. ALSWA works in collaboration and partnership with communities and key government and non-government partners to rectify legal policies and practices that impact adversely and disproportionately on the legal and human rights of Western Australia's First Peoples.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in the areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is governed by a Board of Directors, who are all Aboriginal. ALSWA is a company limited by guarantee registered with the Australian Securities and Investment Commission and a public benevolent institution registered with the Australian Charities and Not-for-Profits Commission.

ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, child protection and human rights law. Its services are available throughout Western Australia via 11 regional and remote offices and one head office in Perth.

ALSWA also provides a number of additional wraparound services to support clients, including the Bail Support Service and Prison In-Reach Legal Service, the Custody Notification Service, the Custody Wellbeing Service, the Work and Development Permit Service and the Youth Engagement Program. ALSWA also leads the justice reinvestment program, Old Ways New Ways, along with Wadjak Northside Aboriginal Corporation, Stephen Michael Foundation and Hope Community Services. In addition, ALSWA works in partnership with Hope Community Services and other organisations for the delivery of the Waullo Dawn Healing Service and Koolark Healing Service in Armadale and the Marni Pirni Healing Service in Kalgoorlie.

3. OVERVIEW OF POLICE ORDERS

3.1 Legislative Intent

Police orders were introduced to the *Restraining Orders Act 1997* (WA) ('*RO Act*') in 2004.² Their purpose was outlined during the second reading of the Bill, when it was noted:

The victim's consent is not required for this type of order. This is a practical action that will protect victims and hopefully interrupt the cycle of violence. These temporary orders can be used only in cases where police believe that the victim would be subject to further violence if they were to be left alone with the offender and when there is insufficient evidence for an arrest.³

Initially, police orders could be issued by officers responding to alleged FDV incidents for a duration of up to 24 hours, and could only be extended to 72 hours with the consent of the person protected by the order. However, additional amendments to the *RO Act* in 2011 removed

² Acts Amendment (Family and Domestic Violence) Bill 2004 (WA).

³ Western Australia, *Parliamentary Debates*, Legislative Assembly, 2 June 2004, 3305 (Jim A McGinty, Attorney-General).

this consent requirement.⁴ The rationale that underpinned this change was that it would provide protection over weekends, when victim-survivors are unable to apply for court-issued restraining orders. It was further noted:

[...] such an order will be of benefit in many of our Indigenous communities in which a significant proportion of the domestic violence is alcohol fuelled. Many of the persons seeking protection in these areas say that all they really want is a temporary cooling-off period for the violent respondent to regain sobriety.⁵

At the time of writing, there have been no further amendments to the provisions for issuing police orders. ALSWA notes, however, that the Family Violence Legislation Reform Bill 2024 (WA) has recently amended the definition of ‘family violence’ in the *RO Act* to encompass patterns of behaviour indicative of coercive control, thereby broadening the circumstances in which police orders may be issued.⁶

3.2 Police Powers

In all circumstances where suspected FDV has been investigated, an officer is required to make an application for a restraining order, issue a police order, or make a written record of the reasons for not taking either of these actions.⁷

The term ‘family violence’ is defined in the *RO Act* to include acts and threats of physical and emotional violence, which encapsulates a range of behaviours indicative of abuse and control in family relationships.⁸ As a result, police orders may be issued in response to a variety of behaviours and circumstances.

Police powers to issue police orders are enlivened by the *RO Act*.⁹ An officer must reasonably believe that there is an urgent need for the order and, either that family violence has been committed and is likely to occur again, or, that there are reasonable grounds to apprehend that family violence will be committed against a person.¹⁰ The provision empowers an officer to issue a police order if the officer reasonably believes that a child is likely to be exposed to FDV, or that another person has reasonable grounds to apprehend that family violence will be committed against a person.¹¹

When considering whether to issue a police order, an officer must have regard to the order’s terms and certain other matters, including the need to:

- (a) protect a person from FDV;
- (b) prevent behaviour that could reasonably cause the person seeking to be protected to apprehend that FDV will be committed against them; and

⁴ Restraining Orders Amendment Bill 2011 (WA).

⁵ Western Australia, *Parliamentary Debates*, Legislative Assembly, 22 June 2011, 4622-3 (Christian C Porter, Attorney-General).

⁶ *Restraining Orders Act 1997 (WA)* s 5A (‘*RO Act*’).

⁷ *Ibid* s 62C.

⁸ *Ibid* s 5A.

⁹ *Ibid* pt 2A div 3A.

¹⁰ *Ibid* s 30A.

¹¹ *Ibid*.

(c) ensure the protection of children from FDV.¹²

Other considerations include the accommodation needs of the persons involved, hardship that may be caused by the order, any similar behaviour by any other person involved, and any other matter that an officer considers relevant.¹³

An officer issuing a police order may impose any restraint upon the lawful activities and behaviour of the person bound by the order that the officer considers appropriate.¹⁴ The officer is to ensure that the order's terms are as least restrictive on the person bound as possible, while also ensuring the safety of the protected person.¹⁵ While the order may be imposed for up to 72 hours, an order of a shorter duration may be issued if the police officer making the order is of the opinion that this would be sufficient time for a family violence restraining order ('FVRO') or violence restraining order ('VRO') application to be made to a court.¹⁶

While it appears that the legislative intent of these provisions is to ensure that the terms and duration of police orders can be appropriately tailored by police officers as circumstances require, ALSWA almost exclusively encounters police orders that have been issued with full 'no contact' conditions for a duration of 72 hours. These orders prevent the bound person from communicating or attempting to communicate with the protected person by any means, and require the bound person to maintain a specified distance from both the protected person and the protected person's designated residential address for the duration of the order.

3.3 Judicial Oversight

Despite the broad powers afforded to WA Police to issue police orders, police officers are solely required to serve a copy of an issued police order to the person bound by the order, the person protected by the order, and the Commissioner of Police.¹⁷ As a result, the decision to issue a police order is not subject to judicial scrutiny unless criminal charges arise from alleged breach police order offences.

Where criminal charges do arise, the circumstances in which police orders are issued nevertheless remain obscure in the overwhelming majority of cases. This is due to a lack of information provided in the Statement of Material Facts ('SMF'), which details only the manner in which a police order is alleged to have been breached. While reference is occasionally made to the means by which the alleged breach has come to police attention, ALSWA has not encountered any cases in which an account of the incident leading to the issuing of the police order—beyond a general reference to a family violence or domestic incident—has been included within the SMF.

ALSWA has previously expressed concerns about the lack of judicial oversight of police orders, as they do not require the provision of sworn evidence and appear to be issued as a

¹² Ibid s 30B.

¹³ Ibid.

¹⁴ Ibid s 30C.

¹⁵ Ibid.

¹⁶ Ibid s 30F.

¹⁷ Ibid s 10(4).

matter of convenience in certain circumstances.¹⁸ ALSWA submits that the circumstances in which police orders are issued are highly relevant to ensuring their lawful and appropriate use, the correct identification of victim-survivors, and accurate responses to coercive control. Further, where breach police order offences arise, these circumstances are highly relevant to determining the rationality of police refusals of bail.

When a judicial officer convicts a person of breach police order and is satisfied that:

- (a) the protected person initiated the breach (without any influence on the part of the bound person, including any influence attributable to family violence); and
- (b) no conduct of the bound person constituted FDV,

the judicial officer is empowered to take these circumstances into account as a mitigating factor at sentence.¹⁹ There is, however, a lack of data on the number of cases in which judicial officers accept this mitigating factor.

While it is accepted that this data relates to a discrete issue considered by judicial officers in individual sentence hearings and may be difficult to record, it could be used to generate a broader picture of the prevalence of breaches that are initiated by the protected party, whom police had perceived to need protection at the time of the order's issue. It would also facilitate insight into the nature of the punishment imposed upon accused persons for breaches that they did not initiate, which may indicate aspects of controlling, threatening, or coercive behavior directed at the bound person by the person protected by the police order.

The below examples demonstrate how acts of coercive control and threats of violence enacted by the protected person (male partner or ex-partner) against a victim-survivor bound by a police order (due to misidentification as the perpetrator) can initiate a victim-survivor's breach of the order. We note that due to the issues above, ALSWA cannot confirm that the judicial officer took the protected person's initiation of the breach into account in determining sentence. However, the case studies below outline circumstances that would likely be relevant to this determination:

- A. An Aboriginal woman called police for help as her partner was violent towards her. The woman was then issued a police order that protected her partner (*misidentification of perpetrator*). Her partner then called her to threaten that he would destroy her belongings (*initiation of breach*). The woman attended (*breach*), the partner was violent, and police were called. The woman was arrested and charged with breach police order and was later convicted in her absence and received a low-level fine ([Case Study A](#)).
- B. An Aboriginal woman was issued with a police order that protected her male partner and was later found at the protected address by police (*breach*). The woman disclosed to ALSWA that the breach occurred because her partner demanded that she return home

¹⁸ ALSWA, Submission No 10 to the Senate Standing Committees on Finance and Public Administration, Parliament of Australia, *Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (29 April 2015) 18 [2].

¹⁹ RO Act (n 6) s 61B(2A).

and threatened her, which caused her to fear for her safety (*initiation of breach*). The woman stated that their relationship was marred by physical, emotional and sexual abuse against her (*misidentification of perpetrator*). Police rejected negotiations to discontinue the charge, and the woman was convicted and received a low-level fine ([Case Study D](#)).

C. Police attended an FDV incident between an Aboriginal woman and her male ex-partner. The woman was issued with a police order and her male ex-partner was arrested at the scene, taken into police custody, and later issued an identical police order. While in police custody, the man told police that the woman was texting him in breach of the police order that protected him (*breach*). The woman was subsequently arrested and charged with breach police order. The woman told ALSWA that her ex-partner had messaged her first using offensive language, including calling her a ‘dog’ (*initiation of breach*). The woman also advised ALSWA that her ex-partner had assaulted her prior to his arrest (*misidentification of perpetrator*), although the SMF stated that his arrest was for ‘unrelated matters’. The woman was convicted and received a low-level suspended fine ([Case Study J](#)).

Unlike the powers which can be exercised when dealing with breaches of restraining orders,²⁰ judicial officers who are satisfied that a protected person has initiated a breach of a police order are not empowered to cancel the order nor vary its terms. The *RO Act* does not permit applications to vary nor cancel a police order. While the provision of such powers was likely considered impractical due to the maximum 72-hour duration of police orders, ALSWA notes that the prohibition on applications to vary or cancel police orders also extends to police.

The inability to vary or cancel police orders prevents the rectification of any issues that may come to light after a police order has been made, including issues that may obviate the need for police orders to remain in place. ALSWA is not only concerned that this may discourage police accountability, but that it may also place victim-survivors of FDV at greater risk of harm and criminalisation. Given the broad powers of police officers to issue police orders, ALSWA submits that transparency as to the circumstances in which police orders are issued is integral to ensuring public confidence in the police orders statutory regime. In addition, this transparency is essential to ensure adequate protection for victim-survivors of FDV and alleged perpetrators alike.

Recommendation 2: That the *Restraining Orders Act 1997* be amended to empower judicial officers to vary or cancel a police order during the first hearing of a breach police order charge where it is considered appropriate to do so.

²⁰ *Ibid* s 61B(4).

3.4 Breach Police Order Offences

Breach police order is an offence that carries a statutory penalty of a \$10,000 fine and/or imprisonment for two years.²¹ Further, where an individual is convicted of breach police order and/or restraining order three times in two years, there is a presumption that a sentence that is, or includes, imprisonment is to be imposed unless a judicial officer is satisfied that:

- (a) imprisonment is ‘clearly unjust given the circumstances of the offence and the person’; and
- (b) the ‘person is unlikely to be a threat to the safety of a person protected or the community generally’.²²

Available figures indicate that breach police order offences occur relevantly infrequently.²³ Notably, however, breach police order offences appear to represent a significant number of FDV-related breach restraining order offences,²⁴ accounting for over 27% of these offences in 2024 and a quarter of all offences in the last 10 years.²⁵

Calendar Year	Police Orders Issued	Breach Police Order Charges	% Police Orders Breached	All FDV-Related Breach RO Charges	% Breach Police Order Charges
2015	21,015	2,256	10.7%	8,489	26.6%
2016	22,804	2,666	11.7%	10,504	25.4%
2017	23,089	2,367	10.3%	9,685	24.4%
2018	22,665	2,485	11.0%	10,332	24.1%
2019	21,496	2,500	11.6%	11,111	22.5%
2020	Unknown	2,695	Unknown	10,995	24.5%
2021	Unknown	2,502	Unknown	10,698	23.4%
2022	Unknown	2,743	Unknown	11,571	23.7%
2023	24,888	3,750	15.1%	14,053	26.7%
2024	Unknown	4,625	Unknown	17,085	27.1%
2015-24	N/A	28,589	N/A	114,523	25.0%

Table 1 – Data compiled by ALSWA²⁶

ALSWA notes that these figures reflect only the total number of charges of breach police order per calendar year; the number of individuals charged with the offence is unknown, as is the frequency with which breaches of the same order have occurred.

i. Bail

Breach police order is a ‘serious offence’ pursuant to the *Bail Act 1982* (WA) (‘*Bail Act*’). If an individual charged with breach police order is subject to Schedule 2 of the *Bail Act* (that is,

²¹ Ibid s 61(2a).

²² Ibid s 61A(6).

²³ See Table 1, Column 4.

²⁴ ‘FDV-related breach restraining order offences’ refers to ‘Breach of Family Violence Restraint Order’ and ‘Breach of Police Order’ offences only. ‘Breach of Violence Restraint Order’ offences are excluded as they do not pertain to persons in family relationships with each other; see *RO Act* (n 6) s 12A.

²⁵ See Table 1, Column 6.

²⁶ Figures in Columns 3-5 compiled using ‘crime time series data’: Western Australia Police Force (‘WA Police’), *Offence Data Time Series* (Report, 7 July 2025) <<https://www.wa.gov.au/organisation/western-australia-police-force/crime-statistics>>. Regarding figures in Column 2, see below nn 192-3.

if they are charged with committing a serious offence while on bail for another serious offence), exceptional circumstances must be shown for the individual to be granted bail.²⁷ While individuals who have been arrested in ‘urban areas’ must be detained until their matter can be heard by the courts,²⁸ police may otherwise consider bail for individuals in Schedule 2 positions subject to other requirements under the *Bail Act*.

ALSWA has raised concerns about the inclusion of breach police order offences under Schedule 2 of the *Bail Act* in previous submissions, as Schedule 2 covers a wide range of offences that include very serious offences (such as murder) and offences that may be far less serious depending on the circumstances, including breach police order.²⁹

Where an individual charged with breach police order is not in a Schedule 2 position, police have a duty to consider bail in most cases.³⁰ Under the *Bail Act*, when considering whether to grant bail, a police officer is to have regard to, *inter alia*, whether the accused will ‘fail to appear’, ‘commit an offence’, ‘endanger safety … of any person’, or ‘interfere with witnesses’.³¹ Further relevant matters include the ‘nature and seriousness of the offence’, ‘the probable method of dealing with the accused for the offence, if convicted’, and the personal circumstances of the accused, including ‘character [and] previous convictions’.³²

ALSWA is not aware of any publicly available information regarding the frequency with which breach police order offences are committed in concurrence with separate criminal offences. Where a further FDV offence is also suspected or alleged to have been committed, ALSWA acknowledges that ensuring the safety of the person protected by the order and preserving trial integrity is paramount. In these circumstances, the practice of WA Police is to refuse bail in the first instance.

ALSWA notes, however, that a significant number of ALSWA clients charged with breach police order and no other criminal offence are refused bail by police and detained in police custody—often for significant periods of time—in circumstances where such decisions appear evidently unjust. This includes circumstances in which the accused has a minimal record, is not in a Schedule 2 position, and the alleged breach occurs in circumstances where FDV (including coercive control) is either not alleged to constitute an element of the breach, or the person bound by the order alleges that FDV has been perpetrated against them by the person protected by the order.

ALSWA is concerned that in these circumstances, and seemingly without exception, bail is nevertheless refused by WA Police.³³ If the matter is not subsequently resolved at first hearing, bail is inevitably granted by the court. Upon conviction, these individuals are usually sentenced to a suspended or low-level fine and, in some cases, a spent conviction order is also granted.

²⁷ *Bail Act 1982* (WA) sch 1 pt C cls 3A-3B (‘*Bail Act*’).

²⁸ *Ibid* s 16A.

²⁹ See, eg, ALSWA, Submission No 74 to Australian Law Reform Commission, *Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (11 Sept 2017) 8.

³⁰ *RO Act* (n 6) pt II ss 5-6.

³¹ *Bail Act* (n 27) sch 1 pt C cl 1(a).

³² *Ibid* sch 1 pt C cl 3.

³³ See Part 4 of this Submission.

It is pertinent to note that data regarding persons held in police lock-ups is excluded from the Australian Bureau of Statistics ('ABS') collection on prisoners in Australia.³⁴ While some Australian states publish police lock-up data,³⁵ there is no publicly available data regarding persons held in police custody in Western Australia. Further, police custodial facilities in Western Australia are not subject to external oversight.

ALSWA has previously raised concerns regarding the lack of external oversight of conditions and practices in police lock-ups, and continues to support the referral of this responsibility to the Office of the Inspector of Custodial Services ('OICS') in Western Australia.³⁶ ALSWA notes that, although the OICS was due to commence oversight of a number of police lock-ups in 2023,³⁷ its ability to do so remains restricted pending the passage of enabling legislation which has not yet been drafted.³⁸

ALSWA submits that the refusal of police bail in circumstances in which imprisonment is an unlikely sentencing disposition is both inherently unjust and unnecessarily resource-intensive for WA Police and the courts. Unreasonable police bail refusals for breaches of police orders also expose Aboriginal people to all of the risks to health and well-being associated with having to spend time in custody in police lock ups.

ii. Sentencing

Despite the statutory penalty for the offence of breach police order and its designation as a 'serious offence' under Schedule 2 of the *Bail Act*, ALSWA submits that sentencing outcomes do not reflect the offence's status as a 'serious offence' in the majority of cases. ALSWA notes that statistics published by the ABS suggest that, in Western Australia in 2023-24, just under 73% of all defendants charged with at least one FDV-related breach restraining offence³⁹ received a fine upon sentencing.⁴⁰

In terms of sentence disposition, the Supreme Court (WA) remarked in *Dennis v Lanternier* (Jenkins J):

There is no tariff for an offence against s 61(1) of the *Restraining Orders Act* as the facts of an offence under s 61(1) can range from a minor, technical breach to a very serious breach involving personal violence. Nevertheless, there has been a sufficient number of cases dealt with on appeal to establish the following principles:

³⁴ Australian Bureau of Statistics, *Prisoners in Australia methodology* (19 December 2024)

<<https://www.abs.gov.au/methodologies/prisoners-australia-methodology/2024>>.

³⁵ See, eg, 'Watch-House Data', *Queensland Police Service* (Web Page, 21 August 2025)

<<https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/watch-house-data>>.

³⁶ ALSWA, Submission to Community Development and Justice Standing Committee, Parliament of Western Australia, *Inquiry into Custodial Arrangements in Police Lock-ups* (July 2013).

³⁷ In line with its obligations as one of Western Australia's National Preventive Mechanism ('NPM') bodies under the United Nations Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('OPCAT'). See, eg, Office of the Inspector of Custodial Services (WA), *Annual Report 2023-24* (Report, 5 November 2024) 38.

³⁸ Australian National Preventive Mechanism, *Annual Report 2022-23* (Report, 10 July 2024) 62 [2].

³⁹ See above n 24; see also Australian Bureau of Statistics, *Criminal Courts, Australia Methodology, 2023-24* (9 April 2025)

<<https://www.abs.gov.au/methodologies/criminal-courts-australia-methodology/2023-24>>.

⁴⁰ See Family and Domestic Violence Order Breaches Experimental Data (FDV Table 19): Australian Bureau of Statistics, *Criminal Courts, Australia, 2023-24* (9 April 2025) <<https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2023-24>>.

- (1) offences at the lower end of the range of seriousness of offences against s 61(1) are usually dealt with by the imposition of a penalty other than a sentence of imprisonment to be served immediately;
- (2) serious offences against s 61(1) will incur a term of imprisonment to be served or, if the offender's circumstances are favourable, suspended;
- (3) offences which include a threat of violence, which the offender is apparently in a position to carry out, actual violence or the invasion of the protected persons home are regarded as offences at the higher end of the range of seriousness of offences against s 61(1);
- (4) an immediate sentence of 7 months' imprisonment imposed for a serious breach of s 61(1) has been upheld on appeal.⁴¹

A 2018 case, *Briggs v Houlihan* (McGrath J), found that the guiding principles referenced above are also relevant to the determination of sentence for breach police order offences,⁴² noting that the maximum penalty for either breach is the same and that both types of orders engage similar underlying concerns.

Additional appeal cases further suggest that the seriousness of these offences increases where an offender has a history of breaching restraining orders, or when repeated breaches have occurred within a short period time, or both.⁴³ In such circumstances, the need for general and personal deterrence is an important sentencing consideration as deliberate or repeated breaches of police orders undermine their efficacy.⁴⁴ Individuals who have accumulated fines and community-based orders for breaches of police orders in the past are therefore more likely to be sentenced to more punitive dispositions such as suspended imprisonment, conditional suspended imprisonment, or immediate imprisonment.

The frequency and extent to which judicial officers consider time spent in police custody when sentencing an individual for breach police order is difficult to determine. However, ALSWA submits that, in circumstances where no additional charges indicative of FDV have been preferred, an individual who has been refused police bail in relation to breaching a police order and has subsequently been detained in a police lockup overnight will frequently have a sound argument that they should be sentenced to no further punishment under s 46 of the *Sentencing Act 1995* (WA) ('*Sentencing Act*').

Notably, in eight of the 38 matters examined by ALSWA, a spent conviction order ('SCO') was granted upon conviction. Under the *Sentencing Act*, SCOs may be granted when the judicial officer considers that the offender is unlikely to commit such an offence again and either that the offence is 'trivial' or the offender is of 'previous good character'.⁴⁵

The effect of an SCO relieves the offender of any 'adverse effect' of conviction.⁴⁶ At sentencing, individuals are more likely to receive a SCO if they have no criminal record or a

⁴¹ *Dennis v Lanternier* [No 2] (2017) WASC 5.

⁴² *Briggs v Houlihan* (2018) WASC 301.

⁴³ See, eg, *O'Driscoll v WA Police* (2023) WASC 456; *Smartt v Sloane* (2019) WASC 35.

⁴⁴ See, eg, *Rogers v Hitchcock* (2015) WASC 120.

⁴⁵ *Sentencing Act 1995* (WA) s 45 ('*Sentencing Act*').

⁴⁶ *Ibid.*

minimal history of offending. The granting of a SCO at sentence for breaching a police order brings into sharp relief punitive and unnecessary decisions by police to refuse bail at the time of charging, along with the injustice involved in having to spend, in some instances, many hours in police lock-up prior to appearing in court.

4. ANALYSIS

4.1 Overview

ALSWA examined the cases of 30 Aboriginal women charged with at least one breach police order offence in 2024 and found that:

- At least 15 women were likely to be victim-survivors of FDV,⁴⁷ of whom at least six (6) were bound by police orders that protected their current or former male partners who were suspected of perpetrating FDV against them.⁴⁸
- All 30 women were refused bail by police in the first instance, and the overwhelming majority (25) were detained in police custody overnight.
- At first hearing, the majority of women were either granted bail by the court (18) or had their matters finalised by way of a low-level fine (4) or a suspended low-level fine (2). One (1) woman's matter was adjourned without bail.
- Of the five (5) women who were refused bail by both police and the court, at least⁴⁹ three (3) were in a Schedule 2 position.⁵⁰
- Of the 21 women whose matters are known to ALSWA to have been finalised:⁵¹
 - 14 women received low-level fines;
 - Six (6) women received suspended low-level fines;
 - One (1) woman received no further punishment;⁵² and
 - Six (6) women were granted SCOs.

ALSWA subsequently examined the cases of an additional eight (8) Aboriginal women who had been issued at least one police order in recent years. In these cases (which were provided by ALSWA criminal lawyers for analysis):

- All women (8) were bound by police orders that protected their current (7) or former (1) male partners.

⁴⁷ This is an estimate based on information provided to ALSWA lawyers and/or Custody Notification Service ('CNS') staff, such as descriptions of women's injuries at the time of their arrest and/or women's accounts of having been subject to FDV, including but not limited to: physical violence, threats, sexual abuse, extortion, and behaviours indicative of coercive control.

⁴⁸ This is a conservative estimate based only on relationships between women and protected persons that ALSWA has been able to confirm. ALSWA notes that, in the remaining nine (9) cases involving women who were likely to be victim-survivors of FDV, women's relationships with protected persons were either unknown (5) or uncertain (4).

⁴⁹ Recent changes to eCourts permissions have prevented the collection of additional data.

⁵⁰ See Part 3.4 of this submission.

⁵¹ See above n 49.

⁵² Released without further punishment pursuant to the *Sentencing Act* (n 45) s 46.

- Seven (7) women were known victim-survivors of FDV perpetrated against them by their protected male partners,⁵³ while one (1) woman was likely to be a victim-survivor of FDV.⁵⁴
- Four (4) women had called police for assistance regarding the FDV incident that led to them being bound by a police order.
- Seven (7) women were charged with at least one breach police order offence, of whom:
 - Six (6) women received either a low-level fine (5) or a suspended low-level fine (1) upon conviction;
 - Two (2) women were granted SCOs; and
 - One (1) woman’s matters were discontinued by prosecution.

While it is pertinent to acknowledge the limitations of this analysis due to its size and scope,⁵⁵ ALSWA is nevertheless deeply concerned by these findings and notes that the issues highlighted by many of the case studies are broadly consistent with those of a well-established body of research, as discussed in [Part 5](#) of this submission.

4.2 Case Examples

The following are select examples of cases analysed by ALSWA, presented to illustrate identified issues and contextualise the concerns raised within this submission.

The examples draw on the experiences of ALSWA clients throughout Western Australia, which clients shared with both lawyers acting for them and ALSWA’s Custody Notification Service (‘CNS’). The CNS is a 24/7 phone service staffed by lawyers and support workers which provides health and welfare support and legal advice to Aboriginal people in police custody in Western Australia. State legislation requires police to phone the CNS every time an Aboriginal person is taken into a police facility, usually following an arrest by police.

- A. In 2022, an Aboriginal woman in her 30s called police for assistance after fleeing from a property she shared with her male partner, who had chased and threatened her with a steel pole. Days prior to this, the woman’s partner had been placed on a conditionally suspended imprisonment order (‘CSIO’) in relation to a violent offence committed against her and had been declared a Serial Family Violence Offender.⁵⁶ Despite the fact that the woman called for police assistance, police issued her with a 24-hour police order that protected her partner. Police officers did not help the woman to retrieve her belongings from the property she shared with her partner.

While the police order was still in force, the woman’s partner contacted her and threatened to destroy her belongings. The woman returned to the property to retrieve her

⁵³ Based on court and/or police records disclosed in the course of criminal proceedings that refer to FDV perpetrated against women by their male partners.

⁵⁴ See above n 47.

⁵⁵ See above nn 47-9.

⁵⁶ *Sentencing Act* (n 45) s 124E.

belongings and found that they were gone. The woman became upset with her partner. Police attended and located the woman in breach of the police order. She was charged and refused bail by police. The woman spent approximately 18 hours in police custody before she was granted bail in court the following day and, later, placed on a notice to attend pursuant to section 7A of the *Bail Act* (which demonstrated the low-level seriousness of the alleged breach). In subsequent days, her partner assaulted her again, which led to him being charged with a violent offence.

ALSWA asked police to discontinue the charge, noting the woman's vulnerability and consistent exposure to FDV at the hands of her partner. However, at a subsequent court date, the woman failed to attend court and was convicted in her absence, receiving a low-level fine.

B. In 2023, police attended an FDV incident between an Aboriginal woman in her 20s and her male partner. Police spoke with both parties. The Police Incident Report stated that the woman was 'yelling and screaming ... in what appeared to be a tantrum', while also noting that there was 'a very good possibility' that the woman had been subjected to violence by her partner. The woman told police that her partner had threatened her but refused to elaborate. The woman's partner told police that he had been verbally angry at her as she had left the house without telling him (an obvious sign of controlling and coercive behavior). Despite this information, police issued the woman with a police order.

The woman was later arrested on two (2) occasions by police for breaching the police order and was eventually refused bail by police, spending approximately nine (9) hours in police custody. The breaches were constituted solely by the woman being in the presence of the male partner. The woman instructed her lawyer that her partner had assaulted her and locked her out of her house (which she was renting) prior to police attendance. The woman obtained an FVRO against her partner two days after the incident, and her partner was subsequently charged with various FDV offences involving actual violence committed against her.

The breaches of the police order were later discontinued by police at the request of ALSWA.

C. In 2024, police issued a 72-hour police order against an Aboriginal woman in her 50s after attending her residence following a verbal argument with her male partner. The order protected her male partner and prohibited her from being at her residence, although she was the sole lessee of the property.

The woman was later charged with two (2) breaches of the police order, refused bail by police and spent approximately 5.5 hours in police custody before being granted bail by a court. The first breach involved the woman throwing a small bottle of liquid towards her partner following an argument where he had made derogatory and insulting comments towards her. The bottle struck the partner on the ankle resulting in police

charging her with aggravated common assault. The second breach occurred about an hour later when the woman returned to the address to get her medication.

The woman instructed that her relationship with her partner involved her being subjected to controlling behaviour, verbal abuse, and physical assaults. The woman was receiving ongoing support from an FDV service, and her partner had been convicted of a violent assault against her only eight days before she was issued with the police order.

The woman pleaded guilty to the three charges at an early stage because of the stress of being on bail and having her matters hanging over her head. On the day she was sentenced, the same court also sentenced the woman's male partner to a conditional suspended imprisonment order for a violent offence he committed against her.

D. In April 2024, an Aboriginal woman in her 50s was issued with a police order that protected her male partner and prohibited her from being at their shared residence. Police later conducted a 'Family Violence compliance check' on the address. The woman's partner refused to allow police inside the property. Police then sighted the woman in the backyard of the residence, arrested her, and charged her with breaching the police order.

The SMF noted that the woman had told police that her partner had consented to her attending the address to make a phone call. The woman disclosed to ALSWA that the breach occurred because her partner demanded that she return home and threatened her, which caused her to fear for her safety. The woman further described a relationship marred by abuse and coercive control against her, reporting that if she refused her partner's physical, financial, and sexual demands, she would be subjected to emotional and physical abuse. The woman also indicated that she wanted to apply for a restraining order.

The woman was refused bail despite her minimal criminal history (she had no prior convictions for breaches of restraining order breaches nor for violent offences). She spent 18 hours in police custody before appearing in court, where she was granted bail with a personal undertaking.

A request that the charge be discontinued on public interest grounds was rejected. At her court hearing, the woman failed to appear, was convicted in her absence, and received a low-level fine.

E. In July 2024, police attended an address in relation to a domestic disturbance and issued a 72-hour police order to an Aboriginal woman in her early 20s. Her male partner was protected by the order. Approximately two hours later, she was arrested and charged with breaching the order. Police alleged that she contacted her partner via a mobile phone multiple times, and that the contact had been recorded by her partner.

When speaking with CNS, the woman advised that she suffered from schizophrenia and borderline personality disorder, which she managed with medication. She said that her partner knew how to wind her up and make her feel mentally unwell. She also said that her partner was trying to get her arrested and jailed.

At the time of her arrest, the woman had one prior conviction for disorderly behaviour. Despite this, and the fact that the allegation exclusively involved phone contact, she was refused bail by police. The woman spent over 24 hours in custody before being released on bail with a personal undertaking only. At the next hearing, she pleaded guilty and received a low-level fine and a spent conviction order.

F. In July 2024, an Aboriginal woman in her early 40s was arrested on suspicion of aggravated assault. She was later released from custody without charge and issued with a police order that protected her male partner. The following day, she was arrested for breach police order and refused bail by police. She advised that her partner had her belongings and had told her to meet with him.

At the time of her arrest, the woman had a very limited record of prior convictions. She spent approximately seven hours in police custody before appearing in court and was granted bail on a personal undertaking. At the next hearing, she pleaded guilty and received a low-level fine.

G. In August 2024, an Aboriginal woman in her early 20s was issued a 72-hour police order that protected her male partner. She later returned to the protected address to drop off her child's car seat and see her child. The woman remained there until her partner accused her of cheating on him and an argument started. The woman's partner then put the child in the car and drove away.

The woman attended the police station as she was worried for her child. She was subsequently arrested when it was ascertained that her partner had reported the breach. Police charged the woman and refused her bail, despite her attendance at the police station and the fact that she had no criminal record. She was detained in police custody overnight for 16 hours. The following day, she appeared before the court and was released on a notice to attend with bail dispensed with.

A request that the charge be discontinued on public interest grounds, citing the offence circumstances and the woman's extensive history of FDV at the hands of her partner, was rejected. The woman later pleaded guilty and received a low-level fine suspended for 9 months and a spent conviction order.

H. In 2023, police responded to an alleged FDV incident after receiving calls from both an Aboriginal woman in her 40s and the woman's male partner. The partner had a known history of offending against the woman and was engaged in a court program to address his FDV behaviour.

The attending officers encountered the woman sitting outside the property in apparent distress, while her partner was inside their shared home. The woman spoke to the officers about her partner 'bashing her up', though it was unclear whether this comment was made in relation to this incident or a previous incident. The officers determined that the woman was intoxicated and unable to provide a coherent narrative of events. Conversely, her partner appeared 'relatively sober' (as described by police on body-

worn camera), had been the first to call police, and provided an account in which the woman had been verbally abusive and threatening towards him.

Police subsequently told the woman to leave the property and offered to take her elsewhere. She protested and told police that her partner had done something to her phone. These comments were dismissed by the officers, who repeatedly told her that she had had too much to drink. When she became increasingly agitated, the woman was issued a police order. At first, she believed that the order was for her protection, and was shocked when she realised that it was to protect her partner.

Less than 15 minutes later, the woman was arrested for breaching the order. Although she had walked off the property, she remained within 50 metres of the residence (in contravention of the order). The SMF stated that she was yelling abuse at the time and a police officer noted on body-worn camera that he would also issue an infringement notice for disorderly behaviour in public.

Prior to the police order being issued, the woman's daughters had arrived at the address but police did not speak with them. During the woman's arrest, one daughter asked police why her mother was being arrested and offered to take her elsewhere. The officers advised that it was 'too late for that now', stating that police had offered to drive the woman elsewhere earlier, 'she was served the order 10 minutes ago' and 'she's had plenty of chances'. While officers were in attendance, they repeatedly referred to their knowledge of the violent history between the woman and her partner—including a statement made by one officer to the woman that he knew that her partner 'gets 90 percent of these [police orders]'. Neither of the officers appeared to have considered the FDV history relevant to their response to the woman's behaviour nor to their evaluation of the incident, which instead appeared to be treated as an isolated incident.

Upon arrest, the woman was charged and refused bail by police despite her limited record. She was detained in police custody for 24 hours before appearing in court the following day, where she was released on personal undertaking bail. The woman pleaded guilty to the charge after advising her lawyer that it was too difficult for her to keep attending court and that she just wanted the matter to be resolved. ALSWA notes that the woman's partner was still engaged in a court program to address his offending against her at the time. The woman ultimately received a low-level fine for the offence.

- I. In 2022, an Aboriginal woman in her 30s called police for assistance in an FDV incident. Two police officers attended; the male officer spoke to the male partner and the female officer spoke to the woman. The male officer issued the woman with a police order. Police later stated at trial that the woman was 'yelling and swearing' and her male partner appeared to be 'calm'. The woman was looking after a newborn baby at the time and became agitated when issued with the order. An argument occurred and the woman was subsequently charged with assault public officer (against the female police officer).

The woman pleaded not guilty to the assault police charge and was acquitted after a trial. The presiding magistrate found that the police had no grounds to issue the police order, as there was no evidence that FDV had been committed, nor evidence of a reasonable

belief or apprehension that the woman would commit FDV against her partner. Further, the making of the police order was not necessary to ensure the safety of the woman's partner. The magistrate found that a verbal argument was not sufficient to meet the family violence definition under the *RO Act*.⁵⁷ The magistrate further noted that police had fallen 'into every family violence cliché' by labelling the woman as the perpetrator, as she was 'angry and emotional' while her partner was 'calm and rational'. The magistrate ultimately ruled that the police order had not been issued lawfully and found that the female police officer was not performing a function of office at the time of the alleged assault and therefore acquitted the woman of the assault public officer charge.

J. In 2024, an Aboriginal woman in her 30s was issued a police order after officers attended an FDV incident involving herself and her ex-partner. The woman's partner was arrested during the incident. Although police stated that this arrest was for 'unrelated matters', the woman's ex-partner was issued an identical police order while he was in police custody. He subsequently advised police that the woman was texting him and provided a statement to police, who arrested and charged the woman with breaching the police order.

The woman was refused bail and held in police custody overnight for approximately 19 hours before her first court appearance. The woman told ALSWA that she had sent texts to her ex-partner because he had messaged her first, calling her a 'dog'. The woman further advised that her ex-partner had assaulted her prior to police attending the FDV incident in relation to which she was issued the police order. The matter was resolved at first hearing by way of a low-level fine suspended for one month.

4.3 Findings

These case studies evidence some of the circumstances in which Aboriginal victim-survivors are misidentified as perpetrators of FDV by police, as well as some of the ways in which this misidentification renders Aboriginal women vulnerable to further abuse and coercive control. Notably, Aboriginal victim-survivors who are bound by police orders may be pressured to return to (usually male) partners and addresses protected by police orders, thus breaching their terms and risking criminalisation and incarceration.

Further, these cases demonstrate that WA Police are generally reluctant to discontinue breach police order charges on public interest grounds, including when victim-survivors subject to long histories of abuse have been issued police orders and are later charged with breach police order offences. In these cases, ALSWA submits that it does not appear that police have seriously entertained the possibility of misidentification. Police responses indicate a limited understanding of the complexity of FDV and coercive control, particularly in the specific context of Aboriginal communities, as well as the legislative intent of police orders under the *RO Act*: namely, to protect victims from potential FDV when there is insufficient evidence to

⁵⁷ As at August 2023.

arrest the perpetrator. There is also clear evidence that police have subscribed to long outdated stereotypical views pertaining to how a “genuine” victim of FDV should respond.

ALSWA acknowledges the complex nature of FDV and the fact that victim-survivors can also be perpetrators. However, ALSWA submits that these case studies demonstrate instances in which police officers responding to FDV incidents have misidentified the party that should be protected by the order. As well as the risk that victim-survivors bound by police orders may be exposed to pressure from their (usually male) partners to breach the order (including threats of abuse and coercive control), victim-survivors may also be rendered more vulnerable to manipulation as a result of their partner’s ability to ‘weaponise’ the order (for example, by reporting a breach to police where the partner initiates contact which then descends into a disagreement or argument).

The issuing of police orders to victim-survivors can also foster distrust of police as unable or unwilling to protect them, render vulnerable women and their children homeless, and place victim-survivors at additional risk of FDV. Further, in circumstances where victim-survivors are charged with breach police order offences and refused police bail, the detrimental impacts of loss of liberty appear to be routinely overlooked by police. Refusals of police bail can also have a negative impact in relation to the supervision and safety of young children.

These case studies also suggest that some victim-survivors plead guilty to breaches of police at an early stage out of convenience (for example, to avoid the inconvenience of complying with bail conditions or having to attend future court dates) in circumstances where they may have an arguable defence or where there is a sound basis for requesting that the charge be discontinued by police. While many breaches of police orders by victim-survivors result in the imposition of low-level fines, this too can entrench disadvantage and vulnerability. Many victim-survivors do not have the capacity to pay court fines, which can lead to further detrimental outcomes such as motor vehicle licence cancellations.

Finally, ALSWA submits that the refusals of police bail in each of the cases outlined above reflect a failure to exercise discretion fairly and by having regard to all relevant considerations under the *Bail Act*.

Recommendation 3: That an external oversight mechanism be established to monitor the use of police orders by WA Police, and that this body include at least one Aboriginal member.

5. MISIDENTIFICATION OF ABORIGINAL VICTIM-SURVIVORS

5.1 Aboriginal Women’s Experiences of FDV & Police

As discussed in [Part 3](#), WA Police officers are afforded broad powers to issue police orders when responding to incidents where FDV is alleged or suspected, but a scarcity of publicly available information together with limited judicial oversight provides little opportunity for accountability and insight into their use. The unfortunate effect is that opportunities to examine

the circumstances in which police orders are issued arise almost exclusively from cases in which criminal charges are subsequently laid in conjunction with the issuing of the order. When this occurs, opportunities for judicial scrutiny nevertheless remain limited and are virtually always preceded by an accused's loss of liberty, as evidenced by ALSWA's analysis in [Part 4](#).

While there is no data pertaining to the sex and Aboriginality of persons restrained or protected by police orders in Western Australia, the deleterious effects of these data limitations are bound to have a disproportionate impact on Aboriginal people and on Aboriginal women in particular, who remain grossly overrepresented both as victims of FDV and defendants within the criminal justice system.⁵⁸

In 2018, Our Watch, a national peak body that targets the prevention of FDV against women and children, reported that 'three in five Aboriginal women have experienced physical or sexual violence perpetrated by a male intimate partner'.⁵⁹ ALSWA notes that in 2022, Western Australia had the highest rate of reported FDV assaults against females in Australia,⁶⁰ and that Aboriginal women experienced—and continue to experience—the highest rates of FDV in the state.⁶¹ Recent research suggests that virtually all (97%) of a sample of Aboriginal women incarcerated for violent crimes in Western Australia had experienced physical violence perpetrated against them by a current or former intimate partner.⁶²

ALSWA's concern regarding the unintended impact of police orders on Aboriginal women is echoed in a 2020 report published by Australia's National Research Organisation for Women's Safety ('ANROWS'), which includes a literature review that:

[...] draws out the unintended impacts of policies designed to enhance legal protection for women subjected to FDV and the evidence that Aboriginal and Torres Strait Islander women are disproportionately impacted negatively.⁶³

The report reveals that 'not only is it more likely that Aboriginal and Torres Strait Islander people will be respondents on FDV protection orders than non-Indigenous Australians, as respondents, they are again more likely to be charged for breaching the order against them'.⁶⁴ Ultimately, researchers conclude that:

[...] despite the legislative understanding of the gendered nature of FDV and policies and procedures aimed at identification of the primary aggressor, or person most in need of protection, many women are respondents on FDV protection orders and are charged with breaching those orders.

[...]

⁵⁸ See, eg, Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws* (Report No 104, 2014) ('LRCWA Report No 104').

⁵⁹ Our Watch, *Changing the Picture: A National Resource to Support the Prevention of Violence Against Aboriginal and Torres Strait Islander Women and Their Children* (Report, 2018) 6.

⁶⁰ Government of Western Australia, *2022 Women's Report Card – Priority Area: Safety and Justice* (Report, 2022) <<https://www.wa.gov.au/system/files/2022-08/Womens-Report-Card-2022-Safety-and-Justice.pdf>>.

⁶¹ *Ibid* 2.

⁶² Louise Fisher et al, 'Exposure to Childhood Adversity and Intimate Partner Violence in a Sample of Incarcerated Women in Australia' (2024) 00(0) *International Journal of Offender Therapy and Comparative Criminology* 1-18, 9.

⁶³ ANROWS, *Accurately Identifying the "Person Most in Need of Protection" in Domestic and Family Violence Law* (Research Report No 23, November 2020) 18 ('ANROWS 2020 Report').

⁶⁴ *Ibid* 55.

Overall, the quantitative results echo national trends of the over-criminalisation of Aboriginal and Torres Strait Islander peoples, along with an increasing trend of the over-criminalisation of Aboriginal and Torres Strait Islander women.⁶⁵

ALSWA further notes the finding that, from 2015-18, Western Australia had the highest proportion of female respondents in restraining order proceedings (at approximately one quarter of all respondents),⁶⁶ and that around a third of all respondents in Western Australia were Aboriginal peoples.⁶⁷

Our Watch purports that the ‘disproportionate levels of violence’ perpetrated against Aboriginal women occurs due to the ‘intersection’ of ‘three main underlying drivers,’ including the ‘ongoing impacts of colonisation’.⁶⁸ For Aboriginal people, experiences of colonisation include intergenerational and collective trauma’, ‘systemic oppression, disempowerment, racism’ and ‘personal experience of/exposure to violence’.⁶⁹ For non-Indigenous people and society, colonisation has generated ‘racialised structural inequalities of power’, ‘entrenched racism’ and ‘insufficient accountability’ for violence against Aboriginal people.⁷⁰ These drivers intersect with ‘gendered factors’, including the ‘condoning of violence against women’ and the ‘impacts of colonial patriarchy on Aboriginal and Torres Strait Islander cultures, gender roles, men, women and relationships’.⁷¹

ALSWA submits that it is essential that women’s experiences of FDV and police are understood in the context of colonisation’s ongoing effects throughout Australia today. Issues related to the engagement between police and Aboriginal women and girls were explored in a 2020 report, *Wiyi Yani U Thangani (Women’s Voices)*, published by the Australian Human Rights Commission (‘AHRC’), which conducted meetings with 2,294 Aboriginal and Torres Strait Islander women and girls in 50 locations across Australia.⁷² Pertinent to relationships between Aboriginal women and the police, former Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO, stated that:

Women and girls [...] are distrusting of the police and are not reporting harms, believing that the police response will cause them further harm.

[...]

They have raised serious concerns about the discriminatory attitudes of police toward them. They have discussed how these attitudes result in police normalising violence against our women and children, disbelieving or disregarding issues reported, or lacking urgency and failing to intervene in violent incidents.⁷³

The significance of the misidentification of victim-survivors as perpetrators will likely have an impact on the future ability and capacity of police to protect women from violence, who, if

⁶⁵ Ibid 55-6.

⁶⁶ Ibid 51.

⁶⁷ Ibid 52.

⁶⁸ Our Watch (n 59) 68.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Australian Human Rights Commission (‘AHRC’), *Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) <<https://humanrights.gov.au/our-work/commission-general/publications>>.

⁷³ Ibid 157.

previously misidentified, may be unwilling to report FDV to police. ALSWA’s concern regarding the limited oversight of police orders is exacerbated by the unknown prevalence of victim-survivors who have been—and continue to be—misidentified as perpetrators of FDV.

5.2 Factors Contributing to Misidentification

A range of factors have been identified as contributing to the misidentification of victim-survivors of FDV as perpetrators, including the abuse of systems by perpetrators, police practices in responding to FDV, criminalisation environments, and broader system processes including courts.⁷⁴

Among those contributing factors specific to policing are incident-based approaches to FDV incidents, inaccurate assessments of acts of self-defence as acts of FDV, perceptions of victim-survivors under the influence of alcohol or other substances as less credible, and criminalisation factors.⁷⁵ ANROWS noted that:

Police and courts are provided exceptional powers in civil FDV law, with serious consequences for people subjected to those powers. Therefore, police and judicial officers must have a sound understanding of the gravity of their decisions. Further, they must be supported to make decisions reflective of the legislative intent.

Despite decades of legislative, policy and procedural reform to address unintended consequences of FDV law in Australia, the problem of women being wrongly treated as perpetrators persists. The gap between intention and application is largely due to a lack of comprehension of key concepts, uncertainty about procedural expectations, and organisational practices and culture.

Based on the available data, it appears that no Australian jurisdiction is currently well-placed to provide a model of police and court practice to effectively address misidentification of victims/survivors as perpetrators of FDV. While all jurisdictions have risk assessment tools, no jurisdiction currently has tools for police to assess patterns of coercive control that would detect which party is the perpetrator and which is acting in self-defence or violent resistance. Risk assessment is, therefore, applied to the person determined to be the perpetrator, often based on visible injury and devoid of context.⁷⁶

In a recent submission, ANROWS further noted:

Victims and survivors who use self-defence against perpetrators of domestic and family violence or engage in couple fighting can be misidentified as a perpetrator of family violence by police and the legal system. Inaccurate identification of the person most in need of protection in these cases can result from incident-based policing approaches that focus on individual incidents of abuse (mostly physical) instead of patterns of behaviour in the broader context of the relationship, and by misconceptions around the stereotypical or “ideal victim” presenting as submissive and powerless. As gendered stereotypes intersect with systemic racism, Aboriginal and Torres Strait Islander women are particularly vulnerable to decisions based on stereotypes around what the ideal victim should look like.

⁷⁴ ANROWS 2020 Report (n 63) 27-31.

⁷⁵ Ibid 27-9.

⁷⁶ Ibid 12.

[...]

Misidentification can also increase a victim's and survivor's vulnerability to further manipulation by the perpetrator. For example, in cases where a victim and survivor is misidentified, the perpetrator can engage in systems abuse, such as by providing misleading statements to police [...]⁷⁷

The issues associated with incident-based policing have been highlighted by the case studies in Part 4.2 of this submission, which include circumstances in which women who have been issued police orders are noted to have presented as 'agitated', 'out of control', or 'too drunk' in the presence of police responding to alleged FDV incidents, while the women's male partners are noted to have appeared 'calm' or 'rational'.

ALSWA further highlights Hall J's comments in *Kritskikh v Director of Public Prosecutions (WA)*⁷⁸ in relation to family violence provisions under the *Evidence Act 1906 (WA)*.⁷⁹ Hall J iterated that, in addition to ensuring the admissibility of evidence of family violence when relevant to issues that are before the court, the provisions 'are also intended to address stereotypes, myths and misconceptions about family violence'⁸⁰ and 'to ensure that common misconceptions about the way in which victims of family violence may behave [...] are dispelled and not taken into account'.⁸¹

There is no pre-ordained or standard way a victim of FDV will act. As the case studies cited in this submission reflect, victim-survivors of FDV may at times remain with the perpetrator of violence, not report FDV promptly, or even be belligerent at police attendance to suspected FDV incidents.

5.3 Implications of Coercive Control

ALSWA submits that, with recent legislative changes to include 'coercive control' as a factor of FDV, it is important that police officers are trained in, and aware of, the specific circumstances in which Aboriginal victim-survivors may experience acts of coercive control.

The Standing Council of Attorneys-General, including former Western Australia Attorney-General John Quigley MLA, endorsed the *National Principles to Address Coercive Control in Family and Domestic Violence* in September 2023.⁸² The principles:

[...] recognise that coercive control in First Nations communities must be understood in the context of colonisation, intergenerational trauma, systems abuse, and racist policy and practice. In particular, the principles also recognise that the misidentification of First Nations women as

⁷⁷ ANROWS, Submission No 23 to Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Missing and Murdered First Nations Women and Children* (12 December 2022) 4-5 [citations omitted].

⁷⁸ *Kritskikh v DPP* (2022) WASC 130 ('Kritskikh').

⁷⁹ *Evidence Act 1906 (WA)* ss 39A-39G.

⁸⁰ *Kritskikh* (n 78) 84.

⁸¹ *Ibid* 106.

⁸² Attorney-General's Department, Australian Government, *The National Principles to Address Coercive Control in Domestic and Family Violence* (2023) <<https://www.ag.gov.au/families-and-marriage/publications/national-principles-address-coercive-control-family-and-domestic-violence>>.

perpetrators of family and domestic violence is a significant issue, and that responses to coercive control must not exacerbate discrimination and inequality for First Nations peoples.⁸³

Issues relating to coercive control and police responses to FDV were further examined in the 2024 Coronial Inquests into the murders of four Aboriginal women by their partners in the Northern Territory ('NT Coronial Inquests').⁸⁴

In particular, the NT Coronial Inquests examined why women may not report FDV to police, including 'fear of repercussions' from the perpetrator's family, 'fear or distrust of Police and other service providers', 'fear [of] their children being removed', and 'fear of being involved in the criminal justice system'.⁸⁵ The Coroner further identified 'cultural reasons', including discomfort speaking about 'personal matters' in front of men and other family members, and feelings of 'shame', 'risk of homelessness' and unwillingness to leave communities as reasons why women may report FDV.⁸⁶ This was compounded by experiences in which women victim-survivors had called police for help and then been detained themselves, or when police responded to women's claims with 'scepticism'.⁸⁷

The NT Coronial Inquests further found that coercive control in relation to Aboriginal women can include:

[...] family stalking, humiliation, isolation, stopping a woman seeing her children, "jealousing", destroying or threatening to destroy property, threats of witchcraft, threats of suicide, using culture to pressure her to stay in the relationship, control of finances ..., humbugging from gaol and forcing a woman to stay with a man's family while he is in gaol.⁸⁸

The situation experienced by Aboriginal women in the Northern Territory with respect coercive control mirrors the experiences of Aboriginal women in Western Australia, especially in regional and remote areas. Notably, similar concerns were raised by the Western Australia Department of Justice's Office of the Commissioner for Victims of Crime ('CVOC') in their 2024 report on the outcomes of consultations regarding legislative responses to coercive control.⁸⁹ CVOC undertook consultation with individuals (including victim-survivors) and groups (including legal and support services) across Western Australia to understand the state's 'particular geographic and demographic features', which affect the 'specific needs' of people experiencing coercive control.⁹⁰

The main finding of the CVOC report was that 'coercive control must be viewed as a process and as a pattern of abuse, and [...] each person's experience must be understood within the context of their own circumstances'.⁹¹ Coercive control is 'an active process in which one

⁸³ Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Missing and Murdered First Nations Women and Children* (August 2024) 120 [4.162].

⁸⁴ *Inquests into the deaths of Miss Yunupiju, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood* (Coroner's Court of the Northern Territory, Territory Coroner Elisabeth Armitage, 25 November 2024) NTLC 14.

⁸⁵ *Ibid* 115-6 [386].

⁸⁶ *Ibid*.

⁸⁷ *Ibid* 120 [401]-[403].

⁸⁸ *Ibid* 111 [375].

⁸⁹ Officer of the Commissioner for Victims of Crime, Department of Justice (WA), *Legislative Responses to Coercive Control: Consultation Outcomes* (Report, 2024) ('CVOC Report').

⁹⁰ *Ibid* 12.

⁹¹ *Ibid*.

person uses a range of abusive behaviours over time to control and cause harm to another person' and it is 'at the core' of FDV.⁹²

The challenge of identifying coercive control lies in its secretive nature: 'the abusive behaviours may not be obvious to an outside observer'.⁹³ These behaviours can isolate a person, control their movements, and withhold access to resources (alongside physical and sexual violence, both threatened and actual); aim to 'control the person, erode their autonomy and instil fear'; and can have a 'significant and pervasive impact on the mental health of survivors'.⁹⁴ Coercive control can be difficult to detect as the abuse is inherently contextual to the relationship between the victim-survivor and abuser.

ALSWA submits that pressure placed on women bound by police orders to breach the order through contact with the protected person (their partner or ex-partner) is another form of coercive control that is reported by ALSWA clients in police custody for the charge of breach police order.

Respondents to CVOC's consultations shared that 'control is present in most of the Aboriginal families that come to them for help'.⁹⁵ FDV against Aboriginal women and families is 'severe and frequent' in regional areas, and 'intersects with substance abuse, mental health, disability and poverty'.⁹⁶ One respondent noted that 'victims are living in dire circumstances up here with lifetime systemic disadvantage'.⁹⁷ Most significantly, another respondent noted that:

[Many] Aboriginal people [...] view the causes of family violence for their communities as being different than for non-Indigenous communities and relating to the ongoing impacts of colonialism and intergenerational trauma, rather than gender inequality.⁹⁸

Aboriginal women experience 'fear, [...] aggression, control and constraint' in both public and private contexts, which informs their decisions to seek (or not seek) protection outside the relationship, including through police.⁹⁹ Indeed, the Western Australian Council of Social Service ('WACOSS') submitted that Aboriginal women 'are substantially less likely than non-Aboriginal women to call police due to experiences of colonisation, dispossession, ongoing racism and discrimination, fear about authorities removing their children or about Black deaths in custody'.¹⁰⁰

The CVOC report highlighted that misidentification can occur both 'unintentionally' (for example, when 'individuals apply problematic assumptions ... to how victim-survivors should react to violence'),¹⁰¹ and 'intentionally' (for example, when a perpetrator 'using coercive control misrepresents the victim-survivor as a perpetrator, including through legal processes', such as calling the police).¹⁰² This is particularly pertinent for Aboriginal women, whose

⁹² Ibid.

⁹³ Ibid 12-13.

⁹⁴ Ibid 13-14.

⁹⁵ Ibid 14.

⁹⁶ Ibid 16.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid 26.

¹⁰¹ Ibid 63.

¹⁰² Ibid.

experiences of ‘over-policing and their misidentification as [FDV] perpetrators [...] is inherently connected’.¹⁰³ This misidentification ‘creates safety risks and can lead to [...] adverse consequences’, including ‘loss of housing, child protection intervention, loss of income support, [...] court proceedings, and considerable psycho-social wellbeing difficulties over time’.¹⁰⁴

Respondents to CVOC’s consultations reported that issues with police responses to coercive control generally centred on a lack of ‘willingness and/or capacity of police to respond to incidents in the absence of a criminal act (or imminent danger)’.¹⁰⁵ Respondents noted that misidentification often occurs in:

[Instances] that the police are called in only when the affected person “snaps”, after having been taunted and tormented for extended periods of time. Once an argument erupts, and without deeper investigation and appropriately targeted questioning, the highly emotional victim may in fact be seen as the cause of the problem while the persistent bully sits unnoticed.¹⁰⁶

Another example of misidentification was provided by a respondent:

[An Aboriginal woman] may act in a way that she knows from experience her partner will respond to with physical violence, simply to “get it over and done with”, because acting early is safer for her and her children than waiting. Yet, in this scenario, both parties may be identified by responders as “they are both perpetrators, they are fighting together, they have a pattern of fighting together”, when in fact the woman is taking proactive steps to protect herself and her children.¹⁰⁷

In considering legislative approaches to coercive control, ALSWA supports the comments of one responder:

[The] criminalisation of coercive control without significant re-education will do little to protect victim-survivors and could in fact embed further trauma and disadvantage. This is particularly so for First Nations communities and culturally diverse minorities who face inherent complications and increased vulnerabilities with seeking protection from, and redress, in the law.¹⁰⁸

In November 2023, the Western Australia Government announced that it intended to ‘take a phased approach to [the] criminalisation’ of coercive control.¹⁰⁹ ALSWA supports the need for increased specialised training for police, and submits that it is integral that such specialised training be part of the phased approach.

ALSWA further emphasises one recommendation of respondents to CVOC’s consultation: that, *inter alia*, the Government ‘introduce a review process to facilitate withdrawal of criminal

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid 28.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid 16.

¹⁰⁸ Ibid 59.

¹⁰⁹ Government of Western Australia, ‘Justice Reforms to Target Coercive Control’ (Media Release, 28 November 2023) <<https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/Justice-reforms-to-target-coercive-control-20231128>>.

charges in cases where a misidentification has occurred'.¹¹⁰ ALSWA strongly supports this recommendation, and submits that many of the case studies outlined in this submission demonstrate the need for such a process.

Recommendation 4: That there be increased training for WA Police specific to FDV in Aboriginal communities and the experiences of Aboriginal women, and that this training be delivered by, or in close consultation with, Aboriginal Community Controlled Organisations to ensure it is culturally aware and informed.

6. WA POLICE PRACTICES & TRAINING

ALSWA's concern regarding the current use of police orders by WA Police is compounded by the scarcity of publicly available information pertaining to the efficacy of police FDV training in Western Australia. Notably, where limited information is available, references to training that is specific to FDV in Aboriginal communities is vague and unenlightening. This remains the case despite numerous recommendations that have been made—and continue to be made—by government bodies and judicial officers.

6.1 Past Investigations, Recommendations & WA Police Responses

The following is presented as an overview of findings, recommendations, and responses arising from significant investigations into FDV responses in Western Australia over the past decade. This is not an exhaustive review, nor is it intended to suggest that actions have not been taken to give rise to the recommendations outlined. Rather, it is intended to highlight a lack of public transparency regarding the steps that have been taken to ameliorate key issues and concerns which, in ALSWA's submission, are longstanding and remain inadequately addressed.

i. Law Reform Commission of Western Australia (2014)

In June 2014, the Law Reform Commission of Western Australia ('LRCWA') recommended that all police officers receive 'comprehensive and ongoing' FDV training, including 'contemporary understandings of the nature and dynamics' of FDV and 'specific issues' faced by Aboriginal communities.¹¹¹ This recommendation arose in part due to issues noted by multiple legal and social support services that submitted that the 'failure' of WA police officers 'to identify the primary aggressor' was raising concerns 'about the consistency and appropriateness' of police responses to FDV, particularly in relation to the issuing of police orders against FDV victims.¹¹²

The LRCWA further recommended that 'training be delivered' by FDV experts from WA Police as well as government and non-government agencies, and the establishment of a 'multi-agency stakeholder committee ... to regularly review the content of [WA Police] training and

¹¹⁰ CVOC Report (n 89) 72.

¹¹¹ LRCWA Report No 104 (n 58) 71-3.

¹¹² Ibid.

monitor its effectiveness'.¹¹³ The report referenced WA Police's submission that police recruits received 4.5 days of training in FDV police procedures and police, which included presentations from an array of police, government, and non-government agencies, as well as two days of 'diversity training'.¹¹⁴

Concerningly, it remains unclear whether any training was delivered by Aboriginal FDV facilitators at that time, or whether Aboriginal perspectives have been implemented in FDV training for WA Police in the 11 years that have now passed since the LRCWA's report.

ii. Community Development and Justice Standing Committee (2015)

In October 2015, the Western Australia Community Development and Justice Standing Committee ('CDJSC') produced a report on the findings of its investigation into the means by which WA Police evaluate their response to FDV.¹¹⁵ The CDJSC found that, in addition to inconsistent approaches to information recording:

Issuing of Police Orders was also inconsistent. While some officers respond appropriately by correctly identifying the perpetrator and/or removing him from the scene, some others issued Police Orders against the victim.¹¹⁶

Referring to the LRCWA's consideration of police training in 2014, the CDJSC reported that:

Evidence to the Committee echoed the LRCWA's finding that specialised, targeted training was the best way of increasing the effectiveness of police responses to family and domestic violence. In particular, there should be:

- More hours allocated;
- Greater involvement of external experts and support services;
- Aboriginal cultural awareness training;
- Broad cultural sensitivity training;
- Training to promote understanding of the dynamics of family and domestic violence;
- Prioritisation of face-to-face training over computer-based training;
- Ongoing education for frontline officers on police policy.

The Family Violence State Coordination Unit regularly reviews the content of its family and domestic violence training, but exactly how this review is conducted, or the standards that the training is expected to meet, was not explained.

WA Police informed the Committee, however, that current family and domestic violence training would be assessed as part of a comprehensive review.¹¹⁷

¹¹³ Ibid 73.

¹¹⁴ Ibid 72.

¹¹⁵ Community Development and Justice Standing Committee ('CDJSC'), Parliament of Western Australia, *A Measure of Trust: How WA Police Evaluates the Effectiveness of its Response to Family and Domestic Violence* (Report No 10, October 2015).

¹¹⁶ Ibid vi.

¹¹⁷ Ibid vii.

Notably, the CDJSC found that:

The Aboriginal cultural awareness training provided to WA Police recruits and officers is ad hoc, inconsistent and insufficient.¹¹⁸

The CDJSC ultimately recommended that WA Police adopt all elements of the recommendation made by the LRCWA pertaining to training, that face-to-face training be prioritised where possible, and that training be provided to ‘ensure that the correct policy and procedures are being used, to ensure a consistent response [to FDV]’.¹¹⁹ The CDJSC also recommended that WA Police report progress on FDV training in their annual report.¹²⁰

In March 2016, all of the recommendations arising from the CDJSC’s findings regarding police responses to FDV were ‘noted’, with clarification that WA Police would investigate ‘the practicality of the delivery of [FDV] training programs in a face to face setting in place of [...] e-learning’,¹²¹ but that mandatory reporting of FDV training in their annual report was ‘not considered necessary’ as ‘[the report] already includes commentary on the training provided’.¹²²

ALSWA notes that FDV training was not mentioned in WA Police Annual Reports from 2014-2016 and submits that, while ‘commentary’ has been included since, it largely remains unenlightening in circumstances where references to new developments are scant and no information beyond the title of the initiative appears to be publicly available.

iii. Ombudsman Western Australia (2015)

In November 2015, additional findings and recommendations were made by the Ombudsman Western Australia (‘Ombudsman’) following a major own motion investigation into issues associated with restraining orders and their relationship with FDV fatalities.¹²³

Of particular relevance, the Ombudsman noted that the findings of this investigation supported the LRCWA’s recommendation pertaining to WA Police training.¹²⁴

A year later, in a report published on the steps taken to effect recommendations arising from this investigation,¹²⁵ it was noted that WA Police had advised the Ombudsman that work would be undertaken to ‘create an enhanced training package for recruit training, with a focus on the dynamics of [FDV], coercion and control, and the importance of risk and behavioural factors’ and that the State Family Violence Unit ‘will also provide in service training on the same

¹¹⁸ Ibid 69.

¹¹⁹ Ibid 75.

¹²⁰ Ibid 76.

¹²¹ Premier of Western Australia, Response to Recommendations of the Legislative Community Development and Justice Standing Committee, *A Measure of Trust: How WA Police evaluate the effectiveness of its response to family and domestic violence* (15 March 2016) 1-7, 1.

¹²² Ibid 2.

¹²³ Ombudsman Western Australia, *Investigation into Issues Associated with Violence Restraining Orders and their Relationship with Family and Domestic Violence Fatalities* (Report, November 2015).

¹²⁴ Ibid 206.

¹²⁵ Ombudsman Western Australia, *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’* (Report, 10 November 2016).

topics'.¹²⁶ WA Police further advised of 'a staffing increase for the State Family Violence Unit, to enable [the Unit] to undertake an audit function'.¹²⁷

In their *Annual Report 2016*, WA Police further acknowledged the Ombudsman's report, together with the LRCWA's 2014 report, noting that:

Both reports have identified the opportunity to apply the impact assessment processes to consider the needs of social minority groups. Specifically, the need to improve police responses and reduce recidivism in family violence offending, by ensuring consistent service delivery and the safety of victims through the review of policy and guidelines.

A current review is being undertaken to consider best practice in the type of governance structures required to further embed diversity management practices and procedures into decision making processes. This includes business as usual, along with the integration of equity impact assessments into program and project management frameworks.¹²⁸

The *Annual Report 2016* also noted the creation of the 'Crime Investigation and Family Violence Division to improve [WA Police's] strategic response to family violence and examine current and emerging trends'.¹²⁹

Despite these acknowledgements, ALSWA is unaware of any publicly available information pertaining to either the enhanced training package or the State Family Violence Unit's audit function.

iv. Community Development and Justice Standing Committee (2016)

In March 2016, following an investigation into the measures used by WA Police to evaluate management of personnel, the CDJSC reported:

Throughout the Inquiry, the [CDJSC] has heard that WA Police lacks the capacity to conduct the kind of detailed analysis that is required for evaluation and to support an intelligence-led approach. It was suggested that the agency needed to change its attitude to data.¹³⁰

The CDJSC further noted that, while WA Police provided 'cultural awareness training to its frontline, including instruction from a member of local Aboriginal communities on locally-specific issues',¹³¹ this training was 'not achieving the desired results, according to specialist support service providers'.¹³² Notably, '[people] from Aboriginal and [culturally and linguistically diverse] backgrounds who were subject to family and domestic violence, for example, reported substandard service from WA Police based on indirect racism or simply misunderstandings of their cultures or specific needs'.¹³³

¹²⁶ Ibid 22.

¹²⁷ Ibid 52.

¹²⁸ Western Australia Police, *Annual Report 2016* (Report, 2016) 129.

¹²⁹ Ibid 20.

¹³⁰ CDJSC, Parliament of Western Australia, *How Do They Manage? An Investigation of the Measures WA Police has in Place to Evaluate Management of Personnel* (Report No 12, March 2016) xiii.

¹³¹ Ibid 52.

¹³² Ibid 53.

¹³³ Ibid.

The Western Australia Government's response to this report did not engage with these particular comments.¹³⁴

v. Coroner's Court of Western Australia (2016)

In December 2016, following the Coronial Inquest into the death of Ms Dhu, further calls for increased cultural training within WA Police were made in formal recommendations by State Coroner Fogliani,¹³⁵ who emphasised:

[...] it is vital that cultural competency training also be undertaken face-to-face so that trainers have the opportunity to assess competence in this area and if necessary, recommend appropriate interventions to ensure that police officers not only learn culturally relevant information, but that they also demonstrate the requisite attitudes and skills.¹³⁶

ALSWA is unaware of any published response made by WA Police to the State Coroner's recommendations. Notably, Recommendations 3 and 4 concerned, *inter alia*, the need for mandatory initial and ongoing cultural competency training to WA Police officers, with the involvement of Aboriginal peoples in the delivery of this training.¹³⁷ ALSWA notes that mandatory cultural competency training was not introduced by WA Police until 2020.¹³⁸

vi. Joint Standing Committee on Corruption and Crime Commission (2018)

In September 2018, almost two years after the findings of the Coronial Inquest into the death of Ms Dhu were delivered and over the Joint Standing Committee on the Corruption and Crime Commission (WA) ('JSCCCC') produced a report which highlighted 'ongoing concerns around systemic issues identified with police and Aboriginal interaction'.¹³⁹

The report noted that recruit training lasted 28 weeks, with only around one and half days devoted to cultural diversity training.¹⁴⁰ Further, while WA Police had advised the JSCCCC that work was being undertaken 'with an Aboriginal educator and researcher [...] to improve the curriculum used to train police recruits in cultural diversity, particularly in Aboriginal issues',¹⁴¹ it appeared that 'the current proposal is a review of existing training and not the implementation of any enhanced cultural diversity training.'¹⁴²

¹³⁴ Western Australia Government, Response to Recommendations of the Community Development and Justice Standing Committee, *How Do They Manage? An Investigation of the Measures WA Police Has in Place to Evaluate Management of Personnel* (2016).

¹³⁵ *Inquest into the Death of Julieka Ivanna Dhu* (Coroner's Court of Western Australia, State Coroner Fogliani, 16 December 2016) 11020-14.

¹³⁶ *Ibid* 137 [759].

¹³⁷ *Ibid* 137-138.

¹³⁸ See, eg. WA Police, Submission No 83 to Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Missing and Murdered First Nations Women and Children* (2 May 2023) 3.

¹³⁹ JSCCCC, Parliament of Western Australia, *The More Things Change: Matters Arising from the Corruption and Crime Commission's Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* (Report No 8, September 2018).

¹⁴⁰ *Ibid* 7.

¹⁴¹ *Ibid* 8.

¹⁴² *Ibid*.

Having noted ‘recommendations made as far back as 2013’ regarding cultural competency training of both recruits and sworn officers,¹⁴³ the JSCCCC expressed concern that ‘mid-2018, it remains that cultural diversity training for police officers in Western Australia appears to be neither appropriate nor sufficient’.¹⁴⁴ Notably, the report found that while WA Police ‘have progressed a range of initiatives to improve the delivery of cultural awareness training [...] more needs to be done in the area of dealing with vulnerable people’.¹⁴⁵

In a response to this report, Michelle Roberts (then Minister for Police) advised that WA Police had created the Aboriginal Affairs Division (‘AAD’) in August 2017, aiming ‘to build, foster and sustain better relations with [Aboriginal peoples] and communities’.¹⁴⁶ The response further advised that WA Police had established the Aboriginal Police Advisory Forum (‘APAF’), comprising ‘the police executive and eight Aboriginal leaders from across Western Australia’, which held its first meeting in September 2018.¹⁴⁷

The establishment of the AAD and APAF was further discussed in the WA Police *Annual Report 2019*,¹⁴⁸ which described WA Police’s commitment to improving cultural competence through additional actions such as the launch of WA Police’s inaugural Reconciliation Action Plan (‘RAP’).¹⁴⁹ In WA Police’s *Annual Report 2020*, it was further noted that the AAD was working to develop the WA Police ‘Aboriginal Affairs Strategic Pathway’, which was due ‘to be officially launched in 2020-21’.¹⁵⁰

While ALSWA acknowledges that these appear to have been positive steps at the time, ALSWA is again concerned by the limited publicly available information pertaining to these initiatives and the work undertaken by WA Police to ensure their ongoing efficacy. WA Police’s first RAP appears to have been its last. At the time of writing, the APAF has not been referenced in a WA Police Annual Report since 2023, and the AAD has not been mentioned since 2022. ALSWA has also been unable to confirm whether the WA Police ‘Aboriginal Affairs Strategic Pathway’ was officially launched in the 2020-21 financial year as planned.

Notably, WA Police recently gave evidence that the APAF was discontinued over two years ago, having last held a meeting in March 2023.¹⁵¹ WA Police advised that this occurred ‘as a result of consideration by the agency to engage a significantly broader proportion of the Aboriginal community’¹⁵² and that, in consultation with District Police Officers and local Aboriginal leaders, work has since been led by the AAD to enact the Police Aboriginal

¹⁴³ Ibid 9.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid 15.

¹⁴⁶ Minister for Police, Response to Joint Standing Committee on Corruption and Crime Commission, *The More Things Change: Matters Arising from the Corruption and Crime Commission’s Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* (2018) 1.

¹⁴⁷ Ibid.

¹⁴⁸ Western Australia Police Force, *Annual Report 2019* (Report, 2019) 26-30.

¹⁴⁹ Western Australia Police Force, *Reconciliation Action Plan May 2019 – December 2020* (Report, 2019).

¹⁵⁰ Western Australia Police Force, *Annual Report 2020* (Report, 2020) 27.

¹⁵¹ Standing Committee on Estimates and Financial Operations, Parliament of Western Australia, *2025-26 Budget Estimates (Additional Questions, Western Australia Police Force, 2025)* 3.

¹⁵² Ibid.

Advisory Group ('PAAG').¹⁵³ WA Police further advised that the PAAG operates in six locations across Western Australia and has met collectively on 18 occasions.¹⁵⁴

Despite these significant developments, ALSWA is unaware of any publicly available sources of information regarding the past work of the APAF, the ongoing work of the AAD, or the enactment of the PAAG.

vii. Ombudsman Western Australia (2022)

In 2022, the Ombudsman published a report following an investigation into FDV-related deaths by suicide in Western Australia.¹⁵⁵

Among the cases examined within the report were those of 43 women and children who had FDV-related contact with WA Police prior to their deaths. Notably, 41 had been identified as victim-survivors in a police Family Violence Incident Report ('FVIR'), while 32 had been identified as both victim-survivors and people of interest or offenders.¹⁵⁶ The Ombudsman noted that these findings were consistent with national data and further stated:

Across Australia, the problem of misidentification of women as perpetrators of family and domestic violence is shown in the over-representation of women named as respondents in Restraining Order and equivalent legal proceedings (comprising between one fifth and one quarter of these applications), as compared to reliable data on experiences of family and domestic violence.¹⁵⁷

The Ombudsman subsequently recommended that WA Police implement the policy and practice reform proposed by ANROWS, including the development of guidance on:

- Distinguishing between coercive controlling violence (physical and non-physical) and violence used in response to ongoing abuse;
- Identifying patterns of coercive control;
- Identifying the person most in need of protection in ambiguous circumstances; and
- Determining whether a police order is necessary or desirable.¹⁵⁸

The following year, in a report on the steps taken to effect recommendations arising from this report,¹⁵⁹ the Ombudsman noted that WA Police referred to the implementation of the 'Family Violence Training and Assessment Strategy 2023-2025', which includes 'recently developed training programs... [that] encompass the numerous factors of coercion and control related to abusive situations.'¹⁶⁰ Reference was also made to the introduction of technologies such as the 'Family Violence History Assist Tool', which provides officers with access to 'the history of previous risk and criminal indicators', and the 'Family Violence Incident Report Application'

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ombudsman Western Australia, *Investigation into family and domestic violence and suicide* (Report, October 2022).

¹⁵⁶ Ibid vol 1, 47.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid 49.

¹⁵⁹ Ombudsman Western Australia, *A report on giving effect to the recommendations arising from the Investigation into family and domestic violence and suicide* (9 November 2023).

¹⁶⁰ Ibid 21.

on police-issued mobile phones, which ‘includes built-in safeguards to aid officers in assessing the necessity of a Police Order.’¹⁶¹

While ALSWA acknowledges the Ombudsman’s finding that steps have been taken and further steps are proposed to be taken by WA Police to give effect to the recommendations made,¹⁶² ALSWA notes that neither the ‘Family Violence Training and Assessment Strategy 2023-2025’, nor information pertaining to its associated training programs, appear to have been made publicly available. This means that there is limited information available to the public to understand what work is being done to combat the misidentification of victim-survivors.¹⁶³

WA Police further advised the Ombudsman of a revised approach to ‘Family Violence Health Checks’—audits of random samples of FVIRs and Computer Aided Dispatch (‘CAD’) reports undertaken by the Family Violence Division of WA Police—which were to be undertaken more frequently.¹⁶⁴ In addition to compliance with relevant policies, procedures and legislation, these checks were said to examine:

...whether the police officer undertook sufficiently detailed questioning regarding methods of coercion being used; whether there were sufficient grounds to issue a police order; and whether the police order correctly identified the primary aggressor. Information to support decision making is further contained in the Family Violence Incident Report Application.¹⁶⁵

ALSWA notes that there is no information on the methodology that underpins ‘Family Violence Health Checks’, including the manner in which the findings of checks are recorded, nor the means to which such findings are subsequently utilised.

In WA Police’s *Annual Report 2023*, it was noted that the Family Violence Division ‘checks a sample of incident responses [to family violence incidents] and offers training on initial attendance’ and also ‘checks a sample of investigations to support frontline response and investigation standards.’¹⁶⁶ It is unclear whether these checks are ‘Family Violence Health Checks’. However, if they are not, ALSWA is also unaware of any published information in relation to the frequency of such checks, the manner in which they are conducted and reported on, the nature of the training that may subsequently be offered, and the number of officers who have undertaken this training (noting it does not appear to be a requirement).

viii. Coroner’s Court of Western Australia (2024)

In December 2024, Coroner Jenkin delivered the findings of the Coronial Inquest into the FDV murder of NW in Kununurra in 2021.¹⁶⁷ The Coroner found that the police response to the

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Regarding limitations arising due to the inability to source this strategy see, eg, Aboriginal Family Legal Service WA, Submission to Australian Law Reform Commission, *Justice Responses to Sexual Violence: Issues Paper 49* (May 2024) 8 <<https://www.alrc.gov.au/wp-content/uploads/2024/07/40.-Aboriginal-Family-Legal-Service-WA.pdf>>.

¹⁶⁴ Ibid 22.

¹⁶⁵ Ibid.

¹⁶⁶ Western Australia Police Force, *Annual Report 2023* (Report, 15 October 2023) 37.

¹⁶⁷ *Inquest into the death of NW* (Coroner’s Court of Western Australia, Coroner Jenkin, 2 December 2024) WACOR 51.

suspected FDV incident was ‘inadequate’,¹⁶⁸ but stopped short of finding that ‘any failure by any member of the WA Police caused or contributed to NW’s death’.¹⁶⁹

Both WA Police and the Coroner found that on-duty police failed to adequately respond to a second triple-0 call made by NW’s mother on the night of NW’s death. In response, the Coroner recommended, *inter alia*, that ‘the face-to-face training developed by the Family Violence Division (i.e.: The Family Violence Learning Event) [be made] mandatory for all front line duty police officers’.¹⁷⁰ Counsel for the Police advised the Coroner that this training was ‘due to recommence on 14 November 2024’.¹⁷¹

This recommendation echoes that made by the CDSJC—and noted by WA Police—in 2015. At the time of writing, however, the content of this training does not appear to be publicly available and it remains unclear how much of the training specifically relates to responding to FDV incidents that involve Aboriginal people.

ALSWA notes that just prior to the publication of the findings of this Coronial Inquest, WA Police were criticised for failing to engage with the Australian Senate Standing Committees on Legal and Constitutional Affairs’ *Inquiry into Missing and Murdered First Nations Women and Children*.¹⁷²

6.2 Recent Developments

On 30 January 2025, the Western Australia Government announced \$2 million to fund ‘specialised’ FDV training for ‘first responders’ in the justice system (including WA Police) that will deliver ‘targeted training to assist their role in supporting victim-survivors and holding perpetrators to account’.¹⁷³ The media release further stated that ‘dedicated funding has been committed to develop Aboriginal-led training about family violence and the unique experiences facing Aboriginal victim-survivors engaging with the justice system’.¹⁷⁴

While ALSWA supports this initiative in theory, little information has been provided in relation to the content and implementation of this training, especially in relation to frontline police officers.

Recently published information indicates that the funding allocated to WA Police in this instance is \$500,000 for the 2025-26 to 2026-27 financial years, all of which is to be used ‘[to] support implementation of experiential theatre based family and domestic violence training’.¹⁷⁵ ALSWA welcomes increased face-to-face FDV training for WA Police, and acknowledges the recent praise this training has received from the Centre for Women’s Safety and Wellbeing

¹⁶⁸ Ibid 28 [109].

¹⁶⁹ Ibid 29 [113].

¹⁷⁰ Ibid 31 [115].

¹⁷¹ Ibid 32 [117].

¹⁷² Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into Missing and Murdered First Nations Women and Children* (August 2024) 47-8 [3.36]-[3.39].

¹⁷³ Government of Western Australia, ‘Cook Government funds \$2 million FDV training for justice sector’ (Media Release, 30 January 2025) <<https://www.wa.gov.au/government/media-statements>>.

¹⁷⁴ Ibid.

¹⁷⁵ Western Australia, *Parliamentary Debates*, Legislative Council, 17 September 2025, 3285 (Jackie Jarvis).

(WA).¹⁷⁶ Nevertheless, ALSWA submits that the absence of information regarding any aspects of this training that are specific to FDV incidents involving Aboriginal peoples is concerning, as is a lack of clarity as to whether the new training is ongoing and available to sworn officers or provided only to recruits. ALSWA notes, for example, that \$500,000 of the funding allocated to the Department of Justice is specifically for the ‘development and delivery of Aboriginal-led and place-based training to Justice staff about Aboriginal family violence’.¹⁷⁷

The Western Australia Government also included extra funding in the state budget for FDV programs in 2019, of which \$1.7 million was specifically allocated to a program which would ensure that ‘every police officer in the state’ received ‘specialist training on FDV’.¹⁷⁸ Despite this announcement, ALSWA is unaware of any publicly available information pertaining to how this program was designed, and what it entailed, beyond what was published in the WA Police *Annual Report 2020*: that 99% of police officers completed face-to-face ‘Response to Family Violence Training’¹⁷⁹ which ‘[incorporated] a focus on Aboriginal people’.¹⁸⁰

ALSWA also notes that, while cultural competency training is now mandatory for WA Police officers, the recent finding of State Coroner Fogliani during the Coronial Inquest into the death of Joyce Gladis Clarke was that ‘police officers gave varying responses on the question of whether and when they had had any Aboriginal Cultural Awareness Training, and if so, what they had learnt from it’.¹⁸¹ The State Coroner subsequently made the following recommendations:

Recommendation 1

I recommend that consideration be given to establishing a section or branch of the WA Police dedicated to improving the relationship between WA Police and Aboriginal persons, and that there be consultation with Aboriginal persons in connection with the role of this section or branch.

Recommendation 2

I recommend that WA Police oversee Aboriginal Cultural Awareness training, to be co-designed with, and delivered by, Aboriginal persons, including face to face training on a regular basis, that consideration be given to tailoring it to the region in which the police officers are serving, and that consideration be given to emphasising the importance of the effect of intergenerational trauma, and foetal alcohol spectrum disorder, and the importance of cultural wellbeing.¹⁸²

ALSWA submits that these recommendations once again echo those that have been made over more than decade, emphasising the need for greater monitoring, accountability, and transparency regarding WA Police practices. Ensuring that WA Police practices and policies

¹⁷⁶ CWSW (Centre for Women’s Safety and Wellbeing) (Facebook, 25 July 2025 10:00am WST) <<https://www.facebook.com/CWSW1/photos/csws-and-representatives-of-the-specialist-family-and-domestic-violence-sector-h/1143084721178849/>>.

¹⁷⁷ Western Australia, *Parliamentary Debates*, Legislative Council, 17 September 2025, 3285 (Jackie Jarvis).

¹⁷⁸ Western Australia, *Parliamentary Debates*, Legislative Assembly, 4 September 2019, 6422 (MH Roberts).

¹⁷⁹ Western Australia Police Force, *Annual Report 2020* (Report, 2020) 8.

¹⁸⁰ Ibid 32.

¹⁸¹ *Inquest into the Death of Joyce Gladis Clarke* (Coroner’s Court of Western Australia, State Coroner Fogliani, 9 June 2025) CORC 44 of 2019, 70 [356].

¹⁸² Ibid 76.

are sufficiently culturally aware and informed is essential to their ability to address factors that contribute to the misidentification of Aboriginal and Torres Strait Islander victim-survivors. As noted by ANROWS:

For Aboriginal and Torres Strait Islander people, [the factors contributing to misidentification of victim-survivors] must be also understood in the context of their experiences of colonisation and systemic racism, which impact negatively on their interactions with non-Indigenous systems and authority, particularly police. Successive assimilation and protection policies denied traditional lands, language and culture, and freedom of movement and marriage; and resulted in forced removal of Aboriginal and Torres Strait Islander children from their families. The consequences of the systemic racism inherent in these policies, along with under- or over-policing, lack of cultural awareness and bias in policing responses, are community mistrust and suspicion of police and law enforcement. These impact on a range of factors informing police decision-making when responding to [FDV] discussed in the literature, particularly prior history, substance use, who contacted the police, offender and witnesses present at the scene, organisational factors and systems factors.¹⁸³

ALSWA submits that, given the longstanding issue of limited information being made available to the public, it is still not possible to determine whether both FDV training and cultural competency training for WA Police officers is being appropriately evaluated and overseen.

In the context of FDV in Western Australia and its significance to the broader community (as demonstrated by its importance in recent announcements from the Western Australia Government and as an election commitment from the Western Australia Labor Party),¹⁸⁴ ALSWA submits that it is of the utmost importance to ensure that the people most vulnerable to FDV are protected and not punished or targeted by laws that were created to protect them and ensure their safety.

ALSWA submits that the importance of FDV-prevention strategies that are developed and implemented by Aboriginal people and communities cannot be overstated,¹⁸⁵ and that effective and meaningful cultural awareness training is of paramount importance to ensuring support for Aboriginal victim-survivors. This requires ongoing evaluation, monitoring, and reporting, all of which must occur in consultation with Aboriginal peoples.

Recommendation 5: That there be greater transparency regarding WA Police training specific to both FDV and cultural competency, including public reporting on the delivery of this training and measurements of its efficacy.

¹⁸³ ANROWS 2020 Report (n 63) 27 [citations omitted].

¹⁸⁴ See, eg, Government of Western Australia, 'Family and Domestic Violence Funding Tops Half a Billion Dollars' (Media Statement, 2 December 2024); Keane Bourke, Lauren Smith and Brianna Melville, 'Restraining Order Reform on WA Labor's Family Domestic Violence Prevention Election Pledge', *ABC News* (online, 8 January 2025) <<https://www.abc.net.au/news/2025-01-08/wa-labor-unveils-domestic-violence-election-promises/104791972>>.

¹⁸⁵ Our Watch (n 59) 45.

6.3 Underutilised Data

i. Police Records of Suspected FDV Incidents

In accordance with the *Police Act 1982* (WA), police officers and all other designated persons are required to make a written record of all FDV incidents in compliance with a guideline or policy prepared by the Commissioner of Police.¹⁸⁶

The WA Police Commissioner's Orders and Procedures Manual ('COPS Manual') provides that police officers must make a record 'in either the Incident Management System (IMS) as an FVIR and/or CAD.¹⁸⁷ The COPS Manual differentiates between 'immediate family' and 'extended family' relationships for the purpose of recording, with reporting requirements dependent upon the incident circumstances and the relationship group under which it is categorised.¹⁸⁸

In circumstances where no FDV offence is suspected and no police order has been issued, a CAD must include full incident details, police actions, and the reason why no police order was issued.¹⁸⁹ In all other circumstances, an FVIR or an Incident Report (IR) is required.¹⁹⁰ A FVIR or IR must include an accurate, chronological, and accessible account with explanations of alleged matters; information regarding the FDV history of involved parties; risk identification in relation to the FDV history (as opposed to the isolated incident); and patterns of behaviour that are also not limited to the incident in isolation.¹⁹¹

ALSWA submits that this data is an invaluable means by which a greater understanding of the use of police orders, and the prevalence of FDV more broadly, can be gained. However, this data currently appears to be underutilised and a deidentified dataset—which would arguably provide significant insight into the FDV profile of Western Australia residents and associated WA Police responses—is unavailable to the public.

ii. Data Pertaining to Police Orders

In 2023, WA Police issued 24,888 police orders during attendance at alleged FDV incidents.¹⁹² ALSWA is not aware of any published figures for the calendar years 2020-2022, but a comparison between this figure and others provided by WA Police¹⁹³ suggests that police orders are being used more frequently now than in previous years.¹⁹⁴ In 2024, a total of 12,360 police orders had already been issued as at 29 May 2024.¹⁹⁵

¹⁸⁶ *Police Act 1982* (WA) s 135.

¹⁸⁷ Western Australia Police Commissioner's Orders and Procedures Manual ('COPS Manual'), *FV-01.02 Recording Family Violence Incidents*.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² Western Australia, *Parliamentary Debates*, Legislative Council (30 May 2024) 2640.

¹⁹³ Western Australia Police Force, Submission 39A to Community Development and Justice Standing Committee, Parliament of Western Australia, *Inquiry into the Magistrates Court of Western Australia's Management of Matters Involving Family and Domestic Violence* (26 March 2020) 1.

¹⁹⁴ See Table 1 within Part 3.4 of this submission.

¹⁹⁵ See above n 192.

These figures suggest a breadth of available data from which a greater understanding of the circumstances in which police orders are issued could be developed, but ALSWA is unaware of any publicly available reports in which data has been utilised for this purpose. At the time of writing, there is no publicly available information pertaining to the frequency with which police orders are issued:

- (a) In the course of police investigating particular types of suspected/alleged FDV incidents;
- (b) In circumstances where criminal offences are alleged/identified;
- (c) In circumstances where no criminal offences are alleged/identified; nor
- (d) In the context of a history of alleged/suspected FDV perpetrated by or against either of the parties.

Further, there is no information that pertains to the frequency with which persons bound or protected by police orders have previously been bound or protected by such orders.

Investigations that have utilised FVIR reports to examine police responses to FDV more broadly¹⁹⁶ exemplify the importance of such data to establish the efficacy of practices and procedures, and to enable recommendations where an area of improvement is identified.

Recommendation 6: That data on the use of police orders by WA Police, monitoring of their use, and findings from reviews of their use be made public to ensure accountability.

6.4 The Need for Greater Oversight

The police order regime under the *RO Act* was last reviewed by the Minister in 2008,¹⁹⁷ which was the sole review required under the legislation.¹⁹⁸ A scarcity of publicly available information in relation to WA Police policies and procedures for FDV responses—together with gaps and omissions in the limited information that is available—presents significant challenges to the monitoring and determination of the efficacy of police orders and FDV responses more broadly.

It has been nearly ten years since the CDJSC observed that:

While WA Police has an internal regime of oversight over the police response to family and domestic violence, the Committee was not able to assess the extent to which this is performed. Monitoring may be dependent on the leadership of senior officers and their willingness to hold those under their command accountable.

¹⁹⁶ See, eg, Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (Report, 19 November 2015); Ombudsman Western Australia, *Investigation into family and domestic violence and suicide* (Report, October 2022).

¹⁹⁷ Department of the Attorney General, Parliament of Western Australia, *A Review of Part 2 Division 3A of the Restraining Orders Act 1997* (Report, 2008).

¹⁹⁸ *RO Act* (n 6) s 30I.

It appears that internal measurement of police performance in the family and domestic violence sphere is a work in progress, with WA Police largely reliant on partner agencies to establish indicators, including qualitative measures.¹⁹⁹

ALSWA is concerned that, despite numerous recommendations for improvement, internal oversight of WA Police practices nevertheless remains inadequate. Together with the lack of external oversight of police processes in relation to FDV prevention, responses, and support, ALSWA submits that this allows issues relating to WA Police's responses to FDV incidents involving Aboriginal peoples—and associated issues with the utilisation of police orders in these circumstances—to continue to go unaddressed.

Police orders are an important and necessary means by which WA Police are empowered to intervene in situations of suspected FDV. The primary purpose of such orders is to ensure the safety of victim-survivors through the provision of temporary respite from perpetrators, which allows for sufficient time for an FVRO application to be made by the protected person or by WA Police on the protected person's behalf.

ALSWA submits that the implications of police orders for both victim-survivors and perpetrators are such that external oversight is essential. Without sufficient oversight, issues in relation to the use of police orders cannot be adequately addressed. These issues have a disproportionate impact on Aboriginal people generally, and on Aboriginal women in particular.

ALSWA notes the recent introduction of the *Family Violence Legislation Reform Act 2024* (WA) and submits that in light of this Bill, its purpose, and the additional responsibilities it creates for WA Police, greater oversight of police orders is urgently needed to ensure protection of victim-survivors, particularly in circumstances of alleged coercive control.

7. RELEVANCE OF AN INDEPENDENT REVIEW AS PROPOSED

The Australian Government Productivity Commission ('AGPC')'s 2024 report²⁰⁰ on progress towards the targets of the National Agreement on Closing the Gap²⁰¹ noted that limited data continues to 'present significant challenges to measure the true experiences of violence in the community, and to assess whether policies are making a difference'.²⁰² The AGPC further noted that:

Data reporting experiences of family violence is often an inaccurate picture of prevalence and incidence, due to significant underreporting [...] As such, prevalence as a measure for experiences of violence can represent either an increase in police activity in addressing

¹⁹⁹ CDJSC (n 115) v.

²⁰⁰ Australian Productivity Commission, *Review of the National Agreement on Closing the Gap* (Final Report, January 2024) <<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>>.

²⁰¹ Closing the Gap, *National Agreement on Closing the Gap* (July 2020)

<https://www.closingthegap.gov.au/sites/default/files/2022-09/ctg-national-agreement_apr-21-comm-infra-targets-updated-24-august-2022_0.pdf>.

²⁰² Australian Productivity Commission (n 200) vol 2, 326 [2].

incidences of domestic, family and sexual violence, or changes in how confident women are to report violence to police.²⁰³

Recommendations to rectify this issue include a focus on addressing gaps in the evidence base, as well as ‘[b]uild[ing] on existing commitments toward developing nationally consistent data from existing administrative information sources on violence experienced by Aboriginal and Torres Strait Islander people’.²⁰⁴

The WA Government has committed to the support of better information sharing within legal frameworks and the provision of consistent, culturally appropriate, and effective responses to family and domestic violence.²⁰⁵ Further, ALSWA notes the WA Government’s commitment to ‘strategies that address both the issues within the criminal justice system and the underlying factors that contribute to the disadvantage faced by many Aboriginal people’.²⁰⁶

ALSWA submits that the development of a greater understanding of the circumstances in which FDV occurs—and the monitoring of the efficacy of current practices and policies designed to prevent its occurrence—is necessary to ensure that the Government is able to fulfil its commitments. This is particularly relevant as rates of FDV in WA produce high emotional, physical and financial costs to individuals, communities, and the Government.²⁰⁷

Finally, ALSWA notes that WA Police have recently released a summary report on the outcomes of the internal investigation into the May 2024 murders of Jennifer and Gretl Petelczyc.²⁰⁸ While ALSWA welcomes WA Police’s commitment to the implementation of all 18 recommendations arising from the investigation, and acknowledges the work that has already been done to implement the majority of these,²⁰⁹ ALSWA is conscious that the recommendations do not address the issues raised within this submission. Further, ALSWA echoes the sentiment expressed by the Centre for Women’s Safety and Wellbeing (WA) in their response to the report:

While we appreciate that the Police have been prepared to shine a light on their failings and areas of weakness, we are conscious that long-term change requires long-term commitment. Improved risk management by Police will require ongoing governance and oversight and a partnership with family and domestic violence specialists. An ongoing mechanism is necessary to highlight gaps in police responses and identify steps which can be taken to improve policing and ultimately, save lives. It is imperative that the community has trust in the police response.

²⁰³ Ibid vol 2, 325 [3].

²⁰⁴ Ibid vol 2, 339.

²⁰⁵ Government of Western Australia, *Strengthening Responses to Family and Domestic Violence – System Reform Plan 2024 to 2029* (Report, 20 Jun 2024) <https://www.wa.gov.au/system/files/2024-04/fdv-system-reform-plan_0.pdf>.

²⁰⁶ Government of Western Australia, *Closing the Gap Implementation Plan 2023 to 2025* (Report, 2 October 2023) <https://www.wa.gov.au/system/files/2023-10/ctgseptember_0.pdf>.

²⁰⁷ See, eg, Government of Western Australia, *Path to Safety: Western Australia’s Strategy to Reduce Family and Domestic Violence* (Final Report, 2020) <<https://www.wa.gov.au/government/publications/western-australias-strategy-reduce-family-and-domestic-violence>>; Keane Bourke, ‘WA Government Makes Landmark Promise to Tackle Domestic Violence, and It Needs to Get It Right’, *ABC News* (online, 3 May 2024) <<https://www.abc.net.au/news/2024-05-03/wa-government-makes-quiet-landmark-domestic-violence-promise/103789400>>.

²⁰⁸ Western Australia Police Force, *Summary of Outcomes, Police Response Review, Floreat – Murder/Suicide* (Report, 31 January 2025) <<https://www.wa.gov.au/media/125425/download?inline>>.

²⁰⁹ Ibid.

Regular and transparent audits increase that trust, as they demonstrate that police take seriously their responsibilities and are willing to reflect on and improve practices where it is required.²¹⁰

ALSWA submits that an independent review is the most appropriate means by which to examine the use of police orders by WA Police, and that ongoing monitoring is integral to ensuring public trust in their efficacy. The entity responsible for this review should be independent of police and government and properly resourced. It should have the capacity to undertake a wide-reaching investigation, and should consult with Aboriginal victim-survivors of FDV as well as Aboriginal Community Controlled Organisations working in the FDV space. It is also critical that any review have ‘buy in’ from WA Police and government.

8. CONCLUSION

It has been over 20 years since police orders were introduced to the *RO Act*, empowering WA Police to intervene at the earliest opportunity when FDV is alleged or suspected. The utility of these powers and the protection that they afford victim-survivors is well-established, yet seemingly little research has occurred to particularise the circumstances in which police orders are imposed and to assess their overall efficacy.

ALSWA acknowledges the difficult work of WA Police, who respond to thousands of FDV-related incidents a year in dynamic and invariably challenging circumstances. The intention of this submission is not to undermine that hard work, nor to suggest that police orders are not used effectively in the majority of cases. Rather, it is intended to highlight both long-standing issues with certain police responses to FDV-related incidents and the need to ensure that recommendations arising from the work of judicial officers and government bodies alike are fully implemented. Given the increasing demands on WA Police to respond to FDV-related incidents,²¹¹ ALSWA submits that these issues must be addressed as a matter of urgency.

A further pressing issue that this submission has sought to emphasise is the scarcity of available information from which a greater understanding of the use of police orders, and associated police FDV training, can be developed. The case studies in this submission are presented as evidence of situations in which Aboriginal women who are victim-survivors of FDV are misidentified as perpetrators in FDV incidents and issued police orders. The case studies further demonstrate the flow-on effects of these orders: from breaches (sometimes initiated by the protected person), to arrest, bail refusal and time spent in police custody (often overnight), and—in the vast majority of cases—release after court, either by bail or by way of pleas of guilty resulting in the imposition of low-level fines (and occasionally, the grant of a spent conviction order). ALSWA submits that the refusal of police bail in circumstances in which imprisonment is an unlikely outcome is inherently unjust, retraumatising for victim survivors of FDV, and unnecessarily resource-intensive for WA Police and the court system.

²¹⁰ Centre for Women’s Safety and Wellbeing, *Response to WA Police Report on the Floreat Homicides* (Media Release, 31 January 2025) <<https://cwsaw.org.au/2025/01/31/response-to-wa-police-report-on-the-floreat-homicides/>>.

²¹¹ Courtney Withers, ‘WA Police Family and Domestic Violence Figures Show “Alarming” Increase’, *ABC News* (online, 8 August 2025) <<https://www.abc.net.au/news/2025-08-08/stats-show-increase-in-family-and-domestic-violence-in-wa/105628818>>.

The issuing of police orders to Aboriginal women who are victim-survivors of FDV means that police are issuing police orders to some of the most vulnerable people in Western Australia. When FDV victim-survivors, particularly women, are misidentified as perpetrators and issued police orders, they may be placed at further risk of FDV through pressure placed upon them by violent partners to breach the order—as illustrated by a number of case studies above. ALSWA accepts that the hidden nature of coercive control renders its detection difficult for police officers responding to FDV incidents. However, coercive control is a significant factor in many Aboriginal victim-survivor's experiences of FDV.

ALSWA submits that increased police training in relation to coercive control and Aboriginal peoples' experiences of FDV is integral to ensuring that police responses are accurate, effective, appropriate, fair, and able to avoid further harms, both at the hands of violent partners as well as systemic and historical harms relating to colonisation and associated distrust of police.

The ever-changing nature of FDV necessitates a proactive approach to reviews of existing policies and procedures aimed at its prevention. Without greater insight into the circumstances in which police orders are utilised and the decision-making processes of officers empowered to issue them, the ability to assess their overall efficacy—and to address issues which diminish that efficacy—is incredibly limited.

ALSWA submits that an independent investigation and an ongoing external oversight mechanism are therefore essential to address the concerns expressed in these submissions, to ensure that current practices are well-informed and evidence-based, and to understand the efficacy of police orders more broadly. This is particularly pertinent in relation to police responses to Aboriginal women, who are overrepresented both as victim-survivors of FDV and as accused persons in the criminal justice system. ALSWA further proposes that judicial officers be empowered to vary or cancel a police order during the first hearing of a breach police charge when appropriate (for example, when there is evidence to suggest that the accused is a victim-survivor of FDV perpetrated by the protected or when the protected person has instigated the breach).²¹²

Finally, ALSWA submits that transparency regarding police practices and policies in responding to FDV is essential to ensuring the safety of victim-survivors and the broader community. As such, ALSWA strongly encourages WA Police to publish data on the use of police orders together with information on FDV training undertaken by police officers, and reiterates the importance of including Aboriginal peoples and communities' perspectives and experiences in the formulation and delivery of FDV training for police officers.

²¹² This would reflect judicial officers' powers under s 61B of the *RO Act* (n 6) when sentencing an accused person for a breach of FVRO or VRO when it is found that the breach was initiated by the protected person.