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# Institute for Health and Social Science Research (IHSSR)

## Quasi criminal domestic violence laws: Australia's primary response to intimate partner violence and its unintended consequences

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## Australia's quasi-criminal response to dv

- Background/rationale
- Key features
- Snapshot of unintended consequences
- Recent developments

# Australia's quasi-criminal response to dv

## Background

- 1980s Domestic violence task force investigations:
  - Government policy
  - Program funding
  - Specific domestic violence legislation

# Q'ld DV Task Force conception of DV



Whilst violent behaviour is never desirable, **no great harm may accrue in instances where partners regard and experience each other as equals and can give as good as they get ... these sorts of fights are not the kinds of incidents with which this report is concerned ... when the Task Force talks about domestic violence we are talking about one partner, usually the woman, being afraid of and being hurt by the other.**

*(1988 p. 13)*

## Associated Criminal Code offences

- ❖ Common assault
- ❖ Assault occasioning bodily harm
- ❖ Assault causing grievous bodily harm (*no complaint required*)
- ❖ Damage to property
- ❖ Kidnapping/deprivation of liberty

## Other forms of domestic violence

- ❖ Psychological/emotional abuse
- ❖ Economic abuse
- ❖ Intimidation
- ❖ Harassment

## Rationale - Limitations of criminal law

### Types of violence covered by Criminal Code

- Addressed physical abuse/property damage only

### Standard of proof – ‘beyond reasonable doubt’

- testimony may seem weak against controlling partner’s
- often no witnesses to corroborate victim’s account

## Rationale - Limitations of criminal law

### Fear and control:

- victims too scared to make a complaint or testify
- coerced into dropping charges/not giving evidence

### Retrospective:

- Focussed on past, not future, behaviour

### Women frequently feared criminal law intervention:

- Didn't want partners in criminalised
- Didn't want to end relationship

### Considerable time to get to court



## Rationale - Limitations of existing civil law

### ***Family Law Act 1975 (Cth):***

- Limited to people who were married or had care of children
- Applications complex and costly
- Difficulties with enforcement

### ***Peace and Good Behaviour Act 1982 (QLD):***

- Co-tenants, colleagues, neighbours & other associates
- 2 step application process – victim initiated
- No police power to enforce orders (unless police witnessed breach)
- Process complex and costly

## Key features of civil domestic violence laws

### Applications

- Police must investigate if domestic violence suspected
- Police, aggrieved or third party may apply for civil order
- Police applications do not need consent of aggrieved
- Police can detain respondent without arrest (4 hours)
- Police may also represent private applications at court

## Key features of civil domestic violence laws

### At court

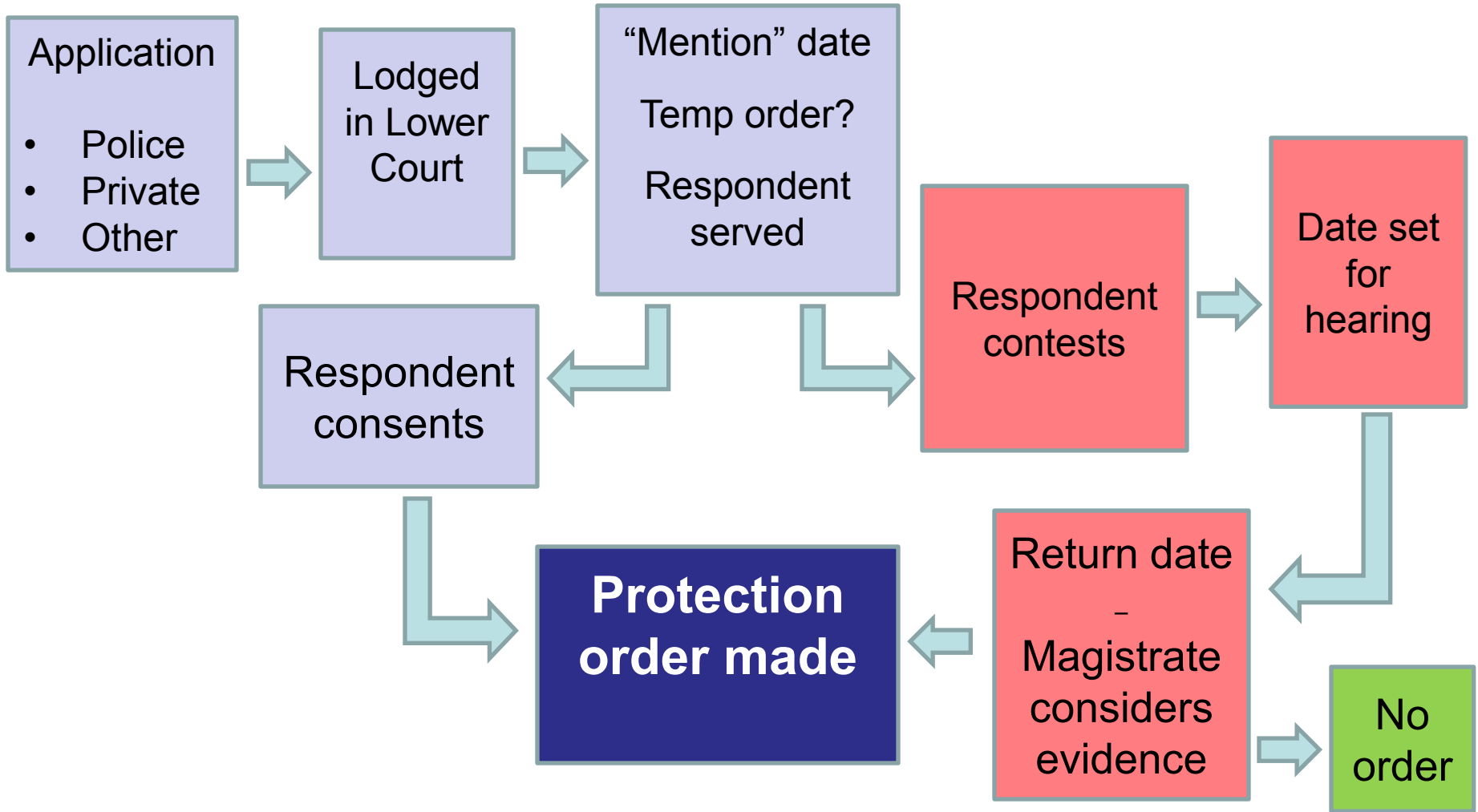
- Magistrate may issue temporary order by phone/fax
- Civil standard of proof “balance of probabilities” applies
- Usual rules of evidence (e.g. ‘hearsay’) do not apply
- Respondent may consent to an order to avoid a hearing
- Temporary orders and orders may be made *ex parte*

## Key features of civil domestic violence laws

### At court

- Standard condition/s on domestic violence orders
  - Be of good behavior/do not commit dv
  - Be of good behavior/do not commit associated dv
- Additional conditions – customised orders; e.g.
  - No contact
  - Do not approach, enter or remain in specified premises
  - Ouster condition
- Duration - 2 years (may be more or less)

# Domestic Violence Protection Order Process: Civil

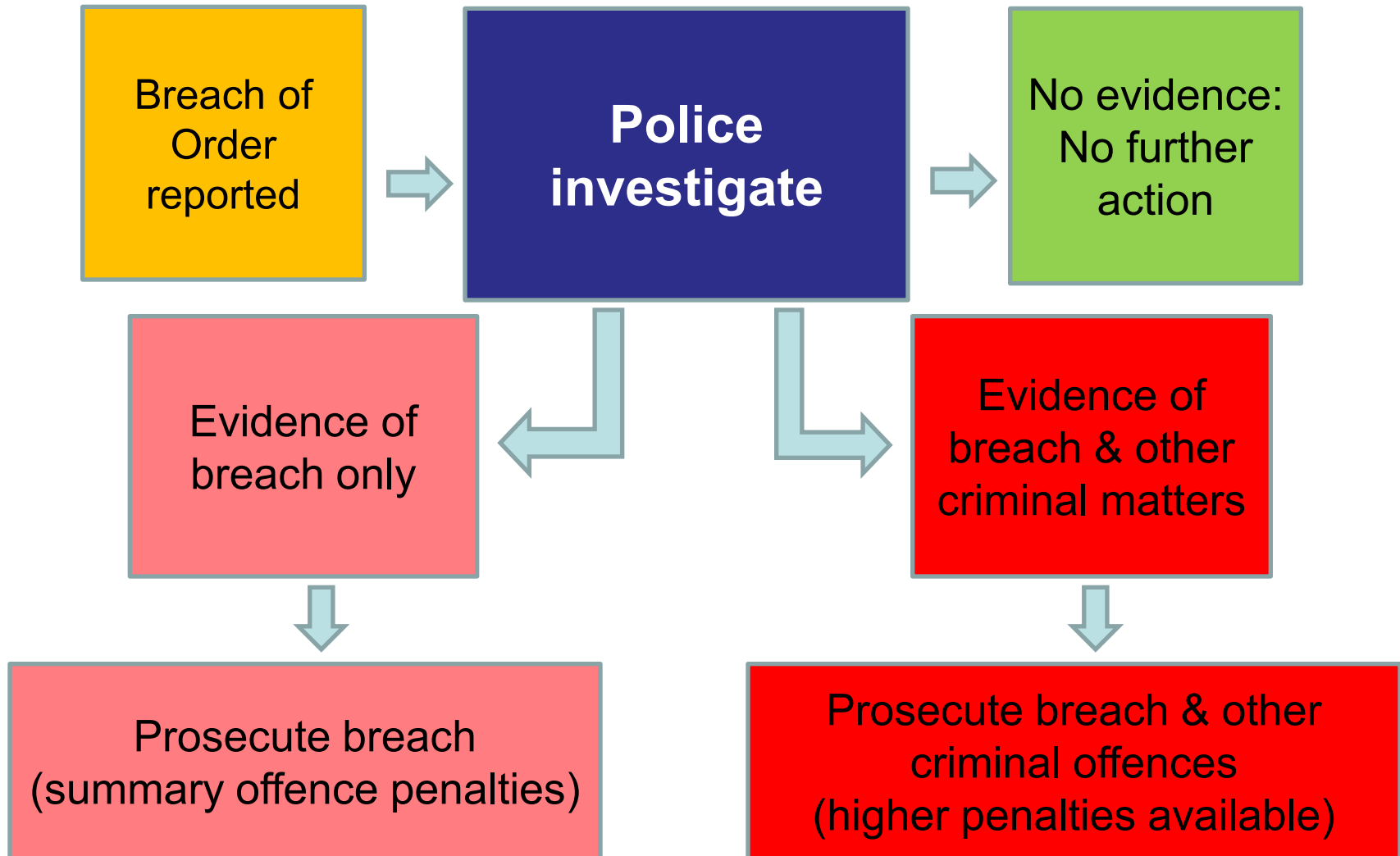


## Key features of civil domestic violence laws

### Breach of domestic violence order

- Breach of civil order a summary criminal offence
- Police investigate reports of breaches
- Evidence of offence/s police lay charges
  - Breach provision in civil legislation;
  - Relevant provisions of Criminal Code (where relevant)

# Domestic Violence Order Breach Process: Criminal



## Unintended consequences

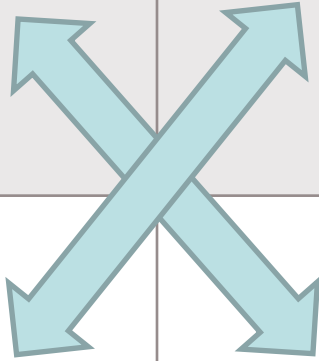
### Key issues

- Further entrenched “irrelevance” of criminal law  
(Douglas and Godden 2002; Douglas 2008)
- Consent “without admission” manipulated by respondents
  - “I’ll consent to yours if you consent to mine”
  - “I consented to the order but I didn’t commit domestic violence”
- Cross applications and cross orders



# Cross applications

<b>Application</b>	<b>1</b>	<b>2</b>
<b>Aggrieved</b>	<b>Person A</b>	<b>Person B</b>
<b>Respondent</b>	<b>Person B</b>	<b>Person A</b>



The diagram illustrates cross-applications between two individuals, Person A and Person B, across two different applications. In the 'Aggrieved' row, Person A is associated with Application 1 and Person B with Application 2. In the 'Respondent' row, Person B is associated with Application 1 and Person A with Application 2. Four light blue arrows form an 'X' shape, indicating that Person A is a respondent in Application 2 and Person B is a respondent in Application 1.

## Cross orders - implications

### Civil law equivalent to dual arrests

- Failure to identify real perpetrator
- Legal system colludes with perpetrator
- Aggrieved is re-victimised
- Negates power of law - reinforces perpetrator power
- Evidence that cross applications increasing

## Recent reforms to address unintended consequences

### Domestic and Family Violence Protection Act 2012

- ❖ Preamble – human rights context
- ❖ Principles and objectives
- ❖ New definition
- ❖ Police Protection Notices

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