

# Collision Zone

Implementing the Criminalisation of Intimate Partner Violence

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ANZSOC Canberra November 2008

# **Criminalisation of IPV**

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## **Specific legislation**

Focuses on the criminal nature of family violence

A whole-of-government, but criminal justice based response to domestic violence in Tasmania

# Criminalisation of IPV

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## Family violence response line

- 24 hour telephone hotline, seven days a week. Operators specifically trained to assess situation quickly and make immediate and active referrals

## Victim safety response teams

- Additional police recruited and trained to take a proactive role in managing safety issues for victims to enable them to stay in their own homes

# Victim Safety Teams

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- ◉ Removal of offender
- ◉ Investigations, evidence gathering and supporting information
- ◉ Police family violence orders
- ◉ Safety assessments including audit, victim safety plans and increased security if required
- ◉ Investigating breaches of family violence orders

# New Resources

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## **Adult victim support service**

- Enhanced counselling and support program for adult victims including new telephone counselling service

## **Children's counselling and support service**

- New service to provide specialised counselling and support to child victims

## **Legal Aid**

- Extension of legal aid to all eligible victims to ensure that they are not disadvantaged by lack of legal representation and advice

# New Resources

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## **Court support and victim liaison service**

- New state-wide service to assist victims navigate the legal and court processes and also provide information and referral to services for family violence victims

## **Child witness program**

- A new service to provide information and support to children participating in legal processes

## **Aboriginal family violence working group**

- Supports the implementation of culturally appropriate responses for aboriginal people under *Safe at Home*.

# New Resources

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- ◉ Additional police prosecutors employed to cover increased workload
  - ◉ Funding provided to ensure courts have resources to cope with increased workload and to ensure that breaches of FVOs are dealt with as quickly as possible.
  - ◉ New Offender program

# New Powers

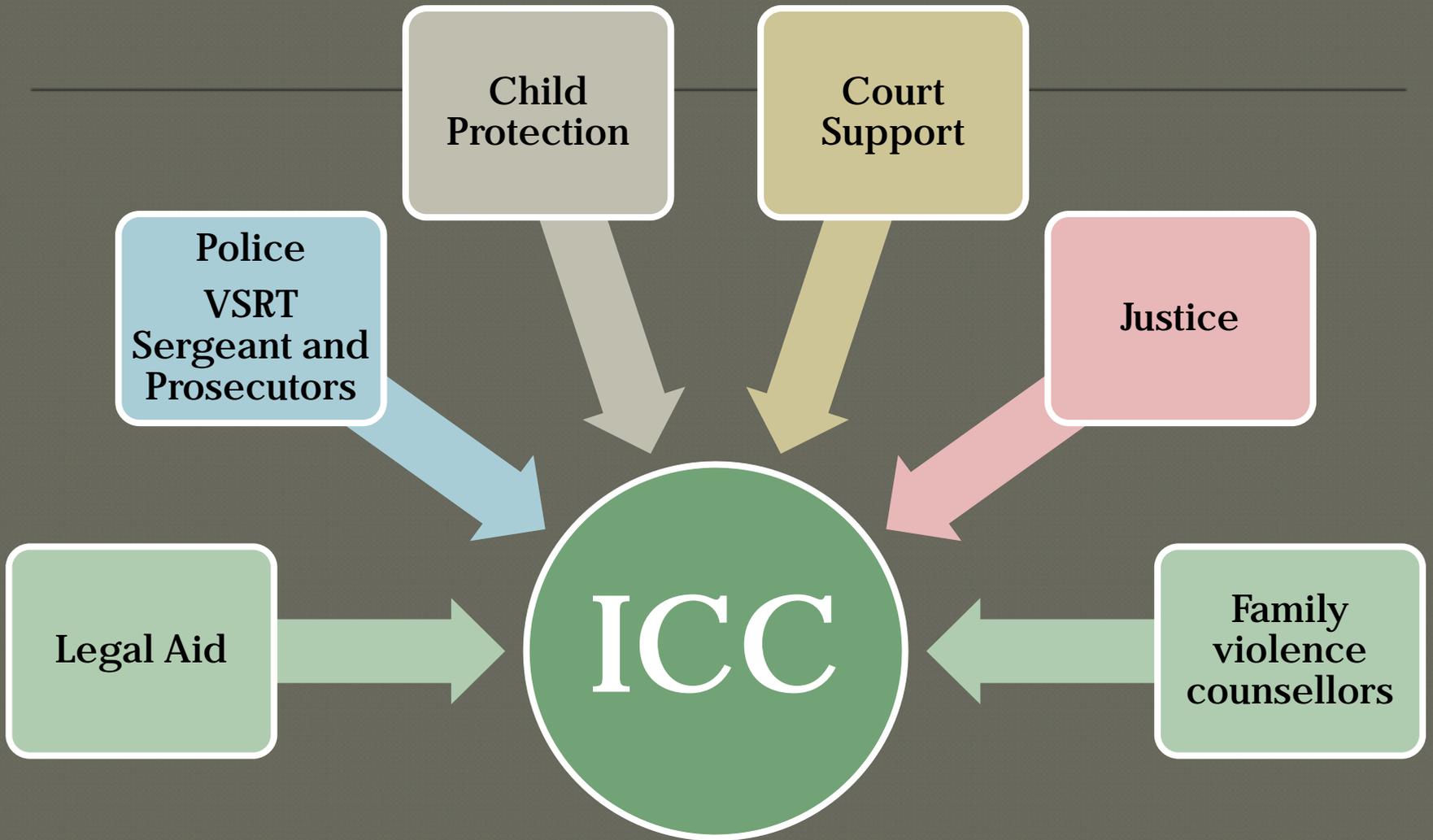
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- Arrest
- Entry
- PFVOs
- Bail can only be granted if the court or police officer is satisfied that the granting of bail is not ‘likely to adversely affect the safety, wellbeing and interests of affected person or affected child’
- Decision to bail must take into account
  - risk screening
  - And availability of accommodation for victim and children

# Principles of Safe at Home

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- The safety of victims is paramount
- Police are responsible for providing immediate intervention to secure victim safety and manage the risk that the offender might repeat or escalate the violence
- The victim does not determine the response of the justice system
- Family violence is a crime and arrest and prosecution will occur wherever evidence of an offence exists
- Wherever possible victims should be able to choose to remain in or return (as soon as possible) to their own homes, and
- The criminal justice response to family violence should be seamless and the roles and responsibilities of each participating agency and service should be clear



# Pro-prosecution

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- ◉ Reporting increased from around 230 per month before Safe at Home to 416 per month
- ◉ Arrest made in more than half cases compared to 30% before S@H
- ◉ Emotional and economic abuse
  - No charges to date
- ◉ Assault on a pregnant woman
  - All suspended sentences to date
  - One man received an additional fine

# Pro-prosecution

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- Majority of convictions under the Act reached through guilty pleas – not many proceeding to a hearing
- Reluctance of police to test circumstantial evidence if complainant is not cooperative

# My research

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## • Mixed methods

- Analysis of 900+ Risk Assessment Tools
- 45 semi structured interviews statewide (45-90 mins)
  - First response Police, VSRT teams and sergeants, magistrates, prosecutors, legal aid, counsellors
- 100+ hours observation of specialist dv police teams
- Participant observation of training of specialist dv officers
- 50 random case descriptions from the Family Violence IMS

# My research

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## ○ Risk

- How it is managed
- The use of the Risk Assessment Tools
- How risk translated across the different components of the family violence strategy

## ○ Discourses

- Today, look at some of the emerging data

# Emerging results

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- ◉ Legal professions adherence to principles of natural justice
- ◉ *Daisy*
  - *40s, Downs Syndrome child, isolated area*
  - *High risk assessment score*
  - *Stalking, hid under floor*
  - *Bailed to parents*
  - *FVO application*

## Discourse of the vexatious complainant

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I probably wouldn't say it happens as often as you probably think it does, but people are definitely clicking on that, you have an argument, police will – you know they've got this special thing and they ask you questions and if it's high enough, you know, the boss can get taken away or whatever. *Police Prosecutor*

# False reporting?

- there's definitely an increase in false reports coming through. Simply because they know, 'well I'll screw you over, I'll ring the cops and tell them you've assaulted me and all of a sudden the cops turn up and he's taken away and I've won'. So I think like I said, I think the incidence of genuine assaults has decreased but accompanied by a definite increase in false reports. Which again, for a false report or a genuine assault, police have to follow the same protocols and do all the paperwork. *Urban Police officer 3*
- you get people that are abusing it as well, because they see that things are going to be done on their word, and um, I'm not for one second saying people are lying to you but a lot of time you can see manipulative sort of women, seeing it as a chance to do over a bloke, or even the other way around, but that's minor. *Urban Police Officer 4*
- Like a lot of people just make stuff up, just in order to get rid of their partners for the night or whatever. Do you know what I mean? *Urban Police Officer 7*

# Evidence

## ● Relying on evidence of physical harm

- And so you do have to keep in mind that – we are – I mean the system requires proof. There has to require proof – it can't be fair to anybody, and that includes victims who get charged with stuff, if it doesn't require the proof *Legal Aid*

## ● 'Technical' breaches

- it's only a tiny little breach of the order – you know, any breach needs to go before a court, you know, they're not to talk apart from in the presence of a third party, well does this mean the offender could send a text message to the victim as long as somebody else is there to see the text message – I mean little trivial things like that *Police Prosecutor*
- there have been a few examples of technical breaches not being proceeded with – and I see that as a problem. And the reason why I see that as a problem is that I understand the research to say that there are normally a number of incidents before anything really serious or fatal and so the point of having technical orders in place is to stop it before it gets into a big incident – so you are supposed to act in relation to the smaller breaches.

*Legal Aid*

## **Police/others usually reluctant to pursue prosecution if victim not cooperative – defer to magistrates**

we always tell them, look you need to make a written statement – we're not going to just drop it. They make a written statement with reasons why they want it dropped and then obviously it comes to us and we take the matter to ICC. And [they] will contact her and figure out why they want them dropped and they just try and figure out the best way to handle the situation. If it's an ongoing thing where they're always fighting and one of the parties want to drop complaints, well we think, well hang on, police had been up there 4 times, you know, in the last year, 2 times have ended up with a black-eye – they're probably not a good thing to drop it, you know, or if last time it was dropped I don't think it is a good idea to do it, so, unfortunately sometimes they're just told, no we're going to proceed with it and unfortunately they are made to come to court and if they refuse to give evidence, they'll just stand up in the box and say, look either nothings happened, which we would then charge them with making a false statement – we're starting to get to that where you can't say in the witness box that nothing's happened, you know, you've genuinely – you've got a black-eye, you've got a bleeding nose and you've told us something's happened – you can't do this. Or they will get up there and tell the magistrate, look I wanted to drop my charges and that's why I'm here today, I don't want to proceed, I don't want to give evidence. So then it is up to the magistrate what happens. *Police prosecutor*

# And not much has changed from the court point of view

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- My feeling is we really haven't dealt with them in any different way than we did before which is unfortunate. We may not necessarily as an institution be directing our minds towards a policy objective , because that traditionally is not our role. We adjudicate. *Magistrate, Urban*

# Some magistrates still have old attitudes

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- My experience is in the courtroom is that the issue of violence, domestically is exaggerated. I can't recall a serious case of injury to a woman in a long, long time.
- I don't know what you want to achieve by bringing it out... it is essentially a private matter, an argument between two people is a private matter, everyone knows males and females squabble and carry on, its a fact of life,
- I really think that rather than spend any time focussing on men perhaps there should be more focus on women *to not push men too far*.

*Magistrate, Regional*

# Other issues

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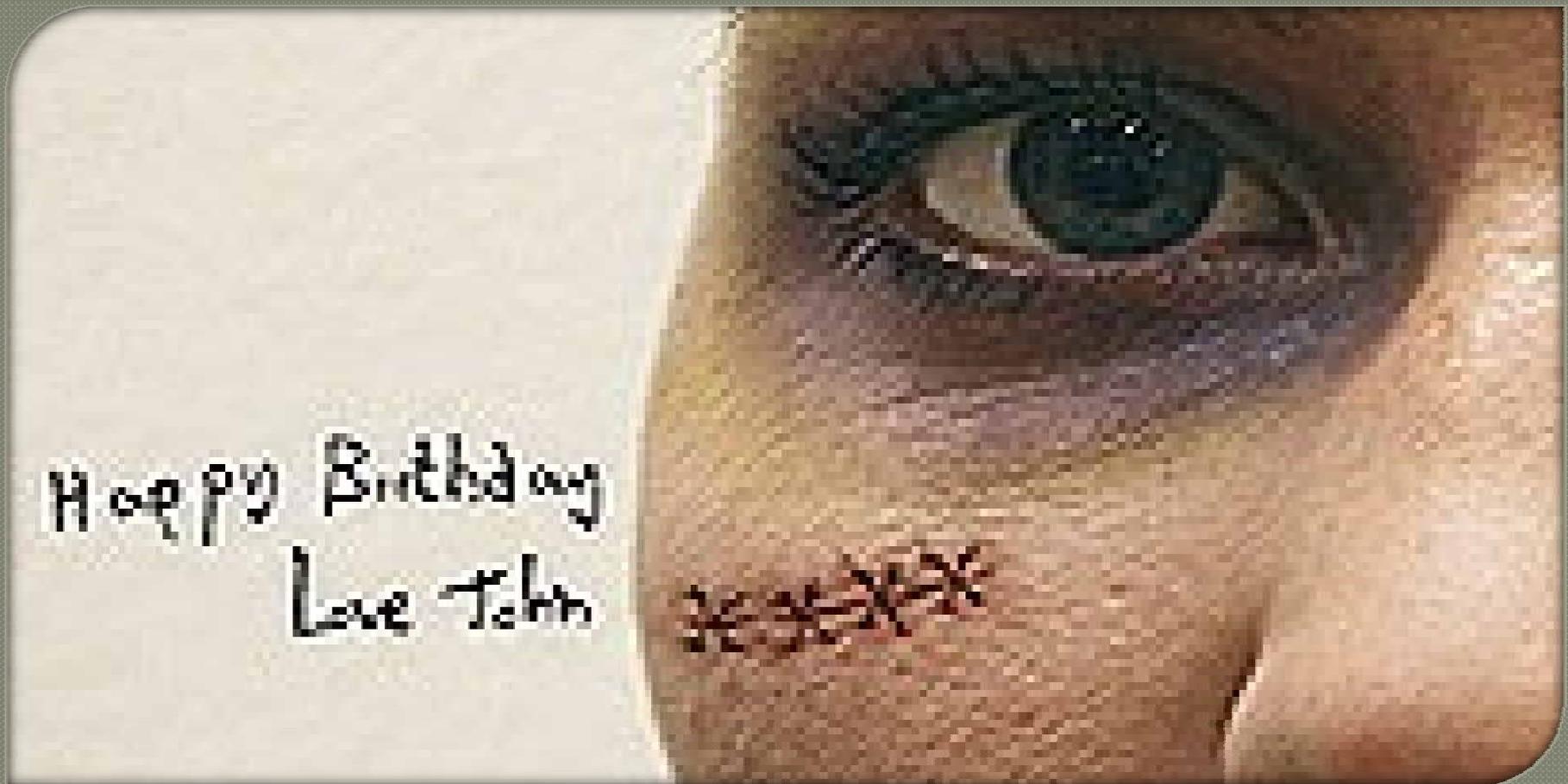
- Wide variety in way police use risk assessments
- Resourcing issues
- Police fatalism about ability to provide true safety
- Police/legal people happy with ICC process but victim advocates less impressed
- Victim and Offender education/information inadequate
- Initial criticism of Section 12 - died down
- Magistrates see police as having a lot of discretion whereas police officers think they have less

# Difficulty of implementing whole of government policies

- ◉ Silos persist
- ◉ Legal discourse privileged
- ◉ Concern about effect on safety of victims – *natural justice*
- ◉ one size does not fit all

In some respects this is like social engineering with a big hammer and the criminal law is the hammer. I can understand the reason for it but I don't know if we're quite equipped to use the criminal law to the best way we can.....

*Magistrate, Urban*



Questions or Comments

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