

## **A note on the Serial Family Violence Offender Declarations – Relevant Convictions and Non-Convictions.**

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In July 2024 Tasmania's Serial Family Violence Offender Declaration (SFVOD) scheme commenced. Section 29A of the Family Violence Act allows a judge or a court to declare a family violence offender a Serial Family Violence Offender provided the following preconditions are met:

- (a) the offender has attained the age of 18 years; and
- (b) the offender has –
  - (i) on that conviction, been convicted of at least 2 indictable family violence offences, with at least 2 of those offences being committed on different days; or
  - (ii) on that conviction, been convicted of at least 3 family violence offences, whether indictable or summary, with at least 3 of those offences being committed on different days; or
  - (iii) on that conviction or a previous conviction, been convicted of Persistent Family Violence under section 170A of the Criminal Code; and
- (c) the court or judge is of the opinion that the declaration is warranted.

Critical to the determination of whether a SFVOD should be imposed is the issue of 'what constitutes a conviction' for the purposes of the Family Violence Act 2004 (Tas).

In an oral decision handed down on 20 November 2024, a Magistrate upheld [my] submission that a prior family violence offence for which a 'no conviction recorded' result is attained, is not a conviction for the purposes of s29A Family Violence Act 2004 (Tas).

To understand the decision, Section 10 of the Sentencing Act 1997 (Tas) needs to be considered. Section 10 states:

### **10. Effect of finding of guilt without recording of conviction**

- (1) Except as otherwise provided by this Act or any other enactment, a finding of guilt without the recording of a conviction is not to be taken to be a conviction for any purpose.

(2) A finding of guilt without the recording of a conviction –

(a) does not prevent a court from making any other order that it is authorised to make by this Act or any other enactment in consequence of the finding; and

...

The critical words are "...in consequence of the finding...".

The Court accepted my submission that "in consequence of the finding" related to the time the finding [of no conviction] was made, not at some later time. Conversely, if the Court was considering imposing a 'no conviction' result at the sentencing hearing, that would be counted as a relevant conviction because of the same wording.

The result of this decision is that a historical 'non-conviction' for a family violence offence does not constitute a conviction for the purposes of s29A Family Violence Act 2004 (TAS).