



sentencing
ADVISORY
COUNCIL

NON- CONVICTION SENTENCES

'NOT RECORDING A CONVICTION'
AS A SENTENCING OPTION

FINAL REPORT No. 3

August 2014



Tasmanian
Government



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Information on the Sentencing Advisory Council

About this Final Advice

The reference to the Sentencing Advisory Council was made by the then Attorney-General and Minister for Justice, the Hon. Brian Wightman MP in October 2013.

This Advice makes recommendation to the Attorney-General in relation to the sentencing option of 'not recording a conviction'. Under the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas), there are several sanctions that can be imposed by judges and magistrates without recording a conviction. However, there is no power to impose a fine on an adult offender without recording a conviction.

This Advice considers the implication for an offender of a court not recording a conviction following a finding of guilt, and specifically whether a fine should be able to be imposed if a conviction is not recorded.

As part of the preparation for this Advice, the Sentencing Advisory Council provided a copy of the paper to the Chief Justice of the Supreme Court of Tasmania, the Chief Magistrate, and the Commissioner of Police (Tas). The feedback received has been incorporated in this Advice.

This Advice reflects the law as at November 2013.

The Sentencing Advisory Council was established in June 2010 by the then Attorney-General and Minister for Justice, the Hon. Lara Giddings MP. The Council was established, in part, as an advisory body to the Attorney-General. Its other functions are to bridge the gap between the community, the courts and the Government by informing, educating and advising on sentencing issues in Tasmania. At the time this reference was concluded, the Council members were Professor Arie Freiberg AM (Chair), Professor Kate Warner, Dr Jeremy Prichard, Mr Phil Wilkinson (until 2nd June 2014), Ms Kim Baumeler, Mr Norman Reaburn, Mr Chris Gunson, Professor Rob White, Ms Sue Robertson and Ms Linda Mason.

Acknowledgments

The Council would like to thank all those who provided information in relation to this reference, in particular the Chief Justice of the Supreme Court of Tasmania, the Chief Magistrate, Tasmania Police, the Monetary Penalties Enforcement Unit, and the Department of Justice. This Final Advice was written by Dr Rebecca Bradfield.

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Executive Summary

TERMS OF REFERENCE

On 22 October 2013, the then Attorney-General and Minister for Justice, the Hon. Brian Wightman MP, wrote to the Sentencing Advisory Council asking it for advice on the implications for an offender of a court not recording a conviction following a finding of guilt, and specifically whether a fine should be able to be imposed if a conviction is not recorded.

In particular, the Attorney-General requested the Council to consider:

- What purpose or purposes does the pronouncement/recording of an order of conviction serve in the modern criminal justice system?
- To what extent has the concept of 'conviction' been kept separate from the concept of 'guilt' both in statute and at common law in Tasmania?
 - Should the two concepts remain separate?
 - Is there a need to clarify any legislative provisions to maintain this distinction?
- What is the actual effect of the exercise by a Court of the sentencing option to 'not record a conviction' on an offender's economic or social wellbeing or employment prospects in light of the fact that criminal history records are kept by and obtained from Tasmania Police and not the Courts?
- What should be the legal consequences of a finding of guilt where a conviction is not recorded? If there is a subsequent finding of guilt or conviction of the offender for a similar offence should that subsequent offence be regarded as a second offence for the purpose of sentencing?
- Should 'not recording a conviction' continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas)? If so should the section

be amended to allow for a fine to be imposed without a conviction being recorded? If the amendment is made how will it relate to section 20 of the *Monetary Penalties Enforcement Act 2005* (Tas) where an offender is 'taken to be convicted' of an offence if an infringement notice is paid or if no election to have the matter decided by the court is made within 28 days?

PURPOSES OF AN ORDER OF CONVICTION IN THE MODERN CRIMINAL JUSTICE SYSTEM

Although the public conception of the criminal justice system is primarily centred on guilt (whether by trial or plea) and sentence, the foundations of sentencing are built upon three concepts: guilt, conviction and sentence. Conviction has traditionally been viewed as an important safeguard of the rights of the accused person as it was considered to provide the basis for the court's power to exercise its sentencing powers. While the traditional sequential approach (guilt, conviction, sentence) has been weakened by the adoption of a statutory sentencing regime in Tasmania that provides that the recording of a conviction is, in some cases, optional or prohibited, it is the Council's view that conviction still has an important role in the modern criminal justice system.

A key purpose of the recording of a conviction in the modern criminal justice system is that it serves as a mark of social condemnation and stigmatisation – in this way a conviction is a punishment in itself.

A conviction also has significant and long-term legal consequences for the convicted person by altering a person's legal status. Collateral consequences may include loss of office, licence or right, restrictions on employment and travel opportunities. These repercussions can cause long-term detriment and extend far beyond the time of any sentence imposed by the court.

THE SEPARATION OF CONVICTION AND GUILT

The terms of reference ask the Council to consider the extent to which the concept of 'conviction' has been kept separate from a finding of guilt in the current framework of the criminal justice system.

Conviction is a term with a dual meaning – one associated with a finding of guilt and the other concerned with the recording of a conviction as part of the sentencing process. At common law, the meaning of conviction has been obscure because its precise meaning was dependent on the context in which it is used and, on occasion, there has been no separation from guilt as conviction has been conflated with the notion of guilt.

In contrast, under the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas), it is made clear that guilt and the recording of a conviction are distinct stages of the court process. When sentencing a person who is found guilty or who has entered a plea of guilty in relation to an offence, the court may or may not make an order recording a conviction. This allows the court to exercise its discretion to shield an offender (in the appropriate case) from the collateral consequences of a conviction, particularly in the area of employment. This recognises that the imposition of a conviction is a punishment in itself and, having regard to its long-term legal and social consequences, the recording of a conviction may, in the circumstances of the case, be disproportionate to the offence.

However, despite the intention of Parliament (as demonstrated in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas)) to maintain a distinction between conviction and guilt, the review has found that other legislative and policy priorities have blurred the boundaries between findings of guilt and the recording of a conviction.

Various legal consequences may follow from a finding of guilt where a conviction is not recorded and the Council has identified a number of deficiencies in the current law in this respect. In particular, the review has highlighted the complexities and inconsistencies in the consequences that follow from a finding of guilt as compared with the consequences that follow from the recording of a conviction.

The Council's view is that the distinction between guilt and conviction should be retained and the Council makes recommendations in relation to the legislative provisions that need to be amended to maintain the distinction between conviction and guilt.

The Council also makes recommendations, in relation to the legal consequences that should attach to a finding of guilt without a conviction, to ensure that there are different consequences that attach to a finding of guilt without a conviction and a finding of guilt with a conviction recorded.

THE ACTUAL EFFECT OF THE EXERCISE BY A COURT OF THE SENTENCING OPTION TO 'NOT RECORD A CONVICTION' ON AN OFFENDER'S ECONOMIC OR SOCIAL WELLBEING OR EMPLOYMENT PROSPECTS

A central concern of this review has been on whether the sentencing option of not recording a conviction has any practical effect for an offender, particularly in view of the increased use of police history record checks as part of the employment process.

Non-conviction sentences have been criticised on the basis that they waste considerable court resources, given the time involved in making the decision about whether to record a conviction (as well as appeals against the decision), when there is little practical benefit to the offender. This criticism recognises that the actual effect of the exercise by a court of the sentencing option to 'not record a conviction' on an offender's economic or social wellbeing or employment prospects is contingent on whether the offence appears on an offender's criminal record for employment and licensing purposes.

In Tasmania, this criticism has partly been addressed by changes in the information release guidelines of Tasmania Police where information is now released in a criminal record check according to the accepted definition of conviction, which is a conviction that is recorded in accordance with the *Sentencing Act 1997* (Tas) or the *Youth Justice Act 1997* (Tas). Tasmania Police draw a distinction between the circumstances in which findings of guilt and convictions are disclosed in a criminal record check, with there being more limited disclosure of findings of guilt. Nevertheless, non-convictions orders are disclosed in police checks for quite a wide variety of occupations including relatively unskilled occupations such as taxi-driving. In addition, protections for offenders also exist under the anti-discrimination and privacy laws.

Despite the changes to information release guidelines, there is still a broad category of employment and licensing purposes where findings of guilt are treated in the same way as convictions for the purposes of employment or licensing. The Council considers that there is still a need to make legislative changes to ensure that the benefits of the sentencing option to 'not record a conviction' are enjoyed by an offender.

In its review, the Council has also identified confusion in relation to what is contained in a criminal record and the nature of the information that is disclosed in a police record check. This has undesirable consequences for offenders, employers, licensing and regulatory bodies and courts.

The Council recommends that the law should be simplified and clarified so it is possible to give a clear explanation of the legal consequences of a finding of guilt where a conviction is not recorded.

'NOT RECORDING A CONVICTION' AS A SENTENCING OPTION UNDER SECTION 7 OF THE *SENTENCING ACT 1997* (TAS)

The terms of reference ask the Council to consider whether 'not recording a conviction' should continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas).

The Council considers that, regardless of other sanctions imposed by the court, the recording of a conviction remains an act of significant punishment – both as a symbolic mark of censure and because of the consequences that attach to a conviction. The sentencing option of 'not recording a conviction' allows a sentencer to have regard to the circumstances of the individual case, and to decline to impose a conviction because of the adverse impact that a conviction would have on the offender's economic or social wellbeing or employment prospects. The Council stresses that maintaining the distinction between guilt and conviction not only provides a benefit to those offenders who are found guilty without a conviction being recorded (who avoid the stigma and adverse consequences of a conviction), it also has the potential to improve community safety through the rehabilitation of offenders. It is also significant that the Chief Justice of the Supreme Court of Tasmania and the Chief Magistrate support the retention of the sentencing option.

The Council recommends that 'not recording a conviction' should continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas).

The Council was also asked to provide advice as to whether section 7 of the *Sentencing Act 1997* (Tas) be amended to allow for a fine to be imposed without a conviction being recorded.

A fine is the most frequently used sanction in Tasmania. As a sanction, a fine has many perceived advantages including its flexibility, its effectiveness as a sanction and its economic benefits (that is, its production of revenue). Unlike other jurisdictions, there is currently no power in Tasmania for courts to impose a fine without recording a conviction and there is a suggestion that, in some cases, fines are not being imposed because of the requirement to record a conviction. Magistrates have expressed the view that they sometimes decline to impose a fine, when it would otherwise be appropriate, because of the adverse impact a conviction would have on the offender's economic or social wellbeing or employment prospect.

Both the Chief Justice of the Supreme Court of Tasmania and the Chief Magistrate have supported the extension of section 7 of the *Sentencing Act 1997* (Tas) to allow for a fine to be imposed without a conviction being recorded.

It is the Council's recommendation that section 7 of the *Sentencing Act 1997* (Tas) be amended to allow for a fine to be imposed without a conviction being recorded.

The terms of reference also asked the Council to consider the relationship between providing the court with the ability to impose a fine without recording a conviction and section 20 of the *Monetary Penalties Enforcement Act 2005* where an offender is 'taken to be convicted' of an offence if an infringement notice is paid or if no election to have the matter decided by the court is made within 28 days.

The Council considers that it is inappropriate for an infringement notice to result in a conviction. It is the Council's view that conviction should be reserved for judicial determination given its significance as an act of social and legal stigma, and that it should not be used for the infringement notice scheme, which is an administrative procedure. The use of conviction in the *Monetary Penalties Enforcement Act 1997* (Tas) is inconsistent with the significance attached to conviction as a sanction in its own right by the *Sentencing Act 1997* (Tas).

The Council recommends that the *Monetary Penalties Enforcement Act 1997* (Tas) be amended to remove the reference to deemed conviction in section 20, and that the enforcement procedure under the Act be grounded on the failure to pay the amount specified in the infringement notice within a specified time.

LEGAL CONSEQUENCES OF A FINDING OF GUILT WHERE A CONVICTION IS NOT RECORDED

The Council was asked to consider what should be the legal consequences of a finding of guilt where a conviction is not recorded.

A finding of guilt may have consequences for an offender in a range of areas including: disqualification (including employment and licensing), subsequent offending, sex offender registration, political rights, citizenship, travel, jury service, capacity to testify as a witness, have forensic samples taken and retained, orders in addition to sentence (restitution, compensation and costs, and forfeiture and confiscation). Beyond these areas, a criminal record may be relevant for making insurance claims, credit applications, applying for adoption or accommodation. This review highlights the range of potential consequences of criminal offending – some of which are immediate and known (such as a court order imposed as part of sentence) and others long term and changeable (such as employment/licensing or travel restrictions).

The Council considers that the legal consequences for a finding of guilt without conviction should be different to a finding of guilt where a conviction is recorded and should have meaning for an offender. Further, the Council's view is that there is a need to reconcile the consequences that attach to a finding of guilt without a conviction recorded with the purposes of a non-conviction sentence – to facilitate the offender's employment prospects with a view to rehabilitation and the need to impose a proportionate punishment – to ensure that the judicial objective in exercising the discretion is not frustrated.

Consistent with the view of the Council that the discretion of the court not to record a conviction should have meaning for the employment and economic prospects of the offender, it is the Council's view that as a general rule non-conviction sentences should not be disclosed and should not appear on a person's criminal record for employment and licensing purposes.

However, the Council endorses the view that restrictions on disclosure cannot be absolute and that in appropriate (and limited) circumstances, the judicial objective of imposing a non-conviction sentence must give way to the competing goal of decision makers having access to all relevant criminal offending (including findings of guilt without a recorded conviction).

The Council recommends that greater restrictions be imposed on the disclosure of findings of guilt without a conviction than apply for recorded convictions.

The Council also recommends that there be appropriate exemptions to the general rule that findings of guilt without conviction should not be disclosed. The recommended exemptions are in relation to:

- court proceedings
- law enforcement
- teaching and persons working with vulnerable persons
- adoption
- health practitioners
- appointment as a judicial officer or with a justice agency
- legal practitioners.

This means that findings of guilt without conviction will still be disclosed and taken into account in the context of decisions about sentence and proceedings of the Parole Board. There is also an exemption to enable law enforcement agencies (such as Tasmania Police) to disclose information as part of legitimate law enforcement functions. Findings of guilt will also be disclosed in context where persons may have close contact with children and/or vulnerable persons.

The establishment of clear exemptions (when findings of guilt can be disclosed) means that courts will have greater certainty in relation to the future implications for an offender of making an order that a conviction not be recorded. It will also provide greater certainty for the community (including offenders and employers) and increase consistency across different regulatory areas by providing guidance to government department and legislative drafters in the development of new legislation.

The terms of reference particularly asked the Council to consider, where there is a subsequent finding of guilt or conviction of the offender for a similar offence, whether that subsequent offence should be regarded as a second offence for the purposes of offending.

The Council considers that increased penalty provisions for a second or subsequent offence should apply to a finding of guilt without a conviction. Higher penalties for subsequent offending are an attempt to deal with recidivism, and this applies equally to offenders who have been found guilty without a conviction recorded.

A finding of guilt without a conviction recorded is not the same as finding a person not guilty; there is still a finding that the person has committed the offence. Therefore, the Council recommends that the legislative amendments be made to provide that a finding of guilt without the recording of a conviction has the same effect as if one had been recorded for the purposes of proceedings against the offender for a subsequent offence.

The Council also makes recommendations in relation to the application of driver licence disqualification and demerit points, restitution, compensation and costs orders, forfeiture and confiscation, and other court orders to an offender who is found guilty without a conviction being recorded.

List of Recommendations

Chapter 4: The future of non-conviction sentences

Should non-conviction orders continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas)?

Recommendation 1 *page 54*

That ‘not recording a conviction’ should continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas).

Recommendation 2 *page 54*

The law should be simplified and clarified so that a clear explanation is possible.

Recommendation 3 *page 54*

Clear explanation should be provided to offenders who receive a non-conviction sentence about the consequences of the sentence at the sentencing hearing.

What should be the approach to the disclosure of findings of guilt without a conviction?

Recommendation 4 *page 61*

That greater restrictions be imposed on the disclosure of findings of guilt without a conviction than apply for a recorded conviction under the provisions of the *Annulled Convictions Act 2003* (Tas).

Recommendation 5 *page 61*

That the following categories of exemptions to the restrictions on disclosure of findings of guilt without conviction are appropriate:

- the proceedings of a court or the making of a decision by a court, including a decision about sentence
- the legitimate enforcement, prosecution, administrative, penal, rehabilitative or other functions of a Justice Agency
- registration and employment for teachers and for persons working with vulnerable persons
- adoption
- registration for health practitioners under the Health Practitioner Regulation National Law (Tasmania)
- appointment as a judicial officer or employment or consultancy with a Justice Agency
- under the *Legal Profession Act 1997* (Tas).

Recommendation 6 *page 61*

If an exemption exists in relation to findings of guilt without a conviction recorded (in other words a finding of guilt can be disclosed), the decision maker should be directed to take account of the fact that court considered that it was appropriate not to record a conviction in making its determination.

Recommendation 7 *page 61*

For the purposes of a decision in relation to registration relevant to employment, the applicant should be provided with an opportunity to provide further information in relation to the finding of guilt without a conviction recorded, in support of his/her application.

How should the recommendation that greater restrictions be imposed on the disclosure of findings of guilt without a conviction than apply for a recorded conviction under the *Annulled Convictions Act 2003* (Tas) (Recommendation 4) be implemented?

Recommendation 8 *page 63*

A finding of guilt without a conviction recorded should continue to be included within the meaning of conviction in the *Annulled Convictions Act 2003* (Tas) but the exemptions from annulment that apply for findings of guilt without a conviction recorded should be more limited.

What should be the consequences of a finding of guilt without a conviction for licensing or registration relevant to employment?

Recommendation 9 *page 65*

A finding of guilt without a conviction should not be relevant to licencing or registration for employment or for obtaining or retaining a licence or permit relevant to a person's ability to earn income unless a specific exemption (see Recommendation 5) applies.

Recommendation 10 *page 65*

Discretionary judgments based on character (such as the 'fit and proper person' test) or other broad discretionary powers concerning licensing or registration should not include consideration of a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) applies.

Recommendation 11 *page 65*

Banning or prohibition orders in relation to employment or licences/permits relevant to employment not be made on the basis of a finding of guilt without conviction unless a specific exemption (see Recommendation 5) applies.

What other changes are necessary to clarify the relationship between a finding of guilt without a conviction and a recorded conviction for employment purposes?

Recommendation 12 *page 67*

Legislation be enacted that sets out the obligations of a person to provide information about a finding of guilt without a conviction, its effect for employment purposes, and consequences for improper disclosure.

Recommendation 13 *page 67*

Consideration be given to amending the *Anti-Discrimination Act 1998* (Tas) by expanding the definition of 'irrelevant criminal record' to include a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) applies.

What changes are necessary to give effect to Recommendation 12 (that is, to set out the obligations of a person to provide information about a finding of guilt without a conviction, its effect for employment purposes, and consequences for improper disclosure)?

Recommendation 14 *page 70*

That a finding of guilt without a conviction be clearly included within the framework of the *Annulled Convictions Act 2003* (Tas) by inserting a provision that specifies that a finding of guilt without conviction in relation to all offences is immediately annulled. In effect this means that the mechanism for making a distinction between a recorded conviction and a finding of guilt without a conviction recorded is the immediate annulment of a finding of guilt without a conviction.

Recommendation 15 *page 70*

That the title of the *Annulled Convictions Act 2003* (Tas) should be amended to reflect its treatment of both convictions and findings of guilt without conviction.

Recommendation 16 *page 70*

That a community education campaign be undertaken to inform the public generally, and employers in particular, about the distinction between a finding of guilt without a conviction and a recorded conviction and the legal obligations on employers in relation to an offender's criminal history.

How should the competing purposes of the registration and reporting requirements for sex offenders pursuant to the *Community Protection (Offender Reporting Act) 2005* (Tas) be reconciled with the purposes of a non-conviction sentence?

Recommendation 17 *page 71*

That the *Community Protection (Offender Reporting Act) 2005* (Tas) be amended to provide the court with a broad discretion to make a reporting order if the person is a person in respect of whom the court has made an order without recording a conviction under section 7 of the *Sentencing Act 1997* (Tas) or section 47 of the *Youth Justice Act 1997* (Tas).

Should increased penalty provisions for subsequent offending apply to finding of guilty without the recording of a conviction?

Recommendation 18 *page 73*

The *Sentencing Act 1997* (Tas) s 10(2) and the *Youth Justice Act 1997* (Tas) s 49 be amended to provide that a finding of guilt without the recording of a conviction has the same effect as if one had been recorded for the purposes of proceedings against the offender for a subsequent offence.

What should be the consequences of a finding of guilt without a conviction for driver licence disqualification?

Recommendation 19 *page 75*

Mandatory driver licence disqualifications should apply to a finding of guilt without a conviction recorded for adult and youth offenders.

Recommendation 20 *page 75*

Where licence disqualification is an available option, a court should have a discretion to impose a period of disqualification from driving on an offender who is found guilty without a conviction being recorded for adult and youth offenders.

What should be the consequences of a finding of guilt without a conviction for compensation, restitution and costs orders?

Recommendation 21 *page 77*

The court should have the power to make an order for compensation or restitution following a finding of guilt without recording a conviction.

Recommendation 22 *page 77*

The court should have a power to make an order for costs following a finding of guilt without recording a conviction.

What should be the consequences of a finding of guilt without a conviction for forfeiture and confiscation orders?

Recommendation 23 *page 78*

A finding of guilt should provide the foundation for further orders in relation to forfeiture of items connected to the offence.

Recommendation 24 *page 78*

Mandatory forfeiture provisions in Tasmanian legislation should apply to a finding of guilt for adult and youth offenders.

Recommendation 25 *page 78*

A court should have the same discretion, in relation to adult and youth offenders, to order forfeiture in relation to any item that is the subject matter of the charge or is used in the commission of the offence on an offender who is found guilty without a conviction being recorded as if a conviction had been recorded.

How should the concept of ‘sentence’ be clarified?

Recommendation 26 *page 80*

A revised definition of sentence be inserted in the *Criminal Code* (Tas) to reflect the range of dispositive orders that a court can make on a finding of guilt. A model for the amendment can be found in the *Criminal Procedure Act 2009* (Vic) s 3, which can be adapted for the Tasmanian context as follows:

‘sentence’ includes –

- (a) the recording of a conviction
- (b) an order made under Parts 3; 4; 5; 6; 6A; 7; 8; 9; or 10 of the *Sentencing Act 1997* (Tas)
- (c) an order made under the *Community Protection (Offender Reporting) Act 2005*
- (d) an order made under the *Crime (Confiscation of Profits) Act 1993* (Tas).

What should be the consequences of a finding of guilt without a conviction in relation to other orders that the court can make at sentencing?

Recommendation 27 *page 80*

Discretionary orders that can be made by the sentencing court on conviction should also be available following a finding of guilt.

Recommendation 28 *page 80*

Mandatory special penalties should apply to an offender who is found guilty without a conviction recorded.

What other legislative changes are necessary to ensure consistency with the modern understanding of conviction in Australia?

Recommendation 29 *page 81*

The use of the term ‘conviction’ in the *Criminal Code* (Tas), the *Justices Act 1959* (Tas), the *Evidence Act 2001* (Tas) and the *Police Offences Act 1935* (Tas) be reviewed to ensure consistency with the modern understanding of conviction, as used in the *Sentencing Act 1997* (Tas), that is the recording (or not recording) of a conviction as part of the imposition of sentence.

Should section 7 of the *Sentencing Act 1997* (Tas) be amended to allow a fine to be imposed without a conviction being recorded?

Recommendation 30 *page 88*

Section 7 of the *Sentencing Act 1997* (Tas) should be amended to allow for a fine to be imposed without a conviction being recorded.

If section 7 of the *Sentencing Act 1997* (Tas) is amended to allow a fine to be imposed without a conviction being recorded, should the *Monetary Penalties Enforcement Act 2005* (Tas) be amended?

Recommendation 31 *page 89*

The *Monetary Penalties Enforcement Act 2005* (Tas) should be amended to remove the reference in section 20 to deemed conviction, and the enforcement procedure be grounded on the failure to pay within a specified period of time.

What are the consequences for repeat offenders of removing the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas)?

Recommendation 32 *page 91*

Guidelines should be developed to allow infringement notice history to be made available to the court in sentencing an offender for a subsequent offence in appropriate cases.

Recommendation 33 *page 91*

Increased penalty provisions applicable for subsequent offending should not apply to offenders who are issued with an infringement notice and do not elect to have the matter determined by a court.

Should infringement notices be disclosed in a criminal history check for employment and licensing purposes?

Recommendation 34 *page 91*

Infringement notices should not appear on a criminal record check.

What are the consequences of removing the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas) for the allocation of demerit points and driver's licence disqualification?

Recommendation 35 *page 92*

That legislative changes be made to ensure that demerit points for infringement notices for driving offences and driver's licence disqualification still occur despite the removal of the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas).

What are the consequences of removing the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas) for the allocation of demerit points and the application of forfeiture provisions?

Recommendation 36 *page 93*

That legislative changes be made to ensure that demerit points and forfeiture arising from the issue of infringement notices still occur despite the removal of the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas).

1.

Introduction

I.1 BACKGROUND TO THIS PAPER

Under the *Sentencing Act 1997 (Tas)* and the *Youth Justice Act 1997 (Tas)*, there are several sanctions that can be imposed by judges and magistrates without recording a conviction. However, there is no power to impose a fine on an adult offender without recording a conviction. This Paper considers the implications for an offender of a Court not recording a conviction following a finding of guilt, and specifically whether a fine should be able to be imposed if a conviction is not recorded. This reflects concerns expressed by Tasmanian magistrates, over many years, that it is desirable that the sentencing discretion be enlarged to allow for the courts to impose a fine without recording a conviction. This was the recommendation of a Legislative Council Select Committee (the Wing Committee) in 1999.¹ This issue has continued to be raised in other forums² and in 2008, the Tasmania Law Reform Institute recommended that courts be provided with the power to fine an offender with or without recording a conviction.³ In 2012, the issue was raised with the Attorney-General by the Chief Magistrate and in 2013 the Attorney-General requested that the Sentencing Advisory Council conduct an inquiry into the matter.

I.2 TERMS OF REFERENCE

By a letter dated 22 October 2013, the Attorney-General, the Hon. Brian Wightman MP, sought advice from the Sentencing Advisory Council ('the Council') on the implications for an offender of a Court not recording a conviction following a finding of guilt, and specifically whether a fine should be able to be imposed if a conviction is not recorded. The terms of reference for this inquiry were as follows:

- What purpose or purposes does the pronouncement/recording of an order of conviction serve in the modern criminal justice system?
- To what extent has the concept of 'conviction' been kept separate from the concept of 'guilt' both in statute and at common law in Tasmania?
 - Should the two concepts remain separate?
 - Is there a need to clarify any legislative provisions to maintain this distinction?
- What is the actual effect of the exercise by a Court of the sentencing option to 'not record a conviction' on an offender's economic or social wellbeing or employment prospects in light of the fact that criminal history records are kept by and obtained from Tasmania Police and not the Courts?
- What should be the legal consequences of a finding of guilt where a conviction is not recorded? If there is a subsequent finding of guilt or conviction of the offender for a similar offence should that subsequent offence be regarded as a second offence for the purpose of sentencing?

1 Parliament of Tasmania, *Correctional Services and Sentencing in Tasmania*, (1999) 119.

2 For example, in Bartels' study of suspended sentences it was raised by a judge and a magistrate who criticised the restrictions on imposing penalties without conviction, in particular the inability to impose a fine or community service without a conviction. Lorana Bartels, *Sword or Feather? The Use and Utility of Suspended Sentences in Tasmania* (PhD thesis, University of Tasmania, 2008) [3.4.9].

3 Tasmania Law Reform Institute, *Sentencing*, Final Report No 11 (2008) Recommendation 42.

- Should 'not recording a conviction' continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas)? If so should the section be amended to allow for a fine to be imposed without a conviction being recorded? If the amendment is made how will it relate to section 20 of the *Monetary Penalties Enforcement Act 2005* (Tas) where an offender is 'taken to be convicted' of an offence if an infringement notice is paid or if no election to have the matter decided by the court is made within 28 days?

1.3 OVERVIEW OF THE TASMANIAN SENTENCING LEGISLATION

Courts (judges and magistrates) are central to the sentencing process and have the responsibility for imposing sentence on persons found guilty of offences. The imposition of sentence involves the exercise of judicial discretion in individual cases within the constraints of the established sentencing principles of the common law and the legislative framework.⁴

The *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas) consolidate the sentencing powers of courts in relation to adult and youth offenders. The *Sentencing Act 1997* (Tas) applies to matters heard in the Supreme Court and the Magistrates Court in relation to adult offenders.⁵

Different sentencing principles and sentencing options generally apply for young offenders with greater emphasis placed on the rehabilitation of the young person.⁶ A youth is a person who is aged 10 or more⁷ and under the age of 18 at the time that the offence was committed.⁸ Most offences committed by youths are heard in the Magistrates Court (Youth Justice Division) and the sentencing options and principles that apply are set out in the provisions of the *Youth Justice Act 1997* (Tas). Youth offenders are dealt with in the Supreme Court for 'prescribed offences', which are listed offences that vary depending on the age of the offender.⁹ A youth aged 15 years or older who is charged with an indictable offence that is not a prescribed offence has the option of having the matter heard by a jury in the Supreme Court.¹⁰ If the matter is heard in the Supreme Court, the Supreme Court has a discretion as to whether to sentence the youth under the *Youth Justice Act 1997* (Tas) or the *Sentencing Act 1997* (Tas).¹¹

Legislation creating criminal offences also includes an indication of the penalty for persons who are found guilty of the offence(s). The *Criminal Code* (Tas) contains most of the indictable (serious) offences created by the Tasmanian Parliament and specifies a general maximum of 21 years imprisonment or a fine of no specific maximum for all offences, except murder and treason where the penalty is imprisonment for natural life or such other term as the court decides.¹² There is an array of other legislation creating summary offences in Tasmania. It has been estimated that there are over two hundred such Acts.¹³ These statutes ordinarily specify the maximum penalty or a minimum and maximum penalty and may also provide for an increased penalty for a second (and subsequent) offence.

4 See Kate Warner, *Sentencing in Tasmania* (Federation Press, 2nd ed, 2002) [1.2].

5 *Sentencing Act 1997* (Tas) s 5. The authority of a court to make an area restriction order, under the *Sentencing Act 1997* (Tas) div 3 pt 9, applies to offenders regardless of their age or the court hearing the matter.

6 For detailed consideration of the principles relevant to the sentencing of young offenders see Sentencing Advisory Council [Victoria], *Sentencing Children and Young People in Victoria*, Report (2012) ch 3 <<https://sentencingcouncil.vic.gov.au/>>.

7 This is the age of criminal responsibility, *Criminal Code* s 18(1).

8 *Youth Justice Act 1997* (Tas) s 3.

9 *Youth Justice Act 1997* (Tas) ss 3, 161. For an offender less than 14, the offences are murder, manslaughter and attempted murder; for an offender aged 14, 15 or 16, in addition to the offences for under 14, aggravated sexual assault, armed robbery, aggravated armed robbery and being found prepared for the commission of a crime under ch XXVII of the *Criminal Code* armed with a dangerous or offensive weapon or instrument; for an offender aged 17, in addition to the offences already specified, offences under the *Police Offences Act 1935* (Tas) s 37] (excessive noise, smoke from vehicles), offences under the *Marine Safety (Misuse of Alcohol) Act 2006* (Tas), the *Road Safety (Alcohol and Drugs) Act 1970* (Tas), the *Traffic Act 1925* (Tas), or the *Vehicle and Traffic Act 1999* (Tas) except where proceedings for that offence are, or are to be determined in conjunction with proceedings for an offence that is not a prescribed offence.

10 *Youth Justice Act 1997* (Tas) s 161(2).

11 *Sentencing Act 1997* (Tas) s 107. For an example of a youth offender sentenced under the *Sentencing Act 1997* (Tas), see *Tasmania v BWJK, Tennant J*, 5 September 2012, (Sentence).

12 *Criminal Code* s 389 (general sentence), s 158 (murder), s 56 (treason). Other indictable offences are contained in *Misuse of Drugs Act 2001* (Tas), *Environmental Management and Pollution Control Act 1994* (Tas), *Firearms Act 1996* (Tas), *Legal Profession Act 2007* (Tas), *Living Marine Resources Management Act 1995* (Tas), *Meat Hygiene Act 1985* (Tas), *Petroleum (Submerged Lands) Act 1982* (Tas).

13 John Blackwood and Kate Warner, *Tasmanian Criminal Law: Texts and Cases Volume 1* (University of Tasmania Press, 2006) 30.

1.4 KEY TERMINOLOGY: CONVICTION, GUILT AND SENTENCE

Although the public conception of the criminal justice system is primarily centred on guilt (whether by trial or plea) and sentence, the foundations of sentencing are built upon three concepts: guilt, conviction and sentence.¹⁴ Traditionally, a successful prosecution was viewed as having four sequential features: 'first, an admission or jury finding of guilty; second, judicial acceptance of that finding by recording of a conviction; third, the announcement of the judgment (that is, the sentence); and finally, its execution'.¹⁵ This reflected the long held view that a court could not exercise its sentencing powers until a 'formal judicial determination of guilt, usually manifested by the recording of a conviction' as this was fundamental to the protection of the rights of accused persons.¹⁶ The traditional sequential approach (guilt, conviction, sentence and execution) has been weakened by the adoption of a statutory sentencing regime in Tasmania (and other Australian jurisdictions) that provides that the recording of a conviction is, in some cases, optional or prohibited.¹⁷

Central to this inquiry is the meaning of the concepts of guilt, conviction and sentence and the relationship between them. This section provides an overview of this key terminology. These issues are problematic and have given rise to uncertainty.¹⁸

1.4.1 Guilt

A person is guilty of an offence if either the person admits, by way of a plea of guilty, that he/she has committed the offence¹⁹ or a tribunal of fact (usually a jury or a magistrate) is satisfied that the prosecution has established, beyond reasonable doubt, the matters that must be proved to establish the offence and delivers a verdict of guilty.²⁰

A finding of guilt serves two important functions in the sentencing process. Under current sentencing legislation, it provides the jurisdictional basis for imposing a sentence – a person must be found guilty before the court can proceed to impose sentence.²¹ It is not necessary for the court to record a conviction to impose sanctions on an offender who has been found guilty. This differs from the position that existed at common law where it was the conviction or the finality of the order that provided the basis for the court's dispositive powers.²²

The second role of the finding of guilt is that it operates to determine some of the facts that form the basis for the sentence imposed by the judge or the magistrate. In the exercise of the sentencing discretion, a judge or magistrate must determine the factual basis for the imposition of sentence that reflects the circumstances of both the offence and the offender²³ and a fundamental principle is that a judge or magistrate is not entitled to sentence an offender on a basis inconsistent with the verdict²⁴ or a plea.²⁵ In some cases the factual implications arising from a finding of guilt may be clear, such as in cases heard in the Magistrates' Court where the magistrate is both the fact-finder and the sentencer.²⁶ In other cases, such as pleas of guilty (which is an admission of the 'bare ingredients of the offence')²⁷ or a jury verdict where there is more than one factual basis for the verdict, greater difficulties may arise.²⁸

14 Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (Thomson, 3rd ed, 2014) [1.250].

15 Ibid.

16 Ibid; *Maxwell* (1996) 184 CLR 501.

17 See at [2.1].

18 Freiberg, above n 14, [1.250].

19 *Criminal Code* (Tas) s 355.

20 *Criminal Code* (Tas) s 383.

21 See Freiberg, above n 14, [1.255]. See *Sentencing Act 1997* (Tas) s 7; *Youth Justice Act 1997* (Tas), s 47. Although note older offences in the *Police Offences Act 1935* (Tas) provide that a person who contravenes the section is guilty of an offence and is liable on summary conviction to a penalty. See for example *Police Offences Act 1935* (Tas) s 35 (common assault and aggravated assault).

22 Freiberg, *ibid* [1.250].

23 Warner, above n 4, [2.301].

24 Ibid [2.316]. See *Webb* [1971] VR 147; *West* [1979] Tas R 1.

25 *De Simoni* (1981) 147 CLR 383, 389; *R v Olbrich* (1999) 199 CLR 272.

26 Freiberg, above n 14, [1.255].

27 Warner, above n 4, [2.311].

28 Freiberg, above n 14, [1.255]. For more information about the determination of the factual basis of sentencing, see Freiberg, [2.55]; Warner, *ibid* [2.3]. Note that the *Criminal Code* (Tas) s 383(3) provides that a judge has the power to ask questions of the jury in relation to their findings of fact.

1.4.2 Conviction

The meaning of a conviction is more obscure and its precise meaning has been difficult to identify because the meaning shifts depending on the context in which it is used.²⁹ The potential for confusion is highlighted by Bagaric & Edney, where they explain the two distinct meanings of conviction – one meaning related to the finding of guilt and one meaning connected with the sentencing options for the court:

When discussing the concept of the conviction a fundamental distinction has to be made between two interrelated – but distinct – meanings of the word 'conviction'. First, the word 'conviction' may be used as describing a part of the adjudicatory aspect of the criminal process where the court finds the charge or offence alleged against the accused proved. In this sense, 'conviction' refers to a positive finding that the charge or offence has been proved and the accused has been found guilty beyond reasonable doubt. Thus 'conviction' is confined here solely for the purpose of describing the final outcome of the adjudicatory stage of the proceeding that results in a finding of guilty.

The word 'conviction' also has a meaning in respect of the dispositional stage of the proceedings. In jurisdictions where a court may impose a sanction with or without conviction, the word describes a process where a court may in its discretion impose a conviction upon the offender.³⁰

This ambiguity and dual meaning was perpetuated in *The Attorney-General v Smith*, where Crawford J cited the observation in *R v Hannan; Ex parte Abbott*³¹ that 'sometimes [conviction is] used in the narrow sense as indicating merely that an accused has been made the subject of a finding of guilt. Sometimes it is used in the wider sense of the finding of guilt combined with the sentence of the court'.³²

In a thorough survey of the diverse interpretations of 'conviction' found in case law, Freiberg³³ observes that it has been treated as:

- denoting the jury's verdict of guilt³⁴
- a determination that an offence has been proved or a final adjudication of guilt³⁵
- the court's sentence or judgment³⁶
- the court's acceptance of the return of a guilty verdict or the offering of a guilty plea³⁷
- the acceptance of a plea of guilty and a remand for sentence³⁸
- occurring on the administration of the *allocutus*³⁹

29 Freiberg, *ibid*; *Maxwell* (1996) 184 CLR 501.

30 Richard Edney and Mirko Bagaric, *Australian Sentencing: Principles and Practice* (Cambridge University Press, 2007) [11.4.1].

31 (1986) 41 NTR 37, 40.

32 [2002] TASSC 10, 23 per Crawford J with whom the other members of the court agreed.

33 This list and the associated references are taken from Freiberg, above n 14, [1.260].

34 *De Marchi* [1983] 1 VR 619.

35 *Kinney v Green* (1992) 29 NSWLR 137, 139 per Carruthers J.

36 *Tanks and Goss* [1963] VR 121, 124; *S (an infant) v Manchester City Recorder* [1969] 3 All ER 1230, 1246; *Re Stubbs* (1947) 47 SR (NSW) 329, 335; *Cobiac v Liddy* [HCA] 26 at [4]-[7] per Windeyer J (1969) 119 CLR 257; *Hannan; Ex parte Abbott* (1986) NTR 37, 39; *Muscatt* (1996) SASR 367.

37 *Griffiths* [1977] HCA 44 at [24] per Barwick CJ and [11]-[13] per Aicken J (1977) 137 CLR 293. See also *Maxwell* (1996) 184 CLR 501; *Elliott; Blessington v The Queen* (2007) 234 CLR 38; *DPP (Cth) v Helou* (2003) 58 NSWLR 574. Freiberg writes that 'such acceptance might be expressed, more usually it is implicit in the subsequent imposition of sentence, or the calling for reports preparatory of sentence', Freiberg, above n 14, [1.260] fn 612.

38 *McCoid and Parsons* [1988] VR 982 approved in *Della Patrona v DPP (Cth) (No 2)* (1995) 38 NSWLR 257.

39 *Shillingworth* [1985] 1 Qd R 537; *Verrall* [2013] 1 Qd R 587. Freiberg describes the common law procedure as '[a]dministering the *allocutus* is the step in a criminal proceeding which occurs when, after a plea of guilty or a finding of guilt by the jury, the court asks the accused whether there is any reason why the court should not proceed to pass judgment according to law', Freiberg, above n 14, [1.260] fn 614. In Tasmania, the *allocutus* is contained in the *Criminal Code*, s 385(1) and is 'now put in terms that the person has been found guilty, or has pleaded guilty'. In contrast, before the *Sentencing Act 1997* (Tas), 'the practice of the Supreme Court of Tasmania when putting the *allocutus* to a person who had been found guilty by jury verdict was to recite that the person stood convicted by the verdict. With a guilty plea, the *allocutus* recited the fact that the person stood convicted on his own confession'. Warner, above n 4, [15.203].

- conviction (in the sense of a finding of guilt) and sentence (in the sense of a final disposal of the case)⁴⁰
- a 'bare finding of guilt' for the purpose of an *ex parte* proceeding.⁴¹

As stated, the meaning of conviction is determined by the statutory context in which it is used and in explaining the meaning of the conviction in the context of the *Sentencing Act 1997* (Tas), in *The Attorney-General v Smith*, Crawford J stated that:

[W]ithout a determination of guilt, there cannot be a conviction, but a determination of guilt will not in all cases amount to a conviction. That has been emphasised for the courts of this State by s10 [of the *Sentencing Act 1997* (Tas)]. It follows from it that in this State, notwithstanding a finding of guilt combined with the sentence of the court, for most purposes the offender is not to be taken to have been convicted unless the court announces that it records the conviction.⁴²

In this inquiry, conviction is generally to be understood in the sense of the recording (or not recording) of a conviction as part of the imposition of sentence under the *Sentencing Act 1997* (Tas), following a finding of guilt.

1.4.3 Sentence

As with conviction, the boundaries of the concept of 'sentence' are fluid and dependent on the context in which the term is used.⁴³ Although the *Sentencing Act 1997* (Tas) contains 'sentencing orders' that a court may make following a finding of guilt,⁴⁴ Tasmanian legislation does not provide a definition of 'sentence' that is of general application. Instead, 'sentence' is statutorily defined for specific (and limited) purposes, such as:

- the correction of a sentence under the *Sentencing Act 1997* (Tas) where it is broadly defined in section 94(1) to include 'a forfeiture, compensation levy, compensation order, restitution order, exclusion order, disqualification and loss or suspension of a licence or privilege'
- an appeal against sentence under the *Criminal Code* (Tas) where sentence is defined in section 399 to include any order made by the court of trial: (a) for the keeping in custody of the person convicted;⁴⁵ (b) with reference to any property; or (c) with reference to any moneys to be paid by a person convicted. In relation to Crown appeals, sentence also includes a probation order under the *Sentencing Act 1997* (Tas).⁴⁶ An order must fall within either the statutory definition of a sentence or within the ordinary meaning of sentence, which is 'in the strict common law sense, ... the judgment of the court consequence upon conviction. To constitute judgment, the order or determination of the court must definitively dispose of the consequences of conviction'⁴⁷
- other legislative provisions extend the concept of 'sentence', by providing that orders of the court (that would not otherwise fall within the meaning of sentence) can be appealed against as if that order were a sentence imposed on conviction. These provisions are found in relation to dangerous criminal declarations,⁴⁸ the registration of sex offenders,⁴⁹ and forfeiture orders.⁵⁰

40 This is for the purposes of *autrefois convict*: *Stone* (2005) NSWLR 413; *Keys v West* [2006] NSWSC 136. *Autrefois convict* is a plea of a defendant that he/she has already been convicted of the offence alleged. See *Criminal Code* (Tas) s 358.

41 *Keys v West* (2006) 65 NSWLR 668. See further Freiberg, above n 14, [1.260] fn 616.

42 [2002] TASSC 10, [23]. The principles expressed in this decision have been applied to the provisions in relation to the recording of a conviction in the *Youth Justice Act 1997* (Tas), see *DPP v NOP* [2011] TASSCA 15, [26] Evans J.

43 See further Richard Fox and Arie Freiberg, 'Sentences Without Convictions: From Status to Contract in Sentencing' (1989) 13(5) *Criminal Law Journal* 297; Freiberg, above n 14, [1.270]; Warner, above n 4, [15.204]-[15.208].

44 Section 7. The *Youth Justice Act 1997* (Tas) s 47 refers to 'sentencing and other orders that may be imposed'.

45 Note the *Sentencing Act 1997* (Tas) s 10(2)(b)(i) provides that a finding of guilt without the recording of a conviction has the same effect as if a conviction was recorded for the purposes of appeals against sentence.

46 *Criminal Code* (Tas) s 401(2)(3).

47 Warner, above n 4, [15.206] relying on the meaning of 'sentence' in *Griffith* (1997) 137 CLR 293, 307 per Barwick CJ; 345 per Aickin J. For this reason, Warner suggests that an order under *Sentencing Act 1997* (Tas) s 7(f) does not seem to be a sentence, at [15.208]. In relation to summary matters, appeal from penalties, sentences or orders imposed to the Supreme Court is, by way of motion, to review under the *Justice Act 1959* (Tas) s 107. In relation to appeals from a sentence or order of the Youth Justice Division of the Magistrates Court, the *Justice Act 1959* (Tas) applies, *Youth Justice Act 1997* (Tas) s 163.

48 *Sentencing Act 1997* (Tas) s 23.

49 *Community Protection (Offender Reporting) Act 2005* (Tas) s 50A. Prior to the amendment of the Act, a reporting order was not appealable as a sentence of the court, *S v Tasmania* [2007] TASSC 62.

50 *Crime (Confiscation of Profits) Act 1993* (Tas) s 72.

In the context of this inquiry, a key concern is the exercise of the discretion whether or not to record a conviction following a finding of guilt. A conviction is a sanction in its own right and, accordingly, is part of the sentence of court and the recording or failure to record a conviction can be the subject of an appeal against sentence.⁵¹

In addition to sanctions that are 'sentences', courts have the power to make other orders in relation to persons found guilty such as orders for restitution, compensation and area restrictions.⁵² In addition, courts have the power to disqualify offenders from holding licences, make costs orders, order forfeiture of property, and make other orders ancillary to a finding of guilt or conviction.⁵³

1.5 SCOPE OF THE PAPER

This paper outlines the sentencing powers of a court in Tasmania to impose sanctions with or without recording a conviction for adult and youth offenders. It also considers the exercise of the court's discretion as to whether to record a conviction. A related area of law is the operation of legislation that exists to ameliorate the effect of past conviction by providing that certain convictions are annulled after a certain period of time.⁵⁴ This also raises the issue of the scope of information contained in an offender's criminal history record. These topics are addressed in Chapter 2.

A key concern is whether the distinction between a finding of guilt and the imposition (or recording) of a conviction has been maintained in the current framework of the criminal justice system in Tasmania and whether the sentencing option of not recording a conviction has any practical effect. It has long been recognised that a conviction has an immediate effect on an offender's legal and social status, and may also have long-term detriments.⁵⁵ Yet, these consequences are difficult to determine due to a multitude of law and regulations (state, federal and overseas).⁵⁶ Uncertainty also exists about how the status of being a convicted person differs from being a person who has been found guilty. A crucial question addressed by this inquiry is the extent to which the legal and social consequences of a conviction now extend, or should extend, to an offender who has been found guilty and not convicted. This is a significant issue in view of the increased use of police history record checks as part of the employment process. The consequences of a conviction and a finding of guilt are considered in detail in Chapter 3.

The future of non-conviction orders is explored in Chapter 4. Consideration is given to the issue of whether 'not recording a conviction' should continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas) and the nature of the legal consequences that should attach to a finding of guilt without recording a conviction.

This paper only addresses the use of non-convictions orders in relation to Tasmanian legislation. Although criminal law is principally a state responsibility, both the Tasmanian and Commonwealth Parliaments have the power to make criminal laws.⁵⁷ In relation to federal offenders, the *Crimes Act 1914* (Cth) section 19B provides the court with powers to discharge an offender without recording a conviction. The powers contained in the *Crimes Act 1914* (Cth) are a matter of Commonwealth jurisdiction and beyond the scope of the inquiry.

51 In some cases, the failure to record a conviction is the basis for the submission that the sentence was manifestly inadequate: *The Attorney-General v Smith* [2002] TASSC 10; *DPP v NOP* [2011] TASC 15. In others, the recording of the conviction is grounds for a submission that the sentence was manifestly excessive: *Higgins v McCulloch* [2013] TASSC 49; *Badcock v White* [2004] TASSC 59; *Traynor v McCullough* (2011) 218 A Crim R 177.

52 *Sentencing Act 1997* (Tas) pt 9; *Youth Justice Act 1997* (Tas) pt 4 divs 13, 14. These are discussed further in Chapter 3.

53 See Chapter 3.

54 *Annulled Convictions Act 2003* (Tas).

55 This is discussed at [2.2].

56 Fox and Freiberg, above n 43, 301.

57 For a detailed consideration of the interrelationship between Commonwealth and state jurisdiction, see Freiberg, above n 14, [1.145]-[1.160] and Warner, above n 4, [1.3].

2. Conviction within the modern Tasmanian criminal justice system

As indicated in Chapter 1, the meaning of conviction is a fluid concept and the precise moment of 'conviction' is dependent on the context in which it is used. While it was accepted that, at common law, 'in the absence of a statutory provision, a guilty plea or equivalent verdict does not amount to a conviction [and that] something more is required',⁵⁸ case law indicates that 'notions of guilt and conviction were both conflated and separated depending upon the purpose of the legislation in relation to the dispositional outcome'.⁵⁹

Under the *Sentencing Act 1997* (Tas) section 7 and the *Youth Justice Act 1997* (Tas) sections 47 and 49, a person must be found guilty of an offence, and then the court may record (or not record) a conviction and impose a sentencing order. This legislation makes it clear that guilt and the recording of a conviction are distinct stages of the court process. It also highlights the importance of a conviction as a sanction in its own right.⁶⁰ The separation of guilt from conviction is reinforced by the *Sentencing Act 1997* (Tas) section 10 that stipulates that a finding of guilt without the recording of a conviction is not to be taken to be a conviction for any purpose (apart from the exceptions listed).⁶¹ This separation of a finding of guilt from a conviction was affirmed in *Attorney-General v Smith* where the court stated that 'notwithstanding a finding of guilt combined with a sentence of the court, for most purposes the offender is not to be taken to have been convicted unless the court announces that it records the conviction'.⁶² The *Youth Justice Act 1997* (Tas) section 49(6) also specifies that except as otherwise provided 'a finding of guilty without the recording of a conviction is not taken to be a conviction for any purpose'.⁶³

2.1 CONVICTION OR NON-CONVICTION UNDER THE SENTENCING ACT 1997 (TAS) AND THE YOUTH JUSTICE ACT (TAS)

The *Sentencing Act 1997* (Tas), s 7 sets out sentencing orders that may be imposed if a person is found guilty of an offence and specifically provides for sanctions that may be imposed with or without a record of conviction:

7. Sentencing orders

A court that **finds a person guilty of an offence** may, in accordance with this Act and subject to any enactment relating specifically to the offence –

- (a) **record a conviction** and order that the offender serve a term of imprisonment; or
- (ab) if the court is constituted by a magistrate, **record a conviction** and make a drug treatment order under Part 3A in respect of the offender; or

58 Freiberg, *ibid* [1.260]. See also *Tonks and Goss* [1963] VR 121; *Maxwell* (1996) 184 CLR 501.

59 Freiberg, *ibid* [1.255]. See Chapter 1.

60 *Ibid*.

61 See further [3.1.1].

62 [2002] TASSC 10, [23] per Crawford J.

63 This has the opposite effect to the position under its predecessor, the *Child Welfare Act 1960* (Tas), where section 20(2) provided that any reference of a person convicted is a reference to a finding of guilty.

- (b) **record a conviction** and order that the offender serve a term of imprisonment that is wholly or partly suspended; or
- (c) **record a conviction** and, if the offender has attained the age of 18 years and the offence is punishable by imprisonment, make a community service order in respect of the offender; or
- (d) **with or without recording a conviction**, make a probation order in respect of the offender if the offender has attained the age of 18 years; or
- (e) **record a conviction** and order the offender to pay a fine; or
- (ea) in the case of a family violence offence, **with or without recording** a conviction, make a rehabilitation program order; or
- (f) **with or without recording a conviction**, adjourn the proceedings for a period not exceeding 60 months and, on the offender giving an undertaking with conditions attached, order the release of the offender; or
- (g) **record a conviction** and order the discharge of the offender; or
- (h) **without recording a conviction**, order the dismissal of the charge for the offence; or
- (i) impose any other sentence or make any order, or any combination of orders, that the court is authorised to impose or make by this Act or any other enactment.⁶⁴

In summary, a record of conviction is:

- mandatory for imprisonment, a suspended sentence of imprisonment, community service orders, fines or discharge⁶⁵
- optional for probation orders, rehabilitation program orders (for family violence offences) and conditional adjournments of proceedings
- prohibited for a dismissal of the charge.

In relation to young offenders, the *Youth Justice Act 1997* (Tas) s 47 sets out the sentencing options:

47. Sentences and other orders that may be imposed

- (1) If a youth is found guilty of an offence, the Court may do one or more of the following:
 - (a) dismiss the charge and impose no further sentence; **[conviction not to be recorded]**
 - (b) dismiss the charge and reprimand the youth; **[conviction not to be recorded]**
 - (c) dismiss the charge and require the youth to enter into an undertaking to be of good behaviour; **[conviction not to be recorded]**
 - (d) release the youth and adjourn the proceedings on conditions; **[conviction not to be recorded]**
 - (e) impose a fine; **[conviction may be recorded]**
 - (f) make a probation order; **[conviction may be recorded]**
 - (g) order that the youth perform community service; **[conviction may be recorded]**
 - (h) make a detention order; **[conviction must be recorded unless detention order wholly suspended]**
 - (i) in the case of a family violence offence, make a rehabilitation program order. **[conviction may be recorded]**
- (2) In addition to imposing a sentence under subsection (1), the Court may make one or more of the following orders:
 - (a) a suspended detention order;
 - (b) a restitution order;
 - (c) a compensation order;

⁶⁴ Emphasis added.

⁶⁵ See also *Justice Act 1959* (Tas) s 74BA(1).

- (d) subject to this Act, any other order a court may make under another Act in respect of the offence of which the youth is found guilty.
- (3) If the Court considers it appropriate that the youth pay an amount by way of compensation and an amount by way of fine but the youth has insufficient resources to pay both amounts, the Court must give preference to ordering the youth to pay the compensation amount.
- (4) In determining what orders to make under subsections (1) and (2), the Court must have regard to all the circumstances of the case, including –
 - (a) the nature of the offence; and
 - (b) the youth's age and any sentences or sanctions previously imposed on the youth by any court or a community conference; and
 - (c) the impact the sentence will have on the youth's chances of rehabilitation generally or finding or retaining employment.⁶⁶

The *Youth Justice Act 1997* (Tas), s 49 (inter alia) sets out the provisions in relation to recording conviction:

49. Recording conviction

- (1) If the Court imposes a sentence under subsection (1) of section 47 that does not include a sentence under paragraph (e), (f), (g), (h) or (i) of that subsection, **a conviction is not to be recorded.**
- (2) If the Court imposes a sentence under section 47(1)(e), (f), (g) or (i), the Court **may order that a conviction is or is not to be recorded.**
- (3) If the Court imposes a sentence consisting of or including a period of detention and does not make a suspended detention order suspending the whole of the period of detention, **a conviction must be recorded.**⁶⁷

It can be seen that an expanded category of sanctions must be imposed without a conviction and (unlike the position in relation to adult offenders) the court is given the discretion to fine a youth without recording a conviction. Orders of detention (immediate detention or partially suspended) are the only sanctions where the court must record a conviction for a youth offender.

The powers of a court to deal with an offender following a finding of guilt without recording a conviction are a creation of statute. At common law, there was no power authorising a judge or magistrate to make a sentencing order that a conviction not be recorded.⁶⁸ In Tasmania, the common law bond, which allowed the court to 'release a convicted offender after binding him over to appear for sentence when called on and to be of good behaviour in the meantime',⁶⁹ gave the court the power to postpone sentence and this has been described as the 'nearest equivalent' to a non-conviction sentencing order.⁷⁰ The powers contained in the *Sentencing Act 1997* (Tas) reflect, in part, the powers under its predecessor (the repealed *Probation of Offenders Act 1973* (Tas)) for a court to dismiss a complaint or make a probation order without recording a conviction.⁷¹ Similarly, the powers contained in the *Youth Justice Act 1997* (Tas) reflect the restrictions on the conviction of children contained in the repealed *Child Welfare Act 1960* (Tas) section 20. These statutory provisions on the imposition of convictions were legislative recognition of the adverse consequences that may flow from obtaining the status of a convicted person and a corresponding concern to limit these effects in appropriate cases.

⁶⁶ Words in square brackets added.

⁶⁷ Emphasis added.

⁶⁸ Freiberg, above n 14, [1.250].

⁶⁹ Warner, above n 4, [7.104].

⁷⁰ Freiberg, above n 14, [1.250]. For further information about the common law powers that allowed the release of an offender before sentence, see Warner, *ibid.* The common law bond has been abolished by the *Sentencing Act 1997* (Tas) s 101. The power to defer sentencing is now contained in the *Sentencing Act 1997* (Tas) s 7(f).

⁷¹ Section 7(1). See Warner, *ibid* [8.201] for a discussion of the expanded meaning of probation under the *Probation of Offences Act 1973* (Tas). See also Fox and Freiberg, above n 43.

2.2 WHAT IS THE SIGNIFICANCE OF A CONVICTION?

It has been long recognised that a conviction by a court fulfils an important declaratory role within the criminal justice system. A conviction is 'a formal and solemn act marking the court's, and society's disapproval of a defendant's wrongdoing'.⁷² Such is the potential impact of the court process on an offender, that it has been suggested '[t]he process of subjecting offenders to trial, conviction and the associated moral blame would in most cases suffice to focus the attention of the offenders and the community on the wrongness of their behaviour'.⁷³ The significance of a conviction as a sanction conveying censure is underscored by the ability of a court, following a finding of guilt, to impose a conviction with no additional penalty.⁷⁴ It is also reflected in case law that has recognised that 'the imposition of a conviction [is] a significant punishment in and of itself'.⁷⁵

Not only does a conviction serve a symbolic function as a mark of condemnation and stigmatisation, a conviction also has significant and long-term legal consequences for the convicted person.⁷⁶ The recording of a criminal conviction officially and permanently (subject to expungement) alters a person's legal status. This reduction in status is automatic and independent of any particular sanction that follows conviction.⁷⁷ Further, the repercussions of being a convicted person can cause long-term detriment and extend far beyond the time of any sentence imposed.⁷⁸ Historically, the consequences of conviction, under the doctrines of forfeiture and attainder, were immediate, well defined and absolute. An accused following a finding of guilt and before judgment was a 'convict' and their personal property was forfeited to the sovereign. Following judgment (usually a sentence of death), a person was 'attain' which meant that their real property (land) was forfeited and 'their remaining civil rights and capacities were extinguished'.⁷⁹ While the modern legal consequences that attached to 'conviction' are certainly less severe, they are also more difficult to ascertain due to the number of statutory provisions that are triggered by a conviction (and increasingly a finding of guilt without a conviction).⁸⁰ Collateral consequences may include the loss of office, licence or right, restrictions on employment and travel opportunities.⁸¹ This issue is considered in detail in Chapter 3.

2.3 EXERCISE OF A COURT'S DISCRETION WHETHER OR NOT TO RECORD A CONVICTION

Given the potential significance of a conviction for an offender's future, sentencing legislation provides the court with a discretion (in some cases) as to whether or not to record a conviction. A major limitation placed on the exercise of the discretion by legislation is the restrictions in relation to the type of sanction that may be imposed with an order not to record a conviction.⁸² Legislation also sets out factors that must be considered by a court in the exercise of its discretion, including the consequences for an offender of recording a conviction. The *Sentencing Act 1997* (Tas) section 9 provides:

72 *R v McInerney* (1986) 28 A Crim R 318, 329 per Cox J.

73 Edney and Bagaric, above n 30, 71–72 referring to Uma Narayan 'Appropriate Responses and Preventive Benefits: Justifying Censure and Hard Treatment in Legal Punishment' (1993) 13 *Oxford Journal of Legal Studies* 166, 176–177. See also Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (Prentice Hall, 1963) 126–39; Martin Wasik, 'The Grant of an Absolute Discharge' (1985) 5 *Oxford Journal of Legal Studies* 211, 215; Geraldine Mackenzie and Nigel Stobbs, *Principles of Sentencing* (Federation Press, 2010) 117 (in relation to the effect of the court process on young offenders).

74 *Sentencing Act 1997* (Tas) s 7(g). In relation to a discharge following conviction, in *R v Ingrassia* (1997) 41 NSWLR 447, Gleeson J explained that '[t]he legal and social consequences of being convicted of an offence often extend beyond any penalty imposed by the court', 449.

75 Edney and Bagaric, above n 30, 286. See *DPP v Candaza, Koufomanolis, Mavros & Nunez* [2003] VSCA 91; *ZXY v Tasmania Police* [2008] TASSC 55; *DPP v Kose* [2006] VSCA 119.

76 This is discussed in detail in Chapter 3. See Freiberg, above n 14, [1.260]; Fox and Freiberg, above n 43. See also Brian Steels, 'Forever Guilty: Convict Perceptions of Pre and Post Conviction' (2009) 21(2) *Current Issues in Criminal Justice* 242.

77 See Freiberg, *ibid*. See also Fox and Freiberg, *ibid* 299–305. The consequences of a conviction are discussed further in Chapter 3. The operation of expungement legislation (*Annulled Convictions Act 2003* (Tas)) is considered at [2.4].

78 Warner, above n 4, [7.214]. Australian Law Reform Commission, *Same Time Same Crime: Sentencing of Federal Offenders*, Final Report (2006) [6.110].

79 Freiberg, above n 14, [1.260].

80 Freiberg, *ibid*; Edney and Bagaric, above n 30, 288.

81 See Freiberg, *ibid*.

82 See [2.1].

9. Conviction or non-conviction

In exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case including –

- (a) the nature and circumstances of the offence; and
- (b) the offender's antecedents and character; and
- (c) the impact that a conviction would have on the offender's economic or social wellbeing or employment prospects.

The *Youth Justice Act 1997* (Tas), section 49(4) also directs the court to have regard future impact of recording a conviction on a youth offender:

49(4) In determining whether or not to record a conviction, the Court must have regard to all the circumstances of the case, including –

- (a) the nature of the offence; and
- (b) the youth's age; and
- (c) any sentences or sanctions previously imposed on the youth by any court or community conference and any formal cautions previously administered to the youth; and
- (d) the impact the recording of a conviction will have on the youth's chances of rehabilitation generally or finding or retaining employment.

The exercise of the discretion to record or not record a conviction is a matter that often arises for judicial attention, particularly in the Magistrates Court. In the Tasmanian Magistrates Court, a majority of offenders receive a conviction. Convictions were recorded in relation to 92% of charges finalised by the Tasmanian Magistrates Court in 2013-14. In Tasmania, convictions were recorded in relation to 25% of charges where a conditional adjournment was imposed and in relation to 93% of charges where a probation order was made. The top five categories of offences in which non-conviction orders were imposed were as follows: regulated public order offences (a conviction was not recorded in relation to 33% of charges), disorderly conduct (a conviction was not recorded in relation to 23% of charges), assault (a conviction was not recorded in relation to 21% of charges), deal or traffic in illicit drugs (a conviction was not recorded in relation to 21% of charges), and breach of violence and non-violence orders (a conviction was not recorded in relation to 20% of charges).⁸³

In the Victorian Magistrates' Court, from 2009-10 and 2012-13, a majority of offenders received a conviction. In Victoria, 20.3% of those who entered into an adjourned undertaking were convicted, 63.6% of those who were fined and 83.6% of those who received a community-based order were convicted'.⁸⁴ It can be seen that fines and community-based orders can be imposed in Victoria with or without a conviction. The use of non-conviction orders is more restricted in NSW where it is limited to dismissing the charge, discharging the person on condition that the person enter a good behaviour bond or an order discharging the person that the person take part in an intervention program.⁸⁵ The NSW Sentencing Council has analysed the use in the NSW Local Court of the non-conviction sentencing options (section 10 orders) in 2007 and 2010. The study found that section 10 orders accounted for 16.7% of all sentences imposed in 2007 and 18.6% of all sentences in 2010.⁸⁶ It also examined the types of offences that section 10 orders have primarily been used for: low range prescribed concentration of alcohol, drive unregistered vehicle, negligent driving (not causing death or grievous bodily harm, special range prescribed concentration of alcohol, offensive conduct, common assault and driving whilst suspended.⁸⁷

83 Data provided by Department of Justice.

84 Sentencing Advisory Council (Vic), *Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria*, Report (2014) [2.6.3].

85 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(1).

86 New South Wales Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders: A Report of the NSW Sentencing Council*, Report (2011) [3.3]; Table 2.

87 *Ibid* [3.10].

In a survey of sentences imposed by the Supreme Court of Tasmania between 2008 and 1 November 2013, 25 cases were located where no conviction was recorded – 13 involving adult offenders and 12 involving youth offenders.⁸⁸ The case summaries (located in Appendix 1) reveal that non-conviction sentences were imposed in relation to a range of offences, including serious offences,⁸⁹ and factors often associated with an exercise of the discretion in favour of not recording a conviction included the offender's age (only three of the offenders were over 25), a plea of guilty (all but one) and the likely impact on the future employment and rehabilitation.

Case law considering the operation of the discretion as to whether or not to record a conviction has recognised that the legislative provisions create a wide discretion. The court is not limited to considering only the matters listed in the *Sentencing Act 1997* (Tas) section 9 or the *Youth Justice Act 1997* (Tas) section 49(4) – the court must take account of all the circumstances of the case.⁹⁰ Further, while a court must have regard to all the factors listed, the provisions do not require any one factor to be given more weight.⁹¹ In *R v Brown*, Macrossan CJ expressed the view that:

nothing justifies granting a general predominance to one of those specified features rather than to another. They must be kept in balance and none of them overlooked, although in a particular case one, rather than another, may have claim to greater weight.⁹²

In relation to a non-conviction order under the *Sentencing Act 1997* (Tas), the court also must have regard to the requirements of section 58 that outline factors to be taken into account when dismissing a charge without recording a conviction or ordering a conditional adjournment.⁹³

In exercising its discretion as to whether or not to record a conviction the court is required to balance competing sentencing objectives of rehabilitation on the one hand against the requirements of punishment, denunciation and deterrence on the other.⁹⁴ A tension exists between the community interest in recording a conviction and the benefit to the offender of not recording a conviction, as was highlighted by the Queensland Court of Criminal Appeal in *Briese*:

... the effect of such an order is capable of considerable effect in the community. Persons who may have an interest in knowing the truth in such matters include potential employers, insurers, and various government departments including the Immigration Department ... For the present purposes it is enough to note that the making of an order [to proceed without conviction] has considerable ramifications of a public nature, and the courts need to be aware of this potential effect....

On the other hand the beneficial nature of such an order to the offender needs to be kept in view. It is reasonable to think that this power has been given to the courts because it has been realised that social prejudice against conviction of a criminal offence may in some circumstances be so grave that the offender will be continually punished in the future well after appropriate punishment has been received. This potential oppression may stand in the way of rehabilitation

The court needs to 'weigh up the public interest, and the need for an official record to be made of the commission of the offence, against the beneficial nature to the offender of a conviction not being recorded'.⁹⁵ The discretion to

88 The cases were identified using the Supreme Court Sentencing database accessed from the Andrew Inglis Clark Law Library (http://www.lawlibrary.tas.gov.au/online_legal_resources/tasmanian_resources).

89 See further [2.3.1].

90 *R v Brown* [1994] 2 Qd R 182; *Blake v Adams* [2013] TASSC 44; *ZXY v Tasmania Police* [2008] TASSC 55.

91 *R v Brown* [1994] 2 Qd R 182, 185 per Macrossan CJ; 193 per Lee J; *Blake v Adams* [2013] TASSC 44; *ZXY v Tasmania Police* [2008] TASSC 55.

92 *R v Brown* [1994] 2 Qd R 182, 185 per Macrossan CJ approved by Porter J in *Blake v Adams* [2013] TASSC 44 and *ZXY v Tasmania Police* [2008] TASSC 55.

93 *Sentencing Act 1997* (Tas) s 58 provides that 'an order under section 7(f), (g) or (h) may be made for such one or more the following purposes as is relevant in the circumstances, as the court thinks fit: (a) to provide for the rehabilitation of an offender by allowing the offender's sentence to be served in the community unsupervised; (b) to take account of the trivial, technical or minor nature of the offence committed by an offender; (c) to allow for circumstances in which it may be inappropriate to record a conviction against an offender; (d) to allow for circumstances in which it may be inappropriate to inflict any punishment other than a nominal punishment on an offender; (e) to allow for the existence of other extenuating or exceptional circumstances that may justify the court showing mercy to an offender.

94 *R v Cay* (2005) 158 A Crim R 488; *Higgins v McCulloch* [2013] TASSC 49; *Director of Public Prosecutions v NOP* [2011] TASC 15; *The Queen v CV* [2013] ACTCA 22; *ZXY v Tasmania Police* [2008] TASSC 55; *McCullough v OBG* [2012] TASSC 29.

95 *Attorney-General v Smith* [2002] TASSC 10 per Crawford J.

record a conviction also gives rise to issues of just punishment and proportionality.⁹⁶ The imposition of a conviction is a punishment in itself and, having regard to its long-term legal and social consequences, the recording of a conviction may, in the circumstances of the case, be disproportionate to the offence.⁹⁷

2.3.1 *The nature and circumstances of the offence*

The *Sentencing Act 1997* (Tas) section 9(a) provides that court should have regard to the nature and circumstances of the offence. Similar principles apply to the *Youth Justice Act 1997* (Tas) section 49(4)(a), which refers to the nature of the offence.⁹⁸ In exercising its discretion, it is permissible for the court to have regard to factors such as 'the legislative policy behind the creation of the offence, the social harm resulting from the offence, the difficulty in policing that particular type of offence and the need for sentences of general deterrence where the particular offence is concerned'.⁹⁹ Courts have expressed the view that a non-conviction disposition may be considered where the offence is 'victimless'¹⁰⁰ or where the offence is the product of negligence rather than conscious wrongdoing.¹⁰¹ In other cases, a conviction may be appropriate to allow the victim of the offence to feel vindicated¹⁰² or where it was important that the offender's peers be left with the impression that a penalty was imposed.¹⁰³

This criterion also directs the court to have regard to 'the actual conduct constituting the offence charged and to the actual circumstances in which it was committed rather than [just] to the offence in the abstract'.¹⁰⁴ The need to have regard to the actual facts of the case was highlighted in *Blake v Adams*, where the offender entered a plea of guilty to possessing a silencer under the *Firearms Act 1996* (Tas) and was fined \$400. In a review of the magistrate's decision to record a conviction, Porter J acknowledged that the nature of the offence was a serious matter. However, His Honour considered that the magistrate did not have regard to the nature of the offending in the circumstances of the case:

As to s 9(a), the magistrate's focus was clearly on the level of penalty set by Parliament and public interest issues associated with the nature of the crime. He was entitled to look at the nature of the offending in the abstract ... but not exclusively.¹⁰⁵

While 'the more serious or blatant the crime, the less appropriate it is for the sentencer to decline to record a conviction',¹⁰⁶ the discretion not to record a conviction is not restricted to trivial offences.¹⁰⁷ The need to have regard to all factors relevant to the exercise of the discretion and to the actual circumstances of the offending (and not just the offence in abstract) means that courts, in Tasmania and in other jurisdictions, have imposed sanctions without recording convictions in relation to relatively serious offences such as possession of a child abuse product,¹⁰⁸ dishonesty and damage to property,¹⁰⁹ armed robbery,¹¹⁰ dangerous driving causing death,¹¹¹ supplying ecstasy,¹¹² and sexual intercourse with a child between the ages of 10 and 16.¹¹³

96 Freiberg, above n 14, [1.265]; Richard Fox, 'The Meaning of Proportionality in Sentencing' (1993) 19 *Melbourne University Law Review* 489, 502-503.

97 *DPP v Kose* [2006] VSCA 119; *R v Brown* [1994] 2 Qd R 182; *Badcock v White* [2004] TASSC 59; *ZXY v Tasmania Police* [2008] TASSC 55; *Blake v Adams* [2013] TASSC 44.

98 Warner, above n 4, [7.206]

99 *Ibid.*

100 *Stubberfield* (2009) 106 SASR 91.

101 *R v Brown* [1994] 2 Qd R 182; *R v T* [1998] QCA 456; *R v TX* [2011] 2 Qd R 247.

102 *Attorney-General v Smith* [2002] TASSC 10; *DPP v NOP* [2011] TASSC 15.

103 *DPP v NOP* [2011] TASSC 15, [42] per Evans J.

104 Warner, above n 4 at [7.206]; *Traynor v McCullough* (2011) 218 A Crim R 177.

105 [2013] TASSC 44, [41].

106 Freiberg, above n 14, [1.265].

107 This contrasts with statutory provisions that specify the court is to have regard to the trivial nature of the offence: *Crimes Act 1994* (Cth) s 19B(1)(b)(ii); *Criminal Law (Sentencing) Act 1988* (SA) s 16(b)(ii); *Crimes (Sentencing Procedure) Act 1999* (NSW) s 10(3)(b); *Sentencing Act 1995* (WA) s 45(1)(b)(i); *Sentencing Act* (NT) s 8(1)(b).

108 See *Badcock v White* [2004] TASSC 59 where Crawford J noted that 'in the Criminal courts of this State since the commencement of 2003, five offenders have been dealt with under s 7(f) without the recording of convictions for crimes for which imprisonment for 21 years was prescribed. Their respective crimes were four aggravated burglaries and seven stealing; aggravated sexual assault; forgery, uttering and stealing; burglary and stealing; and indecency', [17].

109 *ZXY v Tasmania Police* [2008] TASSC 55.

110 *DPP v Candaza* [2003] VSCA 91.

111 *Brown* [1994] 2 Qld R 182.

112 *R v Mauger* [2012] NSWCCA 51.

113 *The Queen v CV* [2013] ACTCA 22. See further Freiberg, above n 14, [1.265].

2.3.2 Antecedents and character

Under the *Sentencing Act 1997* (Tas), s 9(b), the court is directed to take into account the offender's antecedents and character in the exercise of the discretion. Antecedents is a broad term that extends beyond prior convictions to encompass 'all aspects, favourable and unfavourable, recent and distant, of an offender's history in so far as they are relevant to the formation of the opinion as to whether it is appropriate to record or not record a conviction'.¹¹⁴ Courts are concerned to assess the likelihood of the offender reoffending and a finding that the offence was out of character is relevant to the exercise of the discretion. This means that the court has regard to the offender's character, including their contributions made to the community and their general reputation.¹¹⁵ Previous good character may provide a balance to considerations of general deterrence and weigh in favour of a non-conviction sentence.¹¹⁶

While age is expressly recognised in relation to youth offenders, under the *Youth Justice Act 1997* (Tas)¹¹⁷ and case law indicates that youth is 'a very significant factor ... Sentencers are aware that to record a conviction against the young, may ... stigmatise them for the rest of their lives, or blight their possible future careers'.¹¹⁸ However, the relevance of an offender's age to the exercise of the court's discretion to record a conviction applies more generally. In *R v Brown*, the Queensland Court of Criminal Appeal recognised that it is not only young offenders who should have the benefit of the discretion not to record a conviction:

Indeed, an offender's previous unblemished character and his assumed desire to maintain his social well-being and community reputation may be able to be regarded as giving him fair claims to consideration in the matter, even if he is of a mature age.¹¹⁹

The discretion not to record a conviction may also be exercised in favour of older offenders who have 'lead previously blameless lives'.¹²⁰

2.3.3 The impact on economic or social well-being or employment

The requirement to have regard to the future impact on an offender's economic and social wellbeing or employment by the recording of a conviction gives statutory recognition to 'stigmatising effects of a conviction'.¹²¹ This is also recognised in the *Youth Justice Act 1997* (Tas), s 49(4)(d) that directs the court to have regard to the impact of recording a conviction on a youth's chances of rehabilitation or finding and retaining employment. In considering the impact of a conviction on an offender's prospect of rehabilitation, the court has regard to the detrimental effects that a conviction will have on an offender's future employment, his/her eligibility for legislatively regulated employment or board membership, on his/her ability to travel, or on obtaining housing or insurance as matters relevant to the exercise of the conviction.¹²² However, as acknowledged in the Victorian Sentencing Manual, the effective consequences of a conviction as compared with a non-conviction disposition should not be overestimated, as the impact on employment prospects may be the greatest practical significance of a conviction and it is often the finding of guilt rather than the conviction that 'triggers adverse consequences'.¹²³ The consequences for an offender that follow from a conviction being recorded (compared with a finding of guilt without recording a conviction) are considered in detail in Chapter 3.

¹¹⁴ Warner, above n 4, [7.210]. See *Lanham v Brake* [1983] 34 SASR 578; *Hales v Adams* [2005] NTSC 86.

¹¹⁵ Warner, *ibid* [7.210]; *McQuestin v Australian Securities Commission* (1993) 2 TAS R 30.

¹¹⁶ *McQuestin v Australian Securities Commission* (1993) 2 TAS R 30, 41 per Underwood J.

¹¹⁷ Section 49(4)(b), (c).

¹¹⁸ Freiberg, above n 14, [1.265]. See *The Queen v CV* [2013] ACTCA 22.

¹¹⁹ [1994] 2 Qd R 182, 185 per Macrossan CJ.

¹²⁰ Freiberg, above n 14, [1.265]. See also *R v Brown* [1994] 2 Qd R 182 at 193; *Carmichael v Faehmann* (1990) 53 SASR 391; *Fullalove* (1993) 68 A Crim R 486; *McQuestin v Australian Securities Commission* (1993) 2 Tas R 30.

¹²¹ Warner, above n 4, [7.214].

¹²² Freiberg, above n 14, [1.265]; Warner, *ibid* [7.213]-[7.215].

¹²³ Judicial College of Victoria, *Victorian Sentencing Manual*, [5.3.6] <<http://www.judicialcollege.vic.edu.au/>>

2.4 SPENT CONVICTION SCHEMES

In recognition of the detrimental consequences of a criminal conviction, and to facilitate the rehabilitation of offenders, legislation in Tasmania (and other Australian jurisdictions) allows for convictions to be annulled and restrictions imposed on obtaining and disclosing information about annulled convictions.¹²⁴ The rationale for the spent conviction legislation rests on the premise that offenders should be able to 'live down' a past offence (after a period of not re-offending) and should not be subjected to ongoing stigmatisation and discrimination.¹²⁵ The *Annulled Conviction Act 2003* (Tas) was enacted in recognition of the inherent unfairness in the position where:

a convicted person has served a penalty yet a permanent stigma attaches no matter how minor the offence or how long ago. The adverse impact of this criminal record can continue despite the passage of years without re-offending indicating that person's complete rehabilitation. The discrimination attaching to a past criminal record in both the public and private sphere can result in a punishment well beyond the penalty imposed by the court.¹²⁶

As a consequence, legislation provides that minor convictions (and findings of guilt without recording a conviction)¹²⁷ can be annulled through the lapse of time. For adult offenders, the period during which they must not reoffend (be convicted of an offence punishable by a term of imprisonment) is 10 years and for youth offenders, the period is five years.¹²⁸ Minor convictions means any conviction other than a conviction for which a sentence of imprisonment of more than 6 months was imposed or a conviction for a sexual offence.¹²⁹ If an offender was sentenced to imprisonment for more than six months or convicted of a sexual offence, the conviction is never eligible to be annulled on the basis of the need for protection of the community.¹³⁰

Spent conviction legislation has the effect that once a conviction is annulled (subject to specified exemptions):

- the person is not required to disclose the conviction to any other person
- it does not form part of the person's official criminal record
- a question about the person's criminal history does not refer to the annulled conviction
- it is not included for consideration by any legislative provision or provision in an agreement or arrangement that refers to a conviction or a person's character
- it is not a proper ground for refusing the person any appointment, post, status or privilege or revoking any appointment, status or privilege or dismissing a person from any post.¹³¹

In Tasmania, this protection is supported by anti-discrimination laws that make it unlawful to discriminate on the grounds of irrelevant criminal records.¹³²

¹²⁴ See Freiberg, above n 14, [9.370].

¹²⁵ Australian Law Reform Commission *Spent Convictions*, Report 37 (1987) 1. See also Moira Paterson and Bronwyn Naylor 'Australian Spent Conviction Reform: A Contextual Analysis' (2011) 34 *University of NSW Law Journal* 938.

¹²⁶ Tasmania, *Parliamentary Debates*, House of Assembly, Tuesday 19 August 2003, pt 2 32-107 (Jackson). See also Freiberg, above n 14, [9.370]; Australian Law Reform Commission *Spent Convictions*, *ibid*; Paterson and Naylor, *ibid* 8; Law Reform Commission of Western Australia, *Project No 80: The Problem of Old Convictions*, Report (1986); Standing Committee of Attorney-General, *Discussion Paper: Uniform Spent Convictions: A Proposed Model*, Discussion Paper (2004).

¹²⁷ *Annulled Conviction Act 1993* (Tas) s 3(2).

¹²⁸ *Annulled Conviction Act 1993* (Tas) s 6(2). There are specific provisions about dealing with traffic offences and when traffic offences count for non-traffic offences and vice versa in calculating the time period for s 6, see s 7. Other legislation has shorter waiting periods for the disabilities imposed: *Living Marine Resources Management Act 1995* (Tas) s 78 (5 years); *Firearms Act 1996* (Tas) s 29 (5 years); *Motor Vehicle Traders Act 2011* (Tas) s 7 (5 years).

¹²⁹ *Annulled Conviction Act 1993* (Tas) ss 3, 6(1). Sexual offence is defined in *Annulled Conviction Act 1993* (Tas) s 3.

¹³⁰ Tasmania, *Parliamentary Debates*, House of Assembly, Tuesday 19 August 2003, pt 2 32-107 (Jackson). See Paterson and Naylor, above n 125, for a critique of the restrictions in spent conviction legislations. See also Standing Committee of Law and Justice, *Spent Convictions for Juvenile Offenders*, Report No 42 (2010) for arguments in favour and against including sexual offences in a spent conviction scheme.

¹³¹ *Annulled Conviction Act 1993* (Tas) s 9(1).

¹³² *Anti-Discrimination Act 1998* (Tas) s 16(q). Section 3(i) defines 'irrelevant criminal record' to include 'the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises'. However, the definition does not include a spent conviction. Section 50 allows for discrimination on the basis of irrelevant criminal record in dealing in relation to the education, training or care of children if it is reasonably necessary to do so to protect the physical, psychological or emotional wellbeing of the children. This is discussed further at [3.4.2].

Where a conviction is annulled, a third party is not permitted to threaten to disclose information about an annulled conviction nor can people with access to official criminal records (other than in limited circumstances allowed under the Act) disclose information about a person's annulled convictions without consent.¹³³ It is also an offence for a person to take an annulled conviction into account for a purpose not authorised under the Act.¹³⁴ There are some exemptions in relation to disclosure of information, so that an annulled conviction can be disclosed to a court, law enforcement agencies and other specified bodies.¹³⁵ Protection is also afforded to archives, libraries or courts that release the information in the course of normal procedures if it is material that is normally available for public use.¹³⁶

Although the *Annulled Conviction Act 1993* (Tas) places restrictions on the use of annulled convictions, the 'cleaning of the slate' is not absolute. Two important exemptions exist. First is in relation to subsequent criminal proceedings. An annulment does not prevent a court from referring to prior annulled convictions in making decisions, including decisions about sentencing.¹³⁷ Neither does it prevent the Parole Board from having regard to annulled convictions.¹³⁸ Second, in relation to identified employment areas, full disclosure of criminal history is required because of the nature of the position. Persons applying for a range of positions, registrations or licences in the areas set out in Schedule 1 (judicial and legal, law enforcement, prisons and parole, youth justice, racing and gaming, educational and child-related, health, drugs and poisons, hazardous substances and activities, the Auditor General and related staff, members of the Tasmanian Fire Service, licences under the *Firearms Act 1996*, *Security and Investigations Agents Act 2002*, *Liquor Licensing Act 1900* and the *Vehicle and Traffic Act 1999*) will need make full disclosure of their criminal history (including annulled convictions or findings of guilt).

2.5 CRIMINAL HISTORY RECORD

A key issue in this paper is the information that is disclosed in an offender's criminal history record. Although the court's discretion as to whether or not to record a conviction (in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas)) recognises the potential significance of a conviction, it may be that in reality the decision not to record a conviction has limited practical impact on the consequences for the offender's future employment prospects. A person's criminal history record may be requested by an employer or licensing authority because of a mandatory legal requirement or as part of an employer's recruitment process.¹³⁹ It is the information about the offender that is divulged that is likely to have real and long-lasting consequences for the offender – regardless of whether or not a conviction is recorded.

Public confusion exists about what is contained in a criminal record. One definition provided is that a criminal record is 'a written history detailing a person's past criminal convictions'¹⁴⁰ and, as the Fitzroy Legal Service writes, 'this also corresponds with the common understanding of what constitutes a criminal record'.¹⁴¹ There is misunderstanding in the community about whether or not findings of guilt without a conviction recorded appear on criminal records (and whether they need to be disclosed).¹⁴² Another belief is that offences committed while a child are wiped from a person's record at 18.¹⁴³ The confusion is also exacerbated by the different information release policies that apply in the various Australian jurisdictions – with some jurisdictions always releasing findings of guilt¹⁴⁴ and others releasing findings of guilt only for specific checks.¹⁴⁵

133 *Annulled Conviction Act 1993* (Tas) s 11(1), (2).

134 *Annulled Conviction Act 1993* (Tas) s 12(2).

135 *Annulled Conviction Act 1993* (Tas) s 11(3).

136 *Annulled Conviction Act 1993* (Tas) s 11(4).

137 *Annulled Conviction Act 1993* (Tas) s 9(2).

138 *Annulled Conviction Act 1993* (Tas) s 9(3).

139 See [3.4].

140 Peter Butt and David Hamer (eds), *LexisNexis Concise Australian Legal Dictionary* (LexisNexis, 4th ed, 2011) 147.

141 Fitzroy Legal Service Inc and Jobwatch, *Criminal Records in Victoria: Proposals for Reform* (Fitzroy Legal Service Inc, 2005), 10.

142 Ibid 28-31.

143 Georgina Heydon, Bronwyn Naylor, Moira Paterson and Marilyn Pittard, 'Lawyers on The Record: Criminal Records, Employment Decisions and Lawyers' Counsel' (2011) 32 *Adelaide Law Review* 205, 206.

144 For example, in Victoria, criminal history information is released on the basis of findings of guilt, Victoria Police, *National Police Certificates Information Release Policy* < <https://www.police.vic.gov.au/> >.

145 This is the position in Tasmania. See Appendix 10 for the position in other Australian jurisdictions.

In reality, a 'criminal record' may contain much more than convictions; it is 'any information associating an identifiable individual with criminal behaviour, whether or not charged, convicted, or found guilty'.¹⁴⁶ However, not all information is available for release to all persons and the information that is disclosed depends on the purpose of the check (and the requirements of any relevant legislative provisions and the requirements of the *Annulled Conviction Act 1993* (Tas)).

Criminal records are kept by various agencies in Tasmania. The *Record of Offences (Access) Act 1981* (Tas) defines a 'prescribed record' to mean a record kept in Tasmania which (a) records the finding of a court on the trial of a person charged with an offence or records that person has been so charged; (b) records information as whether or not an infringement notice has been satisfied; or (c) records demerit points under the *Vehicle and Traffic Act 1999* (Tas). It does not include records compiled as part of a criminal investigation about whether an offence was committed and who the perpetrator might be. An 'official criminal record' is defined in the *Annulled Conviction Act 1993* (Tas), section 3, to mean 'a record, containing information about the outcome of criminal proceedings, kept by – (a) a court; (b) a Government department or State authority; or (c) a council'. The Supreme Court and Magistrates Court keep court records of proceedings, some of which are publicly available and others that are generally not available. Records are also kept by the Registrar of Motor Vehicles (demerit points),¹⁴⁷ the Department of Police and Emergency Management¹⁴⁸ as well as Councils and other Departments with the authority to issue infringement notices and to prosecute.

Police records can show court appearances, court convictions, findings of guilt with no convictions, conditional adjournments and other court orders, charges, matters pending court hearing, matters under investigation, police intelligence and traffic infringements.¹⁴⁹ An individual's police record contains infringement notices issued by Tasmania Police, where a person has been taken to be convicted (commonly under section 20 of the *Monetary Penalties Enforcement Act 2005* (Tas)).¹⁵⁰ This includes recording infringement notices issued under Acts such as the: *Traffic Act 1925* (Tas); *Traffic (Compliance & Enforcement) Regulations 2011* (Tas); Fisheries and Marine and Safety Tasmania legislation; *Road Safety (Alcohol & Drugs) Act 1970* (Tas); *Animal Welfare Act 1993* (Tas); *Gaming Control Regulation 2011* (Tas); *National Parks & Reserved Land Regulations 2009* (Tas); *Liquor Licensing Act 1990* (Tas); *Security and Investigations Agents Act 2002* (Tas); *Liquor Act 2007* (Tas); *Environmental Management and Pollution Act 1994* (Tas); *Public Health Act 1997* (Tas) as well as some council by-laws.¹⁵¹ However, police records do not capture the whole of a person's criminal history. Offences are not commonly recorded on an individual's police record where matters are prosecuted by authorised officers other than the police (for example, council officers or health officers). Infringement notices issued for parking or stopping offences under the *Traffic (Compliance & Enforcement) Regulations 2011* (Tas) are also not recorded on an individual's police record. However, they are recorded in the Fines and Infringement Notice Database, a system jointly operated by Tasmania Police and the Department of Justice.¹⁵²

2.5.1 Who can access a person's criminal record held by the police?

Access to a person's criminal record is restricted by virtue of privacy laws (*Personal Information Protection Act 2004* (Tas)), as it falls within the category of 'sensitive information'.¹⁵³ A person can apply for and receive a copy of his or her own criminal history, subject to satisfying the 100 points evidence of identity checklist. A person can then provide that document to others, including employers.¹⁵⁴ Tasmania Police 'does not release information about a person's criminal record outside the sphere of law enforcement and the administration of justice without the subject's consent'.¹⁵⁵

146 Office of the Victorian Privacy Commissioner, *Controlled Disclosure of Criminal Record Data: Report to the Attorney-General Pursuant to Section 63(3) of the Information Privacy Act 2000*, Report 02.06, (June 2006) 2 <<http://www.privacy.vic.gov.au/>>.

147 *Record of Offences (Access) Act 1981* (Tas) s 3 recording authority; *Vehicle & Traffic Act 1999* (Tas) s 23; *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), reg 124.

148 See Tasmania Police, *Release Guidelines*, <<http://www.police.tas.gov.au/>>.

149 Australian Human Rights Commission, *On the Record: Guidelines for the Prevention of Discrimination in Employment on the Basis of Criminal Record* (2012) 15 <<https://www.humanrights.gov.au/publications/human-rights-record>>.

150 See [4.3].

151 Information received by the Sentencing Advisory Council from Tasmania Police, 11 February 2014.

152 Information received by the Sentencing Advisory Council from Tasmania Police, 11 February 2014.

153 Note that under the *Registration to Work with Vulnerable People Act 2013* (Tas), the *Personal Information Protection Act 2004* (Tas) does not apply to the obtaining or possessing of information by an official for the purposes of the Act, s 57 (commences 1 July 2014).

154 As discussed at [3.4.3], the unequal bargaining position of the recruitment process or the need to produce the document as part of a mandatory registration or licensing arrangement tends to nullify the consensual nature of the application.

155 Tasmania Police, *Release Guidelines*, above n 148.

2.5.2 *What information is disclosed?*

If a person needs to obtain a National Police Check that sets out their criminal record for employment, occupation-related licensing, registration, voluntary work or personal information, they complete a 'Consent to check and release a National Police Certificate'. The type of check that is requested will dictate whether only convictions are shown or whether findings of guilt are also included. This represents a change in policy, as prior to November 2013 all criminal records checks disclosed convictions and findings of guilt for which no conviction was recorded.

In Tasmania, if a person requests a National Police Check, the information disclosed will reflect the purpose stated on the application form. There are two options:

Option 1 – Schedule 1 record

This check is exempt from the provisions of the *Annulled Convictions Act 2003* (Tas), and so discloses annulled convictions.¹⁵⁶ It discloses details of all findings of guilt including youth justice offences and all Tasmania-based Traffic Infringement Notices. Informal and diversionary cautions do not appear on the record.¹⁵⁷

This check applies for the following occupations/licences: childcare, adoption/foster parent, scout volunteer, legal/judicial appointment, firearms licence, fire service, *Poisons Act 1971*, child related health, justice of the peace, bookmaker, stipendiary steward, security/crowd control, prisons/corrective services, police/law enforcement, teaching/non teaching education staff, youth justice, gaming licence, driver/public passenger licence, Poppy Advisory and Control Board, school-crossing officer, or authorised officer (*Traffic Act 1925*).¹⁵⁸

Option 2 – Annulled record

This check does not disclose annulled records.¹⁵⁹ This means that minor convictions that have met the necessary requirements (time period without reoffending) do not appear on the record. Sexual offences and convictions that receive more than six months imprisonment are not able to be annulled and will appear on the record. Further all relevant Tasmania-based Traffic Infringement Notices are released.¹⁶⁰ Significantly, it does not disclose findings of guilt.

This check applies for employment/licensing in the following areas: aged care, church group, visa, health (other than child related), rental/housing, general employment, racing industry (other than bookmaker or stipendiary steward), adult disabled care, student, or other employment or industry.

In addition, a person can also request a copy of their Tasmanian criminal record (as distinct from National Police Check). An individual, or their legal practitioner on their behalf, can request a copy of their Tasmania prior convictions in accordance with section 6 of the *Record of Offences (Access) Act 1981* (Tas). This may be for a 'Full' Prescribed Record (all court outcomes and infringement notices) or a Prior Convictions Report (only convictions).

156 See [2.4].

157 Tasmania Police, *Frequently Asked Questions*, <http://www.police.tas.gov.au/>; *Annulled Convictions Act 2003* (Tas), s 3(2).

158 Tasmania Police, *Consent to Check and Release a National Police Certificate*, <<http://www.police.tas.gov.au/>>.

159 See [2.4].

160 Tasmania Police, *Frequently Asked Questions*, above n 157.

3. *Consequences of recording a conviction or a finding of guilt*

In allowing courts to impose sentences without recording a conviction, Parliament has sought to lessen the disabilities for an offender associated with a criminal conviction. However, the multitude of laws and regulations that affect multiple areas of life makes identifying all the potential consequences that are associated with a criminal conviction time-consuming and challenging. This chapter sets out the current legal disabilities of being a convicted person that were identified following a comprehensive search of Tasmanian legislation. It also examines the extent to which legislation and policy have blurred the boundaries between findings of guilt and the recording of the conviction to determine the practical significance for an offender of either outcome.

This chapter examines the Tasmanian legislative framework and considers its application in the following areas: disqualification (including employment and licensing), subsequent offending, sex offender registration, political rights, citizenship, travel, jury service, capacity to testify as a witness, have a forensic sample taken and retained, orders in addition to sentence (restitution, compensation and costs), and forfeiture and confiscation. Beyond these areas, a criminal record may be relevant for making insurance claims,¹⁶¹ credit applications,¹⁶² applying for adoption,¹⁶³ or accommodation. This analysis reveals the range of potential consequences of criminal offending – some of which are immediate and known (such as a court order imposed as part of sentence) and others are long term, potentially for a lifetime, and changeable (such as employment/licensing or travel restrictions).

3.1 THE LEGISLATIVE FRAMEWORK

The separation of findings of guilt from the recording of conviction is explicitly recognised in Tasmanian sentencing legislation. The *Sentencing Act 1997* (Tas) section 10(1) provides that '[e]xcept 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'. The *Youth Justice Act 1997* (Tas), section 49(5) is to similar effect. Both Acts then specify orders that the court is authorised to make following a finding of guilt and exceptions that allow a finding of guilt without a conviction to operate as a conviction.

161 Financial Ombudsman Service, *Frequently Asked Questions*, <<http://www.fos.org.au/>>.

162 Standing Committee of Attorneys-General, above n 126, 15.

163 *Adoption Regulations 2006* (Tas) reg 15.

3.1.1 *Finding of guilt under the Sentencing Act 1997 (Tas): What orders can be made and in what circumstances is a finding of guilt equated with a conviction?*

The Sentencing Act 1997 (Tas), section 10 provides:

10. Effect of finding of guilt without recording of conviction

...

- (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
 - (b) has the same effect as if a conviction had been recorded for the purpose of –
 - (i) appeals against sentence; or
 - (ii) proceedings for variation or breach of sentence; or
 - (iii) subsequent proceedings against the offender for the same offence; or
 - (iv) enactments providing for the mandatory forfeiture of property on conviction; or
 - (v) enactments providing for any other kind of mandatory penalty on conviction, not involving disqualification for, or loss of, office or the forfeiture, or suspension, of pensions or other benefits.

This means that a finding of guilt does not prevent the court from making ancillary orders, such as restitution or compensation orders.¹⁶⁴ Further, while a non-conviction order is not to be taken as a conviction, it does not protect an offender from all adverse consequences of conviction. A finding of guilt without recording a conviction operates as a conviction for enactments providing for the mandatory forfeiture of property on conviction or any other kind of mandatory penalty.¹⁶⁵ However, it allows an offender to escape from mandatory consequences in relation to the disqualification for or loss of office and suspension or forfeiture of pensions or other benefits that follow from the recording of a conviction. In addition, a finding of guilt operates in the same way as a conviction for appeals against sentencing and proceedings for variation or breach of sentence.¹⁶⁶ Section 10(2)(b)(iii) provides that a finding of guilt without recording a conviction has the same effect as if a conviction has been recorded for the purposes of subsequent proceedings against the offender for the same offence. This operates to allow a defendant to make a plea of *autrefois convict*.¹⁶⁷

There has been little Tasmanian case law considering the operation of the *Sentencing Act 1997* (Tas) section 10, and guidance is not available from other jurisdictions in relation to the interpretation of section 10(2)(b)(iv) and (v) as these are unique to Tasmania. One area of uncertainty is the scope of the exception that allows a finding of guilt without recording a conviction to be equated with a conviction if a provision creates ‘any other kind of mandatory penalty’. This uncertainty arises because precise meaning of the term ‘penalty’ is elusive.¹⁶⁸ In its consideration of government regulation, the Australian Law Reform Commission defined it expansively to refer to ‘any suffering, loss, disability or disadvantage imposed by law as the result of or punishment for an illegal act’.¹⁶⁹ The wide reach of the concept is reflected in the judgment of Underwood J in *Shirley v Mooloo Farms Pty Ltd*,¹⁷⁰ where His Honour considered the meaning of ‘mandatory penalty’ in the context of the *Workers Rehabilitation and Compensation Act 1988* (Tas) section 97(10), which provides that:

a court that convicts an employer of an offence is to, in addition to any other penalty imposed in respect of the offence, order the employer to pay to the Board an amount equal [to the unpaid premiums].

¹⁶⁴ See [3.12].

¹⁶⁵ Section 10(2)(b)(iv).

¹⁶⁶ See [3.13].

¹⁶⁷ See [3.14].

¹⁶⁸ Freiberg, above n 14, [1.275].

¹⁶⁹ Australian Law Reform Commission, *Principled Regulations: Federal Civil and Administrative Penalties in Australia*, Report No 95 (2002) 21.

¹⁷⁰ [2003] TASSC 101.

This provision, while compensating the Board for its loss, was held to be a mandatory penalty. In making this determination, Underwood J discussed the statutory language used to denote a mandatory provision:

The traditional statutory phrase used to enact a discretionary maximum penalty is, a person who is in breach of a specified statutory requirement 'is liable to pay a fine of X penalty units' or 'is liable to be ordered to pay...'. The traditional statutory phrase used to enact the discretionary additional penalty is 'in addition to any other penalty that may be imposed, the Court may order...'

His Honour then decided that the provision was intended by Parliament to be a penalty because:

- it enacted the provision using the words 'in addition to any other *penalty* imposed'
- section 97(10) applied equally to a conviction for a breach of section 97(1), (6) and (7) notwithstanding that the maximum penalty for a breach of either ss (6) or (7) is less than the maximum penalty for s (1)
- the *Sentencing Act 1997*, s 10(2)(b)(v) contemplates that the expression 'penalty' be given a wide construction. Underwood J emphasised that "'penalty' is a word of wide import"¹⁷¹ and that the term 'would appear to be a broad term covering all possible forms of imposed disadvantage'.¹⁷²

This decision suggests that the scope of the term 'mandatory penalty' is broad for the purposes of the *Sentencing Act 1997* (Tas), section 10(2)(b)(v). However, there is still opportunity for debate as to whether a particular consequence of offending is a true penalty.¹⁷³ If the discretion to impose sentencing orders without recording a conviction is enlarged, the need for judicial resolution of the question of whether a particular provision is a 'mandatory penalty' is likely to occur more often, given the number of provisions that impose a consequence on conviction.

3.1.2 Finding of guilt under the Youth Justice Act 1997 (Tas): What orders can be made and in what circumstances is a finding of guilt equated with a conviction?

There are significant differences between the provisions that set out the effect of a finding of guilt without recording a conviction in the *Youth Justice Act 1997* (Tas) when compared to those contained in the *Sentencing Act 1997* (Tas). As with the *Sentencing Act 1997* (Tas), under the *Youth Justice Act 1997* (Tas), the court is authorised to make restitution and compensation orders following a non-conviction order.¹⁷⁴ However, the circumstances in which a finding of guilt can be equated with a conviction are more limited. Under the *Youth Justice Act 1997* (Tas), there is only one stated exception to the rule that a finding of guilt without recording of a conviction is not to taken to be a conviction: that a 'finding of guilty without the recording of a conviction bars a subsequent proceeding against the youth for the same offence as if a conviction had been recorded'.¹⁷⁵

The *Youth Justice Act 1997* (Tas) also contains a provision that requires a court to comply with a requirement under any other Act that a loss of a licence or other penalty, other than an amount of money or term of imprisonment, must be imposed as a penalty for the offence (section 46(2)(c)). However, this is not an equivalent provision to the *Sentencing Act 1997* (Tas) section 10(2)(v) and its consequences are different. The *Youth Justice Act 1997* (Tas), section 46(2)(c) only directs the court to refer to the specific Act (and be guided by whether it operates on a finding of guilt or a conviction). So, if the provision operates on a finding of guilt, then the court must apply the loss of licence or other penalty provided even if it imposes a non-conviction sentence. However, section 46(2)(c) is not a provision specifying that certain mandatory penalties that follow from conviction also apply to non-conviction orders.¹⁷⁶ So, if the provision operates on conviction, the mandatory loss of licence or other penalty is avoided by the imposition of a non-conviction sentence.

171 [2003] TASSC 101, [18].

172 [2003] TASSC 101, [18] citing Fisher J in *Re Network Agencies International Ltd* [1993] 3 NZLR 325, 328.

173 See Australian Law Reform Commission, *Principled Regulations*, above n 169, [2.68], [2.147] for a discussion of the distinction between true penalties and 'quasi-penalties'.

174 *Youth Justice Act 1997* (Tas) s 47(2). See [3.12].

175 *Youth Justice Act 1997* (Tas) s 49(6).

176 *Police v HM (A Youth)* [2009] TASM 08.

In view of the limited circumstances in which a finding of guilt is equated with a conviction under the *Youth Justice Act 1997* (Tas), an issue that arises is whether the mandatory penalty provisions from the *Sentencing Act 1997* (Tas) apply to non-conviction orders made under the *Youth Justice Act 1997* (Tas). It could be argued that subsections 10(2)(iv) and (v) are an exception provided by any other Act (*Youth Justice Act 1997* (Tas), s 49(5)), and so operate to treat a finding of guilt without recording a conviction as a conviction for the purpose of mandatory penalties.¹⁷⁷ However, this argument was rejected in a decision of the Magistrates Court in *Police v H M (A Youth)*.¹⁷⁸

In this case, the youth had pleaded guilty to the summary offence of motor vehicle stealing (*Police Offences Act 1935* (Tas), s 37B(1)). If he had been convicted, he would have received a mandatory disqualification of his driving licence (*Police Offences Act 1935* (Tas), section 37F(2)). However, in sentencing, the court exercised its discretion to order that a conviction not be recorded, and so the question was whether the mandatory disqualification must also be applied when a conviction was not recorded. In coming to the conclusion that the disqualification only applied on conviction (and not when a conviction was not recorded), it was held that reliance could not be placed on the *Sentencing Act 1997* (Tas) section 10. Magistrate McTaggart's reasons for this view were that:

- Section 5 of the *Sentencing Act 1997* (Tas) provides that the Act does not apply to the Magistrates Court (Youth Justice Division) or to a court of summary jurisdiction that is hearing a charge against a person under 18
- there was specific provision in the *Youth Justice Act 1997* (Tas) that dealt with the application of other statutory requirements for the mandatory loss of licence or other penalty and it had precedence (*Youth Justice Act 1997* (Tas), s 46(2)(c)).

While this conclusion has not been considered by the Supreme Court, it would seem to be an accurate interpretation of the interaction between the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas). The implications of this approach are explored in this chapter.

3.2 PRIOR CRIMINALITY

Although there is debate about its justification,¹⁷⁹ the relevance of an offender's prior criminality to sentencing has long been accepted as an important factor in the sentencing hearing.¹⁸⁰ This is reflected in the sentencing practices of judges and also in public opinion that holds that 'prior criminality is one of the most important of the aggravating factors'.¹⁸¹ Prior offending may be relevant to subsequent offending as a matter related to the exercise of the sentencing discretion for a subsequent offence. It may also activate statutory provisions that specify consequences for prior offending – an offence may only be applicable to recidivist offenders or an increase in penalty may apply for a repeat offender. These consequences of recidivism are explored to identify if there is a distinction between outcomes for offenders who are found guilty with a conviction recorded compared to offenders who do not have a conviction recorded.

3.2.1 *The exercise of the sentencing discretion for a subsequent offence*¹⁸²

Unless required by statute, there is 'no principle of sentencing that demands increasingly more severe sanction be administered to persons who persist in their criminality'.¹⁸³ Increased penalties have been criticised on the basis that they punish an offender twice for his criminal conduct and that they perpetuate the social injustices

177 *Youth Justice Act 1997* (Tas) s 49(5).

178 [2009] TASMCM 08.

179 See Edney and Bagaric, above n 30, ch 9; Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge, 5th ed, 2010) [6.2]. There are three approaches that have been identified to deal with prior conviction: (1) prior convictions are ignored (flat-rate sentencing); (2) more severe penalties are imposed progressively (cumulative principle); (3) the degree of mitigation that should be according to first time offenders is used up by repeat offending (progressive loss of mitigation): see Edney and Bagaric. The progressive loss of mitigation theory appears to be the guiding principle at common law, Edney and Bagaric, [9.2]. For a discussion of the Tasmanian position, see Warner, above n 4, [3.504].

180 Mackenzie and Stobbs, above n 73, 62; Freiberg, above n 14, [5.10]; Warner, above n 4, [3.502].

181 Freiberg, *ibid*.

182 For a more detailed consideration, see Warner, *ibid* [3.502]-[3.505]; Freiberg, *ibid* [5.10]-[5.20]; Mirko Bagaric and Richard Edney, *Australian Sentencing*, (Westlaw AU, n.d.) [450.4200-450.5200].

183 Freiberg, *ibid* [5.20].

experienced by offenders from a disadvantaged background.¹⁸⁴ Yet, prior offending is one of the most important factors in the sentencing hearing. While criminal history cannot be used to increase a penalty beyond that which is proportionate to the current offending,¹⁸⁵ empirical research into sentencing practice demonstrates 'consistently that an offender's prior offending [has] a significant effect on sentencing severity'.¹⁸⁶ The relevance of prior criminality to the exercise of the sentencing discretion is justified on the basis of retribution, deterrence and protection of the community.¹⁸⁷ Repeat offending also shows that the offender has diminished prospect of rehabilitation.¹⁸⁸ It is also relevant to an assessment of an offender's character by showing that the criminal behaviour is not a passing lapse or 'uncharacteristic aberration'.¹⁸⁹

As a matter relevant to the prior criminality of an offender, it would appear that there is no practical difference between a finding of guilt without recording a conviction and findings of guilt with convictions recorded. Tasmanian courts have expressed the view that while a finding of guilt without recording a conviction is not generally to be regarded as a conviction, it is relevant factor to be taken into account in sentencing for a subsequent offence for both adult¹⁹⁰ and youth offenders.¹⁹¹ As Evans J wrote in *Director of Public Prosecutions v NOP*:

There is no reason why a court dealing with a subsequent offence may not pay regard to the fact that the offender had been found guilty of an earlier offence. A failure to record a conviction does not amount to a failure to find an offender guilty.¹⁹²

A finding of guilt without recording a conviction forms part of the offender's antecedent criminal history and, subject to the principles that apply in relation to prior criminality as a sentencing factor, it may be taken into account.

3.2.2 *Statutory consequences of prior offending*

3.2.2.1 *Increased penalty provisions*

A common legislative response to repeat offending is to provide for an increase in penalty for second or subsequent offending of the same type. This is found in several Tasmanian statutes¹⁹³ and an issue arises as to whether a finding of guilt without recording a conviction is sufficient to activate a statutory escalation of penalty for repeat offending.

The question of whether a non-conviction sentence can be regarded as a conviction in this context has not been addressed in Tasmanian case law.¹⁹⁴ In South Australia, the view has been expressed that an offence is a subsequent offence even when a conviction is not recorded against the offender.¹⁹⁵ However, South Australia does not have an equivalent provision to *Sentencing Act 1997* (Tas) section 10(1) or the *Youth Justice Act* (Tas) section 49(5), and relies on the common law meaning of conviction.¹⁹⁶ In Tasmania, the general rule is that (unless otherwise provided by the Act or any other enactment) a finding of guilty without the recording of a conviction is not to be taken to be a conviction for any other purpose. There is no exception under the *Sentencing Act 1997* and the *Youth Justice Act 1997* that would allow a court to treat a finding of guilt without recording as a conviction for the purpose of

184 Edney and Bagaric, above n 30, ch 9.

185 See Freiberg, above n 14, [5.20]; Warner, above n 4, [3.502]; Edney and Bagaric, *ibid* [9.2].

186 Freiberg, *ibid* [5.10].

187 *Veen (No 2)* (1988) 164 CLR 465, 477 cited in *Startup v Tasmania* [2010] TASCCA 5; *Allen v Kerr* (2009) 19 Tas R 132, [11]; *Dunford v R* Serial A10/1995. See Warner, above n 4, [3.502]; Freiberg, *ibid* [5.20]; Ashworth, above n 179 [6.22-6.24]; Richard Fox, 'The Killings of Bobby Veen: The High Court on Proportion in Sentencing' (1988) 12 *Criminal Law Journal* 339.

188 *DPP v Terrick* (2009) 197 A Crim R 474; *Saunders v The Queen* [2010] VSCA 93.

189 *Veen (No 2)* (1988) 164 CLR 465, 477. See also *Allen v Kerr* (2009) 19 Tas R 132; *Crosswell v Tasmania* [2012] TASCCA 1; *Bonde v Newton* [2011] TASSC 21.

190 *Traynor v McCullough* [2011] TASSC 41.

191 *Director of Public Prosecutions v NOP* [2011] TASCCA 15. See also *Youth Justice Act 1997* (Tas) s 46(4)(b).

192 [2011] TASCCA 15, [25].

193 See Appendix 2, Table 2.

194 Although the issue may have been considered in decisions of the Youth Justice Division of the Magistrates Court (not publically accessible) or in a decision of the Magistrates Court that has not been made publicly available.

195 *Police v Betts* (2009) 104 SASR 442; *Police v Hallett* [2010] SASC 256; *Price v Police* (2008) 254 LSJS 275.

196 See [1.4.2]. In *Police v Hallett* [2010] SASC 256, Gray J summarised the view of Kourakis J in *Miles v Police* (2009) 104 SASR 127, [56] as follows: 'in criminal proceedings where there is a finding of guilt or an acceptance of a plea of guilty, there is necessarily a conviction in the narrow sense, which is sufficient to require the imposition of any statutory penalty', [39].

these provisions.¹⁹⁷ This means that the application of provisions creating an escalation of penalty for second or subsequent offences to offenders who are found guilty of offences without a conviction being recorded depends on the interpretation of the particular statute.

Some statutes containing increased penalties for subsequent offence create an exception (for the purposes of the *Sentencing Act 1997* (Tas) section 10(1)) by providing that a reference to 'conviction' includes a finding of guilt without recording a conviction. Examples are the *Marine Safety (Misuse of Alcohol) Act 2006* (Tas), the *Racing Regulation Act 2004* (Tas) and the *Fisheries (Penalties) Regulations 2011* (Tas).¹⁹⁸ This means that the escalation provisions in these enactments apply to finding of guilt with and without a conviction being recorded.

In the absence of such a statutory exemption, a finding of guilt would not be a conviction for the purposes of statutes that refer to an increase in penalty on conviction.¹⁹⁹ An example of this type of provision is found in the *Fire Services Act 1979* (Tas) section 128 that provides 'where a person is convicted of an offence against this Act, having at any time previously been convicted of the same offence, he is liable to a penalty that is double the penalty prescribed in the Act'. Similarly, the *Family Violence Act 2004* section 35 (providing for escalations in penalty on subsequent offences) applies where a person is guilty of an offence and is liable on summary conviction. These provisions would only operate following a conviction being recorded.

A more difficult question is the operation of provisions that create an increased penalty for a subsequent offence without making explicit reference to convictions or penalties on convictions. It could be argued that a conviction is not necessary because the words of the Act do not require it. However, it is an accepted principle of statutory interpretation that an increased penalty provision for a second or subsequent offence does not apply unless it is clearly applicable to the case.²⁰⁰ Accordingly, it could be argued that in the absence of a clear intention that the increased penalty provision was to apply to a finding of guilt (by using an extended definition of conviction or specifying that the penalty operated on a finding of guilt), a finding of guilty without recording a conviction is not sufficient. Tasmanian decisions that have considered the meaning of 'subsequent offence' have held that 'the higher penalty may not lawfully be imposed unless the second or subsequent offence is committed after conviction for the first offence'.²⁰¹ However, these cases did not address the issue of findings of guilt without recording a conviction. This uncertainty raises the prospect of reforming the *Sentencing Act 1997* (Tas) to make clear the position regarding the reliance on findings of guilt without recording a conviction as a 'first' or 'subsequent' offence. This is discussed in Chapter 4.

3.2.2.2 Offences that depend on prior offending

Some offences depend on prior offending as an element of offence.²⁰² For example, under the *Police Offences Act*, s 7A, a person who has been found guilty of a sexual offence must not, 'without reasonable excuse' loiter near children. A prior finding of guilt for a sexual offence makes a person criminally liable for behaviour that would not otherwise be criminal. There is no need for the person to have been convicted of the previous offence.

3.2.2.3 Dangerous criminals

The *Sentencing Act 1997* (Tas) contains the power to declare certain offenders to be a dangerous criminal, with the effect that the offender is not eligible to be released from custody until that declaration is discharged.²⁰³ A court may declare an offender a 'dangerous criminal' if: (a) the offender has been convicted of a crime involving violence or an element of violence; and (b) the offender has at least one previous conviction for a crime involving violence or an element of violence; and (c) the offender has apparently attained the age of 17 years; and (d) the judge is of

197 *Sentencing Act 1997* (Tas) s 10(1). These are not mandatory penalty provisions. Instead they set out the maximum penalty that the court may impose (*Acts Interpretation Act 1931* (Tas) s 37) as the court retains a discretion as to the penalty imposed, see Warner, above n 4, [1.403]-[1.404].

198 See Appendix 2, Table 2.

199 *Sentencing Act 1997* (Tas) s 10(1).

200 *Rivera v Maher* (1992) 1 Tas R 228; Warner, above n 4, [1.417]-[1.418].

201 Warner, *ibid* [1.417] referring the words of Burbury CJ in *Joyce v Smith* [1962] Tas SR (NC 11). See also *O'Hara v Harrington* [1962] Tas SR 165; *Rivera v Maher* (1992) 1 Tas R 228; *Hall v Mann* Serial No 5/1968, *Parker v Bessell* [2012] TASSC 78; *Cashman v Jordan* [2009] TASSC 112; *Gibbon v White* [2004] TASSC 8.

202 See Appendix 2, Table 1.

203 *Sentencing Act 1997* (Tas) s 19(4).

the opinion that the declaration is warranted for the protection of the public.²⁰⁴ In order to be declared a dangerous criminal, there must be two convictions;²⁰⁵ a finding of guilt without recording a conviction is not sufficient to activate the provision.²⁰⁶ This has been recognised as a factor relevant to the court's exercise of discretion as to whether or not to record a conviction.²⁰⁷ However, a finding of guilt without recording a conviction for a prior offence would still be relevant (if there were two convictions to activate the provision) as part of the offender's antecedents and character for the purpose of determining whether to declare an offender a dangerous criminal.²⁰⁸

3.3 DISQUALIFICATION

One of the most significant (and potentially long term) adverse consequences of a criminal conviction is that it may trigger the divestment of rights, licences and office. In Tasmania, numerous statutory provisions exist that impose a disqualification or disability as a consequence of criminal offending in varied ways: some provisions are mandatory and others are discretionary; some are dependent on a court order while others occur independently of any court order; some are activated by a finding of guilt while others require the recording of a conviction.²⁰⁹ A person may be banned or suspended from holding a licence or permit that is integral to their employment (for example, fishing licence, explosives licence, driver licence, firearms licence). In addition, many occupations are regulated, requiring individuals to hold licences or be registered, and this process requires individuals to disclose prior offending. Fox and Freiberg identify three different legal processes that bring about the disqualification:²¹⁰

- The court as part of the criminal sentence process may order the withdrawal of rights. This may be mandatory or a discretion may be afforded to the court
- Legislation may provide that a specific incapacity follows automatically from the conviction or finding of guilt without a conviction being recorded. Alternatively, legislation may give a government official the power to remove a person from office or suspend or cancel a licence in the event of conviction or finding of guilt
- The loss rights may occur as a result of a tribunal or regulatory body taking into account the applicant's criminality in deciding whether to grant or renew an application for a statutory licence or appointment.

However, regardless of the process, the loss of rights 'contributes significantly to the social stigma of the finding of guilt or conviction'.²¹¹ It should also be acknowledged that, legal impediments aside, a criminal history can have a detrimental impact on an offender's employment prospects given the increased use of criminal history screening as part of the employment process.²¹² It may also affect a person's ability to participate in voluntary work.²¹³

204 *Sentencing Act 1997* (Tas) s 19(1). See Appendix 2, Table 3.

205 For the purposes of *Sentencing Act 1997* (Tas) s 19(1), previous conviction is to be read as a reference to – (a) any conviction, either in this State or in some other State or a Territory, on indictment or complaint; or any conviction, either in this State or in some other State or a Territory, as a consequence of which a sentence is imposed by a court, being a court before which offences may be tried on indictment or complaint, on the committal of the accused to that court for sentence.

206 *Attorney-General v Smith* [2002] TASSC 10, [24] per Crawford J.

207 *Attorney-General v Smith* [2002] TASSC 10. See [2.3].

208 *Sentencing Act 1997* (Tas) s 19(2)(b).

209 See Appendix 3.

210 Freiberg, above n 14, [9.235].

211 Freiberg, *ibid.*

212 See [3.4.3].

213 There is no legal requirement in Tasmania for volunteer organisation to undertake police checks as part of the background screening of prospective volunteers. The Volunteering Australia's National Standards best practice standards suggests requiring a police check for volunteers who will have direct and unsupervised contact with vulnerable members of the public (such as children, the elderly and people with disabilities). All volunteers working in Commonwealth Government supported or funded aged-care programs or facilities are required to have a policy check every three years (Volunteering Tasmania, *Volunteering Tasmania Fact Sheet: Police Checks*, <<http://www.volunteeringtas.org.au/>>). However, this position will change following the commencement of the *Registration to Work with Vulnerable People Act 2013*. This provides a framework for the registration of people who have contact with children and vulnerable adults in the course of engaging in regulated activities. See Office for Children, Department of Health and Human Services, *Registration to Work with Vulnerable People Act 2013: Frequently Asked Questions*, <<http://www.dhhs.tas.gov.au/>>.

3.4 OCCUPATIONAL AND EMPLOYMENT RIGHTS

To ameliorate the impact of recording a conviction on an offender's future employment prospects, the court has the discretion to impose some sanctions without recording a conviction.²¹⁴ Further, a finding of guilt is not to be taken as a conviction for the purposes of a disqualification for or loss of office or the loss of a pension or any other benefit.²¹⁵ The Tasmanian government has also sought to regulate the use of criminal convictions (and finding of guilt) by the enactment of a spent conviction scheme²¹⁶ and the use of anti-discrimination law.²¹⁷ While this may lessen the legal consequence of a criminal record on employment prospects, it does not entirely remove the adverse social consequences (refusing to employ, promote and so on) that may flow from criminal offending.²¹⁸ This can have a serious impact on the prospects of a sizable proportion of the population. It is estimated that one in six Australians have a criminal record²¹⁹ and, there were close to half a million people in Australia who were found guilty of a criminal offence in 2011-12 (14,681 in Tasmania).²²⁰ Further, increasingly employers are requiring prospective employees to provide a criminal record check, either as a legally mandated check or as part of the employer's own risk management process.²²¹ Some tertiary education courses now require students to obtain criminal record certificates as part of the course requirements.²²² In 2012/13 Tasmania Police issued 45,055 police record checks to Tasmanian applicants and a further 76,653 Tasmanian records were released to interstate applicants.

3.4.1 Government bodies and appointments

Numerous Tasmanian statutes declare that positions on statutorily created boards, tribunals, trusts, and government or semi-government authorities are vacated following conviction of a specified type.²²³ This means that a person is automatically (mandatorily) removed from office by virtue of their conviction. A variation is that a statute provides that a government official (usually the Minister or the Governor) has the power to remove a person from office following conviction of a specified type.²²⁴ Usually this is a discretionary power, with the provision expressed that the authorised person 'may' remove the person from office on conviction. The types of convictions that typically give rise to mandatory or discretionary loss of office are offences or crimes that are punishable by imprisonment (although the length of imprisonment varies) and/or offences against the relevant act. Another formulation, allowing more scope for discretionary judgment, is that the person has been convicted of a crime of such a nature that, in the opinion of the decision maker, it renders it improper for the person to continue in office.²²⁵

Unless the statute specifies that it is to apply following a finding of guilt,²²⁶ the provisions are only activated following a conviction and do not apply to offenders who are found guilty with no conviction recorded.²²⁷

214 See [2.1].

215 *Sentencing Act 1997* (Tas) s 10(1)(a), (2)(b)(v).

216 See [2.4].

217 See [3.4.3].

218 See Mirjan Damaska, 'Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study' (1969) *Journal of Criminal Law and Criminology* 347, 347; Bronwyn Naylor, Moira Paterson and Marilyn Pittard, 'In the Shadow of a Criminal Record: Proposing a Just Model of Criminal Record Employment Checks' (2008) 32 *Melbourne University Law Review* 171; Heydon, Naylor, Paterson, and Pittard, above n 143.

219 Edney and Bagaric, above n 30, [11.4.5].

220 490,469 people were found guilty in Australian courts (Higher Courts, Magistrates Courts and Children's Courts in 2011-2012): Australian Bureau of Statistics, *Criminal Courts, Australian, 2011-2012*, Cat 4513.0, Table 3.

221 Naylor, Paterson and Pittard, above n 218; Bronwyn Naylor, 'Do Not Pass Go: The Impact of Criminal Record Checks on Employment in Australia' (2005) 30 *Alternative Law Journal* 174; Paterson and Naylor, above n 125.

222 Standing Committee of Law and Justice, above n 130, [3.23]. Students enrolled at the University of Tasmania studying courses that have workplace placements (health sciences, education, social work) require students to obtain a National Police Record Check (<http://www.utas.edu.au/health-science/professional-experience-placement/SiP/national-police-record-check>; <http://www.utas.edu.au/education/professional-experience/professional-experience-in-educational-settings-procedural-guidelines/survival-guide-to-professional-experience-1/clearance-to-work-with-students>; <http://www.utas.edu.au/social-sciences/home/social-work/frequently-asked-questions>).

223 See Appendix 3, Table 1.

224 See Appendix 3, Table 1.

225 For example see *Corrections Act 1997* (Tas) sch 2 cl 6(2)(c).

226 For example, see *Legal Profession Act 2007* (Tas) sch 2 cl (6)(c), (e) and s 11; *Companies Auditors and Liquidators Disciplinary Board Act 1982* sch 1 cl 4(1)(e).

227 *Sentencing Act 1997* (Tas) s 10(1)(a).

3.4.2 Licensing and registration

Modern employment arrangements have seen an increase in regulation and licensing for many occupations. Adopting the position that prior offending is an indicator of a person's unsuitability for certain types of employment, legislators use a person's criminal history as a threshold for registration to professional bodies or the grant of permits and licences relevant to producing income.²²⁸ Some occupations explicitly exclude people with a criminal record containing certain offences from membership or licensing, either by legislation or the accreditation process.²²⁹ Other licensing regimes set out conditions for the grant of licences that are relevant to employment and a person's prior criminality may preclude them from the grant of a licence.²³⁰ Conviction (or finding of guilt) may also provide the basis for automatic²³¹ or discretionary²³² loss of licences, registration or employment.

Provisions that create restrictions on employment and licences following a conviction do not automatically apply to non-conviction orders. The consequences that attach to a finding of guilt without recording a conviction depend on the type of disability and the terms of the legislative provision. However, this protection is not as expansive as it may initially appear. Many legislative provisions, as can be seen from Appendix 3 table 2, invite an inquiry into whether the person is a 'fit and proper person' (or similar expression) and a finding of guilt may be relevant for this purpose, depending on the details of the person's criminal history record that are disclosed.²³³ A finding of guilt may also be sufficient to activate a provision affecting a person's employment or entitlement to a permit or licence if the statute provides that it applies following a finding of guilt. Further, even without a statutory requirement to do so, there is considerable scope for employers to make enquiries about a person's criminal history and make employment decisions on that basis (subject to anti-discrimination laws).²³⁴

Some provisions have the effect of restricting a person from holding a particular position or engaging in a particular activity by imposing a ban, exclusion, disqualification or prohibition.²³⁵ These are mandatory, as people with a criminal record revealing particular offences are disqualified from applying for certain occupational licences. For example, a person with a conviction for an indictable offence who was sentenced to more than three years imprisonment is ineligible to be licenced as a conveyancer (*Conveyancing Act 2004*, s 5).²³⁶ A person with a conviction for an offence of dishonesty or fraud punishable by imprisonment at least three months is disqualified from managing corporations.²³⁷ These disqualifications only apply on conviction, as a finding of guilt is not to be taken as a conviction for any other purpose, unless expressly provided, and is not to be taken as a conviction for the purposes of a mandatory disqualification for or loss of office.²³⁸

A person may also be prevented from obtaining or retaining a licence or permit relevant to a person's ability to work within a particular area if they have a particular criminal history.²³⁹ For example, the *Dangerous Goods (Road and Rail Transport) Regulations 2010* (Tas) provides that the licensing authority must not grant a licence if in the five years before the day the application is made, the applicant has been found guilty of an offence that makes the applicant unsuitable to be the driver of a vehicle transporting dangerous goods. There is an assortment of ways in which these provisions may operate, and this makes it difficult for a person to understand the precise consequences of criminal

228 Naylor, Paterson and Pittard, above n 218, 177. See Appendix 3, Tables 2 and 3.

229 Ibid.

230 For example, see *Wildlife (General) Regulations 2010* (Tas) reg 9; *Work Health and Safety Regulations 2012* (Tas) regs 87, 90, 116, 119, 492, 500. See further Appendix 3, Table 3.

231 *Corrections Act 1997* (Tas) s 24; *Living Marine Resources Management Act 1995* (Tas) s 168. See further Appendix 3, Tables 2 and 3.

232 *Public Health Act 1997* (Tas), s 74H, 83, 103; *Work Health and Safety Regulations 2012* (Tas) regs 107, 135, 521, 603; *Workers Rehabilitation and Compensation Act 1988* (Tas) s 77F; *Wildlife (Exhibited Animals) Regulations 2010* (Tas) regs 17, 31; *Whales Protection Act 1988* (Tas) s 11. See further examples in Appendix 3, Tables 2 and 3.

233 Although findings of guilt (as well as convictions) are relevant to the 'fit and proper' person test, it is not the case that just because a person has a criminal record, they are not a fit and proper person – regard must be had to the time elapsed and the person's subsequent behavior. Bronwyn Naylor, 'Criminal Record and Rehabilitation in Australia, (2011) *European Journal of Probation* 79, 86 citing *Z v DG, Department of Transport* [2002] NSWADT 67.

234 See [3.4.3].

235 Freiberg, above n 14, [9.280], [9.285]. See also Australian Law Reform Commission, *Principles Regulations: Federal Civil and Administrative Penalties in Australia*, above n 169, 21.

236 See further Appendix 3, Table 4.

237 *Corporations Act 2001* (Cth) s 206B. See also *Cooperatives Act 1999* (Tas).

238 *Sentencing Act 1997* (Tas) s 10(1)(a), (2)(b)(v).

239 See Appendix 3, Tables 3, 4.

offending. Some of these provisions are mandatory²⁴⁰ and others are discretionary.²⁴¹ Some provisions are activated only on a conviction,²⁴² while others are triggered by a finding of guilt, either by the enactment defining conviction to include a finding of guilt²⁴³ or by the specific provision specifying that a finding of guilt is the relevant event.²⁴⁴

This lack of clarity is exacerbated by the commonly used formula of the registration or licencing law providing the regulatory authority (professional bodies, boards, ministers or senior public servants) with a discretionary power to grant or cancel the registration or licence on the basis of a person's character – whether they are a 'fit and proper' person, a 'suitable' person or a person of 'good character'. The meaning of the concept of 'fit and proper' was considered by the High Court in *Australian Broadcasting Tribunal v Bond*.²⁴⁵

The expression 'fit and proper person', standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of 'fit and proper' cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.²⁴⁶

Some legislation declares that certain convictions mean that a person is not a 'fit and proper' person.²⁴⁷ Some legislative provisions provide a non-exhaustive list of criteria relevant the decision as to whether a person is a fit and proper person. This may include criminal conviction for a specified type²⁴⁸ and it may also expressly include findings of guilt without recording a conviction.²⁴⁹ However, even if the legislation does not specify that a conviction or a finding of guilt is relevant, given the broad nature of the test, it is still open to the regulatory authority to make a finding that a person is not a fit and proper person on the basis of the non-conviction order.²⁵⁰ Tasmania Police advises that '[t]he procedures applied in conducting an assessment for "fit and proper" are various and are at the discretion of the relevant Department Secretary or Registrar'.²⁵¹

There are many occupations that have a threshold hurdle of establishing that an applicant is a 'fit and proper' person or is of 'good character' or is a 'suitable' person for registration. These include teachers,²⁵² architects,²⁵³

240 *Wildlife (General) Regulations 2010* (Tas) reg 9.

241 *Meat Hygiene Act 1985* (Tas) s 12.

242 See *Wildlife (General) Regulations 2010* (Tas) reg 9.

243 *Living Marine Resources Management Act 1995* (Tas) ss 3, 78.

244 *Dangerous Goods (Road and Rail Transport) Regulations 2010* (Tas) reg 204.

245 (1990) 170 CLR 321, 380 per Toohey and Gaudron JJ.

246 This has been applied in Tasmania to decisions concerning the grant of security agents licences: *Harrison v Assistant Commissioner for Corporate Affairs* [2009] TASMCAAD 19; *Reid v Assistant Commissioner for Corporate Affairs* [2008] TASMCAAD 20; *Joyce v Commissioner for Corporate Affairs* [2007] TASMCAAD 04; *Coombe v Commissioner for Corporate Affairs* [2009] TASMCAAD 18. It has also been applied for the purposes of the issue of a permit for a firearms licence: *Mayne v Scholz* [2009] TASMCAAD 16; *Gillie v Shadbolt* [2007] TASMCAAD 14; *Downham v Shadbolt* [2007] TASMCAAD 08; *Geeves v Shadbolt* [2007] TASMCAAD 12; *Goodyer v Shadbolt* [2009] TASMCAAD 17; *Pintarich v Shadbolt* [2008] TASMCAAD 24; *Quarell v Lieutier* [2013] TASMCAAD 37.

247 For example, the *Motor Vehicle Traders Act 2011* (Tas) s 7 provides that a person is not a fit and proper person if within the preceding 5 years the person has been convicted of an offence involving theft, fraud or other dishonesty that is punishable by a term of imprisonment of 3 years or more; or has completed serving a term of imprisonment for such an offence.

248 *Travel Agents Act 1987* (Tas) s 19; *Travel Agents Regulations 2003* (Tas) reg 5. This includes offences against the Act, offences involving dishonesty, fraud, violence, under pt V of the *Poisons Act*, relating to the possession and use of a firearm or other weapon that would disqualify the applicant from holding a licence under the *Firearms Act 1996* or a conviction and sentence to imprisonment for 3 years.

249 For example, *Security and Investigation Act Agents Act 2002* (Tas) s 8.

250 However, the licensing and registration organisations need to be mindful of anti-discrimination legislation by ensuring that there is an opportunity for 'an individual assessment of the person's particular criminal record and the correlation between the criminal record and the inherent requirement of the job as set out in the licensing or registration regimes' and providing the individual with an opportunity to state their case, Australian Human Rights Commission, above n 149, 32.

251 Information provided to the Sentencing Advisory Council by Tasmania Police, 11 February 2014.

252 *Teachers Registration Act 2000* (Tas).

253 *Architects Act 1929* (Tas).

health practitioners,²⁵⁴ child care workers,²⁵⁵ conveyancers,²⁵⁶ legal professionals,²⁵⁷ motor vehicle traders,²⁵⁸ electrical contractors,²⁵⁹ building professionals,²⁶⁰ property agents,²⁶¹ bookmakers,²⁶² security industry licensees,²⁶³ travel agents,²⁶⁴ and veterinary surgeons.²⁶⁵ A character test is also imposed as a hurdle for the issue of child care licences,²⁶⁶ licences for cat breeders,²⁶⁷ taxi licences,²⁶⁸ gaming licences,²⁶⁹ liquor licences,²⁷⁰ marine farming,²⁷¹ licences connected with firearms,²⁷² permits for explosives,²⁷³ and licences or authorities under the *Health Services Establishment Act 2006* (Tas), *Inland Fisheries Act 1995* (Tas), *Living Marine Resources Management Act 1995* (Tas), *Meat Hygiene Act 1985* (Tas), *National Parks and Reserved Land Regulations 2009* (Tas), *Nature Conservation Act 2002* (Tas), *Passenger Transport Services Act 2011* (Tas), *Poisons Act 1971* (Tas), *Security-sensitive Dangerous Substances Act 2005* (Tas), *Water Management Act 1999* (Tas), *Wildlife (Exhibited Animals) Regulations 2010* (Tas), and the *Wildlife (General) Regulations 2010* (Tas).²⁷⁴ The information disclosed in a criminal record check for the purposes of making an assessment as to 'fit and proper' depends on whether the check relates to a category of employment or licence that is governed by Schedule 1 of the *Annulled Convictions Act 2003* (Tas), in which case convictions and findings of guilt will be disclosed, or whether it is an annulled record check, in which case only convictions will be disclosed.²⁷⁵

3.4.3 Other consequences for employment

Even if police checks are not mandated by the legal regulation of an occupation or the relevant licencing procedure, background checking (including criminal history checks) is increasingly required as a result of government and non-government organisational policies, especially for people who are working with children and vulnerable people.²⁷⁶ A National Police Criminal History Check is required for employment in areas of child protection and youth justice, and for police applicants by the Department of Police and Emergency Management.²⁷⁷ As part of its duty of care, the Department of Education (Tasmania) requires a good character check as mandatory for some volunteers within

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- 254 *Health Practitioners Regulation National Law (Tasmania) Act 2010* (Tas). This applies to those who practice in the following areas: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medication radiation practice, nursing and midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology, *Health Practitioner Regulation National Law 2009* s 3 applied by *Health Practitioner Regulation National Law (Tasmania) Act 2010* (Tas) s 4. For more information refer to Australian Health Practitioners Regulation Agency, <http://www.ahpra.gov.au/>.
- 255 *Child Care Act 2001* (Tas); *Education and Care Services National Law (Application) Act 2011* (Tas); *Education and Care National Regulations 2011* (Tas). Tasmania is the only Australian jurisdiction that does not have a working with children check. However, this position will change following the commencement of the *Registration to Work with Vulnerable People Act 2013* (Tas) on 1 July 2014. This provides a framework for the registration of people who have contact with children and vulnerable adults in the course of engaging in regulated activities. See Office for Children, Department of Health and Human Services, above n 213. For an overview of the various schemes in Australia, see Australian Institute of Family Studies, *Pre-employment Screening: Working with Children Checks and Police Checks*, (October 2013) <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/>.
- 256 *Conveyancing Act 2004* (Tas).
- 257 *Legal Profession Act 2007* (Tas).
- 258 *Motor Vehicle Traders Act 2011* (Tas).
- 259 *Occupational Licensing (Electrical Work) Regulations 2008* (Tas).
- 260 *Building Act 2000* (Tas). This applies to builders, designers, architects, engineers and building surveyors, s 3. It only applies to people taking responsibility and is not occupational licencing (see http://workplacestandards.tas.gov.au/licensing/accreditation_of_building_practitioners#227453).
- 261 *Property Agents and Land Transactions Act 2005* (Tas).
- 262 *Racing Regulation Act 2004* (Tas).
- 263 *Security and Investigation Agents Act 2002* (Tas).
- 264 *Travel Agents Act 1987* (Tas); *Travel Agents Regulations 2003* (Tas).
- 265 *Veterinary Surgeons Act 1987* (Tas).
- 266 *Child Care Act 2001* (Tas); *Education and Care Services National (Application) Act 2011* (Tas).
- 267 *Cat Management Act 2009* (Tas); *Cat Management Regulations 2012* (Tas).
- 268 *Taxi Industry Regulations 2008* (Tas).
- 269 *Gaming Control Act 1993* (Tas).
- 270 *Liquor Licensing Act 1990* (Tas).
- 271 *Marine Farming Planning Act 1995* (Tas).
- 272 *Firearms Act 1996* (Tas).
- 273 *Explosive Regulations 2012* (Tas).
- 274 For further provisions refer to Appendix 3, Tables 2 and 3.
- 275 See [2.5].
- 276 Department of Health and Human Services, *A Working with Children and Other Vulnerable People Checking System for Tasmania*, Discussion Paper (2010) <<http://www.dhhs.tas.gov.au/>>. However, note that a police check will be required for registration under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014).
- 277 *Ibid* 14.

school (those involved in overnight school camps, assistance at swimming lessons, sports coaching/umpiring, school uniform shop, 'walking bus' and attendants, gardeners and cleaners),²⁷⁸ contractors undergoing ongoing work in schools, researchers in schools and adult aged students.²⁷⁹ This involves conducting a National Criminal History Check and the offences of concern are crimes of violence, sex-related offences, serious drug offences, crimes involving dishonesty and serious traffic offences.²⁸⁰ In addition, larger volunteer organisations such as Scouts, the Police and Community Youth Clubs, and some school organisations, as part of their risk management strategies require volunteers to have a National Police Criminal History Check.²⁸¹ The National Criminal History Check for those who work with (or have access to) children will disclose all convictions and findings of guilt including annulled convictions. This will include youth justice offences, and all Tasmania-based Traffic Infringement Notices.²⁸²

Aged care workers²⁸³ and disability providers who are funded by the Department of Health and Human Services are also required, as part of the service funding agreement, to make sure that all people engaged to work with vulnerable people (employees, volunteers and contractors) are fit and proper people.²⁸⁴ A National Police Criminal History check for aged care, adult disabled care and health (other than child related health) does not currently disclose findings of guilt or annulled convictions.²⁸⁵ However, with the new framework that is being introduced for people who require registration under the *Registration to Work with Vulnerable People Act 2013* (Tas), the background check for people working with vulnerable adults will require disclosure of findings of guilt and convictions.²⁸⁶

Employers are entitled to enquire about an applicant's criminal history as part of the recruitment process (even if not mandated to do so), and require the prospective employee to undergo a police check.²⁸⁷ There has been an increase in the number of criminal record checks being conducted in Australia by employers²⁸⁸ and this rise has been linked to broader societal concerns about security and risk management.²⁸⁹ In the employment context, it reflects principles of contract law (the implied duty of good faith and the duty to reasonably ensure the safety of workers), occupational health and safety laws and the laws of negligence that encourage employers to have a cautious approach to recruitment.²⁹⁰ Research suggests that employers are hesitant to employ a person with a criminal record because of concerns about reliability and perceptions about how customers may react.²⁹¹

- 278 Department of Education, *Good Character Checks for School Based Volunteers*, <<https://www.education.tas.gov.au/>>. Note that a new framework will be introduced for people working with children who register under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014).
- 279 Department of Education, *Good Character Checks*, <<https://www.education.tas.gov.au/>>. Note that a new framework will be introduced for people working with children who register under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014).
- 280 Department of Education, *Good Character Checks*, *ibid*. Note that a new framework will be introduced for people working with children who register under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014).
- 281 Department of Health and Human Services, above n 276, 16. Note that a new framework will be introduced for people working with children who register under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014).
- 282 Tasmania Police, *Police History Record Checks Frequently Asked Questions*, above n 157. Note that a new framework will be introduced for people working with children who register under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014).
- 283 Department of Health and Human Services, above n 276, 14.
- 284 *Ibid* 15. It is noted that the Commonwealth Government under Part 4.4 of the Accountability Principles 1998 prevents a person being engaged in aged care as a staff member or volunteer if they have conviction for murder, sexual assault or convicted and sentenced to imprisonment for any other type of assault. Note that a new framework will be introduced for people working with children who register under the *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014). It is noted that there will be a 'phased approach to regulating activities for those working with children and vulnerable adults', Office for Children, Department of Health and Human Services, *Registration to Work with Vulnerable People Act 2013* (Tas): *Frequently Asked Questions*, above n 213, 7. The list of regulated activities is yet to be produced but activities related to children will be regulated first with regulation of employees and volunteers who work with people living with disability, older Tasmanians and people accessing specialist homelessness services, people with mental illness and humanitarian entrants to be included over time, Tasmania, *Parliamentary Debate*, House of Assembly, *Registration to Work with Vulnerable People Bill 2013*, Thursday 14 November 2013, pt 3 94-151 (O'Connor).
- 285 Tasmania Police, *Consent to Check and Release a National Police Certificate*, above n 158.
- 286 See Office for Children, Department of Health and Human Services, above n 213, 8.
- 287 Naylor, Paterson and Pittard, above n 218, 172.
- 288 Naylor notes that in 2009 – 2010 Crim Trac processed around 2.7 million criminal history checks in 2009-2010. This is an increase from the first years of operation (2000-2003) where less than 0.5 million checks (on average) were processed each year (Naylor, 'Criminal Record and Rehabilitation in Australia', above n 233, 80).
- 289 Naylor, Paterson and Pittard, above n 218, 173.
- 290 This is explored in detail, *ibid*. See also Heydon, Naylor, Paterson and Pittard, above n 143.
- 291 This research is summarized in Heydon, Naylor, Paterson and Pittard, *ibid*; Naylor, Paterson and Pittard, above n 218. See also Naylor, 'Do Not Pass Go: The Impact of Criminal Records Checks on Employment in Australia', above n 221; Georgina Heydon, 'Risk and Rehabilitation in Criminal Records Checking by Employers: What Employers Are Doing and Why?' (2012) 18 *Employment Law Bulletin* 129; Human Rights and Equal Opportunity Commission, *Discrimination in Employment on the Basis of Criminal Record*, Discussion Paper (2004).

In the recruitment process, uncertainty about the nature of a conviction (as compared to a finding of guilt) may also create confusion and this may cause an employer and prospective employee to speak at cross-purposes. This is illustrated by the following example:

Des applied for a job as a warehouse assistant. At the interview, he was asked whether he had any criminal convictions. He said he did not. Des did, however, have a criminal record, being a finding of guilt which resulted in a good behaviour bond. When his employer found out about his criminal record, Des was accused of lying at the interview and he was accordingly dismissed. Des maintained that he had answered the question accurately.²⁹²

Employers may also be unsure about their legal obligations concerning police checks and may lack the skills to appropriately interpret and act on a criminal history check.²⁹³

The increased reliance on police check for employment purposes increases the scope for information contained in criminal records to be used to the detriment of offenders – either by limiting employment opportunities or by deterring offenders from seeking work because of the associated embarrassment and shame of disclosing their record.²⁹⁴ Although a person's consent is required to obtain a check, the unequal nature of bargaining position at the recruitment stage makes it difficult to refuse if the applicant wants to be considered for the position.²⁹⁵ It is also difficult to refuse to answer a question in a job interview about past offending.²⁹⁶ Further, there is a danger that applicants may not understand the information that is being sought by an employer's question and may provide incorrect information or an offender may decide to conceal their past out of concerns about discrimination.²⁹⁷ This dishonesty may provide a legitimate basis for refusing to recruit a person²⁹⁸ or for dismissal on the grounds of dishonesty.²⁹⁹

Technology is also making it much more difficult for an offender to 'live down the past'.³⁰⁰ In the past, an offender could expect that knowledge of his or her criminal history would diminish over time – it would be 'rare for a criminal record to haunt an individual'.³⁰¹ Now, with the arrival of the internet, there is a large volume of searchable information, publically available from legitimate sources such as news reports and court judgments and questionable sources such as CrimeNet.³⁰² Access to this information does not make any distinction between a finding of guilt without recording a conviction or the recording of a conviction – all information is accessible and this 'increase[s] the risk that a finding of guilt will forever stigmatise a person and put their rehabilitation ... at risk'.³⁰³

292 Fitzroy Legal Service, above n 141, 12.

293 Heydon, Naylor Paterson and Pittard, above n 218. The AHRC has prepared guidelines to assist employers: Australian Human Rights Commission, above n 149.

294 Heydon, Naylor, Paterson and Pittard, *ibid* 206-7. See [2.5] for discussion of criminal records.

295 Naylor, Paterson and Pittard, above n 218, 175; Moira Paterson, 'Criminal Records, Spent Convictions and Privacy: A Trans-Tasman Comparison' [2011] *New Zealand Law Review* 69, 80.

296 See Australian Human Rights Commission, above n 149, 20.

297 Fitzroy Legal Service, above n 141, 20; Australian Human Rights Commission, *ibid* 20; Australian Human Rights and Equal Opportunity Commission, above n 291, [6.4]; Law Reform Commission of Western Australia, *The Problem of Old Convictions Report* 80, (1986) [3.29-3.30].

298 Australian Human Rights Commission, *ibid* 21.

299 Australian Human Rights and Equal Opportunity Commission, above n 291, 7.

300 Office of the Victorian Privacy Commissioner, above n 146, [22].

301 Paterson and Naylor, above n 125, 939.

302 Crime Net (<http://www.crimenet.com.au/>) operates from California and contains 'a database of thousands of mostly Australian criminal records with emphasis on records relating to fraud, paedophilia, sex-related crimes and crimes of violence', Naylor, Paterson and Pittard, above n 218, 172 fn 4. See also Paterson and Naylor, *ibid*.

303 Office of the Victorian Privacy Commissioner, above n 146, [22]. Note that there are restrictions pursuant to the National Privacy Principles (NPP) placed on the collection of criminal records information. NPP 10 provides that 'sensitive information' (which includes an individual's criminal record) cannot be collected without the individual's consent, unless the collection is required by law. Paterson states that this 'means that employers who are bound by the NPPs are precluded from using [non-official] sources to gather information about prospective employees except with their consent', M Paterson, 'Restrictions on employers' handling of criminal records information: privacy and confidentiality issues' (Nov/Dec 2012) *Employment Law Bulletin* 120, 121. The NPPs generally apply to private sector organisations with a turnover of \$3 million or more. For more information see Office of the Australian Information Commissioner, *National Privacy Principles*, <<http://www.oaic.gov.au/>>. In Tasmania, the *Personal Information Protection Act 2004* (Tas) regulates the collection, use and disclosure of personal information. A person's criminal record is included within the definition of sensitive information, s 3(a)(ix). However, an exemption applies in relation to the obligations in relation to sensitive information contained in Schedule 1 clause 10 for any employee information, s 10. Employee information includes information in relation to the selection and employment of an individual, s 3. The Act applies to personal information custodians which includes state government agencies, statutory boards, local councils, the University of Tasmania and any body, organization or person who has entered into a personal contact with governmental agencies relating to personal information, Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report 108 (2008) [2.62].

The use of criminal records by employers and other regulatory bodies (disclosing convictions and findings of guilt without a conviction) is not without limit. In Tasmania, the *Annulled Conviction Act 2003* (Tas) places restrictions on the time period and context for which an offender needs to disclose minor convictions.³⁰⁴ Further, under the release policy of Tasmania Police, unless a person requests a police check for the purposes of a category of employment or licence that is contained in Schedule 1 of the *Annulled Convictions Act 2003* (Tas), it will not show findings of guilt. In addition, there are legal constraints on the use of criminal records by employers in making employment decisions. Industrial law operates to protect people with a criminal record from unfair dismissal from employment.³⁰⁵ Further, Tasmania is one of only three jurisdictions in Australia to include 'criminal record' as a statutory ground of discrimination.³⁰⁶ The *Anti-Discrimination Act 1998* (Tas) section 16(q) provides that it is unlawful to discriminate against a person on the basis of their 'irrelevant criminal record'.³⁰⁷ In the context of discrimination on the basis of a finding of guilt or a conviction, 'irrelevant criminal record' is defined to include 'the circumstances relating to the offence for which the person was convicted are not directly relevant to the situation in which the discrimination arises'.³⁰⁸ The *Commonwealth Australian Human Rights Commission Act 1986* (Cth) also applies in Tasmania and it defines discrimination to include discrimination on the ground of criminal records,³⁰⁹ subject to the exception that criminal records can only be taken into account where it means that a person is unable to carry out the 'inherent requirements of the job'.³¹⁰

Discrimination in the workplace on the basis of a person's criminal record may incorporate a wide range of behaviours including refusing to employ someone, dismissing a person from employment, denying a person training, denying promotion, subjecting the person to less favourable working conditions or terms of employment or harassing someone in the workplace.³¹¹ Discrimination on the basis of criminal record is not uncommon. As discussed, research shows that employers are 'less inclined to employ someone where they have a criminal record'.³¹² In 2012, the Australian Human Rights Commission reported that:

In recent years there have been a significant number of complaints to the Australian Human Rights Commission from people alleging discrimination in employment on the basis of criminal record. The complaints indicate that there is a great deal of misunderstanding by employers and people with criminal records about discrimination on the basis of criminal record.³¹³

304 See [2.4].

305 See Australian Human Rights Commission, above n 149, 12; Marilyn Pittard, 'Discrimination Law: Constraints on Criminal Record Checks in Recruitment' (Nov/Dec 2012) *Employment Law Bulletin*, 124, 127; *Fair Work Act 2009* (Cth); *Industrial Relations Act 1984* (Tas).

306 *Anti-Discrimination Act 1998* (Tas); the *Anti-Discrimination Act 1992* (NT); and the *Australian Human Rights Commission Act 1986* (Cth).

307 Note that *Anti-Discrimination Act 1998* (Tas) s 50 provides an exception when dealing with children – '[a] person may discriminate against another person on the ground of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical, psychological or emotional wellbeing of children having regard to the circumstances'. Under the Act, there are several legal remedies available if a finding of discrimination is made. These include ordering the employer: not to repeat or continue the discrimination; to redress any loss, injury or humiliation; re-employ the complainant; pay compensation, or pay a fine.

308 *Anti-Discrimination Act 1998* (Tas) s 3. Section 3 does not refer to a finding of guilt without recording a conviction. It would be a matter of interpretation as to whether 'conviction' extended to findings of guilt without recording conviction. However, the *Sentencing Act 1997* (Tas) s 10 and the *Youth Justice Act 1997* (Tas) s 49(5) limit the circumstances in which a finding of guilt is to be regarded as a conviction.

309 Naylor explains that this is achieved by having the International Labour Organisation Conviction (ILO) 111 incorporated as a schedule to the Human Rights Commission Act; ILO 111 article 1(1)(a) defines 'discrimination' in employment as '[a]ny distinction, exclusion or preference made on the basis of ... [criminal record] ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment: Naylor, 'Criminal Record and Rehabilitation in Australia', above n 233, 89 fn 37. The *Human Rights and Equal Opportunity Commission Regulations 1989* (Cth) extend the definition of discrimination to include criminal record.

310 It is noted that under the HREOC process, 'while certain conduct may be found to constitute discrimination by the Commission, the Act does not make the conduct unlawful', Human Rights and Equal Opportunity Commission, above n 291, 11. For more information on the process, see Human Rights and Equal Opportunity Commission and M Pittard, above n 305. See also Naylor, above n 233.

311 Human Rights and Equal Opportunity Commission, *ibid* 3.

312 Naylor, 'Do Not Pass Go: The Impact of Criminal Records Checks on Employment in Australia' above n 221, 176.

313 Australian Human Rights Commission, above n 149, 7.

3.5 LOSS OF LICENCES TO DRIVE³¹⁴

Criminal offending may result in the loss of a licence to drive a vehicle. There are three ways for a person to be disqualified³¹⁵ from driving. First, there is power for a court to order a disqualification (either as a discretionary or mandatory power) on conviction for certain offences relating to the use of motor vehicles. Second, a person may be automatically disqualified from driving (without any court order) as a result of an accumulation of demerit points.³¹⁶ Demerit points may be accumulated either by court order or by operation of law. A court may order a person convicted of a traffic offence be awarded with the prescribed demerit points.³¹⁷ Alternatively, if a person has been served with a traffic infringement relating to a traffic offence that attracts demerit points and is taken to have been convicted of the offence under the provisions of the *Monetary Penalties Enforcement Act 2005* (Tas),³¹⁸ the demerit points prescribed are awarded. A person is also disqualified by operation of law if a person is issued with a traffic infringement notice for a low level of drink driving offence and is taken to be convicted under the *Monetary Penalties Enforcement Act 2005*.³¹⁹ Third, in limited circumstances, power is extended to a police officer to immediately disqualify a person from driving by giving the person an 'excessive drink-driving notice', if the police officer forms a belief on reasonable grounds that the person's blood or breath alcohol reading is above a specified level.³²⁰

The power of a court to disqualify may be triggered only by the recording of a conviction or may be activated on a finding of guilt (without recording a conviction). This depends on whether or not specific legislative provision refers to conviction or a finding of guilt, and if it refers to conviction whether or not a disqualification is mandatory or discretionary. It also depends on whether the person is dealt with under the *Sentencing Act 1997* (Tas) or the *Youth Justice Act 1997* (Tas). If a disqualification is mandatory (the court must impose it) and the offender is dealt with under the *Sentencing Act 1997* (Tas), the penalty applies to conviction as well as to findings of guilt without recording a conviction.³²¹ However, as discussed at [3.1.2], it is unlikely that mandatory penalties apply to youth offenders who receive non-conviction sentences unless this is expressly provided for in the relevant legislation (by defining conviction to include a finding of guilt or by specifically referring to a finding of guilt). In contrast, if the disqualification is discretionary, it only applies to recorded conviction (unless the statute specifies otherwise) and can be avoided by the use of a non-conviction sentence.³²² This distinction will become more significant for licence disqualifications if courts are provided with an enlarged discretion to impose a non-conviction with a fine.

314 See Appendix 4 for relevant Tasmanian provisions.

315 Disqualification is the term used in the legislation. For information about the effect of disqualification in terms of cancellation or suspension, see Warner, above n 4, [6.303]. See also Freiberg, above n 14, [9.240] for a discussion of the distinction between cancellation, suspension and disqualification.

316 The demerit point scheme is set out in the *Vehicle and Traffic Act 1999* (Tas), div IV ss 20-24. For more detail see Warner, above n 4, [6.324]-[6.3.25].

317 *Vehicle and Traffic Act 1999* (Tas) s 21. It is argued that this is a discretionary penalty. Section 21(1) is expressed in mandatory terms: 'Subject to this section, a court must ... award ... demerit points'. However, s 21(5) provides that the court may restrain from awarding demerit points or reduce the number of points to be awarded against a convicted person if it is just to do so'. This provides the court with a discretion as to whether or not to award demerit points.

318 A person is taken to be convicted if a person does not dispute the notice within the specified time period, pays the amount in full or applies to the Director or the issuing authority for a variation of payment conditions, *Monetary Penalties Enforcement Act 2005* (Tas) s 20.

319 *Road Safety (Alcohol and Drugs) Act* (Tas) s 18A.

320 *Road Safety (Alcohol and Drugs) Act* (Tas) s 18B. For the holder of a full licence, the concentration of alcohol is 0.15 grams or more per 100 millilitres of blood or 0.15 grams or more per 210 litres of breath. For the holder of a licence other than a full licence or the holder of learner or provisional licence, it is 0.07 grams or more per 100 millilitres of blood or 0.07 grams or more per 210 litres of breath.

321 *Sentencing Act 1997* (Tas) s 10(2)(b)(v).

322 *Sentencing Act 1997* (Tas) s 10(1).

3.5.1 Mandatory disqualification

Mandatory disqualification is required in relation to drink-driving offences and the offence of driving under the influence of drugs contained in the *Road Safety (Alcohol and Drugs) Act 1970* (Tas). Section 17(3) of the *Road Safety (Alcohol and Drugs) Act 1970* (Tas) provides that, subject to (5), the court that convicts a person of a specified offence,³²³ must impose a specified fine or a term of imprisonment or both and must also disqualify the person from driving for a specified period (length depending on the amount of alcohol). This is expressed in mandatory terms – the court ‘must’.³²⁴ And while the court is provided with a limited discretion to reduce the fine or impose a lesser period of disqualification in special circumstances,³²⁵ there is no discretion for the court to decide not to disqualify the offender for some period of time (or not to impose a fine of some amount).³²⁶ This means that this provision applies, for offenders sentenced under the *Sentencing Act 1997* (Tas), even if the court does not record a conviction.

Similarly, under the *Vehicle and Traffic Act 1999* (Tas) the Court must disqualify a person (subject to a limited discretion to impose a lesser period of disqualification than specified in the statute for ‘special reasons’) if a person is convicted of excessive speeding³²⁷ or of an unaccompanied driver offence.³²⁸ A mandatory disqualification is also contained in the *Police Offences Act 1935* (Tas), section 37F(4). If a person is convicted of the summary offence of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud and the court makes a compensation order, the court shall disqualify that person until the compensation order is paid in full. Again, these provisions are mandatory and apply to conviction and non-conviction sentences for adult offenders.

The application of mandatory penalty provisions in the event of a non-conviction sentence is less clear for youth offenders. As discussed at [3.1.2], the mandatory licence disqualification for juveniles (persons under 17)³²⁹ convicted of the summary offence of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud, contained in the *Police Offences Act 1935*, section 37F, has been held not to apply to youth offenders for whom a conviction was not recorded.³³⁰ In *Police v HM (A Youth)*, the question was left open as to whether other mandatory penalties, such as those contained in the *Road Safety (Alcohol and Drugs) Act 1970* (Tas) and the *Vehicle and Traffic Act 1999* (Tas), apply to a youth under the age of 17 found guilty but not convicted.³³¹ If the reasoning of Magistrate McTaggart is accepted, these mandatory penalties would not apply. This would mean that disqualifications for excessive speed, unaccompanied driver, and drink/drug-driving offences would only apply if the youth were convicted. Similarly, the disqualification pending payment of a compensation order could be avoided by a non-conviction sentence. The only circumstance where a mandatory penalty could be applied to a youth offender would be where the statute specifies that it applies to a finding of guilt, as well as to a conviction.³³²

323 This applies if a court convicts a person of an offence against s 4 (driving under the influence of alcohol or drugs), s 6 (driving with excessive concentration of breath or blood alcohol), s 10A (1) and (4) (failure to comply with obligation to provide blood sample, submit to breath analysis or medical examination) and s 14(5) (unreasonable objection to analysis of blood or urine); *Road Safety (Alcohol and Drugs) Act* (Tas) s 17.

324 *Shirley v Mooloo Farms* [2003] TASSC 101.

325 See Warner, above n 4, [6.312]-[6.313] for a discussion of the special circumstances for the purposes of *Road Safety (Alcohol and Drugs) Act* (Tas) s 17(5).

326 See *Harper v Cullen* (2002) 11 Tas R 211, where it was held that the *Road Safety (Alcohol and Drugs) Act* (Tas) 17(5) required the court, even in very special circumstances, to impose some fine or some disqualification albeit only nominal. This casts doubt on earlier authority that considered that it was appropriate to impose no period of disqualification, see *Strickland v Whitehead*, Serial No B60/1995, 1 per Zeeman J; *Mazengarb v White* Serial No B38/1993, 5 per Crawford J; *Turner v Visser*, Serial No 93/1998; *Snoxall v Visser* [2002] TASSC 89.

327 *Vehicle and Traffic Act 1999* (Tas) s 19B.

328 *Vehicle and Traffic Act 1999* (Tas) s 19E.

329 *Police Offences Act 1935* (Tas) s 37A.

330 See [3.1.2] discussing *Police v HM (A Youth)* [2009] TASMC 08. See contrary view in Warner, above n 4, [6.308] that the *Sentencing Act 1997* (Tas), s 10(2)(b)(v) applies to the *Youth Justice Act 1997* (Tas). However, Warner did not consider the affect of the *Sentencing Act 1997* (Tas), s 5. See discussion in *Police v HM (A Youth)* [2009] TASMC 08, [6]-[8].

331 *Police v HM (A Youth)* [2009] TASMC 08, [33].

332 See [3.1.2].

3.5.2 Discretionary disqualification

The court also has a number of powers to disqualify a driver in the exercise of the court's discretion. Discretionary disqualification can only be ordered following a conviction and is not available for non-conviction sentences. Under the *Sentencing Act 1997* (Tas) section 55, the court has the power to disqualify a driver convicted of reckless driving under section 32 of the *Traffic Act 1925* (Tas) or convicted of an indictable offence arising out of the driving, operation or use of a motor vehicle or in the commission of which a vehicle was used or the commission of which was facilitated by a motor vehicle.³³³ Subject to the requirement for mandatory disqualification if a compensation order is made, under the *Police Offences Act 1935* (Tas) section 37F, the court may order disqualification from holding or obtaining a driver's licence if a person, who has attained the age of 17 years, is convicted of the summary offence of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud. Disqualification is discretionary for offences, other than those to which section 17 applies, under the *Road Safety (Alcohol and Drugs) Act 1970* (Tas).³³⁴ It is also discretionary for offences against the *Police Powers (Vehicle Interception) Act 2000* (Tas).³³⁵

3.6 SEX OFFENDER REGISTRATION

Sex offenders occupy a distinctive position within the criminal justice system reflecting political and community abhorrence, especially in relation to child sex offenders. Sexual offences are not eligible to be annulled, and will always be disclosed on a person's criminal record.³³⁶ Sexual offenders are also subject to offender reporting legislation that reflects 'a hardening in political and public attitudes to sex offenders'.³³⁷ All Australian jurisdictions have offender reporting legislation that aims to protect the community by allowing detailed information to be kept about the offender.³³⁸ This is reflected in the long title of the *Community Protection (Offender Reporting) Act 2005* (Tas) that states that the aim of the legislation is:

to require certain offenders who commit sexual or certain other serious offences to keep police informed about their whereabouts and other personal details for a period of time (to reduce the likelihood that they will reoffend and to facilitate the investigation of any future offence that they may commit).³³⁹

An offender who is subjected to reporting obligations must provide the Registrar of the Community Protection Offender Register with a list of personal details including any names by which he or she has been known, address, names of children with whom they live or have regular unsupervised contact, name and place of employment, affiliation with any club or organisations, vehicle description, name of internet service provider and type of internet connection, email addresses, internet names, chat room user names and any associated passwords.³⁴⁰ The offender must also notify any changes in details within 7 days³⁴¹ and must notify the Registrar if he or she intends to travel interstate for 7 days or more days.³⁴² It is an offence for an offender to fail to comply with reporting obligations³⁴³ or provide misleading information.³⁴⁴

333 See Warner, above n 4, [6.306] for a discussion of the nexus between the offence and the use of a motor vehicle for this provision.

334 *Road Safety (Alcohol and Drugs) Act* (Tas) s 17B.

335 *Police Powers (Vehicle Interception) Act 2000* (Tas) s 15.

336 See [2.5].

337 Kate Warner, 'Sentencing Review 2005-2006' (2006) 30 *Criminal Law Journal* 373, 387.

338 See *ibid*; Freiberg, above n 14, [9.290]-[9.310]; Victorian Law Reform Commission, *Sex Offender Registration*, Information Paper (2011); Victorian Law Reform Commission, *Sex Offender Registration*, Final Report (2011); Law Reform Commission of Western Australia, *Community Protection (Offender Reporting) Act 2004*, Final Report (2012).

339 *Community Protection (Offender Reporting) Act 2005* (Tas) long title.

340 *Community Protection (Offender Reporting) Act 2005* (Tas) s 17.

341 *Community Protection (Offender Reporting) Act 2005* (Tas) s 16.

342 *Community Protection (Offender Reporting) Act 2005* (Tas) s 19.

343 *Community Protection (Offender Reporting) Act 2005* (Tas) s 33.

344 *Community Protection (Offender Reporting) Act 2005* (Tas) s 34.

It is the imposition of sentence that provides the basis for a court to make an order requiring the registration of offender under the *Community Protection (Offender Reporting Act) 2005* (Tas).³⁴⁵ A court sentencing an offender for a reportable offence must make an order directing that the name of the offender be placed on the Community Protection Offender Register, 'unless the court is satisfied that the person does not pose a risk of committing a reportable offence in the future'.³⁴⁶ The court can make an order whether or not a conviction is recorded.³⁴⁷

3.7 RETENTION OF FORENSIC SAMPLES

Legislation regulates the police power to obtain forensic material (samples, handprints, fingerprints, footprints and toeprints, photographs and video recordings, and casts and impressions)³⁴⁸ from or of a person's body and also the use, retention or destruction of material (*Forensic Procedures Act 2000* (Tas)). DNA samples may be taken from people convicted of a serious offence (if imprisoned or on parole).³⁴⁹ It is also permissible to match DNA samples taken from a crime scene with a serious offender's DNA profile.³⁵⁰ Forensic material obtained from a person must be destroyed if the person is acquitted or the conviction is quashed.³⁵¹ The provisions that apply to convicted persons are specified to apply to offenders for whom a finding of guilt was made without recording a conviction.³⁵²

3.8 POLITICAL RIGHTS³⁵³

A person who is convicted of an offence may lose certain political rights as a consequence of their offending. A conviction may prevent a person from holding political office. However, this does not apply to a finding of guilt without recording a conviction. At the Commonwealth level, a person who is 'attained of treason, or has been convicted and is under sentence, or subject to be sentenced for an offence punishable by imprisonment for one year or more is incapable of being chosen or of sitting as a Senator or as a member of the House of Representatives'.³⁵⁴ This disqualification concludes once the sentence has been served (other than for treason).³⁵⁵ However, the disqualification may continue under other legislation in specified circumstances. For example, under the *Commonwealth Electoral Act 1918* (Cth), a person who has been convicted of bribery or interference with political liberty or is found by the Court of Disputed Returns to have committed an offence of bribery or undue influence, is incapable of membership of either the House of Representatives or the Senate for two years from the date of conviction or finding.³⁵⁶

At the state level, the prohibitions are similar to the Commonwealth provisions. Under the *Constitution Act 1934* (Tas), section 34, the office of a member of either House (House of Assembly and Legislative Council) is vacated if the person is attained of treason or convicted of any crime and is sentenced or awaiting sentence to imprisonment for longer than a year. A disqualification may be occur under the *Electoral Act 2004* (Tas) which precludes a person from being elected to either House for 4 years from the date of conviction or finding, if the person is convicted of a corrupt practice or is found by the Supreme Court to have engaged in a corrupt practice.³⁵⁷ At a local government level, eligibility for nomination as councillor is barred to people who are undergoing a term of imprisonment or

345 *Community Protection (Offender Reporting) Act 2005* (Tas) ss 5, 6. A sentence is defined to include (a) an exercise of power under section 7 of the *Sentencing Act 1997*; (b) an exercise of person under section 47 of the *Youth Justice Act 1997* (Tas) and an order made under the *Criminal Justice (Mental Impairment) Act 1999* (Tas).

346 *Community Protection (Offender Reporting) Act 2005* (Tas) s 6. Reportable offences are divided into three classes: Class 1, Class 2 and Class 3, s 12. Class 1 contains offences connected with child pornography, grooming and loitering, as examples, s 13, sch 1. Class 2 contains offences such as making child exploitation material, maintain a sexual relationship or intercourse with a young person, incest, aggravated sexual assault, rape, s 14, sch 2. Class 3 contains offences against the *Criminal Code Act 1995* (Cth).

347 This occurred in *Traynor v McCullough* [2011] TASSC 41 and *DPP v NOP* [2011] TASC 15. In both cases the sentence at first instance was overturned on appeal but not on the basis that a sex offender registration order was made with a non-conviction sentence.

348 *Forensic Procedures Act 2000* (Tas) s 3.

349 *Forensic Procedures Act 2000* (Tas) pt 3.

350 *Forensic Procedures Act 2000* (Tas) s 54.

351 *Forensic Procedures Act 2000* (Tas) s 55(4).

352 *Forensic Procedures Act 2000* (Tas) s 3.

353 See Appendix 5 for relevant Tasmanian provisions.

354 *Commonwealth of Australia Constitution Act* (Cth) s 44(ii).

355 See Freiberg, above n 14, [9.335] citing *Nile v Wood* (No 1) [1987] HCA 62.

356 Section 386.

357 Section 239.

people who are sentenced for a crime but the sentence is not executed.³⁵⁸ Again, these provisions only apply to a recorded conviction and not to a finding of guilt.

Under Commonwealth and Tasmanian law, a further consequence of criminal offending is the loss of voting rights that arises on conviction or a finding of engagement in prohibited behaviour.³⁵⁹ At the Commonwealth level, a person who has been convicted of treason or treachery and not pardoned or offenders who are serving a sentence of imprisonment of three years or longer are not able to vote in elections for either the House of Representatives and the Senate.³⁶⁰ Under the Tasmanian *Electoral Act 2004* (Tas), a person is not able to vote in either Houses of the Tasmanian Parliament if they are not eligible to be enrolled on the Commonwealth electoral role.³⁶¹ Under these provisions, disenfranchisement is activated by conviction alone. In contrast, under the *Electoral Act 2004* (Tas) s 239(1)(b) a person is incapable of being enrolled as voter in Tasmania if convicted of a corrupt practice or found by the Supreme Court to have engaged in a corrupt practice. A person is entitled to be enrolled on the electoral roll for council elections if the person is enrolled to vote for the House of Assembly.³⁶² There are further provisions that allow adults who own or occupy land to be enrolled but specify that a person is not entitled to be enrolled if a person is serving a term of imprisonment.³⁶³

3.9 CITIZENSHIP

Although there is no power for the court to order that person's Australian citizenship is withdrawn,³⁶⁴ criminal offending may deprive a person of their ability to become an Australian citizen or may cause them to lose their citizenship if it is based on conferral (obtained by the grant of a certificate of Australian citizenship).³⁶⁵ In contrast, a person who is a citizen of Australia by virtue of birth in Australia³⁶⁶ cannot be deprived of their citizenship as a result of a criminal conviction or finding of guilt. Similarly, a person who is an Australian citizen by descent from (or adoption by)³⁶⁷ Australian parents³⁶⁸ cannot be deprived of their citizenship (other than as a result of having made false or misleading representations in the application process).³⁶⁹

A person who obtains their citizenship by conferral may lose that citizenship if the person is convicted of an offence of providing false or misleading information in relation to the person's application to become an Australian citizen.³⁷⁰ The Minister may also revoke a person's citizenship if, after making the application, the person has been convicted of serious offence³⁷¹ or a migration related fraud,³⁷² and the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen. It is not necessary for a conviction to be recorded, as the *Australian Citizenship Act 2007* (Cth), section 34(9) extends the definition of conviction to include a discharge of an offender without recording a conviction.

Criminal offending can also prevent a person from becoming a citizen under the *Australian Citizenship Act 2007* (Cth), either in the exercise of the Minister's discretion or as a result of a mandatory prohibition. In order to be eligible for Australian citizenship, a person must (among other things) satisfy a residence requirement of being in Australia for four years immediately preceding the application.³⁷³ If a person were imprisoned during this four-year

358 *Local Government Act 1993* (Tas) s 270.

359 This is discussed in Freiberg, above n 14, [9.335].

360 *Commonwealth Electoral Act 1918* (Cth) ss 93(8), 93(8AA).

361 *Electoral Act 2004* (Tas) s 31.

362 *Local Government Act 1992* (Tas) s 254(1).

363 *Local Government Act 1992* (Tas) s 254(2).

364 See Freiberg, above n 14 [9.340].

365 *Australian Citizenship Act 2007* (Cth) s 24.

366 *Australian Citizenship Act 2007* (Cth) s 12.

367 *Australian Citizenship Act 2007* (Cth) s 13.

368 *Australian Citizenship Act 2007* (Cth) s 12.

369 *Australian Citizenship Act 2007* (Cth) s 34(1).

370 *Australian Citizenship Act 2007* (Cth) s 34(2).

371 *Australian Citizenship Act 2007* (Cth) s 34(2). A serious offence is one where the person has been sentenced for death or to a prison sentence of more than one year that was committed before the person became an Australian citizen, *Australian Citizenship Act 2007* (Cth) s 34(5). A conviction includes an order under *Crimes Act* (Cth) s 19B; *Australian Citizenship Act 2007* (Cth) s 34(9).

372 *Australian Citizenship Act 2007* (Cth) s 34(2).

373 *Australian Citizenship Act 2007* (Cth) s 22(1).

period, they do not satisfy the requirement, unless the Minister decides that, taking into account the circumstances that resulted in the person's imprisonment, it would be unreasonable to apply the provision.³⁷⁴ Citizenship may also be withheld if the Minister is not satisfied, in view of a person's criminal record (findings of guilt and convictions), the person is not of 'good character' at the time of making of the application.³⁷⁵ Further, the Minister must not approve a person becoming an Australian citizen at a time:

- when the person has proceedings for an offence pending
- when the person is imprisoned
- during the two year period after a person's release from prison (if they were sentenced to imprisonment for at least 12 months)
- during the 10 year period after a person's release from prison if a person is a serious repeat offender³⁷⁶ who was sentenced to imprisonment for at least 12 months
- when a person is released subject to parole or licence conditions
- when a person is released subject to another conditional sentence.³⁷⁷

While restrictions that are dependent on imprisonment can only arise following a conviction, non-conviction sentences would be relevant to the character assessment of the applicant and may also prevent the grant of citizenship if the person is subject to a conditional sentence.

3.10 TRAVEL RESTRICTIONS

Prior criminality may prevent Australians from travelling to other countries, and the consequences of offending are difficult to ascertain due to the varied requirement of the different jurisdictions. Even if a person is not to be prohibited from travel, the existence of a prior offence may create uncertainty about entry and additional inconvenience by requiring a person to apply for a visa or other permission prior to travel (when this is not normally required). Importantly, it is not only convictions that may affect travel but also findings of guilt. For example, there are restrictions under Canadian immigration law, which mean that people who have committed or been convicted of certain crime may be 'criminally inadmissible' and so may not be allowed to enter Canada. Relevant crimes for 'criminal inadmissibility' include theft, assault, manslaughter, dangerous driving, driving while under the influence of drugs or alcohol, or possession of or trafficking in drugs or controlled substances. A person who is 'criminally inadmissible' may establish that they meet the requirements for deemed rehabilitation, or that they have been approved for rehabilitation, or that they received a pardon.³⁷⁸ The outcome of these applications can be uncertain and applicants are advised that 'these applications can take over a year to process'.³⁷⁹

Delays and uncertainty also arise for travel to the United States. Australians are generally exempt from having to apply for a visa to enter the United States. However, people with criminal records (regardless of how minor or how long ago) who wish to enter or transit through the United States are advised, by the Australian Department of Foreign Affairs and Trade (DFAT), to seek advice about visa requirements from an American Embassy or Consulate.³⁸⁰ Current advice from the Embassy of the United States is that Australians who have been arrested for or charged with a crime, including offences involving the use of a controlled substance, are advised to apply for a visa prior to travel. This involves an interview with the US Consulate and the consular official will determine whether or not a person is eligible for a US visa. As a general rule, a person is ineligible if they have been convicted of or

374 *Australian Citizenship Act 2007* (Cth) s 22(5A). See also *Australian Citizenship Act 2007* (Cth) s 22A.

375 *Australian Citizenship Act 2007* (Cth) s 21.

376 A person is a 'serious repeat offender' in relation to a serious prison sentence if the sentence was imposed on the person for an offence committed by the person at a time after the person ceased to be confined in prison because of imprisonment for another serious prison sentence, *Australian Citizenship Act 2007* (Cth) s 3.

377 *Australian Citizenship Act 2007* (Cth) s 24(6).

378 See Government of Canada, *Citizenship and Immigration Canada*, <<http://www.cic.gc.ca/>>.

379 *Ibid.*

380 Department of Foreign Affairs and Trade, *Smart Traveller*, <<http://www.smarttraveller.gov.au/>>.

admitted guilt in relation to a crime of moral turpitude or a violation of a law relating to controlled substances.³⁸¹ If a person is found ineligible, they may apply for a waiver and the approval of a waiver (which is not guaranteed) currently takes around five months.³⁸²

Criminality also may prevent non-citizens from entering or remaining in Australia. Under the *Migration Act 1958* (Cth), a non-citizen may be deported from Australia in a range of circumstances.³⁸³ Some of these depend on conviction for a criminal offence. A non-citizen who has been in Australia for less than 10 years may be deported if a person is convicted of an offence and sentenced to imprisonment for not less than one year (or for life imprisonment or sentenced to death).³⁸⁴ A non-citizen may also be deported if they are convicted of certain serious offences.³⁸⁵

Other provisions require that a non-citizen satisfy a character test, and this may allow findings of guilt (as well as convictions) to be taken into account. A visa may be refused or cancelled if the Minister is not satisfied that the person is of good character and that the refusal or cancellation is in the public interest.³⁸⁶ A person may not pass the character test on grounds that are dependent on conviction: the person has a substantial criminal record (defined according to the sentence imposed by the court);³⁸⁷ the person was convicted of an offence while the person was in an immigration detention or during or after an escape from the detention centre, but before capture, or has been convicted of escape; or the person has association with a person or group that the Minister reasonably suspects has been or is involved with criminal activity.³⁸⁸ A visa may also be cancelled or refused on more general grounds that would allow findings of guilt to be relied upon. These grounds are based on their past and present criminal and general conduct that shows that the person is not of good character, or the significant risk that the person would engage in criminal conduct or represent a danger to the Australian community.³⁸⁹

3.1.1 CAPACITY TO SERVE ON JURY AND TESTIFY

At common law people convicted of indictable offences were ineligible to serve on a jury.³⁹⁰ A more limited form of this rule is contained in the *Juries Act 2003* (Tas) that disqualifies a person from jury service if they fall within certain categories of offending. A person is disqualified if convicted of one or more indictable offence and sentenced to imprisonment for a term or aggregate of three years or more, or detention for three years or more under a restriction order.³⁹¹ Also disqualified is any person who is subject to a community service order, a probation order or an undertaking to appear under the *Sentencing Act 1997* (Tas),³⁹² any person remanded in custody,³⁹³ or undergoing a term of imprisonment (whether wholly or partially suspended).³⁹⁴ A person is also disqualified for five years (from the date of the end of their imprisonment),³⁹⁵ if convicted of an indictable offence or offences and sentenced to imprisonment for a term or terms in aggregate of three months or more.³⁹⁶ While most of these exclusions apply on

381 *Immigration and Nationality Act* (USA) s 212(a). In relation to offences of moral turpitude, a person is not ineligible if the offence was committed when under 18 years and the crime was committed (and the person released from confinement to a prison or correctional institution imposed from the crime) more than 5 years from the date of visa or the maximum penalty for the crime did not exceed imprisonment for one year and the person not sentenced to imprisonment in excess of 6 months. See US Department of State, *Ineligibilities and Waivers: Laws*, <<http://www.travel.state.gov/>>.

382 Embassy of the United States Canberra Australia, *Visa*, <<http://canberra.usembassy.gov/>>.

383 See Australia's deportation policy set out in *General Direction under Section 499; Australia's Criminal Deportation Policy: Criminal Deportation under Section 200 of the Migration Act 1958, General Direction – Criminal Deportation – No 9*, <<http://www.comlaw.gov.au/>>. See further references in Freiberg, above n 14, [9.340] fn 742.

384 *Migration Act 1958* (Cth) s 201.

385 *Migration Act 1958* (Cth) s 203.

386 *Migration Act 1958* (Cth) s 501(3).

387 *Migration Act 1958* (Cth) s 501(7) defines this as where the person has been sentenced to death, or imprisonment for life, or to a term of imprisonment of 12 months or more, or to two or more terms of imprisonment where the total of those terms is two years or more.

388 *Migration Act 1958* (Cth) s 501(6)(a)-(b).

389 *Migration Act 1958* (Cth) s 501(6)(c), (d).

390 Freiberg, above n 14, [9.345].

391 *Juries Act 2003* (Tas) s 6; sch 1.1(1).

392 *Juries Act 2003* (Tas) s 6; sch 1.2.

393 *Juries Act 2003* (Tas) s 6; sch 1.1(3).

394 *Juries Act 2003* (Tas) s 6; sch 1.3.

395 This includes when the person is under parole, *Juries Act 2003* (Tas) s 6; sch 1.1(4).

396 *Juries Act 2003* (Tas) s 6; sch 1.1(3).

imprisonment and so depend on conviction, a person could be disqualified on the basis of a probation order or an undertaking to appear where a conviction was not recorded.

Criminality is also relevant to a person's experience as a witness. The devastating effect of the taint of criminality on a person's character was such that, traditionally at common law, a person charged with treason or felony could not give evidence on their own behalf. This was modified to prohibit persons convicted of more serious indictable offences from giving evidence in either civil or criminal proceedings.³⁹⁷ These rules no longer exist and an accused person is able to give evidence, subject to testimonial incompetence in criminal proceedings as a prosecution witness.³⁹⁸ Rules of evidence also impose strict limits on the ability of evidence of an accused's prior criminality to be adduced in a subsequent criminal trial.³⁹⁹ Limits are also placed on the ability to cross-examine a witness (other than the accused) about prior criminality. If a witness's prior criminality is solely relevant to credibility, cross-examination on prior convictions will only be allowed if evidence of them 'could substantially affect the assessment of the credibility of the witness'.⁴⁰⁰

3.12 ORDERS IN ADDITION TO SENTENCE: RESTITUTION, COMPENSATION AND COSTS

A court's power to make an order for restitution, compensation or costs against a defendant in a criminal proceeding rests on the scope of the relevant statutory provisions. Orders for restitution, compensation and costs are traditionally considered to be ancillary orders in the criminal process because their purposes are not to punish the offender.⁴⁰¹ Restitution is concerned with the return of stolen property to the person entitled to them or equivalent goods or money,⁴⁰² compensation is directed to providing monetary recompense when a person has suffered injury, loss, destruction or damage as a result of an offence⁴⁰³ and costs are an award that repays 'successful complainants and prosecutors for the expense of the proceedings'.⁴⁰⁴ The statutory context determines the circumstances in which an order can be made and, in particular, whether the orders can be made following conviction only or whether they can also be made following a finding of guilt without recording a conviction.

Although a finding of guilt is not to be regarded as a conviction, the court retains the power pursuant to the *Sentencing Act 1997* (Tas) section 10(2)(a) to impose ancillary orders such as restitution (under section 65) and compensation orders (under section 68) on a finding of guilt. Restitution orders are discretionary.⁴⁰⁵ Some compensation orders are mandatory. If a person is found guilty of an offence of burglary, stealing or unlawfully injuring property, the court must make a compensation order (section 68(1)(a)) and in all other cases, a compensation order is discretionary (section 68(1)(b)). The power to make restitution and compensation orders is reinforced by section 64 of the *Sentencing Act 1997* (Tas) that provides that a court may make an order for compensation or restitution in addition to adjourning proceedings without recording a conviction or dismissing the charge without recording a conviction.⁴⁰⁶ Similarly the *Youth Justice Act 1997* (Tas) section 47(2) allows the court to make orders in addition to sentence:

397 Freiberg, above n 14, [9.345].

398 Jill Hunter, Camille Cameron and Terese Henning, *Litigation II: Evidence and Criminal Process* (LexisNexis Butterworths, 7th ed, 2005) [24.73]; *Evidence Act 2001* (Tas) s 17.

399 These include the tendency and coincidence rules, rules about credibility and character of the accused.

400 *Evidence Act 2001* (Tas) s 103. Hunter, Cameron, Henning, above n 398, [22.47].

401 Warner, above n 4, [5.101].

402 *Sentencing Act 1997* (Tas), s 65(1). See further *ibid* [5.201].

403 *Sentencing Act 1997* (Tas), s 68(1). See further Warner *ibid* [5.101], [5.3].

404 Warner, *ibid* [5.101].

405 *Sentencing Act 1997* (Tas) s 65(1).

406 This does not apply to references to compensation order or restitution orders found in other statutes, as a compensation order is defined as an order made under div 2 pt 9 and a restitution order is defined as an order made under div 1 pt 9 (*Sentencing Act 1997* (Tas) s 4).

47(2) In addition to imposing a sentence under subsection (1), the Court may make one or more of the following orders:

- (b) a restitution order;
- (c) a compensation order;
- (d) subject to this Act, any other order a court may make under another Act in respect of the offence of which the youth is found guilty.

In addition to the provisions governing orders for restitution and compensation found in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas),⁴⁰⁷ other legislation also authorises a court to make orders for restitution and compensation in criminal proceedings, some exercisable on conviction only and others on a finding of guilt without recording a conviction (or some other basis). These provisions are set out in Appendix 6.

A court may make an order following a finding of guilt (without a conviction) if it is authorised by the enactment,⁴⁰⁸ such as where the provision says 'where a person has been found guilty of an offence'⁴⁰⁹ or where the term 'conviction' is defined for the purposes of the legislation to include a finding of guilt without recording a conviction.⁴¹⁰ If the provision says 'where a person is convicted' or 'on conviction' (and conviction is not defined in the legislation to include a finding of guilt), a court may only make an order for restitution or compensation following a finding of guilt without the recording of a conviction if the provision can be classified as an enactment 'providing for any other kind of mandatory penalty on conviction', pursuant to the *Sentencing Act 1997* (Tas), section 10(2)(b)(v).⁴¹¹ In this case, the finding of guilt is deemed to have the same effect as if a conviction had been recorded.

Legislation also provides power for the court to order costs in criminal cases and again, either a conviction or a finding of guilt without recording a conviction may provide the basis for the court's authority. Although wide in scope, the mandatory penalty provision of the *Sentencing Act 1997* (Tas) does not apply to equate a finding of guilt with provisions in relation to costs. A costs order is an indemnity (not a penalty)⁴¹² and it is also usually discretionary (rather than mandatory). However, under the *Sentencing Act 1997* (Tas) section 63, for the purposes of the award of costs against offenders, a finding of guilty without recording a conviction has the same effect as a conviction if the proceedings against the offender have been adjourned on conditions without recording a conviction or if the charge has been dismissed without recording a conviction.⁴¹³ If the court were to make a probation order without recording a conviction, the applicability of statutory provisions in relation to awards of costs would depend on whether it referred to conviction (in which case it would not apply) or more broadly to findings of guilt (in which case it would apply).⁴¹⁴ Provisions in relation to costs orders are set out in Appendix 6.

407 For a detailed consideration of the scope and requirements for restitution and compensation in Tasmania see Warner, above n 4, ch 5.

408 *Sentencing Act 1997* (Tas) s 10(2)(a); *Youth Justice Act 1997* (Tas) s 47(2)(d).

409 See for example, *Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012* (Tas) reg 45(1)(iii); *Juries Act 2003* (Tas) s 56(2).

410 See for example, *Explosives Act 2012* (Tas) ss 3, 65(1); *Security-sensitive Dangerous Substances Act 2005* (Tas) ss 3, 70(1); *Victims of Crime Compensation Act 1994* (Tas) ss 4, 5.

411 See [3.1.1].

412 Warner, above n 4, [5.50] citing *Latoudis v Casey* (1990) 170 CLR 534, 543, 559, 561, 567; *Templar* (1992) 1 Tas R 133, 138 per Wright J.

413 *Sentencing Act 1997* (Tas) s 63.

414 *Sentencing Act 1997* (Tas) s 10(2)(a).

3.13 APPEALS AND PROCEEDINGS FOR VARIATION OR BREACH OF SENTENCE

In indictable matters, while it is clear that the Crown can appeal against sentence (with or without conviction),⁴¹⁵ the *Criminal Code* section 401(1)(c) limits the defendant's right of appeal against sentence to sentences imposed on conviction: 'a person convicted... may appeal... against the sentence passed on his conviction'. However, under the *Sentencing Act 1997* (Tas), a finding of guilt without recording a conviction has the same effect as if a conviction is recorded for the purposes of appeals against sentence⁴¹⁶ and proceedings for variation or breach of sentence.⁴¹⁷ This means that a defendant can appeal against sentence following a finding of guilt without recording a conviction, including appealing the order to record or not to record a conviction.⁴¹⁸ Despite this provision in the *Sentencing Act 1997* (Tas), Crawford J in *Attorney-General v Smith*⁴¹⁹ suggested it was time that the *Criminal Code* section 401(1)(c) be amended to make it clear that the sentenced offender has a right of appeal against sentence whether or not a conviction is recorded.⁴²⁰

Appeals against sentence in summary matters⁴²¹ and in relation to appeals from a sentence or order of the Youth Justice Division of the Magistrates Court are by way of motion to review under the *Justices Act 1959* (Tas).⁴²² This applies equally to an order made following a finding of guilt with or without a conviction recorded.

3.14 AUTREFOIS CONVICT

The *Sentencing Act 1997* (Tas) section 10(2)(b)(iii) and the *Youth Justice Act 1997* (Tas) section 49(6) provide that a finding of guilt without recording a conviction has the same effect as if a conviction had been recorded for the purposes of subsequent proceedings against the offender for the same offence. This has the same effect as a plea of *autrefois convict* – a plea that an offender has already been convicted of the crime – to prevent a subsequent proceeding for the same crime or one arising out of the same facts and substantially the same crime.⁴²³

3.15 FORFEITURE AND CONFISCATION

Forfeiture and confiscation of property are potential consequences of offending. The forfeiture of assets as a result of criminal conduct has a long history at common law.⁴²⁴ While common law forfeiture has been abolished, over recent decades there has been an increase in statutory provisions allowing for forfeiture and confiscation of property under Tasmanian and Commonwealth legislation.⁴²⁵ Forfeiture in modern usage is understood to refer to the divestment of the proprietary interests in specific property to the Crown 'that is tainted by having been used in connection with, or derived from, the commission of an offence'.⁴²⁶ An example is found in the *Inland Fisheries Act 1995* (Tas) where section 109 allows, on conviction for an offence under the Act, for forfeiture of: (a) any fish to which the offence relates; (b) any equipment used or intended to be used in the commission of the offence; or (c) any boat or other thing used in the commission of the offence. Confiscation refers to the removal of 'any assets representing the proceeds or profits of crime whether or not specific property can be shown to be connected with the crime

415 *Criminal Code* (Tas) s 402(2)(c).

416 *Sentencing Act 1997* (Tas) s 10(2)(b)(i).

417 *Sentencing Act 1997* (Tas) s 10(2)(b)(ii); *Youth Justice Act 1997* (Tas), ss 49(5), 55, 56, 60, 62, 64, 67, 68, 76, 77.

418 Warner, above n 4, [15.208]. See cases in fn 51.

419 [2002] TASSC 10.

420 [2002] TASSC 10, [19].

421 *Justices Act 1959* (Tas) s 107.

422 *Youth Justice Act 1997* (Tas) s 163.

423 *Criminal Code* (Tas), ss 355, 358.

424 *International Financial Trust Company Ltd v NSW Crime Commission* (2009) 240, 319 [25] per French CJ. See also Freiberg, above n 14, [9.10].

425 For example, the *Proceeds of Crime Act 2002* (Cth). For a discussion of the Commonwealth provisions, see Freiberg, above n 14, [9.25]-[9.115], [9.155]-[9.165], [9.175]-[9.185], [9.205]; Warner, above n 4, [6.204], [6.206], [6.210], [6.213], [6.216]; Arie Freiberg and Richard Fox 'Criminal Confiscation, Profit and Liberty' (1992) 25(1) *Australian & New Zealand Journal of Criminology* 44; Lorana Bartels, *A Review of Confiscation Schemes in Australia* (Technical & Background Paper No 36, Australian Institute of Criminology, 2010); Australian Institute of Criminology, *Confiscation of Proceeds of Crime: Federal Overview*, Transnational Crime Brief No 1 (2008).

426 Freiberg, above n 14, [9.10].

charged'.⁴²⁷ It is levied as a pecuniary penalty. For example, the court is authorised, under section 19 of the *Crime (Confiscation of Profits) Act 1993* (Tas), to order the payment of a pecuniary penalty that comprises the commercial benefit derived as a result of the commission of the offence.

Statutory forfeiture can be divided into two broad classes: (1) 'criminal assets forfeiture' which is forfeiture that depends on conviction (and in some cases, a finding of guilt without recording a conviction); and (2) 'civil assets forfeiture' which is forfeiture that depends on unlawful conduct.⁴²⁸ While Tasmania is the only jurisdiction that does not have a 'civil assets forfeiture' scheme,⁴²⁹ there are a number of statutory provisions that provide that forfeiture occurs as a result of the commission of the offence or seizure.⁴³⁰ For these provisions, there is no requirement for a person to be charged or convicted and no need for a judicial order to be made in relation to the forfeiture. As a result, these provisions are not considered in detail. Instead, this paper addresses 'criminal assets forfeiture' (forfeiture following a conviction) as the focus is on the potential consequences for an offender following a finding of guilt either with or without recording a conviction.

There is no general power to order forfeiture as a criminal sanction following conviction under the *Sentencing Act 1997* (Tas). Similarly, there is no power to order forfeiture of any property when sentencing a youth offender under the *Youth Justice Act 1997* (Tas).⁴³¹ However, the *Crime (Confiscation of Profits) Act 1993* (Tas) applies generally to allow the court to make a confiscation order, following an application by an authorised officer, if a person is convicted of a serious offence.⁴³² For the purposes of the Act, a confiscation order means a forfeiture order or a pecuniary penalty order.⁴³³ The Act also contains an extended definition of conviction, so that a person is taken to be convicted even if the person is found guilty but the court has not proceeded to conviction; has had the offence taken into account by a court sentencing the person for another offence; or has absconded in connection with the offence.⁴³⁴

In addition, there are numerous other Acts that contain provisions allowing for forfeiture of particular items that are the subject matter of the charge or have been used in connection with the commission of the offence, as a consequence of conviction for an offence against the Act or section(s) of the Act.⁴³⁵ Some provisions apply on conviction and others are expressed to apply also to a finding of guilt without a conviction being recorded. Provisions may provide that forfeiture is mandatory on conviction, either automatically or as a result of an order of the court (with no discretion as to whether the order is made). Alternatively, the court may be provided with a discretion as to whether or not to make an order for forfeiture. It is the interplay between the words of the specific Act (whether it refers to conviction or guilt; whether forfeiture is mandatory or discretionary) and the provisions of the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas) that determines whether forfeiture arises.

427 Ibid. See also Australian Institute of Criminology, *ibid*; Bartels, above n 425.

428 See *International Financial Trust Company Ltd v NSW Crime Commission* (2009) 240, 319 [26] per French CJ. In a more detailed analysis, Freiberg and Fox have divided these broad classes into six major paradigms: (1) forfeiture as a non-discretionary, *statutory* consequence of the commission of an offence; (2) forfeiture as a non-discretionary, *statutory* consequence of a conviction of an offence; (3) forfeiture as a non-discretionary, *judicial* consequence of a conviction of an offence; (4) forfeiture as a discretionary, *judicial* consequence of conviction of an offence; (5) forfeiture as a discretionary, *judicial* consequence of conviction of an offence, but forfeiture is ordered by a court exercising *civil* rather than criminal jurisdiction; and (6) forfeiture as a discretionary, *judicial* consequence engaging in *civilly* proscribed conduct not necessarily amounting to a criminal offence, Arie Freiberg and Richard Fox, 'Forfeiture, Confiscation and Sentencing' in Brent Fisse, David Fraser D and Graeme Coss G (eds), *The Money Trail: Confiscation of Proceeds of Crime, Money Laundering and Cash Transaction Reporting* (Law Book Company Ltd, 1992), 106, 109-12. See more discussion in Freiberg, above n 14, [9.10].

429 Bartels, above n 425, 22. Note that the *Crime (Confiscation of Profits) Amendment (Unexplained Wealth) Act 2013* (Tas) amends the *Crime (Confiscation of Profits) Act 1993* (Tas) and allows for the Supreme Court to make an order for payment of a person's 'unexplained wealth'. This order does not depend on proof of any specific criminal activity or a link being established between the commission of a specific offence and the wealth. This commenced on 1 March 2004. See Tasmania, *Parliamentary Debates*, House of Assembly, Wednesday 21 2013, pt 2 28-95, Thursday 22 August 2013, pt 2 23-34 (Wrightman).

430 For example, see *Agricultural and Veterinary Chemicals (Control of Use) Act 1995* (Tas) s 50; *Animal Health (Apiaries) Regulations 2011* (Tas) reg 6; *Fertilizers Act 1993* (Tas) s 9; *Food Act 2003* (Tas) s 50; *Living Marine Resources Management Act 1995* (Tas) s 227.

431 However, if a youth has admitted committing an offence and the matter is dealt with by way of a diversionary procedure, there is a power to make a forfeiture declaration in relation to an article that was seized and was used in connection with, or obtained during or as a result of, the commission of the offence, *Youth Justice Act 1997* (Tas) s 22A.

432 *Crime (Confiscation of Profits) Act 1993* (Tas) s 11. Serious offences are indictable offences, even if they may also be dealt with as summarily, s 4.

433 *Crime (Confiscation of Profits) Act 1993* (Tas) s 4. For more detail on the operation of the Act, see Warner, above n 4, [6.202], [6.205], [6.209], [6.212].

434 *Crime (Confiscation of Profits) Act 1993* (Tas) s 5.

435 See Appendix 7.

The *Sentencing Act 1997* (Tas) section 10(2)(b)(iv) provides that a finding of guilt without recording conviction has the same effect as if a conviction had been recorded for the purposes of enactments providing for the mandatory forfeiture of property on conviction. This means that provisions that provide for the mandatory (compared to discretionary) forfeiture of property apply equally to offenders dealt with according to the *Sentencing Act 1997* (Tas) regardless of whether a conviction is recorded following a finding of guilt. Examples of mandatory forfeiture provisions are found in the *Traffic Act 1925* (Tas) section 41D, the *Whale Protection Act 1988* (Tas) section 24 and the *Nature Conservation Act 2002* (Tas) section 59(1) and (2).⁴³⁶ Forfeiture orders can also be made against adult offenders if the provision (either on its face⁴³⁷ or by virtue of an interpretation section extending the meaning of conviction)⁴³⁸ allows for the order to be made against an offender following a finding of guilt.

The use of forfeiture orders for youth offender is more restricted than for adult offenders. Under the *Youth Justice Act 1997* (Tas), there is no equivalent to section 10(2)(b)(iv) or (v) of the *Sentencing Act 1997* (Tas) and it has been held in the Magistrates Court that section 10 does not apply to the *Youth Justice Act 1997* (Tas).⁴³⁹ While this issue has not been the subject of consideration by the Supreme Court, it appears that, for youth offenders, mandatory penalties (including forfeiture) are not necessarily activated following a finding of guilt. Orders can only be made in relation to youth offenders where the terms of the statute (either within the provision or in an interpretation section of the Act) indicate they can be made following a finding of guilt.⁴⁴⁰ As a consequence, several mandatory forfeiture provisions (that would apply to adult offenders) would not apply to youth offenders. These are:

- *Bail Act 1994* (Tas) section 19
- *Classification (Publication, Films and Computer Games) Enforcement Act 1995* (Tas) sections 76, 77(4) and 77A(1)
- *Employment Incentive Assistance Act 1984* (Tas) section 5
- *Gaming Control Act 1993* (Tas) sections 87, 112 and 156
- *Inland Fisheries Act 1995* (Tas) section 109
- *National Parks and Reserves Management Act 2002* (Tas) section 72(1) and (2)
- *Nature Conservation Act 2002* (Tas) section 59(1) and (2)
- *Police Offences Act 1935* (Tas) section 7
- *Traffic Act 1925* (Tas) section 41D
- *Wellington Park Act 1993* (Tas) section 70
- *Whales Protection Act 1988* (Tas) section 24.

Although different considerations apply in sentencing youth offenders, it may be desirable for these mandatory forfeiture provisions to be extended to apply under the *Youth Justice Act 1997* (Tas). This is addressed in Chapter 4.

436 These provisions as set out in Appendix 7. Appendix 7 contains a list of Tasmanian legislation that contains forfeiture provisions.

437 See for example, *Misuse of Drugs Act 2001* (Tas) s 38 that provides '[a] court that convicts or finds a person guilty of an offence under this Act may ... order that any property is forfeited to the Crown'. Other provisions are set out in Appendix 7.

438 See for example, the *Living Marine Resources Management Act 1995* (Tas) s 225 that provides for forfeiture on conviction and s 3 of the Act defines conviction to include a finding of guilt without recording a conviction. See also the *Explosives Act 2012* (Tas) s 67 that provides for forfeiture on conviction and s 3 that defines conviction to include a finding of guilt without recording a conviction. See further Appendix 7.

439 *Police v H M (A Youth)* [2009] TASM 08.

440 *Youth Justice Act 1997* (Tas) ss 46(2)(c), 47(2)(d). Section 46(2)(c) provides that a Court must comply with a requirement under any other Act that a loss of a licence or other penalty, other than an amount of money or terms of imprisonment, must be imposed as a penalty for the offence. Section 47(2)(d) provides that, in addition to imposing a sentence, the Court may make, subject to this Act, any other order a court may make under another Act in respect of the offence of which the youth is found guilty. For examples, see Appendix 7.

3.16 OTHER COURT ORDERS

In addition to the orders discussed above, courts are provided with the power to make a range of other orders on conviction or following a finding of guilt. Some of these are mandatory⁴⁴¹ and some discretionary,⁴⁴² some applying on conviction⁴⁴³ and others extending to a finding of guilty without recording a conviction.⁴⁴⁴ These provisions are set out in Appendix 8, and include the power to require a person to provide a document, record or other information,⁴⁴⁵ desex a cat,⁴⁴⁶ the power to impose restraining orders in relation to property,⁴⁴⁷ special penalties,⁴⁴⁸ or require a person to attend to a prescribed course.⁴⁴⁹

3.17 OTHER PROVISIONS

Other provisions exist in Tasmanian legislation that denote 'conviction' or a finding of guilt as the trigger for specified consequences.⁴⁵⁰ Some have a direct effect on the offender by allowing an authority to recover money on conviction,⁴⁵¹ impose demerit points,⁴⁵² or preclude a person from indemnity for costs⁴⁵³ or benefits that would otherwise be payable.⁴⁵⁴ Many of these provisions operate on a finding of guilt (either by defining conviction to include a finding of guilt⁴⁵⁵ or by specifically referring to a finding of guilt in the section).⁴⁵⁶ A matter that will be addressed in Chapter 4 is the apparent trend of more recent legislation (particularly statutes that provide a consequence by operation of law rather than judicial order) to use a finding of guilt as the relevant judicial act (rather than conviction). Other provisions are concerned with procedural matters such as the requirement to notify the Registrar of Motor Vehicles of convictions that attract demerit points or disqualification,⁴⁵⁷ or the establishment of identity of an offender.⁴⁵⁸ These tend to depend on conviction.

441 For example, *Vehicle and Traffic (Vehicle Operations) Regulations 2001* (Tas) reg 10 (special penalty). This applies to a finding of guilt: *Sentencing Act 1997* (Tas) s 10(2)(b)(v).

442 For example, *Vehicle and Traffic Act 1999* (Tas) s 36 (changes to registered vehicles affecting motor tax). This applies on conviction: *Sentencing Act 1997* (Tas) s 10(1).

443 For example, *Workers Rehabilitation and Compensation Act 1988* (Tas) s 151 (powers of authorized officers).

444 *Forestry Practices Act 1985* (Tas) s 47D (salvage of illegally harvested timber or native vegetation).

445 See for example, *Animal Health Act 1995* (Tas) s 76; *Consumer Affairs Act 1988* (Tas) s 16; *Industrial Relations Act 1984* (Tas) s 75.

446 *Cat Management Act 2009* (Tas) s 29.

447 *Crime (Confiscation of Profits) Act 1993* (Tas) s 26.

448 *Living Marine Resources Management Act 1995* (Tas) ss 26, 268.

449 *Road Safety (Alcohol and Drugs) Act 1970* (Tas) s 18.

450 These are set out in Appendix 9, Table 1. The rules contained in the *Sentencing Act 1997* (Tas) s 10 have been used to determine whether the consequence flows from conviction or a finding of guilt. See [3.1.1].

451 For example, *Marine and Safety Authority Act 1997* (Tas) s 12; *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) ss 18, 28B.

452 For example, *Marine Farming Planning Act 1995* (Tas) s 121; *Living Marine Resources Management Act* (Tas) s 242.

453 For example, *Government Business Enterprises Act 1995* (Tas) s 34; *Marine Point Development Corporation Act 2012* (Tas) s 35.

454 For example, *Motor Accidents (Liabilities and Compensation) Act 1973* (Tas) s 24; *Optometry Offences Act 2010* (Tas) s 11; *Pensioners (Heating Allowances) Act 1971* (Tas) s 5.

455 *Living Marine Resources Management Act 1995* (Tas) ss 3, 242.

456 *Government Business Enterprises Act 1995* (Tas) s 34; *Marine Point Development Corporation Act 2012* (Tas) s 35; *National Trust Act 2006* (Tas) s 20; *Private Forests Act 1994* (Tas) s 14; *Tasmanian Development Regulations 2012* (Tas) reg 11 (contravenes or fails to comply whether or not convicted); *Tasmanian Health Organisation Act 2011* (Tas) s 21; *Tourism Tasmania Act 1996* (Tas) s 16; *Training and Workforce Development Act 2013* (Tas) s 65.

457 *Vehicle and Traffic Act 1999* (Tas) s 65.

458 *Evidence Act 2001* (Tas) ss 179, 180.

3.18 SUMMARY

This chapter has highlighted the diverse range of areas in which the consequences of criminal offending may have a long term and incapacitating impact on a person's life (aside from any sentence imposed by the court). After reviewing Tasmanian legislation, it can be seen that a finding of guilt is not regarded as a conviction for many purposes including:

- disqualification from driving under the *Police Offences Act 1935* (Tas), the *Vehicle and Traffic Act 1999* (Tas) (other than excessive speeding) and the *Sentencing Act 1997* (Tas)
- award of driving demerit points
- disqualification or loss of office from most government boards, tribunals, councils or bodies⁴⁵⁹
- disqualification from custody of animals⁴⁶⁰
- ineligibility or disqualification for certain employment related registration or loss of office⁴⁶¹
- certain employment related disciplinary action⁴⁶²
- grant of certain licences⁴⁶³
- renewal or transfer of certain licences/leases⁴⁶⁴
- loss of licence or registration⁴⁶⁵
- increased penalties for subsequent offences for certain offences⁴⁶⁶
- declaration as a dangerous offender
- entitlement to vote
- some provisions allowing for forfeiture of property.⁴⁶⁷

459 See Appendix 3, Table 1.

460 *Animal Welfare Act 1993* (Tas) s 43.

461 Conveyancers, office under *Aboriginal Lands Act 1995* (Tas), charity not able to collect funds, company management, correctional officer, work in mental health unit, management of retirement villages.

462 Architects, surveyors, veterinary surgeons.

463 Permit or licence in relation to agricultural chemicals, cat management facilities, marine farm licence, manufacturing and wholesale chemist licence, water licence, dam works permit.

464 Commercial freshwater fishing licence, marine farm, licence under *Meat Hygiene Act 1985* (Tas), water licence.

465 Prepaid funeral trusts, competency certificate in relation to agricultural chemicals, authority under *Crown Lands Regulations 2011* (Tas), environmental approvals, registration of firearm, divestment of certain fisheries licences, forest practices officers, freshwater fishing licences, fish farm licences (inland fisheries), marine farm licence, authority or licence in relation to national parks, licence under *Nature Conservation Act 2002* (Tas), tobacco sellers licence, assembly licence, registration of premises, water licence, well driller's licence, permit in connection with Wellington Park, permits in relation to whales, wildlife exhibition licence, fauna dealers licence or commercial taxidermy licence, threatened species permit.

466 See Appendix 2, Table 1 and [3.2.2.1] for more detail. Some examples are: contravention of family violence orders, offences in relation to *Fire Services Act 1997* (Tas), and offences under the *Police Offences Act 1935* (Tas).

467 See Appendix 7. Examples include forfeiture under the *Liquor Licensing Act 1990* (Tas) and forfeiture of vehicles under the *Police Offences Act 1935* (Tas) s 37Y.

However, a finding of guilt does not protect an offender from all the adverse consequences that follow from offending. There is a power for the court to make ancillary orders such as restitution⁴⁶⁸ and compensation⁴⁶⁹ and costs orders in some circumstances following a finding of guilt.⁴⁷⁰ A finding of guilt is also treated as a conviction for a range of legislative purposes including:

- disqualification from holding a local mariners certificate under *Marine Safety (Misuse of Alcohol) Act 2006* (Tas)
- disqualification from driving under the *Road Safety (Alcohol and Drugs) Act 1970* (Tas)
- disqualification from driving for excessive speeding
- increased penalties for subsequent offences for certain offences⁴⁷¹
- some provisions allowing for forfeiture of property⁴⁷²
- the imposition of certain special penalties.⁴⁷³

Importantly, in the area of employment, professional registration and related licences, many legislative provisions that operate either on a finding of guilt or (more commonly) use a character test (fit and proper person or suitable person) may invite an inquiry into all relevant offending (and not just convictions).⁴⁷⁴ Further, there are several occupations or licences where a police history check must be obtained and this check will disclose all convictions and findings of guilt (regardless of when they occurred).⁴⁷⁵

It is probable that there is not widespread community understanding of the range of potentially serious consequences that follow from a conviction given the number of legislative provisions that are activated on a conviction. The distinction between a finding of guilt and a recorded conviction (and the circumstances in which a finding of guilt is treated as a conviction) may also not be well understood. The potential for confusion is most noticeable in the context of employment, professional registration and licencing, as there is a need to understand the nature of the information that will be taken into account by employers and registration bodies and the extent of information that will be released on a police records check. This is a concern as this is likely to be a key concern for an individual.⁴⁷⁶ This is addressed in Chapter 4.

468 See [3.12].

469 Ibid.

470 Ibid.

471 See Appendix 2, Table 2 and [3.2.2.1]. Some examples are penalties under *Living Marine Resources Management Act 1995* (Tas) and *Marine Safety (Misuse of Alcohol) Act 2006* (Tas).

472 See Appendix 7 and [3.15]. Examples include forfeiture under the *Crime (Confiscation of Profits) Act 1993* (Tas) and the *Explosives Act 2012* (Tas).

473 Penalties under *Dangerous Goods (Road and Rail Transport) Act 2010* (Tas), *Living Marine Resources Management Act 1995* (Tas).

474 See [3.4.2].

475 See [2.5]; *ibid.*

476 Law Reform Commission of Western Australia, above n 297, [3.28], where it was reported that 'the chief problem experienced by the majority of persons with criminal records who contacted the Commission was obtaining and keeping employment'.

4.

The future of non-conviction orders

All Australian jurisdictions have accepted, for many years, the availability of non-conviction sentences as an appropriate extension of the sentencing discretion to shield an offender, in the appropriate case, from the collateral consequences of a conviction, particularly in the area of employment. While it is understandable that legislatures have provided courts with this discretion, Fox and Freiberg have observed that the development occurred essentially without debate or analysis.⁴⁷⁷ This chapter examines whether it is appropriate that 'not recording a conviction' continues to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas) by outlining the justifications for non-conviction sentences as well as objections to such sentences. It also asks what should be the legal consequences of a finding of guilt where a conviction is not recorded and makes recommendations for reform. The paper then addresses the implications of enlarging the discretion of judges and magistrates to allow fines to be imposed without conviction and recommends that section 7 should be amended to allow for a fine to be imposed without a conviction being recorded.

4.1 SHOULD NON-CONVICTION ORDERS CONTINUE TO BE A SENTENCING OPTION UNDER SECTION 7 OF THE SENTENCING ACT 1997 (TAS)?

4.1.1 Justification for non-conviction sentences

The importance attached to the discretion as to whether or not to record a conviction is reflected in the desire of Tasmanian magistrates to enlarge the discretion to allow a court to impose a fine without conviction. The Chief Justice of the Supreme Court of Tasmania also supports the retention of the sentencing option of not recording a conviction under section 7 of the *Sentencing Act 1997* (Tas).⁴⁷⁸ The discretion allows a sentencer to have regard to the circumstances of the individual case, and to decline to impose a conviction because of the adverse impact that a conviction would have on the offender's economic or social wellbeing or employment prospects. In doing so, courts are cognisant that the impact of a criminal conviction is felt beyond the bounds of any sentence imposed by the court, and that justice may require the amelioration of these consequences.

Non-conviction sentences need to be considered in the broader context of their relationship to the principles of punishment and sentencing aims and purposes.⁴⁷⁹ Commonly accepted aims of sentencing are punishment, deterrence, community protection and rehabilitation,⁴⁸⁰ and, while there is no clear statement of the purpose of sentencing under the *Sentencing Act 1997* (Tas), the importance of community protection (to be achieved by deterrence, rehabilitation or denunciation) are recognised by the Act (s 3(b) and (e)). This reflects the aims of punishment set out in judicial statements:

477 Fox and Freiberg, above n 43, 299.

478 Letter from the Chief Justice to the Sentencing Advisory Council, 16 April 2014.

479 The approach of Paterson and Naylor in their comprehensive analysis of spent-conviction schemes has been relied on as a model to set out the justifications for non-conviction sentences and to consider their relationship with principles of punishment and sentencing rationales, see Paterson and Naylor above n 125.

480 Ibid 943. See Warner, above n 4, [3.2] for a discussion of the Tasmania position. See also Freiberg, above n 14, [3.35]-[3.125].

It has been said many times that the dominant theme in sentencing is to provide protection to society. To achieve this, the sentencing judge must balance retribution – in the sense of a just punishment to express the moral outrage of the community: deterrence – of the particular offender and others in the community who may consider similar action and rehabilitation – ensuring that the sentence imposed is consistent, if possible, with the offender's returning to society as a contributing member.⁴⁸¹

Underpinning these sentencing aims are theories of punishment, which attempt to articulate a coherent and principled basis for the government to impose punishment on its citizens.⁴⁸² It is possible, from the literature, to identify two broad approaches that attempt to justify the imposition by the state of sanctions: utilitarian theories and retributive theories. Utilitarian theories focus on achieving benefits which outweigh the harm imposed by punishment,⁴⁸³ while retributive theories focus 'on punishment as a justified consequence of the offence committed'.⁴⁸⁴ Retributive theories support the sentencing aims of retribution and punishment while utilitarian theories support the aims of deterrence, community protection and rehabilitation.⁴⁸⁵

Non-conviction sentences can be justified by the theoretical frameworks of both retributive and utilitarian approaches to punishment.

4.1.1.1 Retributive theories of punishment

From a retributive standpoint, non-conviction sentences can be justified on the basis of 'just deserts' as they reflect the principle that a sentence should be proportionate to the offence. Non-conviction sentences are an acknowledgment that, in some cases, 'the social prejudice against conviction of a criminal offence may in some circumstances be so grave that the offender will be continually punished in the future well after appropriate punishment has been received'.⁴⁸⁶ The discretion not to record a conviction recognises that the long-term non-judicial consequences of a conviction may be disproportionate to the nature of the offending.⁴⁸⁷ It also recognises the significance of the conviction as a punishment in itself.⁴⁸⁸

Related to the notion of 'just deserts' is the role of mercy as a factor relevant to the exercise of the sentencing discretion.⁴⁸⁹ Non-conviction sentences can be justified on the basis of justice, as 'a capacity in special circumstances to avoid the rigidity of inexorable law is the very essence of justice'.⁴⁹⁰ Non-conviction sentences enable a court to take into account the subjective circumstances of an offender, including youth, disadvantage, intellectual disability and mental health problems⁴⁹¹ and impose a merciful sentence in the appropriate case.⁴⁹²

4.1.1.2 Utilitarian theories of punishment

Non-conviction sentences can also be justified on the basis of a utilitarian approach to punishment and sentencing. By relieving the offender of the stigma of a conviction, and the associated barriers to employment, it can be argued that non-conviction sentences facilitate the aims of community safety and individual rehabilitation. Research has shown that the two key factors in reducing re-offending are accommodation and employment.⁴⁹³ Employment is

481 *R v Valentini* (1980) 48 FLR 416 cited by Crawford J in *Mazengarb v White* Serial No B38/1993.

482 See Ashworth, above n 179, ch 3.

483 Paterson and Naylor above n 125, 943.

484 *Ibid.*

485 *Ibid.*

486 *R v Briese; Ex parte Attorney-General* [1998] 1 Qd R 487, 491. See [2.3].

487 See [2.2], [2.3].

488 *Ibid.*

489 It is acknowledged that the precise role of mercy in the exercise of the sentencing discretion is controversial, see Freiberg, above n 14, [6.250]; Richard Fox, 'When Justice Sheds a Tear: The Place of Mercy in Sentencing' (1999) 25 *Monash University Law Review* 1; Jeffrie Murphy, 'Mercy and Legal Justice', in Jeffrie Murphy and Jean Hampton (eds), *Forgiveness and Mercy* (Cambridge University Press, 1988), 162-186; Nigel Simmonds, 'Judgment and Mercy' (1993) 13 *Oxford Journal of Legal Studies* 52; Nigel Walker, 'The Quiddity of Mercy' (1995) 70 *Philosophy* 27; Nigel Walker, *Aggravation, Mitigation and Mercy in English Criminal Justice* (Blackstone Press, 1999).

490 *R v Ingrassia* (1997) 41 NSWLR 447, 449 per Gleeson C citing Windeyer J in *Cobiac v Liddy* (1969) 119 CLR 257, 269.

491 Law Society of New South Wales submission to New South Wales Law Reform Commission, *Sentencing*, Report 139 (2013).

492 See *R v Stubberfield* (2010) 106 SASR 91; *R v Candaza* [2003] VSCA 91.

493 Naylor, 'Do Not Pass Go', above n 221, 174. See also Bronwyn Naylor, 'Living Down the Past: Why a Criminal Record Should Not Be a Barrier to Successful Employment' (Nov/Dec 2012) *Employment Law Bulletin* 115, 116. According to the 2002 United Kingdom report, *Breaking the Circle*, 'employment can reduce re-offending by between a third and a half but [that] a criminal record can seriously diminish employment opportunities', United Kingdom Home Office, *Breaking the Circle: A Report of the Review of the Rehabilitation of Offenders Act*, Report (2002) ii.

central to successful rehabilitation because it 'brings income and structure, but also a connection to society, self-esteem and a community of peers reinforcing "legitimate" norms and values'.⁴⁹⁴ As well as benefitting the individual, access to employment also offers benefits to the community by adding to the pool of labour and skills that are available for employers and making the community safer by reducing re-offending.⁴⁹⁵

4.1.2 What are the criticisms of non-conviction sentences?

Although motivated by a concern to shield offenders (in appropriate cases) from the legal and social disabilities of a criminal conviction, non-convictions orders have been criticised for depriving courts of the authority to punish offenders, for being irrelevant or at the least creating confusion and uncertainty. Non-conviction sentences may also be perceived by the community as being unduly lenient and depriving the public of information that should be available.

4.1.2.1 Weakening of State's authority to impose punishment

Non-conviction orders can be challenged for removing the justification for the state's right to impose punishment on a citizen. Fox and Freiberg have raised concerns that 'the wish to promote civil rehabilitation clashes with the role of the conviction as a moral justification for the corrective action taken against the convicted person'.⁴⁹⁶ Traditionally, conviction was a fundamental step in the criminal justice process because it provided the 'legal and philosophical foundations for the state's intrusion into the life and property of a citizen through the sentencing process'.⁴⁹⁷ It was the loss of status brought about by a conviction – 'the forfeiture of full autonomy and self-determination' – that allowed the state to impose sentence.⁴⁹⁸ This authority has been weakened under the Tasmanian sentencing regime because conviction is now optional or even prohibited for the imposition of some sentences. Now, it is the finding of guilt, either by plea or verdict, which provides the legal foundation for the imposition of sentence.⁴⁹⁹

Modern legislative provisions that create offences have also followed the shift to guilt as 'the touchstone for punishment rather than whether or not a conviction is recorded'.⁵⁰⁰ Perhaps prompted by an increased awareness of the possibility that a court may exercise its discretion not to record a conviction, there appears to be a tendency for more recent legislation to provide that the consequences (whether arising by operation of law or by judicial order) follow from a finding of guilt. For example, recent offences inserted in the *Police Offences Act 1925* (Tas) in relation to graffiti, crossbows, body armour and laser pointers provide for forfeiture if a person is convicted or found guilty of an offence⁵⁰¹ and the offence of loitering near children only requires that the person has previously been found guilty.⁵⁰² Some recent licence disqualification provisions also apply on guilt: the *Marine Safety (Misuse of Alcohol) Act 2006* (Tas), s 41 (penalties for breaches of marine alcohol restrictions) and *Police Powers (Vehicle Interception) Act 2000* (Tas), s 15). Other examples are found in the *Crime (Confiscation of Profits) Act 1993* (Tas), s 5; *Dangerous Goods (Road and Rail Transport) Act 2010* (Tas), s 85; *Food Act 2003* (Tas), s 117; *Forestry Practices Act 1985* (Tas), s 47D; *Work Health and Safety Act 2012* (Tas), s 239; *Cat Management Act 2009* (Tas) s 29; *Explosives Act 2012* (Tas), s 3. This trend has the advantage of clarity but a routine use of guilt rather than conviction will serve to undermine the judicial discretion not to record a conviction by reducing the difference in reality between a conviction and a finding of guilt.

494 Naylor, 'Do Not Pass Go', *ibid.*

495 Heydon, Naylor, Paterson and Pittard, above n 143, 206; United Kingdom Home Office, above n 493, 12.

496 Fox and Freiberg, above n 43, 319.

497 *Ibid.* 299.

498 *Ibid.* 304.

499 See [1.4.1].

500 New South Wales Law Reform Commission, *Sentencing*, above n 491, [14.34].

501 See ss 15CA (inserted in 2009), 15D (inserted 2004), 15E (inserted 2009) and 15F (inserted 2010).

502 Section 7A (inserted 2000).

4.1.2.2 No practical effect for offender's employment prospects

Non-conviction sentences have been criticised on the basis that they waste considerable court resources, given the time involved in making the decision about whether to record a conviction (as well as appeals against the decision), when there is little practical benefit for the offender (or the community).⁵⁰³ Employment and licensing disabilities that follow from conviction have been identified as a significant concern for offenders because of their far-reaching and unpredictable effects and research suggests that ex-offenders experience discrimination on basis of their criminal record.⁵⁰⁴ Non-conviction sentences aim to reduce this disadvantage but they have been criticised for being ineffective because (in reality) there is little discernable difference between a conviction and a finding of guilt (without recording a conviction).⁵⁰⁵ Accordingly, it is argued that the dichotomy between conviction/non-conviction has lost its significance and should be abolished.

This criticism has been addressed in Tasmania, in part, by recent changes to the information release guidelines of Tasmania Police following a 'comprehensive review and refinement of its information release policies'.⁵⁰⁶ Previously, Tasmania Police released information about convictions and findings of guilt on the basis of an interpretation that required convictions and findings of guilt without conviction to be disclosed until annulled under the *Annulled Convictions Act 2003* (Tas).⁵⁰⁷ Now, Tasmania Police release information in accordance with the *Annulled Conviction Act 2003* (Tas) 'on the basis of the accepted definition of conviction'.⁵⁰⁸ The accepted definition of a conviction that is relied upon is where a conviction has been recorded in accordance with the *Sentencing Act 1997* (Tas) s 7 or the *Youth Justice Act 1997* (Tas), s 47.⁵⁰⁹ This gives effect to the requirements of the *Sentencing Act 1997* (Tas) s 10(1) and the *Youth Justice Act 1997* (Tas), s 47(5) that a finding of guilt without the recording of a conviction is not be taken as a conviction for any purpose unless otherwise provided. Accordingly, the change accords with the judicial objective of limiting adverse consequences for future employment and other detrimental impacts arising from a conviction by limiting disclosure of a finding of guilt.

However, offenders who receive a non-conviction sentence and who are required to obtain a police check for employment or licensing purposes that fall within the exemptions in Schedule 1 of the *Annulled Convictions Act 2003* (Tas) will still have this order disclosed. Schedule 1 contains a quite broad category of exemptions⁵¹⁰ and extends to relatively unskilled occupations such as taxi driving and cleaning in schools, and this potentially reduces the employment opportunities of ex-offenders.⁵¹¹ In these circumstances, the judicial objective of limiting adverse consequences for future employment arising from a conviction is undercut if this leniency is not perceived by the defendant due to a requirement to disclose a finding of guilt in a criminal record check.

4.1.2.3 Uncertainty and inconsistency

A criticism that has been directed at non-conviction sentences is that Parliament has not been prepared to allow a person who was not convicted to wholly avoid the consequences of being a convicted person,⁵¹² and this increases complexity and gives rise to uncertainty and inconsistency. It is difficult to identify the extent of the legal disabilities that attach to findings of guilt (as compared to conviction) due to the multitude of legislative provisions, and the fact that consequences may result not only from a judicial order (at the time of sentencing) but also result automatically by operation of law. This means that deterrence may be reduced, if an individual cannot readily determine, in advance, the consequence of offending.⁵¹³

503 Edney and Bagaric, above n 30, [11.4.3].

504 See [3.4].

505 Edney and Bagaric, above n 30, [11.4.3].

506 Tasmania Police, *Release Guidelines*, above n 148.

507 Section 3(2) provides that 'for the purposes of this Act, where a court finds a person guilty of an offence does not proceed to record a conviction, the finding is to be regarded as a conviction'.

508 Tasmania Police, *Release Guidelines*, above n 148.

509 Information provided to the Sentencing Advisory Council (Tas) by Tasmania Police, 11 February 2014.

510 See [2.5].

511 See Naylor, 'Criminal Records and Rehabilitation in Australia' above n 233, 86.

512 Fox and Freiberg, above n 43, 313.

513 See Paterson and Naylor, above n 125 for a consideration of the value of deterrence in the context of spent conviction schemes. Similar considerations apply to non-conviction sentences.

There is little logic or consistency in the different consequences that may attach to a finding of guilt as compared to a conviction under legislation dealing with essentially the same subject matter. This is illustrated by the provisions that require an increased penalty for subsequent offences. Sometimes a second offence by a person who has previously been found guilty without a conviction recorded is treated as a subsequent offender and sometimes it is not. There does not appear to be a sound reason why a person who drives a boat while under the influence of alcohol should be dealt with as a repeat offender for the purpose of provisions that increase penalties⁵¹⁴ whereas a person who drives a motor vehicle is dealt with as a first offender.⁵¹⁵ Similarly, there seems no good reason why a power to cancel a licence should be exercisable on a finding of guilt under the *Living Marine Resources Management 1995* (Tas) (applying to sea fisheries) whereas a commercial freshwater fishing licence can only be cancelled under the *Inland Fisheries Act 1995* (Tas) following a conviction.

The current approach can also create inconsistent results within the same Act. This can be seen in relation to whether a driver licence disqualification can be ordered for a person found guilty of an offence without a conviction being recorded. For example, under the *Road Safety (Alcohol and Drugs) Act 1970* (Tas), the court must make a disqualification order for a person found guilty of a drink-driving offence but has no power to impose an order for any other offences unless a conviction is recorded.⁵¹⁶ Similarly, the court must make a disqualification order under the *Vehicle and Traffic Act 1999* (Tas), for excessive speeding (s 19B) and for an unaccompanied driver offence (s 19E) following a finding of guilt but cannot make a disqualification from driving order for other traffic offences under the Act (*Vehicle and Traffic Act 1999* (Tas), s 17) unless a conviction is recorded.

In the context of employment, it may be that it is appropriate that a consequence of finding of guilt or conviction is the loss or an inability to continue in or obtain suitable employment in a particular area (for example, a child sex offender working with children). However, concerns have been raised about the inconsistency between the court's intention in making a non-conviction order and the practical consequences for offenders given that a finding of guilt will appear on an offender's criminal record, depending on the purpose for which the police record check is sought.⁵¹⁷ Anecdotally, the Council is aware that offenders who receive a finding of guilt without recording a conviction believe that they have been spared any adverse future consequences, including in areas such as employment or travel. This means that offenders are surprised and concerned if a finding of guilt appears on their criminal record or when it creates difficulties for them when applying for visas for travel. The complexity also creates difficulties for offenders and employers in understanding what details about a person's criminal history needs to be disclosed.⁵¹⁸

4.1.2.4 Inappropriate leniency

Non-conviction sentences may give rise to claims that they are being inappropriately used and are too lenient.⁵¹⁹ This issue has been raised in New South Wales in relation to the use of non-conviction sentences for Prescribed Concentration of Alcohol (PCA) Offences, as a non-conviction order means that the offender does not receive a licence disqualification.⁵²⁰ Despite some controversy over the orders, the NSW Law Reform Commission has recommended that non-conviction sentences remain a sentencing option⁵²¹ and has expressed the view that perceptions of leniency could be countered by providing courts with the power to impose a fine when a non-

514 *Marine Safety (Misuse of Alcohol) Act 2006* (Tas), ss 3, 14, 17.

515 *Road Safety (Alcohol and Drugs) Act 1970* (Tas), ss 17, 19A.

516 See [3.5].

517 See [2.5].

518 See [3.4.3].

519 New South Wales Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*, Report (2011) [2.51].

520 Ibid [1.3]. The New South Wales Bureau of Crime Statistics and Research concluded that magistrates be provided with greater guidance on the appropriate use of the orders: NSW Bureau of Crime Statistics and Research, *Sentencing Drink-drivers: The Use of Dismissals and Conditional Discharges*, Crime and Justice Bulletin 81 (2004). A guideline judgment was issued on high-range PCA offences (*Application by the Attorney-General under Section 37 of the Crimes (Sentencing Procedure) Act for a Guideline Judgment Concerning the Offence of High Range Prescribed Concentration of Alcohol under Section 9(4) of the Road Transport (Safety and Traffic Management) Act 1999* (No 3 of 2002) [2004] NSWCCA 303) and a subsequent Judicial Commission of NSW study of the impact of the judgment found that there was a significant reduction in use of non-conviction orders for drink drivers (Judicial Commission of NSW, *Impact of the High Range PCA Guideline Judgment on Sentencing Drink Drivers in NSW*, Sentencing Trends & Issues 35 (2005). It was considered again by the New South Wales Sentencing Council, *Good Behaviour Bonds and Non-Conviction Orders*.

521 NSW Law Reform Commission, above n 491. The NSW Law Reform Commission made recommendations for substantial changes to the NSW sentencing legislation, including the replacement of s 10 bonds with a new conditional release order (Recommendation 13.11).

conviction order was made.⁵²² However, even without the option to fine, judicial statements have stressed the potentially onerous nature of a conditional release on good behaviour and have rejected any notion that a decision to not record a conviction is to be automatically regarded as a lenient sentence.⁵²³

4.1.2.5 Limits access to information

A criticism that can be directed at non-conviction sentences is that they undermine the community interest by limiting access to information. It can be argued that restricting the free access to information undermines public safety by concealing information that should be available to the public and, in particular, employers.⁵²⁴ It is in the interests of employers, licencing and registration authorities to have access to be able to make 'the best and most informed decisions'.⁵²⁵ Naylor and Paterson write:

this goes to the heart of the use of criminal record checks, the belief that the fact that a person has been convicted in the past (or conversely, that they have a clean record) provides a good predictor of future offending behaviour.⁵²⁶

The reliability of this assumption can be questioned, and additionally, the right to free access to information is not absolute – some limits are appropriate.⁵²⁷ It can also be argued that facilitating an offender's employment prospects assists in rehabilitation and so reduces the risk of public harm.⁵²⁸

Further, in exercising the discretion not to record a conviction, the court is mindful of the need to protect the community. It is frequently expressed that the discretion to not record a conviction involves balancing the public interest in having access to information about a person's criminal past against the beneficial nature of the order for the offender by protecting them from having that information adversely affect employment and other prospects such as travel.⁵²⁹ The issue remains where the appropriate balance is struck.

4.1.3 Options and recommendations

The Sentencing Advisory Council was requested in the terms of reference to consider whether 'not recording a conviction' should continue to be a sentencing option under section 7 of the *Sentencing Act 1997 (Tas)*. In considering this question, there are two broad options for reform: (1) remove the option to impose a non-conviction sentence; or (2) retain the option to impose a non-conviction sentence and ensure that its purpose is realised and that it fits logically and consistently with other legislation.

The Sentencing Advisory Council, after considering the arguments in favour and against a non-conviction sentence, supports option 2 and its recommendation is that non-conviction orders should continue to be a sentencing option under section 7 of the *Sentencing Act 1997 (Tas)*. It is the view of the Sentencing Advisory Council that the distinction between guilt and conviction has value and should be maintained. Regardless of other sanctions imposed by the court, the recording of a conviction remains an act of significant punishment – both as a symbolic mark of censure and because of the consequences that attach to a conviction.⁵³⁰ The power of a court to impose a sentencing order without conviction (whether as a mandatory or discretionary requirement) allows the courts to take account of the circumstances of the particular case and impose a sentence that is appropriate for the offence and the offender. At the sentencing stage, the distinction between conviction and non-conviction allows the court to impose a proportionate sentence directed to the rehabilitation of the offender. This can make a difference for the individual offender and, importantly, it can also be justified within a broader theoretical framework.

522 Ibid [14.33].

523 *R v Mauger* [2012] NSWCCA 51 [38] per Harrison J cited with approval in *Blake v Adams* [2013] TASSC 44, [77]-[79] per Porter J.

524 Paterson and Naylor, above n 125, 941.

525 Australian Law Reform Commission, *Spent Convictions*, above n 125, [6].

526 Paterson and Naylor, n 125, 941–942.

527 Ibid 942.

528 Ibid; Law Reform Commission of Western Australia, above n 297, [4.3]. See [4.1.1.2].

529 See [2.3].

530 See [2.2].

In its research, the Council has identified confusion by offenders as to the distinction between a finding of guilt with and without a conviction as an issue. It is important that an offender clearly understands the consequences that attach to a finding of guilt without a recorded conviction, and particularly his or her obligation to disclose that order. It is the Council's view that this should be provided at the sentencing hearing, verbally by the Magistrate and also in a comprehensible printed guide provided by the Court. The provision of a clear explanation to an offender depends on ensuring that a clear explanation is possible and the recommendations that appear in this paper are designed to simplify and clarify the consequences of a finding of guilt without a conviction.

Should non-conviction orders continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas)?

Recommendation 1

That 'not recording a conviction' should continue to be a sentencing option under section 7 of the *Sentencing Act 1997* (Tas).

Recommendation 2

The law should be simplified and clarified so that a clear explanation is possible.

Recommendation 3

Clear explanation should be provided to offenders who receive a non-conviction sentence about the consequences of the sentence at the sentencing hearing.

4.2 WHAT SHOULD BE THE LEGAL CONSEQUENCES OF A FINDING OF GUILT WHERE A CONVICTION IS NOT RECORDED?

An important corollary of the recommendation to retain the sentencing option of 'not recording a conviction' is the need to revisit the approach to the legal consequences that attach to a conviction as compared to a finding of guilt. It is undesirable for courts to view not recording a conviction to have one effect on an offender when in reality, due to other legislative and policy considerations, the beneficial nature of the order is not felt by the offender. There is a need to reconcile the consequences that attach to a finding of guilt without a conviction recorded with the purposes of a non-conviction sentence – to facilitate the offender's employment prospects with a view to rehabilitation and the need to impose a proportionate sentence – to ensure that the judicial objective in exercising the discretion is not frustrated. If it is accepted that the discretion to impose a non-conviction order should be retained, the Sentencing Advisory Council's view is that the order should not be tokenistic and that it ought to have a meaning. Further, there needs to be a logical and consistent approach between the provisions of the *Sentencing Act 1997* (Tas) and other legislation.

Consequences that may attach to a finding of guilt without recording a conviction can be divided into those that occur by an order of the court at sentencing hearing (ancillary orders such as restitution, compensation, costs, forfeiture, driving disqualification) and those that occur by operation of law without the need for a court order (retention of forensic samples or loss of a licence relevant to employment). There are also legal consequences that may extend into the future, such as employment and travel impediments. In determining whether a particular consequence that attaches to a conviction also attaches to a finding of guilt, the Tasmanian approach is either to rely on the nature of the power (discretionary or mandatory) or to allow a specific legislative provision to specify that it applies to a finding of guilt. This approach has meant that the law has developed in a piecemeal fashion, giving rise to uncertainty and inconsistency.⁵³¹ A further limitation of using the mandatory/discretionary dichotomy is that consideration is not given to whether a particular consequence (such as forfeiture or a loss of licence) should attach to a finding of guilt. In addition, discretionary orders do not inevitably apply to non-conviction sentences, and this is

531 See [4.1.2.3].

reflected in the apparent trend for more recent legislation to use guilt rather than conviction as the trigger for legal consequences.⁵³² Accordingly, the Council's approach is to review the consequences that should attach to a finding of guilt – regardless of whether they are discretionary or mandatory. In addition, a key focus is on reconsidering the effect of a finding of guilt without recording a conviction on an offender's occupational and employment rights.

4.2.1 Occupational and employment rights

Recent changes to the record release policy of Tasmania Police have benefited offenders who have been found guilty without having a conviction recorded. A finding of guilt without a conviction will no longer be released in a police record check, unless the check is for an employment or licensing purpose requiring disclosure.⁵³³ However, it is the view of the Sentencing Advisory Council that the current Tasmanian statutory environment, in relation to the relevance of a person's criminal history to their ability to work in a particular field or to obtain or retain a licence or permit relevant to obtaining income, still contains complexity and uncertainty. In addition, while the Sentencing Advisory Council accepts that circumstances exist where it is appropriate to disclose and take into account a finding of guilt without a conviction for employment or licensing purposes, it is the Council's view that the current arrangement needs to be reassessed to ensure greater consistency with the objects of the judicial discretion. This involves rethinking the exemptions that apply in relation to non-conviction sentences under the *Annulled Convictions Act 2003 (Tas)*, as well as reviewing the statutory provisions that either expressly or implicitly (as part of a more general character test) allow a finding of guilt to be taken into account. It is also necessary to consider the protections that are afforded to offenders in circumstances where a finding of guilt is not disclosed in a criminal record check.

4.2.1.1 Criminal history check and the exemptions under the *Annulled Convictions Act 2003 (Tas)*

Currently Tasmania Police will only release information about a finding of guilt without a conviction recorded if the criminal history check is required for an occupation or licence that is exempt from the application of the *Annulled Convictions Act 2003 (Tas)*. The *Annulled Convictions Act 2003 (Tas)* includes a finding of guilt within the definition of a conviction, and this has been interpreted to mean that the exemptions within the Act also apply to findings of guilt.⁵³⁴ Exemptions currently exist in relation to a broad category of employment and licencing in the following areas:⁵³⁵

- prisons and parole
- childcare
- health
- teaching and nonteaching education staff
- adoption/foster parents
- justice of the peace
- youth justice
- scout volunteer
- bookmaker
- gaming licence
- liquor licence
- stipendiary steward
- driver/public passenger licence
- legal/judicial appointment
- security/crowd control

532 See [3.17].

533 See [2.5].

534 See [2.4].

535 See *Annulled Conviction Act 2003 (Tas)*, sch 1 for full details of non-exempt applications.

- poppy advisory and control board
- firearms licence
- prisons/corrective services
- school-crossing patrol officer
- fire service
- police/law enforcement
- authorised officer (*Traffic Act 1925*)
- *Poisons Act 1971*
- *Security-sensitive Dangerous Substances Act 2005*.

These exemptions correspond with the information disclosed in a Schedule 1 police record check, which will contain all prior convictions and findings of guilt (including those of a minor nature).⁵³⁶

Consistent with the Sentencing Advisory Council's view that the discretion of the court not to record to a conviction should have meaning for the employment and economic prospects of the offender, it is the Council's view that as a general rule non-conviction sentences should not be disclosed and should not appear on a person's criminal record. However, the Sentencing Advisory Council endorses the view that restrictions on disclosure cannot be absolute and that in appropriate (and limited) circumstances, the judicial objective of imposing a non-conviction sentence must give way to the competing goal of decision makers having access to all relevant criminal offending (including findings of guilt without a recorded conviction). It is necessary then to decide the circumstances in which a finding of guilt without a conviction should be disclosable and the issue that needs to be resolved is whether it is appropriate that findings of guilt without conviction are treated as recorded convictions for the purposes of these exemptions or whether there should be a greater restriction on the disclosure of non-conviction sentences. In considering the most appropriate approach, there are two options available: either to make no change to the current situation (Option 1) or to impose greater limits on the disclosure of findings of guilt without a conviction in a criminal history check that currently applies under the exemptions to the *Annulled Convictions Act 2003 (Tas)* (Option 2).

Option 1: Make no change to the current situation so that the exemptions under the *Annulled Convictions Act 2003 (Tas)* that apply for a recorded conviction also apply for a finding of guilt without a conviction.

This option retains the status quo in Tasmania and applies the same exemptions under the *Annulled Convictions Act 2003 (Tas)* for a finding of guilt without a conviction as apply for a recorded conviction. This is the approach in the Northern Territory,⁵³⁷ New South Wales,⁵³⁸ the Australian Capital Territory,⁵³⁹ and under Commonwealth legislation.⁵⁴⁰ Similarly, although non-conviction sentences do not exist for adult offenders in Western Australia, the court has the option to make an order that a conviction is immediately spent and this is subject to the same exemptions in relation to non-disclosure as a conviction that is spent through time elapsing.⁵⁴¹ However, care needs to be taken in relying on the approach of other jurisdictions as some of these jurisdictions (Northern Territory, New South Wales and Commonwealth)⁵⁴² have much more limited exemptions than exist in Tasmania.

This approach maximises the information about an offender's behaviour that is available to employers and licensing authorities in areas that have been identified as special categories. The balance between disclosure and non-disclosure can be said to be appropriately struck because there are still many occupational and licensing purposes where an offender's finding of guilt will not be released in a criminal record check.

536 Tasmania Police, *Release Guidelines*, above n 148; *Consent to Check and Release a National Police Certificate*, above n 158.

537 *Criminal Records (Spent Convictions) Act (NT)*.

538 *Criminal Records Act 1991 (NSW)*.

539 *Spent Convictions Act 2000 (ACT)*.

540 *Crimes Act 1914 (Cth)*.

541 *Sentencing Act 1999 (WA)*; *Spent Conviction Act 1988 (WA)*.

542 See Appendix 10.

Option 2: To impose greater limits on the disclosure of findings of guilt without a conviction than apply for a recorded conviction under the *Annulled Convictions Act 2003* (Tas).

This option will change the law in Tasmania to treat a finding of guilt without a conviction differently (and more favourably) than a recorded conviction for a greater range of employment and licencing purposes. Option 2 accords with the approach in South Australia where recent amendments to the *Spent Convictions Act 2009* (SA) provide that without conviction offences are taken to be immediately spent and that most of the exclusions contained in the *Spent Convictions Act 2009* (SA) that allow spent convictions to be released do not apply to without conviction court outcomes.⁵⁴³ This means that without conviction court outcomes are generally not disclosed on a national police certificate provided in South Australia.⁵⁴⁴ Non-conviction outcomes are only disclosed in relation to disclosure by justice agencies or those seeking employment with a justice agency, proceedings before or the making of decision by designated judicial authority and decisions of the Parole Board.⁵⁴⁵ Expanded offender history information release practices also allow four specified organisations to receive information about all convictions and non-convictions. These are:

- the Authorised Screening Units under the National Exchange of Criminal History Information for Person Working with Children Intergovernmental Agreement
- the Australian Health Practitioners Regulation Agency for the screening of health practitioners under the *Health Practitioner Regulation National Law (South Australia) Act 2010*
- the South Australian Teachers Registration Board for the screening of teachers under the *Teachers Registration and Standards Act 2004*
- the Department of Communities and Social Inclusion for screening of persons applying to work with/care for children and vulnerable groups under the Information Privacy Principles Instruction (1992) for the protection of the government as an employer.⁵⁴⁶

The amendments to treat without conviction offences differently from a recorded conviction reflect the view that to allow a finding of guilt where a conviction was not imposed to appear on a police check circumvents the desire of the court that a conviction not be recorded. Instead, it was thought appropriate that 'if a court declares that no conviction be recorded against an individual, then this will actually be the case'.⁵⁴⁷

Option 2 is underpinned by the guiding principle that the consequences that attach to a finding of guilt without a conviction being recorded should differ from those that follow from a recorded conviction, and that they should only in exceptional circumstances be made available. It is consistent with the sentencing policy that is central to the power provided to courts to impose a non-conviction sentence. It can also be argued that restricting access to information about findings of guilt is not unfair to employers and the public because a 'court of law has, after hearing both prosecution and defence, formed a view that the offending is not of a serious nature and not reflect adversely on the person's character to the point where a record should be created'.⁵⁴⁸

543 *Spent Convictions Act 2009* (SA) s 13(3), (3a).

544 See South Australia Police, *National Police Certificate Frequently Asked Questions*, 2013, <<http://www.police.sa.gov.au/>>.

545 *Spent Convictions Act 2009* (SA), s 13(3a), sch 1 cls 1, 3, 4.

546 See South Australia Police, above n 544. Note also that the *Spent Convictions Act 2009* (SA), s 13(3), (3a), cl 9A sch 1 as amended by the *Statutes Amendment (Assessment of Relevant History) Act 2013* (SA) provides that screening units are excluded from disclosure restrictions on findings of guilt without conviction. However, the exclusion does not apply unless the screening unit is satisfied that there are good reasons for the exclusion to have effect under the Act, s 12.

547 South Australia, *Parliamentary Debates*, House of Assembly, *Spent Convictions (Miscellaneous) Amendment Bill*, 13 November 2012, 3644 (Rau).

548 Attorney-General's Department [South Australia], *Proposal to Amend the Spent Convictions Act 2009* Discussion Paper (2011) 5.

Discussion and recommendations

It is the Sentencing Advisory Council's view that there should only be a very small number of exemptions.⁵⁴⁹ This corresponds with the judicial aim of reducing indirect punishment (in employment and related areas) and increasing an offender's prospects of rehabilitation through the imposition of non-conviction sentence.⁵⁵⁰ It also acknowledges the balancing process that has already taken place when the court has exercised its discretion as to whether or not to record a conviction. The court has considered the competing interests of the public (including employers, licensing authorities and regulators) having full access to information about an offender's criminal behaviour against the benefits to an offender in not having a conviction recorded. In making an order that a conviction not be recorded, the court has made an assessment of where the balance should appropriately be struck in the circumstances of the individual case⁵⁵¹ and has formed the view that the offender should be free of adverse consequences in relation to employment and the acquisition of licences.⁵⁵² This intent should only be undermined in exceptional circumstances.⁵⁵³ However, it is acknowledged that choosing the circumstances in which a finding of guilt without a conviction recorded is disclosable is likely to be a matter for debate given the large number of professional and licencing bodies that may seek exempt status.⁵⁵⁴ In this regard, the Council notes the comments of Tasmania Police that the proposed changes in Recommendations 4 to 7 will 'have noticeable implications for the DPEM resulting in less information released on both the Tasmania and National Police Checks' and that 'the implementation process would require comprehensive administrative changes'.⁵⁵⁵

Consideration has been given in the literature considering spent conviction legislation to the development of guidelines in relation to the relevance of a prior conviction to employment and exceptions to the non-disclosure of spent convictions.⁵⁵⁶ This has stressed the need to ensure that there is 'a strong, persuasive and demonstrable reason ... for an exemption'⁵⁵⁷ and that there is a close connection established between the criminal records that are disclosed and the employment context so that only relevant convictions are disclosed (rather than all convictions). This ensures that employers/regulators are making an assessment of a person's suitability based on an assessment of the need for disclosure and the establishment of a causal link between the specific conviction and the requirements of the job/licence rather than a broadbrush assessment of character or 'sweeping generalisations, such as a claim that an individual is an unsuitable candidate because of universal trust and honesty requirements'.⁵⁵⁸ As Naylor, Patterson and Pittard write:

[...]miting disclosure to *relevant* information protects the privacy, dignity, and autonomy of individuals, and it minimises the risk of decision-making based on irrelevant information. It helps to ensure *appropriate* use of information and reduces the opportunity for intended or unintended discrimination on the basis of a criminal record.⁵⁵⁹

549 This was the view of the Standing Committee of Attorneys-General in relation to spent conviction schemes, Standing Committee of Attorneys-General, above n 126, 47.

550 Paterson and Naylor, above n 125, 939.

551 See 2.3.

552 Standing Committee of Attorneys-General, above n 126, 19.

553 In the paper of the Standing Committee of Attorneys-General, it is asserted that 'there may be a limited number of circumstances in which a finding of guilt without conviction would be made available to a particular employer. The likelihood of this situation occurring would be extremely remote, and could be addressed through an exemption', *ibid* 20.

554 A similar point was made by the Standing Committee of Attorneys-General in relation to spent conviction schemes, *ibid* 48. In its consideration of a spent conviction scheme, the Australian Law Reform Commission observed that it 'received a large number of submissions from a wide range of groups and individuals seeking exemptions from particular consequences of the scheme', above n 125, [41].

555 Letter from Tasmania Police to the Sentencing Advisory Council, 19 May 2014.

556 See Naylor, Paterson, and Pittard, above n 218; Fitzroy Legal Service, above n 141; Australian Law Reform Commission, above n 125; Paterson and Naylor, above n 125; Paterson, above n 295.

557 Fitzroy Legal Service, *ibid* 40; Standing Committee of Attorneys-General, above n 126, 46; Naylor, Pittard and Paterson above n 218, 196.

558 Fitzroy Legal Service, *ibid* 50. See also Naylor, Pittard and Paterson *ibid*, 193.

559 Naylor, Pittard and Paterson *ibid* 197.

In its consideration of exemptions under spent conviction legislation, the Australian Law Reform Commission also highlighted the need to give effect to the underlying rationale for the spent conviction scheme through the establishment of an expert body to closely scrutinise claims for exemption to determine whether ‘the relevance of the spent conviction to the decision making process and the public intent in allowing its consideration [has been] ... clearly demonstrated’.⁵⁶⁰ The Australian Law Reform Commission identified three factors that should inform the development of exceptions to the spent conviction legislation:

- Convictions of the kind sought to be covered by an exemption should be substantially relevant to the exercise of power, or the performance of the duty or function for which they may be taken into account
- The harm that might be caused if the exempted convictions, or convictions of that kind, had to be disregarded should substantially outweigh the harm to convicted persons that would be caused by taking them into account
- For exemption from the obligation to acknowledge spent convictions, the persons to whom the exempted convictions are to be disclosed or acknowledged must be lawfully entitled to take them into account.⁵⁶¹

These considerations are also useful in developing a framework to regulate exclusions/exemptions for findings of guilt without a conviction.

It is the Sentencing Advisory Councils’ view that a strong demonstrable case must exist for non-conviction sentences to be disclosed. This means they need to be substantially relevant, the harm caused by nondisclosure should substantially outweigh the harm to the offender of having the finding of guilt disclosed, and the authority/employer must lawfully be able to take it into account.⁵⁶² It is also the view of the Council that the exemptions for a finding of guilt without a conviction must be more restricted than those that apply to a recorded conviction. It follows that it is the Council’s view that the exclusions under the *Annulled Conviction Act 2003* (Tas) are too extensive to apply to findings of guilt without conviction and, further, that there is no necessary connection between the offending behaviour and the purposes for which the disclosure is made under the Act. It is for this reason that the Council does not favour Option 1.

Instead the Council prefers Option 2 as a means to give practical effect to the discretion not to record a conviction. This approach achieves consistency with the rationale for discretion to not record a conviction by restricting disclosure to a limited category of exemptions where a compelling case is made that disclosure should be required. It reflects the principle that a finding of guilt without a conviction is not to be regarded as a conviction and should not have the same consequence for employment and economic prospects. It also accords with the Sentencing Advisory Council’s view that the general rule should be that findings of guilt without conviction should not be disclosed.

560 Australian Law Reform Commission, above n 125, [42].

561 Ibid [43].

562 This depends on anti-discrimination legislation (see [3.4.3]) and the specific statutory requirements for area of employment/licence (see [3.4]).

It is the Sentencing Advisory Councils' view that the following exemptions are appropriate:

- The proceedings of a court or the making of a decision by a court, including a decision about sentence
- The legitimate enforcement, prosecution, administrative, penal, rehabilitative or other functions of a Justice Agency⁵⁶³
- Registration and employment for teachers and for persons working with vulnerable persons⁵⁶⁴
- Adoption⁵⁶⁵
- Registration for health practitioners under the Health Practitioner Regulation National Law (Tasmania)
- Appointment as a judicial officer or employment or consultancy with a Justice Agency
- The operation of the *Legal Profession Act 2007* (Tas).

Category 1 is concerned with subsequent court proceedings and reflects the requirements of the *Sentencing Act 1997* (Tas), s 10(2)(b)(i), (ii), and (iii) and the *Youth Justice Act 1997* (Tas), s 49(6). It is also consistent with Recommendation 18 in relation to a finding of guilt without the recording of a conviction having the same effect as if one had been recorded for the purposes of proceedings against the offender for a subsequent offence.⁵⁶⁶

Category 2 is concerned with the legitimate law enforcement functions of agencies such as the police, prosecutors, and the Parole Board. Categories 3, 4, and 5 are concerned with persons who may have close contact with children and/or vulnerable persons. It is generally accepted that additional protective measures are necessary to create a safe environment and reduce the likelihood of harm to these groups.⁵⁶⁷ Categories 6 and 7 creates an exemption for the employment or appointment connected with the administration of justice (such as judges, magistrates, legal practitioners, police officers) where it can be argued that the responsibility of administering the law means that all criminal behaviour should be disclosed (and not just recorded convictions).⁵⁶⁸ These exemptions generally correspond with the exemptions for non-conviction sentences in South Australia.⁵⁶⁹

The establishment of clear exemptions (when findings of guilt can be disclosed) means that courts will have greater certainty in relation to the future implications for an offender of making an order that a conviction not be recorded. It will also provide greater certainty for the community (including offenders and employers) and increase consistency across different regulatory areas by providing guidance to government departments and legislative drafters in the development of new legislation. The Council recognised that stakeholders may wish to make a case for further exemptions. It is important to note that the exemptions mean that a repeat offender who has previously received a non-conviction sentence will not be viewed by the court as a first offender.⁵⁷⁰ There is also an exemption to enable law enforcement agencies to disclose information as part of legitimate law enforcement functions.

563 This is taken from the *Annulled Convictions Act 2003* (Tas), s 10(3)(b). A 'Justice Agency' is defined as (a) the Australian Federal Police; (b) the police force or service of a State; (c) the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* of the Commonwealth; (d) the CrimTrac Agency established on 1 July 2000 as an Executive Agency by the Governor-General of the Commonwealth under section 65 of the *Public Service Act 1999* of the Commonwealth; (e) the Australian Customs Service established by section 4 of the *Customs Administration Act 1985* of the Commonwealth; (f) the Attorney-General for the Commonwealth or a State; (g) the Director of Public Prosecutions for the Commonwealth or a State; (h) a person employed in a Government Department or Agency of the Commonwealth or a State, or in a council, and whose primary duties include the prosecution of offences or assisting with the prosecution of offences; (i) the Director of Corrective Services and the equivalent entity in another State; (j) the Parole Board and the equivalent entity in another State; (k) the Registrar or administrator of a Commonwealth or State court; (l) the Secretary of the responsible Department in relation to the *Youth Justice Act 1997* and any entity that is responsible for the administration of discrete youth justice legislation in another State; (m) a prescribed body or person, s 3.

564 See Appendix 3, Tables 2 and 3. See also *Registration to Work with Vulnerable People Act 2013* (Tas) (commencing on 1 July 2014) that creates a new statutory framework for the registration of people who have contact with children and vulnerable persons in the course of engaging in a regulated activity. This includes childcare services, education, accommodation, counselling and support services, services to mentally impaired and ill, services to support migrant and refugees or asylum seekers, services to homeless people, public or community housing, services to victims of crime, services for addictions, disability services and respite care services (see Office for Children, Department of Health and Human Services, above n 213).

565 Under the *Adoption Regulations 2006* (Tas), reg 15, a person's suitability to adopt is assessed according to a number of criteria including whether the person has (f) been convicted of any offence against a child. This will need to be amended to refer to found guilty or convicted.

566 See [4.2.4].

567 See Office for Children, Department of Health and Human Services, above n 213.

568 These exemptions do not exist in relation to non-conviction sentences in South Australia.

569 The exemptions are also similar to the provisions of the spent conviction legislation at a Commonwealth level as well as in the Northern Territory and New South Wales. See Appendix 10.

570 See [4.2.4].

If an exemption exists in relation to findings of guilt without a conviction recorded, it is the view of the Sentencing Advisory Council that the decision maker should be directed to take account of the fact that the court considered that it was appropriate not to record a conviction in making its determination. Further, in relation to decisions concerning employment registration, there should be an opportunity afforded for the applicant to provide further information in relation to the finding of guilt without a conviction recorded in support of his/her application.

It will also be necessary for Tasmania Police to change its information release guidelines to reflect this change in approach to findings of guilt without conviction.

What should be the approach to the disclosure of findings of guilt without a conviction?

Recommendation 4

That greater restrictions be imposed on the disclosure of findings of guilt without a conviction than apply for a recorded conviction under the *Annulled Convictions Act 2003* (Tas).

Recommendation 5

That the following categories of exemptions to the restrictions on disclosure of findings of guilt without conviction are appropriate:

- the proceedings of a court or the making of a decision by a court, including a decision about sentence
- the legitimate enforcement, prosecution, administrative, penal, rehabilitative or other functions of a Justice Agency
- registration and employment for teachers and for persons working with vulnerable persons
- adoption
- registration for health practitioners under the Health Practitioner Regulation National Law (Tasmania)
- appointment as a judicial officer or employment or consultancy with a Justice Agency
- under *the Legal Profession Act 2007* (Tas).

Recommendation 6

If an exemption exists in relation to findings of guilt without a conviction recorded (in other words a finding of guilt can be disclosed), the decision maker should be directed to take account of the fact that court considered that it was appropriate not to record a conviction in making its determination.

Recommendation 7

For the purposes of a decision in relation to registration relevant to employment, the applicant should be provided with an opportunity to provide further information in relation to the finding of guilt without a conviction recorded in support of his/her application.

If Recommendation 4 is accepted, this could be achieved by either excluding a finding of guilt without a conviction recorded from the definition of conviction in section 3(2) of the *Annulled Convictions Act 2003* (Tas) (Option 4.1), or amending the *Annulled Convictions Act 2003* (Tas) to limit the exemptions under the Act that apply to a finding of guilt without a recorded conviction (Option 4.2).

Option 4.1: Exclude a finding of guilt without a conviction recorded from the definition of a conviction in section 3(2) of the *Annulled Convictions Act 2003* (Tas).

Option 4.1 is to exclude a finding of guilt without a conviction recorded from the definition of a conviction in section 3(2) of the *Annulled Convictions Act 2003* (Tas). It means that only recorded convictions would be included within the definition of a conviction for the purposes of the spent conviction legislation and consequently only recorded convictions would be released in a criminal history check, subject to limited exemptions.⁵⁷¹ While this model was not adopted in the model *Spent Conviction Bill 2009*, it reflects the recommendations contained in the Standing Committee of Attorneys-General paper in relation to a national uniform model for spent convictions:

Recommendation 2: That only recorded criminal convictions in a recognised Court of Law should come within the scope of a national spent conviction scheme.

Recommendation 3: That unless a specific exemption applies, a finding of guilt without a criminal conviction should not be included within the definition of 'conviction' for the purposes of a spent conviction scheme, and therefore should not be made available on a person's criminal record.⁵⁷²

This is the approach in Queensland, where a conviction is limited to recorded convictions,⁵⁷³ and a police certificate shows 'disclosable convictions' which means those that are recorded by the court and that have not been rehabilitated or spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.⁵⁷⁴ However, there are exceptions where a finding of guilt is disclosable.⁵⁷⁵

Option 4.2: Include a finding of guilt without a recorded conviction within the meaning of conviction in the *Annulled Convictions Act 2003* (Tas) but limit the exemptions that apply for findings of guilt without a conviction recorded

Option 4.2 is to continue to include a finding of guilt without a recorded conviction within the meaning of conviction in the *Annulled Convictions Act 2003* (Tas) but to limit the exemptions that apply for findings of guilt without a conviction recorded (as compared to recorded convictions). This is the approach in South Australia.⁵⁷⁶

Discussion and recommendations

Both options treat a finding of guilt without a conviction differently from a recorded conviction for the purposes of disclosure in a criminal history check by allowing for more limited disclosure through a reduced list of exemptions that operate for non-conviction sentences. Both are consistent with the view of the Sentencing Advisory Council that there needs to be a practical distinction between a finding of guilt without a conviction recorded and a recorded conviction, so that the beneficial nature of the order is felt by an offender⁵⁷⁷ and both reconcile the *Annulled Convictions Act 2003* (Tas) with the underlying policy of the sentencing option of a finding of guilt without recording a conviction contained in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas). They clearly separate the requirements for disclosure of findings of guilt without conviction as compared to recorded convictions, and support the judicial objective of ameliorating adverse consequences for an offender's employment or rehabilitation prospects.⁵⁷⁸

571 Exemptions for convictions are discussed at [2.4].

572 Standing Committee of Attorneys-General, above n 126, 4.

573 *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) s 3.

574 Queensland Police, *Police Certificate (Australia-wide Criminal History)*, <<http://www.police.qld.gov.au/>>.

575 These include working with children checks, teacher registration, adoption, radiation safety and laws in relation to criminal organisations: see Appendix 10.

576 See [4.2.1.1] Option 2.

577 Paterson and Naylor write that 'there is a strong claim to be made that minor offences where no conviction is recorded should be treated as spent immediately. ... This follows from the fact that a non-conviction sentence is a specific sentencing decision, recognizing the judge's assessment of the low level of seriousness of the offence and expressly intended to mitigate the impact of a formal record on a person's future', Paterson and Naylor, above n 125, 954.

578 Law Council of Australia, *Model Spent Conviction Bill 2008*, Submission (2009) 6; Standing Committee of Attorneys-General, above n 126, 19–20.

In deciding between Option 4.1 and 4.2, it can be argued that Option 4.1 more strongly reflects the principle that a finding of guilt without a conviction is not to be regarded as a conviction. Commentators have suggested that findings of guilt should not be included in spent conviction legislation as only convictions should form part of an offender's criminal record and that findings of guilt should not be made public (subject to very limited exemptions).⁵⁷⁹ However, Option 4.2 has the advantage that it operates within an established statutory framework (the *Annulled Convictions Act 2003* (Tas) that specifies the effects of an annulled conviction and creates offences for improper disclosure. This is not fatal to Option 4.1 as an alternative framework that sets out the effects of a finding of guilt without a conviction and creates offences for improper disclosure could be developed. However, it is the Sentencing Advisory Council's view that Option 4.2 be adopted and accordingly it is the recommendation that a finding of guilt without a conviction recorded continue to be included within the meaning of conviction in the *Annulled Convictions Act 2003* (Tas) but the exemptions that apply for findings of guilt without a conviction recorded are limited.

How should the recommendation that greater restrictions be imposed on the disclosure of findings of guilt without a conviction than apply for a recorded conviction under the *Annulled Convictions Act 2003* (Tas) (Recommendation 4) be implemented?

Recommendation 8

A finding of guilt without a conviction recorded should continue to be included within the meaning of conviction in the *Annulled Convictions Act 2003* (Tas) but the exemptions from annulment that apply for findings of guilt without a conviction recorded should be more limited.

4.2.1.2 Statutory provisions that allow consideration of findings of guilt for employment or licensing purposes

Tasmania Police do not release information about findings of guilt unless a person requests a criminal history check for the purposes of a category of employment or licence that is exempt under the *Annulled Convictions Act 2003* (Tas). As indicated, it is the view of the Sentencing Advisory Council that it is not appropriate, as a general rule, for findings of guilt without conviction to be disclosed and the Council has formulated a small number of exemptions to that general rule. It is also not appropriate, other than in the limited exempt categories, that employers, licensing authorities and regulators take into account a finding of guilt without a conviction in the decision making process. This is to give effect to the distinction that exists between a finding of guilt with and without a recorded conviction, and to allow the intent of the judicial discretion to have practical and positive consequences for an offender. This means that, in addition to reconsidering the disclosure of the findings of guilt without conviction in police record checks, it is necessary to review the statutory provisions that require disclosure of a finding of guilt for employment or licensing purposes⁵⁸⁰ to ensure that there is a logical and consistent approach.

579 Standing Committee of Attorney-General, *ibid* 18, 47; Fitzroy Legal Service, *above* n 141, 36; Law Council of Australia, *ibid* 6.

580 See [3.4] and Appendix 3.

Government bodies and appointments⁵⁸¹

Substantial protection currently exists in relation to the effect of a finding of guilt without a conviction being recorded for offenders who hold positions on statutorily created boards, tribunals, trusts, and government or semi-government authorities. Of the 81 Tasmanian statutes that provide for the removal from a position on a government body or an appointment to office by government, only four statutes provide that a finding of guilt is sufficient to activate the provisions.⁵⁸² Three Acts are concerned with health, education and the legal profession and so are consistent with the Sentencing Advisory Council's recommendations in relation to exemptions. It is the view of the Council that the *Companies Auditors and Liquidators Disciplinary Board Act 1982* (Tas) needs to be reviewed to remove the reference to finding of guilt as a basis for vacating the office of a Board member.⁵⁸³

Licensing and registration

The widespread legislative regulation of occupations through registration and licensing and the granting of permits and licences relevant to employment needs to logically correspond with the underlying rationale of the judicial discretion to not record a conviction. There are 80 statutes identified where a person's criminal history is relevant to the registration or obtaining a licence or permit that may be relevant to a person's ability to work within a particular area.⁵⁸⁴ In 63 of these statutes, a finding of guilt is either expressly mentioned in the legislative criteria or potentially incorporated within a more general character test (such as a 'fit and proper person' test) or broad discretion (for example, necessary or reasonable in the circumstances).⁵⁸⁵ It is noted that the procedures for the determination of a 'fit and proper' person are varied within Tasmania and at the discretion of the relevant Department Secretary or Registrar.⁵⁸⁶ There are also six statutes that allow a ban or prohibition to be imposed on the person on the basis of a finding of guilt.⁵⁸⁷

It is the Sentencing Advisory Council's view that findings of guilt without conviction should not routinely be disclosed or considered relevant to an offender's suitability for employment or registration/licensing (either expressly or as part of discretionary judgment based on character) unless one of the exemptions applies. Accordingly, it is the Sentencing Advisory Council's recommendation that a finding of guilt without a conviction should not be relevant to licensing or registration for employment or for obtaining or retaining a licence or permit relevant to a person's ability to earn income unless a specific exemption (see Recommendation 5) applies.⁵⁸⁸ Further, the Sentencing Advisory Council's recommendation is that discretionary judgments based on character (such as the 'fit and proper person' test) concerning licensing or registration should not include consideration of a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) applies. The Council notes that Tasmania Police has commented that this change will mean that:

mere findings of guilt are *not* taken into consideration when agencies, including Tasmania Police, assess applicants to be 'fit and proper' persons under relevant Acts. This includes the *Firearms Act 1996* and *Security & Investigation Agents Act 2002*. Those undertaking these assessments will have less information available to them. Any proposals which limit the information available to those undertaking an assessment require careful consideration.⁵⁸⁹

The Council has considered this matter and its view is that concerns in relation to limited access of information can be properly addressed in the exercise of the sentencing discretion, where the court is required to balance the community interest in recording the conviction (and having the information about the offender's criminal behaviour disclosable) and the interest of the offender in not recording a conviction.⁵⁹⁰

581 See Appendix 3, Table 1.

582 *Companies Auditors and Liquidators Disciplinary Board Act 1982* (Tas), sch 1 (membership of Board); *Education and Care Services National (Application) Act 2011* (Tas), s 235 (membership of Ministerial Council); s 254 (Chief Executive Officer); *Legal Profession Act 2007* (Tas), sch 2 (membership of Legal Profession Board of Tasmania); sch 4 (membership of Board of Legal education); sch 6 (membership of Disciplinary Tribunal); sch 7 (membership of Solicitors' Trust); *National Health Funding Administration Act 2012* (Tas), s 6.

583 Schedule 1, cl 4(1)(e).

584 See Appendix 3, Tables 2 and 3.

585 See [3.4.2].

586 Information provided to the Sentencing Advisory Council by Tasmania Police, 11 February 2014.

587 See Appendix 3, Table 4.

588 This recommendation does not apply to driver licensing. This is dealt with separately at [4.2.5].

589 Letter from Tasmania Police to the Sentencing Advisory Council, 19 May 2014.

590 See [2.3].

In addition, the Council recommends that banning or prohibition orders in relation to employment or licences/permits relevant to employment not be made on the basis of a finding of guilt without conviction unless a specific exemption (see Recommendation 5) applies.⁵⁹¹

What should be the consequences of a finding of guilt without a conviction for licencing or registration relevant to employment?

Recommendation 9

A finding of guilt without a conviction should not be relevant to licencing or registration for employment or for obtaining or retaining a licence or permit relevant to a person's ability to earn income unless a specific exemption (see Recommendation 5) applies.

Recommendation 10

Discretionary judgments based on character (such as the 'fit and proper person' test) or other broad discretionary powers concerning licencing or registration should not include consideration of a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) applies.

Recommendation 11

Banning or prohibition orders in relation to employment or licences/permits relevant to employment not be made on the basis of a finding of guilt without conviction unless a specific exemption (see Recommendation 5) applies.

In terms of how to implement these recommendations, it could be achieved by the adoption of Recommendation 14 (below) or by an amendment to section 10 of the *Sentencing Act 1997 (Tas)* and section 49 of the *Youth Justice Act 1997* to provide greater clarity in relation to the effect of a finding of guilt without recording a conviction.⁵⁹²

If these recommendations are accepted it will be necessary to review relevant Tasmanian legislation to ensure compliance with the recommendations. The Council has identified the following statutes as being in need of review for inconsistency with the exemptions identified in Recommendation 5:

- *Conveyancing Act 2004 (Tas)*
- *Land Valuers Act 2001 (Tas)*
- *Motor Vehicle Traders Act 2011 (Tas)*
- *Occupational Licensing Act 2005 (Tas)*
- *Occupational Licensing (Electrical Work) Regulations 2008 (Tas)*
- *Property Agents and Land Transactions Act 2005 (Tas)*
- *Racing Regulation Act 2004 (Tas)*
- *Security and Investigation Agents Act 2002 (Tas)*
- *Taxi Industry Regulations 2008 (Tas)*
- *Travel Agents Act 1987 (Tas)*
- *Animal Health Act 1995 (Tas)*
- *Cat Management Regulations 2012 (Tas)*

591 This recommendation does not apply to driver licensing. This is dealt with separately at [4.2.5].

592 A possible model can be found in the *Annulled Convictions Act 2003 (Tas)* s 9(1)(d)(ii) that provides that 'in applying a provision of any legislation, agreement or arrangement to the person a reference to the person's character, however expressed, is not to be taken as allowing or requiring anyone to take account of the annulled conviction'. This could be adapted as follows: 'Except as otherwise provided, in applying a provision of any legislation, agreement or arrangement to the person a reference to the person's character, however expressed, is not to be taken as allowing or requiring anyone to take account of a finding of guilt without the recording of a conviction.'

- *Dairy Industry Act 1994* (Tas)
- *Dangerous Goods (Road and Rail Transport) Act 2010* (Tas)
- *Dangerous Goods (Road and Rail Transport) Regulations 2010* (Tas)
- *Explosive Regulations 2012* (Tas)
- *Firearms Act 1996* (Tas)
- *Gaming Control Act 1993* (Tas)
- *Inland Fisheries Act 1995* (Tas)
- *Liquor Licencing Act 1990* (Tas)
- *Living Marine Resources Management Act 1995* (Tas)
- *Passenger Transport Services Act 2011* (Tas)
- *Restricted Hire Vehicle Industry Regulations 2013* (Tas)
- *Poisons Act 1971* (Tas)
- *Security-sensitive Dangerous Substances Act 2005* (Tas)
- *Work Health and Safety Regulations 2012* (Tas)
- *Workers Rehabilitation and Compensation Act 1988* (Tas).

4.2.1.3 Other employment

The information release policy of Tasmania Police, which provides that findings of guilt without conviction are not released in a National Criminal History check, unless the employment or licence falls into an exempt category, affords an offender some protection from an employer obtaining information that may have adverse consequences for an offender's employment prospects. However, in view of the increasing trend for employers to use criminal history as a pre-employment tool and the lack of clarity about the issue,⁵⁹³ it is the view of the Sentencing Advisory Council that there is a need for clarity and certainty about the consequences of a finding of guilt without a conviction. In addition, there needs to be greater protection provided to offenders by creating limits on the ability of a potential employer to ask questions about findings of guilt without convictions (unless the employer falls within one of the exempt categories; see Recommendation 5) or to rely on information obtained about a person's criminal history outside of an official criminal history check (such as news and other internet sources). Accordingly, it is the Council's recommendation that legislation should be enacted that sets out the obligations of an offender to provide information about a finding of guilt without a conviction, its effect for employment purposes and created consequences for improper disclosure. This will ensure that the distinction between guilt and conviction is maintained (other than in the limited exempt categories of employment/licence) and will give effect to the judicial assessment of the offender and the requirements of justice in the particular case as expressed by exercising the discretion not recording a conviction.⁵⁹⁴ It will also create greater certainty for courts, offenders and employers about the consequences of a finding of guilt without a conviction for employment and licensing purposes.

Protection for offenders could also be strengthened through amendments to the *Anti-Discrimination Act 1998* (Tas) to expand the definition of 'irrelevant criminal record' to include a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) were to apply.⁵⁹⁵ This would provide a formal means of redress for offenders who are discriminated against on the basis of a finding of guilt without a conviction. The Council's recommendation is that consideration be given to amending the *Anti-Discrimination Act 1998* (Tas) by expanding the definition of 'irrelevant criminal record' to include a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) applies.

593 See [3.4.3].

594 Paterson and Naylor, above n 125, 939.

595 See [4.2.1].

What other changes are necessary to clarify and strengthen the distinction between a finding of guilt without a conviction and a recorded conviction for employment purposes?

Recommendation 12

Legislation be enacted that sets out the obligations of a person to provide information about a finding of guilt without a conviction, its effect for employment purposes and consequences for improper disclosure.

Recommendation 13

Consideration be given to amending the *Anti-Discrimination Act 1998* (Tas) by expanding the definition of 'irrelevant criminal record' to include a finding of guilt without a conviction unless a specific exemption (see Recommendation 5) applies.

If Recommendation 12 is accepted, it is the Council's view that it could be achieved by clearly including a finding of guilt without a conviction within the framework of the *Annulled Convictions Act 2003* (Tas). This could be done by inserting a provision that specifies that a finding of guilt without conviction is immediately annulled. This approach would also be consistent with the approach in the Northern Territory,⁵⁹⁶ New South Wales,⁵⁹⁷ the Australian Capital Territory,⁵⁹⁸ and Western Australia.⁵⁹⁹ It is also consistent with Recommendation 8 (which recommends that a finding of guilt without a conviction recorded should continue to be included within the meaning of conviction in the *Annulled Convictions Act 2003* (Tas)).

Currently, the interpretation of the *Annulled Convictions Act 2003* (Tas) and the *Sentencing Act 1997* (Tas), s 10 relied on by Tasmania Police has the effect that findings of guilt without conviction are not considered to fall within the Act unless disclosure of the finding of guilt is for one of exempt categories of employment or licence contained in Schedule 1.⁶⁰⁰ If findings of guilt without conviction were clearly included in the *Annulled Convictions Act 2003* (Tas) by providing that they are immediately annulled, the protections afforded under the Act would be extended to offenders with a non-conviction sentence. Under the *Annulled Convictions Act 2003* (Tas), section 9(1) specifies that:

Except as otherwise provided, a finding of guilt without a conviction recorded –

- (a) is not required to be disclosed to any other person; and
- (b) is taken not to form part of the person's official criminal record; and
- (c) is taken not to be referred to in a question about the person's criminal record; and
- (d) in applying a provision of any legislation, agreement or arrangement to the person –
 - (i) a reference to a conviction, however expressed, is taken not to refer to the annulled conviction; and
 - (ii) a reference to the person's character, however expressed, is not to be taken as allowing or requiring anyone to take account of the annulled conviction; and
- (e) is not a proper ground for –
 - (i) refusing the person any appointment, post, status or privilege; or
 - (ii) revoking any appointment, status or privilege held by the person or dismissing the person from any post.⁶⁰¹

596 *Criminal Records (Spent Convictions) Act* (NT).

597 *Criminal Records Act 1991* (NSW).

598 *Spent Convictions Act 2000* (ACT).

599 *Sentencing Act 1999* (WA); *Spent Convictions Act 1988* (WA).

600 See [2.4].

601 This is based on the *Annulled Convictions Act 2003* (Tas) s 9(1).

It can be seen that these protections will create limits on an offender's obligation to disclose a finding of guilt and will impose a prohibition on employers and registration or licensing bodies from taking into account a finding of guilt in making a decision about employment or registration. This will provide protection for a person with a non-conviction sentence and also provide clarity in relation to an employer's or regulator's ability to take account of a finding of guilt without a recorded conviction.

The restrictions on disclosure and relevance that will be created by inclusion of a finding of guilt without a conviction in the *Annulled Convictions Act 2003* (Tas) are not absolute. While protections exist in the employment context, it is important to stress that restrictions do not apply to court proceedings, including decisions about sentences and proceedings of the Parole Board.⁶⁰² In these contexts, a finding of guilt without a conviction will be disclosed and can be taken into account. The restrictions would also not apply to categories of employment or licence that are exempt from the operation of the Act.⁶⁰³

There are also offences of improper disclosure contained in the *Annulled Convictions Act 2003* (Tas) that would be extended to findings of guilt without conviction if the Act was amended to specify that finding of guilt without a conviction is immediately annulled. Under the Act, where a conviction is annulled, a third party is not permitted to threaten to disclose information about an annulled conviction nor can people with access to official criminal records (other than in limited circumstances allowed under the Act) disclose information about a person's annulled convictions without consent.⁶⁰⁴ It is also an offence for a person to take into account an annulled conviction for a purpose not authorised by the Act.⁶⁰⁵ This limits the ability of an employer or registration body to take into account information about an offender obtained from unofficial sources (such as the internet).⁶⁰⁶ Again, there are exemptions created to allow for the disclosure of information by Justice Agencies in the proper discharge of their function to courts, other Justice Agencies, bodies that have exemption under the Act (such as those outlined in Recommendation 5),⁶⁰⁷ and for research or law reform purposes.⁶⁰⁸ Protection is also provided for archives, libraries and courts who release the information in accordance with normal procedures if it is material that is normally available for public use.⁶⁰⁹ It is the view of the Sentencing Advisory Council that this approach offers an appropriate balance between protection to the offender in relation to the disclosure or use of information about a finding of guilt without a conviction in an employment context while still allowing the exchange of information between law enforcement agencies and access to an offender's history of criminal behaviour in subsequent court proceedings.

602 Sections 9(2), (3).

603 Note the Sentencing Advisory Council's recommendation that a narrower category of exemptions should apply to a finding of guilt without a conviction than apply to a recorded conviction under the *Annulled Convictions Act 2003* (Tas) (see Recommendations 5 and 8).

604 *Annulled Convictions Act 1993* (Tas) s 11(1), (2).

605 *Annulled Convictions Act 1993* (Tas) s 12(2).

606 As noted at fn 303 there are restrictions pursuant to the National Privacy Principles (NPP) placed on the collection of criminal records information. NPP 10 provides that 'sensitive information' (which includes an individual's criminal record) cannot be collected without the individual's consent, unless the collection is required by law. Paterson states that this 'means that employers who are bound by the NPPs are precluded from using [non-official] sources to gather information about prospective employees except with their consent', Paterson, above n 303, 121. The NPPs generally apply to private sector organisations with a turnover of \$3 million or more. For more information see Office of the Australian Information Commissioner, above n 303.

607 The *Annulled Convictions Act 2003* (Tas), s 3 defines 'Justice Agency' as (a) the Australian Federal Police; (b) the police force or service of a State; (c) the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002* of the Commonwealth; (d) the CrimTrac Agency established on 1 July 2000 as an Executive Agency by the Governor-General of the Commonwealth under section 65 of the *Public Service Act 1999* of the Commonwealth; (e) the Australian Customs Service established by section 4 of the *Customs Administration Act 1985* of the Commonwealth; (f) the Attorney-General for the Commonwealth or a State; (g) the Director of Public Prosecutions for the Commonwealth or a State; (h) a person employed in a Government Department or Agency of the Commonwealth or a State, or in a council, and whose primary duties include the prosecution of offences or assisting with the prosecution of offences; (i) the Director of Corrective Services and the equivalent entity in another State; (j) the Parole Board and the equivalent entity in another State; (k) the Registrar or administrator of a Commonwealth or State court; (l) the Secretary of the responsible Department in relation to the *Youth Justice Act 1997* and any entity that is responsible for the administration of discrete youth justice legislation in another State; (m) a prescribed body or person, s 3.

608 *Annulled Convictions Act 2003* (Tas) s 9(3).

609 *Annulled Convictions Act 2003* (Tas) s 9(4).

Incorporating all findings of guilt without conviction in the *Annulled Convictions Act 2003* (Tas) is not without difficulty. It can be criticised for conflating conviction with guilt.⁶¹⁰ It will also have a serious practical implication for offenders who are found guilty of a sexual offence without a conviction recorded. Under the *Annulled Convictions Act 2003* (Tas), sexual offences cannot be annulled.⁶¹¹ This means that, unlike the current situation, a finding of guilt without a recorded conviction for a sexual offence would be disclosed on an offender's criminal record and considered relevant to employment/licencing decisions in all cases. Although a full reconsideration of the *Annulled Conviction Act 2003* (Tas) is beyond the scope of this paper, it is necessary to have regard to the implications for offenders found guilty of a sexual offence if this option is adopted and it is the view of the Sentencing Advisory Council that such offenders should not be placed in a position that is worse than the current situation.

The treatment of sexual offences within the spent conviction legislation framework is a controversial issue,⁶¹² and the treatment of sexual offences is not uniform across Australian jurisdiction.⁶¹³ The Sentencing Advisory Council recognises that recommendations in relation to sexual offences raise sensitive issues. Community protection is an important consideration in determining an appropriate response to sexual offenders. However, given the widespread community abhorrence in relation to sexual offences, the need to disclose a finding of guilt may unduly stigmatise offenders for whom the court has sought to ameliorate the impact of a criminal conviction (in the circumstances of the case) by imposing a non-conviction sentence.⁶¹⁴ Disclosure of a sexual offence is likely to negatively impact on an offender's employment prospects, and this may give rise to injustice in the circumstances of the individual case. Although public perception of sexual offenders tends to be based on the stereotype of worst type of offender,⁶¹⁵ the exercise of the discretion to not record a conviction in sex offence cases reflects the reality that there are cases where the offender's culpability is reduced.⁶¹⁶ This was recognised by the New South Wales Standing Committee on Law and Justice, where the view was expressed that:

[I]f, after reviewing the individual circumstances of a matter, the court is satisfied that no conviction should be recorded, a conviction for a sexual offence should be capable of being spent immediately as is currently the case with non-sexual offences.⁶¹⁷

If the *Annulled Convictions Act 2003* (Tas) is amended to provide that findings of guilt without conviction are immediately annulled, it is the Sentencing Advisory Council's view that the status quo should be retained in relation to sexual offenders. This means that the *Annulled Convictions Act 2003* (Tas) will need to be amended to enable findings of guilt without conviction for sexual offences to be immediately annulled.

610 Standing Committee of Attorneys-General, above n 126, 18, 47; Fitzroy Legal Service, above n 141, 36.

611 See [2.4].

612 See Standing Committee on Law and Justice, above n 130, ch 3 for an overview of the debate.

613 Sexual offences cannot be spent in the Northern Territory (*Criminal Records (Spent Convictions) Act* (NT)); New South Wales (*Criminal Records Act 1991* (NSW)); Australian Capital Territory (*Spent Convictions Act 2002* (ACT)); Tasmania (*Annulled Convictions Act 2003* (Tas)). Sexual offences can be spent in South Australia (eligible sex offences - *Spent Convictions Act 2009* (SA)); Western Australia (*Spent Conviction Act 1988* (WA)), *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) and under Commonwealth legislation (*Crimes Act 1914* (Cth)). In Victoria, although governed by policy rather than legislation, sexual offences can be spent (Victoria Police, above n 144). In New South Wales, a report of the Standing Committee on Law and Justice recommended that 'the Attorney General ensure that the NSW legislation to implement the Model Spent Convictions Bill includes convictions for juvenile sexual offences' (Recommendation 2) and that 'the Attorney General ensure that the NSW legislation to implement the Model Spent Convictions Bill provides that where a court finds a person guilty of an offence without proceeding to a conviction under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, including for a sexual offence, the finding is spent immediately after it is made (Recommendation 3), *ibid*.

614 Standing Committee on Law and Justice, *ibid* [3.21].

615 Kate Warner and Julia Davis, 'Using Jurors to Explore Public Opinion' (2012) 52 *British Journal of Criminology* 93, 108.

616 See for example, *Traynor v McCullough* (2011) 218 A Crim R 177 where the offender was convicted of one count of possessing child exploitation material under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas), s 74A. The circumstances were that the child exploitation material was a publication from the Victorian era containing journal-style entries, a number of which described children as young as 12 years of age engaging in sexual activity with children and adults. It was entirely fictional and there were no pictures. The publication was available for purchase online and from bookshops from mainstream Australian booksellers and at the time that the magazine was originally in print the age of consent was 12 and similar literature was not uncommon. In the appeal against the recording of the conviction (which was upheld), it was submitted that it was unlikely that the offender would continue as an alderman, he had been suspended from running Army cadet training and it was unlikely that he would return to it or continue with taxi driving. See also *Badcock v White* [2004] TASSC 59.

617 Standing Committee on Law and Justice, above n 130, [5.61]; Recommendation 3.

Further, Tasmania Police has expressed the view that the change to immediately provide annulment of offences with court outcomes of findings of guilt without conviction would fundamentally reshape the vetting policies of the DPEM.⁶¹⁸ The Council accepts that its recommendations will require changes to the procedures and policies of government departments, including Tasmania Police. However, the Council notes that the DPEM must already make a distinction between recorded convictions and findings of guilt without conviction under its current information release policy. The DPEM currently will not release a finding of guilt without a conviction in a national criminal history check unless the purpose of the check is for a category that is exempt from the provisions of the *Annulled Convictions Act 2003* (Tas).⁶¹⁹

An alternative option to amending the *Annulled Convictions Act 2003* (Tas) would be to emulate the protections that exist under the *Annulled Convictions Act 2003* (Tas) in relation to annulled convictions in other legislation that dealt only with findings of guilt without a recorded conviction. A provision could be included in the *Sentencing Act 1997* (Tas) section 10 and the *Youth Justice Act 1997* (Tas) section 49 or, alternatively, a separate enactment could set out the effects of a finding of guilt without a conviction and also create offences in relation to improper disclosure of a finding of guilt without a conviction.⁶²⁰ However, it is the Council's view that this is not the preferable approach.

Accordingly, it is the Council's recommendation that a finding of guilt without a conviction should be clearly included within the framework of the *Annulled Convictions Act 2003* (Tas) by inserting a provision that specifies that a finding of guilt without conviction is immediately annulled. This recommendation is subject to two conditions: (1) the adoption of Recommendations 4 and 5 that limit the exemptions that apply to findings of guilt without a recorded conviction under the *Annulled Convictions Act 2003* (Tas); and (2) the retention of the status quo in relation to the disclosure of sexual offences. It is also the view of the Council, in light of the evidence of confusion and uncertainty within the community about the distinction between the consequences of a finding of guilt without a conviction and a recorded conviction,⁶²¹ that a community education campaign be undertaken to inform the public generally, and employers in particular, about the distinction between a finding of guilt without a conviction and a recorded conviction and the legal obligations on employers in relation to an offender's criminal history.

What changes are necessary to give effect to Recommendation 12 (that is, to set out the obligations of a person to provide information about a finding of guilt without a conviction, its effect for employment purposes and consequences for improper disclosure)?

Recommendation 14

That a finding of guilt without a conviction be clearly included within the framework of the *Annulled Convictions Act 2003* (Tas) by inserting a provision that specifies that a finding of guilt without conviction in relation to all offences is immediately annulled. In effect this means that the mechanism for making a distinction between a recorded conviction and a finding of guilt without a conviction recorded is the immediate annulment of a finding of guilt without a conviction.

Recommendation 15

That the title of the *Annulled Convictions Act 2003* (Tas) should be amended to reflect its treatment of both convictions and findings of guilt without conviction.

Recommendation 16

That a community education campaign be undertaken to inform the public generally, and employers in particular, about the distinction between a finding of guilt without a conviction and a recorded conviction and the legal obligations on employers in relation to an offender's criminal history.

618 Letter from Tasmania Police to the Sentencing Advisory Council, 19 May 2014.

619 See [2.5].

620 This could be modelled on the protections contained in the *Annulled Convictions Act 2003* (Tas).

621 See [3.4.3].

4.2.2 Sex offender registration

Although a review of the sex offender registration scheme is beyond the scope of this paper, there is a need to reconcile the competing purposes of the registration and reporting requirements for sex offenders pursuant to the *Community Protection (Offender Reporting Act) 2005* (Tas) with the purposes of non-conviction sentences. Sex offender registration aims to keep police informed about the whereabouts of offenders to facilitate police investigations and to reduce recidivism. It is also concerned with assuaging public concern about sex offending by demonstrating that the government takes sex offending seriously.⁶²² However, the negative impact of ongoing reporting obligations (stigma and labelling)⁶²³ may undermine the judicial purpose of imposing a non-conviction sentence directed to an offender's rehabilitation and employment prospects.

Currently, no distinction is made under the *Community Protection (Offender Reporting Act) 2005* (Tas) between offenders who have a conviction recorded and offenders who are found guilty without a conviction being recorded, as it is the imposition of sentence that provides the basis for the court's authority to make an order. This means that the court may decide in the circumstances of the case that a conviction is not appropriate but will be compelled to make a reporting order as the court has very limited power to decline to make an order. The requirement that the court make a reporting order 'unless the court is satisfied that the person does not pose a risk of committing a reportable offence in the future'⁶²⁴ has been interpreted to mean that the court must make the order unless the 'risk is non-existent'.⁶²⁵ In contrast, in some Australian jurisdictions, the legislation provides that a person is not a reportable offender if the person is sentenced for a prescribed offence (class 1 or class 2 offences) but is released or discharged without conviction.⁶²⁶ Another approach would be to provide the court with a broad discretion to impose a Sex Offender Registration Order if the court does not record a conviction, following a finding of guilt. It is the Sentencing Advisory Council's view that creating a broad discretion more appropriately corresponds with the purposes of a non-conviction sentence (than the current situation) and should be adopted. This approach provides maximum flexibility to the court to take into account the employment consequences for an offender of a recorded conviction, while still making a registration order in the appropriate case. Accordingly, it is the recommendation of the Council that the *Community Protection (Offender Reporting Act) 2005* (Tas) be amended to provide the court with a broad discretion to make a reporting order if the person is a person in respect of whom the court has made an order without recording a conviction under section 7 of the *Sentencing Act 1997* (Tas) or section 47 of the *Youth Justice Act 1997* (Tas).

How should the competing purposes of the registration and reporting requirements for sex offenders pursuant to the *Community Protection (Offender Reporting Act) 2005* (Tas) be reconciled with the purposes of a non-conviction sentence?

Recommendation 17

That the *Community Protection (Offender Reporting Act) 2005* (Tas) be amended to provide the court with a broad discretion to make a reporting order if the person is a person in respect of whom the court has made an order without recording a conviction under section 7 of the *Sentencing Act 1997* (Tas) or section 47 of the *Youth Justice Act 1997* (Tas).

622 Warner, above n 337, 389. See [3.6], [4.2.1.3].

623 Victoria Williams, 'Branding Children as "Sex Offenders"' (2012) *Brief 18* summarising the findings of the Law Reform Commission of Western Australia's Report, *Community Protection (Offender Reporting) Act 2004*, above n 338.

624 *Community Protection (Offender Reporting) Act 2005* (Tas) s 6. Reportable offences are divided into three classes: Class 1, Class 2 and Class 3, s 12. Class 1 contains offences connected, for example, with child pornography, grooming and loitering, s 13, sch 1. Class 2 contains offences such as making child exploitation material, maintain a sexual relationship or intercourse with a young person, incest, aggravated sexual assault, rape, s 14, sch 2. Class 3 contains offences against the *Criminal Code Act 1995* (Cth).

625 *DPP v STU* [2012] TASCRA 7, [33] per Evans J.

626 *Child Protection (Offender Reporting) Act 2004* (Qld) s 5(2)(a); *Child Protection (Offenders Reporting and Registration) Act 2004* (NT) s 11(1)(b); *Child Protection (Offenders Registration) Act 2000* (NSW) s 3A(2)(a); *Crimes (Child Sex Offenders) Act 2005* (ACT) s 9(1)(a).

4.2.3 *Travel restrictions*

In the exercise of the discretion as to whether or not to record a conviction, courts are concerned about the likely effect of a criminal conviction on an offender's ability to travel. However, as visa and entry requirements are a matter for foreign governments, the Tasmanian Parliament cannot make any legislative change that will influence the entry requirements in overseas jurisdictions. However, steps can be taken to give effect to the court's finding of guilt by limiting disclosure in criminal history checks.⁶²⁷ In addition, if all criminal offending (including findings of guilt) need to be disclosed for the purposes of visa and entry requirements, it is also likely to strengthen a person's claim for entry to show that the court exercised its discretion favourably in the circumstances of the case by not recording a conviction, and thereby demonstrating a lower culpability.

4.2.4 *Increased penalty provisions for subsequent offending*

Reform is required to clarify the consequences of a finding of guilt without recording a conviction for the purposes of increased penalty provisions for subsequent offending. Currently, Tasmania is in a unique position. While it has a provision limiting the effect of a finding of guilt without recording a conviction⁶²⁸ (as do Queensland, Victoria and the Northern Territory), it does not have a provision that equates a finding of guilt without recording a conviction with a conviction for the purposes of subsequent offences. As discussed, the *Sentencing Act 1997* (Tas), section 10(2)(b)(iii), which provides that a finding of guilt without a conviction recorded is to be regarded as a conviction for the purpose of subsequent proceedings against the offender for the same offence, does not have this effect.⁶²⁹ The current position creates uncertainty and inconsistency as to whether a finding of guilt without a recorded conviction counts for this purpose.⁶³⁰ The need for clarity will become more pressing if magistrates are authorised to impose a fine without recording a conviction, as this will increase the scope for the use of non-conviction orders.⁶³¹ However, it is the view of the Sentencing Advisory Council that reform is necessary, regardless of whether the *Sentencing Act 1997* (Tas) is amended to provide courts with the ability to impose a fine without recording a conviction.

An increased penalty provision for a second or subsequent offence is found in many Tasmanian statutes. See Appendix 2, Table 2. The Sentencing Advisory Council has identified 26 acts or regulations that create an escalation in penalty for subsequent offending, and has found legislative inconsistency in relation to the application of these provisions to a finding of guilt without a conviction recorded. A finding of guilt is sufficient for three enactments for the purposes of an escalation of penalty for second or subsequent offences, while 10 require a person to be convicted of the offence. There is also ambiguity in the current situation, as for 12 enactments it is unclear if they apply only to offences for which a conviction is recorded or if they also count a finding of guilt without a conviction recorded as a subsequent offence.⁶³²

Accepting that reform is required to create certainty and uniformity, there are two options: (1) to specify that a finding of guilt without a conviction recorded *is to be equated* with a conviction for the purpose of increased penalties for subsequent offences; or (2) to specify that a finding of guilt without a conviction recorded *is not to be equated* with a conviction for the purposes of increased penalties for subsequent offences.

Option 1 is to adopt the Queensland, Victorian and Northern Territory approach that makes it clear that a finding of guilt without recording a conviction has the same effect as if one had been recorded for the purpose of 'proceedings against the offender for a subsequent offence'.⁶³³ Higher penalties for subsequent offending is an attempt to deal with recidivism, and this applies equally to offenders who have been found guilty without a conviction recorded - a finding of guilt without a conviction recorded is not the same as finding a person not guilty as there is a finding that the person has committed the offence. This option is also consistent with the underlying justification for the discretion

627 See [4.2.1.1].

628 *Sentencing Act 1997* (Tas), s 10(1); *Youth Justice Act* (Tas), s 49(5).

629 It operates to allow a defendant to make a plea of *autrefois convict*. See [3.14].

630 See [2.1], [3.2.2.1].

631 See [4.3].

632 See [3.2.2.1] and Appendix 2, Table 2.

633 *Sentencing Act 1992* (Qld) s 12(4)(iii); *Sentencing Act 1991* (Vic) s 8(3)(b)(iii); *Sentencing Act* (NT) s 8(3)(b)(iii).

not to record a conviction, which is not a denial that the offender has committed the offence but rather focuses on rehabilitation and the desire to protect an offender from adverse consequences for their economic or social wellbeing or employment prospects.⁶³⁴

Option 2 would be to make it clear that a finding of guilt without recording a conviction does not count as an offence for the purposes of increased penalties provisions. It could be argued that as a conviction was not recorded, due to the circumstances of the case, the offence should not count towards the application of a higher penalty rate.

The Sentencing Advisory Council's recommendation is that Option 1 should be adopted and that the *Sentencing Act 1997* (Tas) s 10(2) and the *Youth Justice Act* (Tas) s 49 be amended to provide that a finding of guilt without the recording of a conviction has the same effect as if one had been recorded for the purposes of proceeding against the offender for a subsequent offence.

Should increased penalty provisions for subsequent offending apply to a finding of guilt without the recording of a conviction?

Recommendation 18

The *Sentencing Act 1997* (Tas) s 10(2) and the *Youth Justice Act* (Tas) s 49 be amended to provide that a finding of guilt without the recording of a conviction has the same effect as if one had been recorded for the purposes of proceedings against the offender for a subsequent offence.

4.2.5 *Licence disqualification and demerit points*

Currently, mandatory licence disqualifications apply to offenders who receive a non-conviction sentence under the *Sentencing Act 1997* (Tas).⁶³⁵ However, if the court has discretion in relation to disqualification, then (unless the enactment provides otherwise) there is no power for a court to disqualify a person found guilty.⁶³⁶ In relation to youth offenders who receive a non-conviction sentence, the court can only make an order for licence disqualification if the enactment provides that it applies to a finding of guilt – it does not matter whether licence disqualification is mandatory or discretionary.⁶³⁷

In Tasmania, the mandatory penalties (including loss of licence) that apply to drink-driving,⁶³⁸ excessive speeding,⁶³⁹ unaccompanied driver offences,⁶⁴⁰ and motor vehicle stealing by a juvenile⁶⁴¹ are informed by road safety policy and concerns about youth crime (motor vehicle stealing). The purposes of disqualifying a person from driving are to punish the offender⁶⁴² and also to operate as a deterrent to the offender and to others.⁶⁴³ There may be a conflict between these objectives and the judicial objective of shielding an offender from the serious adverse consequences in terms of employment and social wellbeing, given that a licence may be integral to employment or social engagement.⁶⁴⁴ There is no consistent approach to reconciling these competing policies in other jurisdictions. In New South Wales, licence disqualification for drink driving offences flows from the recording of a conviction and can be avoided if a person receives a non-conviction sentence.⁶⁴⁵ This has been recently reconsidered with no

634 *Sentencing Act 1997* (Tas) s 9(c); *Youth Justice Act 1997* (Tas) s 49(4)(d). In relation to youth offenders, Option 1 is also supported by the requirement for the court to have regard to any sentences or sanctions previously imposed on the youth by any court or community conferences and any formal cautions previously administered to the youth, *Youth Justice Act 1997* (Tas) s 49(4)(c).

635 *Sentencing Act 1997* (Tas) s 10(2)(v).

636 This power exists under the *Marine Safety (Misuse of Alcohol) Act 2006* (Tas) ss 41, 42.

637 *Youth Justice Act 1997* s 49(5); *Police v HM (A Youth)* [2009] TASM 08.

638 *Road Safety (Alcohol and Drugs) Act 1970* (Tas) s 17. See *Harper v Cullen* (2003) 11 Tas R 211 where it was held that the *Road Safety (Alcohol and Drugs) Act 1970* (Tas) s 17(5) required a court to impose some fine and some disqualification; albeit only nominal.

639 *Vehicle and Traffic Act 1999* (Tas) s 19B.

640 *Vehicle and Traffic Act 1999* (Tas) s 19E.

641 *Police Offences Act 1935* (Tas) s 37F(2).

642 Douglas Brown, *Traffic Offences and Accidents* (Butterworths, 4th ed, 2006) [5.8].

643 See *ibid*.

644 See NSW Sentencing Council, above n 519, [4.15].

645 *Ibid* [5.27].

recommendation made for change.⁶⁴⁶ In contrast, in Victoria, mandatory provisions relating to loss of driver licences for speeding, drink-driving offences, and for not completing a drink-driver education program apply to both those who are found guilty with and without a conviction being recorded.⁶⁴⁷ This is also the approach in South Australia,⁶⁴⁸ the Northern Territory,⁶⁴⁹ and Queensland.⁶⁵⁰ In Western Australia, the making of a spent conviction order does not affect the right or duty of a court to disqualify the offender from holding or obtaining a driver's licence or the operation of the law relating to the cancellation of, or disqualification from holding or obtaining, a licence.⁶⁵¹

There are two options for reform: (1) to provide that mandatory penalties should apply to a finding of guilt; or (2) to provide that mandatory penalties should not apply to a finding of guilt.

It is the Sentencing Advisory Council's view that these mandatory penalties should also apply to a finding of guilt, as it is not appropriate for the court's discretion to not record a conviction to undermine the legislative objectives in relation to licence disqualification. The court is still able to allow an offender to avoid the consequences in relation to employment by not recording a conviction and also imposing a licence disqualification. If a driver licence is integral for employment, the offender may apply for a restricted driver licence⁶⁵² or a special hardship order.⁶⁵³ There is also a discretion, under the *Road Safety (Alcohol and Drugs) Act 1970* (Tas), section 17(5), for the court to impose a lesser period of disqualification than the minimum period specified if it is satisfied that special circumstances exist. In a case where special circumstances exist, such as a case of drink-driving in a medical emergency, it appears that the court has the discretion to impose a nominal period of disqualification (but cannot impose no period of disqualification).⁶⁵⁴ It is noted that loss of employment in itself has been held not to amount to a 'special circumstance' for the purposes of section 17(5), as it is not so far outside the ordinary as to be outside the contemplation of Parliament.⁶⁵⁵

It is the Council's view that this recommendation should also apply to youth offenders.⁶⁵⁶

Currently, there is no authority for a court to impose a discretionary licence disqualification on an offender if a conviction is not recorded (unless the statute specifies that it applies on a finding of guilt).⁶⁵⁷

It is the Council's view that the court should have a discretion to impose a period of licence disqualification on an offender who is found guilty without a conviction being recorded, if a licence disqualification could be imposed on conviction. This allows the court to consider the circumstances of the particular case and reconcile the competing demands of the non-conviction and licence disqualification.

The power to impose a discretionary licence disqualification also creates greater consistency with the award of demerit points under the *Vehicle and Traffic Act 1999* (Tas).⁶⁵⁸ The court's power to award demerit points on conviction is discretionary, and so does not apply currently to non-conviction sentences. In contrast, if a person receives a traffic infringement notice and does not take steps to object or pays the full amount (or enters into a payment plan), the person is taken to be convicted and demerit points are awarded. Consistency demands that the court should have the discretion to award demerit points if a person is found guilty without a conviction recorded.

646 Ibid.

647 Freiberg, above n 14, [9.245].

648 See *Police v Varma* [2013] SASCF 72, [19] on the distinction between a conviction and the recording of a conviction. For the purposes of the mandatory disqualification provisions in the *Road Traffic Act 1961* (SA) s 47(3)(a) the relevant matter was the conviction, which occurred on the finding of guilt and its acceptance by the court.

649 *Traffic Act* (NT).

650 *Penalties and Sentences Act 1992* (Qld) s 12(4)(a) provides that a conviction without the recording of a conviction does not stop a court from making any order that it may make under this or another Act because of the conviction. See *Mould v Newland* [2001] QCA 211.

651 *Sentencing Act 1995* (WA) s 45(5)(a), (b).

652 *Vehicle & Traffic Act 1999* (Tas) s 18.

653 *Road Safety (Alcohol and Drugs) Act 1970* (Tas) s 19. See Warner, above n 4, [6.326]-[6.333].

654 This was the view expressed in *Harper v Cullen* (2002) 11 Tas R 211, 218 per Cox CJ. In *Strickland v Whitehead* (1995) 22 MVR 352, Zeeman J doubted whether the *Road Safety (Alcohol and Drugs) Act 1970* (Tas), s 17(5) allowed the court to impose no period of disqualification but was not required to decide the issue. However, in *Mazengarb v White* Serial no B38/1993 and *Turner v Visser*, Serial No 93/1998 (both medical emergency cases), the court imposed no period of disqualification.

655 *Strickland v Whitehead* (1995) 22 MVR 352 per Zeeman J; *Davies v Kennedy* (1992) 17 MVR 264 per Underwood J.

656 It is noted that there is no power to impose a licence disqualification as a sanction under the *Youth Justice Act 1997* (Tas) (unlike the *Sentencing Act 1997* (Tas), s 55). This paper makes no recommendation in relation to whether one is included.

657 See [3.5] and Appendix 4.

658 See [4.1.2.3].

Accordingly, the Council recommends that a court should have a discretion to impose a period of disqualification from driving and/or award demerit points for a offender who is found guilty without a conviction being recorded, if a disqualification or demerit points⁶⁵⁹ could be imposed on conviction. It is the Council's view that this recommendation should also apply to youth offenders.⁶⁶⁰ This is consistent with the law in other Australian jurisdictions.⁶⁶¹

The Council proposes that the recommendations should be implemented by amending the legislation that contains the disqualification or award of demerit points to specify that it applied on conviction or a finding of guilt.⁶⁶²

Other amendments may also be necessary depending on whether it is accepted that a court should have the power to impose a licence disqualification following a finding of guilt and whether it is accepted that the court should have the power to impose a fine without recording a conviction.⁶⁶³ These include amendments to:

- the *Sentencing Act 1997 (Tas)*, section 8(4) that provides that a court may combine a fine with a driver licence disqualification under section 55
- the *Vehicle and Traffic Act 1999*, s 65 that requires that the Registrar of Motor Vehicles be notified of conviction for certain offences.

What should be the consequences of a finding of guilt without a conviction for driver licence disqualification?

Recommendation 19

Mandatory driver licence disqualifications should apply to a finding of guilt without a conviction recorded for adult and youth offenders.

Recommendation 20

Where licence disqualification is an available option, a court should have a discretion to impose a period of disqualification from driving on an offender who is found guilty without a conviction being recorded for adult and youth offenders.

659 Note in New South Wales, demerit points are not awarded if a conviction is not recorded, *Road Transport (Driver Licencing) Act 1998* (NSW) s 14(3A).

660 It is noted that there is no power to impose a licence disqualification as a sanction under the *Youth Justice Act 1997* (Tas) (unlike the *Sentencing Act 1997* (Tas) s 55). This paper makes no recommendation that one be included.

661 See Victoria (*Children, Youth and Families Act 2005* (Vic) s 360(5)(b)); New South Wales (*Children (Criminal Proceedings) Act 1987* (NSW) s 33(5)(a), (6)) – except where dismissal is ordered; Australian Capital Territory (*Crimes (Sentencing) Act 2005* (ACT) s 18(2), (5)(f)); Queensland (*Penalties and Sentences Act 1997* (Qld) s 12(4)(a) provides that a finding of guilt without recording a conviction does not prevent a court from making any other order that it is able to make under this Act or another Act because of conviction. The *Transport Operations (Road Use Management) Act 1995* (Qld) s 86 allows the court to order the disqualification of a licence. This applies to children by virtue of *Youth Justice Act 1992* (Qld) s 184(2) (except as provided by this Act or another Act, a finding of guilt is not regarded as a conviction) and *Penalties and Sentences Act 1997* (Qld) s 6 (this Act does not apply to a child under the *Youth Justice Act* except to the extent allowed)); Western Australia (*Young Offenders Act 1994* (WA) s 55(4)); and the Northern Territory (*Youth Justice Act* (NT) s 88).

662 See Appendix 4.

663 See [4.3].

4.2.6 Restitution, compensation and costs

4.2.6.1 Restitution and compensation

Some consequences that currently attach to a finding of guilt, such as the power of the court to make ancillary orders such as restitution and compensation under the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas) following a finding of guilt, seem largely unobjectionable.⁶⁶⁴ These are not a punitive response, but have a value as a rehabilitative or restorative measure.⁶⁶⁵ This corresponds with the purposes of the discretion not to record a conviction.

In addition to the power of the court to make an order for restitution and/or compensation under the sentencing legislation, the Sentencing Advisory Council has identified 35 provisions where a court has the power to make an order for restitution or compensation. Currently there is not a consistent approach to the issue of whether or not these orders attach to a finding of guilt without recording a conviction. In 14 provisions, the orders apply to a finding of guilt, either because they are a mandatory penalty (3 provisions) or because the provisions expressly apply to a finding of guilt (11 provisions). In the remaining 21 provisions, restitution and compensation can only be made on conviction.

It is the Council's view that, consistent with the provisions of the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas), the court should have the power to make an order for compensation or restitution following a finding of guilt without recording a conviction. Accordingly, the Council's recommendation is that court should have the power to make an order for compensation or restitution following a finding of guilt without recording a conviction. This recommendation could be achieved by inserting a provision to that effect in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas).

4.2.6.2 Costs

Although costs orders are rarely made, it would also seem uncontroversial to provide the court with a discretion to make a costs order following a finding of guilt (in the appropriate case), and while this power exists in some circumstances, the Council's recommendations are that this power should be extended to all non-conviction sentences under the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas).⁶⁶⁶

It is the Council's view that there is no inconsistency between the policy of the *Sentencing Act 1997* (Tas) to allow the court to make a non-conviction order and the ability of the court to make an order for costs (depending on the circumstances of the case) following a finding of guilt given that costs are compensatory in nature rather than punitive.⁶⁶⁷

Similarly, it is not inconsistent with the policy of the *Youth Justice Act 1997* (Tas) to focus on the accountability of young people and the rehabilitation of the offender.⁶⁶⁸ Currently, there is no independent power under the *Youth Justice Act 1997* (Tas) for the court to make a costs order (either on conviction or a finding of guilt) but a youth may receive a costs order under other statutes that allow a court to impose costs.⁶⁶⁹ It seems appropriate that the court also has a discretion under the *Youth Justice Act 1997* (Tas) to make a costs order on a finding of guilt with or without a recorded conviction, but it is accepted that usually there will be no order for costs. If these recommendations are accepted, it will be necessary to amend the *Sentencing Act 1997* (Tas), s 63 and the *Youth Justice Act 1997* (Tas) to give them effect.

664 *Sentencing Act 1997* (Tas) ss 10(2)(a), 65, 68; *Youth Justice Act 1997* (Tas) s 47(2).

665 MacKenzie and Stobbs, above n 73, 119.

666 See [2.1]. This is the case in New South Wales (*Criminal Procedure Act 1986* (NSW) s 215) and Victoria (in relation to summary offences – *Magistrates' Court Act 1989* (Vic) s 131(1) for adult offenders). Costs orders can also be made against young offenders in NSW (*Children (Criminal Proceedings Act) 1987* (NSW) s 42A), Victoria (*Children, Youth & Families Act 2005* (Vic) s 361(3)(b)), and Western Australia (*Young Offender Act 1994* (WA) s 57). It is noted that the Sentencing Advisory Council made a recommendation that the *Sentencing Act 1997* (Tas) be amended to include an ancillary sentencing option to order an offender convicted of a fire-related offence to reimburse the costs incurred by the State to respond to the fire, Sentencing Advisory Council [Tasmania], *Arson & Deliberately Lit Fires*, Final Report 1 (2012) Recommendation 7.

667 See Freiberg, above n 14, [8.05].

668 See Tasmania, *Parliamentary Debates*, House of Assembly, *Youth Justice Bill 1997*, Thursday 2 October 1997, pt 2 40-95 (Cleary). See also Freiberg, above n 14, [16.40].

669 See Appendix 6. See also *Youth Justice Act 1997* (Tas) s 47(2)(d).

If courts are to have a discretion to make an order for costs following a finding of guilt it will also be necessary to reconsider the 25 statutes that make provision for the payment of costs – either associated with a prosecution (such as testing of substances, investigation of the offence, or the care of animals) or for the recovery of costs incurred by emergency services.⁶⁷⁰ In 17 of the provisions, a finding of guilt without recording a conviction has the same effect as a conviction if the proceedings against the offender have been adjourned on conditions without recording a conviction or if the charge has been dismissed without recording a conviction.⁶⁷¹ However, if the court makes a probation order without recording a conviction, a court can only make a costs order on conviction.⁶⁷² Consequently, it will be necessary to make amendments to provide the court with power to make a costs order for any finding of guilt without a conviction recorded. This recommendation could be achieved by inserting a provision to this effect in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas).

What should be the consequences of a finding of guilt without a conviction for compensation, restitution and costs orders?

Recommendation 21

The court should have the power to make an order for compensation or restitution following a finding of guilt without recording a conviction.

Recommendation 22

The court should have a power to make an order for costs following a finding of guilt without recording a conviction.

4.2.7 *Forfeiture and confiscation*

The Sentencing Advisory Council's consideration of the legal consequences that should attach to a finding of guilt without a recorded conviction does not address the issue of confiscation schemes generally.⁶⁷³ Rather, the focus is on the need to provide greater certainty and consistency in the application of forfeiture provisions to a finding of guilt, and to ensure that the approach taken fits logically with the discretion to make a finding of guilt without recording a conviction. The aim of forfeiture and confiscation is to deprive an offender of the material benefits of their offending and/or to remove items that were used to commit the offence.⁶⁷⁴ This is not inconsistent with the purpose of imposing a non-conviction sentence, and it is the Council's recommendation that a finding of guilt should provide the foundation for further orders in relation to forfeiture of items connected to the offence.

There are various arrangements that apply for criminal forfeiture in Tasmania, giving rise to uncertainty and unpredictability. The *Crime (Confiscation of Profits) Act 1993* (Tas) is the principal legislation that provides the court with the power to make a confiscation or forfeiture order. This applies if an offender is found guilty of an indictable offence, whether or not a conviction is recorded.⁶⁷⁵ This applies to youth and adult offenders. In addition, there are 32 other statutes that provide for criminal forfeiture of particular items that are the subject matter of the charge or have been used in connection with the commission of the offence - nine apply following a finding of guilt, 12 apply on conviction, nine have provisions that operates on a finding of guilt and provisions that operate only on conviction, and the remaining two statutes operate on a different basis (either contravention or the balance of probabilities).⁶⁷⁶

670 See Appendix 6. See also Warner, above n 4, [5.5].

671 *Sentencing Act 1997* (Tas) s 63.

672 *Sentencing Act 1997* (Tas) s 10(2)(a).

673 See Freiberg, above n 14, [9.10] ff.

674 *Ibid* [9.10].

675 See [3.15].

676 See Appendix 7.

For adult offenders, forfeiture may be extended to a finding of guilt without a conviction recorded in two situations: (1) the forfeiture is mandatory or (2) the specific act provides that it applies to a finding of guilt. In contrast, youth offenders can only be made subject to forfeiture if the provisions of the Act specify it applies following a finding of guilt.⁶⁷⁷

It is the Sentencing Advisory Council's recommendation that mandatory forfeiture provisions in Tasmanian legislation should apply to a finding of guilt, as it is not inconsistent with the aims of a non-conviction sentence. There is no objection to the mandatory forfeiture of items that are the subject matter of the offence (such as illegally possessed fish, counterfeit coins or child exploitation material). Further, if there is a power for mandatory forfeiture of property associated with the commission of the offence, a person is usually able to make an application that forfeiture does not occur.⁶⁷⁸ This may be relevant to preserve a person's means of income, if the items subject to forfeiture are connected with employment (such as fishing boats, hunting equipment), and the court's view is that the circumstances of the case require a sentence that does not detrimentally affect an offender's economic wellbeing.

The Sentencing Advisory Council also recommends that the court have the discretion to make any forfeiture order following a finding of guilt without recording a conviction that the court could make on conviction.

In relation to youth offenders, the Sentencing Advisory Council notes the current limitations on forfeiture and recommends that forfeiture provisions should operate for youth offenders in the same way as for adult offenders. This is not inconsistent with objectives of rehabilitation and the preservation of employment prospects. It is also not inconsistent with the *Youth Justice Act 1997* (Tas) as forfeiture of articles used in connection with the commission of an offence already exists for youth offenders who have admitted committing an offence and are dealt with by way of a diversionary procedure.⁶⁷⁹

These recommendations could be achieved by inserting provisions to this effect in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas).

What should be the consequences of a finding of guilt without a conviction for forfeiture and confiscation orders?

Recommendation 23

A finding of guilt should provide the foundation for further orders in relation to forfeiture of items connected to the offence.

Recommendation 24

Mandatory forfeiture provisions in Tasmanian legislation should apply to a finding of guilt for adult and youth offenders.

Recommendation 25

A court should have the same discretion, in relation to adult and youth offenders, to order forfeiture in relation to any item that is the subject matter of the charge or is used in the commission of the offence on an offender who is found guilty without a conviction being recorded as if a conviction had been recorded.

⁶⁷⁷ See [3.15].

⁶⁷⁸ See *Living Marine Resources Management Act 1995* (Tas) s 225; *National Parks and Reserves Management Act 2002* (Tas) s 72; *Nature Conservation Act 2002* (Tas) s 59.

⁶⁷⁹ *Youth Justice Act 1997* (Tas) s 22A.

4.2.8 Appeal against sentence

In addition to clarifying the relationship between guilt and conviction, it is necessary to reconsider the boundaries of the concept of sentence. This is important to clarify the availability of rights of appeal⁶⁸⁰ and to recognise that the meaning of 'sentence' has necessarily expanded, as the range of sentencing options have increased and become more flexible.⁶⁸¹

The Sentencing Advisory Council's view is that the definition of sentence within the *Criminal Code* (Tas) is outdated and should be modernised to reflect the expansive nature of dispositive orders available to court. These orders include ancillary orders under the *Sentencing Act 1997* (Tas) (restitution, compensation, costs, licence disqualification and area restrictions) and the *Youth Justice Act 1997* (Tas) (restitution and compensation orders), as well as other legislation that provides for orders for forfeiture, loss of licence, sex offender registration, and dangerous criminal declarations. In addition, the current definition in the sentence does not cover all the sentencing orders that may be made under the *Sentencing Act 1997* (Tas), section 7. As Warner observes, an order under s 7(f) (adjournment on undertaking) does not seem to be a 'sentence' because it is in the nature of a 'conditional remand for sentence' which is a deferment of judgment (not a sentence).⁶⁸²

The Sentencing Advisory Council's recommendation is that a revised definition of sentence be inserted in the *Criminal Code* (Tas) to reflect the range of dispositive orders that a court can make on a finding of guilt. A model for the amendment can be found in the *Criminal Procedure Act 2009* (Vic) s 3, which can be adapted for the Tasmanian context as follows:

'sentence' includes –

- (a) the recording of a conviction
- (b) an order made under Parts 3,⁶⁸³ 4,⁶⁸⁴ 5,⁶⁸⁵ 6,⁶⁸⁶ 6A,⁶⁸⁷ 7,⁶⁸⁸ 8,⁶⁸⁹ 9⁶⁹⁰ or 10⁶⁹¹ of the *Sentencing Act 1997* (Tas)
- (c) an order made under the *Community Protection (Offender Reporting) Act 2005*
- (d) an order made under the *Crime (Confiscation of Profits) Act 1993* (Tas).

680 See [3.13].

681 Freiberg, above n 14, [1.270]. See also *Sentencing Act 1997* (Tas) s 94(1) where sentence is defined to include a 'forfeiture order, compensation levy, compensation order, restitution order, exclusion order, disqualification and loss of suspension of a licence or privilege'.

682 Warner, above n 4, [15.208].

683 Imprisonment (including dangerous criminal declarations).

684 Community service orders.

685 Probation orders.

686 Fines.

687 Rehabilitation program order.

688 Driving disqualification.

689 Adjournment, discharges and dismissals.

690 Orders in addition to sentence (restitution, compensation, area restriction).

691 Continuing care, supervision and restriction orders.

How should the concept of ‘sentence’ be clarified?

Recommendation 26

A revised definition of sentence be inserted in the *Criminal Code* (Tas) to reflect the range of dispositive orders that a court can make on a finding of guilt.

A model for the amendment can be found in the *Criminal Procedure Act 2009* (Vic) s 3, which can be adapted for the Tasmanian context as follows:

‘sentence’ includes –

- (a) the recording of a conviction
- (b) an order made under Parts 3; 4; 5; 6; 6A; 7; 8; 9 or 10 of the *Sentencing Act 1997* (Tas)
- (c) an order made under the *Community Protection (Offender Reporting) Act 2005*
- (d) an order made under the *Crime (Confiscation of Profits) Act 1993* (Tas).

4.2.9 Other court orders

In addition to the orders discussed above, there are numerous statutory provisions that allow a court to make a range of other orders on conviction or a finding of guilt. These can be categorised into discretionary orders that require a person to provide information or take some action in connection with the offence, or attend a prescribed course for drink-drivers. Consistent with the approach of the Sentencing Advisory Council to other orders that can be made at the sentencing hearing, the Council considers that the court should have the power to make those orders following a finding of guilt (in the appropriate case). These orders do not generally affect an offender’s social or economic wellbeing or employment prospects. This recommendation will require amendment to those acts or regulations set out in Appendix 8 that currently only operate on conviction.

In some circumstances, the court is required to impose a special penalty – (either mandatory or discretionary) on a finding of guilt.⁶⁹² It is the view of the Council that although mandatory special penalties may impose a hardship in the individual case, this is not unintended and that the intention of Parliament should be respected. It is also consistent with the recommendation in relation to mandatory penalties for driving offences.

What should be the consequences of a finding of guilt without a conviction in relation to other orders that the court can make at sentencing?

Recommendation 27

Discretionary orders that can be made by the sentencing court on conviction should also be available following a finding of guilt.

Recommendation 28

Mandatory special penalties should apply to an offender who is found guilty without a conviction recorded.

692 *Dangerous Goods (Road and Rail) Transport Act 2010* (Tas) s 85 (discretionary); *Living Marine Resources Management Act 1995* (Tas) ss 267, 268 (mandatory); *Vehicle and Traffic (Vehicle Operations) Regulations 2001* (Tas) reg 19 (mandatory).

4.2.10 Other provisions

Other provisions exist in Tasmanian legislation to stipulate 'conviction' or a finding of guilt as the trigger for specified consequences. While it is difficult to neatly categorise these consequences, it is possible to identify three groups: those that provide for (1) the recovery of financial loss or repayment of improper profits directly by the victim; (2) the award of demerit points; (3) indemnity for costs. It is the Council's view that there should be consistency, within these categories, as to whether they apply on conviction or guilt. Further, it is the Council's view that all three should follow from a finding of guilt.

Another area for reform are legislative provisions that use 'conviction' in the sense associated with a finding of guilt. As discussed at [1.4.2], conviction is a term that has a dual meaning – one associated with a finding of guilt and the other concerned with the recording of a conviction as part of the sentencing process. In Tasmania, since the enactment of the *Sentencing Act 1997* (Tas), a finding of guilt is not to be equated with a conviction unless it is provided for in the *Sentencing Act 1997* (Tas) or another Act.⁶⁹³ This creates an inconsistency with the provisions in the *Criminal Code* (Tas),⁶⁹⁴ the *Justices Act 1959* (Tas),⁶⁹⁵ the *Evidence Act 2001* (Tas)⁶⁹⁶ and the *Police Offences Act 1935* (Tas) that refer to conviction, as these sections used 'conviction' in the sense associated with a finding of guilt.

Many of the offences created in the *Police Offences Act 1935* (Tas) refer to a person who has contravened a section to be guilty of an offence and liable on summary conviction to a penalty.⁶⁹⁷ In contrast, offences created by more recent amendments to the Act do not refer to 'summary conviction' and specify that the consequences arise from a finding of guilt or a conviction.⁶⁹⁸

The Sentencing Advisory Council's recommendation is that the use of the term 'conviction' in these Acts be reviewed to ensure consistency with the modern understanding of conviction, as used in the *Sentencing Act 1997* (Tas), that is the recording (or not recording) of a conviction as part of the imposition of sentence.

What other legislative changes are necessary to ensure consistency with the modern understanding of conviction in Tasmania?

Recommendation 29

The use of the term 'conviction' in the *Criminal Code* (Tas), the *Justices Act 1959* (Tas), the *Evidence Act 2001* (Tas) and the *Police Offences Act 1935* (Tas) be reviewed to ensure consistency with the modern understanding of conviction, as used in the *Sentencing Act 1997* (Tas), that is the recording (or not recording) of a conviction as part of the imposition of sentence.

⁶⁹³ *Sentencing Act 1997* (Tas) s 10(1).

⁶⁹⁴ See Appendix 9, Table 2.

⁶⁹⁵ See Appendix 9, Table 4.

⁶⁹⁶ See Appendix 9, Table 5.

⁶⁹⁷ See for example, ss 4, 6, 7, 8, 10, 12.

⁶⁹⁸ See for example, ss 15C, 15CA, 15F, 16.

4.3 SHOULD SECTION 7 OF THE *SENTENCING ACT 1997 (TAS)* BE AMENDED TO ALLOW A FINE TO BE IMPOSED WITHOUT A CONVICTION BEING RECORDED?

A fine is the most frequently used sanction in Tasmania.⁶⁹⁹ It is used mostly in relation to summary offences and, in the Magistrates Court, fines account for 69 per cent of penalties imposed.⁷⁰⁰ Fines are also available as a sanction against an offender convicted of indictable offences, and in the Supreme Court (between 2001-2006) fines accounted for 3.6 per cent of penalties imposed.⁷⁰¹ A fine is less severe than a probation order in the sentencing hierarchy.⁷⁰² As a sanction, a fine has many perceived advantages including: (1) it has economic benefits as it produces revenue; (2) flexibility, as it can be adjusted to an offender's means and the seriousness of the offence; and (3) 'penological effectiveness' because, as an alternative to short-term imprisonment, it avoids the adverse consequences of imprisonment and there is some evidence that it is more effective than imprisonment to reduce recidivism.⁷⁰³

4.3.1 *Arguments in favour*

An amendment to section 7 of the *Sentencing Act 1997 (Tas)* to allow a fine to be imposed without a conviction being recorded would appear to meet with consensus within the judiciary and law reform bodies in Tasmania. It is a long-held view of Tasmanian magistrates that the sentencing discretion should be enlarged to allow for courts to impose a fine without recording a conviction and this was also the recommendation of the Wing Committee in 1999 and the Tasmania Law Reform Institute in 2008. It is supported by the Chief Justice of the Supreme Court of Tasmania.⁷⁰⁴ It also has been accepted as an appropriate exercise of judicial discretion within most other Australian jurisdictions. A court can impose a fine without recording a conviction in Victoria,⁷⁰⁵ South Australia,⁷⁰⁶ Queensland,⁷⁰⁷ and the Northern Territory,⁷⁰⁸ and in New South Wales it has been recommended as a sentencing option.⁷⁰⁹ In Western Australia, a different approach has been adopted to ameliorating the effect of a conviction, and the *Sentencing Act 1995* establishes the option of a fine 'with or without a spent conviction order' (s 39(2)(c)).

Providing the court with a discretion as to whether or not to record a conviction, when a fine is imposed allows a non-conviction order to have a greater role in punishing an offender. This is the basis of the desire by magistrates to have the option to impose a fine without recording a conviction:

Frequently, magistrates decline to impose a fine because of the adverse impact a conviction would have on the offender's economic or social wellbeing or employment prospects. Anecdotally, magistrates report that they would have imposed a fine except for the requirement to convict. In terms of sentencing principle, the consequences of recording a conviction sometimes appear disproportionate to the offending and so no fine is imposed.⁷¹⁰

699 Tasmania Law Reform Institute, above n 3, [3.9.1].

700 Ibid. In Victoria, from 2009-10 to 2012, a fine was imposed in 64% of cases sentenced in the Magistrates' Court, 22% of cases in the Children's Court, 11% of cases in the County Court and 3% of cases in the Supreme Court, Sentencing Advisory Council (Vic), above n 84, [2.3.3]. The Sentencing Advisory Council (Vic) sets out the most common offences in relation to which a fine is imposed, [2.4].

701 Tasmania Law Reform Institute, *ibid.*

702 Ibid.

703 These are summarized in Warner, above n 4, [4.102]. See also Pat O'Malley, 'Politicizing the Case for Fines' (2011) 10(3) *Criminology & Public Policy* 547; Sentencing Advisory Council (Vic), above n 84, [2.2.14]-[2.2.61]. Some difficulties in relation to fines are enforcement issues and the problem of the unequal impact of fines. See Tasmania Law Reform Institute, *ibid.* [3.9].

704 Letter from the Chief Justice to the Sentencing Advisory Council, 16 April 2014.

705 *Sentencing Act 1991 (Vic)* ss 7(1)(f), 49.

706 *Criminal Law (Sentencing) Act 1988 (SA)* s 16.

707 *Penalties and Sentences Act 1992 (Qld)* s 44.

708 *Sentencing Act (NT)*, ss 7, 16.

709 NSW Law Reform Commission, above n 491, Recommendation 14.2.

710 Chief Magistrate Hill, Letter to the Attorney-General, 2012.

Common features of cases where the court would impose a fine but decline to do so are where the risk of reoffending is low, and the offender's antecedents and character and the identifiable adverse impact (usually employment or employability) are such that not recording the conviction is justified. Yet, 'although it may appear undesirable to record a conviction, the community's interest might be well served if the offender received a measure of punishment'.⁷¹¹

The magistrates provided the following examples of such cases:

Example 1

A young adult pleaded guilty to an assault of moderate seriousness. He was about to graduate from university. He intended to travel and to work overseas requiring a work visa. The court accepted that a conviction would adversely impact upon the applications relevant to those ambitions. The magistrate thought that while a fine alone may have been an appropriate punishment in the circumstances of the case, the consequences of recording a conviction were disproportionate to the offending. The court made an order under s 7(f), releasing the defendant without conviction and adjourning the proceedings.

Example 2

A 60 year old man earned his income as a horse trainer. He was charged with possession of a modest quantity of cannabis, using cannabis (for pain management, it was accepted) and cultivation for his own use. He had no history of drug offending and only minor traffic matters. The court accepted that a conviction would result in the loss of the defendant's training licence and the income he earned from it. While a fine may have been an appropriate punishment in the circumstances of the case, the consequences of recording a conviction (loss of the training licence and the income he derived from that licence) were disproportionate to the offending. The court made an order under s 7(f), releasing the defendant without conviction and adjourning the proceedings.⁷¹²

In these cases, it was thought that a fine was appropriate but the recording of a conviction inappropriate because of the consequences for the employment prospects of the defendant.

Further, the Tasmania Law Reform Institute has asserted that it is 'anomalous that courts can make a probation order without recording conviction but have no such power in relation to fines'.⁷¹³ This is also the view of Tasmanian magistrates who note that:

It is puzzling that the discretion not to convict accompanies a probation order, but not a fine. The *Sentencing Act 1997* (Tas), s 7 is generally understood to set out a hierarchy with imprisonment at the top. The position of the fine within the hierarchy is interesting. The sentencing options in the subsection immediately above (probation) and immediately below (family violence rehabilitation program and the '7(f)' release and adjourn) do not require a conviction to be recorded, yet s 7(e) does. The usual length of a probation order is 12 months and such orders often involve onerous obligations of attendance, supervision and the liability to be returned to court in the event of breach.⁷¹⁴

If it is accepted that a non-conviction order is an appropriate basis for a probation order, then it is difficult to argue that a fine should be only be imposed if a conviction is recorded.

711 Ibid.

712 Ibid.

713 Tasmania Law Reform Institute, above n 3, [3.9.6].

714 Chief Magistrate Hill, above n 710.

4.3.2 Arguments against

In the recent consideration of the issue of whether to allow a court to impose other sentencing orders concurrently with a non-conviction order undertaken by the New South Wales Law Reform Commission, concerns were raised that it had the potential for net-widening 'as it may be tempting for courts to impose more onerous or punitive sentencing options when a... dismissal or a... [good behaviour] bond is more appropriate'.⁷¹⁵ Although, it was accepted that it may be appropriate for a court to have the power to impose a fine without a conviction, particularly in the case of a fine-only offence and/or offences capable of being dealt with by a penalty notice or criminal infringement notice.⁷¹⁶ Concerns about net-widening may have some merit as allowing courts to have a discretion to fine an offender without a conviction would mean that the court is likely to impose more fines, when currently the Tasmanian Magistrates Court has been willing to order the adjournment of proceedings without a conviction being recorded. On the other hand, it would appear from the magistrates' comments that the current situation may lead to 'net narrowing', that is, imposing an inappropriately lenient sentence because of the requirement to record a conviction if the magistrate wishes to impose a fine.

Another argument that can be advanced against the extension of judicial discretion to allow a fine to be imposed with or without a conviction is that this will be inconsistent with the provisions of the *Monetary Penalties Enforcement Act 2005* (Tas) that relate to infringement notices. Infringement systems (despite concerns raised about their expansion)⁷¹⁷ are now an entrenched part of the Australian legal landscape. The rationale for infringement notice schemes is to 'provide a system for the expeditious collection of monetary penalties arising with respect to minor offences, such as routine traffic offences'.⁷¹⁸ In Tasmania, there are 45 Acts (as well as other associated regulations) administered by various government departments and agencies that provide for the issue of infringement notice.⁷¹⁹ In addition to the use of infringement notices for minor regulatory offences, there has been an expansion of the infringement notice system to include summary offences that are usually regarded as criminal in nature, such as

715 Shopfront Youth Legal Centre, *Submission to Sentencing Paper: Question Paper 7: Non-Custodial Sentencing Options* (2012).

716 Ibid.

717 Gaye Lansdell, Anna Eriksson, Bernadette Saunders and Meredith Brown, 'Infringements Systems in Australia: A Precarious Blurring of Civil and Criminal Sanctions?' (2012) 37 *Alternative Law Journal* 41. See also Richard Fox, *Criminal Justice On-the-Spot: Infringement Penalties in Victoria* (AIC 1995); Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Australia*, above n 169, Chapter 12; New South Wales Ombudsman, *The Trial of the Criminal Infringement Notices by NSW Police* (2005).

718 *McQuade v Marion City Council* (1998) 100 A Crim R 203, 206 cited in Australian Law Reform Commission, *ibid* [12.5].

719 For example, Tasmania Police (*Road Safety (Alcohol & Drugs) Act 1970* (Tas); *Police Offences Act 1935* (Tas); *Traffic Act 1925* (Tas); *Vehicle and Traffic Act 1999* (Tas)); Department of Primary Industry, Parks, Water and the Environment (*Agricultural and Veterinary (Control of Use) Act 1995* (Tas); *Animal (Brands and Movements) Act 1994* (Tas); *Animal Health Act 1995* (Tas); *Animal Welfare Act 1993* (Tas); *Cat Management Act 2009* (Tas); *Dog Control Act 2000* (Tas); *Environmental Management and Pollution Control Act 1994* (Tas); *Inland Fisheries Act 1995* (Tas); *Irrigation Clauses Act 1973* (Tas); *Litter Act 2007* (Tas); *Living Marine Resources Management Act 1995* (Tas); *Marine Farming Planning Act 1995* (Tas); *National Parks and Reserves Management Act 2002* (Tas); *Nature Conservation Act 2002* (Tas); *Plant Quarantine Act 1997* (Tas); *Primary Produce Safety Act 2011* (Tas); *Water Management Act 1999* (Tas); *Water and Sewerage Industry Act 1999* (Tas); *Weed Management Act 1999* (Tas); *Wellington Park Act 1993* (Tas)); Workplace Standards (*Building Act 2000* (Tas); *Dangerous Goods (Road and Rail Transport) Act 2010* (Tas); *Explosives Act 2012* (Tas); *Occupational Licensing Act 2005* (Tas); *Work Health and Safety Act*; *Workers Rehabilitation and Compensation Act 1988* (Tas)); Consumer Affairs and Fair Trading (*Australian Consumer Law (Tasmania) Act 2010* (Tas); *Security and Investigations Agents Act 2002* (Tas); *Motor Vehicle Traders 2011* (Tas)); Department of Health and Human Services (*Food Act 2003* (Tas); *Health Service Establishments Act 2006* (Tas); *Public Health Act 1997* (Tas); *Radiation Protection Act 2005* (Tas); *Reproductive Health (Access to Terminations) Act 2013* (Tas)); Department of Finance and Treasury (*Gaming Control Act 1993* (Tas); *Liquor Licensing Act 1980* (Tas)); Department of Premier and Cabinet (*Local Government (Highways) Act 1982* (Tas); *Local Government Act 1993* (Tas)); Department of Infrastructure, Energy and Resources (*Marine Safety (Domestic Commercial Vessel National Law Application) Act 2013* (Tas); *Marine and Safety Authority Act 1997* (Tas); *Heavy Vehicle National Law (Tas) Act 2013* (Tas)); Electoral Department (*Electoral Act 2004* (Tas)); Department of Education (*Education and Care Services National Law (Application) Act* (Tas)).

offensive behaviour and shop theft.⁷²⁰ This trend has been followed in Tasmania with proposed amendments to the *Police Offences Act 1935* (Tas) allowing police to issue infringement notices for an increased range of summary offences including stealing.⁷²¹

An enforcement mechanism is provided in the *Monetary Penalties Enforcement Act 2005* (Tas) for the payment of fines or penalties prescribed in an infringement notice, as well as orders for payment of money imposed in a court of criminal jurisdiction.⁷²² Currently, there is no inconsistency between the enforcement of infringement notices and court ordered fines because both rest on a conviction – either a deemed conviction (infringement notices) or a conviction recorded by the court. A court can only impose a fine if it records a conviction (*Sentencing Act 1997* (Tas), s 7(e)) and under the *Monetary Penalties Enforcement Act 2005* (Tas) an offender is taken to be convicted of the offence to which the notice relates within 28 days of being served – either by paying in part or full, making an arrangement to enter a payment plan, or doing nothing.⁷²³ If an amendment is made to the *Sentencing Act 1997* (Tas) to allow a court to impose a fine without a conviction, the consistency between infringement notices and court ordered fines will disappear.

Aside from any objections that may be raised about the appropriateness of a deemed conviction in relation to infringement notices,⁷²⁴ one result of any inconsistency may be an increased number of people electing to have an infringement notice matter heard and determined by a court to argue that a conviction not be recorded, notwithstanding that a fine may be imposed. The extent to which this will be an issue, in practice, is unclear. The number of deemed convictions that are involved suggest that it may be an issue given that in the 12 months to 30 June 2009, the MPES imposed 111,604 convictions.⁷²⁵ However, an offender may be reluctant to make an election to have the matter dealt with by a court due to the associated stress and publicity involved in a court appearance. This would need to be balanced against the negative consequences for a person of having a recorded conviction and having that conviction form part of their criminal record.

4.3.3 Discussion and recommendations

The Sentencing Advisory Council's view is that an amendment should be made to the *Sentencing Act 1997* (Tas), section 7 to enable a fine to be imposed without recording a conviction. This would result in conformity with the position in many other Australian states. Further, the imposition of fine, without a conviction, will provide the court with greater flexibility to impose a fine (even a substantial fine) as punishment while allowing an accused to have the benefits of a non-conviction order in terms of future employment.⁷²⁶ This may also counter any public concern about the perceived leniency of non-conviction sentences.⁷²⁷ If an amendment is made to the *Sentencing Act 1997* (Tas), section 7 to allow a court to impose a fine without a conviction, a consequential amendment will need to

720 See *Crimes Act 1958* (Vic) s 74A (shop theft); *Summary Offences Act 1966* (Vic) s 17(1)(d) (offensive behaviour) (other offences include offensive behaviour, indecent language; permit consumption of liquor on unlicensed premises; failure by a drunk, quarrelsome or violent person to leave licensed premises when requested; permitting or allowing unauthorized consumption of liquor on a party bus; willful damage (up to value of \$500); *Criminal Procedure Act 1986* (NSW) ch 7 pt 3 (offences include larceny (less than \$300); offensive behaviour; offensive language; unlawful entry of a vehicle/boat; obstruct traffic; obtain a benefit by deception; goods in custody). In Queensland, police can issue an infringement notice for public nuisance offences include disorderly behaviour; offensive behaviour; threatening behaviour; violent behaviour; language offence; public urination; obstruct a police officer; disobey requirement by police officer to state correct name and address, Queensland Government, *Report a Crime or Disturbance* <<https://www.qld.gov.au/law/crime-and-police/register-or-report-to-police/report-a-crime-or-disturbance/report-a-nuisance-or-disturbance/>>.

721 The offences are: Prohibited language and behaviour (s 12(1)(a), (b), (c) or (d)); Public annoyance (s 13(1)(a), (b),(c), (d), (e) or (f), (2), (4), (6) or (7)); Trespass (s 14B); Dispersal of persons (s 15B); Graffiti and graffiti equipment (s 15CA(1) or (4)); Street entertainment (s 16(1) or (2)); Sports venues (s 19A(1)); Consumption of liquor in streets (s 25(2) or (3)); Requirement of owner or registered operator to provide details (s 37G(1)); Notice of demand (s 37GA(3)); Use of spotlights on vehicles on public streets (s 37JA(1)); Stealing (s 38(1)); Advertising reward for return of stolen property (s 41(1)); No motor-vehicle race to be held without a permit (s 48(1)); Public street permits (s 49AB(1) or (8)); or Power of Commissioner to control public entertainments (s 49B(1)). See Sentencing Advisory Council (Vic), above n 83, for a discussion of the use of infringement notices in Victoria in relation to summary offences, [3.7.20]-[3.7.27].

722 Department of Justice [Tasmania], *Report on the Operation of the Monetary Penalties Enforcement Service*, Report (2009) 4.

723 Section 20.

724 See [4.3.3].

725 Department of Justice [Tasmania], above n 722, 7. This is a significant number of convictions given that Tasmania's total population at that time was 503,300, Australian Bureau of Statistics, *Regional Population Growth, Australia 2008-09*, Cat 3218.0. It is noted that this is the number of convictions and not the number of people taken to be convicted. See also Sentencing Advisory Council (Vic), above n 83, for a discussion of the use of infringement notices in Victoria, [3.5]-[3.7].

726 *DPP v Candaza* [2003] VSCA 91 where a fine and community work were imposed and a conviction not recorded for armed robbery.

727 This is the view of the NSW Law Reform Commission, above n 491.

be made to the provisions setting out the permissible combined sentencing orders for probation orders in the *Sentencing Act 1997* (Tas), section 8(3) to reflect this change.

In response to the inconsistency with the *Monetary Penalties Enforcement Act 2005* (Tas), the Sentencing Advisory Council has identified two broad options: (1) make no change to the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas), or (2) amend the *Monetary Penalties Enforcement Act 2005* (Tas) to remove a deemed conviction as the trigger for the enforcement for infringement notices.

Option 1 is to make no change to the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas). The deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas) reflects a policy decision taken that the strength of the enforcement provisions contained in the Act (up to and including imprisonment) were such that they should only be applied following conviction. It was also thought desirable to have a definite point at which an offender's responsibility to pay the fine or penalty imposed by an infringement notice crystallised and triggered the enforcement provisions in the Act.⁷²⁸ This created certainty and had administrative advantages for the MPES database.

There are also advantages for Tasmania Police and other government agencies that issue infringement notices in retaining the status quo. They are able to obtain convictions without the uncertainty of outcome and the associated costs involved in preparing a matter for court and attending court. Offenders are taken to be convicted of the offence to which the infringement notice relates within 28 days of being served with the notice – either by paying in part or full, making an arrangement to enter a payment plan, or doing nothing.⁷²⁹ This means that if an offender wants to argue that a conviction not be recorded in relation to an infringement notice matter, the onus rests on the offender to elect to have the matter heard and determined by the court.⁷³⁰ If the deemed conviction provision is removed, Tasmania Police and other authorities that issue infringement notices will need to have the matter determined by a court if they wish to argue that a conviction should be imposed on an offender. This would be a significant change in approach, and there is a possibility that less infringement notices will be issued.

In its consideration of the issue of extending a power to the court to impose a fine without recording a conviction, the Tasmania Law Reform Institute seemed content to leave the *Monetary Penalties Enforcement Act 2005* (Tas) unaltered:

While a person who accepts an infringement notice does usually incur a conviction, the conviction is for an offence which is generally viewed as not 'truly criminal' and is unlikely to impact on personal integrity, character or job prospects. The Institute does not regard an automatic conviction for acceptance of an infringement notice as sufficient reason to deny the courts a discretion to decline to convict when imposing a fine.⁷³¹

However, given the expansion of the infringement system in Tasmania to include summary offences that are viewed as criminal (such as stealing), this observation now has less relevance. A conviction for stealing that appears on a person's criminal record is likely to be viewed as 'truly criminal' and is likely to impact on personal integrity, character or job prospects.

728 Correspondence with Emma Gunn, Department of Justice.

729 *Monetary Penalties Enforcement Act 2005* (Tas) s 20.

730 *Monetary Penalties Enforcement Act 2005* (Tas) ss 14(1)(b), 21.

731 Tasmania Law Reform Institute, above n 3, [3.9.6].

Option 2 is to revisit the *Monetary Penalties Enforcement Act 2005* (Tas) and remove the provision in section 20 in relation to a deemed conviction for infringement notices. There are important objections that can be directed at the use of conviction for infringement notices. The object of an infringement notice scheme is to relieve the burden on 'overstretched courts' by diverting minor criminal behaviour and allowing police and court time to be spent on more serious criminal matters.⁷³² This requires a person who receives an infringement notice to forfeit 'some of the procedural protections associated with the criminal justice system' in exchange for avoiding 'the costs and stress associated with going to court and the avoidance of the risk of a criminal conviction'.⁷³³ Unlike other jurisdictions, this benefit does not exist in Tasmania because a person is taken to be convicted with the attendant social and legal consequences.

In addition, the current Tasmanian approach does not reflect the serious nature of a conviction. In a detailed consideration of the infringement notice system, Fox opposed the acquisition of a conviction as an automatic consequence of receiving an infringement notice:

[I]t is submitted that the expiation of an offence by way of voluntary payment instead of a judicial determination of the matter should never result in the recording of a criminal conviction. To subject the alleged offender to the formal legal condemnation, civil disabilities and permanent alternation of legal status which a conviction entails is a grave departure from the concept of diversion or decriminalisation which underpins the offer of expiation. A conviction is a badge of criminality and a social stigma.⁷³⁴

It is a serious matter to allow a person to be convicted legislatively, rather than by the exercise of judicial power.⁷³⁵ This is reinforced by the conclusion of the Australian Law Reform Institute, in its review of administrative penalties in Australia, that the payment of an infringement notice should not even be taken as an admission of liability.⁷³⁶ The consensus of reviews undertaken into penalty and enforcement notice schemes is that payment (or non-payment) of an infringement notice should not result in a conviction.⁷³⁷ This is the position in all other jurisdictions (except in relation to some traffic infringement notices).⁷³⁸ It was also the intention of Tasmania Police that the current reforms to infringement notices issued under the *Police Offences Act 1935* (Tas) did not result in a conviction: 'It is proposed that a record of an infringement notice, paid or not paid, in Tasmania will not be entered or constitute part of the offender's criminal record'.⁷³⁹

There are also concerns about fairness given that not all convictions for infringement notices appear on a person's criminal record. Tasmania Police only records infringement notices issued by Tasmania Police on an individual's criminal record. Infringement notices proceeded with by other agencies are not commonly recorded on an individual's criminal record.⁷⁴⁰

732 New South Wales Law Reform Commission, *Penalty Notices Report 132* (2012) [4.55]. See also Sentencing Advisory Council (Vic), above n 84, [3.2.1], [3.2.4], [3.2.15].

733 New South Wales Law Reform Commission, *ibid* [4.56].

734 Richard Fox, *Criminal Justice on-the-Spot; Infringement Penalties in Victoria*, above n 717, [10.6].

735 Fox notes that the question of whether infringements disposed of non-judicially should be regarded as a conviction does not arise at the federal level given that it would be unconstitutional to convict a person legislatively; *ibid*.

736 Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Australia*, above n 169, Recommendation 12-5.

737 New South Wales Law Reform Commission, *Penalty Notices* above n 732, *Sentencing*, above n 491, [3.51]; Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Australia*, *ibid* Recommendation 12-5; New South Wales Ombudsman, *The Trial of the Criminal Infringement Notices by NSW Police*, (2005); Attorney-General's Department (Cth), Criminal Justice Division, *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (2004) [6.9.1].

738 *Fines Act 1996* (NSW); *Fines, Penalties and Infringement Notices Act 1994* (WA); *Infringement Act 2006* (Vic); *Fines and Penalties (Recovery) Act 2001* (NT); *State Penalties Enforcement Act 1999* (Qld); *Expiation of Offences Act 1996* (SA). Enforcement of infringement notices is dealt with in several Acts in the ACT. It is noted that there is a deemed conviction provision in the *Road Safety Act 1986* (Vic) s 89A in relation to infringement notices issued for drink driving, drug driving or excessive speed infringement. See Sentencing Advisory Council (Vic), above n 84, [3.9.3]. There is also a deemed conviction provision contained in the *Road Traffic Act 1974* (WA) s 102(7) for traffic infringement notices for the limited purpose of cancellation of provisional or extraordinary licences. In the Northern Territory, a person who receives an infringement notice for a hooning offence is taken to be found guilty for the purposes of the provisions relating to hooning, *Traffic Act* (NT) s 29AC.

739 Tasmania Police, *Tasmanian Police Offences Act 1935* (Tas), Public Consultation (2011) 79.

740 Information provided by Tasmania Police to the Sentencing Advisory Council, 11 February 2014.

Tasmania Police have observed that 'one of the key aims of the *Monetary Penalties Enforcement Act 2005* was to reduce the volume of court hearings related to traffic offences' and that 'the legislation has been successful in reducing the number of traffic related matters being heard by the court'.⁷⁴¹ Tasmania Police also expressed the view that 'it is assumed that the proposed changes will increasingly shepherd offenders into electing court hearings'.⁷⁴² The Council is unsure of the basis of this concern given that its recommendations will mean that payment of an infringement notice will no longer result in a conviction. Accordingly, the Council's view is that removal of the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas) will be likely to decrease (rather than increase) the number of offenders electing to have the matter determined in court.

Although recognising the pragmatic reasons for including a deemed conviction provision within the *Monetary Penalties Enforcement Act 2005* (Tas) and the change in approach that may be required by prosecuting agencies, the Council considers that it is inappropriate for an infringement notice to result in a conviction. The purpose of enacting the *Monetary Penalties Enforcement Act 2005* (Tas) was to provide for an efficient means of collecting and enforcing monetary penalties.⁷⁴³ The use of conviction was used to facilitate this. However, it is the Council's view that conviction should be reserved for judicial determination given its significance as an act of social and legal stigma, and it should not be used for the infringement notice scheme, which is an administrative process. The use of conviction in the *Monetary Penalties Enforcement Act 1997* (Tas) is inconsistent with the significance attached to conviction as a sanction in its own right by the *Sentencing Act 1997* (Tas).⁷⁴⁴ Further, it is inconsistent with the views expressed in this paper that concepts of guilt and conviction should remain separate, and the recommendations made that have been concerned to limit the disclosure and use of a finding of guilt to a restricted category of employment contexts. This approach is undermined if an offender's conviction for an infringement notice offence appears on a person's criminal record. It is also contrary to the approach to conviction taken in the *Sentencing Act 1997* (Tas) and the *Youth Justice Act 1997* (Tas). As Fox writes, (in relation to similar legislation in Victoria), '[i]t takes the view that a conviction is a significant disability and should not be lightly recorded by a court, particularly in relation to less serious offences'.⁷⁴⁵ Accordingly, the Council recommends that the *Monetary Penalties Enforcement Act 2005* (Tas), section 20 be amended to remove the reference to deemed conviction, and the enforcement procedure be grounded on the failure to pay within a specified period of time.

Should section 7 of the *Sentencing Act 1997* (Tas) be amended to allow a fine to be imposed without a conviction being recorded?

Recommendation 30

Section 7 of the *Sentencing Act 1997* (Tas) should be amended to allow for a fine to be imposed without a conviction being recorded.

741 Letter from Tasmania Police to the Sentencing Advisory Council, 19 May 2014.

742 Letter from Tasmania Police to the Sentencing Advisory Council, 19 May 2014.

743 Tasmania, *Parliamentary Debates*, House of Assembly, Wednesday 23 November 2005, pt 2 27-97 (Jackson).

744 See Fox, above n 717, [10.6].

745 *Ibid* [4.6.10].

If section 7 of the *Sentencing Act 1997* (Tas) is amended to allow a fine to be imposed without a conviction being recorded, should the *Monetary Penalties Enforcement Act 2005* (Tas) be amended?

Recommendation 31

The *Monetary Penalties Enforcement Act 2005* (Tas) should be amended to remove the reference in section 20 to deemed conviction, and the enforcement procedure be grounded on the failure to pay within a specified period of time.

4.3.4 Consequences of removing the reference to deemed convictions in the Monetary Penalties Enforcement Act 2005 (Tas), section 20.

If Recommendation 31 is accepted and the *Monetary Penalties Enforcement Act 2005* (Tas) is amended to remove the reference in section 20 to deemed conviction, there are some further issues that need to be resolved. A primary concern is the issue of repeat offenders and the circumstances in which a person's infringement notice history should be disclosed to a court. Another issue is whether infringement notices should be disclosed in a criminal record check for employment and licensing purposes. There are also some other important consequences that should follow from the issue of an infringement notice, such as licence disqualification and the issue of demerit points for driving offences, and demerit points and forfeiture provisions under other Acts.

4.3.4.1 Repeat offenders

As indicated, it is the view of the Council that a conviction (with its associated negative consequences) should not be imposed on the issue of an infringement notice. However, a concern that may be raised in response is that repeat offenders may avoid conviction, if they only receive infringement notices without conviction. This will be a matter for Tasmania Police and other authorities that issue infringement notices to address through the revision of administrative guidelines or through the development of regulations that set out the criteria for the use of the discretion to issue an infringement notice, including the eligibility of repeat offenders for an infringement notice. An illustration is the proposed regulations that are to be developed to accompany the new infringement offence of stealing under the *Police Offences Act 1935* (Tas): [i]t is proposed that the regulations specify the penalty unit for first and second offences. Offenders who have been detected for a third or subsequent offence should not be eligible for an infringement notice'.⁷⁴⁶ Tasmania Police and other relevant authorities would need to keep a record of the infringement notices that are issued to make sure that they are only issued in appropriate circumstances.

A related issue is the receipt by court of an offender's history of infringement notice offences in sentencing proceedings for a subsequent offence. There is divided opinion as to whether or not this is appropriate. In a 2012 review of penalty notices by the New South Wales Law Reform Commission, the arguments against penalty notice history being relevant to sentence were identified as being:⁷⁴⁷

- that it is a breach of the 'bargain' embodied in penalty notices
- that it is unfair 'to expect a defendant to respond to evidence about their penalty notice history when they have in good faith paid their penalty notices in expectation that the matter had been disposed of once and for all'⁷⁴⁸
- that payment of a penalty notice is not an admission of liability and so is irrelevant to sentencing.

⁷⁴⁶ Tasmania Police, *Tasmanian Police Offences Act 1935 (Tas)*, above n 739, 81.

⁷⁴⁷ New South Wales Law Reform Commission, *Penalty Notices*, above n 732, [8.102]-[8.107].

⁷⁴⁸ *Ibid* [8.102] citing the submission of the Homeless Persons' Legal Service, Public Interest Advocacy Centre Ltd, 22.

This is the position in Victoria, where the *Infringement Act 2006* (Vic) section 33(3) provides that 'the payment of an infringement penalty must not be referred to in any report provided to a court for the purpose of determining sentence for any offence'. Similarly, in South Australia, the expiation of an offence cannot be referred to in any report provided to a court for the purposes of determining sentence.⁷⁴⁹

In contrast, the New South Wales Law Reform Commission identified the following arguments in favour of making penalty notice history relevant to sentence:⁷⁵⁰

- the information allows the court to respond appropriately to the individual, including addressing issues of specific deterrence and character
- there is an issue of potential uneven treatment as a person who court-elects will have the matter recorded and taken into account in sentencing for any subsequent offence whereas if the penalty notice is paid, it will not appear on the person's criminal record
- a court is able to make appropriate judgments about the weight that should attach to penalty notice history and can take into account that the issuing agency has not been put to proof, and the reasons (unrelated to guilt) that people may pay penalty notices
- that issuing agencies may be reluctant to issue infringement notices if a previous record of infringements cannot be put before a court.

In considering the competing arguments, the New South Wales Law Reform Commission expressed the view that, while in most cases a penalty notice history will not be relevant, in some cases 'it may be important that the court has the penalty notice history, such as where it shows clear pattern of behaviour that may go to character or may be relevant to the prospects of rehabilitation'.⁷⁵¹ An example provided of when an offender's penalty notice history would be relevant would be if a food supplier had received numerous penalty notices in relation to hygiene offences before a prosecution for a food hygiene offence is brought.⁷⁵² A driver's history of traffic infringements would similarly be relevant if the driver was being sentenced for dangerous driving.

The Sentencing Advisory Council agrees that in the appropriate case (where there is a history of relevant offending for the same offence) infringement notice history should be made available to the court in sentencing an offender for a subsequent offence. Accordingly, the Council's recommendation is that guidelines should be developed to allow infringement notice history to be made available to the court in sentencing an offender for a subsequent offence in appropriate cases.

There is also a need to address the application of increased penalty provisions for a subsequent offence (see Recommendation 18) to offenders who receive an infringement notice and do not elect to have the matter determined by a court. In view of the purpose of an infringement notice scheme to provide an expedient means of dealing with minor offending, the Council's view is that payment of an infringement notice should not be equated with a conviction or a finding of guilt without conviction for the purposes of subsequent offending. Accordingly, it is the recommendation of the Council that increased penalty provisions applicable for subsequent offending should not apply to offenders who are issued with an infringement notice and do not elect to have the matter determined by a court.

749 *Expiation of Offences Act 1996* (SA) s 15(4)(c).

750 New South Wales Law Reform Commission, *Penalty Notices*, above n 732, [8.95]-[8.101].

751 *Ibid* [8.109]; Recommendation 8.5.

752 *Ibid* [8.109].

What are the consequences for repeat offenders of removing the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas)?

Recommendation 32

Guidelines should be developed to allow infringement notice history to be made available to the court in sentencing an offender for a subsequent offence in appropriate cases.

Recommendation 33

Increased penalty provisions applicable for subsequent offending should not apply to offenders who are issued with an infringement notice and do not elect to have the matter determined by a court.

4.3.4.2 Release of details about an infringement notice history in a criminal history check for employment or licensing purposes

Minor regulatory and traffic offences are routinely dealt with by way of infringement notice, with only more serious matters being dealt with by a court. If the *Monetary Penalties Enforcement Act 2005* (Tas) is amended, as recommended in Recommendation 31, people who receive infringement notices will not be convicted and the record of the offence will not generally appear in a police records check (given that release is based on a conviction).⁷⁵³ The Council agrees that infringement notices should not appear in a criminal history search for employment or registration purposes. This reflects the theoretical basis of an infringement notice scheme⁷⁵⁴ and is consistent with the approach taken in this paper to the disclosure of findings of guilt without conviction. Further, this approach is consistent with the approach in other jurisdictions including Victoria, New South Wales and Western Australia where infringement notices do not appear on a national criminal record check. Similarly, in South Australia, if a person pays their infringement notice then it will not appear on a national criminal record check. In Queensland, a national criminal record check will only contain 'disclosable' convictions which is a conviction that is recorded by the court and has not been rehabilitated or spent under the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld).⁷⁵⁵

However, it is noted that information about infringement notices (including traffic infringement notices) is part of the information that is to be taken into account in making a risk assessment about an applicant under the *Registration to Work with Vulnerable People Act 2013* (Tas).⁷⁵⁶

Should infringement notices be disclosed in a criminal record check for employment and licensing purposes?

Recommendation 34

Infringement notices should not appear on a criminal record check.

753 See [2.5].

754 See [4.3.3].

755 See Appendix 10.

756 This commences on 1 July 2014.

4.3.4.3 Licence disqualification and demerit points for infringement notices issued for traffic offences

Currently, there are several provisions where a person's disqualification or suspension from driving is based on a deemed conviction under the *Monetary Penalties Enforcement Act 2005* (Tas). A person who is taken to be convicted under the *Monetary Penalties Enforcement Act 2005* (Tas) is automatically disqualified from driving under the *Road Safety (Alcohol and Drugs) Act 1970* (Tas), section 18A (low-level drink driving) and under the *Vehicle and Traffic Act 1999* (Tas), section 19A (excessive speeding) and 19D (unaccompanied driver offence). A person may also be suspended from driving because of an accumulation of demerit points as a result of deemed convictions for infringement notices received for traffic offences that attract demerit points (*Vehicle and Traffic Act 1999* (Tas), ss 22, 24). It will be necessary to ensure that this authority to disqualify or suspend is retained following the removal of the deemed conviction provisions in the *Monetary Penalties Enforcement Act 2005* (Tas).

Some jurisdictions rely on conviction in limited circumstances for some traffic infringement notices to allow for licence disqualification. In Victoria, under the *Road Traffic Act 1986* (Vic), section 89A, infringement notices issued for drink driving, drug driving and excessive speed are taken to be a conviction for the offence 28 days after the date of the infringement notice, unless the person has objected to the infringement notice or made a statement.⁷⁵⁷ In Western Australia, the payment of whole or a part of a penalty pursuant to a traffic infringement notice constitutes a conviction for the purposes of the cancellation of a provisional or extraordinary licence.⁷⁵⁸ However, it is not necessary to rely on conviction to enable licence disqualification and the allocation of demerit points following the issue of infringement notices for driving offences. An example is found in the *Infringements Act 2006* (Vic), section 34 that provides that the expiation of an infringement notice in relation to a traffic infringement offence does not prevent the incurring of demerit points in relation to the infringement offence. In New South Wales, the *Road Transport Act 2013* (NSW), section 31 sets out the circumstances in which demerit points are recorded, including when the person pays a penalty specified in a penalty notice or the person does not pay and does not elect to have the matter dealt with by a court and the time for election has lapsed.⁷⁵⁹ Further, the use of conviction can be criticised on the grounds that there has been no judicial determination that should necessarily precede the loss of status occasioned by a conviction.⁷⁶⁰ Further it does not have regard to the role of a conviction as 'a major act of condemnation and public stigmatisation and [that it] is, without more, regarded as a significant sanction in its own right'.⁷⁶¹

The Sentencing Advisory Council's view is that the use of conviction is inappropriate to ensure the allocation of demerit points and the imposition of a licence disqualification following the payment of the penalty specified in an infringement notice or the failure to elect to have the matter dealt with by a court. This aim can be realised without appropriating the concept of conviction. Accordingly, the Council's recommendation is that legislative changes be made to ensure that demerit points for infringement notices for driving offences and driver's licence disqualification still occur despite the removal of the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas).

What are the consequences of removing the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas) for the allocation of demerit points and driver's licence disqualification?

Recommendation 35

That legislative changes be made to ensure that demerit points for infringement notices for driving offences and driver's licence disqualification still occur despite the removal of the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas).

757 See Sentencing Advisory Council (Vic), above n 84, [3.9].

758 *Road Traffic Act 1974* (WA) s 102(7).

759 See also *Motor Vehicles Act 1959* (SA) s 98B that applies demerit points on conviction or where a person expiates an offence.

760 Fox, above n 717, [4.6.9].

761 *Ibid.* See also [2.2].

4.3.4.4 Demerit points and forfeiture provisions under other Acts

There are other provisions that provide for the allocation of demerit points (*Water Management Act 1999* (Tas), s 257; *Occupational Licensing Act 2005* (Tas), s 62) or the forfeiture of property (*Inland Fisheries Act 1995* (Tas), s 110; *Living Marine Resources Management Act 1995* (Tas) s 226) if a person is taken to be convicted under the *Monetary Penalties Enforcement Act 2005* (Tas). It will also be necessary to ensure that this power is retained following the removal of the deemed conviction provisions in the *Monetary Penalties Enforcement Act 2005* (Tas). Again the Council's view is that the conviction should not be used to allow for the allocation of demerit points or the forfeiture of property following the issue of an infringement notice.

What are the consequences of removing the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas) for the allocation of demerit points and the application of forfeiture provisions?

Recommendation 36

That legislative changes be made to ensure that demerit points and forfeiture arising from the issue of infringement notices still occur despite the removal of the deemed conviction provision in the *Monetary Penalties Enforcement Act 2005* (Tas).

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Appendix 1

COMMENTS ON PASSING SENTENCE, TASMANIAN SUPREME COURT 2008 – I NOVEMBER 2013: NON-CONVICTION SENTENCES.

Name	Date & judge	Offence	Factors mentioned	Sentence
Tasmania v C	20 May 2013 Porter J	Aggravated armed robbery	<ul style="list-style-type: none"> • Plea • Influenced by older brother • 14 years old • No prior convictions but informal and formal cautions for dishonesty offences • Addressed drug and alcohol problems 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Three months detention suspended on condition that: <ol style="list-style-type: none"> i. of good behaviour for 12 months and not commit any offences of dishonesty ii. report to youth justice worker iii. not leave the state without written permission from the Secretary, Health and Human Services iv. obey instructions of youth justice worker v. attend educational, personal, health and other programs as directed vi. abstain from drinking alcohol and using illegal drugs vii. undergo medical, psychiatric, psychological and drug counselling and treatment. 3. 20 hours of community service.
Tasmania v Flannery	22 April 2013 Tennent J	Making a false threat of danger	<ul style="list-style-type: none"> • Plea • 23 years old • Full time employment • No relevant history • Previous cannabis and alcohol problems • A 'cry for help' 	<ol style="list-style-type: none"> 1. No conviction. 2. Adjourned for 12 months on condition that not in that period commit any offence involving violence, or any threat of violence.
Tasmania v Blake	18 February 2013 Wood J	Unlawfully setting fire to property	<ul style="list-style-type: none"> • Plea • 19 years old • No prior convictions • Previously undiagnosed pyromania (setting fire when anxious and stressed) • Stress due to grandmother's illness • Carer for grandmother • Wants to pursue a career and get a pilot's licence 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Probation order of 18 months. Report as required and comply with all reasonable and lawful directions, including directions in relation to attending your treating psychologist or medical practitioner for assessment, treatment, therapy or counselling. You must also comply with any conditions with regard to vocational and educational courses.
Tasmania v Strange	4 February 2013 Crawford CJ	Making a false declaration	<ul style="list-style-type: none"> • Plea • 18 years old • Not pre-meditated but spur of moment 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Proceedings adjourned for two years on undertaking that of good behaviour and not commit an offence that could be punishable by imprisonment.

Name	Date & judge	Offence	Factors mentioned	Sentence
Tasmania v TJP	21 May 2012	Aggravated armed robbery	<ul style="list-style-type: none"> • Plea • 15 years old • Serious alcohol problem since 13 • Previous offending but not as serious • If deal with alcohol problem then indications are that will stop offending • Intelligent young man with good positive attitude to life and work • Responsible by caring for mother with acquired brain injury and her infant child • In past have lacked guidance but now has Youth Justice officer and support of girlfriend's father • Opportunity to show that can reform and turn life around 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Detention for six months wholly suspended on conditions that: <ol style="list-style-type: none"> i. be of good behaviour and commit no offences punishable by imprisonment for a period of two years ii. perform 105 hours of community work iii. subject to supervised probation for 2 years. Must comply with all usual conditions of probation and must comply with all reasonable directions of Youth Justice worker and must comply with direction regarding alcohol and drug abuse, including assessment, treatment and counselling and vocational and educational courses iv. comply with direction you attend psychological therapy and treatment as directed.
Tasmania v LMK	30 March 2012 Tennent J	Armed robbery	<ul style="list-style-type: none"> • Plea • 17 years old • Family support • Out of character • No history of violent offending • In education and prospects of rehabilitation 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Order pursuant to s47(1)(d) of <i>Youth Justice Act</i> that released and proceedings adjourned for 12 months on the following conditions: <ol style="list-style-type: none"> i. not commit any offence involving dishonesty or violence during that period ii. attend education course or session on acquired brain injury as may be recommended by Youth Justice officer iii. attend such information on drug and alcohol as you may be directed by a Youth Justice officer.
Tasmania v Hiras	2 February 2012 Tennent J	Forgery and uttering	<ul style="list-style-type: none"> • Plea • No third party loss • 39 years old • Suffered significant financial consequences • Offending resulted from desperation to keep business going 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for three years and not commit any offences of dishonesty.
Tasmania v Rompa	4 April 2011 Wood J	Attempting to unlawfully set fire to property	<ul style="list-style-type: none"> • Plea • 19 years old • Out of character • No relevant priors • Good employment prospects 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for two years.

Name	Date & judge	Offence	Factors mentioned	Sentence
Tasmania v Higgins	6 June 2011 Blow J	Being found prepared for the commission of a crime	<ul style="list-style-type: none"> • Plea • No relevant priors • Age (young) • Good job 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for 12 months.
Tasmania v Alexander	20 May 2011 Tennent J	Being found prepared for the commission of a crime	<ul style="list-style-type: none"> • Plea • Age (young) • Family support • Asperger's disorder • Concern for problems in the future if record a conviction 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Probation order for 18 months.
Tasmania v Palmer	18 March 2011 Blow J	Being found prepared for the commission of a crime	<ul style="list-style-type: none"> • Plea • Age (young) • No prior convictions • Interfere with employment prospects 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Probation order for 18 months with special conditions that you are to undergo assessment and treatment for alcohol dependency, if so directed by a probation officer, and submit to testing for alcohol use.
Tasmania v AJK	9 February 2011 Crawford CJ	Being found prepared for the commission of a crime	<ul style="list-style-type: none"> • Plea • 15 years old • No record • Opportunity to show that can behave 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned for 12 months on condition that of good behaviour and not commit any offences that for an adult would be punishable by imprisonment.
Tasmania v Stevens	7 June 2010 Porter J	Unlawfully setting fire to property	<ul style="list-style-type: none"> • Plea • Immediately remorseful and took steps to contract authorities • Embarrassed and ashamed and court process salutary one • 25 years old • Musical career • Tertiary education and regular employment • Some traffic offences 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for 18 months.
Tasmania v King	1 December 2010 Blow J	Unlawfully setting fire to property	<ul style="list-style-type: none"> • Plea • Undiagnosed major depression • Breakdown of relationship • After lit fire put it decided to put it out • 51 years old • No significant prior convictions • Director of business that employs 30 people • Successful and prosperous business built up from hard work • Out of character 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for 12 months.

Name	Date & judge	Offence	Factors mentioned	Sentence
Tasmania v ABH Tasmania v Scott	23 July 2010 Crawford CJ	Stealing	<ul style="list-style-type: none"> • H – 17 and Scott – 18 • Pleas • Stealing occurred in circumstances where others had severely injured the victim who subsequently died. H and Scott not involved in this but held in custody for two months and 13 days during investigations • Previous good character • Employment 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for two years and not commit any offences that for an adult would be punishable by imprisonment.
Tasmania v Rudd	30 September 2009 Tennent J	Perjury	<ul style="list-style-type: none"> • Plea • Exceptional circumstances because of ongoing threats of violence if gave evidence • 39 years old • No relevant priors 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Proceedings adjourned for 12 months on undertaking that of good behaviour.
Tasmania v JS	30 September 2009 Blow J	Armed robbery	<ul style="list-style-type: none"> • Found guilty by jury • 15 years old • No priors • Drug and anger problems • Remanded in custody for 4 months during which time obtained coxwain's certificate • Concerns for future employment 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. 10 months detention suspended on condition until 18th birthday. 3. Probation order for 18 months on conditions: <ol style="list-style-type: none"> i. attend educational, personal, health and other programs as directed ii. undergo medical, psychiatric, psychological and drug counselling and treatment.
Tasmania v N	16 March 2009 Blow J	Aggravated sexual assault	<ul style="list-style-type: none"> • Young age • Plea • C – 6 year old female • Not impose community service to protect privacy • Difficult home life • Concerns for future employment 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Detention order of 6 months suspended on condition that of good behaviour for two years. 3. Probation order with assessment in relation to understanding of sex and your sexual behaviour. 4. Sex Offenders Register for two years.
Tasmania v JD	27 February 2009 Crawford CJ	3 counts of stealing	<ul style="list-style-type: none"> • Plea • 16 years old • Work waiting for him • Remorse • Disassociated himself from others involved in offending • Family support • Relevant record 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Proceedings adjourned for a period of 6 months on condition that of good behaviour and attend such educational, personal, health and other programs as directed by Youth Justice worker. 3. 70 hours of community service.

Name	Date & judge	Offence	Factors mentioned	Sentence
Tasmania v LJP	2 February 2009 Crawford CJ	Aggravated robbery	<ul style="list-style-type: none"> • Plea • Allowed phone to be used to order pizza knowing that there would be a robbery • 15 years old • Prior offence for assault and stealing • Limited education • Fractured upbringing • Current employment with Conservation Volunteers • Remorse • Actual detention cause more harm than an order than encourages her rehabilitation 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Detention for 6 months, suspended for a period of 12 months on condition that of good behaviour for that time.
Tasmania v KG	30 October 2008 Crawford CJ	Attempted stealing and two counts of perverting justice	<ul style="list-style-type: none"> • Plea • 15 years old • No record of offending • Difficult upbringing • Encouraging Youth Justice report • Bright and cheerful woman with positive future prospects • Remorse • Attending school • Pregnant with child 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned for a period of 12 months on condition that: <ol style="list-style-type: none"> i. be of good behaviour and commit no offence which if committed by an adult could be sentenced by imprisonment ii. abide by reasonable and lawful instructions of Youth Justice worker iii. attend educational, personal, health and other programs as directed.
Tasmania v JJS	26 June 2008 Tennent J	Aggravated armed robbery	<ul style="list-style-type: none"> • Plea • In detention since arrest • Prior offences of dishonesty • Youth Justice report indicates that improved behaviour • 17 years old 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Pursuant to <i>Youth Justice Act</i>, s47(1)(f) probation order for 12 months with the following conditions: <ol style="list-style-type: none"> i. report to Youth Justice worker ii. not commit any further offence iii. not leave the State iv. comply with instructions of Youth Justice worker v. reside with mother in Hobart vi. curfew from 10 pm – 6 am. 3. 49 hours of community service.

Name	Date & judge	Offence	Factors mentioned	Sentence
Tasmania v BDW	5 May 2008 Crawford CJ	3 counts of sexual intercourse with a young person	<ul style="list-style-type: none"> • Admitted sexual intercourse but denied rape • 15 years old • C - 13 year old male • 'All the signs of sexual experimentation' • Prior convictions • Conditions of bail that almost continually in parent's company for 21 months • Cooperation with Youth Justice • Demonstrated willingness to be an active pro-social member of community • Current employment 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Probation order under <i>Youth Justice Act</i>, s47(1)(f) for 12 months on condition that: <ol style="list-style-type: none"> i. commit no further offences which, if committed by an adult, could be punishable by imprisonment ii. obey instructions of Youth Justice worker.
Tasmania v WCM	28 April 2008 Tennent J	Sexual intercourse with a young person	<ul style="list-style-type: none"> • Plea • 18 years old • C - 13 years old female • Occurred on one night and not ongoing • Current employment • Future prospects • 'Stupidity rather than criminality' 	<ol style="list-style-type: none"> 1. No conviction recorded. 2. Adjourned on condition that of good behaviour for 18 months and not commit any offences of sexual nature and not approach C.

Appendix 2

PRIOR CRIMINALITY

Table 1: Offences that depend on prior offending

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Police Offences Act 1935</i> (Tas)	Section 7: Loiterers	7(1) A person, being a suspected person or reputed thief shall not: (a) be in or upon any building whatsoever or in any enclosed yard, garden, or area of any unlawful purpose, or (b) frequent or loiter in or near any public place, or any river, or navigable steam with intent to commit a crime.	Conviction not necessary.
	Section 7A: Loitering near children	7A(2) A person who has been found guilty of a sexual offence must not, without reasonable excuse, loiter near children.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas)	Section 6: Driving with excessive concentration of breath or blood alcohol	6(2) applies to: (3)(c) a person who has been convicted of manslaughter arising out of driving a motor vehicle or causing death by dangerous driving and also convicted of section 4 of this Act or this section; 4(a) a person who has been convicted within any 10 year period of 3 or more offences under this Act arising from at least 3 separate incidents (subject to additional qualifications).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Table 2: Increased penalties

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Cat Management Act 2009</i> (Tas)	Section 16: Care agreements	16(6) A person must not enter into a care agreement except as specified in this section. Increased penalty for subsequent offences. This is an infringement offence (<i>Cat Management Act 2009</i> s39; <i>Cat Management Regulations</i> reg 28) and the <i>Monetary Penalties Enforcement Act 2005</i> (Tas) applies.	If dealt with under <i>Monetary Penalties Enforcement Act 2005</i> (Tas) – deemed conviction. Increased penalty on conviction. However, a person has an election to have the matter dealt with in court. Arguable that it also requires a conviction for it to be a subsequent offence.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Child Care Act 2001 (Tas)</i>	Section 29: Safe and suitable child care	29(1) & (2) Increased penalty for second or subsequent offences.	S 29 does not refer to conviction. However, other provisions allow the court to make additional orders on conviction (ss 38(6) & 40(4)). Arguable that s 29 also requires conviction. If it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.
<i>Dog Control Act 2000 (Tas)</i>	Section 19A: Subsequent attack by dangerous dog	19A(1) & (2) powers in relation to dangerous dog where a dangerous dog that has attacked an animal or a person subsequently attacks any animal or person.	No need for prior court proceedings.
<i>Ex-Servicemen's Badges Act 1967 (Tas)</i>	Section 3: Unauthorised use or possession of badges	3(1) 'Any person who contravenes section is guilty of offence'. (2) Increased penalty for subsequent offence.	Provision does not refer to conviction. It could be argued that if it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.
<i>Family Violence Act 2004 (Tas)</i>	Section 35: Contravention of FVO or PFVO	35(1) Increased penalties for subsequent offences. Refers to conviction.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
<i>Fire Services Act 1979 (Tas)</i>	Section 128: Offences and penalties	128(6) Where a person is convicted of an offence against this Act, having at any time previously been convicted of the same offence, he is liable to a penalty that is double the penalty prescribed by this Act.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<p>Fisheries (Penalties) Regulations 2011 (Tas)</p>	<p>Regulation 6: Grade 2 Penalties Regulation 7: Grade 3 Penalties Regulation 3: Interpretation</p>	<p>Regulations 6 & 7 contain increased penalties for a second offence and for a third or subsequent offence.</p> <p>Regulation 3 defines second offence to mean a second offence against any fisheries regulation or fisheries rule, whether or not the first offence was in respect of the same regulation or rule.</p> <p>Third or subsequent offence means the third or subsequent offence against any fisheries regulation or rule, whether or not the first and second offences were in respect of the same regulation of rule.</p> <p>The regulations are made under the <i>Living Marine Resources Management Act 1995</i>. Section 3 of the Act provides that conviction includes:</p> <p>(b) a finding by a court that a person committed an offence for which the person was charged even though a conviction was not recorded;</p> <p>or</p> <p>(c) a finding of guilty by a court even though a conviction is not recorded.</p>	<p>Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) ss 3(b) & (c) applicable by virtue of <i>Acts Interpretation Act 1931</i> (Tas) s 5(2).</p>
<p>Gaming Control Act 1993 (Tas)</p>	<p>Section 5A: Gaming and related activities prohibited in certain circumstances</p> <p>Section 76B: Offence to conduct gaming business without endorsing Tasmanian gaming licence</p> <p>Section 76ZDL: Restrictions on brokering wagering</p> <p>Section 76ZNF: Restrictions on wagering with excluded person</p> <p>Section 76ZU: Keeping register of players</p> <p>Section 76ZV: Restrictions on who may wager</p> <p>Section 76ZM: Licensed provider not to act as credit provider</p>	<p>All provisions contain an increased penalty for subsequent offences.</p>	<p>The increased penalty provisions do not refer to conviction. It could be argued that if it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.</p> <p>Some provisions use the term 'convicted'. For example, section 76ZQB refers to freezing funds and ss (10) specifies if the fundholder commits an offence against this section, the responsible licensee is also guilty of the offence. Ss(11) provides that ss (10) has effect whether or not the fundholder is charged with or convicted of an offence.</p>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Inland Fisheries Act 1995</i> (Tas)	Section 37: Angling licence Section 38: Whitebait licence	All provisions contain an increased penalty for subsequent offences.	The increased penalty provisions do not refer to conviction. It is arguable should only operate on conviction because Act has many consequences that flow from conviction (suspension/ cancellation of licence forfeiture of goods/ imprisonment for subsequent offence). If it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.
	Section 148A: Penalty of imprisonment	148A(2) A penalty of imprisonment only applies if the person was previously convicted of an offence under this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Irrigation Clauses Act 1973</i> (Tas)	Section 69: Offences Section 71: Service and acceptance of irrigation infringement notices	Provisions contain an increased penalty for subsequent offences. Refers to conviction.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Local Government (Highways) Act 1982</i> (Tas)	Section 97: Enforcement of controlled parking Section 98: Obstruction of use of parking spaces	Provisions contain an increased penalty for subsequent offences.	These are infringement notice offences, s 100. If dealt with under <i>Monetary Penalties Enforcement Act 2005</i> (Tas) – deemed conviction. Increased penalty on conviction. However, a person has an election to have the matter dealt with in court. Arguable also require a conviction for it to be a subsequent offence.
<i>Marine Safety (Misuse of Alcohol) Act 2006</i> (Tas)	Section 14: Person who has consumed alcohol not to be allowed to operate commercial vessel Section 17: Person who has consumed more than certain amount of alcohol not to be allowed to operate non-commercial vessel	Provision contains an increased penalty for subsequent offences.	Finding of guilt: <i>Marine Safety (Misuse of Alcohol) Act 2006</i> (Tas) s 3.
<i>Meat Hygiene Act 1985</i> (Tas)	Section 63: Indictable offences	Provision contains an increased penalty for subsequent offences. Refers to conviction.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Police Offences Act 1935</i> (Tas)	<p>Section 4: Drunkenness when in charge of vehicle or in possession of dangerous weapon</p> <p>Section 10: Disorderly houses</p> <p>Section 12: Prohibited language and behaviour</p> <p>Section 13: Public annoyance</p> <p>Section 39: Possession of stolen property</p> <p>Section 42: Taking or using animal, vehicle or vessel without owner's consent</p>	<p>All provisions contain an increased penalty for subsequent offences.</p> <p>Refers to conviction.</p>	<p>Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).</p>
<i>Public Health Act 1997</i> (Tas)	<p>Section 64: Sale to children*</p> <p>Section 68: Cigarette packaging</p> <p>Section 68A: Restrictions regarding toys and confections</p> <p>Section 69: Marketing device, plan or scheme*</p> <p>Section 69A: Notice to be displayed*</p> <p>Section 70: Display of tobacco advertisements*</p> <p>Section 73: Packaging of tobacco products*</p> <p>Section 74: False information relating to legislation</p> <p>Section 74A: Licence to sell tobacco product*</p> <p>Section 74AA: Incorrect information relating to health effects of tobacco products</p> <p>Section 74L: Offences relating to tobacco seller's licence*</p>	<p>All provisions contain an increased penalty for subsequent offences.</p> <p>* These provisions are also designated as infringement notice offences (<i>Public Health Act 1997</i>, 169, 183; <i>Public Health (Infringement Notices) Regulations 2012</i> Schedule 1). There is no additional penalty specified in the regulations for subsequent offences.</p>	<p>Provision does not refer to conviction.</p> <p>It is arguable that it should only operate on conviction because Act has many consequences that flow from conviction (cancellation of licence/ forfeiture of goods/costs). If it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.</p>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Racing Regulation Act 2004</i> (Tas)	<p>Section 54: Warning-off notices</p> <p>Section 54A: Publication of Tasmanian race field information restricted</p> <p>Section 56: Bookmakers must be registered</p> <p>Section 57: Bookmakers' agent must be registered</p> <p>Section 67: Bookmakers and their agents may only field on racecourses</p> <p>Section 69: Bookmakers and their agents must not engage in improper procurement</p> <p>Section 70: Bookmakers' agent may only field if their principals field on the same day</p> <p>Section 72: Control of telephone betting</p> <p>Section 77: Bookmakers and agents must issue tickets and record bets</p> <p>Section 78: Bookmakers must keep betting records</p> <p>Section 79: Bookmakers must keep books of account</p> <p>Section 81: Bookmakers must give certain returns to Director</p> <p>Section 82: Unclaimed winnings and their disposal</p> <p>Section 87: Offences by bettors</p> <p>Section 92: Betting in public places</p> <p>Section 94: False or misleading statements</p> <p>Section 95: Bribery of stewards and other racing officials</p>	<p>All provisions contain an increased penalty for subsequent offences.</p>	<p>Finding of guilty: <i>Racing Regulation Act 2004</i> (Tas) s 3.</p>
<i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas)	<p>Section 17: Penalties for drink-driving offences</p> <p>Section 19A: Driving while disqualified under this Act</p>	<p>All provisions contain an increased penalty for conviction for subsequent offences.</p> <p>17(1)(b) For the purposes of this section a person is guilty of a subsequent offence if that person has previously been convicted of an offence.</p> <p>Refers to conviction.</p>	<p>Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).</p>
<i>Sex Industry Offences Act</i> (Tas)	<p>Section 14: Hindering or obstructing police officers</p>	<p>Provisions contain an increased penalty for subsequent offence.</p>	<p>Provision does not refer to conviction.</p> <p>It could be argued that if it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.</p>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Taxi and Hire Vehicle Industries Act 2008</i> (Tas)	Section 91E: General small passenger vehicle offences	Provision contains an increased penalty for subsequent offence.	Provision does not refer to summary conviction. S 101 refers to the power to make regulation that provides for offences on summary conviction. It is arguable that for an offence under the Act a conviction is also required for the increased penalty provisions.
<i>Teachers Registration Act 2000</i> (Tas)	Section 27: Employing unregistered teachers	Provision contains an increased penalty for subsequent offence.	Provision does not refer to conviction. It could be argued that if it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.
<i>Traffic Act 1925</i> (Tas)	Section 32: Reckless driving Section 52: Penalties Section 80: Directions to move unsafe or unauthorised electronic billboards	Provisions contain an increased penalty for subsequent offences. Refers to conviction.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<p><i>Vehicle and Traffic (Vehicle Operations) Regulations 2001 (Tas)</i></p>	<p>Regulation 6: Maximum tyre pressures</p> <p>Regulation 7: Maximum tyre loads</p> <p>Regulation 8: Minimisation of dimensions</p> <p>Regulation 10: Width</p> <p>Regulation 11: Length of single motor vehicles</p> <p>Regulation 12: Length of certain trailers</p> <p>Regulation 13: Length of combinations</p> <p>Regulation 14: Rear overhang</p> <p>Regulation 15: Trailer drawbar length</p> <p>Regulation 16: Height</p> <p>Regulation 17: Ground clearance</p> <p>Regulation 20: Overmass vehicles or combinations</p> <p>Regulation 21: Mass limits for combinations</p> <p>Regulation 22: Maximum wheel loads and axle loads</p> <p>Regulation 26: Standards for security of loads</p> <p>Regulation 27: Loads on vehicles</p> <p>Regulation 28: More than one large indivisible item</p> <p>Regulation 29: Freight container loads</p> <p>Regulation 30: Dangerous projections</p> <p>Regulation 31: Warning requirements on projections</p> <p>Regulation 32: Coupling of vehicles in combinations</p> <p>Regulation 33: Motor vehicles not to tow trailers except in certain cases</p> <p>Regulation 34: Motor vehicles towing more than one vehicle</p> <p>Regulation 36: Driving time</p> <p>Regulation 37: Work time</p> <p>Regulation 38: Rest time</p> <p>Regulation 39: Additional offences</p> <p>Regulation 40: Carriage of national driver work diary</p> <p>Regulation 40A: Inspection of national driver work diary</p>	<p>Provisions contain an increased penalty for subsequent offences.</p>	<p>The increased penalty provisions do not refer to conviction.</p> <p>However, the <i>Traffic Act 1925 (Tas)</i> creates offences on conviction and the <i>Traffic Act 1925 (Tas)</i> and the <i>Vehicle and Traffic Act 1999 (Tas)</i> are to be read as one Act. It could be argued that the increased penalty provisions under the <i>Vehicle and Traffic Act 1999 (Tas)</i> and associated regulation also require a conviction.</p>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<p><i>Vehicle and Traffic (Vehicle Operations) Regulations 2001</i> (Tas) continued</p>	<p>Regulation 40B: Production of national driver work diary</p> <p>Regulation 40C: Delivery of national driver work diary into custody</p> <p>Regulation 41: Application for national driver work diary</p> <p>Regulation 42A: Driving hours record</p> <p>Regulation 42B: Carriage of driving hours record</p> <p>Regulation 42C: Inspection of driving hours record</p> <p>Regulation 42D: Delivery of driving hours record into custody</p> <p>Regulation 42E: False or misleading statements</p> <p>Regulation 42F: Defacing or destroying driving hours record or national driver work diary</p> <p>Regulation 42H: Failure by exempted driver to ensure nominees maintain driving hours record or national driver work diary</p> <p>Regulation 57: Breach of condition</p> <p>Regulation 58: Breach of dimension or mass</p> <p>Regulation 59: Warning signs and warning lights</p> <p>Regulation 60: Pilot vehicles</p> <p>Regulation 61: Damage to infrastructure</p> <p>Regulation 62: Keeping documents</p> <p>Regulation 63: Speed limiting devices</p> <p>Regulation 64: Load limit road signs</p>		

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Vehicle and Traffic Act 1999 (Tas)</i>	Section 8: Requirement to hold driver licence Section 9: Driving while subject to licence suspension Section 12: Compliance with conditions Section 13: Driving while disqualified Section 15: Public passenger vehicles Section 16: Compliance with conditions Section 18: Restricted driver licences Section 27: Requirement for registration Section 28: Vehicles registered under corresponding law Section 29: Vehicles registered in a foreign country Section 30: Compliance with conditions of registration Section 31: Use of vehicle while its registration is under supervision Section 32: Use of vehicle contrary to prohibitions Section 36: Changes to registered vehicle affecting motor tax Section 45: Regulations generally Section 46: Power to stop vehicles Section 48: Miscellaneous document production requirements Section 49: Inspection of vehicles Section 49A: Power to unload Section 52: Powers of entry Section 53: Hindering or obstructing police officers or authorised officers Section 55: Verification of record Section 56C: Certain activities prohibited on public streets Section 64: Offences of dishonesty	Provisions contain an increased penalty for subsequent offences.	The increased penalty provisions do not refer to conviction. However, the <i>Traffic Act 1925 (Tas)</i> creates offences on conviction and the <i>Traffic Act 1925 (Tas)</i> and the <i>Vehicle and Traffic Act 1999 (Tas)</i> are to be read as one Act. It could be argued that the increased penalty provisions under the <i>Vehicle and Traffic Act 1999 (Tas)</i> and associated regulation also require a conviction.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Vehicle and Traffic (Driver Licencing and Vehicle Registration) Regulations (Tas)</i>	Regulation 26P: Offences Regulation 77: Notifying Registrar of written-off vehicle Regulation 79: Duties and offences relating to written-off vehicle label	Provisions contain an increased penalty for subsequent offences.	The increased penalty provisions do not refer to conviction. However, the <i>Traffic Act 1925 (Tas)</i> creates offences on conviction and the <i>Traffic Act 1925 (Tas)</i> and the <i>Vehicle and Traffic Act 1999 (Tas)</i> are to be read as one Act. It could be argued that the increased penalty provisions under the <i>Vehicle and Traffic Act 1999 (Tas)</i> and associated regulation also require a conviction.
<i>Water Management Regulations 2009 (Tas)</i>	Regulation 21: Penalties on service of infringement notices	Provision contains an increased penalty for subsequent offences.	If dealt with under <i>Monetary Penalties Enforcement Act 2005 (Tas)</i> – deemed conviction. Increased penalty on conviction. However, a person has an election to have the matter dealt with in court. Arguable also requires a conviction for it to be a subsequent offence.
<i>Youth Participation in Education and Training (Guaranteeing Futures) Act 2005 (Tas)</i>	Section 14: Obligation to ensure participation	Provision contains an increased penalty for subsequent offence. S 39: proceedings are summary.	Provision does not refer to conviction. It could be argued that if it was intended that increased penalty provisions applied to findings of guilt without recording a conviction, it should have been made clear.

Table 3: Habitual or persistent offenders

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Dangerous Goods (Road and Rail Transport) Act 2010 (Tas)</i>	Section 88: Supervisory intervention orders	88(1) The court that finds a person guilty of an offence may make an order if the court considers the person to be a systematic or persistent offender against this Act.	Finding of guilt.
<i>Sentencing Act 1997 (Tas)</i>	Section 19: Court may declare violent offender to be dangerous criminal	19(1) A judge may declare the offender to be a dangerous criminal if (a) the offender has been convicted for a crime involving violence or an element of violence; and (b) the offender has at least one previous conviction for a crime involving violence or an element of violence.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).

Appendix 3

DISQUALIFICATION

Table 1: Vacation of office from government boards, tribunals, councils and bodies following conviction in Tasmanian legislation

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Aboriginal Lands Act 1995</i> (Tas)	Schedule 1: Provisions with respect to membership of the Aboriginal Land Council of Tasmania	5(2)(c) The Council may remove a member if convicted of an offence punishable by imprisonment for 3 years or longer or a crime.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Aboriginal Relics Act 1975</i> (Tas)	Section 5: Removal of appointed members of the Council	5(1)(f) The Governor may remove if member has been convicted of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to be a member of the Council.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i> (Tas)	Schedule 3: Provisions with respect of membership of Advisory Committee	8(2)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 6 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Alcohol and Drug Dependency Act 1968</i> (Tas)	Schedule 1: Provisions with respect of membership of Tribunal	4(2)(b) The Governor may remove a member from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Animal Welfare Act 1993</i> (Tas)	Schedule 3: Provisions with respect of membership of Advisory Committee	5(2)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Anti-Discrimination Act 1998</i> (Tas)	Schedule 1: Vacation of, and removal from, office of Commissioner	2(1)(b) & (c) The Minister may remove a member from office if: (b) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (c) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Asbestos-Related Disease (Occupational Exposure) Compensation Act 2011</i> (Tas)	Schedule 2: Asbestos Compensation Commissioner	6(1)(d) & (e) The Minister may remove a member from office if: (d) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (e) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Building Act 2000</i> (Tas)	Schedule 1: Membership and meetings of Advisory Committee	6(1)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Building and Construction Industry Training Fund Act 1990</i> (Tas)	Section 13: Appointment and powers of administrator	13(6)(c) An administrator of the Board shall be deemed to have vacated office if convicted of a crime or an offence which is punishable by imprisonment for a period of not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 4: Membership of Board	6A(2)(c) The Minister may remove a member from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Climate Change (State Action) Act 2008</i> (Tas)	Schedule 1: Membership of Council	5(2)(c) The Minister may remove a member from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or a fine of 300 penalty units or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Commissions of Inquiry Act 1995</i> (Tas)	Schedule 1: Provisions with respect of membership of Commission	4(1)(b) The Governor may terminate appointment if convicted of a crime or an offence punishable by imprisonment of 2 years or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Companies Auditors and Liquidators Disciplinary Board Act 1982</i> (Tas)	Schedule 1: Provisions relating to members and deputy members of the Board	4(1)(d) & (e) The office is vacated if: (d) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (e) is found guilty of an offence involving fraud or dishonesty.	4(1)(d) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). 4(1)(e) Finding of guilt.
<i>Consumer Affairs Act 1988</i> (Tas)	Schedule 1: Provisions with respect to membership and meetings of Committee	4(2)(c) 7 (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer or a fine of 300 penalty units or more, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Corrections Act 1997</i> (Tas)	Schedule 2: Membership and meetings of Board	6(2)(c) The Governor may remove if member has been convicted of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to be a member.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Council of Law Reporting Act 1990</i> (Tas)	Schedule 1: Provisions with respect of membership of Council	7(1)(e) The office is vacated if convicted of a crime or an offence punishable by imprisonment of not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Crown Lands (Shack Sites) Act 1997</i> (Tas)	Schedule 1: Vacation of, and removal from, office of Commissioner	1 (a) The office is vacated if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Dairy Industry Act 1994</i> (Tas)	Schedule 1: Membership of Authority	4(2)(c) The Minister may remove from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Education and Care Services National (Application) Act 2011</i> (Tas) s 4 adopts <i>Education and Care Services National Law Act 2010</i> (References to sections in columns 2 – 4 are to the <i>Education and Care Services National Law Act 2010</i>)	Section 235: Vacancy in the office by a member	235(2)(a) The Chairperson of the Ministerial Council may remove a member from office if the member has been found guilty of an offence that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member.	Finding of guilt.
	Section 254: Termination of appointment	254(1)(d) The Board may terminate the appointment of the chief executive officer if has been found guilty of an offence that, in the opinion of the Board, makes the CEO unfit to continue to be appointed.	Finding of guilt.
<i>Economic Regulator Act 2009</i> (Tas)	Schedule 2: Membership of Regulator	5(2)(c) & (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Education Act 1994</i> (Tas)	Schedule 1: Provisions with respect to membership and meetings of Registration Board	5(2)(c) & (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Education and Training (Tasmanian Academy) Act 2008</i> (Tas)	Schedule 1: Membership and meetings of Academy Association	6(1)(a)(ii) The Minister may remove from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or a fine of 300 penalty units or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Electoral Act 2004</i> (Tas)	Section 21: Suspension or removal of Commissioner	21(2)(e) The Governor may suspend the Commissioner from office if he has been convicted of a crime or offence punishable by imprisonment for a term exceeding 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 1: Membership of Commission	8(2)(e) The Minister may remove from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or a fine of 300 penalty units or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Environmental Management and Pollution Control Act 1994</i> (Tas)	Schedule 3: Provisions with respect to membership of Board	8(1)(b) The Governor may terminate appointment if convicted of a crime or an offence punishable by imprisonment of 2 years or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Fair Trading (Code of Practice for Retail Tenancies) Regulations 1998</i> (Tas)	Part 5: Monitoring Committee	41(1)(c) The office is vacated if convicted of a crime or an offence punishable by imprisonment of not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Fire Service Act 1979</i> (Tas)	Schedule 1: Provisions with respect to membership and meetings of the Commission	2(2)(e) The Governor may remove a member from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or has been convicted of a crime or offence for which he has been imprisoned.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 5: Provisions with respect to membership and meetings of the Council	2(2)(e) The Governor may remove a member from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or has been convicted of a crime or offence for which he has been imprisoned.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Forest Practices Act 1985</i> (Tas)	Schedule 2: Provisions with respect to membership of Forest Practices Tribunal	4(1)(d) & (e) The office becomes vacant if: (d) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer or has been convicted of a crime or offence for which he has been imprisoned, or (e) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 3: Provisions with respect to Directors of Board	2A(d) & (e) The Minister may terminate if: (d) convicted of an offence punishable by imprisonment of 2 years or longer, or (e) is convicted of an offence against this Act or the <i>Forestry Act 1920</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 5: Provisions with respect of membership of Council	4(d) & (e) The Minister may terminate if: (d) convicted of an offence punishable by imprisonment of 2 years or longer, or (e) is convicted of an offence against this Act or the <i>Forestry Act 1920</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Fruit and Nut Industry (Research, Development and Extension Trust Fund) Act 2012</i> (Tas)	Schedule 1: Membership of Management Board	6(1)(d) The office is vacated if convicted of an offence punishable by imprisonment of not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Gaming Control Act 1993</i> (Tas)	Schedule 2: Provisions with respect to membership of Commission	6(b) The Governor may remove a member of the Commission from office if member is convicted of an offence involving fraud or dishonesty which is punishable on conviction by imprisonment for a term of 3 months or more or of an offence which is punishable by imprisonment for a term of 12 months or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Government Enterprises Act 1995</i> (Tas)	Section 32: Effect of conviction for offence	A person is not entitled to be director or chief executive officer or otherwise concerned with the management of a Government Business Enterprise if within the preceding 5 years: (a) the person was convicted of an offence against this part, or (b) the person, having been sentenced to a term of imprisonment in respect of an offence against this Part, was released from prison.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 5: Directors	8(1)(c) & (d) The Portfolio Minister and Treasurer must recommend to the Governor that director be removed from office if: (c) is convicted of an offence under this Act, or (d) is convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Guardianship and Administration Act 1995</i> (Tas)	Schedule 1: Members of Board	5(4)(b) If a member is convicted of an indictable offence the office becomes vacant.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Health Practitioners Tribunal Act 2010</i> (Tas)	Schedule 1: Chairperson and Deputy Chairperson	3(3)(b) The Minister may only revoke appointment if the person is convicted of a crime or an offence punishable by imprisonment for a term of more than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 2: Professional and community members	3(4)(c) The Chairperson may revoke the appointment of the person if the person is convicted of a crime or an offence punishable by imprisonment for a term of more than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 3: Health Complaints Commissioner 6: Suspension 7: Removal from office	6(1)(c) The Governor may suspend the Commissioner if he has been convicted of an offence punishable by imprisonment of 12 months or longer. 7(1) The Governor, on addresses from both Houses of Parliament, may remove the Commissioner.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Health Service Establishments Act 2006</i> (Tas)	Schedule 1: Members and Procedure of Health Service Establishments Advisory Committee	5(1)(e) A member is taken to have vacated office if convicted of an offence which is punishable by imprisonment for 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Historic Cultural Heritage Act 1995</i> (Tas)	Schedule 1: Provisions with respect to membership of Heritage Council	4(2)(c) & (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Industrial Relations Act 1984</i> (Tas)	Section 5: Constitution of the Commission	5(4)(c) The Commissioner must be a fit and proper person.	Finding of guilt relevant.
	Section 11: Removal of Commissioners	11(1) The Governor shall not remove a Commissioner from office unless (d) is convicted of a crime of offence which is punishable by imprisonment for 6 months or upwards or convicted of a crime of offence for which he has been sentenced to imprisonment.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Inland Fisheries Act 1995</i> (Tas)	Schedule 3: Membership and meetings of Council	5(2)(c) The Minister may remove from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Integrity Commission Act 2009</i> (Tas)	Schedule 2: Membership of board of Integrity Commission	8(1) A member may be removed from office by the Governor by resolution of each House of Parliament. (2)(e) The Governor may suspend a member if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or a fine of 300 penalty units or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Legal Aid Commission Act 1990</i> (Tas)	Schedule 1: Membership of Commission	4(1)(d) The office becomes vacant if convicted of a crime or an offence punishable by imprisonment of 12 months or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Legal Profession Act 2007</i> (Tas)	Schedule 2: Provisions with respect to membership of Board	6(2)(c) & (e) The office becomes vacated if: (c) is convicted of a crime or an offence punishable by imprisonment of 3 months or longer, or (e) is convicted of an offence against this Act.	Finding of guilt: <i>Legal Profession Act 2007</i> (Tas) s 11.
	Schedule 4: Provisions with respect to members of Board of Legal Education	7(3)(c) & (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Finding of guilt: <i>Legal Profession Act 2007</i> (Tas) s 11.
	Schedule 6: Provisions with respect to membership of Tribunal	6(2)(b) and (d) The judges may only remove a member from office if: (b) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Finding of guilt: <i>Legal Profession Act 2007</i> (Tas) s 11.
	Schedule 7: Provisions with respect to membership of trust	7(2)(c) & (e) The Governor may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (e) is convicted of an offence against this Act.	Finding of guilt: <i>Legal Profession Act 2007</i> (Tas) s 11.
<i>Libraries Act 1984</i> (Tas)	Schedule 1: Provisions with respect of membership and meetings of Tasmanian Library Advisory Board	6(1)(e) & (f) The office becomes vacated if: (e) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (f) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 3: Provisions with respect of membership and meetings of State Library and Archives Trust	5(1)(e) & (f) The office becomes vacated if: (e) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (f) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 4: Provisions with respect to membership and meetings of Allport Library and Museum of Fine Arts Management Committee	5(1)(e) & (f) The office becomes vacated if: (e) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (f) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Local Government Act 1993</i> (Tas)	Schedule 1: Membership of Local Government Board	5(3)(c) & (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Macquarie Point Development Corporation Act 2012</i> (Tas)	Schedule 1: Directors	8(1)(b) & (c) The Minister must recommend to the Governor (and the Governor may remove) from office if: (b) is convicted of an offence under this Act, or (c) the director has been convicted of an indictable offence	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Marine Farming Planning Act 1995</i> (Tas)	Schedule 2: Membership of Panel	7(2)(c) The Minister may remove from office if convicted a crime or an offence punishable by imprisonment for 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 4: Membership of Board	6(2)(c) The Minister may remove from office if convicted a crime or an offence punishable by imprisonment for 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Marine and Safety Authority 1997</i> (Tas)	Schedule 1: Directors	7(c) & (d) The Minister may remove from office if: (c) is convicted of an offence under this Act, or (d) the director has been convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Mental Health Act 1996</i> (Tas)	Section 74Q: Terms and conditions of appointment	74Q(3) An appointment as official visitor terminates if convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 1: Members and staff of the Mental Health Tribunal	5(4) If a member is convicted of an indictable offence the office becomes vacant.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 1A: Membership of Forensic Tribunal	7(3)(a) The appointment is terminated if convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>National Health Funding Administration Act 2012</i> (Tas)	Section 6: Suspension of Administrator	6(2)(c) May request a suspension if Administrator has been accused or convicted of an offence that carries a penalty of imprisonment.	Accused of offence.
<i>National Parks and Reserves Management Act 2002</i> (Tas)	Section 16: Removal of members of Council	16(1)(f) The Governor may remove if have been convicted of an offence of a nature that in the opinion of the Governor, renders it improper for the member to continue to hold office.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Natural Resource Management Act 2002</i> (Tas)	Schedule 2: Membership and meetings of Council	6 The Minister may remove a member if convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>National Trust Act 2006</i> (Tas)	Section 45: Vacation of office of Administrator	45(1)(c) Vacates office if convicted of a crime or offence punishable by imprisonment for a term of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Part 1: Directors Section 3: When office of Director becomes vacant	3(j) Office becomes vacant if convicted of a crime or an offence punishable by imprisonment for 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Obstetric and Paediatric Mortality and Morbidity Act 1994</i> (Tas)	Schedule 1: Members of Council	7(1) The member vacates office if convicted of an offence punishable by imprisonment for 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Ombudsman Act 1978</i> (Tas)	Section 6: Removal or suspension of Ombudsman	6 Where the Governor is satisfied that the Ombudsman has been convicted of a crime or an offence punishable by imprisonment for 12 months or longer or convicted of a crime or offence for which he has been sentenced to imprisonment, he may suspend Ombudsman.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Pharmacy Control Act 2001</i> (Tas)	Schedule 1: Provisions with respect to membership of Authority	4(2)(c) & (e) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (e) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Poisons Act 1971</i> (Tas)	Schedule 1: Membership of Poppy Advisory and Control Board	6(2)(b) The Minister may remove from office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer or a fine of 300 penalty units or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Police Service Act 2003</i> (Tas)	Schedule 2: Membership of Police Review Board	5(2)(b) & (c) The Minister may remove a member from office if: (b) is convicted of a crime or an offence that in the opinion of the Minister justifies the removal, or (c) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Private Forests Act 1994</i> (Tas)	Schedule 2: Directors	7(c) & (d) The Minister may remove a member from office if: (c) is convicted of an offence against this Act, or (d) is convicted of an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Professional Standards Act 2005</i> (Tas)	Schedule 2: Provisions relating to members of council	4(1)(f) The office becomes vacant if convicted of an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Property Agents and Land Transactions Act 2005</i> (Tas)	Section 73: Vacancy in Board membership	73(3)(c) & (e) The Governor may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (e) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 114: President of Tribunal	114(5)(b) & (c) The Governor may remove a member from office if: (b) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (c) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 154: Vacation of office of Trust members	154(c) The Governor must terminate the appointment if convicted of an offence of such a nature that in the opinion of the Governor it is inappropriate for the member to remain a member of Trust.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Public Health Act 1997</i> (Tas)	Schedule 1: Provisions with respect of membership and meetings of Advisory committee	5(2)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Racing Regulation Act 2004</i> (Tas)	Schedule 3A: Further provisions relating to membership of IAB	5(2)(d) & (e) The Governor may remove a member if: (d) is convicted of a crime or an offence punishable by imprisonment or a fine of 300 penalty units or more, or (e) is convicted of an offence against this Act or the <i>Gaming Control Act 1993</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 3B: Further provisions relating to membership of TRAB	5(2)(d) & (e) The Governor may remove a member if: (d) is convicted of a crime or an offence punishable by imprisonment or a fine of 300 penalty units or more, or (e) is convicted of an offence against this Act or the <i>Gaming Control Act 1993</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Radiation Protection Act 2005</i> (Tas)	Schedule 1: Membership of Council	6(2)(c) & (d) The Minister may remove a member if: (d) is convicted of a crime or an offence punishable by imprisonment for 12 months or longer or a fine of 300 penalty units or more, or (e) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Residential Tenancy Act 1997</i> (Tas)	Schedule 1: Vacation of and removal from office of Commissioner 2 Removal from office	2(1)(b) & (c) The Minister may remove from office if: (b) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (c) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Resource Management and Planning Appeal Tribunal Act 1993</i> (Tas)	Schedule 2: Provisions with respect of membership of Appeal Tribunal	6(1)(b) The Governor may terminate appointment if convicted of a crime or an offence punishable by imprisonment of 2 years or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Royal Tasmanian Botanical Gardens Act 2002</i> (Tas)	Schedule 1: Membership of Board	3(3)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>State Grants Commission Act 1976</i> (Tas)	Section 5: Term of office and removal of members	5(3)(e) The Governor may remove a member from office if convicted of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to be a member.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Solicitor-General Act 1983</i> (Tas)	Section 6: Vacation of office of Solicitor-General	6(3) The Governor may remove from office if receives from both Houses of Parliament resolutions requesting that the person be so removed. (4)(c) The Governor may suspend if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Stolen Generations of Aboriginal Children Act 2006</i> (Tas)	Schedule 1: Provision in relation to office of Stolen Generations Assessor	4(a) The Premier may remove the Stolen Generations Assessor if convicted of a crime or an offence punishable by imprisonment for a period exceeding 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Beef Industry (Research and Development) Trust Act 1990</i> (Tas)	Schedule 1: Members of the Trust	1(1)(d) The office is vacated if convicted of a crime or an offence punishable by imprisonment for not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Community Fund Act 2005</i> (Tas)	Schedule 1: Membership of Board	6(1)(d) Office is vacated if convicted of a crime or an offence punishable by imprisonment for not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Development Act 1983</i> (Tas)	Section 32: Appointment and powers of administrator	32(5)(c) Shall be deemed to have vacated if convicted of a crime or an offence punishable by imprisonment for a period exceeding 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 1: Provisions with respect to Directors	5(1)(d) A director is deemed to have vacated his office if convicted of a crime or an offence punishable by imprisonment for not less than 12 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Early Years Foundation Act 2005</i> (Tas)	Schedule 1: Membership of Board	6(2)(c) The Minister may remove a member if convicted of a crime or an offence punishable by imprisonment for 12 months or longer or a fine of 300 penalty units or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Health Organisations Act 2011</i> (Tas)	Schedule 3: Members of Governing Councils	5(2)(c) & (d) & (e) The Responsible Ministers may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, (d) has been convicted of an offence of dishonesty, or (e) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Planning Commission Act 1997</i> (Tas)	Schedule 2: Provisions with respect to appointment, constitution and membership of commission	10(1)(b) The Governor may terminate a member if is convicted in Tasmania, or elsewhere, of an offence punishable by imprisonment for 2 years or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Tasmanian Qualifications Authority Act 2003</i> (Tas)	Schedule 1: Membership of Authority	6(2)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Teachers Registration Act 2000</i> (Tas)	Schedule 1: Membership and meetings of Board	6(a) & (b) The Minister may remove from office if: (a) is convicted of an offence against this Act, or (b) is convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Theatre Royal Management Act 1986</i> (Tas)	Schedule 2: Membership of Board	3(3)(c) & (d) The Minister may remove a member from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Threatened Species Protection Act 1995</i> (Tas)	Schedule 2: Members and Meetings of Scientific Advisory Committee and Community Review Committee	7(1)(d) The office becomes vacant if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Timber Promotion Act 1970</i> (Tas)	Section 5: Term of office and removal of members of the Board	(3)(e) The Minister may remove from office if convicted of an offence of such a nature that, in the opinion of the Minister, renders it improper for him to continue to be a member.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tourism Tasmania Act 1996</i> (Tas)	Schedule 1: Directors	8(1)(c) & (d) The Minister may recommend the Governor to remove from office if: (c) is convicted of an offence against this Act, or (d) is convicted of an indictable offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Training and Workforce Development Act 2012</i> (Tas)	Part 2: Membership of Committee	6(2)(b) & (c) The TasTAFE Board may remove a member from office if: (b) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (c) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Part 2: TasTAFE Directors	6(2)(c) & (d) The Minister may remove from office if: (c) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (d) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Part 2: Membership of TTAC	6(2)(b) & (c) The Minister may remove from office if: (b) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (c) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Veterinary Surgeons Act 1987</i> (Tas)	Schedule 1: Provisions with respect to membership of the Board	8(e), (f) & (g) The office becomes vacant if: (e) is convicted of a crime or an offence punishable by imprisonment of 6 months or longer, or (f) is convicted of an offence against this Act, or (g) is convicted of an offence against the <i>Misuse of Drugs Act 2001</i> (Tas) or <i>Poisons Act 1971</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Water Management Act 1999 (Tas)	Schedule 2: Constitution and procedure of the Assessment Committee for Dam Construction	6(1)(d) A member is taken to have vacated office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Part 1: Membership	2(f) The office of the trustee becomes vacant if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
Wellington Park Act 1993 (Tas)	Schedule 3: Provisions with respect to Constitution and membership of the Trust	7(1)(b) The Minister may terminate the appointment if convicted of a crime or an offence punishable by imprisonment of 2 years or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
Workers Rehabilitation and Compensation Act 1988 (Tas)	Schedule 1: Provisions with respect to membership of Board	7(1)(e) & (f) The office becomes vacant if: (e) is convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (f) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 3: Provisions with respect to the term of office and conditions of service of Chief Workers Rehabilitation and Compensation Commissioner	7(1)(d) The person is deemed to have vacated office if convicted of a crime or an offence punishable by imprisonment of 12 months or longer.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Schedule 6: Provisions with respect to membership and meetings of Nominal Insurer	7(1)(e) & (f) The office becomes vacant if: (e) convicted of a crime or an offence punishable by imprisonment of 12 months or longer, or (f) is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Table 2: Licensing and regulation relevant to employment

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Architects Act 1929 (Tas)	Section 12: Good character	12 No person shall be entitled to be registered as an architect unless he satisfies the Board that he is of good fame and character.	Finding of guilt relevant.
	Section 16: Disciplinary powers of the Board	16(1)(a) Where an architect is convicted of a crime or a contravention of section 19(2) of the Act, the Board may summons him to appear to show cause why not be removed from register.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
Building Act 2000 (Tas)	Section 26: Application for accreditation	26(2)(b)(ia) The Director may refuse the application if satisfied that the applicant does not satisfy the prescribed personal probity requirements. The Act applies to builders, designers, architects, engineers and building surveyors, s 3. It only applies to people taking responsibility and is not occupational licencing (see < http://workplacestandards.tas.gov.au/licensing/accreditation_of_building_practitioners#227453 >).	The application form asks to assist, in determining whether a person meets the prescribed personal probity requirements for accreditation, whether a person in the last 10 years has been convicted of an offence (other than a minor traffic offence) or are any court proceeding pending. (< http://workplacestandards.tas.gov.au/resources/forms/building_practitioner_accreditation_form/Building_Practitioner_Application.pdf >)

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Burial and Cremation Act 2002</i> (Tas)	Section 10: Objection by Director of Local Government Section 44: Notification to Director of Local Government as to prescribed business	10(1) & 44(4) The Director of Local Government may lodge an objection if: (i) (a) convicted of an offence under this Act, <i>the Cremation Act 1934</i> or Part 4 of the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> ; or (ii)(b) is not a fit and proper person.	10(1)(i) & 44(4)(a) Conviction: <i>Sentencing Act 1997</i> (Tas)(ii) s 10(1). 10(1)(ii) & 44(4)(b) Finding of guilt relevant.
<i>Child Care Act 2001</i> (Tas) ¹	Section 47 Child care standards	47(1)(g) Make standards for the approval and registration of persons as child carers. Tasmanian Licencing Standards for Centre Based Child Care Class 5 (0 – 12 years) 1 Fit and proper – the child care service provider and all persons who have regular contact with the children who are placed in the service's care are to be fit and proper persons (< https://www.education.tas.gov.au/documentcentre/Documents/Centre-Based-Care-Standards-Class-5.pdf >). Tasmanian Licencing Standards for Centre Based Child Care Class 4 1 Fit and proper – the child care service provider and all persons who have regular contact with the children who are placed in the service's care are to be fit and proper persons (< https://www.education.tas.gov.au/documentcentre/Documents/Centre-Based-Care-Standards-Class-4.pdf >).	Finding of guilt relevant.
<i>Christ College Act 1926</i> (Tas)	Section 43: Appointment and dismissal of headmasters	43(a) Fit and proper person to be headmaster.	Finding of guilt relevant.

¹ Note, this Act applies to Centre based Care Class 4 and Centre Based Care Class 5 (previously licensed as occasional care and In-Home Child Care). Other services are subject to the *Education and Care Services National Law (Application) Act 2011* (Tas) and the *Education and Care National Regulations 2011* (Australian Institute of Family Studies, *Pre-employment screening: Working with children checks and police checks*, October 2013, <http://www.aifs.gov.au/cfca/pubs/factsheets/a141887/#a8>). Note also the *Registration to Work with Vulnerable People Act 2013* (commences on 1 July 2014) that provides a framework for the registration of people who have contact with children and vulnerable adults in the course of engaging in regulated activities, see Office for Children, Department of Health and Human Services, *Registration to Work with Vulnerable People Act 2013: Frequently Asked Questions*.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Conveyancing Act 2004 (Tas)	Section 5: Ineligibility to be licenced	5(1)(f) Person is ineligible to be licenced if has been convicted of an indictable offence and sentenced to imprisonment or detention for 3 years or more or a restriction order made under section 75(1) (e) of the <i>Sentencing Act 1997</i> .	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 7: Character report	7(b) The Director must request the Commissioner of Police that applicant is fit and proper person.	Finding of guilt relevant. (National Police Criminal History record check required: http://www.consumer.tas.gov.au/conveyancing/qualifications)
	Section 8: Grant or refusal of licence	8 Director may refuse to grant a licence if satisfied that: (a) not a fit and proper person (b) convicted of a prescribed offence. ²	8(a) Finding of guilt relevant. 8(b) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). The application form asks: Have you been convicted of any offences anywhere in the world (not traffic charges)? Have you been found guilty (without a conviction recorded) anywhere in the world (not traffic charges)? (http://www.consumer.tas.gov.au/___data/assets/pdf_file/0020/62156/Conveyancing_Licence_Application.pdf).
<i>Education and Care Services National Regulations 2011</i> (Tas) ³	Regulation 344: Safety screening clearance – staff members	Employee, volunteers or a student of practicum placement aged over 18 are required to undergo a safety screening clearance. This is administered by the Department of Education of Tasmania. The Good Character Check includes a national Police Check, which considers crimes of violence, sex-related offences, serious drug offences, crimes involving violence, sex-related offences, serious drug offences, crimes involving dishonesty and serious traffic offences.	Finding of guilt. The Good Character Check application form of the Department of Education authorises the release of the applicant's 'criminal history record' (which will include charges and findings of guilt even if the Court recorded no conviction). The application requires an answer to the question, 'Have you ever been charged or found guilty of an offence in this State or any other State or Territory of Australia or any other country?' An offence includes crimes of violence, sex-related offences, serious drug offences, crimes involving dishonesty and serious traffic offences. (https://www.education.tas.gov.au/documentcentre/Documents/Good-Character-Check-Application-Form.pdf)

2 The *Conveyancing Act 2004* s 3 defines 'prescribed offence' to mean an offence involving dishonesty; or an offence involving violence; or an offence under Part V of the *Poisons Act 1971* (Tas); or an offence relating to the possession and use of a firearm or any other weapon, that would disqualify the applicant from holding a licence under the *Firearms Act 1996*; or an offence against this Act.

3 Note also the *Registration to Work with Vulnerable Act 2013* (commences on 1 July 2014) that provides a framework for the registration of people who have contact with children and vulnerable adults in the course of engaging in regulated activities. See Office for Children, Department of Health and Human Services, *Registration to Work with Vulnerable People Act 2013: Frequently Asked Questions*, <http://www.dhhs.tas.gov.au/>.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Forest Practices Act 1985 (Tas)	Section 38: Appointment of officers for purposes of Act	38(2A) Authority may refuse to appoint nominee on grounds that not a fit and proper person. 38(2B) for the purposes of ss (2A), the authority may have regard to: (a) where the nominee has been convicted of an offence against the <i>Forestry Act 1920</i> (Tas) or this Act, or (b) whether the nominee has been convicted of an offence involving dishonesty.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 39: Forest practices officers	39(3) Authority may revoke authorisation on ground that: (a) the person has been convicted of an offence against the <i>Forestry Act 1920</i> (Tas) or this Act, or (b) the person has been convicted of an offence involving dishonesty.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Health Practitioner Regulation National Law (Tasmania) Act 2010</i> (Tas)	Section 55: Unsuitability to hold general registration	A person must be a 'suitable' person to be eligible for general registration (s 52(1)(c)), specialist registration (s 57(1)(c)), provisional registration (s 62(1)(b)), limited registration (s 65(1)(c)), non-practising registration (s 73(b)). Other than for s 73(b), s 55 applies to the determination of suitability and provides that a National Board may decide an individual is not suitable (1)(b) – having regard to the individual's criminal history to the extent that is relevant to the individual's practice of the profession, the individual is not, in the Board's opinion, an appropriate person to practise the profession or it is not in the public interest for the individual to practise the profession. For s 73(b), s 74(a) applies and is in similar terms to s 55. S 77(3)(c) provides the application form must require an applicant to disclose their criminal history. The spent convictions laws do not apply, s 77(4). The Board must obtain a criminal history check, s 79. Criminal history is defined as every conviction, every plea of guilty or finding of guilty whether or not a conviction is recorded and every charge made against the person s 5. This applies to those who practice in the following areas: Aboriginal and Torres Strait Islander health practice, Chinese medicine, chiropractic, dental, medical, medication radiation practice, nursing and midwifery, optometry, osteopathy, pharmacy, physiotherapy, podiatry and psychology, s 5. The sections refer to <i>Health Practitioner Regulation National Law 2009</i> applied by <i>Health Practitioner Regulation National Law (Tasmania) Act 2010</i> , s 4.	Findings of guilt are relevant. For more information refer to guidance issued by the relevant boards: Medical Board of Australia, <i>Criminal history registration standard</i> < http://www.medicalboard.gov.au/Registration/Obligations-on-Medical-Practitioners.aspx >; Nursing and Midwifery Board of Australia, <i>Criminal history registration standard</i> < http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx >.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
	Section 109: Annual statement	109(1)(b) In annual statement, must provide details of any change in criminal history.	Findings of guilt are relevant: <i>Health Practitioner Regulation National Law 2009</i> , s 5.
	Section 130: Registered health practitioners or students to give National Board notice of certain events	130(3)(ii) Notice if convicted or the subject of a finding of guilt.	Finding of guilt.
	Section 144: Voluntary notifications	(1)(c) Not a suitable person For student (2)(a) the student has been charged with an offence or has been convicted or found guilty of an offence that is punishable by imprisonment of 12 months or more.	Finding of guilt.
	Division 7: Immediate action	Allows the Board to take immediate action if a practitioner's behaviour 'poses a serious risk to person' and it is necessary to take immediate action to protect public health or safety (156(1)(a)) or if a student poses a serious risk because they have been charged with an offence or has been convicted or found guilty of an offence that is punishable by imprisonment of 12 months or more and it is necessary to take immediate action to protect public health or safety (156(1)(b)).	Finding of guilt.
	Section 191, 196: Decisions of Panel/Tribunal	Allows action including suspension or cancellation of registration for unprofessional conduct. This includes behaviour inconsistent with being a fit and proper person, s 5(c).	Finding of guilt.
<i>Land Valuers Act 2001 (Tas)</i>	Section 9: Grounds for disciplinary action	9(c) The land valuer has been found guilty of an offence involving fraud or dishonesty that is punishable on conviction by imprisonment for 3 months or more.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Legal Profession Act 2007 (Tas)</i>	Section 9: Suitability matters	9(1)(a) Good fame and character; (c) whether convicted of an offence and if so, (i) the nature of the offence; (ii) how long ago the offence was committed; (iii) the person's age when the offence was committed.	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11.
	Section 11: References to convictions for offences	11(1) A reference to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11.
	Section 17: Associates who are disqualified or convicted persons	17(1)(b) A law practice must not have a lay associate who has been convicted of a serious offence [unless approval].	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11.
	Section 26: Suitability for admission	Refer to s 9.	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11. Note must annex copy of criminal record (<i>Supreme Court Rules 2000 (Tas)</i> r 783AE).
	Section 43: Suitability to hold local practising certificate (see also section 53: grant and renewal of local practising certificate)	In determining whether a fit and proper person to have a practising certificate take into account any suitability matters (see s 9).	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11. Note that if matter was disclosed and admitted to legal profession, then may not take into account to refuse practising certificate.
	Section 60: Statutory condition regarding notification of offence Section 205: Statutory condition regarding notification of offence [foreign lawyer]	60(1)(a) & 205(1) Must notify if (i) convicted of an offence that would have to be disclosed under the admission rules; or (ii) charged with serious offence. 3 'serious offence' means an indictable offence.	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11.
	Section 64: Grounds for amending, suspending or cancelling local practising certificate	64(a) No longer a fit and proper person (see s 43).	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11.
	Section 72: Applicant to local practising certificate – show cause event Section 73: Holder of local practicing certificate – show cause event Section 192: applicant for local registration – show cause event Section 193: Locally registered foreign lawyer – show cause event	If show cause event, must provide statement about event and why a fit and proper person. 3 'show cause event' means (d) his or her conviction for a serious offence or a tax offence.	Finding of guilt: <i>Legal Profession Act 2007 (Tas)</i> s 11.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
	<p>Section 181: Manner of application [for foreign lawyer]</p> <p>Section 182: requirements regarding applications for grant or renewal of registration</p> <p>Section 185: Refusal to grant or renew registration</p> <p>Section 187: Grounds for amending, suspending or cancelling registration</p>	<p>181(6)(b) Disclosure of offences for which convicted in Australia or a foreign country.</p> <p>182(2)(d) state (i) the nature of the offence; (ii) how long ago the offence was committed; (iii) the person's age when the offence was committed.</p> <p>185(4) may refuse to grant if satisfied not a fit and proper person considering - (i) the nature of the offence; (ii) how long ago the offence was committed; (iii) the person's age when the offence was committed.</p> <p>187(1)(e) the person has been convicted of an offence.</p>	<p>Finding of guilt: <i>Legal Profession Act 2007</i> (Tas) s 11.</p>
	Section 421: Professional misconduct	421(1)(b) Conduct that justifies a finding that not a fit and proper person (see s 9).	<p>Finding of guilt: <i>Legal Profession Act 2007</i> (Tas) s 11.</p>
	Section 422: Conduct capable of constituting unsatisfactory conduct or professional misconduct	422(1)(c) Without limiting s 420 or 421, conduct in respect of which there is a conviction for – (i) a serious offence; or (ii) a tax offence; or (iii) an offence of dishonesty.	
<i>Living Marine Resources Management Act 1995</i> (Tas)	Section 168: Interests of fisheries officers	168(2) A fisheries officer or assistant fisheries who is convicted of an offence under ss(1) ceases to hold office on the date of that conviction.	<p>Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) s 3.</p>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Motor Vehicle Traders Act 2011</i> (Tas)	Section 7: Who is a fit and proper person to hold motor vehicle trader licence	7(1)(b) Not a fit and proper person if within the immediately preceding 5 years – (i) has been convicted of an offence involving theft, fraud or other dishonesty that is punishable by a term of imprisonment of 3 years or more; or (ii) has completed serving a term of imprisonment for such an offence; or (iii) The Director otherwise determines that not fit and proper person. (3)(b) In determining if fit and proper person, whether been convicted of an offence against this Act; or <i>Consumer Affairs Act 1988</i> (Tas); the <i>Fair Trading Act 1990</i> (Tas) or the <i>Australian Consumer Law (Tasmania) Act 2010</i> (Tas) or the <i>Trade Practices Act 1974</i> (Cth); or (d) any other matter that Director considers relevant.	Finding of guilt relevant to 7(1)(iii) & 7(3)(b). (National Police Record check required: < http://www.consumer.tas.gov.au/motor_vehicle_traders/applying_for_licence >). The application form indicates that the following offences as examples of the types of offences that could prevent an applicant being granted a licence: blackmail, burglary, breach of the <i>Trade Practices Act 1974</i> (Cth), breach of Australian Consumer Law, breach of <i>Fair Trading Act 1990</i> (Tas), deception, extortion, forgery, fraud, stealing, robbery, obtaining or acquiring a financial advantage, receiving stolen property. (< http://www.consumer.tas.gov.au/_data/assets/pdf_file/0015/190500/Motor_Vehicle_Trader_Online_form_v3.pdf >).
	Section 8: Police report for determination of fit and proper person to hold motor vehicle trader licence	8(1) In an investigation involving a determination as to whether or not an applicant for a motor vehicle trader licence is a fit and proper person, the Director may require the person to authorise the Director to obtain reports from (a) the Commissioner of Police in respect of convictions and proceedings taken in Tasmania, and (b) equivalent of Commissioner of Police in other States or Territories.	Findings of guilt disclosed. (National Police Record check required: < http://www.consumer.tas.gov.au/motor_vehicle_traders/applying_for_licence >).
	Section 21: Cancellation of motor vehicle trader licence	21(1) May cancel if satisfied that not a fit and proper person.	Findings of guilt relevant (as above).
	Section 41: Duty to notify of certain charges	41(1) Must notify Director of change in circumstances that result in not being fit and proper person.	Findings of guilt relevant (as above).
<i>Notaries Public Act 1990</i> (Tas)	Section 5: Appointment of notaries public	5(1)(a) Is an Australian legal practitioner and (b) is of good fame and character.	Finding of guilt relevant.
<i>Occupational Licensing Act 2005</i> (Tas)	Section 90: Proper cause for disciplinary action	90(1)(c) & (2)(c) There is a proper cause for disciplinary action against a contractor if not a fit and proper person to hold licence. This Act licences electrician, plumbers, gas-fitters, automotive gas-fitters, and those who contract for electrical, plumbing, gas-fitting and automotive gas-fitting.	Finding of guilt relevant.
<i>Occupational Licensing (Electrical Work) Regulations 2008</i> (Tas)	Regulation 9: Eligibility for electrical contractor's licence	9(b) Fit and proper person; (c) Whether committed an offence under specified Acts.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Pharmacy Control Act 2001</i> (Tas)	Section 61B: Applying to hold an interest in pharmacy business	61B(1) The Authority must issue an eligibility certificate if the applicant is a fit and proper person.	Finding of guilt.
	Section 70A: Failure to notify Authority	70A(1)(b) Must notify if a person is convicted of an offence or is the subject of a finding of guilt for an offence punishable by imprisonment.	Finding of guilt.
<i>Police Services Act 2003</i> (Tas)	Section 30: Termination or demotion of commissioned police officers Section 31: Termination or demotion of non-commissioned police officers	30 & 31 May be terminated having regard to (1)(a) the police officer's competence, integrity, performance of conduct.	Finding of guilt.
<i>Prepaid Funerals Act 2004</i> (Tas)	Section 12: Register of funeral trusts	12 The Director may remove funeral trust from register if any person concerned with management of trust is convicted of an offence against this Act or any other offence involving dishonesty.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Property Agents and Land Transactions Act 2005</i> (Tas)	Section 60: Application for registration	60(1) The Board to enter the name in Register if (b) satisfied that a fit and proper person.	Finding of guilt relevant.
	Section 125: Power of Board to suspend registration or to disqualify	125(4) The Board may take action if property agent has been found guilty of an offence that the Board considers makes it inappropriate that the property agent should continue to act as property agent.	Finding of guilt relevant.
<i>Racing Regulation Act 2004</i> (Tas)	Section 50: Appointment of club officers	50(3) If the Director reasonably considers that a person is not a fit and proper person to remain as a prescribed officer, may direct the club to dismiss the person.	Finding of guilt: <i>Racing Regulation Act 2004</i> (Tas) s 3.
	Section 58: Applications for registration [as bookmaker]	58(3)(a) In deciding whether to approve the application the Director may consider whether the applicant is a fit and proper person.	Finding of guilt: <i>Racing Regulation Act 2004</i> (Tas) s 3.
	Section 63: Cancellation of registration for certain convictions	63(1) The registration of bookmaker or bookmaker's agent is taken to have been cancelled if convicted of specified offences. 3 Conviction includes a finding of guilty without the recording of a conviction for the offence.	Finding of guilt: <i>Racing Regulation Act 2004</i> (Tas) s 3.
<i>Second-hand Dealers and Pawnbrokers Act 1994</i> (Tas)	Section 4: Requirement to notify police as to business of second-hand dealer or pawnbroker	4(5) Commissioner of Police may object to notice to carry on business if the person (a) has been convicted of an offence under the Act or the repealed Act or an offence involving dishonesty or (b) that person is not in the opinion of the Commissioner of Police a fit and proper person.	4(5)(a): Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1) but finding of guilt may be relevant to (b).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Security and Investigations Agents Act 2002</i> (Tas)	Section 8: Grant or refusal of application	<p>8(2)(a) The Director may refuse to grant the application for a licence if satisfied that (i) not a fit and proper person to hold a licence; (iv) has been found guilty of a prescribed offence or an offence under this Act; or (iva) has been ground guilty of any other offence, or a series of other offences, that, in the opinion of the Director, makes the applicant unsuitable to hold a licence.</p> <p>A prescribed offence is:</p> <p>(a) an offence involving theft or robbery, or any other offence involving dishonesty, whether committed in the State or elsewhere; or</p> <p>(b) an offence involving assault, or any other offence involving violence, whether committed in the State or elsewhere; or</p> <p>(ba) an offence involving abduction, kidnapping or stalking, whether committed in the State or elsewhere; or</p> <p>(c) an offence under the <i>Poisons Act 1971</i> (Tas) or <i>Misuse of Drugs Act 2001</i> (Tas), or a similar offence under the law of another State or a Territory; or</p> <p>(d) an offence involving a weapon, whether committed in the State or elsewhere; or</p> <p>(e) an offence under Part 5.3 of the Criminal Code of the Commonwealth or a similar offence under the law of a State or a Territory or an overseas jurisdiction.</p>	<p>Finding of guilt.</p> <p>As part of the character report (s 7), the applicant is required to have his photograph, fingerprints and palm prints taken.</p> <p>The application form asks whether the offender has been charged, found guilty (without a conviction recorded) or convicted of an offence: involving assault of violence, been the subject of a restraint or family violence order, involving dishonesty, fraud or theft, involving burglary or stealing, firearms or weapons offence, drug offence, subject to court or police diversion, charges pending any where in world, convicted of any offence anywhere in the world.</p> <p>(<http://www.consumer.tas.gov.au/__data/assets/pdf_file/0020/120827/Application_employee_licence_dce.pdf>)</p>
<i>State Service Act 2000</i> (Tas)	<p>Section 10: Breaches of code of conduct</p> <p>Section 9: The State Service code of conduct</p> <p>Section 44: Termination of employment of officers and employees</p>	<p>9(14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the state service.</p> <p>44(3)(a) Ground for termination that found to have breached Code of Conduct under section 10.</p>	Finding of guilt.
<i>Surveyors Act 2002</i> (Tas)	Section 32: Grounds for disciplinary action	32 There are grounds for disciplinary action if the (c) surveyor has been found guilty of an offence involving fraud or dishonesty that is punishable on conviction by imprisonment for 3 months or more.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Qualification Authority Act 2003</i> (Tas)	Section 55ZZJ Cancellation or suspension of registration	<p>55ZZJ (1) The Authority may cancel or suspend registration if satisfied that:</p> <p>(a) the provider has contravened this Act; or (b) has been found guilty of any law in relation to the provision of an education program or a dealing relating to a person who is an overseas students.</p>	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Taxi Industry Regulations 2008 (Tas)</i>	Regulation 10: Suspension of owner-operator taxi licence	10 For the purposes of section 36(1) of the Act, the prescribed circumstances in which the Commission may suspend an owner-operator taxi licence are (d) if the holder of the licence is found guilty of an offence under s 95 of the Act.	Finding of guilt.
	Regulation 11: Cancellation of owner-operator taxi licence	11 For the purposes of section 36(1), the prescribed circumstances in which the Commission may suspend an owner-operator taxi licence are (d) if the holder of the licence is found guilty of an offence under s 95 of the Act.	Finding of guilt.
	Regulation 12: Suspension of wheelchair-accessible taxi licence	12 For the purposes of section 55(1), the prescribed circumstances in which the Commission may suspend an owner-operator taxi licence are (d) if the holder of the licence is found guilty of an offence under s 95 of the Act.	Finding of guilt.
	Regulation 13: Cancellation of wheelchair-accessible taxi licence	13 For the purposes of section 55(1), the prescribed circumstances in which the Commission may suspend an owner-operator taxi licence are (j) if the holder of the licence is found guilty of an offence under s 95 of the Act.	Finding of guilt.
	Regulation 70: Suspension or cancellation of appointment as authorised meter adjuster	70(1) Commissioner may suspend or cancel if (d) satisfied that not a fit and proper person.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Teachers Registration Act 2000</i> (Tas) ⁴	Section 13: Determination of application for registration Section 17J Determining whether person of good character	13(2)(b) & 3(b) Criteria that applicant is of good character. 17J In determining whether of good character, take into account any conviction of, or charge made against, the person.	Finding of guilt. The Good Character Check application form of the Department of Education authorises the release of the applicant's 'criminal history record'. The application requires the applicant to declare if they have been charged with or convicted of a prescribed offence (any offence for which a term of imprisonment may be imposed) and other offences including any other offence including traffic offences. A conviction is any charge of which a person has been found guilty and includes traffic tickets, convictions under the <i>Youth Justice Act 1997</i> (Tas), findings of guilt with no conviction recorded and convictions which have been annulled. The policy of the Teachers Registration Board is to deem a record of conviction not to be of concern where it reveals: No records of conviction, only minor traffic offences which have been declared on the application, a limited number of more serious traffic offences which have been declared, an offence for which no conviction is recorded if this constitutes a singular event and/or occurred a number of years ago and has been fully disclosed on the application, an offence which resulted in any conviction if this is a relatively minor offence and is a singular event and/or it occurred a number of years ago and has been fully disclosed on the application (Teachers Registration Board of Tasmania, <i>Records of Conviction and Determining Good Character</i> , 2013, < http://www.trb.tas.gov.au/Shared%20Documents/Record%20of%20Convictions%20Policy%20-%20April%202013.pdf >). Convictions that are of concern include crimes of violence, sex-related offences, serious drug offences, crimes involving dishonesty and serious traffic offences.

⁴ Note also the Registration to Work with Vulnerable Act 2013 (commences on 1 July 2014) that provides a framework for the registration of people who have contact with children and vulnerable adults in the course of engaging in regulated activities. See Office for Children, Department of Health and Human Services, *Registration to Work with Vulnerable People Act 2013: Frequently Asked Questions*.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
	Section 17L: Police Report	17L(1) Person taken to have authorised Commissioner of Police to provide a report for the purpose of considering and determining the application.	
	Section 17D: Determination of application [for limited authority to teach]	17D(2)(b) is of good character.	
	Section 18A: Disciplinary action if person found guilty of prescribed offence	18A If teacher is found guilty of a prescribed offence, the Board may take [specified actions]. 3 'Prescribed offence' means an offence in respect of which a sentence of imprisonment may be imposed (whether or not such sentence is imposed).	Finding of guilt.
<i>Training and Workforce Development Act 2013 (Tas)</i>	Section 27A: Notification of charge or finding of guilt	27A(1) A person must notify the Board when charged with a prescribed offence. (2) If charged and court makes finding of guilty or not guilty or another finding, or adjourned sine die or charge is dismissed or withdrawn, must notify the Board.	Finding of guilt.
	Section 15: Cancellation of registration as listed group training organisation	15(2) Satisfied that not a fit and proper person.	Finding of guilt.
	Section 48: Employers who are not fit and proper persons for purposes of training contracts or vocational placement agreements	48(2) In determining whether a fit and proper person may take into account: (b) whether or not the employer has contravened this Act.	Finding of guilt.
<i>Travel Agents Regulations 2003 (Tas)</i>	Regulation 5: Applications for licences	5 For the purposes of s 19(4) of the Act, the licence is to include – (e) a statement of whether or not person who (i) has been convicted of an offence specified in Schedule 1 Schedule 1 (a) against this Act (b) involving dishonesty, fraud (c) involving violence (d) under Part V of the <i>Poisons Act 1971 (Tas)</i> (e) relating to the possession and use of a firearm or other weapon that would disqualify the applicant from holding a licence under the <i>Firearms Act 1996 (Tas)</i> (f) person is convicted of an offence and is sentenced to imprisonment for a term of or terms totalling 3 years; or sentenced to period of detention for 3 years or more under a restriction order.	See below.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Travel Agents Act 1987 (Tas)</i>	Section 19: Application for licence	19(4) Matters to be included on application (see Reg 5).	The application form requires full details of whether: within 10 years of the application, the person has been convicted of any offence involving dishonesty and fraud, or, has a charge pending in relation to an offence involving fraud. The person is also required to obtain a Tasmania and National Criminal History check.
	Section 21: Grant or refusal of licence	21(2) An application shall be refused if it appears that (d) a person is not of good reputation or character or in any other way would be a fit and proper person; (f) the applicant is in any other way not a fit and proper person to be the holder of a licence. (3) Without affecting the generality of (2), in determining whether not a fit and proper person, may have regard to: (a) has, during the period of 10 years, been convicted of or served any part of imprisonment for, an offence for fraud or dishonesty; or (b) was bound in relation to such an offence by a recognizance; or (c) has been convicted of an offence against this Act.	21(3) Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1). 21(2)(d) & (f) 'Fit and proper person': Finding of guilt relevant.
	Section 32: Notices to show cause	32 May be served notice to show cause if: (b) the holder of a licence has been convicted of an offence against this Act; (d) the holder of a licence has been found guilty of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.	32(b) Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1). 32(d) Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Veterinary Surgeons Act 1987</i> (Tas)	Section 15: Entitlement to registration as veterinary surgeon	15(1)(c) Entitled to be registered if a fit and proper person. (3) For the purpose of this section, the Board may regard a person as not being fit and proper if – (c) the person has been convicted of (i) any crime; (ii) an offence under a law prohibiting or regulating the possession, sale, use, supply or other dealing in any poison or drug; or (iii) an offence under this Act which indicates the person is not a fit and proper person to practice as a veterinary surgeon.	15(3) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). Scope of 'fit and proper' inquiry could consider findings of guilt.
	Section 41: Interpretation of Part VI	41(2) 'Misconduct in a professional respect' if: (h) he is convicted of an offence as a veterinary surgeon or an offence under law relating to cruelty to animals, animal welfare or control or use of chemicals, poisons or pharmaceuticals.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 46: Determination of Board	46(1) May suspend or cancel registration or prohibit person from engaging in practice of veterinary surgery if: (b) has been convicted of a crime or offence which is punishable by imprisonment for a term of not less than 6 months; (c) has been convicted of an offence under the <i>Poisons Act 1971</i> or the <i>Misuse of Drugs Act 2001</i> .	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Table 3: Other permits and licences relevant to employment

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Agricultural and Veterinary Chemicals (Control of Use) Act 1995</i> (Tas)	Section 3: Grant or refusal [of permit or licence]	3(4)(a) The Registrar may refuse to grant an authority if the applicant has been convicted of a crime or an offence punishable by imprisonment.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 4: Cancellation or suspension [of permit or licence]	4(1)(b) The Registrar may ... cancel or suspend the authority if the holder has been convicted of an offence against a relevant Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012</i> (Tas)	Section 12: Cancellation or suspension of certificate of competency	12(1)(b) The holder has been convicted of any offence under any Act if the Registrar considers the offence is relevant to the holder's competency to handle a listed chemical product.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Animal (Brands and Movement) Act 1984</i> (Tas)	Section 22B: Grant of permission to use &c., permanent identification device	22B(3)(a): Registrar may refuse to grant a permission to attach to, or insert in, any animal a ... permanent identification device if the applicant or any person working under the control or direction of the application has been convicted of an offence against this Act (b) for any other reason the Registrar considers sufficient.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1) but ss(b) would appear to allow Registrar to take into account finding of guilt.
<i>Animal Farming (Registration) Act 1994</i> (Tas)	Section 7: Grant of registration	S7(2): In determining whether to grant registration, the Secretary must consider whether the application is a fit and proper person to farm prescribed animals.	Finding of guilt relevant to whether 'fit and proper person'.
<i>Animal Health Act 1995</i> (Tas)	Schedule 1 Section 2 - Licenses	2(2)(a): In determining whether to issue a licence, the Chief Veterinary Officer must consider whether the applicant is a fit and proper person to hold a licence.	Finding of guilt relevant to whether 'fit and proper person'.
	Schedule 1 Section 8 – Cancellation of licenses	2(1) The Chief Veterinary Officer may cancel a licence if: (a) the licence holder has committed an offence against this Act or the regulations; or (b) the licence holder has committed an offence against any law in relation to an animal.	Finding of guilt.
<i>Cat Management Act 2009</i> (Tas)	Section 30: Registration of cat breeders	30(3)(b)(i) The Secretary may grant an application if satisfied that the applicant is a fit and proper person to be a registered breeder.	Finding of guilt relevant to fit and proper person.
<i>Cat Management Regulations 2012</i> (Tas)	Regulation 5: Approval to operate cat management facilities	5(2)(c)(i) An application needs to provide full details in respect of any offence the applicant has been convicted of that involves or relates to an animal.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 7: Suspension or cancellation of approval to operate cat management facilities in other cases	7(1)(b) The Secretary may suspend the operation of a cat management facility if satisfied that an employee has been found guilty within the last 5 years of an offence in relation to an animal.	Finding of guilt.
	Regulation 27: Cancellation or suspension of registration of breeder	27 The Secretary may cancel or suspend the registration of a registered breeder if satisfied: (a) the breeder has been found guilty of an offence under the <i>Animal Welfare Act 1993</i> .	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Child Care Act 2001</i> (Tas) ⁵	Section 15A: Criteria for grant of, or holding, licence	15A(2) In determining whether an application for a licence or a holder of a licence is a fit and proper person the Secretary must take into account any matters the Secretary considers relevant including, but not limited to, – whether a suitable person ((a), (b), (c), (d), (e), (f)) whether been charged with, or found guilty of within the period of 10 years an offence punishable by a period of imprisonment whether charged with or found guilty of or otherwise disciplined for an offence against this Act, the regulation or standards; a previous Act or law that substantially corresponds; the Education and Care Services National Law (Tasmania); the <i>Family Violence Act 2004</i> (Tas); the <i>Children, Young Persons and Their Families Act 1997</i> (Tas); or an enactment or law of another State or Territory that substantially corresponds; any reports provided by the Commissioner of Police under section 15B(5) [this provides for report in respect of convictions and proceedings taken against]; ⁶ whether person is of good repute as having regard to character, honesty and integrity.	Finding of guilt.
	Section 16: Grant or refusal of licence	16(3)(a) The Secretary must not grant a licence unless the Secretary is satisfied that the applicant is not a fit and proper person to hold that licence.	Finding of guilt relevant.
	Section 25: Disciplinary action	25(2) The Secretary may take disciplinary action if satisfied that no longer a fit and proper person.	Finding of guilt relevant.
<i>Crown Lands Regulations 2011</i> (Tas)	Regulation 24: Cancellation of authority	24(1)(b) A bailiff or ranger may cancel an authority if a person has been convicted of an offence under the Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Dairy Industry Act 1994</i> (Tas)	Section 29: Revocation of licence	29(1) The Authority may revoke a licence if: (a) the licensee fails to comply with, or contravenes any provision of this Act; or (c) is convicted of an offence under this Act.	Finding of guilt would be sufficient for 29(1)(a).
<i>Dangerous Goods (Road and Rail Transport) Act 2010</i> (Tas)	Section 86: Power to affect licences	86(1) A court that finds the driver guilty may cancel or modify or suspend a licence required to have by regulations or order that driver is disqualified from having a licence.	Finding of guilt.

5 Note also the *Registration to Work with Vulnerable Act 2013* (commences on 1 July 2014) that provides a framework for the registration of people who have contact with children and vulnerable adults in the course of engaging in regulated activities, see Office for Children, Department of Health and Human Services, *Registration to Work with Vulnerable People Act 2013: Frequently Asked Questions*, <<http://www.dhhs.tas.gov.au/>>.

6 Note that the provisions in relation to the non-identification of a youth (*Youth Justice Act 1997* (Tas) ss 22(1), 31(1), 45(1) and 108) do not apply.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Dangerous Goods (Road and Rail Transport) Regulations 2010</i> (Tas)	Regulation 201: Required driver licence evidence 201(1)(a) A current certified extract of entries about applicant	201(2) and (3) documents containing records of any conviction for a driving offence.	201(2) and (3) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 204: Grant of dangerous goods licences	204(2)(a) The licensing authority must not grant a licence if: (i) in the 5 years before the day when the application is made the applicant has been found guilty by a court in Australia of an offence that makes the applicant unsuitable to be the driver of vehicle transporting dangerous goods; or (ii) the applicant's drivers licence has been cancelled or suspended on a ground that makes the applicant unsuitable to be the driver of vehicle transporting dangerous goods.	Finding of guilt.
	Regulation 206: Renewal of licences	206(2)(a) The licensing authority must not renew a licence if while the licence had effect: (i) the applicant has been found guilty by a court in Australia of an offence that makes the applicant unsuitable to be the driver of vehicle transporting dangerous goods; or (ii) the applicant's drivers licence has been cancelled or suspended on a ground that makes the applicant unsuitable to be the driver of vehicle transporting dangerous goods.	Finding of guilt.
	Regulation 210: Grounds for cancelling, suspending or varying licences	210(2) A dangerous goods licence may be cancelled or varied if the licensee is unsuitable to continue to be the driver of road vehicle transporting dangerous goods because: (a) a licensee has contravened the Act or regulation; (b) the licensee has been found guilty by a court in Australia of an offence; (c) the licensee's driver licence has been cancelled.	Finding of guilt.
	Regulation 210: Grounds for cancelling, suspending or varying licences	210(2) A dangerous goods licence may be cancelled or varied if the licensee is unsuitable to continue to be the driver of road vehicle transporting dangerous goods because: (a) a licensee has contravened the Act or regulation; (b) the licensee has been found guilty by a court in Australia of an offence; (c) the licensee's driver licence has been cancelled.	Finding of guilt.
<i>Duties Act 2001</i> (Tas)	Section 181: Cancellation of registration by the Commissioner	181(1) The Commissioner may cancel an insurer's registration if: (c) insurer is convicted of an offence under an Act imposing duty; or (g) for any other reason the Commissioner thinks is sufficient.	181(1)(c) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). Finding of guilt may provide a sufficient reason under 181(1)(g).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<p><i>Education and Care Services National (Application) Act 2011</i> (Tas) s 4 adopts <i>Education and Care Services National Law Act 2010</i></p> <p>(References to sections in columns 2 – 4 are to the <i>Education and Care Services National Law Act 2010</i>)</p>	Section 12: Applicant [for provider approval] must be fit and proper person]	12(1) & (2) Applicant is a fit and proper person to be involved in the provision of an education and care service.	
	Section 13: Matters to be taken into account in assessing whether fit and proper person	13(1)(a)(i) Compliance with child care laws; (c) either: (i) any prescribed matters relating to the criminal history of the person to the extent that history may affect the person's suitability for the role of provider of an education and care service; or (ii) any check of the person under a working with vulnerable people law of the participating jurisdiction. (3) Nothing in (1) or (2) limits the circumstances in which a person may be considered not to be a fit and proper person. <i>Education and Care Services National Regulations</i> Reg 16 provides that matters relating to the criminal history are any matters included in a criminal history record check.	Finding of guilt relevant.
	Section 35: Grounds for suspension of provider approval	25(a) The approved provider has been charged with an indictable offence or any other circumstance indicates that the approved provider may not be a fit and proper person. (c) Failed to comply with this law.	Charge or lack of compliance.
	Section 31: Grounds for cancellation of provider approval	31 (a) Not a fit and proper person: (c) the approved provider has been found guilty of an indictable offence; or (d) the approved provider has been found guilty of an offence under this Law.	Finding of guilt.
	Section 108: Applicant [for supervisors certificate] must satisfy Regulatory Authority of specified matters	108(1)(a) Must satisfy that is a fit and proper person to be a supervisor.	
	Section 109: Matters to be taken into account in assessing whether fit and proper person	109(1)(a) Compliance with child care laws; (c) the working with children check for that person, or if there is no working with children check for that person, any prescribed matters relating to the criminal history of the person to the extent that that history may affect the person's suitability for the role of supervisor of an education and care service. (3) Nothing in (1) or (2) limits the circumstances in which a person may be considered not to be a fit and proper person. <i>Education and Care Services National Regulations</i> Reg 48(b) provides that if jurisdiction does not have a working with vulnerable people law: (i) any matters included in a criminal history record check; (ii) whether the person holds a current teacher registration under an education law of that jurisdiction.	Finding of guilt.
	Section 123: Grounds for suspension or cancellation of supervisor's certificate	123 May suspend or cancel if: (a) Not a fit and proper person (c) Fails to comply with Law.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Egg Industry Act 2002 (Tas)	Section 5: Approval of egg production programs	5(2)(d) The application for approval of an egg production program must address the relevant criteria. Relevant criteria defined in s 3: (a) food safety; (b) animal welfare; (c) biosecurity; (d) environmental impact; (e) labelling standards; (f) such other criteria as may be prescribed in the regulations.	
	Section 7: Revocation of approvals	7(1) The Secretary may revoke an approval if (c) it is necessary to do so in the circumstances.	Finding of guilt.
Environmental Management and Pollution Control (Controlled Waste Tracking) Regulations 2010 (Tas)	Regulation 24: Exemptions from regulations on application of person	24(6) The Director may refuse to grant an applicant an exemption if: (b) that the applicant has been convicted of an offence against the Act or regulations or any other offence that relates to the handling of controlled waste; or (e) on reasonable grounds that it is otherwise appropriate to do so.	24(6)(b) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). Finding of guilt may provide a reasonable ground under 24(6)(e).
Environmental Management and Pollution Control (Waste Management) Regulations 2010 (Tas)	Regulation 12: Environmental approvals	12(3)(b) The Director may refuse an application for an environmental approval if the applicant has been convicted of an offence against the Act or regulations or any other offence that relates to dealing with waste.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Explosives Regulations 2012 (Tas)</i>	Regulation 21: Permits to handle unauthorised explosives	21(10)(f) Cancellation of permit if having regard to the criteria in Schedule 4 or other matters, the holder of the permit is not a fit and proper person to continue to hold such a permit.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 53: Cancellation of permits	53(1)(b) The Secretary must cancel the shot-firing permit if the holder of the permit is convicted of a terrorism offence or a crime.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 53: Cancellation of permits	53(2)(e) The Secretary may cancel/suspend permit if having regard to the criteria in Schedule 4 or other matters, the holder of the permit is not a fit and proper person to continue to hold such a permit or (f) there is other compelling justification for the cancellation or suspension.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 55: Effect of recognition [of interstate shot-firer]	55(2)(e) The Secretary may cancel recognition if having regard to the criteria in Schedule 4 or other matters, the holder of the permit is not a fit and proper person to continue to hold such a permit or (f) there is other compelling justification for the cancellation.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 62: Matters relevant to grant of accreditation	62(1)(j) The Secretary may take into account the applicant's record in complying with the Act and allied Act. (3)(c) The Secretary must not accredit a person as a shot-firing instructor if having regard to Schedule 4 the person is not a fit and proper person.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 68: Cancellation and suspension of accreditation	68(1)(d) The Secretary may cancel/suspend accreditation if having regard to the criteria in Schedule 4, the holder of the accreditation is not a fit and proper person to continue to hold such accreditation.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 69: Monitoring of trainees	69(5)(c) The Secretary must not approve the application for training if having regard to the criteria in Schedule 4, the person is not a fit and proper person to receive such training.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 70: Suspension and cancellation of approval to be trained.	70(1)(d) The Secretary may cancel/suspend approval to be trained if having regard to the criteria in Schedule 4, the person is not a fit and proper person or (e) there is other compelling justification for the cancellation.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 88: Application for fireworks display permits.	88(9)(c) The Secretary may refuse application if having regard to the criteria in Schedule 4, and any other matters that the Secretary considers relevant, the person is not a fit and proper person.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Regulation 93: Cancellation of permits	93(1)(d) The Secretary may cancel a permit if having regard to the criteria in Schedule 4, the person is not a fit and proper person or (e) there is other compelling justification for the cancellation.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>
	Schedule 4: Fit and proper person criteria	2(f) Whether the person has ever been convicted of an offence involving explosives or other dangerous substances; (g) Whether the person has even been convicted of a terrorism offence; (h) Whether the person has ever been convicted of an offence involving violence or weapons, dishonesty or the obstruction or intimation of persons exercising or performing statutory power or functions; (i) Whether the person has been convicted of an offence of another kind that calls into question his or her fitness or competence to retain the entitlement.	Finding of guilt, <i>Explosives Act 2012 (Tas) s 3.</i>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Firearms Act 1996 (Tas)	Section 29: General restrictions on granting licence	<p>29(1) Commissioner must not grant unless a fit and proper person.</p> <p>(2) In deciding whether fit and proper person the Commissioner is to take into account:</p> <p>(c) any criminal activity of the person, whether in Tasmania or elsewhere;</p> <p>(d) any offence committed by the person under this Act or under the <i>Guns Act 1991</i> (Tas).</p> <p>(3) The Commissioner must not grant an application for a licence to a person who: (a) within the period of 5 years before the application was made, has been convicted in Tasmania or elsewhere of any crime involving violence to another person, whether or not the crime is a crime under a law of Tasmania; or</p> <p>(b) has at any time been sentenced to a term of imprisonment, whether in Tasmania or elsewhere, for an offence involving violence to another person unless the Commissioner is satisfied that the nature of the offence, the term of imprisonment and the length of time since that term expired do not justify the refusal to grant the licence or</p> <p>(c) has been convicted of an offence under Division 1 of Part 3 of the <i>Guns Act 1991</i> (Tas) or under section 114 of this Act or a crime under section 183 of the <i>Criminal Code</i> (Tas); or</p> <p>(d) is subject to a firearms prohibition order, or one or more of the following in relation to personal injury:</p> <p>(i) a restraint order;</p> <p>(ii) an interim restraint order;</p> <p>(iii) a family violence order;</p> <p>(iv) an interim family violence order;</p> <p>(v) a police family violence order; or</p> <p>(e) in the Commissioner's opinion, having regard to any criminal intelligence report or other criminal information held in relation to the person, is a risk to public safety.</p>	<p>29(2) Conviction not necessary for fit and proper person.</p> <p>29(3) Conviction not necessary for ss (d) or (e).</p>
	Section 29A: Restriction on granting a firearms dealers licence	29A(1)(b) The Commissioner must not grant a firearms dealer licence unless satisfied that the applicant's close associates are fit and proper persons to be close associates of a firearms dealer.	As above.
	Section 51: Cancellation of licence	<p>51(1) A licence is automatically cancelled if becomes subject to any firearms prohibition order or restraint order relating to personal injury of family violence order.</p> <p>(2) May cancel if:</p> <p>(c) if the holder contravenes any provision of this Act, whether or not he or she had been convicted of an offence; or</p> <p>(f) satisfied that holder is no longer a fit and proper person.</p> <p>Fit and proper person determined under criteria from section 29(2).</p>	<p>51(2)(c) Conviction not necessary.</p> <p>51(2)(f) Conviction not necessary for fit and proper person.</p>
	Section 60: General restrictions on granting permits	<p>60(1) Commissioner must not grant a permit unless satisfied that fit and proper person.</p> <p>Fit and proper person determined under criteria from section 29(2).</p> <p>(3) The Commissioner must not grant an application for a permit to a person who would not be granted a licence for any reason specified in section 29(3).</p>	<p>29(2) Conviction not necessary for fit and proper person.</p> <p>29(3) Conviction not necessary for ss (d) or (e).</p>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
	Section 69: Granting minor's permit	69 The Commissioner may (b) refuse to grant the application if: (i) satisfied that not fit and proper person. [Fit and proper person is determined under criteria from section 29(2)] (ii) on any grounds the Commissioner must not grant an application for a permit to a person under section 29(3).	29(2) Conviction not necessary for fit and proper person. 29(3) Conviction not necessary for ss (d) or (e).
	Section 79: Cancellation of registration	79 The Commissioner may cancel the registration of a firearm if the applicant is convicted of an offence under this Act or a prescribed offence.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 96A: Employment restrictions Various offences in relation to proscribed persons.	96A Proscribed person is defined in (6) to be a person who: (b)(i) was not considered a fit and proper person to be issued with the licence or permit; or (ii) the person was not considered a fit and proper person to be trusted with possession of firearms; or (iii) the issue of the licence or permit would be contrary to the public interest; or (c) is subject to an interim restraint order or interim family violence order or a similar interim order in force under a law of another jurisdiction; or (d) is subject to a restraint order, family violence order or police family violence order or a similar order in force under a law of another jurisdiction; or (e) is subject, either in this State or elsewhere, to a good behaviour bond relating to an offence of or involving violence; or (f) is subject to a firearm prohibition order.	29(2) Conviction not necessary for fit and proper person.
	Section 99A: Licence to be cancelled in certain circumstances	29A(1)(b) The Commissioner must cancel a firearms dealer licence if satisfied that the applicant's close associates are not fit and proper persons to be close associates of a firearms dealer. Fit and proper person determined under criteria from section 29(2).	29(2) Conviction not necessary for fit and proper person.
<i>Fisheries (Scalefish) Rules 2004 (Tas)</i>	Section 58H: Maximum licence holding for banded morwong	58H(2) If a person is convicted of an offence under subrule 1, the Minister <i>may</i> divest the person of interests in excess of 2 licences.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 58I: Maximum quota unit holdings	58I(2) If a person is convicted of an offence under subrule 1, the Minister <i>may</i> divest the person of interests in excess of 200 banded morwong quota units.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
<i>Forest Practices Act 1985 (Tas)</i>	Section 38: Appointment of officers for purposes of Act	38(2A) Authority may refuse to appoint nominee on grounds that not fit and proper person. 38(2B) For the purposes of ss (2A), the authority may have regard to: (a) whether the nominee has been convicted of an offence against the <i>Forestry Act 1920 (Tas)</i> or this Act; or (b) whether the nominee has been convicted of an offence involving dishonesty.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 39: Forest practices officers	39(3) Authority may revoke authorisation on ground that: (b) the person has been convicted of an offence against the <i>Forestry Act 1920 (Tas)</i> or this Act; or (b) the person has been convicted of an offence involving dishonesty.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Gaming Control Act 1993 (Tas)	Section 23: Matters to be considered in determining application	23(1) Not grant a casino licence or gaming operator's licence unless suitable person. 23(2) Fit and proper having regard to character, honesty and integrity.	Finding of guilt relevant.
	Section 37: Grounds for objection	37(1) Objections on ground that not fit and proper person.	Finding of guilt relevant.
	Section 38: Matters to be considered in determining application	38(1) Must not grant a licence unless satisfied that suitable person. 38(2)(a) Fit and proper having regard to character, honesty and integrity.	Finding of guilt relevant.
	Section 74: Determination of application [to be on roll of recognised manufacturers, suppliers and testers of gaming equipment]	74(2) Must consider when deciding whether to enter on roll that (a) fit and proper having regard to character, honesty and integrity.	Finding of guilt relevant.
	Section 76J: Suitability of person to hold a Tasmanian gaming licence Section 76K: Suitability of associates	76J(a) & 76K(a) in deciding whether suitable person may have regard to whether fit and proper having regard to character, honesty and integrity.	Finding of guilt relevant.
	Section 112U: Suspension of prescribed licence without opportunity to be heard	112U(1) The Commissioner may suspend a prescribed licence if satisfied that the person has been charged with: (a) an offence against this Act; or (b) an offence involving fraud or dishonesty, whether that offence or conviction occurred in Tasmania or elsewhere.	112U(1) – only requires charge.
	Section 112S: Grounds for disciplinary action	112S(1) Each of the following is a ground for disciplinary action in relation to a prescribed licence: (a) The prescribed licence holder is no longer suitable or qualified to hold a prescribed licence or gaming endorsement; (b) An associate of the prescribed licence holder is no longer suitable to be an associate of a prescribed licence holder; (c) The prescribed licence holder has contravened a provision of this Act or a gaming Act; (e) The prescribed licence holder has been found guilty of an offence involving fraud or dishonesty, whether or not in Tasmania, the maximum penalty for which exceeds imprisonment for 3 months.	Finding of guilt.
Health Services Establishment Act 2006 (Tas)	Section 10: Approval in principle or refusal of application	10(3) May refuse application for licence if not a fit and proper person.	Finding of guilt.
	Section 30: Cancellation of licence with notice	30(1) The Secretary may cancel the licence if: (b) the licensee is no longer a fit and proper person; (c) convicted of an offence under the Act or regulations (d) convicted of an offence punishable by imprisonment for a period of 12 months or more.	Finding of guilt relevant to fit and proper person under ss(1)(b). 30(1)(c) & (d) Conviction: Sentencing Act 1997 (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>HIV/AIDS Preventive Measures Act 1993 (Tas)</i>	Section 26: Permits to supply syringes and needles permit	26(3) May grant permit if satisfied that applicant is an appropriate person to participate in a needle exchange program.	Finding of guilt relevant to appropriate person assessment.
	Section 31: Cancellation of permit	31(1) The Secretary may cancel a permit if: (b) has been convicted of an offence against section 28 or 29, or (c) is no longer an appropriate person.	Finding of guilt relevant to appropriate person assessment.
<i>Inland Fisheries Act 1995 (Tas)</i>	Section 31: Transfer of commercial freshwater fishing licence	31(2)(c) The Director may approve the transfer if satisfied that the person to whom the licence is to be transferred has not been convicted of an offence; (d) it is appropriate to do so.	31(2)(c) Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1). 31(2)(d) scope to take into account finding of guilt.
	Section 32: Renewal of commercial freshwater fishing licence	32(3)(b) The Director must take into account whether or not the holder has been convicted of an offence under this Act.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 33: Cancellation of commercial freshwater fishing licence	33(1)(b) The Director may cancel the licence if holder convicted of an offence under this Act.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 41: Grant of fish farm licence	41(1) The Director may grant an application for a fish farm licence if satisfied that (a) the applicant is a fit and proper person. (1A) In determining whether a fit and proper person must consider whether: (a) has contravened this Act; and (b) has committed any offence the Director considers relevant.	Finding of guilt.
	Section 46: Transfer of fish farm licence	46(2) The Director may approve the transfer of a fish farm licence if satisfied that (a) a fit and proper person.	Finding of guilt.
	Section 47: Renewal of fish farm licence	47(2) The Director may grant an application for a fish farm licence if satisfied that (a) the applicant is a fit and proper person. (2A) In determining whether a fit and proper person must consider whether: (a) has contravened this Act; and (b) has committed any offence the Director considers relevant.	Finding of guilt.
	Section 48: Cancellation of fish farm licence	48(1) The Director may cancel licence if (d) the holder of the licence has been convicted of: (i) an offence under this Act; or (ii) any other offence the Director considers relevant.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 79: Cancellation of registration	79(1)(b) The Director may cancel the registration if the person to whom the registration relates is convicted of an offence under this Act. (2) If the Director cancels a registration, a person is disqualified from applying again for the cancelled registration for any period, not exceeding 5 years, the Director determines.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Liquor Licensing Act 1990 (Tas)</i>	Section 22: Qualifications for liquor licence	22(1)(b) Fit and proper person.	Finding of guilt.
	Section 24: Consideration of application for liquor licence	24(1B)(b) Commissioner may request report from Commissioner of Police as to whether the person is a fit and proper person.	
	Section 41: Powers of Commissioner to suspend licence	41(1)(b) May give notice to comply with direction if found guilty of an offence under Act. 41(2A) May suspend a liquor licence if not a fit and proper person.	Finding of guilt.
	Section 42: Cancellation and suspension of licence	42(1) The Commissioner may apply to Board for cancellation of licence if: (a) in prison serving imprisonment; (b) during the immediately preceding 3 years a total of 3 offences have been committed in respect of conduct of the licensed premises; or (c) the licensee has been convicted of an offence that makes it not in the public interest that continue to hold a licence; or (l) is no longer fit and proper person.	Finding of guilt for (b). Conviction for (a)(convicted if imprisoned) and (c) (<i>Sentencing Act 1997 (Tas) s 10(1)</i>). Finding of guilt may be relevant to (l).
<i>Littering Act 2007 (Tas)</i>	Section 50A Exemptions	50A(3)(b) The Director may grant exemption if satisfied that fit and proper person.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Living Marine Resources Management Act 1995 (Tas)</i>	Section 3: Interpretation	3 Convicted includes: (a) a plea of guilt; or (b) a finding by a court that a person committed an offence even though no conviction was recorded; or (3) a finding of guilty by a court even though a conviction is not recorded.	
	Section 78: Grant of licence	78(1) – The Minister may grant a licence if satisfied that - (b) the applicant, within 5 years before the date of the application, has not been convicted of any offence under this Act or any other Act which Minister considers relevant to holding of a licence; (f) fit and proper person.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
	Section 78A: Grant of licence previously cancelled	78(1) May grant licence if (d) the applicant (ii) was not the person convicted of any of the offences that resulted in the demerit points being allocated to the former licence.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
	Section 81: Renewal of licence	81(2) The Minister must renew the licence as long as: (b) the holder of the licence has not been convicted of any offence under this Act, or any other Act which Minister considers relevant to holding of a licence; (e) a fit and proper person. 81(3) May refuse to renew licence if not so satisfied.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
	Section 82: Transfer of licence	82(2) The Minister may grant a transfer if satisfied that: (b) the applicant, within 5 years before the date of the application, has not been convicted of any offence under this Act or any other Act which Minister considers relevant to holding of a licence; (f) a fit and proper person.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
	Section 83: Variation of licence	83(1A) The Minister may grant a variation if satisfied that (b) the applicant, within 5 years before the date of the application, has not been convicted of any offence under this Act or any other Act which the Minister considers relevant to holding of a licence.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
	Section 87: Prohibition on use of licence by other persons	87(2)(b) The Minister may grant approval for use of licence by other persons if: (ii) the holder of the licence has not been convicted of any offence under this Act, or any other Act which Minister considers relevant to holding of a licence; (iv) a fit and proper person.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
	Section 90: Cancellation or suspension of licence	90(1) The Secretary may apply for an order to cancel or suspend a licence for a period of 5 years if: (a) convicted of an offence against this Act, another Act or corresponding law, being an offence of a kind that is (i) relevant to the holding, supervision or use of the licence; and (ii) of such character as to merit the cancellation or suspension of licence; or (b) convicted of an offence against a corresponding law or a New Zealand law with equivalent of an offence under this Act.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
<i>Marine Farming Planning Act 1995 (Tas)</i>	Section 66: Renewal of lease	66(4) The Minister may grant renewal if satisfied that – (e) the applicant has not been convicted of an offence under any law relating to marine farming.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>
	Section 67: Variation of a lease	67(1)(c) The Minister may vary a lease or a lease area if the lessee is convicted of an offence under this Act.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Meat Hygiene Act 1985</i> (Tas)	12: Grant or refusal of application	12(2)(c) The Chief Inspector may refuse an application for a licence if satisfied that (c) the applicant was a convicted of an offence under – (i) this Act; (ii) the <i>Export Control Act 1982</i> (Cth); or (iii) the <i>Animal Welfare Act 1993</i> (Tas); or (iv) any other Act relating to meat hygiene or animal welfare.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	19: Reviews	19(1)(c) The Chief Inspector may cancel a licence if (c) convicted of an offence under – (i) this Act; (ii) the <i>Export Control Act 1982</i> (Cth); or (iii) the <i>Animal Welfare Act 1993</i> (Tas); or (iv) any other Act relating to meat hygiene or animal welfare.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	21: Transfer of licence	21(4) The Chief Inspector may refuse the transfer of a licence if (c) convicted of an offence under – (i) this Act; (ii) the <i>Export Control Act 1982</i> (Cth); or (iii) the <i>Animal Welfare Act 1993</i> (Tas); or (iv) any other Act relating to meat hygiene or animal welfare.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>National Parks and Reserved Land Regulations 2009</i> (Tas)	Regulation 30: Cancellation of authority	30(1)(c) May cancel authority granted to a person if the person has been convicted of an offence under Act or regulation.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>National Parks and Reserves Management Act 2002</i> (Tas)	Section 69: Production and cancellation of licences	69(3) If a person is convicted of an offence, the Court may (a) cancel any licence issued under Act; prohibit person from applying for or being granted a licence for a specified period; prohibit person from being in possession or control of any hunting equipment.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 70: Cancellation of firearms licence	70(2) If a person is convicted of an offence against this Act and the behaviour constituting the offence involves the use of a firearm the court may cancel or suspend a firearms licence and/or prohibit the person from applying for a firearms licence during specified period.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Nature Conservation Act 2002</i> (Tas)	Section 56: Production and cancellation of licences	56(3) If a person is convicted of an offence, the Court may (a) cancel any licence issued under Act; prohibit person from applying for or being granted a licence for a specified period; prohibit person from being in possession or control of any hunting equipment.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 57: Cancellation of firearms licence	57(2) If a person is convicted of an offence against this Act and the behaviour constituting the offence involves the use of a firearm the court may cancel or suspend a firearms licence and/or prohibit the person from applying for a firearms licence during specified period.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Passenger Transport Services Act 2011</i> (Tas)	Section 15: Purpose of accreditation	15(1) The purpose of mandatory accreditation is to ensure that the operator of a passenger transport service or hire and drive passenger service is (a) a fit and proper person to operate the service.	
	Section 19: Determination of application for accreditation	19(3)(a) The Commissioner must refuse to approve the application if it reasonably determines that the applicant is not a fit and proper person. 4(a) Without limiting that matters the Commissioner may determine that a person is not a fit and proper person if – (a) the person has a conviction for a serious offence. Section 3 conviction includes a finding of guilt without recording of a conviction.	Finding of guilt: <i>Passenger Transport Services Act 2011</i> (Tas) s 3.
	Section 31: Cancellation and suspension of accreditation	31(1)(b) – No longer a fit and proper person (see 19(2) and (4)).	Finding of guilt: <i>Passenger Transport Services Act 2011</i> (Tas) s 3.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Petroleum (Submerged Lands) (Management of Environment) Regulations 2012</i> (Tas)	Regulation 31: Withdrawal of acceptance not affected by other provisions	31(1) The Minister may withdraw the acceptance of an environment plan ... even though not been convicted of an offence by reason for the failure to comply with that provision.	Conviction not necessary.
<i>Petroleum (Submerged Lands)(Pipelines) Regulations 2008</i> (Tas)	Regulation 44: Withdrawal of acceptance not affected by other provisions	44(1) The Minister may withdraw the acceptance of a pipeline management plan ... even though not been convicted of an offence by reason for the failure to comply with Act or regulations.	Conviction not necessary.
<i>Police Offences Act 1935</i> (Tas)	Section 15C: Use, carriage and possession of crossbow 15C(5) Commissioner must not grant permit unless satisfied that a (c) fit and proper person.	15C(6) In deciding whether fit and proper person, take into account (c) any criminal activity by person; (d) any offence committed by the person under this Act, the <i>Guns Act 1991</i> (Tas) or the <i>Firearms Act 1996</i> (Tas).	Finding of guilt.
	Section 15E: Body Armour	15E(5) In deciding whether fit and proper person, take into account (c) any criminal activity by person; (d) any offence committed by the person under this Act, the <i>Guns Act 1991</i> (Tas) or the <i>Firearms Act 1996</i> (Tas).	Finding of guilt.
<i>Poisons Act 1971</i> (Tas)	Section 17: Refusal of licences and of renewals	17 The Minister may refuse to grant or renew a licence if that person convicted of an offence against this Act of such a nature that in the opinion of the Minister it would be contrary to public interest.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 27: Licences to sell certain substances	27(4)(b) The Minister may revoke or refuse to renew a licence on the ground that the holder of the licence is a person who has been convicted of an offence against this Act and by reason of that conviction, the Minister is of the opinion that no longer a fit and proper person or (c) for another reason is no longer a fit and proper person.	27(4)(b) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1) but finding of guilt for (c).
<i>Poisons Regulations 2008</i> (Tas)	Regulation 74: Authorisation to manufacture certain dangerous poisons	74(7) May refuse application if not fit and proper person. (8) May have regard to any matters the Secretary considers relevant.	Finding of guilt relevant to fit and proper person.
<i>Public Health Act 1997</i> (Tas)	Section 74H: Cancellation of tobacco seller's licence	74H(1)(d) The Director may cancel a licence if holder is convicted of an offence under this Part.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 83: Cancellation of licence	83(1)(c) A council may cancel a place of assembly licence if the holder is convicted of an offence in respect of the place to which the licence relates.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 103: Cancellation of registration of premises	103(1)(b) A council may cancel the registration of premises if the person is convicted of an offence in respect of premises.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Racing Regulation Act 2004</i> (Tas)	Section 50: Appointment of club officers	50(3) If the Director reasonably considers that a person is not a fit and proper person to remain as a prescribed officer, may direct the club to dismiss the person.	Finding of guilt.
	Section 58: Applications for registration	58(3)(a) In deciding whether to approve the application the Director may consider whether the applicant is a fit and proper person.	Finding of guilt.
	Section 63: Cancellation of registration for certain convictions	63(1) The registration of bookmaker or bookmaker's agent is taken to have been cancelled if convicted of specified offences. 3 Conviction includes a finding of guilty without the recording of a conviction for the offence.	Finding of guilt: <i>Racing Regulation Act 2004</i> (Tas) s 3.
<i>Radiation Protection Regulations 2006</i> (Tas)	Regulation 4: Criteria for determining applications for authorities [for purposes of 21(2)(a) of the Act]	4(1)(d) Whether convicted of an offence that the Director of Public Health considers relevant.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Radiation Protection Act 2005</i> (Tas)	Section 21: Determination of application	21(2)(h) The Director of Public Health satisfied that a fit and proper person having regard to any other matter considers relevant.	Finding of guilt may be relevant.
	Section 31: Grounds for suspending or cancelling authority	31(b) Holder found guilty of an offence against this Act or other legislation.	Finding of guilt.
<i>Restricted Hire Vehicle Industry Regulations 2013</i> (Tas)	Regulation 6: Suspension of restricted hire vehicle licence	For section 84P(1) of the Act, the prescribed circumstance in which the Commission may suspend a licence is: (e) if the holder of the restricted hire vehicle licence is found guilty of an offence under section 95.	Finding of guilt.
	Regulation 7: Cancellation of restricted hire vehicle licence	For section 84P(1) of the Act, the prescribed circumstances in which the Commission may cancel a licence are: (d) if the holder of the restricted hire vehicle licence is found guilty of an offence under section 95; (e) if the holder of the licence is found guilty of offence under reg 11 but continues to offer vehicle.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Security-sensitive Dangerous Substances Act 2005 (Tas)</i>	Section 13: Applications not to be approved unless applicants are fit and proper persons	13(2) Must have regard to: (e) whether contravened this Act, or a related or corresponding law; (f) whether convicted of an offence involving a SSDS or another dangerous substance; (g) whether convicted of a terrorism offence (h) whether convicted of an offence involving (i) violence or weapons; (ii) dishonesty; or (iii) obstruction or intimidation of persons exercising statutory power. 3: Conviction includes finding of guilt without recording conviction.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005 (Tas) s 3.</i>
	Section 14: Applications not to be approved unless responsible workers are fit and proper persons	14(2) Must have regard to: (e) whether contravened this Act, or a related or corresponding law (whether or not the contravention resulted in a conviction); (f) whether convicted of an offence involving a SSDS or another dangerous substance; (g) whether convicted of a terrorism offence (h) whether convicted of an offence involving (i) violence or weapons; (ii) dishonesty; or (iii) obstruction or intimidation of persons exercising statutory power.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005 (Tas) s 3.</i>
	Section 31: Cancellation and suspension of permits by regulator	31(1)(b) The regulator must cancel permit immediately if convicted of a terrorism offence. (2) May suspend or cancel licence if: (e) contravened this Act, or a related or corresponding law; (g) convicted of an offence involving; (i) violence or weapons; (ii) dishonesty; or (iii) obstruction or intimidation of persons exercising statutory power; (h) committed an offence of another kind that calls into question his or her fitness or competence to continue to hold SSDS permit.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005 (Tas) s 3.</i>
	Section 41: Responsible worker – revocation of status	41(1) The regulator may revoke status if: (g) contravened this Act, or a related or corresponding law; (i) convicted of an offence involving (i) violence or weapons; (ii) dishonesty; or (iii) obstruction or intimidation of persons exercising statutory power; (j) committed an offence of another kind that calls into question his or her fitness or to continue as a responsible worker. (2) The regulator must revoke status if convicted of a terrorism offence.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005 (Tas) s 3.</i>
<i>Tasmanian Qualification Authority Act 2003 (Tas)</i>	Section 55ZZJ Cancellation or suspension of registration	55ZZJ (1) The Authority may cancel or suspend registration if satisfied that (a) the provider has contravened this Act; or (b) been found guilty of any law in relation to the provision of an education program or a dealing relating to a person who is an overseas students.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Training and Workforce Development Act 2013 (Tas)</i>	Section 13: Registration as listed group training organisation	13(1) Needs to be a fit and proper person.	
	Section 15: Cancellation of registration as listed group training organisation	15(2) Satisfied that not fit and proper person.	
	Section 48: Employers who are not fit and proper persons for purposes of training contracts or vocational placement agreements	48(2) In determining whether a fit and proper person may take into account: (b) whether or not the employer has contravened this Act.	Finding of guilt.
<i>Water Management Act 1999 (Tas)</i>	Section 64: Refusal of application for licence	64(c) The Minister may refuse an application for a licence if satisfied that the applicant has been convicted of an offence under this Act or has accepted an infringement notice.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 85: Payment for allocation	85(4) The Minister may refuse to accept a bid or tender for a water allocation from a person who has been convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 98: Refusal of application for transfer	98(2) The Minister may refuse an application for transfer if (a) has been convicted of an offence against this Act or has accepted an infringement notice.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 106: Cancellation of licence on conviction for offence	106(1) On conviction of a licensee for an offence which has resulted in a significant adverse impact or material or serious environment harm, a court may cancel the licence or suspend it. (3) If the licensee has been convicted of an offence under the EMPC Act and the Minister is satisfied that the environment of the water resource has been detrimentally affected, may cancel, suspend or vary the licence.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 123F: Cancellation or suspension of watercourse authority	123F(1) The Minister may cancel or suspend a watercourse authority if: (b) convicted of an offence under s 123A which has resulted in a significant adverse impact or material or serious environment harm; (b) has committed an offence under the EMPC Act (h) has committed an offence under s 283.	123F(1)(b) Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1). 123F(1)(b) and (h) Finding of guilt.
	Section 136I: Cancellation or suspension of well driller's licence	136I(b) and (d) The Minister may cancel or suspend licence if convicted of specified offences.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 158: Refusal of application for permit	158(2) May refuse to grant a permit for dam works if the applicant has been convicted of an offence under this Part.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
<i>Wellington Park Regulations 2009 (Tas)</i>	Regulation 36: Cancellation of permits	36(1)(b) The Trust may cancel a permit if (b) the holder of the permit has been convicted of an offence under the Act or regulation.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Whales Protection Act 1988</i> (Tas)	Section 11: Cancellation of permits	11 The Secretary may cancel a permit if (c) the holder of the permit has been convicted of an offence against a law relating to fisheries, fauna or the preservation, conservation and protection of whales.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 23: Production and cancellation of permit in proceedings for offences	23(2) Where a person is convicted of an offence against this Act, the court may order any permit to be cancelled.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Wildlife (Exhibited Animals) Regulations 2010</i> (Tas)	Regulation 10: Issue of wildlife exhibition licence	10(3) The Secretary must not grant the application unless satisfied that (f) is a fit and proper person and is otherwise of good character.	Finding of guilt.
	Regulation 17: Cancellation of wildlife exhibition licence	17(1)(b) The Secretary may cancel licence on grounds that convicted of an offence under Act or regulations.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 31: Cancellation of travelling wildlife exhibition permit	17(2)(b) The Secretary may cancel licence on grounds that convicted of an offence under Act or regulations.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 42: Cancellation of wildlife display permit	17(1)(b) The Secretary may cancel licence on grounds that convicted of an offence under Act or regulations.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Wildlife (General) Regulations 2010</i> (Tas)	Regulation 8: Application for licence [fauna dealers licence (skins) or commercial taxidermy licence]	8(1)(c) The application is to be accompanied by a written notification of all relevant offences of which the applicant has been convicted within the period of 5 years. 3 Relevant offence means: (a) an offence under the Act, the <i>Animal Welfare Act 1993</i> (Tas), the <i>Firearms Act 1996</i> (Tas), the <i>National Parks and Reserves Management Act 2002</i> (Tas), or the <i>Threatened Species Protection Act 1995</i> (Tas); or (b) regulations made under any of those Acts; or (c) such other offence as determined by the Secretary for the purpose of this regulation.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 9: Grant and issue of licence	9(2) The Secretary is to refuse to grant application if the applicant has been convicted of relevant offence within the period of 5 years.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 20: Application for permit	20(1)(c) The application is to be accompanied by a written notification of all relevant offences of which the applicant has been convicted within the period of 5 years.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 21: Grant and issue of permit	21(4) The Secretary is to refuse to grant application if the applicant has been convicted of relevant offence within the period of 5 years.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Work Health and Safety Regulations 2012</i>	Regulation 87: Application for high risk work licence	87(2)(h) Application must include a declaration as to where or not the applicant has ever been convicted or found guilty of any offence under the Act or these regulations.	Finding of guilt.
	Regulation 90: Matters to be taken into account	90 For the purposes of 89(2)(f) [competency and compliance], the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
	Regulation 107: Matters to be taken into account	107(2) For the purposes of making a decision whether to suspend or cancel a licence, the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
	Regulation 116: Application for accreditation	116(2)(f) Application must include a declaration as to whether or not the applicant has ever been convicted or found guilty of any offence under the Act or these regulations.	Finding of guilt.
	Regulation 119: Matters to be taken into account	119 For the purposes of 118(2)(a)(ii) and (iii) [that the applicant is able to carry out work safely and competently], the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
	Regulation 135: Matters to be taken into account	135(2) For the purposes of making a decision whether to suspend or cancel accreditation, the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
	Regulation 492: Application for asbestos removal licence or asbestos assessor licence	492(2)(f) Application must include a declaration as to where or not the applicant has ever been convicted or found guilty of any offence under the Act or these regulations or been convicted or found guilty of any offence in relation to the unlawful disposal of hazardous waste under the <i>Environmental Management and Pollution Control Act 1994</i> (Tas).	Finding of guilt.
	Regulation 500: Matters to be taken into account	500(1) For the purposes of 497(2)(e) and (f) [that the applicant is able to carry out work safely and competently and ensure compliance], the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty; (b) any offence in relation to the unlawful disposal of hazardous waste under the <i>Environmental Management and Pollution Control Act 1994</i> (Tas) for which convicted or found guilty.	Finding of guilt.
	Regulation 521: Matters to be taken into account	521(2) For the purposes of making a decision whether to suspend or cancel licence, the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
	Regulation 538: Content of notification	538 (3)(d)(i) Must provide information in notification [about major hazard facilities] about any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
	Regulation 578: Application for major hazard facility licence	578(2)(f)(i) Application must include a declaration as to where or not the applicant has ever been convicted or found guilty of any offence under the Act or these regulations.	Finding of guilt.
	Regulation 581: Matters to be taken into account	581(1) For the purposes of making a decision whether to grant a licence, the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.
Regulation 603: Matters to be taken into account	603(2) For the purposes of making a decision whether to suspend or cancel licence, the regulator must have regard to (a) any offence under the Act or regulations of which been convicted or found guilty.	Finding of guilt.	

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Workers Rehabilitation and Compensation Act 1988</i>	Section 77F: Revocation or suspension of accreditations	77(1) The Board may revoke or suspend the accreditation of a medical practitioner or accredited person because: (a) failed to comply with any provision of this Act or <i>Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011</i> (Tas) and that failure constitutes a substantial breach of requirements, or (b) convicted of an offence against those Acts.	77F(1)(a) Finding of guilt. 77F(1)(b) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 111: Revocation or suspension of licences and permits	111(1) The Board may revoke or suspend a licence or permit of a licensed insurer or self-insurer if: (a) failed to comply with any provision of this Act and that failure constitutes a substantial breach of requirements, or (b) convicted of an offence against the Act.	111(1)(a) Finding of guilt. 111(1)(b) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Table 4: Banning, disqualification and prohibition order

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Aboriginal Lands Act 1995</i> (Tas)	Section 37: Disqualification from office	37(2) A person who is convicted of an offence under this section is disqualified from holding any office under this Act for 7 years from the date of conviction, or for such shorter period as the court by which the person is convicted may order.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Animal Welfare Act 1993</i> (Tas)	Section 43: Custody of animals	43(1)(a) If a person been convicted of an offence under this Act in respect of an animal ... the court may, in addition to, or instead of, any other penalty, order that the person be disqualified ... from having custody of any animals.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Collection for Charities Act 2001</i> (Tas)	Section 15: Prohibition of soliciting	15(1) A magistrate may make an order prohibiting an organisation from soliciting if the organisation is convicted of an offence against this Act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 16: Appointment of administrators	16(1) Following a conviction of an organisation for an offence, a magistrate may appoint an administrator.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Cooperatives Act 1999</i> (Tas)	Section 213: Disqualified persons	213(1)(b) A person must not act as a director or directly or indirectly take part in management of a cooperative if been convicted on indictment of an offence in connection with the promotion, formation or management of a body corporate of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months; of certain offences against the <i>Corporations Act</i> ; of an offence against a previous law corresponding to the <i>Corporations Act</i> within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Corrections Act 1997</i> (Tas)	Section 24: Prohibition against bringing authorised articles and things into prison	24(5) In addition to any other penalty that may be imposed on a correctional officer, a correctional officer who is convicted of an offence against this section forfeits office.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Conveyancing Act 2004</i> (Tas)	Section 5: Ineligibility to be licenced	5(1)(f) Person is ineligible to be licenced if has been convicted of an indictable offence and sentenced to imprisonment or detention for 3 years or more or a restriction order made under section 75(1)(e) of the <i>Sentencing Act 1997</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Dangerous Goods (Road and Rail Transport) Act 2010</i> (Tas)	Section 87: Power to affect road vehicle registration	87(1) This section applies if the registered operator of a road vehicle is found guilty of an offence under this Act.	Finding of guilt.
	Section 90: Exclusion orders	90(1) A court that finds a person guilty may make an exclusion order prohibiting person from involvement in the transport of dangerous goods or any aspect of transport if the person is a systematic or persistent offender.	Finding of guilt.
<i>Dog Control Act 2000</i> (Tas)	Section 19A: Subsequent attack by dangerous dog	19A(8) The owner of a dangerous dog must not own or be in charge of any dog in the period of 5 years immediately following conviction or finding of guilt in respect of subsequent attack by dangerous dog.	No need for court proceedings to provide basis for prior attack. Disqualification arises on finding of guilt.
<i>Employment Incentive Assistance Act 1984</i> (Tas)	Section 5: Applications for grants	5(3) Where a person is convicted of an offence of providing false or misleading information in an application, if the application has not been granted when that person is convicted, the person ceases to be eligible for the grant.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Explosives Act 2012</i> (Tas)	Section 66: Prohibiting convicted persons from involvement in handling of explosives	66(1) In sentencing a person for an offence against this Act, a court may order that person be prohibited from having any involvement in handling of explosives. 3 Conviction, in relation to an offence, includes a finding of guilt without recording of a conviction for the offence.	Finding of guilt: <i>Explosives Act 2012</i> (Tas) s 3.
	Section 3: Interpretation		
<i>Historic Cultural Heritage Act 1995</i> (Tas)	Section 74: Order prohibiting works	74(1) The Minister may prohibit the owner of a registered place convicted of an offence relating to the destruction of, or damage to, the place from carrying out any works in relation to the place.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Inland Fisheries Act 1995</i> (Tas)	Section 36: Disqualification from applying for or obtaining licence	36 The Director may determine that a person who is convicted of an offence under this Act is disqualified from applying for and obtaining a commercial freshwater fishing licence for a specified period.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 38A: Disqualification from applying for or obtaining recreational licence	38A The Director may disqualify a person who is convicted of an offence under this Act from applying for and obtaining a recreational fishing licence for a period not exceeding 5 years.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 145: Application for control order	145(1) The Director may apply for a control order against a person: (a) convicted of more than one offence against this Act; and (b) who the Director reasonably believes is likely to commit further offences.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Living Marine Resources Management Act 1995</i> (Tas)	Section 246: Permanent disqualification from obtaining a licence	Provides for permanent disqualification for 200 or more demerit points that have been allocated consequent on one or more serious convictions.	Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) s 3.
	Section 251: Application for control order	251 The Director may apply for a control order against a person: (a) in respect of whom 200 or more demerit points are in force and who the Secretary reasonably believes is likely to commit further offences under the Act or; (b) convicted of more than one offence which is relevant to making the order.	Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) s 3.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Mental Health Act 1996</i> (Tas)	Section 73]: Offence to bring certain things into secure mental health unit	73](4) A person who is convicted of an offence is not entitled to be employed in or to undertake any work, including the practice of medicine, in any secure mental health unit unless Secretary determines otherwise.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Racing Regulation Act 2004</i> (Tas)	Section 63: Cancellation of registration for certain convictions	63(1) The registration of bookmaker or bookmaker's agent is taken to have been cancelled if convicted of specified offences. 3 Conviction includes a finding of guilty without the recording of a conviction for the offence.	Finding of guilt: <i>Racing Regulation Act 2004</i> (Tas) s 3.
<i>Retirement Villages Act 2004</i> (Tas)	Section 41: Certain persons excluded from administration of retirement village	41(1) A person to whom section applies must not be concerned with administration or management of retirement village. (2)(c) a person who: (i) has during the preceding 5 years been convicted of an offence against another person or an offence involving fraud or dishonesty; or (ii) has served a sentence of imprisonment for an offence against another person or an offence involving fraud or dishonesty, if the sentence ended during the preceding 5 years.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Security-sensitive Dangerous Substances Act 2005</i> (Tas)	Section 31: Cancellation and suspension of permits by regulator	31(1)(b) The regulator must cancel permit immediately if convicted of a terrorism offence.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005</i> (Tas) s 3.
	Section 71: Prohibiting convicted persons from SSDS involvement	71(1) In sentencing a person for an offence against this Act, the court may, order that the person be prohibited for a specified period from having involvement with SSDS (2) Court has regard to: (a) any prior convictions of the person.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005</i> (Tas) s 3.
<i>Tasmanian Health Organisations Act 2011</i> (Tas)	Section 74: Certain persons disqualified from offices	74(a), (b) & (c) A person is not eligible to be a chief executive officer or a member of the governing council or to be concerned with or take part in the management of a Tasmanian Health Organisation if in the previous 5 years: (a) the person was convicted of an offence against this Act; or (b) the person, having been sentenced to a term of imprisonment in respect of an offence against this Act was released from prison; or (c) the person has been convicted of an offence of dishonesty.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Threatened Species Protection Act 1995</i> (Tas)	Section 53: Additional penalties on conviction	53 Where a person is convicted, the court may order: (a) any permit held is cancelled and they are disqualified from holding or obtaining a further permit.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Vehicle and Traffic (Vehicle Operations) Regulations 2001</i> (Tas)	Regulation 51: Variation, suspension and cancellation of permits	51(3) The Commission may suspend or cancel a permit if: (b) the holder has been convicted of a traffic offence of a serious or persistent nature.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Wellington Park Act 1993</i> (Tas)	Section 31: Licensing of activities in Wellington Park	31(7) Where the holder of a licence is convicted of an offence under (6) the Trust may cancel the licence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 68: Production and cancellation of licence	68(2) If convicted of an offence, the court may: (a) cancel or suspend licence etc; (b) prohibit person from applying for any licence etc; (c) prohibit the person from being in possession or control of any hunting equipment.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Wildlife (General) Regulations 2010 (Tas)	Regulation 9: Grant and issue of licence	<p>9(2) The Secretary is to refuse to grant application if the applicant has been convicted of relevant offence within the period of 5 years</p> <p>3 Relevant offence means:</p> <p>(a) an offence under the Act, the <i>Animal Welfare Act 1993</i> (Tas), the <i>Firearms Act 1996</i> (Tas), the <i>National Parks and Reserves Management Act 2002</i> (Tas), or the <i>Threatened Species Protection Act 1995</i> (Tas); or</p> <p>(b) regulations made under any of those Acts; or</p> <p>(c) such other offence as determined by the Secretary for the purpose of this regulation.</p>	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 21: Grant and issue of permit	<p>21(4) The Secretary is to refuse to grant application if the applicant has been convicted of relevant offence within the period of 5 years</p>	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Appendix 4

LOSS OF LICENCES TO DRIVE

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Marine Safety (Misuse of Alcohol) Act 2006</i> (Tas)	Section 41: Penalties for direct breaches of marine alcohol restrictions	<p>41 (2) If a court convicts a person for an offence under Part 2 that specified in table, the court must, regardless of any other penalty it may impose for the offence:</p> <p>(a) impose a fine specified, and</p> <p>(b) disqualify the person for the period that is specified.</p> <p>3 Conviction includes a finding of guilty without recording of a conviction for the offence.</p> <p>41 (5) Court may also (a) suspend or cancel a local mariners certificate held by the convicted person and/or prohibit the person from applying for a local mariners certificate.</p>	Finding of guilt: <i>Marine Safety (Misuse of Alcohol) Act 2006</i> (Tas) s 3.
	Section 42: Additional penalty of disqualification for certain offences	42(2) For specified offences, the court may, in addition to any other penalty, disqualify the person for period not exceeding 3 years.	Finding of guilt: <i>Marine Safety (Misuse of Alcohol) Act 2006</i> (Tas) s 3.
<i>Police Offences Act 1935</i> (Tas)	Section 37F: Disqualification from driving	<p>37F(1) The court may order disqualification from driving on conviction of an offence (not being a juvenile) of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud.</p> <p>37F(2) Where a juvenile is convicted of an offence of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud, the court must order him/her to be disqualified from driving for such period as the court determines.</p> <p>37(4) Where a person is convicted of motor vehicle stealing or procuring the hire or use of a motor vehicle by fraud and the court makes a compensation order, the court shall disqualify that person from driving until that person has paid in full the sum specified in the order.</p>	<p>37F(1) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).</p> <p>37F(2) Conviction: <i>Youth Justice Act 1997</i> s 49(5); <i>Police v HM (A Youth)</i> [2009] TASMC 08.</p> <p>37F(4) Finding of guilt (adult offenders): <i>Sentencing Act 1997</i> (Tas) s 10(2)(b)(v).</p> <p>Conviction (youth offender): <i>Youth Justice Act 1997</i> (Tas) s 49(5); <i>Police v HM (A Youth)</i> [2009] TASMC 08.</p>
<i>Police Powers (Vehicle Interception) Act 2000</i> (Tas)	Section 15: Disqualification	15 Court may disqualify a person found guilty of an offence against this Act from holding or obtaining a driver's licence for a period not exceeding 3 years.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas)	Section 17: Penalties for drink-driving offences	17(3) Subject to (5), a court that convicts a person of an offence (a) must impose (i) a specified fine; or (ii) term of imprisonment; or both; and (b) must, in addition, disqualify the person from driving for specified period. (5) Notwithstanding (3), if the person who is convicted satisfies the courts that there are special reasons why minimum not be imposed, the court may impose a lesser fine or period of disqualification.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(b)(v). This is a mandatory penalty because the court must impose a fine or imprisonment and disqualify the person. There is a discretion to impose a lesser fine or period of disqualification if 'special reasons' exist.
	Section 17A: Penalties for other offences	17A(2) A court who convicts a person of an offence other than section 6A or section 17 may order the person to be disqualified from driving for a period not exceeding 3 years.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 18A: Traffic infringement notices may be issued in certain circumstances	18A(1) Provides that in specified circumstances, a person may be served with a traffic infringement notice including if (a) not been convicted of (i) manslaughter arising out of use of motor vehicle, (ii) causing death by dangerous driving, (iii) an offence under this Act; or (iv) reckless driving. (3) Where, in accordance with section 20 of the <i>Monetary Penalties Enforcement Act 2005</i> , a person is taken to have been convicted, the person is disqualified for a period of 3 months.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 18B: Immediate disqualification in certain circumstances	18B(3) A person to whom an excessive drink-driving notice is given is disqualified from driving.	Police officer reasonable grounds for belief.
<i>Sentencing Act 1997</i> (Tas)	Section 55: Power of court to disqualify driver on conviction for certain offences	55(2) A court that convicts an offender of a motor vehicle offence may, in addition to imposing any other penalty, order that the offender be disqualified from driving.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
Vehicle and Traffic Act 1999 (Tas)	Section 13B: Recommencement or extension of provisional period of conviction for prescribed offences	13B(1) If a novice driver or rider commits and is subsequently convicted of a prescribed offence, the person is to recommence or that period is to be extended as prescribed by the regulations.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 17: Power of court to order disqualification	17(1) Subject to 19B or 19E, a court that convicts a person of a traffic offence may disqualify the person from driving for a period specified by the court. 17(2) If court disqualifies, Court must either suspend or cancel in specified circumstances (subject to (3)).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 19A: Automatic disqualification for excessive speeding	19A(1) If a person commits an excessive speeding offence and is taken to have been convicted of that offence in accordance with section 20 of the <i>Monetary Penalties Enforcement Act 2005</i> , the person is disqualified from driving for a specified period.	Deemed conviction.
	Section 19B: Court-imposed penalties for excessive speeding	19B (1) A court that convicts a person of an excessive speeding offence must (a) disqualify the person [period varying depending on speed], (b) exercise discretion in 17(2) or (3) and impose a fine of amount depending on speed. (2) Notwithstanding (1), if the person who is convicted satisfies the courts that there are special reasons why a lesser fine or period of disqualification.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2) (b)(v). This is a mandatory penalty because the court must impose a fine or imprisonment and disqualify the person. There is a discretion to impose a lesser fine or period of disqualification if 'special reasons' exist.
	Section 19D: Conviction under <i>Monetary Penalties Enforcement Act 2005</i> for unaccompanied driver offence	19D(1) If a novice driver who commits an unaccompanied driver offence is taken to have been convicted in accordance with <i>Monetary Penalties Enforcement Act 2005</i> he/she is disqualified from driving for 3 months and any driver licence is cancelled.	Deemed conviction.
	Section 19E: Court imposed penalties for unaccompanied driver offence	19B (1) A court that convicts a person of an unaccompanied driver offence must (a) disqualify the person for not less than 3 months, (b) cancel licence (3) and impose a fine (2) Notwithstanding (1), if the person who is convicted satisfies the courts that there are special reasons why a lesser fine or period of disqualification.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2) (b)(v). This is a mandatory penalty because the court must impose a fine or imprisonment and disqualify the person. There is a discretion to impose a lesser fine or period of disqualification if 'special reasons' exist.
	Section 21: Award of demerit point on conviction	21(1) Subject to this section, a court must, on conviction of a person of a traffic offence attracting demerit points, award against the convicted person the number of demerit points. (5) The court may restrain from awarding demerit points or reduce the number of points to be awarded against a convicted person if satisfied that it is just to do so.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). This isn't a mandatory penalty because the court has a discretion not to impose demerit points if it is just to do so.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
	Section 22: Award of demerit points on traffic infringement notice	22(1) Where a traffic infringement notice relating to a traffic offence that attracts demerit points has been served on the person and the person is taken to have been convicted in accordance with <i>Monetary Penalties Enforcement Act 2005</i> the demerit points prescribed is awarded against that person.	Deemed conviction.
<i>Vehicle and Traffic (Driver Licencing and Vehicle Registration) Regulations 2010</i> (Tas)	Regulation 17: Recommencement or extension of provisional period on conviction for prescribed offences	Regulation provides for recommencement or extension of provisional period for notice if the driver is convicted of a prescribed offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 22: Issue of driver licence	22(9A)–(9C) provide for the issue of interlock licences for persons convicted of specified offences	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Regulation 26j: Restarting of time periods	26j(1) Holder of interlock licence must restart period if (a) interlock licence is suspended or cancelled as a consequence of an offence under the <i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas) relating to alcohol. (2) The holder of an interlock licence must restart the 180 consecutive day period if (b) the holder of an interlock licence is found guilty of an offence under the <i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas) relating to alcohol but licence not suspended or cancelled.	26j(1): refer to <i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas) (above). 26j(2): Finding of guilt.
	Regulation 32: Variation, suspension or cancellation of driver licence	32(1) The Registrar may vary, suspend or cancel a driver licence if (e) the person is not in some other respect a suitable person to drive a motor vehicle of the relevant class. (i) The person has been convicted of an offence committed outside of Tasmania which, if committed within Tasmania, would have resulted in disqualification from driving or suspension or cancellation of licence. Regulation 4: Determination of suitability of person to hold driver licence, ancillary certificate or exemption includes: (b) evidence of the person's character; (e) evidence of any offence committed by the person that may indicate that the person is not a fit and proper person to hold a licence.	32(1)(e) Finding of guilt. 32(1)(i) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Appendix 5

POLITICAL RIGHTS

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Constitution Act 1934</i> (Tas)	Section 34: Vacation of office for other causes	34 If any Member of either House shall (e) be attainted of treason or be convicted of any crime and is sentenced or subject to be sentenced to imprisonment for any term exceeding one year his seat shall become vacant.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Electoral Act 2004</i> (Tas)	Section 31: Entitlement to enrolment	31(1) Entitled to vote if person is entitled to be enrolled on the Commonwealth roll. Excluded if been convicted of treason or treachery (<i>Commonwealth Electoral Act 1918</i> (Cth) s 93(8)). 31(2) Not entitled to be enrolled to vote if serving a sentence of imprisonment for a term of 3 years or more.	31(1) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). 31(2) Conviction only because a person must be convicted before imprisonment imposed: <i>Sentencing Act 1997</i> (Tas) s 7.
	Section 239: Disqualification from being elected	239(1) If convicted of a corrupt practice (s 3 means a crime by virtue of this Act) or who is found to have engaged in a corrupt practice is incapable of: (a) being elected to, and sitting as a member of parliament, or (b) being enrolled as an elector or voting.	Found to have engaged.
<i>Local Government Act 1993</i> (Tas)	Section 254: Entitlement to be on list of electors and to vote in election	254(1) A person is entitled to be enrolled on the electoral role if the person is entitled to enrol in House of Assembly election. (2)(c) Not entitled to be enrolled if serving a term of imprisonment.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 270: Eligibility for nomination as councillor	270(1)(h) A person is eligible to nominate as a candidate for the office of councillor if the person is not undergoing a term of imprisonment. (2) A person is not eligible to nominate as a candidate if the person has been sentenced but the sentence has not been executed.	

Appendix 6

ORDERS FOR COMPENSATION, RESTITUTION AND COSTS

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Agricultural and Veterinary Chemicals (Control of Use) Regulations 2012</i> (Tas)	Section 45: Testing at expense of owner	45(a)(iii) The owner has been found guilty of an offence under section 18, 20, 25, 30, 31, 32, 40, 41, 42, 43 or 46 of the Act or any regulations made in respect of any of those sections and relating to the handling of a chemical product (iv) The owner has been found guilty of an offence under the <i>Poisons Act 1971</i> (Tas) in relation to the use or possession of a chemical product that is listed, or which contains a constituent that is listed, in Schedule 4 to the Standard for the Uniform Scheduling of Drugs and Poisons and was proscribed by a veterinary surgeon for use in relation to an animal.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s10(2)(a).
<i>Ambulance Services Act 1982</i> (Tas)	Section 40: False ambulance calls	40(2) Where a person is convicted by a court of causing, by false pretence, a motor vehicle provided by the Director to attend at any place, the court may, in addition to imposing the penalty referred to in subsection (1), order that person to pay the costs incurred by the Director.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h): <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d): <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Animal Farming (Registration) Act 1994</i> (Tas)	Section 20: Seizure of prescribed animal	20(6): An animal farmer from whom a prescribed animal was seized is liable to pay all costs related to the maintenance of the animal by the Secretary if the animal farmer is convicted of an offence under this Act in relation to that animal.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h): <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d): <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011</i> (Tas)	Section 170: Convictions for offences relating to levy	170(1) If ... is convicted of an offence under this part by a court, the court, in addition to imposing a penalty for the offence, is to order the person to pay to the Commissioner – (a) the sum in respect of the non-payment of which the offence was committed; or (b) the portion of that sum that remains unpaid at the date of the conviction.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(v); <i>Shirley v Mooloo Farms</i> [2003] TASSC 101.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Cooperatives Act 1999</i> (Tas)	Section 224: Court may order payment of compensation	224(1) If court convicts a person and is satisfied that a cooperative has suffered loss or damage, the court may (in addition to imposing a penalty) order the convicted person to pay a specified amount of compensation.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 417: Costs of inquiry	417(4) If a person is convicted of an offence in proceedings that are the result of an inquiry, the court may order the convicted person to pay to the Crown all or part of the costs of the inquiry.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 419: Fraud or misappropriation	419(2) A person who is found guilty of an offence must, if ordered to do so by the court, deliver up all such property and repay all money improperly applied.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>Criminal Code</i> (Tas)	Section 425: Costs against convicts	425 The court by which judgment is given on conviction of a person for a crime, may, in addition to any other sentence, condemn that person to pay the whole or part of the costs or expenses incurred in or about the prosecution and conviction for the crime of which he is convicted.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act</i> (Tas) s 10(1).
<i>Costs in Criminal Cases Act 1976</i> (Tas)	Section 5: Costs of convicted defendant	5 Where a defendant is convicted but case involved a difficult or important point of law ... the court may order costs for defendant.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Dangerous Goods (Road and Rail Transport) Act 2010</i> (Tas)	Section 93A: Compensation orders Section 98: Recovery of costs	93A and 98(1): A court that finds a person guilty ... [can impose order].	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
	Section 130: Dismissal or other victimisation of employee or contractor assisting with or reporting breaches	130(6) If a person is found guilty, the court may order payment of compensation to the employee or contractor or the employment of employee or contractor.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>Dog Control Act 2000</i> (Tas)	Section 19: Dogs attacking persons or animals	19(8) If an owner of a dog is found guilty, the court may order the owner pay compensation for any danger caused or costs incurred.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
	Section 19A: Subsequent attack by dangerous dog	19A(6) Liability to costs in relation to detaining and destroying dangerous dog where a dangerous dog that has attacked an animal or a person subsequently attacks any animal or person.	No need for prior court proceedings.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Environmental Management and Pollution Control Act 1994</i> (Tas)	Section 64: Recovery of technical costs associated with prosecutions	64 Where a person is convicted of an offence, the court may order the convicted person to pay costs of taking any samples or conduct of tests, examination or analyses.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 65: Recovery of other costs associated with prosecutions	65 Where a person is convicted of an offence, the court may order the convicted person to pay other costs incurred in course of investigation and prosecution of the offence.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Explosives Act 2012</i> (Tas)	Section 65: Recovery of investigation costs from convicted persons Section 3: Interpretation	65(1) A court that convicts a person may order the defendant to pay any costs incurred in investigating the offence. 3 Conviction, in relation to an offence, includes a finding of guilt without recording of a conviction for the offence.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>Farm Water Development Act 1985</i> (Tas)	Section 13: False or misleading statements	13(3) Where a person is convicted of an offence against this section, the court may ... order him to pay to TDR an amount equal to the amount of the outstanding balance of the loan paid under this Act together with interest.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Fertilizers Act 1993</i> (Tas)	Section 22: Costs of analysis	In any proceedings for an offence against this Act, a court may order a person to pay the costs of an analysis, whether or not the person is convicted of the offence.	Conviction not necessary.
<i>Fire Service Act 1979</i> (Tas)	Section 109: Charges for services at fire	Under 109(3) and (3A) a person is liable to pay a charge if a person is convicted of an offence under Act or any other Act or of a crime relating to the fire.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(v).
	Section 58: Powers of responsible fire officers	58(6) Where a person is convicted of the offence of failing to comply with an order under ss(2) to extinguish or control a fire burning on any land and services were rendered by a brigade at that fire, the court which convicted the person may order that person to pay an amount being a charge for the services rendered by the brigade at that fire.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Forest Practices Act 1985</i> (Tas)	Section 47A: Recovery of costs for loss or damage	47A A court that convicts a person for specified offence may, in addition to any other penalty it may impose, order that person to pay to a person specified by the court – (a) the cost of making good any damage done or any loss incurred by reason of the convicted person's act.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 47A: Recovery of costs for loss or damage	47A A court that convicts a person for specified offence may, in addition to any other penalty it may impose, order that person to pay to a person specified by the court – (b) such other costs as the court considers appropriate.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Government Business Enterprises Act 1995</i> (Tas)	Section 33: Compensation and other payments for contravention of this Part	33(2) If a person is found guilty of certain offences, the court may order the person to pay any profits made by the person as a result of the contravention and an amount equal to any loss and damage suffered as result of the contravention.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>Industrial Relations Act 1984</i> (Tas)	Section 47: General provisions as to employment	47(1B) Where an employer is convicted, the court by which he is convicted shall ... order the employer to pay wages that failed to pay.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(v).
<i>Irrigation Clauses Act 1973</i> (Tas)	Section 69: Offences	69(10) Every person convicted of any offence against this Act may be ordered to pay a sum equal to the value of the property damaged or destroyed by him.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Juries Act 2003</i> (Tas)	Section 56: Termination of employment because of jury service	56(2) If the employer is found guilty, the court may order to pay lost wages and order that reinstated to former position.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>Justices Act 1959</i> (Tas)	Section 77: Costs	77(1): Where justices make a conviction or order in favour of the complainant they may order that the defendant pay to the complainant the costs.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Land Use Planning and Approvals Act 1993</i> (Tas)	Section 63: Obstruction of sealed scheme	63(5) Where a person is convicted of an offence, the court may, in addition to any fine, order that the person pay to the planning authority the reasonable costs incurred in carrying out any work.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s7 (d); <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Legal Aid Commission Act 1990</i> (Tas)	Section 46: False or misleading statements	46(2) Where a person is convicted of offence, the court may order the person to pay an amount equal to expenses incurred.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Liquefied Petroleum Gas (Subsidy) Act 1980</i> (Tas)	Section 17: Order by court to refund payment	Where convicted, the court may order that person refund any amount obtained	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Littering Act 2007</i> (Tas)	Section 34: Court may order removal of litter	34(1) If convicts person, the court may order the person to clear away litter or pay an amount representing the reasonable amount of removal.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Macquarie Point Development Corporation Act 2012</i> (Tas)	Section 34: Compensation and other payments for contravention of this Part	34(2) If a person convicted of specified offences, the court may impose an order to pay Corporation any profit made or amount equal to loss sustained by offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Mines Work Health and Safety (Supplementary Requirements) Regulations 2012</i> (Tas)	Regulation 32: Closing or abandoning mines	32(3) The Chief Inspector of Mines may recover costs to make mine safe and secure whether or not a mine operator is convicted, with or without penalty.	Conviction not necessary.
<i>Misuse of Drugs Act 2001</i> (Tas)	Section 36B: Costs of analysis or examination	36(2) The court may order defendant pay in case of conviction the expense of analysis or examination. 36(3) Other costs that may be ordered.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Motor Vehicle Traders Act 2011</i> (Tas)	Section 56: Compensation when person convicted of offence	56(2) If a court convicts or finds a person guilty, and court is satisfied that another person has suffered loss or damage, the court may make an order for purposes of compensating the other person.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).
<i>National Parks and Reserves Management Act 2002</i> (Tas)	Section 73: Compensation on conviction for offences	73(2) If a person is convicted, the court may order the person to pay such sum as it thinks reasonable by way of compensation for the damage or injury or the taking of the wildlife.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Nature Conservation Act 2002</i> (Tas)	Section 60: Compensation on conviction for offences	60(2) If a person is convicted, the court may order the person to pay such sum as it thinks reasonable by way of compensation for the damage or injury or the taking of the wildlife.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Poisons Act 1971</i> (Tas)	Section 65: Costs of analysis or examination	65(1) The court may order defendant pay in case of conviction the expense of analysis or examination. 65(2) Other costs that may be ordered.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Police Offences Act 1935</i> (Tas)	Section 43: Finding property	43(3) If a person convicted, the court may order to pay owner of property a sum not exceeding \$1000.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Pollution of Waters by Oil and Noxious Substances Act 1987</i> (Tas)	Section 38: Costs of incidents: recovery	38(3) Costs can be awarded whether or not the person is convicted of offence.	Conviction not necessary.
	Section 39: Costs of incidents: power of detention	39(1) Where a person has been convicted of specified offences and court awards costs, those costs are taken as charge on ship.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Property Agents and Land Transactions Act 2005</i> (Tas)	Section 22: Conflict of interest – acquisition of property	22(1) A court before which a person has been convicted may order (a) pay vendor any profit made; and pay any commission or other valuable consideration received to vendor.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 22: Conflict of interest – sale of property	23(2) A court before which a person has been convicted may order purchaser any profits that would not have been made if full disclosure of relevant facts.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Public Health Act 1997</i> (Tas)	Section 159: Costs of proceedings	159(1) A person convicted of an offence is liable for costs set out in section.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Radiation Protection Act 2005</i> (Tas)	Section 81: Additional court orders	81(2) In addition to a penalty for a prescribed offence, the court may order the person found guilty of an offence to pay compensation for specified reasons.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(a).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas)	Section 19A: Driving while disqualified under this Act	19A(4) If a person's vehicle is impounded, a court on convicting a person may order person pay costs.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Security-sensitive Dangerous Substances Act 2005</i> (Tas)	Section 70: Recovery of investigation costs from convicted persons	70(1) Court that convicts a person may order pay costs incurred in investigation of offence.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005</i> (Tas) s 3.
<i>Surveyors Act 2002</i> (Tas)	Section 41: Destruction of, damage to survey marks	41(2) If a person is convicted of an offence against (1), the court may order that the person pay the reasonable cost of re-establishing the survey mark.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Development Regulations 2012</i> (Tas)	Regulation 10: Power of court to order compensation	10 Where a person is convicted, the court may order to pay compensation to the Authority.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Threatened Species Protection Act 1995</i> (Tas)	Section 54: Requirement to carry out restoration work	54 If a person is convicted of an offence involving destruction, or damage to flora or fauna or habitat, the court may order that the person must carry out restoration work.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 55: Payment of compensation by offender	55(1) If a person is convicted of an offence, the court may order that the person must pay compensation for that destruction or damage.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Vehicle and Traffic Act 1999</i> (Tas)	Section 13: Driving while disqualified	13(5) A court may, on convicting a person, order the convicted person to pay the reasonable costs of impounding and removing the vehicle.	Finding of guilt for orders under <i>Sentencing Act 1997</i> (Tas) s 7(f) and (h); <i>Sentencing Act 1997</i> (Tas) s 63(b). Conviction for orders under <i>Sentencing Act 1997</i> (Tas) s 7(d); <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Victims of Crime Compensation Act 1994</i> (Tas)	Section 5: Liability of convicted persons to pay compensation levy	5 A person who is convicted of a serious offence must pay a compensation levy. 4 For the purposes of this Act, a person it taken to have been convicted of a serious offence if (c) the person has been charged with and found guilty of the serious offence but the court hearing the charge has not proceeded to conviction.	Finding of guilty: <i>Victims of Crime Compensation Act 1994</i> (Tas) s 5.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Water Management Act 1999 (Tas)</i>	Section 200: Compensation payable to water entity	200 A court by which a person is convicted of an offence against s 199 may order defendant to pay damages representing costs of restoring its work or repairing damage.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 249: Recovery of costs	249 On conviction, the court may order that person pay to the Minister the amount of expense reasonably incurred in taking action.	Finding of guilt for orders under <i>Sentencing Act 1997 (Tas)</i> s 7(f) and (h); <i>Sentencing Act 1997 (Tas)</i> s 63(b). Conviction for orders under <i>Sentencing Act 1997 (Tas)</i> s 7(d); <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 295A: Recovery of costs	295A A court that convicts a person of an offence, may order that person pay any costs in investigating the action.	Finding of guilt for orders under <i>Sentencing Act 1997 (Tas)</i> s 7(f) and (h); <i>Sentencing Act 1997 (Tas)</i> s 63(b). Conviction for orders under <i>Sentencing Act 1997 (Tas)</i> s 7(d); <i>Sentencing Act 1997 (Tas)</i> s 10(1).
<i>Waterworks Clauses Act 1952 (Tas)</i>	Section 71: Offences	71(6) Every person convicted of an offence may be ordered to pay a sum equal to the value of the property damaged or destroyed.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1)
<i>Whales Protection Act 1988 (Tas)</i>	Section 25: Compensation on conviction for offences	25 Where a person is convicted and damage or injury was caused to property, the court may order compensation of damage and injury.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
<i>Work Health and Safety Act 2012 (Tas)</i>	Section 11: Order for compensation or reinstatement	11 If a person is convicted or found guilty of an offence, the court may order pay compensation or reinstatement.	Finding of guilt: <i>Sentencing Act 1997 (Tas)</i> s 10(2)(a).
<i>Workers Rehabilitation and Compensation Act 1988 (Tas)</i>	Section 97: Obligation of employers to ensure	97(10) A court that convicts an employer of an offence under subsection (1), (6) or (7) is to, in addition to any other penalty imposed in respect of the offence, order the employer to pay to the Board an amount equal to the total of any insurance premiums which the court is satisfied the employer has, at any time during the period of 7 years before the conviction, avoided by failing to maintain insurance as required by subsection (1), failing to provide an estimate or statement as required by subsection (6) or (7) or giving any false information or particular in any such estimate or statement.	Finding of guilt: <i>Sentencing Act 1997 (Tas)</i> s 10(2)(v); <i>Shirley v Mooloo Farms</i> [2003] TASSC 101.
	Section 128: Payment to Nominal Insurer	128(7) Where a licensed insurer or self-insurer is convicted of an offence the court may order, in addition to any other penalty imposed in respect of the offence, the payment to Nominal Insurer the sum in respect of non-payment or such amount as is unpaid.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).
	Section 128A: Special contributions	128A(16) Where a policyholder, licensed insurer or self-insurer is convicted of an offence the court may, in addition to any other penalty imposed in respect of the offence, order the payment to Nominal Insurer the sum in respect of non-payment or such amount as is unpaid.	Conviction: <i>Sentencing Act 1997 (Tas)</i> s 10(1).

Appendix 7

FORFEITURE OF PROPERTY

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Aboriginal Relics Act 1975</i> (Tas)	Section 14: Protection of relics	14(5) Where a person is convicted of an offence under this section in relation to a relic owned by him, <u>the court</u> by which he is convicted <i>may</i> , in addition to or in lieu of imposing any penalty on that conviction, order the relic to be forfeited to the Crown.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Animal Welfare Act 1993</i> (Tas)	Section 43AA: Forfeiture of animals for contravention of section 43 order	43AA(1) <u>A magistrate</u> <i>may</i> order that an animal is forfeited to the Crown if he or she is satisfied that person has custody of the animal in contravention of an order.	Contravention of order.
<i>Bail Act 1994</i> (Tas)	Section 19: Forfeiture of money deposited for bail	19(1) Where a person is convicted of an offence against section 9, <u>the court</u> by which that person is convicted <i>must</i> order – (a) that the full amount of money ordered to be deposited is to be forfeited to the Crown. (2) Notwithstanding subsection (1) where the convicted person shows that forfeiture would cause excessive hardship or it is just to do so, the court <i>may</i> decline to make an order.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Classification (Publication, Films and Computer Games) Enforcement Act 1995</i> (Tas)	Section 76: Power of entry and seizure	76(4) If convicted anything seized under this section <i>is</i> forfeited to the Crown.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(iv).
	Section 77: Forfeiture of child exploitation material	77(3) <u>The court</u> <i>may</i> make order whether or not the person is convicted of the offence to which the child exploitation material or bestiality product relates. (4) If the person is convicted of an offence under Part 8, the court <i>may</i> also order that any thing used to commit the offence be forfeited to the Crown.	77(3) Conviction not necessary. 77(4) Conviction necessary: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 77A: Forfeiture of other seized publications, film and computer games	77A(1) Subject to the applicant obtaining an order that the products be returned, other products seized on the same day from the same premises <i>are</i> forfeited if 10 or more different products are forfeited to the Crown as the result of the proceedings.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(iv).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Crime (Confiscation of Profits) Act 1993</i> (Tas)	Section 11: Applications Section 5: Meaning of convicted	11(1) If a person is convicted of a serious offence, may apply for: (a) a forfeiture order against property that is tainted property in respect of the offence; and/or (b) a pecuniary penalty order arising in respect of benefits, including any commercial benefits derived by that person from the commission of the crime. 5(1) For the purposes of this Act, a person is taken to have been convicted of an offence if – (a) the person has been charged with and found guilty and convicted of the offence; (b) the person has been charged with and found guilty of the offence but the court hearing the charge has not proceeded to conviction; or (c) the offence has been taken into account by a court in sentencing the person for another offence; or (d) the person has absconded in connection with the offence.	Finding of guilt: <i>Crime (Confiscation of Profits) Act 1993</i> (Tas) s 5.
<i>Criminal Code 1924</i> (Tas)	Section 130F Forfeiture of child exploitation material	130F(3) <u>Court</u> may make order that child exploitation material forfeited to Crown whether or not the person is convicted. (4) If the person is convicted, <u>the court</u> may also order that any thing used to commit the crime is forfeited to the Crown.	130F(3) Conviction not necessary. 130F(4) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1). Note can still rely on provision under <i>Crime (Confiscation of Profits) Act 1993</i> (Tas).
<i>Dangerous Goods (Road and Rail Transport) Act 2010</i> (Tas)	Section 92: Forfeiture	92(1) <u>The court</u> that finds a person guilty of an offence in relation to dangerous goods may order forfeiture of goods.	Finding of guilt.
<i>Dog Control Act 2000</i> (Tas)	Section 19: Dogs attacking persons or animals	19(9) If the owner of a dog is found guilty of an offence under this section, <u>the court</u> may order that the dog be destroyed.	Finding of guilt.
	Section 63: Additional orders	63(a) In imposing any penalty, <u>a court</u> may order that the dog be seized if a person who is the owner has been convicted of an offence under the Act in relation to the dog.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Egg Industry Regulations 2004</i> (Tas)	Regulation: Forfeiture of seized items	8(1) If a court convicts a person of an offence under the Act, <u>the court</u> may order forfeiture of any good seized [under regulation 5].	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Employment Incentive Assistance Act 1984</i> (Tas)	Section 5: Applications for grants	5(3)(b) Where a person is convicted of an offence of providing false or misleading information in an application, if the application has been granted when that person is convicted, the grant <i>shall</i> be forfeited.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(b)(iv).
<i>Environmental Management and Pollution Control Act 1994</i> (Tas)	Section 94: Provisions relating to seizure	94(4) If a person convicted or found guilty then <u>court</u> may order forfeiture of goods seized.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Explosives Act 2012</i> (Tas)	Section 67: Forfeiture Section 3: Interpretation	67(1) <u>Court</u> may order forfeiture of explosives if a person is convicted. 3 Conviction, in relation to an offence, includes a finding of guilt without recording of a conviction for the offence.	Finding of guilt: <i>Explosives Act 2012</i> (Tas) s 3.
<i>Family Violence Act 2004</i> (Tas)	Section 16: Family violence orders	16(3)(b) If a <u>court</u> makes a FVO, a condition may be the forfeiture of any firearm.	If satisfied on balance of probabilities as to the making of FVO: <i>Family Violence Act 2004</i> (Tas), s 16.
<i>Firearms Act 1996</i> (Tas)	Section 149: Disposal of surrendered or seized firearms	149(3) If a person is convicted of an offence under part 5 in respect of which any firearm or ammunition has been seized ... <u>the court</u> ... may order that the seized firearms or ammunition is forfeited to the Crown.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Food Act 2003</i> (Tas)	Section 116: Court may order forfeiture	116A <u>Court</u> by which a person is convicted of an offence under this Act may order the forfeiture of any thing that was used in the commission of the offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Gaming Control Act 1993</i> (Tas)	Section 87: Unlawful interference with gaming equipment	87(4) On conviction any device used or intended to be used for interfering with the normal operation of the gaming equipment is forfeited to the Crown.	Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv).
	Section 112: Possession of certain things prohibited	112(5) On conviction any device used in the commission of the crime is forfeited to the Crown.	Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv).
	Section 156: Seizure and forfeiture of equipment	156(3) If forfeiture order is made in relation to seized goods, <u>the court</u> must order that the equipment be forfeited if satisfied that equipment is gaming equipment that the person is not authorised under this Act to possess regardless of whether a charge has been filed or whether a person has been convicted.	Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv).
<i>Inland Fisheries Act 1995</i> (Tas)	Section 109: Forfeiture on conviction	109(1) If a <u>court</u> convicts a person of an offence under this Act, any of the following is forfeited: (a) fish to which the offence relates; (b) any equipment used or intended to be used in the commission of the offence (c) any boat or other thing used in the commission of the offence (subject to application that forfeiture not take place). (4) In addition to any penalty imposed for an offence, <u>a court</u> , on application of the complainant, may order the forfeiture to the Director of any money, cheque or other thing that is the proceeds of the sale of any fish, boat or equipment in contravention of this Act.	109(1) Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv). 109(4) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 110: Forfeiture on acceptance of infringement notice	110 If person is taken under section 20 of the <i>Monetary Penalties Enforcement Act 2005</i> to have been convicted of an offence, any seized goods are forfeited (as above in (1)).	Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv) would be sufficient but person is deemed to be convicted under <i>Monetary Penalties Enforcement Act 2005</i> (Tas).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Liquor Licensing Act 1990</i> (Tas)	Section 96: Liquor may be forfeited	96(1) If liquor seized and person subsequently convicted, <u>the court</u> may order that liquor is forfeited.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Listening Devices Act 1991</i> (Tas)	Section 26: Orders for forfeiture	26(1) Where a court has convicted person of an offence against Act, <u>the court</u> may order: (a) listening device forfeited or destroyed, or (b) order that record of private conversation be forfeited or destroyed.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Living Marine Resources Management Act 1995</i> (Tas)	Section 225: Forfeiture on conviction	225(1) If a court convicts a person for an offence under this Act, any of the following is forfeited: (a) fish to which the offence relates; (b) apparatus or equipment used or intended to be used or in connection with in the commission of the offence; (c) vessel, vehicle, aircraft used in or in connection with the commission of the offence (subject to application that forfeiture not take place). (4) In addition to any penalty imposed for an offence, <u>a court</u> , on application of the complainant, may order the forfeiture to the Director of any money, cheque or other thing that is the proceeds of the sale of any fish, vessel, apparatus or equipment in contravention of this Act.	Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) s 3.
	Section 226: Forfeiture on acceptance of infringement notice	226 If person is taken under section 20 of the <i>Monetary Penalties Enforcement Act 2005</i> to have been convicted of an offence, any seized goods are forfeited (as above).	Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) s 3 would be sufficient but person is deemed to be convicted under <i>Monetary Penalties Enforcement Act 2005</i> (Tas).
<i>Misuse of Drugs Act 2001</i> (Tas)	Section 38: Forfeiture of property on conviction	38 A court that convicts or finds a person guilty of an offence under this Act may ... order that any property is forfeited to the Crown.	Finding of guilt.
<i>National Parks and Reserves Management Act 2002</i> (Tas)	Section 72: Forfeiture of articles on conviction	72(1) Any wildlife, product or plants in contravention of this Act are forfeited and the conviction of any person for any such contravention has the effect as a condemnation of that wildlife, those products or those plants without the necessity of a complaint being laid. (2) On conviction, hunting equipment is forfeited if used in or in connection with the commission of the offence or if the offence was committed in relation to it (subject to application that forfeiture not take place). (3) On conviction for an offence under this Act, <u>the court</u> may declare forfeited to the Crown anything seized under section 64(3).	Finding of guilt sufficient for forfeiture and condemnation under (1) and forfeiture (2): <i>Sentencing Act 1997</i> (Tas) s 10(2)(iv) and (v). Need conviction for (3) to operate: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Nature Conservation Act 2002</i> (Tas)	Section 59: Forfeiture of articles on conviction	<p>59(1) Any wildlife, product or plants in contravention of this Act are forfeited and the conviction of any person for any such contravention has the effect as a condemnation of that wildlife, those products or those plants without the necessity of a complaint being laid.</p> <p>(2) On conviction, hunting equipment is forfeited if used in or in connection with the commission of the offence or if the offence was committed in relation to it (subject to application that forfeiture not take place).</p> <p>(3) On conviction for an offence under this Act, <u>the court</u> may declare forfeited to the Crown anything seized under section 51(3).</p>	<p>Finding of guilt sufficient for forfeiture and condemnation under (1) and forfeiture (2): <i>Sentencing Act 1997</i> (Tas) ss 10(2)(iv), (v).</p> <p>Need conviction for (3) to operate: <i>Sentencing Act 1997</i> (Tas) s 10(1).</p>
<i>Petroleum (Submerged Lands) Act 1982</i> (Tas)	Section 133: Orders for forfeiture in respect of certain offences	133(1) Where a person is convicted of a specified offence, <u>the Supreme Court</u> may order forfeiture of specified property.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Petroleum Products Emergency Act 1994</i> (Tas)	Section 6: Directions in relation to petroleum products	6(6) Where person is convicted of an offence under ss (5), <u>the court</u> may make an order forfeiting to the Crown the petroleum products in relation to which the offence was committed or order discontinuance of the supply to that person.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<p><i>Police Offences Act 1935</i> (Tas)</p> <p>The <i>Police Offences Amendment Bill 2013</i> (Tas) amends s 7.</p> <p>It also inserts a forfeiture provision in s 7A (Loitering near children) that allows the court to make an order forfeiting an implement or item seized that could have been used in the commission of the offence whether or not the person is convicted of an offence (Clause 6).</p> <p>It creates a new offence of being in possession of implement or instrument with intent to commit a crime or offence (s 7B) and this provides for forfeiture of any items seized on conviction (Clause 7).</p> <p>Section 13 is amended to allow for seizure and forfeiture (on conviction) of fireworks and missiles (Clause 11).</p> <p>Clause 12 amends the offence of observation or recording in breach of privacy (s 13A) and allows for the court to make an order for the forfeiture of visual recording, item or instrument found that could be used for observing or visually recording that could have been used in the commission of the offence whether or not the person is convicted.</p> <p>Clause 13 inserts a power for the court to make a forfeiture order in relation to any prohibited visual recording that may have been used in the commission of the offence whether or not the person is convicted.</p> <p>Clause 14 amends section 13C (possession of prohibited visual recording) to allow a court to make a forfeiture order in relation to any prohibited visual recording, item or instrument found that could be used for publishing or distributing the recording that may have been used in the commission of the offence whether or not the person is convicted.</p>	Section 7: Loiterers	7(4) Every such key, implement, or instrument [in contravention of (3)] may be taken from the offender by any police officer and <i>shall</i> , on conviction of the offender, become forfeit to the Crown.	Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv).
	Section 13: Public annoyance	13(3C) If liquor seized and person in possession of liquor convicted, <u>court may</u> order forfeiture.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 14B: Unlawful entry on land	14B(2B) If firearm in possession, if convicted, <u>the court may</u> order the firearm is forfeited and/or cancel all licences or permits under <i>Firearms Act 1996</i> (Tas).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 15C: Dangerous articles	15C(5) If a person is convicted or found guilty of an offence, the dangerous article to which offence relates is forfeited and is to be disposed of as court orders.	Finding of guilt.
	Section 15CA: Graffiti and graffiti equipment	15CA(9) If a person is convicted or found guilty of an offence, the equipment to which offence relates is forfeited and is to be disposed of as court orders.	Finding of guilt.
	Section 15C: Use, carriage and possession of crossbow	15C(5) If a person is convicted or found guilty of an offence, the equipment to which offence relates is forfeited.	Finding of guilt.
	Section 15E: Body armour	15E(9) If a person is convicted or found guilty of an offence, the equipment to which offence relates is forfeited and is to be disposed of as court orders.	Finding of guilt.
	Section 15F: Laser pointers	15F(9) If a person is convicted or found guilty of an offence, the laser point to which offence relates is forfeited and is to be disposed of as the Commissioner orders.	Finding of guilt.
	Section 37Y: Application for forfeiture of vehicles	37(Y)(1) The section applies if (c) the offending driver has been convicted. (2) <u>The Court may</u> make a forfeiture order if court satisfied that the offending driver has been convicted of a prescribed offence on 3 or more occasions, inclusive of conviction in (1).	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<p>Clause 21A substitutes section 21A (unlawfully administering drug) and allows a court to make an order forfeiting any drug, liquor or other thing found that is likely to impair the consciousness or bodily function of another person, if the court considers it to have been used during the commission of the offence, whether or not the person is convicted.</p> <p>Clause 26 inserts section 37I (tampering with vehicles) that provides any tools, equipment or material found used in the commission of the offence that were seized are forfeited to the Crown.</p> <p>Clause 35 amends s 37Y (application for forfeiture of vehicles) by providing the court with the discretion of imposing a monetary penalty as an alternative to forfeiture.</p>			
<i>Radiation Protection Act 2005</i> (Tas)	Section 67: Retention of thing seized	67(1)(b) <u>The court</u> may order the thing or vehicle seized is forfeited to Crown or pay equal market value.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Security-sensitive Dangerous Substances Act 2005</i> (Tas)	Section 72: Forfeiture	72(1) If a person convicted, <u>the court</u> may order the SSDS be forfeited to the Crown.	Finding of guilt: <i>Security-sensitive Dangerous Substances Act 2005</i> (Tas) s 3.
<i>Threatened Species Protection Act 1995</i> (Tas)	Section 53: Additional penalties on conviction	53 Where a person is convicted, <u>the court</u> may order (b) any equipment or material used is forfeited; (c) any flora or fauna is forfeited.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Traffic Act 1925</i> (Tas)	Section 41D: Seizure of detection devices	41D(2) If a person is convicted of offence, the detection device is forfeited to the Crown.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(iv).
<i>Victims of Crime Assistance Act 1976</i> (Tas)	Section 25: Application for forfeiture order	25(1) If a person is convicted of a serious offence, the Director may apply to <u>a judge</u> for a forfeiture order in respect of the person's property. 14 Meaning of convicted is 'a person is taken to have been convicted of a serious offence if the person has been charged with and convicted of the offence'.	Conviction: <i>Victims of Crime Assistance Act 1976</i> (Tas), s 14.
<i>Wellington Park Act 1993</i> (Tas)	Section 70: Forfeiture of articles on conviction	70(1) On the conviction of a person, any wildlife, product of wildlife or plant taken, had in possession or dealt with in contravention of any of the provisions of this Act is forfeited. (2) On conviction, hunting equipment is forfeited if used in connection with offence or if offence committed in relation to it. (4) On conviction for an offence under this Act, <u>the court</u> may declare forfeited to the Crown any thing seized under this Act.	70(1), (2) Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(iv). 70(4) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Whales Protection Act 1988</i> (Tas)	Section 24: Forfeiture of articles on conviction	24(1) Any whale or whale product taken, in possession, bought, sold, interfered or dealt with, exported, or disposed of, in contravention of any of the provisions of this Act <i>is</i> forfeited to the Crown. (2) On conviction, <u>the court</u> <i>may</i> declare forfeited any hunting equipment used in, or for the purposes of, the commission of that offence, or in relation to which the offence was committed.	24(1) Finding of guilt: <i>Sentencing Act 1997</i> s 10(2)(b)(iv). 24(2) Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Note: the emphasis in column 3 is used to (a) highlight the use of mandatory or discretionary language (italics) and; (b) show involvement of court in making an order (underlined).

Appendix 8

OTHER COURT ORDERS

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Animal Health Act 1995</i> (Tas)	Section 76: Obstruction of inspectors	76(2) On convicting a person of an offence ... in addition to imposing a penalty the Court may order that person to: (a) provide the answer or other information, or (b) provide the document or record. (3) If court orders person to provide the answer, information or document it is not admissible in any civil or criminal proceedings). (4) On convicting a person of an offence ... in addition to imposing a penalty the Court may order that person comply with the direction.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Australian Consumer Law (Tasmania) Act 2010</i> (Tas)	Section 26: Obstruction, &c., of authorised officers	26(2) If a person is convicted of an offence ... , the court may order the person to – (a) comply with the lawful request, direction or requirement; or (b) produce to an authorised officer the document or record.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Cat Management Act 2009</i> (Tas)	Section 29: Restriction on breeding of cats	29(2) If found guilty of an offence, the court may order the person to cause the relevant cat to be desexed in addition to any penalty the court may impose.	Finding of guilt.
<i>Consumer Affairs Act 1988</i> (Tas)	Section 16: Obstruction, &c., of authorised officers	16(2) Where a person is convicted of an offence, the court may order that person to – (a) furnish the information; (b) comply with the lawful request, direction, or requisition; or (c) produce the invoice, document or record.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Corrections Act 1997</i> (Tas)	Section 61: Penalties which may be imposed on prisoner or detainee	If a prisoner or detainee is found guilty of a prison offence [provides penalty options].	Finding of guilt.
<i>Crime (Confiscation of Profits) Act 1993</i> (Tas)	Section 26: Restraining orders	26(1) If a person (a) has been convicted of a serious offence or has been, or is about to be charged with a serious offence, may apply for various orders in relation to property.	Finding of guilt: <i>Crime (Confiscation of Profits) Act 1993</i> (Tas) s 5.
	Section 49: Production orders	49(2) Police officer can make application for production of documents in relation to a serious offence for which a person was convicted.	Finding of guilt: <i>Crime (Confiscation of Profits) Act 1993</i> (Tas) s 5.
	Section 53: Search warrants	53(1) If a person convicted then police officer can apply for a search warrant to search premises.	Finding of guilt: <i>Crime (Confiscation of Profits) Act 1993</i> (Tas) s 5.
<i>Dangerous Goods (Road and Rail Transport) Act 2010</i> (Tas)	Section 85: Commercial benefits penalty orders	85(1) The court that finds a person guilty of an offence may make a commercial benefits penalty order.	Finding of guilt.
<i>Food Act 2003</i> (Tas)	Section 117: Court may order corrective advertising	117 A court by which a person is found guilty of an offence may order disclosure of information or publication of advertisement.	Finding of guilt.
<i>Forestry Practices Act 1985</i> (Tas)	Section 47D: Salvage of illegally harvested timber or native vegetation	47D(1) If a person is found guilty or convicted of specified offence, the court may allow another person to purchase or acquire that timber or threatened native vegetation.	Finding of guilt.

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Industrial Relations Act 1984</i> (Tas)	Section 75: Records of employment and advice of pay details	75(7) The court by which a person is convicted may order the person to forward a true copy of the record or information contained in record.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Living Marine Resources Management Act 1995</i> (Tas)	Section 267: Illegally taking or possessing fish Section 268: Illegal use of apparatus	Imposition of special penalty on conviction.	Finding of guilt: <i>Living Marine Resources Management Act 1995</i> (Tas) s 3.
<i>Road Safety (Alcohol and Drugs) Act 1970</i> (Tas)	Section 18: Requirement for drink-drivers to attend prescribed course	18(1) The court shall order certain persons who are convicted of offences under s 4, 6 or 7 to attend a prescribed course. (4) The court may in its discretion exempt a person from requirement to attend.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Police Offences Act 1935</i> (Tas)	Section 37MA: Special compulsory penalty for prescribed offences	37MA(1) A court that convicts a person of a prescribed offence involving a vehicle must, if the vehicle was clamped or confiscated under this Division in connection with the prescribed offence, order the person to pay a special compulsory penalty.	Finding of guilt: <i>Sentencing Act 1935</i> (Tas) s 10(2)(b)(v).
<i>Tasmanian Qualification Authority Act 2003</i> (Tas)	Section 65: Offences relating to exercise of powers by Authority or authorised officer	65(2) and (3) If the person is convicted, the court may order the person to open the container or provide document.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Work Health and Safety Act 2012</i> (Tas)	Section 239: Release on giving of a court-ordered WHS undertaking	239(1) The court may (with or without recording a conviction) adjourn the proceedings and make an order for the release of the offender on an undertaking.	Finding of guilt.
<i>Workers Rehabilitation and Compensation Act 1988</i> (Tas)	Section 151: Powers of authorized officers	151(8) The court by which a person is convicted may order the person to forward a copy of record of information.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Vehicle and Traffic Act 1999</i> (Tas)	Section 36: Changes to registered vehicles affecting motor tax	36(2) The court may impose an additional fine on a person convicted of an offence not exceeding the amount of motor tax payable for registration.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Vehicle and Traffic (Vehicle Operations) Regulations 2001</i> (Tas)	Regulation 19: Special penalty	19 Where person is convicted of an offence, the court must impose a special penalty.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(b)(v).

Appendix 9

OTHER PROVISIONS

Table 1

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Adoption Regulations 2006</i> (Tas)	Regulation 15: Acceptance of suitability applications	15(1)(d) That each person so named has not been sentenced to a term of imprisonment for a criminal conviction within a period of 5 years preceding the application; (e) that each person so named has not been sentenced to a term of imprisonment of 5 years or more at any time; (f) that each person so named has not been convicted of any offence against a child.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Australian Crime Commission (Tasmania) Act 2004</i> (Tas)	Section 49: Annual report	49(3)(a) An annual report must not identify persons as having committed offences unless those persons have been convicted of those offences.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Bail Act 1994</i> (Tas)	Section 15: Procedure for repayment of bail money	15(2) If convicted, the appropriate officer must if ordered by a judicial officer appropriate any money paid to pay any fine and costs payable on conviction.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 16: Procedure on non-appearance of person admitted to bail	16(2) If convicted, the appropriate officer must if ordered by a judicial officer appropriate any money paid to pay any fine and costs payable on conviction.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Cooperatives Act 1999</i> (Tas)	Section 422: False statements in loan application	422(2) If a person is convicted of an offence, a cooperative from which money has been obtained in relation to the commission of the offence may exercise all such rights under a mortgage or other security given to it by the person to secure the repayment of money.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
	Section 448: Notice to be given of conviction for offence	448 If convicted must given notice of: (a) the conviction; (b) any penalty imposed and (c) the nature of the offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Corrections Regulations 2008</i> (Tas)	Regulation 22: Remission	22(2) Remission of sentence is not to be granted to a prisoner who is convicted of escape or attempted escape in respect of that part of the prisoner's sentence served up to and including the day on which the escape or attempted escape was made.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(1)(b)(v).
<i>Defamation Act 2005</i> (Tas)	Section 42: Proof of convictions for offences	42(4) In this section, conviction for an offence includes a finding of guilt.	Finding of guilt: <i>Defamation Act 2005</i> (Tas) s 42(4).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Government Business Enterprises Act 1995 (Tas)</i>	34: Indemnifying officers	34(5)(b) A Government Business Enterprise must not indemnify a person against legal costs in defending an action for a liability incurred as an officer of that Government Business Enterprise if the costs are incurred in defending or resisting proceedings for an offence in which the person is found guilty.	Finding of guilt.
<i>Living Marine Resources Management Act 1995 (Tas)</i>	Section 242: Allocation of demerit points on conviction	Provides for demerit points in relation to the sentence imposed by court.	Finding of guilt: <i>Living Marine Resources Management Act 1995 (Tas) s 3.</i>
<i>Local Government (Building and Miscellaneous Provisions) Act 1993 (Tas)</i>	Section 241: Preservation orders	241(6) In determining the penalty to be imposed on a person convicted, the court is to have regard to any financial benefit.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>
<i>Macquarie Point Development Corporation Act 2012 (Tas)</i>	Section 35: Indemnifying officers	35(5) Corporation must not indemnify a person against legal costs in defending an action for a liability incurred as an officer of the Corporation if the costs are incurred in defending or resisting proceedings for an offence in which the person is found guilty.	Finding of guilt.
<i>Marine Farming Planning Act 1995 (Tas)</i>	Section 121: Demerit points by penalty	121 If a person is convicted by a court of an offence under Act or regulations, one demerit point for each penalty unit imposed by way of penalty or special penalty is allocated.	Finding of guilt: <i>Sentencing Act 1997 (Tas) s 10(2)(b)(v).</i>
<i>Marine and Safety Authority Act 1997 (Tas)</i>	Section 12: Repayment of improper profit	12 If a director or former director is found guilty, the Authority may recover any profit or an amount equal to any loss.	Finding of guilt.
<i>Motor Accidents (Liabilities and Compensation) Act 1973 (Tas)</i>	Section 18: Recovery by Board from owner or driver in certain cases	18(3) Board may recover payments made to person if convicted of specified offences.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>
	Section 24: Exclusion from scheduled benefits	24(2) Medical benefits, disability benefit or disability allowance not payable in respect of personal injury where person convicted of specified offences 24(4) Reduced or nil benefits payable for personal injury if person convicted of specified offences.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>
	Section 28B: Recovery by Board of scheduled benefits	28B Board may recover benefits paid if person convicted of specified offences.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>
<i>National Trust Act 2006 (Tas)</i>	Section 20: Repayment by director of improper profits	20 If a director or former director is found guilty, the Trust may recover any profit or an amount equal to any loss.	Finding of guilt.
<i>Optometry Offences Act 2010 (Tas)</i>	Section 11: No right of recovery	11 An optometrist is not entitled to recover fee or remuneration if convicted of an offence under s 5 or 6.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>
<i>Pensioners (Heating Allowances) Act 1971 (Tas)</i>	Section 5: False information	5(2) Where a person to whom an allowance has been granted is convicted of an offence, the Secretary may cancel the allowance.	Conviction: <i>Sentencing Act 1997 (Tas) s 10(1).</i>

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Private Forests Act 1994</i> (Tas)	Section 14: Repayment by director of improper profits	14 If a director is found guilty of offence under section 13, the Authority may recover any profit or an amount equal to any loss.	Finding of guilt.
<i>Retirement Benefits Regulations 2005</i> (Tas)	Section 122: False and misleading information	122(2) If a person is convicted of offence under (1), the Board may determine that person ceases to be (a) a contributor either permanently or for any period that Board determines of, and (b) in case pensioner that pension is cancelled immediately.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Sale of Goods Act 1896</i> (Tas)	29: Revesting of property in stolen goods on conviction of offender	29(1) Where goods have been stolen and the offender is prosecuted to conviction the property in the goods so stolen reverts in the person who was the owner of the goods.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Tasmanian Development Regulations 2012</i> (Tas)	Regulation 11: Power of Authority to recover unlawful profits	11 where a person contravenes or fails to comply with regulations, the Authority may whether or not the person has been convicted recover any profit or an amount equal to any loss.	Conviction not necessary.
<i>Tasmanian Health Organisations Act 2011</i> (Tas)	Section 21: Recovery of improper profits	21 If a person is found guilty of an offence under s 20, the THO may recover any profit or an amount equal to any loss.	Finding of guilt.
<i>Tourism Tasmania Act 1996</i> (Tas)	Section 16: Repayment by director of improper profits	16 If a director is found guilty of offence under section 15, the Authority may recover any profit or an amount equal to any loss.	Finding of guilt.
<i>Trustee Act 1898</i> (Tas)	Section 32: Power of Court to appoint new trustees	32(1) The court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of a crime of such a nature that the Court considers he should be removed.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Training and Workforce Development Act 2013</i> (Tas)	Section 65: Recovery of improper profits	65 If a person is found guilty of an offence under s 65, the TasTAFE may recover any profit or an amount equal to any loss.	Finding of guilt.
<i>Vehicle and Traffic (Vehicle Operations) Regulations 2001</i> (Tas)	Section 44: Exemptions by Commission	44(3) The Commission may exempt from regulations, and in determining whether to exempt may have regard to (b)(ii) whether the person has been convicted of a traffic offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Vehicle and Traffic Act 1999</i> (Tas)	Section 65: Registrar to be notified of convictions for certain offences	65(1) If a person is convicted by a court of – (a) an offence that attracts demerit points; or (b) an offence in respect of which disqualification from driving is imposed; or (c) a prescribed offence the registrar, clerk or other proper person must give notification.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).
<i>Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010</i> (Tas)	Regulation 142: Notification of convictions	Sets of prescribed offences for the purposes of s 65(1)(c) of the Act.	
<i>Victims of Crime Assistance Act 1976</i> (Tas)	Section 7A: Recovery from offender	Allows for recovery of interim award if offender is convicted of an offence.	Conviction: <i>Sentencing Act 1997</i> (Tas) s 10(1).

Act/Regulation	Section/Regulation	Substance of provision	Conviction or finding of guilt
<i>Water Management Act 1999</i> (Tas)	Section 257: Allocation of demerit points	Where convicted of an offence, demerit points are to be allocated against licence.	Finding of guilt: <i>Sentencing Act 1997</i> (Tas) s 10(2)(b)(v).
<i>Water Management Regulations 2009</i> (Tas)	Regulation 23: Allocation of demerit points for court conviction	Sets out demerit points but provides court with discretion to allocate a lesser number of demerit points.	

Table 2: *Criminal Code Act 1924* (Tas)

Section 5: Trial by magistrates in certain cases	5(2) In every such case, as aforesaid, a magistrate shall have power to impose upon any person convicted of any such offence a term of imprisonment not exceeding one year, or such shorter period as may be provided by such statute, in addition to any fine or other punishment, if any, authorized thereby, or otherwise.
Section 11: Outlawry, attainr, and forfeiture abolished	11(2) No confession, verdict, inquest, conviction, or judgment of or for any treason, felony, or other crime, shall hereafter cause any attainder or corruption of blood or any forfeiture or escheat other than any fine or penalty imposed by the sentence of the Court.

Table 3: *Criminal Code* (Tas)

Section 7: Effect of changes in statute law	7(2) If the law in force when a crime was committed differs from that in force at the time of the conviction therefor, the offender shall not be punished to any greater extent than was authorized by the former law, or than is authorized by the latter law.
Section 54: Liability of husband and wife for offences committed by either with respect to other's property	54(1) No married person shall be convicted of any offence alleged to have been committed by him or her during cohabitation with respect to the property of the other spouse.
Section 57: Accessories after fact guilty of treason	57 Every person who is an accessory after the fact to treason shall be guilty of treason; but no such person shall be tried for knowingly comforting or receiving a traitor till such traitor has been convicted.
Section 60: Evidence of treason: Limitation of time in treason charges	60(2) No one shall be convicted of treason (unless he pleads guilty) except upon the evidence of 2 witnesses to one overt act of the kind of treason with which he is charged, or upon the evidence of one witness to one such act and one other witness to another such act.
Section 67: Sedition: Limitation of time in charges	67(3) No person shall be convicted of any crime under this section upon the testimony of one witness, unless the same is corroborated in some material particular by other evidence implicating the accused person.
Section 96: Evidence on charge of perjury	96 No person shall be convicted of any crime under the provisions of section 94 or section 95 solely upon the evidence of one witness as to the falsity of any statement alleged to be false.
Section 106: Interpretation (escape)	106(c) In this Chapter, <i>lawful custody</i> includes custody or detention pursuant to an order for remand, a conviction, or a sentence of imprisonment.
Section 113: False statutory declarations and other false documents	113(2) No person shall be convicted under the provisions of this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.
Section 124: Sexual intercourse with young person	124(6) Nothing in subsection (4) impugns or otherwise affects the lawfulness of a conviction arising from conduct that occurred before the commencement of the <i>Criminal Code Amendment (Sexual Offences) Act 1987</i> (Tas).
Section 127: Indecent assault	127(6) Nothing in subsection (4) impugns or otherwise affects the lawfulness of a conviction arising from conduct that occurred before the commencement of the <i>Criminal Code Amendment (Sexual Offences) Act 1987</i> (Tas).
Section 136: Warning relating to uncorroborated evidence	136(1) At the trial of a person accused of a crime under chapter XIV or XX, no rule of law or practice shall require a judge to give a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of a person against whom the crime is alleged to have been committed.

Section 258: Receiving stolen property	258(1)(3)(b) In any proceedings under this section, the fact that within 3 years preceding his being charged with the crime the accused had been convicted of a crime under any of the provisions of chapters XXIV to XXVII or of this chapter may be given in evidence against the accused in support of the averment of guilty knowledge.
Section 308: Trial before magistrate	308(4) A magistrate to whom the trial of any person has been remitted under the provisions of this section shall, upon conviction of the accused person, have power to inflict a sentence of a fine not exceeding 20 penalty units or imprisonment for a term not exceeding one year. 308(9) Every conviction and sentence made or imposed under the provisions of this section shall be subject to appeal in the same manner in every respect as a conviction or sentence in the Supreme Court, and for the purposes of any such appeal the magistrate before whom the accused person was so tried as aforesaid shall be deemed to be the judge of the court of trial.
Section 330: Parties to crimes	330(3) Any party to whom subsection (1) relates who is alleged to have instigated, aided, or abetted the commission of a crime may be convicted upon a count charging him with having committed the crime, or upon a count charging him with having instigated, aided, or abetted, as the case may be, the commission thereof.
Section 331: Accessories after the fact	331 Any number of accessories after the fact to the same crime, though becoming so at different times, or any number of receivers, though at different times, of the same stolen property or of any part or parts thereof, may be joined in the same indictment, and may be tried with the principal offender, or separately, or may be indicted and tried, either together or separately, although the principal offender has not been convicted or is not amenable to justice.
Section 332: Alternative convictions (see alternative conviction in ss 333 – 344)	332(1) Except as provided in this chapter no person shall on an indictment for a crime be convicted of any other crime. (2) Where pursuant to this chapter a person may, on indictment for any crime, be convicted of any other crime it is intended that, if the jury find him not guilty of the crime with which he is charged, he may be convicted of that other crime if it is established by the evidence to have been committed by him.
Section 351: Arraignment	351(2) In any case in which a previous conviction is alleged in the indictment the accused person shall in the first place be arraigned on so much of the indictment as charges the subsequent crime, and no reference to such previous conviction shall be then made to the jury, except as provided in subsection (5); (3) If the accused person pleads, or is found, guilty of such subsequent crime, he shall then, and not before, be asked whether he has been previously convicted as so alleged; (4) If the accused person denies such previous conviction, or wilfully refuses to answer, or does not answer directly to, such question as aforesaid, the jury shall then be charged to inquire whether he has been so previously convicted or not; (5) In any such case as aforesaid, if the accused person gives evidence of good character, either by cross-examination or calling witnesses, such previous conviction as aforesaid may be proved before the jury give their verdict upon the charge for the subsequent crime.
Section 355: Pleas	355(1) An accused person may plead to an indictment – (a) that he is guilty of the crime charged in the indictment; or, with the consent of the Crown, of any other crime of which he might be convicted upon such indictment; (b) that he has already been acquitted or convicted – (i) of the crime charged in the indictment; (ii) upon an indictment upon which he might have been convicted of that crime; (iii) of a crime arising out of the same facts and substantially the same crime as that charged in that indictment; (iv) of any crime, an acquittal or conviction of which is, under the provisions of the Code, a bar to a prosecution for the crime charged in the indictment.
Section 358: Plea of autrefois acquit or autrefois convict	358 An accused can plea that they have already been convicted of that crime or one that is substantially the same crime arising out of the same facts.

Section 361: Trial by jury	361 If the accused person pleads any plea other than the plea of guilty or a plea to the jurisdiction of the court, he shall be deemed by such plea, and without any further form, to have demanded that the issues raised thereby shall be tried by a jury, and shall be entitled to have them tried accordingly, but if the plea is that the accused person has already been acquitted or convicted, or that he has received the Royal pardon, of the crime charged in the indictment the judge shall determine the plea in such manner and upon such evidence as he thinks fit, and may, in his discretion, order a jury to be empanelled and sworn to try any question of fact necessary for such determination.
Section 385: Convicted person to be called on to show cause	385(1) When a person is convicted of a crime, he shall, before sentence is passed, be asked by an officer of the court whether he has anything to say why sentence should not be passed upon him.
Section 385A: Hearing by judge of complaint of simple offence	385A(2) Where, in proceedings before a judge, a person is convicted or acquitted of a crime, the judge may, on the application of that person, hear and determine any complaint of a simple offence arising out of facts that are closely related to the facts alleged in the indictment or which are, or form part of, a series of offences of the same or a similar character to that of which the applicant has been convicted or acquitted, as the case may be. (4) Where, on an application under subsection (2), a judge decides to hear and determine any complaint of a simple offence, he may, after having heard and determined that complaint – (a) acquit, convict and sentence, or otherwise deal with, the person who made the application, as if the offence were being dealt with in accordance with the <i>Justices Act 1959</i> (Tas); or (b) make any order, or give any directions, that he considers appropriate in the circumstances, including remission of the matter to a court of petty sessions.
Section 387: Questions of law may be reserved	387 If on the trial of any person convicted of any crime any question of difficulty in point of law shall have arisen it shall be lawful for the judge, in his discretion, to reserve such question of law for the consideration and determination of the Court of Criminal Appeal, and in any such case to respite the execution of the judgment on such conviction, or postpone the judgment until such question of law shall have been considered and determined; and in either case the judge, in his discretion, shall commit the person convicted to gaol, or shall admit the convicted person to bail in order to secure that he shall appear at such time and place as the judge shall direct, and receive judgment, or render himself in execution, as the case may be.
Section 388A: Abatement or removal of nuisance	388A Upon a conviction of creating and continuing a nuisance the court may adjourn the cause for a specified period to give the person convicted an opportunity to abate or remove the nuisance.
Section 388B: Punishment for creating a nuisance	388B(1) When a person is convicted of creating and continuing a nuisance, the court may, in addition to any fine imposed under section 388A, impose a sentence in respect of the creating of the nuisance. (2) Where under subsection (1) the judge of the court of trial is of opinion that both imprisonment and a fine should be imposed, he may sentence the person convicted at any time after the verdict and while the procedure of section 388A is going on and as part of the same sentence add the fine when it is clear what fine, if any, should be imposed under subsection (6) of that section.
Section 396: Tainted acquittal - meaning	396 An acquittal is "tainted" if – (a) the accused person or another person has been convicted in this State or elsewhere of an administration of justice crime in relation to the proceedings in which the accused person was acquitted; and (b) it is more likely than not that, but for the commission of the administration of justice crime, the accused person would have been convicted.
Section 397AD: Retrial	397AD(5) At the retrial of an accused person, the prosecution is not entitled to refer to the fact that the Court has found that it appears that – (a) there appears to be fresh and compelling evidence against the acquitted person; or (b) more likely than not, but for the commission of the administration of justice crime, the accused person would have been convicted.

Section 399: Interpretation (appeals)	<p>399 In this chapter, unless the contrary intention appears <i>appellant</i> means any person convicted, or any prosecutor, who wishes to appeal under this chapter.</p> <p>Sentence includes any order made by the court of trial –</p> <p>(a) for the keeping in custody of any person convicted;</p> <p>(b) with reference to any property; or</p> <p>(c) with reference to any moneys to be paid by a person convicted.</p>
Section 401: Right of Appeal	<p>401(1)(c) A person convicted may appeal against his conviction or sentence.</p> <p>(2)(c) The Crown may appeal against sentence.</p> <p>(3) For the purposes of ss(2)(c), sentence in relation to a person convicted on indictment includes a probation order under the <i>Sentencing Act 1997</i> (Tas).</p>
Section 402: Determination of appeals	<p>402(3) Subject to the special provisions of this chapter, the Court shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.</p> <p>(5)(b) If the Court allows an appeal against an order arresting judgment or against an acquittal, it may make an order that a conviction be entered against the offender.</p>
Section 403: Powers of courts in special cases	<p>403(1) If it appears to the Court that an appellant, though not properly convicted on some count or part of the indictment has been properly convicted on some other count or part of the indictment, the Court may either affirm the sentence passed at the trial or pass such sentence, whether more or less severe, in substitution therefor, as it thinks proper, and as may be warranted in law by the conviction on the indictment or part thereof on which it considers the appellant has been properly convicted.</p> <p>(2) Where an appellant has been convicted of a crime, and the jury could on the indictment have found him guilty of some other crime, and on the finding of the jury it appears to the Court that the jury must have been satisfied of facts which proved him guilty of that other crime, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other crime, and pass such sentence, not being a sentence of greater severity, in substitution for the sentence passed at the trial, as may be warranted in law for that other crime.</p> <p>(3) Where, on the conviction of the appellant, the jury have found a special verdict, and the Court considers that a wrong conclusion has been arrived at by the court of trial on the effect of that verdict, the Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court to be in law required by the verdict, and pass such sentence, whether more or less severe, in substitution for the sentence passed at the trial, as may be warranted in law.</p>
Section 405: Suspension of order & Revesting property on conviction	<p>405(1) The operation of any order for the restitution of any property, or for the payment of compensation to an aggrieved person, made by the court of trial, and the operation of the provisions of section 29(1) of the <i>Sale of Goods Act 1896</i> (Tas), as to the revesting of the property in stolen goods on conviction, shall (unless the court of trial directs to the contrary in any case in which in its opinion the title to the property is not in dispute) be suspended –</p> <p>(a) until the expiration of the time provided for appealing to the Court and</p> <p>(b) where notice of appeal or of application for leave to appeal is given within the time provided, until the determination of the appeal or refusal of the application –</p> <p>and in cases where the operation of any such order or the operation of the said provisions is suspended until the determination of the appeal, the order or provisions, as the case may be, shall not take effect as to the property in question if the conviction is quashed on appeal, except by the special order of the Court</p> <p>(2) The Court may, by order, annul or vary any order made on a trial for the restitution of any property to any person, although the conviction is not quashed; and such order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.</p>
Section 407: Time for appealing	<p>407(1) Any person convicted desiring to appeal to the Court, or to obtain leave to appeal, against any conviction or sentence, shall give notice of appeal or notice of application for leave to appeal, within 14 days of the date of such conviction or sentence.</p>
Section 409: Supplemental powers	<p>409(1)(ab) For the purposes of this Chapter the Court may, if it thinks it necessary or expedient in the interests of justice order a person convicted, or a person who is a respondent to a prosecution appeal, to attend before the Court on the hearing of an appeal in relation to the person or to receive judgment in relation to the appeal.</p>

Section 415: Admission of appellant to bail and custody when attending court	415(6) This section shall apply to a person in respect of whose conviction a case has been stated under the provisions of section 387.
Section 416: Duties of Registrar	416(2) If it appears to the Registrar that any notice of appeal against a conviction does not show any substantial ground of appeal, he may refer the appeal to the Court for summary determination; and the Court may thereupon, if it considers that the appeal is frivolous or vexatious, dismiss the appeal summarily without calling upon any person to attend the hearing.
Section 419: Prerogative of mercy	419 The Attorney-General, on the consideration of any petition for the exercise of His Majesty's mercy, having reference to the conviction of any person or to any sentence passed on a convicted person may (a) refer the whole case to the Court, and the case shall be heard and determined by the Court as in the case of an appeal by a person convicted.
Section 425: Costs against convicts	425 The court by which judgment is given on conviction of a person for a crime may, in addition to any other sentence, condemn that person to pay the whole or part of the costs or expenses incurred in or about the prosecution and conviction for the crime of which he is convicted.
Section 433: Recognizance to keep the peace &c., may be forfeited on proof of conviction	433(1) Where any recognizance to keep the peace or to be of good behaviour is entered into by any person, as principal or surety, before the Supreme Court, or before any justice, it shall be lawful for a judge, upon – (a) application made to him; (b) production of such recognizance; and (c) proof of a conviction of the party bound by such recognizance of any offence which is in law a breach of the condition of the same; and that a notice in writing, signed by the person seeking to put such recognizance in force, has, 7 clear days before such application is made, been personally served upon or left at the usual place of abode of the party or each of the parties, if more than one, who entered into such recognizance, that an application will be made to the said judge that the said recognizance shall be declared forfeited – to declare such recognizance to be forfeited.

Table 4: *Justices Act 1959* (Tas)

Section 3: Interpretation	3 <i>Decision</i> includes a committal for trial and an admission to bail as well as a conviction, order, order of dismissal, or other determination. <i>Simple offence</i> means any offence (indictable or not) punishable, on summary conviction before justices, by fine, imprisonment, or otherwise. <i>Summary conviction, or conviction</i> , means a conviction by justices for a simple offence.
Section 17: Clerks of petty sessions	17(2) The clerk of petty sessions may himself or by deputy receive complaints and issue summonses thereon, summonses to witnesses, and process in execution of convictions and orders as if he were a justice.
Section 29: Only one matter of complaint: Procedure if otherwise	29(5) On the hearing of a complaint that does not comply with subsection (1) - (b) if the defendant does not so apply, the justices shall proceed to hear the evidence, and shall determine which matter or matters of complaint, if any, is or are proved, and may convict the defendant accordingly.
Section 30: Statement of offences	30(1) Any complaint, summons, warrant, or other document that is laid, issued, or made for the purpose of, or in connection with, proceedings before justices shall be sufficient if it – (a) describes the matter of complaint with which the defendant is charged or of which he is convicted in ordinary language, avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the matter of complaint; and (b) contains such particulars as will give reasonable information of the nature of the matter complained of.

Section 31: Irregularities and amendments	<p>31(5) Any –</p> <p>(a) conviction or order made by justices may be amended, according to the evidence, by the justices by or before whom it was made, issued, or had, or by any court before which it comes, on appeal or otherwise, at any time after it has been signed, and before it has been executed, upon such terms as to costs, or otherwise, as to the justices or court seems fit.</p> <p>(6) A conviction or order of, or other proceeding before, justices shall not be quashed or set aside for a mere matter of form or technical error, or mistake in a name, date, or title, or in a matter of description only, but in all cases regard shall be had alone to the substantial merits and justice of the case.</p> <p>(7) A warrant of commitment issued upon any conviction by justices shall not be void or invalid, or be quashed, for any defect in substance or in form, and a party shall not be entitled to be discharged out of custody on account of any such defect where –</p> <p>(a) it is alleged in the warrant that the party has been convicted of an offence; and</p> <p>(b) it appears to the court before which the warrant is returned that the conviction proceeded on good and valid grounds.</p>
Section 34: Power of police officers to admit to bail	<p>34(2)(b) In the case of a person taken into custody for a family violence offence or to facilitate the making of an application for a family violence order or restraint order, the person considering under subsection (1) whether to admit that person to bail, in determining whether there is reasonable ground for believing that to do so would not be in the interests of justice must take into account any previous violence by that person against the person against whom the offence was committed or for whose benefit the family violence order, restraint order, interim restraint order or telephone interim restraint order is sought or was made or against any other person whether or not that person was convicted of an offence, or had a prior family violence order or restraint order made against him or her, in respect of that violence.</p>
Section 35: Power of justice to admit person to bail	<p>35(2) In determining whether to refuse to bail or to admit to bail a person who is a prescribed person within the meaning of section 34A or a person referred to in section 34A(1) who has been taken into custody in respect of an offence constituted by a breach of a restraint order, interim restraint order or telephone interim restraint order, the justice – (b) must take into account any previous violence by that person against the person for whose benefit the restraint order, interim restraint order or telephone interim restraint order is sought or was made or against any other person whether or not that person was convicted of an offence, or had a prior restraint order made against him or her, in respect of that violence.</p>
Section 37: Admission to courts of summary jurisdiction	<p>37(1) Subject to subsection (2) and to the <i>Admission to Courts Act 1916</i> (Tas), and the regulations thereunder, the room or place in which justices sit to hear and determine a complaint upon which a conviction or order may be made, is an open and public court, to which all persons may have access so far as it can conveniently contain them.</p>
Section 59: Entering plea and making election	<p>59(1) In pleading to an indictable offence, the defendant may plead – (b) if the justices and prosecutor consent, guilty of any other indictable offence of which he or she might be convicted on an indictment for the offence charged; or</p> <p>(e) that he or she has cause to show why he or she should not be convicted of the offence charged.</p>
Section 60: Committal of defendant to Supreme Court	<p>60(1) The justices must commit to the Supreme Court for sentence or trial, on a day to be fixed by the Supreme Court, a defendant charged with an indictable offence –</p> <p>(a) if the defendant pleads guilty to that offence, or to another indictable offence of which he or she might be convicted on an indictment for the offence charged, and the offence to which the defendant pleads guilty is one –</p> <p>(i) which must be tried in the Supreme Court; or</p> <p>(ii) in respect of which the defendant under section 72 may elect to be tried or sentenced by justices or in the Supreme Court and the defendant elects to be sentenced in the Supreme Court.</p>
Section 71: Petty crime triable summarily	<p>71(2) An offence mentioned in subsection (1) may be dealt with in the Supreme Court unless –</p> <p>(a) the person arraigned therefor has been convicted therefor.</p>

Section 72A: Attempts triable summarily	<p>72A(2) On a complaint of an offence referred to in subsection (1), the defendant may, where the evidence so requires, be convicted of an attempt to commit the offence.</p> <p>(3) On a complaint of attempting to commit an offence referred to in subsection (1), the defendant may, where the evidence so requires, be convicted of the offence that he is alleged to have attempted to commit.</p>
Section 72B Hearings under this Part	<p>72B(1) Where a charge is heard and determined summarily under this Part –</p> <p>(a) the complaint shall be deemed good and sufficient for the purposes of Part VI; and</p> <p>(b) the defendant or any one of joint defendants may, if he is found not guilty of the offence with which he is charged, be convicted of any other offence of which he might be convicted on an indictment charging the same facts if it is established by the evidence to have been committed by him.</p> <p>(2) If, during the hearing of a charge to be determined under this Part, the defendant requests or the justices consider for any reason that the charge should be dealt with in the Supreme Court, the justices shall–</p> <p>(a) if they have not convicted the defendant, either abandon the hearing and begin again in accordance with Part VII or complete it and convict or discharge the defendant and if they convict him commit him to the Supreme Court for sentence; or</p> <p>(b) if they have convicted the defendant, commit him to the Supreme Court for sentence.</p> <p>(3) Where a person has been committed for sentence after conviction as provided in subsection (2) –</p> <p>(a) section 60 applies as nearly as possible as if he had pleaded guilty when charged with his offence, but so that the conviction stands, unless it is subsequently quashed by the Supreme Court; and</p> <p>(b) the justices shall transmit to the Registrar of the Supreme Court a statement from the record made by them pursuant to section 50A containing particulars of the facts found by them, together with a report of their reasons</p>
Section 73: Accessories	<p>73(3) A person who is alleged to have instigated, aided, or abetted the commission of a simple offence may be convicted upon a complaint charging him with having committed the offence, or upon a complaint charging him with having instigated, aided, or abetted, as the case may be, the commission thereof.</p>
Section 74: Attempts	<p>74(1) Where, upon the hearing of a complaint for a simple offence, the complete commission of the offence charged is not proved but the evidence establishes that the defendant attempted to commit that offence, he may be convicted of such an attempt.</p> <p>(6) Where, upon the hearing of a complaint for an attempt to commit a simple offence, the evidence establishes that the defendant has completed the commission of the simple offence, he may be convicted of the simple offence.</p> <p>(7) Where a person has been convicted of an attempt to commit a simple offence, he is not liable to be tried for the simple offence of which he was so convicted of having attempted to commit.</p>
Section 74A: Procedure where defendants not represented	<p>74A(5) The defendant may plead –</p> <p>(a) guilty of the offence charged or, with the consent of the justices and the prosecutor, of any other offence of which the defendant might be convicted on the complaint; or</p> <p>(d) that the defendant has cause to show why he or she should not be convicted of the charge.</p>
Section 74BA: Discharge before conviction	<p>74BA(1) Where justices convict a person of an offence they may, having regard to the circumstances, the nature of the offence and the character of the person, determine the proceedings by discharging the person.</p>

Section 77: Costs	<p>77(1) Where justices make a conviction or order in favour of the complainant they may, in their discretion, order that the defendant shall pay to the complainant the whole or a specified proportion of his costs of and incidental to his complaint.</p> <p>(4) An assessment of costs under subsection (3) –</p> <p>(c) shall be deemed to be part of the conviction or order of dismissal to which it relates; and</p> <p>(d) shall comply with such requirements (if any) as are prescribed.</p> <p>(5) The sum allowed for costs in a conviction or order by which a penalty or sum of money is adjudged to be paid shall be recoverable in the same manner and under the same warrants as the penalty or sum of money adjudged to be paid by the conviction or order is recoverable.</p>
Section 101: Power to require convicted persons to give sureties of the peace in addition to or in lieu of punishment	<p>101 Wherever, upon the hearing of any complaint for an offence punishable summarily, it appears to the justices, by the evidence, that the defendant has used threats, or done an act for which he might be required to enter into recognizance of the peace, they may, if they think fit, require the defendant to enter into such a recognizance, either in addition to or in lieu of the punishment to which he is liable upon conviction of the offence, and whether the complainant has required sureties of the peace against the defendant or not.</p>
Section 105: How recognizances of the peace may be forfeited	<p>105(1) Where a recognizance to keep the peace is entered into before a justice by a person as principal or surety, a court of petty sessions may, upon application, adjudge the recognizance to be forfeited upon proof –</p> <p>(a) of conviction of the party bound as principal by the recognizance of an offence which is in law a breach of the condition of the recognizance –</p> <p>and upon further proof that a notice in writing, signed by the person seeking to put the recognizance in force, has, 7 clear days before the application is made, been personally served upon or left at the usual place of abode of the party or each of the parties, if more than one, against whom it is sought to put the recognizance in force, that an application will be made, at a time and place to be stated in the notice that the recognizance may be adjudged to be forfeited.</p>
Section 106F: Powers of justices to remand in custody, admit to bail,	<p>106F(1A) In making a determination under subsection (1) in respect of an application for a restraint order or interim restraint order –</p> <p>(a) the protection and welfare of the person for whose benefit the order is sought is of paramount importance; and</p> <p>(b) the justices must take into account any previous violence by the person against whom the order is sought against any other person whether or not that person was convicted of an offence, or had a prior restraint order made against him or her, in respect of that violence.</p>
Section 106I: Contravention of restraint order	<p>106I(1) Where a person in respect of whom a restraint order, interim restraint order or telephone interim restraint order, as made, varied or extended has effect contravenes or fails to comply with the order, that person is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months.</p>
Section 106K: Restriction of publication of names of parties	<p>106K(5) A person who contravenes subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units or to imprisonment for a period not exceeding 3 months.</p>
Section 116: Interpretation	<p>116 In this Part, unless the contrary intention appears, <i>order</i> includes conviction, dismissal of a complaint, determination, and adjudication.</p>
Section 118: Proceedings not to be quashed for want of form	<p>118 A complaint, conviction, order, or other proceeding before justices shall not be quashed or set aside, or adjudged void, or insufficient for want of form.</p>
Section 119: Amendment of convictions	<p>119(1) When evidence given before the justices in substance supports the adjudication of the justices, and if that evidence would have justified the justices in making any necessary allegation or finding omitted in the adjudication, or in the formal conviction or order, or any warrant issued in pursuance of the adjudication, all necessary amendments shall be made by the Supreme Court, and when in a conviction there is some excess which may, consistently with the merits of the case, be corrected, the conviction shall be amended accordingly, and shall stand good for the remainder.</p>

Section 120: Want of complaint or summons	120 When the person convicted, or against whom an order has been made, or a person whose goods have been condemned or directed to be sold as forfeited, was present at the hearing of the case, the conviction or order shall be sustained, although there may have been no complaint or summons, unless he objected at the hearing that there was no complaint or summons, and the Supreme Court is of opinion that the course of procedure was prejudicial to the conduct of his case.
Section 121: Distribution of penalty	121 A conviction or order shall not be defeated for the want of any distribution, or for a wrong distribution, of the penalty or forfeiture.
Section 122: Power of court or judge to admit to bail	122(1) Where a person committed to gaol by virtue of a summary conviction or order has been brought up by writ of <i>habeas corpus</i> , and the Supreme Court postpones the final decision of the case, the Court may admit the person to bail to secure his appearance at such time and place, and upon such conditions, as the Court may appoint.
Section 127: Action for act done without in in excess of jurisdiction	127(1) An action against a justice for an act done by him in a matter – (a) of which by law he has not jurisdiction; or (b) in which he has exceeded his jurisdiction – may be maintained by any person injured by that act or by any act done under any conviction or order made, or any warrant issued by the justice in that matter, in the same form and in the same cases as such an action might have been maintained before the passing of this Act. (2) In the statement of claim or plaint it is not necessary to allege that the act was done maliciously and without reasonable and probable cause. (3) No such action may be brought – (a) for anything done under the conviction or order until after that conviction or order has been set aside, or has been quashed under Part XI.
Section 128: No action maintainable for exercise of discretion	128 An action shall not be brought against a justice – (a) for or by reason of the manner in which he has exercised his discretion in the execution of a discretionary power conferred on him by an Act; (b) for anything done under a warrant of execution or of commitment on the ground of a defect in the conviction or order on which it was founded if, either before or after the granting of the warrant, the conviction or order has been confirmed or amended under Part XI; (c) by reason of a defect in a conviction or order made by some other justice on which he has <i>bona fide</i> and without collusion granted a warrant of execution or of commitment; or (d) by reason of a want of jurisdiction in another justice by whom a conviction or order has been made on which he has <i>bona fide</i> and without collusion granted a warrant of execution or of commitment.
Section 133: Damages	133 If the plaintiff in an action subject to this Part claims as damages the amount of a penalty or sum of money levied or paid under the conviction or order, or seeks to recover damages in respect of imprisonment suffered by him thereunder, and it is proved – (a) that he was guilty of the offence of which he was convicted, or that he was liable by law to pay the sum he was ordered to pay; and (b) that the imprisonment, if any, so suffered by him was no greater than the punishment assigned by law for the offence of which he was convicted, or for non-payment of the sum he was ordered to pay – he is not entitled to recover the amount of the penalty or sum so levied or paid or any sum as damages for the imprisonment or any costs.
Section 135: Warrant not to be void for form only	135 A warrant of commitment or to apprehend shall not be held void by reason only of a defect or error therein if there is a conviction or order which is good and valid, or which may be amended and made good and valid, under this Act to sustain it.
Section 136: Protection of defective or irregular execution	136(1) Where there is a defect or want of form in a conviction or order – (a) execution made thereon under this Act shall be deemed not to be unlawful; and (b) the person making the execution shall be deemed not to be a trespasser – by reason thereof.

Section 137: Fees	137(2) A person who is summarily convicted or against whom an order is made upon the complaint of a person exempted from payment of fees by this section shall pay the amount of the prescribed fees that would otherwise have been payable in respect of the proceedings if all documents used therein had been prepared by the clerk of petty sessions, and that amount shall for purposes of recovery be deemed to be costs ordered under section 77.
Section 138: Power to order delivery of possession of goods in custody of police officer	138(1) When possession has been taken by a police officer of property in relation to which an offence is alleged to have been committed and – (a) proceedings taken against the alleged offender have terminated by his conviction or discharge – or when property reasonably supposed to have been stolen has come into the possession of a police officer, and in either case the police officer is not satisfied as to who is entitled to the property or the owner of the property is not known or cannot be found, the officer may apply to a court of petty sessions for directions for the disposal of the property.
Section 142: Accounts to be kept	142 Clerks of petty sessions and gaolers shall – (a) keep a true and exact account of all money received by them under or by virtue of a conviction or order, showing the persons from whom and the time when the sums were received, and to whom and when the sums were paid, in such form and manner as the Auditor-General may determine.
Section 143: Appropriation of penalties and fees	143(1) Subject to the <i>Penalties Remission Act 1934</i> (Tas) and to subsections (3) and (3A), and except as otherwise provided by section 123 of the <i>Local Government (Highways) Act 1982</i> (Tas) or any provision of any other Act which makes special provision with respect to the payment of fines and penalties, all fines and penalties imposed upon summary conviction before justices, and any incidental fees shall be paid into the Consolidated Fund (3A). Notwithstanding anything contained in subsection (1), fees incidental to complaints of simple offences and recoverable on conviction thereof are payable as provided in the rules of court.
Section 144: Rules of court	144(4) Rules of court made by the Magistrates Rule Committee for this Act may, without limiting the generality of the committee's powers, make provision as to– (a) the practice and procedure of justices out of sessions; (b) the execution of convictions and orders; (cd) the hearing and determination in the absence of the defendant of complaints for simple offences and breaches of duty where the defendant has failed to appear as summoned or in accordance with his admission to bail, and the taking at such a hearing of the complaint as admitted, but with a right in the defendant to have the conviction or order then made vacated and the complaint reheard, except where he has filed a plea of guilty before the hearing.

Table 5: *Evidence Act 2001 (Tas)* provisions

<p>Section 178: Convictions, acquittals and other judicial proceedings</p>	<p>178(1) This section applies to the following facts:</p> <p>(a) the conviction or acquittal before or by an applicable court of a person charged with an offence; ...</p> <p>(2) Evidence of a fact to which this section applies may be given by a certificate signed by a judge, a magistrate or registrar or other proper officer of the applicable court –</p> <p>(a) showing the fact, or purporting to contain particulars, of the record, indictment, conviction, acquittal, sentence, order or proceeding in question; and</p> <p>(b) stating the time and place of the conviction, acquittal, sentence, order or proceeding; and ...</p> <p>(3) A certificate given under this section showing a conviction, acquittal, sentence or order is evidence of the particular offence or matter in respect of which the conviction, acquittal, sentence or order was had, passed or made, if stated in the certificate.</p> <p>(5) A certificate given under this section purporting to contain particulars of a record, indictment, conviction, acquittal, sentence, order or proceeding is evidence of the matters stated in the certificate.</p> <p>(7) A conviction is presumed not to have been appealed against, quashed or set aside until the contrary is shown.</p>
<p>Section 179: Proof of identity of convicted persons by affidavits of members of State or Territory police forces</p>	<p>179(2) For the purpose of proving before a court the identity of a person alleged to have been convicted in that State or Territory of an offence, the affidavit is evidence in a proceeding that the person whose fingerprints are shown on a fingerprint card referred to in the affidavit and marked for identification –</p> <p>(a) is the person referred to in a certificate of conviction, or certified copy of conviction annexed to the affidavit, as having been convicted of an offence; and</p> <p>(b) was convicted of that offence; and</p> <p>(c) was convicted of any other offence of which he or she is stated in the affidavit to have been convicted.</p>
<p>Section 180: Proof of identity of convicted persons by affidavits of members of Australian Federal Police</p>	<p>180(2) For the purpose of proving before a court the identity of a person alleged to have been convicted of an offence against a law of the Commonwealth, the affidavit is evidence in a proceeding that the person whose fingerprints are shown on a fingerprint card referred to in the affidavit and marked for identification –</p> <p>(a) is the person referred to in a certificate of conviction, or certified copy of conviction annexed to the affidavit, as having been convicted of an offence; and</p> <p>(b) was convicted of that offence; and</p> <p>(c) was convicted of any other offence of which he or she is stated in the affidavit to have been convicted.</p>
<p>Section 196B: Certain errors not avoid conviction</p>	<p>196B A conviction, whether upon indictment or summary, is not to be set aside on the ground of the improper admission of evidence –</p> <p>(a) if it appears to the court that the evidence was not material; or</p> <p>(b) upon the ground of the improper admission of evidence adduced for the defence.</p>

Appendix 10

FINDINGS OF GUILT WITHOUT CONVICTION AND SPENT CONVICTION LEGISLATION IN AUSTRALIA

Jurisdiction	Findings of guilt included in spent conviction legislation	How dealt with?	Details and exemptions	Relevant legislation
Commonwealth	Yes (included in definition of conviction in s 85ZM(1)(b)).	Subject to same rules as convictions.	Sexual offences can be spent. Exemptions: Working with children Law enforcement agencies Intelligence or security agencies Court or tribunal Citizenship, migration and immigration AUSTRAC.	<i>Crimes Act 1914</i> (Cth) Part VIIC
Northern Territory	Yes (included in definition of criminal record, s 3(1)).	Immediately spent or at end of period specified in order. 'Where a person convicted but a court without recording the conviction ...' or 'If finding that offence proved without the court proceeding to conviction'.	Sexual offence cannot be spent. Exemptions: Need to disclose judiciary Specific offences for fire fighting, <i>Firearms Act</i> Testify on jury Prostitution licence Work in care, instruction or supervision of vulnerable persons.	<i>Criminal Records (Spent Convictions) Act</i> (NT)
South Australia	Yes (definition of conviction in s 3(5)).	If conviction is not recorded, immediately spent. Not appear on criminal record (< http://www.lawhandbook.sa.gov.au/ch13s07s01s01.php >).	Not spent: sexual offences, unless eligible sex offence (see 8A). Note: Different disclosure exceptions for no conviction recorded compared with conviction recorded. Need to disclose: Judicial agencies, designated judicial authorities and parole board. Working with children, health practitioners, teachers and work with/care for children and vulnerable groups. Note that a spent conviction does not appear on police check.	<i>Spent Conviction Act 2009</i> (SA)

Jurisdiction	Findings of guilt included in spent conviction legislation	How dealt with?	Details and exemptions	Relevant legislation
Western Australia	<p>Not have option to not record conviction but can make a spent conviction order at time of sentence.</p> <p>For young offenders – non-conviction available.</p>	<p>Conviction - means a conviction incurred, <i>Spent Conviction Act 1988 (WA)</i> s 3.</p> <p>Can be spent at sentencing hearing <i>Sentencing Act 1999 (WA)</i> s 45.</p>	<p>Can have sexual offence spent.</p> <p>Exemptions:</p> <p>Being considered by Prisoner Review Board or Supervised Release Review Board</p> <p>Justice of the peace</p> <p>Police</p> <p>Prison officer</p> <p>High level security work under <i>Poisons Act 1981 (WA)</i></p> <p>Work involving assessing, reporting about or classifying prisoners</p> <p>Employment under the <i>Gold Corporation Act 1987 (WA)</i></p> <p>Authorisations under the <i>Court Security and Custodial Services Act 1999 (WA)</i></p> <p>Firearms licence</p> <p>Security agent</p> <p>Casino key employee or casino employee</p> <p>Authorisations under the <i>Court Security and Custodial Services Act 1999 (WA)</i> or the <i>Corruptions and Crime Commission Act 2003 (WA)</i></p> <p>Public Trustee and some jobs to assist Public Trustee</p> <p>Public Advocate and some jobs to assist Public Advocate</p> <p>Security officer under the <i>Public Transport Authority Act 2003 (WA)</i></p> <p>Duties require to come into contact with children in school, community kindergarten college or hostel</p> <p>Child care service</p> <p>Work with Department of Child Protection</p> <p>Work with Department of Health</p> <p>Work with Disability Services Commission.</p>	<p><i>Sentencing Act 1999 (WA)</i></p> <p><i>Spent Conviction Act 1988 (WA)</i></p>

Jurisdiction	Findings of guilt included in spent conviction legislation	How dealt with?	Details and exemptions	Relevant legislation
Victoria	Yes.	Victoria Police releases information on the basis of a finding of guilt.	<p>Same rules generally apply to sexual offences.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> Child-screening unit or teaching Assisted Reproductive Treatment Health professionals Prisons or police force Casino or gaming licence Prostitution Service Provider's Licence Operator accreditation under the <i>Bus Safety Act 2009</i> (Vic) Private Security Licence Taxi Services Commission Firearms licence <p>If record includes a serious offence of violence or a sex offence and record check is for the purposes of employment or voluntary work with children or vulnerable people</p> <p>In other exceptional circumstances when the release of information is in the interest of crime prevention and the administration of justice</p> <p>Traffic offences where outcome was imprisonment or detention</p> <p>Serious Offences where the result was 'Acquittal by reason of insanity/mental illness' or 'Not guilty by reason of insanity/mental illness.'</p>	<p>No legislation – Victoria Police Policy</p> <p>(http://www.police.vic.gov.au/content.asp?Document_ID=692)</p>
NSW	Yes (except for order under s 33 of the <i>Children (Criminal Proceedings) Act 1987</i> (NSW) dismissing the charge: see s 5).	Immediately spent (s 8(2)) or on completion of good behaviour period or program or other condition (s 8(4)).	<p>Sexual offences not able to be spent.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> Judiciary, police officer, prisons, teacher, teacher aide Working with children check Conviction for arson appointed or employed in firefighting <p>Use in subsequent court proceedings – note limits on evidence of prior offences for young offenders (CCPA s 15).</p> <p>See also Criminal Records Regulations:</p> <ul style="list-style-type: none"> Employment with office of DPP, ICAC, Police Integrity Commission, NSW Crime Commission, Crown Prosecutors or admission as a legal practitioner. 	<p><i>Criminal Records Act 1991</i> (NSW)</p> <p><i>Criminal Records Regulations 2004</i> (NSW)</p>

Jurisdiction	Findings of guilt included in spent conviction legislation	How dealt with?	Details and exemptions	Relevant legislation
Queensland	<p>No.</p> <p><i>Penalties and Sentences Act 1992 (Qld)</i> s 12(3)(b).</p> <p><i>Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)</i> s 3.</p>	<p>Note <i>Penalties and Sentences Act 1992 (Qld)</i> defines conviction to mean a finding of guilt or the acceptance of a plea of guilty, s 4.</p> <p><i>Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)</i> s 3 conviction – means a conviction by or before any court for an offence whether recorded in Queensland or elsewhere.</p> <p>Criminal history – convictions recorded against that person.</p> <p>Police website: A Police Certificate contains a certification that the person to whom it relates either has no 'disclosable' convictions or has a 'disclosable' conviction that is detailed in the Certificate. A 'disclosable' conviction is one that is recorded by the court and has not been rehabilitated or spent under the <i>Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)</i> and, in the case of Commonwealth convictions, the <i>Crimes Act 1914 (Commonwealth)</i>, and does not breach the confidentiality provisions of the <i>Youth Justice Act 1992 (Qld)</i> (<http://www.police.qld.gov.au/services/purchase/polcert.htm>).</p>	<p>Sexual offences can be spent.</p> <p>S 12(3) Except as otherwise expressly provided a conviction without recording a conviction is taken not to be a conviction for any other purpose and must not be entered in any records.</p> <p>Exceptions:</p> <p><i>Commissioner for Children and Young People and Child Guardian Act 2000 (Qld)</i> (Bluecards) sch 7 conviction means a finding of guilt whether or not conviction is recorded</p> <p>Teacher registration – <i>Education (Queensland College of Teachers) Act 2005 (Qld)</i> sch 3 conviction means a finding of guilt whether or not conviction is recorded</p> <p><i>Radiation Safety Act 1999 (Qld)</i></p> <p><i>Family Responsibilities Commission Act 2008 (Qld)</i></p> <p><i>Adoption Act 2009 (Qld)</i></p> <p><i>Criminal Organisations Act 2009 (Qld)</i></p> <p><i>Security Providers Act 1993 (Qld)</i></p> <p><i>Disability Services Act 2006 (Qld)</i></p> <p><i>Legal Profession Act 2007 (Qld)</i></p> <p><i>Animal Care and Protection Act 2001 (Qld)</i></p> <p><i>Corrective Services Act 2006 (Qld)</i></p> <p><i>Explosives Act 1999 (Qld)</i></p> <p><i>Prostitution Act 1999 (Qld)</i></p> <p><i>Police Service Administration Act 1990 (Qld)</i></p> <p><i>Private Employment Agents Act 2005 (Qld)</i></p> <p><i>Public Service Act 2009 (Qld)</i></p> <p><i>Transport Operators (Passenger Transport) Act 1994 (Qld)</i></p> <p><i>Veterinary Surgeons Act 1936 (Qld)</i></p> <p>Health Practitioners</p> <p><i>Tobacco and Other Smoking Products Act 1998 (Qld)</i></p> <p><i>Food Act 2006 (Qld)</i>.</p>	<p><i>Penalties and Sentences Act 1992 (Qld)</i></p> <p><i>Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)</i></p>

Jurisdiction	Findings of guilt included in spent conviction legislation	How dealt with?	Details and exemptions	Relevant legislation
ACT	Yes (definition of conviction in s 6).	Immediately spent (s 11(2)) or on completion of good behaviour period or program or other condition (s 11(3)).	Sexual offences not able to be spent. Exclusions: Judiciary, police officer, teacher, teacher's aide, childcare provider, prison officer, aged care provider or disability Supervision of children, school etc, institution or supervision for children, older people or people with a disability, casino employee, interactive gambling licence, older people or people with disability Arson – firefighting or fire prevention Not apply to court or sentencing <i>Firearms Act 1996 (ACT)</i> Eligible person under <i>Casino Control Act 2006 (ACT)</i> , <i>Race and Sports Bookmaking Act 2001 (ACT)</i> , <i>Prostitution Act 1992 (ACT)</i> , <i>Security Industry Act 2003 (ACT)</i> , teacher registration.	<i>Spent Convictions Act 2000 (ACT)</i>

Jurisdiction	Findings of guilt included in spent conviction legislation	How dealt with?	Details and exemptions	Relevant legislation
Tasmania	Yes (definition of conviction in s 3).	Not disclosed unless exclusion applies and are then subject to same rules as convictions for purposes of exclusions.	Sexual offences not able to be spent. Exclusions: Prisons and parole Childcare Health Teaching and nonteaching education staff Adoption/foster parents Justice of the peace Youth justice Scout volunteer Bookmaker Gaming licence Liquor licence Stipendiary steward Driver/public passenger licence Legal/judicial appointment Security/crowd control Poppy advisory and control board Firearms licence School-crossing patrol officer Fire service Police/law enforcement Authorised officer (<i>Traffic Act 1925 (Tas)</i>) <i>Poisons Act 1971 (Tas)</i> <i>Security-sensitive Dangerous substances Act 2005 (Tas)</i> .	<i>Annulled Convictions Act 2003 (Tas)</i>

