

***Potschick v Bruce* [2018] WADC 107 (31 August 2018) – Western Australia District Court**

‘Protection orders’ – ‘Summary of considerations’

Charges: The Magistrate was satisfied that the respondent committed two acts of abuse against the appellant.

Appeal type: Appeal from a decision of the Magistrate refusing to make a final violence restraining order.

Facts: The appellant appealed a decision of the Magistrate to refuse to make a final violence restraining order against the respondent. The appeal was conducted by way of a rehearing of the application.

Issues: Whether the Magistrate erred in fact in finding that the respondent was not likely, in the future, to commit an act of abuse against the appellant.

Decision and reasoning: The appeal was dismissed. Before the Court’s power to grant a Final Violence Restraining Order (VRO) is enlivened, it must be satisfied that the respondent committed an act of abuse against the appellant and that he is likely to commit such an act again. The Court noted that the Magistrate was not satisfied to the requisite standard that the respondent was likely to commit an act of abuse against the appellant again, or that the granting of either a Family Violence Restraining Order FVRO or a Misconduct Restraining Order (MRO) was justified. As the Court was not prepared to disturb the Magistrate’s finding as to the respondent’s likely future conduct, there was no statutory basis on which the Court could order an MRO (there being no family relationship between the appellant and respondent). Having regard to the issue of the respondent’s likely future conduct in relation to the appropriateness of granting a Final VRO or a MRO, there was no utility in undertaking a consideration of a hypothetical question of whether the Magistrate erred in exercising his discretion to refuse an order in the event that the finding was overturned and the jurisdiction to make an order enlivened ([36]).