***Re Magistrate G Mignacca-Randazzo; Ex parte Chown* [2018] WASC 157 (11 May 2018) – Supreme Court of Western Australia**

'Adjournments and timely decision making' – 'Fair hearing and safety' – 'Family violence restraining order' – 'Judicial review' – 'Victim experience of court processes'

Case type: Application for review of Magistrate's decision not to make a final family violence restraining order and application for stay of proceedings.

Facts: The applicant made an application for a family violence restraining order pursuant to s 24A of the *Restraining Orders Act 1997* (WA) ('*Restraining Orders Act*') against her former partner ([9]). The Court made an interim family violence restraining order ([10]). The respondent objected to the interim order ([11]). The next hearing was listed as a 'Restraining Order Final Order Directions Hearing'. The respondent did not attend at that hearing. The Magistrate did not make a final order, and adjourned the hearing ([14]-[17]).

The applicant applied for a review order under s 36 of the *Magistrates Court Act 2004* (WA) ([2]), to review the Magistrate's decision not to make a final restraining order. The applicant also applied for a stay of the substantive hearing.

Issues: Whether the applications should be granted.

Decision and Reasoning: Tottle J granted the review order and the stay of proceedings.

Tottle J set out the principles governing judicial review under s 36of the *Magistrates Court Act 2004* (WA) at [4]-[8]. His Honour set out the principles governing when a final order must be made under s 42 of the *Restraining Orders Act* at [20]-[24]. Tottle J held that it was irrelevant that the hearing was described as a 'Restraining Order Final Order Directions Hearing' even though no hearing of that nature is contemplated or provided for by the Restraining Orders Act (discussing *Kickett v Starr* [2013] WADC 52) ([27]-[32]). Tottle J was satisfied that the Magistrate made a jurisdictional error by not exercising the jurisdiction conferred on him by the *Restraining Orders Act* ([33]).

Tottle J set out the principles governing when a stay ought to be granted at [40]. Tottle J granted a stay of the proceedings on the grounds that the applicant's medical conditions and stress would be exacerbated by having to face the respondent in a contested hearing ([41]-[42]). Tottle J noted that s 10B of the *Restraining Orders Act* requires courts to have regard to the possibility of re-traumatisation during the proceedings ([43]).