

***MDE v MLG & Queensland Police Service* [2015] QDC 151 (2 June 2015) – Queensland District Court**

‘Necessary or desirable test’ – ‘Protection order’ – ‘Three stage approach’

Appeal type: appeal against a protection order.

Facts: On 17 October 2014, a police officer made an application for a protection order against the appellant (MDE) for the benefit of the first respondent (MLG) under the *Domestic and Family Violence Protection Act* 2012 (Qld) (DFVPA). MDE had been continually harassing MLG over the phone and outside her apartment (see [1]-[6]). On 23 October 2013, a temporary protection order was issued with the standard condition (under s56 DFVPA) that “the respondent be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.” Three months later, on 21 January 2015, the Magistrate heard the application and decided to issue a protection order against MDE having been satisfied the requirements under s 37 of DFVPA could be established. The order incorporated the standard condition under s 56 and other conditions under s 57 of the DFVPA ([13]).

Issues: The appellant appealed against the Magistrate’s decision on six grounds, of which the first three questioned the correctness of the Magistrate’s application of s 37 of the DFVPA and the last three concerned procedural and fact-finding errors on the Magistrate’s part (see [18]). Relevantly, the first ground of appeal was that the Magistrate failed to follow, as required, the decision in *GKE v EUT* [2014] QDC 248 at [33] which provides that a future ‘risk’ of violence must be considered and, if absent, a protection order should not be issued (see [64]).

Decision and reasoning: The appeal was allowed and the protection order was therefore set aside.

The second and third grounds of the appeal (see [69] and [56] respectively), along with the fourth, fifth and sixth grounds (see [73]-[79]), were rejected by Morzone QC DCJ (see [72] and [63] respectively). The first, however, was allowed.

Morzone QC DCJ found that the Magistrate relied on erroneous or irrelevant matters and principles in their determination of whether the order was “necessary or desirable” ([68]). Specifically, his Honour highlighted at para [65]-[66] that the Magistrate’s reasons confused the requirements set by s 37(1)(a) and s 37(1)(c). His Honour further noted that the Magistrate failed to expressly examine the material considerations relevant to s 37(1)(c) and (2) ([67]). These included the nature and risk of future domestic violence, the protective needs of the aggrieved (if any), and, if a need was found, how imposing a protection order would be “necessary or desirable” to meet those needs ([67]).

The Magistrate's decision was therefore considered unreasonable by Morzone QC DCJ. This prompted his Honour to re-examine the third element posed by s 37(1)(c), that is, whether a protection order is necessary or desirable to protect the aggrieved from domestic violence ([84]).

Importantly, earlier in his judgement, Morzone QC DCJ expressed the view that the third element of s 37(1) requires a three-stage process supported by a proper evidentiary basis (adduced pursuant to s 145 of the DFVPA) (see [55]). In short, the three steps involve (1) assessing the risk of future domestic violence between the parties in the absence of any order, (2) the need to protect the aggrieved from that domestic violence in the absence of any order, and (3) whether imposing an order is "necessary or desirable" to protect the aggrieved from the domestic violence (see [55]).

Upon analysis of the evidence in para [85]-[89], Morzone QC DCJ reached the conclusion that the first and second stage cannot be established, meaning the imposition of a protection order was neither necessary nor desirable to protect MLG from the domestic violence and therefore, the protection order ought not remain in force.