

EKL v Commissioner of Police & PEL [2020] QDC 194 (12 August 2020) – Queensland District Court

‘Complainant a protected witness’ – ‘Procedural fairness’ – ‘Trial proceeded without the appellant present’

Matter: Protection order appeal.

Facts: Discussion between the magistrate and the prosecutor about the protection order took place in the absence of the appellant and/or his legal representative. The prosecution made an application for the complainant to be a protected witness under the *Domestic and Family Violence Protection Act* (DFVP Act). The appellant’s legal representative informed the court that they did not have instructions in relation to any matter other than to request an adjournment, which application was refused by the magistrate. The appellant’s representative sought leave to withdraw. The magistrate granted the protected witness application.

Issues: (1) The appellant was not afforded procedural fairness; (2) the Magistrate erred in failing to comply with the DFVP Act; (3) the Magistrate erred in finding that the protection order was ‘necessary or desirable’ in the circumstances.

Decision and reasoning: *Appeal allowed, protection order set aside. Application for protection order remitted to magistrate’s court before a different magistrate.*

(1) The discussion of substantive matters by the magistrate in the absence of the appellant is a ‘clear breach of the obligation of procedural fairness’ [20]. (2) In prohibiting the appellant from cross-examining the complainant, the magistrate did not comply with the pre-conditions in s 151 of the DFVP Act which include ‘requiring the court to inform the respondent that he could not cross-examine the aggrieved’ [33]. (3) Unnecessary to consider.