

## ***QKL v Queensland Police Service* [2021] QDC 195 (18 June 2021) – Queensland District Court**

‘Cross-examination’ – ‘Denial of natural justice’ – ‘Evidence’ – ‘Natural justice’ – ‘Necessary or desirable’

Charges: Assault occasioning bodily harm whilst armed x 1; common assault x 1.

Proceedings: Appeal pursuant to s 164 of [Domestic Violence and Family Protection Act 2012 \(Qld\)](#) against the making of a protection order.

Facts: The appellant (respondent) and aggrieved were sisters. The Magistrate hearing the application, pursued by police, did not allow the appellant sister a hearing or opportunity to cross-examine witnesses, in particular the aggrieved sister and both the appellant and aggrieved had submitted that they did not believe a protection order was necessary. The decision was made upon the papers and the appellant was not afforded the opportunity to give evidence as to her insight and the need for the orders. The appellant’s solicitor sought a listing for half-day hearing on counsel’s instructions, but the Magistrate proceeded to hear the matter on the papers. The Magistrate in his decision acknowledged that in the absence of evidence he was unable to make a determination as to whether the aggrieved was a particularly vulnerable person requiring extra consideration, or give weight to the aggrieved’s request an order not be made without explanation why the aggrieved did not see the order as necessary or desirable. The Magistrate made adverse findings against the appellant, finding the extensive differences between the appellant and aggrieved’s affidavit evidence indicated a lack of insight in the appellant, which suggestion the appellant was not given any opportunity to respond to. Adverse findings were made which seemed to have no basis in evidence, but if there was evidence of those matters they were not put to the appellant and she did not have an opportunity to respond to them.

### Grounds:

1. The magistrate erred in finding the matter without a hearing resulting in a denial of natural justice; and
2. The magistrate erred in finding a domestic and family violence protection order was desirable in the circumstances.

### Decision and Reasoning:

1. Appeal allowed;
2. Order of the Magistrate of 10 September 2020 set aside;
3. Application remitted for hearing to the Brisbane Magistrates Court;

Burnett AM DCJ held that the ruling was made before the appellant's solicitor was able to obtain instructions from counsel, and at the very least the matter ought to have been stood down to obtain instructions from counsel. The appellant has been denied natural justice as there were critical disputed matters going to the only issue in the matter, whether a protection order was necessary or desirable, which cross-examination of the parties could have resolved. The appellant was also denied the opportunity to put relevant evidence before the court.