

SUPREME COURT OF QUEENSLAND

CITATION: *RMB v RTA & another* [2026] QSC 245

PARTIES: **RMB**
(applicant)
v
RTA
(first respondent)

MAGISTRATES COURT OF QUEENSLAND
(second respondent)

FILE NO/S: BS No. 1880 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 9 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 21 September 2026

JUDGE: Ryan J

ORDER: **The application is dismissed.**

As to costs: If a party contends for an order, *other than an order that the applicant is to pay the first respondent's costs, including reserved costs (if any), on the standard basis, then they are to let my associate know, by email, copying in the other parties, by 4.00pm on 14 October 2026, and I will set a timetable for the provision of written submissions as to costs. Otherwise, the applicant is to pay the first respondent's costs of the application, including reserved costs (if any), on the standard basis.*

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – EXISTENCE OF OTHER REVIEW OR APPEAL RIGHTS – where the respondent's application for a protection order, made under the *Domestic and Family Violence Protection Act 2012* (Qld), was “struck out” by a Magistrate [REDACTED] because the wife filed her material late – where Magistrate [REDACTED] anticipated that the respondent would “re-file” her application – where the respondent re-filed the application (the “Second Application”) in a different Magistrates Court district – where the Second Application came before a different Magistrate

██████████ – where the applicant applied to Magistrate ██████████ for the Second Application to be summarily dismissed on the basis that it had already been determined on the merits by Magistrate ██████████, or as an abuse of process – where Magistrate ██████████ refused to summarily dismiss the Second Application on either basis – where the applicant sought a review, under Part 5 of the *Judicial Review Act 2012* (Qld), of Magistrate ██████████’s refusal – whether Magistrate ██████████ erred in his application of the doctrine of *res judicata* – whether *res judicata* applied to the decision of Magistrate ██████████ – whether it mattered to the application of *res judicata* that Magistrate ██████████ had not summarily dismissed the application on its merits – whether the decision of Magistrate ██████████ ought to be reviewed

MAGISTRATES – JURISDICTION – PRESUMPTION OF JURISDICTION – whether an order of an inferior court made without jurisdiction is a nullity of no legal consequence – section 21 *Justices Act 1886* (Qld)

PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – INHERENT AND GENERAL STATUTORY POWERS – TO PREVENT ABUSE OF PROCESS – ATTEMPTS TO RELITIGATE – whether *res judicata* applied to the decision of Magistrate ██████████ to summarily dismiss the application for a protection order – where Magistrate ██████████ had not summarily dismissed the matter on its merits – whether that mattered to the application of the doctrine of *res judicata*

PROFESSIONS AND TRADES – LAWYERS – DUTIES AND LIABILITIES – DUTIES TO THE COURT – DUTY TO INFORM THE COURT – where the applicant’s solicitor misled Magistrate ██████████ about her power to summarily dismiss an application for a protection order – where the applicant’s solicitor made submissions about a matter of substance in the absence of the respondent’s legal representatives – where the applicant’s solicitor misrepresented to Magistrate ██████████ what Magistrate ██████████ had done *Australian Solicitors’ Conduct Rules 2023* (Cth) r 3, r 19.1, r 19.6, r 19.11, r 22.5, r 22.6

Australian Solicitors’ Conduct Rules 2023 (Cth) r 3, r 19.1, r 19.6, r 19.11, r 22.5, r 22.6

Domestic and Family Violence Protection Act 2012 (Qld) s 3(a), s 4, s 37, s 38, s 93, s 94, s 157(2)(a), s 157(2)(b), 169
Domestic and Family Violence Protection Rules 2014 (Qld) r 5, r 6, r 22, r 26, r 48

Domestic and Family Violence Protection Act 2012 Benchbook (14th ed., May 2025)

Judicial Review Act 1991 (Qld) s 12(b), s 43, Part 5

Justices Act 1886 (Qld) s 21

Magistrates Court Practice Direction No 4 of 2022 (Qld)

Appleyard v Walker [2009] WASCA 141

CD v Queensland Police Prosecutions (2024) QDCR 244
Clayton v Bant (2020) 272 CLR 1
CNE v VYN [2024] QDC 90
General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125
HDI v HJQ [2020] QDC 83
Jones v Pennuto [2020] WASC 416
KAV v Magistrate Bentley [2016] QSC 46
Keybridge Capital Limited v Molopo Energy Limited [2024] NSWSC 779
Mandeville v Better Lending Pty Ltd [2021] SASCA 28
Murray v Pinder [2020] QSC 385
New South Wales v Kable (2013) 252 CLR 118
OSE v HAN [2020] QDC 309
Prodata Solutions Pty Ltd v Zacest [2025] SASC 138
Queensland v Stradford (a pseudonym) [2025] HCA 3
Rogers v Legal Services Commission of South Australia (1995) 64 SASR 572
Tulloch v Chief Executive Officer of the Department of Corrective Services [2018] WASC 105
Wylie v AMN [2022] QDC 241
Yu v Yu [2020] NSWSC 1904
Zetta Jet Pte Ltd v The Ship 'Dragon Pearl' (No 2) [2018] FCAFC 132

COUNSEL: M Black for the applicant
 G Elmore for the first respondent
 The second respondent was excused from the proceedings

SOLICITORS: Gnech & Associates for the applicant
 Brookwater Legal for the first respondent
 The second respondent was excused from the proceedings

Overview

- [1] Part 5 of the *Judicial Review Act 2012* (Qld) (**JRA**) continues this court's power to grant relief or remedy of the kind previously achieved by way of a writ of mandamus, prohibition or certiorari. It also confers a right to apply for a declaration, even if a prerogative order is not sought.
- [2] The applicant husband applied for a Part 5 JRA review of an interlocutory decision made by a Magistrate not to summarily dismiss his wife's application for a protection order made under the *Domestic and Family Violence Protection Act 2012* (**DFVPA**).¹
- [3] Many applications for the review of a Magistrate's decision fail because adequate provision is made by a law, other than the JRA, for an applicant to seek a review of the matter (section 12(b) JRA). Such a review under another law may be by way of an appeal exercisable only after the proceedings have been finalised, as in this case:

¹ For the purposes of these reasons, I will refer to the primary parties as the husband and the wife, intending no disrespect and appreciating that that is no longer their status but seeking to achieve ease of understanding.

section 164 of the DFVPA.² However, applications to superior courts in relation to interlocutory decisions of Magistrates in the meantime are entertained “sparingly”, as Henry J put it in *Murray v Pinder & Anor* [2020] QSC 385.

- [4] I was concerned that entertaining this application fragmented the DFVPA proceedings in a way which was anathema to the objects of the DFVPA (*cf* the observations of Smith DCJA³ in *CD v Queensland Police Prosecutions* [2024] QDC 150). And I was concerned that this application for review by the husband could be said to run contrary to his undertaking to proceed expeditiously as per rule 5 of the *Domestic and Family Violence Protection Rules 2014* (the **Rules**).
- [5] However, I decided to consider this application for review on its merits because the conclusion, that it ought to be dismissed, was an easy one to reach; and because of my serious concerns about the conduct of the husband’s solicitor in this matter. If I were to dismiss the application under section 12(b) of the JRA, his conduct may well have passed unremarked.
- [6] The husband’s solicitor’s concerning conduct included, but not only, that in the absence of his opponent, he misled a Magistrate about the source of her power to summarily dismiss the wife’s application for a protection order. Her Honour understood that the husband’s solicitor wanted her to finally determine the application, but she made it plain to him that she would not do so. Her Honour made it very clear that her expectation was that the wife would re-file her application and that it would then be determined on its merits.
- [7] The wife re-filed her application for a protection order (the “**Second Application**”) in another Magistrates Court district to be heard by a second Magistrate. By way of false and exaggerated submissions, the husband’s solicitor applied to the second Magistrate for the summary dismissal of the Second Application on the basis that the application had already been dismissed *on its merits* by the first Magistrate; or on the basis that the application was an abuse of process.
- [8] The second Magistrate refused the application for summary dismissal and, as above, his Honour’s refusal was the subject of this application for review.
- [9] For the reasons which follow, I dismiss the application.

Preliminary remarks

The Domestic and Family Violence Protection Act 2012

- [10] The DFVPA is protective legislation. Its main objects include maximising the safety, protection and wellbeing of people who fear or experience domestic violence: section 3(a). And it is to be administered under the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount: section 4.
- [11] The objects of the DFVPA would not be achieved, nor its principles respected, if applications for protection orders were dismissed without proper consideration of their merits, other than in exceptional circumstances.

² From which there is no further appeal (section 169).

³ As his Honour then was.

- [12] The application of the DFVPA is complemented by the Rules, which are intended to assist the Court (referred to in the DFVPA and the rules as the “**DFVP court**”) to decide a proceeding in a way that is consistent with the DFVPA’s objects.
- [13] The DFVPA and the Rules are further complemented by *Magistrates Court Practice Direction No 4 of 2022* (the **PD**). The purpose of the PD is “...to facilitate procedural consistency in the determination of applications for Domestic Violence Orders under the [DFVPA] while allowing for flexible case management to ensure justice is done in individual cases”.
- [14] Over the many years since its original enactment, a large body of jurisprudence about the DFVPA has developed in the District Court of Queensland, sitting as the *final* court of appeal from decisions of DFVP courts. The jurisprudence extends to well-considered authoritative decisions of senior judges of the District Court about the circumstances in which a Magistrates Court may summarily dismiss an application for protection.
- [15] For the assistance of DFVP courts and those who practice in those courts, there is freely and publicly available the *Domestic and Family Violence Protection Act 2012 Benchbook* (the **Benchbook**), the fourteenth edition of which was published in May 2025.
- [16] It should go without saying that DFVP courts are entitled to expect that a legal practitioner who brings, or responds to, an application under the DFVPA has an accurate and up-to-date understanding of the law which applies to that application.

Solicitors’ duties

- [17] The duties and responsibilities owed by solicitors may be found in the *Australian Solicitors’ Conduct Rules 2023* (**ASCR**).
- [18] By Rule 3, a solicitor’s paramount duty is to the Court and the administration of justice. By Rule 19.1, they are under a duty not to recklessly mislead the Court.
- [19] Those duties, and the many others set out in the ASCR, must be fulfilled by solicitors in *all* courts at *all* times, especially in busy Magistrates Courts which rely upon the skill and integrity of legal practitioners to ensure that Magistrates correctly apply the law; accord fairness; and do justice, under the burden of significant workloads and time constraints which may cause them to misunderstand their powers or the applicable law, or to lapse into informality or intemperance.
- [20] Solicitors are under a duty to correct a Magistrate’s misunderstanding of an order as soon as they become aware of it: Rule 19.11. It should go without saying that a solicitor’s duty to the administration of justice does not permit them to take, or attempt to take, advantage of it.

Context for the present application – Part 1: summary dismissal by Magistrate

- [21] The husband and wife have two children. [REDACTED]

- [22] On 17 October 2025, the wife applied for a protection order against the husband. She supported her application with a substantial affidavit.
- [23] On 22 October 2025, a temporary protection order (**TPO**) was made, by consent, naming the wife as the aggrieved and the husband as the respondent. The order was made by her Honour, Magistrate [REDACTED], at [REDACTED]. However, her Honour had no input into its conditions.⁴
- [24] On 24 November 2025, the wife signed an application to vary the TPO, by way of naming the children of the marriage on it, supported by an affidavit.
- [25] The matter came on before Magistrate [REDACTED] on 26 November 2025. The wife was represented by counsel. The husband was represented by his solicitor.
- [26] There had been some “issues” with the filing of the application to vary and the supporting affidavit because they were electronically signed. So instead, the documents were “handed up” to her Honour at her Honour’s request.⁵
- [27] The husband’s solicitor told her Honour that his position was that it would be “unfair” to deal with the application to vary that day and that he and counsel for the wife agreed that it ought to be adjourned until 17 December 2025 to allow the husband to consider the wife’s material and to decide whether to file material in response.
- [28] Having stated that an adjournment was the parties’ preferred position, the husband’s solicitor then went on to “put a few things on the record”. Those “few things” amounted to substantive arguments about why no variation ought to be made. Neither counsel for the wife nor her Honour stopped him.
- [29] The husband’s solicitor’s attempt to make arguments in the husband’s favour should have been immediately shut down. The parties had agreed to adjourn the matter and there was no suggestion that her Honour would not adjourn the application to vary. There was no call for any submissions about anything of substance that day. If the husband’s solicitor had an application to make, he should have made it on proper notice. Instead, he was permitted to contend (among other contentions) that –
- (a) the wife was “weaponising” the DFVPA proceedings for use in Family Court proceedings;
 - (b) despite a plan to resolve matters by way of an undertaking, there had been no communication from the wife about resolving the matter in that way;
 - (c) the father’s access to his children was unreasonably restricted;
 - (d) in addition to the application to vary, the wife had made a complaint to police about breaches of the TPO for the purposes of “weaponising” the DFVPA proceeding; and
 - (e) the wife’s affidavit in support of the application to vary was extraordinary.

⁴ Under the PD, an application for summary dismissal of the wife’s application could have been made (on notice) at the first hearing of the application (that is, at the hearing at which the TPO was made): see [34] – [38] and [58] and [59] of the PD. The PD anticipates that, before an application for summary dismissal is determined, a Magistrate will give an applicant an opportunity to file an amended application or further evidence. Of course, no such application was made in this case.

⁵ And not, for example, filed in the courtroom, with the Magistrate excusing the irregularity.

- [30] Those submissions prompted her Honour to read the wife's initial affidavit (in support of a protection order) and her affidavit in support of the variation. The submission at (d) above prompted her Honour to ask the wife's counsel what the wife had gone to the police about.
- [31] Counsel for the wife pointed out the breaches of the TPO alleged in the wife's affidavit. They involved the husband messaging the wife about matters which did not concern the children. Her Honour described the breaches as "technical".
- [32] Her Honour was moved to observe that the wife's reliance on those matters as "breaches", requiring police action, amounted to her abusing the domestic violence law processes. Counsel for the wife attempted to persuade her Honour that the messages were a perpetuation of the husband's harassment of the wife. Her Honour made it clear that she did not accept that categorisation of the messages. Her Honour wondered aloud whether the conditions which attached to the TPO were necessary and desirable.
- [33] I note again that her Honour was not asked to determine anything on this day and I struggle to understand how matters were allowed to proceed as they did. As counsel for the wife pointed out to her Honour, there was before her no application from the husband to vary the TPO by reducing its conditions.
- [34] Having heard that from the wife's counsel, the husband's solicitor said he had *just* received instructions to "...advance an argument for the temporary order conditions to be ... reduced." It seems that her Honour was prepared to treat this statement as an oral application by the husband for the variation of the TPO. (Overlooking paragraph [47] of the PD.)
- [35] Her Honour decided to adjourn "it". She said, "[W]e can all go and review the legislation – review what's necessary and desirable, and we can argue it next week." Her Honour was not keen to adjourn "it" until 17 December 2025, as the parties had initially agreed because, as she understood it and put it, "I've got a man who's muzzled – a man who, for a start, is not going to see his children, by the sounds of it, for no reasonable basis, and that just seems to be punitive." Counsel for the wife corrected her Honour's understanding of the contact between the husband and his children. [REDACTED]
- [36] Her Honour went on to make other remarks adverse to the wife.
- [37] It seems, conscious that he had the wind behind him, as it were, the husband's solicitor pressed his "application" to reduce the conditions of the TPO. That prompted her Honour to again consider the wife's material; to make further remarks adverse to the wife; and to engage with counsel for the wife about it.
- [38] Counsel for the wife asked for time to consider the "application" to reduce the conditions of the TPO and asked that *both* matters be adjourned to 17 December 2025.
- [39] Her Honour agreed to adjourn the matters but said that she would "on an interim basis", "review" the necessity and desirability of the TPO conditions.

- [40] Her Honour considered whether she would have included the existing TPO conditions on the TPO had she known how it would be used by the wife. Counsel for the wife again asked for time to put in submissions before her Honour reduced the conditions of the TPO. Her Honour would not allow counsel that time. She said how “wrong” it all was, then adjourned “this” to 17 December 2025. She told the parties to put in submissions about which conditions were necessary and desirable on a temporary basis. Her Honour then “formally amended” the TPO by reducing its conditions. She removed from the TPO any restrictions on the husband’s access to his children. Her Honour said, “I’m not going to be used as a – about custody. You can go and sort out custody yourself”.
- [41] The matter came on again on 17 December 2025 at which time her Honour made directions for the applicant and respondent to file material for the final hearing of the application, which was listed for 10 March 2026. Her Honour set 21 January 2026 as the date by which the applicant wife was to file her material and 25 February 2026 as the date by which the respondent husband was to file his. The transcript of the hearing on 17 December 2025 was not before me. I do not know what became of the two “applications” to vary the TPO.
- [42] On 18 February 2026, the husband’s solicitor brought the matter on urgently because the wife’s material was “dropped off” twenty-seven days late. He appeared in person before Magistrate [REDACTED]. A solicitor from the wife’s law firm appeared by telephone. She had been notified the day before of the husband’s solicitor’s request to have the matter listed urgently. It is not clear how much she knew about what was to be raised at the mention.
- [43] Her Honour invited the husband’s solicitor to explain his concerns about non-compliance with the hearing directions. The solicitor said, “Thank you your Honour. Your Honour, I do make application for your Honour to strike out the application.”
- [44] Plainly, the husband’s solicitor came to court intending to make – orally and without notice to the wife – an application for final determination of the wife’s application by way of summary dismissal at the mention.
- [45] The husband’s solicitor reminded her Honour of the criticisms she made of the wife’s application on 26 November 2025 and told her that things had worsened. He referred to an affidavit which he had emailed to the registry and the wife’s solicitor.
- [46] Her Honour indicated that she had read that affidavit but said that, because it had not been filed, she was happy to “put on the record” that she had not read any material. She said she would *hear* from the husband’s solicitor about what was in it.
- [47] The husband’s solicitor told her Honour that the wife [REDACTED]
[REDACTED]
[REDACTED] e told her Honour that the wife’s solicitors had informed the husband that, if he contacted her in any way, that would be “...classed as harassment”.
- [48] Her Honour said she was “taking notes” and observed (having heard more from the husband’s solicitor) that it sounded to her like the wife was weaponising the order.

- [49] Her Honour then questioned the wife's solicitor *not* about the accusations made by the husband's solicitor about her [REDACTED] *et cetera* but about the lateness of the wife's material.
- [50] The wife's solicitor acknowledged that there had been a delay and sought the Court's indulgence. Her Honour observed that there had not been a request for an extension nor an apology for its lateness. She said, "...obviously, we're going to have to delist the hearing".
- [51] At that point, the husband's solicitor asked to be heard. He said the application was not about non-compliance and referred to rule 26 of the Rules which states that a failure to comply with a direction does not render "...a proceeding, a document or a step taken in a proceedings a nullity." He said there had been contemptuous non-compliance with a court order; and that there had only been late compliance because the wife's solicitors were on notice of the mention. He asserted this was "a course of conduct" on the wife's part (that is, late filing/serving of material). He said there was no "evidence" before the Court justifying the exercise of her Honour's "discretion". He opposed the delisting of the court date (to accommodate the filing of the husband's material). He said:
- "We oppose the 10th March being delisted if we get to that point. It is ... simply the case in all the circumstances, your Honour – it's a case that's overwhelmingly in support of dismissing the application, in my submission."
- [52] Her Honour said, "Yes, yes, yes. On today, yes." The solicitor said, "The application itself ...".
- [53] The husband's solicitor went on to make disparaging remarks about the content of the wife's affidavits and the circumstances in which the children were removed from the husband's school. That caused her Honour to read the relevant affidavit and to observe, in effect, that the wife had been dishonest in how she put things.
- [54] The husband's solicitor said he was "happy to hand up" a further affidavit from the husband (dated 16 February 2026) which revealed "a further disturbing set of facts" and went on to describe them. He obtained her Honour's leave to file that affidavit "...for completeness". Her Honour considered it "helpful" to have "...something else on the file... as a record". She also received from the solicitor a copy of the transcript of the hearing on 26 November 2025.
- [55] Her Honour asked the wife's solicitor whether she'd seen that affidavit. She said she had received it but had not read it and asked for time to do so. She also asked to respond to the submissions made by the husband's solicitor if her Honour was "so inclined to hear that".⁶
- [56] Her Honour said, returning to the topic of late filing (my emphasis):

⁶ With respect, in my view, the wife's solicitor should have: (i) clarified that the application which was being made by the husband's solicitor was an application to summarily dismiss the wife's application for protection; (ii) known the law which applied to applications for summary dismissal of applications for protection; (iii) reminded her Honour of that law; and (iv) sought its proper application in a procedurally fair way.

“Yes, yes. I am keen to resolve this today, because I should strike out your application. You did not comply with the hearing directions and it clearly says on the bottom of those hearing directions “failure to comply can be fatal”. [With respect to her Honour, that does not appear to be correct. See footnote 7.]⁷ Now, it’s not always necessarily fatal, sometimes, people have a very good excuse as to why they haven’t complied with the hearing directions, and they have the courtesy to ask the court for leave to file outside of time and not just sent an email to the lawyers saying we’re filing out of time so you can have the same.

So it’s really quite an extraordinary case where you have not complied with the hearing directions, so my next step is why should I not strike this out today, right now? So that’s the **first hurdle** you have to get over, is why I shouldn’t strike it out for failing to comply with the hearing directions. **And then** there’s all these other issues [with the assertions made by the wife].

So there are some serious concerns about your client’s behaviour towards all of this, and I think that, you know, domestic violence orders are here to protect people from violence and not to be weaponised ...”

[57] It may be noted that her Honour identified strike out for non-compliance with hearing directions as the "first hurdle" faced by the wife and issues with the substance of the application for protection as the next.

[58] Her Honour chastised the wife’s solicitor for the late filing of the material and asked, rhetorically, how was it fair to file the material late, expecting the husband to “roll over” and say “...sure, well, you’ve had an extra four weeks, we get an extra four weeks but that takes them beyond the hearing date”.

[59] Her Honour then pulled herself up and said she was happy to stand the matter down to give the wife’s solicitor an opportunity to prepare a *response to the complaint about late filing*. Her Honour said:

“I need to give [the wife’s solicitor] an opportunity to respond, but I would have thought she would – you know, you’d be on the front foot anyway with trying to explain why you didn’t comply with the hearing directions...”

[60] Before adjourning, her Honour said to the wife’s solicitor (my emphasis):

“So [wife’s solicitor], we’re going to give you until sort of 1 o’clock, we’re going to phone you again and you know, I’d hope that **you’d have some responses to [the husband’s solicitor’s] application to strike out the application for failing to comply with the hearing**

⁷ Annexure A of the PD contains draft orders for the filing of material. The draft orders include the following statement, which is bolded for emphasis, “**If an applicant or respondent does not attend the review mention the Application may be heard and determined on the papers at the review mention.**” The draft orders attached to the PD do *not* include a statement to the effect that late filing may be fatal. However, I acknowledge that her Honour may have used a different form of her own design.

directions. Okay. We can phone at 1. If you [husband's solicitor] want to come down and appear in person, also good. Okay."

- [61] It was abundantly clear that her Honour was only contemplating a strike out for non-compliance with the hearing directions and not summary dismissal of the wife's application for a protection order by way of a final judgment on it.
- [62] When the Court resumed later that day, **with only the husband's solicitor present**, the first question her Honour asked was about the source of her power to "strike out" the application. She wondered whether it was to be found in the *Justice Act 1886* (Qld). Clearly, her Honour's question related to her "power" to summarily dismiss an application for protection for non-compliance with a hearing direction as to the date for filing material.
- [63] In reply, the husband's solicitor – **in the absence of the wife's legal representatives** – misled her Honour.
- [64] It is very concerning that the husband's solicitor did not appreciate that he was prohibited by the ASCR from communicating with the Court on this matter of substance in the absence of his opponent, at least without promptly telling her what had passed between them: see Rules 22.5 and 22.6.
- [65] In reply to her Honour's question about the source of her power, he said:
- "No, no [not in the *Justices Act 1886*]. It's under the DV Act, your Honour. But I would need to take you to the decision of Judge Muir, as she then was, that points out that there's no power to stay but there is a power for a summary dismissal in reference to rules collectively, rules 5, 6, 22, 48 that it's implied under the Act ... that there's power for summary dismissal."
- [66] The husband's solicitor was wrong about the effect of "the decision of Judge Muir".⁸
- [67] I infer, at best for him, that he was *unaware* of the relevant binding authorities on summary dismissal of applications for protection orders – even though that was the application he made; and even though simple text searches⁹ of free relevant data bases or resources¹⁰ would have brought them up.
- [68] Her Honour then said that she would get the wife's solicitor on the phone before *she did too much talking*. It is regrettable that her Honour's oblique recognition of the need for all parties to be present when matters of substance were discussed did not remind the husband's solicitor of his professional obligations.
- [69] The court telephoned the wife's solicitor who explained that counsel, Mr [REDACTED], had been briefed. He too appeared by phone.

⁸ As her Honour then was.

⁹ For example, searching for "summary dismissal" and "Domestic and Family Violence Protection Act 2012".

¹⁰ Such as the Supreme Court of Queensland Library; Queensland Judgments; Austlii; Jade; or the Benchbook.

- [70] Her Honour filled Mr [REDACTED] in on the background. She referred to the husband's "abundance of good will" in consenting to the making of a TPO on certain conditions which was followed by the wife's reliance on "technical breaches" of those conditions. Her Honour told him that she deleted one of the conditions on 26 November 2025 and that the matter was then adjourned to 17 December 2025. He was told that, on that date, her Honour made hearing directions and that the wife was required to file her material by 21 January 2026. Her Honour continued:

"Now, without even contacting the court to seek leave for an extension of time, they just rocked up to court on the 17th of February and filed about two inches – well, they didn't file it because they haven't been given leave to file it, about two inches of material, and according to [the husband's solicitor] emailed him the material and basically said: "well, we're late but we don't mind you being late with the filing of material. You can have the same length of time" which would have taken it past the hearing date on the 10th of March. So in the meantime, there has been some material filed today. **So [the husband's solicitor is] asking that I strike out their application for not complying with the hearing directions ... so that's what we're doing today is why should I not strike this out for [non] compliance with hearing directions...**"

- [71] Her Honour asked the husband's solicitor whether he wished to add anything.
- [72] In response to that invitation, her Honour appreciated that the husband's solicitor was about to repeat the arguments he'd made in the morning about the *quality* of the wife's application directed at summary dismissal of it by way of final determination. But her Honour had clearly decided that it was only appropriate to deal with the late filing point and she made that plain. She told the husband's solicitor that things were to be taken "...one step at a time". In context: as above, the first step was the application to "strike out" the application for non-compliance with the hearing directions. The next step was a determination on the merits about the wife's need for protection from the husband. Her Honour's position was clear.
- [73] Further conveying that position to the husband's solicitor, her Honour said: "[E]ven if I do strike out the application, I wouldn't be making any orders about staying proceedings... or et cetera. And they may just refile and... we start all over again".
- [74] The husband's solicitor said that re-filing was something he would have to deal with "in that space" and made submissions only about the late filing and there being no explanation or justification for it. He did not make any submissions about reasons which he said justified the striking out of the application, other than procedural ones. That was consistent with his understanding that her Honour was only dealing with the application to strike out the wife's application for a protection order on the basis that she had filed her material late.
- [75] I am concerned by the husband's solicitor reference to having to "deal ... in that space" with the wife's re-filing. Both what her Honour understood to be the consequences of any order she made that day striking out the wife's application and the requirements of Rule 19.11 of the ASCR, were clear.

- [76] Her Honour understood that, although she was contemplating “striking out” the wife’s application for protection, that was *only* on the basis of her late filing of material and the wife could (and likely would) re-file her application.
- [77] *If* the husband’s solicitor’s reference to “deal[ing] with it in that space” was foreshadowing the position he took before the second Magistrate (discussed below) – in effect, that there could not at law be a re-filing – then he was *obliged* to raise that with her Honour. Instead, he stayed silent.
- [78] Coming back to the progress of the hearing: Mr [REDACTED] explained that he had been briefed only at 12.30pm for an appearance at 1.00pm. He referred to an affidavit which had been filed, or was to be filed, to explain the delay (which had not been provided to the husband’s solicitor) and said, essentially, that the delay was a “mistake” by the wife’s solicitors. Mr [REDACTED] offered to email that affidavit to the Court. Her Honour then asked him whether there was anything he wished to say about why the application ought not be struck out for failing to comply.
- [79] Mr [REDACTED] did not touch on the Court’s jurisdiction at all in his submissions to her Honour. Nor was he made aware that her Honour herself was not clear on the source of it. Nor was he made aware that the husband’s solicitor had made (erroneous) submissions to her Honour about it in his absence.
- [80] Mr [REDACTED] argued, in effect, that the wife ought not to be punished for the faults of her lawyers in filing the material late and “plead[ed]” with her Honour not to strike out the application.
- [81] Her Honour moved from the issue of late filing back to the content of the wife’s material and conveyed her concerns about it and her view that the wife was abusing the TPO. She then returned to the application to strike out the application and said (my emphasis):

“So I’ve heard everything that you’ve said about she’s, you know, not to blame for any of this, but the way that it has been played out before the court, I’m afraid I am going to strike it out. These orders are put in place for a reason. **There’s absolutely nothing to stop her re-filing, and I’m sure she will refile**, but the application is struck out and dismissed, and that’s the end of the matter. The hearing directions were not complied with, and you can take that back to [the solicitors for the wife] ... And I’ve delisted the hearing on the 10th of March, which could never have gone ahead because it’s now unfair on [the husband] to have to try to scramble to meet the deadline of a hearing on the 10th of March. So the hearing is also delisted.”

The jurisprudence

- [82] It is regrettable that the husband’s solicitor was, apparently, unaware of authoritative decisions of the District Court which deal with the power of Magistrates to summarily dismiss applications for protection, including the thoroughly considered decisions of his Honour Judge Byrne KC in *OSE v HAN* [2020] QDC 309 and *CNE v VYN & Anor* [2024] QDC 90 and of his Honour Judge Porter KC in *Wylie v AMN* [2022] QDC 215, which postdate the “decision of Judge Muir” upon which the husband’s solicitor relied.

- [83] Indeed, *CNE v VYN & Anor* at [27] and [30] *prohibited* the application which the husband’s solicitor made (see below) (*cf* Rule 19.6 of the ASCR); and the outcome of *Wylie v AMN* conveyed something similar (also see below).
- [84] Additionally, *Wylie v AMN* at [79] made it clear that no party would be permitted to bring on such a fundamental application on one day’s notice, other than in exceptional circumstances – let alone on no notice at all.
- [85] The “decision of Judge Muir” relied upon by the husband’s solicitor was *HDI v HJQ* [2020] QDC 83. It is enough to say in the body of these reasons that the decision was not concerned with summary dismissal under the DFVPA: it was concerned with the existence of a Magistrate’s implied power to stay applications under the DFVPA as an abuse of process. Her Honour’s reference to summary dismissal was only in passing. And regardless, later decisions of the District Court squarely dealt with the issue and should have been known to the husband’s solicitor. (See footnote 11 for further elaboration on *HDO v HJQ*.)¹¹
- [86] The Rules do not contain an express power to summarily dismiss an application for protection. Nor do they imply such a power. As Porter KC DCJ explained in *Wylie v AMN*:

“[60] The *Domestic and Family Violence Prevention Rules 2014* do not provide for summary determination other than by withdrawal of an application: see Part 6. Indeed, it might be thought that the DFVP Rules are more consistent, if anything, with the conclusion that the Court may not summarily determine an application. Rule 22 provides a plenary power to make directions for the conduct of

¹¹ In *HDO v HJQ*, a protection order had been made in favour of the aggrieved wife, naming the husband as respondent. He applied for a variation of it. The Magistrate stayed his application as an abuse of process. The husband appealed to the District Court from the decision to stay under section 164 of the DFVPA. The substantive issue on the appeal was whether the Magistrate had the power to stay an application made under the DFVPA as an abuse of process.

In her Honour’s search for an implied power to stay (there being no express one), she considered rules 5, 6, 22, and 48 as well as Part 6 of the Rules. Rule 5 sets out the main objects of the rules, which include allowing a court to proceed in a way which is consistent with the main objects of the DFVPA. Rule 6 explains that a failure to comply with the rules does not render a proceeding, a document, step taken or order made in a proceeding a nullity. Rule 22 permits a court to make procedural directions – including when an affidavit is to be filed and served. Rule 48 concerns the return of exhibits in a “finalised proceeding” which is defined to include “...a proceeding in which a DFVP court as dismissed a DFVP application without deciding it”. Part 6 of the Rules is headed “Ending proceedings early” and deals only with the circumstances of one party withdrawing an application.

After referring to those rules, at [83] her Honour said, “It follows that the DFVP Rules make express provision for the summary dismissal of applications but no reference to a power to stay proceedings”. This seems to be the paragraph of the judgment upon which the husband’s solicitor relied.

Of course, making provision for summary dismissal is something different from creating a power of summary dismissal. I understood her Honour’s reference to the rules making “express provision” for the summary dismissal of applications to be conveying that they anticipated summary dismissal under the Act.

The only express provision in the rules for summary dismissal is to be found in the definition of “finalised proceeding” in rule 48. Obviously, the definition is referring to an application for protection which is dismissed without a court deciding it under the DFVPA, which may occur only in limited circumstances, and subject to an important qualification as the law espoused by the judges of the District Court explains.

proceedings in the Court. That power is conditioned by Rule 23 which provides:

23 Matters relevant to making orders or issuing direction

- (1) In deciding whether to make an order or issue a direction, the interest of justice are paramount.
- (2) In addition to the principle mentioned in subrule (1), in deciding whether to make an order or issue a direction of a type mentioned in rule 22, the DFVP court may have regard to the following matters –
 - ...
 - (b) that each party is entitled to a fair hearing;
 - ...
 - (i) that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
 - ...”

[87] And as Byrne KC DCJ in *OSE v HAN* at [39] observed, “The *Domestic and Family Violence Protection Rules*... are silent as to any express power to find no case to answer or to exercise any other form of summary dismissal or summary termination of the application”.

Dismissal without deciding under the DFVPA

[88] Section 38 DFVPA permits the dismissal of an application without deciding it if the *applicant* does not appear at the hearing of the application. But as per section 38(4), the dismissal does not affect the right of the applicant to make a further application against the respondent. Section 93 permits an application for the variation of a domestic violence order to be dismissed without deciding it if the applicant for variation is *someone other than the respondent* and they do not appear. But as per 93(4), the dismissal does not affect the right of the applicant to make a further application to vary against the respondent. Section 94 provides for the dismissal of an application to vary by a *respondent* who does not appear. But that provision does *not* permit the respondent to bring a further application to vary. The difference between section 38 and 93 on the one hand and section 94 on the other is consistent with the paramountcy accorded to those who fear or experience domestic violence (section 4).

[89] The DFVPA does not otherwise expressly contemplate dismissal of an application *without deciding it*. And the important qualification to the power to dismiss an application without deciding it is contained in sub-sections 38(4) and 93(4) which clearly preserve for an applicant an entitlement to have their application for protection determined at a hearing.

[90] The DFVPA recognises that applications for protection orders may not be brought in good faith and may in fact amount to domestic violence themselves (known as

systems abuse or legal abuse). The DFVPA also recognises that applications may be malicious, deliberately false, frivolous or vexatious. Applications of those kinds may be dismissed (with costs) *only if* the Court *hears* the application (which implies that an applicant had been provided with an opportunity to be heard) and *decides* to dismiss it on the grounds set out in section 157(2)(a) or (b): see *KAV v Magistrate Bentley* [2016] QSC 46 at [7].

[91] Consistently with its objects and principles, the DFVPA is designed to ensure that those who *may* fear or experience domestic violence are not summarily denied protection without a consideration of the merits of their application, at least other than in exceptional circumstances which warrant summary dismissal, but even then, not without a proper hearing.

[92] As his Honour Porter KC DCJ put it at [61] of *Wylie v AMN*:

“Turning to the Act itself, apart from s 51 [Court may make or vary domestic violence order by consent], there does not appear to be any statutory provision which expressly, or by necessary implication, authorises hearing and determination of an application for a (final) protection order other than by “trial” of the application. It is to be noted of course that the Act does not expressly say that a protection order is to be determined by trial. However, where the Act creates a right and confers civil jurisdiction on a court to hear and decide an application to enforce that right, it must necessarily imply that the application be determined by procedurally fair process apposite to a hearing which results in a final order. At the least, that must include a reasonable opportunity to lead evidence, cross-examine and otherwise test another party’s evidence and address the Court on the findings of fact that the Court should make on the evidentiary record and the law that applies to those facts.”

The implied power to summarily dismiss an application for protection

[93] It has been authoritatively decided that the DFVPA implies a power of summary dismissal of an application for protection, akin to a finding of *no case to answer* in a criminal matter or summary dismissal without the need for a trial in a civil matter – but it is a power only to be exercised in exceptional circumstances.

[94] Byrne KC DCJ in *OSE v HAN* at [46] held that a Magistrate has an implied power to summarily dismiss or otherwise terminate proceedings under the DFVPA, akin to a power to rule that a defendant has *no case to answer* in a criminal matter, on the basis of a lack of evidence capable of supporting the making of the order sought where that is appropriate. His Honour explained that such a power was necessary “...to facilitate the efficient disposition of the Court’s business and to otherwise promote confidence in the administration of justice when exercised in appropriate circumstances.” He continued: “The power however is not unrestrained and the occasion to exercise it will be relatively infrequent.” His Honour made it plain that he was not contemplating the use of such a power other than at a hearing proper of the application (with all that that entails, to ensure procedural fairness) and that the criminal threshold applied, meaning that such an application should only be granted in the clearest of cases and with the “exercise of exceptional caution”; and ought not to be granted where there exists *any* evidence from the applicant which, *when taken at its highest*,

is *capable* of supporting the granting of an application for protection: See [52] and especially [59]-[60].

[95] His Honour confirmed his decision in *OSE v HAN* in *CNE v VYN & Anor* [2024] QDC 90 at [24].

[96] In *CNE v VYN & Anor*, an application for protection was summarily dismissed at its first mention (*cf* [58] and [59] of the PD). An appeal against that summary dismissal was allowed. His Honour said (my emphasis):

“[25] Notably, the application there entertained [in *OSE v HAN*] was at an advanced stage of a contested hearing for a PO [protection order]. Affidavits had been filed by both the appellant and the respondent in those proceedings, and the appellant had been cross-examined on three separate dates. The fact that the respondent had not yet been cross-examined was a relevant consideration and affected what material should be relied on.

[26] In the present case, the matter was at its first mention. There had not been any directions for the filing of material, let alone any filed. It was far from a clear case that warranted summary dismissal and, although the Magistrate appears to have weighed the material before him, it cannot be said that he exercised exceptional caution.

[27] **The power to summarily dismiss applications of this nature is not to be used as some form of triaging the matters deemed suitable to proceed to a hearing stage.** That error is compounded when the justification for dismissal of the proceedings is based on a value judgment generated by, given the workload of the Magistrates Court, a necessarily brief reading of the preliminary material, and questioning of the aggrieved, who was not then legally represented. His Honour did not know whether the respondent would even file material in response, which may have contained admissions as to certain conduct.

[28] Further, in my view, it was not open to his Honour to elect to effectively handball the application to be catered for by some ill-defined mooted discussions about family law issues, without even the assurance that family law proceedings were on foot...

[29] ...it was not open to him for assume that some necessarily ill-defined negotiations or possible family law proceedings were “really the jurisdiction where these matters are going to properly be resolved”.

[30] **The processes under the Act are undoubtedly burdensome on the Magistrates Court, but the exceptional nature of the power to summarily dismiss that I spoke of in *OSE v HAN* must be respected for the reasons I outlined therein. Change in this area can be**

effected by legislative intervention, not by the erosion of the express and also protective nature of the provisions themselves through practice and procedure evolved from a limited implied power.”

- [97] Her Honour Magistrate [REDACTED] was clearly not purporting to summarily dismiss the wife’s application on this exceptional basis.
- [98] In *Wylie v AMN*, his Porter KC DCJ explained that, in his view, the procedures adopted by a DFVP court in hearing and deciding applications were to be informed by the principles generally applicable to the conduct of civil proceedings and the provisions of the DFVPA which impact on the way in which matters are heard and determined: [56]. Thus, an application for the summary dismissal of an application for a protection order was to be conducted in accordance with the principles contained in the decision of Barwick CJ in *General Steel Industries Inc v Commissioner for Railways* (NSW) (1964) 112 CLR 125 at 128-129 which are to the following effect: To deny a plaintiff access to a tribunal, the cause of action must obviously be so untenable that it cannot proceed. Once it appears that there is a real question of fact or law to be determined, and the rights of the parties depend on it, then it is not competent for the Court to dismiss the action. Great care must be taken to ensure that – under the guise of achieving expeditious finality – a plaintiff is not improperly deprived of his opportunity for a trial.
- [99] His Honour had some reservations about Byrne KC DCJ’s reference to criminal law principles in the context of civil proceedings under the DFVPA but acknowledged that that was a “distinction in approach which did not amount to a difference”: See [75]. He continued:
- “... The criminal standard is probably a good reference point for Courts more familiar with the criminal law to appreciate the care which must be taken in summarily dismissing proceedings where there are materially disputed issues of fact and how to approach assessing that matter.”
- [100] The short point is that there is an exceptional implied power to summarily dismiss, or strike out, an application for a protection order. But that was not the power her Honour purported to exercise. Her Honour purported to exercise a non-existent power to strike out the wife’s application for a procedural breach while preserving for her the right to re-file the same application.

Context for present application – Part 2: application for summary dismissal to second Magistrate

Status of the decision of Magistrate [REDACTED]

- [101] For reasons which are not clear, her Honour’s order was recorded in a Verdict and Judgment Record (a **VJR**), which is a form contained in the *Criminal Practice Rules 1999* (Qld) applicable to criminal proceedings. The VJR records the “Judgment or Order of the Court” as **“STRUCK OUT – Conviction not applicable.** The application is struck out and dismissed”.

- [102] Her Honour acted beyond power in striking out and dismissing the wife’s application on the basis of the late filing of material, as the decisions of the District Court make plain.
- [103] The husband argued before me that, notwithstanding that it was beyond power, *res judicata* applied to her Honour’s order and the Second Application ought to have been summarily dismissed by the second Magistrate for that reason. The wife submitted that *res judicata* did not apply because her Honour’s order was affected by more than one jurisdictional error, relying on *Queensland v Mr Stradford (a pseudonym)* [2025] HCA 3.
- [104] On the question of the status of the order made by her Honour, section 21 of the *Justices Act 1886* is relevant, although neither party referred to it. Section 21 is entitled “Presumption” and it says, “Every act done or purporting to have been done by or before a justice shall be taken to have been done within the justice’s jurisdiction without an allegation to that effect and until the contrary is shown”.
- [105] In *Jones v Pennuto* [2020] WASC 416, Tottle J considered the legal effect of a restraining order made by a Magistrate in excess of their jurisdiction.
- [106] In the course of his judgment, his Honour discussed several relevant authorities, including *New South Wales v Kable* (2013) 252 CLR 118 (*Kable (No 2)*); *Appleyard v Walker* [2009] WASCA 141; and *Tulloh v Chief Executive Officer of the Department of Corrective Services* [2018] WASC 105.
- [107] In *Kable (No 2)*, Gageler J said at [56]:
- “ ... A judicial order of an inferior court made without jurisdiction has no legal force as an order of that court. One consequence is that failure to obey the order cannot be a contempt of court. Another is that the order may be challenged collaterally in a subsequent proceeding in which reliance is sought to be placed on it. [That answered an argument of the applicant husband that the wife ought to have appealed or challenged her Honour’s order after it was made and that it was, in effect, “too late” to do so now.] Where there is doubt about whether a judicial order of an inferior court is made within jurisdiction, the validity of the order ‘must always remain an outstanding question’ unless and until that question is authoritatively determined by some other court in the exercise of judicial power within its own jurisdiction ...”
- [108] In *Appleyard v Walker*, McLure JA (as her Honour then was), with whom Pullin and Newnes JJA agreed, considered section 10(1) of the *Magistrates Court (Civil Proceedings) Act 2004 (WA)* (**MCAWA**), which provides that the court has “jurisdiction to decide whether a claim is or is not within the jurisdiction conferred by section 6 [which specifies claims which fall within the jurisdiction of the Magistrates Court] or the jurisdiction referred to in section 8 [which provided that the Magistrates Court’s civil jurisdiction included jurisdiction conferred by other laws]”.
- [109] At [20] – [21], her Honour said (my emphasis):
- “ ... The doctrines of *res judicata* and *issue estoppel* do not apply to a decision of an inferior court made without jurisdiction because, **unless**

the statute conferring jurisdiction otherwise provides, the decision is a nullity: Bower GS, Turner AK and Handley KR, *The Doctrine of Res Judicata* (3rd ed, 1996) [110] – [115]. The same is not true of a decision of a superior court of general jurisdiction ...

...

However, a decision of the Magistrates Court made without jurisdiction is not a nullity because it has statutory jurisdiction to make a binding decision on jurisdiction. [Her Honour then referred to section 10(1) of the MCAWA].

...

Thus, the magistrate's orders are valid and binding unless and until they are set aside. **It follows that the principles of res judicata and issue estoppel apply to the magistrate's decision.** The application of those principles would prevent the appellant from re-litigating the issues in the Building Disputes Tribunal."

- [110] In *Tulloh v Chief Executive Officer of the Department of Corrective Services*, Le Miere J said (my emphasis) at [28]:

"First, an administrative decision which involves jurisdictional error is legally invalid. Secondly, an administrative decision which is legally invalid does not necessarily have no legal effect unless and until it is set aside or declared to be invalid. Thirdly, whether a legally invalid decision has any relevant legal effect before it is set aside or declared to be invalid **depends upon the statutory framework under which and the context in which the decision is made.**"

- [111] In the light of those authorities and others, Tottle J considered the relevant statutory framework. His Honour described section 10(1) of the MCAWA as a "notable feature" of it. His Honour held that the order of the Magistrate extending the restraining order, albeit an order which was later set aside for invalidity, was effective, and the extended restraining order had to be obeyed until it was set aside.
- [112] Adopting the same approach, I have considered this application on the basis that her Honour's order was effective although, as will also emerge, it was not an order to which *res judicata* applied.

The wife's second application for a protection order

- [113] The day after Magistrate [REDACTED] summarily dismissed the wife's application, the wife filed again in the Brisbane Magistrates Court (the **Second Application**) relying on the same material.
- [114] The Second Application was mentioned before Magistrate [REDACTED] on 5 March 2026. On this occasion, the wife was represented by counsel, Ms [REDACTED], who was briefed by a new firm of solicitors.
- [115] The husband's solicitor sought summary dismissal of the Second Application "without a hearing". His written submissions in support of the application reflect his misunderstanding of *HDI v HJQ* and his apparent ignorance of the District Court

decisions which deal with the exceptional power of a Magistrate to summarily dismiss an application for a protection order and the limited circumstances in which such a power may be exercised. Of more concern, they misrepresented the outcome of the hearing before Magistrate [REDACTED] on 18 February 2026.

[116] In his written submissions, the husband's solicitor contended that the wife's Second Application was "estopped" because it had been determined *on the merits* by Magistrate [REDACTED] (a complete misrepresentation of that which had occurred), or that it ought to be struck out as an abuse of process.

[117] The breadth of the husband's solicitor's misrepresentation of that which occurred on 18 February 2026, is concerning. His submissions were false and exaggerated. They included, in writing:

"[33] The summary dismissal of the previous proceeding was not predicated solely on procedural grounds; rather, the application was properly and thoroughly determined on its merits, with due regard to [the wife's] asserted need for protection and in accordance with the objectives and purposes of the Act...

...

[38] The material before her Honour was duly considered, and Her Honour properly directed her mind to the statutory requirements under the Act. The proceedings were not summarily dismissed on procedural grounds alone; rather, the failure to comply with court orders was but one element among a collection of factors which led the Court to conclude that the proceedings constituted an abuse of process ..."

[118] I struggle to understand what caused the husband's solicitor to falsely state that her Honour had *not* dismissed the wife's application on procedural grounds – when she plainly did. And I struggle to understand what caused him to exaggerate the way in which the hearing was conducted. Even if he left the hearing burdened by a misunderstanding of that which had occurred or how it had occurred, the husband's solicitor had the transcript.

[119] The husband's solicitor's submissions (written and oral) were further misleading because he omitted reference to her Honour's clear understanding that her order would not prevent the wife from re-filing her application. On the abuse of process point, he submitted *inter alia* that the wife's re-filing in Brisbane (not [REDACTED]) raised "serious question as to [her] motives".

[120] In oral submissions, the husband's solicitor asked for "liberty" to "focus" his Honour's mind and went on (my emphasis):

"... my point is that my ... learned friend is estopped, **it was dealt with on the merits**, and it should be dealt with, if there's a grievance, by appeal. And if I'm wrong in regards to that, I continue the application that it's an abuse of process given the findings that have been made by her Honour Magistrate [REDACTED] that the

proceedings have been weaponised and are an abuse, and that's the basis of the summary dismissal that occurred on the 18th of February ..."

[121] He also said (my emphasis):

"... what her Honour has done is **determine on the merits** an application to summarily dismiss the proceedings **on the basis that they have been weaponised, they're an abuse**, with all of those factors together and that, in my submission, is a judicial determination that, if it is to be reviewed, the proper course is that that is to be an appeal and this application is estopped from proceeding. And as I say, your Honour, I would ask that you summarily dismiss this application on that ground."

[122] He acknowledged that her Honour did not act under section 38 or 93 of the DFVPA but claimed that her Honour had ordered a dismissal "of a different type" – that is, "...in the form of that which is described in the case of *HDI v HJQ* [2020] QDC 83".

[123] I find it deeply concerning that the husband's solicitor told Magistrate [REDACTED] that her Honour made a finding *on the merits*, when he must have known that her Honour did not do so and expected the wife to commence another identical application. The husband's solicitor's conduct was no less concerning because he went on to say "...if I'm wrong".

[124] It is worth reminding those who may have forgotten of a solicitor's paramount duty to the Court and the administration of justice (Rule 3, ASCR); and their more specific duties to the Court which include the duty not to recklessly mislead (Rule 19.1).

[125] *If* on 18 February 2026, the husband's solicitor was of the view that her Honour was wrong in her understanding of the effect of her order, or in her understanding that the wife could re-file, then, under rule 19.11, he was *obliged* to bring that to her Honour's attention. He ought not to have simply said he would deal with a re-filing "...in that space".

[126] The wife's counsel did not have written submissions in response to the husband's application to strike out the Second Application. Orally, she did not expressly submit that the husband's solicitor had misrepresented what had occurred before Magistrate [REDACTED] but, by reference to the transcript, she submitted that her Honour struck out the matter because the wife's material was filed late. She made no submissions about her Honour's jurisdiction to do so.

[127] Magistrate [REDACTED] reserved his decision on the application to summarily dismiss the Second Application. Separately, his Honour decided not to make a TPO in the meantime.

[128] On 17 March 2026, his Honour refused the application to summarily dismiss the second application for a protection order and published his reasons.

[129] As to "estoppel", his Honour considered both issue estoppel and *res judicata*. His Honour determined that issue estoppel did not apply, essentially because he did not consider her Honour to have made relevant findings. As to *res judicata*, his Honour

did not consider it to have any operation in the absence of her Honour addressing or commenting upon section 37 of the DFVPA or assessing any of the acts of domestic violence alleged against the husband.

[130] Additionally, his Honour was not satisfied that the circumstances called for the use of the Court's powers to prevent an abuse of its processes.

[131] His Honour then made orders to progress the Second Application.

The present application for review

[132] From there, the husband brought this application for review seeking –

- (a) An order quashing the decision of the Magistrates Court of Queensland made on 17 March 2026.
- (b) A declaration that the proceedings commenced by [the wife] in the Magistrates Court of Queensland on 19 February 2026 is barred by the principles of *res judicata* or is otherwise an abuse of process.
- (c) An order in the nature of prohibition directing the Magistrates Court of Queensland not to proceed further with proceeding number MAG- 0032133/26(6).
- (d) Costs.

[133] The application was supported by extensive materials, written submissions and more than 850 pages of authorities (albeit a joint bundle).

[134] The husband's counsel submitted that Magistrate [REDACTED]'s decision was affected by jurisdictional error in that he (a) misapprehended the nature of his dismissal power; and (b) applied a wrong principle of law in determining whether the Second Application was barred by the principles of *res judicata*. Thus, the husband submitted, the Magistrate wrongly refused to dismiss the Second Application.

[135] The husband's counsel appeared to accept that Magistrate [REDACTED] had not dismissed the wife's application on the merits. Indeed, on the face of the transcript, he could not contend otherwise. But he argued that that did not matter. Nor did it matter that her Honour had been misled about her powers or exceeded her powers. What mattered, he argued, was that there had been a dismissal of the application as recorded in the VJR.

[136] He submitted that the application of the principle of *res judicata* was not dependent upon a determination on the merits. In support of this contention, he referred me primarily to *Zetta Jet Pte Ltd v The Ship "Dragon Pearl" (No 2)* [2018] FACFC 132 especially at [14] – [51].¹² He said, in writing: "The dismissal was ordered as a result of the [wife's] non-compliance with a Court order and falls squarely within the scope of final judgments as contemplated in *Zetta Jet* and *Prodata Solutions* [2025] SASC 138".

[137] With respect, his submissions ignored a critical paragraph of *Zetta Jet* (paragraph [34]) and failed to appreciate that *Prodata* was easily distinguishable.

¹² Special leave to appeal was refused: [2019] HCA Trans 014.

[138] The Court in *Zetta Jet* made it plain that what was critical to the application of *res judicata* was a *final judgment*. It did not matter what led to the final judgment – “...whether it be default, consent or an adjudication on the merits” ([18]).

[139] After a thorough consideration of the authorities, the Court emphasised the significance of there being a final judgment which adjudicated the underlying cause of action, but added an important qualification at [34] that care had to be taken in the case of dismissals which were, in substance allowing a party to discontinue (my emphasis):

“[32] It follows that since *Blair v Curran*, in the High Court there has been no qualification as to the effect that is to be given to a **final judgment that determines in any way an underlaying cause of action which may be said to merge in the judgment**. There is no suggestion that *res judicata* depends upon the circumstances in which a final adjudication of a cause of action occurred (whether there be by default, consent or the absence of attendance by a party at a hearing where notice has been given that an order for judgment may be made or by reason of a failure of a party to advance any case at trial or final hearing). The same is reflected in the judgments of this Court.

[33] It is an important principle. A party who is commanded to attend a trial or final hearing to answer a claim based upon a cause of action would face the same injustice if the claim could be re-agitated after final judgment was given dismissing the claim irrespective of the circumstances in which the judgment was given. Whether a claim is allowed or dismissed by consent, default or after a contested hearing, the need for finality is the same in each instance. **A party who wishes to preserve the right to bring further proceedings should seek leave to discontinue**. The need for finality is one reason why an application for such leave may be refused if brought late in the day and without explanation beyond inability to proceed with the case.

[34] In applying these principles, **care may need to be taken to ensure that an order expressed as a dismissal was, in substance, to be taken as a final adjudication of underlying causes of action**. The term dismissal may be used inaccurately to describe an instance where a party is being allowed to discontinue. Or the “dismissal” may be on terms that the party is at liberty to bring fresh proceedings, in which case it will not be a final adjudication of the causes of action in the proceeding (see r 39.03 *Federal Court Rules 2011* (Cth)).¹³ Or it may be a

¹³ **39.03 Dismissal of proceedings and stay of further proceedings**

(1) If the Court makes an order dismissing a proceeding or part of a proceeding, the applicant may apply to the Court:

(a) for an order that the dismissal be without prejudice to any right of the applicant to bring fresh proceedings; or

procedural dismissal in the sense explained above. But these matters do not detract from the character of a final judgment and the *res judicata* that arises.”

- [140] In the present case, her Honour’s order was one to which [34] of *Zetta Jet* applied. Even though it was expressed and recorded as a dismissal, it was plainly not, in substance, a final adjudication of the application for a protection order. It was a dismissal or strike out expressly on terms which left the wife at liberty to bring fresh proceedings. Thus, the principle of *res judicata* did not apply to it. Counsel for the husband argued that I could not go behind the VJR but [34] of *Zetta Jet* required me to do so.
- [141] I considered the additional authorities upon which the husband relied. He referred me to *Keybridge Capital Limited v Molopo Energy Limited* [2024] NSWSC 779 at [79] – [84]; and *Mandeville v Better Lending Pty Ltd* [2021] SASCA 28 at [64] – [74] as cases which expressly adopted *Zetta Jet*. He submitted that the High Court appeared to approve the *Zetta Jet* approach in *Clayton v Bant* (2020) 272 CLR 1 at [26] (footnote 31) and at [52] (footnote 83). And he submitted that the principle had been applied in circumstances not dissimilar to the present case in *Prodata Solutions*.
- [142] None of those cases supported the application of *res judicata* to Magistrate [REDACTED]’s order. Indeed, to the contrary, they supported the conclusion that *res judicata* did not apply to it because it clearly was not a final adjudication.
- [143] The court in *Keybridge* made express reference to [34] of *Zetta Jet* at [82] and then continued (my emphasis):

“[83] In the present case, the order dismissing Keybridge’s claims in the Second Keybridge Proceeding was expressed as follows: “The plaintiff’s [Keybridge’s] claims against the first defendant [Molopo] are dismissed without adjudication on the merits”. By contrast, the corresponding order in the First Keybridge Proceeding was that “the proceedings be dismissed”.

[84] **I was not referred to any rules or decision of the Supreme Court of Victoria to the effect that an order for dismissal of claims “without adjudication on the merits” has an effect similar to an order granting leave to discontinue or otherwise does not give rise to *res judicata*.** As the Full Court explained in *Zetta Jet*, a judgment or final order gives rise to *res judicata* irrespective of whether there has been a determination on the merits. There is no apparent reason why a final order dismissing a proceeding which is expressed to be made “without adjudication on the merits” should be treated any differently from a final order dismissing a proceeding which is in fact made with adjudication on the merits.”

(b) for leave to claim the same relief in a new proceeding.

(2) ...

- [144] The reason for treating Magistrate [REDACTED]'s dismissal "differently", that is as one which did not give rise to *res judicata*, was that it anticipated that the wife would file another application (indeed, the one her Honour dismissed).
- [145] *Mandeville* concerned a default judgment. Paragraph [34] of *Zetta Jet* was not referred to. At [74] the Court noted that *Zetta Jet* and *Rogers v Legal Services Commission of South Australia* (1995) 64 SASR 572 "...each acknowledge that while default judgments are capable of engaging the principle of *res judicata*, they will not always do so; it will depend upon a close scrutiny of the circumstances of the particular judgement and what it can be taken to have decided". The Court went on to distinguish between those default judgments which are predicated on a final determination on the merits and those which are not. The matter was resolved on the basis that the default judgment in that case could "...properly be viewed as a final judgment".
- [146] On no view could her Honour's order *properly* be viewed as a final judgment on the wife's application for protection.
- [147] *Clayton v Bant* was an appeal from a decision of the Full Court of the Family Court which had decided that proceedings in a court in Dubai determined the same cause of action as that sought to be pursued in property settlement proceedings in the Family Court and gave rise to a "*res judicata estoppel*". It is enough to say that the references to paragraphs of *Zetta Jet* in the footnotes relied upon by the husband did not take his arguments any further, nor overcome the impact of paragraph [34].
- [148] In *Prodata*, an applicant's proceedings in the Federal Court had been dismissed for its failure to comply with court orders about the filing of lay evidence. By rule 5.23(1)(b) of the *Federal Court Rules 2011* and section 37P of the *Federal Court of Australia Act 1976* (Cth), the Court was empowered to dismiss a proceeding for such a failure. The applicant did not apply under rule 39.03¹⁴ to bring further proceedings – notwithstanding the dismissal – as it may have done. The applicant sought to bring fresh proceedings, arguing that the dismissal was not an order to which *res judicata* applied.
- [149] The Court considered *Rogers*, *Mandeville* and *Zetta Jet*. The Court stated at [24] that those authorities established that a full trial of a matter is not required to establish *res judicata*; an administrative or procedural judgement without a hearing will not usually suffice, but anything more formal may do so. The Court determined in the circumstances of that case that it was appropriate to treat the order as a final judgment on the merits of the action, to which *res judicata* applied. The case is easily distinguishable from the present matter because in this case her Honour intended to preserve for the wife the right to re-file.
- [150] My own research led me to the decision of *Yu v Yu* [2020] NSWSC 1904 which, at [56], applied the principle in [34] of *Zetta Jet*.
- [151] It was not at all the case in the present matter that, as the husband's counsel put it, "[T]he only legally correct conclusion that was open to the Brisbane Magistrates Court was that that the Second Application was barred by *res judicata*." The only legally correct conclusion was to the contrary. While Magistrate [REDACTED]'s reasons

¹⁴ Ibid.

for concluding that *res judicata* had no operation in the present case may not have demonstrated an accurate understanding of the complexity and nuances of the doctrine, his conclusion was correct.

- [152] With respect to the abuse of process, it was submitted by the husband's counsel – contrary to what was clearly conveyed by the transcript of the hearing before Magistrate [REDACTED] – that the wife was afforded during that hearing "...the opportunity of litigating the issues raised in her Supporting Affidavit [the affidavit filed on 17 February 2026]. That opportunity came to an end due to the [wife's] failure to comply with the Court's orders...".
- [153] I interrupt my quote of the husband's counsel's submissions to note, with concern, the absurdity of the suggestion that there had been any, or any genuine, litigation of the issues of substance before Magistrate [REDACTED].
- [154] Counsel went on: "The [wife] did not directly challenge the dismissal order but instead sought to circumvent the dismissal by bringing the Second Application relying on the same facts and circumstances but in a different district of the Magistrates Court. That, with respect, is an abuse of process".
- [155] I treated those submissions as contentions that there had been legal error in Magistrate [REDACTED]'s conclusion that the wife had not engaged in an abuse of process.
- [156] With respect, in my view, it is unfair to suggest that the wife "circumvented" her Honour's dismissal by re-filing. The wife did exactly what her Honour expected her, if not implicitly invited her, to do. To re-file was not at all to abuse the process of the Court.
- [157] The separate issue implicitly asserted by the husband was that the wife was "forum shopping" by re-filing in Brisbane.
- [158] Numerous decisions of the District Court remit DFVPA matters back to a different Magistrate, after a successful appeal, acknowledging the overwhelming workload of Magistrates, particularly their DFVPA workloads, and how difficult and frustrating the work can be. Obviously, remitting the matter to a different Magistrate avoids the human tendency to frustration when one is asked to re-do a task one thought was complete, and avoids any suggestion of bias or pre-judgment infecting the outcome of the remitted matter.
- [159] The re-filing of the wife's application in Brisbane was consistent with routine District Court practice and, in line with Rule 5, facilitated the just and expeditious resolution of the matter by avoiding any possible suggestion of pre-judgment in the outcome. It did not separately or in combination with the re-filing amount to an abuse of process.
- [160] Magistrate [REDACTED] committed no jurisdictional error. Accordingly, the application for review is dismissed.