

## ***ACP v Queensland Police Service (No 2)* [2017] QDC 293 (8 December 2017) – Queensland District Court**

‘Breach of protection order’ – ‘Interpretation of order’ – ‘Ouster order’ – ‘Particularise a charge’ – ‘Return condition’ – ‘Uncertain in its terms’

Charges: Breach of temporary protection order x 1.

Appeal type: Appeal against conviction.

Facts: A temporary protection order was made naming ACP as the respondent and MP as the aggrieved. Condition 4 of the order provided that ACP must vacate the family property, and condition 5 allowed ACP to return to the property to collect belongings in the company of a police officer ([10]). The order did not specify the time by which ACP must vacate the property, but ACP gave evidence that the Magistrate said that ACP must vacate the property ‘straight away’ ([58]).

MP returned to the property 3 days later, to find ACP loading belongings onto a truck. ACP had not yet vacated the property ([20]-[21]). ACP gave evidence that he understood the order to mean that he could vacate the property himself, and only needed police attendance to return to the property ([60]).

The bench charge sheet did not set out the particulars of which condition of the order the defendant was alleged to have contravened ([8]), contrary to s 177(4) of the *Domestic Violence and Family Protection Act 2012* (Qld) ([19]).

Issues: Whether the temporary protection order was uncertain in its terms.

Decision and Reasoning: The appeal was allowed, and the conviction was set aside.

Judge Horneman-Wren SC concluded: first, that the charge was not adequately particularised; and second, that the order was uncertain in its terms. First, the charge sheet did not inform the defendant of the factual ingredients of the offence ([72]). Second, even though the order did not provide a timeframe within which ACP was to vacate the property, the Magistrate stated that ‘the order is quite clear on its face and I am satisfied that the appellant was aware that he was to get out straight away’ ([79]). This was an error because ‘straight away’ was not incorporated in the condition ([90]).