



HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY**

BETWEEN:

BIANCA FULLER

First Appellant

and

CHIEF EXECUTIVE OF QUEENSLAND CORRECTIVE SERVICES

Second Appellant

and

MARK LAWRENCE

Respondent

APPELLANTS’ SUBMISSIONS

PART I: CERTIFICATION

1. This submission is in a form suitable for publication on the internet.

10 PART II: ISSUE PRESENTED BY THE APPEAL

2. This appeal concerns a Direction (**the Direction**) given by a Corrective Services Officer to a prisoner who is the subject of a supervision order under the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* (**DPSO Act**). The supervision order is an order made by the Supreme Court of Queensland (**the Supreme Court**). The Direction has no force, and is unenforceable, without the effect of the supervision order.

3. The question in this appeal is whether the Direction “itself” affects rights in the sense necessary to satisfy the second limb of the test for whether it is a “decision ... made under an enactment”, within the meaning of the *Judicial Review Act 1991 (Qld)* (**the JR Act**).¹

- 20 4. In other words, the question in this appeal is whether an administrative decision which has no force, and is unenforceable, without the effect of an order of a court, “itself” affects legal rights. The Appellants contend that the Court of Appeal was in error by answering this question “yes”.

¹ *Griffith University v Tang* (2005) 221 CLR 99 at 131 [89] (**Tang**) (Gummow, Callinan and Heydon JJ).

PART III: SECTION 78B NOTICES

5. The Appellants consider that section 78B notices are not required in this proceeding.

PART IV: CITATION

6. The judgment of the Court of Appeal of Queensland has not been reported. Its medium neutral citation is *Fuller v Lawrence* [2023] QCA 257 (CA).² The judgment of the primary judge has not been reported. Its medium neutral citation is *Lawrence v Fuller* [2023] QSC 156.³

PART V: BACKGROUND FACTS AND STATUTORY CONTEXT

Background

- 10 7. The DPSO Act provides a regime for the continuing detention or supervision of prisoners after the expiry of their periods of detention. This regime is given effect by the conferral of jurisdiction on the Supreme Court to hear applications⁴ by the Attorney-General of Queensland in respect of prisoners in custody for “serious sexual offences”.⁵ The exercise of that jurisdiction culminates in a final order made under Part 2, Division 3 of the DPSO Act (**a Division 3 order**), which may only be made if the Supreme Court is satisfied that the prisoner is a serious danger to the community in the absence of a Division 3 order.⁶
- 20 8. This Court has upheld the constitutional validity of the DPSO Act on the basis that a Division 3 order is the result of a rigorous, independent and impartial exercise of judicial power by the Supreme Court.⁷ Similar regimes have been enacted in other jurisdictions throughout the Commonwealth of Australia.⁸
9. A Division 3 order may be either a continuing detention order or a supervision order. The order has effect once it is made or on the prisoner’s “release day”⁹ if that occurs

² Core Appeal Book filed by the appellants on 15 May 2024 (CAB), 26-37.

³ CAB, 5-20.

⁴ DPSO Act, s. 5.

⁵ Defined in Schedule 1 of the DPSO Act.

⁶ DPSO Act, s. 13.

⁷ *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 at 502 [19] (Gleeson CJ), at 596 [34] and at 602 [44] (McHugh J), at 614 [90] to 621 [113] (Gummow J), at 647 [196] (Hayne JJ), at 656 [220]-[224] (Callinan and Heydon JJ); DPSO Act, ss. 8, 11, 13, 17, 25, 31.

⁸ *Crimes (High Risk Offenders) Act 2006 (NSW)*, *Serious Offenders Act 2018 (Vic)*, *High Risk Serious Offenders Act 2020 (WA)*, *Criminal Law (High Risk Offenders) Act 2015 (SA)*, *Serious Sex Offenders Act 2013 (NT)*.

⁹ Defined in Schedule 1 of the DPSO Act as the day that the prisoner is due to be unconditionally released from lawful custody.

later.¹⁰ The requirements for supervision orders are determined in accordance with s. 16 of the DPSO Act, which specifies requirements that an order “must contain” (s. 16(1)) and other requirements that the Court considers appropriate (s. 16(2)). The requirements which an order “must contain” include requirements that give effect to the scheme for supervision of the prisoner contemplated by the DPSO Act, including requirements that the prisoner:

- (a) report to a Corrective Services Officer¹¹ and receive visits from that officer (s. 16(1)(a) and 16(1)(b));
- (b) notify a Corrective Services Officer of every change of the prisoner’s name, place of residence or employment (s. 16(1)(c));
- (c) be under the supervision of a Corrective Services Officer (s. 16(1)(d)); and
- (d) not leave or stay out of Queensland without the permission of a Corrective Services Officer (s. 16(1)(e)).

10. In addition to the above requirements, s. 16(1) of the DPSO Act also specifies that a supervision order “must contain” requirements that the prisoner comply with directions referred to in ss. 16(1)(da), 16(1)(daa) and 16(1)(db). Section 16(1)(da) states that the order “must contain” a requirement to comply with a “curfew or monitoring direction”.¹² Section 16(1)(daa) states that the order “must contain” a requirement that the prisoner comply with directions given under s. 16B.¹³ Section 16(1)(db) states that the order “must contain” a requirement that the prisoner: “comply with every reasonable direction of a Corrective Services Officer that is not directly inconsistent with the requirements of the order”. Criteria for giving directions are specified by s. 16C of the DPSO Act.¹⁴

11. The DPSO Act contains no provisions that directly impose consequences for non-compliance with a direction given by a Corrective Services Officer. Instead, legal consequences flow by virtue of the fact that non-compliance with a direction would be

¹⁰ DPSO Act, s. 15.

¹¹ Such officers are appointed under s. 275 of the *Corrective Services Act 2006 (Qld)*. Section 276 of that Act provides that those officers have the powers given to them “under an Act”.

¹² Curfew and monitoring directions are provided for by s. 16A of the DPSO Act.

¹³ That is, a direction given by a Corrective Services Officer about the prisoner’s accommodation, their rehabilitation or care or treatment, or drug or alcohol use by the prisoner.

¹⁴ Which requires Corrective Services Officers to reasonably believe that directions are “necessary...to ensure the adequate protection of the community; or for the prisoner’s rehabilitation or care or treatment”.

a contravention of the relevant requirement in the supervision order that requires compliance with that direction. One such consequence is the triggering of proceedings for contravention of a supervision order under Part 2, Division 5 of the DPSO Act. That process commences with a police officer or Corrective Services Officer making a complaint to a Magistrate under s. 20(2) of the DPSO Act. Such a complaint may be made if the officer “reasonably suspects a released prisoner is likely to contravene, is contravening or has contravened, a requirement of the released prisoner’s supervision order”.¹⁵ Upon such a complaint, a Magistrate must issue a warrant for the prisoner’s arrest.¹⁶ Upon the prisoner’s arrest, the prisoner is to be brought before the Court to be dealt with in accordance with law.¹⁷ If the Court is satisfied that the prisoner “is likely to contravene, is contravening, or has contravened, a requirement of the supervision order”,¹⁸ the Court is then required to consider whether to either order the prisoner’s re-release on the supervision order or make an order for the prisoner’s detention.¹⁹ What order is made by the Court depends on whether the prisoner satisfies the Court, on the balance of probabilities, that the adequate protection of the community can, despite the contravention or likely contravention of the existing order, be ensured by a supervision order.²⁰

12. The other consequence of contravention of a supervision order (as opposed to the Direction itself) is that it is an offence against s. 43AA of the DPSO Act. That section defines the act or omission which constitutes that offence as a contravention of the order.

13. The Respondent was released under a supervision order made by the Supreme Court on 16 April 2020.²¹ One of the requirements of that order was a requirement within the meaning of s. 16(1)(db), namely that the Respondent “obey any reasonable direction” given to him by a Corrective Services Officer.²² In November 2022, a

¹⁵ DPSO Act, s. 20(1).

¹⁶ DPSO Act, s. 20(3).

¹⁷ DPSO Act, s. 20(2).

¹⁸ DPSO Act, s. 22(1).

¹⁹ DPSO Act, s. 22(2).

²⁰ DPSO Act, s. 22(7).

²¹ CA at [2], CAB, 27; affidavit of Bianca Fuller affirmed on 5 April 2023, [3] & BF-1, Appellants’ Book of Further Materials (AFM), 13, 16-17; affidavit of Mark Lawrence affirmed on 10 February 2023, [2]-[3], AFM, 6.

²² Requirement 6 of the Supreme Court order, BF-1 of affidavit of Bianca Fuller affirmed on 5 April 2023, AFM, 17.

Corrective Services Officer gave the Direction.²³ The Direction was that the Respondent not have in-person contact with a person named in the Direction.

14. The Respondent requested a statement of reasons for the Direction under the JR Act.²⁴ That request was refused.²⁵ The Respondent applied to the Supreme Court under s. 38 of the JR Act for an order that the reasons be provided.²⁶ An order to that effect was made by the trial division of the Supreme Court and an appeal against that order was dismissed by the Court of Appeal.

15. At the centre of the trial division and Court of Appeal proceedings was the question whether the Direction is a “decision ... made under an enactment”, within the meaning of the JR Act, so as to entitle the Respondent to a statement of reasons under the JR Act.²⁷ This turned on the test articulated in *Tang (the Tang test)*.²⁸ Stated in full, the Tang test is as follows:²⁹

The determination of whether a decision is “made ... under an enactment” involves two criteria: first, the decision must be expressly or impliedly required or authorised by the enactment;³⁰ and, secondly, the decision must itself confer, alter or otherwise affect legal rights or obligations, and in that sense the decision must derive from the enactment.³¹ A decision will only be “made ... under an enactment” if both these criteria are met.

20 *The reasoning of the Court of Appeal*

16. All members of the Court of Appeal agreed that the provisions of the DPSO Act either expressly or impliedly authorised the giving of the Direction,³² so as to satisfy the first limb of the Tang test.³³ The Appellants do not challenge that conclusion.

17. The Appellants’ challenge is to the Court of Appeal’s conclusion that the second limb

²³ CA at [3], CAB, 27; Affidavit of Bianca Fuller affirmed on 5 April 2023, [3] & BF-2, AFM, 13, 27; Affidavit of Mark Lawrence affirmed on 10 February 2023, [4], ML-1, AFM, 6.

²⁴ CA at [4], CAB, 27; Affidavit of Mark Lawrence affirmed on 10 February 2023, [5] & ML-2, AFM 7, 10.

²⁵ CA at [4], CAB, 27; Affidavit of Bianca Fuller affirmed on 5 April 2023, [8], AFM, 14; Affidavit of Mark Lawrence affirmed on 10 February 2023, [6], ML-3, AFM, 7, 11.

²⁶ CA at [5], CAB, 27; Application Relating to Statement of Reasons filed 23 February 2023, AFM, 4.

²⁷ JR Act, ss. 4 and 31-32.

²⁸ *Tang* at 131 [89] (Gummow, Callinan and Heydon JJ).

²⁹ *Tang* at 131 [89] (Gummow, Callinan and Heydon JJ).

³⁰ The first limb of the Tang test.

³¹ The second limb of the Tang test.

³² It is uncontroversial that no other Act or law authorises Corrective Services Officers to give such directions.

³³ CA at [29]-[34] and [39], CAB, 31 & 32.

of the Tang test, that the decision must “itself ... affect legal rights or obligations”, was satisfied.

18. The Appellants’ argument to the Court of Appeal was that the Direction did not “itself” affect legal rights or obligations.³⁴ This was on the basis that the DPSO Act conferred no power on the Corrective Services Officer who gave the Direction to bind the Respondent with the Direction. The Direction merely constitutes a factum upon which one of the obligations created *by the supervision order* operates. This is reinforced by the text of the DPSO Act, which makes compliance with the Direction a “requirement” *of the order*³⁵ and which imposes legal consequences for noncompliance with the requirements of the order rather than the Direction itself.³⁶ It is like other requirements of the order which impose obligations on the Respondent that operate by reference to various acts of Corrective Services Officers and other professionals.³⁷ None of those acts themselves affect rights because they merely constitute facts upon which the obligations created by the order operates. The DPSO Act does not give effect to those other acts, as opposed to the supervision order which defines obligations by reference to them.

19. Morrison JA, with whom Bowskill CJ agreed,³⁸ rejected the Appellants’ argument. In support of this conclusion, His Honour said, “the supervision order is merely the way in which directions ... are enforceable”.³⁹ His Honour said that, “The scheme of the ... [DPSO Act] ... provides that the order must contain provisions which compel the prisoner to obey the directions which are made under the ... [DPSO Act].”⁴⁰ His Honour said that the supervision “order cannot be divorced from the direction in the way postulated by the” Appellants.⁴¹

20. Morrison JA said that the Appellants’ argument could only succeed if the requirement

³⁴ CA at [40], CAB, 33.

³⁵ DPSO Act, s. 16(1)(db).

³⁶ See the provisions of ss. 20, 22 and 43AA of the DPSO Act discussed above.

³⁷ See for example requirement 9 that requires the Respondent to receive injections of anti-libidinal medication prescribed by his treating psychiatrist or doctor, requirement 14 that requires the Respondent to follow a direction of a Corrective Services Officer to submit to a blood test and requirement 21 that requires the Respondent to see his psychologist at the times directed by a Corrective Services Officer: BF-1 of affidavit of Bianca Fuller affirmed on 5 April 2023, AFM, 18-21.

³⁸ CA at [1], CAB, 27.

³⁹ CA at [44], CAB, 24.

⁴⁰ CA at [44], CAB, 34.

⁴¹ CA at [44], CAB, 34.

in the second limb of the Tang test is read to mean that the decision must “itself, **and only itself** ... affect legal rights”.⁴² Doing so, His Honour said, would be an inappropriate reading of the judgment in *Tang* as if it were a statute.⁴³

21. Morrison JA said that the Direction did “itself, affect or alter legal rights”, reasoning that the Direction was made after the supervision order was in place and, in consequence, the Respondent was required to comply with it.⁴⁴ His Honour said that the present case was clearer than that in *Australian Broadcasting Tribunal v Bond*⁴⁵ in which a finding was held to constitute a “decision ... made under an enactment” because it was a condition precedent to a substantive determination that itself affected rights.⁴⁶

10 22. Bond JA reasoned to similar effect to that of Morrison JA. His Honour reasoned to the effect that the Respondent’s rights were affected by the combined effect of both the supervision order and the Direction.⁴⁷ His Honour concluded that this satisfied the second limb of the Tang test.

PART VI: ARGUMENT

23. It is submitted that the requirement that the decision must “itself ... affect rights” in the second limb of the Tang test means what it says. Contrary to the reasoning of Morrison JA, and that of Bond JA to similar effect, to read the second limb as requiring that the decision “itself, **and only itself** ... affect legal rights” does not alter that limb.⁴⁸ It emphasises what the second limb of the Tang test expressly requires. To so read the
20 second limb of the Tang test is not to read it as if it were a statute. It is to give effect to a clear statement of principle by this Court.

24. The requirement that the decision must “itself ... affect legal rights or obligations” in part reflects the reasoning of the plurality in *Tang* that the JR Act has its provenance in the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**the ADJR Act**).⁴⁹ The

⁴² CA at [46], CAB, 34-5.

⁴³ CA at [47], CAB, 35.

⁴⁴ CA at [48], CAB, 35.

⁴⁵ *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 (**Bond**) at 377 Toohey and Gaudron JJ.

⁴⁶ CA at [49]-[50], CAB, 35.

⁴⁷ CA at [59], CAB, 37.

⁴⁸ It is respectfully submitted that Morrison JA’s reliance, at [46] of CA, CAB, 34-5, on the plurality’s rejection of a test based on the “proximate source” of power was erroneous because that is an area of discourse relevant to the first, rather than the second limb of the Tang test: *Tang* at 124-125 [68]-[69] (Gummow, Callinan and Heydon JJ).

⁴⁹ *Tang* at 112 [26] (Gummow, Callinan and Heydon JJ).

plurality reasoned that the ADJR Act operates in the context that s. 76 of the *Constitution* requires “some immediate right, duty or liability to be established by ... a ... court dealing with an application for review under the” ADJR Act.⁵⁰ This distinguishes judicial review of administrative power from the rendering of advisory opinions on questions of law in which there is an absence of a relationship with the administration of that law.⁵¹

25. It was in this context that the plurality in *Tang* identified the affection of legal rights as an essential feature of a decision that merits the legislative conferral of a right of judicial review of that decision.⁵² The plurality defined the issue as follows:

10 “Do legal rights or duties owe in an immediate sense their existence to the decision, or depend upon the presence of the decision for their enforcement? To adapt what was said by Leane J in *Lewins*, does the decision in question derive from the enactment the capacity to affect legal rights and obligations? Are legal rights and obligations affected not under the general law but by virtue of the statute?”⁵³

26. The plurality distinguished decisions made “under ... an enactment” from other types of decisions on the basis that they “unilaterally affect ... rights or liabilities”.⁵⁴ The plurality illustrated this point by reference to statutory grants of a bare capacity to contract. The plurality said that a decision to enter a contract would not “without more”
20 be sufficient to unilaterally affect rights or liabilities.⁵⁵ It “would have no legal effect without the consent of the other party; the agreement between the parties is the origin of the rights and liabilities as between the parties”.⁵⁶

27. The plurality illustrated this point of distinction with another example which derives

⁵⁰ *Tang* at 131 [90] (Gummow, Callinan and Heydon JJ).

⁵¹ *Tang* at 131 [90] (Gummow, Callinan and Heydon JJ) and *Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372 at 388-389 [3]-[6] (Gleeson CJ), citing *Re Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265 (Knox C.J., Gavan Duffy, Powers, Rich and Starke JJ) and *North Ganalanja Aboriginal Corporation v Queensland* (1996) 185 CLR 595 at 612 (Brennan CJ, Dawson, Toohey, Gaudron and Gummow JJ).

⁵² *Tang* at 128 [79]-[80] (Gummow, Callinan and Heydon JJ); it is also consistent with administrative law being concerned with the ‘adjudication of legality’ including whether rights or interests are diminished or altered by the exercise of power: see Gageler, S, *Administrative Law within the Common Law Tradition* (2023) 53 Australian Bar Review at p8.

⁵³ *Tang* at 128 [80] (Gummow, Callinan and Heydon JJ). To adapt what Edelman J said, in reliance on this passage, in *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 179 ALD 1 (**Davis**) at [120], a decision of an administrative character made under an enactment is an exercise of administrative power pursuant to a statute that effects a change in legal relations.

⁵⁴ *Tang* at 129 [82] (Gummow, Callinan and Heydon JJ).

⁵⁵ *Tang* at 129 [82] (Gummow, Callinan and Heydon JJ).

⁵⁶ *Tang* at 129 [82] (Gummow, Callinan and Heydon JJ).

from the Full Federal Court's decision in *Hutchins v Federal Commissioner of Taxation*.⁵⁷ *Hutchins* concerned a decision of the Federal Commissioner of Taxation to vote against a motion put to a meeting of creditors under the *Bankruptcy Act 1966* (Cth). In one of the judgments given in that case, Lockhart J⁵⁸ said that the decision to vote could not have conferred any benefit or imposed any disadvantage when it was made; any affection of legal rights arose from the cumulative effect of the votes later cast against the special resolution at the meeting of creditors. In *Tang*, the plurality described as "sound" the reasoning of Black CJ that the decision to vote was not a "decision ... under an enactment" because "the decision was not given statutory effect by the sections relied upon".⁵⁹ Black CJ said that "standing on its own ... [the relevant legislation] ..., gives no force or effect to the decision to vote".⁶⁰

28. The above context indicates that by anchoring judicial review jurisdiction to administrative power which "itself ... affects legal rights and obligations", the second limb of the *Tang* test thereby avoids the rendering of judicial advisory opinions in which there is an absence of a relationship with the administration of the law. The various descriptions by the plurality of a decision that "itself ... affects legal rights or obligations", such as a decision that has that effect "unilaterally", "without more", and "without the consent" of another party all give effect to this object. Judicial review of decisions that do not meet these descriptions would divorce the exercise of judicial power from the administration of the law.

29. This point may be further illustrated by what would happen if review under the JR Act were permitted in respect of a decision that does not "itself ... affect rights". One of the powers of the Court on an application for statutory order of review of a decision to which the JR Act applies under Part 3 is "an order quashing or setting aside the decision".⁶¹ At common law, an order of this character⁶² is not available for a decision that does not "itself ... affect rights" because "if an act or decision has no legal effect, there is nothing to quash".⁶³ In this context, it would seem nonsensical to interpret the

⁵⁷ *Hutchins v Federal Commissioner of Taxation* (1996) 65 FCR 269 (*Hutchins*).

⁵⁸ *Hutchins* at 277 (Lockhart J).

⁵⁹ *Hutchins* at 273 (Black CJ).

⁶⁰ *Hutchins* at 273 (Black CJ).

⁶¹ JR Act, s. 30(1)(a).

⁶² That is, a writ or order in the nature of *certiorari*. To adapt what Edelman J said in *Davis* at [120], a quashing or setting aside order reverses the change in legal relations effected by the decision.

⁶³ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 (*Ainsworth*) at 595 (Brennan J).

provisions creating jurisdiction for statutory orders of review under the JR Act as permitting relief in respect of a decision that does not “itself ... affect rights”.

30. In this case, the Respondent’s rights have undoubtedly been affected by the requirement that he not have in-person contact with the person identified in the Direction. However, that affect is not by the force or effect of the Direction “itself”.

31. No provision of the DPSO Act provides that the Direction may, by itself, require the Respondent to comply with it. The terms of the DPSO Act make plain that it is the exercise of judicial power⁶⁴ constituted by the supervision order that obliges the Respondent to do what the Direction requires. Without the order, the Respondent is under no obligation to comply with the Direction. Under the DPSO Act, legal consequences only flow from a non-compliance with the Direction on the basis that the non-compliance is a contravention of the supervision order. To adapt what Black CJ said in *Hutchins*, the DPSO Act, “standing on its own, gives no force or effect” to the Direction.

32. It is of no relevant significance, as suggested by Morrison JA, that the DPSO Act “provides that the order must contain provisions which compel the prisoner to obey” the Direction.⁶⁵ The requirements which the Supreme Court “must” include in a supervision order⁶⁶ constitute unexceptional examples of exercises of judicial power which legislation may mandatorily require upon the establishment of the conditions for their exercise.⁶⁷ Thus, the obligations created by those requirements are obligations created by the exercise of judicial power, notwithstanding the fact that they are requirements mandated by the DPSO Act.

33. The approach of Morrison JA to say that “the supervision order is merely the way in which directions ... are enforceable”⁶⁸ is just another way of saying that the Direction does not “without more” affect rights. That should have led to a conclusion that the second limb of the Tang test was not satisfied because the Direction does not “itself ... affect legal rights or obligations”. Morrison JA’s reasoning that the Direction was made

⁶⁴ The plurality in *Tang* confirmed that judicial power is not within the ambit of a “decision...made under an enactment”: *Tang* at 123 [63].

⁶⁵ CA at [44], CAB, 34.

⁶⁶ By operation of section 16(1) of the DPSO Act.

⁶⁷ *Palling v Corfield* (1970) 123 CLR 52 at 58 (Barwick CJ).

⁶⁸ CA at [44], CAB, 34.

after the supervision order was in place and, in consequence, the Respondent was required to comply with it,⁶⁹ elides the second limb of the Tang test, which requires⁷⁰ an effect on rights to come from the force or effect of the Direction itself. Merely saying that the Respondent was required to comply with the Direction does not identify whether that requirement derives from the force given by the DPSO Act to the Direction itself or from some other exercise of power (in this case, the exercise of judicial power manifested by the supervision order).

34. It is submitted that the comparison by Morrison JA with the decision considered in *Bond* is inapt. The finding in *Bond* itself affected rights because, by its own force, given to it by the Act under which it was made, it satisfied a condition precedent to the substantive exercise of power affecting rights.⁷¹ It did not depend upon the exercise of some other power or right to have that affect. As is plain from the analysis of *Bond* by the plurality in *Tang*, it is just a further illustration of the Tang test.⁷²

35. The Respondent's rights are only affected to the extent that the Direction is a direction within the meaning of the order. If it does not meet that description, then it does not affect his rights. It would be open to the Respondent to seek a declaration that the Direction is not a direction within the meaning of the order⁷³ or to contend to that effect in defending any proceedings alleging contravention of the supervision order.

36. In contrast, an order purporting to quash or set aside the Direction in proceedings under the JR Act would have no effect. Any effect on the Respondent's rights comes from the supervision order rather than the Direction itself. An order quashing or setting aside the Direction cannot quash or set aside the fact of the Direction having been made. If the Direction is a direction within the meaning of the supervision order, then the effect on the Respondent's rights will still stand because that effect is imposed by the supervision order rather than the Direction itself.

37. The above analysis demonstrates that the effect on the Respondent's rights derives from

⁶⁹ CA at [48], CAB, 35.

⁷⁰ This is how the Tang test has been interpreted in the leading administrative law text: Aronson, Groves & Weeks, *Judicial Review of Administrative Action and Government Liability*, 7th Ed, Lawbook Co, 2022, at [2.540].

⁷¹ *Bond* at 377 (Toohey and Gaudron JJ).

⁷² *Tang* at 130 [86] (Gummow, Callinan and Heydon JJ).

⁷³ *Ainsworth* at 582 (Mason CJ, Dawson, Toohey and Gaudron JJ).

the force given by the DPSO Act to the supervision order, rather than the Direction.
The Direction thereby does not satisfy the second limb of the Tang test.

PART VII: ORDERS SOUGHT

38. The Appellants seek the following orders:

- (1) the appeal be allowed; and
- (2) order 1 of the Court of Appeal of the Supreme Court of Queensland made on 15 December 2023 is set aside and, in its place, order that: (a) the appeal is allowed; and (b) orders 1 and 2 made by Applegarth J on 11 July 2023 are set aside and, in their place, order that ‘the application is dismissed’.

10 PART VIII: TIME ESTIMATE

39. The Appellants estimate that they will need 2 hours for oral argument.

Dated: 30 May 2024



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BRISBANE REGISTRY**

BETWEEN

BIANCA FULLER
First Appellant

and

CHIEF EXECUTIVE OF QUEENSLAND CORRECTIVE SERVICES
Second Appellant

and

MARK LAWRENCE
Respondent

ANNEXURE TO THE APPELLANTS' SUBMISSIONS

Pursuant to paragraph 3 of *Practice Direction No 1 of 2019*, the Appellants set out below a list of statutes and provisions referred to in the Appellants' submissions.

No.	Description	Version	Provisions
<i>Queensland enactments</i>			
1.	<i>Corrective Services Act 2006</i> (Qld)	Current from 1 November 2023	ss 275, 276
2.	<i>Dangerous Prisoners (Sexual Offenders) Act 2003</i> (Qld)	Current from 25 May 2020	ss 5, 8, 13, 15, 16, 16A, 16B, 16C, 20, 22, 43AA, sch 1 (definitions of "serious sexual offences" & "release day")
3.	<i>Judicial Review Act 1991</i> (Qld)	Current from 1 March 2023	ss 4, 30, 31, 32, 33, 38
<i>Commonwealth enactments</i>			
4.	<i>Administrative Decisions (Judicial Review) Act 1977</i> (Cth)	Current from 8 December 2023	
5.	<i>Constitution of the Commonwealth of Australia</i>	Current from 29 July 1977	s 76