



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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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' OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

Part II: Outline of propositions that the appellants intend to advance orally

The Direction and the Supervision order

2. The Direction [ABFM, p28] given to the respondent has no legal effect by itself; rather, the respondent's obligation to comply with the Direction arises by force of the supervision order made by the Supreme Court: AS, [2]-[4]; [ABFM, pp16-26].
3. The supervision order of the Supreme Court [ABFM, pp16-26] contained a requirement that the respondent "must obey any reasonable direction that a Corrective Services officer gives" about the matters set out therein: [ABFM, p17]; AS, [13]. The order defined 'reasonable direction'. Provided a direction meets the criteria set out in that definition, the respondent is bound to comply with it: AS, [35].
4. The provisions of the DPSO Act with respect to the imposition of supervision orders, do not impose any consequences defined to apply in circumstances when a prisoner, subject to supervision, does not comply with a direction given to the

prisoner. Instead, legal consequences for noncompliance with a direction arise indirectly from the legal consequences that flow from the fact that noncompliance is a contravention of a requirement of a supervision order: ss 20, 43A of the DPSOA; **AS**, [7]-[12].

5. It follows from the provisions of the DPSO Act, consistently with the terms of the supervision order, that the legal efficacy of the respondent's obligation to comply with the Direction depends entirely on the supervision order and the Direction has no legal force that is independent of the supervision order: **AS**, [31]-[32].
6. The requirements of the supervision order operate for the period stated in the order: s 15 of the DPSO Act. An order of the Supreme Court to quash or set aside a direction that meets the objective criteria in the supervision order would be in conflict with the supervision order and of no effect: **AS**, [36].
7. For those reasons, the Direction does not "itself" affect rights or obligations: **AS**, [37].

The second limb of the Tang test

8. The nature of an exercise of judicial power, by way of judicial review, is the resolution of a controversy as to whether a *change in legal relations* effected by administrative power should be reversed: *Griffith University v Tang* at [79]-[80], [90]: [**Authorities**, Vol 3, tab 16, p438, p441]; **AS**, [24]-[29].
9. This conclusion reflects traditional notions as to the ambit of an exercise of judicial power in the primary common law form of review, viz, an application for an order in the nature of *certiorari*. The defining characteristic of which is that its function is to remove the legal consequences or purported legal consequences of an exercise or purported exercise of power: *Wingfoot* at [25], [**Authorities**, Vol 4, p910); **AS**, [29]. Similar considerations are implicit in and apply to an exercise of power under the JR Act, Part 3: s 30; **AS**, [29].

10. Hence, the second-limb of the *Tang* test requires that the decision “itself” affect legal rights, as it is the affection of legal rights which is the essential feature of a decision that merits the legislative conferral of a right to judicial review of that decision: **AS**, [23]-[25]. This requirement, in conjunction with the first limb of the test, also gives effect to the words “under an enactment” in the statutory definition, by applying to the affection of rights derived from “enactments”, as opposed to from other sources: *Griffith University v Tang* at [76] and [80]. Thus, where the order, rather than the direction, is properly understood as the source of the Respondent’s obligation to comply with the direction, the direction does not “itself” confer, alter, or otherwise affect the Respondent’s rights or obligations.

Dated: 10 September 2024



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