HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

B24/2024

BETWEEN:

BIANCA FULLER
First Appellant

and

CHIEF EXECUTIVE OF QUEENSLAND CORRECTIVE SERVICES
Second Appellant

and

MARK LAWRENCE
Respondent

RESPONDENT'S SUBMISSIONS

PART I: CERTIFICATION

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

PART II: ISSUES PRESENTED BY THE APPEAL

2. The Respondent is subject to a supervision order, made under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) (the **DPSO Act**), which requires him to comply with reasonable directions given by corrective services officers. It is common ground that he was given such a direction and that the direction was authorised by the DPSO Act.[1] To be a decision "made … under an enactment",[2] *Griffith University v Tang*[3] requires that the direction "must itself confer, alter or otherwise affect legal rights or obligations". This appeal raises the questions of:

   (a) Whether it is sufficient for a decision to derive its legal force or effect ***in part*** from the enactment to satisfy that criterion in *Tang*; and, if so,

   (b) Whether the direction given to the Respondent is of that character.

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1 Appellants' Submissions (**AS**), [13], [16].
2 Within s 4(a) of the *Judicial Review Act 1991* (Qld) (the **JR Act**).
3 (2005) 221 CLR 99 (***Tang***), 131 [89] per Gummow, Callinan and Heydon JJ.

PART III: NOTICES – SECTION 78B OF THE JUDICIARY ACT 1903 (CTH)

3. Notice does not need to be given under s 78B of the *Judiciary Act 1903* (Cth).

PART IV: BACKGROUND FACTS AND STATUTORY CONTEXT

4. The Appellants' Submissions include a factual and statutory context.[4] The Respondent does not agree that the first two sentences of paragraph 11 accurately characterise the operation of the DPSO Act, but otherwise agrees with paragraphs 7 to 15 of the Appellants' Submissions, as supplemented by the further matters below.

5. A "supervision order" is an order "that the prisoner be released from custody subject to the requirements [the Supreme Court] considers appropriate that are stated in the order".[5] The term "prisoner" has an extended meaning.[6]

6. The requirement to comply with reasonable directions given by corrective services officers appears in a supervision order, but the terms of a supervision order are given "effect" by s 15 of the DPSO Act.[7] Section 15 provides that a supervision order:

   (a) "[H]as effect in accordance with its terms … on the order being made or on the prisoner's release day, whichever is the later".[8] The "release day" "means the day on which the prisoner is due to be unconditionally released from lawful custody" under the *Corrective Services Act 2006* (Qld) (the **CS Act**).[9] A supervision order might therefore only have effect from a date after it is made.

   (b) "[H]as effect in accordance with its terms … for the period stated in the order".[10] However, if a person under a supervision order is convicted of a non-sexual offence, the "period for which the released prisoner's supervision order … has effect as stated in the order is extended by any period the released prisoner is detained in custody".[11] A supervision order may therefore have effect until a date after that which is stated in the order.[12]

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4 AS, [7]-[15].
5 DPSO Act, s 13(5)(b).
6 DPSO Act, s 43A and sch 1.
7 *Taylor v O'Beirne* [2010] QCA 188, [35]; *Bickle v Attorney-General* [2016] 2 Qd R 523, 540 [29].
8 DPSO Act, s 15(a).
9 DPSO Act, sch 1.
10 DPSO Act, s 15(b).
11 DPSO Act, ss 23 and 24(2).
12 See *Attorney-General v Ruhland* (2020) 3 QR 449.

7. A supervision order may be amended by application to the Court (but not the mandatory requirements mentioned in s 16(1)).[13] It may be rescinded and replaced with a continuing detention order through contravention proceedings.[14] However, in *Bickle v Attorney-General*,[15] the Queensland Court of Appeal held there is no power for the Court to discharge a supervision order (or shorten its period). The Court said doing so "would excuse the [prisoner] from compliance with the statutory requirements of a supervision order expressly given effect for the period stated in the order by s 15 of the DPSO Act".[16] The Court considered that conclusion was compelled by the High Court's decision in *Reid v Howard*,[17] where it was said that "[n]either the inherent power nor the completely general terms of [the relevant Supreme Court Act] can authorise the making of orders excusing compliance with obligations or preventing the exercise of authority deriving from statute".[18]

8. The Respondent was released under a supervision order (the **Supervision Order**) on 16 April 2020[19] after spending 36 years in custody, including 12 years during which he was detained under a continuing detention order made under the DPSO Act.[20] Paragraph 6 of the Supervision Order included the mandatory requirement referred to in s 16(1)(db) of the DPSO Act—that is, that the Respondent "obey any reasonable direction that a Corrective Services officer gives" (the **Requirement**).[21]

9. Under s 16C(1) (read with ss 16(1)(db) and 16D), power to give a "reasonable direction" is granted to a "corrective services officer".[22] A "corrective services officer" means a person appointed as such pursuant to the CS Act.[23] The power to give a "reasonable direction" "includes power to amend or repeal" the direction.[24]

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13 DPSO Act, ss 18-19A.
14 DPSO Act, ss 20-22.
15 [2016] 2 Qd R 523, 539 [25].
16 *Bickle v Attorney-General* [2016] 2 Qd R 523, 540 [29].
17 *Reid v Howard* (1995) 184 CLR 1.
18 *Bickle v Attorney-General* [2016] 2 Qd R 523, 540 [29].
19 Exhibit BF-1 to the affidavit of Bianca Fuller affirmed on 5 April 2023, Appellants' Book of Further Materials filed 30 May 2024 (**AFM**), pp 16-26.
20 *Attorney-General for the State of Queensland v Lawrence* [2020] QSC 73, [1].
21 Exhibit BF-1 to the affidavit of Bianca Fuller affirmed on 5 April 2023, AFM, p 17.
22 Section 16(1)(db) was inserted by the *Dangerous Prisoners (Sexual Offenders) Amendment Act 2007* (Qld) and s 16C was inserted by the *Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010* (Qld).
23 DPSO Act, sch 1; CS Act, s 275 and sch 4.
24 *Acts Interpretation Act 1954* (Qld), s 24AA.

10. The Respondent has fundamental rights of association and communication with others, arising at common law[25] and recognised in the *Human Rights Act 2019* (Qld).[26] The Supervision Order subjected those rights to the contingency that they might be affected by a "reasonable direction" given by a corrective services officer,[27] but did not immediately or directly alter the Respondent's right to associate and communicate with the person named in the Direction (the **Named Person**).

PART V: ARGUMENT

Summary of argument

11. The Appellants have argued that the second criterion in *Tang* requires that a decision must itself, **and only itself**, affect legal rights or obligations in order to qualify as a decision made "under an enactment" for the purposes of the JR Act. That approach is said to deny the Direction the character of a decision "under an enactment" because the Direction is said to have "no force, and is unenforceable, without" the Supervision Order.[28] This effectively raises three primary questions:

    (a) What is the proper scope of the second *Tang* criterion?

    (b) What is the nature or character of the Direction?

    (c) Does the Direction satisfy the second *Tang* criterion?

12. The Respondent submits that the second *Tang* criterion includes within its scope decisions with a capacity to affect legal rights or obligations if that capacity is derived, in whole or in part, from the enactment. A decision is not denied that character merely because it also derives that capacity from, or depends for that capacity upon, another source. A review of the DPSO Act shows that the Direction has a legal effect which is, at least in part, derived from the DPSO Act and so it satisfies the *Tang* criteria. The Court of Appeal was correct and the appeal should be dismissed.

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25 See, for example, *Evans v State of New South Wales* [2008] FCAFC 130, [72]; *South Australia v Totani* (2010) 242 CLR 1, [30]-[31]; *Tajjour v New South Wales* (2014) 254 CLR 508, [224].
26 Sections 21 and 22.
27 *Fuller v Lawrence* [2023] QCA 257 (**CA**), [56], Core Appeal Book (**CAB**), p 36.
28 AS, [4].

What is the proper scope of the second *Tang* criterion?

13. The appeal in *Tang* turned on the construction of the JR Act.[29] The plurality noted the origins of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**), to which the JR Act is linked,[30] and observed that the phrase "a decision of an administrative character made … under an enactment" had "directed attention away from the identity of the decision-makers … and to the source of the power of the decision-makers".[31] Their Honours said that although the phrase involved three elements, there were "dangers in looking at the definition as other than a whole".[32]

14. The plurality in *Tang* ultimately identified two criteria for determining whether a decision is made under an enactment: "first, the decision must be expressly or impliedly required or authorised by the enactment; 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".[33] In this appeal, the Appellants emphasise the word "itself" in the second criterion and argue that this requires that a decision must itself, **and only itself**, affect legal rights in order to qualify as a decision made "under an enactment" for the purposes of the JR Act.

15. In contrast, the Respondent submits that the second *Tang* criterion does not require the decision to affect legal rights or obligations *alone* or *without more*, or that it be the *sole source* of any such affection. *Tang* does not mandate that a decision whose effect is derived from multiple sources, at least one of which is the enactment, is denied the character of being made "under an enactment". What is required is that the decision has an identifiable effect on legal rights or obligations and that its capacity to do so is derived in whole or in part from the enactment—that is, a "decision will 'itself' have the relevant effect if it *triggers* statutory consequences with impacts in the realm of legal rights or obligations".[34] Although this precise question did not arise in *Tang*, it is submitted that this understanding of *Tang* (and its construction of the JR Act) should be preferred for ***two primary reasons***.

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29 *Tang*, 112 [26].
30 JR Act, s 16 and sch 3.
31 *Tang*, 113 [29].
32 *Tang*, 121-122 [59]-[60].
33 *Tang*, 130-131 [89].
34 Aronson, M., "Private Bodies, Public Power and Soft Law in the High Court" (2007) 35 *Federal Law Review* 1.

16. ***First***, the plurality in *Tang* said the concept of a decision "made … under an enactment" "involved a question of characterisation of the particular outcome which founds an application for review under the statute".[35] After emphasising the importance of the subject, scope and purpose of the JR Act, their Honours said that it was "not necessarily an adequate answer to the suggested attribution to the outcome in question of one character, to urge the possession of additional or alternative attributes".[36] They gave two examples from federal constitutional law:

    (a) If a federal law "fairly answers the description of being a law of two characters, one of which is and the other of which may be not a subject-matter appearing in s 51 of the Constitution, the possession of the positive attribute is sufficient for validity and the other character is of no determinative significance".[37]

    (b) A matter may "arise under" a Commonwealth law "if the right or duty in question owes its existence to federal law or if it depends upon federal law for its enforcement … notwithstanding that the action in question is brought, for example, for breach of a contract or to enforce a trust".[38]

17. This approach to the characterisation of an "outcome" or decision shows that the plurality did not intend to adopt any kind of 'sole character' test. That is, the underlying reasoning in *Tang* accepts that a decision might fairly answer the description of being a decision of 'two characters'. So long as the decision possesses the 'positive attribute' (that is, deriving a capacity to affect rights from the enactment), the 'other character' (say, deriving a capacity to affect rights from a contract or a court order) is of "no determinative significance".[39]

18. The approach of Gleeson CJ in *Tang* was similar. His Honour concluded that the question was one of characterisation of the decision and its legal force and effect.[40] What mattered was that the University's decision "was not given legal force or effect

35 *Tang*, 123 [64].
36 *Tang*, 124 [66].
37 *Tang*, 124 [66], citing *Grain Pool of Western Australia v Commonwealth* (2000) 202 CLR 479, 492 [16].
38 *Tang*, 124 [67], citing *R v Commonwealth Court of Conciliation and Arbitration; Ex parte Barrett* (1945) 70 CLR 141, 154; *LNC Industries Ltd v BMW (Australia) Ltd* (1983) 151 CLR 575, 581.
39 *Tang*, 124 [66].
40 *Tang*, 111-112 [23].

by" the statute; that is, it was "not a decision which took legal force or effect, ***in whole or in part***, from the terms of either statute" (emphasis added).[41]

19. ***Second***, the plurality in *Tang* posed the question:[42]

> "What is it, in the course of administration, that flows from or arises out of the decision taken so as to give that significance which has merited the legislative conferral of a right of judicial review upon those aggrieved?"

20. Their Honours said the "answer in general terms is the affecting of legal rights and obligations".[43] That answer drew upon the judgments of Lockhart and Morling JJ in in *Chittick v Ackland*[44] and of Kiefel J and Lehane J in *Australian National University v Lewins*,[45] which the plurality said assisted in fixing the proper construction of the phrase "decision of an administrative character made … under an enactment".[46] Their Honours explained more fully:[47]

> "The answer in general terms is the affecting of legal rights and obligations. 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 Lehane 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?"

21. The last of those questions cited, and drew from, the decision in *General Newspapers Pty Ltd v Telstra Corporation*.[48] There, Davies and Einfeld JJ said that a "contract entered into by a corporation under a general power to enter into contracts is not given force and effect by the empowering statute".[49] However, their Honours went on to say "If the challenge to validity is made by reference to a federal enactment, then the challenge may be appropriate, even in relation to a contract, because the

41 *Tang*, 111 [20].
42 *Tang*, 128 [79].
43 *Tang*, 128 [80].
44 (1984) 1 FCR 254 (***Chittick v Ackland***).
45 (1996) 68 FCR 87 (***Lewins***).
46 *Tang*, 128 [78].
47 *Tang*, 128 [80] (footnotes omitted).
48 (1993) 45 FCR 164.
49 *General Newspapers Pty Ltd v Telstra Corporation* (1993) 45 FCR 164, 173.

statute affects the force and effect of that which was done".[50] The Full Court thus accepted that "even in relation to a contract", a decision may be under the enactment if the enactment "affects the force and effect" of the decision.[51]

22. The plurality in *Tang* did not say that a decision must alone or "without more" affect legal rights or obligations in order to satisfy the second criterion.[52] Rather, their Honours said a "legislative grant of capacity to contract to a statutory body will not, without more, be sufficient to empower that body unilaterally to affect the rights or liabilities of any other party".[53] *Chittick v Ackland* was an example of a contract case with something more than a bare capacity to contract, because the statute in that case provided for a determination that had "the effect of unilaterally changing the relevant terms and conditions of employment" contracts.[54] That was sufficient to characterise the determination as one made under an enactment, notwithstanding that the determination of terms and conditions of employment could also fairly be described as having formed contracts of employment.[55]

23. Another of the 'contract cases' is *Australian National University v Burns*.[56] There, Bowen CJ and Lockhart J said the answer to the question of whether the decision (in that case, to dismiss the respondent) was made under an enactment "lies in the true characterization of the decision itself".[57] The dismissal decision in *Burns* was made under a contract and not under the statute. However, the Court accepted "the correctness of the proposition that the same decision may be made both under a contract and 'under an enactment' for the purposes of the Judicial Review Act", saying that whether that was so would "depend on the circumstances of each case".[58]

24. In summary, it is submitted that the cases and principles that underlie the reasoning in *Tang* indicate that the *Tang* criteria permit that the force or effect of a decision which affects rights or obligations may be derived from more than one source. That is, a decision is not denied the character of being "under an enactment" merely

50 *General Newspapers Pty Ltd v Telstra Corporation* (1993) 45 FCR 164, 173.
51 See, also, *Quach v Commissioner of Taxation* (2019) 168 ALD 130, 145 [66]-[68].
52 AS, [28].
53 *Tang*, 129 [82].
54 *Chittick v Ackland*, 264.
55 *Chittick v Ackland*, 264.
56 (1982) 64 FLR 166 (***Burns***). *Burns* was expressly relied upon by Gleeson CJ in *Tang* (at 107-109 [10]-[14]) and indirectly cited by the plurality (at 121-122 [60]).
57 *Burns*, 174.
58 *Burns*, 177.

because it might also have some other character. If at least part of the force or effect of a decision derives from the enactment, or if the decision impacts on matters given force and effect by the enactment,[59] the decision is not, in principle, precluded from satisfying the second criterion in *Tang*.

What is the nature or character of the Direction?

25. The Appellants have contended that the Direction "merely constitutes a factum upon which one of the obligations created *by the supervision order* operates".[60] They seek to place the Direction in the same category as "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".[61] They give examples that include, under the Supervision Order, a requirement that the Respondent receive certain medication "at the dosage and the frequency as prescribed" by a treating doctor (requirement 9) and a requirement that the Respondent continue to see a psychologist "at the times recommended by the psychologist" (requirement 21).[62]

26. The existence or non-existence of a prescription or recommendation from a treating health professional may properly be understood as a mere factum upon which the Supervision Order Requirement operates. Thus, the existence of a doctor's prescription is simply a fact—albeit an important one—to which the obligation in requirement 9 applies; and, similarly, a recommendation from a psychologist is a fact upon which the obligation in requirement 21 operates. What is significant for present purposes is that such prescriptions or recommendations derive no force at all from and are entirely "dehors"[63] the DPSO Act.[64]

27. The Respondent submits that the Direction cannot be equated with such facts. The Appellants do not challenge[65] the Court of Appeal's conclusion that the DPSO Act expressly or impliedly gave the First Appellant the power to give the Direction.[66] The Direction is therefore an exercise of statutory power that may only be given,

59 *Tang*, 132 [96].
60 AS, [18].
61 AS, [18].
62 AS, [18] and footnote 37; and see AFM, pp 18-19.
63 *Tang*, 130 [87].
64 As was the 'consent' in *Neat Domestic Trading Pty Ltd v AWB Ltd* (2003) 216 CLR 277.
65 AS, [16].
66 CA [1], CAB, p 26 (Bowskill CJ); CA [29]-[32], CAB, p 32 (Morrison JA); CA [57]-[58], CAB, pp 36-37 (Bond JA).

amended, or repealed by a particular statutory office-holder empowered by the DPSO Act. And the Direction may only be given in the way authorised by s 16C(1). A doctor's prescription or recommendation is simply not of that character.

28. The Appellants have conceded that "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".[67] That is plainly correct. The Direction impacted upon or altered the subsisting legal relationship between the parties:

(a) The Direction altered the Respondent's right to associate and communicate with the Named Person. That right was reduced because he was no longer lawfully able to associate or communicate 'in-person' with the Named Person.

(b) The Direction created a new ground upon which contravention proceedings under ss 20-22 of the DPSO Act might be brought against the Respondent; namely, for contravening the Supervision Order by associating 'in-person' with the Named Person.

(c) The Direction created a new ground upon which the Respondent might be exposed to criminal prosecution under s 43AA; again, for contravening the Supervision Order by associating 'in-person' with the Named Person.

29. The Appellants make the point that no "provision of the DPSO Act provides that the Direction may, by itself, require the Respondent to comply with it" and that without the Supervision Order "the Respondent is under no obligation to comply with the Direction".[68] However, the Supervision Order does not stand alone: it is given "effect" by s 15 of the DPSO Act and the Order might either have no "effect" at certain times or a continuing "effect" after the expiration of the period stated in the Order through the operation of ss 15 and 24. As such, the DPSO Act controls whether the Supervision Order is in "effect" at any particular time and the Requirement in the Order thereby has "effect" by force of the DPSO Act, not merely through its effect as an exercise of judicial power.

30. The Appellants also contend that the "Respondent's rights are only affected to the extent that the Direction is a **direction within the meaning of the order**" (emphasis

67 AS, [30].
68 AS, [31].

added).[69] However, whilst the Supervision Order provides a description of a "reasonable direction" as "an instruction about what you must do, or what you must not do, that is reasonable in that situation",[70] it does not grant any power to a corrective services officer to give directions nor regulate the giving of directions.

31. The Respondent submits that a "direction" will only have legal efficacy for the purposes of a supervision order and will only be a "direction within the meaning of the order" if it is a "direction" within s 16C(1) of the DPSO Act.[71] The power of a "corrective services officer" to give a "direction" is derived from, and regulated by, s 16C. A direction binds (or purports to bind) the Respondent if it has (or purports to have) the legal status of a "direction" within s 16C. The power of a corrective services officer is not the "capacity to take action" (in this case, giving an "instruction" to the Respondent), but rather the "legal effect given to that action by statute".[72] In other words, an "instruction" is one the Respondent must comply with only if it is clothed with the legal status of a "direction" given under s 16C(1). As such, the Direction in this case "derived its legal efficacy"[73] as a "direction" to which the Supervision Order applied from the DPSO Act.

32. This illustrates why the Appellants' analogy with the scope of certiorari[74] does not assist.[75] Whilst "the scope of certiorari has developed from time to time to meet changing conditions",[76] the essential function of "certiorari is to remove the legal consequences or purported legal consequences of an exercise or purported exercise of power" and so it "is available only in respect of an exercise or purported exercise of power which has, at the date of order, an 'apparent legal effect'".[77] The above analysis of the DPSO Act reveals that the Direction does have an "apparent legal effect" because it is the Direction's status, or purported status, as a "direction" within

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69 AS, [35].
70 Exhibit BF-1 to the affidavit of Bianca Fuller affirmed on 5 April 2023, AFM, p 17.
71 For example, a direction given by a corrective services officer under a provision like s 163 of the CS Act would not be a "direction" that engaged the Supervision Order Requirement.
72 Gageler, S., "The Legitimate Scope of Judicial Review: The Prequel" (2006) 57 *Admin Review* 5.
73 To use the language in *Glasson v Parkes Rural Distributions Pty Ltd* (1984) 155 CLR 234, 240-241 (Gibbs CJ, Mason, Murphy, Wilson and Brennan JJ).
74 AS, [29] and [36].
75 And, in any event, relief under the JR Act is not confined to orders quashing or setting aside the decision: JR Act, s 30(1) (and ADJR Act, s 16(1)).
76 *Hot Holdings Pty Ltd v Creasy* (1996) 185 CLR 149, 158-159 (Brennan CJ, Gaudron and Gummow JJ) citing *R v Criminal Injuries Compensation Board; Ex parte Lain* [1967] 2 QB 864.
77 *Wingfoot Australia Partners Pty Ltd v Kocak* (2013) 252 CLR 480, 492 [25].

s 16C(1) which gives content to the Requirement in the Supervision Order and thereby affects rights or purports to affect rights.

33. For these reasons, the Respondent submits that the Direction is properly characterised as a decision which has a legal status or effect and which derives that legal status or effect from (or at least partly from) the DPSO Act. Further, the legal status or effect of the Direction as so derived affects the Respondent's rights or obligations by crystallising the content of the Supervision Order's Requirement.

Does the Direction satisfy the second Tang criterion?

34. Contrary to the Appellants' contentions,[78] the fact that a supervision order must contain particular requirements mandated by the DPSO Act, including a requirement to comply with reasonable directions, is significant. A direction authorised by s 16C(1) of the DPSO Act will only be given in circumstances where there is an extant obligation on a prisoner to comply with the direction. That is, a direction will always take that subsisting legal framework as its starting point.

35. That was, of course, the case here. When the Direction was made, a relationship of legal rights and obligations already subsisted between the parties. In particular:

(a) The Supervision Order ordered the Respondent to be under the supervision of the Appellants as required by s 16(1)(d) of the DPSO Act.

(b) The Requirement was included in the Supervision Order as required by s 16(1)(db) of the DPSO Act.

(c) The Supervision Order, and thus the Requirement, had effect as an exercise of judicial power and the "effect" given by s 15 of the DPSO Act.

(d) Section 16C(1) of the DPSO Act expressly (or, alternatively, impliedly) gave the First Appellant the power to give the Respondent a "reasonable direction".

(e) The First Appellant had the authority to apply for an arrest warrant in respect of the Respondent, and thereby commence contravention proceedings, if she

78 AS, [32].

reasonably suspected that the Respondent had contravened—or was likely to contravene—the Supervision Order (including the Requirement).[79]

36. Within that legal framework, the Respondent had the ordinary rights of freedom of association and communication that inhere in an individual, albeit contingent upon the Supervision Order and the Appellants' exercise of powers.

37. The Direction was then made as authorised by s 16C(1) of the DPSO Act. It was a unilateral act which altered the parties' subsisting state of legal rights and obligations. It gave content to the Requirement in the Supervision Order. It reduced the Respondent's right to freedom of association and communication by creating a new limitation on that right. It subjected his rights to a new legal hazard: a new ground upon which contravention proceedings under s 20 or criminal charges under s 43AA might be brought against him. The Direction did so not merely because it was the type of "instruction" described in the Supervision Order, but by force of its status or effect as a "direction" under s 16C(1) of the DPSO Act.

38. To borrow and adapt the language used in *Tang*,[80] the Respondent's obligation not to associate 'in-person' with the Named Person owed in an immediate sense its existence to the Direction. The Direction derived its status as a "direction" from s 16C(1) of the DPSO Act and, in that capacity, it affected the Respondent's legal rights and obligations. The Respondent's rights and obligations were affected not under the general law but by virtue of the DPSO Act.

39. The Respondent submits that, accordingly, the Direction satisfies the *Tang* criteria and has the character of a decision made under an enactment within the JR Act. He further submits that this conclusion remains valid even if the Direction might also be fairly characterised as a decision deriving part of its effect from the Supervision Order or as "a direction within the meaning of the order".[81]

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79 DPSO Act, s 20(1) and (2).
80 *Tang*, 128 [80].
81 AS, [35].

Conclusion

40. For the reasons set out above, the Respondent submits that the Court of Appeal was correct to conclude that the Direction was a decision "made … under an enactment" for the purposes of the JR Act.

41. It is submitted that the appeal should be dismissed with costs.

PART VI: NOTICE OF CONTENTION OR NOTICE OF CROSS APPEAL

42. Not applicable.

PART VII: TIME ESTIMATE

43. The Respondent estimates that he will need 1.5 hours for oral argument.

10 Dated: 27 June 2024

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ANNEXURE TO THE RESPONDENT'S SUBMISSIONS

Pursuant to paragraph 3 of Practice Direction 1 of 2019, the Respondent sets out below a list of statutes and provisions referred to in the Respondent's Submissions.

No.	Description	Version	Provisions
Queensland enactments			
1.	*Acts Interpretation Act 1954* (Qld)	Current from 3 November 2022	s 24AA
2.	*Corrective Services Act 2006* (Qld)	Current from 1 November 2022	ss 163, 275, sch 4 (definition of "corrective services officer")
3.	*Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)	Current from 25 May 2020	ss 13, 15, 16, 16A, 16B, 16C, 16D, 18, 19, 19A, 20, 21, 22, 23, 24, 43AA, 43A sch 1 (definitions of "corrective services officer", "prisoner" and "release day")
4.	*Dangerous Prisoners (Sexual Offenders) Amendment Act 2007* (Qld)	Act No. 35 of 2007	s 3

5.	*Dangerous Prisoners (Sexual Offenders) and Other Legislation Amendment Act 2010* (Qld)	Act No. 34 of 2010	s 14
6.	*Human Rights Act 2019* (Qld)	Current from 25 May 2020	ss 21, 22
7.	*Judicial Review Act 1991* (Qld)	Current from 1 October 2020	ss 4(a), 16, sch 3
Commonwealth enactments			
8.	*Administrative Decisions (Judicial Review) Act 1977* (Cth)	Current from 8 December 2023	