

# HIGH COURT OF AUSTRALIA

GAGELER CJ,  
GORDON, EDELMAN, GLEESON AND BEECH-JONES JJ

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BIANCA FULLER & ANOR

APPELLANTS

AND

MARK LAWRENCE

RESPONDENT

*Fuller v Lawrence*

[2024] HCA 45

*Date of Hearing: 10 September 2024*

*Date of Judgment: 4 December 2024*

B24/2024

## ORDER

*Appeal dismissed with costs.*

On appeal from the Supreme Court of Queensland

### Representation

A D Scott KC with P K O'Higgins KC for the appellants (instructed by Crown Law (Qld))

M Black with R H Berry for the respondent (instructed by Suncoast Community Legal Service)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.



## CATCHWORDS

### **Fuller v Lawrence**

Administrative law – Judicial review – Decision of administrative character made under an enactment – Where prisoner was subject to supervision order of Supreme Court of Queensland – Where *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) required supervision order to contain requirement that prisoner comply with every reasonable direction of corrective services officer – Whether prisoner entitled to reasons for direction – Whether Act source of direction's effect on prisoner's legal obligations.

Words and phrases – "decision made under an enactment", "direction", "judicial review", "legal force or effect from statute", "legal rights or obligations", "statement of reasons", "supervision order".

*Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), ss 13, 16, 16C, 20, 43AA.

*Judicial Review Act 1991* (Qld), ss 4, 30, 32, 33.



1 GAGELER CJ, GORDON, EDELMAN, GLEESON AND BEECH-JONES JJ. The issue raised by this appeal is whether a direction, given by a corrective services officer to a prisoner under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) ("the DPSO Act"), is subject to judicial review pursuant to the *Judicial Review Act 1991* (Qld) ("the Review Act"), so that the prisoner is entitled to receive a statement of reasons for the direction. That issue is determined by whether the direction is a decision of an administrative character "made ... under an enactment" within the meaning of the *Review Act*, as that phrase was explained by this Court in *Griffith University v Tang* ("Tang").<sup>1</sup>

2 The respondent, Mr Lawrence, is the subject of a supervision order made by Bowskill J (as her Honour then was) on 16 April 2020 under s 13(5)(b) of the DPSO Act ("the Supervision Order"). Section 13(5) of the DPSO Act relevantly empowers the Supreme Court of Queensland to make an order that a prisoner "be released from custody subject to the requirements it considers appropriate that are stated in the order", if satisfied that the prisoner is a "serious danger to the community"<sup>2</sup> in the absence of such an order.<sup>3</sup> Section 16 of the DPSO Act specifies requirements that must be contained in a supervision order including, by s 16(1)(db), that the prisoner "comply with every reasonable direction of a corrective services officer that is not directly inconsistent with a requirement of the order".

3 The Supervision Order obliges Mr Lawrence to "follow the rules" in the Supervision Order for 20 years, that is, until 16 April 2040. In accordance with s 16(1)(db) of the DPSO Act, cl 6 of the Supervision Order requires him to obey any reasonable direction that a corrective services officer gives him about, relevantly, "who you may not have contact with".

4 Mr Lawrence was released from custody pursuant to the Supervision Order on 16 April 2020. In November 2022, the first appellant, Ms Fuller, gave

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1 (2005) 221 CLR 99.

2 A prisoner is a serious danger to the community if there is an unacceptable risk that the prisoner will commit a "serious sexual offence" if the prisoner is released from custody or if the prisoner is released from custody without a supervision order being made: *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), s 13(2) and Sch 1 Dictionary, definition of "serious sexual offence".

3 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), s 13(1) and Sch 1 Dictionary, definition of "division 3 order".

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Mr Lawrence a document entitled "Reasonable Direction: General". Ms Fuller is a corrective services officer within the meaning of the DPSO Act and within the meaning of the Supervision Order.<sup>4</sup> In accordance with cl 6 of the Supervision Order, the document stated that Mr Lawrence was approved to have phone contact with a named person (including Facetime video calls) but was not approved to have in-person contact with that named person ("the Direction Decision").

5 By letter dated 27 December 2022, Mr Lawrence requested a statement of reasons in relation to the Direction Decision under s 32 of the *Review Act*, which Ms Fuller refused on 18 January 2023. Ms Fuller's refusal was made on the stated basis that the direction is not a "decision ... made ... under an enactment" within the meaning of the *Review Act* and so is not a decision to which that Act applies.

6 A judge of the Supreme Court of Queensland concluded that the Direction Decision is a decision "made ... under an enactment" and, accordingly, that Mr Lawrence is entitled to a statement of reasons for the decision under s 33 of the *Review Act*.<sup>5</sup> The Court of Appeal of the Supreme Court dismissed the appellants' appeal.<sup>6</sup> For the following reasons, the appeal to this Court must also be dismissed.

### **The *Review Act* and *Tang***

7 The *Review Act* confers statutory rights of judicial review of administrative action that are additional to any other rights that a person has to seek a review of the relevant action.<sup>7</sup> The right to obtain a statement of reasons under s 33 of the *Review Act* applies only to a "decision to which [the *Review Act*] applies", an expression that is defined in s 4 of the *Review Act*.<sup>8</sup> By s 4(a), a decision to which the Act applies relevantly means:

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4 *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld), Sch 1 Dictionary; *Corrective Services Act 2006* (Qld), Sch 4 Dictionary.

5 *Lawrence v Fuller* [2023] QSC 156 at [77]-[78].

6 *Fuller v Lawrence* [2023] QCA 257.

7 *Judicial Review Act 1991* (Qld), s 10(1).

8 *Judicial Review Act 1991* (Qld), ss 20, 31, 32(1).

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"a decision of an administrative character made, proposed to be made, or required to be made, under an enactment (whether or not in the exercise of a discretion)".

8 "Enactment" is defined by s 3 of the *Review Act* to mean an Act or statutory instrument, and includes a part of an Act or statutory instrument. An Act means an Act of the Queensland Parliament.<sup>9</sup>

9 The meaning of the phrase "made ... under an enactment" was considered by this Court in *Tang*. In *Tang*, the disputed decisions were a decision made by a committee established by the appellant university to exclude the respondent, Ms Tang, from her PhD candidature programme for academic misconduct, and the confirmation of that decision on an internal appeal to an appeals committee, also established by the university. The university was established under the *Griffith University Act 1998* (Qld) ("the *University Act*"). The majority, comprising Gleeson CJ, Gummow, Callinan and Heydon JJ, held that the disputed decisions were not "made ... under an enactment" within the meaning of s 4(a) of the *Review Act*.

10 Accepting that the words "made ... under an enactment" limited the class of decisions to which the *Review Act* applied, Gleeson CJ identified as the relevant question whether the university's decision "took its legal force or effect from statute".<sup>10</sup> The Chief Justice concluded that the decision, which terminated the voluntary relationship between the university and Ms Tang, was not a decision which took legal force or effect, in whole or in part, from the terms of a statute.<sup>11</sup> While the *University Act* provided the legal context in which the relationship existed, the termination occurred under the general law and under the terms and conditions on which the university was willing to enter a relationship with Ms Tang.<sup>12</sup>

11 The joint reasons of Gummow, Callinan and Heydon JJ reviewed the existing case law on the meaning of the expression "a decision of an administrative character made ... under an enactment" in the *Administrative Decisions (Judicial*

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9 *Acts Interpretation Act 1954* (Qld), s 6(1).

10 *Griffith University v Tang* (2005) 221 CLR 99 at 110 [17].

11 *Griffith University v Tang* (2005) 221 CLR 99 at 111-112 [20], [23].

12 *Griffith University v Tang* (2005) 221 CLR 99 at 111-112 [20], [23].

*Review*) Act 1977 (Cth) ("the AD(JR) Act"), upon which the *Review Act* is substantially based.<sup>13</sup> The plurality described the expression "made ... under an enactment" as involving a question of "characterisation of the particular outcome" which founds an application for review under the statute (in the context of the *Review Act*, an application for a statutory order of review).<sup>14</sup>

- 12 The plurality rejected a construction of s 4(a) turning upon the identification of the "immediate" or "proximate" source of power to make the relevant decision as deflecting attention from the interpretation of the *Review Act* (and the AD(JR) Act) in the light of legislative subject, scope and purpose.<sup>15</sup> They also rejected a construction turning upon the "true lawful source" of the power to make the decision.<sup>16</sup> Their Honours identified cases in which a decision, required or authorised by an enactment, is nevertheless not "made under" that enactment. These included where the decision derived its capacity to bind from contract or some other private law source;<sup>17</sup> where a decision to vote at a creditors meeting was not given statutory effect by the sections relied upon and only affected legal rights because of the cumulative effect of votes later cast;<sup>18</sup> and where the power to make the decision was not sourced in a relevant statute, even though the decision, once made, had a critical effect for the operation of that statute.<sup>19</sup>

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13 *Griffith University v Tang* (2005) 221 CLR 99 at 112 [26]. See also *Judicial Review Act 1991* (Qld), s 16.

14 *Griffith University v Tang* (2005) 221 CLR 99 at 123 [64].

15 *Griffith University v Tang* (2005) 221 CLR 99 at 125 [69].

16 *Griffith University v Tang* (2005) 221 CLR 99 at 125-126 [71].

17 *Griffith University v Tang* (2005) 221 CLR 99 at 128-129 [81]-[82], citing *Australian National University v Lewins* (1996) 68 FCR 87.

18 *Griffith University v Tang* (2005) 221 CLR 99 at 129 [84], citing *Hutchins v Commissioner of Taxation* (1996) 65 FCR 269.

19 *Griffith University v Tang* (2005) 221 CLR 99 at 130 [87], citing *Glasson v Parkes Rural Distributions Pty Ltd* (1984) 155 CLR 234 and *NEAT Domestic Trading Pty Ltd v AWB Ltd* (2003) 216 CLR 277.



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13 The plurality concluded that the determination of whether a decision is "made ... under an enactment" involves the following two criteria:<sup>20</sup>

"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."

14 As to the first criterion, the plurality found that the decisions were authorised by the *University Act*, as the decision-making committees depended for their existence and powers upon the delegation by the council of the university under provisions of the *University Act*.<sup>21</sup> However, as to the second criterion: the decisions did not affect legal rights and obligations; the decisions had no impact upon matters to which the *University Act* gave legal force and effect; and Ms Tang enjoyed no relevant legal rights and the university had no obligations under the *University Act* with respect to the course of action the latter adopted towards the former.<sup>22</sup> There were no legal rights and obligations under private law which were capable of being affected by the relevant decisions. A consensual relationship had been brought to an end, but no decision was made by the university "under" the *University Act*.<sup>23</sup>

15 The criteria stated by the plurality in *Tang* for determining whether a decision of an administrative character is "made ... under an enactment" have been applied by numerous Australian courts in construing statutory judicial review regimes.<sup>24</sup> Neither party to this appeal sought to challenge the two "*Tang* criteria" as necessary for a finding that the Direction Decision was made under an enactment – namely, the DPSO Act – within the meaning of the *Review Act*.

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20 *Griffith University v Tang* (2005) 221 CLR 99 at 130 [89].

21 *Griffith University v Tang* (2005) 221 CLR 99 at 132 [96].

22 *Griffith University v Tang* (2005) 221 CLR 99 at 132 [96].

23 *Griffith University v Tang* (2005) 221 CLR 99 at 131 [91].

24 For example, *Eastman v Besanko* (2010) 244 FLR 262 at 265-266 [8]-[11]; *Prisoners Review Board v Freeman* [2010] WASCA 166 at [160]-[161]; *Nona v Barnes* [2013] 2 Qd R 528 at 530-532 [6]-[10], 536-538 [20]-[23]; *King v Director of Housing* (2013) 23 Tas R 353 at 360-361 [25]-[26], 366-371 [53]-[68]; *Minister for Health v Nicholl Holdings Pty Ltd* (2015) 231 FCR 539 at 547-549 [36]-[39].

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16 The second *Tang* criterion, that the decision must itself confer, alter or otherwise affect legal rights or obligations, and in that sense the decision must derive from the enactment, coheres with the observation of Mason CJ (with whom Brennan J agreed and Deane J agreed on this point) in *Australian Broadcasting Tribunal v Bond* ("*Bond*") that a decision "on a matter of substance for which the statute provided as an essential preliminary to the making of the ultimate decision" was reviewable under the AD(JR) Act.<sup>25</sup> It also coheres with the observation of Toohey and Gaudron JJ in *Bond* that, if an enactment requires that a particular finding be made as a condition precedent to the exercise of or refusal to exercise a substantive power (in that case a decision to suspend or cancel a commercial broadcasting licence), a finding that satisfies the condition precedent is "readily characterized as a decision 'under an enactment'".<sup>26</sup>

### **Was the direction "made ... under an enactment"?**

17 At the outset, it should be noted that the *Tang* criteria identify a decision to which the *Review Act* applies. Satisfaction of the *Tang* criteria does not imply that the relevant decision was made validly, or may not be set aside, quashed or the subject of the other forms of relief provided for by that Act.<sup>27</sup>

18 There was no dispute between the parties that the first *Tang* criterion is satisfied. The appellants accepted that s 16(1)(db) of the DPSO Act either expressly or impliedly authorised the Direction Decision.

19 The narrow contention ultimately made by the appellants was that the Direction Decision fails to satisfy the second *Tang* criterion, because the Decision does not "itself" affect legal rights or obligations. The appellants acknowledged that Mr Lawrence's rights have been affected by the requirement that he not have in-person contact with the person named in the Direction Decision. Further, at the hearing in this Court, the appellants conceded that the second *Tang* criterion is capable of encompassing decisions which derive legal force in whole or in part from the relevant enactment. Accordingly, they did not press an earlier contention that the second *Tang* criterion is only satisfied in respect of a decision that "itself,

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25 (1990) 170 CLR 321 at 339.

26 (1990) 170 CLR 321 at 377.

27 *Judicial Review Act 1991* (Qld), s 30(1).

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and only itself" affects legal rights or obligations. Having made those concessions, the argument was limited to the proposition that the Direction Decision does not "itself" affect Mr Lawrence's legal obligations where the source of his obligation to comply with the Direction Decision is found in a judicial order, namely, the Supervision Order.

20 The appellants' narrow contention must be rejected because the source of Mr Lawrence's obligation to comply is in the DPSO Act. The capacity of the Direction Decision to affect Mr Lawrence's legal obligations is derived from the DPSO Act and, specifically, from s 16(1)(db), which required the Supervision Order to contain a requirement that Mr Lawrence comply with any reasonable direction of a corrective services officer, provided that any such direction is not directly inconsistent with a requirement of the order. In this regard, the appellants accepted that the statutory power to make a direction is conditioned by s 16C(1) of the DPSO Act, which provides that a corrective services officer may give a direction mentioned in s 16(1)(db) only if the officer reasonably believes the direction is necessary "to ensure the adequate protection of the community" or "for the prisoner's rehabilitation or care or treatment".

21 As the appellants ultimately acknowledged, it follows that the legal status or effect of the Direction Decision as one purportedly authorised by ss 16(1)(db) and 16C(1) is necessary for the Decision to affect Mr Lawrence's legal rights. A prisoner would not be required by a supervision order to comply with a direction made in breach of s 16C(1) because such a direction would not be within the ambit of that supervision order. It follows that the significance of the Direction Decision depends upon its purported validity, and not upon the mere historical fact of the Decision having been made,<sup>28</sup> nor upon whether, as a matter of fact, the Decision is reasonable. The Direction Decision "derives from the enactment", the DPSO Act, in the sense that it has no legal efficacy unless it is a direction authorised by ss 16(1)(db) and 16C(1) of the Act.

22 Further, the Direction Decision, if validly made, "itself" exposed Mr Lawrence to new legal jeopardy under s 20 of the DPSO Act, which provides for the issue of a warrant for the arrest of a released prisoner suspected of contravening a supervision order; or under s 43AA of that Act, which makes it an offence, punishable by a maximum penalty of two years' imprisonment, to contravene a supervision order without a reasonable excuse. Without a direction under s 16(1)(db) of the DPSO Act, Mr Lawrence would be free to meet the person

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28 cf *Australian Education Union v General Manager of Fair Work Australia* (2012) 246 CLR 117 at 140 [46].

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named in the Direction Decision without any potential criminal sanctions. That is, the Direction Decision purported to add to Mr Lawrence's obligations under the Supervision Order, and the Decision's power to have that effect is derived from the DPSO Act.

23 The appellants sought to illustrate the scope of the second *Tang* criterion by reference to the Supreme Court's power under s 30(1)(a) of the *Review Act*, on an application for a statutory order of review in relation to a decision, to make an order quashing or setting aside the decision. The appellants noted that a power to grant relief of this kind presupposes that a decision to which the *Review Act* applies has an "apparent legal effect",<sup>29</sup> and contended that an order quashing the Direction Decision would have no legal effect. The appellants' argument fails because, as has been explained, the Direction Decision did have an "apparent legal effect" and an order quashing the Decision would affect the scope of Mr Lawrence's legal obligations under the Supervision Order. As the appellants conceded, the Direction Decision is reviewable at common law for jurisdictional error.

24 The appellants' remaining argument was that there is no provision of the DPSO Act that imposes a consequence directly for noncompliance with a direction. Instead, the sole force of the obligation derives "indirectly" from provisions of the DPSO Act, including ss 20 and 43AA. However, as noted earlier, a decision which takes legal force in part from an enactment satisfies the second *Tang* criterion. It necessarily follows that, while the Direction Decision depends for its purported efficacy on the making of a supervision order by a court in the exercise of judicial power, this does not detract from the conclusion that the Direction Decision was "made under" the DPSO Act.

## Conclusion

25 The appeal must be dismissed with costs.

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29 cf *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 595; *Hot Holdings Pty Ltd v Creasy* (1996) 185 CLR 149 at 159; *Wingfoot Australia Partners Pty Ltd v Kocak* (2013) 252 CLR 480 at 492 [25].

