

CASE NOTE:

Wallace v Tannock & Anor [2023] QSC 122

Court/tribunal	Supreme Court
Type of proceeding	Judicial review
Application of <i>Human Rights Act 2019</i>	Section 58 (conduct of public entities)
Rights engaged	Right to peaceful assembly and freedom of association (s 21)
Outcome	Application allowed - directions set aside
Date of decision	2 June 2023

A man applied to the Supreme Court for a review of two aspects of a direction issued to him by Queensland Corrective Services (QCS) pursuant to a supervision order made under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (DPSOA).

The man had a history of sexual and violent offending. Psychiatric assessments of the man made in 2015 for the original DPSOA application suggested he represented a risk of future sexual reoffending. Based on these assessments, the Supreme Court released the man from prison subject to a 10 year supervision order, which required that he comply with every reasonable direction of a corrective services officer.

For some time he has lived alone with support from the National Disability Insurance Scheme (NDIS), including funded services from support workers who visit him at his home. They assist with tasks such as cooking, cleaning, and shopping. The man is able to exercise control over this situation by use of an “app” from which he can make requests for support workers. QCS staff became concerned about the man’s behaviour with respect to female NDIS workers, and in 2022 issued a direction requiring, among other things that he only have male NDIS support workers (Support Worker Direction) and that he obtain approval to have any person at his home, including family members (Visitor Direction). QCS stated that the reasons for making the directions included the psychiatric opinions considered by the court in making the 2015 supervision order. QCS did not obtain any current or recent psychiatric information from the man’s current treating team.

The man sought a review of these directions on several grounds, including that they were an unreasonable limitation on his human rights.

Separate to the human rights grounds, the court concluded that the man was not provided the necessary procedural fairness in the making of the directions. The directions were given without notice, and the man was not able to make submissions. QCS could have, but did not, consider, more recent psychiatric evidence targeted to their current concerns about the man’s behaviour. The court found that QCS is not required to seek submissions or further information for every direction made and whether this is necessary to afford procedural fairness will depend on the particular circumstances of the matter.

Having made that determination, the court nonetheless also considered the human rights grounds. The court concluded the directions engaged and limited his right to freedom of association. The evidence provided by the respondent demonstrated that Support Workers Direction's limitation on the man's right was justified according to the criteria in s 13 of the HR Act. It was 'calculated to mitigate the damage to society that may arise from the applicant's offending against a female support worker'.

However, the same evidence did not justify the limitation on rights in the Visitors Direction. A direction requiring the man to inform QCS about the prospect of the man associating with women might have been. However, the direction went further, requiring approval for any persons, including men within the man's family, to be approved. The evidence did not justify such a broad direction, particularly as the 2015 supervision order was made because of concerns about the man committing sexual offences against women. The respondent did not demonstrate that the direction achieved the purpose of the direction, which was to ensure community safety. The court set aside the Visitors Direction on the additional basis that it was an invalid limitation on the man's freedom of association.

The court suggested the directions may also have been unreasonable, and set them aside and remitted the decision back to QCS to consider according to law.

You can read the decision online at <https://www.sclqld.org.au/caselaw/QSC/2023/122>.