

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *NBR v Department of Child Safety, Youth and Women*  
[2020] QCAT 3

PARTIES: **NBR**  
(applicant)

v

**DEPARTMENT OF CHILD SAFETY, YOUTH AND  
WOMEN**  
(respondent)

APPLICATION NO/S: CML382-19

MATTER TYPE: Childrens matters

DELIVERED ON: 7 January 2020

HEARING DATE: 5 November 2019

HEARD AT: Brisbane

DECISION OF: Senior Member Aughterson

ORDERS: **The application will proceed as an application to review the decision to withhold information pursuant to section 86(4) of the *Child Protection Act 1999 (Qld)*.**

CATCHWORDS: ADMINISTRATIVE LAW – whether applicant may seek review of a decision for which she was not provided notice – whether a decision to withhold information precludes a right to review the substantive decision

*Child Protection Act 1999 (Qld) s 82, s 86, Schedule 2*

*Department of Child Safety, Youth and Women v PJC*  
[2019] QCATA 109

*Project Blue Sky Inc v Australian Broadcasting Authority*  
(1998) 194 CLR 355

*SZTAL v Minister for Immigration and Border Protection*  
(2017) 262 CLR 362

APPEARANCES &  
REPRESENTATION:

Applicant: Jessica Beikoff, Legal Aid Queensland

Respondent: Tracey Barrett, Court Services Advisor

## REASONS FOR DECISION

- [1] On 5 November 2019, the Tribunal directed that the application in this matter filed on 4 October 2019, purportedly to review a decision made under s 86(2) of the *Child Protection Act 1999* (Qld) ('the Act'), would proceed as an application to review a decision made under s 86(4) of the Act.
- [2] The respondent has requested reasons for that decision. These are the reasons.
- [3] The application to review was framed as an application to review a placement decision made by the respondent in relation to the relevant child.
- [4] Section 86 of the Act provides:

### **Chief executive to notify parents of placing child in care—child protection order**

- (1) This section applies if the child is in the chief executive's custody or guardianship under a child protection order.
- (2) Subject to subsections (3) and (4), the chief executive must, as soon as practicable after deciding in whose care to place the child, give written notice of the decision to the child and the child's parents stating the following—
  - (a) the person in whose care the child is placed and where the child is living;
  - (b) the reasons for the decision;
  - (c) the child or child's parent may apply to the tribunal to have the decision reviewed;
  - (d) how, and the time within which, the child or child's parent may apply to have the decision reviewed;
  - (e) any right the child or child's parent has to have the operation of the decisions stayed.
- (3) Before complying with subsection (2), the chief executive must consider the matters prescribed under a regulation.
- (4) If, after considering the matters, the chief executive reasonably suspects compliance with subsection (2) would constitute a significant risk to the safety of the child or anyone else with whom the child is living, the chief executive may decide not to comply with the subsection.
- (5) If the chief executive makes a decision under subsection (4), the chief executive must give written notice of the decision to the child and the child's parents stating the following—
  - (a) that the chief executive has decided not to tell the child's parents the person in whose care the child is placed and where the child is living;
  - (b) the reasons for the decision;

- (c) the child or child's parent may apply to the tribunal to have the decision reviewed;
  - (d) how, and the time within which, the child or child's parent may apply to have the decision reviewed;
  - (e) any right the child or child's parent has to have the operation of the decisions stayed.
- (6) Subsection (2) does not apply if the chief executive is satisfied it is not reasonably practicable for the chief executive to give the notice because the child is placed in the person's care for less than 7 days.
- [5] While s 86 of the Act is framed in terms of notification of the decision relating to placement of a child, it is s 82 of the Act that allows the chief executive to make a placement decision. The question is whether the placement decision can be reviewed by the Tribunal where a notice is issued under s 86(4) of the Act.
- [6] As noted in *Department of Child Safety, Youth and Women v PJC*,<sup>1</sup> the review of decisions made under the Act is not 'at large'. Decisions that may be reviewed by the Tribunal are set out in Schedule 2 of the Act. The first column of Schedule 2 lists the reviewable decisions, while the second column shows the related 'aggrieved person'. Only an 'aggrieved person' can bring the review application.<sup>2</sup> Reviewable decisions include:
- Deciding in whose care to place a child under a child protection order granting the chief executive custody or guardianship (section 86(2)). Here, the 'aggrieved person' is 'the child's parents or the child'.
- Not informing a child's parents or person in whose care the child is and where the child is living (section 86(4)). Here, the 'aggrieved person' is 'a parent given the notice or the child'.
- [7] In the present matter, the applicant was given a notice under s 86(5) of the Act, which is required where a decision is made under s 86(4). It was the applicant's case that as a consequence of that notice she is entitled to review the placement decision itself, rather than merely the decision made under s 86(4) of the Act.
- [8] However, as appears from the reviewable decisions shown at [6] above, review of the placement decision is linked with the issuing of a notice under s 86(2) of the Act. Subsection 86(2)(c) provides that the notice must state, among other things, that 'the child or child's parents may apply to the tribunal to have the decision reviewed'. Clearly, the 'decision' referred to is the placement decision. Subsection 86(2) refers to the decision 'in whose care to place the child'.
- [9] Subsections 86(4) and (5) are framed differently. Subsection 86(4) provides that in the specified circumstances the chief executive may decide not to comply with s 86(2) of the Act. Subsection 86(5)(c) then provides that where a 'decision' is made

---

<sup>1</sup> [2019] QCATA 109, [34].

<sup>2</sup> By s 247 of the Act, an 'aggrieved person' for a reviewable decision may make an application to the Tribunal for review. In Schedule 3 of the Act, an 'aggrieved person' is defined to mean 'a person stated opposite the decision in schedule 2'.

under s 86(4) the notice must state, among other things, that ‘the child or the child’s parents may apply to the tribunal to have the decision reviewed’. Clearly, here the ‘decision’ referred to is the decision made under s 86(4). Subsection 86(5) refers to the decision made under s 86(4); that is, the decision not to comply with s 86(2).

- [10] As noted in *SZTAL v Minister for Immigration and Border Protection*,<sup>3</sup> the ‘starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose’.
- [11] The purpose of the Act is to provide for the protection of children,<sup>4</sup> while, by s 5A of the Act, the main principle for administering the Act is that the safety, wellbeing and best interests of a child are paramount. The example given at s 5A makes it clear that those interests are paramount over the interests of any relevant adult. By s 12 of the Act, where granted custody the chief executive has the right and responsibility to make decisions about the child’s daily care. It is to be imagined that it would not be in the best interests of the child, or be compatible with the effective administration of the Act, if every decision of the chief executive were open to review. In that context, review is not at large, but rather is confined to specified ‘reviewable decisions’ by an ‘aggrieved person’.<sup>5</sup>
- [12] Relevant to the present matter, where a s 86(4) notice is issued it is the decision not to issue the s 86(2) notice that is reviewable before the Tribunal. Where that decision is successfully reviewed and a s 86(2) notice is issued, the placement decision itself might be reviewed.
- [13] It follows that a decision having been made by the respondent pursuant to s 86(4) of the Act, the application should proceed as an application to review the decision of the respondent to withhold information pursuant to s 86(4) of the Act.

---

<sup>3</sup> (2017) 262 CLR 362, [14] per Kiefel CJ, Nettle and Gordon JJ. See also *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, [69]-[71].

<sup>4</sup> The Act, s 4.

<sup>5</sup> See the Act, s 247, Schedule 2, and Schedule 3 definitions of ‘aggrieved person’ and ‘reviewable decision’.