QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*SBN v Department of Children, Youth Justice and Multicultural Affairs* [2022] QCAT 321
PARTIES:	**SBN** (applicant) **v** **DEPARTMENT OF CHILDREN, YOUTH JUSTICE AND MULTICULTURAL AFFAIRS** (respondent)
APPLICATION NO/S:	CML114-22
MATTER TYPE:	Childrens matters
DELIVERED ON:	9 September 2022
HEARING DATE:	Decision on the papers
HEARD AT:	Brisbane
DECISION OF:	Senior Member Aughterson
ORDERS:	**The application to dismiss the application to review a decision filed on 8 April 2022 is refused.**
CATCHWORDS:	FAMILY LAW AND CHILD WELFARE – CHILD WELFARE UNDER STATE OR TERRITORY JURISDICTION AND LEGISLATION – OTHER MATTERS – where chief executive granted custody of subject children – where application to review contact decision made by chief executive – whether applicant a parent or family member – whether applicant person affected by decision – whether Tribunal has jurisdiction to determine the application *Child Protection Act* 1999 (Qld), s 5B, s 5BA, s 11, s 12, s 13, s 87, s 247, Schedule 2 *Human Rights Act* 2019 (Qld), s 26 *Allan v Transurban City Link Limited* (2001) 208 CLR 167 *Department of Child Safety, Youth and Women v PJC and the Public Guardian* [2019] QCATA 109 *FQA and MKD v Department of Children, Youth Justice and Multicultural Affairs* [2022] QCAT 126 *NN and IN v Department of Child Safety, Youth and Women* [2020] QCAT 146 *PP and DP and DT v Department of Communities, Child Safety and Disability Services* [2017] QCAT 477 *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362

APPEARANCES & REPRESENTATION:	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

[1] The question raised by the present application to dismiss filed by the respondent is whether the applicant mother has standing to bring an application to review a contact decision made by the respondent, which decision was designed to facilitate contact between the applicant's children. It does not concern contact between the applicant and her children.

[2] The decision was made under s 87 of the *Child Protection Act* 1999 (Qld) ('the Act'). Section 87(2) allows the Chief Executive 'to refuse to allow, or restrict or impose conditions on, contact between the child and the child's parents or members of the child's family'.

[3] In relation to review of a contact decision, generally there are two issues. First, whether the decision is a 'reviewable decision' under the Act and, second, if it is a reviewable decision whether the applicant is 'a person affected by the decision', so that they have standing to bring the application.

[4] In the present case, it is not submitted by the respondent that the decision is not a reviewable decision. By s 247 and Schedule 2 of the Act, contact decisions made under s 87(2) of the Act are reviewable by the Tribunal. The present decision allowed contact between the subject child and the paternal aunt and uncle of one of the subject child's siblings, 'L'. However, the expressed intention was to facilitate family time between the subject child, 'L' and two other siblings on an ongoing basis. The applicant is the mother of all of the children. Clearly, the decision concerns contact between family members.

[5] However, it is the respondent's submission that the applicant is not 'a person affected by the decision' and hence is not an 'aggrieved person' within the meaning of s 247 and Schedule 2 of the Act. It is submitted that that is so because the applicant was not the subject of the decision; the decision did not concern her contact with the subject child and hence she was not 'a person affected by the decision'. On that basis, it is submitted that the Tribunal does not have jurisdiction to determine the matter.

[6] The term 'a person affected by the decision' is not defined in the Act. While two earlier decisions, referred to in the written submissions of the respondent, have considered the meaning of that term, the primary issue in those cases was whether it was a reviewable decision such as to invoke the jurisdiction of the Tribunal.

[7] In *Department of Child Safety, Youth and Women v PJC and the Public Guardian* ('PJC'),[1] application was made by a former approved foster carer of the subject child, seeking to review a decision of the respondent restricting her contact with the child. It was the position of the Department, and accepted by the Appeal Tribunal,[2]

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1 [2019] QCATA 109.
2 Ibid, [103].

that the contact decision was not made pursuant to s 87, but rather under s13 of the Act.[3]

[8] Where the Chief Executive is granted custody or guardianship of a child, s 12 and s 13 of the Act allow the Chief Executive 'to make decisions about the child's daily care'. There is no right of review to the Tribunal from a decision made under those sections. It was submitted by the Department, and accepted by the Tribunal, that s 87 of the Act is a supplementary provision dealing with contact decisions made as between the child and the child's parents and family members and, in relation to those decisions, there is a right of review before the Tribunal.[4]

[9] In PJC, the Tribunal held that the applicant was neither a 'parent' nor 'member of the child's family'.[5] It follows, and was so determined, that the matter did not fall under s 87 of the Act, so that it was not a reviewable decision and the Tribunal did not have jurisdiction to determine the application.[6]

[10] While the Tribunal did seem to suggest that the term 'a person affected by the decision' refers to the child and parent or family member in respect of whom contact is refused or restricted, that issue was not central to the determination of the Tribunal. That is because where there has been no decision made under s 87 of the Act and hence no reviewable decision, the question of standing does not arise.

[11] In *FQA and MKD v Department of Children, Youth Justice and Multicultural Affairs* ('FQA and MKD'),[7] the ultimate question for determination by the Tribunal was whether MKD could bring an application to review a decision of the respondent in relation to contact as between him and the subject children. FQA withdrew her application in relation to her contact with the children. MKD identified himself as the stepfather of the subject children. FQA and MKD had been in a relationship for approximately 3 years. MKD was not the biological father of the children, had not met the children and had never exercised parental responsibility in relation to them.[8] The subject children, aged 11 and almost 9, had been in the care of the Chief Executive since 2014.[9] They were subject to a long term guardianship order and were not subject to a child protection order with aims to reunify them to the care of a parent.[10]

[12] By s 11 of the Act: 'A *parent* of a child is the child's mother, father or someone else (other than the chief executive) having or exercising parental responsibility for the child'. Given that MKD was not the biological father of the children and had not exercised any parental responsibility for the children, it was held that he could not be considered to be a 'parent' within the meaning of s 87 of the Act. Accordingly, as with PJC, it was not a reviewable decision under s 247 and Schedule 2 of the Act, so that, again, the question of standing to make an application to review a reviewable decision was not directly in issue.

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3 Ibid, [56]-[58].
4 Ibid, [58].
5 Ibid, [102].
6 Ibid, [101]-[103].
7 [2022] QCAT 126.
8 *FQA and MKD v Department of Children, Youth Justice and Multicultural Affairs* [2022] QCAT 126, [15].
9 Ibid, [2].
10 Ibid.

[13] As with PJC, in FQA and MKD, there was some discussion as to the meaning of the term 'a person affected by the decision'. A distinction was drawn between being directly and indirectly affected by the decision.[11] It was stated that a broad interpretation of the term 'person affected', so that a review application might be brought by a wide range of people outside the 'family', does not sit comfortably with the 'principles for achieving permanency for a child'; in particular, at s 5BA(2)(b), the principle of ensuring the child experiences or has stable living arrangements.[12]

[14] A third decision referred to by the respondent is *PP and DP and DT v Department of Communities, Child Safety and Disability Services*.[13] That involved a decision relating to contact between a mother and her children and, accordingly, was a decision made under s 87 of the Act. The applicants for review were the kinship carers and grandparents and a sister of the grandfather/carer. The applicants wanted the mother's contact with the children to be fully supervised. It was held that they were not persons affected by the decision. It seems that the conclusion of the Tribunal proceeded on the assumption that a person asking for contact or the child is a person affected. However, the application was unlike the present case, where the application was made by the mother of the children.

[15] In the present case, it is not in dispute that the decision was made under s 87 of the Act, so that it is a reviewable decision. In relation to standing, the applicant is the mother of the subject child. At least where the Chief Executive has custody rather than guardianship of a child, as in the present case, a parent has a direct interest in contacts formed with their children and, accordingly, is a person affected by any such decision.

[16] In *Allan v Transurban City Ling Limited,*[14] it was stated that the term 'affected by' appears in a range of laws and in determining its scope it is necessary to consider the subject, scope and purpose of the legislation in question rather than by the application of concepts derived from decisions under the general law in relation to 'standing'.

[17] In the present case, the 'subject, scope and purpose of the legislation' includes the general principles under the Act. Section 5B(b) of the Act provides that:

> a child's family has the primary responsibility for the child's upbringing, protection and development.

Also, s 5B(f) of the Act provides:

> If a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family if the return is in the child's best interests.

[18] Further, s 26 of the *Human Rights Act* 2019 (Qld) provides, in part:

> (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.

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11 Ibid, [9]-[10].
12 Ibid, [11]
13 [2017] QCAT 477.
14 (2001) 208 CLR 167. See *PJC,* [83]. See also, *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362, [14].

> (2) Every child has the right, without discrimination, to the protection that is needed by the child.

[19] In that context, given the obligation to support the family and also the potential return of the subject child to the applicant, the applicant is a person affected by any decision concerning contact with the child.

Conclusion

[20] For the reasons outlined, the decision of the respondent which is under review is a reviewable decision within the meaning of s 247 and Schedule 2 of the Act. Further, as the mother of the subject child, the applicant is 'a person affected by the decision' and has standing to bring the present application. Accordingly, the application to dismiss the review application is refused.