

SUPREME COURT OF QUEENSLAND

CITATION: *Dunstan v Registrar of Births, Deaths and Marriages (No 2)*
[2026] QSC 200

PARTIES: **TANYA FELICITY DUNSTAN**
(applicant)
v
REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES
(first respondent)
JOHN DUDLEY NEILL
(second respondent)

FILE NO/S: BS No 71 of 2026

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 27 August 2026

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: McCafferty J

ORDER: **1. The applicant is to pay the first respondent's costs of the proceeding, to be assessed on the standard basis if not agreed.**

CATCHWORDS: ADMINISTRATIVE LAW — JUDICIAL REVIEW — PROCEDURE AND EVIDENCE — COSTS — where the applicant sought judicial review of a decision by the first respondent to release information to the second respondent — where the application was summarily dismissed — where the first respondent seeks its costs of the proceeding — where the applicant has brought a costs application under s 49 of the *Judicial Review Act 1991* — whether the proceeding involves an issue that affects, or may affect, the public interest — whether a special costs order should be made — whether costs should follow the event

Judicial Review Act 1991 (Qld), s 49, s 49(1), s 49(1)(d), s 49(1)(e), s 49(2), s 49(2)(b)
Uniform Civil Procedure Rules 1999 (Qld), r 681

Australian Conservation Foundation Inc v Commonwealth (1980) 146 CLR 493, cited

Australian Society for Kangaroos Inc v Chief Executive of the Department Environment and Heritage Protection [2015] QSC 67, cited
Burrage v Minister for Natural Resources and Mines (No 2) [2017] QSC 265, cited
Drage v Gold Coast Hospital and Health Service [2025] QSC 57, considered
du Boulay v Worrell [2009] QCA 63, cited
Dunstan v Registrar of Births, Deaths and Marriages [2026] QSC 144, related
Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337; [2000] HCA 63, applied
Foster v Shaddock [2016] QCA 163, cited
Lonergan v Stilgoe (No 2) [2020] QSC 146, cited
Meizer v Chief Executive, Department of Corrective Services [2005] QSC 351, cited
Northern Territory v Sangare (2019) 265 CLR 164; [2019] HCA 25, cited
Onus v Alcoa of Australia Ltd (1981) 149 CLR 27, cited
Sharples v Council of the Queensland Law Society Incorporated [2000] QSC 392, considered
Sica v Crime and Corruption Commission [2025] QSC 118, cited

COUNSEL:	No appearance for the applicant, the applicant's submissions were heard on the papers No appearance for the first respondent, the first respondent's submissions were heard on the papers No appearance for the second respondent
SOLICITORS:	The applicant appeared on her own behalf C E Christensen, Crown Solicitor for the first respondent No appearance for the second respondent

Introduction

- [1] On 22 June 2026, I made orders dismissing the applicant, **Ms Dunstan's**, application for review filed on 12 January 2026 and interlocutory application filed on 18 March 2026¹: *Dunstan v Registrar of Births, Deaths and Marriages* [2026] QSC 144 (**Reasons**). The first respondent, the **Registrar** of the Registry of Births, Deaths and Marriages, applied for those orders under ss 13 and 48 of the *Judicial Review Act 1991* (Qld) (**Judicial Review Act**).
- [2] The applicant and first respondent were directed to file written submissions on the issue of costs. The Registrar has filed submissions which seek its costs of the proceeding on the standard basis. Ms Dunstan has provided an affidavit and unfiled application.²

¹ The Reasons erroneously refer to this application as being filed on 18 May 2026.

² Ms Dunstan attempted to file this application, but it was not accepted by the Registry on grounds that the matters sought to be agitated had been finally determined by the Reasons save for the issue of costs.

- [3] The unfiled application seeks various relief, much of which seeks to challenge the Reasons. That relief cannot be obtained in the trial division of this Court. It is however appropriate to address paragraph 5 of the application, which seeks that “Associate Judge McCafferty formally recuse himself on grounds of apprehension of bias and refer the file and transcript of the hearing dated 25 March 2026 to an independent judge to determine the matter”.
- [4] Ms Dunstan’s affidavit, which I take to be a submission, expands on this position:
- “This proceeding has amount [sic] to a miscarriage of justice and the judgement should be recalled and rescinded with Associate Judge McCafferty recusing himself on grounds of apparent bias, unless there are additional conflicts of interest not disclosed, to explain why he has abandoned his judicial oath in these proceedings.”
- [5] To the extent that this raises a recusal application, I proceed on the basis that Ms Dunstan wishes to make the application with a view to me not determining the outstanding issue of costs. No recusal application was raised until after my orders were made. It is somewhat unusual for an application to be made to prevent a judge, who has otherwise determined the substantive issues, from determining the issue of costs.
- [6] Where a question arises as to the independence or impartiality of a judge, the question to be asked is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.³
- [7] In the present case the question required to be decided is not the Registrar’s application to dismiss Ms Dunstan’s application. That has already been determined, and there was no application that I disqualify myself prior to that decision. The only remaining question is that of costs.
- [8] It is not apparent why Ms Dunstan contends that I should disqualify myself from dealing with this question. In her document which, as I have said, I take to be a submission, Ms Dunstan raises various complaints as to why she contends my orders dismissing her applications were wrong. Those reasons, which are challenges to the outcome, are not relevant to the question of costs.
- [9] In these circumstances, I am not satisfied there is any reason why I should disqualify myself from determining the issue of costs.

Consideration

- [10] The Court has a broad discretion to award costs. The general rule is that costs follow the event unless the court orders otherwise.⁴ The fact that Ms Dunstan is without legal representation is no reason to displace the general rule.⁵
- [11] The Registrar has identified the potential application of s 49 of the *Judicial Review Act*. That section provides, relevantly, that a person who has made a review

³ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; [2000] HCA 63 at [6] and [33].

⁴ See r 681 of the *Uniform Civil Procedure Rules 1999* (Qld) and s 49(4) of the *Judicial Review Act*.

⁵ See *du Boulay v Worrell* [2009] QCA 63 at [71].

application (a “relevant applicant”) may make a costs application to the Court. If a costs application is made by a relevant applicant, the Court is empowered by s 49(1)(d) to order “that another party to the review application indemnify the relevant applicant in relation to the costs properly incurred in the review application by the relevant applicant, on a party and party basis, from the time the costs application was made.” Alternatively, under s 49(1)(e), the Court may order “that a party to the review application is to bear only that party’s own costs of the proceeding, regardless of the outcome of the proceeding.”

- [12] Ms Dunstan is a relevant applicant. In paragraph 7 of her unfilled application, she seeks orders that the Registrar pay her costs and disbursements of the application and substantive proceeding. While not phrased as an application under s 49, in circumstances where Ms Dunstan is self-represented it is appropriate that this be dealt with as a costs application under that section.
- [13] Although Ms Dunstan seeks her costs of the proceeding, it is apparent s 49(1)(d) is of little utility to her as, by its terms, Ms Dunstan could only have her costs from the time the costs application was made.⁶ Ms Dunstan’s application was not made until after her review application was decided. The Court does however retain the discretion under s 49(1)(e) to order that each party bear their own costs of the proceeding.⁷
- [14] Although not an exhaustive list of relevant factors,⁸ by s 49(2) of the *Judicial Review Act* the Court is required, when considering such a costs application, to have regard to:
- (a) the financial resources of Ms Dunstan;
 - (b) whether the proceeding involves an issue that affects, or may affect, the public interest, in addition to any personal right or interest of Ms Dunstan; and
 - (c) whether the proceeding discloses a reasonable basis for the review application.
- [15] As to the first of those considerations, the court file records that upon commencing this proceeding the Registrar granted an application by Ms Dunstan for a reduction of the filing fee on grounds of financial hardship. There is no other evidence about Ms Dunstan’s financial resources, but I accept the granting of that application indicates she is impecunious. That is a consideration in favour of the parties bearing their own costs, but it is not sufficient reason alone to depart from the usual order.⁹
- [16] As to the third consideration, as was outlined in detail in the Reasons, I do not consider the proceeding disclosed a reasonable basis for the review application.¹⁰ A separate (but of course related) consideration is that the application was unsuccessful.¹¹

⁶ *Foster v Shaddock* [2016] QCA 163 at [16] (Atkinson J).

⁷ *Ibid* at [2] (Fraser JA).

⁸ *Burragubba v Minister for Natural Resources and Mines (No 2)* [2017] QSC 265 at [14].

⁹ *Northern Territory v Sangare* (2019) 265 CLR 164; [2019] HCA 25 at [32]-[33]; *Sica v Crime and Corruption Commission* [2025] QSC 118 at [55].

¹⁰ See Reasons at [39]-[51]; [56]-[63].

¹¹ *Loneragan v Stilgoe (No 2)* [2020] QSC 146 at [18].

- [17] The remaining consideration enshrined in s 49(2), s 49(2)(b), requires the Court to consider whether this proceeding involved an issue that affects, or may affect, the public interest. The rationale for s 49(2)(b) was explained by Freeburn J in *Drage v Gold Coast Hospital and Health Service*¹²:

“[T]he evident purpose of section 49 ... is to ensure that in review applications the costs discretion is exercised having regard to the extent to which there is a public aspect to the proceedings, and the potentially inhibiting effect of costs orders in favour of a government against a citizen. The court’s discretion should be exercised so as to ensure that the risk of adverse costs orders does not deter meritorious applications under the Act. But the principle cannot be taken too far. As McHugh J explained in *Oshlack v Richmond River Council*: ‘litigants espousing the public interest are not thereby granted an immunity from costs or a free kick in litigation’.

Thus, the discretion to make a costs order under section 49(1)(e) will be exercised where there is a clear or compelling public interest.”

(citations omitted)

- [18] As Mullins J (as her Honour then was) explained in *Sharples v Council of the Queensland Law Society Incorporated*¹³, more than a mere element of public interest is required:

“There is always a public interest in seeing that statutory obligations of a statutory body are fulfilled and that the personal rights of any party affected by the performance of that statutory obligation are observed. By the very nature of what is a decision to which the Act applies, every review application will involve an element of public interest. It is apparent from the observations made in the judgements in the Court of Appeal to which I have referred relating to section 49 of the Act there will usually be some broader public interest involved in the particular application to justify a special costs order than the usual public interest which must be present in every application from the mere fact that the Act applies to the decision under review.”¹⁴

- [19] It has been said that s 49(2)(b) seems to be directed to proceedings in which it is the public interest, rather than any private right of an applicant, that is sought to be vindicated by the application.¹⁵ Historical examples of proceedings of that kind include those concerning the environmental impacts of a development¹⁶ or ventilating issues relating to Aboriginal rights and claims to tribal relics.¹⁷ There may also be a significant public interest in proceedings that, although concerned with a private right, raise matters of general importance or with significant public ramifications.¹⁸ A

¹² [2025] QSC 57 at [10]-[11].

¹³ [2000] QSC 392.

¹⁴ *Ibid* at [30].

¹⁵ *Australian Society for Kangaroos Inc v Chief Executive of the Department Environment and Heritage Protection* [2015] QSC 67 at [144].

¹⁶ *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493.

¹⁷ *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27.

¹⁸ *Sica v Crime and Corruption Commission* [2025] QSC 118 at [43].

proceeding concerning a prisoner's right to seek judicial review of decisions made by the Department of Corrective Services is one example.¹⁹

- [20] While Ms Dunstan's material did not explicitly engage with s 49(2)(b), it raises matters that could arguably be said to affect the public interest. Ms Dunstan submits that she is a recognised victim of domestic violence and that her application was brought to challenge a statutory decision which breached her privacy and endangered her and her children's safety. It has been said that this proceeding might have ramifications for other persons in that position. In oral submissions at the substantive hearing Ms Dunstan summarised her rationale for bringing the review application:²⁰

“ ... the fundamental point of the initial review is to have a finding that [the Registrar] made an error of law and judgment to issue a document, and that declaration will hopefully serve as a deterrent for them to continue to make this mistake not just with me and my children, but with any other person they hold confidential information to.

And I would ask that the court consider a mandate, should they continue to make these errors, that a tort will be an automated relief available to the victims, in addition to fines, or potentially sanctions or imprisonment, whatever the court deems just or appropriate, to ensure the first respondents understand the seriousness of their privacy breaches and, in my children's case, the very fatal risk that they have placed them in, and continue to do so.”

- [21] Ms Dunstan's affidavit also exhibits correspondence from the Attorney-General of Queensland dated 21 July 2026 which, from review of its contents, is evidently a response to a letter sent by Ms Dunstan on 26 May 2026. That correspondence notes that Ms Dunstan has requested a review of procedures relating to decisions of the kind impugned in the review application and has suggested amendments to the enactment under which the Registrar's decision was made. It also acknowledges concerns expressed by Ms Dunstan that the current enactment does not adequately protect victims of domestic violence.
- [22] It may of course be accepted that there is an element of public interest in a review application of the kind brought by Ms Dunstan. But that public interest does not extend further than the general public interest of seeing that the Registrar's statutory obligations are fulfilled. That is no different from most other applications for judicial review, which by their nature scrutinise governmental action and seek to ensure the proper administration of the laws of the State.²¹
- [23] Further, the review application was principally directed to vindicating Ms Dunstan's private rights. It was not what is commonly referred to as “public interest litigation”;²² nor was it presented as a test case or one which sought a ruling on an administrative matter not previously judicially considered.²³ That a successful application might

¹⁹ *Meizer v Chief Executive, Department of Corrective Services* [2005] QSC 351.

²⁰ See Reasons at [21].

²¹ *Loneragan v Stilgoe (No 2)* [2020] QSC 146 at [12].

²² *Ibid* at [13].

²³ *Australian Society for Kangaroos Inc v Chief Executive of the Department Environment and Heritage Protection* [2015] QSC 67 at [146]; cf. *Meizer v Chief Executive, Department of Corrective Services* [2005] QSC 351 at [14].

deter future errors of that kind does not, without more, alter that characterisation. To the extent Ms Dunstan contends that the enactment itself requires further amendment, that is a matter beyond the function of this Court.

- [24] In considering the factors under s 49(2) one must also recall the circumstances in which the matter transpired. Ms Dunstan's review application was summarily dismissed because it was made out of time and because there were other avenues for relief available to her which she had not pursued. In those circumstances, and having regard to the matters set out above, I am not satisfied that any special costs order should be made. Costs should follow the event.
- [25] Accordingly, the order will be that the applicant pay the first respondent's costs of the proceeding to be assessed on the standard basis if not agreed.