

SUPREME COURT OF SOUTH AUSTRALIA

(Court of Appeal: Civil)

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JAMIL v SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & ANOR (No 3)

[2026] SASCA 93

Decision of the Honourable Acting Chief Justice Livesey

6 August 2026

APPEAL AND NEW TRIAL - PROCEDURE - SOUTH AUSTRALIA - SECURITY FOR COSTS

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - COSTS - APPEALS AS TO COSTS

On 31 July 2026, the Court ruled on an application for security for costs. The applicant was ordered to pay the costs of the Medical Board of Australia, but he was given a short time in which to put a submission against costs, if he wished, pursuant to the liberty to apply granted to the parties.

The applicant has now put a written submission arguing against costs.

Held, declining to vacate or vary the order for costs:

1. The orders requiring security are not to be regarded as provisional or subject to the outcome of the application for leave to appeal. The fact of an appeal does not usually provide any proper basis to refrain from making an order as to costs.
2. The impecuniosity of an unsuccessful party does not, of itself, justify depriving a successful party of an order for costs.
3. The applicant's concern that an order for costs made in these appeal proceedings should not now be capable of taxation and enforcement is explicitly addressed by r 194.4(8) of the *Uniform Civil Rules 2020* (SA).

On Appeal from SUPREME COURT OF SOUTH AUSTRALIA (THE HONOURABLE JUSTICE
BAMPTON) CIV-26-006993

Applicant: SHAMYAL HAROON JAMIL

First Respondent: SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL - **Solicitor:**
CROWN SOLICITOR (SA)

Second Respondent: MEDICAL BOARD OF AUSTRALIA **Counsel:** MS H LUU - **Solicitor:**
MINTERELLISON

Hearing Date/s: 04/08/2026

File No/s: CIV-26-007122

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4. Given the issues at stake, and the way in which they were litigated, it is appropriate that the applicant be ordered to pay the Board's costs of the hearing and determination of the application for security for costs on a standard costs basis.

Uniform Civil Rules 2020 (SA) r 194.4(8), referred to.

ADC v Prince Alfred College Inc (No 2) (2016) 139 SASR 396; *Amaca Pty Ltd v Werfel (No 2)* [2021] SASCFC 26; *Doerr v Gardiner (No 2)* [2024] QCA 21; *Ewins v BHP Billiton Limited & Wallaby Grip Limited (No 2)* [2005] SASC 164; *Happy Haven OSHC Pty Ltd v Education and Early Childhood Services Registration and Standards Board of South Australia* [2026] SASCA 58; *Jamil v South Australian Civil and Administrative Tribunal & Anor (No 2)* [2026] SASCA 88; *Latoudis v Casey* (1990) 170 CLR 534; *Northern Territory v Sangare* (2019) 265 CLR 164; *Oshlack v Richmond River Council* (1998) 193 CLR 72; *Queensland v Stradford* (2025) 99 ALJR 396; *Willey v Synan* (1935) 54 CLR 175, considered.

**JAMIL v SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL & ANOR (No 3)
[2026] SASCA 93**

Court of Appeal – Civil – Application

LIVESEY ACJ:

Introduction

1 On 31 July 2026, I heard and decided an application for security for costs.¹ I then ordered that the applicant pay the costs of the Medical Board of Australia (the **Board**), but I gave the applicant a short time in which to put a submission against costs, if he wished, pursuant to the liberty to apply which I granted to the parties.

2 The applicant has now put a written submission arguing against costs. The applicant submits that my costs order should be vacated or varied. I did not call on the Board to respond.

3 For the following reasons I decline to vacate or vary the order for costs which has been made.

The application for security for costs

4 The Board sought security for the costs of an appeal which has been listed for hearing in December 2026 in an amount exceeding \$30,000. For the purposes of this ruling, it is not necessary to traverse the arguments for and against making an order for security. Ultimately, I decided that this was a proper case in which to order security for costs. However, I was not prepared to order security in the amount that the Board sought, and I was prepared to grant the applicant some weeks in which to raise security.

5 In so doing, I gave the applicant the benefit of providing security in a lesser amount over a greater time than might ordinarily be allowed.

The applicant's contentions on costs

6 In submissions filed on Tuesday, 4 August 2026 the applicant contended that the proposed alternative costs order which should be made is one of the following:

1. The costs of the security application be reserved; alternatively
2. The costs of the security application be costs in the appeal; alternatively
3. That there be no order as to the costs of the security application; and
4. In any event, any order that the applicant pay the costs of the security application not be taxed or enforceable until the final determination of these

¹ *Jamil v South Australian Civil and Administrative Tribunal & Anor (No 2)* [2026] SASCA 88.

proceedings, including the determination of the applicant's application for permission to appeal from the orders made on 31 July 2026.

7 The last-mentioned proposed order referred to the application made by the applicant for leave to appeal against my decision ordering security for costs, also filed on Tuesday. The applicant asks that costs not be taxed or enforced until after his application for leave to appeal and the final determination of the appeal listed in December 2026.

8 At the same time, the applicant filed an application seeking an extension of time in which to comply with the order I made. The applicant has applied for an extension of time in which to provide security until the determination of the application for leave to appeal or, alternatively, that the operation of the stay be suspended until that determination is made.

9 The application also sought an order that the hearing of the application for leave to appeal the order regarding security for costs be expedited and, if practicable, listed for hearing before 28 August 2026, when security must be provided.

10 These applications, together with the application for leave to appeal, have been referred to another judge of the Court of Appeal who will determine what course the Court will take.

The five matters raised by the applicant on costs

11 In substance, the applicant has raised five matters which, it is contended, justify the alternative proposed costs orders that he seeks. The fact that an order has been made will not prejudice the position of the applicant. I will address these matters as if they were the arguments that the applicant might have made in opposition to the making of any costs order before it was made.

12 The first matter raised by the applicant was that the order for security is the subject of a pending challenge. That is, the applicant has filed a notice of appeal and an application seeking leave to appeal against the order for security. The applicant contended that if leave to appeal is granted and the appeal succeeds, he will have been ordered to provide security under an order which must be "unwound". As the "event" for which costs were ordered is under challenge, "the orthodox and just course is to reserve the costs, or to make them costs in the appeal, so that they abide the outcome".² The applicant contended that this course occasioned no prejudice to the Board.

13 I reject this contention. Ordinarily, the orders of the Court operate and must be complied with unless and until they are set aside.³ The orders requiring security

² Written submissions of the applicant dated 4 August 2026, [3].

³ *Queensland v Stradford* (2025) 99 ALJR 396, [3], [107] (Gageler CJ, Gleeson, Jagot and Beech-Jones JJ), [168]-[183], [324] (Gordon J, with whom Steward J agreed), [227]-[230], [319] (Edelman J), albeit in the context of an order made by a federal court.

are not to be regarded as provisional or subject to the outcome of the application for leave to appeal. The fact of an appeal, like a foreshadowed appeal at the conclusion to an argument and decision by the Court, does not usually provide any proper basis to refrain from making an order as to costs.

14 The applicant's second and third contentions were that the Board did not obtain all of the relief it sought, and that his opposition was reasonable and genuine. In my view, these are at the core of the applicant's present submission.

15 It may be accepted that, from time to time, the failure by a party to obtain all that it seeks, especially where a party obtains only partial or mixed success, may warrant a departure from the principle that costs should ordinarily follow the event. That can be seen most clearly in cases where it is possible to view the event as involving a number of different issues on which there has been only mixed success.⁴ However, in this case, the principal object of the battle was always over whether any order for security should be made. Whether orally or in writing, the question of the quantum of that security was a peripheral issue, touched on only very briefly. In addition, whilst it may be open to describe the applicant's opposition as reasonable and genuine, it was certainly resolute and determined. At no stage was any concession contemplated. Given the issues at stake, and the way in which they were litigated, it is appropriate that the applicant be ordered to pay the Board's costs on a standard costs basis.

16 The fourth matter relied on by the applicant was that he should be viewed, in substance, as standing in the position of a defendant⁵ and, on the unchallenged evidence, he is without significant income or assets. The applicant contended that a "presently payable costs order" serves no compensatory purpose and its immediate operation would only add to his burden which gives rise to a real prospect of stultification.

17 There are four points to be made in rejection of this submission. The first is that even if one has regard to the substance rather than the form of these appeal proceedings, the applicant was never compelled by the Board to commence the originating application for judicial review, nor the proceeding in the Court of Appeal. He chose to appeal and chose to resist the security application. The Board was responding to litigation the applicant instituted after his rights of appeal were exhausted.

18 Secondly, the question of stultification was explicitly taken into consideration when determining whether to order security. Thirdly, because an applicant has limited financial means that does not, without more, provide any reason to depart from the ordinary rule that costs follow the event. The impecuniosity of an unsuccessful party does not, of itself, justify depriving a

⁴ Cf *ADC v Prince Alfred College Inc (No 2)* (2016) 139 SASR 396 (Kourakis CJ, Gray and Peek JJ); *Amaca Pty Ltd v Werfel (No 2)* [2021] SASCF 26, [61]-[62] (Kourakis CJ, Nicholson and Livesey JJ); *Doerr v Gardiner (No 2)* [2024] QCA 21, (Morrison JA and Livesey AJA).

⁵ *Willey v Synan* (1935) 54 CLR 175.

successful party of an order for costs.⁶ Fourthly, the applicant's concern that an order for costs made in these appeal proceedings should not now be capable of taxation and enforcement is explicitly addressed by the *Uniform Civil Rules 2020* (SA).⁷

19 Finally, the applicant contended that reserving costs to the appeal preserves the position of every party without any associated risk of “inconsistent outcomes and further interlocutory expense”.⁸ I do not accept that submission.

20 The exercise of the discretion to make an order for costs is broad and unfettered. It must be exercised in a broad, pragmatic way without undue delay or expense.⁹ Whilst there may be cases where it might be appropriate to defer the determination of the costs of an application for security pending the outcome of the appeal, I am not satisfied that this is an appropriate case in which to proceed in that way. The matter was argued as a discrete application where, quite apart from the merits, a number of discrete considerations needed to be taken into account and balanced.

Conclusion

21 It is appropriate that the applicant pay the Board's costs of the hearing and determination of the application for security for costs of the applicant's appeal.

22 The application to vacate or vary the costs order I made late last week should be refused.

⁶ *Northern Territory v Sangare* (2019) 265 CLR 164, [2]-[3] (Kiefel CJ, Bell, Gageler, Keane and Nettle JJ); *Oshlack v Richmond River Council* (1998) 193 CLR 72, [92] (McHugh J).

⁷ Under the *Uniform Civil Rules 2020* (SA), r 194.4(8), subject to an order of the Court to the contrary, any costs “ordered or to be paid under these Rules are not to be taxed and do not become payable until the final determination of a proceeding, including final costs orders being made”.

⁸ Written submissions of the applicant dated 4 August 2026, [7].

⁹ *Happy Haven OSHC Pty Ltd v Education and Early Childhood Services Registration and Standards Board of South Australia* [2026] SASCA 58, [74] (Livesey P, with whom S Doyle and Bleby JJA agreed); *Ewins v BHP Billiton Limited & Wallaby Grip Limited (No 2)* [2005] SASC 164, [29] (Doyle CJ); *Latoudis v Casey* (1990) 170 CLR 534, 541-542 (Mason CJ).