

SUPREME COURT OF QUEENSLAND

CITATION: *D'Arcy v Queensland Building and Construction Commission*
[2026] QCA 200

PARTIES: **MICHELE D'ARCY**
(applicant)
v
QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION
(respondent)

FILE NO/S: Appeal No 1015 of 2026
QCATA No 20 of 2023

DIVISION: Court of Appeal

PROCEEDING: Application for Leave *Queensland Civil and Administrative Tribunal Act*

ORIGINATING COURT: Queensland Civil and Administrative Appeals Tribunal at
Brisbane – [2026] QCATA 6 (Judicial Member Rinaudo)

DELIVERED ON: 13 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 16 July 2026

JUDGES: Mullins P, Doyle JA, Freeburn J

ORDER: **The application is dismissed with costs.**

CATCHWORDS: ADMINISTRATIVE LAW – STATUTORY APPEALS FROM ADMINISTRATIVE AUTHORITIES TO COURTS – where the applicant engaged a builder to renovate the bathroom and kitchen of her tenth floor apartment – where the respondent issued the applicant a notice of cover for the work under the Home Warranty Insurance Scheme – where the builder subsequently refused to complete the work – where the applicant made a claim for assistance with the reasonable costs of completing the work under the Home Warranty Insurance Scheme – where the respondent refused the applicant's claim on the bases that the work was 'on or for' a 'multiple dwelling' that was 'more than 3 storeys' and because assistance for such work was excluded from the Home Warranty Insurance Scheme by section 26(a) of the *Queensland Building and Construction Commission Regulation 2018* (Qld) – where the applicant sought an external review of the respondent's decision – where the Queensland Civil and Administrative Tribunal and subsequently the Queensland Civil and Administrative Appeal Tribunal found that the respondent's decision was the correct and preferable decision – where the applicant may only appeal the decision of the Appeal Tribunal

on a ‘question of law’ and only with leave of the Court of Appeal pursuant to section 150(3) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) – whether, having regard to the principles guiding the exercise of discretion to grant leave, the applicant should be granted leave to appeal

Queensland Building and Construction Commission Act 1991 (Qld), s 67WB

Queensland Building and Construction Commission Regulation 2018 (Qld), s 26(a)

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 150

Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (2009) 239 CLR 27; [2009] HCA 41, applied

Allen v Queensland Building and Construction Commission (2024) 18 QR 79; [\[2024\] QCA 24](#), applied

Pivovarova v Michelsen (2019) 2 QR 508; [\[2019\] QCA 256](#), cited

Queensland Building & Construction Commission v Meredith [\[2014\] QCA 62](#), cited

Terera v Clifford [\[2017\] QCA 181](#), cited

COUNSEL: C C Wilson for the applicant
T C Schmitt for the respondent

SOLICITORS: Lovels for the applicant
Queensland Building and Construction Commission for the respondent

- [1] **MULLINS P:** I agree with Freeburn J.
- [2] **DOYLE JA:** I agree with the reasons of Freeburn J and with the order proposed by his Honour.
- [3] **FREEBURN J:** The applicant, Ms D’Arcy, is the owner of and lives in an apartment on the tenth floor of a high-rise residential apartment building in Surfers Paradise.
- [4] In October 2021, Ms D’Arcy engaged a licensed builder to renovate the bathroom and the kitchen in her apartment. The builder collected from Ms D’Arcy and paid the respondent (**QBCC**) the insurance premium for cover (or ‘assistance’) under the Home Warranty Scheme administered by the QBCC under Part 5 of the *Queensland Building and Construction Commission Act 1991* (**QBCC Act**) for the work and the QBCC issued Ms D’Arcy a notice of cover for the work under the Scheme.
- [5] The builder started but refused to complete the work after falling into dispute with Ms D’Arcy.
- [6] In response Ms D’Arcy made a claim under the Home Warranty Scheme for assistance with the reasonable cost of completing the work. The QBCC decided to refuse Ms D’Arcy’s claim. The reasons given by the QBCC for declining assistance were that:
 - (a) the work was ‘on or for’ a ‘multiple dwelling’ that was ‘more than 3 storeys’; and

- (b) assistance for such work was excluded from the Scheme by section 26(a) of the *Queensland Building and Construction Commission Regulation 2018 (QBCC Regulations)*.

[7] On an application to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the QBCC's decision, QCAT found that the QBCC's decision disallowing Ms D'Arcy's claim was the correct and preferable decision. The QCAT Appeal Tribunal confirmed the decision at first instance.¹

Leave to Appeal

[8] Under section 150(3) of the *Queensland Civil and Administrative Tribunal Act 2009*, Ms D'Arcy may only appeal from the decision of the QCAT Appeal Tribunal on a question of law *and* if she has obtained this Court's leave to appeal.² The general discretion to grant leave is to be exercised in accordance with orthodox principles, namely where it is shown that it ought to be granted as it "*is necessary to correct a substantial injustice*" and "*there is a reasonable argument that there is an error [of law] to be corrected*".³ There must be reasonable prospects of success to warrant a grant of leave. Therefore, in deciding whether to grant leave to appeal, the court usually makes some preliminary assessment of the prospects of the proposed appeal.⁴

[9] In *Queensland Building & Construction Commission v Meredith* this Court said:

"Section 150(3) of the QCAT Act permits an appeal to this Court against a final decision of the Appeal Tribunal only on a question of law and only if the party who wishes to appeal has obtained leave to appeal from this Court. The very structure of this provision forcefully implies, first, that leave to appeal may be given only with respect to a question or questions of law and, secondly, that in considering the exercise of the discretion to grant leave to appeal, this Court will have high regard for the prospects of success that the applicant for leave has of demonstrating error on the part of the Appeal Tribunal with respect to the question or questions of law concerned. **There must be reasonable prospects of success to warrant a grant of leave.**"⁵
[emphasis added]

[10] More recently in *Allen v Queensland Building and Construction Commission*⁶ this Court summarised the principles guiding the discretion:

- (a) Leave to appeal may only be granted if the proposed appeal is only on a question of law in the sense discussed in *Pivovarova*.⁷

¹ The statement of facts in paragraphs [1] to [5] is largely a paraphrased version of the applicant's outline of submissions at [1] to [7]. Those facts were not in dispute.

² See *Allen v Queensland Building and Construction Commission* (2024) 18 QR 79; [2024] QCA 24 at [21].

³ *Pivovarova v Michelsen* (2019) 2 QR 508; [2019] QCA 256 at [38] citing *Rintoul v State of Queensland* [2018] QCA 20 at [10]. See also *Allen* (supra) at [18] where the Court of Appeal refused an invitation to depart from *Pivovarova*.

⁴ *Rintoul* (supra) at [10]; *Terera v Clifford* [2017] QCA 181 at [10].

⁵ [2014] QCA 62 at [23].

⁶ (2024) 18 QR 79; [2024] QCA 24.

⁷ This is a reference to an appeal only on a question of law: *Pivovarova* (supra) at [2]-[10], [14] and [37].

- (b) The discretion is otherwise unfettered, and exercisable according to the nature of the case, but leave to appeal will not be granted lightly, given that the applicants have already had the benefit of two hearings in QCAT.
 - (c) It will usually be necessary – but not sufficient – that the Court be persuaded that there is a reasonable argument that there is an error of law to be corrected, which, if corrected, would justify the applicant’s claim for relief.
 - (d) Tests which provide useful guidance as to the nature of the additional consideration over and above the existence of a reasonable argument that there is such an error of law to be corrected include –
 - (i) that leave is necessary to correct a substantial injustice; and
 - (ii) that the proposed appeal raises a question of law of general or public importance.⁸
- [11] If granted leave to appeal, Ms D’Arcy would raise two grounds of appeal: an issue of statutory interpretation (Ground 1) and the alleged invalidity of section 26(a) of the QBCC Regulations (Ground 2). Both issues are questions of law. However, for the reasons explained below, neither ground has any prospect of success.
- [12] That being the case, it is unnecessary to consider the additional consideration over and above the existence of a reasonable argument, namely whether leave is necessary to correct a substantial injustice or whether the proposed appeal raises a question of law of general or public importance.

Ground 1: The Issue of Statutory Interpretation

- [13] Section 67WB of the QBCC Act provides:

“67WB Work not covered under the statutory insurance scheme

- (1) The following work is not eligible for assistance from the statutory insurance scheme—

[...]

- (f) other work prescribed by regulation.”

- [14] In accordance with s 67WB of the Act, the QBCC Regulations prescribe that certain work is ineligible for assistance. Section 26(a) of the QBCC Regulations provides as follows:

**“26 Work not covered under the statutory insurance scheme—
Act, s 67WB**

For section 67WB(1)(f) of the Act, the following work is prescribed—

- (a) work on or for a duplex or multiple dwelling if the duplex or multiple dwelling is more than 3 storeys;

Examples for paragraph (a)—

⁸ (2024) 18 QR 79 at [23].

- work for tiling the kitchen in a single residential unit in a 4-storey duplex
- work for renovating the bathroom of a single residential unit in a 10-storey multiple dwelling”.

- [15] At first instance, the Member of QCAT entertained a doubt that the expression “*on or for*” included work “*in*” the building.⁹ However, the Tribunal decided that the example in section 26(a) was a ‘roadblock’ to interpreting section 26(a) so as to include work within the building of more than three storeys. The Tribunal’s view was that the example¹⁰ was very clear and expresses a legislative intent as to what cannot be included in the Scheme. For that reason, the Member decided that the exclusion did apply because, on its proper interpretation, by reference to the example, section 26 excludes defective and incomplete building work on a multiple building of more than three storeys. The QCAT Appeal Tribunal confirmed the decision at first instance.¹¹
- [16] The crucial words in section 26(a) are “*work on or for a... multiple dwelling if the... multiple dwelling is more than 3 storeys*”.
- [17] The expression “*multiple dwelling*” is defined as “*a building comprising 2 or more separate residential units, other than a duplex*”.¹² It is common ground that Ms D’Arcy’s apartment is in a ‘multiple dwelling’ and that it is more than three storeys. Thus, the work on Ms D’Arcy’s apartment is excluded from the statutory scheme if it qualifies as “*work on or for a... multiple dwelling*”.
- [18] Counsel for Ms D’Arcy submits that, on its proper interpretation, the words “*work on or for a... multiple dwelling*” in section 26(a) do not include work that is on or for *part* of a ‘multiple dwelling’. Further, the concept of a part of a ‘multiple dwelling’ includes a ‘residential unit’. Therefore, counsel submits, the exclusion from the Scheme effected by section 26(a) does not apply to Ms D’Arcy’s application for assistance under the Scheme.
- [19] That submission distinguishes between, on the one hand, work on the multiple dwelling itself, such as the exterior walls, and, on the other hand, work on a part of the multiple dwelling, such as work within a residential unit that comprises part of the overall multiple dwelling.
- [20] In my view that submission must be rejected. *First*, the task of statutory interpretation begins with a consideration of the text itself.¹³ The language employed in the text is that “*work on or for a... multiple dwelling*” is excluded. That language unambiguously encompasses work done on a residential unit within the building.¹⁴ The text of the legislation does not distinguish between work done on the structure of the building and work done within the building, nor do they distinguish between work done on what might be described as body corporate or common property and work for individual residences within the building. The submission on behalf of

⁹ *D’Arcy v Queensland Building and Construction Commission* [2022] QCAT 435 at [41].

¹⁰ Presumably this is a reference to the second of the examples – the example for multiple dwellings.

¹¹ *D’Arcy v Queensland Building and Construction Commission* [2026] QCATA 6.

¹² This is the dictionary definition in Schedule 8 of the QBCC Regulations.

¹³ *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27; [2009] HCA 41 at [47].

¹⁴ In this respect, I accept the QBCC’s submissions at [14].

Ms D’Arcy — that ‘on or for’ is confined to work on the exterior surface or common property of the building — imports a restriction that is not part of the text.¹⁵

- [21] *Second*, as explained, the context is that the expression “*multiple dwelling*” is defined as “*a building comprising 2 or more separate residential units, other than a duplex*”. As counsel for the QBCC explained, the word ‘*comprising*’ bears its ordinary meaning and denotes that the defined entity consists of or is composed of its enumerated elements, that is, multiple separate residential units. If the multiple dwelling *consists* of its residential units, then work done on one of those units is work done on a constituent element of the multiple dwelling itself — and thus work done ‘on or for’ the multiple dwelling.¹⁶
- [22] *Third*, whilst it can be accepted that there may be some awkwardness in the use of the prepositions in the phrase “*work on or for a... multiple dwelling*”, the QBCC Regulations elsewhere utilises the concept of work being carried out *for* the residential units in a multiple dwelling.¹⁷ In that way section 26(a) is consistent with section 34 of the same Regulations.
- [23] *Fourth*, the examples given in section 26(a) (quoted above) are consistent with the idea that work within a residential unit in a multiple dwelling is “*work on or for a...multiple dwelling*”. Counsel for Ms D’Arcy submitted that the examples and the substantive provision of section 26(a) are inconsistent. There is, in my view, no inconsistency. The examples explain the operation of section 26(a) by explicitly stating that the exclusion in section 26(a) applies to work within a residential unit in a multiple dwelling greater than three storeys.
- [24] *Fifth*, the consumer protection purpose of the Home Warranty Scheme does not override the factors set out above, especially the plain words of the text. And, as counsel for the QBCC points out, the three storey threshold is used in the Act and Regulations¹⁸ as the dividing line between work that is within and outside the Home Warranty Scheme.¹⁹
- [25] For those reasons, the QCAT decision at first instance and in the Appeal Tribunal were correct that the exclusion in section 26(a) does apply because, on its proper interpretation, section 26 excludes building work on a multiple dwelling of more than three storeys.

Ground 2: Invalidity of Section 26(a)

- [26] Counsel for Ms D’Arcy raised a further ground. His argument was that section 26(a) of the QBCC Regulations is invalid as subordinate legislation because it is repugnant to the Act or is not reasonably proportionate to the enabling purpose.
- [27] In *Plaintiff M47/2012 v Director-General of Security* French CJ explained:

“Regulations made under s 504 must be ‘*not inconsistent with*’ the *Migration Act*. Even without that expressed constraint delegated legislation cannot be repugnant to the Act which confers the power to

¹⁵ QBCC’s submissions at [17].

¹⁶ QBCC’s submissions at [16].

¹⁷ See section 34 of the QBCC Regulations.

¹⁸ See section 67WE(1)(c) of the QBCC Act, and sections 26(b)-(c) of the QBCC Regulations.

¹⁹ QBCC’s submissions at [24]-[27].

make it. Repugnancy or inconsistency may be manifested in various ways. An important consideration in judging inconsistency for present purposes is ‘*the degree to which the legislature has disclosed an intention of dealing with the subject with which the statute is concerned*’. A grant of power to make regulations in terms conferred by s 504 does not authorise regulations which will ‘*extend the scope or general operation of the enactment but [are] strictly ancillary*’. In considering whether there has been a valid exercise of the regulation-making power ‘*[t]he true nature and purpose of the power must be determined*’.”²⁰

[28] Section 26(a) is consistent with the QBCC Act. Section 67WB(1) expressly lists the building work that is *not* eligible for assistance from the Scheme. That list includes building work on backpackers’ accommodation, boarding houses, caravan parks, guest houses, holiday accommodation, hostels, hotels, lodging houses, motels, correctional centres, hospitals, nursing homes, orphanages, children’s homes, retirement villages, educational institution, group accommodation for persons with a physical or mental disability and commercial or industrial premises. The last of the types of building work in the list is “*other (building) work prescribed by regulation*”. And so, section 67WB(1)(f) expressly authorises regulations that exclude other types of building work from the Scheme.

[29] Nor can it be said that the regulation excluding buildings over three storeys is to be so lacking in reasonable proportionality as not to be a real exercise of the power.²¹ As counsel for the QBCC submitted:

“A regulation that draws a boundary on coverage within the scope of the enabling power is not *ultra vires* merely because the boundary might have been drawn differently. The three-storey threshold reflects a policy choice committed to by Parliament. It is not for the courts to substitute a different policy choice.”

[30] For those reasons, section 26(a) of the QBCC Regulations is not invalid. The second proposed ground of appeal has no prospect of success.

[31] Thus, the application for leave to appeal should be dismissed, with costs.

²⁰ (2012) 251 CLR 1; [2012] HCA 46 at [54] (footnotes deleted).

²¹ See *South Australia v Tanner* (1989) 166 CLR 161 at 168, a case relied on by counsel for the QBCC.