

**COURT OF APPEAL**

**FRASER JA  
MORRISON JA  
PHILIPPIDES JA**

**Appeal No 706 of 2018  
QCAT No 44 of 2015**

**THE MEDICAL BOARD OF AUSTRALIA**

**Appellant**

**v**

**XY**

**Respondent**

**BRISBANE**

**THURSDAY, 24 MAY 2018**

**JUDGMENT**

**FRASER JA:** This is an appeal by the Medical Board of Australia from a decision made in the Queensland Civil and Administrative Tribunal (QCAT) under which a variety of orders were made, including an order prohibiting the respondent from applying for registration for a period of one week from the date of the orders. The parties agree in their submissions that there was an error of law made in the tribunal in relation to that decision. The parties also agree upon the orders that ought to be made setting aside that aspect of the decision, and instead making an order for cancellation of the respondent's registration.

A preliminary question agitated at the commencement of the hearing of the appeal was whether or not the court ought to embark upon a consideration of the precise reasons for the order. The Medical Board submits that the Court ought to do so essentially for the reason that

it is a matter of considerable importance, including national importance in relation to subsequent proceedings. The respondent submits that there is no necessity for the Court to do so except perhaps in relation to costs. The Court is of the view that, there being no current dispute between the parties, it is not appropriate to embark upon the consideration urged by the appellant. Accordingly, the Court will make the orders sought by the appellant.

By consent, the Court orders that order 3 of the decision of QCAT be set aside and that, in lieu thereof, there be an order for cancellation of the respondent's registration.

The appellant asks for costs of the appeal, for the reason that costs ought to follow the event and there is no applicable exception to that general approach here, particularly given that the appellant did not contribute to the result which has been corrected by the orders just made. The respondent argues against such an order, essentially upon the basis that it made reasonable submissions on the difficult question of law. It also makes the point that, initially, the respondent and the appellant had made a joint submission as to penalty, which included the order which has now been made by the court by way of correction. It was QCAT itself which raised the question of law and sought submissions from both parties on the point. At the same time, the respondent applies for an appeal costs fund certificate by way of the indemnity, to the extent allowed under that Act, against any liability it would have under a costs order made in favour of the appellant if such an order is made.

In my view, the circumstances upon which the respondent relies are an insufficient basis for depriving the appellant of its costs. The respondent ultimately did advocate for the particular result which was reflected in the orders made in the tribunal but which the respondent has now agreed ought to be set aside.

I would order that the respondent pay the appellant's costs of the appeal. In relation to the appeal costs fund certificate, this is a case in which an appeal has succeeded upon a question of law, so the power of the Court to order the grant of such a certificate is enlivened. The circumstances upon which the respondent relied in support of its costs argument do seem to

me to make this an appropriate case for the exercise of a discretion to grant the certificate.  
I would order that a certificate be granted under the *Appeal Costs Fund Act*.

**MORRISON JA:** I agree.

**PHILPIDES JA:** I also agree.

**FRASER JA:** Those are the orders of the court.