

CITATION: *Reynolds v Northern Territory of Australia (No. 2)* [2026] NTSC 76

PARTIES: REYNOLDS, Carolyn Jane

v

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory jurisdiction

FILE NO: 2026-00378-SC

DELIVERED: 15 September 2026

HEARING DATE: On the papers

JUDGMENT OF: Smyth A/AsJ

CATCHWORDS:

COSTS – Entitlement to costs – Costs ordinarily to follow the event – Absence of special circumstances to warrant departure from ordinary rule – Insufficient reasons for punitive costs to be ordered – Costs ought not be reserved on the basis that an appeal may be lodged – Lump sum costs awarded – Costs certified fit for counsel

Supreme Court Rules 1987 (NT), rr 22.01, 63.03, 63.07(c), 63.72(9)(a)

Reynolds v Northern Territory of Australia [2026] NTSC 65; *Northern Territory v Sangare* (2019) 265 CLR 164; *Messenger v Commonwealth of Australia (No 2)* [2023] FCA 20; *Beach Petroleum NL v Johnson (No 2)* (1995) 57 FCR 119; *Seven Network Ltd v News Ltd* [2007] FCA 2059; *Australasian Performing Rights Association Ltd v Marlin* [1999] FCA 1006; *ChongHerr Investments Ltd v Titan Sandstone Pty Ltd* [2007] QCA 278; *Phillips & Ors v Chief Health Officer & Anor* (2022) 44 NTLR 12; *Houston*

v State of New South Wales [2020] FCA 502; *Lewis v De Silva & Anor (No 2)* [2024] NTSC 15; *Yarabala Pty Ltd & Anor v Sweetpea Petroleum Pty Ltd* [2024] NTSC 5; *Harrison v Schipp* (2002) 54 NSWLR 738, referred to

G E Dal Pont, *Law of Costs* (LexisNexis, 5th Ed, 2021) 538-547

REPRESENTATION:

Counsel:

Plaintiff:	Self-Represented
Defendant:	L Spargo-Peattie

Solicitors:

Defendant:	Solicitor for the Northern Territory
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Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Reynolds v Northern Territory of Australia (No. 2) [2026] NTSC 76
No. 2026-00378-SC

BETWEEN:

CAROLYN JANE REYNOLDS
Plaintiff

AND:

**NORTHERN TERRITORY OF
AUSTRALIA**
Defendant

CORAM: SMYTH A/AsJ

REASONS FOR DECISION

(Delivered 15 September 2026)

- [1] On 17 August 2026, summary judgment was entered in favour of the Defendant pursuant to r 22.01 of the *Supreme Court Rules 1987* (NT) ('the Rules').¹ The proceeding was dismissed in its entirety. Following delivery of judgment, I directed the parties to file and serve written submissions in relation to costs.
- [2] The Defendant seeks its costs of and incidental to the proceeding. Its primary position is that those costs should be awarded by way of a lump sum order pursuant to r 63.07(c) of the Rules. Alternatively, it seeks an order that its costs be paid on the standard basis, as agreed or taxed. The

¹ *Reynolds v Northern Territory of Australia* [2026] NTSC 65.

Defendant relies upon the affidavit of Charlotte Sophie Guthridge affirmed 31 August 2026.

- [3] The Plaintiff opposes any order that she pay the Defendant's costs. Alternatively, she seeks that the question of costs be reserved pending an intended appeal. Whilst this application was reserved, to be determined on the papers, the Plaintiff filed a Notice of Appeal on 11 September 2026 in respect to the substantive proceeding.

The Defendant's submissions

- [4] The Defendant submits that it was wholly successful in the proceeding and that the ordinary rule, namely that costs follow the event, should apply. It submits that none of the matters raised by the Plaintiff justify any departure from that principle. The Defendant further submits that the proceeding cannot properly be characterised as public interest litigation. Rather, the relief sought was directed to the vindication of proprietary interests said to be held by the Plaintiff in relation to Lake Bennett and claims for restitution or compensation said to arise from those alleged interests.
- [5] The Defendant's primary position is that a lump sum costs order should be made. It contends that a gross sum award would avoid the cost, inconvenience and delay associated with taxation. It also submits that the Court is sufficiently familiar with the proceeding to assess the costs reasonably incurred and that taxation may itself generate disproportionate expense. In support of that position, Ms Guthridge's affidavit estimates that

the defendant has incurred legal costs totalling approximately \$14,700, comprising solicitor and counsel costs associated with the summary judgment application and hearing.

The Plaintiff's submissions

- [6] The Plaintiff submits that the Court should depart from the ordinary rule and make no order as to costs. She emphasises that she appeared as a self-represented litigant, that the proceeding raised unusual and technically difficult issues concerning water rights, private property rights and statutory interpretation, and that she complied with the Court's procedural directions throughout the proceeding. The Plaintiff also places considerable reliance upon the exclusion of her affidavit dated 9 April 2026. She submits that the affidavit was filed within the timetable ordered by the Court and that its exclusion was based upon admissibility concerns rather than lateness or any finding that the underlying factual material lacked bona fides. She further contends that the affidavit contained substantial scientific and technical work undertaken by her personally.
- [7] The Plaintiff further submits that, at the time of her submissions, she intended to appeal the judgment on the substantive proceeding and that the issue of costs should therefore be reserved pending determination of that appeal.

Relevant principles

- [8] Rule 63.03 of the Rules confers a broad discretion in relation to costs. The discretion is not at large. The well-established starting point is that costs follow the event. A successful party will ordinarily recover its costs unless some special circumstance justifies departure from that course.²
- [9] The purpose of a costs order is ordinarily compensatory, not punitive. Accordingly, the fact that a party has unsuccessfully advanced a legal argument does not, of itself, warrant the denial of costs to the successful party. The same is said for self-representation, impecuniosity or the existence of an arguable legal issue ordinarily sufficient to displace the usual rule.³
- [10] Additionally, r 63.07(c) permits the Court to order that costs be fixed in a gross sum. A lump sum order is directed to avoiding the expense, delay and inconvenience associated with taxation proceedings and permits the Court to apply a broad brush rather than engage in an exercise approaching taxation.⁴ Orders for lump sum costs are particularly apt in lengthy and complex cases, where the taxation process is likely to be time consuming and expensive. It is also compelling in other situations, where the party awarded costs is unlikely, due to an opponent's financial situation, able to recover costs.

² See: *Northern Territory v Sangare* (2019) 265 CLR 164 at [25].

³ *Messenger v Commonwealth of Australia (No 2)* [2023] FCA 20 at [67], [77]; *Northern Territory of Australia v Sangare* (2019) 265 CLR 164 at [36].

⁴ *Beach Petroleum NL v Johnson (No 2)* (1995) 57 FCR 119 at 120-123 per von Doussa J; *Seven Network Ltd v News Ltd* [2007] FCA 2059 at [25] per Sackville J. See also: G E Dal Pont, *Law of Costs* (LexisNexis, 5th Ed, 2021) 538-547.

Additionally, such orders can be utilised in simple matters where it is recognised that it is ‘entirely appropriate to save the parties the difficulties and inconvenience, and added expense of taxation’.⁵ In setting a fixed amount, the Court must nevertheless be satisfied that the amount fixed is logical, fair and reasonable in the circumstances, and adequately supported by the material before it.⁶

Consideration

i. Entitlement to costs

[11] The Defendant was wholly successful. Summary judgment was entered in its favour and the proceeding was dismissed. There is no residual issue remaining for determination. This is not a case in which costs should be costs in the cause as there is no continuing cause to which such an order could attach.

[12] I accept that the Plaintiff appeared without legal representation. I also accept that she genuinely believed that the proceeding raised important issues concerning the interaction of the *Water Act 1992* (NT), the *Lake Bennett (Land Title) Act 2005* (NT), private land ownership and statutory control of water. However, many unsuccessful litigants hold genuine beliefs about the merits of their case. That circumstance does not ordinarily justify depriving a successful party of its costs, nor do I accept that the proceeding

⁵ *Australasian Performing Rights Association Ltd v Marlin* [1999] FCA 1006 at [4]; *ChongHerr Investments Ltd v Titan Sandstone Pty Ltd* [2007] QCA 278 at [6].

⁶ *Beach Petroleum NL v Johnson (No 2)* (1995) 57 FCR 119 at 123.

is properly characterised as litigation in the public interest. Although questions of statutory interpretation arose, the proceeding was ultimately directed toward the Plaintiff's asserted proprietary interests in Lake Bennett and her associated compensation claim. The Plaintiff pursued interests personal to herself.⁷ The proceeding cannot properly be characterised as a test case or litigation directed primarily to vindication of public rights.⁸

[13] I do not accept the Defendant's costs claim on any punitive basis. Equally, I do not accept the Plaintiff's submission that the conduct of the proceeding warrants departure from the ordinary rule. I did not find that the Plaintiff conducted the proceeding improperly, vexatiously, dishonestly or in breach of Court orders. She complied with procedural directions and endeavoured to advance her case as she understood it. However, the absence of unreasonable conduct is not itself a basis for depriving the successful party of costs.

[14] I also reject the submission that costs should be reserved pending an intended appeal. An appeal had just been filed at the time the costs issue fell for final determination. The possibility that an appeal may proceed does not justify postponing the determination of costs. In the meantime, it would be open to the Plaintiff to seek agreement with the Defendant to delay any

⁷ Cf. *Phillips & Ors v Chief Health Officer & Anor* (2022) 44 NTLR 12 at [41]; *Houston v State of New South Wales* [2020] FCA 502 at [26]-[29]. See also: *Lewis v De Silva & Anor (No 2)* [2024] NTSC 15 at [11]-[12].

⁸ See: *Yarabala Pty Ltd & Anor v Sweetpea Petroleum Pty Ltd* [2024] NTSC 5 at [15]-[16].

enforcement of costs or otherwise formally apply for a stay from the Court of Appeal.

- [15] In my view, no exceptional circumstance has been identified which would justify departure from the ordinary principle that costs follow the event. The Defendant should therefore receive its costs of and incidental to the proceeding.

ii. *Lump sum costs*

- [16] The next question is whether costs should be taxed or fixed in a lump sum. In the present case, the proceeding was confined in scope. It involved a single summary judgment application, supported by affidavit evidence and written submissions, followed by a hearing before the Court. The legal and factual issues are familiar to the Court.
- [17] The affidavit of Ms Guthridge provides a breakdown of the work undertaken by the Defendant's solicitors and counsel, and estimates the Defendant's recoverable costs at \$14,700.⁹ That affidavit also explains that this estimate does not include a number of items such as supervising solicitor time, junior counsel's time and certain disbursements.¹⁰ There is no expert report from a costs assessor nor any itemised account. Notwithstanding that, the estimate appears conservative and reasonable having regard to the nature of the work undertaken, the volume of material filed, the hearing conducted and the

⁹ Comprising 100 units of solicitors' time at \$3,300, and 1 day and 21 hours of counsel's time at \$11,400.

¹⁰ Affidavit of Charlotte Sophie Guthridge made 31 August 2026 at [5]-[7].

issues raised by the proceeding. Given some items are not claimed, the estimate is less than the defendant would justifiably claim if the matter went to taxation. I am mindful that the Court's task is not to undertake a taxation by another name, but to determine whether the amount claimed represents a logical, fair and reasonable estimate of the costs actually incurred.¹¹

[18] I also accept the Defendant's submission that taxation is likely to generate additional expense, delay and inconvenience disproportionate to the amount in issue. That consideration is particularly significant where one party is self-represented and where the costs dispute itself may become more expensive than the amount sought to be recovered.¹²

[19] In those circumstances, I am satisfied that a lump sum costs order under r 63.07(c) is appropriate. The Plaintiff's proposed appeal does not alter that conclusion.

Disposition

[20] The Defendant was wholly successful in the proceeding and is entitled to its costs. No sufficient basis has been established for departing from the ordinary rule that costs follow the event. I am further satisfied that a lump sum costs order is appropriate and that the amount of \$14,700 represents a fair and reasonable assessment of the Defendant's costs of and incidental to

¹¹ *Seven Network Ltd v News Ltd* [2007] FCA 2059 at [25].

¹² See: *Beach Petroleum NL v Johnson (No 2)* (1995) 57 FCR 119 at 120-123; *Harrison v Schipp* (2002) 54 NSWLR 738 at [21].

the proceeding. Having regard to the nature of the application and the issues raised, I am also satisfied that the proceeding was fit for counsel.

Orders

[21] I therefore order that:

1. The Plaintiff pay the Defendant's costs of and incidental to the proceeding fixed in the sum of \$14,700 pursuant to r 63.07(c) of the Rules.
2. The Defendant's costs are certified fit for counsel pursuant to r 63.72(9)(a) of the Rules.
