

CITATION: *Arid Lands Environment Centre Inc v Minister for Environment & Anor (Costs)* [2026] NTSC 51

PARTIES: ARID LANDS ENVIRONMENT
CENTRE INC

v

MINISTER FOR ENVIRONMENT

and

FORTUNE AGRIBUSINESS FUNDS
MANAGEMENT PTY LTD
(ACN 607 474 251)

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2022-00087-SC

DELIVERED: 16 June 2026

HEARING DATE: 27 August 2025

JUDGMENT OF: Barr J

CATCHWORDS:

COSTS – ADMINISTRATIVE LAW – JUDICIAL REVIEW – Party/Party costs – General rule that costs follow the event – Application of rule and discretion – Whether successful defendant entitled to costs orders against one of two plaintiffs – Proceedings directed to public interest – Plaintiff an independent not-for-profit environmental organisation without any commercial interest in outcome – Litigation conducted appropriately – Unjust if successful

defendant were denied compensation for costs incurred – Plaintiff to pay 35 per cent of second defendant’s overall costs of proceedings.

AUTHORITIES

Central Australian Frack Free Alliance Inc v Minister for Environment & Anor (Costs) [2025] NTSC 54, *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor and Arid Lands Environment Centre Inc v Minister for Environment & Anor* [2024] NTSC 4; (2024) 384 FLR 234, *Northern Territory v Sangare* (2019) 265 CLR 164, *Oshlack v Richmond River Council* (1998) 193 CLR 72, referred to.

REPRESENTATION:

Plaintiff:	M Sherman
First Defendant:	---
Second Defendant:	M Grove

Solicitors

Plaintiff:	Environmental Defenders Office (NT) Inc
First Defendant:	---
Second Defendant:	Ward Keller

Judgment category classification:	C
Judgment ID Number:	Bar2601
Number of pages:	12

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Arid Lands Environment Centre Inc v Minister for Environment & Anor
(Costs)* [2026] NTSC 51

No. 2022-00087-SC

BETWEEN:

**ARID LANDS ENVIRONMENT
CENTRE INC**
Plaintiff

AND:

MINISTER FOR ENVIRONMENT
First Defendant

AND:

**FORTUNE AGRIBUSINESS FUNDS
MANAGEMENT PTY LTD
(ACN 607 474 251)**
Second Defendant

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 16 June 2026)

- [1] The second defendant ('Fortune') seeks an order that the plaintiff ('ALEC') pay its costs consequent on the dismissal of proceedings brought by ALEC and another party, Mpwerempwer Aboriginal Corporation ('MAC') against the Minister and Fortune in which the plaintiffs sought declarations and other relief in the nature of certiorari

and mandamus. ALEC commenced proceedings on 13 January 2022. MAC commenced proceedings on 28 January 2022. An order was made on 10 March 2022 that the two proceedings be tried at the same time and determined together.¹ A further order was made that evidence in each proceeding was to be treated as evidence in both proceedings. However, those orders did not amount to a formal consolidation. The parties' cases were heard over three days in September 2022.

- [2] The background to the litigation is set out in detail in the primary decision.² Fortune is the owner/lessee of Singleton Station, a huge pastoral property situated in the Western Davenport region of the Northern Territory, approximately 380 km north of Alice Springs. It applied to the Controller of Water Resources for a water extraction licence for a large-scale horticultural project on Singleton Station. The licence subsequently granted was subject to extensive conditions but permitted Fortune to extract up to 40,000 ML of groundwater per annum from aquifers in the Western Davenport Water Control District. The Minister for Environment then undertook a review of a decision made by the Controller. In the course of that review, she referred the matter to the Water Resources Review Panel, which provided a report to the Minister. A decision was subsequently made by another Minister, as delegate of the Minister for Environment, substituting a decision for that made by the

¹ *Supreme Court Rules*, SCR 9.12.

² *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor and Arid Lands Environment Centre Inc v Minister for Environment & Anor* [2024] NTSC 4; 384 FLR 234 (the "primary decision").

Controller. The substituted decision was very similar to the Controller's decision but was subject to some additional conditions precedent and several amended conditions.³

[3] Although Fortune was made a defendant in both proceedings, the causes of action of both ALEC and MAC were pleaded against the Minister. The challenge in each of the plaintiffs' cases was to the Minister's decision. Fortune was joined as a party whose interests were potentially significantly affected by the outcome of the litigation.

[4] As I explained in the primary judgment, ALEC contended that the Minister erred in her decision to grant the licence in three principal ways.⁴

[5] First, ALEC argued that the Minister's decision failed to accord with specific drawdown limits identified in the applicable Water Allocation Plan ('WAP'), which were intended to protect groundwater dependent ecosystems. Under s 90(1)(ab) *Water Act 1992*, the Minister was required to take the WAP into account, while s 22B(4) of the Act required that water resource management (which ALEC argued included licensing decisions) be in accordance with the WAP. ALEC argued that, rather than applying the WAP, the Minister chose instead to apply a Departmental policy document which had been developed in consultation with Fortune,

3 Primary decision [26] – [27].

4 Primary decision [32] – [35].

which had no statutory significance under the *Water Act 1992* and which was said to be “fundamentally inconsistent” with the WAP.

- [6] Second, ALEC argued that the Minister erred in imposing various conditions precedent which operated to defer consideration of matters which, for the decision to have been lawfully made under s 30(3)(a)(ii) of the Act, were required to be determined prior to, or in the course of, making the purported decision. ALEC submitted that the result of the conditions precedent was that the Minister left for a later decision an important aspect of the proposal which could result in a significant alteration of the proposal. That was said to violate the principle of finality with respect to ambulatory conditions recognised in the long-standing *Mison* and *Unley* line of authorities.⁵
- [7] Third, ALEC argued that the decision was legally unreasonable “in that central planks of the analysis in support of the conclusions reached exhibited illogicality”. In particular, the Minister’s conclusion that her decision was consistent with the WAP was said to be ‘illogical’. ALEC also argued that it was illogical to treat the Departmental policy document referred to in [5] (‘the Guideline’) as ‘a relevant factor’ on the (contested) basis it constituted ‘new scientific knowledge’.

⁵ *Mison v Randwick Municipal Council* (1991) 23 NSWLR 734; *Corporation of the City of Unley v Claude Neon Ltd* (1938) 32 SASR 329.

- [8] All three grounds advanced by ALEC failed, with the result that the proceeding commenced by ALEC was dismissed.⁶
- [9] ALEC is an incorporated association, an independent not-for-profit environmental organisation and a registered charitable institution. Its central object, as stated in its constitution, “is to protect the environment and ensure healthy futures for arid lands and peoples”.⁷ The unchallenged affidavit evidence of its Chief Executive Officer is that ALEC has 210 members. It employs seven staff, who are either part-time or casual employees. Its aims include the protection of nature and support for ecologically sustainable development in the arid lands of Central Australia. Over many years, it has been actively involved in achieving or seeking to achieve environmental protection public interest outcomes. Moreover, it has carried out significant policy and law reform work, much of it directed to the application by Fortune for the Singleton Station water licence.⁸
- [10] As mentioned in [8], the proceeding commenced by ALEC was dismissed. ALEC did not appeal the adverse judgment.
- [11] MAC also failed at first instance. MAC appealed but was unsuccessful.⁹ However, in September 2025, MAC obtained special leave to appeal to

⁶ Primary decision [59], [60] – [68], [107] – [108], [122].

⁷ See ALEC’s Originating Motion, Details of Claim, par 3.

⁸ Affidavit of Adrian Tomlinson affirmed 15 July 2024, pars 15 – 17.

⁹ *Mpwerempwer Aboriginal Corporation RNTBC v Minister for Territory Families & Urban Housing as Delegate of the Minister for Environment & Anor* [2025] NTCA 6.

the High Court and its appeal was heard in February 2026. The High Court has reserved its decision. I mention these matters because one of ALEC's arguments in relation to costs is that it is "at least a reasonable likelihood that if MAC were to succeed on ALEC's grounds, ALEC would seek to have any cost orders in the first instance proceedings varied to reflect that circumstance".¹⁰ That argument was in support of its contention that the Court should refrain from making any cost orders against ALEC until such time as MAC's appeal has been finally determined.

[12] I reject the contention summarised in the previous paragraph. Irrespective of the position of MAC, ALEC is to be seen simply as an unsuccessful plaintiff which has not sought to appeal the adverse first instance judgment. If that is correct, the outcome of MAC's appeal is irrelevant. Moreover, even if MAC's appeal outcome were a relevant consideration, it appears that its grounds of appeal in the High Court (extracted below) have very little if any connection with ALEC's grounds at first instance, summarized in [5]–[7] above:

1. The NTCA erred by holding it was permitted by *MZAPC v Minister for Immigration and Border Protection* to infer two critical matters about the first respondent's state of mind into her statutory reasons for granting the licence, being (a) she was aware of the need to find 'special circumstances' under s 60(4)(b) of the Water Act 1992 (NT); and (b) she determined there were 'special circumstances', notwithstanding that was contrary to the principle confirmed in *LPDT v Minister for*

10 ALEC's Costs Submissions, 15 July 2024, par 31.

Immigration, Citizenship, Migrant Services and Multicultural Affairs that a reviewing court does not rework or rewrite a decision-maker's reasons.

2. The NTCA erred in holding the first respondent took Aboriginal cultural values into account by imposing a condition on the licence, even though she did not form a view about the only information before her on those values and even though the statutory scheme required those values to be taken into account before the licence was granted, and did not permit their consideration to be deferred to a licence condition.
3. The NTCA erred in failing to hold the first respondent was obliged to give MAC, whose members held the Aboriginal cultural values the subject of a proposed licence condition, and which derived from their native title rights and interests, the same opportunity to be heard on the terms of the proposed condition as she gave to the second respondent.¹¹

[13] I therefore exclude MAC's ongoing litigation in my consideration of Fortune's application for costs against ALEC.

[14] There are two further preliminary matters to record. First, it has been agreed that the costs of the MAC litigation against Fortune should await the outcome of the High Court appeal. Second, the Minister does not seek costs orders against ALEC or MAC.

[15] The purpose of a costs order is to compensate the party in whose favour it is made, rather than to punish the party against whom the order is made.¹² It may also be accepted that the general rule is that, if the court makes any order as to costs, it is to order that the costs follow the event, unless it appears that some other order should be made having regard to the

¹¹ Taken from the "Short Particulars" which appear on the High Court's web site – <https://www.hcourt.gov.au/sites/default/files/case-summaries/2026-02/SP%20February%202026.pdf>

¹² *Northern Territory v Sangare* (2019) 265 CLR 164 at [25].

circumstances.¹³ That general rule is based on the principle that justice is not achieved if the party who is responsible for others incurring the costs of litigation does not bear those costs. In ordinary *inter partes* civil litigation, where a defendant is successful, it is the plaintiff who has been responsible for the costs incurred because it has claimed something to which it was not entitled.

[16] ALEC argues that this is not the kind of case in which the ordinary principles in relation to costs, and particularly the principle that the unsuccessful party should pay the costs of the successful party, should be applied.

[17] The special circumstances relied on by ALEC are summarised in paragraph 3 of its outline of submissions. ALEC contends that the proceedings were brought by it in the public interest, that is, that ALEC had no personal or financial interest in the outcome of the proceedings. ALEC contends further that it commenced proceedings in order to ensure compliance with the law; that there were a significant number of members of the public who shared ALEC's concerns; that the proceedings tested arguable and novel questions of law of general importance regarding water resource management and licensing in the Northern Territory; and that the proceedings were conducted by it in an expeditious and economical fashion.

13 This general rule has been said to found a 'reasonable expectation' on the part of a successful party of being awarded costs against the unsuccessful party: *Oshlack v Richmond River Council* (1998) 193 CLR 72 at [67], [134]; *Northern Territory v Sangare* (2019) 265 CLR 164 at [25].

[18] I will deal first with the contention that a significant number of members of the public shared ALEC's concerns. In written submissions, counsel for ALEC submits that, prior to the grant of the licence (the original licence granted by the Controller), a petition had been signed by 23,331 supporters in 2021 calling for the Controller to refuse to grant the groundwater extraction licence. Reference is made to the content of an online petition in which the following information, inter alia, was provided by ALEC to intending petitioners:¹⁴

FAFM plans to develop approximately 3,500 Ha of intensive irrigated horticulture on Singleton Station, a property located in the Western Davenport Region of the NT. To support this project they have applied for a groundwater extraction licence to take and use 40 Billion Litres (40 GL) of groundwater water per year for 30 years.

Taking 40 GL/year of water will lower the water table within the centre of the proposed farm by 40 to 50 metres over a 30-year period. Any vegetation or fauna that relies on shallow groundwater will die.

[19] The information contained in the petition referred to the 30-year production period but did not mention that the development would not reach peak extraction (if it ever did) until seven or eight years into that 30-year period. I explained the staging conditions in the principal judgment at [71] – [72]. I also explained (at [100]) that, under the staging conditions, Fortune would be at risk for many years of not being permitted to proceed to a subsequent stage of its horticulture project. If it

14 Affidavit of Adrian Tomlinson affirmed 15 July 2024, annexure AT-19, p 352.

were unable to proceed to the next stage, it would not be entitled to extract the greater volume of groundwater permitted for that next stage.

[20] I accept that more than 20,000 signatures on the petition reflected the fact that a significant number of members of the general public may have shared ALEC's concerns. However, I am not sure where that leads; the extent to which those members of the public may have continued to share ALEC's concerns, by the time proceedings were commenced, is unclear.

[21] I accept that the proceeding brought by ALEC was brought in the public interest, at least as perceived by ALEC. The proceeding was not vexatious or frivolous. The proceeding did seek to test "arguable questions of law", but I am not convinced that such questions were "novel", as counsel for ALEC contends. I accept further that ALEC was motivated by its view that the Minister had erred in law in making the substituted decision referred to in [2] above. I also accept that ALEC had no personal or financial interest in the outcome of the proceedings. Finally, I accept that ALEC conducted the proceedings appropriately.

[22] However, the matters accepted by me do not constitute a sufficient basis for an order that would effectively deny Fortune a costs order in its favour. In coming to this conclusion, I adopt with respect the reasoning of

Grant CJ in *Central Australian Frack Free Alliance Inc v Minister for Environment & Anor (Costs)*.¹⁵

[23] In my opinion it would be unjust for Fortune not to be compensated for its costs incurred in the litigation brought by ALEC and MAC. However, because of the orders referred to in [1] above, it would be a difficult and somewhat artificial exercise to identify and separate out the costs incurred by Fortune at the suit of ALEC. In those circumstances, an appropriate costs order must reflect my assessment of the scope of the cases brought by ALEC and MAC relative to one another, a comparison of the range of legal and factual arguments raised by each, and the extent of the consideration and response required on the part of Fortune.

Conclusion and orders

[24] Save for the costs referred to in [25] below, I order that ALEC pay 35% of Fortune's overall legal professional costs and disbursements, to be taxed on the standard basis in default of agreement.

[25] I order that ALEC pay Fortune's costs of and incidental to the costs application and hearing.

[26] Pursuant to Rule 63.72(9)(b) of the *Supreme Court Rules 1987*, I certify that the retainer by Fortune of more than one counsel was warranted.

[27] Fortune's lawyers are to file draft orders in the Registry for settling.

15 [2025] NTSC 54 at [18] – [23].

[28] I grant liberty to apply in the event that any difficulty arises in the practical application of the above costs orders.
