

AUSTRALIA / JUDGMENT

YQR v YQS

[2026] NSWCATAP 95**COURT**

Civil and Administrative Tribunal

DECIDED

26 March 2026

BEFORE

A Britton, Deputy President

CASE / FILE NUMBER

2025/00360925

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: YQR v YQS [2026] NSWCATAP 95**Hearing dates:** On the papers**Date of orders:** 26 March 2026**Decision date:** 26 March 2026**Jurisdiction:** Appeal Panel**Before:** A Britton, Deputy President**Decision:** (1) A hearing is dispensed with, under s 50(2) of the Civil and Administrative Tribunal Act 2013 (NSW).
(2) The application for costs on the appeal is refused.**Catchwords:** COSTS – special circumstances – exercise of discretion to award costs
WORDS AND PHRASES – “proceedings” in Civil and Administrative Tribunal Act 2013 (NSW), s 60**Legislation Cited:** Administrative Decisions Tribunal Act 1997 (NSW), s 88(1)
Civil and Administrative Tribunal Act 2013 (NSW), ss 50, 50(2), 55(1)(a), 60, 60(1)-(3), 60(3)(c), 60(3)(e), 60(3)(g)
Powers of Attorney Act 2003 (NSW), s 50

Cases Cited:	Allen v TriCare (Hastings) Ltd [2017] NSWCATAP 25 Cripps v G & M Dawson Pty Ltd [2006] NSWCA 81 Edwards v Commissioner for Fair Trading, Department of Customer Service (Costs) [2019] NSWCATAP 249 eMove Pty Ltd v Naomi Dickinson [2015] NSWCATAP 94 Gelder v The Owners - Strata Plan No 38308 [2021] NSWCATAP 109 James v Department of Justice (Corrective Services NSW) (No 2) [2022] NSWCATAP 216 Kaye v The Owners – Strata Plan No 4350 [2022] NSWSC 1386 Lisle v Courtney [2025] NSWCATAP 121 OLL [2014] NSWCATGD 40 Youssef v NSW Legal Services Commissioner (Costs) [2020] NSWCATOD 115
Texts Cited:	None cited
Category:	Costs
Parties:	YQR (Appellant) YQS (First Respondent) NSW Public Guardian (Second Respondent) NSW Trustee and Guardian (Third Respondent) YQT (Fourth Respondent)
Representation:	BlackBay Lawyers (Appellant) KPW Lawyers (Fourth Respondent)
File Number(s):	2025/00360925
Publication restriction:	Pursuant to s 65 of the Civil and Administrative Tribunal Act 2013 (NSW), a person must not without the consent of the Tribunal, publish, or broadcast the name of any person who appears as a witness in these proceedings, to whom these proceedings relate, or is mentioned or otherwise involved in the proceedings. The name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person. The provision of these reasons (with persons Identified) is not intended to be a publication or broadcasting of an official report of the proceedings. Decision under appeal
Court or tribunal:	Civil and Administrative Tribunal
Jurisdiction:	Guardianship Division
Citation:	N/A
Date of Decision:	1 September 2025
Before:	M Tibbey, Senior Member (Legal) M A Franke, Senior Member (Professional) M Black, General Member (Community)
File Number(s):	2025/00234073

REASONS FOR DECISION

YQT seeks an order for the costs of an appeal commenced by her brother, YQR, from decisions made by the Guardianship Division of the NSW Civil and Administrative Tribunal (the costs application). YQT requests that YQR be required to pay the costs she incurred in the appeal on an indemnity basis. Before the hearing of the appeal but after YQR filed submissions in opposition to the appeal, YQT withdrew the appeal.

In these reasons we have not used the real names of the parties. Instead, we will refer to YQT as “the Daughter”, YQR as “the Son”, and YQS, the mother of YQT and YQR, who is the person the subject of the decisions under appeal, as “the Mother”.

The Daughter was legally represented in the appeal. The Son, on the other hand, was legally represented only in relation to the costs application. The Daughter and the Son were the only parties in the appeal to make submissions in relation to the costs application. Unsurprisingly, the Son opposed that application.

I decided to hear the costs application “on the papers”, that is, without a hearing because I was satisfied, and the Daughter and the Son agreed, that the issues raised in the appeal can be adequately determined by considering the parties’ written submissions: Civil and Administrative Tribunal Act 2013 (NSW) (NCAT Act), s 50.

To exercise the power to award costs I must be satisfied that there are “special circumstances” warranting an award of costs. For the reasons that follow, I am not persuaded that special circumstances are established.

Decision under appeal

On 1 September 2025, the Guardianship Division of the NSW Civil and Administrative Tribunal (respectively, the “Guardianship Division” and “NCAT”) decided:

To dismiss the application made by the Son requesting NCAT to make a guardianship order in respect of the Mother; and

To make a financial management in respect of the Mother and to appoint the Daughter as the manager of the Mother’s estate.

These are the decisions the subject of the appeal.

In July 2022, while living in Western Australia in an apartment owned by the Son, the Mother executed instruments appointing the Son as her enduring guardian and attorney.

On 29 May 2025, after moving to NSW to live with the Daughter, the Mother signed a deed revoking the appointment of the Son as her attorney. On the same day, the Mother executed instruments appointing the Daughter as her attorney and enduring guardian.

On 18 June 2025, the Son lodged applications requesting NCAT to make:

a guardianship order in respect of the Mother and to appoint him as her guardian; and

a financial management order and to appoint him as manager of the Mother's estate.

In each application, the Son contended that in May 2025 the Mother lacked capacity to revoke his appointments and to appoint the Daughter as her enduring guardian and attorney. He claimed that the Sister had manipulated the Mother to move to NSW and to contribute towards buying a property the Mother could ill afford.

In reasons for dismissing the application made by the Son for a guardianship order (the Reasons), the Tribunal concluded that the appointment of the Daughter as enduring guardian is "consistent with [the Mother's] wishes and intentions to continue to live with [the Daughter and her partner] and that there is therefore no need to disturb those arrangements". The Tribunal based that conclusion on the following findings:

that the Mother did not want to have any contact with the Son: at [30]

that there are "still hundreds of thousands of dollars unaccounted for at a time when [the Son] was the enduring attorney": at [33]

that the Apprehended Domestic Violence Order against the Son, the Mother applied for on 6 May 2025, indicates that the Mother had "a degree of suspicion and apprehension towards [the Son]": at [33]

that in May 2025 the Mother had capacity to appoint the Daughter as her enduring guardian: at [39]

that the Mother wishes the Daughter to remain as her enduring guardian: at [39]

that the Mother trusts the Daughter and "is content living in NSW" with the Daughter and her partner: at [38].

In contrast to its decision to dismiss the Son's application for a guardianship order, the Tribunal decided to make a financial management order in respect of the Mother. That order operated to suspend the Daughter's appointment as the Mother's attorney: Powers of Attorney Act 2003 (NSW), s 50.

The Tribunal found that, given the Mother's diagnosis of cognitive impairment and the disappearance of substantial amounts of money from her bank account since 2022, which the Mother believed had been taken by the Son, the Mother "is not capable of managing her own finances in her own best interests".

However, the Tribunal decided to make a financial management order, reasoning:

"A home has been purchased for [the Mother, the Daughter and the Daughter's partner] to live in, substantially with [the Daughter's] funds. She has been reunited with her daughter after a long period of minimal or no contact (35 years, [the Son] suggests). Given [the Mother's] diagnosis of cognitive

impairment and the need to ensure that [the Mother's] funds are used for [the Mother's] welfare and benefit, there is a need to appoint a financial manager for [the Mother], rather than allowing the enduring power of attorney to remain operative. This will ensure that there is prudential oversight of her finances by an independent third party, the NSW Trustee and Guardian. That would be both necessary and in [the Mother's] best interests, in order to ensure that her resources are used for her welfare and benefit and she is protected from financial exploitation and abuse by others."

The Tribunal found that the Daughter was a suitable person to act as the Mother's manager and "appeared to have the best interests of [the Mother] at heart": at [90].

The appeal

On 18 September 2025, the Son filed a notice of appeal in NCAT.

On 30 October 2025, at a call over (the call over), the Appeal Panel directed the parties to file and serve submissions in relation to the appeal and listed the appeal for hearing on 5 March 2026.

In compliance with those directions, on 23 December 2025, the Daughter filed and served submissions opposing the appeal.

In an email sent to NCAT on 5 January 2026, the appellant said "I wish to advise all that I no longer will be proceeding with the appeal on 22/3/2026. Thank you".

On 14 January 2026, the Appeal Panel dismissed the appeal under s 55(1)(a) of the NCAT Act.

Power to order costs

Statutory framework: s 60 of the NCAT Act

Section 60(1) of the NCAT Act creates the general rule that each party is to pay their own costs. Section 60(2) gives the Appeal Panel a discretionary power to award costs but only if it is "satisfied that there are special circumstances warranting an award of costs". Section 60(3) sets out a non-exhaustive list of factors the Appeal Panel may have regard to in deciding whether there are special circumstances warranting an award of costs.

Section 60 of the NCAT Act states:

60 Costs

- (1) Each party to proceedings in the Tribunal is to pay the party's own costs.
- (2) The Tribunal may award costs in relation to proceedings before it only if it is satisfied that there are special circumstances warranting an award of costs.
- (3) In determining whether there are special circumstances warranting an award of costs, the Tribunal may have regard to the following--
 - (a) whether a party has conducted the proceedings in a way that unnecessarily disadvantaged another party to the proceedings,

- (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceedings,
- (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law,
- (d) the nature and complexity of the proceedings,
- (e) whether the proceedings were frivolous or vexatious or otherwise misconceived or lacking in substance,
- (f) whether a party has refused or failed to comply with the duty imposed by section 36(3),
- (g) any other matter that the Tribunal considers relevant.

In *Cripps v G & M Dawson Pty Ltd* [2006] NSWCA 81, the NSW Court of Appeal considered the meaning of the term “special circumstances” in s 88(1) of the now repealed Administrative Decisions Tribunal Act 1997 (NSW) (ADT Act). While in different terms to s 60 of the NCAT Act, like that provision, s 88(1) of the ADT Act gave the Tribunal power to award costs “but only if it is satisfied that there are special circumstances warranting an award of costs”. At [60], Santow JA held (Mason P and Brownie AJA agreeing) that the Tribunal was in error in failing to conclude that special circumstances were established. Santow JA observed: “[I]t suffices that the circumstances are out of the ordinary. They do not have to be extraordinary or exceptional”. NCAT has consistently applied that statement: see e.g. *Gelder v The Owners - Strata Plan No 38308* [2021] NSWCATAP 109 at [12]; *Youssef v NSW Legal Services Commissioner (Costs)* [2020] NSWCATOD 115 at [107]; *James v Department of Justice (Corrective Services NSW) (No 2)* [2022] NSWCATAP 216 at [6].

More recently, in *Kaye v The Owners – Strata Plan No 4350* [2022] NSWSC 1386 at [70], Basten AJA said that the term “special circumstances” in s 60 of the NCAT Act is “not a term of art”:

“[70] ...Its scope and operation will depend heavily on the context in which it appears. A particular circumstance which appears to be special in one case may not be so in another. It is not a phrase which readily gives rise to appellate explication.”

Where special circumstances are found to exist, the Tribunal has a discretion to exercise in deciding what, if any, order should be made: *Lisle v Courtney* [2025] NSWCATAP 121 (Lisle) at [34]. The discretion to award costs must be exercised judicially and having regard to the underlying principle that parties to proceedings in the Tribunal are ordinarily to bear their own costs: *Lisle* at [35]; *eMove Pty Ltd v Naomi Dickinson* [2015] NSWCATAP 94 at [48]. Relevant to the exercise of that discretion are those facts upon which the finding of special circumstances was based.

The costs application

The Daughter contends that the following factors constitute special circumstances warranting an award of costs in the appeal:

the Son's application had "no tenable basis in fact or law": NCAT Act, s 60(3)(c);

the proceedings before the Tribunal were frivolous, vexatious and misconceived: NCAT Act, s 60(3)(e);

the Son pressed on with the appeal notwithstanding that he was on notice that he had failed to identify any question of law and had not sought leave to appeal: NCAT Act, s 60(3)(g).

Ground 1: the Son's application had "no tenable basis in fact or law"

The Daughter contends that the Son failed to provide any credible evidence to support his claim that she had subjected the Mother to undue influence. The Daughter contends that the Mother gave a reasonable explanation for her decision to purchase a property with her in Victoria and the Son failed to present any "independent corroborative evidence" to support his claim that in making that purchase, the Mother was subject to undue influence. Citing, OLL [2014] NSWCATGD 40 at [80], the Daughter contends that an "applicant must bring credible evidence to the Tribunal to support his or her application".

The Daughter points out that, as found by the Tribunal, the Mother made it clear that she did not want to have any further contact with the Son, as demonstrated by her decision to apply for an Apprehended Domestic Violence Order in May 2025. She asserts that the real reason the Son made application to the Guardianship Division was to "pursue his personal interests and not [because of] genuine concern" for the Mother.

Consideration

This ground rests on the erroneous assumption that the word "proceedings" in s 60 of the NCAT Act, should be interpreted as meaning the proceedings before the Tribunal at first instance and the internal appeal proceedings. In *Allen v TriCare (Hastings) Ltd* [2017] NSWCATAP 25 at [37], an NCAT Appeal Panel held that the word "proceedings" in s 60 in the NCAT Act refers to "the process set in motion, or commenced, by lodging an application or notice of appeal". Put another way, the Appeal Panel said for the purpose of s 60 of the NCAT Act, the proceedings initiated by a notice of appeal is to be treated as separate and distinct to the proceedings initiated by an application to NCAT, in which the decision under appeal was made. The two are not to be conflated.

The arguments on which the Daughter relies, concerns the conduct of the Son in the proceedings before the Tribunal. Constituted as the Appeal Panel, I cannot award costs in respect of those proceedings: *Edwards v Commissioner for Fair Trading, Department of Customer Service (Costs)* [2019] NSWCATAP 249 at [11], [32].

Ground 2: Proceedings were frivolous, vexatious and misconceived

Ground 2 suffers from the same defect as Ground 1. The proceedings said by the Daughter to be "vexatious" are the proceedings before the Tribunal, not the subsequent internal appeal.

Ground 3: Son failed to identify a question of law

The Daughter contends that at the call over on 30 October 2025, it was brought to the Son's attention that he had failed to identify a question of law in the Notice of Appeal, and it was "strongly recommended that he seek leave". She points out that the Appeal Panel gave him leave to amend the Notice of Appeal by 27 November 2025 but he failed to do so. The Daughter argues that she ought not be expected to bear the costs of opposing the appeal in circumstances where the Son failed to address those shortcomings or seek legal representation.

The Daughter contends that the Notice of Appeal and the submissions filed by the Son in support of the appeal were, in effect, a challenge to the merits of the decisions under appeal. She points out that NCAT Guideline, Internal Appeals, November 2023 states that "generally, an appeal is not an opportunity to have a "second go" at a hearing". She asserts that the Son was using the appeal to do just that, by rerunning his case before the Tribunal and continuing to make unsubstantiated allegations about her.

The Daughter claims that the Son withdrew the appeal on the same day as he was charged with 36 counts of criminal fraud relating to withdrawals of large sums of money from the Mother's bank account.

The Son submits that the Appeal Panel should be slow to penalise a self-represented party for "technical errors", especially where the underlying issues are serious. He stated that he complied with all directions made by the Appeal Panel and his conduct was not improper. The decision to withdraw the appeal was made in good faith, in advance of the hearing, and without any intention to cause unnecessary cost or delay.

Consideration

At the call over, the Appeal Panel made several orders, including:

"5 If the Appellant seeks to amend the notice of appeal, he must lodge with the appeal panel and give to the Respondents an amended notice of appeal by 27 November 2025."

It can be inferred from that order that at the call over an issue was raised about the Notice of Appeal. It is possible that issue was raised by the Appeal Panel, the Daughter's legal representative, or both. It is also possible, as the Daughter contends, the issue raised was the Son's failure in the Notice of Appeal to identify a question of law or seek leave to appeal. Further, it is possible that the Appeal Panel urged the Son to take steps to rectify that shortcoming. It is also possible that at the call over the Son foreshadowed his intention to amend the Notice of Appeal.

However, without a transcript or some other evidence about what had occurred at the call over, Order 5 does not support the inference the Daughter urges should be drawn, that the Son was put on notice that the appeal was hopeless unless he took steps to address the identified shortcomings in the Notice of Appeal.

Finally, as to Daughter's submission that in bringing the initiating proceedings and the internal appeal, the Son acted in bad faith because he stole significant sums of money from the Mother, I note that the Tribunal made no findings about that issue. The Mother and the Daughter may be correct in their belief that the Son misused his authority as attorney and stole money from the Mother. However, at this point in time, the best evidence is that Western Australian Police are of the opinion that there is sufficient evidence to charge the Son with 36 counts of criminal fraud. Whether the Son is found guilty of those charges is yet to be decided.

I am not satisfied that the Son's failure to amend the Notice of Appeal and/or his alleged misconduct as attorney constitutes special circumstances warranting an award of costs.

Orders

A hearing is dispensed with, under s 50(2) of the Civil and Administrative Tribunal Act 2013 (NSW).

The application for costs on the appeal is refused.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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Decision last updated:

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