



## Non-Party Costs: Can a costs order be made against a party not named in Court proceedings?

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It is important to understand non-party costs orders in Queensland. This article sets out key legal principles and insights from *WOHB Pty Ltd v Williams & Anor (No. 2)* [2024] QDC 209.

While the general rule is that only parties named in litigation are liable for costs, the courts have the discretion to depart from this principle under certain circumstances. A non-party costs order allows a court to make a costs order against someone who is not directly named in the legal proceedings.

The *WOHB Pty Ltd v Williams & Anor (No. 2)* case serves as a reminder of the circumstances in which courts may exercise their discretion to make non-party costs orders. Non-parties involved in the financing, conduct, or management of a case, particularly those with an interest in its outcome, should be aware that they may be liable for costs, even if they are not formally named as a party to the litigation.

### When can a Non-Party Costs Order be made?

The recent decision by Dearden DCJ in *WOHB Pty Ltd v Williams & Anor (No. 2)* provides valuable guidance on when non-party costs orders can be made, particularly in situations where a non-party is closely connected to the litigation. The case highlights several key principles.

The court has the power to make non-party costs orders under Section 15 of the *Civil Proceedings Act 2011* (Qld). While costs are typically awarded against a party to the proceedings, the court may depart from this

general rule if certain criteria are met. The principles, as previously outlined in *Trouton v Trouton & Anor (No. 3)* [2024] QSC 54, include:

- 1. Active Participation:** A non-party's active involvement in the subject matter in dispute and the litigation itself, such as financing or managing the litigation, providing instructions to legal representatives, or influencing key decisions, can justify a costs order.
- 2. Interest in the Outcome:** Even without direct financial interest, a non-party may be subject to a costs order if they have a



vested interest or an "agenda for motive" in the litigation's outcome.

- 3. Conduct of Litigation:** If the non-party's conduct of the litigation or the conduct of the litigation in general was unreasonable or improper such as the making of baseless claims or failing to accept reasonable settlement offers, this may also warrant a non-party costs order.

### Key Criteria for Non-Party Costs Orders

Several factors guide the court's discretion to award non-party costs, including:

- **Insolvency:** If a party to the litigation is insolvent, a corporation or person "of straw", or financially incapable of paying a costs order, the court may look to a non-party to bear the costs;
- **Financial Interest:** A non-party with a substantial financial interest in the outcome of the case may be held liable for costs;
- **Active Role in Litigation:** A non-party who played a significant role in the litigation's conduct, even if they didn't directly control the proceedings, may be held accountable for costs; and
- **Non-Party's Involvement in Funding:** If a non-party funded the litigation or provided key financial resources, they could be subject to costs orders.

### Insights from WOHB Pty Ltd v Williams & Anor (No. 2)

In this case, the court made non-party costs orders against the director of the plaintiff company and his father. The director had given a personal undertaking to cover any costs orders in the event the plaintiff was unable to pay, as the company was effectively a "corporation of straw"—lacking the financial means to pay such a costs order.

Several factors contributed to the decision, including:

- **The Director's Involvement:** The director

was the sole shareholder and director of the plaintiff company, and he had provided evidence on the company's behalf. The court found that he had control over the company's litigation decisions, yet failed to provide any information about his financial circumstances. The Director did not own real property and it was concluded that he would be unable to fully pay a costs order.

- **The Father's Role:** The director's father had played an active role in the litigation, including funding the case and issuing instructions to the company's lawyers. The father conceded in evidence at trial that the plaintiff company was operated as a father and son partnership. Decisions were made in relation to matters in issue in the substantive proceeding that were made jointly by father and son and the father paid the initial option fee in relation to a transaction central to the proceedings. Documents that were subject of the proceeding were prepared by the father and the court found a clear intention to be practically involved in negotiations including settling of agreements which were all central to issues in dispute. In the end, his financial interest and involvement in the case justified a non-party costs order.

### A Cautionary Tale

The key takeaway is to avoid becoming too involved in a matter if there is a potential for a costs order to be made against you. This case highlights the importance of understanding the risks of being closely linked to litigation, especially if your role could be perceived as influencing or funding the proceedings.

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