

HIGH COURT OF AUSTRALIA

BEECH-JONES J

Matter No S143/2018

BIANCA HOPE RINEHART & ANOR

APPELLANTS

AND

HANCOCK PROSPECTING PTY LTD & ORS

RESPONDENTS

Matter No S144/2018

BIANCA HOPE RINEHART & ANOR

APPELLANTS

AND

GEORGINA HOPE RINEHART (IN HER
PERSONAL CAPACITY AND AS TRUSTEE OF THE
HOPE MARGARET HANCOCK TRUST AND AS
TRUSTEE OF THE HFMT TRUST) & ORS

RESPONDENTS

[2026] HCASJ 25

Date of Judgment: 7 August 2026

S143 of 2018 & S144 of 2018

ORDERS

- 1. The ninth and eleventh respondents in matter no. S143/2018 be granted leave pursuant to r 4.03.2 of the High Court Rules 2004 (Cth) to file a bill of costs.*
- 2. The first and second respondents in matter no. S144/2018 be granted leave pursuant to r 4.03.2 of the High Court Rules 2004 (Cth) to file a bill of costs.*
- 3. There be no order as to costs of the application filed on 18 May 2026.*

Representation

The appellants in each matter are represented by Yeldham Price O'Brien Lusk Lawyers

The ninth and 11th respondents in S143/2018 and the first and second respondents in S144/2018 are represented by Speed and Stracey Lawyers

No appearance for the first to eighth, 10th and 12th to 15th respondents in S143/2018, and for the third to 15th respondents in S144/2018

1 BEECH-JONES J. On 8 May 2019, this Court dismissed appeals brought by Ms Bianca Rinehart and Mr John Hancock (the "Costs Respondents") against a decision of the Full Court of the Federal Court of Australia.¹ The Full Court had stayed proceedings the Costs Respondents had commenced in the Federal Court against Mrs Georgina Rinehart ("Mrs Rinehart"), Hancock Prospecting Pty Ltd ("HPPL"), 150 Investments Pty Ltd ("150 Investments") and other entities because of the existence of an arbitration agreement.² This Court also allowed a cross-appeal brought by other respondents to those Federal Court proceedings.³

2 Mrs Rinehart and 150 Investments (the "Costs Applicants") were separately represented in this Court from the other respondents. The Costs Respondents were ordered to pay the costs of all the respondents to their appeals, including the costs of the Costs Applicants.

3 Rule 4.03.2 of the *High Court Rules 2004* (Cth) provides that "[w]here 3 years or more has elapsed since any party has taken any step in a proceeding, no step shall be taken in the proceeding without the leave of the Court or a Justice".

4 On 18 May 2026, the Costs Applicants applied for leave under r 4.03.2 to file a bill of costs in each of the appeals (the "application"). Their application is opposed.

Litigation and arbitration between the parties

5 In his affidavit filed in support of the application, the solicitor for the Costs Applicants, Mr Peter Speed, states that the "central reason" for the Costs Applicants' failure to file a bill of costs within the three-year period provided for by r 4.03.2 (which Mr Speed appears to accept expired on 8 May 2022), and for a four-year period thereafter, was that the Costs Applicants and their legal representatives were "focused on and heavily involved in related and other litigation in arbitration and in various courts."

6 The Federal Court proceedings that were stayed and were the subject of the appeals to this Court were commenced in 2014 (the "2014 Federal Court Proceedings"). In those proceedings, the Costs Respondents made various claims concerning the alleged conduct of HPPL, Mrs Rinehart and others in relation to the assets of various trusts established prior to the death of the late Mr Lang Hancock, of which the Costs Respondents are beneficiaries.⁴ After the

1 *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514.

2 *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514 at 524 [2], 527 [16].

3 *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514 at 547 [81].

4 *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514 at 524 [2].

determination of the appeals to this Court, the substance of the claims made in the 2014 Federal Court Proceedings were referred to arbitration (the "Principal Arbitration").

7 Prior to the final (and lengthy) hearing of the Principal Arbitration, the Costs Respondents brought proceedings in the Supreme Court of New South Wales seeking the disqualification of a member of the arbitral tribunal determining that arbitration (the "Apprehended Bias Proceedings"). Those proceedings were dismissed with costs at first instance and leave to appeal that decision was refused with costs.⁵

8 On 29 March 2023, the arbitral tribunal reserved its decision. Mr Speed states that the Costs Applicants and their legal representatives were focused on the Principal Arbitration from late 2019 until March 2023, and they have continued to make further submissions to the arbitral tribunal in each year since the hearing concluded.

9 Given the confidentiality constraints applying to arbitration proceedings,⁶ the parties were circumspect in their filing of evidence concerning the nature and progress of the Principal Arbitration. It suffices to state that the Principal Arbitration appears to be large in scope, legally and factually complex, resource intensive and costly.

10 Further, in 2016 the Costs Respondents were ordered to be joined to proceedings in the Supreme Court of Western Australia that had been commenced by Wright Prospecting Pty Ltd and other parties against HPPL and others (the "WA Proceedings").⁷ In their defence and counterclaim in the WA Proceedings, the Costs Respondents repleaded many of the claims they had pleaded in the 2014 Federal Court Proceedings. In December 2018 the Costs Respondents' counterclaim in the WA Proceedings was stayed and referred to arbitration.⁸ Following various interlocutory decisions and appeals, as well as an unsuccessful application for special leave to appeal to this Court, the balance of the parties' substantive claims in the WA Proceedings were heard over 51 hearing days in 2023.

5 *Hancock v Hancock Prospecting Pty Ltd* (2022) 402 ALR 328; *Hancock v Hancock Prospecting Pty Ltd* (2022) 409 ALR 638.

6 See *Commercial Arbitration Act 2012* (WA), s 27E(2).

7 *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd (No 7)* [2016] WASC 305.

8 *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd (No 10)* [2018] WASC 407.

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11 Judgment at first instance in the WA Proceedings was delivered by Smith J
on 15 April 2026.⁹ That judgment has been appealed by all active parties. The
appeals are listed for hearing over five weeks commencing in February 2027.

12 Mr Speed states that his clients did not appear at the hearing of the WA
Proceedings "except to a minor extent" but attests that those proceedings were a
"focus of Mrs Rinehart in early 2024" when a privilege issue involving her was
heard and determined, as well as by reason of Mrs Rinehart being a director of
HPPL, the principal defendant in those proceedings.

13 In addition, in 2011 the Costs Respondents commenced proceedings in the
Supreme Court of New South Wales against Mrs Rinehart (the "Trust Dispute
Proceedings") concerning the administration of the Hope Margaret Hancock Trust
(the "HMH Trust"). In 2015, orders were made appointing Ms Bianca Rinehart as
the trustee of that Trust in place of Mrs Rinehart, and Mrs Rinehart was ordered to
deliver up documents relating to that Trust. Following those orders being made,
and up until 2022, the Costs Respondents and Mrs Rinehart were engaged in
further disputation regarding what documents were to be considered trust property,
the extent to which Mrs Rinehart complied with and was obliged to comply with
the orders for delivery up of such documents, and at whose expense. Further
hearings also took place in the Trust Dispute Proceedings relating to Ms Bianca
Rinehart's access to certain documents filed in other earlier proceedings, as well as
in relation to an application for suppression orders filed by Mrs Rinehart.

14 In 2017, Ms Bianca Rinehart, in her capacity as the trustee of the HMH
Trust, commenced proceedings in the Supreme Court of New South Wales against
HPPL, Mrs Rinehart and others seeking relief in respect of the administration of
HPPL, including its alleged failure to pay dividends (the "Oppression
Proceedings"). After various interlocutory applications were filed, in February
2020 the Supreme Court ordered that all bar one aspect of the Oppression
Proceedings be referred to arbitration and the balance of those proceedings were
stayed pending determination of the arbitration. In March 2020, Ms Bianca
Rinehart was ordered to pay the costs of Mrs Rinehart's and HPPL's successful
applications to refer the Oppression Proceedings to arbitration.¹⁰

Other evidence

15 In his affidavit Mr Speed pointed to r 51.03.2 of the *High Court Rules 2004*
(Cth), which provides that an order for costs of an interlocutory proceeding shall
not entitle a party, unless the Court or a Justice otherwise orders, to have the costs

9 *Wright Prospecting Pty Ltd v Hancock Prospecting Pty Ltd (No 26)* [2026] WASC 101.

10 *Rinehart v Rinehart (No 2)* [2020] NSWSC 235.

ordered in their favour taxed until the principal proceeding in which the interlocutory order is made is concluded. Mr Speed stated that this and other similar rules in the *Federal Court Rules 2011* (Cth) reflect an objective of avoiding the inconvenience and injustice arising from multiple taxations following interlocutory applications. Mr Speed stated that the Costs Applicants had sought to avoid the cost, inconvenience and oppressive aspects of multiple taxations of costs orders. He said the Costs Applicants hoped that the delivery of an award in the Principal Arbitration and the other proceedings noted above "would lead to an overall finalization and settlement" of the disputes between the Costs Applicants and Costs Respondents, including with respect to legal costs, but that the delay in the delivery of the award in the Principal Arbitration and in the handing down of multiple judgments prompted this application.

16 In his affidavit, the solicitor for the Costs Respondents, Mr Price, disputed Mr Speed's assertion that the necessity to focus on the Principal Arbitration and the other proceedings referred to above explains the delay in filing the application. Mr Price referred to the resources available to Mrs Rinehart and noted that in late 2025, during the period that Smith J had reserved judgment in the WA Proceedings, both HPPL and Mrs Rinehart pursued the assessment and payment of costs by the Costs Respondents of interlocutory costs orders in those proceedings for substantial amounts. In 2020, 2025 and 2026, HPPL and Mrs Rinehart also filed various applications seeking the assessment of costs relating to the 2014 Federal Court Proceedings, which were the subject of the appeals to this Court. Mr Price also noted that in September 2025 the Costs Applicants filed an application for an assessment of their costs with respect to the Costs Respondents' unsuccessful Apprehended Bias Proceedings. In April 2026 Mrs Rinehart also filed a bill of costs in respect of the costs orders made against Ms Bianca Rinehart in the Oppression Proceedings.

17 Mr Price also stated that, during 2019, HPPL had their costs taxed in this Court, had the certificates of taxation registered in the Supreme Court of New South Wales and obtained costs judgment orders with respect to those certificates of taxation from that Court. Those costs were then paid by the Costs Respondents.

18 Further, Mr Price stated that he expects that the Costs Respondents, and their legal team, will be "significantly occupied" with the appeal of the WA Proceedings until its completion.

19 Mr Price claimed that to grant this application would occasion prejudice to the Costs Respondents. Specifically, he asserted: (i) the Costs Respondents have lost the opportunity to undertake the taxation process in parallel with HPPL's bill of costs in 2019, which will disadvantage them in assessing whether there was any duplication of work undertaken by HPPL and the Costs Applicants; (ii) the effluxion of time has compromised the Costs Respondents' capacity to participate in the taxation process through the degradation of Mr Price's memory of the "procedural steps" in the appeals to this Court; (iii) there have been changes in the

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Costs Respondents' legal team since the appeals were heard in this Court such that Mr Price is the only remaining member of the team of solicitors who worked on those appeals; (iv) the Costs Respondents' legal team is otherwise substantially involved in preparation for the hearing of the appeals in the WA Proceedings; and (v) the period of delay is such that it was uncertain as to whether the costs orders made by this Court would ever be enforced and the Costs Respondents "could no longer be expected to have funds set aside" to meet the costs order.

Leave under rule 4.03.2 to file a bill of costs

20 As has been noted by Edelman J, some decisions of single Justices of this Court have held that, in cases where an applicant seeks leave to take a step under r 4.03.2 to give effect to a court order such as an order for costs, the applicant need not show any reason for the delay in seeking to take the step.¹¹ Instead, the application has been determined by reference to an assessment of the prejudice occasioned to the other party or parties from the prospective grant of the application.¹² However, in other cases, single Justices of this Court have proceeded by assessing whether a "good" or "proper" reason for the delay or sufficient reason for the grant of leave has been demonstrated.¹³

21 In *DBO19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs*,¹⁴ Edelman J determined an application under r 4.03.2 on the basis that, as a party seeking the making of an order, an applicant was required to demonstrate a "sufficient reason for making the order" but that would entail a consideration of the reason for the delay, the extent of the delay and the prejudice occasioned to the other party.¹⁵ His Honour observed that thus, "even a weak

11 *DBO19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2026] HCASJ 8 at [7] ("*DBO19*").

12 *Cross Country Realty Pty Ltd v Peebles* [2015] HCATrans 278; *Mineralogy Pty Ltd v Sino Iron Pty Ltd* [2021] HCATrans 55; see also, in relation to an earlier form of the rule, *Hospital Products Ltd v United States Surgical Corporation* (1993) 67 ALJR 777 at 779; (1993) 116 ALR 218 at 221 per Gaudron J.

13 *Doppstadt Australia Pty Ltd v Lovick & Son Developments Pty Ltd* [2021] HCATrans 1; *Defteros v Google LLC* [2024] HCASJ 6 ("*Defteros*"); *Brisbane City Council v Amos* [2024] HCASJ 35.

14 [2026] HCASJ 8.

15 *DBO19* [2026] HCASJ 8 at [8]-[9].

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reason will sometimes be sufficient"¹⁶ depending on the other factors. I will adopt that approach.

Determination

22 The Cost Applicants accepted that the three-year period provided by r 4.03.2 expired on 8 May 2022. The Costs Application was filed just over four years after that time. That is a very significant period for which to seek an extension.

23 The Costs Respondents submitted that the explanations for the delay proffered by Mr Speed should not be accepted. They submitted that the Court should "guard against the risk that a party engaged in an ongoing and extensive array of proceedings may *tactically* refrain from filing a bill of costs at the time the costs orders are made so as to be able to escalate pressure on their opponents, or distract their opponents' legal teams, at a critical point in the overall dispute" (emphasis added), specifically their preparation for the appeal from the decision of Smith J in the WA Proceedings, to be heard in February 2027.

24 I do not accept that the delay by the Costs Applicants was undertaken for any tactical reason. I accept Mr Speed's denial to that effect in his affidavit in reply. As he stated, if that had been his intention he would have filed the application during the course of the Principal Arbitration when the Costs Respondents and their solicitors were no doubt heavily occupied. In fact, Mr Speed sought to file this application in February 2026, prior to Smith J delivering judgment, but by the time the Deputy Registrar notified him of the leave requirement in r 4.03.2, the parties in the WA Proceedings had been notified that judgment would be delivered.

25 Overall, the effect of Mr Speed's affidavits is that the delay in filing the bill of costs arose from the intense work involved in the conduct of the Principal Arbitration in circumstances where it was anticipated, or at least hoped, that taxation could be avoided by wrapping up the resolution of any dispute over the (relatively modest) costs at issue in this Court in any resolution of the dispute over the very large amounts in issue in the Principal Arbitration. By late 2025 no award had been delivered, so that approach lost its attraction. The Costs Applicants then sought to quantify and, if possible, enforce their costs order in this Court. They took similar action in 2025 and 2026 with respect to the costs orders that had been made in their favour in the WA Proceedings, the Oppression Proceedings, the 2014 Federal Court Proceedings, and the Apprehended Bias Proceedings.

26 While I would not characterise this explanation as "weak", it is not especially compelling given the extent of the delay. Whether the explanation is sufficient to warrant the application being granted ultimately depends on an

16 DBO19 [2026] HCASJ 8 at [9].

assessment of the prejudice occasioned to the Costs Respondents if this application was granted.

27 While I accept that the Costs Respondents would have benefitted from taxing the costs of all the respondents in the appeals to this Court at the same time, I do not accept that the denial of that benefit represents a form of prejudice that relevantly arises from the Costs Applicants' delay in filing a bill of costs within the three-year period provided for in r 4.03.2. HPPL's assessment was completed during 2019 and there were a further two years in which the Costs Applicants could have filed a bill of costs before there was any necessity to apply under r 4.03.2.

28 I also do not accept that the effluxion of time and the changes in the Costs Respondents' legal team since 2019 has any significant impact on their capacity to participate in the taxation assessment. The costs being assessed are those of the Costs Applicants. The Costs Applicants' lawyers' files should be available, if needed, and the rates and type of work done to prepare for and conduct the appeals in this Court are reasonably well established.¹⁷ In responding to the applications, the Costs Respondents will have the benefit of Mr Price's direct involvement in the appeals and will have access to his firm's files.¹⁸ If any difficulty arises from Mr Price being involved in the preparation for the hearing of the appeal in the WA Proceedings in February 2027, then that can be accommodated in the timing of the taxation.

29 Lastly, Mr Price's assertion that the delay in filing the bill of costs created uncertainty as to whether the costs orders would be enforced and the Costs Respondents "could no longer be expected to have funds set aside" to meet the order does not advance the Costs Respondents' opposition to the application. The making of the costs orders in this Court was always a relatively small event in a much larger ongoing dispute between the parties. Mr Price's assertion is different from an assertion that the Costs Respondents were in fact induced to conclude that the costs orders would not be enforced and as a consequence made financial decisions that in fact inhibited their setting aside of funds to make payment. In the absence of evidence of the latter assertion, Mr Price's contention cannot be taken further.

30 In the end result, although the delay is much longer, the circumstances of this application are similar to those that I considered in *Defteros v Google LLC*.¹⁹ The parties are enmeshed in ongoing and substantial litigation, much of it initiated by the Costs Respondents. At all relevant times since the costs orders were made

17 *Defteros* [2024] HCASJ 6 at [12].

18 *Defteros* [2024] HCASJ 6 at [12].

19 [2024] HCASJ 6.

in this Court, the parties should have anticipated (and presumably did anticipate) that there would be many more costs orders between the parties, including orders for substantial amounts of costs. They also should have anticipated (and presumably did anticipate) the potential for substantial awards to ultimately be made in favour of one set of parties or the other (or even competing awards). While the Costs Applicants' delay has been substantial, so has the delay in the completion of the Principal Arbitration. It is understandable that the Costs Applicants would now seek to at least quantify amounts owing in their favour with a view to either enforcing them or bringing them to account when the Principal Arbitration and the other proceedings eventually resolve. In the absence of any real or substantial prejudice to the Costs Respondents, I am satisfied that sufficient cause has been shown to warrant a grant of leave under r 4.03.2.

31 I order that Georgina Hope Rinehart and 150 Investments Pty Ltd be granted leave pursuant to r 4.03.2 of the *High Court Rules 2004* (Cth) to file their bill of costs.

32 There will be no order as to the costs of this application. In bringing the application, the Costs Applicants sought an indulgence. The Costs Respondents resolutely opposed the application and have been unsuccessful.