

# SUPREME COURT OF QUEENSLAND

CITATION: *Ganesan v Monadelphous Pty Ltd & Ors* [2026] QSC 136

PARTIES: **SELVAM GANESAN**  
(plaintiff)

v

**MONADELPHOUS ENGINEERING PTY LTD**  
**ABN 43 010 305 923**  
(first defendant)

**BM ALLIANCE COAL OPERATIONS PTY LTD**  
**ABN 67 096 412 752**  
(second defendant)

**M MAINTENANCE PTY LTD**  
(third defendant)

FILE NO/S: 1175/2024

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Rockhampton

DELIVERED ON: 15 June 2026

DELIVERED AT: Rockhampton

HEARING DATE: 3 June 2026

JUDGE: Crow J

ORDER:

CATCHWORDS: PROCEDURE- SUPREME COURT- PROCEDURE BEFORE TRIAL- COMEMNCEMENT OF ACTIONS AND PLEADINGS- Where the plaintiff sues the defendant for personal injury- whether the plaintiff can *nunc pro tunc* commence a proceeding against the first defendant- whether the second defendant can be included in the proceedings as a defendant- whether the requirement to hold a compulsory conference between the parties be dispensed with- whether the requirement of parties to exchange mandatory final offers has been dispensed with- whether the plaintiff has leave to amend the claim and statement of claim.

*Limitations of Actions Act* 1974 s31

*Personal Injuries Proceedings Act* 2002 (Qld) s7, s9, s18, s36, s40, s48, s59

*Uniform Civil procedure Rules 1999 (Qld) r69, r188*  
*Worker's Compensation and Rehabilitation Act 2003 (Qld)*  
 s151, s 292, s294, s295, s296, s297, s298, s318  
*Workers' Compensation Act 1987 (NSW) s151C*  
*WorkCover Queensland Act 1996 (Qld) s303*

*Berowra Holdings Pty Ltd v Gordon (2006) 225 CLR 364*  
*Hamilton v Merck & Co [2006] NSWCA 55*  
*Hamling v Australian Meat Holdings Pty Ltd (No 2) [2007] 1*  
*Qd R 315*  
*Phipps v Australian Leisure and Hospitality Group Ltd*  
*[2007] 2 Qd R 555*  
*Stanley-Clark v Boyle [2012] QSC 196*

COUNSEL: A Stobbie for the plaintiff  
 G C O'Driscoll for the first defendant  
 Mr T Scott (SOL) for the second defendant  
 M Rothery for the third defendant

SOLICITORS: Turner Freeman Lawyers for the plaintiff  
 Lander & Rogers for the first defendant  
 HWL Ebsworth for the second defendant  
 DWF Australia for the third defendant

- [1] By a claim and statement of claim filed 1 November 2024, the plaintiff, Mr Ganesan, sued Monadelphous Engineering Pty Ltd (Monadelphous) and BM Alliance Coal Operations Pty Ltd (BMA). Mr Ganesan alleges he suffered personal injury on 19 February 2019 at the Blackwater Coal Mine. The circumstances of the accident are straightforward. Mr Ganesan was employed as a boiler maker/welder. Mr Ganesan was tasked with welding a heavy steel ring to the roof of a tank inside No. 25 Dragline and a scaffold had been erected inside the tank to allow Mr Ganesan to undertake this task. The scaffold did not contain a ladder but rather, a portable step. In the course of his duties, Mr Ganesan attempted to jump from the level of the roof of the tank onto the portable step, and when he did so, the portable step slid and he fell onto the deck of the scaffold, suffering personal injuries. After this accident, a ladder was recommended to be installed. The statement of claim alleged that Monadelphous was his employer and that BMA was the coal mine operator that had contracted Monadelphous to provide mining services to the mine.

- [2] WorkCover Queensland, the insurer of the employer, acting through its appointed solicitor, DWF Australia Pty Ltd, filed its notice of intention to defend and defence on 28 November 2024, admitting that it was Mr Ganesan’s employer and it further admitted that BMA had contracted Monadelphous to provide services at the mine.
- [3] Similarly, in the notice of intention to defend and defence filed by BMA on 28 November 2024, Mr Ganesan’s employment with Monadelphous was admitted, as was the contractual relationship between Monadelphous and BMA. Both Monadelphous and BMA have filed notices claiming contribution against each other pursuant to s 6 of the *Law Reform Act* 1995. On the pleadings, Mr Ganesan’s case was a routine claim by a coal mine worker for personal injuries sustained in the course of employment at a coal mine; that is, for many years it has been routine for injured workers of that category to pursue their rights against the employer, having complied with the provisions of the *Workers’ Compensation and Rehabilitation Act* 2003 (Qld) and against the coal mine operator having complied with the *Personal Injuries Proceedings Act* 2002 (Qld) (“PIPA”). Unfortunately, this simple claim has become far more complicated.
- [4] On 25 May 2026, Mr Ganesan filed an application seeking, *inter alia*, orders:
- (a) Pursuant to s 18(1)(c)(ii) of the PIPA the plaintiff have leave, *nunc pro tunc*, to commence this proceeding against the first defendant, Monadelphous...
  - (b) That M Maintenance Services Pty Ltd ... be included in the proceedings as a defendant pursuant to r 69(2)(a)(iii) of the *Uniform Civil Procedure Rules* 1999 (Qld).
- [5] The background to the application is that on 4 June 2025, DWF Solicitors, acting for WorkCover Queensland, wrote to HWL Ebsworth Lawyers, acting for BMA, asserting that “the correct employing entity, however, is M Maintenance Service Pty Ltd as per the payment summary. Prior to trial, an application will need to be brought to amend the name of the first defendant.”
- [6] The prompt response of HWL Ebsworth of 16 June 2025 asserted:
- “We note that this matter has proceeded to date on the basis that Monadelphous Engineering Pty Ltd was the employer of the plaintiff. Indeed, we note this had been admitted on the pleadings. We note that our client entered into a services contract with that entity pursuant to

which the plaintiff was working at the time of the alleged incident. Accordingly, Monadelphous Engineering Pty Ltd is an appropriate defendant to the claim and we do not anticipate that our client will be consenting to an amendment of the name of the first defendant. If it is the position that M Maintenance Services also needs to be added as a defendant to the proceeding by the plaintiff, we will take our client's instructions on that proposal."

[7] The next day, 17 June 2025, Turner Freeman wrote

"To date, our understanding has been (which was repeatedly confirmed, including in the pleadings) that Monadelphous Engineering was our client's employer at the time of the subject incident. We agree that based on the material we have viewed to date, Monadelphous Engineering should remain a defendant. Should DWF hold a different view, please provide reasons..."

[8] The response of DWF of 7 July 2025 asserted that the correct employing entity was M Maintenance Services Pty Ltd and advising:

"Here, Engineering was the executing entity relating to the contract entered into with BM Alliance Coal Operations Pty Ltd under contract MS-23416A. We have received further instructions from Monadelphous Group Ltd who confirm that both Engineering and Maintenance are wholly owned subsidiaries of the Monadelphous Group Ltd. We also are instructed that there are no formal arrangements or documents about the relationship between Engineering and Maintenance and that it is more of a back office accounting function. Our client agrees that Engineering should remain as the named defendant to the proceedings. At this time, we do not anticipate receiving instructions to add Maintenance as a defendant to the proceedings."

[9] The parties then discovered documents concerning employment which plainly confirmed that M Maintenance Pty Ltd was the employer. DWF then in its letter of 21 August 2025, after acknowledging that it had incorrectly admitted that Monadelphous Engineering was the employing entity, asserted that the defence will need to be amended and that:

"We are advised that it would be improper to continue proceedings against Monadelphous Engineering Pty Ltd on the basis it was the employing entity and that doing so would be tantamount to misleading the Courts. Our client is therefore compelled to take steps to rectify this issue, as it holds a statutory right of abrogation only in respect of claims against the employer pursuant to s 300 of the *Workers' Compensation and Rehabilitation Act 2003* (Qld). Should the plaintiff continue to pursue the claim against Monadelphous Engineering Pty Ltd, our client will be forced to deny indemnity in respect of the claim

against the first defendant. We acknowledge that the plaintiff may make an application to court pursuant to r 69(2)(a)(iii) of the *Uniform Civil Procedure Rules 1999* (Qld) to substitute M Maintenance Services Pty Ltd as the correct party. If the plaintiff chooses to do so, we hold WorkCover's instructions to consent to the addition of that entity to the proceedings on the basis that it was a relevant employing entity. Any suggested proposed orders should provide for the filing of an amended claim and statement of claim and an amended defence within a reasonable time..."

[10] The response of HWL Ebsworth Lawyers on 22 August 2025 to that proposal was that:

"We confirm that if M Maintenance is substituted as the first defendant in place of Monadelphous Engineering Pty Ltd, our client will be required to join Monadelphous Engineering Pty Ltd as a third party to the claim to prosecute its rights pursuant to a contract between our client and Monadelphous Engineering Pty Ltd..."

[11] The original parties to the litigation, being the plaintiff, Monadelphous Engineering Pty Ltd (then acting through its insurer, WorkCover Queensland) and BMA agree on the terms of orders which may be made to rectify the error in the identification of the plaintiff's correct employer. The proposed mechanism is to include M Maintenance Services Pty Ltd (MMS) as third defendant under UCPR 69(2)(a)(iii) but leave Monadelphous in as the first defendant. The Plaintiff MMS (Workcover) and BMA submit the following orders be made:

- (1) Pursuant to s18(1)(c) (ii) of the *Personal Injuries Act 2002* ("PIPA"), the Plaintiff have leave *nunc protunc* to continue this proceeding against the First Defendant Monadelphous Engineering Pty Ltd ABN 43010305923;
- (2) Pursuant to section 36(5)(b) of PIPA, the requirement to hold a compulsory conference between the parties be dispensed with;
- (3) Pursuant to section 40(9) of PIPA, the requirement of the parties to exchange mandatory final offers be dispensed with;
- (4) M Maintenance Services Pty Ltd ABN 82605643678 be included in this proceeding as a defendant, pursuant to r 69(2)(a)(ii);

- (5) The plaintiff have leave accordingly to amend the Claim and Statement of Claim;
- (6) The Mandatory Final Offers made by WorkCover Queensland on 6 September 2024 in the name of Monadelphous Engineering Pty Ltd pursuant to s292 of the *Worker's Compensation and Rehabilitation Act* 2003 ("WCRA") in relation to the Plaintiff's claim be treated as offers made by WorkCover Queensland on behalf of M Maintenance Services Pty Ltd.
- (7) The Notice of Intention to Defend and the Defence filed in the name of Monadelphous Engineering Pty Ltd (ABN 43010305923) on 29 November 2024 be taken to be the Notice of Intention to Defend and the Defence of M Maintenance Services Pty Ltd ABN (826053643678);
- (8) M Maintenance Services Pty Ltd have leave, pursuant to rule 188 of the *Uniform Civil procedure Rules* 199, to withdraw its admission at paragraph 5(a) of that Defence.
- (9) The parties' costs of this Application be the parties' costs in the cause except as against M Maintenance Services Pty Ltd where pursuant to s318C of the WCRA, there is no order for costs.

[12] The first defendant, Monadelphous Engineering Pty Ltd object to the proposed course of action, arguing that the application ought to be dismissed as "Section 18 does not permit the court to exercise its discretion in circumstances where there has been no notice issued whatsoever against the purported defendant" and "the orders sought by the application would have the effect of simply wiping away compliance with the pre-court regime to now constitute the action as a PIPA action in circumstances where the construction of s 18 clearly does not give rise to any discretion in the court to make the orders sought."

[13] Monadelphous does not oppose order 4 to 8 as they concern the other parties. Mr O'Driscoll for Monadelphous argues that orders 1 to 3 ought not be made. I accept the argument of Mr O'Driscoll.

- [14] The starting point is a consideration of the High Court’s decision in *Berowra Holdings Pty Ltd v Gordon* (2006) 225 CLR 364 in which the plurality of the High Court concluded that the failure to comply with s 151C of the *Workers’ Compensation Act 1987* (NSW) meant that “such proceedings are vulnerable to an application by the defendant to strike out the initiating process or to move for summary dismissal, but they are not a nullity.”<sup>1</sup>
- [15] The decision in *Berowra Holdings* was analysed by Keane JA (as his Honour then was) in *Phipps v Australian Leisure and Hospitality Group Ltd* [2007] 2 Qd R 555. As Keane JA said in paragraph [10] in response to the submission that proceedings commenced in breach of the WCRA were invalid or a nullity “that contention was rejected by the High Court in reasons which emphasised that a true understanding of the effect of non-compliance with s 151C requires close attention to the words of the statute and the statutory scheme in general.” [my underlining].
- [16] The decision in *Phipps* concerned the provisions of the WCRA. Importantly, as pointed out by Keane JA, that included ss 294 to 298 as follows:

**“294 Application of Div 1**

This division states the conditions that must be satisfied before a claimant can start a court proceeding.

**295 Compliance necessary before starting proceeding**

The claimant may start a proceeding in a court for damages only if the claimant has complied with—

- (a) the relevant division under part 2, to the extent the division imposes a requirement on the person; and
- (b) part 5, other than as provided by sections 297 and 298; and
- (c) part 6; and
- (d) section 296.

[my underlining]

**296 Claimant to have given complying notice of claim or insurer to have waived compliance**

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<sup>1</sup> At [33]-[37].

The claimant may start the proceeding if any of the following have happened—

- (a) at least 6 months or, for a claimant with a terminal condition or to whom section 302(1)(b) applies, 3 months have elapsed after—
  - (i) the claimant has given, or is taken to have given, a complying notice of claim; or
  - (ii) the insurer has waived the claimant's noncompliance with the requirements of section 275 with or without conditions; or
  - (iii) the court has made an order under section 297 or 298;
- (b) the insurer has admitted liability, but is claiming contributory liability from the claimant, a contributor or another party, and the claimant has given the insurer written notice that the extent of the admission is disputed;
- (c) the insurer has admitted liability but damages can not be agreed.

#### **297 Court to have made declaration about noncompliance**

- (1) Subject to section 296, the claimant may start the proceeding if the court, on application by the claimant dissatisfied with the insurer's response under section 278 to a notice of claim, declares that—
  - (a) notice of claim has been given under section 275; or
  - (b) the claimant is taken to have remedied noncompliance with the requirements of section 275.
- (2) A declaration that a claimant is taken to have remedied noncompliance with section 275 may be made on conditions the court considers necessary or appropriate to minimise prejudice to the insurer from the claimant's failure to comply with the requirements of section 275.

#### **298 Court to have given leave despite noncompliance**

- (1) Subject to section 296, the claimant may start the proceeding if the court, on application by the claimant, gives leave to bring the proceeding despite noncompliance with the requirements of section 275.
- (2) The order giving leave to bring the proceeding may be made on conditions the court considers necessary or appropriate to minimise prejudice to the insurer from the claimant's failure to comply with the requirements of section 275.

[17] Keane JA also had reference to the unanimous Court of Appeal decision in *Hamling v Australian Meat Holdings Pty Ltd (No 2)* [2007] 1 Qd R 315 in which Jerrard JA, with whom Holmes JA and McKenzie J agreed said at [18]:

“[18] It was common ground between the parties on this appeal that the recent decisions of the High Court in *Brighton Und Refern Plaster Pty Ltd v. Boardman* (2006) 225 C.L.R. 402 and *Berowra Holdings Pty Ltd v. Gordon* (2006) 225 C.L.R. 364, while involving consideration of different legislation, express principles and matters relevant in construing the Act and in determining the strike out application. Those matters include that s.303 does not inevitably result in the invalidity of proceedings commenced in contravention of it, because the section does not extinguish rights or create new ones. Rather it postpones the remedy for the common law right to initiate proceedings in a court of competent jurisdiction...”

[18] The reference to s303 is a reference to s303 of the *Workcover Queensland Act 1996* which is provided.

**303 Claimant to have given complying notice of claim or WorkCover to have waived compliance**

The claimant may start the proceeding if any of the following have happened—

- (a) at least 6 months... have elapsed after-
  - (i) the claimant has given a complying notice of claim; or
  - (ii) WorkCover [Queensland] has waived the claimant’s non-compliance with the requirements of section 280; or
  - (iii) the court has made an order under section... 305...

[19] With reference to *Berowra Holdings* and *Hamling’s* decision, Keane JA said at [12]:

“[12] ... The fact that an action had been commenced contrary to the requirements of the regulatory regime did not dictate the result of the exercise of the discretion whether to terminate the proceeding, at least in the absence of an express or implied prohibition in the Act upon the claimant continuing to prosecute the irregularly commenced claim. [my underlining]

[20] At [16] , [17] and [18] Keane JA said:

“[16] The language of s. 237 and s. 250 is quite different from the proscription in s. 275 of the Act. The difference is between a statutory abolition of the entitlement to seek damages at all, otherwise than in compliance with the conditions of the statute, and a statutory prohibition on commencing an action. That is, I think, a real difference...”

“[17] In my respectful opinion, s 237 and s 250 go to the substantive entitlement of a claimant to recover damages. I was initially of the tentative view that the difference in statutory language may have been decisive against the appellant in this case because of the emphasis in Berowra Holdings upon the difference between statutory prohibitions which go to substantive rights and those which affect only matters of procedure. Further reflection has, however, led me to conclude that the substance/procedure dichotomy discussed in Berowra Holdings is not decisive of this case. Nevertheless, the reasoning in Berowra Holdings does contain authoritative instruction in relation to the determination of this case notwithstanding my view that s 237 and s 250 go to the appellant's entitlement to recover damages from the respondent.”

“[18] The first point to be made here is that neither s. 237 nor s. 250 of the Act purports to prohibit the Court from continuing to entertain a claim brought contrary to those provisions. What those provisions do is ensure that an action brought in disconformity with those provisions cannot succeed because the fact of the disconformity means that no liability can be established in the action against the defendant. While the disconformity exists, the defendant can be under no liability in damages to the plaintiff.”

[21] Similarly, Muir J said at [37]:

“[37] All members of the Court in Berowra concluded that s. 151C of the Workers Compensation Act 1987 (N.S.W.) did not invalidate proceedings commenced in breach of it. Like s. 151C, each of ss 237(1), 250(1) and 275 does not expressly prescribe the consequences of non-compliance. Both Acts constitute statutory schemes modifying common law rights in respect of damages claims in which the worker's right to sue the employer for damages “remains a right sourced at common law”.”

[22] As the above judgments make clear, it is a matter of construing the statute. The relevant provisions of PIPA are ss 7 , 9, 11, 20, 18, 36, 48 and 59 as follows:

### **7 Provisions of this Act that are provisions of substantive law**

- (1) Provisions of this Act that provide for the kinds of damage, and the amount of damages, that may be recovered by a person, and the provisions of chapter 2, part 1, divisions 1, 1A, 2 and 4, are provisions of substantive, as opposed to procedural, law.
- (2) Despite subsection (1), notice of a claim is to be given in the form approved for a notice of a claim when the notice is given.
- (3) Also, subsection (2) has effect for notice of a claim given before the commencement of this subsection.

## **9 Notice of Claim**

- (1) Before starting a proceeding in a court based on a claim, a claimant must give written notice of the claim, in the approved form, to the person against whom the proceeding is proposed to be started.
  - (1A) The approved form must provide for the notice to be in 2 parts, namely part 1 and part 2.
  - (1B) The approved form may provide that some or all information included in the notice be verified by statutory declaration.
- (2) The notice must-
  - (a) contain a statement of the information required under a regulation; and
  - (b) Authorise each of the following to have access to records and sources of information relevant to the claim specified under a regulation
    - (i) the person;
    - (ii) if the person is insured against the claim, the person's insurer for the claim, and
    - (c) if a law practice is retained by the claimant to act in relation to the claim and section 9A does not apply in relation to the claim—be accompanied by—
      - (i) A copy of the law practice certificate for the claim given under section 8C by the supervising principal of the law practice; and
      - (ii) if the claimant has received a copy of a law practice certificate for the claim under section 8F(2)(b)—the copy of the certificate; and
  - (d) be accompanied by the documents required under a regulation.
- (2A) A regulation may require information or other material to accompany a particular part of a notice of claim.

(3) Part 1 of the notice must be given within the period ending on the earlier of the following days-

(a) the day 9 months after the day the incident giving rise to the personal injury happened or, if symptoms of the injury are not immediately apparent, the first appearance of symptoms of the injury;

(b) the day 1 month after the day the claimant first instructs a law practice to act on the person's behalf in seeking damages for the personal injury and the person against whom the proceeding is proposed to be started is identified.

(3A) Part 2 of the notice must be given, to the person to whom part 1 of the notice was given, within 2 months after the earlier of the following to happen-

(a) the person to whom part 1 of the notice was given complies with section 10(1);

(b) the person to whom part 1 of the notice was given is, under section 13, conclusively presumed to be satisfied part 1 of the notice is a complying part 1 notice of claim.

(4) If the claimant is a child, the child's parent or legal guardian may give the notice for the child.

(5) If part 1 of the notice is not given within the period prescribed under subsection (3) or section 9A(9)(b), the obligation to give the notice under subsection (1) continues and a reasonable excuse for the delay must be given in part 1 of the notice or by separate notice to the person against whom the proceeding is proposed to be started.

## **18 Claimant's failure to give part 1 of a notice of a claim**

(1) A claimant's failure to give a complying part 1 notice of claim prevents the claimant from proceeding further with the claim unless—

(a) the respondent to whom part 1 of a notice of a claim was purportedly given—

(i) has stated that the respondent is satisfied part 1 of the notice has been given as required or the claimant has taken reasonable action to remedy the noncompliance; or

- (ii) is conclusively presumed to be satisfied it is a complying part 1 notice of claim under section 13; or
- (b) the respondent has waived compliance with the requirement; or
- (c) the court, on application by the claimant—
  - (i) declares that the claimant has remedied the noncompliance; or
  - (ii) authorises the claimant to proceed further with the claim despite the noncompliance.
- (2) An order of the court under subsection (1)(c) may be made on conditions the court considers necessary or appropriate to minimise prejudice to a respondent from the claimant’s failure to comply with the requirement.
- (3) This section does not affect the application of section 13A.

[23] **36 Compulsory conference**

- (1) Before starting a proceeding in a court based on a claim, there must be a conference of the parties (the *compulsory conference*).
- (2) Any party may call the compulsory conference—
  - (a) at a time and place agreed between the parties; or
  - (b) if the relevant day has passed, at a reasonable time and place nominated by the party calling the conference.
- (3) For subsection (2)(b), the relevant day is the later of the following days—
  - (a) if there is only 1 respondent to the claim, the day 6 months after the claimant gave the respondent a complying part 1 notice of claim or, if there is more than 1 respondent to the claim, the day 6 months after the day the claimant last gave a respondent part 1 of a notice of a claim under [section 14](#)(1);
  - (b) if, under [section 12](#), a person to whom part 1 of a notice of a claim is given gives notice to the claimant that the person is a proper respondent to the claim—the day 6 months after the person gives notice or, if there is more than 1 person to whom part 1 of a notice of a claim is given, the day 6 months after the day after the last person gives notice to the claimant.
- (4) The parties may, for good reason, dispense with the compulsory conference or the signing of a certificate of readiness under [section 37](#)(1)(d) by agreement.
- (5) The court may, on application by a party—
  - (a) fix the time and place for the compulsory conference; or
  - (b) dispense with the compulsory conference for good reason; or

(c) dispense with the requirement to sign a certificate of readiness under [section 37\(1\)\(d\)](#) in cases of complexity including, for example, a case involving multiple respondents, non-party discovery and the need for further expert evidence;

and make any other orders the court considers appropriate in the circumstances.

(6) In considering whether to make any order under subsection (5), the court must take into account—

(a) the extent of compliance by the parties with their respective obligations relating to the claim; and

(b) how the main purpose of this Act is to be achieved having regard, in particular, to [section 4\(2\)\(a\)](#) to (e).

#### **48 Consequences of failure to comply with claims procedures may result in adverse costs order**

(1) If a claimant does not comply with the requirements of part 1, division 1, a court in which the claimant starts a proceeding based on the claim—

(a) may, on a respondent's application in the proceeding, award in the respondent's favour costs (including legal and investigation costs) reasonably incurred by the respondent because of the claimant's default; and

(b) may only award interest in the claimant's favour for a period for which the claimant was in default if the court is satisfied there is a reasonable excuse for the default.

(2) If a respondent does not comply with the requirements of part 1, division 1, a court in which the respondent defends a proceeding based on the claim may, on a claimant's application in the proceeding, award in the claimant's favour costs (including legal and investigation costs) reasonably incurred by the claimant because of the respondent's default.

#### **59 Alteration of period of limitation**

(1) If a complying part 1 notice of claim is given before the end of the period of limitation applying to the claim, the claimant may start a proceeding in a court based on the claim even though the period of limitation has ended.

(2) However, the proceeding may be started after the end of the period of limitation only if it is started within-

(a) 6 months after the complying part 1 notice is given or leave to start the proceeding is granted; or

(b) a longer period allowed by the court

- (3) Also, if a proceeding is started under subsection (2) without the claimant having complied with part 1, the proceeding is stayed until the claimant complies with the part or the proceeding otherwise ends.
- (4) If a period of limitation is extended under the Limitation of Actions Act 1974, part 3, this section applies to the period of limitation as extended under that part.

[24] Chapter 2 of PIPA is entitled “Claims”. Part 1 of Chapter 2 is entitled “Pre-court Procedures”. Division 1 of Part 1 entitled “claims procedure” consists of s 9 to 20 of PIPA. Part 3 of Chapter 2 is entitled “Proceedings in Court”. Thus, the scheme of the act is by 36(1) to require a “claim” to precede a proceeding in a court. The question raised in this application is whether a proceeding in a court is a nullity where the claim process under PIPA has not been commenced and so s36(1) has not been complied with.

[25] In this case, as the plaintiff and his legal advisors and WorkCover and its legal advisors were acting under the mistaken assumption that Monadelphous was the employer, the plaintiff has not complied with s 9 and sent a PIPA Form 1 Notice of Claim to Monadelphous. Although it is plain there is a breach of s 9(1) of the Act with respect to Monadelphous in terms of PIPA, the consequences of such a failure, in my view, are clear. As s 18(1) says, the consequence is that it prevents a claimant proceeding further with his claim unless one of the matters in s 18(1) are satisfied. Importantly, as s 18(2) provides, the court may make such an order the court considers necessary or appropriate to minimise prejudice to a respondent for a claimant’s failure to comply with any requirement of Part 2.

[26] Attention is then turned to Part 3 of Chapter 2, which is entitled Proceedings in Court and includes ss 47 through to 60. It seems to me that the position under the PIPA legislation is clearly set out in s 48. The penalty for failure to comply with the requirements of Part 1 Div 1 (the claims procedure) is an adverse costs order and/or a limited interest award. There is nothing of the nature that Keane JA and Muir J referred to as a legislative provision invalidating proceedings which are commenced in breach of the pre-court process. To the contrary, as can be seen from s 18(2) and s 48, the legislation has expressly provided that the sanction for failure to comply lies in potentially adverse costs orders and interest orders. In my view, properly construed,

a failure to comply with Division 1 of Part 1 PIPA process does not result in proceedings commenced in breach of it being struck out. Section 48 does not however, apply to a breach of Division 4 of Part 1 dealing with compulsory conferences.

- [27] It seems to me when s 18(2) and s 48 are read together that it was Parliament's intention to cure any prejudice suffered by a respondent by a claimant failing to comply with claims procedures in Div 1 of Part 1 of PIPA by fashioning orders to minimise that prejudice with such sanctions including an adverse costs order or a reduction in interest upon damages.
- [28] An application of those principals to the present application, it may be observed that as the accident occurred on 19 February 2019, ordinarily the three-year time limitation period<sup>2</sup> concluded on 18 February 2022. As the claim and statement of claim were filed 1 November 2024 it was commenced out of time. However, that does not invalidate the action. Monadelphous may or may not choose to plead a time limitation defence and if they do the plaintiff may or may not plead an estoppel or bring an application under s 31 of the *Limitation of Actions Act* 1974 to extend the time period, or raise such an application in its reply. Although Monadelphous have, by their solicitors, filed an affidavit supporting its position, the affidavit does not raise any matters of specific prejudice. As set out above by its letter of 7 July 2025, DWF then acting for WorkCover Queensland have asserted that both Monadelphous and M Maintenance Services Pty Ltd are wholly owned subsidiaries of the Monadelphous Group Ltd, there are no formal arrangements or documents about the relationship between Engineering and Maintenance, and that it was more of a "back-office accounting function".
- [29] The affidavit of Ms Josey attaches the relevant detailed incident reports of Monadelphous and BMA and identifies four relevant witnesses. As no one has attempted to contact those witnesses there is currently no specific prejudice.
- [30] Despite being asked what, if any, orders Monadelphous would seek under s 18(2) to minimise any prejudice, Monadelphous were unable to suggest any such conditions, other than compliance with Division 1 of Chapter 2 Part 1 of PIPA.

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<sup>2</sup> S 9 of the Limitation of Actions Act 1974.

[31] Of the s 18 discretion, McMeekin J said in *Stanley-Clark v Boyle* [2012] QSC 196 at [14]:

“[14] PIPA gives no guidance as to the considerations that are relevant to the exercise of the discretion conferred. All that can be said is that plainly s 18(1)(c)(ii) requires that a discretion be exercised and of course it must be exercised judicially — the factors for and against balanced, and the decision made bearing in mind the purpose of the statute.”

[32] The following matters have been relied upon by the applicant as being relevant to the discretion:

- (a) Monadelphous have always been fully aware of the claim being brought against it.
- (b) All parties have considered and Monadelphous has an existing contribution claim against BMA.
- (c) There was compliance with pre-court proceedings under the WCRA (as against Monadelphous Engineering Pty Ltd at the time it was considered the employer) and under PIPA against BMA.
- (d) Monadelphous Engineering Pty Ltd is currently bound by the admission that it is in fact the employer.
- (e) The long delay in bringing proceedings is explicable by matters referred to in Mr Pollock’s affidavit, namely, there was a significant delay from April 2023 as the solicitors for Monadelphous Engineering Pty Ltd had advised that they had referred the matter to the Office of Industrial Relations for consideration pursuant to Ch 12 Pt 2 of the WCRA, with that matter being concluded with no action being taken on 19 March 2024. That delayed the compulsory conference by over a year.
- (f) There has been no intention by the plaintiff to avoid the provisions of PIPA.
- (g) Errors have been made by the lawyers acting for the applicant plaintiff and the lawyers acting for Monadelphous Engineering in identifying the correct employer.

[33] On the first return date of the application, no party raised any issue on the effect of s 59 of PIPA.

[34] The orders that are sought by the applicant and joined in by M Maintenance Services Pty Ltd and BMA did seek, as the first order, as order that “1. Pursuant to s 18(1)(c)(ii) of the *Personal Injuries Act* [sic] 2002 PIPA the plaintiff have leave *nunc pro tunc* to continue proceedings against the first defendant, Monadelphous Engineering Pty Ltd...”

[35] Apart from a typographical error in the omission of the word “proceedings” in the correct title of the Act, the real problem is that s 18(1)(c)(ii) provides the court leave to authorise the claimant to proceed further with the claim despite noncompliance with Part 1. Section 18(1)(c)(ii) says nothing about proceedings and does not include any power to commence proceedings at any time. As stated above, s 18 as it sits within Div 1 of Part 1 of Chapter 2 concerns the claim process and not the proceedings in a court process.

[36] The only arguable impediment therefore to the validity of a court proceeding must come from s 36 (1) or s 59(2) of PIPA. The text of s294 of WCRA as analysed by Keane JA in Phipps is a much stronger indicator of invalidity than s 36(1) of PIPA. As Keane JA said at [12] in Phipps there is no express nor implied prohibition to the continuation of irregularly commenced proceedings. As s 36(5) of PIPA grants a broad power to remedy non-compliance with the requirement for a compulsory conference and s40(9) allows mandatory final offers to be dispensed with. I would conclude that there is no express nor implied prohibition in PIPA to the continuation of an irregularly commence proceedings nor does the substantive nature of division 1 and 4 have the effect for the reason expressed by Keanne JA at [17] in Phipps.

[37] S59(2) of PIPA states that:

“Proceedings may be started after the end of the period of limitation only if a court is satisfied the proceeding is started within 6 months after the complying notice of claim is given or leave to start the proceedings is granted or a longer period allowed by the court.”

(my underlining)

[38] As set out in s 9(3) of PIPA, in order for a Notice of Claim to be complying it must be given the earlier of nine months of the date of the incident or the appearance of symptoms, or within one month of attendance upon a law practice.

[39] As the accident which caused physical injury occurred on 19 February 2019, a complying Notice of Claim was required to be sent by 19 November 2019. The PIPA Form 1 Notice of Claim provided to BMA is exhibit PP1 to Mr Pollock's affidavit filed 27 May 2026. It includes it a reasonable excuse for delay within the terms of s 9(5) of PIPA. Furthermore, as asserted in Mr Pollock's affidavit, the failure by BMA to respond to the Notice of Claim within the required time has the effect under s 13 of PIPA of deeming the notice to BMA as being a complying notice. Accordingly, there is a compliant notice, as required by s 9(1) given to the person (BMA) against whom the proceeding was proposed to be started.

[40] The definition of a claim as contained in the dictionary in Schedule 1 to PIPA does not define a claim by reference to a person against whom the claim is made. Claim and Respondent are defined in the dictionary as follows:

“**Claim** means a claim, however described, for damages based on liability for personal injury, whether the liability is based in tort or in contract or in or on another form of action including breach of statutory duty and, for a fatal injury, includes a claim for the deceased's dependents or estate.”

“**Respondent** means a person who:

- (a) is a respondent under s 12(1); or
- (b) is added as a respondent under s 14.

[41] Cases such as *Berowra Holdings, Phipps, Hamling and Hamilton v Merck & Co* [2006] NSWCA 55 show that courts are obliged to strictly construe statutes that are suggested to extinguish common law rights.

[42] In terms of s 59(1) of PIPA, a complying Part 1 Notice of Claim was given (albeit to BMA) before the end of the limitation period applying to the claim. So, pursuant to s 59(1), the applicant as claimant is entitled to start a proceeding in a court “based on the claim”, even though the period of limitation is ended. It seems to me the phrase “based on a claim” is broadly expressed.

[43] The “new” cause of action against Monadelphous as a contractor/PIPA defendant, is set out in the proposed amended statement of claim, exhibit PP06 to the affidavit of Mr Pollock filed 30 June 2026. When a comparison is made between the proposed cause of action in the proposed amended statement of claim, and the extremely

detailed 53-page PIPA form 1 Notice of Claim given to BMA it may be concluded that they are factually and legally very closely aligned.

- [44] In particular, the eight allegations of breach of duty of care against BMA align almost precisely with the allegations of breach of duty made against the Monadelphous in paragraph 12 of the proposed amended statement of claim. Although the “new” PIPA claim against Monadelphous is closely aligned to the claim against BMA it seems to me that they are different claims (against different Respondents) and therefore the applicant can not rely on s59(1) to extend the period of limitation to the new PIPA claim against Monadelphous. On the current status of pleadings with Monadelphous admitting it is the employer then the proceeding against Monadelphous is in time. It is only if Monadelphous successfully withdraws that admission that a time limitation issue arises.
- [45] In conclusion, I am content with the proposed orders in paragraph 4, 5, 6 and 8 which regularize the existing pleadings and grant leave to amend the claim and statement of claim in terms of exhibit pp-06 to the affidavit of Mr Pollock file 3 June 2026 however I am not prepared to make proposed orders 1, 2, 3 and 7. In my view order 1 is inappropriate as s18(1)(c) (ii) relates to claim compliance and does not authorise any orders to be made in respect of the conduct of a court proceeding. In my view orders 2 and 3 are inappropriate as, although there is power in 36(5) and s 40(9) to make such orders the plaintiff has failed to comply with the claims procedure in Division 1 Part 1 and compulsory conference procedure requires Div 4 of Part 1 of PIPA. As to order 7, I will hear further submissions, however, on its face, it appears to release Monadelphous from its admission that it was the employer which prejudices the applicant as it allows a limitation defence to be raised by Monadelphous.
- [46] I will hear from the parties as to form of orders and costs.