SUPREME COURT OF QUEENSLAND

CITATION:	*McMillan v Trad (No 2)* [2026] QSC 219
PARTIES:	**GRANT ROBERT MCMILLAN** (plaintiff) **v** **SHARBEL TRAD** **AAI LIMITED** ABN 48 005 297 807 (joint defendants)
FILE NO/S:	BS No 1199 of 2022
DIVISION:	Trial Division
PROCEEDING:	Claim
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	15 September 2026
DELIVERED AT:	Brisbane
HEARING DATE:	Heard on the papers
JUDGE:	McCafferty J
ORDER:	**1. The plaintiff pay the second named joint defendant's costs of the proceeding on the standard basis from 31 January 2022, to be assessed if not agreed.** **2. The costs payable by the plaintiff under order 1 be set off against the judgment amount ordered on 8 June 2026.**
CATCHWORDS:	PROCEDURE — CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS — COSTS — DEPRIVING SUCCESSFUL PARTY OF COSTS — NATURE OF PROCEEDING — NOMINAL OR SMALL DAMAGES RECOVERED — where the plaintiff was awarded damages in a sum less than the lower offer limit prescribed by the *Motor Accident Insurance Regulation 2018* — where the amount awarded is less than the insurer's mandatory final offer — whether costs should be awarded to the insurer on the standard basis as from the date on which the proceeding started *Motor Accident Insurance Act 1994* (Qld), s 51A, s 51C, s 51C(1), s 55F, s 55F(1), s 55F(2), s 55F(2)(c), s 100A *Motor Accident Insurance Regulation 2018* (Qld), s 20, s 27 *Habig v McCrae* [2014] QSC 69, cited

Mansi v O'Connor [2012] QSC 374, cited
McMillan v Trad [2026] QSC 108, related

COUNSEL:	The plaintiff appeared on his own behalf, the plaintiff's submissions were heard on the papers D J Murphy for the joint defendants, the joint defendants' submissions were heard on the papers
SOLICITORS:	The plaintiff appeared on his own behalf Jensen McConaghy Lawyers for the joint defendants

Introduction

[1] On 8 June 2026, I delivered reasons in this matter assessing the damages payable to the plaintiff at $8,002.75 (**judgment amount**)[1]. The parties have since filed submissions and materials on the question of costs.

The parties' position

[2] The second named joint defendant (**second defendant**), the first named joint defendant having taken no part in the proceeding, seeks its costs of the proceeding on the standard basis. It submits that costs are to be determined in accordance with the *Motor Accident Insurance Act 1994* (Qld) (**the Act**). It also seeks an order that those costs be set off against the judgment amount payable to the plaintiff.

[3] The plaintiff's position on costs is not clearly articulated in the material he filed, which comprises an affidavit and four exhibits. The affidavit advances no positive submission on costs and does not address the second defendant's submissions. The exhibits comprise: a statement of loss and damage provided under the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**); the claim and statement of claim; a tax invoice issued by the solicitors formerly acting for the plaintiff; and an application under the UCPR for a reduction of fees. From this, I take the plaintiff's position to be that he should not be ordered to pay the second defendant's costs.

The relevant framework and background

[4] Costs in proceedings arising from motor vehicle accidents are regulated by the Act. Sections 55F(1) and (2), which are relevantly applicable, provide:

> "**55F Costs in cases involving relatively small awards of damages**
>
> (1) This section applies if a court awards an amount equal to the upper offer limit or less in damages in a proceeding based on a claim (but it does not apply to the costs of an appellate proceeding).
>
> (2) If the court awards an amount equal to the lower offer limit or less, the court must apply the following principles—

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1 *McMillan v Trad* [2026] QSC 108.

(a) if the amount awarded is less than the claimant's mandatory final offer but more than the insurer's mandatory final offer, no costs are to be awarded;

(b) if the amount awarded is equal to, or more than, the claimant's mandatory final offer, costs are to be awarded to the claimant on an indemnity basis as from the date on which the proceedings started (but no award is to be made for costs up to that date);

(c) if the amount awarded is equal to, or less than, the insurer's mandatory final offer, costs are to be awarded to the insurer on a standard basis as from the date on which the proceedings started (but no award is to be made for costs up to that date).

…"

[5] Several terms used in s 55F are defined elsewhere in the Act.

[6] The terms "lower offer limit" and "upper offer limit" are defined in s 4 by reference to amounts fixed by the Minister under s 100A of the Act. Section 100A requires the Minister, before the commencement of each financial year, to publish a notice fixing those amounts for that financial year. At the time of the plaintiff's accident, the prescribed lower offer limit was $44,070. Section 27 of the *Motor Accident Insurance Regulation 2018* (Qld) (**Regulation**) prescribed that amount for the period from 1 July 2017 to 30 June 2018.

[7] The expression "mandatory final offer" is defined in s 51C of the Act, which at the time of the plaintiff's accident relevantly provided:

"**51C Parties to exchange mandatory final offers if claim not settled at compulsory conference**

(1) If a motor vehicle accident claim is not settled at the compulsory conference, each party must (unless the court has dispensed with this obligation) exchange written final offers—

(a) at the conference; or

(b) if the conference has been dispensed with—within 14 days after the date of the agreement or order dispensing with the conference.

(2) A written final offer required under subsection (1) is called a mandatory final offer.

…"

[8] Section 51C refers to the compulsory conference required by s 51A of the Act. Ordinarily, that conference must occur before a claimant commences proceedings. It is unnecessary to reproduce s 51A or describe the procedure in further detail.

[9] What is relevant is that the parties participated in a compulsory conference on 17 November 2021. The plaintiff was not legally represented, and the claim did not settle. As required by s 51C(1) of the Act the second defendant made a mandatory final offer in the sum of $20,000. The plaintiff made an offer of $50,000 plus costs. The proceeding was commenced on 31 January 2022.

[10] As the plaintiff was not legally represented, s 20 of the Regulation required the second defendant's offer to be accompanied by an explanatory statement in the form approved by the Commissioner. At the relevant time, the approved statement was as follows:

> "Please be aware that your acceptance of this offer of settlement will finalise your claim and you will not be able to make any further claim or receive any further payment from (name of CTP insurer/s) for personal injuries you received arising from this accident.
>
> Should you have any concerns regarding acceptance of this offer of settlement, please contact us. You may also wish to obtain independent advice."

[11] The second defendant did not provide the explanatory statement. It submits that this non-compliance does not affect the operation of s 55F(2) of the Act. I accept that submission, for the following reasons.

[12] Neither the Act nor the Regulation prescribes a consequence for failing to accompany an offer with the explanatory statement. In particular, neither expressly provides that non-compliance with s 20 of the Regulation invalidates the offer. The statement is directed to the consequences of accepting an offer: acceptance will finalise the claim and preclude any further claim or payment arising from the accident. Consistently with that purpose, the statement encourages the claimant to obtain independent advice before accepting the offer.

[13] By contrast, the statement does not address the consequences of rejecting the offer. It says nothing about the costs consequences that may follow if the claimant commences proceedings and either fails or recovers less than the mandatory final offer. That distinction informs the purpose of s 20 and the legislative intention underlying it. The provision is directed to ensuring that an unrepresented claimant understands the finality of accepting an offer, not to warning the claimant of the possible costs consequences of rejecting it. The omission of the statement therefore does not prevent the second defendant's offer from constituting a mandatory final offer for the purposes of s 55F(2).

Costs in this case

[14] In my judgment, s 55F(2)(c) of the Act applies. The judgment amount is less than the lower offer limit of $44,070 and also less than the second defendant's mandatory final offer. The section is expressed in mandatory terms and confers no discretion. The consequence of this is that the fact that the plaintiff may be impecunious (an inference

that may be drawn by reason of his lack of representation and the fact that he was granted an application for a reduction of the filing fee) is irrelevant.

[15] It follows that the second defendant is entitled to its costs on the standard basis as from the date on which the proceedings commenced.

[16] The second defendant also seeks an order that the costs payable to it be set off against the judgment amount.[2] I am satisfied that such an order is appropriate. The second defendant's recoverable costs and outlays are likely to exceed the judgment amount. Further, as the reasons for judgment on liability and damages record, the plaintiff is not employed. These considerations support the making of the order sought.

Orders

[17] I make the following orders:

1. The plaintiff pay the second named joint defendant's costs of the proceeding on the standard basis from 31 January 2022, to be assessed if not agreed.

2. The costs payable by the plaintiff under order 1 be set off against the judgment amount ordered on 8 June 2026.

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2 *Mansi v O'Connor* [2012] QSC 374 at [30] and *Habig v McCrae* [2014] QSC 69 at [39]-[40].