

# Commencing proceedings without complying with section 37 of the *Motor Accident Insurance Act 1994* (QUEENSLAND)

*Bryant v Queensland Rail (2000) QSC 081 /File No 293 of 1998 – Townsville*

On 13 April 2000 His Honour Mr Justice Muir of the Supreme Court of Queensland handed down his decision in the matter of *Bryant v Queensland Rail*.

Mr Bryant was injured in a motor vehicle accident on 23 April 1995. Through his Solicitors Mr Bryant filed a Writ on 15 April, 1998. Mr Bryant had not previously complied with Section 37 of the *Motor Accident Insurance Act* by giving a Section 37 Notice of Claim form to Suncorp Metway, the compulsory third party insurer of the relevant motor vehicle.

Mr Bryant sought the Court's order that:

- a) Pursuant to Section 39(5)(c) of the *Motor Accident Insurance Act* leave to commence proceedings be given nunc pro tunc; and
- b) Pursuant to Rule 69 of the Uniform Civil Procedure Rules the Defendant's licensed insurer, Suncorp Metway, be joined as Second Defendant.

Not surprisingly, the application was opposed.

Section 39(5)(c) allows the Court to

give leave to bring a proceeding "despite non compliance with requirements of this division". Counsel for both parties did not question the correctness of *McKelvie v Page* (1998) 2 QD.R.259 which held that the Court did have leave under that provision to allow commencement of proceedings nunc pro tunc.

However, the Defendant relied on Section 57 of the *Motor Accident Insurance Act* which states:

*"If notice of a motor vehicle accident claim is given ... before the end of the period of limitation applying to the claim, the claimant may bring a proceeding in Court based on the claim even though the period of limitation has ended."*

His Honour held:

*"In my view the clear purport of Section 57(2) is to prevent the bringing of proceedings after the expiration of limitation periods unless the notice of claim is given within the limitation period. An exception to this restriction is provided for in Section 57(5) which permits a limitation period to be extended by application under Part 3 of the Limitation of Actions Act 1974. No such application was made."*

His Honour held that the application of the Plaintiff must therefore fail and quoted the decision of His Honour Justice White in *Couling v Nelson & Ors* where Her Honour stated:-

*"A discretion in Section 39(5)(c) is limited in my view by the provisions of Section 57. At the least a notice of claim or an application for leave to bring a proceeding must be brought before the end of the period of limitation applying to the claim, Section 57(1)."*

His Honour therefore dismissed the application and ordered that the Plaintiff pay the Defendant's costs.

Accordingly, following this decision, it is essential that if instructions from a Plaintiff are received, with the limitation period fast approaching, the Section 37 Notice of Claim form (together with a statutory declaration containing reasons for it being outside the 9 month period) is given to the compulsory third party insurer of the vehicle as soon as possible and absolutely prior to instituting Court proceedings. Delivery of a Section 37 Notice is a mandatory step prior to instituting Court proceedings. ■