

MOTOR VEHICLE (THIRD PARTY INSURANCE).

8° Elizabeth II., No. XXV.

No. 25 of 1959.

AN ACT to amend the Motor Vehicle (Third Party Insurance) Act, 1943-1957.

[Assented to 15th October, 1959.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Motor Vehicle (Third Party Insurance) Act Amendment Act, 1959.* Short title and citation.

(2) In this Act the Motor Vehicle (Third Party Insurance) Act, 1943-1957, is referred to as the principal Act. Vol. 11 Reprinted Acts, approved for reprint 12/6/57, amended by Act No. 77 of 1957.

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(3) The principal Act as amended by this Act may be cited as the Motor Vehicle (Third Party Insurance) Act, 1943-1959.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

S. 3A
amended.

3. Paragraph (a) of subsection (3) of section three A of the principal Act is amended by substituting for the word, "manager" in line one, the words, "General Manager."

S. 3P
amended.

4. Section three P of the principal Act is amended—

(a) by substituting for subsection (5) the following subsection—

(5) (a) The Trust has, and is deemed always to have had, power from time to time to invest any moneys in its hands in any investment authorised by the Trustees Act, 1900, or in other manner approved by the Minister on the recommendation of the Trust.

(b) Any interest or profits obtained by the Trust as a result of any investment referred to in paragraph (a) of this subsection shall not be deemed interest or profit in respect to a particular year or account but shall be apportioned by the Trust between the annual accounts referred to in subsection (4) of this section in such manner as the Trust determines. ;

(b) by substituting for subsection (6) the following subsection—

(6) The Trust may at any time in anticipation of a surplus remaining to the credit of each account referred to in

subsection (4) of this section in respect to any year ending on the thirtieth day of June, make a distribution to the participating approved insurers for that year, but the total amount of distribution under this subsection to any one participating approved insurer in respect of all years together with all payments made to him under subparagraph (iii) of paragraph (b) of subsection (7) of this section shall not exceed seven and one-half per centum of his proportion of the total premiums received by the Trust up to and including the thirtieth day of June immediately preceding the date of the making of the distribution. ;

- (c) by substituting for subsection (7) the following subsection—

(7) (a) The Trust shall dispose of any surplus that remains to the credit of each account referred to in subsection (4) of this section after all the claims to which that subsection refers have been finalised by crediting the surplus to the respective account of each participating approved insurer for that year in proportion to his interest in the Fund for that year.

(b) The credit, less any distribution in respect of that year made to the participating approved insurer under the provisions of subsection (6) of this section, shall be applied and paid as follows—

(i) firstly against the whole or any part of his share of the losses, excluding losses that have been recovered by the Trust pursuant to subsection (8) of this section, debited in respect of any year or years;

(ii) secondly in repayment to him of the whole or any part of any amount paid by him to the Trust pursuant to subsection (8) of this section;

(iii) thirdly in payment to him of a sum by way of dividend but all sums paid to him pursuant to this subsection together with all sums paid to him pursuant to subsection (6) of this section shall not exceed seven and one-half per centum of his proportion of the total premiums received to and including the thirtieth day of June immediately preceding the day of payment; and

(iv) any surplus then remaining to his credit shall be held by the Trust and may from time to time be applied by it in payment of the amounts for the purposes referred to in subparagraph (i), (ii), or (iii) of this paragraph.

(c) For the purposes of subsections (6) and (7) of this section, a participating approved insurer's proportion of the premiums for each year in which he was a participating approved insurer is the same as his proportion in the Fund for that year.

(d) Where a participating approved insurer withdraws from the Fund and

(i) the claims in respect of all years in which he participated have been finalised; and

(ii) there remains a balance which but for the provisions of subparagraph (iii) of paragraph (b) of this subsection, would be payable to him,

the Trust may pay and apply the balance by adding it to the surplus or deducting it from the deficit in respect of any year in which he was not a participating insurer. ;

- (d) by adding after subsection (7) a subsection as follows—

(8) (a) The deficit, if any, to the debit of each account referred to in subsection (4) of this section that remains after all claims referred to in that subsection have been finalised, becomes the liability of the participating approved insurers during the year to which the account relates in proportion to the interest of each of them in the Fund during that year and the Trust may recover from each participating approved insurer the proportionate amount at any time deemed expedient to the Trust.

(b) The provisions of subsection (5) of section three N of this Act apply to the recovery by the Trust of the proportionate amount, as though the proportionate amount were an amount payable by a participating approved insurer by way of contribution under the provisions of that section.

(c) A claim by the Trust against a participating approved insurer under this subsection is not barred or extinguished by any lapse of time and no statute, enactment or rule of law relating to any period in which actions may or shall be brought or commenced applies to the claim.

5. Section eight of the principal Act is amended—

- (a) by substituting for the words, “obtain judgment against the Trust for a sum equivalent to” in lines fifteen and sixteen of subsection (1), the words, “claim from the Trust payment of”;
- (b) by deleting the words, “first mentioned” in lines seventeen and eighteen of subsection (1);
- (c) by adding after the word, “amount” in line twenty-two of subsection (1), the words, “and where the Trust fails to pay the

S. 8
amended.

amount the judgment creditor may recover it in an action in a court of competent jurisdiction as a debt due to him by the Trust”;

- (d) by deleting the word, “first-mentioned” in lines one and two of the first proviso and in lines one and four of the second proviso to subsection (1);
- (e) by substituting for the first four lines of subsection (3) the following passage—

(3) The Trust may recover from

- (a) the owner; or
- (b) the driver,

of the motor vehicle and if they are both liable from them jointly and severally, such sum as the Trust has paid in settlement, payment or compromise of the claim of or any judgment obtained by the judgment creditor against it: ;

- (f) by substituting for subparagraph (i) of the proviso to subsection (3) the following subparagraph—
 - (i) it shall be a good defence in any action against the owner of such motor vehicle if he establishes to the satisfaction of the Court that
 - (I) the fact that the motor vehicle was an u n i n s u r e d motor vehicle was not due to his own fault; or
 - (II) at the time of the occurrence out of which such death or bodily injury arose the driver was not driving the motor vehicle with the consent or authority of the owner; .

6. Subsection (1) of section eleven of the principal Act is repealed and re-enacted with amendments as follows—

S. 11
amended.

(1) The Trust may on behalf of an insured person and the owner and driver of an uninsured vehicle—

- (a) conduct negotiations in respect of a claim against any such person, owner or driver;
- (b) accept or instruct any solicitor to accept service of legal process issued in respect of the claim;
- (c) assume the conduct and control of legal proceedings in respect of the claim; and
- (d) at any stage in the negotiations or proceedings
 - (i) admit negligence on his behalf, where there is no claim against the person, owner or driver as the case may be, in relation to damage to property and the Trust has no right of recovery against the person, owner or driver, under the provisions of subsection (3) of section seven, subsection (3) of section eight or section fifteen of this Act;
 - (ii) pay, compromise or settle the claim.

7. Paragraph (b) of subsection (2) of section thirty-one of the principal Act is amended by substituting for the word, "manager" in line one, the words, "General Manager."

S. 31
amended