

MOTOR VEHICLE (THIRD PARTY INSURANCE).

6° Elizabeth II., No. LXXVII.

No. 77 of 1957.

AN ACT to amend the Motor Vehicle (Third Party Insurance) Act, 1943-1954.

[Assented to 16th December, 1957.]

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, 1957*.

Short title and citation.

(2) In this Act the Motor Vehicle (Third Party Insurance) Act, 1943-1954,

Act No. 32 of 1943 as reprinted with amendments to and including Act No. 36 of 1954 incorporated pursuant to the provisions of the Amendments Incorporation Act, 1938,

Approved for reprint, 12th July 1957.

is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Motor Vehicle (Third Party Insurance) Act, 1943-1957.

Commence-
ment.

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

S. 3P
amended.

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

- (a) by adding after the subsection designation, “(6)”, the paragraph designation, “(a)”;
and
- (b) by adding to subsection (6) the following paragraph:—

(b) No claim by the Trust against any participating approved insurer under the above subsection shall be barred or extinguished by any lapse of time and no statute enactment or law relating to any period in which actions may be brought or commenced shall apply to any such claim.

S. 4
amended.

4. Section four of the principal Act is amended by adding before subsection (10) the following subsection:—

(9a) (a) A local authority on behalf of the Trust shall when required issue in such form as shall be determined by the Trust a policy of insurance under this Act in respect of any motor vehicle

- (i) which the local authority is satisfied does not require to be licensed under the Traffic Act; or
- (ii) which is not included in the interpretation, “motor vehicle” in section three of this Act.

(b) The owner and driver of any such motor vehicle shall have the same rights and be subject to the same duties and obligations and the Trust shall have against such owner and driver the same rights and remedies as if such motor vehicles were included in the interpretation, "motor vehicle" in section three of this Act.

5. Section seven of the principal Act is amended by repealing and re-enacting subsection (3) with amendments as follows:— s. 7 amended.

(3) Where the driver of a motor vehicle has caused death or bodily injury by negligence in the use of a motor vehicle but the identity of the vehicle cannot be ascertained, any person who could have obtained a judgment in respect of the death or bodily injury so caused against that driver may obtain by action against the Trust the judgment which, in the circumstances, he could have recovered against the driver of the vehicle: Provided that as soon as practicable after the happening of the accident

- (a) he made due search and inquiry to ascertain the identity of the vehicle; and
- (b) he gave to the Trust notice in writing of the claim and a short statement of the grounds thereof.

6. Section twenty-one of the principal Act is amended by repealing and re-enacting paragraph (c) of subsection (1) with amendments as follows:— s. 21 amended.

(c) If however the new policy is not issued until after the expiration of that period of fifteen days

- (i) the motor vehicle is notwithstanding any provision to the contrary of paragraph (a) of subsection (8) of section four of this Act or of any provision of

- section ten of the Traffic Act an uninsured vehicle until the new policy is issued;
- (ii) the new policy shall have effect only from the date of its issue and shall expire on the expiry date of the license under the Traffic Act issued in respect of such vehicle at the time of the issue of the new policy; and
 - (iii) the premium payable in respect of such new policy shall be the appropriate premium for the period from the date of the expiration of the previous policy to the date of the expiration of the new policy.

S. 29
repealed and
re-enacted
with
amendments.

7. Section twenty-nine of the principal Act is repealed and re-enacted with amendments as follows:—

Notice of
claim.

29. (1) Where any person has suffered death or bodily injury as the result of the use of a motor vehicle by another person which may, under the provisions of this Act give rise to an action for damages against either an insured person or the Trust, no such action shall be commenced or be maintainable unless notice in writing as prescribed by the regulations is given by the person proposing to claim damages or some person on his behalf to the insured person or the Trust of his intention to claim such damages as soon as practicable after the happening of the accident out of which such claim for damages arises: Provided that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such action, if it is found in such action that the defendant is not or would not if a notice or any amended notice were then given and the hearing of the action postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the State or other reasonable cause.

(2) If

- (a) the Trust or any insured person has received notice of the intention of any person (hereinafter called the claimant) to claim damages for bodily injuries as the result of the use of a motor vehicle; and
- (b) no legal proceedings to enforce the claim have been commenced by or on behalf of such claimant after the expiration of six months from the happening of the accident out of which such claim arises;

then the Trust may by notice in writing to the claimant require him to commence within forty-two days from service on him of such notice legal proceedings for the purpose of ascertaining the liability of any insured person or the Trust in respect of such claim.

(3) If the claimant does not commence such legal proceedings within the said period of forty-two days the Trust may apply to a Judge of the Supreme Court of Western Australia for an Order under subsection (5) hereof.

(4) Any application to a Judge of the Supreme Court for such an Order shall be made by summons supported by affidavit and a copy of the summons and all affidavits in support shall be served on the claimant at least fourteen days before the date fixed for the hearing of the application.

(5) Upon the hearing of such application the Judge may make an Order

- (a) that the claimant commence legal proceedings for the purpose set out in subsection (2) of this section within such time as the Judge may nominate, if the Judge is of the opinion that no good reason exists why the claimant should not commence such proceedings within such time; or

