

MOTOR VEHICLE (THIRD PARTY INSURANCE).

12° GEO. VI., No. XXXI.

No. 31 of 1948.

AN ACT to amend the Motor Vehicle (Third Party Insurance) Act, 1943-1945.

[Assented to 9th December, 1948.]

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

1. This Act may be cited as the *Motor Vehicle (Third Party Insurance) Act Amendment Act, 1948*, and shall be read as one with the Motor Vehicle (Third Party Insurance) Act, 1943-1945 (Act No. 32 of 1943, as reprinted pursuant to the Amendments Incorporation Act, 1938, with amendments up to and including Act No. 7 of 1945), hereinafter referred to as the principal Act.

Short title.
Cf. No. 7 of
1945, s. 5.

2. (1) The principal Act, as amended by this Act, may be cited as the Motor Vehicle (Third Party Insurance) Act, 1943-1948.

Citation of
principal Act
as amended,
and
commence-
ment of
Parts.

(2) Part I. of this Act shall come into operation on a day to be fixed by proclamation.

(3) Part II. of this Act shall come into operation on the same day as the prescribed date (as hereinafter defined).

PART I.

Amendment
of s. 3.

3. Subsection (1) of section three of the principal Act is amended as follows.—

(a) By inserting after the definition of “driver” the following definition:—

“Fund.”

“Fund” means the Motor Vehicle Insurance Fund established under and for the purposes of this Act.

(b) By inserting after the definition of “Insured person” the following definition:—

“Local authority.”

“Local authority” means a local authority as defined in the Traffic Act.

(c) By inserting after the definition of “Owner” the following definition:—

“Participating approved insurer.”

“Participating approved insurer” means an approved insurer which gives notice in writing to the Minister pursuant to and within the time limited under subsection (1) of section three L of this Act.

(d) By inserting after the definition of “Policy of insurance” the following definition:—

“Prescribed date.”

“Prescribed date” means such date as is prescribed pursuant to subsection (1) of section three R of this Act.

(e) By inserting after the definition of “Traffic Act” the following definition:—

“Trust.”

“Trust” means The Motor Vehicle Insurance Trust constituted under this Act.

New sections inserted.

4. The principal Act is amended by inserting after section three the following new sections:—

Constitution of Trust.

3A. (1) A body corporate, to be called “The Motor Vehicle Insurance Trust,” is hereby constituted for the purposes of this Act.

(2) The Trust shall consist of five members appointed by the Governor.

(3) Of the members so appointed—

(a) one shall be the manager for the time being of The State Government Insurance Office;

(b) three shall be nominated by the Fire and Accident Underwriters' Association of W.A. (Inc.);

(c) one shall be nominated by those participating approved insurers which are not members of the Fire and Accident Underwriters' Association of W.A. (Inc.).

(4) If no nomination or no sufficient nomination of persons as members of the Trust under subsection (3) of this section shall be made within the prescribed time, the Governor may appoint any person as a member of the Trust as representative of the body in respect of the representative of which no nomination or no sufficient nomination has been made.

(5) The members of the Trust shall from time to time, as may be required, elect one of the members as chairman.

(6) A member of the Trust shall not be personally liable for any act done in good faith by the Trust or by the member as such.

3B. Each nominated member of the Trust shall hold office for the period of three years from the date of his appointment, but shall be eligible for re-nomination and re-appointment.

*Duration
of office.*

3C. (1) The Trust shall be a body corporate under the name of "The Motor Vehicle Insurance Trust," with perpetual succession and a common seal, and shall be capable of suing and being sued in its corporate name, and of acquiring, holding and disposing of real and personal property.

*Trust to be
a body
corporate.*

(2) No act or proceeding of the Trust shall be invalid or be prejudiced by reason only of the fact

that at the time when such act or proceeding is done, taken, or commenced, there is a vacancy in the office of any member.

**Quorum and
voting.**

3D. (1) The Trust shall hold its meetings at such places and on such days as the Trust shall from time to time determine.

(2) Any three members of the Trust shall form a quorum thereof.

(3) At all meetings of the Trust, the Chairman of the Trust shall preside, if present, and, in his absence from any meeting, the members present shall elect one of their number to be chairman of the meeting.

(4) Whenever the members are not unanimous as to any matter, such matter shall be decided by the majority of votes, and the decision so arrived at shall be the decision of the Trust.

(5) The Chairman of the Trust, when presiding at any meeting of the Trust, shall have a deliberative vote.

(6) The Trust may regulate its own procedure.

**Resignation
from Trust.**

3E. Any nominated member may resign from the Trust by giving one month's notice in writing to the Trust.

**Disqualifica-
tion.**

3F. Any person who has his affairs under liquidation or is an undischarged bankrupt, or insolvent, or has been convicted of an indictable offence, or is undergoing sentence of imprisonment, or becomes an insane person, shall be disqualified from being appointed or from continuing as a member of the Trust.

**Vacation of
membership
of Trust.**

3G. (1) The office of member of the Trust shall be vacated—

(a) if he is or has become disqualified under this Act; or

(b) if (in the case of a nominated member only) without leave of the Trust he has been absent from more than two consecutive meetings of the Trust; or

(c) upon death or resignation.

(2) Any vacancy in the office of a member shall be filled—

(a) in the case of the member appointed pursuant to paragraph (a) of subsection (3) of section three A—by the Governor;

(b) in the case of a member appointed pursuant to paragraph (b) of subsection (3) of section three A—by the Governor, on the nomination of the association named in such subsection;

(c) in the case of a member appointed pursuant to paragraph (c) of subsection (3) of section three A—by the Governor, on the nomination of the persons mentioned in such subsection.

(3) A person appointed under this section to fill any vacancy in the office of a member of the Trust shall hold office only for the unexpired portion of the term of office of his predecessor.

3H. In case of illness, other incapacity, or absence from the State of any member of the Trust by reason whereof the member is likely to be unable to perform his duties for more than three months, the Trust may appoint some person to act as a member of the Trust during his illness, incapacity, or absence aforesaid.

Appointment
of acting
members.

3J. The members of the Trust shall be entitled to receive remuneration for their services. Such remuneration shall be as prescribed from time to time and shall be paid out of the Fund.

Remuneration
of members.

3K. The Trust may appoint and employ and pay out of the Fund a manager and such officers, inspectors, assessors, clerks, medical practitioners, nurses and other persons as it considers necessary to carry out its functions; and it may also appoint, engage, or instruct such bankers, barristers, solicitors, auditors, accountants, assessors, medical practitioners, nurses and other persons as it considers necessary, and remunerate their services out of the Fund.

Appointment
of officers,
etc., of Trust.

Participation
in and
contribution
to the Fund.

3L. (1) Any approved insurer desiring to participate in and contribute to the Fund shall give notice in writing of its intention in that behalf to the Minister within thirty days of the commencement of Part I. of the Motor Vehicle (Third Party Insurance) Act Amendment Act, 1948.

(2) Each approved insurer giving such notice shall thereupon become entitled to participate in and liable to contribute to the Fund in the manner and to the extent hereinafter in this Act set out, and shall be called for the purposes of this Act a "participating approved insurer."

(3) The interest of each participating approved insurer in the Fund shall be in the same proportion as its gross premiums received as an approved insurer under this Act during the year ending on the thirtieth day of June, 1948, bears to the total gross premiums received by all participating approved insurers as approved insurers under this Act during that year. The percentage amount of each such interest shall be determined by the Chairman of the Committee appointed under section thirty-one of this Act, and certified by him in writing to the Trust.

(4) A participating approved insurer may, on giving to the Trust not less than six months' written notice of its intention in that behalf, withdraw from participation in and contribution to the Fund as at the thirtieth day of June in any year. Upon such withdrawal, the interest in the Fund of any participating approved insurer so withdrawing shall be apportioned among the remaining participating approved insurers in proportion to their existing interests in the Fund.

General
meetings.

3M. (1) The Trust may at any time, and shall within twenty-one days of receiving a written request in that behalf signed by not less than one-fifth of the participating approved insurers, call a general meeting of participating approved insurers.

(2) Any such written request shall include a statement of the purposes for which such meeting is requested, and at any meeting called pursuant to

such written request, the business shall be confined to matters relevant to the purposes mentioned in the request.

(3) Such general meetings shall be held at such time and place as the Trust shall determine.

(4) The Trust may make rules regulating the procedure at such general meetings.

3N. (1) The Trust may from time to time fix and determine amounts payable by participating approved insurers by way of contribution to the Fund.

**Contributions
to the Fund.**

(2) The contribution of each participating approved insurer shall be in proportion to its interest for the time being in the Fund.

(3) The amount of any contribution of a participating approved insurer shall constitute a debt due by it to the Trust and may be sued for and recovered accordingly.

(4) The whole or any part of the contributions to the Fund required by the Trust may, at the discretion of the Trust, be repaid at any time out of the Fund to the participating approved insurers.

(5) If a participating approved insurer shall fail to pay any contribution to the trust within a period of thirty days after a written notice requiring payment has been sent to it by the Trust by registered post, then the Trust may, by notice in writing to such participating approved insurer, at its discretion, declare that such participating approved insurer shall as and from a date to be fixed by the Trust cease to be a participating approved insurer for the purposes of this Act, whereupon its interest in the Fund shall be apportioned among the remaining participating approved insurers in proportion to the then existing interest of each of them in the Fund.

3P. (1) There shall be established for the purposes of this Act a fund to be known as the "Motor Vehicle Insurance Fund."

**Establish-
ment of
Fund.**

(2) The Fund shall consist of the contributions, insurance premiums and other moneys which may come into its hands under and for the purposes of this Act.

(3) Out of the Fund, the Trust shall pay all claims, costs, expenses and other moneys payable by it under and for the purposes of this Act.

(4) The Trust shall keep a separate ledger account in respect of each year ending on the thirtieth day of June. Each such account shall show—

- (a) the total amount paid or incurred by the Trust in respect of its administration and general expenses during the year to which such account relates;
- (b) the total amount paid by the Trust in respect of claims (including costs and other expenses incidental to claims) arising from any accident which occurs during that year; and
- (c) the total amount of premiums received by the Trust in respect of insurances effected during that year.

(5) The surplus (if any) to the credit of each such account which remains after all such claims have been finalised shall be paid to and apportioned amongst those who were participating approved insurers during the year to which such account relates in proportion to the interest of each of them in the Fund during that year. The Trust may from time to time make distributions in anticipation of any such surplus.

(6) The deficit (if any) to the debit of each such account which remains after all such claims have been finalised shall be contributed to the Fund by those who were participating approved insurers during the year to which such account relates in proportion to the interest of each of them in the Fund during that year.

Books and
accounts.

3Q. (1) The Trust shall cause books to be provided and kept, and true and regular accounts to be entered therein—

- (a) of all moneys received and paid by the Trust, and of all moneys owing to the Trust, and of the several purposes for

which such moneys shall have been received and paid, and owing; and

(b) of all assets and liabilities of the Trust.

(2) All such books shall be open to the inspection of the Minister and the Auditor General and any persons authorised by them or either of them, and all such persons may take copies or extracts therefrom. Such books shall also be open to the inspection, at reasonable hours, of any approved insurer for a period of one month in each year after the date on which the accounts mentioned in subsection (3) of this section shall have been furnished to them pursuant to that subsection.

(3) The Trust shall cause its accounts to be balanced every year on the thirtieth day of June and within two months thereafter (or such extended time as the Minister may allow) shall furnish a balance sheet of its assets and liabilities, together with profit and loss account for the year, in each case duly audited by a qualified accountant, to the Minister, the Auditor General, and each participating approved insurer.

(4) A true copy of the accounts so audited shall in each year be laid before both Houses of Parliament.

3R. (1) For the purposes of this Act, the Governor may, by notice published in the *Gazette*, fix a day (in this Act called the prescribed date).

Issue of
policies
of insurance.

(2) From and after the prescribed date, no person other than a local authority, on behalf of the Trust, shall issue any policy of insurance under or for the purposes of this Act, and subject to this Act it shall be the duty of the Trust to cause policies of insurance to be issued under and for the purposes of this Act.

(3) Subject to the provisions of section four of this Act, each local authority shall issue policies of insurance under this Act on behalf of and as agent for the Trust.

(4) Every local authority shall, within twenty-one days after the last day of each calendar month, remit to the Trust the total amount of all insurance

premiums and other moneys received by such local authority under this Act, and within the same time shall furnish to the Trust such documents and information relating thereto as may be prescribed under this Act.

(5) Subject to the provisions of subsection (9) of section seven of this Act, and of section thirty-one of this Act, the Trust shall determine the terms, warranties and conditions to be contained in and the premiums to be charged for policies of insurance under this Act.

Further powers of the Trust.

3S. The Trust shall have and may exercise such further powers as may be prescribed under this Act.

PART II.

Further amendment of s. 3.

5. Subsection (1) of section three of the principal Act is further amended by deleting the definition of "Contract of Insurance" and substituting the following:—

"Contract of Insurance" means a contract of insurance with the Trust and complying with the requirement of this Act.

Amendment of s. 4.

6. Section four of the principal Act is amended as follows:—

(a) By deleting subsection (2) thereof and substituting the following:—

(2) Nothing in this section shall require the owner of any motor vehicle in respect of which at the prescribed date there has been issued and is in force a policy of insurance under this Act with an approved insurer to insure as aforesaid until the expiration or earlier determination of the period of such policy of insurance.

(b) By deleting subsection (8) thereof and substituting the following:—

(8) From and after the prescribed date and notwithstanding anything to the contrary contained in the Traffic Act, no

license shall be issued under that Act in respect of any motor vehicle, unless—

- (a) prior to or at the time of the issue of such license there is paid to and received by the local authority issuing such license the appropriate insurance premium determined by the Trust for the class of vehicle being licensed and for the period of the license; and
- (b) such license incorporates in the one document a policy of insurance under this Act in relation to the said motor vehicle in respect of the same period as that for which such license is issued.

(c) By deleting subsection (9).

7. Section five of the principal Act is repealed.

Repeal of
s. 5.

8. Section six of the principal Act is amended as follows:—

Amendment
of s. 6.

- (a) By deleting paragraph (a) of subsection (1) and substituting the paragraph following:—
 - (a) Be issued by the Trust.
- (b) By deleting from subsection (2) the words “the insurer” in line one of paragraph (a) and substituting the words “the Trust.”
- (c) By deleting paragraph (c) of subsection (2).

9. Section seven of the principal Act is amended as follows:—

Amendment
of s. 7.

- (a) By deleting the words “the insurer” and “an insurer” wherever occurring, and substituting the words “the Trust.”
- (b) By deleting the words “a nominal defendant to be named by the Minister” in lines six and seven and the words “the Minister” in line eleven of subsection (3), and substituting in each case the words “the Trust.”

- (c) By deleting the word "he" in line two of subsection (4), and in lines two, twenty and twenty-five of subsection (5), and the word "him" in line two of subsection (4), and substituting in each case the word "it."
- (d) By adding after paragraph (b) of subsection (6) a new paragraph as follows:—
 - (c) So as to make the Trust liable in respect of any claim arising out of the use of a motor vehicle where the accident or occurrence giving rise to such claim happened before a policy of insurance under this Act in respect of such motor vehicle had been issued on behalf of the Trust.
- (e) By deleting subsections (7) and (8).

Amendment
of s. 8.

10. Section eight of the principal Act is amended as follows:—

- (a) By deleting the words "a nominal defendant, to be named by the Minister," in lines fifteen and sixteen of subsection (1) and in lines sixteen and seventeen of subsection (5), and the words "an approved insurer" in line nineteen of subsection (1), and in line twenty of subsection (5), and the words "the nominal defendant" where occurring in lines two and three of subsection (3), and the words "the Minister" in line twenty-eight of subsection (5), and in lines nine and fifteen of subsection (6), and by deleting the words "the officer in charge at the police station nearest to the place where the accident occurred" in lines ten and eleven of subsection (6), and substituting in each case the words "the Trust."
- (b) By deleting subsection (2).
- (c) By deleting the word "his" in line two of subsection (3) and substituting the word "its".
- (d) By deleting subsection (4).
- (e) By deleting paragraphs (b) and (c) of subsection (5).

11. Section nine of the principal Act is repealed.

Repeal of
s. 9.

12. Section ten of the principal Act is amended as follows:—

(a) By deleting the words “the insurer concerned” in lines five and six of subsection (1), in line three of subsection (3), and in line two of subsection (5), and the words “that insurer” in line four of subsection (3), and the words “such insurer” in line ten of subsection (5), and the words “the insurer” in lines one and four of subsection (6), and substituting in each case the words “the Trust”.

(b) By deleting the word “he” in line five of subsection (3) and substituting the word “it”.

13. Section eleven of the principal Act is amended by deleting the words “the insurer” in line one of subsection (1), in line six of subsection (2), and where twice occurring, in line sixteen of subsection (3), and substituting in each case the words “the Trust”.

Amendment
of s. 11.

14. Section twelve of the principal Act is amended as follows:—

Amendment
of s. 12.

(a) By inserting after the words “motor vehicle” in line six of subsection (1) the words “which is insured under this Act or is an uninsured vehicle.”

(b) By deleting the words “the insurer who issued the policy of insurance in force under this Act in relation to the said motor vehicle” in lines eleven, twelve and thirteen of subsection (1), and substituting the words “the Trust”.

(c) By deleting the words “the insurer” in line fifteen of subsection (1), in lines four and nine of subsection (3), and in lines two and three of subsection (5), and substituting the words “the Trust”.

(d) By deleting subsections (2) and (7).

Amendment
of s. 13.

15. Section thirteen of the principal Act is amended as follows:—

(a) By deleting the words “an insurer” in line three of subsection (1), and the words “the insurer” in lines fourteen and seventeen of subsection (1), and in lines four and seven of subsection (3), and in lines one and eight of subsection (4), and substituting in each case the words “the Trust”.

(b) By deleting the whole of subsection (2).

Amendment
of s. 14.
Repeal and
new section.

16. Section fourteen of the principal Act is repealed and the following new section substituted:—

Recovery of
payment for
emergency
treatment.

14. Where the Trust has made any payment for emergency treatment as mentioned in section twelve of this Act in respect of bodily injury (fatal or otherwise) caused by or arising out of the use of an uninsured motor vehicle, the Trust may recover from the owner or driver of such uninsured vehicle the amount so paid as a simple contract debt due from such owner or driver. Provided that it shall be a sufficient defence in such action if the defendant establishes to the satisfaction of the Court that he is not in any manner responsible in law for the bodily injury which gave rise to such emergency treatment.

Amendment
of s. 15.

17. Section fifteen of the principal Act is amended by deleting the words “the insurer” in lines eleven, fifteen and seventeen thereof and substituting the words “the Trust”.

Amendment
of s. 16.

18. Section sixteen of the principal Act is amended as follows:—

(a) By deleting the words “approved insurer, nominal defendant” in lines one and two thereof.

(b) By inserting after the words “motor vehicle” in line two thereof, the words “or against the Trust”.

19. Section seventeen of the principal Act is amended by deleting the word "licensing" in line four thereof and substituting the word "local".

Amendment
of s. 17.

20. Section eighteen of the principal Act is amended by deleting the words "approved insurer" in lines one and two thereof, and substituting the words "the Trust".

Amendment
of s. 18.

21. Section nineteen of the principal Act is repealed and the following new section substituted:—

Amendment
of s. 19.
Repeal and
new section.

19. The Trust shall not terminate a policy of insurance under this Act before its expiry by effluxion of time, except in cases where the motor vehicle concerned is no longer required to be insured under this Act.

Trust not to
terminate
policy.

22. Section twenty-three of the principal Act is amended by deleting the words "the insurer" in line four and substituting the words "the Trust".

Amendment
of s. 23.

23. Section twenty-five of the principal Act is amended as follows:—

Amendment
of s. 25.

(a) By deleting the words "every approved insurer" in line one of subsection (1), and substituting the words "the Trust".

(b) By deleting subsections (2), (3) and (4).

24. Section twenty-seven of the principal Act is amended as follows:—

Amendment
of s. 27.

(a) By deleting the words "an approved insurer" in lines five and six of subsection (2), and substituting the words "the Trust".

(b) By deleting all the words from and including the words "in a case" in line seven of subsection (2) to the end of that subsection.

25. Section twenty-nine of the principal Act is amended by deleting the words "an insurer" in line five, and the words "the insurer" in line nine thereof, and substituting in each case the words "the Trust".

Amendment
of s. 29.

Amendment
of s. 30.

26. Section thirty of the principal Act is amended as follows:—

- (a) By deleting the words “an insurer” in line two of subsection (1) thereof, and in line two of subsection (3) thereof, and the words “insurer, or the insurer when conducting negotiations on behalf of the insured person” in lines five and six of subsection (1) thereof, and the words “the insurer” in line eleven of subsection (1) thereof, and the word “insurer” in line six of subsection (3) thereof, and substituting in each case the words “the Trust”.
- (b) By inserting in subsection (3), after the word “him” in line three, the words “or it”.

Amendment
of s. 31.

27. Section thirty-one of the principal Act is amended as follows:—

- (a) By deleting paragraph (d) of subsection (2) and substituting the paragraph following:—
 - (d) Two persons appointed as representing the Trust.
- (b) By deleting paragraph (b) of subsection (3) and substituting the paragraph following:—
 - (b) The members referred to in paragraph (d) of the last preceding subsection shall be appointed on the nomination of the Trust.

Amendment
of s. 32.

28. Section thirty-two of the principal Act is amended as follows:—

- (a) By deleting all words in subsection (3) from and including the word “without” in line six of that subsection to the end of such subsection, and substituting the words “without the local authority issuing the same being bound to comply with the provisions of subsection (8) of section four of this Act.”
- (b) By deleting the word “insurers” in line three of subsection (4), and the words “the insurer” in line thirteen of subsection (4), and substituting in each case the words “the Trust”.

- (c) By deleting the word "them" in line four of subsection (4), and substituting the word "it".

29. In relation to any accident or occurrence arising out of the use of any motor vehicle in respect of which there is existing at the prescribed date a policy of insurance with an approved insurer under the principal Act, and which accident or occurrence happens before the expiry or lawful termination of the such policy, then notwithstanding anything contained in this Act, the rights, duties, powers, obligations and liabilities of—

Saving with respect to existing insurances.

- (a) the approved insurer under such policy; and
- (b) the owner and driver of such motor vehicle; and
- (c) any person claiming damages for or in respect of death or bodily injuries arising out of the use of such motor vehicle,

shall continue and be determined in accordance with the provisions of the principal Act as they existed immediately prior to the commencement of Part II. of this Act, and for that purpose the provisions of the principal Act shall be deemed to continue in operation.
