

1943.]

*Motor Vehicle (Third Party
Insurance).*

[No. 32.

MOTOR VEHICLE (THIRD PARTY INSURANCE)

7° Geo. VI., No. XXVII.

No. 32 of 1943.

AN ACT to require owners of motor vehicles to insure against liability in respect of deaths or bodily injuries caused by the use of such motor vehicles, to make certain provisions in relation to such insurance, to amend the Traffic Act, 1919-1941, and for other purposes.

[Assented to 12th November, 1943.]

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, 1943*, and shall come into operation on a day to be fixed by proclamation.

Short title
and com-
mencement.

2. This Act shall be read in conjunction with and as supplementary to the Traffic Act, 1919-1941, and all Acts which amend that Act.

This Act to
be read with
the Traffic
Act, 1919-
1941.

3. (1) In this Act, unless the context requires otherwise—

“Approved insurer” means any person or association of persons carrying on the business of insurance who or which—

Interpre-
tation.
See N.S.W.,
No. 15 of
1942, s. 5;
Vic., No.
4688, s. 3;
S.A. Road
Traffic Act,
1934-1942,
s. 70A.

- (a) Not being an incorporated insurance office approved under and for the purposes of section ten of the Workers' Compensation Act, 1912-1941, is approved by the Minister as an approved insurer for the purposes of this Act; or
- (b) Being an incorporated insurance office which has been and is approved under and for the purposes of section ten of the Workers' Compensation Act, 1912-1941, agrees in writing with the Minister to accept and enter into contracts of insurance for the purposes of this Act at rates of premium and subject to warranties and conditions not less favourable to the insured than those which are deemed to be fair and reasonable by the Committee appointed under section twenty-six of this Act.

The term includes the State Government Insurance Office established under the State Government Insurance Office Act, 1938.

“Contract of insurance” means a contract of insurance with an approved insurer and complying with the requirements of this Act.

“Driver” in relation to a motor vehicle includes any person who is in charge of the motor vehicle, and “drives” and “driving” have a corresponding meaning.

“Insured person” means the owner of a motor vehicle in respect of which a policy of insurance is in force under this Act, and the driver at the material time whether with or without the consent of the owner.

“Minister” means the Minister for Works or such other member of the Executive Council as is for the time being charged by the Governor with the administration of this Act.

“Motor vehicle” means any vehicle propelled by gas, oil, electricity or any other motive power not being animal power and used or intended to be used on roads; but the expression does not

include a locomotive or traction engine propelled by steam, or a railway carriage or wagon, tram, motor tram car, trolley bus, any farm tractor which is not used on a public road or any kind of air craft intended for use in air navigation.

“Owner” when used in relation to a motor vehicle which is the subject of a hire purchase agreement means the person in possession of that vehicle under that agreement; and when used in relation to a motor vehicle which is the subject of a hiring agreement (other than a hire purchase agreement) under which that vehicle is hired for a period of not less than six months means the person in possession of that vehicle under that hiring agreement.

Save as aforesaid the term “owner” means and includes every person who is the owner or part owner or joint owner of a motor vehicle.

“Policy of Insurance” includes a cover note and/or certificate of insurance which is binding on the insurer.

“Traffic Act” means the Traffic Act, 1919-1941.

“Uninsured motor vehicle” means any motor vehicle in relation to which the owner thereof is required to enter into a contract of insurance under this Act and in relation to which there is not existing and in force a contract of insurance under this Act.

The expression does not include a motor vehicle owned by the Commonwealth or any Commonwealth instrumentality.

(2) Any reference in this Act to action brought or a judgment entered or obtained or a judgment creditor or judgment debtor or execution of a judgment shall (where the case so requires) include a reference to complaint laid, an order made by a court, the person in whose favour the order is made, the person against whom the order is made and distress levied upon such order.

(3) This Act shall not render it obligatory to insure any motor vehicle owned by the Crown in right either of the Commonwealth or of the State and used solely in the public business of the Commonwealth or of the State as the case may be.

Provided that in relation to any motor vehicle which is owned by the Crown in right of the State and is not insured, the Crown shall be under the same liabilities and have the same rights as an insurer if such insurer had issued to the Crown a policy of insurance complying with this Act in relation to the use of that vehicle.

Vic. No. 4688,
s. 4 (2).

(4) (a) It shall not be necessary for the owner of any motor vehicle which is temporarily in this State and which is licensed or registered in any other State or territory of the Commonwealth prescribed by the Governor as hereinafter provided to insure under this Act, if while the motor vehicle is in this State the owner and any driver of such motor vehicle are insured under a contract of insurance in accordance with the law of such other State or territory against liability which may be incurred by such owner or driver in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor vehicle in this State.

(b) The Governor may by order in council prescribe for the purposes of this subsection any State or territory of the Commonwealth in which the Governor is satisfied there is in operation legislation for the carrying out of objects substantially similar to the objects of this Act.

See Vic. No.
4688, s. 4
(3).

(5) So far as relates to motor vehicles for which licenses under the Traffic Act are not in force and which are in the possession or under the control of any manufacturer of or dealer in motor vehicles to whom a general identification disc or tablet has been assigned under section eighteen of the said Act, the provisions of this Act shall, with such adaptations as are necessary, extend and apply in all respects as if such manufacturer or dealer were the owner of every such motor vehicle, and the application of a manufacturer or dealer for the assignment to him of a general identification disc or tablet aforesaid shall for the purposes of this Act be deemed to be an application for a license in respect of one motor vehicle of every different class of motor vehicle in the possession or under the control of the applicant for which such general identification disc or tablet is required by the applicant.

(6) This Act shall cease to have any effect in relation to any motor vehicle which is commandeered, requisitioned, or used for any military or defence purposes

under any law of the Commonwealth or any regulation made or any proclamation issued under any such law.

4. (1) Subject to subsection (10) of this section, every owner of a motor vehicle shall, subject to and in accordance with this Act—

(a) insure against any liability which may be incurred by him or any person who drives such motor vehicle in respect of the death of or bodily injury to any person caused by or arising out of the use of such motor vehicle; and.

(b) for that purpose enter into a contract of insurance under this Act.

(2) Nothing in this section shall require the owner of any motor vehicle in respect of which at the commencement of this Act there has been issued and is in force a license under the Traffic Act to insure as aforesaid until the expiration of the period of such license.

(3) No person shall use or cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to such motor vehicle a policy of insurance complying with this Act.

Penalty—First offence, One hundred pounds. Subsequent offence Two hundred pounds.

(4) Any person convicted of an offence under this section shall (unless the Court thinks fit to order otherwise) be disqualified from holding and obtaining under the Traffic Act a driver's license or a license in respect of a motor vehicle for a period of twelve months from the date of the conviction.

(5) Proceedings for an offence under this section shall be commenced—

(a) Within a period of six months from the date of the commission of the alleged offence; or

(b) Within a period of three months from the date on which it came to the knowledge of the prosecutor that the alleged offence had been committed—whichever period is the longer.

Provided that no such proceedings shall be commenced after the expiration of one year from the date of the commission of the alleged offence.

Insurance
against third
party risks.
See N.S.W.,
ibid., s. 7;
Vic., *ibid.*,
s. 5; S.A.,
ibid., s. 70B.

(6) In any prosecution for an offence under this section the allegation in the complaint that at any time mentioned in the complaint there was not in force in respect of any particular motor vehicle a policy of insurance complying with this Act shall be *prima facie* evidence of the fact so alleged.

(7) (a) Subject to subsection (2) of this section, any owner of a motor vehicle shall, on being requested so to do by an inspector appointed under the Traffic Act or by any member of the Police force, produce evidence that there is in force in respect of every motor vehicle owned by him a policy of insurance complying with this Act.

(b) The owner shall be deemed to have complied with this subsection if he produces the necessary evidence at a Police station (to be nominated by the owner to the inspector or the member of the Police force at the time when the request is made) within five days from the time when its production was requested.

(c) Any person who without just excuse fails to comply with this subsection shall be guilty of an offence.

Penalty—Fifty pounds.

See N.S.W.
ibid s. 9.
S.A. *ibid.*, ss.
8B and 8C.

(8) After the commencement of this Act 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) the application for the license contains a statement by the owner of the vehicle or by the person applying for the license on behalf of the owner that a policy of insurance complying with this Act is in force in relation to the vehicle and will, unless lawfully cancelled, remain in force during the whole of the currency of the term of the license for which the application is made, and a statement of the name of the insurer who has issued the policy; and

(b) there is produced and lodged with the application—

(i) a certificate given by or on behalf of an approved insurer certifying that a policy of insurance has been issued by that insurer in relation to the said motor vehicle, that the

policy complies with this Act and will, unless lawfully cancelled, remain in operation throughout the currency of the term of the license applied for; or

(ii) a certificate given by or on behalf of an approved insurer which has the effect of a cover note issued pending the issue of a policy of insurance by that insurer applied for in relation to the said motor vehicle to comply with this Act and which indicates therein that the said certificate is legally binding upon the insurer for the period of the license applied for to the same extent, and in the same manner as will be the policy of insurance applied for as aforesaid.

(9) An insurer who has issued a policy of insurance complying with this Act shall, notwithstanding that the insured person named therein has not agreed to pay or has not paid the premium for the policy be bound by the policy to the same extent as if the said insured person had agreed to pay and had paid that premium.

*See S.A. ibid.
s. 70 ba.*

Provided that this subsection shall not affect any right which the insurer may have to cancel the policy with the consent of the Minister or to recover any premium owing under the policy.

(10) Notwithstanding anything to the contrary contained in subsection (1) of this section, subsections (1), (7) and (8) of this section shall not apply during such time, after this Act comes into operation as the Governor may by proclamation issued under the authority of section twenty-seven of this Act declare the operation of this Act to be suspended.

5. (1) Any person or association of persons carrying on the business of insurance in this State who or which is willing to enter into contracts of insurance and issue policies of insurance complying with this Act may apply to the Minister to be approved as an approved insurer.

*Applications
by persons to
become ap-
proved insur-
ers.
See Vic., ibid.,
s. 6.*

(2) (a) In the case of an applicant, not being an incorporated insurance office approved under and for the purposes of section ten of the Workers' Compensation Act, 1912-1941, the Minister may refuse to grant such

approval or may grant such approval subject to such conditions (if any) as may be prescribed.

(b) In the case of an applicant, being an incorporated insurance office which has been and is approved under and for the purposes of section ten of the Workers' Compensation Act, 1912-1941, the Minister shall grant such approval if and when the applicant agrees in writing with the Minister, to accept and enter into contracts of insurance for the purposes of this Act at rates of premium and subject to warranties and conditions not less favourable to the insured than those which are deemed to be fair and reasonable by the Committee appointed under section twenty-six of this Act.

(3) The Minister shall cause notice of such approval to be published in the *Government Gazette*, and such approval shall take effect on a date specified for the purpose by the Minister in such notice.

(4) Any approved insurer may by notice in writing to the Minister withdraw from insurance business in terms of this Act:

Provided that such notice of withdrawal shall not take effect until a date (not being more than three months after the date when the notice of withdrawal is given) specified by the Minister by notice published in the *Government Gazette*.

(5) A notice of withdrawal as aforesaid shall not affect any contract of insurance entered into under this Act with the approved insurer before the notice of withdrawal takes effect.

Requirements
in respect of
policies.
N.S.W. *ibid.*,
s. 10;
Vic. *ibid.*,
s. 7;
S.A. *ibid.*,
s. 700.

6. (1) In order to comply with this Act a policy of insurance must—

- (a) be issued by an approved insurer;
- (b) except as provided in this section insure the owner of the vehicle mentioned in the policy and any other person who at any time drives that vehicle, whether with or without the consent of the owner, in respect of all liability for negligence which may be incurred by that owner or other person in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle.

(2) A policy of insurance shall be deemed to comply with this Act notwithstanding that—

- (a) the liability of the insurer is limited to two thousand pounds in respect of any claim made by or in respect of any passenger carried in the vehicle mentioned in the policy and to twenty thousand pounds in respect of all claims made by or in respect of such passengers and such limits shall be inclusive of all costs in relation to any such claim or claims.
- (b) the policy does not indemnify the insured person in respect of any claim based on the death or bodily injury suffered by any person who at the time of the accident was
 - (i) the spouse or a child or other relative being a grandchild, parent, brother or sister of the insured person; or
 - (ii) a servant of the insured person and engaged on his master's business.
- (c) the policy, in addition to insuring the owner of the vehicle in respect of the liability mentioned in paragraph (b) of subsection (1) of this section, also insures him in respect of any other liability or indemnifies him in respect of any insurable loss, damage, or injury.

(3) Every policy which relates to a motor vehicle used for the carriage of passengers for hire by a person, a substantial part of whose usual business is such carriage, must indemnify the insured person in respect of any claim based on the death of or bodily injury to any person who, as a passenger carried or about to be carried for hire, was being conveyed in or was entering into or alighting from that vehicle. Except as mentioned in this subsection it shall not be necessary to insure against any claim for death of or bodily injury to any person driving or being conveyed in or on or entering into or alighting from the motor vehicle mentioned in the policy.

7. (1) Any person who has obtained a judgment against an insured person in respect of death or bodily injury caused by negligence in the use of a motor vehicle specified in a policy of insurance under this Act

may recover by action from the insurer such amount of the money (including costs or a proportionate part thereof) payable pursuant to the judgment as relates to death or bodily injury and is unsatisfied:

Provided that—

- (i) This subsection shall not apply unless before the action in which judgment was obtained against the insured person came on for hearing, the insurer knew that that action had been commenced; and
- (ii) the right to recover under this subsection shall be subject to any limitations prescribed by the policy of insurance as to the amount in respect of which the insured is indemnified or as to the persons in respect of whose death or injury the injured person is indemnified.

(2) Where an insured person has caused death or bodily injury by negligence in the use of a motor vehicle specified in a policy of insurance under this Act but that insured person is dead or cannot be served with process, any person who could have obtained a judgment in respect of the death or bodily injury so caused against that insured person if he were living or if he had been served with process may recover by action against the insurer the amount of the judgment which he could have so recovered against the insured person. Provided that he shall not be entitled to so recover unless he proves that he gave to the insurer notice of the claim and a short statement of the grounds thereof as soon as possible after he knew that the insured person was dead or could not be served with process, or that such notice was given within such time as would prevent the possibility of the insurer being prejudiced by want of such notice.

(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 a nominal defendant to be named by the Minister, the judgment which, in the circumstances, he could have recovered against the driver of the vehicle: Provided that, as soon as possible after he knew the identity of the

vehicle could not be ascertained, he gave to the Minister notice of the claim and a short statement of the grounds thereof.

(4) It shall be no defence by an insurer to an action against him under this section that he is not liable under a policy of insurance by reason of the fact that—

- (a) the policy was obtained by any mis-statement or non-disclosure, whether fraudulent, material or otherwise;
- (b) the insured person has committed any breach of any term, condition, or warranty of a policy or any provision of this Act; or
- (c) the insured person has failed to comply with any condition of the policy as to what the insured person should do or should not do after the event giving rise to liability.

(5) The insurer may, in addition to any other right or remedy he may have, recover from the insured person liable in respect of any such accident, and, if two or more persons were so liable, from those persons jointly and severally—

- (a) such part of any judgment so obtained against the insurer; or
- (b) such sums as the insurer has paid in payment, settlement or compromise of the claim or judgment against the insured person or the insurer; and
- (c) such costs and expenses

as would not have been recovered from or incurred or paid by the insurer but for the last preceding subsection of this section, and that amount may be recovered either in a separate action or by means of third party procedure in the action against the insurer by the person who obtained the judgment: Provided that if the insured person has made any written request to the insurer that he should settle or compromise up to any specified sum or should pay or should contest the claim, and if the insurer acts unreasonably in failing to comply with such request then the insurer shall not recover more than the amount of the liability which the insurer would have paid or incurred if he had not so acted unreasonably.

(6) This section shall not apply—

- (a) so as to confer any rights against an insurer upon the spouse or a child or other relative of

the insured person, being a grandchild, parent, brother or sister of the insured person, or upon a servant of the insured person whilst engaged on his master's business, or any passenger (other than a passenger carried or about to be carried for hire in a vehicle such as mentioned in subsection (3) of section six of this Act) in, or any person entering into or alighting from, or about to enter into or alight from, the vehicle specified in the policy; nor

- (b) so as to make an insurer liable for more than two thousand pounds (including costs) in respect of any passenger nor more than twenty thousand pounds (including costs) in respect of all passengers in the motor vehicle specified in the policy if at the material time it was being used in the business of carrying passengers for hire;
- (c) to any accident which happened before the commencement of this Act.

(7) (a) Subject to subsection (8) of this section a nominal defendant shall not be liable to satisfy any judgment obtained against him but the judgment and the nominal defendant's costs shall be paid by all those who were approved insurers at the date of the accident giving rise to the liability in proportions determined by the Minister who, in so determining, shall have regard to the premium income in respect of contracts or policies of insurance under this Act received by each such insurer during the previous year.

(b) The Treasurer may, on the recommendation of the Minister, out of the general revenue of the State and without any appropriation other than this Act, pay the amount of any judgment obtained against a nominal defendant under this section and of the nominal defendant's costs; and the approved insurers who are under this subsection liable for such judgment and costs shall, upon demand made by the Treasurer, repay to him their respective proportions of any amounts so paid by him.

(8) (a) Any association consisting of not less than ten approved insurers may submit for the Treasurer's approval a scheme under which it is proposed that all

approved insurers will contribute money in proportions provided for in the scheme for—

- (i) Satisfying claims made in respect of death or bodily injury caused by negligence in the use of a motor vehicle where the identity of the vehicle cannot be ascertained; and
- (ii) Satisfying judgments obtained against nominal defendants under this section;
- (iii) Paying the costs of such defendants; and
- (iv) Paying expenses of emergency treatment and hospital treatment when the same are payable in accordance with section fourteen of this Act.

(b) If the Treasurer approves of any scheme so submitted every approved insurer shall enter into and execute an agreement between himself and all other approved insurers for the purpose of carrying the scheme into effect, and shall carry out the obligations imposed upon him by the agreement; and the Treasurer may by notice in the *Government Gazette* declare that any approved insurer who refuses to enter into or execute such an agreement or fails or refuses to carry any such obligation shall cease to be an approved insurer.

(c) Subsection (7) of this section, so far as it provides that the Treasurer shall determine the proportions in which approved insurers are to satisfy judgments and pay nominal defendants' costs, and that the Treasurer may satisfy judgments and pay a nominal defendant's costs, shall not apply in relation to any judgment against a nominal defendant which is satisfied pursuant to a scheme approved by the Treasurer under this subsection or in relation to any nominal defendant's costs which are paid pursuant to any such scheme.

(9) No policy shall be deemed to comply with this Act if any term, warranty or condition thereof is in form or substance a term, warranty or condition of which the committee appointed under section twenty-six of this Act has expressed its disapproval by notice in the *Government Gazette*: Provided that every such notice shall come into effect upon the expiration of three months after the publication thereof in the *Government Gazette* and not earlier.

Special provisions in relation to uninsured motor vehicles.
See N.S.W.
ibid s. 30.
Vic. *ibid.*,
s. 14.

8. (1) Where—

- (a) judgment against the owner or driver of an uninsured motor vehicle has been entered in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor vehicle;
- (b) such death or bodily injury is one against liability in respect of which the judgment debtor had there been in force a contract of insurance under this Act relating to such motor vehicle, would have been insured; and
- (c) the judgment debtor does not satisfy the judgment in full within one month after the same has been entered—

the judgment creditor may obtain judgment against a nominal defendant, to be named by the Minister, for a sum equivalent to the amount (including costs) unpaid in respect of the first-mentioned judgment or the amount to which the liability of an approved insurer might have been limited had there been in force a contract of insurance under this Act relating to such motor vehicle, whichever is the smaller amount:

Provided that, where execution of such first-mentioned judgment is stayed pending appeal, the time during which such execution is so stayed shall be excluded in calculating the said period of one month.

(2) The nominal defendant shall not be liable to satisfy any judgment obtained against him but subject to subsection (8) of section seven of this Act the judgment and the nominal defendant's costs shall be paid by the approved insurers at the time of the occurrence out of which the claim arose, in proportions determined by the Minister, who in so determining shall have regard so far as practicable to the premium income in respect of contracts or policies of insurance under this Act received by each such insurer during the previous year.

(3) The sum paid as aforesaid to satisfy the judgment claimed against the nominal defendant and his costs shall be recoverable by the nominal defendant against the owner or driver of the motor vehicle:

Provided that—

- (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 the fact that such motor vehicle was an uninsured motor vehicle was not due to his own fault;
 - (ii) in any case where the owner of the motor vehicle is the judgment debtor as aforesaid, no sum shall be so recoverable against the driver of the motor vehicle unless judgment could have been obtained against the driver in respect of the death or bodily injury aforesaid; and
 - (iii) it shall be a good defence in any action against the driver of such motor vehicle if he establishes to the satisfaction of the Court that at the time of the occurrence out of which such death or bodily injury arose he was driving the motor vehicle with the authority of the owner and that he had reasonable grounds for believing, and did in fact believe, that the motor vehicle was a motor vehicle in relation to which there was in force a contract or policy of insurance under this Act.
- (4) Any amount recovered by the nominal defendant as aforesaid against the owner or driver of such motor vehicle shall be paid to the approved insurers aforesaid in the same proportions as such insurers paid to satisfy the judgment and the nominal defendant's costs as aforesaid or into the funds of the scheme approved by the Treasurer under subsection (8) of section seven of this Act as the case may require.
- (5) (a) Where—
- (i) liability has been incurred by the owner or driver of any uninsured motor vehicle in respect of the death of, or bodily injury to, any person caused by or arising out of the use of that motor vehicle; and
 - (ii) such liability is one against which such owner or driver, had there been in force a contract of insurance under this Act relating to such motor vehicle, would have been insured; but
 - (iii) such owner or driver is dead or cannot after strict inquiry and search be found

any person who could have obtained a judgment in respect of such death or bodily injury against such owner or driver, if he were living or if he could be found, as the case may be, may obtain judgment against a nominal defendant, to be named by the Minister, for a sum equivalent to the amount for which he could have obtained a judgment against the owner or driver, or the amount to which the liability of an approved insurer might have been limited had there been in force a contract of insurance under this Act relating to such motor vehicle, whichever is the smaller amount:

Provided that—

(i) such person shall not be entitled so to recover unless within a reasonable time after he knew that such owner or driver was dead or could not be found he gave to the Minister notice of intention to make a claim and a short statement of the grounds thereof; and

(ii) the inquiry and search made for such owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

(b) The nominal defendant shall not be liable to satisfy any judgment obtained against him, but subject to subsection (8) of section seven of this Act the judgment and the nominal defendant's costs shall be paid by the approved insurers at the date of the occurrence out of which the claim arose in proportions determined by the Minister, who in so determining shall have regard, so far as practicable, to the premium income in respect of contracts or policies of insurance under this Act received by each such insurer during the previous year.

(c) Subject to subsection (8) of section seven of this Act the Treasurer may, on the recommendation of the Minister, out of the general revenue of the State, and without any appropriation other than this Act, pay the amount of any judgment obtained against a nominal defendant under this section and of the nominal defendant's costs, and the approved insurers who are under this subsection liable for such judgment and costs shall, upon demand made by the Treasurer, repay to him their respective proportions of any amounts so paid by him.

(6) (a) On the happening of any accident affecting an uninsured motor vehicle and resulting in the death of or bodily injury to any person, it shall be the duty—

(i) of the driver (when he is not also the owner) as soon as practicable after the accident; and

(ii) of the owner, as soon as practicable after he first becomes aware of the accident,

to notify the Minister in writing sent or delivered to the officer in charge at the police station nearest to the place where the accident occurred of the fact of the accident with particulars as to the date, nature and circumstances thereof.

(b) The owner or driver of any such motor vehicle who fails to notify the Minister as aforesaid shall be guilty of an offence against this Act.

Penalty: One hundred pounds.

Provided that it shall be a good defence in any proceedings for an offence under this subsection against the driver if he establishes to the satisfaction of the Court that he did not know that such motor vehicle was an uninsured motor vehicle.

9. Where under this Act the Minister is authorised to name a nominal defendant, such nominal defendant shall be an approved insurer named after consultation with the committee appointed under and for the purposes of this Act, as hereinafter provided.

Provisions as
to nominal
defendants.
See N.S.W.
ibid s. 29.

10. (1) Upon the happening of any accident which results in the death of or causes bodily injury to any person and is caused by or arises out of the use of a motor vehicle, the driver and the person in charge thereof shall give written notice forthwith to the insurer concerned and such notice (which notice shall not be subject to discovery or admissible in evidence in any proceedings except proceedings for an offence under this section) shall set forth the following information with as full particulars as the driver and the person in charge of the vehicle as aforesaid is or are able to give—

(a) the fact of the accident;

Duties of
owner or in-
sured person.
Vic. *ibid.*,
s. 14 (6).
S.A. *ibid.*,
s. 70 E.

- (b) the time and place at which it occurred;
- (c) the circumstances of the accident;
- (d) the name and address of any person killed or injured therein;
- (e) the names and addresses of any witnesses of the accident.

(2) When neither the driver nor the person in charge of the motor vehicle is the owner of the motor vehicle concerned the owner thereof shall give a like notice immediately upon the accident coming to his knowledge.

(3) An insured person, immediately upon any claim being made upon him in respect of an accident, shall give notice of the claim to the insurer concerned and supply to that insurer such particulars of the claim as he requires.

(4) If any person fails to comply with any requirement of subsection (1) or subsection (3) of this section he shall be guilty of an offence.

Penalty: Five pounds.

(5) An insured person shall not, without the consent in writing of the insurer concerned—

- (a) enter upon or incur any expense in any litigation;
- (b) make any offer or promise of payment or settlement;
- (c) make any payment or settlement; or
- (d) make any admission of liability

in respect of any claim in respect of which he is insured with such insurer but this provision shall not prevent any person truthfully answering any questions reasonably asked of him.

(6) The insurer shall be entitled to recover from an insured person who has failed to comply with any provision of this section all moneys paid and costs incurred by the insurer in relation to any claim arising out of the accident in respect of which such failure has occurred.

11. (1) The insurer may, on behalf of the insured person conduct the negotiations in respect of any claim against the insured person and may assume the conduct and control of any legal proceedings in respect of any

such claim, and at any stage of those negotiations or proceedings may pay, compromise or settle any such claim.

(2) The insured person shall sign and execute all such warrants, authorities and other documents as are necessary to give effect to this section, and, if the insured person makes default in doing so or is absent or cannot be found, the warrants, authorities or other documents aforesaid may be signed or executed by the insurer on behalf of the insured person.

(3) Where as the result of the use of a motor vehicle an accident happens which results in the death of or bodily injury to any person as well as damage to property, and claims are made in respect of the death or bodily injury, and also in respect of the damage to property, and the person against whom the claims are made is insured against his liability for death or bodily injury but not against his liability for damage to property, then nothing said or done in any negotiations for settlement of either of the claims, and no judgment given in any legal proceedings in respect of either of the claims, shall be evidence in any legal proceedings in respect of the other claim, unless the negotiations or proceedings in respect of both claims are conducted or controlled by the person against whom the claims are made with the authority of the insurer or by the insurer with the authority of the said person.

12. (1) Where—

(a) (i) any legally qualified medical practitioner or registered nurse renders emergency treatment in respect of bodily injury (including fatal injury) to any person caused by or arising out of the use of a motor vehicle; or

(ii) the person so injured is immediately after such injury conveyed in any vehicle; and

(b) notice in writing of a claim under this section is given by the medical practitioner, nurse, or person who conveyed the injured person, to the insurer who issued the policy of insurance in force under this Act in relation to the said motor vehicle within one month after the occurrence out of which the death

Emergency
treatment,
S.A. *ibid.*, s.
70G.

or bodily injury arose, the insurer shall make the following payments as are applicable to the case:—

- (i) to the medical practitioner the sum of twelve shillings and sixpence for each person to whom emergency treatment is rendered by him, together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered;
- (ii) to the nurse the sum of ten shillings and six pence for all emergency treatment rendered by her to the person or persons injured in the accident, together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered, which sum shall, if emergency treatment is rendered to two or more persons be deemed to have been paid on behalf of all those persons in equal shares;
- (iii) to any person who conveyed the injured person as mentioned in paragraph (a) of this subsection, an amount to be ascertained in accordance with the regulations.

(2) where bodily injury (including fatal injury) is caused by or arises out of the use of two or more motor vehicles in respect of which policies of insurance were issued by different insurers, each such insurer shall pay an equal share of the payments required to be made under subsection (1) of this section.

(3) The liability (if any)—

- (a) of the owner or driver of such motor vehicle in respect of the death or bodily injury; and
- (b) of the insurer to the owner or driver in respect of the contract of insurance; and
- (c) of the injured person or his personal representatives to the person to whom the payment is made under this section

shall be reduced by the amount paid by the insurer under this section.

(4) In this section “emergency treatment” means such medical or surgical treatment or examination by a legally qualified medical practitioner or by a registered

nurse as is immediately required as the result of any such injury as mentioned in subsection (1) of this section.

(5) A sum payable under this section shall be recoverable as if it were a simple contract debt due from the insurer to the person entitled to that sum.

(6) Any local authority shall, if so requested by a person who alleges that he is entitled to a payment under this section, furnish that person with any information at its disposal as to the identification marks or plates or registration of any motor vehicle which that person alleges to be a motor vehicle out of the use of which the death or bodily injury arose, and as to the identity and address of the person who owned or was using the vehicle at the time of the event out of which the death or bodily injury arose.

(7) Any person who was using a motor vehicle at the time when death or bodily injury was caused by or arose from such use, shall, upon request of any person who alleges that he is entitled to a payment under this section, furnish such person with the name and address of the insurer who issued the policy of insurance in force in relation to that vehicle at the time of the death or bodily injury.

13. (1) Where—

- (a) any payment is made (whether or not with an admission of liability) by an insurer under or in consequence of a contract of insurance under this Act in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle; and
- (b) the person who has so died or been injured received treatment at a hospital, whether as an in-patient or as an out-patient in respect of the bodily injury (fatal or otherwise) so caused or arising; and
- (c) notice in writing of a claim under this section is given by that hospital to the insurer within one month after the occurrence out of which the death or bodily injury arose

Hospital
treatment.
N.S.W. *ibid.*,
s. 24; Vic.
ibid., s. 22;
S.A. *ibid.*, s.
70H.

there shall be paid by the insurer to the hospital the amount owing to the hospital in respect of treatment afforded to the person who has so died or been injured.

(2) Where two or more insurers make payments under or in consequence of a contract of insurance under this Act in respect of the death of or bodily injury to a person caused by or arising out of the use of two or more motor vehicles each such insurer shall pay an equal share of the payments required to be made under subsection (1) of this section.

(3) The liability (if any)—

- (a) of the owner or driver of the motor vehicle in respect of the death or bodily injury; and
- (b) of the insurer to the owner or driver in respect of the contract of insurance,

shall be deemed to be reduced by the amount paid by the insurer to the hospital under this section.

(4) The amount to be paid by the insurer to the hospital in respect of any such bodily injury (fatal or otherwise) shall not exceed fifty pounds for each person so treated as an in-patient, or five pounds for each person so treated as an out-patient; and in either case the amount to be paid to the hospital as aforesaid shall not exceed one-fifth of the total amount (exclusive of costs) paid by the insurer in respect of such fatal or bodily injury.

(5) If the person who has died or been bodily injured has received treatment at more than one hospital, and the total amount owing to those hospitals in respect of treatment afforded to that person exceeds fifty pounds, the sum of fifty pounds shall be divisible between the hospitals in proportion to the claims of the hospitals.

**Emergency
treatment
and hospital
treatment
when motor
vehicle un-
insured.**

14. (1) Where emergency treatment as mentioned in section twelve of this Act, or hospital treatment as mentioned in section thirteen of this Act, is rendered to a person in respect of bodily injury (fatal or otherwise) caused by or arising out of the use of an uninsured motor vehicle, section twelve or section thirteen aforesaid, as the case may require, shall apply, subject to the following modifications, namely:—

- (a) Any notice required by either of the said sections to be given to the insurer shall be given to the Minister;

- (b) Any payment required by either of the said sections to be made by the insurer shall subject to subsection (8) of section seven of this Act be made by all those who were approved insurers at the date of the accident giving rise to the emergency treatment or hospital treatment in proportions determined by the Minister, who in so determining shall have regard to the premium income for insurance under this Act received by each such insurer during the previous year;
- (c) Subject to subsection (8) of section seven of this Act the Treasurer may, on the recommendation of the Minister, out of the general revenue of the State and without any appropriation other than this Act, pay the amount of any sum payable for the emergency treatment or hospital treatment aforesaid and the approved insurers who are under this section liable for payment of such sum shall, upon demand made by the Treasurer, repay to him their respective proportions of any sum so paid by him.

(2) Where by virtue of this section any payment for emergency treatment or for hospital treatment has been paid, the Minister may, by action brought in his ministerial capacity, recover from the owner or driver of the said uninsured motor 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 or hospital treatment.

(3) Where the Minister has recovered from the owner or driver of an uninsured motor vehicle the amount paid for emergency treatment or hospital treatment by virtue of this section, the amount so recovered (exclusive of costs and other expenses incurred by the Minister) shall be paid by the Minister to the approved insurers, in the same proportions as those in which the said insurers paid the sums for the emergency treatment or the hospital treatment as required and provided by this section or

into the funds of the Scheme approved under subsection (8) of section seven of this Act as the case may be.

*Right of ap-
proved in-
surers against
unauthorised
drivers.*

15. Where the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle to which a contract of insurance under this Act relates, and that motor vehicle was at the time of the occurrence out of which such death or injury arose, driven by a person without the authority of the owner or without reasonable grounds for believing that he had the authority of the owner, then, notwithstanding anything to the contrary in this Act—

- (a) such driver shall not be entitled to recover from the insurer any sum on account of any moneys (including costs) paid or payable by such driver in respect of his liability in respect of such death or bodily injury; and
- (b) any sum paid by the insurer in discharge of such liability of such driver shall be recoverable by the insurer from such driver.

*Actions to be
tried without
jury.
S.A. *ibid.*, s.
70 I.*

16. Every action brought against the owner, approved insurer, nominal defendant or driver of a motor vehicle for damages in respect of the death of or bodily injury to any person caused by or arising out of the use of that vehicle shall be tried without a jury. In so far as this section is inconsistent with or repugnant to or may be deemed to be inconsistent with or repugnant to any provision contained in any other Act in force at the commencement of this Act, this section shall prevail and such provision contained in such other Act aforesaid shall be subject to this section and shall be read and construed and have effect accordingly.

*Insurance by
visiting
motorists.
S.A. *ibid.*,
s. 70J.*

17. Subject to subsection (4) of section three of this Act, no temporary license in respect of any motor vehicle of a person visiting the State shall be granted unless, in the opinion of the licensing authority to which application for such temporary license is made, that person is adequately insured against any liability which may be incurred by him in respect of the death of or bodily injury to any person caused by or arising out of the use of that motor vehicle in the State.

18. (1) Any police officer or constable or approved insurer may apply on complaint to a court of summary jurisdiction for an order that any person be disqualified for such period as the Court fixes from holding and obtaining a driver's license under the Traffic Act.

Power to
suspend or
cancel
Licenses on
application
of approved
insurer.
S.A. *ibid.*,
s. 70K.

(2) If it is proved to the satisfaction of the Court that the defendant is likely, in the event of his continuing to drive motor vehicles, to endanger unduly the safety of the public the Court may make such order under subsection (1) of this section as it thinks fit.

(3) This section shall have effect and be construed as being supplementary to section thirty-two of the Traffic Act.

19. (1) An insurer shall not terminate a policy of insurance complying with this Act before its expiry by effluxion of time, except upon fourteen days notice in writing given to the person to whom the policy was issued and to the licensing authority which granted the then current license in respect of the vehicle to which the said policy of insurance relates, unless the insurer substitutes another policy of insurance which complies with this Act and commences immediately upon the termination of the previous policy.

Insurer not
to terminate
policy of in-
surance
without
notice.
S.A. *ibid.*,
s. 70K.

(2) Upon the termination of the policy on such notice, the motor vehicle specified in the policy shall be an unlicensed vehicle within the meaning and for the purposes of the Traffic Act, unless and until the licensing authority to whom the notice was given by the insurer as aforesaid is satisfied that another policy of insurance complying with this Act has been issued in respect of the use of that vehicle.

20. (1) Every approved insurer shall, whenever so required by the Minister, furnish to the Minister, such information as the Minister reasonably requires relating to the following matters:—

Information
to be fur-
nished by in-
surers.
S.A. *ibid.*,
s. 70L.

- (a) Premiums received for insurance under this Act;
- (b) Claims paid under this Act;
- (c) Persons insured under this Act;
- (d) Any other matters relevant to this Act.

(2) Any insurer who, without lawful excuse, fails to furnish any information to the Minister within two months after receipt of a written notice from the Minister requesting such information shall be guilty of an offence.

Penalty: One hundred pounds.

(3) Any insurer who wilfully or negligently furnishes any false information to the Minister shall be guilty of an offence.

Penalty: Two hundred pounds.

(4) Where any insurer is convicted of any offence under this section the Minister may, by notice given to such insurer and published in the *Government Gazette*, cancel the approval of such insurer as an approved insurer within the meaning and for the purposes of this Act and as from the date of the publication of such notice in the *Government Gazette* such insurer shall cease to be an approved insurer until he is again approved by the Minister, as regards the issue of new policies of insurance or the renewal of existing policies of insurance for the purposes of this Act: Provided that policies of insurance issued by such insurer and current at the time when the insurer ceases to be an approved insurer as aforesaid, and the liability of the insurer thereunder, and under the provisions of this Act by virtue of such policy shall not in any way be affected or diminished by reason of the insurer ceasing to be an approved insurer as aforesaid until the expiry (by effluxion of time or otherwise) of the said current term of the policy.

Contracting
out of liability
for negli-
gence.
S.A. *ibid.*,
s. 70P.

21. Any contract (whether under seal or not) by virtue of which any person in advance contracts out of any right to claim damages or any other remedy for the negligence of any other person in driving a motor vehicle shall to that extent be void.

Soliciting in-
structions
from persons
claiming.
S.A. *ibid.*,
s. 70S.

22. (1) No person shall—

(a) for or in the expectation of directly or indirectly receiving any reward accept instructions or authority to act on behalf of any person in respect of the making, commencement, resisting, compromise or settlement of any claim or action for damages for the death

of or bodily injury to any person or for the injury to the property of any person arising out of the use of a motor vehicle;

- (b) for or in the expectation of directly or indirectly receiving any reward, make, commence, cause to be made or commenced, negotiate, settle or compromise on behalf of any person any such claim or action;
- (c) hold himself out as being willing to act for reward on behalf of any person in making, commencing, resisting, negotiating, settling or compromising any such claim or action.

(2) This section shall not apply to any solicitor or barrister who is carrying on his profession in the ordinary way, or to any officer of an association acting in the course of his duties for a member of such association, or to any person employed or instructed by an approved insurer to act on its behalf in connection with any claim or action in a case where that insurer is liable to indemnify the person against whom the claim is made or the action is brought.

(3) Any agreement to pay any money for work done or services rendered contrary to this section shall be void, and any money so paid shall be recoverable by the person who has paid it.

23. (1) Any person who does or attempts to do any act, matter, or thing in breach of any of the provisions of this Act, or fails or neglects faithfully to observe and perform any duty or obligation imposed on him by any provision of this Act shall be guilty of an offence against this Act.

*Offences.
General
penalty.*

(2) Every person who commits any offence under this Act shall, if no penalty is expressly specified for the offence in this Act, be liable on conviction to a penalty not exceeding one hundred pounds.

(3) Proceedings for any offence under this Act shall be heard and disposed of summarily.

24. 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

*Notice of
claim to be
given within
one month.*

Act give rise to an action for damages against either an insured person or an insurer, 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 insurer from whom he proposes to claim such damages, of his intention to claim such damages within one month after the date of the accident out of which such claim for damages arises.

Medical examination
of injured
person.
S.A. *ibid.*,
s. 70R.

25. (1) Where, in accordance with section twenty-four of this Act, an insured person or an insurer has received notice of a claim for damages in relation to the bodily injury of a person who has suffered bodily injury, the insured person or insurer, or the insurer when conducting negotiations on behalf of the insured person, may, subject to the regulations require the injured person aforesaid from time to time to submit himself for medical examination by a legally qualified medical practitioner nominated and paid for such examination by the insured person or by the insurer, as the case may be. The medical adviser of the injured person shall be entitled to attend upon any such examination but no legal advisers shall be entitled to do so.

(2) If the injured person, without reasonable excuse, refuses to submit himself to any such medical examination, no action for damages shall be commenced, or any action commenced shall not be proceeded with, unless and until the injured person aforesaid shall have submitted himself to the medical examination aforesaid.

(3) The costs (if any) allowed by a court to an insured person or to an insurer as the successful defendant in any action for damages brought against him, may, in the discretion of and upon the certificate of the court, include any expenses incurred by such insured person or insurer in the payment of professional fees to a legally qualified medical practitioner who has made a medical examination of an injured person as provided for by this section.

Appointment
of committee
to make in-
quiries, etc.
S.A. *ibid.*,
s. 70M.

26. (1) Upon the recommendation of the Minister, the Governor may from time to time appoint a committee—

(a) to inquire into and report upon the question whether the premiums charged for insurance

under this Act are, or whether any term, warranty, or condition contained in any policy of insurance issued for the purposes of this Act, is, fair and reasonable; and

- (b) to exercise any other powers and functions and to perform any other duties which by the provisions elsewhere contained in this Act are expressly required or permitted to be exercised or performed by the committee appointed under this section.

(2) The Committee shall consist of six members as follows:—

- (a) The Auditor General as chairman.
- (b) The Manager of the State Government Insurance Office.
- (c) Two persons, being owners of motor vehicles, appointed as representing owners of motor vehicles, one of whom shall be resident outside the Metropolitan Area as constituted under and for the purposes of the Traffic Act; and
- (d) Two persons appointed as representing approved insurers other than the State Government Insurance Office.

(3) (a) The members referred to in paragraph (c) of the last preceding subsection shall be appointed after consultation with such body or bodies as in the opinion of the Minister, represent the interests of owners of motor vehicles.

(b) The members referred to in paragraph (d) of the last preceding subsection shall be appointed from a list of persons compiled from names submitted by approved insurers each approved insurer having the right to submit the name of one such person.

(4) The committee when making inquiries shall have all the powers of a Royal Commission and the Royal Commissioners' Powers Act, 1902, with the necessary modifications shall apply to the chairman and other members of the committee and its proceedings and to witnesses and persons summoned as witnesses before the committee.

(5) The Minister shall lay a copy of every report of the committee before both Houses of the parliament

Governor
may suspend
operation of
this Act in
certain cir-
cumstances.

27. (1) Notwithstanding anything to the contrary contained elsewhere in this Act, where the committee appointed under section twenty-six of this Act reports that all or any of the premiums charged for insurance under this Act are unfair and unreasonable, the Governor may, on the recommendation of the Minister, by proclamation suspend the operation of this Act either indefinitely until such proclamation is revoked by a subsequent proclamation or for an express period specified in the proclamation.

(2) Any proclamation issued by the Governor under subsection (1) of this section may be revoked or varied by a subsequent proclamation.

(3) While the operation of this Act continues to be suspended by virtue of a proclamation issued under this section, owners of motor vehicles shall not be required to obtain any policy of insurance as required by this Act, and vehicle licenses under the Traffic Act for motor vehicles may be issued to the owners thereof without any proof or evidence that such owners have obtained policies of insurance in respect of their vehicles in compliance with this Act.

(4) The suspension of the operation of this Act as provided for by this section shall not in any way affect or diminish the obligations or liabilities of insurers under policies of insurance issued by them under this Act and current at the time of the issue of the proclamation by which the operation of this Act has been suspended and, in so far as the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle specified in any such policy of insurance has occurred during the currency of such policy, whether before or after the issue of the proclamation suspending the operation of this Act as aforesaid, the liabilities and rights of the insurer in respect of the contract of insurance under this Act in respect of the death of or bodily injury to the person aforesaid shall continue, and to that extent and for that purpose the provisions of this Act shall be deemed to be still in operation.

Regulations.

28. The Governor may make any regulations necessary or convenient for carrying this Act into effect or for facilitating the operation of this Act, and may by any

1943.]

*Motor Vehicle (Third Party
Insurance).*

[No. 32.

such regulation impose penalties recoverable summarily and not exceeding twenty pounds for breach of any regulation.

29. The Traffic Act, 1919-1941, is hereby amended as follows:—

Amendment
of Traffic
Act.

- (a) Section one is amended by adding at the end thereof the words “and shall be read in conjunction with the Motor Vehicle (Third Party Insurance) Act, 1943.”
 - (b) Section thirty-two is amended by adding thereto a subsection as follows:—
 - (3) Nothing in this section shall affect or in any way limit the operation of section eighteen of the Motor Vehicle (Third Party Insurance) Act, 1943.
 - (c) Section fifty-seven is hereby repealed.
-