

## MOTOR VEHICLE (THIRD PARTY INSURANCE).

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No. 95 of 1966.

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AN ACT to amend the Motor Vehicle (Third Party Insurance) Act, 1943-1964.

[Assented to 12th December, 1966.]

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:—

Short title and citation.

1. (1) This Act may be cited as the *Motor Vehicle (Third Party Insurance) Act Amendment Act, 1966*.

Reprinted as approved for reprint 2nd March, 1961, and amended by Acts Nos. 70 of 1961, 57 of 1962, 72 of 1962, 71 of 1963 and 65 of 1964.

(2) In this Act the Motor Vehicle (Third Party Insurance) Act, 1943-1964, 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, 1943-1966.

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2. (1) Subject to subsection (2) of this section, this Act shall come into operation on a date to be fixed by proclamation. Commence-  
ment.

(2) It shall not be necessary to proclaim that the whole Act shall come into operation on one date, but the several sections of this Act may be proclaimed to come into operation on such dates as are respectively fixed by proclamation.

3. The long title to the principal Act is amended by inserting after the word, "insurance" in line five, the passage, ", to establish the Third Party Claims Tribunal". Long title  
amended.

4. Section three of the principal Act is amended by adding after the interpretation, "Prescribed date" in subsection (1), the following interpretation— S. 3  
amended.

"the Tribunal" means the Third Party Claims Tribunal established under this Act. .

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

(a) by adding after subsection (3), the following subsections—

(3a) The Trust shall keep a separate account to be known as the "Periodical Payments Account" and shall pay out of that account all periodical payments of damages ordered to be paid by the Tribunal under the provisions of this Act.

(3b) The Trust may at any time capitalise into a fixed sum all periodical payments of damages payable after the date of such capitalisation to any claimant in pursuance of an order of the Tribunal together with all costs and other expenses payable in respect of his claim, and shall debit the appropriate

annual account and credit the Periodical Payments Account with the fixed sum so capitalised; and on such capitalisation being effected, the claim of the claimant shall for the purpose of any account kept under the provisions of this Act be deemed to be finalised. ;

- (b) by substituting for the words, "arising from" in lines three and four of paragraph (b) of subsection (4), the passage, "and the total amount of all fixed sums capitalised under subsection (3b) of this section, arising from or relating to";
- (c) by substituting for the word, "Any" in line one of paragraph (b) of subsection (5), the passage, "Subject to paragraph (c) of this subsection, any"; and
- (d) by adding after paragraph (b) of subsection (5), the following paragraph—

(c) Any interest or profits obtained by the Trust as a result of any investment of moneys standing to the credit of the Periodical Payments Account shall be credited to and form part of that Account, and shall not be subject to apportionment between the annual accounts kept by the Trust. .

S. 6  
amended.

6. Section six of the principal Act is amended—

- (a) by repealing subsection (2) and substituting the following subsection—

(2) Nothing in this section operates to increase the liability of the Trust relating to a claim in respect of the death of or bodily injury to a person caused by or arising out of the use of a motor vehicle before the commencement of section six of the Motor Vehicle (Third Party Insurance) Act Amendment Act, 1966,

beyond the amount for which it might at that time have been liable under the provisions of this section as those provisions then existed. ; and

(b) by repealing subsection (3).

7. The principal Act is amended by adding after section six, the following section—

S. 6A  
added.

6A. (1) Where a person causes or contributes to bodily injury to his spouse by negligence in the use of a motor vehicle then and notwithstanding any Act or rule of law to the contrary, but subject to this section, the spouse shall have the like right of action in respect of that injury as if they were not husband and wife.

Spouse  
may sue  
in certain  
cases.

(2) Nothing in this section shall—

- (a) impose on any person liability for a claim in respect of which that person is not insured under a policy of insurance issued pursuant to this Act, or for an amount in excess of which that person is so insured;
- (b) apply to any accident which happened before the commencement of section seven of the Motor Vehicle (Third Party Insurance) Act Amendment Act, 1966;
- (c) derogate from or limit any right of action which any person would have had at common law or pursuant to section twelve of the Married Women's Property Act, 1892, if this section had not been enacted.

(3) An action pursuant to this section shall not be brought by an injured spouse unless that spouse gives to the Trust notice of the claim and

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a short statement of the grounds thereof as soon as practicable after the bodily injury was caused. .

S. 7  
amended.

8. Section seven of the principal Act is amended by substituting for paragraph (a) of subsection (6), the following paragraph—

(a) so as to make the Trust liable for any greater amount in respect of any passenger in a motor vehicle where the accident occurred before the commencement of section eight of the Motor Vehicle (Third Party Insurance) Act Amendment Act, 1966, than the amount for which it would have been liable in respect of that passenger before the commencement of that section of that Act; .

S. 8A  
added.

9. The principal Act is amended by adding after section eight, the following section—

Liability of  
Trust  
where spouse  
injured.

8A. (1) Notwithstanding the provisions of section eight of this Act, where bodily injury to a person is caused partly by negligence in the use of a motor vehicle by the spouse of that person and partly by negligence in the use of a motor vehicle by some other person, and at the time of that injury that spouse was not in respect of the motor vehicle in the use of which he was negligent an insured person, the Trust shall not be liable in respect of that injury to any greater amount than such proportion of the total claim of that injured person as is equivalent to the degree of negligence attributable to that other person who partly caused the injury.

(2) The degree of negligence attributable to a person as referred to in subsection (1) of this

section shall be such degree as may be agreed between the injured spouse and the Trust, or as may be determined on the hearing of the claim of the injured spouse.

(3) On the hearing of any action pursuant to section six A of this Act, the degree of negligence that is attributable to any person who by negligence in the use of a motor vehicle caused or contributed to the bodily injury of the injured spouse shall be determined if determination of the degree of negligence is requested by any party to the action. .

10. Section sixteen of the principal Act is repealed and the following section substituted—

S. 16  
repealed and  
section  
substituted.

16. (1) For the purposes of this Act there is hereby established a Tribunal to be called the Third Party Claims Tribunal.

Establish-  
ment of  
Third Party  
Claims  
Tribunal.

(2) The Tribunal shall consist of three members who shall be appointed by the Governor, and of those three members—

- (a) one shall be Chairman;
- (b) two shall be nominee members.

(3) A person is not eligible for appointment to the office of Chairman unless he is a judge, or if the appointment of a judge to that office appears to the Governor to be impracticable, unless he is a practitioner as defined by the Legal Practitioners Act, 1893, of not less than eight years' standing and practice.

(4) The Tribunal is a Court of Record and shall have an official seal.

(5) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Tribunal affixed to a document and shall presume that it has been duly so affixed.

(6) The nominee members of the Tribunal shall be nominated by the Minister and of those members one shall be a person who has not, during a period of not less than seven years immediately prior to being so nominated, been a permanent employee or officer of a company or body engaged in the business of indemnifying for reward persons from liability incurred for negligence in respect of the use of a motor vehicle.

(7) Where the Chairman appointed under this section is a judge, he shall be entitled to hold office for a term of seven years; and where the Chairman is not a judge, he shall, subject to retirement as provided by subsection (13) of this section, be entitled to hold office during good behaviour, but may be removed from office by the Governor upon the address of both Houses of Parliament in the same parliamentary session praying for his removal on the ground of proved misbehaviour or incapacity.

(8) If for any reason a person who has been appointed a member of the Tribunal fails to take office, the Governor may appoint a person to act in that office.

(9) Subject to the provisions of this Act, the nominee members first appointed under this section shall be appointed to hold office, in the case of one of those members for a term of five years, and in the case of the other of those members for a term of six years, and after the appointment of those nominee members first appointed, each further appointment shall subject to this section be for a term of seven years; and a nominee member is eligible for re-appointment.

(10) The Governor may terminate the appointment of a nominee member for inability, inefficiency or misbehaviour.

(11) Where a nominee member ceases to hold office before the expiration of the period

of his appointment, another person shall be appointed by the Governor to the office of that member for the remainder of the term of office of the member in whose place he is appointed, but such person shall at the expiration of the term of office be eligible for re-appointment.

(12) If a nominee member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) becomes of unsound mind or is declared under any law for the time being relating to mental infirmity incapable of managing his affairs;
- (c) is absent, without the consent of the Minister, from the duties of his office for a period of one month or longer;
- (d) resigns his office by writing under his hand addressed to the Governor and the resignation is accepted by the Governor;
- (e) has his appointment terminated for inability, inefficiency or misbehaviour;  
or
- (f) attains the age of sixty-five years, or dies,

the Governor shall, by notice in the *Gazette*, declare that the office of that nominee member is vacant, and thereupon that office shall be deemed to be vacant.

(13) The Chairman shall retire from his office upon attaining the age of seventy years, and each nominee member shall retire upon attaining the age of sixty-five years unless he is granted retiring leave, in which case he shall retire on the expiration of that leave, but any



member of the Tribunal who ceases to hold office by virtue of this subsection may nevertheless complete any matter that the Tribunal of which he was sitting as a member had entered upon and had not completed before the member attained the age on which he was due to retire.

(14) The Governor may appoint to act in the place and during the absence of any member of the Tribunal, as deputy for that member, a person with qualifications rendering him eligible for appointment to the office of that member on the Tribunal, and no appointment and no act, matter or thing done by any person acting as deputy for any member or to fill any vacancy in office on the Tribunal shall in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

(15) The Chairman shall, if a judge, receive his salary pursuant to the Judges' Salaries and Pensions Act, 1950, and, if not a judge, shall be paid the same remuneration as is paid from time to time to a puisne judge, and the nominee members shall be paid such remuneration as the Governor from time to time determines; and each member of the Tribunal shall be entitled, in addition to his remuneration, to such travelling and other allowances and such leave of absence as is determined by the Governor.

(16) Subject to subsection (15) of this section, the Minister may grant leave of absence to any member of the Tribunal upon such terms and conditions as to remuneration or otherwise as the Minister determines.

(17) No member of the Tribunal shall engage in any business or occupation for remuneration other than that of his office on the Tribunal, without the consent of the Minister.

(18) At any hearing before the Tribunal at which all three members are present, the determination of a majority of the members shall

be the determination of the Tribunal, but the Chairman alone shall determine any questions of law.

(19) The Chairman and one nominee member shall be a quorum at any meeting of the Tribunal and shall have and may exercise all or any of the powers and duties conferred or imposed upon the Tribunal by this Act, but if at any meeting of the Tribunal at which the Chairman and one nominee member only are present there is a difference of opinion upon any matter (other than a matter of law), the determination of that matter shall be postponed to a meeting of the Tribunal at which all the members are present. .

11. The principal Act is amended by adding after section sixteen, the following section—

S. 16A added.

16A. (1) For the purpose of carrying out the powers, duties and obligations conferred or imposed upon the Tribunal by this Act or any other Act, there shall be a Registrar and such other officers and servants as may be necessary for that purpose.

Registrar and officers of Tribunal.

(2) The Registrar and other officers and servants shall be appointed under and be subject to the provisions of the Public Service Act, 1904. .

12. The principal Act is amended by adding after section sixteen A, as added by this Act, the following section—

S. 16B added.

16B. (1) The costs of the administration of this Act in relation to the establishment of the Tribunal and the carrying out by the Tribunal of the provisions of this Act shall be borne as to two-thirds thereof by the Trust and as to the other one-third thereof by the Treasurer.

Costs of administration to be paid by the Trust and the Treasurer.

(2) The Trust shall in each year pay to the Treasurer the share of the costs for which it is liable under this section, and the share thereof for which the Treasurer is so liable shall be

paid out of moneys in the Public Account as defined in the Audit Act, 1904, which to the necessary extent is appropriated accordingly. .

(3) Where the Chairman of the Tribunal is a judge, his salary appropriated by the Judges' Salaries and Pensions Act, 1950, shall, without affecting his rights under that Act, be taken into account as part of the costs mentioned in subsection (1) of this section and the appropriations from the Public Account shall be adjusted, accordingly. .

S 16C  
added.

13. The principal Act is amended by adding after section sixteen B, as added by this Act, the following section—

Appointment  
of Registrar.

16C. (1) The Governor may appoint a person as Registrar who shall act as clerk to the Tribunal.

(2) The Registrar shall keep a register in the prescribed form and containing the prescribed particulars of all claims for damages received by the Tribunal and of all decisions, determinations and orders of the Tribunal upon or arising out of those claims.

(3) The Minister may direct any officer of the Tribunal to act as deputy of the Registrar during any absence of the Registrar, and while so acting as deputy, that officer shall exercise the powers and perform the duties of the Registrar. .

S. 16D  
added.

14. The principal Act is amended by adding after section sixteen C, as added by this Act, the following section—

Proceedings  
before the  
Tribunal.

16D. (1) All proceedings before the Tribunal shall be conducted in public unless the Tribunal determines, as it is hereby authorised so to do, that any part of the proceedings shall be conducted in camera.

(2) The Tribunal may—

(a) adjourn any proceedings to any time or place;

- (b) appoint to sit with the Tribunal in an advisory capacity any person who in the opinion of the Tribunal possesses any specialised knowledge or skill relating to the subject matter of the proceedings;
- (c) submit to any person who in the opinion of the Tribunal possesses any specialised knowledge or skill for report, any matter which seems material to any question arising out of the proceedings.

(3) Any report furnished pursuant to paragraph (c) of subsection (2) of this section shall be read at a sitting of the Tribunal conducted in public, and at the request of any party to the proceedings the person furnishing the report may be called before the Tribunal to be examined on that report. .

15. The principal Act is amended by adding after section sixteen D, as added by this Act, the following section—

S. 16E  
added.

16E. (1) Subject to the provisions of section sixteen F of this Act, the Tribunal shall, on and after a date to be proclaimed, have exclusive jurisdiction to hear and determine all actions and proceedings brought against an owner or driver of a motor vehicle, or against the Trust, claiming damages in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle.

Jurisdiction  
of Tribunal

(2) Notwithstanding the provisions of subsection (1) of this section, any action or proceeding commenced before the date proclaimed under that subsection for damages in respect of the death of or bodily injury to a person caused by or arising out of the use of a motor vehicle shall be continued in and under the jurisdiction of the Court in which that action or proceeding was commenced.



- (ii) to order that any such periodical payments be redeemed by payment of a lump sum;
- (c) to award to any party such costs as the Tribunal deems proper. .

16. The principal Act is amended by adding after section sixteen E, as added by this Act, the following section—

S. 16F added.

16F. (1) The Tribunal may, in respect of any claim, delegate all or any of its powers (other than its power of delegation) under this Act—

Power to delegate to Local Court.

- (a) in respect of powers relating to the determination of questions and matters arising for determination under the provisions of section sixteen E of this Act, to a magistrate of a Local Court under the Local Courts Act, 1904;
- (b) in respect of powers relating to such corresponding matters as are referred to in sections fourteen and fifteen of the Local Courts Act, 1904, which relate to procedural matters, to any clerk of a Local Court under that Act;
- (c) in respect of powers relating to such corresponding matters as are referred to in sections seventeen to twenty-two, both inclusive, of the Local Courts Act, 1904, which relate to the service of process, the execution of warrants and the functions of bailiffs generally, to any bailiff appointed under that Act.

(2) Every delegation pursuant to paragraph (a) of subsection (1) of this section shall be of a specific and not a general nature and may be enlarged from time to time if the Tribunal deems it expedient, but a delegation pursuant to paragraph (b) or paragraph (c) of that subsection may be either specific or general.

(3) Any party to any proceedings before a magistrate acting under delegated authority pursuant to this section may appeal from the decision of that magistrate to the Tribunal, but subject thereto, the decision of that magistrate shall be as binding and as effective as if that decision were a decision of the Tribunal.

(4) A report of the proceedings before a magistrate shall be forwarded to the Tribunal within fourteen days of a decision on those proceedings being promulgated by the magistrate. .

S. 16G  
added.

17. The principal Act is amended by adding after section sixteen F, as added by this Act, the following section—

Right of  
appeal.

16G. Any party dissatisfied with any decision, determination or judgment of the Tribunal in any action or proceedings under this Act may appeal to the Full Court of the Supreme Court in the manner and within the time prescribed by Rules of Court, and on any such appeal the Court may make such order as appears to the Court to be just, including any order for the payment of costs.

S. 16H  
added.

18. The principal Act is amended by adding after section sixteen G, as added by this Act, the following section—

Party  
may appear  
personally or  
by solicitor.

16H. Any person who is a party to any question for hearing and determination under the provisions of this Act may appear personally or by a legal practitioner authorised to practise as such by the provisions of the Legal Practitioners Act, 1893. .

S. 29A  
amended.

19. Section twenty-nine A of the principal Act is amended by inserting after the word, "of" in line one, the passage, "subsection (3) of section six A,".

20. Section thirty-three of the principal Act is repealed and re-enacted with amendments as follows—

s. 33  
repealed and  
re-enacted.

33. (1) The Governor may make rules and regulations prescribing all matters and things that by this Act are contemplated, required or permitted to be prescribed, or that are necessary or convenient to be prescribed, or are convenient for carrying out and for facilitating the operation of the provisions and purposes of this Act.

Regulations.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Governor may make rules or regulations for or with respect to—

- (a) prescribing such forms as may be necessary or expedient for the purposes of this Act so far as those purposes relate to the Tribunal or the Registrar or any proceedings of or before the Tribunal;
- (b) fixing scales of fees to be paid to the Tribunal and scales of fees, costs and expenses to be paid to solicitors, counsel, medical practitioners and witnesses in proceedings before the Tribunal, and to other experts appointed by the Tribunal or from whom the Tribunal has requested a report under subsection (2) of section sixteen D of this Act;
- (c) regulating the practice and procedure of the Tribunal or any person or Court authorised by delegation by the Tribunal under the provisions of this Act, and providing for the effective exercise of the jurisdiction by the Tribunal or person or Court so authorised and in particular, but without



limiting the general power to make rules and regulations under the provisions of this Act, with reference to—

- (i) the times and places for sittings of the Tribunal and any person or Court so authorised;
- (ii) the summoning of parties and witnesses;
- (iii) the enforcement of awards, orders and judgments;
- (d) the receipt and disbursement of moneys, the keeping of the accounts, and the method of arranging for payment, as between the Trust and the Treasurer, of the respective contributions to be made by them under section sixteen B of this Act;
- (e) prescribing penalties recoverable summarily and not exceeding forty dollars for the breach of any rule or regulation;
- (f) generally carrying into effect the provisions of this Act so far as those provisions relate to the Tribunal and the Registrar and any proceedings of or before the Tribunal. .

Principal Act amended to accord with Decimal Currency Act, 1965.

21. The principal Act is amended by substituting for every reference therein to an amount of money, a reference to the corresponding amount of money expressed in terms of decimal currency calculated on the basis of the equivalents specified in subsection (4) of section eight of the Currency Act 1965 of the Parliament of the Commonwealth.

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