

MOTOR VEHICLE (THIRD PARTY INSURANCE) (No. 2).

11° Elizabeth II., No. LXXII.

No. 72 of 1962.

AN ACT to amend the Motor Vehicle (Third Party Insurance) Act, 1943-1961.

[Assented to 30th November, 1962.]

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

1. (1) This Act may be cited as the *Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2), 1962.*

Short title and citation.

(2) In this Act the Motor Vehicle (Third Party Insurance) Act, 1943-1961, is referred to as the principal Act.

Reprinted as approved for reprint 2nd March, 1961, and further amended by Act No. 70 of 1961.

(3) The principal Act as amended by this Act may be cited as the Motor Vehicle (Third Party Insurance) Act, 1943-1962.

S. 3
amended.

2. Section three of the principal Act is amended by substituting for the interpretation, "Motor vehicle" the following interpretation:

"Motor vehicle" means any vehicle propelled by gas, oil, electricity or any other motive power, not being animal power, required to be licensed, and complying with the requirements necessary for licensing, under the Traffic Act, 1919, and includes a caravan, trailer or semi-trailer drawn or hauled by a motor vehicle. .

S. 3L
amended.

3. Section three L of the principal Act is amended by adding, after subsection (6), the following subsection:

(7) (a) Where both the Trust and the Minister are satisfied that proceedings have been taken, whether in or out of the State, under any Act of the Parliament or any other Act, for the purpose of winding up or dissolving a participating approved insurer, on the ground that the insurer is unable to pay its debts, the Trust may, with the written approval of the Minister, by notice sent to that insurer, the liquidator of that insurer or the receiver or manager of the property of that insurer, declare that, as from—

- (i) the thirtieth day of June immediately preceding the commencement of those proceedings; or
- (ii) the thirtieth day of June immediately following the making of any order, in those proceedings, winding up or dissolving the insurer,

as the Trust may specify, the insurer shall cease to be a participating approved insurer and the insurer, by force of this subsection, ceases, as from the day so specified, to be a participating approved insurer.

(b) On the day on which the participating approved insurer ceases to be such an insurer, the interest of that insurer in the Fund as at that day shall be apportioned among the remaining participating approved insurers in proportion to their interests as they then exist in the Fund. .

4. Section three P of the principal Act is amended by adding, immediately after paragraph (d) of subsection (7), the following paragraph: S. 3P
amended.

(e) Where, pursuant to the provisions of subsection (7) of section three L of this Act, a participating approved insurer ceases to be such an insurer, no dividend in respect of any year to which the insurer might, but for this paragraph, be entitled shall thereafter be paid or credited to it or any person on its behalf or at its direction, until all claims in respect of all years in which it was a participating approved insurer have been finalised; and, notwithstanding the provisions of any Act to the contrary, where—

(i) the claims in respect of all years in which the insurer was participating have been finalised; and

(ii) there remains a balance that, but for the provisions of this paragraph, would be payable to the insurer,

the Trust may pay and apply the balance by adding it to the surplus, or deducting it from the deficit, in the Fund, in respect of any year in which that insurer was not a participating approved insurer; and, where there remains a

debt due by the insurer, the liability for so much of that debt as is not recovered from that insurer shall be apportioned among the remaining participating approved insurers in proportion to their interests as they then exist in the Fund. .

S. 4
amended.

5. Section four of the principal Act is amended—

- (a) by substituting for the passage, commencing with the word, “motor”, in line four of paragraph (a) of subsection (9a), and ending with the word, “Act”, being the last word in the paragraph, the passage, “vehicle propelled by gas, oil, electricity or any other motive power not being animal power that the local authority is satisfied does not require to be licensed under the Traffic Act, 1919, but only if that vehicle complies with the requirements necessary for licensing under that Act”; and
- (b) by deleting the word, “motor” in line one of paragraph (b) of subsection (9a).

S. 6
amended.

6. Section six of the principal Act is amended by repealing subsection (2) thereof and substituting the following subsections:

(2) A policy of insurance complies with this Act, notwithstanding that the liability of the Trust is limited to six thousand pounds, in respect of any claim made by, or in respect of, any passenger (other than a passenger in a vehicle licensed under the Traffic Act, 1919 for carriage of passengers for hire or reward) carried in the vehicle mentioned in the policy and to sixty thousand pounds, in respect of all claims made by, or in respect of, any number of passengers so carried; and those limits are inclusive of all costs in relation to any such claim or claims.

(3) Every policy of insurance shall, so far as it relates to a claim in respect of death or personal injury caused by, or arising out of, the use of a motor vehicle after the commencement of the Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2), 1962, be read and construed as though the limitation of the liability of the Trust were expressed as being that mentioned in subsection (2) of this section; but nothing in that subsection operates to increase the liability of the Trust, in respect of any such claim relating to the use of a motor vehicle before the commencement of that Act, beyond the amount for which it might at that time have been liable.

7. Section seven of the principal Act is amended— ^{S. 7} amended.

- (a) by substituting for the word, “possible” in line fourteen of subsection (2), the word, “practicable”; and
- (b) by substituting for paragraph (a) of subsection (6) the following paragraph:
 - (a) so as to make the Trust liable for more than six thousand pounds (including costs) in respect of any passenger (other than a passenger in a vehicle licensed under the Traffic Act, 1919 for carriage of passengers for hire or reward) nor more than sixty thousand pounds (including costs) in respect of all such passengers in the motor vehicle specified in the policy; .

8. Section eight of the principal Act is amended by substituting for the words, “within a reasonable time”, in line two of subparagraph (i) of the proviso to subsection (5), the words, “as soon as practicable”. ^{S. 8} amended.

S. 29
amended.

9. Section twenty-nine of the principal Act is amended by deleting the proviso to subsection (1).

S. 29A
added.

10. The principal Act is amended by inserting, after section twenty-nine, the following section:

29A. Notwithstanding the provisions of subsections (2) and (3) of section seven, of subsection (5) of section eight, and of subsection (1) of section twenty-nine, of this Act, where the court in which an action is brought, or (as the case may be) is sought to be brought, to recover damages against an insured person or the Trust in respect of the death of, or bodily injury to, any person, caused by or arising out of the use of a motor vehicle, considers the failure to give notice, or the defect in any notice, or the failure to make due search and inquiry, as required by one or other of those subsections, was occasioned by mistake, inadvertence or any other reasonable cause or that the Trust is not materially prejudiced in its defence or otherwise by the failure or defect, the court may—

- (a) where the action is commenced, at any stage of the proceedings, if it thinks fit, relieve the plaintiff of the effect of that failure or defect; or
 - (b) where an action is sought to be brought, if it thinks fit, grant the applicant leave to proceed, notwithstanding that failure or defect. .
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