

# MOTOR VEHICLE (THIRD PARTY INSURANCE).

No. 32 of 1943.<sup>1</sup>

(Affected by Act No. 56 of 1962.)

[As amended by Acts :

No. 40 of 1944 assented to 11th January, 1945;  
No. 7 of 1945 assented to 27th November, 1945;  
No. 31 of 1948<sup>2</sup> assented to 9th December, 1948;  
No. 40 of 1951 assented to 20th December, 1951;  
No. 36 of 1954 assented to 3rd December, 1954;  
No. 77 of 1957<sup>3</sup> assented to 16th December, 1957;  
No. 18 of 1959 assented to 8th October, 1959;  
No. 25 of 1959<sup>4</sup> assented to 15th October, 1959;  
No. 31 of 1960 assented to 21st October, 1960;  
No. 70 of 1961 assented to 28th November, 1961;  
No. 57 of 1962 assented to 30th November, 1962;  
No. 72 of 1962 assented to 30th November, 1962;  
No. 71 of 1963 assented to 17th December, 1963;  
No. 65 of 1964 assented to 4th December, 1964;  
No. 95 of 1966<sup>5</sup> assented to 12th December, 1966;  
No. 37 of 1967<sup>6</sup> assented to 21st November, 1967;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**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 establish the Third Party Claims Tribunal, to amend the Traffic Act, 1919-1941, and for other purposes.

Amended by  
No. 95 of  
1966, s. 2.

[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 the 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, 1943-1967*, and shall come into operation on a day to be fixed by proclamation.<sup>1</sup>

Short title and commencement.<sup>1</sup>  
No. 32 of 1943, s. 1, as amended by No. 37 of 1967, s. 1.

<sup>1</sup> Came into operation on 1st July, 1944 (see *Gazette* 12/5/44).

<sup>2</sup> Part I came into operation on 17th December 1948 (see *Gazette* 17/12/48). Part II came into operation on 27th May, 1949 (see *Gazette* 27/5/49).

<sup>3</sup> Came into operation on 1st February, 1958 (see *Gazette* 31/1/58).

<sup>4</sup> Came into operation on 4th December, 1959 (see *Gazette* 4/12/59).

<sup>5</sup> Sections 1, 2, 6, 7, 8, 9, 19 and 21 came into operation on 1st July, 1967 (see *Gazette* 5/5/67); and the remaining sections came into operation on 4th December, 1967 (see *Gazette* 24/11/67). Came into operation on 4th December, 1967.

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

2. This Act shall be read in conjunction with and as supplementary to the Traffic Act, 1919-1941,<sup>1</sup> and all Acts which amend that Act.

Interpretation.  
Amended by  
No. 49 of  
1944, s. 2;  
No. 7 of  
1945, s. 2;  
No. 31 of  
1948, s. 3  
and s. 5;  
No. 18 of  
1959, s. 3;  
No. 31 of  
1960, s. 2;  
No. 72 of  
1962, s. 2;  
No. 71 of  
1963, s. 2;  
No. 95 of  
1966, s. 4.

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—

- (a) not being an incorporated insurance office approved under and for the purposes of section ten of the Workers’ Compensation Act, 1912-1944,<sup>2</sup> 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, 1912-1944,<sup>2</sup> 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 thirty-one of this Act.

The term includes the State Government Insurance Office established under the State Government Insurance Office Act, 1938-1945.<sup>3</sup>

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

<sup>1</sup> Now Traffic Act, 1919-1967.

<sup>2</sup> Now the Workers’ Compensation Act, 1912-1967.

<sup>3</sup> Now the State Government Insurance Office Act, 1938-1965.

“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.

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

“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.

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

“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, 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.

“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

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vehicle, but does not include the grantee under a Bill of Sale by way of security granted in respect of a motor vehicle except when such grantee takes possession of the motor vehicle under the authority of and by way of enforcing his rights as grantee under such Bill of Sale.

“Participating approved insurer” means—

- (a) any approved insurer which was on the thirtieth day of June, one thousand nine hundred and fifty-nine or which for any period prior to that date had been a participant in the Fund; or
- (b) any person to whom the whole or any part of the interest in the Fund of such an approved insurer is transferred pursuant to section three L of this Act, or
- (c) any insurer that becomes a participating approved insurer, pursuant to the provisions of section three L of this Act.

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

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

“the Tribunal” means the Third Party Claims Tribunal established under this Act.

“Traffic Act” means the Traffic Act, 1919, as amended from time to time and for the time being.

“Transferee insurer” means a person referred to in paragraph (b) of the interpretation, “participating approved insurer”.

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

<sup>1</sup> 27th May, 1949 (see footnote 2 on p. 1 of this reprint).

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“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.

(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.

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(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.

(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<sup>1</sup> 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.

Constitution  
of Trust.  
Added by  
No. 31 of  
1948, s. 4.  
Amended by  
No. 40 of  
1951, s. 3;  
No. 25 of  
1959, s. 3.

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

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

(3) Of the members so appointed—

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

<sup>1</sup> Now s. 19 of Traffic Act, 1919, as reprinted.

- (b) three shall be nominated by the body known as Fire and Accident Underwriters' Association of Western Australia;
- (c) one shall be nominated by those participating approved insurers which are not members of the body known as Fire and Accident Underwriters' Association of Western Australia.

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

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

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

**3B.** (a) Of the three members of the Trust nominated by the body known as the Fire and Accident Underwriters' Association of Western Australia for appointment as from the expiration of the term for which the first three members nominated by that body were first appointed, the first, second and third in the order in which they are nominated for appointment shall hold office for five, four and three years respectively from the date of appointment.

Duration of office. Added by No. 31 of 1948, s. 4. Repealed and re-enacted by No. 40 of 1951, s. 4.

(b) Except as provided in the last preceding subsection, each nominated member of the Trust shall hold office for the period of three years from the date of his appointment.

(c) Each nominated member of the Trust shall be eligible for re-nomination and re-appointment.

Ss. 3C-3F.

Trust to be a body corporate. Added by No. 31 of 1948, s. 4.

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

(2) No act or proceeding of the Trust shall be invalid or be prejudiced by reason only of the fact that at the time when such act or proceeding is done, taken, or commenced, there is a vacancy in the office of any member.

Quorum and voting. Added by No. 31 of 1948, s. 4.

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

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

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

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

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

(6) The Trust may regulate its own procedure.

Resignation from Trust. Added by No. 31 of 1948, s. 4.

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

Disqualification. Added by No. 31 of 1948, s. 4.

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



Ss. 3G-3J.

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

Vacation of membership of Trust. Added by No. 31 of 1948, s. 4.

- (a) if he is or has become disqualified under this Act; or
- (b) if (in the case of a nominated member only) without leave of the Trust he has been absent from more than two consecutive meetings of the Trust; or
- (c) upon death or resignation.

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

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

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

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

Appointment of acting members. Added by No. 31 of 1948, s. 4.

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

Remuneration of members. Added by No. 31 of 1948, s. 4.

Ss. 3K-3L.

Appointment of officers, etc., of Trust. Added by No. 31 of 1948, s. 4.

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

Interest of participating approved insurers in Fund. Added by No. 31 of 1948, s. 4. Amended by No. 40 of 1951, s. 5. Substituted by No. 31 of 1960, s. 3. Amended by No. 72 of 1962, s. 3; No. 71 of 1963, s. 3.

**3L.** (1) Subject to any determination and apportionment made under this section, the interest in the Fund of each participating approved insurer (other than a transferee insurer) shall,—

- (a) as from the commencement of the Fund, until the date mentioned in paragraph (b) of this subsection, be in the same proportion as the aggregate of the gross premiums received by it, in the year ended the thirtieth day of June, one thousand nine hundred and forty-eight, bears to the aggregate of the gross premiums received by all the participating approved insurers, in that year; and
- (b) on the thirtieth day of June, one thousand nine hundred and sixty-four, be such as is shown in the books of account of the Trust, as at that date; and
- (c) after the date mentioned in paragraph (b) of this subsection, be such as is determined under the provisions of subsection (4) of this section.

(2) For the purpose of subsection (1) of this section a premium received during the year ended on the thirtieth day of June, one thousand nine hundred and forty-eight, means a premium received during that year by a participating approved insurer as an approved insurer under this Act in respect of any insurance that commenced during that year either by way of the issue or the renewal of a policy of insurance.

(3) Subject to any determination made under the provisions of subsection (4) of this section, the interest in the Fund of a transferee insurer is the interest or that part of the interest in the Fund of a participating approved insurer which is transferred to the transferee insurer pursuant to subsection (5) of this section.

(3a) On and after the first day of July, one thousand nine hundred and sixty-four, the Trust may, upon such terms, and subject to such conditions, as it may stipulate, but so that the admission takes effect on the first day of July in any year, admit, as a participant in the Fund, any person requesting admission that carries on the business of insurance and that is not then a participant.

(3b) A person upon being admitted, under the provisions of subsection (3a) of this section, as a participant in the Fund, becomes a participating approved insurer, for the purposes of this Act; and the interest of each participating approved insurer shall thereupon be determined, under the provisions of subsection (4) of this section, having regard to any terms and conditions stipulated by the Trust under subsection (3a) of this section.

(4) (a) The percentage of each interest mentioned in subsections (1) and (3b) of this section shall be determined by the Chairman of the committee appointed under section thirty-one of this Act; and the determination of the Chairman shall be certified by him, in writing, to the Trust.

(b) The Trust, after considering a determination made under paragraph (a) of this subsection, may accept or reject it; and, where accepting the determination, shall put it into effect, and, where rejecting it, shall report that fact to the Minister who shall, thereupon, finally determine the percentage of each interest.

(c) Where the Chairman mentioned in paragraph (a) of this subsection, fails to make a determination, pursuant to that paragraph, within twenty-one days after being requested by the Trust so to do, the Trust shall report that fact to the Minister who shall, thereupon, finally determine the percentage of each interest.

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(5) (a) Any participating approved insurer may, in writing at any time with the written consent of the Trust and upon such terms and conditions as the Trust may require, transfer its interest or any part of its interest in the Fund to any person carrying on the business of insurance.

(b) A transfer made under authority of this subsection shall, subject to the written consent of the Trust, operate and take effect as from such date (in this section called the "transfer date") whether that date is before, on or after, the date of—

- (i) the execution of the document of transfer; or
- (ii) the coming into operation of the Motor Vehicle (Third Party Insurance) Act Amendment Act, 1960,

as the parties to the transfer may agree upon.

(c) On and from the transfer date the transferee insurer—

- (i) has in respect of the interest so transferred to it, all the same rights and duties including the same right to participate in and the same duty to contribute to the Fund, as the transferor of that interest had immediately prior to the transfer date;
- (ii) shall be deemed to be a participating approved insurer for the purposes of this Act.

(6) (a) A participating approved insurer may, on giving to the Trust at any time before the thirty-first day of December in any one year written notice of its intention so to do, withdraw from participation in and contribution to the Fund on and including the thirtieth day of June in the year next succeeding the thirty-first day of December, before which the notice was given.

(b) Where a participating approved insurer so withdraws, the interest of that insurer shall be apportioned among the remaining participating approved insurers in proportion to their interests as they then exist in the Fund.

(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.

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

General meetings.  
Added by  
No. 31 of  
1948, s. 4.

(2) Any such written request shall include a statement of the purposes for which such meeting is requested, and at any meeting called pursuant to such written request, the business shall be confined to matters relevant to the purposes mentioned in the request.

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

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

Ss. 3N-3P.

Contributions to the Fund.  
Added by No. 31 of 1948, s. 4.

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

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

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

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

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

Establishment of Fund.

Added by No. 31 of 1948, s. 4.

Amended by No. 40 of 1951, s. 6;  
No. 36 of 1954, s. 2;  
No. 25 of 1959, s. 4;  
No. 57 of 1962, s. 2;  
No. 72 of 1962, s. 4;  
No. 65 of 1964, s. 2;  
No. 95 of 1966, ss. 5 and 21.

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

(2) The Fund shall consist of the contributions, insurance premiums and other moneys which the Trust receives under and for the purposes of this Act.

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

(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.

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

- (a) the total amount paid or incurred by the Trust in respect of its administration and general expenses during the year to which such account relates;
- (b) the total amount paid by the Trust in respect of claims, including costs and other expenses incidental to claims, and the total amount of all fixed sums capitalised under subsection (3b) of this section, arising from or relating to—
  - (i) insurances effected during that year, and
  - (ii) accidents occurring during that year in respect to which claims are made under subsection (3) of section seven or section eight of this Act; and,
- (c) the total amount of premiums received by the Trust in respect of insurances effected during that year.

(4a) (a) The Trust shall keep a separate account to be known as the "Premium Surcharge Account" and shall pay into that account all sums received by it on

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account of the surcharge payable in respect of a premium payable on a policy of insurance payable under the Motor Vehicle (Third Party Insurance Surcharge) Act, 1962.

(b) All sums so received by the Trust—

- (i) do not form part of the Fund;
- (ii) are not subject to subsection (5) of this section;
- (iii) shall be paid to the Treasurer by the Trust at such intervals and in such manner as the Treasurer determines; and
- (iv) when so paid to the Treasurer shall be paid by the Treasurer into the Consolidated Revenue Fund.

(5) (a) The Trust has, and is deemed always to have had, power from time to time to invest any moneys in its hands in any investment authorised by the Trustees Act, 1962, or in other manner approved by the Minister on the recommendation of the Trust.

(b) Subject to paragraph (c) of this subsection, any interest or profits obtained by the Trust as a result of any investment referred to in paragraph (a) of this subsection shall not be deemed interest or profit in respect to a particular year or account but shall be apportioned by the Trust between the annual accounts referred to in subsection (4) of this section in such manner as the Trust determines.

(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.

(6) The Trust may at any time in anticipation of a surplus remaining to the credit of any annual account, make a distribution to the participating approved insurers for the year to which the annual account relates, in accordance with each participating insurer's respective percentage interest in the Fund for that year, but so that the total amount distributed by the



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Trust pursuant to this subsection, shall not in any event exceed five per centum of the amount of the premiums received by the Trust for that year.

(7) (a) The Trust shall dispose of the amount of any surplus that remains to the credit of any annual account after all the administration and general expenses and claims referred to in subsection (4) of this section have been finalised in the following order, that is to say—

- (i) firstly, by crediting the respective account of each participating approved insurer for the year to which that annual account relates, with an amount not exceeding five per centum of its proportion of the total amount of the premiums received by the Trust for that year;
- (ii) secondly, by applying all or any part of the amount of the then balance of the remaining surplus,
  - (I) against a deficit incurred in any previous year by crediting the annual account for that year with the amount so applied or by crediting the respective account of each participating approved insurer for that year with a proportion of the amount so applied according to his interest in the Fund for that year; or
  - (II) in payment of any unpaid dividend for any previous year to the respective participating approved insurers for that year to an amount not exceeding five per centum of its proportion of the total amount of the premiums received by the Trust for that year, or where the amount of the dividend so paid for that year was less than that percentage, in payment of the difference between the amount of dividend so paid and that percentage,

as the Trust may determine;

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- (iii) thirdly, by transferring and applying from the amount of the then balance of the remaining surplus to a fund, to be called "The Disaster Reserve Fund", a sum not exceeding twenty-four thousand dollars per year, but the amount standing to the credit of the Fund shall not at any time exceed the sum of two hundred thousand dollars; and
- (iv) fourthly, in holding and applying the amount of the then balance of the remaining surplus to the credit of the annual account for the next succeeding year.

(b) Any amount standing to the credit of an account of a participating approved insurer may be paid by the Trust to it at any time, if the amount so paid together with all payments made in accordance with subsection (6) of this section does not exceed five per centum of its proportion of the total amount of premiums received by the Trust to and including the thirtieth day of June immediately preceding the day the amount is paid to the approved participating insurer.

(c) Paragraph (b) of this subsection does not affect any payments made by the Trust to an approved participating insurer prior to the thirtieth day of June, nineteen hundred and sixty-four.

(d) The Trust is entitled at any time to withdraw from The Disaster Reserve Fund such amount as may be necessary to complete or satisfy any claim or judgment exceeding the sum of sixty thousand dollars or any claims or judgments arising out of one accident where the total claims or judgments exceed that sum, and the amount of any such claims or judgments may be recovered from the Trust under this Act.

(e) For the purposes of subsections (6) and (7) of this section, the participating approved insurer's proportion of the premiums for each year in which it was such an insurer, is the same as its proportion in the Fund for that year.

(f) When a participating approved insurer withdraws from the Fund and—

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- (i) the claims in respect of all years in which it participated have been finalised; and
  - (ii) there remains a balance after the payment of dividends for those years at the rate referred to in subsection (6) of this section, which but for the provisions of this section would be payable to that participating approved insurer, the Trust may pay and apply in accordance with this subsection, that balance by adding it to the surplus or deducting it from the deficit shown in any annual account in respect of any year in which the participating approved insurer was not such an insurer.

(g) 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 years 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 the discretion of the Trust, until all claims in respect of all years in which it was such an insurer have been finalised; and, notwithstanding any Act to the contrary, where—

- (i) the claims in respect of all years during 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.

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(8) (a) The deficit, if any, to the debit of each account referred to in subsection (4) of this section that remains after all claims referred to in that subsection have been finalised, becomes the liability of the participating approved insurers during the year to which the account relates in proportion to the interest of each of them in the Fund during that year and the Trust may recover from each participating approved insurer the proportionate amount at any time deemed expedient to the Trust.

(b) The provisions of subsection (5) of section three N of this Act apply to the recovery by the Trust of the proportionate amount, as though the proportionate amount were an amount payable by a participating approved insurer by way of contribution under the provisions of that section.

(c) A claim by the Trust against a participating approved insurer under this subsection is not barred or extinguished by any lapse of time and no statute, enactment or rule of law relating to any period in which actions may or shall be brought or commenced applies to the claim.

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

- (a) of all moneys received and paid by the Trust, and of all moneys owing to the Trust, and of the several purposes for which such moneys shall have been received and paid, and owing; and
- (b) of all assets and liabilities of the Trust.

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

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

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

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

Issue of policies of insurance. Added by No. 31 of 1948, s. 4. Amended by No. 40 of 1951, s. 7; No. 57 of 1962, s. 3.

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

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

(4) (a) Subject to paragraph (b) of this subsection, every local authority shall, within twenty-one days after the last day of each calendar month, remit to the Trust the total amount of all insurance premiums and other moneys received by such local authority under this Act, and within the same time shall furnish to the Trust such documents and information relating thereto as may be prescribed under this Act.

(b) The Commissioner of Police as the licensing authority in the Metropolitan Area under the Traffic Act, 1919, shall comply with the provisions of paragraph (a) of this subsection, except that all amounts received by him on account of the surcharge payable under the Motor Vehicle (Third Party Insurance Surcharge) Act, 1962, upon any insurance premium

<sup>1</sup> 27th May, 1949 (see footnote 2 on p. 1 of this reprint).

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paid in respect of any policy of insurance shall, within twenty-one days after the last day of each calendar month, be paid by him to the Treasurer.

(c) The Treasurer shall pay all amounts received by him under paragraph (b) of this subsection into the Consolidated Revenue Fund.

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

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

**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 prescribed date there has been issued and is in force a policy of insurance under this Act with an approved insurer to insure as aforesaid until the expiration or earlier determination of the period of such policy of insurance.

(3) (a) 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, Two hundred dollars. Subsequent offence, Four hundred dollars.

Further powers of the Trust. Added by No. 31 of 1948, s. 4.

Insurance against third party risks. Amended by No. 40 of 1944, s. 3; No. 31 of 1948, s. 6; No. 77 of 1957, s. 4; No. 18 of 1959, s. 4; No. 57 of 1962, s. 4; No. 72 of 1962, s. 5; No. 95 of 1966, s. 21.

(b) After the coming into operation of the Motor Vehicle (Third Party Insurance) Act and Traffic Act Amendments Act, 1959, a person shall not be convicted or punished for an offence under paragraph (a) of this subsection if

he has already been convicted or acquitted of an offence under section five of the Traffic Act

and

both those offences had been committed simultaneously.

(c) Upon conviction of a person of an offence under this subsection, if the Court is satisfied that the owner of the vehicle in question was, at the time of the commission of the offence, not the holder of the requisite vehicle license for the vehicle as required by the Traffic Act, the Court shall order the person convicted, in addition to the penalty imposed on him, to pay the amount of the annual license fee that should have been paid in respect of that vehicle in accordance with that Act and that order may be enforced as if the amount of the fee was a penalty imposed on him.

(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.

(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

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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—One hundred dollars.

(8) From and after the prescribed date and notwithstanding anything to the contrary contained in the Traffic Act, no license shall be issued under that Act in respect of any motor vehicle, unless—

- (a) prior to or at the time of the issue of such license there is paid to and received by the local authority issuing such license the appropriate insurance premium determined by the Trust for the class of vehicle being licensed and for the period of the license together with the surcharge payable under the Motor Vehicle (Third Party Insurance Surcharge) Act, 1962, in respect of that premium; and
- (b) such license incorporates in the one document a policy of insurance under this Act in relation to the said motor vehicle in respect of the same period as that for which such license is issued.

(9) [*Repealed by No. 31 of 1948, s. 6.*]



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

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

(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 thirty-two of this Act declare the operation of this Act to be suspended.

5. [*Repealed by No. 31 of 1948, s. 7.*]

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

(a) be issued by the Trust;

(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 in any part of the Commonwealth.

Require-  
ments in  
respect of  
policies.  
Amended by  
No. 40 of  
1944, s. 4 ;  
No. 31 of  
1948, s. 8 ;  
No. 72 of  
1962, s. 6 ;  
No. 95 of  
1966, s. 6.

Ss. 6-6A.

(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.

(3) [*Repealed by No. 95 of 1966, s. 6.*]

Spouse  
may sue  
in certain  
cases.  
Added by  
No. 95 of  
1966, s. 7.

**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.

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

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17. (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 Trust 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:

Liability of the Trust.  
Amended by  
No. 40 of  
1944, s. 5;  
No. 7 of  
1945, s. 3;  
No. 31 of  
1948, s. 9;  
No. 36 of  
1954, s. 3;  
No. 77 of  
1957, s. 5;  
No. 72 of  
1962, s. 7;  
No. 95 of  
1966, s. 8.

Provided that—

- (i) when the judgment against the insured person was obtained within the State, this subsection shall not apply unless before the action in which such judgment was obtained came on for hearing, the Trust 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.

(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 Trust 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 Trust notice of the claim and a short statement of the grounds thereof as soon as practicable after he knew that the insured person was dead or could not be served with process, or that such notice

<sup>1</sup> It is enacted by s. 29 of No. 31 of 1948 as follows:—

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

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

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

Saving with respect to existing insurances.

S. 7.

was given within such time as would prevent the possibility of the Trust 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 the Trust the judgment which, in the circumstances, he could have recovered against the driver of the vehicle: Provided that as soon as practicable after the happening of the accident

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

(4) It shall be no defence by the Trust to an action against it under this section that it 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) Where any of the matters mentioned in subsection (4) of this section has arisen or occurred in respect of a policy of insurance, the Trust may, in addition to any other right or remedy it 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, and from the owner where the insured person liable in respect of any such accident is not the owner of the motor vehicle concerned and at the time of the accident the owner was guilty of any of the matters mentioned in subsection (4) of this section,

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

as have been recovered from or paid by the Trust by reason of the policy in respect to which a matter mentioned in subsection (4) of this section has arisen or occurred, and that amount may be recovered either in a separate action or by means of third party procedure in the action against the Trust by the person who obtained the judgment: Provided that if the insured person has made any written request to the Trust that it should settle or compromise up to any specified sum or should pay or should contest the claim, and if the Trust acts unreasonably in failing to comply with such request then the Trust shall not recover more than the amount of the liability which the Trust would have paid or incurred if it had not so acted unreasonably.

(6) This section shall not apply—

- (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;
- (b) to any accident which happened before the commencement of this Act;
- (c) so as to make the Trust liable in respect of any claim arising out of the use of a motor vehicle where the accident or occurrence giving rise to such claim happened before a policy of insurance under this Act in respect of such motor vehicle had been issued on behalf of the Trust.

(7) and (8) [*Repealed by No. 31 of 1948, s. 9.*]

Ss. 7-8.

(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 thirty-one 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.  
Amended by No. 31 of 1948, s. 10; No. 36 of 1954, s. 4; No. 25 of 1959, s. 5; No. 72 of 1962, s. 8.

### 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 claim from the Trust payment of the amount (including costs) unpaid in respect of the judgment or the amount to which the liability of the Trust 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, and where the Trust fails to pay the amount the judgment creditor may recover it in an action in a court of competent jurisdiction as a debt due to him by the Trust.

Provided that, where execution of such 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.

Provided further that when such judgment was obtained within the State, this subsection shall not apply unless, before the action on which such judgment was obtained came on for hearing, the Trust knew that such action had been commenced.

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(2) [*Repealed by No. 31 of 1948, s. 10.*]

(3) The Trust may recover from

(a) the owner; or

(b) the driver,

of the motor vehicle and if they are both liable from them jointly and severally, such sum as the Trust has paid in settlement, payment or compromise of the claim of or any judgment obtained by the judgment creditor against it:

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
  - (I) the fact that the motor vehicle was an uninsured motor vehicle was not due to his own fault; or
  - (II) at the time of the occurrence out of which such death or bodily injury arose the driver was not driving the motor vehicle with the consent or authority of the owner;
- (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.

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(4) [*Repealed by No. 31 of 1948, s. 10*].

(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 the Trust 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 the Trust might have been limited had there been in force a contract of insurance under this Act relating to such motor vehicle, which ever is the smaller amount:

Provided that—

- (i) such person shall not be entitled so to recover unless as soon as practicable after he knew that such owner or driver was dead or could not be found he gave to the Trust 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.

[*Paragraphs (b) and (c) repealed by No. 31 of 1948, s. 10.*]

(6) [*Repealed by No. 36 of 1954, s. 4.*]



Ss. 8A,-10.

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.

Liability of Trust where spouse injured.  
Added by No. 95 of 1966, s. 9.

(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.

9. [*Repealed by No. 31 of 1948, s. 11*].

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 Trust 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—

Duties of owner or insured person.  
Amended by No. 51 of 1948, s. 12 ; No. 36 of 1954, s. 5 ; No. 95 of 1966, s. 21.

(a) the fact of the accident;

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- (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 and the owner and the driver of an uninsured motor vehicle, immediately upon any claim being made upon him in respect of an accident, shall give notice of the claim to the Trust and supply to the Trust such particulars of the claim as it 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: Ten dollars.

(5) An insured person and the owner and the driver of an uninsured motor vehicle shall not, without the consent in writing of the Trust—

- (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 which the Trust is, or may become, liable under the provisions of this Act but this provision shall not prevent any person truthfully answering any questions reasonably asked of him.

(6) The Trust shall be entitled to recover from any person who has failed to comply with any provision of this section, or, if two or more persons have so failed, from them jointly and severally, all moneys paid and costs incurred by the Trust in relation to any claim arising out of the accident in respect of which such failure has occurred.

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11. (1) The Trust may on behalf of an insured person and the owner and driver of an uninsured vehicle—

Power of the Trust to deal with claims against insured person.

Amended by No. 31 of 1948, s. 13; No. 36 of 1954, s. 6; No. 25 of 1959, s. 6.

- (a) conduct negotiations in respect of a claim against any such person, owner or driver;
- (b) accept or instruct any solicitor to accept service of legal process issued in respect of the claim;
- (c) assume the conduct and control of legal proceedings in respect of the claim; and
- (d) at any stage in the negotiations or proceedings
  - (i) admit negligence on his behalf, where there is no claim against the person, owner or driver as the case may be, in relation to damage to property and the Trust has no right of recovery against the person, owner or driver, under the provisions of subsection (3) of section seven, subsection (3) of section eight or section fifteen of this Act;
  - (ii) pay, compromise or settle the claim.

(2) The insured person and the owner and the driver of an uninsured vehicle shall sign and execute all such warrants, authorities and other documents as are necessary to give effect to this section, and, if he 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 Trust on his behalf.

(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

Ss. 11-12.

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 Trust or by the Trust with authority of the said person.

Emergency  
treatment.

Amended by  
No. 40 of  
1944, s. 6;  
No. 31 of  
1948, s. 14;  
No. 95 of  
1966, s. 21.

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 which is insured under this Act or is an uninsured 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 Trust within one month after the occurrence out of which the death or bodily injury arose, the Trust shall make the following payments as are applicable to the case—

(i) to the medical practitioner the sum of one dollar and twenty-five cents 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 one dollar and five cents 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) [*Repealed by No. 31 of 1948, s. 14.*]

(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 Trust 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 Trust 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 Trust to the persons entitled to that sum.

(6) Any local authority within the meaning of the Traffic Act, 1919-1946,<sup>1</sup> 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

<sup>1</sup> Now the Traffic Act, 1919-1967.

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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) [*Repealed by No. 31 of 1948, s. 14.*]

Hospital  
treatment.  
Amended by  
No. 31 of  
1948, s. 15 ;  
No. 95 of  
1966, s. 21.

13. (1) Where—

- (a) any payment is made (whether or not with an admission of liability) by the Trust 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 Trust within one month after the occurrence out of which the death or bodily injury arose

there shall be paid by the Trust 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) [*Repealed by No. 31 of 1948, s. 15.*]

(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 Trust to the owner or driver in respect of the contract of insurance,

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

(4) The amount to be paid by the Trust to the hospital in respect of any such bodily injury (fatal or otherwise) shall not exceed one hundred dollars for each person so treated as an in-patient, or ten dollars

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 Trust 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 one hundred dollars, the sum of one hundred dollars shall be divisible between the hospitals in proportion to the claims of the hospitals.

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

Recovery of payment for emergency treatment. Substituted by No. 31 of 1948, s. 16.

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—

Right of the Trust against unauthorised drivers. Amended by No. 31 of 1948, s. 17.

- (a) such driver shall not be entitled to recover from the Trust 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

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- (b) any sum paid by the Trust in discharge of such liability of such driver shall be recoverable by the Trust from such driver.

Establishment of Third Party Claims Tribunal.  
Amended by No. 31 of 1948, s. 18.  
Repealed and re-enacted by No. 95 of 1966, s. 10.  
Amended by No. 37 of 1967, s. 3.

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

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- (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) Subject to subsection (20) of this section, the Tribunal is constituted by the Chairman and one nominee member or by the Chairman and both nominee members, but where the Tribunal, being constituted by the Chairman and one nominee member, is divided on a question of fact, the hearing shall be adjourned to a sitting of the Tribunal constituted by all three members.

(20) The Chairman has jurisdiction to hear and determine all interlocutory proceedings before the Tribunal, and, for that purpose, has the powers of a judge and may sit in chambers and alone.

**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.  
Added by  
No. 95 of  
1966, s. 11.  
Amended by  
No. 37 of  
1967, s. 4.

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

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(3) The Registrar shall transact such part of the business of the Tribunal and exercise such jurisdiction in relation to interlocutory proceedings and the taxation of costs as may be prescribed.

Costs of administration to be paid by the Trust and the Treasurer. Added by No. 95 of 1966, s. 12.

**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.

(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.

Appointment of Registrar. Added by No. 95 of 1966, s. 13.

**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.

proceedings before the Tribunal. Added by No. 95 of 1960, s. 14. Amended by No. 37 of 1967, s. 5.

**16D.** (1) All proceedings before the Tribunal, other than interlocutory proceedings, 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.

**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 (including proceedings to compromise claims) 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.  
Added by  
No. 95 of  
1966, s. 15.  
Amended by  
No. 37 of  
1967, s. 6.

(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.

(3) No proceedings before the Tribunal shall be restrained by injunction, prohibition or other process of law or be removed from the hearing of the Tribunal by any such process, but on application made to him

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by a party to an action who was not the driver, person in charge or owner of a motor vehicle involved in the occurrence giving rise to the claim by or against that party, a judge may order that such issues in that action as he may direct shall be heard and determined by a court instead of by the Tribunal.

(4) No action shall be maintained or brought against the Tribunal or any member thereof in respect of any act, decision or judgment done, made or given in the honest belief that the same was within the jurisdiction of the Tribunal.

(5) On the hearing by the Tribunal of any action or proceedings referred to in subsection (1) of this section, the Tribunal shall have and may exercise all or any of the powers in relation to that action or those proceedings and the parties thereto as a judge would, but for the enactment of this section, have had, but without in any way limiting those powers, the Tribunal shall have the following further powers—

- (a) to award by way of general damages either a lump sum or periodical payments or a lump sum and periodical payments, such periodical payments to be for such period and upon such terms as the Tribunal determines;
- (b) at any time either of its own motion or on the application of any party to the action or proceedings—
  - (i) to review any periodical payment and either continue, vary, reduce, increase, suspend, or determine it, or to order payment to the claimant of a further lump sum; or
  - (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.

(6) The Tribunal may order that the amount, or any part of the amount, of damages recovered or adjudged, ordered or agreed to be paid to, or for the benefit of, a person under a legal disability be paid to the Public Trustee or other trustee approved by the Tribunal, for investment and application as authorised by law.

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.  
Added by  
No. 95 of  
1966, s. 16.

- (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.

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(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.

Right of appeal.  
Added by No. 95 of 1966, s. 17.

**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.

Party may appear personally or by solicitor.  
Added by No. 95 of 1966, s. 18.

**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.

Insurance by visiting motorists.  
Amended by No. 31 of 1948, s. 19.

**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 local 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.

Power to suspend or cancel licenses.  
Amended by No. 31 of 1948, s. 20.

**18.** (1) Any police officer or constable or the Trust 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.

(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<sup>1</sup> of the Traffic Act.

<sup>1</sup> Now s. 33 of the Traffic Act, 1919, as reprinted.



Ss. 19-21.

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

Trust not to terminate policy.  
Substituted by No. 31 of 1948, s. 21.

20. (1) Notwithstanding any agreement to the contrary, a policy of insurance issued under and for the purposes of this Act—

Policy of insurance to continue notwithstanding change of ownership of vehicle.  
Added as s. 19A by No. 40 of 1944, s. 7.  
Renumbered s. 20 in 1950 reprint.

(a) shall not be deemed to be cancelled or otherwise deemed to terminate solely by reason of a change of ownership of the vehicle in relation to which the policy was issued; but

Amended by No. 36 of 1954, s. 7.

(b) shall, subject to any lawful termination thereof, ensure in favour of every person who during the period for which the policy was granted or renewed becomes an owner for the time being of the vehicle in relation to which the policy was issued and in favour of every person who during that period drives that vehicle whether with or without the consent of the owner.

(2) So long as a policy of insurance is in force as aforesaid every owner of the vehicle in relation to which the policy was issued (whether originally a party to the policy or not), and every person who during that period drives the vehicle whether with or without the consent of the owner shall be bound by all the terms, warranties and conditions in the policy as if he had expressly agreed to them.

21. (1) (a) Where a policy of insurance complying with the requirements of this Act, and a license under the Traffic Act, have been issued in respect of a motor vehicle, and both would, but for this subsection, expire by effluxion of time on the same expiry day, if the provisions of paragraph (b) of this subsection apply, the operation of the policy is extended by, and in accordance with those provisions.

Term of policy of insurance deemed to be extended in certain cases.

Added as s. 19B by No. 40 of 1944, s. 7.  
Renumbered s. 21 in 1950 reprint.

Amended by No. 7 of 1945, s. 4; No. 36 of 1954, s. 8; No. 77 of 1957, s. 6.

(b) If a new policy complying with the requirements of this Act is issued in respect of the motor vehicle within the period of fifteen days of the expiry day of the policy mentioned in paragraph (a) of this subsection, the operation of the policy mentioned in that para-

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graph, is, by this paragraph, and notwithstanding any provisions to the contrary of the policy mentioned in that paragraph, extended until the new policy is issued.

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

- (i) the motor vehicle is notwithstanding any provision to the contrary of paragraph (a) of subsection (8) of section four of this Act or of any provision of section ten of the Traffic Act an uninsured vehicle until the new policy is issued;
- (ii) the new policy shall have effect only from the date of its issue and shall expire on the expiry date of the license under the Traffic Act issued in respect of such vehicle at the time of the issue of the new policy; and
- (iii) the premium payable in respect of such new policy shall be the appropriate premium for the period from the date of the expiration of the previous policy to the date of the expiration of the new policy.

(2) Nothing in subsection (1) of this section shall operate or be deemed or construed to operate so as to render any policy of insurance aforesaid liable to payment of further stamp duty in consequence of the currency of such policy being extended by the operation of this section.

**22.** (1) Where the owner of a motor vehicle in respect of which a policy of insurance complying with this Act is in force uses such vehicle in connection with or for the purpose of the performance of his service as a servant of the employer of such owner, and the employer acquiesces in such use of the vehicle as aforesaid, the said policy of insurance shall, subject to any lawful termination thereof, when such vehicle is being so used enure in favour of the employer as well as of the owner to the same extent as if the employer were an owner of such vehicle, and the employer shall be bound by all the terms, warranties and conditions in the policy as if he had expressly agreed to them.

Provision regarding motor vehicle of employer used by employee in employer's business.

Added as s. 19C by No. 40 of 1944, s. 7.  
Renumbered s. 22 in 1950 reprint.

(2) Where the owner of a motor vehicle in respect of which a policy of insurance complying with this Act is in force uses the vehicle in connection with or for the purposes of the performance of his service as a servant of the employer of such owner, without the knowledge or contrary to the instructions of the employer, the employer shall not in any manner whatsoever be liable in respect of any claim for damages or compensation by any person injured by such vehicle whilst being so used by the owner thereof as such servant.

23. When any Act comes into operation which alters the insurance required to be given by a policy of insurance complying with this Act or the rights or liabilities of the Trust under any such policy, every policy of insurance which has been issued for the purpose of providing insurance required by this Act and is in force when the said Act comes into operation or at any time thereafter shall be deemed to be altered so as to provide the insurance required by this Act as altered by the said first-mentioned Act.

Policies to give cover required by amending Acts.  
Added as s. 19D by No. 40 of 1944, s. 7.  
Renumbered s. 23 in 1950 reprint.  
Amended by No. 31 of 1948, s. 22.

24. Where in any provision of this Act reference is made to the issue of a policy of insurance complying with this Act such reference shall extend to and include the issue of a renewal of such policy of insurance.

Reference to issue of policy to extend to renewal of policy.  
Added as s. 19E by No. 40 of 1944, s. 7.  
Renumbered s. 24 in 1950 reprint.

25. The Trust 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 furnished by the Trust.  
No. 32 of 1943, s. 20.  
Renumbered s. 25 in 1950 reprint.  
Amended by No. 31 of 1948, s. 23 ; No. 57 of 1962, s. 5.

- (a) Premiums received for insurance under this Act.
- (b) Claims paid under this Act.
- (c) Persons insured under this Act.

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- (ca) The amounts received by the Trust on account of the surcharge payable under the Motor Vehicle (Third Party Insurance Surcharge) Act, 1962, in respect of premiums payable on policies of insurance complying with the requirements of this Act;
- (d) Any other matters relevant to this Act.

[Subsections (2), (3) and (4) repealed by No. 31 of 1948, s. 23.]

Contracting out of liability for negligence.  
No. 32 of 1943, s. 21.  
Renumbered s. 26 in 1950 reprint.

26. 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 instructions from persons claiming.  
No. 32 of 1943, s. 22.  
Renumbered s. 27 in 1950 reprint.  
Amended by No. 31 of 1948, s. 24.

27. (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 the Trust to act on its behalf in connection with any claim or action.

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(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.

28. (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.  
No. 32 of 1943, s. 23.  
Renumbered s. 23 in 1950 reprint.  
Amended by No. 95 of 1966, s. 21.

(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 two hundred dollars.

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

29. (1) Where any person has suffered death or bodily injury as the result of the use of a motor vehicle by another person which may, under the provisions of this Act give rise to an action for damages against either an insured person or the Trust, no such action shall be commenced or be maintainable unless notice in writing as prescribed by the regulations is given by the person proposing to claim damages or some person on his behalf to the insured person or the Trust of his intention to claim such damages as soon as practicable after the happening of the accident out of which such claim for damages arises.

Notice of claim.  
No. 32 of 1943, s. 24.  
Renumbered s. 29 in 1950 reprint.  
Substituted by No. 77 of 1957, s. 7.  
Amended by No. 72 of 1962, s. 9.

(2) If

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

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

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

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

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

- (a) that the claimant commence legal proceedings for the purpose set out in subsection (2) of this section within such time as the Judge may nominate, if the Judge is of the opinion that no good reason exists why the claimant should not commence such proceedings within such time; or
- (b) adjourn such application for such period or indefinitely (with liberty to the Trust to apply) and on such terms and conditions as the Judge may deem necessary; or
- (c) make such other or further Order as he deems just or proper in the circumstances.

(6) On the hearing of any adjourned application the Judge shall have the same powers in regard thereto as are conferred on him under the previous subsection on an original application.

(7) Any Judge of the Supreme Court shall have power to extend the period fixed for the commencement of proceedings in any Order made under the

previous subsection at any time so long as an application for such extension is filed in the Supreme Court prior to the expiration of such period.

(8) On an Order being made under paragraph (a) of subsection (5) hereof, and proceedings not being commenced within the time specified in any such Order or any extension of such time granted under subsection (7) hereof then the claim of the claimant and any rights he may have in respect thereto against any insured person and against the Trust shall be forever barred and extinguished.

**29A.** Notwithstanding the provisions of subsection (3) of section six A, 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—

Added by  
No. 72 of  
1962, s. 10.  
Amended by  
No. 95 of  
1966, s. 19.

- (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.

**30.** (1) Where, in accordance with section twenty-nine of this Act, an insured person or the Trust 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 the Trust may, subject to the regulations require the injured person aforesaid from time to time to submit himself for medical

Medical  
examination  
of injured  
person.  
No. 32 of  
1943, s. 25.  
Renumbered  
s. 30 in 1950  
reprint.  
Amended by  
No. 31 of  
1948, s. 26.

Ss. 30-31.

examination by a legally qualified medical practitioner nominated and paid for such examination by the insured person or by the Trust, 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 the Trust as the successful defendant in any action for damages brought against him or it, may, in the discretion of and upon the certificate of the court, include any expenses incurred by such insured person or the Trust 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.

31. (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 to make to the Minister, such recommendations, on any such question, as the Committee thinks fit; 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.

Appointment of Committee to make inquiries, etc.

No. 32 of 1943, s. 26.

Renumbered s. 31 in 1950 reprint.

Amended by No. 31 of 1948, s. 27 ; No. 25 of 1959, s. 7 ; No. 70 of 1961, s. 2.



(2) The Committee shall consist of six members of whom—

- (a) one shall be a member of the Institute of Chartered Accountants in Australia, practising accountancy in the State, and who shall be appointed as Chairman of the Committee;
- (b) one shall be the person for the time being holding the office of General Manager of the State Government Insurance Office;
- (c) one shall be the person, not being a member of the Trust, nominated by the participating approved insurers that are not members of the body known as the Fire and Accident Underwriters' Association of Western Australia;
- (d) one shall be the person, not being a member of the Trust, nominated by the participating approved insurers that are members of the body known as the Fire and Accident Underwriters' Association of Western Australia;
- (e) one shall be a person nominated by the governing body of The Royal Automobile Club of W.A. (Inc.), who shall represent the owners of motor vehicles;
- (f) one shall be the person nominated by the Minister.

(2a) The members of the committee are entitled to receive such remuneration for their services as may be prescribed and the remuneration shall be paid out of the Fund.

(3) [*Repealed by No. 70 of 1961, s. 2.*]

(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.

S. 32.

Governor may suspend operation of this Act in certain circumstances. No. 32 of 1943, s. 27. Renumbered s. 32 in 1950 reprint. Amended by No. 31 of 1948, s. 28.

32. (1) Notwithstanding anything to the contrary contained elsewhere in this Act, where the committee appointed under section thirty-one 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 licences under the Traffic Act for motor vehicles may be issued to the owners thereof without the local authority issuing the same being bound to comply with the provisions of subsection (8) of section four of 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 the Trust under policies of insurance issued by it 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 Trust 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.

S. 33.

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  
No. 32 of  
1943, s. 28.  
Renumbered  
s. 33 in 1950  
reprint.  
Repealed and  
re-enacted by  
No. 95 of  
1966, s. 20.  
Amended by  
No. 37 of  
1967, s. 7.

(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;

Ss. 33-33A.

- (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) the means by which particular facts may be proved and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with, or at any stage of, any proceedings;
- (g) the application to proceedings before the Tribunal, the Chairman or the Registrar of the rules of the Supreme Court for the time being in force;
- (h) the making of practice rules by the Chairman; and
- (i) carrying into effect, generally, the provisions of this Act so far as they relate to the Tribunal, the Chairman, the Registrar and proceedings of, or before, any of them.

(3) For the purposes of proceedings before the Tribunal, a medical report the substance of which a party intends to adduce in evidence, at some stage of the proceedings, is not a document that may be withheld on the ground of privilege by that party.

Affidavits.  
Added by  
No. 37 of  
1967, s. 8.

**33A.** An affidavit required for use in any proceeding depending in, or before, the Tribunal may be sworn or affirmed in the State before a member of the Tribunal, a Commissioner for taking affidavits for use in the Supreme Court, a Justice of the Peace for the State or the Registrar and may be sworn or affirmed at any place outside the State before a person authorised under the law of that place to administer oaths.

34. The Traffic Act, 1919–1941, is hereby amended as follows:—

Amendment  
to Traffic  
Act.  
No. 32 of  
1943, s. 29.  
Renumbered  
s. 34 in 1950  
reprint.

(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<sup>1</sup> 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.

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<sup>1</sup> Now s. 33 of Traffic Act, 1919, as reprinted.

