

Western Australia

Motor Vehicle (Third Party Insurance) Act 1943

CONTENTS

1.	Short title and commencement	1
2.	This Act to be read with the Road Traffic Act	1
3.	Interpretation	2
3A.	Application of sections 3C and 3D	5
3B.	Limit on powers of courts	5
3C.	Restrictions on damages for non-pecuniary loss	5
3D.	Restrictions on damages for provision of home care services	8
3E.	Causes of action to which restrictions on damages apply	10
3Q.	Director General's functions	10
3R.	Issue of policies of insurance	11
3S.	Further powers of the Commission	11
3T.	Premiums	12
4.	Insurance against third party risks	13
6.	Requirements in respect of policies	16
6A.	Spouse may sue in certain cases	16
7.	Liability of the Commission	17
8.	Special provisions in relation to uninsured motor vehicles	20
8A.	Liability of Commission where spouse injured	23
10.	Duties of owner or insured person	24
11.	Power of the Commission to deal with claims against insured persons	25
12.	Emergency treatment	27

Motor Vehicle (Third Party Insurance) Act 1943

Contents

14.	Recovery of payment for emergency treatment	28
15.	Right of the Commission against unauthorized drivers	29
16.	Jurisdiction	29
17.	Insurance by visiting motorists	31
18.	Power to suspend or cancel licences	32
19.	Commission not to terminate policy	32
20.	Policy of insurance to continue notwithstanding change of ownership of vehicle	32
21.	Term of policy of insurance deemed to be extended in certain cases	33
22.	Provision regarding motor vehicle of employee used by employee in employer's business	34
23.	Policies to give cover required by amending Acts	35
24.	Reference to issue of policy to extend to renewal of policy	36
25.	Information to be furnished by the Commission	36
26.	Contracting out of liability for negligence	36
27.	Soliciting instructions from persons claiming	36
27A.	Costs between solicitor and client	37
28.	Offences: general penalty	38
29.	Notice of claim	39
29A.	Court may grant leave to proceed	40
30.	Medical examination of injured person	41
33.	Regulations	42

Schedule

Notes

Defined Terms

Motor Vehicle (Third Party Insurance) Act 1943

An Act to require owners of motor vehicles whilst on a road, to be insured against liability in respect of deaths or bodily injuries directly caused by, or by the driving of, such motor vehicles, whether caused on or off a road, to make certain provisions in relation to such insurance and in relation to the awarding of damages in respect of such bodily injuries, and for other purposes.

[Long title amended by No. 95 of 1966 s.3; No. 42 of 1972 s.3; No. 107 of 1987 s.4; No. 13 of 1994 s.4; No. 17 of 1994 s.4.]

1. Short title and commencement

This Act may be cited as the *Motor Vehicle (Third Party Insurance) Act 1943*, and shall come into operation on a day to be fixed by proclamation.¹

2. This Act to be read with the Road Traffic Act

- (1) This Act shall be read in conjunction with and as supplementary to the Traffic Act.
- (2) Words and expressions defined in the Traffic Act shall have the same respective meanings in this Act, unless the contrary intention appears.

[Section 2 amended by No. 58 of 1974 s.27; No. 13 of 1994 s.5.]

3. Interpretation

- (1) In this Act, unless the context requires otherwise —
- “**Commission**” means the body continued as the Insurance Commission of Western Australia under the *Insurance Commission of Western Australia Act 1986*;
- “**contract of insurance**” means a contract of insurance with the Commission and complying with the requirements of this Act.
- “**Director General**” means the Director General of Transport referred to in section 8 of the *Transport Co-ordination Act 1966*;
- “**District Court**” means The District Court of Western Australia established under the *District Court of Western Australia Act 1969*.
- “**driver**” in relation to a motor vehicle includes any person who is in charge of the motor vehicle.
- “**Fund**” means the Third Party Insurance Fund established under section 16 of the *Insurance Commission of Western Australia Act 1986*.
- “**insured person**” means the owner of a motor vehicle in respect of which a policy of insurance is in force under this Act, and the driver at the material time whether with or without the consent of the owner.
- “**Minister**” means the Minister for Works or such other member of the Executive Council as is for the time being charged by the Governor with the administration of this Act.
- “**motor vehicle**” means any vehicle propelled by gas, oil, electricity or any other motive power, not being animal power, required to be licensed, and complying with the requirements necessary for licensing, under the Traffic Act 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) includes any persons who have hired the vehicle under that hiring agreement.

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

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

“**Traffic Act**” means the *Road Traffic Act 1974* as amended from time to time and for the time being.

“**uninsured motor vehicle**” means any motor vehicle in relation to which there is required to be in force a contract of insurance entered into by the owner of the motor vehicle 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 whilst that motor vehicle is on a road 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 directly caused by, or by the driving of, such motor vehicle in this State, whether caused on or off a road.
- (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 licences 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 26 of the 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 licence 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.
- (7) For the purposes of this Act, the death of or bodily injury to any person shall not be taken to have been caused by a vehicle if it is not a consequence of the driving of that vehicle or of the vehicle running out of control.

[Section 3 amended by No. 40 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; No. 21 of 1969 s.2; No. 19 of 1970 s.2; No. 44 of 1971 s.2; No. 42 of 1972 s.4; No. 58 of 1974 s.28; No. 55 of 1975 s.2; No. 106 of 1981 s.9; No. 81 of 1982 s.3; No. 51 of 1986 s.46; No. 107 of 1987 ss.5 and 14; No. 13 of 1994 s.6; No. 45 of 1996 s.38; No. 76 of 1996 s.37]

3A. Application of sections 3C and 3D

Sections 3C and 3D apply to the awarding of damages in respect of bodily injury to a person directly caused by, or by the driving of, a motor vehicle.

[Section 3A inserted by No. 17 of 1994 s.5.]

3B. Limit on powers of courts

If sections 3C and 3D apply a court is not to award damages to a person contrary to those sections.

[Section 3B inserted by No. 17 of 1994 s.5.]

3C. Restrictions on damages for non-pecuniary loss

- (1) In this section —

“Amount A” means —

- (a) for the financial year ending on 30 June 1994, \$200 000; and

- (b) for any subsequent financial year, the amount recalculated as Amount A under subsections (8) and (9);

“Amount B” means —

- (a) for the financial year ending on 30 June 1994, \$10 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount B under subsections (8) and (10);

“Amount C” means —

- (a) for the financial year ending on 30 June 1994, \$30 000; and
- (b) for any subsequent financial year, the amount recalculated as Amount C under subsections (8) and (10);

“non-pecuniary loss” means —

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of enjoyment of life;
- (d) curtailment of expectation of life; and
- (e) bodily or mental harm.

- (2) The amount of damages to be awarded for non-pecuniary loss is to be a proportion, determined according to the severity of the non-pecuniary loss, of the maximum amount that may be awarded.
- (3) The maximum amount of damages that may be awarded for non-pecuniary loss is Amount A, but the maximum amount may be awarded only in a most extreme case.
- (4) If the amount of non-pecuniary loss is assessed to be Amount B or less, no damages are to be awarded for non-pecuniary loss.
- (5) If the amount of non-pecuniary loss is assessed to be more than Amount B but not more than Amount C, the amount of damages

to be awarded for non-pecuniary loss is the excess of the amount so assessed over Amount B.

- (6) If the amount of non-pecuniary loss is assessed to be more than Amount C but less than the sum of Amounts B and C, the amount of damages to be awarded for non-pecuniary loss is the excess of the amount so assessed over —

$$\text{Amount B} - \left[\begin{array}{l} \text{Amount so} \\ \text{assessed} \end{array} - \text{Amount C} \right]$$

- (7) No entitlement to damages is created by subsection (2), (3), (5) or (6) and those subsections are subject to any law (other than Division 2 of Part IV of the *Workers' Compensation and Rehabilitation Act 1981*) that prevents or limits the awarding of damages.
- (8) By operation of this subsection and subsection (9) or (10) each of Amounts A, B and C is recalculated for each financial year with effect from 1 July (“**the recalculation date**”), commencing on 1 July 1994, by varying the respective amounts for the preceding financial year —
- (a) by the percentage by which the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Statistician varies between 1 April in the calendar year preceding the recalculation date and 31 March in the calendar year of the recalculation date; or
 - (b) if the relevant information is not so published, in accordance with the regulations.
- (9) If an amount recalculated under subsection (8) as Amount A is not a multiple of \$1 000 it is to be rounded off to the nearest multiple of \$1 000 (with an amount that is \$500 more than a multiple of \$1 000 being rounded off to the next highest multiple of \$1 000).
- (10) If an amount recalculated under subsection (8) as Amount B or C is not a multiple of \$500 it is to be rounded off to the nearest

s. 3D

multiple of \$500 (with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500).

- (11) On or before 1 July in each year the Minister is to publish a notice in the *Gazette* setting out Amounts A, B and C as they will have effect on and from that 1 July.
- (12) Failure to publish, or late publication of, a notice under subsection (11) does not affect the operation of subsection (8), (9) or (10).
- (13) Issues as to whether damages for non-pecuniary loss may be awarded and as to the amount of those damages that may be awarded are to be determined by reference to Amounts A, B and C as in effect on the date on which the determination is made.

[Section 3C inserted by No. 17 of 1994 s.5.]

3D. Restrictions on damages for provision of home care services

- (1) This section limits the damages that may be awarded for the value of gratuitous services of a domestic nature or gratuitous services relating to nursing and attendance that have been or are to be provided to the person in whose favour the award is made by a member of the same household or family as the person.
- (2) No damages are to be awarded for the value of the services if the services would have been or would be provided to the person even if the person had not suffered the bodily injury.
- (3) If the services are provided or to be provided for not less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated on a weekly basis at the rate of —
 - (a) the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in Western Australia for the relevant quarter; or
 - (b) if the Australian Statistician fails or ceases to make the estimate referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations.

- (4) In subsection (3)(a) **“the relevant quarter”** means the quarter in which the services were provided or, if at the date of the award an estimate as referred to in that paragraph is not available to the court for that quarter or the services are yet to be provided, the most recent quarter for which such an estimate is available to the court at the date of the award.
- (5) If the services are provided or to be provided for less than 40 hours per week, the amount of damages awarded for their value is not to exceed the amount calculated at an hourly rate of one-fortieth of the weekly rate that would be applicable under subsection (3) if the services were provided or to be provided for not less than 40 hours per week.
- (6) If the amount of damages that may be awarded under subsection (3) or (5) is Amount D or less, no damages are to be awarded for the value of the services provided or to be provided.
- (7) In subsection (6) **“Amount D”** means —
 - (a) for the financial year ending on 30 June 1994, \$5 000; and
 - (b) for any subsequent financial year, the amount recalculated as Amount D under subsections (8) and (9).
- (8) By operation of this subsection and subsection (9) Amount D is recalculated annually with effect from 1 July (**“the recalculation date”**), commencing on 1 July 1994, by varying Amount D for the preceding financial year —
 - (a) by the percentage by which the weighted average minimum award rate for adult males under Western Australian State Awards published by the Australian Statistician varies between 1 April in the calendar year preceding the recalculation date and 31 March in the calendar year of the recalculation date; or
 - (b) if the relevant information is not so published, in accordance with the regulations.
- (9) If the amount recalculated under subsection (8) is not a multiple of \$500 it is to be rounded off to the nearest multiple of \$500

s. 3E

(with an amount that is \$250 more than a multiple of \$500 being rounded off to the next highest multiple of \$500).

- (10) On or before 1 July in each year the Minister is to publish a notice in the *Gazette* setting out Amount D as it will have effect on and from that 1 July.
- (11) Failure to publish, or late publication of, a notice under subsection (10) does not affect the operation of subsections (8) and (9).
- (12) The issue of whether damages may be awarded for the value of gratuitous services is to be determined by reference to Amount D as in effect on the date on which the determination is made.

[Section 3D inserted by No. 17 of 1994 s.5.]

3E. Causes of action to which restrictions on damages apply

Sections 3A to 3D do not apply to causes of action arising before 1 July 1993 but apply to causes of action arising on or after that day and before the commencement of section 5 of the *Motor Vehicle (Third Party Insurance) Amendment Act 1994* in the same way as they apply to causes of action arising after that commencement.

[Section 3E inserted by No. 17 of 1994 s.5.]

[3F, 3G, 3H, 3J, and 3K Repealed by No. 51 of 1986; s.46]

[3L, 3M, and 3N Repealed by No. 81 of 1982 s.10.]

[3P Repealed by No. 8 of 1988 s.5.]

3Q. Director General's functions

The functions of the Director General include the exercise and performance of all powers, duties and responsibilities vested in or imposed on the Director General by this Act.

[Section 3Q inserted by No. 76 of 1996 s.38.]

[3QA, 3QB Repealed by No. 98 of 1985 s.3.]

3R. Issue of policies of insurance

[(1) repealed.]

- (2) No person other than the Director General, on behalf of the Commission, 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 Commission to cause policies of insurance to be issued under and for the purposes of this Act.
- (3) Subject to the provisions of section 4, the Director General shall issue policies of insurance under this Act on behalf of and as agent for the Commission.
- (4)
 - (a) The Director General shall at such times as are directed by the Commission remit to the Commission the total amount of all insurance premiums received by it under this Act together with such documents and information relating thereto as may be prescribed.
 - (b) The Director General shall pay to the Treasurer at such times as are directed by the Treasurer all amounts of stamp duty payable upon the issue of the policies.
 - (c) The Treasurer shall pay all amounts received by him under paragraph (b) into the Consolidated Fund.
- (5) Subject to the approval of the Minister, the Commission shall determine the terms, warranties, and conditions to be contained in policies of insurance under this Act.

[Section 3R inserted by No. 31 of 1948 s.4; amended by No. 40 of 1951 s.7; No. 57 of 1962 s.3; No. 45 of 1973 s.3; No. 58 of 1974 s.29; No.106 of 1981 s.10; No. 81 of 1982 s.13; No. 51 of 1986 s.46; No. 8 of 1988 s.6; No. 6 of 1993 s.11; No. 76 of 1996 s.40.]

3S. Further powers of the Commission

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

[Section 3S inserted by No. 31 of 1948 s.4; amended by No. 51 of 1986 s.46.]

3T. Premiums

- (1) At least once in each financial year, the Commission shall make an assessment of the extent to which in the next following financial year the premium income of the Commission as estimated on the basis of existing scales of premiums, together with other income expected to be received under and for the purposes of this Act by the Commission, would be likely to be sufficient to meet claims arising and costs and other expenses estimated to be incurred in that financial year under this Act (whether expected to be actually paid in that year or not), due account being taken also of the accumulated surplus or deficit, if any, which is expected to exist at the commencement of the next following financial year.
- (2) Before making an assessment under subsection (1), the Commission shall procure and consider an actuarial report on the Fund.
- (3) If, having regard to an assessment made under subsection (1), the Commission is of the opinion that the existing scales of premiums are likely to be insufficient or excessive, the Commission shall submit for the approval of the Minister its recommendations for new scales or premiums and at the same time shall furnish to the Minister a copy of the actuarial report referred to in subsection (2).
- (4) The Minister may approve or refuse to approve recommended scales of premiums submitted under subsection (3) or may invite the Commission to review all or any of its recommendations.
- (5) If under subsection (4) the Minister invites the Commission to review all or any of its recommendations, the Commission shall proceed to do so and after such a review the Commission may submit further recommendations for the approval of the Minister.

[Section 3T inserted by No. 81 of 1982 s.14; amended by No. 51 of 1986 s.46.]

4. Insurance against third party risks

(1) When any motor vehicle is on a road there is required to be in force in relation to the motor vehicle a contract of insurance entered into by the owner of the motor vehicle under which the owner has insured subject to and in accordance with this Act against any liability which may be incurred by the owner or any person who drives the motor vehicle in respect of the death of or bodily injury to any person directly caused by, or by the driving of, the motor vehicle.

[(2) repealed]

(3) (a) Where a motor vehicle in relation to which there is not in force a policy of insurance complying with this Act is used on a road the owner of the motor vehicle and any person so using the motor vehicle or causing or permitting such use commits an offence.

Penalty: First offence: \$400.

Subsequent offence: \$800.

(b) A person shall not be convicted or punished for an offence under paragraph (a) if he has already been convicted or acquitted of an offence under section 15 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 licence 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 licence 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

s. 4

from holding and obtaining under the Traffic Act a driver's licence or a licence in respect of a motor vehicle for a period of 12 months from the date of the conviction.

- (5) Proceedings for an offence under this section shall be commenced —
- (a) within a period of 6 months from the date of the commission of the alleged offence; or
 - (b) within a period of 3 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 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) 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 5 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: \$200.

- (8) Notwithstanding anything to the contrary contained in the Traffic Act, no licence 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 licence there is paid to and received by the Director General issuing such licence the appropriate insurance premium determined by the Commission for the class of vehicle being licensed and for the period of the licence; and
 - (b) such licence 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 licence is issued.

[(9) repealed]

- (9a) (a) The Director General on behalf of the Commission shall when required issue in such form as shall be determined by the Commission 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 Director General is satisfied does not require to be licensed under the Traffic Act, 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 Commission 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 3 of this Act.

[Section 4 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; No. 44 of 1971 s.3; No. 58 of 1974 s.30; No. 106 of 1981 s.11; No. 81 of 1982 s.15; No. 51 of 1986 s.46; No. 107 of 1987 s.14; No. 8 of 1988 s.7; No. 13 of 1994 s.7; No. 76 of 1996 s.40.]

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

6. Requirements in respect of policies

- (1) In order to comply with this Act a policy of insurance must —
 - (a) be issued by the Commission;
 - (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 directly caused by, or by the driving of, the vehicle in any part of the Commonwealth; and
 - (c) be in a form substantially similar to that contained in the Schedule.

[(2) and (3) repealed]

[Section 6 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; No. 51 of 1986 s.46; No. 107 of 1987 ss.6 and 14.]

6A. Spouse may sue in certain cases

- (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 7 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 12 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 Commission notice of the claim and a short statement of the grounds thereof as soon as practicable after the bodily injury was caused.

[Section 6A inserted by No.95 of 1966 s.7; amended by No.51 of 1986 s.46.]

7. Liability of the Commission

- (1) Any person who has obtained a judgment against an insured person in respect of negligence causing death or bodily injury, being death or bodily injury directly caused by, or by the driving of, a motor vehicle specified in a policy of insurance under this Act may recover by action from the Commission such amount of the money (including costs or a proportionate part thereof) payable pursuant to the judgment as relates to death or bodily injury and is unsatisfied:

Provided that —

- (i) 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 Commission 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, being death or bodily injury directly caused by, or by the driving 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 Commission 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 Commission 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 was given within such time as would prevent the possibility of the Commission being prejudiced by want of such notice.
- (3) Where the driver of a motor vehicle has caused death or bodily injury by negligence, being death or bodily injury directly caused by, or by the driving 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 Commission 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 Commission notice in writing of the claim and a short statement of the grounds thereof.
- (4) It shall be no defence by the Commission 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 misstatement 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) has arisen or occurred in respect of a policy of insurance, the Commission 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 2 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),
- (a) such part of any judgment so obtained against the Commission; or
 - (b) such sums as the Commission has paid in payment, settlement or compromise of the claim or judgment against the insured person or the Commission; and
 - (c) such costs and expenses

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

(6) This section shall not apply —

[(a) deleted]

(b) to any accident which happened before the commencement of this Act;

(c) so as to make the Commission liable in respect of any claim in respect of death or bodily injury directly caused by, or by the driving 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 Commission.

[Section 7 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; No. 81 of 1982 s.16; No. 51 of 1986 s.46; No. 107 of 1987 s.7.]

8. Special provisions in relation to uninsured motor vehicles

(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 directly caused by, or by the driving 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 Commission payment of the amount (including costs) unpaid in respect of the judgment or the amount to which the liability of the Commission 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 Commission 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 Commission.

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 Commission knew that such action had been commenced.

[(2) repealed]

- (3) The Commission 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 Commission 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.

[(4) repealed]

(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 directly caused by, or by the driving 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 Commission 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 Commission might have been limited had there been

in force a contract of insurance under this Act relating to such motor vehicle, whichever is the smaller amount:

Provided that —

- (i) such person shall not be entitled so to recover unless, as soon as practicable after he knew that such owner or driver was dead or could not be found, he gave to the Commission notice of intention to make a claim and a short statement of the grounds thereof; and
- (ii) the inquiry and search made for such owner or driver may be proved orally or by the affidavit of the person who made the inquiry and search.

[(b) and (c) repealed]

[Section 8 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; No. 51 of 1986 s.46; No. 107 of 1987 s.14.]

8A. Liability of Commission where spouse injured

- (1) Notwithstanding the provisions of section 8, where bodily injury to a person, being bodily injury directly caused by, or by the driving of, a motor vehicle, is so caused partly by negligence on the part of the spouse of that person and partly by negligence on the part of some other person, and at the time of that injury that spouse was not, in respect of the vehicle to which the negligence of the spouse relates, an insured person the Commission shall not be liable in respect of that injury to any greater amount than such proportion of the total claim of that injured person as is equivalent to the degree of negligence attributable to that other person who partly caused the injury.
- (2) The degree of negligence attributable to a person as referred to in subsection (1) shall be such degree as may be agreed between the injured spouse and the Commission, or as may be determined on the hearing of the claim of the injured spouse.

s. 10

- (3) On the hearing of any action pursuant to section 6A, the degree of negligence that is attributable to any person who, by negligence in relation to 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.

[Section 8A inserted by No. 95 of 1966 s.9; amended by No. 51 of 1986 s.46; No. 107 of 1987 s.8.]

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

10. Duties of owner or insured person

- (1) Upon the happening of any accident which results in the death of or causes bodily injury to any person and is directly caused by, or by the driving of, an insured or an uninsured motor vehicle, the driver and the person in charge thereof shall give written notice forthwith to the Commission and such notice (which notice shall not be subject to discovery or admissible in evidence in any proceedings except proceedings for an offence under this section) shall set forth the following information with as full particulars as the driver and the person in charge of the vehicle as aforesaid is or are able to give —
- (a) the fact of the accident;
 - (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 Commission and supply to the Commission such particulars of the claim as it requires.

- (4) If any person fails to comply with any requirement of subsection (1) or subsection (3) he shall be guilty of an offence. Penalty: \$20.
- (5) An insured person and the owner and the driver of an uninsured motor vehicle shall not, without the consent in writing of the Commission —
- (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 Commission 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 Commission shall be entitled to recover from any person who has failed to comply with any provision of this section, or, if 2 or more persons have so failed, from them jointly and severally, all moneys paid and costs incurred by the Commission in relation to any claim arising out of the accident in respect of which such failure has occurred.

[Section 10 amended by No. 31 of 1948 s.12; No. 36 of 1954 s.5; No. 95 of 1966 s.21; No. 44 of 1971 s.4; No. 51 of 1986 s.46; No. 107 of 1987 s.9; No. 13 of 1994 s.8.]

11. Power of the Commission to deal with claims against insured persons

- (1) The Commission may on behalf of an insured person and the owner and driver of an uninsured vehicle —
- (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 Commission has no right of recovery against the person, owner or driver, under the provisions of section 7(5), section 8(3) or section 15;
 - (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 defaults in doing so or is absent or cannot be found, the warrants, authorities or other documents aforesaid may be signed or executed by the Commission on his behalf.
- (3) Where an accident directly caused by, or by the driving of, a motor vehicle results in the death of or bodily injury to any person as well as damage to property, and claims are made in respect of the death or bodily injury, and also in respect of the damage to property, and the person against whom the claims are made is insured against his liability for death or bodily injury but not against his liability for damage to property, then nothing said or done in any negotiations for settlement of either of the claims, and no judgment given in any legal proceedings in respect of either of the claims, shall be evidence in any legal proceedings in respect of the other claim, unless the negotiations or proceedings in respect of both claims are conducted or controlled by the person against whom the claims are made with the authority of the Commission or by the Commission with authority of the said person.

[Section 11 amended by No. 31 of 1948 s.13; No. 36 of 1954 s.6; No. 25 of 1959 s.6; No. 7 of 1975 s.2; No. 51 of 1986 s.46; No. 107 of 1987 s.10.]

12. Emergency treatment

(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 directly caused by, or by the driving 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 Commission within one month after the occurrence out of which the death or bodily injury arose, the Commission shall make the following payments as are applicable to the case —

- (i) to the medical practitioner or nurse, his or her charges in respect of each person to whom emergency treatment is rendered, together with any travelling expenses reasonably and necessarily incurred in respect of the emergency treatment so rendered;

[(ii) repealed]

- (iii) to any person who conveyed the injured person as mentioned in paragraph (a), an amount to be ascertained in accordance with the regulations.

[(2) repealed]

(3) The liability (if any) —

- (a) of the owner or driver of such motor vehicle in respect of the death or bodily injury; and

s. 14

- (b) of the Commission 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 Commission 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).
- (5) A sum payable under this section shall be recoverable as if it were a simple contract debt due from the Commission to the persons entitled to that sum.
- (6) The Director General 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 the Director General’s disposal as to the identification marks or plates or registration of any motor vehicle which that person alleges to be a motor vehicle out of the use of which the death or bodily injury arose, and as to the identity and address of the person who owned or was using the vehicle at the time of the event out of which the death or bodily injury arose.

[Section 12 amended by No. 40 of 1944 s.6; No. 31 of 1948 s.14; No. 95 of 1966 s.21; No. 58 of 1974 s.31; No. 81 of 1982 s.17; No. 51 of 1986 s.46; No. 107 of 1987 s.14; No. 76 of 1996 s.40.]

[13. Repealed by No. 81 of 1982 s.18.]

14. Recovery of payment for emergency treatment

Where the Commission has made any payment for emergency treatment as mentioned in section 12 in respect of bodily injury (fatal or otherwise) directly caused by, or by the driving of, an uninsured motor vehicle, the Commission 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.

[Section 14 inserted by No. 31 of 1948 s.16; amended by No. 51 of 1986 s.46; No. 107 of 1987 s.14.]

15. Right of the Commission against unauthorized drivers

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

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

[Section 15 amended by No. 31 of 1948 s.17; No. 51 of 1986 s.46; No. 107 of 1987 s.11.]

16. Jurisdiction

- (1) In this section —

“action or proceedings” means action or proceedings making a claim for damages, in respect of the death of or bodily injury to a person directly caused by, or by the driving of, a

motor vehicle, against the owner or driver of the vehicle or against the Commission;

“Court” means Supreme Court, District Court, or Local Court established under the *Local Courts Act 1904*, as the case may be;

“pending action or proceedings” means action or proceedings commenced in the Tribunal and pending or in progress therein immediately before the proclaimed date, and includes action or proceedings in respect of which the Tribunal had, at that time, power to review periodical payments, or to order that periodical payments be redeemed by a lump sum;

“proclaimed date” means the date on which the *Motor Vehicle (Third Party Insurance) Act Amendment Act 1972* comes into operation; and

“the Tribunal” means the Third Party Claims Tribunal abolished by subsection (2).

- (2) On the proclaimed date the Third Party Claims Tribunal, established under this Act before that date, is abolished.
- (3) On and after the proclaimed date a Court may, subject to the extent of its jurisdiction and to subsection (5), hear and determine any action or proceedings.
- (4) On the hearing and determination of any action or proceedings a Court shall, without in any way limiting its usual powers in relation thereto, 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 Court determines; and
 - (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 on the review 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.
- (5) Any pending action or proceedings shall, notwithstanding the amount of damages claimed, be continued in the District Court in accordance with such practice and procedure of the Tribunal, or the District Court, or a mixture of both, as the District Court, generally or for the particular case, directs.
- (6) In relation to any pending action or proceedings, the District Court may, with such modifications as are necessary or desirable, exercise all or any of the powers referred to in subsection (4).
- (7) After the proclaimed date, the books and records of the Tribunal shall be kept by the Registrar of the District Court and that Registrar may certify for all purposes any such book or record, or any copy thereof or extract therefrom, as if he were the Registrar of the Tribunal.

[Section 16 inserted by No. 42 of 1972 s.6; amended by No. 51 of 1986 s.46; No. 107 of 1987 s.14.]

17. Insurance by visiting motorists

Subject to section 3(4), no temporary licence in respect of any motor vehicle of a person visiting the State shall be granted unless, in the opinion of the authority to which application for such temporary licence 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 directly caused by, or by the driving of, that motor vehicle in the State.

[Section 17 amended by No. 31 of 1948 s.19; No. 107 of 1987 s.14; No. 14 of 1996 s.4.]

18. Power to suspend or cancel licences

- (1) Any police officer or constable or the Commission 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 licence 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) as it thinks fit.
- (3) This section is supplementary to section 105 of the *Sentencing Act 1995*.

[Section 18 amended by No. 31 of 1948 s.20; No. 58 of 1974 s.32; No. 51 of 1986 s.46; No 78 of 1995 s.74.]

19. Commission not to terminate policy

The Commission 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.

[Section 19 inserted by No. 31 of 1948 s.21; amended by No. 51 of 1986 s.46.]

20. Policy of insurance to continue notwithstanding change of ownership of vehicle

- (1) Notwithstanding any agreement to the contrary, a policy of insurance issued under and for the purposes of this Act —
 - (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
 - (b) shall, subject to any lawful termination thereof, enure 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.

[Section 20 inserted as s.19A by No. 40 of 1944 s.7; renumbered s.20 in 1950 reprint; amended by No. 36 of 1954 s.7.]

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

- (1) (a) Where a policy of insurance complying with the requirements of this Act, and a licence 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) apply, the operation of the policy is extended by, and in accordance with, those provisions.
- (b) If a new policy complying with the requirements of this Act is issued in respect of the motor vehicle within the period of 15 days of the expiry day of the policy mentioned in paragraph (a), the operation of the policy mentioned in that paragraph 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 15 days
- (i) the motor vehicle is, notwithstanding any provision to the contrary of section 4(8)(a) of this

Act or of any provision of section 18 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 licence 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) 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.

[Section 21 inserted 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; No. 58 of 1974 s.33.]

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

- (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.

-
- (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.

[Section 22 inserted as s.19C by No. 40 of 1944 s.7; renumbered s.22 in 1950 reprint.]

23. Policies to give cover required by amending Acts

- (1) 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 Commission 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 in such a manner as to comply with the requirements of this Act as from time to time amended.
- (2) Where, as a consequence of an alteration to which subsection (1) applies, any cause of action arising prior to the coming into operation of the Act by which that alteration was effected would not have been a cause of action had it arisen after the coming into operation of that Act, no proceedings shall be commenced or, subject to subsection (3), determined in respect of that cause of action.
- (3) Subsection (2) does not apply to or in relation to any cause of action in respect of which a court has given judgment, whether or not that judgment is subject to appeal.

[Section 23 inserted as s.19D by No. 40 of 1944 s.7; renumbered s.23 in 1950 reprint; amended by No. 31 of 1948 s.22; No. 51 of 1986 s.46; No. 107 of 1987 s.12.]

24. Reference to issue of policy to extend to renewal of policy

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.

[Section 24 inserted as s.19E by No. 40 of 1944 s.7; renumbered s.24 in 1950 reprint.]

25. Information to be furnished by the Commission

The Commission shall, whenever so required by the Minister, furnish to the Minister such information as the Minister reasonably requires relating to the following matters —

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

[Section 25 renumbered in 1950 reprint; amended by No. 31 of 1948 s.23; No. 57 of 1962 s.5; No. 51 of 1986 s.46; No. 8 of 1988 s.8.]

26. Contracting out of liability for negligence

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 in respect of death or bodily injury caused or contributed to by the negligence of any other person in driving a motor vehicle shall to that extent be void.

[Section 26 renumbered in 1950 reprint; amended by No. 65 of 1986 s.3.]

27. Soliciting instructions from persons claiming

- (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 directly caused by, or by the driving of, an insured or an uninsured 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 Commission to Act on its behalf in connection with any claim or action.
 - (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.

[Section 27 renumbered in 1950 reprint; amended by No. 31 of 1948 s.24; No. 51 of 1986 s.46; No. 107 of 1987 s.13; No. 13 of 1994 s.9.]

27A. Costs between solicitor and client

- (1) This section applies to an action for damages in respect of the death of or bodily injury to a person directly caused by, or by the driving of, a motor vehicle.
- (2) An agreement is not to be made for a legal practitioner to receive, for appearing for or acting on behalf of a person in an action to which this section applies, any greater reward than is

provided for by a determination in force under section 58W of the *Legal Practitioners Act 1893*.

- (3) An agreement is void —
- (a) if it is made contrary to this section; or
 - (b) if it would have been contrary to this section if it had been made after the commencement of section 6 of the *Motor Vehicle (Third Party Insurance) Amendment Act 1994*,

and any money paid under such an agreement is recoverable by the person who has paid it.

- (4) Subsection (3) does not affect the operation of an agreement so far as it relates to services provided before the commencement of section 6 of the *Motor Vehicle (Third Party Insurance) Amendment Act 1994* and does not apply in relation to any money paid in respect of services so provided.

[Section 27A inserted by No. 17 of 1994 s.6.]

28. Offences: general penalty

- (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.
- (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 \$400.
- (3) Proceedings for any offence under this Act shall be heard and disposed of summarily.

[Section 28 renumbered in 1950 reprint; amended by No. 95 of 1966 s.21; No. 44 of 1971 s.5.]

29. Notice of claim

- (1) A person shall not, in respect of the death or bodily injury to a person directly caused by, or by the driving of, an insured or an uninsured motor vehicle by another person which may, under the provisions of this Act, give rise to an action or proceeding for damages against either an insured person or the Commission, commence or maintain such an action or proceeding unless the person proposing to claim the damages or some person on his behalf has given to the Commission, as soon as practicable after the occurrence giving rise to the claim, notice in writing prescribed by the regulations of his intention to make the claim.
- (2) Where a person (hereafter in this section called “**the claimant**”) or some person on his behalf has given the notice referred to in subsection (1) but he or some person on his behalf has not, within the period of 6 months after the occurrence giving rise to the claim, commenced an action or proceeding making the claim the Commission may, pursuant to a summons with an affidavit in support containing a brief statement of the facts to be relied on, make, subject to subsection (3), an application to a Judge of the Supreme Court or of the District Court (hereafter in this section called the Judge) for an order that such an action or proceeding be commenced.
- (3) The Judge shall not hear the application referred to in subsection (2) unless the Commission has, at least 14 days before the day fixed for the hearing, served on the claimant a copy of the summons and the affidavit in support.
- (4) On hearing an application made pursuant to subsection (2) the Judge may make an order —
 - (a) fixing the time after service of the order on the claimant within which the action or proceeding referred to in that subsection shall be commenced; or

- (b) adjourning the application (with liberty to the Commission to apply) —
 - (i) for an indefinite period or such a period as the Judge thinks fit; and
 - (ii) on such terms and conditions as he thinks fit,and may make such other and further order as he thinks fit.
- (5) On any later hearing of an application adjourned pursuant to subsection (4)(b) the Judge has all the powers he had under that subsection in respect of the first hearing.
- (6) Where, before the end of the time fixed by any order of the Judge pursuant to subsection (4)(a), an application for an extension of that time is filed in the Supreme Court or the District Court, as the case requires, the Judge may order the extension.
- (7) Where the Judge makes an order pursuant to subsection (4)(a) and the action or proceeding has not been commenced within the time fixed, or any extension of it pursuant to subsection (6), the claim of the claimant and any rights he may have had in respect of it are forever barred and extinguished.

[Section 29 inserted by No. 21 of 1969 s.5; amended by No. 42 of 1972 s.8; No. 51 of 1986 s.46; No. 107 of 1987 s.14; No. 13 of 1994 s.10.]

29A. Court may grant leave to proceed

Notwithstanding the provisions of section 6A(3), of section 7(2) and (3), section 8(5), and section 29(1), 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 Commission in respect of the death of, or bodily injury to, any person, directly caused by, or by the driving of, an insured or an uninsured 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 Commission is not materially prejudiced in its defence or otherwise by the failure or defect, the court may —

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

[Section 29A inserted by No. 72 of 1962 s.10; amended by No. 95 of 1966 s.19; No. 51 of 1986 s.46; No. 107 of 1987 s.14; No. 13 of 1994 s.11.]

30. Medical examination of injured person

- (1) Where, in accordance with section 29 of this Act, an insured person or the Commission 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 Commission may, subject to the regulations, require the injured person aforesaid from time to time to submit himself for medical examination by a legally qualified medical practitioner nominated and paid for such examination by the insured person or by the Commission, 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 Commission 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 Commission 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.

[Section 30 renumbered in 1950 reprint; amended by No. 31 of 1948 s.26; No. 51 of 1986 s.46.]

[31. Repealed by No. 81 of 1982 s.19.]

[32. Repealed by No. 51 of 1986 s.46.]

[32A. Repealed by No. 76 of 1996 s.39.]

33. Regulations

- (1) The Governor may make 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.
- (2) In regulations made under subsection (1) penalties, recoverable summarily and not exceeding \$80, may be prescribed for the breach of any regulation.
- (3) For the purposes of proceedings making a claim for damages, in respect of the death of or bodily injury to a person directly caused by, or by the driving of, a motor vehicle against the owner or driver of the vehicle or against the Commission, which proceedings have been entered for trial, 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, but the time for the production of such a report shall be subject to rules of court applicable to such proceedings.

[Section 33 inserted by No. 95 of 1966 s.20; amended by No. 37 of 1967 s.7; No. 44 of 1971 s.6; No. 42 of 1972 s.9; No. 111 of 1976 s.13; No. 51 of 1986 s.46; No. 107 of 1987 s.14.]

[33A. Repealed by No. 42 of 1972 s.10.]

[34. Omitted under s.7(4)(g) of the Reprints Act 1984.]

Schedule

**INSURANCE POLICY — issued under the *MOTOR VEHICLE
(THIRD PARTY INSURANCE) ACT 1943***

[s. 6]

The INSURANCE COMMISSION OF WESTERN AUSTRALIA, subject to the warranties and conditions contained in this Policy and to the provisions of the *Motor Vehicle (Third Party Insurance) Act 1943*, in this Policy referred to as “**the Act**”, agrees to insure the owner of the motor vehicle described in the Traffic Licence issued herewith and any other person who drives that motor vehicle, whether with or without the consent of the owner, in respect of all liability for negligence which may be incurred by the owner or other person in respect of the death of or bodily injury to any person directly caused by, or by the driving of, that motor vehicle in any part of the Commonwealth during the period from the date of the issue of this Policy to the date of expiry of the said Traffic Licence.

WARRANTIES

The owner warrants that the vehicle will not be —

- (a) used for any other purpose than that stated by the owner in his application for this Policy;
- (b) driven in an unsafe or damaged condition;
- (c) driven by or in charge of himself or any other person who is unlicensed to drive or who is under the influence of intoxicating liquor.

It shall be a defence to any action in respect of the warranty contained in subclause (c) if the owner proves that the vehicle was so driven or in charge of such other person without his knowledge or consent.

CONDITIONS

1. The owner and any other person claiming indemnity under this Policy shall comply with the provisions of sections 10 and 11 of the Act.
2. Sections 7(5) and 15 of the Act are deemed to be incorporated in this insurance.

Motor Vehicle (Third Party Insurance) Act 1943

Schedule

3. The Commission is entitled to all rights remedies and benefits which may accrue to it by virtue of the Act.
4. This contract of insurance is subject to the provisions of the Act.
[Schedule inserted by No. 107 of 1987 s.15; amended by No. 45 of 1996 s.38.]

=====

Notes

1. This reprint is a compilation as at 20 November 1998 of the *Motor Vehicle (Third Party Insurance) Act 1943* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Motor Vehicle (Third Party Insurance) Act 1943</i>	32 of 1943	12 November 1943	1 July 1944 (see <i>Gazette</i> 12 May 1944 p.375)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1944</i>	40 of 1944	11 January 1945	11 January 1945	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1945</i>	7 of 1945	27 November 1945	27 November 1945	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1948</i>	31 of 1948	9 December 1948	Part I: 17 December 1948 (see <i>Gazette</i> 17 December 1948 p.2966) Part II: 27 May 1949 (see <i>Gazette</i> 27 May 1949 p.1155)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1951</i>	40 of 1951	20 December 1951	20 December 1951	

Motor Vehicle (Third Party Insurance) Act 1943

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1954</i>	36 of 1954	3 December 1954	3 December 1954	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1957</i>	77 of 1957	16 December 1957	1 February 1958 (see <i>Gazette</i> 31 January 1958 p.168)	
<i>Motor Vehicle (Third Party Insurance) Act and Traffic Act Amendment Act 1959</i>	18 of 1959	8 October 1959	8 October 1959	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1959</i>	25 of 1959	15 October 1959	4 December 1959 (see <i>Gazette</i> 4 December 1959 p.2975)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1960</i>	31 of 1960	21 October 1960	21 October 1960	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1961</i>	70 of 1961	28 November 1961	28 November 1961	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1962</i>	57 of 1962	30 November 1962	30 November 1962	

Motor Vehicle (Third Party Insurance) Act 1943

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2) 1962</i>	72 of 1962	30 November 1962	30 November 1962	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2) 1963</i>	71 of 1963	17 December 1963	17 December 1963	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1964</i>	65 of 1964	4 December 1964	4 December 1964	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1966</i>	95 of 1966	12 December 1966	Sections 1, 2, 6, 7, 8, 9, 19, 21: 1 July 1967 (see <i>Gazette</i> 5 May 1967 p.1119) Balance: 4 December 1967 (see <i>Gazette</i> 24 November 1967 p.3195)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1967</i>	37 of 1967	21 November 1967	4 December 1967	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2) 1969</i>	21 of 1969	7 May 1969	7 May 1969	

Motor Vehicle (Third Party Insurance) Act 1943

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1970</i>	19 of 1970	8 May 1970	8 May 1970	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1971</i>	44 of 1971	10 December 1971	10 December 1971	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1972</i>	42 of 1972	16 June 1972	13 July 1972 (see <i>Gazette</i> 30 June 1972 p.2098)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1973</i>	45 of 1973	6 November 1973	21 December 1973 (see <i>Gazette</i> 21 December 1973 p.4662)	
<i>Acts Amendment (Road Traffic) Act 1974, Part V</i>	58 of 1974	3 December 1974	29 August 1975 (see <i>Gazette</i> 29 August 1975 p.3085)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1975</i>	7 of 1975	9 May 1975	9 May 1975	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act (No. 2) 1975</i>	55 of 1975	15 October 1975	15 October 1975	
<i>Acts Amendment (Expert Evidence) Act 1976, Part VI</i>	111 of 1976	25 November 1976	25 November 1976	

Motor Vehicle (Third Party Insurance) Act 1943

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Acts Amendment (Traffic Board) Act 1981, Part II</i>	106 of 1981	4 December 1981	2 February 1982 (see <i>Gazette</i> 2 February 1982 p.393)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1982</i>	81 of 1982	11 November 1982	25 February 1983 (see <i>Gazette</i> 25 February 1983 p.640)	
<i>Acts Amendment (Financial Administration and Audit) Act 1985, section 3</i>	98 of 1985	4 December 1985	1 July 1986 (see <i>Gazette</i> 30 June 1986 p.2255)	
<i>State Government Insurance Commission Act 1986, section 46</i>	51 of 1986	5 August 1986	1 January 1987 (see <i>Gazette</i> 19 December 1986 p.4859)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1986</i>	65 of 1986	28 November 1986	28 November 1986 (see section 2)	Transitional ²
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1987</i>	107 of 1987	16 December 1987	16 December 1987 (see section 2)	
<i>Motor Vehicle (Third Party Insurance Surcharge) Repeal Act 1988, Part 3</i>	8 of 1988	30 June 1988	30 June 1988 (see section 2)	Transitional ³

Motor Vehicle (Third Party Insurance) Act 1943

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993	
<i>Acts Amendment (Vehicles on Roads) Act 1994, (Part 2)</i>	13 of 1994	15 April 1994	17 May 1994 (see section 2 and <i>Gazette</i> 17 May 1994 p.2065)	
<i>Motor Vehicle (Third Party Insurance) Act Amendment Act 1994</i>	17 of 1994	3 May 1994	3 May 1994 (see section 2)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Sentencing (Consequential Provisions) Act 1995, Part 53</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	
<i>Acts Amendment (ICWA) Act 1996, section 38</i>	45 of 1996	25 October 1996	1 October 1997 (see section 2 and <i>Gazette</i> 23 September 1997 p. 5357)	
<i>Road Traffic Amendment Act 1996, Part 3, Division 5</i>	76 of 1996	14 November 1996	1 February 1997 (see section 2 and <i>Gazette</i> 31 January 1997 p.613)	

NB. The *Motor Vehicle (Third Party Insurance) Act 1943* was affected by the *Motor Vehicle (Third Party Insurance Surcharge) Act 1962*.

² Section 4 of Act No. 65 of 1986 reads as follows: —

“

4. Validity of existing contracts

A contract entered into before the coming into operation of this Act —

- (a) is as valid and effectual as it would be;
- (b) shall be deemed to have always been as valid and effectual as it would have been,

if this Act had come into operation on 1 July 1944.

”.

³ Section 9 of Act No. 8 of 1988 reads as follows: —

“

9. Saving

(1) The provisions of the *Motor Vehicle (Third Party Insurance Surcharge) Act 1962*⁴ and the *Motor Vehicle (Third Party Insurance) Act 1943*, as in force immediately before the coming into operation of this Act shall continue to apply to and in relation to —

- (a) a surcharge payable in respect of the grant of a vehicle licence if that licence is granted before 1 July 1988; and
- (b) a surcharge payable in respect of the grant of a renewal of a vehicle licence if, pursuant to section 18(4) of the *Road Traffic Act 1974*, that renewal has effect, or is deemed to have effect, on and from a day not later than 30 June 1988.

(2) In subsection (1) —

“**surcharge**” has the same meaning as under the *Motor Vehicle (Third Party Insurance Surcharge) Act 1962*⁴;

“**vehicle licence**” has the same meaning as under the *Road Traffic Act 1974*.

”.

⁴ Repealed by Act No. 8 of 1988 s.3.

Motor Vehicle (Third Party Insurance) Act 1943

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
It is not part of the Act.]*

Defined Term	Provision(s)
action or proceedings.....	16(1)
Amount A	3C(1)
Amount B	3C(1)
Amount C	3C(1)
Amount D	3D(7)
Commission	3(1)
contract of insurance.....	3(1)
Court.....	16(1)
Director General.....	3(1)
District Court	3(1)
driver	3(1)
emergency treatment	12(4)
Fund	3(1)
insured person	3(1)
Minister	3(1)
motor vehicle	3(1), 4(9a)(b)
non-pecuniary loss.....	3C(1)
owner.....	3(1), 3(1)
pending action or proceedings	16(1)
policy of insurance	3(1)
proclaimed date.....	16(1)
the Act	Schedule
the claimant.....	29(2)
the recalculation date.....	3C(8), 3D(8)
the relevant quarter.....	3D(4)
the Tribunal.....	16(1)
Traffic Act	3(1)
uninsured motor vehicle	3(1)