

WESTERN AUSTRALIA

MOTOR VEHICLE (THIRD PARTY INSURANCE) AMENDMENT ACT

No. 107 of 1987

AN ACT to amend the *Motor Vehicle (Third Party Insurance) Act 1943*.

[Assented to 16 December 1987]

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

Short title

1. This Act may be cited as the *Motor Vehicle (Third Party Insurance) Amendment Act 1987*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Motor Vehicle (Third Party Insurance) Act 1943** is referred to as the principal Act.

[*Reprinted as approved 12 January 1981 and amended by Acts Nos. 106 of 1981, 81 of 1982, 98 of 1985, and 51 and 65 of 1986.]

Long title amended

4. The long title to the principal Act is amended by deleting “**caused by the use of**” and substituting the following—

“ **directly caused by, or by the driving of,** ”.

Section 3 amended

5. Section 3 of the principal Act is amended—

(a) in subsection (1), in the definition of “Driver”, by deleting “, and “drives” and “driving” have a corresponding meaning”; and

(b) by adding the following subsection—

“ (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 6 amended

6. Section 6 of the principal Act is amended by deleting “Commonwealth.” and substituting the following—

“ Commonwealth; and

(c) be in a form substantially similar to that contained in the Schedule. ”.

Section 7 amended

7. Section 7 of the principal Act is amended—

(a) in subsection (1), by deleting “death or bodily injury caused by negligence in the use of” and substituting the following—

“ negligence causing death or bodily injury, being death or bodily injury directly caused by, or by the driving of, ”;

(b) in subsections (2) and (3), by deleting “in the use of” and substituting the following—

“ , being death or bodily injury directly caused by, or by the driving of, ”; and

(c) in subsection (6) (c), be deleting “arising out of the use of” and substituting the following—

“ in respect of death or bodily injury directly caused by, or by the driving of, ”.

Section 8A amended

8. Section 8A of the principal Act is amended—

(a) in subsection (1), by deleting “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” and substituting the following—

“ , 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 ”;

and

(b) in subsection (3), be deleting “in the use of” and substituting the following—

“ in relation to ”.

Section 10 amended

9. Section 10 (1) of the principal Act is amended by deleting “caused by or arises out of the use of” and substituting the following—

“ directly caused by, or by the driving of, ”.

Section 11 amended

10. Section 11 (3) of the principal Act is amended by deleting “as the result of the use of a motor vehicle an accident happens which” and substituting the following—

“ an accident directly caused by, or by the driving of, a motor vehicle ”.

Section 15 amended

11. Section 15 of the principal Act is amended by deleting “caused by or arises out of the use of” and substituting the following—

“ directly caused by, or by the driving of, ”.

Section 23 amended

12. Section 23 of the principal Act is amended—

(a) by inserting after the section designation the subsection designation “(1)”;

(b) by deleting “so as to provide the insurance required by this Act as altered by the said first-mentioned Act.” and substituting the following—

“ in such a manner as to comply with the requirements of this Act as from time to time amended. ”; and

(c) by adding the following subsections—

“ (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 27 amended

13. Section 27 (1) (a) of the principal Act is amended by deleting “arising out of the use of” and substituting the following—

“ directly caused by, or by the driving of, ”.

Sections 3, 4, 6, 8, 12, 14, 16, 17, 29, 29A and 33 amended

14. The principal Act is amended, in sections 3 (4) (a), 4 (1) (a), 6 (1) (b), 8 (1) (a), 8 (5) (a) (i), 12 (1) (a) (i), 14, 16 (1), 17, 29 (1), 29A and 33 (3), by deleting “caused by or arising out of the use of” and substituting the following—

“ directly caused by, or by the driving of, ”.

Schedule added

15. The principal Act is amended by adding the following Schedule—

“ SCHEDULE (s. 6)

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

The STATE GOVERNMENT INSURANCE COMMISSION, 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.
 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. ”.
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