

Motor Vehicles (Third Party Insurance) Bill.

EXPLANATORY NOTE.

THE main purpose of this Bill is to ensure that where judgment is given by a court for damages in respect of the death of or bodily injury to any person caused by or arising out of the negligence of another person in connection with the use of a motor vehicle, the judgment creditor will be able to obtain payment of such damages, together with costs and any incidental expenses.

To this end the Bill requires that in relation to every motor vehicle used upon a public street there must be in force a policy of insurance which is in an approved form and has been issued by an authorised insurer, and which insures the owner of the vehicle and any person driving the vehicle (with or without the authority of the owner) against liability which may be incurred in respect of the death of or bodily injury to persons caused by or arising out of the use of the vehicle.

Where the owner or driver fails to discharge any such liability it will be competent for the judgment creditor to recover direct from the insurer. If the owner or driver commits any act or makes any omission (*e.g.*, misrepresentation or non-disclosure of material facts or a breach of the conditions of the policy of insurance) which would ordinarily enable the insurer to avoid liability to the owner or driver, the authorised insurer will nevertheless remain liable to the judgment creditor but may recover from the owner or driver the amount of any loss occasioned to the insurer by such act or omission.

The Bill provides that the Government Insurance Office shall be an authorised insurer for the purpose of undertaking insurance business in terms of the Bill, and it also amends the Government Insurance Act, 1927-1930, so as to enable the Government Insurance Office to undertake all classes of insurance in relation to motor vehicles (including that connected with damage to property or the theft of insured vehicles).

The Bill provides that maximum rates of premiums to be paid in respect of policies of insurance may be prescribed by regulations to be made on the recommendation of a Premiums Committee.

There is also provision for payment to hospitals, legally qualified medical practitioners, registered nurses and ambulances for treatment or other services rendered to the victims of motor vehicle accidents.

The Bill also provides machinery whereby damages in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle may be recovered from a pool contributed by the authorised insurers where the motor vehicle is uninsured, and damages cannot be recovered from the owner or driver, or where the motor vehicle cannot be identified.

In order to facilitate settlement of claims under the Bill and to eliminate unnecessary litigation provision is made with respect to the medical examination of claimants and the furnishing of particulars as to injury and losses the subject of the claim.

Similar provisions are made with respect to all claims against the Commissioner for Railways, the Commissioner for Main Roads and the Commissioner for Road Transport and Tramways.

The Bill contains a number of other clauses of an ancillary nature.

148
[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1939.

A BILL

To require that owners and drivers of motor vehicles shall be insured against liability in respect of the death of or bodily injury to certain persons caused by or arising out of the use of motor vehicles; to provide for the regulation of premiums payable in respect of such insurance; to make certain provisions with respect to the discharge of any such liability; to amend the Transport Act, 1930, and certain other Acts; and for purposes connected therewith.

Motor Vehicles (Third Party Insurance).

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Motor Vehicles Short title.
(Third Party Insurance) Act, 1939."

(2) This Act shall bind the Crown.

2. (1) This Part of this Act shall commence on the Commence-
ment.
day upon which the assent of His Majesty to this Act is signified.

(2) Subject to subsection one of this section this Act shall commence upon such date or dates as may be appointed and notified pursuant to subsection three of this section.

(3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette, the date upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint and notify different dates for different Parts or provisions (whether contained in the same Part or section or in different Parts or sections) and the Part or provision so specified shall commence accordingly.

3. This Act shall be read and construed subject to Construc-
tion.
the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

4. This Act is divided into Parts and Divisions as Division
into Parts.
follows :—

PART I.—PRELIMINARY—ss. 1-5.

PART

Motor Vehicles (Third Party Insurance).

PART II.—THIRD PARTIES—ss. 6-42.

DIVISION 1.—*Administration*—s. 6.

DIVISION 2.—*Insurance*—ss. 7-26.

DIVISION 3.—*Payments to hospitals, etc.*—ss. 27-30.

DIVISION 4.—*Motor Omnibuses*—ss. 31,32.

DIVISION 5.—*Uninsured and unidentified motor vehicles*—ss. 33-41.

DIVISION 6.—*Amendment of Government Insurance Act, 1927-1930, as amended by subsequent Acts*—s. 42.

PART III.—PREMIUMS—ss. 43-50.

PART IV.—LEGAL PROCEEDINGS—ss. 51,52.

PART V.—GENERAL—ss. 53-61.

5. In this Act, unless the context or subject matter otherwise indicates or requires— Definitions.

“Authorised insurer” means a person whose name is for the time being on the list of authorised insurers under this Act.

“Commissioner” means the Commissioner for Road Transport and Tramways.

“Driver” includes the rider of a motor cycle and any person for the time being in charge of any motor vehicle, and “driving” has a corresponding meaning.

“Excepted person” where used with reference to liability in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle means—

(a) the driver of the motor vehicle;

(b) a member of the family of the owner of the motor vehicle ordinarily residing at the same address as the owner or the driver of the motor vehicle;

(c)

Motor Vehicles (Third Party Insurance).

- (c) a member of the family of the driver of the motor vehicle ordinarily residing at the same address as the owner or the driver of the motor vehicle;
- (d) a person in the employment of the owner or the driver of the motor vehicle where the death of such person results from a personal injury which, or the bodily injury to such person is a personal injury which arises out of and in the course of such employment;
- (e) in any case where the motor vehicle is not a public motor vehicle licensed for the conveyance of passengers, a person in or upon, entering or getting on to or alighting from the motor vehicle.

“Insured motor vehicle” means a motor vehicle in relation to which there is in force at all material times a third-party policy.

“Member of family” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister and any person who stands in loco parentis to another person and also that other person.

“Motor vehicle” has the same meaning as in the Motor Traffic Act, 1909, as amended by subsequent Acts.

“Owner” when used with reference to a motor vehicle means—

- (a) in a case where a trader’s plate is affixed to the motor vehicle pursuant to the provisions of the Motor Traffic Act, 1909, as amended by subsequent Acts, or the regulations made thereunder—the trader to whom such trader’s plate is in issue;

(b)

Motor Vehicles (Third Party Insurance).

(b) in any other case— /

- (i) where the motor vehicle is registered—the person in whose name the motor vehicle is registered except where such person has sold or ceased to have possession of the motor vehicle within the meaning of section twenty-seven of this Act;
- (ii) where the motor vehicle is unregistered, or where the motor vehicle is registered but the person in whose name the motor vehicle is registered has sold or ceased to have possession of the motor vehicle within the meaning of section twenty-seven of this Act—any person who solely or jointly or in common with any other person is entitled to the immediate possession of the motor vehicle.

- “Prescribed” means prescribed by this Act or the regulations.
- “Public street” has the same meaning as in the Motor Traffic Act, 1909, as amended by subsequent Acts.
- “Registered” means registered under the Motor Traffic Act, 1909, as amended by subsequent Acts, or the Transport Act, 1930, as amended by subsequent Acts, and “registration” has a corresponding meaning.
- “Regulations” means regulations made under this Act.
- “Third-party policy” means a policy of insurance which complies with the requirements of this Act and includes a cover note issued in respect of such a policy and, in relation to a motor vehicle to which a trader’s plate is affixed, also includes a trader’s plate policy.

“This

Motor Vehicles (Third Party Insurance).

“This Act” includes the regulations.

“Trader’s plate” means a special number plate issued to a manufacturer or repairer of or dealer in motor vehicles in accordance with the regulations under the Motor Traffic Act, 1909, as amended by subsequent Acts, and, in a case where a pair of such plates has been so issued, includes such pair of plates.

“Trader’s plate policy” means a policy of insurance which complies with the requirements of this Act and which is issued in relation to motor vehicles to which a trader’s plate is affixed, and includes a cover note issued in respect of such a policy.

PART II.

THIRD PARTIES.

DIVISION 1.—Administration.

6. Subject to the control of the Minister this Part of this Act shall be administered in the Department of Road Transport and Tramways by the Commissioner. Administration.

DIVISION 2.—Insurance.

7. (1) No motor vehicle shall be used upon a public street unless such motor vehicle is an insured motor vehicle. Uninsured motor vehicle not to be driven on a public street.

(2) Any person who uses or causes, permits or suffers any other person to use a motor vehicle in contravention of subsection one of this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds or to imprisonment for a period not exceeding twelve months or to both such penalty and imprisonment.

8. (1) Registration or renewal of registration of a motor vehicle shall not be granted unless and until there is lodged with the Commissioner a certificate in or to the effect of the prescribed form issued by an authorised insurer without evidence of insurance.

Motor Vehicles (Third Party Insurance).

insurer that a third-party policy expressed to commence upon the date of issue of such certificate or upon any date not later than the date of commencement of the registration or renewal of registration (as the case may be) and to terminate upon the date of expiration of such registration or renewal has been or will be issued by that authorised insurer in relation to such motor vehicle: Provided that in the case of a renewal of the registration of a motor vehicle (not being the first renewal, after the commencement of this section, of a registration which was in force at such commencement) where the authorised insurer who issued the third-party policy in force in relation to the motor vehicle on the date of expiration of the registration or last preceding renewal of the registration of the motor vehicle has not notified the Commissioner, at least one month before such date, that he will not renew such policy, the Commissioner may accept, in lieu of a certificate of the nature referred to in this subsection, the appropriate amount of insurance premium for renewal of such policy.

(2) Upon acceptance by the Commissioner of any amount under proviso to subsection one of this section the authorised insurer referred to in that proviso shall be deemed to have issued in relation to the motor vehicle a third-party policy expressed to commence upon the date of such acceptance or the date of commencement of the renewal of registration (whichever of such dates is the later) and to terminate upon the date of expiration of the renewal of registration.

Such amount shall be paid by the Commissioner to such authorised insurer.

(3) In any case where an authorised insurer issues (including any case where an authorised insurer is deemed, under subsection two of this section, to have issued) a third-party policy in this subsection hereinafter referred to as the "new policy" in relation to a motor vehicle for a period expressed to terminate upon the date of expiration of a renewal of the registration of that motor vehicle, and such authorised insurer also issued the
last

Motor Vehicles (Third Party Insurance).

last preceding third-party policy in this subsection hereinafter referred to as the "expired policy" in relation to that motor vehicle, the new policy shall be deemed to be a renewal of the expired policy in favour of the owner for the time being, and the driver, notwithstanding any change in the ownership of the motor vehicle and notwithstanding any interval between the respective periods for which such policies are expressed to be effective, and insurance premium shall be payable as if the new policy had commenced from the date of commencement of the renewal of registration:

Provided that the authorised insurer shall not be liable under the new policy in respect of any liability arising out of the use of such motor vehicle during such interval, and shall not, except as provided in subsection six of section nine of this Act, be liable under the expired policy in respect of any liability arising out of the use of such motor vehicle after the date upon which the expired policy is expressed to terminate.

(4) A trader's plate shall not be issued (except under the circumstances mentioned in subsection five of this section) unless and until there is lodged with the Commissioner a certificate in or to the effect of the prescribed form issued by an authorised insurer that a trader's plate policy expressed to commence not later than the date of commencement of the period for which such trader's plate is issued and to terminate upon the date of expiration of such period has been or will be issued by that authorised insurer in relation to motor vehicles to which such trader's plate is affixed at any time whilst such trader's plate policy is in force.

Conditions relative to issue of trader's plates.

(5) Where a trader's plate policy in relation to motor vehicles to which a trader's plate is affixed is expressed to terminate upon a certain date and before such date the Commissioner issues, in lieu of such trader's plate and for a period expiring upon such date, another trader's plate, such trader's plate policy shall enure in relation to motor vehicles to which such other trader's plate is affixed.

Motor Vehicles (Third Party Insurance).

9. (1) In order to comply with the requirements of this Act a policy of insurance—

Third-party policy.
cf. Act No. 2,332 (1936), S.A., s. 70c.

- (a) must be issued by an authorised insurer; and
- (b) (i) where such policy is not a trader's plate policy, must, except as provided in this section, insure the owner of the motor vehicle mentioned in the policy and any other person who at any time drives the motor vehicle, whether with or without the authority of the owner, jointly and each of them severally, against any liability which may be incurred by that owner and that person jointly or by either of them severally, in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle in New South Wales and in such other parts (if any) of the Commonwealth of Australia as may be prescribed; or
- (ii) where such policy is a trader's plate policy, must, except as provided in this section, insure the trader to whom the trader's plate mentioned in the policy is in issue and any other person who at any time drives a motor vehicle to which such trader's plate is affixed (whether the vehicle is so driven or the trader's plate is so affixed with or without the authority of the trader) jointly and each of them severally, against any liability which may be incurred by that trader and that person jointly or by either of them severally, in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle to which the trader's plate is so affixed, in New South Wales and in such other parts (if any) of the Commonwealth of Australia as may be prescribed; and
- (c) must be in a form approved by the Commissioner.

154

Motor Vehicles (Third Party Insurance).

(2) A third-party policy need not extend to insure the owner and the driver of the motor vehicle jointly and each of them severally against any liability which may be incurred by them or either of them in respect of the death of or bodily injury to—

- (a) the driver of the motor vehicle;
- (b) a member of the family of the owner of the motor vehicle ordinarily residing at the same address as the owner or the driver of the motor vehicle;
- (c) a member of the family of the driver of the motor vehicle ordinarily residing at the same address as the owner or the driver of the motor vehicle;
- (d) a person in the employment of the owner or the driver of the motor vehicle where the death of such person results from a personal injury which, or the bodily injury to such person is a personal injury which arises out of and in the course of such employment;
- (e) in any case where the motor vehicle is not a public motor vehicle licensed for the conveyance of passengers, a person in or upon, entering or getting on to or alighting from the motor vehicle.

(3) The liability of the authorised insurer under a third-party policy in relation to a public motor vehicle licensed for the conveyance of passengers may be limited to two thousand pounds in respect of any claim made by or in respect of any one person in or upon, entering or getting on to or alighting from that public motor vehicle. The sum referred to in this subsection shall be inclusive of all costs incurred in relation to any such claim.

(4) A policy of insurance which complies with the matters referred to in the foregoing provisions of this section other than paragraph (c) of subsection one of this section shall not be prevented from being a third-party policy merely by reason of the fact that it contains any term, condition or warranty not approved by the Commissioner; but any such term, condition or warranty shall be void and of no effect.

Motor Vehicles (Third Party Insurance).

(5) Notwithstanding anything in any enactment other than this Act or any rule of law an authorised insurer issuing a third-party policy shall, subject to section twenty-two of this Act, be liable to indemnify the owner and the driver jointly or either of them severally in respect of any liability which the third-party policy purports to cover in the case of the owner and the driver jointly or either of them severally.

(6) Where a third-party policy is issued by an authorised insurer in relation to a motor vehicle or in relation to motor vehicles to which a trader's plate is affixed, then unless the policy is sooner cancelled pursuant to this Act or unless the authorised insurer notifies the Commissioner, at least one month before the date upon which the policy is expressed to terminate, that he will not renew the policy, the policy shall—

- (a) except as provided in paragraph (b) of this subsection, continue in force for a period of fifteen days after the date upon which it is expressed to terminate;
- (b) where, during such period, another third-party policy issued by the same or another authorised insurer in relation to that motor vehicle or in relation to motor vehicles to which that trader's plate is affixed commences to have effect, continue in force until such commencement.

10. (1) A third-party policy may be cancelled by the authorised insurer if another third-party policy (not being a trader's plate policy) has been issued in relation to the same motor vehicle or another third-party policy (being a trader's plate policy) has been issued in relation to motor vehicles to which the same trader's plate is affixed, and such other third-party policy is expressed to terminate not earlier than the date upon which such first-mentioned third-party policy was expressed to terminate.

Cancellation of third-party policy.

(2) A third-party policy may be cancelled by the authorised insurer after notice of intention to cancel the same has been served on the Commissioner, and on the owner of the motor vehicle to which the third-party policy relates or, as the case may be, on the trader.

Such

Motor Vehicles (Third Party Insurance).

Such notice shall specify a day, not being earlier than thirty days after service of the notice, upon which the authorised insurer proposes to cancel the third-party policy.

Where an appeal is lodged on or before the day specified in the notice, the third-party policy shall not be cancelled unless and until the action of the authorised insurer is confirmed by the court or the appeal is for any reason dismissed.

(3) (a) Where the registration of an insured motor vehicle is cancelled by the Commissioner before the date on which the third-party policy in relation to the motor vehicle is expressed to terminate the authorised insurer who issued such policy shall, upon application by the owner and subject to any conditions which may be prescribed by the regulations, cancel such policy.

(b) Where a trader's plate issued to a trader is delivered to the Commissioner before the date on which the trader's plate policy in relation to motor vehicles to which such trader's plate is affixed, is expressed to terminate the authorised insurer who issued such policy shall, upon application by the trader and subject to any conditions which may be prescribed by the regulations, cancel such policy.

(4) Where, pursuant to subsection one or subsection two of this section, an authorised insurer cancels any third-party policy he shall forthwith notify the Commissioner of the fact.

(5) The cancellation of any third-party policy in accordance with this section shall not exempt the authorised insurer from any liability whether under the policy or under this Act, accrued or incurred before the date of cancellation.

11. (1) Where an authorised insurer refuses to issue to any person a third-party policy or refuses to renew or gives notice of intention to cancel a third-party policy issued to any person there shall be a right of appeal to the district court having jurisdiction in the district in which such person resides.

Appeal
against
refusal to
issue or
against
cancellation
of policy.

(2) Any such appeal shall be in the nature of a rehearing and shall be made in accordance with rules of court.

(3)

Motor Vehicles (Third Party Insurance).

(3) On any such appeal the district court may make such order as it thinks fit, having regard to the merits of the case and the public welfare.

Without prejudice to the generality of the foregoing power the district court may direct that the third-party policy be issued upon payment of a premium at the amount specified in the order or that the notice of intended cancellation of a policy be withdrawn upon payment of an additional amount to be specified in the order by way of premium.

(4) If any party to any such appeal is dissatisfied with the ruling, order, direction or decision of the district court in point of law or upon the admission or rejection of evidence such party may appeal from the same to the Supreme Court either by way of special case or upon notice of motion.

The provisions of Part VI of the District Courts Act, 1912, as amended by subsequent Acts, shall, mutatis mutandis, apply to and in respect of any such appeal.

12. (1) Any person who is willing to undertake insurance business in terms of this Act may apply to the Commissioner to have his name entered in the list of authorised insurers.

Authorised insurers.

(2) The Commissioner may grant or refuse any such application.

(3) In determining whether to grant or refuse any application the Commissioner shall have regard to the interests of the public generally and without prejudice to the generality of the foregoing requirement shall take into consideration—

cf. Act No. 4,198 Vict. (1928), s. 26.

- (a) the financial stability of the applicant; and
- (b) where the applicant is a firm or corporation, the character of the persons controlling the firm or corporation.

(4) The Commissioner shall not grant any such application unless it is established to his satisfaction that the applicant has complied with the requirements of any Act of the Parliament of the Commonwealth of Australia relating to the making of deposits.

(5)

Motor Vehicles (Third Party Insurance).

(5) Where the Commissioner grants any such application he shall enter the name of the applicant in the list of authorised insurers.

(6) The Colonial Treasurer, acting under the powers and authorities conferred by the Government Insurance Act, 1927-1930, as amended by subsequent Acts, shall be an authorised insurer for the purposes of this Act, and the name "The Colonial Treasurer" shall be entered in the list of authorised insurers.

13. (1) Any person whose name is on the list of authorised insurers may give notice to the Commissioner that he withdraws from insurance business in terms of this Act.

Withdrawal from business by authorised insurer.

Every such notice shall take effect as from the eighth day after delivery of the same to the Commissioner or from such later date as may be specified in the notice.

cf. Act No. 52, 1928 (N.Z.), s. 4 (3)-(5).

(2) Where any such notice is given the Commissioner shall, on the day upon which the notice takes effect, remove the name of such person from the list of authorised insurers.

14. (1) The Commissioner may, at any time, but subject to this section, remove the name of any person from the list of authorised insurers.

Removal by Commissioner from list of authorised insurers.

(2) Without prejudice to the generality of subsection one of this section the Commissioner may remove the name of any person from the list of authorised insurers if such person has, in his capacity as authorised insurer, been convicted of an offence against this Act.

(3) The Commissioner shall give notice to the person concerned of his intention to remove the name of that person from the list of authorised insurers, and shall, in such notice, specify the grounds upon which the action is taken and the date (not being earlier than fourteen days after the giving of such notice) upon which he proposes to remove the name.

(4) Where an appeal is lodged on or before the date specified in the notice the name of such person shall not be removed from the list of authorised insurers unless

Motor Vehicles (Third Party Insurance).

unless and until the action of the Commissioner is confirmed by the court or the appeal is for any reason dismissed.

15. (1) Where the Commissioner refuses any application by a person to have his name entered in the list of authorised insurers or gives notice to any person of his intention to remove the name of that person from the list of authorised insurers there shall be a right of appeal to the district court having jurisdiction in the metropolitan district.

Right of
appeal.

(2) Any such appeal shall be in the nature of a rehearing, and shall be made in accordance with rules of court.

(3) On any such appeal the district court may make such order as it thinks proper having regard to the merits of the case and the public welfare.

(4) If any party to any such appeal is dissatisfied with the ruling, order, direction or decision of the district court in point of law or upon the admission or rejection of evidence, such party may appeal from the same to the Supreme Court either by way of special case or upon notice of motion.

The provisions of Part VI of the District Courts Act, 1912, as amended by subsequent Acts, shall, mutatis mutandis, apply to and in respect of any such appeal.

16. (1) The removal of the name of any person from the list of authorised insurers shall not affect—

Removal of
name not to
affect
certain
liabilities.

(a) any third-party policy in force at the date of such removal;

(b) any liability of that person as an authorised insurer, whether under a third-party policy or under this Act, accrued or incurred before the date of such removal.

(2) For the purposes of any such policy and for all purposes relating to such liability this Act shall extend to and in respect of such person in all respects as if he were an authorised insurer.

17.

Motor Vehicles (Third Party Insurance).

17. (1) Where judgment has been obtained in respect of the death of or bodily injury to any person caused by or arising out of the use of an insured motor vehicle, and the third-party policy in relation to that motor vehicle insures the judgment debtor against liability in respect of such death or bodily injury, and the judgment debtor does not satisfy the judgment in full within one month after the same has been entered, the judgment creditor may recover by action against the authorised insurer who issued the third-party policy an amount equivalent to the sum (including costs) unpaid in respect of the judgment or the amount to which the liability of the authorised insurer is limited by the third-party policy, whichever is the smaller amount:

Liability of authorised insurer.
cf. Act 2,332 (1936), S.A., s. 70D.

Provided that, where execution on such judgment is stayed pending appeal, the time during which execution is so stayed shall be excluded in calculating the said period of one month:

Provided further that no such action shall be commenced until seven days at least after notice in writing of intention to commence such action is given to the authorised insurer.

(2) Where liability has been incurred by any person (in this section referred to as the "insured person") in respect of the death of or bodily injury to any other person caused by or arising out of the use of an insured motor vehicle, and the third-party policy in relation to that motor vehicle insures the insured person against that liability, but the insured person 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 the insured person if he were living or if he could be found as the case may be, may recover by action against the authorised insurer an amount equivalent to the sum for which he could have obtained a judgment against the insured person or the amount to which the liability of the authorised insurer is limited by the third-party policy, whichever is the smaller amount: Provided that he cannot so recover unless within a reasonable time after he knew that the

Motor Vehicles (Third Party Insurance).

the insured person was dead or could not be found he gave to the authorised insurer notice of intention to make the claim. Such notice may be incorporated in the notice given pursuant to section fifty-three of this Act or may be given separately.

The inquiry and search made for the insured person may be proved orally or by the affidavit of the person who made the inquiry and search.

(3) It shall be no defence by an authorised insurer to an action against him under this section that he is not liable under the third-party policy by reason of any act committed or omission made by the owner or driver of the insured motor vehicle.

In particular and without prejudice to the generality of the foregoing provisions of this subsection, it shall be no defence by an authorised insurer to an action against him under this section that he is not liable under the third-party policy by reason of the fact that—

- (a) the third-party policy was obtained by any false statement or misrepresentation or non-disclosure, whether fraudulent, material or otherwise; or
- (b) the owner of the insured motor vehicle has committed a breach of or has failed to comply with any term, condition or warranty of the third-party policy; or
- (c) the owner or driver of the insured motor vehicle has committed a breach of or has failed to comply with any provision of this Act.

(4) The authorised insurer may, in addition to any other right or remedy he may have, recover from the owner of the insured motor vehicle (and where two or more persons were such owners from such persons jointly and severally), so much of—

- (a) any judgment obtained against the authorised insurer; or

(b)

Motor Vehicles (Third Party Insurance).

- (b) any sums which the authorised insurer has paid in payment, settlement or compromise of the claim or of the judgment against the owner and the driver jointly or either of them severally or against the authorised insurer; and
- (c) the costs of and expenses reasonably incurred by the authorised insurer,

as would not have been recovered from or incurred or paid by the authorised insurer but for subsection three of this section and is reasonably attributable to—

- (i) the false statement or misrepresentation or non-disclosure in obtaining the third-party policy (but only where such false statement, misrepresentation or non-disclosure, whether fraudulent or otherwise, was in relation to some material fact or thing); or
- (ii) the fact that the owner has committed a breach of or has failed to comply with any term, condition or warranty of the third-party policy; or
- (iii) the fact that the owner has committed a breach of or has failed to comply with any provision of this Act other than subsection two of section twenty-three or subsection two of section twenty-four of this Act.

(5) The authorised insurer may, in addition to any other right or remedy he may have, recover from the driver so much of—

- (a) any judgment obtained against the authorised insurer; or
- (b) any sums which the authorised insurer has paid in payment, settlement or compromise of the claim or of the judgment against the owner and the driver jointly or either of them severally or against the authorised insurer; and
- (c) the costs of and expenses reasonably incurred by the authorised insurer,

as would not have been recovered from or incurred or paid by the authorised insurer but for subsection three of

Motor Vehicles (Third Party Insurance).

of this section and is reasonably attributable to the fact that the driver has committed a breach of or has failed to comply with any provision of this Act.

(6) An authorised insurer shall not be entitled to recover, under this section, from the driver, as well as from the owner, in respect of the same act or omission or in respect of the same breach of or failure to comply with any provision of this Act.

(7) Any payment by an authorised insurer, made in consequence of this section, shall, to the extent of such payment, be a discharge of—

(a) the liability of the judgment debtor to the judgment creditor or, as the case may be, of the insured person to the person bringing the action referred to in subsection two of this section; and

(b) the liability (if any) of the authorised insurer to the judgment debtor or, as the case may be, to the insured person.

18. For the purposes of any third-party policy, and for the purposes of any civil proceedings against the owner of an insured motor vehicle, whether severally or jointly with the driver of such motor vehicle, in respect of the death of or bodily injury to any person (not being an excepted person) caused by or arising out of the use of the insured motor vehicle, any person (other than the owner) who was, at the time of the occurrence out of which such proceedings arose, the driver of such insured motor vehicle (whether with or without the authority of the owner) shall be deemed to be the agent of the owner acting within the scope of his authority in relation to such motor vehicle:

Presumption of agency.

Provided that nothing in this section shall render the owner of the insured motor vehicle liable to a greater extent or amount than the liability in respect of which he is required to insure under this Act:

Provided further that nothing in this section shall be construed as implying any ratification by the owner of the insured motor vehicle of the acts of the person driving the motor vehicle.

164

Motor Vehicles (Third Party Insurance).

19. If any person, not being—

- (a) the owner of the motor vehicle; or
- (b) a person using the motor vehicle with the authority of the owner,

Unauthorised drivers.
 cf. 24 and 25 Geo. V, c. 50 s. 12 (Proviso).

incurs any liability in respect of the death of or bodily injury to any person caused by or arising out of the use of an insured motor vehicle driven by him, and the third-party policy in relation to that motor vehicle insures the owner and the driver of the insured motor vehicle jointly and each of them severally against liability in respect of such death or bodily injury, the authorised insurer shall not be required to pay any sum in respect of the liability of such first mentioned person otherwise than in or towards the discharge (to the limit of the liability of the authorised insurer under the third-party policy) of the liability of that person.

Any sum paid by the authorised insurer in or towards the discharge of the liability of the owner and of that person jointly or either of them severally in respect of such death or bodily injury shall be recoverable by the authorised insurer from that person.

20. (1) The authorised insurer who issued any third-party policy—

- (a) may for the purposes of the third-party policy undertake the settlement of any claim against the owner and the driver jointly or either of them severally;
- (b) may take over during such period as he thinks proper the conduct and control on behalf of the owner and the driver jointly or either of them severally of any proceedings taken or had to enforce such claim or for the settlement of any question arising with reference thereto;
- (c) may defend or conduct such proceedings in the name and on behalf of the owner and the driver jointly or either of them severally; and

Authorised insurer may take over proceedings, etc.
 cf. Act No. 52, 1928 (N.Z.), s. 12.

(d).

Motor Vehicles (Third Party Insurance).

(d) shall indemnify the owner or driver, as the case may be, against all costs and expenses of or incidental to any such proceedings while the authorised insurer retains the conduct and control thereof.

(2) The owner or driver, as the case may be, shall sign all such warrants and authorities as the authorised insurer requires for the purpose of enabling the authorised insurer to have the conduct and control of any proceedings referred to in subsection one of this section and, in default of his so doing, the court in which such proceedings are pending may order that the same be signed by the authorised insurer on behalf of such owner or driver.

(3) The authorised insurer who issued any third-party policy—

- (a) may represent the owner or driver of the insured motor vehicle at any inquest or other public inquiry in the Commonwealth of Australia relative to the death of or bodily injury to any person where such death or bodily injury is caused by or arises out of the use of the insured motor vehicle and the third-party policy insures the owner and the driver jointly and each of them severally against liability in respect of such death or bodily injury;
- (b) may take over during such period as he thinks proper the conduct and control of the defence of the owner or driver in any court of summary jurisdiction in the Commonwealth of Australia in respect of any alleged offence connected with the occurrence out of which such death or bodily injury arose;
- (c) shall indemnify the owner or driver, as the case may be, against all costs and expenses of or incidental to any such defence while the authorised insurer retains the conduct and control thereof.

(4) Where the death of or bodily injury to any person (not being an excepted person) is caused by or arises out of the use of an insured motor vehicle and a claim

Motor Vehicles (Third Party Insurance).

claim is made against the owner and the driver of the motor vehicle jointly or either of them severally in respect of such death or bodily injury, nothing said or done by or on behalf of the authorised insurer in connection with the settlement of any such claim shall be regarded as an admission of liability in respect of or shall in any way prejudice any other claim made against the owner and the driver jointly or either of them severally or any claim made by the owner or driver.

21. (1) Any provision, stipulation, covenant or condition in any agreement (whether made before or after the commencement of this Act) which negatives, limits or modifies or purports to negative, limit or modify the operation of the provisions of this Act shall be void and of no effect.

No contract-
ing out of
Act.

(2) In any action brought against the owner and the driver of an insured motor vehicle jointly or either of them severally (being a public motor vehicle licensed for the conveyance of passengers) or against an authorised insurer in respect of an accident resulting in the death of or bodily injury to any person being at the time of the accident a person in or upon, entering or getting on to, or alighting from that insured motor vehicle, it shall not be a defence that the contract of carriage had negated, limited or modified the liability of the owner or of any other person to pay damages in respect of accidents caused by or arising out of the use of that insured motor vehicle.

cf. Act No.
52, 1928
(N.Z.),
s. 13.

22. (1) If, at the time of the happening of any accident which results in the death of or bodily injury to any person and which is caused by or arises out of the use of an insured motor vehicle, the person driving the insured motor vehicle (in this section referred to as "the driver") is not the owner thereof, the driver shall, in any case where the third-party policy in relation to that motor vehicle insures the owner and the driver jointly and each of them severally against liability in respect of such death or bodily injury, forthwith give or cause to be given a notification in writing to the owner or authorised insurer of the fact of such accident and if so required by the authorised

Duties of
driver on
happening
of accident.

Motor Vehicles (Third Party Insurance).

authorised insurer shall furnish the authorised insurer with particulars as to the date, nature and circumstances of the accident, and thereafter shall give all such information and take all such steps as the authorised insurer may reasonably require in relation thereto, whether or not any claim has actually been made against the driver or the owner of the motor vehicle on account of the accident.

A notification under this subsection shall not be subject to discovery nor be admissible in evidence in any proceedings (whether or not for an offence against this or any Act) except proceedings for neglect or failure to comply with the requirements of this subsection.

(2) A notification as to every notice of intention to make a claim given to or of every claim made or action brought against him on account of the accident shall be forthwith thereafter given by the driver to the authorised insurer with such particulars as the authorised insurer may reasonably require.

(3) It shall be a sufficient compliance with the requirements of subsection one or subsection two of this section as to the giving of a notification if the notification is given by some person on behalf of the driver.

(4) The driver shall not without the written consent of the authorised insurer enter upon or incur the expense of litigation as to any matter or thing in respect of which he is insured under the third-party policy nor shall he, without such consent, make any offer, promise, payment or settlement or any admission of liability as to any such matter.

(5) If the driver neglects or fails to comply with or observe the provisions of this section he shall be guilty of an offence against this Act.

23. (1) Every third-party policy, not being a trader's plate policy, in relation to a motor vehicle shall enure in favour of the owner for the time being and the driver, notwithstanding any change in the ownership of the motor vehicle, but shall cease to have effect upon the issue of another third-party policy in relation to that

Change of ownership of motor vehicle.
cf. Act No. 52, 1928. (N.Z.), s. 7.

motor

Motor Vehicles (Third Party Insurance).

motor vehicle except in relation to any liability, whether under the policy or under this Act, accrued or incurred before such other third-party policy was issued.

(2) As soon as practicable after the owner of an insured motor vehicle sells or ceases to have possession of the motor vehicle—

- (a) he shall give notice in writing to the authorised insurer who issued the third-party policy of the sale or passing of possession of the insured motor vehicle and of the name and address of the person who has purchased or acquired possession thereof; and
- (b) the person who has purchased or acquired possession of the insured motor vehicle shall give notice in writing to the authorised insurer that he has purchased or acquired possession of the insured motor vehicle.

Any person who neglects or fails to comply with the requirements of this subsection shall be guilty of an offence against this Act.

(3) Where, after a person purchases or acquires possession of an insured motor vehicle, liability arises in respect of the death of or bodily injury to any person caused by or arising out of the use of the insured motor vehicle, and the authorised insurer had not, before the time at which such liability arose, received notice of such purchase or acquisition of possession, the authorised insurer may recover from the person who purchased or acquired possession of the insured motor vehicle, by way of damages, so much of any amount paid in satisfaction of such liability as is reasonably attributable to the fact that the authorised insurer did not, before such time, receive such notice.

(4) For the purposes of this section a person shall be deemed not to have ceased to have possession or, as the case may be, not to have acquired possession of an insured motor vehicle where a change of possession occurs by way of—

- (a) any hiring (not being a hiring under a hire-purchase agreement) or any lending of a motor vehicle; or

(b)

Motor Vehicles (Third Party Insurance).

- (b) the passing of the possession of a motor vehicle to a bailee for the purpose of sale or disposal or for the purpose of alteration, repair, renovation, garaging, storing or other like purpose not involving the use of the motor vehicle for the benefit of the bailee.

24. (1) Every trader's plate policy in relation to motor vehicles to which a trader's plate issued in respect of any business is affixed shall enure in favour of the person who for the time being is carrying on such business and the driver of any such motor vehicle, notwithstanding any change in the ownership of such business, but shall cease to have effect upon the issue of another trader's plate policy in relation to motor vehicles to which that trader's plate is affixed except in relation to any liability, whether under the policy or under this Act, accrued or incurred before such other trader's plate policy was issued.

Change of ownership of trader's business.

(2) As soon as practicable after the sale or other disposal of any such business—

- (a) the former owner of the business shall give notice in writing to the authorised insurer who issued the trader's plate policy of the fact of such sale or disposal and of the name and address of the new owner of the business; and
- (b) the new owner of the business shall give notice in writing to such authorised insurer of the fact of his acquisition of such business.

Any person who neglects or fails to comply with the requirements of this subsection shall be guilty of an offence against this Act.

(3) Where, after a person purchases or otherwise acquires any business in respect of which a trader's plate is in issue, liability arises in respect of the death of or bodily injury to any person caused by or arising out of the use of any motor vehicle to which such trader's plate is affixed, and the authorised insurer had not, before the time at which such liability arose, received notice of such purchase or acquisition of the business, the

14/3

Motor Vehicles (Third Party Insurance).

the authorised insurer may recover from the person who purchased or otherwise acquired the business, by way of damages, so much of any amount paid in satisfaction of such liability as is reasonably attributable to the fact that the authorised insurer did not, before such time, receive such notice.

25. (1) Any authorised insurer who upon any proposal for a third-party policy issues a policy of insurance which is not a third-party policy or which contains any term, condition or warranty rendered void by the operation of subsection four of section nine of this Act shall be guilty of an offence against this Act.

Offences.

(2) Any person who, not being an authorised insurer, advertises himself or holds himself out to be an authorised insurer or undertakes, or offers to undertake insurance business in terms of this Act, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding five hundred pounds.

(3) Any person who in or with respect to any proposal for a third-party policy knowingly makes any false statement or misrepresentation with regard to any material fact or thing or fails to disclose any material fact or thing of which he has knowledge shall be guilty of an offence against this Act.

(4) If the owner of an insured motor vehicle commits any act or makes any omission contrary to the terms or conditions of the third-party policy in relation to the motor vehicle, and no penalty for the commission of such act or the making of such omission is provided by or under any Act other than this Act he shall be guilty of an offence against this Act.

26. A notification given to an authorised insurer by the owner of an insured motor vehicle pursuant to the conditions of the third-party policy in relation to the motor vehicle shall not be subject to discovery nor be admissible in evidence in any proceedings (whether or not for an offence against this or any other Act) except proceedings for an offence against subsection four of section twenty-five of this Act.

Certain notifications not subject to discovery.

Motor Vehicles (Third Party Insurance).

DIVISION 3.—Payments to hospitals, etc.

27. In this Division—

Definitions.

“Ambulance vehicle” means a motor vehicle which is fitted or equipped or constructed for use for the conveyance of sick or injured persons and which is controlled by a district committee or by the council of a city, municipality or shire or a county council established under the Local Government Act, 1919, or by the governing body or manager of a hospital.

“District committee” means a district committee within the meaning of the Ambulance Transport Service Act, 1919, as amended by subsequent Acts.

“Hospital” means an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937, or a private hospital licensed under the Private Hospitals Act, 1908, as amended by subsequent Acts.

“Medical Treatment” does not include treatment which is rendered by a medical practitioner to a patient in a hospital and in respect of which the medical practitioner is by or under any Act prohibited from charging the patient with any fees.

“Proper officer” in relation to a hospital (other than a private hospital) or a district committee means the person generally or specially authorised by the governing body of the hospital or by the district committee in respect of or whose duty it is to deal with or to act in regard to any acts, matters or things in relation to which the expression is used; and in relation to a council means the proper servant of the council as defined in the Local Government Act, 1919; and in relation to a private hospital means the manager.

Motor Vehicles (Third Party Insurance).

28. (1) Subject to subsection two of this section, where any payment is made (whether or not with an admission of liability) by an authorised insurer, in respect of the death of or bodily injury to any person caused by or arising out of the use of an insured motor vehicle and the third-party policy in relation to that motor vehicle insures the owner and the driver of the motor vehicle jointly and each of them severally against liability in respect of such death or bodily injury—

Payments in respect of certain matters.

- (a) if such person received hospital treatment as an in-patient in respect of such bodily injury or of the injury which caused his death, there shall also be paid by the authorised insurer to the proper officer of the hospital at which the hospital treatment was received an amount calculated at the rate of nine shillings for each day or part of a day during which he received such hospital treatment, or a total amount of fifty pounds (whichever is the less);
- (b) if such person received, in respect of such bodily injury or of the injury which caused his death, hospital treatment as an out-patient or reasonably necessary medical treatment by a legally qualified medical practitioner or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, or such person, as a consequence of such bodily injury or of the injury which caused his death, was conveyed in any ambulance vehicle, there shall also be paid by the authorised insurer to the proper officer of the hospital at which such hospital treatment was received or to such medical practitioner or nurse or to the proper officer of the district committee or council by which such ambulance vehicle is controlled or of the hospital by the governing body or manager of which such ambulance vehicle is controlled (as the case may be) an amount calculated in accordance with a scale to be prescribed by the regulations but not exceeding a maximum amount (if any) prescribed by the regulations.

Any

Motor Vehicles (Third Party Insurance).

Any regulations made in relation to any matter referred to in paragraph (b) of this subsection may prescribe different scales and/or different maximum amounts in respect of different classes of hospital treatment, medical treatment, nursing or conveyance or according to different circumstances.

(2) An authorised insurer shall not be bound to pay any amount under this section unless notice in writing that a claim will be made either under this section or section twenty-nine of this Act is given to the authorised insurer as soon as practicable after the proper officer, medical practitioner or nurse, as the case may be, became aware of the identity of the authorised insurer but not, in any case, later than one month after such proper officer, medical practitioner or nurse could with reasonable diligence have ascertained the identity of the authorised insurer.

(3) Any amount payable under this section by an authorised insurer may be recovered as a debt from the authorised insurer by the proper officer, medical practitioner or nurse to whom, under the terms of this section, the amount is payable.

cf. Act
24 and 25
Geo. V,
c. 50,
s. 17 (5).

29. Where the death of or bodily injury to any person is caused by or arises out of the use of an insured motor vehicle and the third-party policy in relation to that motor vehicle insures the owner and the driver of the motor vehicle jointly and each of them severally against liability in respect of such death or bodily injury, and the person suffering death or bodily injury received, in respect of such bodily injury or the injury which caused his death, hospital treatment, or reasonably necessary medical treatment by a legally qualified medical practitioner or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, or such person, as a consequence of such bodily injury or of the injury which caused his death, was conveyed in any ambulance vehicle, the following provisions shall have effect:—

Right of
action
against
insured
person by
hospital, etc.

- (a) Where such person received hospital treatment as an in-patient, the proper officer of the hospital at which such hospital treatment was received

Motor Vehicles (Third Party Insurance).

received may, in the name and on behalf of such person, and notwithstanding that such person may be dead, recover by way of damages from the owner and the driver of the insured motor vehicle jointly or from either of them severally an amount calculated at the rate of nine shillings for each day or part of a day during which he received such hospital treatment, or a total amount of fifty pounds (whichever is the less).

- (b) Where such person received hospital treatment as an out-patient or reasonably necessary medical treatment by a legally qualified medical practitioner or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, or such person was conveyed in any ambulance vehicle, the proper officer of the hospital at which such hospital treatment was received or such medical practitioner or nurse or the proper officer of the district committee or council by which such ambulance vehicle is controlled or of the hospital by the governing body or manager of which such ambulance vehicle is controlled (as the case may be) may, in the name and on behalf of such person, and notwithstanding that such person may be dead, recover by way of damages from the owner and the driver of the insured motor vehicle jointly or from either of them severally an amount calculated in accordance with a scale to be prescribed by the regulations but not exceeding a maximum amount (if any) prescribed by the regulations.
- (c) Any regulations made in relation to any matter referred to in paragraph (b) of this section may prescribe different scales and/or different maximum amounts in respect of different classes of hospital treatment, medical treatment, nursing or conveyance or according to different circumstances.

(d)

Motor Vehicles (Third Party Insurance).

- (d) No action under this section for the recovery of any amount referred to in this section shall be commenced unless notice in writing that a claim will be made under this section or section twenty-eight of this Act is given to the authorised insurer as soon as practicable after the proper officer, medical practitioner or nurse became aware of the identity of the authorised insurer but not, in any case, later than one month after such proper officer, medical practitioner or nurse could with reasonable diligence have ascertained the identity of the authorised insurer.
- (e) No action under this section for the recovery of any amount referred to in this section shall be commenced by the proper officer, medical practitioner or nurse—
 - (i) in any case where the authorised insurer has made a payment (whether or not with an admission of liability) in respect of the death of or bodily injury to the person who received the hospital treatment, medical treatment nursing or conveyance;
 - (ii) in any case where proceedings have been commenced for the recovery of damages in respect of the death of or bodily injury to such person, unless and until such proceedings have been dismissed for want of prosecution;
 - (iii) in any other case, until six months at least after the happening of the event giving rise to the liability of the owner and/or the driver of the insured motor vehicle.
- (f) Where action under this section for the recovery of any amount referred to in this section has been commenced by the proper officer, medical practitioner or nurse, and before such action

149

Motor Vehicles (Third Party Insurance).

has been completed proceedings are commenced by any other person for the recovery of damages in respect of the death of or bodily injury to the person who received the hospital treatment, medical treatment, nursing or conveyance such action shall be stayed pending completion of the proceedings.

If as a result of such proceedings the authorised insurer makes a payment under section thirty of this Act of the amount to which the action relates such action shall abate.

- (g) Any payment by an authorised insurer in settlement of any claim made or judgment recovered under this section shall be made direct to the proper officer, medical practitioner or nurse as the case may be.

30. Any payment by an authorised insurer under and in accordance with section twenty-eight or section twenty-nine of this Act in respect of hospital treatment or medical treatment by a medical practitioner or nursing by a nurse rendered to the person suffering death or bodily injury or in respect of the conveyance of such person in an ambulance vehicle shall, to the extent of such payment, be a discharge of—

Payments by authorised insurer.

- (a) the liability of any person to the proper officer, medical practitioner or nurse in respect of such hospital treatment, medical treatment, nursing or conveyance;
- (b) the liability of the owner and the driver of the insured motor vehicle jointly and each of them severally to any person in respect of such hospital treatment, medical treatment, nursing or conveyance;
- (c) the liability (if any) of the authorised insurer to any person in respect of such hospital treatment, medical treatment, nursing or conveyance.

180

Motor Vehicles (Third Party Insurance).

DIVISION 4.—Motor Omnibuses.

31. (1) This Act shall not apply to or in respect of any motor omnibus registered under the Transport Act, 1930, as amended by subsequent Acts, until the date upon which section thirty-four of this Act commences.

Application of Act to motor omnibuses.

(2) After the commencement of section thirty-four of this Act, this Act shall extend to and in respect of motor omnibuses registered under the Transport Act, 1930, as amended by subsequent Acts.

32. (1) The Transport Act, 1930, as amended by subsequent Acts, is amended—

Amendment of Act No. 18, 1930.

(a) (i) by omitting subsections one, two and three of section one hundred and fifty-four and by inserting in lieu thereof the following subsections:—

Sec. 154. (Insurance.)

(1) In this section—

“Authorised insurer” means a person whose name is for the time being on the list of authorised insurers under the Motor Vehicles (Third Party Insurance) Act, 1939.

Insurance of motor omnibuses against damage to property.

“Commissioner” means the Commissioner for Road Transport and Tramways.

“Policy” means a policy of insurance which complies with the requirements of this section and includes a cover note issued in respect of such a policy.

(2) (a) The owner of a motor omnibus shall insure himself and keep himself insured to the extent of at least one thousand pounds under a policy of insurance in a form approved by the Commissioner and issued by an authorised insurer against liability to pay damages in respect of damage to property caused by or arising out of the use of the motor omnibus.

(b).

Motor Vehicles (Third Party Insurance).

(b) The insurance required by paragraph (a) of this subsection shall be additional to the insurance required by the Motor Vehicles (Third Party Insurance) Act, 1939.

(3) (a) Registration or renewal of registration of a motor omnibus shall not be granted unless and until there is lodged with the Commissioner a certificate in or to the effect of the prescribed form issued by an authorised insurer that a policy expressed to commence upon the date of issue of such certificate or upon any date not later than the date of commencement of the registration or renewal of registration (as the case may be) and to terminate upon the date of expiration of such registration or renewal has been or will be issued by that authorised insurer in relation to such motor omnibus: Provided that in the case of a renewal of the registration of a motor omnibus not being the first renewal, after the commencement of section thirty-two of the Motor Vehicles (Third Party Insurance) Act, 1939, of a registration which was in force at such commencement, where the authorised insurer who issued the policy in force in relation to the motor omnibus on the date of expiration of the registration or last preceding renewal of the registration of the motor omnibus has not notified the Commissioner, at least one month before such date, that he will not renew such policy, the Commissioner may accept, in lieu of a certificate of the nature referred to in this paragraph, the appropriate amount of insurance premium for renewal of such policy.

Upon acceptance by the Commissioner of any amount under this paragraph the aforesaid authorised insurer shall be deemed to have

Motor Vehicles (Third Party Insurance).

have issued in relation to the motor omnibus a policy expressed to commence upon the date of such acceptance or the date of commencement of the renewal of registration (whichever of such dates is the later) and to terminate upon the date of expiration of the renewal of registration.

Such amount shall be paid by the Commissioner to such authorised insurer.

(b) In any case where an authorised insurer issues (including any case where an authorised insurer is deemed, under paragraph (a) of this subsection, to have issued) a policy in this paragraph hereinafter referred to as the "new policy" in relation to a motor omnibus for a period expressed to terminate upon the date of expiration of a renewal of the registration of that motor omnibus and such authorised insurer also issued the last preceding policy in this paragraph hereinafter referred to as the "expired policy" in relation to that motor omnibus the new policy shall be deemed to be a renewal of the expired policy, in favour of the owner for the time being, notwithstanding any change in the ownership of the motor omnibus, and notwithstanding any interval between the respective periods for which such policies are expressed to be effective, and insurance premium shall be payable as if the new policy had commenced from the date of commencement of the renewal of registration: Provided that the authorised insurer shall not be liable under the new policy in respect of any liability arising out of the use of such motor omnibus during such interval and shall not, except as provided in paragraph (c) of this subsection, be liable under the expired policy in respect of any liability arising out of the use of such motor omnibus after the date
upon

Motor Vehicles (Third Party Insurance).

upon which the expired policy is expressed to terminate.

(c) Where a policy is issued by an authorised insurer in relation to a motor omnibus, and the authorised insurer does not, at least one month before the date on which the policy is expressed to terminate, notify the Commissioner that he will not renew the policy, the policy shall—

- (i) except as provided in subparagraph (ii) of this paragraph, continue in force for a period of fifteen days after the date upon which it is expressed to terminate;
 - (ii) where, during such period, another policy issued by the same or another authorised insurer in relation to that motor omnibus commences to have effect, continue in force until such commencement.
- (ii) by omitting from subsection four of the same section the word “insurer” wherever occurring and by inserting in lieu thereof the words “authorised insurer”;
 - (iii) by omitting from subsection five of the same section the words “injuries to persons and/or property” and by inserting in lieu thereof the words “damage to property caused by or”;
 - (iv) by omitting from subsection six of the same section the word “insurer” wherever occurring, and by inserting in lieu thereof the words “authorised insurer”;
 - (v) by omitting from subsection eight of the same section the words “and deposit with the Trust”;
 - (vi) by inserting at the end of the same subsection the words “and shall lodge with the Commissioner a certificate by an authorised insurer that a policy or policies as required by this subsection have been issued”;
 - (vii)

Motor Vehicles (Third Party Insurance).

(vii) by omitting from subsection nine of the same section the word "Trust" and by inserting in lieu thereof the word "Commissioner";

(b) by omitting sections one hundred and fifty-five and one hundred and fifty-six.

Secs. 155, 156.
(Self-insurers:
notice of
accidents.)

(2) This section shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

DIVISION 5.—Uninsured and unidentified motor vehicles.

33. In this Division, unless the context or subject matter otherwise indicates or requires— Definitions.

"Nominal defendant" means the person who, for the time being, is the nominal defendant for the purposes of this Act.

"Uninsured motor vehicle" means a motor vehicle which is not an insured motor vehicle, but does not include a motor vehicle in respect of which persons are exempted by the regulations from the provisions of section seven of this Act.

34. (1) The Minister may from time to time, by notification in the Gazette, appoint any person resident in New South Wales to be the nominal defendant for the purposes of this Act and may, from time to time, in like manner, revoke any such appointment. Nominal
defendant.

(2) Any action or proceeding by or against the nominal defendant may be taken in the name of "The Nominal Defendant" and the death or resignation of or the revocation of the appointment of the person holding office as nominal defendant at the time any action or proceeding was commenced and the appointment of another person in his place shall not abate the action or proceeding but the same may be continued and concluded as if there had been no such death, resignation, revocation or appointment.

Motor Vehicles (Third Party Insurance).

35. (1) Where the death of or bodily injury to any person (not being an excepted person) is caused by or arises out of the use upon a public street of an uninsured motor vehicle—

Duties of owner and driver of uninsured vehicle.

- (a) it shall be the duty of the owner, as soon as practicable after the accident which results in such death or bodily injury, or, if the owner was not driving the motor vehicle at the time of such accident, as soon as practicable after he first becomes aware of the accident, to give or cause to be given a notification in writing to the nominal defendant of the fact of such accident, with particulars as to the date, nature and circumstances thereof and thereafter to give all such other information and to take all such steps as the nominal defendant may reasonably require in relation thereto, whether or not any claim has actually been made against the nominal defendant on account of such accident;
- (b) if at the time of the accident which results in such death or bodily injury the person driving the motor vehicle (in this section referred to as "the driver") is not the owner thereof, the driver shall forthwith give or cause to be given a notification in writing to the owner or the nominal defendant of the fact of such accident, and if so required by the nominal defendant shall furnish the nominal defendant with particulars as to the date, nature and circumstances of the accident, and thereafter shall give all such information and take all such steps as the nominal defendant may reasonably require in relation thereto, whether or not any claim has actually been made against the nominal defendant on account of the accident;
- (c) the owner or driver shall not make any offer, promise, payment or settlement or any admission of liability in respect of such death or bodily injury.

It

Motor Vehicles (Third Party Insurance).

It shall be a sufficient compliance with the requirements of this subsection as to the giving of a notification if the notification is given by some person on behalf of the owner or driver (as the case may be).

A notification under this subsection shall not be subject to discovery nor be admissible in evidence in any proceedings (whether or not for an offence against this or any other Act) except proceedings for failure to comply with or observe the provisions of this subsection.

(2) If the owner or driver neglects or fails to comply with or observe the provisions of this section he shall be guilty of an offence against this Act.

36. (1) Every claim for damages in respect of the death of or bodily injury to any person (not being an excepted person) caused by or arising out of the use upon a public street of an uninsured motor vehicle shall be made to the nominal defendant and not to the owner or driver of the uninsured motor vehicle and any proceedings to enforce any such claim for damages shall be taken against the nominal defendant and not against the owner or driver of the uninsured motor vehicle.

Certain claims and proceedings to be made to and taken against the nominal defendant.

Any such claim may be so made and any such proceedings may be so taken notwithstanding that the owner or driver of the uninsured motor vehicle is dead or cannot be found.

(2) Any settlement of a claim under subsection one of this section effected between the nominal defendant and the claimant shall be binding upon the owner and/or the driver of the uninsured motor vehicle, or, if he be dead at the date the settlement is effected, upon his estate, and may be enforced as provided in section thirty-seven of this Act.

(3) Any judgment obtained against the nominal defendant in proceedings to enforce any claim under subsection one of this section shall be binding upon the owner and/or the driver of the uninsured motor vehicle, or, if he be dead at the date the judgment is obtained, upon his estate, and may be enforced as provided in section thirty-eight of this Act.

(4)

Motor Vehicles (Third Party Insurance).

(4) The nominal defendant shall not be liable to pay any amount agreed upon in any such settlement made between the nominal defendant and a claimant, nor the amount of any such judgment (including costs), but any such amount, if not paid by the owner and/or the driver, shall, subject to subsection five of this section, be payable by the authorised insurers in accordance with this Division.

(5) Where any claim under subsection one of this section is in respect of the death of or bodily injury to any person who, at the time of the occurrence giving rise to the claim, was in or upon, entering or getting on to or alighting from a public motor vehicle licensed for the conveyance of passengers, and such public motor vehicle is the uninsured motor vehicle out of the use of which the claim arises, and either a settlement is effected between the nominal defendant and the claimant or a judgment is obtained by the claimant against the nominal defendant for an amount which, in either case, exceeds the sum of two thousand pounds then—

- (a) if a sum of not less than two thousand pounds is paid by or recovered from the owner and/or the driver no moneys shall be payable by the authorised insurers in accordance with this Division;
- (b) if a sum of less than two thousand pounds is paid by or recovered from the owner and/or the driver the difference between that sum and the sum of two thousand pounds shall be payable by the authorised insurers in accordance with this Division;
- (c) if nothing is paid by or recovered from the owner and/or the driver, the sum of two thousand pounds shall be payable by the authorised insurers in accordance with this Division.

37. (1) Where a settlement of any claim under subsection one of section thirty-six of this Act is effected between

Enforcement
of terms of
settlement.

Motor Vehicles (Third Party Insurance).

between the nominal defendant and the claimant the amount payable to the claimant under the terms of settlement may be recovered by the claimant as a debt from—

- (a) the owner of the uninsured motor vehicle (or, if the owner was dead at the date the settlement was effected, or died thereafter, the legal personal representative of such owner) in any case where the owner was driving the motor vehicle at the time of the occurrence giving rise to the claim;
- (b) the owner and the driver of the uninsured motor vehicle (or, if such owner and driver or either of them was dead at the date the settlement was effected or died thereafter, their or his legal personal representative or representatives) jointly or either of them severally, in any case where some person other than the owner was driving the motor vehicle at the time of the occurrence giving rise to the claim:

Provided that it shall be a sufficient defence to any proceedings against the owner (whether severally or jointly with the driver) if he establishes to the satisfaction of the Court, that, at the time of such occurrence, such other person was driving the motor vehicle without the authority of the owner:

Provided further that it shall be a sufficient defence to any proceedings against the driver (whether severally or jointly with the owner) if he establishes to the satisfaction of the court that at the time of such occurrence 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 an insured motor vehicle.

- (2) Where the person who is liable to pay the amount payable to the claimant under the terms of settlement cannot after strict inquiry and search be found, or where the claimant has taken all reasonable steps to recover that amount from such person but that amount

Motor Vehicles (Third Party Insurance).

amount remains unpaid in whole or in part that amount (or so much thereof as remains unpaid) shall, subject to subsection five of section thirty-six of this Act, be payable by the authorised insurers in accordance with this Division.

The inquiry and search made for the person so liable may be proved orally or by the statutory declaration of the person who made the inquiry and search.

38. (1) Where judgment is obtained in proceedings to enforce any claim under subsection one of section thirty-six of this Act, the court may, at the date of the judgment, or any judge of the court may, at any time thereafter, direct that judgment be entered against—

Enforcement
of
judgments
against
nominal
defendant.

- (a) the owner of the uninsured motor vehicle (or, if the owner was dead at the date the judgment was obtained, the legal personal representative of such owner) in any case where he was driving the motor vehicle at the time of the occurrence giving rise to the claim;
- (b) the owner and the driver of the motor vehicle (or, if such owner and driver or either of them was dead at the date the judgment was obtained or died thereafter, their or his legal personal representative or representatives) jointly or either of them severally, in any case where some person other than the owner was driving the motor vehicle at the time of the occurrence giving rise to the claim:

Provided that no such direction shall be given for entry of the judgment against the owner (whether severally or jointly with the driver) if he establishes to the satisfaction of the court or judge that, at the time of such occurrence, the motor vehicle was being driven by such other person without the authority of the owner:

Provided further that no such direction shall be given for entry of the judgment against the driver (whether severally or jointly with the owner) if he establishes to the satisfaction of the

the

Motor Vehicles (Third Party Insurance).

the court or judge that at the time of such occurrence 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 an insured motor vehicle.

(2) The court or judge may of its or his own motion and shall, if so required by the judgment creditor or the nominal defendant, give a direction under subsection one of this section unless satisfied that the person who would be named in the direction cannot after strict inquiry and search be found, or that there is no reasonable probability that, if the direction were given, the judgment could be enforced against the person who would be named in the direction.

The inquiry and search made for the person who would be named in the direction may be proved orally or by the affidavit of the person who made the inquiry and search.

(3) Where the court or judge gives any such direction the judgment may be entered and enforced against the person named in the direction.

(4) Where no direction is given under subsection one of this section, or where any such direction has been given and the judgment creditor has taken all reasonable steps to enforce the judgment against the person named in the direction, but the judgment remains unsatisfied in whole or in part, the amount of the judgment (or so much thereof as remains unpaid) shall, subject to subsection five of section thirty-six of this Act, be payable by the authorised insurers in accordance with this Division.

39. (1) A claim for damages in respect of the death of or bodily injury to any person (not being an excepted person) caused by or arising out of the use upon a public street of a motor vehicle the identity of which cannot be established, may be taken against the nominal defendant.

Unidentified
motor
vehicles.

(2) The nominal defendant shall not be liable to pay any amount agreed upon in settlement of a claim under

Motor Vehicles (Third Party Insurance).

under subsection one of this section made between the nominal defendant and the claimant nor the amount of any judgment (including costs) recovered against the nominal defendant by the claimant, but any such amount shall be payable by the authorised insurers in accordance with this Division.

(3) No action shall lie against the nominal defendant under this section unless notice of intention to make a claim is given by the claimant to the nominal defendant within a reasonable time after the occurrence out of which the claim arose. Such notice may be incorporated in the notice given pursuant to section fifty-three of this Act or may be given separately.

40. (1) Where any claimant who has effected a settlement with the nominal defendant or who has obtained a judgment against the nominal defendant under this Division has or deems himself to have a right under this Division to have the amount payable under the terms of settlement or the amount (including costs) payable under the judgment (or so much of either such amount as remains unpaid) paid by the authorised insurers in accordance with this Division, he may apply to the Commissioner to take action to have such amount (or the amount remaining unpaid) paid to him accordingly.

Recovery
from
authorised
insurers.

(2) Every such application shall be supported by evidence which satisfies the Commissioner that the amount payable under the terms of settlement or the amount (including costs) payable under the judgment (or so much of either such amount as remains unpaid) has become payable by the authorised insurers.

(3) Where the Commissioner is satisfied that any amount (including an amount remaining unpaid) is payable by the authorised insurers in accordance with this Division, he shall apportion such amount in proportions determined by him among all those who were authorised insurers at the time of the occurrence out of which the claim arose. In so determining the Commissioner shall have regard to the premium income in respect of third-party policies received by each such authorised insurer during a period adopted by the Commissioner for the purpose.

(4)

Motor Vehicles (Third Party Insurance).

(4) When the Commissioner apportions any such amount he shall—

- (a) give notice to each authorised insurer concerned of the sum which the Commissioner has determined as being payable by that authorised insurer and shall specify in such notice what portion of such sum is payable in or towards satisfaction of the judgment or the amount payable under the terms of settlement and what portion of such sum is payable in or towards satisfaction of the costs of and expenses reasonably incurred by the nominal defendant;
- (b) in such notice, require the authorised insurer to pay the sum specified in the notice to the Colonial Treasurer within a time to be specified in the notice;
- (c) furnish the Colonial Treasurer with a list showing the sums specified in the notices referred to in paragraph (a) of this subsection, determined by the Commissioner as being payable by the respective authorised insurers, and notify the Colonial Treasurer of the time within which such amounts have been required to be paid.

The Commissioner may revoke, alter or vary any such notice from time to time as occasion requires.

(5) (a) The Colonial Treasurer shall, on application made to him by a claimant who has effected a settlement with or has obtained a judgment against the nominal defendant under this Division, pay to such claimant any sums (not being sums paid in or towards satisfaction of the costs of or expenses reasonably incurred by the nominal defendant) received by the Colonial Treasurer under this Division, in respect of such settlement or judgment.

(b) The Colonial Treasurer shall, on application made to him by the nominal defendant, pay to the nominal defendant any sums received by the Colonial Treasurer

Motor Vehicles (Third Party Insurance).

Treasurer in or towards satisfaction of the costs of or expenses reasonably incurred by the nominal defendant.

(6) Where an authorised insurer neglects or fails to pay to the Colonial Treasurer the sum specified in any notice given to him under this section within the time specified in the notice he shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred pounds, and the court, in addition to imposing a penalty, may order such authorised insurer to pay to the Colonial Treasurer such amount or such portion of it as remains unpaid.

Any such order shall operate as an order for the payment of money under the Small Debts Recovery Act, 1912-1933, and be enforceable as such order under the provisions of that Act. For such purpose such order may be entered in the records of the Small Debts Court exercising jurisdiction at the place where such order was made in such manner as may be prescribed by rules made under that Act.

(7) The authorised insurers who have, in accordance with this section, paid the sums specified in notices given to them under this section, shall be subrogated to the rights of the person to whom such sums are paid, against the owner and the driver of the motor vehicle concerned or against either of them.

41. (1) Any amount from time to time necessary to enable the nominal defendant to exercise and perform the powers, authorities, duties and functions conferred and imposed upon him by or under this Division shall be paid by the authorised insurers in such proportions as the Commissioner may determine. In so determining the Commissioner shall have regard to the premium income in respect of third-party policies received by each authorised insurer during a period adopted by the Commissioner for the purpose.

General expenses of nominal defendant.

(2) The provisions of subsections four, five and six of section forty of this Act shall apply, mutatis mutandis, to and in respect of notices to and payments by authorised insurers under this section.

DIVISION

Motor Vehicles (Third Party Insurance).

DIVISION 6.—*Amendment of Government Insurance Act, 1927-1930, as amended by subsequent Acts.*

42. The Government Insurance Act, 1927-1930, as amended by subsequent Acts, is amended by inserting next after paragraph (f) of section two the following new paragraph:—

Amendment of Act No. 18, 1927, s. 2.

(Power to carry on certain insurance business.)

(f1) to undertake and carry on all classes of insurance in relation to motor vehicles, inclusive of any liability and any benefit, and inclusive of insurance business in terms of the Motor Vehicles (Third Party Insurance) Act, 1939,

PART III.

PREMIUMS.

43. (1) There shall be a committee to be called the Premiums Committee which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed on the Premiums Committee by this Part.

Premiums Committee.

(2) The Premiums Committee shall consist of seven members, six of whom (in this Part referred to as "appointed members") shall be appointed by the Governor by notification in the Gazette and one of whom shall be the person who, for the time being, holds the office of Government Actuary.

The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of appointed members, nor shall the appointed members, in their capacity as appointed members, be subject to the provisions of any such Act during their term of office.

(3) Of the appointed members—

(a) one shall, in and by the instrument by which he is appointed, be appointed chairman of the Premiums Committee;

(b)

Motor Vehicles (Third Party Insurance).

- (b) two (in this Part referred to as "insurers' representatives") shall be appointed to represent the interests of persons carrying on the business of motor vehicle accident insurance in New South Wales;
- (c) two (in this Part referred to as "motorists' representatives") shall be appointed to represent the interests of owners and drivers of motor vehicles;
- (d) one shall be a representative of the Government Insurance Office of New South Wales established under the Government Insurance Act, 1927-1930, as amended by subsequent Acts.

(4) The Government Actuary shall be the vice-chairman of the Premiums Committee.

(5) (a) The insurers' representatives shall be appointed on the nomination of the Minister from persons whose names are on a panel consisting of not less than six names submitted to the Minister in the manner and within the time specified by the Minister, by persons carrying on the business of motor vehicle accident insurance in New South Wales.

(b) The motorists' representatives shall be appointed on the nomination of the Minister from persons whose names are on a panel consisting of not less than six names submitted to the Minister in the manner and within the time specified by the Minister, by organisations of owners and/or drivers of motor vehicles.

(6) An appointed member shall hold office for the period for which he is appointed and shall be eligible for reappointment from time to time.

(7) The office of an appointed member shall become vacant if the person appointed thereto—

(a) dies; or

(b) becomes bankrupt, compounds with his creditors, or makes an assignment of his estate for their benefit; or

(c) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or

(d).

196

Motor Vehicles (Third Party Insurance).

- (d) resigns his office by writing under his hand addressed to the Governor; or
- (e) is removed from office by the Governor.

(8) (a) Where a vacancy occurs in the office of an appointed member before the expiration of his term of office the Governor may appoint a person to fill the vacant office.

(b) Where the vacancy occurs in the office of an insurers' representative the person so to be appointed shall be appointed on the nomination of the Minister from persons whose names are on a panel consisting of not less than six names submitted to the Minister in the manner and within the time specified by the Minister, by persons carrying on the business of motor vehicle accident insurance in New South Wales.

(c) Where the vacancy occurs in the office of a motorists' representative the person so to be appointed shall be appointed on the nomination of the Minister from persons whose names are on a panel consisting of not less than six names submitted to the Minister in the manner and within the time specified by the Minister, by organisations of owners and/or drivers of motor vehicles.

(9) (a) Where the persons carrying on the business of motor vehicle accident insurance neglect or fail to submit to the Minister, in the manner and within the time specified by the Minister, a panel of names as provided by this section, the Minister may nominate any person or persons for appointment to represent the interests of persons carrying on such business in New South Wales.

(b) Where the organisations of owners and/or drivers of motor vehicles neglect or fail to submit to the Minister, in the manner and within the time specified by the Minister, a panel of names as provided by this section, the Minister may nominate any person or persons for appointment to represent the interests of owners and drivers of motor vehicles.

44. (1) The chairman of the Premiums Committee shall receive such remuneration for his services as chairman as may be determined by the Governor.

Remuneration.

(2)

194

Motor Vehicles (Third Party Insurance).

(2) The remaining members of the Premiums Committee shall not receive any remuneration for their services as such members.

45. (1) (a) In the case of the illness or absence of the chairman the vice-chairman shall act in his place, and whilst so acting may exercise all the powers and authorities of the chairman. Deputies.

(b) In the case of the illness or absence of any member of the committee, other than the chairman, the Governor may appoint a deputy to act in the place of such member during his illness or absence.

(c) Where in pursuance of paragraph (a) of this subsection the vice-chairman is acting in the place of the chairman, the Governor may appoint a deputy to act in the place of the vice-chairman.

(2) Any deputy appointed under this section whilst acting as such deputy may exercise all the powers and authorities of the member in whose place he acts.

46. (1) The chairman (or, in his absence, the vice-chairman), one insurers' representative, and one motorists' representative shall be a quorum at any meeting of the Premiums Committee. Procedure of the Premiums Committee.

(2) At any meeting of the Premiums Committee the decision of the majority of the members present and voting at such meeting shall be the decision of the Premiums Committee.

If at any meeting of the Premiums Committee the voting on any matter is equal, the chairman (or, in his absence, the vice-chairman) shall have a second or casting vote.

(3) No act or proceeding of the Premiums Committee shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member of the Premiums Committee.

(4) The Premiums Committee shall cause minutes of its proceedings and decisions at formal meetings to be kept.

(5)

Motor Vehicles (Third Party Insurance).

(5) The procedure for the calling of meetings of the committee and for the conduct of business at such meetings shall, subject to this Act and any regulations in relation thereto, be as determined by the Premiums Committee.

(6) The chairman or the vice-chairman may sign any notice or other document for and on behalf of the Premiums Committee.

47. (1) The Premiums Committee may, at any time, and shall, if and when the Minister so requires, recommend to the Governor—

Functions
of the
Premiums
Committee,

(a) the maximum amounts of premiums to be charged in respect of third-party policies; or

(b) the different maximum amounts of premiums to be charged in respect of third-party policies in relation to different classes of motor vehicles (including motor vehicles to which trader's plates are affixed), having regard to the purposes for which such motor vehicles are used or the areas in which such motor vehicles are mainly used, or the periods for which the third-party policies are expressed to be effective, or having regard to such other matters as the Minister may specify.

(2) The Premiums Committee shall, when so directed by the Minister—

(a) investigate and furnish to the Minister a report and recommendation with respect to any matter relevant to this Act referred to it by the Minister;

(b) make an investigation with respect to any return furnished by an authorised insurer pursuant to this Act.

(3) For the purposes of any investigation under subsection two of this section any authorised insurer shall, when required by the Premiums Committee so to do, and upon reasonable notice, produce to any person nominated for the purpose by the Premiums Committee,
any

Motor Vehicles (Third Party Insurance).

any book, contract, record, document, or paper reasonably required by such person, and shall permit such person to inspect the same and to take copies of or extracts therefrom.

Any person so nominated who, otherwise than in the performance of his duties under this Act, makes a record of or reveals any information contained in any such book, contract, record, document or paper shall be guilty of an offence against this Act and shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

48. (1) The Governor may, upon the recommendation of the Premiums Committee, make regulations for or with respect to maximum amounts of premiums to be charged in respect of third-party policies.

Maximum premiums may be prescribed.

(2) Different maximum amounts may be prescribed in respect of third-party policies in relation to different classes of motor vehicles (including motor vehicles to which trader's plates are affixed), having regard to the purposes for which such motor vehicles are used or the areas in which such motor vehicles are mainly used, or the periods for which the third-party policies are expressed to be effective, or otherwise.

(3) If an authorised insurer demands, charges or accepts in respect of any third-party policy any premium or sum of money greater than the appropriate maximum amount of premium prescribed by the regulations or, where an order has been made pursuant to section thirteen of this Act, greater than the amount of premium, or, as the case may be, the amount of premium and the additional amount specified in the order, he shall be guilty of an offence against this Act.

49. (1) If, in accordance with the authority conferred by section forty-eight of this Act, different maximum amounts of insurance premiums are prescribed in respect of third-party policies in relation to different classes of motor vehicles, having regard to different circumstances, it shall not be lawful for any person to use or cause, permit or suffer to be used any insured motor vehicle unless the appropriate amount of the insurance premium payable

Special provisions applicable where different rates of premium are prescribed.

Motor Vehicles (Third Party Insurance).

payable in relation thereto has been paid, but failure by any person to comply with the requirements of this subsection shall not affect the third-party policy.

(2) Every person who uses any motor vehicle or causes, permits or suffers any motor vehicle to be used in contravention of subsection one of this section shall be liable to a penalty of not more than ten pounds for every day on which it is so used.

(3) The authorised insurer may recover as a debt from any person who uses a motor vehicle or causes, permits or suffers a motor vehicle to be used in contravention of subsection one of this section, the difference between the premium actually paid in respect of such motor vehicle and the appropriate maximum amount of premium.

50. (1) The Premiums Committee may, from time to time, by notice in writing given to authorised insurers, require each authorised insurer to furnish to a prescribed officer within a time and in respect of a period specified in the notice, a return verified by statutory declaration setting forth such particulars as may be prescribed.

Returns.

(2) Notwithstanding anything in this Act, such prescribed officer shall—

(a) furnish to the Premiums Committee the information disclosed by any return under subsection one of this section; and

(b) when so directed in writing by the Minister, furnish to the Minister or to the Commissioner so much of the information disclosed by any such return as may be indicated in the direction.

(3) The Commissioner, or any member of the Premiums Committee, or any officer or employee of the Commissioner or of the Public Service who without lawful excuse makes a record of or reveals any of the particulars contained in any return under this section shall be guilty of an offence against this Act and shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

cf. Act No.
43, 1936,
s. 16 (4).

(4)

201

Motor Vehicles (Third Party Insurance).

(4) Any person who has held the office of Commissioner or of a member of the Premiums Committee or who has been an officer or employee of the Commissioner or of the Public Service and who, without lawful excuse, reveals any of the particulars contained in any return under this section, shall be guilty of an offence against this Act and shall be liable to imprisonment for any term not exceeding two years with or without hard labour.

cf. Act No. 43, 1936. s. 16 (5).

(5) Any authorised insurer—

- (a) who neglects or fails to furnish a return under this section when required so to do; or
- (b) who furnishes any return which is incomplete or is false or misleading in any material particular,

shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding five hundred pounds.

PART IV.

LEGAL PROCEEDINGS.

51. (1) A writ or other process for the recovery of damages in respect of the death of or bodily injury to any person (not being an excepted person) caused by or arising out of the use of a motor vehicle, whether or not in conjunction with damages in respect of any other matter, shall not be sued out or served upon any person until one month at least after notice in writing in accordance with this section has been given to that person.

Notice of action. cf. Act No. 41, 1919, s. 580.

(2) The notice shall clearly and explicitly state the nature and cause of the action, the court in which the same is intended to be brought, the name and place of abode of the party intending to commence such action and the name and place of abode or of business of the attorney or agent if such notice is given by an attorney or agent, and shall give particulars—

- (a) of the time and place at which the occurrence giving rise to the cause of action happened; and
- (b)

Motor Vehicles (Third Party Insurance).

(b) where the cause of action is negligence, of the acts or omissions to be relied on as constituting negligence.

(3) Any such notice shall be sufficiently given—

- (a) if given personally to the person concerned; or
- (b) if left for such person at his usual place of abode or business.

(4) If at the trial of any such action the plaintiff goes or attempts to go into evidence of any cause of action that is not stated in the notice or of any act or omission of which particulars should have been given in the notice but were not so given, the hearing of the action shall be abandoned and the cost thereof shall be paid by the plaintiff as a condition precedent to the fresh hearing of the action:

Provided that at any stage of the proceedings the court or any judge of the court may, if the court or judge deems it to be just and reasonable so to do—

- (a) amend any defect in the notice or in the particulars therein contained on such terms and conditions (if any) as the court or judge may fix;
- (b) direct that any non-compliance or insufficient compliance with this section shall not be a bar to the maintenance of the action.

52. Where a claim (whether by making a demand for damages or by service of a notice of action or by the commencement of an action) is made by or on behalf of any person (in this section referred to as the "claimant") upon any person (in this section referred to as the "defendant") in respect of the death of or bodily injury to any person (not being an excepted person) caused by or arising out of the use of a motor vehicle, whether or not in conjunction with damages in respect of any other matter, the following provisions shall have effect:—

Medical
examina-
tion, par-
ticulars,
etc.

- (a) In any case where the claim is in respect of bodily injury suffered by the claimant, the claimant shall, within ten days after a request in that behalf has been made to him by or on behalf

203

Motor Vehicles (Third Party Insurance).

behalf of the defendant, submit himself to a medical examination by a legally qualified medical practitioner nominated by the defendant and shall give such medical practitioner all facilities and information which are reasonably required by him for the purposes of the examination or which are necessary to enable him to ascertain fully the nature and extent of the injury and the nature of the treatment of the claimant in respect of such injury.

Any such request may be made from time to time as the defendant may think fit but in no case shall a claimant be bound to submit himself to more than one such medical examination within any period of one month.

The attorney or agent of the claimant shall not be entitled to be present at the medical examination except with the consent of the defendant, and the attorney or agent of the defendant shall not be entitled to be present at the medical examination except with the consent of the claimant.

- (b) If, at the instructions of the claimant, a medical practitioner who is attending or has attended him is present at a medical examination to which the claimant submits himself pursuant to a request under paragraph (a) of this section, the defendant shall, after such examination, pay to such medical practitioner, or, where more than one such medical practitioner is so present, to one of such medical practitioners, such reasonable fee (not being less than one guinea) as may be appropriate.
- (c) The claimant shall, within ten days after a request to that effect has been made to him by or on behalf of the defendant, furnish to the defendant a statutory declaration giving full particulars up to the date of such declaration, with

Motor Vehicles (Third Party Insurance).

with respect to such one or more of the following matters as may be specified in the request, that is to say—

- (i) where the claim is in respect of the death of any person, whether or not in conjunction with damages in respect of any other matter, the nature of the injuries causing such death and the nature and extent of any medical treatment, nursing, or hospital treatment rendered to such person and particulars of the expenses of his funeral;
- (ii) where the claim is in respect of bodily injury to any person, whether or not in conjunction with damages in respect of any other matter, the nature of such injury, the nature and extent of any medical treatment, nursing or hospital treatment rendered to such person in respect of such injury, whether such person has recovered from such injury and, if not, when recovery is expected;
- (iii) the occupation and the net annual income or earnings, during the three years immediately preceding the occurrence giving rise to the cause of action, of the person suffering the death or bodily injury in respect of which the claim is made;
- (iv) the amount claimed as special damages showing each item of special damages and how the same is assessed;
- (v) the amount claimed as general damages showing each item of general damages and how the same is assessed;
- (vi) the amount which will be unconditionally accepted by the claimant in settlement of his claim.

Any

Motor Vehicles (Third Party Insurance).

Any such request may be made from time to time as the defendant may think fit.

- (d) Where one of the items of special damages claimed is loss of profits or earnings the claimant shall, within ten days after a request in that behalf has been made to him by or on behalf of the defendant, permit the defendant or any person nominated by him to inspect all papers, books and documents which the defendant or such person may deem necessary to ascertain fully whether or not there has been any such loss and, if so, the extent thereof, and shall furnish the defendant or such person with all facilities and information which are reasonably required by him or which are necessary to enable him to make such inspection.

Any such person who, without lawful excuse, discloses any information obtained by him in the course of any such inspection, shall be guilty of an offence against this Act and shall be liable to imprisonment, for any term not exceeding two years, with or without hard labour.

- (e) Any request under this section shall be sufficiently given if given personally or by post to the attorney or agent of the claimant or, where the claimant is not represented by an attorney or agent—
- (i) if given personally to the claimant; or
 - (ii) if left for the claimant at his usual place of abode or business.
- (f) Where, in response to any request made under paragraph (c) of this section, a claimant has furnished a statutory declaration purporting to give full particulars as to the matters specified in such request, the claimant shall not, at the trial of the action, go into evidence in relation to any matter which should have been mentioned in the particulars given in such declaration but

was

Motor Vehicles (Third Party Insurance).

was not so mentioned nor in relation to any matter which is contrary to or inconsistent with the particulars given in such declaration.

- (g) If the defendant makes an offer of settlement which is not unconditionally accepted by the claimant and the action proceeds to trial and a verdict is given in favour of the claimant, then—
- (i) if the verdict is for an amount which exceeds the final offer of the defendant but is less than the final offer of the claimant the defendant shall pay to the claimant that part of the costs of the claimant which bears the same proportion to the total costs of the claimant as the excess of the verdict over the final offer of the defendant bears to the excess of the final offer of the claimant over the final offer of the defendant;
 - (ii) if the verdict is for an amount equal to or greater than the final offer of the claimant, the defendant shall pay the costs of the claimant;
 - (iii) if the verdict is for an amount equal to or less than the final offer of the defendant the court or a judge may make such order as the court or judge deems fit as to payment of the costs of the defendant.

In this paragraph the expression—

“final offer of the defendant” means an offer made in writing by the defendant at any time before the hearing of the action is commenced and not subsequently withdrawn, of a specified amount to be accepted unconditionally by the claimant in settlement of his claim;

“final offer of the claimant” means an offer made in writing by the claimant and not subsequently withdrawn, to accept

209

Motor Vehicles (Third Party Insurance).

accept unconditionally a specified amount in settlement of his claim, whether such offer is made by specifying, in response to a request made under paragraph (c) of this section, an amount which will be unconditionally accepted in settlement of the claim or is otherwise made in writing to the defendant before the commencement of the action in any case where an offer by the defendant is made before such commencement or not less than seven days before the action is set down for trial in the Supreme Court or before the return day of the summons in any other jurisdiction, in any case where the action has been commenced before an offer by the defendant is made, unless the defendant agrees to the fixation of a later date for the final offer of the claimant, or, failing agreement, a later date is fixed by the court or a judge.

- (h) If the action is tried by a judge with a jury no communication of the amount claimed or of the fact that an offer has been made, or of the amount of any offer either by the claimant or by the defendant shall be made to the jury.
- (i) Where a request to submit to medical examination, or to furnish particulars, or to permit inspection of papers, books and documents has been made to a claimant under this section, then, during the period commencing on the date upon which such request is made and ending seven days after the date upon which the medical examination is carried out, the particulars are furnished or the inspection is completed, as the case may be, unless the court or a judge otherwise orders—

(i) no action shall be commenced;

(ii).

Motor Vehicles (Third Party Insurance).

- (ii) time shall not run for any purpose of or relating to any action which has been commenced and proceedings in any such action shall be stayed.
- (j) In any case where judgment is given in favour of the claimant the amount of the judgment shall be paid into court and, except as provided by the Damages (Infants and Persons of Unsound Mind) Act, 1929, paid out to the claimant in person unless the court or a judge thereof shall otherwise order.
- (k) Causes or actions pending in the same court by a married woman in respect of bodily injury and by her husband for loss, damage or expense consequent thereupon may be consolidated by the court or a judge.

PART V.

GENERAL.

- 53.** (1) A certificate purporting to be signed by the Commissioner or a prescribed officer and to certify that—
- (a) on a specified date or during the whole of a specified period the name of any person was or was not on the list of authorised insurers; or
 - (b) on a specified date the name of any person was added to or removed from the list of authorised insurers,

Facilitation
of proof.
cf. Act No.
25, 1927
(Irish Free
State),
s. 31 (6).

shall, without proof of the signature of the person purporting to sign such certificate or that he was the Commissioner or the prescribed officer, be conclusive evidence of the matters certified in and by such certificate.

(2) A certificate purporting to be signed by the Commissioner or a prescribed officer and to certify that, according to the records kept in the office of the Commissioner—

- (a) on a specified date or during the whole of a specified period a third-party policy was in force in relation to a specified motor vehicle

209

Motor Vehicles (Third Party Insurance).

vehicle or in relation to motor vehicles to which a specified trader's plate is affixed; or
(b) on a specified date a specified third-party policy was issued, or expired or was cancelled,
shall, without proof of the signature of the person purporting to sign such certificate or that he was the Commissioner or the prescribed officer be prima facie evidence that on the specified date or during the whole of the specified period a third-party policy was in force in relation to the specified motor vehicle or to motor vehicles to which the specified trader's plate is affixed, or, as the case may be that on the specified date the specified third-party policy was issued or expired or was cancelled.

(3) A certificate purporting to be signed by the Commissioner or a prescribed officer and to certify that the records kept in the office of the Commissioner do not contain any entry indicating that a third-party policy was in force on a specified date or during the whole of a specified period in relation to a specified motor vehicle or in relation to motor vehicles to which a specified trader's plate is affixed shall, without proof of the signature of the person purporting to sign such certificate or that he was the Commissioner or the prescribed officer, be prima facie evidence that on the specified date or during the whole of the specified period a third-party policy was not in force in relation to the specified motor vehicle or to motor vehicles to which the specified trader's plate is affixed.

Service of notices, etc.

54. Any notice, notification or request (other than a notice under section fifty-one or a request under section fifty-two of this Act) required or authorised by this Act to be given or made shall be in writing and shall be sufficiently given or made—

- (a) if delivered personally to the person to whom the same is to be given or made;
- (b) if sent by post in a prepaid letter addressed to the person to whom the same is to be given or made at his place of abode or business last known to the person giving or making the notice,

200

Motor Vehicles (Third Party Insurance).

notice, notification or request; and the notice, notification or request shall be deemed to have been given at the time at which the letter would in the ordinary course of post be delivered or available for collection;

- (c) if given or made in the manner prescribed in the Companies Act, 1936, where the person to whom the notice, notification or request is to be given or made is a company within the meaning of that Act.

55. (1) The owner of a motor vehicle shall, if and when required so to do by any member of the police force or by any officer authorised in that behalf by the Commissioner or by any other person whomsoever who has reasonable grounds for so requiring forthwith give information (which shall, if so required, be in writing) as to whether or not the motor vehicle is an insured motor vehicle and, if so, as to the name and address of the authorised insurer who issued the third-party policy in relation to the motor vehicle.

Owner and driver to give certain information.

(2) The driver of a motor vehicle shall, if and when required so to do by any member of the police force or by any officer authorised in that behalf by the Commissioner or by any other person whomsoever who has reasonable grounds for so requiring forthwith give information (which shall, if so required, be in writing) as to the name and place of abode of the owner of the motor vehicle.

(3) Any owner or driver of a motor vehicle who neglects or fails to comply with the requirements of this section or who, in complying with such requirements, gives any false or misleading information, shall be guilty of an offence against this Act.

56. Where a judgment is obtained for payment of damages in respect of the death of or bodily injury to any person (not being an excepted person) caused by or arising out of the use of an insured motor vehicle as well as for damages in respect of any other matter, the court shall as part of such judgment declare what portion of the sum awarded by such judgment is in respect of such death or bodily injury and shall apportion any costs awarded.

Court to apportion damages.

57.

Motor Vehicles (Third Party Insurance).

57. Any expenses incurred in connection with the administration of this Act may be paid by the Commissioner from the Road Transport and Traffic Fund established under the Transport Act, 1930.

Administra-
tive
expenses.

58. (1) Any person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a penalty not exceeding twenty pounds.

General
penalty.

(2) Any penalty imposed by this Act or the regulations may be recovered before a stipendiary or police magistrate or any two justices in petty sessions.

(3) The court shall cause particulars of each conviction or order under this Act to be forwarded to the Commissioner.

59. No proceeding or conviction for any act or omission by this Act declared to be an offence against this Act shall affect any remedy which any person aggrieved or injured by such act or omission may be entitled to at law or in equity against the person who committed such act or who was responsible for such omission.

Conviction
not to affect
civil
remedy.
cf. Act No.
25, 1900,
s. 142.

60. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect.

Regula-
tions.

(2) Without prejudice to the generality of the power conferred by subsection one of this section, the Governor may make regulations with respect to—

(a) the exemption, subject to such conditions as may be specified, from the operation of all or any of the provisions of this Act of—

(i) motor vehicles or specified classes of motor vehicles which are owned by persons ordinarily resident outside New South Wales and which are temporarily in New South Wales;

(ii) motor vehicles of any other specified class;

(iii)

Motor Vehicles (Third Party Insurance).

- (iii) persons in respect of a specified class or specified classes of motor vehicles (including motor vehicles or specified classes of motor vehicles which are owned by persons ordinarily resident outside New South Wales and which are temporarily in New South Wales);
 - (b) the granting of refunds, subject to such conditions as may be prescribed, of portion of premiums in cases where third-party policies are cancelled;
 - (c) the circumstances under which and the conditions (which may include the payment of a prescribed fee) subject to which the records kept and documents filed in the Commissioner's office for the purposes of this Act may be inspected or the information contained in such records or documents may be made available, or certificates of the Commissioner or a prescribed officer may be given;
 - (d) the imposition of a requirement that insurance labels shall be displayed upon motor vehicles, or that insurance cards shall be carried by the drivers of motor vehicles and produced by such drivers upon demand by prescribed persons.
- (3) A regulation may impose a penalty not exceeding twenty pounds for any breach thereof.
- (4) A regulation may be of general or specially limited application and may apply to all cases generally, to any specified class of cases or to any particular case.
- (5) A regulation may be made to apply either to all motor vehicles or to any specified class of motor vehicles or to all motor vehicles with the exception of a specified class.
- (6) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by the Minister or the Commissioner either generally or for any class of cases or in any particular case, or may confer on the Minister or the Commissioner

213

Motor Vehicles (Third Party Insurance).

or other prescribed person any power or authority necessary or convenient for carrying into effect all or any of the provisions of the regulations.

61. All regulations made under this Act shall—

Publication
of regula-
tions.

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part thereof shall thereupon cease to have effect.