



STATUTES AMENDMENT (MOTOR VEHICLES AND WRONGS) ACT 1993

No. 5 of 1993

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

Section	
1.	Short title
2.	Commencement
3.	Interpretation

PART 2 AMENDMENT OF MOTOR VEHICLES ACT 1959

4.	Amendment of s. 99—Interpretation
5.	Amendment of s. 100—Application of this Part to the Crown
6.	Amendment of s. 104—Requirements if policy is to comply with this Part
7.	Amendment of s. 110—Liability of insurer to pay for emergency treatment
8.	Amendment of s. 113—Liability of insurer where the insured is dead or cannot be found
9.	Amendment of s. 115—Claims against nominal defendant where vehicle not identified
10.	Amendment of s. 116—Claim against nominal defendant where vehicle uninsured
11.	Repeal of s. 118
12.	Amendment of s. 124a—Recovery by the insurer
13.	Amendment to s. 124ab—Recovery of an excess in certain cases
14.	Repeal of s. 130
15.	Amendment of s. 131—Insurance by visiting motorists
16.	Amendment of s. 133—Contracting out of liability
17.	Amendment of fourth schedule—Policy of Insurance

PART 3 AMENDMENT OF WRONGS ACT 1936

18.	Amendment of s. 35a—Motor accidents
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PART 4 TRANSITIONAL PROVISION

19.	Transitional provision
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ELIZABETHAE II REGINAE

A.D. 1993

No. 5 of 1993

An Act to amend the Motor Vehicles Act 1959 and the Wrongs Act 1936

[Assented to 4 March 1993]

The Parliament of South Australia enacts as follows:

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Motor Vehicles and Wrongs) Act 1993*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2**AMENDMENT OF MOTOR VEHICLES ACT 1959****Amendment of s. 99—Interpretation****4. Section 99 of the principal Act is amended—**

- (a) by inserting in subsection (1) “and in the fourth schedule” after “In this Part”;
- (b) by inserting after the definition of “owner” in subsection (1) the following definitions:

“passenger”, in relation to a motor vehicle, includes any person in or on the vehicle whether or not the person is travelling, has travelled or is proposing to travel in or on the vehicle;

and

- (c) by striking out from subsection (3)(b) “when stationary” and substituting “whether in motion or stationary”.

Amendment of s. 100—Application of this Part to the Crown**5. Section 100 of the principal Act is amended—**

- (a) by inserting in subsection (2)(b) “or is a passenger in or on” after “any person who drives”;
- (b) by inserting in subsection (3) “or is a passenger in or on” after “a person drives”;
- (c) by striking out from subsection (3) “caused by such driving” and substituting “for which that person is wholly or partly liable caused by or arising out of the use of the motor vehicle”;

and

- (d) by inserting in subsection (3) “or was a passenger in or on” after “person who so drove”.

Amendment of s. 104—Requirements if policy is to comply with this Part

6. Section 104 of the principal Act is amended by inserting “or is a passenger in or on” after “person who at any time drives”.

Amendment of s 110—Liability of insurer to pay for emergency treatment**7. Section 110 of the principal Act is amended—**

- (a) by inserting in subsection (3)(a) “, or of a passenger in or on the vehicle,” after “motor vehicle”;

and

- (b) by striking out from subsection (3)(b) “or driver” and substituting “, driver or passenger”.

Amendment of s. 113—Liability of insurer where the insured is dead or cannot be found

8. Section 113 of the principal Act is amended by striking out from subsection (1)(a) “the insured person” and substituting “any person insured under a policy of insurance in respect of the vehicle who is wholly or partly liable for the death or bodily injury”.

Amendment of s. 115—Claims against nominal defendant where vehicle not identified

9. Section 115 of the principal Act is amended—

(a) by striking out from subsection (1) “the driver” firstly occurring and substituting “a person insured under a policy of insurance in respect of the vehicle (assuming that the vehicle had been an insured vehicle at the relevant time);

and

(b) by striking out from subsection (1) “recovered against the driver” secondly occurring and substituting “so recovered”.

Amendment of s. 116—Claim against nominal defendant where vehicle uninsured

10. Section 116 of the principal Act is amended—

(a) by striking out from subsection (2) “negligence in” and substituting “or arising out of”;

(b) by striking out subsection (3) and substituting the following subsection:

(3) Where an action may be brought against the nominal defendant under subsection (2)—

(a) the amount recoverable is the amount of the judgement that in the circumstances could have been recovered in respect of the death or bodily injury against a person who would have been an insured person if the vehicle had been an insured vehicle at the relevant time;

and

(b) no action for damages in respect of the death or bodily injury may be commenced or proceeded with against such a person or a person liable in respect of the acts or omissions of such a person.;

and

(c) by striking out subsection (7) and substituting the following subsection:

(7) Where—

(a) a sum is properly paid by the nominal defendant to satisfy a claim made or judgement obtained in respect of death or bodily injury caused by or arising out of the use of an uninsured motor vehicle;

and

(b) the driver of the uninsured vehicle was wholly or partly liable for the death or bodily injury,

the nominal defendant may bring an action to recover the sum, or such part of the sum as the court considers just and reasonable in the circumstances, together with costs from the driver or a person liable in respect of the acts or omissions of the driver; but it will be a defence to an action under this subsection if the defendant satisfies the court that—

(c) the vehicle was being used at the relevant time by or with the consent of the owner;

and

(d) the defendant did not know and had no reason to believe that the vehicle was an uninsured motor vehicle.

Repeal of s. 118

11. Section 118 of the principal Act is repealed.

Amendment of s. 124a—Recovery by the insurer

12. Section 124a of the principal Act is amended by inserting before paragraph (a) of subsection (1) the following paragraph:

(aa) by driving a motor vehicle, or doing or omitting to do anything in relation to a motor vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property, or with reckless indifference as to whether such death, bodily injury or damage results;

Amendment to s. 124ab—Recovery of an excess in certain cases

13. Section 124ab of the principal Act is amended by striking out from subsection (1) "\$200" wherever occurring and substituting, in each case, "\$300".

Repeal of s. 130

14. Section 130 of the principal Act is repealed.

Amendment of s. 131—Insurance by visiting motorists

15. Section 131 of the principal Act is amended by inserting "or are passengers in or on" after "persons who drive".

Amendment of s. 133—Contracting out of liability

16. Section 133 of the principal Act is amended by striking out from subsection (1) "for the negligence of any other person in driving" and substituting "in respect of death or bodily injury caused by or arising out of the use of".

Amendment of fourth schedule—Policy of Insurance

17. The fourth schedule of the principal Act is amended—

(a) by inserting in clause 1 "or is a passenger in or on" after "person who at any time drives";

and

(b) by striking out clause 2 and substituting the following clauses:

2. A person so insured warrants that he or she will not—

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- (a) drive the vehicle, or do or omit to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property or with reckless indifference as to whether such death, bodily injury or damage results;
- (b) drive the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle;
- (c) drive the vehicle while there is present in his or her blood a concentration of .15 grams or more of alcohol in 100 millilitres of blood;
- or
- (d) drive the vehicle while not duly licensed or otherwise permitted by law to drive the motor vehicle;
- (e) drive the vehicle while the vehicle is overloaded, or in an unsafe, unroadworthy or damaged condition;
- or
- (f) use the vehicle otherwise than for purposes—
- (i) stated in the application for registration, renewal of registration, exemption from registration, or permit, in respect of the motor vehicle;
- or
- (ii) agreed upon by the insurer and the registered owner of the vehicle.

3. The owner of the vehicle warrants that no other person will, with his or her knowledge or consent (which will be presumed in any proceedings in the absence of proof to the contrary), drive or use the vehicle, or do or omit to do anything in relation to the vehicle, contrary to any of the paragraphs of clause 2.

PART 3**AMENDMENT OF WRONGS ACT 1936****Amendment of s. 35a—Motor accidents****18. Section 35a of the principal Act is amended—**

- (a)* by striking out from subsection (1)(i) “(not being a minor)” and substituting “(not being a person under the age of 16 years)”;
- (b)* by striking out from subsection (1)(j)(ii) “(not being a minor)” and substituting “(not being a person under the age of 16 years)”;
- (c)* by striking out from subsection (5)(b) “stationary vehicle” and substituting “vehicle whether in motion or stationary”;

and

- (d)* by striking out from the definition of “the prescribed minimum” in subsection (6) “\$1000” and substituting “\$1400”.

PART 4**TRANSITIONAL PROVISION****Transitional provision**

19. The amendments made by this Act do not affect a cause of action, right or liability that arose before the commencement of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor