

MOTOR VEHICLES (THIRD PARTY INSURANCE) ACT.

Act No. 15, 1942.

George VI.
No. 15, 1942.

An Act to require that owners and drivers of motor vehicles shall be insured against liability in respect of the death of or bodily injury to persons caused by or arising out of the use of motor vehicles; to make certain provisions with respect to the discharge of any such liability; to amend the Transport Act, 1930, the Compensation to Relatives Act, 1897, and certain other Acts; and for purposes connected therewith. [Assented to, 29th June, 1942.]

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.

Short title.

1. This Act may be cited as the "Motor Vehicles (Third Party Insurance) Act, 1942."

Commencement.

2. (1) This Part of this Act shall commence on the 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

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. No. 15, 1942.

3. This Act shall be read and construed subject to 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. Construction.

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

PART I.—PRELIMINARY—ss. 1-6.

PART II.—THIRD PARTIES—ss. 7-32.

DIVISION 1.—*Insurance*—ss. 7-23.

DIVISION 2.—*Payments to hospitals, etc.*—ss. 24-27.

DIVISION 3.—*Motor Omnibuses*—s. 28.

DIVISION 4.—*Nominal Defendant*—ss. 29-32.

PART III.—PREMIUMS—ss. 33-35.

PART IV.—GENERAL—ss. 36-46.

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

“Authorised insurer” means a person who is for the time being an authorised insurer 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.

“Government Insurance Office” means the Government Insurance Office of New South Wales established under the Government Insurance Acts, 1927-1941.

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

“Motor

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“Motor vehicle” means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway.

The expression “motor vehicle” does not include any motor vehicle which is owned by the Commonwealth of Australia or by any person or body of persons representing the Commonwealth of Australia.

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

“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—the trader to whom such trader’s plate is in issue;

(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-one 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-one 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”

“Prescribed” means prescribed by this Act or the No. 15, 1942. 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.

“This Act” includes the regulations.

“Trader’s plate” means a special number plate issued to a manufacturer or repairer or dealer in motor vehicles in accordance with the regulations under the Motor Traffic Act, 1909, as amended by subsequent Acts.

“Uninsured motor vehicle” means—

(a) a motor vehicle (not being a motor vehicle in respect of which persons are exempted by or under this Act from the provisions of subsection one of section seven of this Act) which is not an insured motor vehicle; or

(b) a motor vehicle which, under subsection six of section ten of this Act, is deemed to be an uninsured motor vehicle.

(2) In the application of any provision of this Act to and in respect of a motor vehicle to which a trader’s plate is affixed, a reference in such provision to the owner shall be construed as a reference to the trader, and a reference to the third-party policy in relation to that motor vehicle shall be construed as a reference to the third-party policy in relation to motor vehicles to which the trader’s plate is affixed.

No. 15, 1942. (3) Where in any provision of this Act reference is made to the issue of a third-party policy such reference shall extend to and include the issue of a renewal of the third-party policy.

Administration. **6.** (1) Subject to the control of the Minister this Act shall be administered in the Department of Road Transport and Tramways by the Commissioner.

Administrative expenses. (2) 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, as amended by subsequent Acts.

PART II.

THIRD PARTIES.

DIVISION 1.—*Insurance.*

Uninsured motor vehicle not to be driven on a public street. **7.** (1) Any person who uses or causes, permits or suffers any other person to use an uninsured motor vehicle upon a public street 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.

(2) Subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette:

Provided that where, upon the day so appointed and notified, a motor vehicle is registered, the provisions of that subsection shall not apply to and in respect of the use of that motor vehicle until the expiration of such registration or until the expiration of a period of thirty days after the day so appointed and notified whichever first happens.

(3) (a) Where on the day appointed and notified pursuant to subsection two of this section there is in force in relation to a motor vehicle or to motor vehicles to which a trader's plate is affixed a policy of insurance (in this subsection referred to as the "existing policy") which insures the owner of the motor vehicle or the trader

against

against some or all of the liabilities against which he is required to insure under this Act the following provisions shall have effect:—

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- (i) The existing policy shall, as regards all liability against which the owner or trader is required to insure under this Act, be deemed for all purposes of this Act to be a third-party policy, and the existing policy shall be deemed to have been varied, modified or amended in such manner and to such extent as may be necessary to give effect to this subsection.
- (ii) The insurer who issued the existing policy shall, for the purposes only of such policy and of this paragraph, be deemed to be an authorised insurer, whether or not he has been approved as such.
- (iii) The provisions of this Act shall apply in all respects as if the motor vehicle were an insured motor vehicle and the insurer were an authorised insurer.

(b) Nothing in paragraph (a) of this subsection shall affect the operation of the existing policy in so far as the existing policy insures the owner or the trader or any other person against any liability other than the liability against which he is required to insure under this Act.

(4) It shall be a sufficient defence in any proceedings for a contravention of subsection one of this section if the defendant proves to the satisfaction of the court that at the time the vehicle was used upon the public street he had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

S. (1) Registration or renewal of registration of a motor vehicle shall not be granted unless and until there is lodged with the Commissioner—

Motor vehicle not to be registered, etc., without evidence of insurance.

- (a) a certificate in or to the effect of the prescribed form issued by an authorised insurer that a third-party policy expressed to commence either upon the date of issue of the certificate or upon a date not later than the date of commencement of

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of the registration or renewal of registration and to terminate upon the date of expiration of such registration or renewal will be issued by that authorised insurer in relation to such motor vehicle; or

- (b) a nomination of the Government Insurance Office as authorised insurer, and the appropriate amount of insurance premium in respect of the insurance of the motor vehicle for a period commencing on the date of commencement and terminating on the date of expiration of the registration or renewal of registration.

Any such nomination shall be in or to the effect of the prescribed form and shall furnish the particulars indicated in the form.

No such nomination shall be vitiated by any informality.

Conditions
relative to
issue of
traders'
plates.

(2) A trader's plate shall not be issued (except under the circumstances mentioned in subsection three of this section) unless and until there is lodged with the Commissioner—

- (a) a certificate in or to the effect of the prescribed form issued by an authorised insurer that a third-party 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 will be issued by that authorised insurer in relation to motor vehicles to which such trader's plate is affixed; or
- (b) a nomination of the Government Insurance Office as authorised insurer, and the appropriate amount of insurance premium in respect of the insurance of motor vehicles to which such trader's plate is affixed at any time whilst it is in issue.

Any such nomination shall be in or to the effect of the prescribed form and shall furnish the particulars indicated in the form.

No such nomination shall be vitiated by any informality.

(3)

(3) Where a third-party 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 third-party policy shall enure in relation to motor vehicles to which such other trader's plate is affixed.

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9. (1) (a) Where an authorised insurer accepts the appropriate amount of insurance premium in respect of the insurance of a motor vehicle he shall forthwith issue to the owner a certificate of the nature referred to in paragraph (a) of subsection one of section eight of this Act in relation to the motor vehicle.

Issue of certificate and third-party policy.

(b) Where an authorised insurer accepts the appropriate amount of insurance premium in respect of the insurance of motor vehicles to which a trader's plate is affixed he shall forthwith issue to the trader a certificate of the nature referred to in paragraph (a) of subsection two of section eight of this Act in relation to such motor vehicles.

(c) An authorised insurer who issues any such certificate—

- (i) shall, for all purposes of this Act relating to the liability of authorised insurers, be deemed to have issued a third-party policy in conformity with the certificate; and
- (ii) shall, at the time of the issue of such certificate or as soon as practicable thereafter, issue a third-party policy in conformity with the certificate.

(2) Upon lodgment under paragraph (b) of subsection one or paragraph (b) of subsection two of section eight of this Act of a nomination of the Government Insurance Office and the appropriate amount of insurance premium the Government Insurance Office shall be deemed to have issued a third-party policy pursuant to the nomination.

The Commissioner shall pay such amount to the Government Insurance Office and the Government Insurance Office shall, as soon as practicable, issue a third-party policy pursuant to the nomination.

The

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No. 15, 1942. The Government Insurance Office shall, if so required by the regulations, also issue a certificate of the nature referred to in paragraph (a) of subsection one or paragraph (a) of subsection two of section eight of this Act, as may be appropriate.

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

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

(a) must be issued by an authorised insurer; and

(b) (i) where such policy is issued in relation to a particular motor vehicle must 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 all liability 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 issued in relation to motor vehicles to which a trader's plate is affixed must 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 all liability 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 the prescribed form.

(2)

(2) A third-party policy shall not extend to insure the owner or driver of the motor vehicle against—

- (a) a liability to pay compensation under the Workers' Compensation Act, 1926, as amended by subsequent Acts, to a worker employed by him;
- (b) a liability which may be incurred by him under an agreement unless the liability is one which would have arisen in the absence of such agreement.

(3) A policy of insurance which complies with the matters referred to in paragraphs (a) and (b) 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 contained in the prescribed form; but any such term, condition or warranty shall be void and of no effect.

(4) Where the death of or bodily injury to any person is caused by or arises out of the use of an insured motor vehicle whilst a trader's plate is affixed to such motor vehicle, the third-party policy in relation to motor vehicles to which such trader's plate is affixed shall (to the exclusion of the third-party policy in relation to the particular motor vehicle) be the policy under which, in respect of such death or bodily injury, any person whom such policy purports to insure is insured.

(5) A third-party policy 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 shall commence on the date on which it is expressed to commence and, unless it is sooner cancelled pursuant to this Act, shall continue in force—

Duration
of third-
party
policy.

- (a) in a case where the authorised insurer notifies the Commissioner, at least thirty days before the date on which the policy is expressed to terminate, that he will not renew the policy—until such date;
- (b) in a case, not provided for in paragraph (a) of this subsection, where another third-party policy issued by the same or another authorised insurer in relation to that motor vehicle or in relation

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relation to motor vehicles to which that trader's plate is affixed commences during the period of fifteen days next following the date on which such first-mentioned policy is expressed to terminate—until such commencement;

- (c) in any other case—until fifteen days after the date on which it is expressed to terminate.

(6) Where an authorised insurer issues a renewal of a third-party 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 the motor vehicle—

- (a) the insurance premium shall be payable as if such renewal of the policy were expressed to commence from the date of commencement of the renewal of registration whether or not the renewal of the policy is so expressed;
- (b) the authorised insurer shall not be liable under the renewal of the policy in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle during the period (if any) between the date from which the renewal of the policy is expressed to commence and the date of payment of the amount of insurance premium in respect of the renewal of the policy.

Whilst any authorised insurer is exempted under paragraph (b) of this subsection from 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, and no third-party policy is in force in relation to the motor vehicle whether by reason of the operation of subsection five of this section or otherwise, such motor vehicle shall, for the purposes of this Act, be deemed to be an uninsured motor vehicle.

(7) Notwithstanding anything in any enactment other than this Act or any rule of law an authorised insurer issuing a third-party policy shall, in respect of any liability in respect of the death of or bodily injury to any person which the third-party policy purports to cover in the case of the owner of the insured motor vehicle or any other person, be liable to indemnify such owner or person.

11. (1) This Act shall, except as otherwise provided by the regulations, apply to and in respect of a motor vehicle owned by any State, including the State of New South Wales. No. 15, 1942.
Vehicles
owned by
State, etc.

(2) Where the owner of a motor vehicle is a person or body of persons representing the State any insurance, effected after the commencement of this section, of the owner and the driver of the motor vehicle, jointly or either 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 any person caused by or arising out of the use of the motor vehicle shall be effected with the Government Insurance Office.

(3) For the purposes of this section the expression "person or body of persons representing the State" shall include—

- (a) the Metropolitan Water, Sewerage and Drainage Board, the Hunter District Water Board and the Broken Hill Water Board;
- (b) the Board of Fire Commissioners of New South Wales;
- (c) the Metropolitan Meat Industry Commissioner;
- (d) the governing body of an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts;
- (e) a district committee within the meaning of the Ambulance Transport Service Act, 1919, as amended by subsequent Acts.

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

(b) Where an authorised insurer cancels a third-party policy under this subsection he shall forthwith notify the Commissioner of the fact.

(2) Where the registration of an insured motor vehicle is cancelled by the Commissioner, or a trader's plate is delivered to the Commissioner, before the date

on

No. 15, 1942. on which the third-party policy is expressed to terminate, the authorised insurer who issued such policy shall, upon application by the owner of the motor vehicle or the trader, as the case may be, but subject to any conditions which may be prescribed by the regulations, cancel such policy.

(3) Where the Commissioner refuses the renewal of or cancels the registration of an insured motor vehicle on the ground that the vehicle or its parts or equipment is not in a thoroughly serviceable condition or does not comply with requirements prescribed by or under the Motor Traffic Act, 1909, as amended by subsequent Acts, the Commissioner shall forthwith give to the authorised insurer who issued the third-party policy in relation to that motor vehicle a notice in writing of such cancellation or refusal.

(4) (a) In any case not provided for in subsection one or subsection two of this section, a third-party policy may be cancelled by the authorised insurer after a notice specifying a date, not being earlier than thirty days after service of the notice, upon which the authorised insurer proposes to cancel such policy has been served on the Commissioner and (except where the owner of the motor vehicle or the trader has applied to the authorised insurer for cancellation of the policy) on the owner of the motor vehicle or the trader, as the case may be.

(b) Where an appeal is lodged on or before the date specified in the notice, the third-party policy shall not be cancelled unless and until the proposed cancellation is confirmed by the court or the appeal is for any reason dismissed.

(c) Where an authorised insurer cancels a third-party policy under this subsection he shall forthwith notify the Commissioner of the fact.

(5) Whilst the registration of a motor vehicle is current or a trader's plate is in issue the authorised insurer shall not (whether upon application by the owner of the motor vehicle or the trader, or otherwise) cancel the third-party policy except—

(a) under the circumstances and subject to the conditions prescribed by or under this section or section thirty-five of this Act; or

(b)

(b) under such other circumstances and subject to such conditions as may be prescribed by the regulations. No. 15, 1942.

(6) The cancellation of any third-party policy shall not exempt the authorised insurer from any liability, whether under the policy or under this Act, accrued or incurred before such cancellation.

13. (1) Where an authorised insurer refuses to issue to any person a third-party policy 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 or to the court of petty sessions nearest to the place at 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 where made to the district court shall be made in accordance with rules of court and when made to a court of petty sessions shall be made in accordance with regulations made in that behalf.

(3) On any such appeal the 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 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) (a) If any party to any such appeal made to a district court 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.

(b) If any party to any such appeal made to a court of petty sessions is dissatisfied with the determination or order of the court of petty sessions such party may appeal

No. 15, 1942. appeal from the same under and in accordance with Part V of the Justices Act, 1902, as amended by subsequent Acts, and the provisions of that Part shall, mutatis mutandis, apply to and in respect of such appeal as if the same were an appeal from a determination or order of a justice or justices.

Authorised
insurers.
cf. Act No.
4688 (Viet.),
s. 6.

14. (1) The Government Insurance Office shall be an authorised insurer.

(2) Any other person carrying on the business of insurance in New South Wales who is willing to undertake insurance business in terms of this Act may apply to the Minister to be approved as an authorised insurer.

(3) The Minister may refuse to grant such approval or may grant such approval subject to such conditions (if any) as are prescribed.

(4) The Minister shall cause notice of such approval to be published in the Gazette and such approval shall take effect on a date specified for the purpose by the Minister in such notice.

(5) (a) Any such approval may be cancelled by the Minister after a notice specifying 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 cancel the approval has been served on the authorised insurer.

(b) Where, pursuant to subsection eight of this section, an appeal is lodged on or before the date specified in the notice, such approval shall not be cancelled unless and until the proposed cancellation is confirmed by the court or the appeal is for any reason dismissed.

(c) Without prejudice to the generality of paragraph (a) of this subsection, the Minister may cancel an approval granted under this section to any person if such person has, in his capacity as authorised insurer, been convicted of an offence against this Act.

(6) Any authorised insurer may by notice in writing to the Minister withdraw from insurance business in terms of this Act:

Provided that such notice of withdrawal shall not take effect until a date (not being more than three months after the date when the notice of withdrawal is given) specified

specified by the Minister by notice published in the Gazette. As from the date so specified the person giving the notice of withdrawal shall cease to be an authorised insurer. No. 15, 1942.

(7) (a) A cancellation of approval or a notice of withdrawal as aforesaid shall not affect—

- (i) any third-party policy in force at the date upon which such cancellation or notice of withdrawal takes effect; or
- (ii) any liability as an authorised insurer, whether under a third-party policy or under this Act, accrued or incurred before the date upon which such cancellation or notice of withdrawal takes effect or incurred under any third-party policy to which subparagraph (i) of this paragraph relates.

(b) For the purposes of any such policy and for all purposes relating to such liability this Act shall extend to and in respect of the person referred to in the notification of cancellation or, as the case may be, the person who gave the notice of withdrawal in all respects as if he were an authorised insurer.

(8) Where an application for approval as an authorised insurer has been refused or where the Minister gives notice of intention to cancel the approval of any person as an authorised insurer there shall be a right of appeal to the Supreme Court against such refusal or proposed cancellation.

The jurisdiction of the Supreme Court in any appeal under this section may be exercised by any judge of that court.

The decision of the Court on any such appeal shall be final, and the Minister shall give effect to the same.

Rules of court of the Supreme Court may be made prescribing all matters necessary or convenient to be prescribed for carrying this subsection into effect.

15. (1) (a) Where judgment has been obtained in any court 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 insures the judgment debtor against liability in respect of such death or bodily injury and the judgment is not satisfied

Entry of judgment against authorised insurer in certain events.

in

No. 15, 1942. in full within a period of thirty days after the same has been entered, the court or any judge of the court (or, where the judgment was obtained under the Small Debts Recovery Act, 1912-1933, any stipendiary or police magistrate) shall, upon the application of the judgment creditor, direct that the judgment be entered against the authorised insurer:

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

Provided further that notice of intention to make the application shall be served on the authorised insurer at least seven days before the hearing of the application.

(b) Where the court or judge or magistrate gives any such direction the judgment shall be entered and may thereupon be enforced as a judgment against the authorised insurer:

Provided that any judgment so entered may be enforced against the authorised insurer only to the extent to which it had not already been satisfied at the time it was so entered.

Where insured person is dead, or cannot be served with process.
cf. Act 2183 (1934), S.A., s. 70D (2).

(2) (a) Where, in respect of the death of or bodily injury to any other person caused by or arising out of the use of a motor vehicle, liability has been incurred by any person (in this subsection referred to as the "insured person") who is insured against such liability under—

- (i) a third-party policy; or
- (ii) a policy of insurance complying with the provisions of any statute which is in force in any prescribed part of the Commonwealth of Australia (other than this State) and which requires the owner or driver of a motor vehicle to be insured against liability in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle;

and where the insured person is dead or cannot be served with process, any person who could have obtained judgment in respect of such death or bodily injury against the insured person if he were living or if he could have been

been served with process, as the case may be, may recover No. 15, 1942.
in a case where the insurance is under a third-party policy by action against the authorised insurer who issued the third-party policy, and in a case where the insurance is under a policy of the nature referred to in subparagraph (ii) of this paragraph by action against the nominal defendant, an amount equivalent to the sum for which he could have obtained a judgment against the insured person.

(b) No such action shall lie against the authorised insurer or the nominal defendant unless notice of intention to make a claim is given to the authorised insurer or the nominal defendant, as the case may be—

- (i) in the case of an action for the recovery of any amount referred to in subsection one of section twenty-six of this Act—within the time prescribed by subsection two of that section;
- (ii) in any other case—within a period of three months after the occurrence which resulted in such death or bodily injury, or within such further period as the court, upon sufficient cause being shown, may allow.

(c) The fact that the insured person cannot be served with process may be proved orally or by the affidavit of the person who endeavoured to effect service.

(3) It shall be no defence by an authorised insurer to an application to enter judgment against him pursuant to subsection one of this section or to an action against him under subsection two of 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.

Certain defences not available against third parties.

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 any such application or action 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)

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- (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.

It shall be no defence by the nominal defendant to an action against him under subsection two of this section that the owner or driver of the motor vehicle has committed any breach of or has failed to comply with any provision of this Act.

Recovery
by insurer
from
owner.

(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 are such owners from such persons jointly and severally) so much of—

- (a) any judgment entered or 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 of the judgment entered or obtained against the authorised insurer; and
- (c) the costs of and expenses reasonably incurred by the authorised insurer,

as the authorised insurer has paid under or in consequence of any third-party policy where there has been—

- (i) a false statement or misrepresentation or non-disclosure in obtaining the third-party policy; or
- (ii) a breach by the owner of any term, condition or warranty of the third-party policy or any provision of this Act or a failure by the owner to comply with any such term, condition, warranty or provision:

Provided that the authorised insurer shall not be entitled to recover any moneys under this subsection unless the court in which the proceedings for the recovery of such moneys are taken is satisfied—

- (a) where there has been a false statement or misrepresentation or non-disclosure in obtaining the

the third-party policy—that such false statement, misrepresentation or non-disclosure, whether fraudulent or otherwise, was in relation to some fact or thing of such a nature as to influence a prudent insurer in determining whether or not to accept a proposal for insurance; No. 15, 1942.

- (b) where there has been a breach of or failure to comply with any term, condition, warranty or provision as aforesaid—that the breach or failure was such that it contributed in a material degree to the circumstances in which the authorised insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

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

- (a) any judgment entered or 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 of the judgment entered or obtained against the authorised insurer; and
- (c) the costs of and expenses reasonably incurred by the authorised insurer,

as the authorised insurer has paid under or in consequence of any third-party policy where the driver has committed a breach of or has failed to comply with any provision of this Act:

Provided that the authorised insurer shall not be entitled to recover any moneys under this subsection unless the court in which the proceedings for the recovery of the moneys are taken is satisfied that the breach or failure was such that it contributed in a material degree to the circumstances in which the authorised insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

(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. Limitation
of amount
recover-
able.

(7)

Motor Vehicles (Third Party Insurance) Act.**No. 15, 1942.**Effect of
payment by
authorised
insurer.

(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 entitled to the right of 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.

Any payment by the nominal defendant, made in consequence of this section, shall, to the extent of such payment, be a discharge of the liability of the insured person to the person entitled to the right of action referred to in subsection two of this section.

Presump-
tion of
agency.

16. For the purposes of any proceedings against the owner of a motor vehicle, whether severally or jointly with the driver of such motor vehicle, for the recovery of damages in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle, and, where the motor vehicle is an insured motor vehicle, for the purposes of the third-party policy, any person (other than the owner) who was, at the time of the occurrence out of which such proceedings arose, the driver of such 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:

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

Provided further that, in the case of a motor vehicle which is registered at the commencement of subsection one of section seven of this Act, the provisions of this section shall not apply to and in respect of that motor vehicle until the expiration of such registration or until the expiration of a period of thirty days after such commencement whichever first happens.

17.

17. 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 that motor vehicle was at the time of the occurrence out of which such death or injury arose driven by a person without the authority of the owner or without reasonable grounds for believing that he had the authority of the owner, then—

No. 15, 1942.
Right of authorised insurers against unauthorised drivers.
cf. Act No. 4688 (Vict.), s. 20.

- (a) such driver shall not be entitled to recover from the authorised insurer any sum on account of any moneys (including costs) paid or payable by such driver in respect of his liability in respect of such death or bodily injury, but any amount necessary to satisfy such liability shall be paid by the authorised insurer to the person to whom the liability was incurred; and
- (b) any sum paid by the authorised insurer in or towards the discharge of the liability of any person in respect of such death or bodily injury shall be recoverable by the authorised insurer from such driver.

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

- (a) may undertake the settlement of any claim against any person in respect of a liability against which he is insured under the third-party policy;
- (b) may take over during such period as he thinks proper the conduct on behalf of such person 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 such person; and
- (d) shall indemnify such person against all costs and expenses of or incidental to any such proceedings while the authorised insurer retains the defence or conduct thereof.

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

(2) The person referred to in subsection one of this section shall sign all such warrants and authorities as the authorised insurer requires for the purpose of enabling the authorised insurer to have the defence or conduct of any proceedings referred to in that subsection and,

Motor Vehicles (Third Party Insurance) Act.

No. 15, 1942. 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 person.

(3) Nothing said or done by or on behalf of the authorised insurer in connection with the settlement of any such claim or the defence or conduct of any such proceedings shall be regarded as an admission of liability in respect of or shall in any way prejudice any other claim, action or proceeding arising out of the same occurrence.

No contract-
ing out of
Act.

19. (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.

(2) Any contract whereby the liability of the owner of a public motor vehicle used for the conveyance of passengers in respect of the death of or bodily injury to any passenger thereon is negated, limited or modified shall be void.

In this subsection "passenger" includes any person (other than the driver) who is in or upon, entering or getting on to or alighting from the motor vehicle.

Duties of
owner and
driver.

20. (1) Where the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle (not being a motor vehicle in respect of which persons are exempted by or under this Act from the provisions of subsection one of section seven of this Act) the following provisions shall have effect:—

(a) The owner shall, as soon as practicable after the occurrence which resulted in such death or bodily injury, or, if he was not then driving the motor vehicle, as soon as practicable after he became aware of the occurrence, give a notification in writing of the occurrence with particulars as to the date, nature and circumstances thereof, to the authorised insurer (where the motor vehicle is an insured motor vehicle) or to the nominal defendant (where the motor vehicle is an uninsured motor vehicle).

(b)

(b) If at the time of the occurrence the person driving the motor vehicle (in this section hereinafter referred to as the driver) was not the owner of the motor vehicle, the driver shall as soon as practicable give a notification in writing—

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- (i) to the owner of the motor vehicle; or
- (ii) to the authorised insurer (where the motor vehicle is an insured motor vehicle) or the nominal defendant (where the motor vehicle is an uninsured motor vehicle).

Such notification shall be a notification of the occurrence with particulars as to the date, nature and circumstances thereof.

- (c) The owner and the driver, or either of them, shall give such information, in addition to the information referred to in paragraphs (a) and (b) of this subsection, and shall take such steps as the authorised insurer or the nominal defendant may reasonably require, whether or not any claim has been made in respect of such death or bodily injury.
- (d) Neither the owner nor the driver shall, without the consent in writing of the authorised insurer or the nominal defendant, make any offer, promise, payment or settlement or any admission of liability in respect of such death or bodily injury.
- (e) Where the motor vehicle is an insured motor vehicle—
 - (i) the owner or the driver, as the case may be, shall forthwith give to the authorised insurer a notification in writing of every notice of intention to make a claim given to and of every claim made or action brought against him in respect of such death or bodily injury;
 - (ii) the owner shall, where he becomes aware that notice of intention to make a claim has been given to, or a claim has been made or an action brought against the driver

No. 15, 1942.

driver in respect of such death or bodily injury, forthwith give to the authorised insurer a notification in writing thereof;

- (iii) neither the owner nor the driver shall, without the consent in writing of the authorised insurer, enter upon or incur the expense of litigation in respect of any liability against which he is insured under the third-party policy.

(2) It shall be a sufficient compliance with any requirement of subsection one of this section as to the giving of a notification by the owner or the driver if the notification is given by some person on his behalf.

(3) A notification given under this section shall not be subject to discovery and shall not 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 requirements of this section.

(4) This section shall not apply in any case where—

- (a) the person suffering the death or bodily injury was the owner of the motor vehicle; and
 (b) the motor vehicle was at the time of the occurrence being driven by such owner.

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

21. (1) Every third-party 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 when another third-party policy in relation to that motor vehicle comes into force except in relation to any liability, whether under the policy or under this Act, accrued or incurred before such other third-party policy came into force.

(2) The regulations may require that 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 a notice in the prescribed form to the authorised insurer who issued the third-party policy;

(b)

- (b) the person who has purchased or acquired possession of the insured motor vehicle shall give a notice in the prescribed form to such authorised insurer. No. 15, 1942.

(3) 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 lending of a motor vehicle for a period not exceeding three months; or
(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.

22. (1) Every third-party 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 when another third-party policy in relation to motor vehicles to which that trader's plate is affixed comes into force, except in relation to any liability, whether under the policy or under this Act, accrued or incurred before such other third-party policy came into force. Change of ownership of trader's business.

(2) The regulations may require that as soon as practicable after the sale or other disposal of any business in respect of which a trader's plate is in issue—

- (a) the former owner of the business shall give a notice in the prescribed form to the authorised insurer who issued the third-party policy;
(b) the new owner of the business shall give a notice in the prescribed form to such authorised insurer.

23. (1) Any authorised insurer who upon any proposal for a third-party policy issues a policy of Offences.
insurance

Motor Vehicles (Third Party Insurance) Act.

No. 15, 1942. insurance which is not a third-party policy or which contains any term, condition or warranty rendered void by the operation of subsection three of section ten of this Act shall be guilty of an offence against this Act.

(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.

DIVISION 2.—*Payments to hospitals, etc.*

Definitions. 24. In this Division—

“Ambulance vehicle” means a 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 within the meaning of the Ambulance Transport Service Act, 1919, as amended by subsequent Acts, or by the council of a city, municipality or shire or a county council established under any Act, or by the governing body or manager of a hospital.

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

The expression “hospital” also includes a hospital or institution in the nature of a hospital conducted by or on behalf of the State.

“Massage treatment” means massage rendered by a person who carries on the profession of masseur and includes any ancillary treatment rendered by such person, but does not include any

any such massage or treatment which is rendered— **No. 15, 1942.**

- (a) to a patient in an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless such patient has been classified as a private or intermediate patient;
- (b) to any patient in a hospital, by a person who is a paid employee of the hospital and who, in the course of his employment at the hospital, normally works for at least thirty hours per week;

“Masseur” means a person by whom massage treatment is rendered.

“Medical treatment” does not include treatment which is rendered—

- (a) to a patient in an incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless such patient has been classified as a private or intermediate patient;
- (b) to any patient in a hospital by a resident medical officer of such hospital.

“Nursing” includes treatment by a registered nurse.

25. (1) Subject to subsection two of this section, where the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle, not being a motor vehicle in respect of which persons are exempted by or under this Act from the provisions of subsection one of section seven of this Act, and where any payment is made (whether or not with an admission of liability) by the authorised insurer under or in consequence of the third-party policy, or (in the case of an uninsured or unidentified motor vehicle) by the nominal defendant, in respect of such death or bodily injury, then—

Payments
in respect
of certain
matters.

- (a) if such person received, in respect of such bodily injury or the injury which caused his death,
hospital

No. 15, 1942.

hospital treatment (whether as an in-patient or an out-patient) or such person, as a consequence of any such injury, was conveyed in any ambulance vehicle, there shall also be paid by the authorised insurer or the nominal defendant, as the case may be, to the proper officer, 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;

- (b) if such person received, in respect of any such injury, reasonably necessary medical treatment by a legally qualified medical practitioner or reasonably necessary massage treatment by a masseur or reasonably necessary dental treatment (otherwise than as hospital treatment) by a registered dentist, or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, there shall also be paid by the authorised insurer or the nominal defendant, as the case may be, to such medical practitioner, masseur, dentist, or nurse, as the case may be, such amount as is reasonably appropriate to the treatment or nursing afforded, having regard to the reasonable necessity therefor and the customary charge made in the community for such treatment or nursing.

In this section, "proper officer" means the officer or person generally or specially authorised by law or by the person or body governing or controlling the hospital or the ambulance vehicle, as the case may be, to receive any amount payable under paragraph (a) of this subsection.

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

(2) An authorised insurer or the nominal defendant shall not be bound to pay any amount under this section unless notice in writing that a claim will be

be made under this section or under section twenty-six No. 15, 1942, of this Act is given—

- (a) to the authorised insurer as soon as practicable after the person entitled to make the claim became aware of the identity of the authorised insurer, but not in any case later than thirty days after such person could, with reasonable diligence, have ascertained such identity;
- (b) to the nominal defendant as soon as practicable after the person entitled to make the claim became aware of the fact that the motor vehicle was an uninsured motor vehicle or that the identity of the motor vehicle could not be established, but not, in any case, later than thirty days after such person could, with reasonable diligence, have ascertained such fact.

(3) Any amount payable under this section by an authorised insurer or the nominal defendant may be recovered as a debt from him by the proper officer, medical practitioner, masseur, dentist, 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).

26. (1) Subject to subsection two of this section, where liability at law is incurred in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle, not being a motor vehicle in respect of which persons are exempted by or under this Act from the provisions of subsection one of section seven of this Act, then—

Right of action against insured person by hospital, etc.

- (a) if such person received, in respect of such bodily injury or the injury which caused his death, hospital treatment (whether as an in-patient or an out-patient) or such person, as a consequence of any such injury, was conveyed in any ambulance vehicle, the proper officer may, in the name and on behalf of such person, and notwithstanding that such person may be dead, recover 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;
- (b) if such person received, in respect of any such injury, reasonably necessary medical treatment by a legally qualified medical practitioner or reasonably

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reasonably necessary massage treatment by a masseur, or reasonably necessary dental treatment (otherwise than as hospital treatment) by a registered dentist, or reasonably necessary nursing (otherwise than as hospital treatment) by a registered nurse, such medical practitioner, masseur, dentist, or nurse, as the case may be, may, in the name and on behalf of such person, and notwithstanding that such person may be dead, recover such amount as is reasonably appropriate to the treatment or nursing afforded, having regard to the reasonable necessity therefor and the customary charge made in the community for such treatment or nursing.

Any amount recoverable under this subsection may be recovered by way of damages from the owner and the driver of the motor vehicle jointly, or from either of them severally or (in the case of an uninsured or unidentified motor vehicle) from the nominal defendant.

In this section, "proper officer" means the officer or person generally or specially authorised by law or by the person or body governing or controlling the hospital or the ambulance vehicle, as the case may be, to conduct proceedings for the recovery of any amount recoverable under paragraph (a) of this subsection.

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

(2) 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-five of this Act is given—

(a) to the authorised insurer as soon as practicable after the person entitled to make the claim became aware of the identity of the authorised insurer, but not in any case later than thirty days after such person could, with reasonable diligence, have ascertained such identity;

(b)

(b) to the nominal defendant as soon as practicable after the person entitled to make the claim became aware of the fact that the motor vehicle was an uninsured motor vehicle or that the identity of the motor vehicle could not be established, but not in any case later than thirty days after such person could, with reasonable diligence, have ascertained such fact. No. 15, 1942.

(3) (a) No such action shall be commenced—

- (i) in any case where the authorised insurer or the nominal defendant has made a payment (whether or not with an admission of liability) in respect of the death or bodily injury;
- (ii) in any case where, in respect of such death or bodily injury, proceedings have been taken for compensation under the Workers' Compensation Act, 1926, as amended by subsequent Acts, or for the recovery of damages, unless and until such proceedings have been dismissed for want of prosecution or otherwise discontinued;
- (iii) in any other case, until six months at least after the occurrence out of which such death or bodily injury arose.

(b) Where any such action has been commenced by the proper officer, medical practitioner, masseur, dentist, or nurse, and before such action has been completed proceedings are commenced by any other person for compensation under the Workers' Compensation Act, 1926, as amended by subsequent Acts, or for the recovery of damages, in respect of the death or bodily injury aforesaid such action shall be stayed pending completion of the proceedings.

If as a result of such proceedings compensation is paid or a payment is made under section twenty-five of this Act such action shall abate.

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

Motor Vehicles (Third Party Insurance) Act.

No. 15, 1942.

Payments
by
authorised
insurer.

27. Any payment by an authorised insurer or the nominal defendant under and in accordance with section twenty-five or section twenty-six of this Act in respect of treatment, conveyance, or nursing shall, to the extent of such payment, but subject to section thirty-two of this Act, be a discharge of the liability of any person in respect of such treatment, conveyance or nursing.

DIVISION 3.—Motor Omnibuses.Amendment
of Act No.
18, 1930.Sec. 154.
(Insurance.)

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

(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:—

(1) In this section—

“Authorised insurer” means a person who is for the time being an authorised insurer under the Motor Vehicles (Third Party Insurance) Act, 1942.

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

“Government Insurance Office” means the Government Insurance Office of New South Wales, established under the Government Insurance Acts, 1927-1941.

“Policy” means a policy of insurance which complies with the requirements of this section.

(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 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.

Every such policy shall be in the prescribed form. (b)

Insurance of
motor
omnibuses
against
damage to
property.

(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, 1942. No. 15, 1942.

(3) Registration or renewal of registration of a motor omnibus shall not be granted unless and until there is lodged with the Commissioner—

(a) 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 the certificate or upon a date not later than the date of commencement of the registration or renewal of registration and to terminate upon the date of expiration of such registration or renewal will be issued by that authorised insurer in relation to such motor omnibus; or

(b) a nomination of the Government Insurance Office as authorised insurer, and the appropriate amount of insurance premium in respect of the insurance of the motor omnibus for a period commencing upon the date of commencement and terminating upon the date of expiration of the registration or renewal of registration.

Any such nomination shall be in or to the effect of the prescribed form and shall furnish the particulars indicated in the form.

No such nomination shall be vitiated by any informality.

(3A) (a) Where an authorised insurer accepts the appropriate amount of insurance premium in respect of the insurance of
of

No. 15, 1942.

of a motor omnibus he shall forthwith issue to the owner a certificate of the nature referred to in paragraph (a) of subsection three of this section in relation to the motor omnibus.

(b) An authorised insurer who issues any such certificate—

(i) shall, for the purposes of this section relating to the liability of authorised insurers, be deemed to have issued a policy in conformity with the certificate; and

(ii) shall at the time of the issue thereof or as soon as practicable thereafter issue a policy in conformity with the certificate.

(3b) (a) Upon lodgment under paragraph (b) of subsection three of this section of a nomination of the Government Insurance Office and the appropriate amount of insurance premium, the Government Insurance Office shall be deemed to have issued a policy in conformity with the nomination.

(b) The Commissioner shall pay such amount to the Government Insurance Office and the Government Insurance Office shall, as soon as practicable, issue a policy in conformity with the nomination.

(3c) A policy issued by an authorised insurer in relation to a motor omnibus shall commence on the date on which it is expressed to commence and shall continue in force—

(a) in a case where the authorised insurer notifies the Commissioner, at least thirty days before the date on which the policy is expressed to terminate, that he will not renew the policy—until such date;

(b) in a case, not provided for in paragraph (a) of this subsection, where another policy issued by the same

or

or another authorised insurer in No. 15, 1942.
relation to that motor omnibus
commences during the period of
fifteen days next following the date
on which such first-mentioned
policy is expressed to terminate—
until such commencement;

- (c) in any other case—until fifteen
days after the date on which it is
expressed to terminate.

(3d) Where an authorised insurer issues
a renewal of a policy in relation to a motor
omnibus for a period expressed to terminate
on the date of expiration of a renewal of the
registration of the motor omnibus—

- (a) the insurance premium shall be
payable as if such renewal of the
policy were expressed to commence
from the date of commencement
of the renewal of registration,
whether or not the renewal of the
policy is so expressed;
- (b) the authorised insurer shall not be
liable under the renewal of the
policy in respect of any damage to
property caused by or arising out
of the use of the motor omnibus
during the period (if any) between
the date from which the renewal of
the policy is expressed to commence
and the date of payment of the
amount of insurance premium in
respect of the renewal of the policy.

Nothing in this subsection shall affect
the operation of subsection (3c) of this
section, or exempt any authorised insurer
from liability under any policy continued in
force by that subsection.

- (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)

No. 15, 1942.

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

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

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

(2) Subsection one of this section shall commence on the day upon which subsection one of section seven of this Act commences:

Provided that where, upon the said day, a motor omnibus is registered, then until the expiration of such registration or until the expiration of a period of thirty days after the said day, whichever first happens,—

- (a) the provisions of sections one hundred and fifty-four, one hundred and fifty-five and one hundred and fifty-six of the Transport Act, 1930, as amended by subsequent Acts (as in force immediately before the said day), shall continue to apply to and in respect of the motor omnibus; and
- (b) the provisions of section one hundred and fifty-four of the Transport Act, 1930, as amended by subsequent Acts and by subsection one of this section, shall not apply to and in respect of the motor omnibus:

Provided

Provided further that where, upon the said day, there is in force in relation to a motor omnibus a policy of insurance (in this proviso referred to as the "existing policy") which to any extent insures the owner of the motor omnibus against liability to pay damages in respect of damage to property caused by or arising out of the use of the motor omnibus, the following provisions shall have effect:—

- No. 15, 1942.**
- (i) The existing policy shall, as regards any such liability, be deemed, for all purposes of section one hundred and fifty-four of the Transport Act, 1930, as amended by subsequent Acts and by subsection one of this section, to be a policy as defined in that section, and the existing policy shall be deemed to have been varied, modified or amended in such manner and to such extent as may be necessary to give effect to this proviso;
 - (ii) The insurer who issued the existing policy shall, for the purposes only of such policy and of this proviso, be deemed to be an authorised insurer whether or not he has been approved as such;

but nothing in the foregoing provisions of this proviso shall affect the operation of the existing policy in so far as the existing policy insures the owner of the motor omnibus against any liability other than the liability to which those provisions relate.

DIVISION 4.—Nominal Defendant.

29. (1) The Governor 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.

Any such appointment shall be made on the nomination of the authorised insurers or a majority of them or in default of such nomination upon the nomination of the Minister.

(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

No. 15, 1942. 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.

Claims in respect of uninsured and unidentified motor vehicles.

30. (1) Every claim for damages in respect of the death of or bodily injury to any person caused by or arising out of the use 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.

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.

cf. Act No. 4688 (Vict.) s. 13 (1).

(2) (a) Where the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle but the identity of the motor vehicle cannot after due inquiry and search be established, any person who could have enforced a claim for damages against the owner or driver of the motor vehicle in respect of the death or bodily injury may enforce against the nominal defendant the claim which he could have enforced against the owner or driver of the motor vehicle.

The inquiry and search for the purpose of establishing the identity of the motor vehicle may be proved orally or by the affidavit of the person who made the inquiry and search.

(b) No action to enforce any such claim shall lie against the nominal defendant unless notice of intention to make a claim is given by the claimant to the nominal defendant—

- (i) in the case of an action for the recovery of any amount referred to in subsection one of section twenty-six of this Act—within the time prescribed by subsection two of that section;
- (ii) in any other case—within a period of three months after the occurrence out of which the claim arose, or within such further period as the court, upon sufficient cause being shown, may allow.

31.

31. (1) The nominal defendant shall not be personally liable to pay any amount payable in satisfaction of any claim made or judgment recovered against him or the amount of any costs or expenses incurred by him in relation to any such claim or to the proceedings in which the judgment was obtained, but every such amount shall be paid by the nominal defendant out of moneys provided by the authorised insurers in accordance with this Division.

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Payment by
nominal
defendant.

Any amount which is required by this subsection to be provided by the authorised insurers shall be apportioned by the Commissioner, in proportions determined by him, amongst those who were authorised insurers at the time of the occurrence out of which the claim arose.

(2) Any amounts (not being amounts to which subsection one of this section applies) from time to time necessary to meet any costs and expenses incurred by the nominal defendant in or in connection with the exercise and discharge of the powers, authorities, duties and functions conferred and imposed upon him by or under this Act shall be apportioned by the Commissioner, in proportions determined by him, amongst the authorised insurers.

(3) In making any determination under this section the Commissioner shall have regard so far as practicable to the premium incomes in respect of third-party policies received by each authorised insurer during a period adopted by the Commissioner for the purpose.

(4) When the Commissioner makes any apportionment under this section he shall give notice to each authorised insurer concerned of the sum which the Commissioner has determined as being payable by that authorised insurer and shall in such notice require the authorised insurer to pay such sum to the nominal defendant within a time to be specified in the notice.

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

(5) Where an authorised insurer neglects or fails to pay to the nominal defendant 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

No. 15, 1942. exceeding one hundred pounds, and the court, in addition to imposing a penalty, may order such authorised insurer to pay to the nominal defendant 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, as amended by subsequent Acts, 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.

**Recovery
from owner
or driver.**
cf. Act No.
4688 (Vict.),
s. 14 (3).

32. (1) Any amount paid by the nominal defendant in satisfaction of a claim made or judgment recovered against him and the amount of any costs and expenses incurred by him in relation to any such claim or to the proceedings in which the judgment was obtained may be recovered by the nominal defendant as a debt from the person who, at the time of the occurrence out of which such claim arose or in respect of which such judgment was obtained, was the owner of the motor vehicle or, where at the time of such occurrence some other person was driving the vehicle, from the owner and the driver jointly or from either of them severally:

Provided that—

- (a) it shall be a sufficient defence in any proceedings under this section against the owner (whether severally or jointly with the driver) if he establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without his authority;
- (b) it shall be a sufficient defence in any proceedings under this section against the driver of an uninsured motor vehicle (whether severally or jointly with the owner) if he establishes to the satisfaction of the court that, at the time of the occurrence, he was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing and did in fact believe that he had such authority, and that he had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

(2)

(2) Any amount recovered by the nominal defendant under this section shall be paid by the nominal defendant, in proportions determined by the Commissioner, to the authorised insurers who provided the amount. No. 15, 1942.

In so determining the Commissioner shall have regard so far as practicable to the proportion of the amount provided by each such authorised insurer.

PART III.

PREMIUMS.

33. (1) The Governor may make regulations for or with respect to maximum rates of premiums to be charged in respect of third-party policies. Maximum rates of premiums may be prescribed.

(2) Different maximum rates may be prescribed in respect of third-party policies in relation to different classes of motor vehicles having regard to the purposes for which such motor vehicles are used or the areas in which such motor vehicles are mainly used or are usually garaged or the periods for which the third-party policies are expressed to be effective, or otherwise.

The regulations may, in cases where more than one motor vehicle is owned by the same owner, provide for progressively diminishing maximum rates of insurance premiums.

(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 rate 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.

34. (1) Any person who uses or causes, permits or suffers any other person to use upon a public street any insured motor vehicle shall, if the appropriate amount of insurance premium payable in relation thereto has not been paid, be guilty of an offence against this Act and shall be liable to a penalty not exceeding ten pounds for every day on which it is so used. Use of motor vehicle where appropriate amount of insurance premium not paid.

(2)

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(2) The authorised insurer may recover as a debt from any such person, the difference between the amount of premium (if any) actually paid in relation to such motor vehicle and the appropriate amount of premium.

(3) Notwithstanding any other provisions of this Act failure by any person to lodge or pay in full the appropriate amount of insurance premium in respect of the insurance of a motor vehicle (whether such failure is due to error or omission, or to any change of circumstances or other matter affecting the amount payable as the appropriate amount of insurance premium) shall not affect the validity of any third-party policy issued or deemed to have been issued, nor any registration of the motor vehicle.

Rebates of
premiums.

35. (1) Where on the day upon which a third-party policy issued in relation to a motor vehicle or in relation to motor vehicles to which a trader's plate is affixed commences, there is in force in relation thereto a policy of insurance (in this subsection hereinafter referred to as the "existing policy") which by reason of the operation of subsection three of section seven of this Act is, to the extent referred to in that subsection, deemed to be a third-party policy, the owner of the motor vehicle, or the trader may, by notice in writing given to the insurer, cancel the existing policy so far as it relates to liability covered by the third-party policy; and such insurer shall pay or allow to the owner or trader a reasonable amount by way of rebate of portion of the premium paid in respect of the existing policy.

(2) Where on the day upon which a policy as defined in section one hundred and fifty-four of the Transport Act, 1930, as amended by subsequent Acts and by this Act (in this subsection hereinafter referred to as a "prescribed policy"), issued in relation to a motor omnibus commences, there is in force in relation thereto a policy of insurance (in this subsection hereinafter referred to as the "existing policy") which by reason of the operation of the second proviso to subsection two of section twenty-eight of this Act is deemed to be to the extent referred to in that proviso a policy of insurance as defined in the said section one hundred and fifty-four, the owner of the motor omnibus may, by notice in writing given to the insurer, cancel the existing policy so far
as

as it relates to liability covered by the prescribed policy, ^{No. 15, 1942.} and such insurer shall pay or allow to the owner a reasonable amount by way of rebate of portion of the premium paid in respect of the existing policy.

PART IV.

GENERAL.

36. (1) A certificate purporting to be signed by the Commissioner or a prescribed officer and to certify that—

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

- (a) on a specified date or during the whole of a specified period any person was or was not an authorised insurer; or
- (b) on a specified date any person ceased to be an authorised insurer,

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 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 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; or
- (c) a specified third-party policy was issued by a specified authorised insurer,

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 of the matters set forth in the certificate.

(3)

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(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.

37. Any notice, notification or request 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, notification or request; and the notice, notification or request shall be deemed to have been given or made 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.

Owner and driver to give certain information.

38. (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. (2)

(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.

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(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.

39. Where a judgment is obtained for payment of damages 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 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.

40. Where any matter or thing is by or under this Act directed or forbidden to be done, and such matter or thing if so directed to be done remains undone or if so forbidden to be done is done, then in every such case every person offending against such direction or prohibition shall be guilty of an offence against this Act.

Offences.
cf. Act No. 41, 1919, s. 632.

41. (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 or under this Act may be recovered before a stipendiary or police magistrate or any two justices in petty sessions.

(3) The court shall cause particulars of every conviction for an offence against this Act and of every order made under this Act to be forwarded to the Commissioner.

42. 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

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

law

Motor Vehicles (Third Party Insurance) Act.

No. 15, 1942. law or in equity against the person who committed such act or who was responsible for such omission.

**Amend-
ment of
Act No. 31,
1932, s. 29.**

43. The Transport (Division of Functions) Act, 1932-1940, is amended by inserting at the end of section twenty-nine the following proviso:—

Provided that this section shall not apply to or in respect of an action against any of such Commissioners for 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.

**Amendment
of Act No.
31, 1897.**

44. The Compensation to Relatives Act of 1897, as amended by subsequent Acts, is amended—

**Sec. 3.
(Right of
action.)**

(a) (i) by inserting in subsection two of section three, after the word “funeral,” the words “or the cremation”;

(ii) by inserting in the same subsection after the word “person” the words “and the reasonable cost of erecting a headstone or tombstone over the grave of the deceased person”;

**Sec. 4.
(Persons
for whose
benefit action
may be
brought.)**

(b) by inserting in section four, after the word “husband,” the words “brother, sister, half-brother, half-sister”;

**Sec. 7.
(Defini-
tions.)**

(c) (i) by inserting in subsection one of section seven, after the word “stepmother,” the words “and any person standing in loco parentis to another”;

(ii) by inserting in the same subsection, after the word “stepdaughter,” the words “and any person to whom another stands in loco parentis”.

Regulations.

45. (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.

(2)

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

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- (a) the exemption, subject to such conditions (if any) 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) 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 furnishing to a prescribed person by any authorised insurer of prescribed particulars, verified as prescribed, which may be necessary or convenient to be ascertained from time to time for the purpose of enabling the Governor to decide what maximum amounts of premiums should be prescribed, or for the purpose of enabling the Commissioner to make any determination under section thirty-one of this Act;
 - (e)

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(e) the imposition of a requirement that a duplicate of the certificate of insurance shall be carried on insured motor vehicles, and shall be produced to prescribed persons on demand.

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

Publication
of regu-
lations.

46. All regulations made under this Act shall—

- (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 shall thereupon cease to have effect.