

**MOTOR VEHICLES (THIRD PARTY INSURANCE)
AND LAW REFORM (MISCELLANEOUS PRO-
VISIONS) AMENDMENT ACT.**

Act No. 42, 1962.

An Act to make further provision with respect to the discharge of liability in respect of the death of or bodily injury to persons caused by or arising out of the use of motor vehicles; for these purposes to amend the Motor Vehicles (Third Party Insurance) Act, 1942-1951, the Law Reform (Miscellaneous Provisions) Act, 1944, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 14th December, 1962.]

Elizabeth II,
No. 42, 1962

BE it enacted by the Queen'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:—

1. (1) This Act may be cited as the "Motor Vehicles (Third Party Insurance) and Law Reform (Miscellaneous Provisions) Amendment Act, 1962".

Short title
and citation.

(2) The Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts and by this Act, may be cited as the Motor Vehicles (Third Party Insurance) Act, 1942-1962.

(3) The Law Reform (Miscellaneous Provisions) Act, 1944, as amended by this Act, may be cited as the Law Reform (Miscellaneous Provisions) Act, 1944-1962.

2. The Motor Vehicles (Third Party Insurance) Act, 1942, as amended by subsequent Acts, is amended—

Amendment
of Act No.
15, 1942.

(a) by inserting at the end of section ten the following new subsection:—

Sec. 10.
(Third-party
policy.)

(8) Every third-party policy shall to the extent of the insurance effected by that policy—

(a) extend and as from the commencement of the Law Reform (Miscellaneous Provisions) Act, 1944, be deemed to have extended,

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extended, in any case where the insured person is dead, to indemnify his estate against—

- (i) liability arising under any cause of action which, by virtue of section two of that Act survives against his estate;
 - (ii) liability arising by operation of subsection four of that section;
- (b) extend and as from the commencement of the Law Reform (Miscellaneous Provisions) Act, 1946, be deemed to have extended to indemnify the insured person or in any case where the insured person is dead, to indemnify his estate against—
- (i) liability arising where the insured person or, as the case may be, his estate has in any proceedings been joined as an alternative defendant;
 - (ii) liability arising where the insured person or, as the case may be, his estate has served or has been served with a notice in writing under subsection one of section three of the said Act;
 - (iii) liability arising where the insured person or, as the case may be, his estate claims contribution from some other person as a joint tort-feasor or has a claim made against him or it as a joint tort-feasor.

In this subsection “insured person” means a person so referred to in paragraph (a) of subsection two of section fifteen of this Act.

Sec. 15.
(Entry of judgment against authorised insurer in certain events.)

- (b) (i) by omitting from paragraph (a) of subsection two of section fifteen the word “subsection” and by inserting in lieu thereof the word “section”;

(ii)

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(ii) by inserting at the end of the same section the No. 42, 1962
following new subsections :—

(8) It is hereby declared—

(a) that the provisions of subsection one
of this section—

(i) shall extend, and as from
the commencement of Part II
of the Law Reform (Miscel-
laneous Provisions) Act, 1944,
be deemed to have extended, in
the circumstances mentioned in
that subsection to authorise
entry against the authorised
insurer of any judgment
obtained against the estate of
a deceased insured person ;

(ii) shall extend, and as from the
commencement of the Law
Reform (Miscellaneous Provi-
sions) Act, 1946, be deemed
to have extended, in the cir-
cumstances mentioned in that
subsection to authorise entry
against the authorised insurer
of any judgment obtained
against the estate of a deceased
insured person pursuant to Part
II of that Act or for contri-
bution under Part III of that
Act ;

(b) that the provisions of subsection two
of this section shall continue, and as
from the commencement of Part II of
the Law Reform (Miscellaneous Provi-
sions) Act, 1944, be deemed to have
continued in full force and effect not-
withstanding the enactment of or any-
thing contained in that Part.

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(9) The provisions of paragraph (a) of subsection two of this section shall extend and, as from the commencement of Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, shall be deemed to have extended, to permit the institution of proceedings as referred to in the said subsection against the authorised insurer or nominal defendant, as the case may be, in any case where the insured person is dead including any case where, by operation of subsection four of section two of that Act, a cause of action in respect of such death or bodily injury is deemed to have been subsisting against him before his death.

(10) The provisions of this section shall extend and, as from the commencement of the Law Reform (Miscellaneous Provisions) Act, 1946, be deemed to have extended in the manner hereinafter mentioned.

In all cases where liability of the nature mentioned in paragraph (a) of subsection two of this section has been incurred by an insured person and the insured person is dead or cannot be served with process—

- (a) any person seeking to recover damages in respect of the death or bodily injury as a result of which such liability was incurred may join as a defendant or one of the defendants, in a case where the insurance is under a third-party policy, 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 paragraph (a) of subsection two of this section, the nominal defendant;
- (b) any notice in writing under subsection one of section three of the said Act which might have been served by the insured

insured person, if he had been joined in the proceedings, or upon the insured person if he were living or could have been served with process, may be served by or upon the authorised insurer or the nominal defendant, as the case may be; No. 42, 1962

- (c) the authorised insurer or the nominal defendant, as the case may be, shall have the like rights and be subject to the like obligations, with respect to contribution between joint tort-feasors as the insured person would have had or been subject to if he were living or could have been served with process.

(11) The right of action against the authorised insurer or the nominal defendant where the insured person is dead shall be and as from the commencement of Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, be deemed to have been alternative to the right of action conferred by that Part against the estate of a deceased insured person.

In particular and without prejudice to the generality of the foregoing provisions of this subsection :—

- (a) where proceedings are commenced against the authorised insurer or nominal defendant no proceedings in respect of the same cause of action shall lie against the estate of a deceased insured person, unless the first mentioned proceedings have been discontinued;
- (b) where proceedings are commenced against the estate of a deceased insured person no proceedings in respect of the same cause of action shall lie against the

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the authorised insurer or nominal defendant, unless the first mentioned proceedings have been discontinued;

- (c) where proceedings against the authorised insurer, the nominal defendant or the estate of a deceased insured person, as the case may be, have been carried to judgment no further proceedings in respect of the same cause of action shall lie.

Sec. 16.
(Presump-
tion of
agency.)

- (c) by inserting at the end of section sixteen the following new subsection :—

(2) The presumption of agency under subsection one of this section shall be applicable and shall, as hereinafter provided, be deemed to have been applicable not only with respect to proceedings taken against the owner of the motor vehicle, whether severally or jointly with the driver, but also where the owner or driver is dead with respect to proceedings against his estate pursuant to Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, or where the owner or driver is dead or cannot be served with process, with respect to proceedings against the authorised insurer or the nominal defendant, as the case may be, under the authority of subsection two of section fifteen of this Act, and with respect to proceedings in which the owner or driver or his estate or the authorised insurer or the nominal defendant as the case may be, is involved as alternative defendant or as a person on whom notice in writing has been served pursuant to Part II of the Law Reform (Miscellaneous Provisions) Act, 1946, or as a party to proceedings for recovery of contribution by or against a joint tort-feasor pursuant to Part III of that Act.

The foregoing provisions of this subsection shall as from the commencement of Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, be deemed

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deemed to have been applicable with respect to proceedings dependent on that Act; and shall, as from the commencement of the Law Reform (Miscellaneous Provisions) Act, 1946, be deemed to have been applicable with respect to proceedings dependent on that Act; and shall as from the commencement of the Motor Traffic (Amendment) Act, 1951, be deemed to have been applicable with respect to proceedings dependent on the Law Reform (Miscellaneous Provisions) Act, 1946, as amended by the Motor Traffic (Amendment) Act, 1951. No. 42, 1962

3. (1) The Law Reform (Miscellaneous Provisions) Act, 1944, is amended— Amendment
of Act No.
28, 1944.

(a) (i) by inserting after the word “representation” in paragraph (b) of subsection three of section two the words “or within such further time as the Court may allow”; Sec. 2.
(Effect of
death on
certain
causes of
action.)

(ii) by inserting at the end of the same subsection the following new paragraph :—

The jurisdiction under paragraph (b) of this subsection to allow further time for taking proceedings may be exercised, where the proceedings are to be taken in the Supreme Court, by a judge of that Court sitting either in court or in chambers, or, where the proceedings are to be taken in a district court by a judge of the district court sitting either in court or in chambers, or where the proceedings are to be taken in a court of petty sessions exercising jurisdiction under the Small Debts Recovery Act, 1912, as amended by subsequent Acts, by a stipendiary magistrate.

(b) (i) by inserting in subsection six of the same section after the word “Part” the words “for the benefit of the estates of deceased persons and the obligations continued or created by this Part against the estates of deceased persons”;
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(ii) by inserting in the same subsection after the words "rights conferred" where secondly occurring the words "or obligations created".

(2) The amendments made by paragraph (b) of subsection one of this section shall be deemed to have commenced on the eighth day of December, one thousand nine hundred and forty-four.

Transitional provisions.

4. (1) The amendments made by the foregoing provisions of this Act and by this section shall, in addition to any other operation which they may have, also have effect, but subject to subsection two of this section, with respect to—

- (a) proceedings pending as at the first day of July, one thousand nine hundred and fifty-nine, and notwithstanding that in any such proceedings notice of discontinuance has been filed; and
- (b) proceedings which although not pending as at the first day of July, one thousand nine hundred and fifty-nine, could be commenced by reason of such amendments.

(2) Notwithstanding anything in subsection one of this section proceedings which—

- (a) have been settled by agreement followed by release or by entry of verdict or judgment; or
- (b) have been taken to verdict or judgment the judgment or decision of the Supreme Court of New South Wales in the case of Turner versus Government Insurance Office of New South Wales 1961 S.R. 1, the judgment or decision of the High Court of Australia in the case of The Nominal Defendant versus Maybury 35 A.L.J.R. 497 and the judgment or decision in any other case in respect of which an appeal to the Supreme Court of New South Wales or the High Court of Australia is pending at the date of the commencement of this Act excepted,

shall not be revived or continued.

(3) With respect to proceedings of the nature referred to in paragraph (b) of subsection one of this section during the period from the first day of July, one thousand nine hundred

hundred and fifty-nine, to the date upon which Her Majesty's assent to this Act is signified, time shall not run for the purpose of any notice before action required to be given by any Act or for the purpose of any limit of time within which actions must be brought imposed by any rule of law or any Act or Imperial Act or for the purposes of section sixty-nine of the Common Law Procedure Act, 1899-1962, or for the purposes of any rules of court. No. 42, 1962

(4) Where the plaintiff seeks to revive, continue or institute any proceedings to which paragraph (a) of subsection one of this section apply or which would, but for subsection three of this section, have been barred, the Court or a judge may by order allow the plaintiff to revive, continue or institute such proceedings on such terms and conditions, if any, as the Court or judge may think fit.

Any application to the Court or judge under this subsection shall be made within one year after the date upon which Her Majesty's assent to this Act is signified, or such further time as the Court or judge may allow, but not thereafter.
