

# Motor Vehicles (Third Party Insurance) Act 1942 No 15

[1942-15]



New South Wales

## Status Information

### Currency of version

Historical version for 4 December 2006 to 5 July 2009 (accessed 28 November 2024 at 19:12)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Private Health Facilities Act 2007 No 9](#) (not commenced)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 13 December 2007

# Motor Vehicles (Third Party Insurance) Act 1942 No 15



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Application of Act .....	5
4 (Repealed) .....	6
5 Interpretation .....	6
6 Administration .....	8
6A Scheme .....	8
<b>Part 2 Third parties</b> .....	8
<b>Division 1 Insurance</b> .....	8
7 Uninsured motor vehicle not to be driven on a public street .....	8
8 Conditions relative to registration of motor vehicles, issue of traders' plates etc .....	8
9 Issue of third-party policy .....	9
10 Third-party policy .....	10
11 (Repealed) .....	13
12 Cancellation of third-party policy .....	13
13 Appeal against refusal to issue or against cancellation of policy .....	14
14 Making of claims—identified motor vehicles .....	15
14A Making of claims—unidentified motor vehicles .....	16

14B Exclusion of certain claims .....	16
14C Service of documents on the GIO .....	16
14D Payment of claims .....	17
14E Joint hearing of certain proceedings .....	17
15, 16 (Repealed) .....	18
17 Right of Government Insurance Office against unauthorised drivers .....	18
18 Government Insurance Office may take over proceedings etc .....	18
19 No contracting out of Act.....	19
20 Duties of owner and driver .....	19
21 Change of ownership of motor vehicle .....	20
22 Change of ownership of trader's business.....	21
23 Offences .....	21
<b>Division 2 Payments to hospitals etc .....</b>	<b>22</b>
24 Interpretation .....	22
25 Payments in respect of certain matters.....	23
26 Right of action against insured person by hospital etc.....	24
27 Payments by the Government Insurance Office .....	26
<b>Division 3 Motor omnibuses.....</b>	<b>26</b>
28 (Repealed) .....	26
<b>Division 4 Recovery of certain amounts .....</b>	<b>27</b>
29-31A (Repealed) .....	27
32 Recovery from owner or driver .....	27
<b>Part 3 Premiums .....</b>	<b>27</b>
33-33E (Repealed) .....	27
34 Use of motor vehicle where appropriate amount of insurance premium not paid .....	27
35 (Repealed) .....	28
<b>Part 3A Awarding of damages .....</b>	<b>28</b>
35A Application .....	28
35B Discount rate applicable to certain awards of damages.....	28
35C Maximum amount of damages for provision of certain services .....	29
35D Payment of interest.....	29

<b>Part 4 General</b> .....	30
36 Facilitation of proof .....	30
37 Service of notices etc .....	30
38 Owner and driver to give certain information.....	31
38A (Repealed).....	31
39 Court to apportion damages.....	31
40 Offences .....	31
41 General penalty .....	32
42 Conviction not to affect civil remedy .....	32
43 (Repealed) .....	32
44 Amendment of Act No 31, 1897 .....	32
45 Regulations.....	32
46 (Repealed) .....	33
<b>Schedule 1 (Repealed)</b> .....	33

# Motor Vehicles (Third Party Insurance) Act 1942 No 15



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

- (1) This Part shall commence on the day upon which the assent of His Majesty to this Act is signified.
- (2) Subject to subsection (1) this Act shall commence upon such date or dates as may be appointed and notified pursuant to subsection (3).
- (3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the date upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint and notify different dates for different Parts or provisions (whether contained in the same Part or section or in different Parts or sections) and the Part or provision so specified shall commence accordingly.

### 3 Application of Act

This Act applies to and in respect of:

- (a) the registration or renewal of registration of a motor vehicle effected or required to be effected before 1 July 1987,
- (b) the issue of a trader's plate before 1 July 1987,
- (c) the use of a motor vehicle before 1 July 1987, and

- (d) the death of or bodily injury to a person arising out of the use, before 1 July 1987, of a motor vehicle.

#### 4 (Repealed)

#### 5 Interpretation

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Bodily injury** includes, in relation to a person, damage to the person's crutches, artificial members, eyes or teeth, other artificial aids or spectacle glasses.

**Commissioner** means the Commissioner for Motor Transport.

**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 Act 1927*.

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

**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 or any vehicle which is owned by the Commonwealth or by any person or body of persons representing the Commonwealth.

**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 21,
  - (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 21—any person who solely or jointly or in common with any other person is entitled to the immediate possession of the motor vehicle.

**Public street** means:

- (a) any street, road, lane, thoroughfare, footpath, or place open to or used by the public, and includes any place at the time open to or used by the public on the payment of money or otherwise, or
- (b) a recreation vehicle area within the meaning of the [Recreation Vehicles Act 1983](#).

**Registered** means:

- (a) registered under the [Motor Traffic Act 1909](#), the [Transport Act 1930](#) or the [Recreation Vehicles Act 1983](#), or
- (b) registered in New South Wales under the [Interstate Road Transport Act 1985](#) of the Commonwealth.

**Regulations** means regulations made under this Act.

**Transport Accidents Compensation Fund** means the Fund established under section 15 of the [Transport Accidents Compensation Act 1987](#) and continued in accordance with Part 10 of the [Motor Accidents Act 1988](#).

**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 of or dealer in motor vehicles in accordance with the regulations under the [Motor Traffic Act 1909](#).

**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 section 7 (1)) which is not an insured motor vehicle, or
  - (b) a motor vehicle which, under section 10 (6), 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.
- (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.

(4) (Repealed)

## **6 Administration**

(1) Subject to the control of the Minister this Act shall be administered in the Department of Motor Transport by the Commissioner.

(2) (Repealed)

### **6A Scheme**

(1) The provisions of this Act relating to third-party policies shall constitute a scheme to be known as the "Department of Motor Transport Third Party Insurance Scheme".

(2) The Government Insurance Office shall be the manager of the Department of Motor Transport Third Party Insurance Scheme.

## **Part 2 Third parties**

### **Division 1 Insurance**

#### **7 Uninsured motor vehicle not to be driven on a public street**

(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 5 penalty units.

(2), (3) (Repealed)

(4) It shall be a sufficient defence in any proceedings for a contravention of subsection (1) if the defendant proves to the satisfaction of the court that at the time the vehicle was used upon the public street the defendant had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

#### **8 Conditions relative to registration of motor vehicles, issue of traders' plates etc**

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

(a) (Repealed)

(b) the appropriate amount of insurance premium in respect of the insurance under a third-party policy with the Government Insurance Office 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.

(2) A trader's plate shall not be issued (except under the circumstances mentioned in subsection (3)) unless and until there is lodged with the Commissioner:



(a) (Repealed)

(b) the appropriate amount of insurance premium in respect of the insurance under a third-party policy with the Government Insurance Office of motor vehicles to which such trader's plate is affixed at any time whilst it is in issue.

(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.

## **9 Issue of third-party policy**

(1) (Repealed)

(2) Upon lodgment under section 8 (1) (b) of the appropriate amount of insurance premium, the Government Insurance Office shall be deemed to have been nominated as the insurer of the motor vehicle in respect of which such amount was lodged and to have issued a third-party policy, duly stamped within the meaning of the [Stamp Duties Act 1920](#), in relation to such motor vehicle.

(2A) For the purposes of this Act, a policy referred to in subsection (2) shall be deemed to be expressed:

(a) to commence on the date of commencement of the registration or renewal of registration or the date of lodgment of the amount referred to in that subsection, whichever is the later, and

(b) to terminate on the date of expiration of the registration or renewal of registration.

(3) Upon lodgment under section 8 (2) (b) of the appropriate amount of insurance premium, the Government Insurance Office shall be deemed to have been nominated as the insurer of motor vehicles to which the trader's plate, specified in the receipt for payment of such amount, is affixed and to have issued a third-party policy, duly stamped within the meaning of the [Stamp Duties Act 1920](#), in relation to such motor vehicles.

(3A) For the purposes of this Act, a policy referred to in subsection (3) shall be deemed to be expressed:

(a) to commence on the date of commencement shown in such receipt or the date of lodgment of the amount referred to in that subsection whichever is the later, and

(b) to terminate on the date of expiration shown in such receipt.

(4) Where a third-party policy is deemed to be issued pursuant to subsection (2) or (3) it shall not, for the purposes of this or any other Act, be necessary for the Government

Insurance Office to make out, execute or issue a third-party policy.

- (5) The Commissioner shall, at such times as may be agreed upon by the Commissioner and the Government Insurance Office, pay any amount of insurance premium lodged with the Commissioner in accordance with section 8 (1) (b) or (2) (b) to the Government Insurance Office.
- (6) (Repealed)

## **10 Third-party policy**

- (1) In order to comply with the requirements of this Act a policy of insurance:
- (a) must be issued by the Government Insurance Office, 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) 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](#) to a worker employed by the owner or driver, as the case may be,
  - (b) a liability which may be incurred by the owner or driver, as the case may be, 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 subsection (1) (a) and (b) 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 the Government Insurance Office 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:
  - (a) in a case where the Government Insurance Office notifies the Commissioner, at least 30 days before the date on which the policy is expressed to terminate, that it will not renew the policy—until such date,
  - (b) in a case, not provided for in paragraph (a), where another third-party policy issued by the Government Insurance Office in relation to that motor vehicle or in relation to motor vehicles to which that trader's plate is affixed commences during the period of 15 days next following the date on which such first-mentioned policy is expressed to terminate—until such commencement,
  - (c) in any other case—until 15 days after the date on which it is expressed to terminate or the last day of the month in which that date occurs, whichever is the later.
- (6) Where the Government Insurance Office 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 Government Insurance Office 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.

- (6A) While the Government Insurance Office is exempted under subsection (6) (b) 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 (5) 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 the Government Insurance Office in 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.
- (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, in any case where the insured person is dead, to indemnify the insured person's estate against:
    - (i) liability arising under any cause of action which, by virtue of section 2 of that Act survives against the insured person's estate,
    - (ii) liability arising by operation of section 2 (4) of that Act,
  - (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 the insured person's estate against:
    - (i) liability arising where the insured person or, as the case may be, the insured person's estate has in any proceedings been joined as an alternative defendant,
    - (ii) liability arising where the insured person or, as the case may be, the insured person's estate has served or has been served with a notice in writing under section 3 (1) of that Act,
    - (iii) liability arising where the insured person or, as the case may be, the insured person's estate claims contribution from some other person as a joint tort-feasor or has a claim made against the insured person or the insured person's estate, as the case may be, as a joint tort-feasor.
- (9) In subsection (8), **insured person** means a person who is insured against liability 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 under:

- (a) a third-party policy, or
- (b) 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.

**11 (Repealed)**

**12 Cancellation of third-party policy**

(1)

(a) A third-party policy may be cancelled by the Government Insurance Office 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.

(b) Where the Government Insurance Office cancels a third-party policy under this subsection it 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 which the third-party policy is expressed to terminate, the Government Insurance Office 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](#) or the [Recreation Vehicles Act 1983](#), the Commissioner shall forthwith give to the Government Insurance Office a notice in writing of such cancellation or refusal.

(4)

(a) In any case not provided for in subsection (1) or subsection (2), a third-party policy may be cancelled by the Government Insurance Office after a notice specifying a date, not being earlier than 30 days after service of the notice, upon which the Government Insurance Office 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 Government Insurance Office 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 the Government Insurance Office cancels a third-party policy under this subsection it 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 Government Insurance Office 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
  - (b) under such other circumstances and subject to such conditions as may be prescribed by the regulations.
- (6) The cancellation of any third-party policy shall not exempt the Government Insurance Office from any liability, whether under the policy or under this Act, accrued or incurred before such cancellation.

### **13 Appeal against refusal to issue or against cancellation of policy**

- (1) Where the Government Insurance Office 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 or to the Local Court nearest to the place at which such person resides.
- (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 Local Court 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.
- (3A) Without prejudice to the generality of the power conferred by subsection (3) 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 the 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.

- (b) If any party to any such appeal made to a Local Court is dissatisfied with the determination or order of the Local Court such party may appeal from the same under and in accordance with Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001*, 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.

#### **14 Making of claims—identified motor vehicles**

- (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 a motor vehicle, the identity of which is established and which, at the time the circumstances resulting in the death or bodily injury occurred, was:

- (a) in the case of an insured motor vehicle, being used in any place, whether within New South Wales or otherwise, or
- (b) in the case of an uninsured motor vehicle, being used on any public street in New South Wales,

being a claim which, but for this section, could be made against the owner or driver of the motor vehicle, shall be made against the Government Insurance Office and any proceedings to enforce any such claim for damages shall be taken against the Government Insurance Office and not against the owner or driver of the motor vehicle.

- (2) A claim referred to in subsection (1) may be made and proceedings so referred to may be taken notwithstanding that the owner or driver of the motor vehicle is dead or cannot be found or is the spouse of the person whose death or to whom bodily injury has been caused.
- (3) In respect of a claim referred to in subsection (1), the Government Insurance Office shall, except as provided by section 14D, be liable as if it were the owner or driver of the motor vehicle in relation to which the claim is made.
- (4) Where, in relation to the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle, a claim lies against an insurer, otherwise than under a third-party policy, nothing in this section or section 14D limits or otherwise affects the making of any such claim or prevents the recovery of any contribution by the Government Insurance Office as the insurer under the third-party policy from any other insurer.
- (5) Nothing in this section affects the liability of a driver referred to in section 17.
- (6) Subsection (1) (as inserted by the *Motor Vehicles (Third Party Insurance) Amendment Act 1984*) does not apply, and is taken never to have applied, to a claim for damages in respect of the death of or bodily injury to an employee if:

- (a) the death or injury arises out of or in the course of the employment of the employee, and
- (b) the claim is made by or in relation to the employee and against the employer (in the capacity of employer).

Subsection (4) extends to a claim to which this subsection applies.

(7) Subsection (6) (and the amendment made to section 35A by the *Motor Vehicles (Third Party Insurance) Amendment Act 1993*):

- (a) do not affect the order made by the Court of Appeal in *Nikolovsky v GIO and Anor* of 11 September 1992 or any other order of a court made before the commencement of subsection (6), and
- (b) do not prevent the continuation of any pending proceedings, namely, proceedings brought (but not finally disposed of) before the commencement of subsection (6).

Proceedings against the employer (as referred to in subsection (6)) may be brought instead of, or in addition to, any such pending proceedings against the Government Insurance Office, despite any restriction in the *Limitation Act 1969*.

#### **14A Making of claims—unidentified motor vehicles**

- (1) Where the death of or bodily injury to any person is caused by or arises out of the use of a motor vehicle upon a public street in New South Wales 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 Government Insurance Office the claim which the secondmentioned person could have enforced against the owner or driver of the motor vehicle.
- (2) The inquiry and search referred to in subsection (1) may be proved orally or by the affidavit of the person who made the inquiry and search.

#### **14B Exclusion of certain claims**

Nothing in section 14 or 14A entitles a person to make a claim 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 which, at the time the circumstances resulting in the death or bodily injury occurred, was registered pursuant to the law of a place other than New South Wales unless the motor vehicle was so registered under the *Interstate Road Transport Act 1985* of the Commonwealth and there was in force in respect of that vehicle a third-party policy issued by the Government Insurance Office.

#### **14C Service of documents on the GIO**

A document required or authorised by this Act or any other law to be delivered to or



served upon the Government Insurance Office in respect of a claim under section 14 or 14A shall be sufficiently delivered or served if delivered to, or sent by post in a prepaid letter addressed to, the Government Insurance Office at an address prescribed for the purposes of this section.

#### **14D Payment of claims**

The Government Insurance Office shall not be personally liable to pay any amount payable in satisfaction of any claim made under section 14 or 14A, any judgment recovered against it or the amount of any costs or expenses incurred by it 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 Government Insurance Office out of the Transport Accidents Compensation Fund.

#### **14E Joint hearing of certain proceedings**

- (1) Where 2 or more proceedings have been commenced against the Government Insurance Office by persons who would, but for section 14, be parties to the same proceedings or could, but for section 14, be joined as parties to the same proceedings, a court before which those proceedings or any of those proceedings have been commenced shall, on the application of the Government Insurance Office, order that those proceedings be heard at the same time.
- (2) Where proceedings referred to in subsection (1) have been commenced in different courts, the court to which an application under that subsection is made shall, when making an order under subsection (1), order that the proceedings not commenced in that court be transferred to it.
- (3) Where, in relation to proceedings which have been transferred from the District Court of New South Wales to the Supreme Court of New South Wales in accordance with an order under subsection (2):
  - (a) an order for costs is made against the plaintiff, the plaintiff shall pay those costs assessed as if those proceedings had been conducted in the District Court, or
  - (b) an order for costs is made against the Government Insurance Office, the Government Insurance Office shall pay those costs assessed:
    - (i) in accordance with the rules of the Supreme Court, or
    - (ii) as if those proceedings had been conducted in the District Court,whichever assessment is the higher.
- (4) Notwithstanding subsections (1) and (2), a court, in relation to an application under subsection (1), may refuse to make an order referred to in those subsections, or may make any other order, if the court is of the opinion that, in the interests of justice, it is desirable to do so.

**15, 16 (Repealed)**

**17 Right of Government Insurance Office against unauthorised drivers**

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 the driver had the authority of the owner, then:

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

**18 Government Insurance Office may take over proceedings etc**

- (1) The Government Insurance Office:
  - (a) may undertake the settlement of any claim against any person in respect of a liability against which that person is insured under the third-party policy,
  - (b) may take over during such period as it 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 Government Insurance Office retains the defence or conduct thereof.
- (2) The person referred to in subsection (1) shall sign all such warrants and authorities as the Government Insurance Office requires for the purpose of enabling the Government Insurance Office to have the defence or conduct of any proceedings referred to in that subsection and, in default of the person signing all such warrants and authorities, the court in which such proceedings are pending may order that the same be signed by the Government Insurance Office on behalf of such person.
- (3) Nothing said or done by or on behalf of the Government Insurance Office 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.

## **19 No contracting out of Act**

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

## **20 Duties of owner and driver**

- (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 section 7 (1)) 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 the owner was not then driving the motor vehicle, as soon as practicable after the owner 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 Government Insurance Office.
  - (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:
    - (i) to the owner of the motor vehicle, or
    - (ii) to the Government Insurance Office,being 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), and shall take such steps as the Government Insurance Office 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 Government Insurance Office, 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 Government Insurance Office a notification in writing of every notice of intention to make a claim given to and of every claim made or action brought against the owner or driver, as the case may be, in respect of such death or bodily injury,
- (ii) the owner shall, where the owner 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 in respect of such death or bodily injury, forthwith give to the Government Insurance Office a notification in writing thereof,
- (iii) neither the owner nor the driver shall, without the consent in writing of the Government Insurance Office, enter upon or incur the expense of litigation in respect of any liability against which the owner or driver is insured under the third-party policy.

(2) It shall be a sufficient compliance with any requirement of subsection (1) as to the giving of a notification by the owner or the driver if the notification is given by some person on the owner's or driver's 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.

## **21 Change of ownership of motor vehicle**

- (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) the owner shall give a notice in the prescribed form to the Government Insurance Office,
  - (b) the person who has purchased or acquired possession of the insured motor vehicle shall give a notice in the prescribed form to the Government Insurance Office.
- (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 Change of ownership of trader's business**

- (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.
- (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 Government Insurance Office,
  - (b) the new owner of the business shall give a notice in the prescribed form to the Government Insurance Office.

## **23 Offences**

- (1) (Repealed)
- (2) Any person, other than the Government Insurance Office, who 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 10 penalty units.
- (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 that person has knowledge shall be guilty of an offence against this Act.

## Division 2 Payments to hospitals etc

### 24 Interpretation

(1) 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 the Health Administration Corporation constituted by the [Health Administration Act 1982](#).

**Hospital** means a public hospital, or a private hospital licensed under the [Private Health Establishments Act 1982](#), and 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 such massage or treatment which is rendered:

- (a) to a patient in a public hospital, 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 that person's employment at the hospital, normally works for at least 30 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 a public hospital, 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.

**Public hospital** means:

- (a) a public hospital within the meaning of the [Health Services Act 1997](#) controlled by an area health service or the Crown, or
- (b) a statutory health corporation or affiliated health organisation within the meaning of that Act.

(2) Where, at a public hospital, a person receives, as an out-patient, treatments of

different kinds or at different places, each treatment shall, for the purposes of sections 25 (1) (b) and 26 (1) (b), be counted as a separate treatment.

## **25 Payments in respect of certain matters**

- (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 section 7 (1), and where any payment is made (whether or not with an admission of liability) by the Government Insurance Office in respect of such death or bodily injury, then:
  - (a) if the person received, in respect of the bodily injury or the injury which caused the person's death, treatment at a public hospital as an in-patient, there shall also be paid by the Government Insurance Office to the proper officer for each day or part of a day of the treatment of the person, an amount estimated by the Minister for Health and last notified, as the daily average cost to that hospital of the hospital treatment of in-patients,
  - (b) if the person received, in respect of the bodily injury or the injury which caused the person's death, treatment at a public hospital as an out-patient, there shall also be paid by the Government Insurance Office to the proper officer in respect of each separate treatment of the person, an amount estimated by the Minister for Health and last notified, as the average cost to that hospital, for each separate treatment, of the hospital treatment of out-patients,
  - (c) if the person received, in respect of the bodily injury or the injury which caused the person's death, treatment (whether as an in-patient or as an out-patient) at a hospital other than a public hospital, there shall also be paid by the Government Insurance Office to the proper officer an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed, and
  - (d) if the person, as a consequence of any such injury, was conveyed in any ambulance vehicle, there shall also be paid by the Government Insurance Office to the proper officer an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed, and
  - (e) if the 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 Government Insurance Office 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 thereof and the customary charge made in the community for such treatment or nursing.

- (2) (Repealed)
- (3) Any amount payable under this section by the Government Insurance Office may be recovered as a debt from it by the proper officer, medical practitioner, masseur, dentist, or nurse to whom, under the terms of this section, the amount is payable.
- (4) The estimated costs referred to in subsection (1) (a) and (b) shall, in respect of any public hospital, be based, wherever practicable, on the costs incurred by that hospital for the year which ended on 30 June next preceding any date on which it is proposed to notify the costs, pursuant to either of those paragraphs, in respect of that hospital.
- (5) Any regulation made in relation to any matter referred to in subsection (1) (c) or (d) 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.

- (6) In this section:

**notified** means notified in the Gazette by the Minister for Health.

**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 subsection (1) (a), (b), (c) or (d).

## **26 Right of action against insured person by hospital etc**

- (1) 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 section 7 (1), then:
  - (a) if the person received, in respect of the bodily injury or the injury which caused that person's death, treatment at a public hospital as an in-patient, the proper officer may, in the name and on behalf of the person, and notwithstanding that the person may be dead, recover for each day or part of a day of the treatment of the person, an amount estimated by the Minister for Health and last notified, as the daily average cost to that hospital of the hospital treatment of in-patients,
  - (b) if the person received, in respect of the bodily injury or the injury which caused that person's death, treatment at a public hospital as an out-patient, the proper officer may, in the name and on behalf of the person, notwithstanding that the person may be dead, recover in respect of each separate treatment of the person, an amount estimated by the Minister for Health and last notified, as the average



cost to that hospital, for each separate treatment, of the hospital treatment of out-patients,

- (c) if the person received, in respect of the bodily injury or the injury which caused that person's death, treatment (whether as an in-patient or as an out-patient) at a hospital other than a public hospital, the proper officer may, in the name and on behalf of the person, and notwithstanding that the 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) so prescribed,
- (d) if the 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 the person, notwithstanding that the person may be dead, recover an amount calculated in accordance with a scale to be prescribed by the regulations, but not exceeding the maximum amount (if any) so prescribed, and
- (e) if the 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, the medical practitioner, masseur, dentist, or nurse, as the case may be, may, in the name and on behalf of the person, and notwithstanding that the 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.

(1A) Any amount recoverable under subsection (1) may be recovered by way of damages from the Government Insurance Office.

(2) (Repealed)

(3)

- (a) No action under this section for the recovery of any amount referred to in this section shall be commenced:
  - (i) in any case where the Government Insurance Office 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](#), 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 6 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*, 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.

(3A) If as a result of such proceedings compensation is paid or a payment is made under section 25 such action shall abate.

(4) Any payment by the Government Insurance Office 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.

(5) The estimated costs referred to in subsection (1) (a) and (b) shall, in respect of any public hospital, be based, wherever practicable, on the costs incurred by that hospital for the year which ended on 30 June next preceding any date on which it is proposed to notify the costs, pursuant to either of those paragraphs, in respect of that hospital.

(6) Any regulation made in relation to any matter referred to in subsection (1) (c) or (d) 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.

(7) In this section:

***notified*** means notified in the Gazette by the Minister for Health.

***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 subsection (1) (a), (b), (c) or (d).

## **27 Payments by the Government Insurance Office**

Any payment by the Government Insurance Office under and in accordance with section 25 or section 26 in respect of treatment, conveyance, or nursing shall, to the extent of such payment, but subject to section 32, be a discharge of the liability of any person in respect of such treatment, conveyance or nursing.

## **Division 3 Motor omnibuses**

### **28 (Repealed)**

## **Division 4 Recovery of certain amounts**

### **29-31A (Repealed)**

### **32 Recovery from owner or driver**

- (1) Any amount properly paid by the Government Insurance Office in satisfaction of a claim made under section 14 in respect of an uninsured motor vehicle or under section 14A in respect of a motor vehicle, any judgment recovered against it and the amount of any costs and expenses properly incurred by it in relation to any such claim or to the proceedings in which the judgment was obtained may be recovered by the Government Insurance Office 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 the owner establishes to the satisfaction of the court that, at the time of the occurrence, some other person was driving the motor vehicle without the owner's 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 the driver establishes to the satisfaction of the court that, at the time of the occurrence, the driver was driving the motor vehicle with the authority of the owner or had reasonable grounds for believing and did in fact believe that the driver had such authority, and that the driver had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.
- (2) (Repealed)

## **Part 3 Premiums**

### **33-33E (Repealed)**

### **34 Use of motor vehicle where appropriate amount of insurance premium not paid**

- (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 premiums 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 0.5 penalty unit for every day on which it is so used.
- (2) The Government Insurance Office 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.

### **35 (Repealed)**

## **Part 3A Awarding of damages**

### **35A Application**

This Part applies to and in respect of an award of damages:

- (a) which relates to the death of or bodily injury to a person caused by or arising out of the use of a motor vehicle, and
- (b) which is payable out of the Transport Accidents Compensation Fund,

but does not include an award of damages in respect of a claim to which section 14 (6) applies.

### **35B Discount rate applicable to certain awards of damages**

- (1) Where an award of damages to which this Part applies is to include compensation, assessed as a lump sum, in respect of damage for future loss which is referable to:
- (a) deprivation or impairment of earning capacity,
- (b) loss of the expectation of financial support, or
- (c) a liability to incur expenditure in the future,
- the present value of the future loss shall be qualified by adopting:
- (d) a discount rate of the prescribed percentage, or
- (e) where no percentage is prescribed as referred to in paragraph (d), a discount rate of 5 per cent,

in order to make appropriate allowance for inflation, for future changes in rates of wages generally or of prices, and for tax (either actual or notional) upon income from investment of the sum awarded.

- (2) Except as provided by this section, nothing in this section affects any other law relating to the discounting of sums awarded as damages.

### **35C Maximum amount of damages for provision of certain services**

- (1) Where an award of damages to which this Part applies is to include compensation for the value of services of a domestic nature or services relating to nursing and attendance:
  - (a) which have been or are to be provided by another person to the person in whose favour the award is made, and
  - (b) for which the person in whose favour the award is made has not paid and is not liable to pay,the amount of the compensation shall not exceed:
  - (c) where the services provided or to be provided are not less than 40 hours per week:
    - (i) the amount per week comprising the amount estimated by the Australian Statistician as the average weekly total earnings of all employees in New South Wales for:
      - (A) in respect of the whole or any part of a quarter occurring between the date of the injury in relation to which the award is made and the date of the award, being a quarter for which such an amount has been estimated by the Australian Statistician and is, at the date of the award, available to the court making the award—that quarter, or
      - (B) in respect of the whole or any part of any other quarter—the most recent quarter occurring before the date of the award for which such an amount has been estimated by the Australian Statistician and is, at that date, available to the court making the award, or
    - (ii) where the Australian Statistician fails or ceases to estimate the amount referred to in subparagraph (i), the prescribed amount or the amount determined in such manner or by reference to such matters, or both, as may be prescribed, or
  - (d) where the services provided or to be provided are less than 40 hours per week—the amount calculated at an hourly rate of one-fortieth of the amount determined in accordance with paragraph (c) (i) or (ii), as the case may be.
- (2) Except as provided by this section, nothing in this section affects any other law relating to the value of services of the kind referred to in subsection (1).

### **35D Payment of interest**

- (1) A court shall not, in relation to an award of damages to which this Part applies, order the payment of interest, and no interest shall be payable, on an amount of general

damages, or damages under section 35C, in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to the date of the award.

- (2) Except as provided by this section, nothing in this section affects any other law relating to the payment of interest on an amount of general damages.
- (3) Subsection (1), as amended by the *Motor Accidents (Amendment) Act 1994*, applies to claims for damages arising from the death of or bodily injury to a person caused by or arising out of the use, between 1 July 1984 and 30 June 1987 (both dates inclusive), of a motor vehicle that were not settled or finally determined as at the date of commencement of the amendment made by that Act to that subsection.

## **Part 4 General**

### **36 Facilitation of proof**

- (1) (Repealed)
- (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 third-party policy was issued, or expired or was cancelled,
  - (c) (Repealed)

shall, without proof of the signature of the person purporting to sign such certificate or that that person was the Commissioner or the prescribed officer, be prima facie evidence of the matters set forth in the certificate.

- (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 that person 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.

### **37 Service of notices etc**

Except as provided by section 14C, 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 that person's place of abode or business last known to the person giving or making the notice, notification or request,
- (c) if given or made by service in accordance with section 109X of the *Corporations Act 2001* of the Commonwealth, 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.

### **38 Owner and driver to give certain information**

- (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.
- (2) The driver of a motor vehicle shall, if and when required so to do by any member of the police force or by any officer authorised in that behalf by the Commissioner or by any other person whomsoever who has reasonable grounds for so requiring, forthwith give information (which shall, if so required, be in writing) as to the name and place of abode of the owner of the motor vehicle.
- (3) Any owner or driver of a motor vehicle who neglects or fails to comply with the requirements of this section or who, in complying with such requirements, gives any false or misleading information, shall be guilty of an offence against this Act.

### **38A (Repealed)**

### **39 Court to apportion damages**

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.

### **40 Offences**

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.

#### **41 General penalty**

- (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 3 penalty units.
- (2) Any penalty imposed by or under this Act may be recovered before a Local Court.
- (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 Conviction not to affect civil remedy**

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

#### **43 (Repealed)**

#### **44 Amendment of Act No 31, 1897**

##### **Editorial note—**

The amending provisions relating to the [Compensation to Relatives Act of 1897](#) are not reprinted: [Reprints Act 1972](#), section 6.

#### **45 Regulations**

- (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) Without prejudice to the generality of the power conferred by subsection (1), the Governor may make regulations with respect to:
  - (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 the Government Insurance Office 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 31,
  - (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 3 penalty units 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.

#### **46 (Repealed)**

### **Schedule 1 (Repealed)**