



ANNO UNDECIMO

ELIZABETHAE II REGINAE

A.D. 1962

No. 49 of 1962

An Act to amend the Motor Vehicles Act,
1959-1961.

[Assented to 15th November, 1962.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Motor Vehicles Act Amendment Act (No. 2), 1962". Short titles.
- (2) The Motor Vehicles Act, 1959-1961, as amended by this Act, may be cited as the "Motor Vehicles Act, 1959-1962".
- (3) The Motor Vehicles Act, 1959-1961, is hereinafter referred to as "the principal Act".
2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.
3. Subsection (5) of section 12 of the principal Act is amended by striking out the word "subsection" in the first line thereof and inserting in lieu thereof the word "section". Amendment of principal Act, s. 12 (5).
4. The following section is enacted and inserted in the principal Act after section 118 thereof:— Enactment of s. 118a of principal Act—
 - 118a. (1) Where the Treasurer is satisfied that an approved insurer, being a corporation which is incorporated in the State or elsewhere, has insufficient assets to meet all its liabilities and— Appointment of nominal defendant when approved insurer is in liquidation or enters into compromise with creditors.
 - (a) is being wound up ; or
 - (b) has entered into a compromise or arrangement with its creditors,

the Governor may, on the recommendation of the Treasurer, by proclamation declare that this section shall apply to that insurer and thereupon the Treasurer shall, by notice published in the *Government Gazette*, appoint a person to be the nominal defendant in relation to that insurer for the purposes of this section.

(2) Subsection (1) of this section shall not apply where—

(a) the insurer is being wound up pursuant to an order of a court made, or a resolution for its winding up passed, before the commencement of the Motor Vehicles Act Amendment Act (No. 2), 1962 ; or

(b) the compromise or arrangement was entered into before the commencement of that Act.

(3) Where a nominal defendant has been appointed under this section in relation to an insurer, any person having any claim or entitled to bring any action or enforce any judgment against that insurer—

(a) under the terms and conditions of a policy of insurance issued by the insurer under this Part ; or

(b) pursuant to any provision of this Part,

may make or bring that claim or action or enforce that judgment against the nominal defendant.

(4) Where a nominal defendant has been appointed under this section in relation to an insurer—

(a) the nominal defendant shall have the same duties and liabilities and shall have and may exercise the same powers and rights in or in relation to any such claim, action or judgment as the insurer would have if it were not being wound up or had not entered into a compromise or arrangement with its creditors ; and

(b) any reference applicable to the insurer in subsections (2) and (3) of section 114, section 123, subsection (4) of section 124 and section 126, shall be read as including a reference also to the nominal defendant.

(5) Notwithstanding any other Act, where the nominal defendant appointed in relation to an insurer pays or is liable to pay any sum pursuant to subsection (3) of this section and the amount so paid or liable to be paid or any

part thereof would, if paid by the insurer, have been recoverable by the insurer from another person under a contract or arrangement for re-insurance, the nominal defendant shall have and may exercise the rights and powers of the insurer under that contract or arrangement so as to enable the nominal defendant to recover that amount from that other person.

(6) The insurer or any officer or agent of the insurer or, where the insurer is being wound up, the liquidator of the insurer shall, upon the request of the nominal defendant, forthwith—

- (a) furnish the nominal defendant with such particulars as he requires relating to claims, actions and judgments referred to in subsection (3) of this section of which the insurer or liquidator has received notice ;
- (b) make available to the nominal defendant all books and papers of the insurer relating to such claims, actions and judgments ; and
- (c) give the nominal defendant such assistance as he reasonably requires in relation to any such claim, action or judgment.

(7) All moneys paid out or incurred by the nominal defendant under this section in respect of any claim, action or judgment shall be paid—

- (a) out of moneys contributed by approved insurers pursuant to a scheme under section 119 of this Act ; or
- (b) if no such scheme is in operation, by the Treasurer and approved insurers in accordance with section 120 of this Act.

(8) The amount of all moneys paid out or incurred by the nominal defendant under this section may, in the winding up of the insurer or in any compromise or arrangement between the insurer and any of its creditors, be proved as a debt due to the nominal defendant by the insurer, and the nominal defendant shall pay any amounts received by him as dividends out of the assets of the insurer and any amounts recoverable by the insurer under this Part which have been recovered by the nominal defendant to such approved insurers in such amounts or proportions as the Treasurer directs.

**Amendment of
principal Act,
s. 119 (1)**

5. Subsection (1) of section 119 of the principal Act is amended by inserting after paragraph (b) thereof the following paragraph :—

(b1) making other payments which nominal defendants are liable to make under this Part ; and

**Amendment of
principal Act,
s. 120 (1)**

6. Subsection (1) of section 120 of the principal Act is amended by inserting after the word “costs” in the third line thereof the words “and any other moneys which a nominal defendant is liable to pay under this Part”.

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

EDRIC BASTYAN, Governor.