

South Australia



ANNO QUINQUAGESIMO PRIMO
ELIZABETHAE II REGINAE
A.D. 2002

**STATUTES AMENDMENT (THIRD PARTY BODILY INJURY
INSURANCE) ACT 2002**

No. 17 of 2002

[Assented to 12 September 2002]

An Act to amend the Motor Accident Commission Act 1992 and the Motor Vehicles Act 1959.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 AMENDMENT OF MOTOR ACCIDENT COMMISSION ACT 1992

4. Insertion of s. 13A
 - 13A. Sufficient level of solvency
5. Amendment of s. 14—Functions and objectives of Commission
6. Insertion of s. 14A
 - 14A. Non-application of Government Business Enterprises (Competition) Act 1996
7. Repeal of s. 22
8. Amendment of s. 23—Tax and other liabilities of Commission
9. Amendment of s. 25—Special fund for compulsory third party insurance
10. Amendment of s. 26—Requirement by Treasurer for payment from surplus
11. Amendment of s. 29—Annual report
12. Insertion of s. 29B
 - 29B. Prosecution of offences under Part 4 of *Motor Vehicles Act 1959*
13. Repeal of Part 6
14. Repeal of Sched.

PART 3 AMENDMENT OF MOTOR VEHICLES ACT 1959

15. Amendment of s. 99—Interpretation
16. Repeal of s. 100
17. Amendment of s. 101—Approved insurers
18. Amendment of s. 124—Duty to co-operate with insurer
19. Amendment of s. 129—Inquiries into premiums

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Third Party Bodily Injury Insurance) Act 2002*.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Section 8 will be taken to have come into operation on 1 July 2001.

Interpretation

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

**PART 2
AMENDMENT OF MOTOR ACCIDENT COMMISSION ACT 1992**

Insertion of s. 13A

4. The following section is inserted after the heading to Part 4 of the principal Act:

Sufficient level of solvency

13A. For the purposes of this Part, the Compulsory Third Party Fund has a **sufficient level of solvency** if the amount in the Fund equals or exceeds an amount calculated in accordance with the formula determined from time to time by the Treasurer for the purpose and published in the *Gazette*, being a formula designed to ensure that the Fund is able to meet all its reasonably estimated liabilities as they fall due.

Amendment of s. 14—Functions and objectives of Commission

5. Section 14 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The functions of the Commission are—

- (a) to provide policies of compulsory third party insurance under Part 4 of the *Motor Vehicles Act 1959*, and to be the sole approved insurer under that Part until such time as the Minister responsible for the administration of that Act forms the view that it would be in the best interests of the State to invite and approve other persons or bodies of persons to be insurers under that Part;
- (b) to maintain the Compulsory Third Party Fund;
- (c) to perform the functions of the nominal defendant while the Commission holds that office under Part 4 of the *Motor Vehicles Act 1959*;
- (d) to provide financial or other support for and promote programs designed to reduce the incidence or impact of road accidents and road accident injuries;

- (e) to carry on any other residual insurance business arising from its earlier operations as the State Government Insurance Commission (but only in order to wind up that business);
- (f) to perform any functions of a kind prescribed by regulation;
- (g) to perform any functions that are necessary or convenient for or incidental to the performance of functions referred to above.;

(b) by inserting after subsection (2) the following subsection:

(3) The principal objectives of the Commission in providing compulsory third party insurance are—

- (a) to achieve and maintain a sufficient level of solvency in the Compulsory Third Party Fund; and
- (b) to minimise premium charges having regard to the Commission's objective of achieving and maintaining a sufficient level of solvency in the Fund; and
- (c) to deal with claims for compensation in accordance with law as expeditiously as possible.

Insertion of s. 14A

6. The following section is inserted after section 14 of the principal Act:

Non-application of Government Business Enterprises (Competition) Act 1996

14A. The *Government Business Enterprises (Competition) Act 1996* does not apply to the Commission or to any activity of the Commission.

Repeal of s. 22

7. Section 22 of the principal Act is repealed.

Amendment of s. 23—Tax and other liabilities of Commission

8. Section 23 of the principal Act is amended by striking out from subsection (2) "income tax and any other taxes or imposts" and substituting "taxes or imposts (other than income tax)".

Amendment of s. 25—Special fund for compulsory third party insurance

9. Section 25 of the principal Act is amended—

- (a) by striking out subsection (2);
- (b) by striking out subsection (3) and substituting the following subsections:

(3) The Commission must seek to achieve and maintain at all times a sufficient level of solvency in the Fund.

(3a) Subject to any direction of the Treasurer to the contrary, the Commission must not, while there is less than a sufficient level of solvency in the Fund, fix its third party insurance premiums at amounts that are less than those determined by the committee appointed under section 129 of the *Motor Vehicles Act 1959*.;

(c) by inserting after subsection (4)(a) the following paragraph:

- (ab) all income of the Commission derived from fines for offences against Part 4 of the *Motor Vehicles Act 1959* prosecuted by the Commission; and;

(d) by inserting after subsection (5)(d) the following word and paragraph:

and

- (e) in making payments approved by the Minister responsible for the administration of the *Motor Vehicles Act 1959* and the Treasurer to cover the administrative costs and expenses (including members' allowances and expenses) reasonably incurred by the committee appointed under section 129 of that Act in carrying out its functions.;

(e) by inserting after subsection (5) the following subsection:

(5a) The Commission—

- (a) may, where it considers it appropriate to do so, by agreement with a claimant, pay the whole or part of any amount of compensation payable to the claimant under a policy of third party insurance in periodic payments, by way of an annuity or otherwise, instead of in a lump sum; and
- (b) may provide any investment or other incidental services for the purpose.

Amendment of s. 26—Requirement by Treasurer for payment from surplus

10. Section 26 of the principal Act is amended—

- (a) by striking out subsection (1);
- (b) by inserting after "the board" in subsection (2) "and having regard to the obligation of the Commission to seek to achieve and maintain a sufficient level of solvency in the Fund".

Amendment of s. 29—Annual report

11. Section 29 of the principal Act is amended by inserting after subsection (2)(e) the following word and paragraph:

and

- (f) set out the current formula determined by the Treasurer for calculating the sufficient level of solvency for the purposes of the Compulsory Third Party Fund.

Insertion of s. 29B

12. The following section is inserted after section 29A of the principal Act:

Prosecution of offences under Part 4 of *Motor Vehicles Act 1959*

29B. (1) The Commission may, while it is the sole approved insurer under Part 4 of the *Motor Vehicles Act 1959*, lay a charge for, or prosecute, an offence against that Part.

(2) A fine recovered for an offence under Part 4 of the *Motor Vehicles Act 1959* prosecuted by the Commission is payable to the Commission.

Repeal of Part 6

13. Part 6 of the principal Act is repealed.

Repeal of Sched.

14. The Schedule of the principal Act is repealed.

**PART 3
AMENDMENT OF MOTOR VEHICLES ACT 1959**

Amendment of s. 99—Interpretation

15. Section 99 of the principal Act is amended by inserting after the definition of "bodily injury" in subsection (1) the following definition:

"GST law" means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Cwth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

Repeal of s. 100

16. Section 100 of the principal Act is repealed.

Amendment of s. 101—Approved insurers

17. Section 101 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

(1a) However, while the Motor Accident Commission is the sole approved insurer under this Part, an application for approval may only be made under subsection (1) on an invitation by the Minister under subsection (1b).

(1b) If at any time the Minister forms the view that it would be in the best interests of the State for there to be more than one approved insurer under this Part, the Minister may, in a manner and form determined by the Minister, invite interested persons or bodies to apply for approval.;

(b) by striking out from subsection (2) "any such application" and substituting "an application for approval".

Amendment of s. 124—Duty to co-operate with insurer

18. Section 124 of the principal Act is amended by striking out the penalty provisions from subsections (6) and (6a) and substituting, in each case, the following penalty provision:

Maximum penalty: \$50 000 or imprisonment for one year.

Amendment of s. 129—Inquiries into premiums

19. Section 129 of the principal Act is amended—

(a) by striking out from subsection (2)(a) "a judge of the Supreme Court, a magistrate, or";

(b) by inserting in subsection (2)(c) "the interests of" after "represent";

(c) by striking out paragraph (d) of subsection (2) and substituting the following paragraph:

(d) three persons with expertise in the insurance industry field, of whom at least one is to represent the interests of approved insurers.;

(d) by inserting after subsection (2) the following subsection:

(2a) At least one member of the committee must be a woman and at least one must be a man.;

(e) by inserting in subsection (3) "the interests of" after "represent";

(f) by inserting after subsection (5) the following subsections:

(5a) In determining premium amounts, the committee—

(a) may not fix differential premiums except on the basis of one or more of the following:

(i) vehicle type;

(ii) vehicle use;

(iii) garaging location;

(iv) entitlement under the GST law to an input tax credit in respect of compulsory third party insurance premiums; and

(b) must, while the Motor Accident Commission is the sole approved insurer under this Part, have regard to the Commission's obligation to seek to achieve and maintain a sufficient level of solvency (within the meaning of section 13A of the *Motor Accident Commission Act 1992*) in its Compulsory Third Party Fund.;

(g) by inserting in subsection (6) "and a statement of reasons for the determination" after "determination";

(h) by inserting after subsection (6) the following subsections:

(7) The committee may not incur expenses in respect of consultancy services or expert advice provided by a person other than as a witness before the committee except with the prior approval of the Minister and Treasurer (which approval must not be unreasonably withheld).

(8) The administrative costs and expenses reasonably incurred by the committee in carrying out its functions are recoverable—

(a) while the Motor Accident Commission is the sole approved insurer under this Part—from the Third Party Insurance Fund, subject to and in accordance with the *Motor Accident Commission Act 1992*;

- (b) in any other case—in fair proportions from all approved insurers, subject to and in accordance with the directions of the Minister and the Treasurer.