

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 6 DEC 1962*

## New South Wales



ANNO UNDECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No.       , 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.

BE



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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**B**E 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  
5 follows :—

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

10 (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.

15 (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, Amendment  
of Act No.  
15, 1942.  
1942, as amended by subsequent Acts, is amended—

(a) by inserting at the end of section ten the following Sec. 10.  
new subsection :— (Third-party  
policy.)

20 (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  
25 Provisions) Act, 1944, be deemed to have  
extended, in any case where the insured  
person is dead, to indemnify his estate  
against—

(i) liability arising under any cause of  
30 action which, by virtue of section  
two of that Act survives against his  
estate ;

(ii) liability arising by operation of sub-  
section four of that section ;

(b)

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5 (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—

10 (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;

15 (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 sub-  
section one of section three of the  
said Act;

20 (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.

25 In this subsection "insured person" means a  
person so referred to in paragraph (a) of subsec-  
tion two of section fifteen of this Act.

30 (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";

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

(ii) by inserting at the end of the same section the following new subsections:—

(8) It is hereby declared—

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

35 (i) shall extend, and as from  
the commencement of Part II  
of the Law Reform (Miscel-  
laneous Provisions) Act, 1944,

be



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(Miscellaneous Provisions) Amendment.*

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- 5 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 ;
- 10 (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  
15 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-  
20 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  
25 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.
- 30 (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  
35 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



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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.

5 (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.

10 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—

15 (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  
20 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 sub-  
25 paragraph (ii) of paragraph (a) of subsection two of this section, the nominal defendant;

30 (b) any notice in writing under subsection one of section three of the said Act which might have been served by the 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  
35 served by or upon the authorised insurer or the nominal defendant, as the case may be;

(c)

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(Miscellaneous Provisions) Amendment.*

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5 (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.

10 (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,  
15 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 :—

20 (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  
25 insured person, unless the first men-  
tioned proceedings have been discon-  
tinued;

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

35 (c) where proceedings against the autho-  
rised insurer, the nominal defendant or  
the estate of a deceased insured person,  
as



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as the case may be, have been carried to judgment no further proceedings in respect of the same cause of action shall lie.

5 (c) by inserting at the end of section sixteen the follow- Sec. 16.  
ing new subsection :— (Presump-  
tion of  
agency.)

10 (2) The presumption of agency under subsec-  
tion one of this section shall be applicable and shall,  
as hereinafter provided, be deemed to have been  
15 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  
20 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  
25 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  
30 person on whom notice in writing has been served  
pursuant to Part II of the Law Reform (Miscel-  
laneous 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.

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



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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.

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”;

(ii) by inserting in the same subsection after the words “rights conferred” where secondly occurring the words “or obligations created”.

(2)



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(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.

5 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—

Transitional provisions.

10 (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

15 (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—

20 (a) have been settled by agreement followed by release or by entry of verdict or judgment; or

25 (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  
30 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.

35 (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 and fifty-nine, to the date upon which Her Majesty's assent to this Act is signified, time shall not run for the



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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 5 of the Common Law Procedure Act, 1899-1962, or for the purposes of any rules of court.

(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 sub- 10 section 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 sub- 15 section 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.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962

[1s.]



**MOTOR VEHICLES (THIRD PARTY INSURANCE) AND LAW  
REFORM (MISCELLANEOUS PROVISIONS) AMENDMENT  
BILL, 1962.**

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**EXPLANATORY NOTE.**

THE object of this Bill is to rectify anomalies created by the decision of the High Court in *Genders v. Government Insurance Office of New South Wales*, 102 C.L.R. 363. To this end the Bill:—

- (a) re-affirms the principle of section 15 (2) (a) of the Motor Vehicles (Third Party Insurance) Act, 1942-1951, (viz. that where the insured person is dead proceedings may be taken against the authorised insurer) and extends it to cover not only primary liability but also liability arising by operation of section 2 (4) of the Law Reform (Miscellaneous Provisions) Act, 1944, and cases in which alternative defendants and third party procedure is invoked or where contribution between joint tort-feasors is sought;
- (b) provides that the right of action against the authorised insurer is to be alternative to the right of action against the personal representative of the insured person;
- (c) declares what the effect of insurance under a third-party policy is;
- (d) applies the presumption of agency under section 16 of the Motor Vehicles (Third Party Insurance) Act, 1942-1951, to all the contingencies referred to in paragraph (a) above;
- (e) makes provision to allow further time within which proceedings may be taken under section 2 (3) of the Law Reform (Miscellaneous Provisions) Act, 1944;
- (f) makes provisions to cover special problems relating to the period during which the decision of the High Court in *Genders v. Government Insurance Office* had effect;
- (g) provides for matters incidental to and supplementary to the foregoing.



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No. , 1962.

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## A BILL

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.

[Mr. MANNIX;—4 December, 1962.]

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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

**B**E 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  
5 follows :—

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

10 (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.

15 (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, Amendment  
of Act No.  
15, 1942.  
1942, as amended by subsequent Acts, is amended—

(a) by inserting at the end of section ten the following Sec. 10.  
new subsection :— (Third-party  
policy.)

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

25 (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 his estate  
against—

30 (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 sub-  
section four of that section;

(b)



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(Miscellaneous Provisions) Amendment.*

5 (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—

10 (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;

15 (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 sub-  
section one of section three of the  
said Act;

20 (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.

25 In this subsection "insured person" means a  
person so referred to in paragraph (a) of subsec-  
tion two of section fifteen of this Act.

30 (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";

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

(ii) by inserting at the end of the same section the following new subsections : —

(8) It is hereby declared—

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

35 (i) shall extend, and as from the commencement of Part II of the Law Reform (Miscellaneous Provisions) Act, 1944, be



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- 5 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 ;
- 10 (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  
15 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-  
20 bution under Part III of that  
Act ;
- 25 (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.
- 30 (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  
35 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



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(Miscellaneous Provisions) Amendment.*

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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.

5 (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.

10 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—

15 (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  
20 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  
25 policy of the nature referred to in subparagraph (ii) of paragraph (a) of subsection two of this section, the nominal defendant;

30 (b) any notice in writing under subsection one of section three of the said Act which might have been served by the 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  
35 served by or upon the authorised insurer or the nominal defendant, as the case may be;

(c)



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(Miscellaneous Provisions) Amendment.*

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5 (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.

10 (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,  
15 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 : —

20 (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  
25 insured person, unless the first men-  
tioned proceedings have been discon-  
tinued ;

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

35 (c) where proceedings against the autho-  
rised insurer, the nominal defendant or  
the estate of a deceased insured person,  
as

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as the case may be, have been carried to judgment no further proceedings in respect of the same cause of action shall lie.

5 (c) by inserting at the end of section sixteen the following new subsection : — Sec. 16.  
(Presumption of agency.)

10 (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.

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



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5 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.

3. (1) The Law Reform (Miscellaneous Provisions) Act, 1944, is amended—

10 (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";

Amendment of Act No. 28, 1944.

Sec. 2. (Effect of death on certain causes of action.)

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

20 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.

30 (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";

35 (ii) by inserting in the same subsection after the words "rights conferred" where secondly occurring the words "or obligations created".

(2)



*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

(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.

5 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—

Transitional provisions.

10 (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

15 (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—

20 (a) have been settled by agreement followed by release or by entry of verdict or judgment; or

25 (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  
30 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.

35 (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 and fifty-nine, to the date upon which Her Majesty's assent to this Act is signified, time shall not run for the

purpose



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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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  
5 of the Common Law Procedure Act, 1899-1962, or for the purposes of any rules of court.

(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  
10 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  
15 which Her Majesty's assent to this Act is signified, or such further time as the Court or judge may allow, but not thereafter.

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BY AUTHORITY:

V. C. N. BLIGHT. GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962



No. , 1962.

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## A BILL

To make further provision relating to the reporting of road accidents, enforcement of parking restrictions and exemptions from registration of motor vehicles; to increase certain fees payable under the Motor Traffic Act, 1909–1961; for these and other purposes to amend the said Act, the Metropolitan Traffic Act, 1900–1957, the Motor Vehicles Taxation Management Act, 1949–1956, the State Transport (Co-ordination) Act, 1931–1956, and the Local Government Act, 1919, as amended by subsequent Acts; and for purposes connected therewith.

[Mr. McMAHON ;—4 December, 1962.]

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BE



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*Motor Traffic (Amendment).*

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**B**E 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 Traffic (Amendment) Act, 1962". Short title and citation.
- (2) The Motor Traffic Act, 1909, as amended by subsequent Acts and by this Act, may be cited as the Motor Traffic Act, 1909-1962.
- (3) The Metropolitan Traffic Act, 1900, as amended by subsequent Acts and by this Act, may be cited as the Metropolitan Traffic Act, 1900-1962.
- (4) The Motor Vehicles Taxation Management Act, 1949, as amended by subsequent Acts and by this Act, may be cited as the Motor Vehicles Taxation Management Act, 1949-1962.
- (5) The State Transport (Co-ordination) Act, 1931, as amended by subsequent Acts and by this Act, may be cited as the State Transport (Co-ordination) Act, 1931-1962.
2. (1) The Motor Traffic Act, 1909, as amended by subsequent Acts, is amended— Amendment of Act No. 5, 1909.
  - (a) (i) by inserting next after paragraph (j) of subsection one of section three the following new paragraph :— Sec. 3. (Regulations.)
    - (j1) provide conditionally or unconditionally for the issue of permits for the temporary use, upon public streets, of motor vehicles which are unregistered and for the payment in respect of any such permit of such fees, not exceeding in any case two pounds, as may be prescribed ; and for the regulation of matters relating to the issue of such permits ;
    - (ii)



*Motor Traffic (Amendment).*

- (ii) by inserting next after paragraph (l) of the same subsection the following new paragraph : —
- 5 (1) provide conditionally or unconditionally for the exemption of any person from all or any of the provisions of section six of this Act and for the exemption from registration of any motor vehicle;
- 10 (iii) by inserting in paragraph (r) of the same subsection after the word “regulation” the words “or any provision or condition attached to any license, exemption or permit granted under the regulations”;
- 15 (iv) by inserting next after subsection one of the same section the following new subsection : —
- (1A) A motor vehicle in respect of which a permit issued under the regulations made pursuant to paragraph (j1) of subsection one of this section is in force shall for the purposes of this Act or any other Act relating to the registration or licensing of motor vehicles be deemed to be a registered motor vehicle.
- 20
- 25 (b) by omitting from paragraph (a) of subsection seven of section 4A the words “connected with the prevention or investigation of any offence or suspected offence against the law or with the apprehension of offenders against the law”;
- 30 (c) (i) by omitting from subsection three of section eight the words “ten pounds” and by inserting in lieu thereof the words “twenty-five pounds, or where some other amount is prescribed such other amount,”;
- 35 (ii) by omitting from subsection four of the same section the words “ten pounds” and by inserting in lieu thereof the words “twenty-five pounds, or where some other amount is prescribed such other amount,”;
- (d)



*Motor Traffic (Amendment).*

- (d) by inserting at the end of section 18A the following new subsection :—
- (6) The provisions of this section shall be in addition to and not in derogation of any other provisions of this or any other Act.
- (e) (i) by omitting from the Schedule the definition of "Motor cycle";
- (ii) by omitting from the Schedule the items relating to "Motor vehicle driver", "Motor cycle rider" and "Learner's permit" and by inserting in lieu thereof the following item :—
- License fee to be paid by the applicant upon the application for the license—
- Motor vehicle driver (not being the rider of a motor cycle)—two pounds;
- Motor cycle rider—one pound ten shillings;
- Learner's permit—one pound.
- (iii) by omitting from the Schedule the two items relating to traders' plates and by inserting in lieu thereof the following items :—
- Trader's plate for use as prescribed on a motor vehicle other than a motor cycle—Fee, at the rate of eighteen pounds six shillings and sixpence yearly.
- Trader's plate for use as prescribed on a motor cycle—Fee, at the rate of four pounds four shillings and sixpence yearly.
- (2) Subparagraph (ii) of paragraph (a) of subsection one of this section shall be deemed to have commenced on the twelfth day of October, one thousand nine hundred and nine.
- (3) The several subparagraphs of paragraph (e) of subsection one of this section shall commence upon such days as are respectively appointed by the Governor and notified by proclamation published in the Gazette.

Sec. 18A.  
(Liability of motor vehicle owner for parking offences.)

Schedule.

The



*Motor Traffic (Amendment).*

The amendments made by subparagraphs (i) and (ii) of the said paragraph (e) shall apply to and in respect of licenses or renewals of licenses under the Motor Traffic Act, 1909-1961, as amended by this Act, which are to take effect on or  
5 after the day so appointed in relation to the said subparagraphs (i) and (ii), whether application therefor was made either before or after such day.

The amendments made by subparagraph (iii) of the said paragraph (e) shall apply to and in respect of traders' plates  
10 to be issued or re-issued under the Motor Traffic Act, 1909-1961, as amended by this Act, for a period expiring on any day later than the day appointed in relation to the said subparagraph (iii), whether application therefor was made either before or after such appointed day.

15 **3.** The Metropolitan Traffic Act, 1900, as amended by subsequent Acts, is amended— Amendment of Act No. 8, 1900.

(a) by omitting from subsection three of section 13B the words "ten pounds" and by inserting in lieu thereof the words "twenty-five pounds, or where  
20 some other amount is prescribed such other amount,"; Sec. 13B. (Requirements in case of accident.)

(b) by omitting from subsection four of the same section the words "ten pounds" and by inserting in lieu thereof the words "twenty-five pounds, or where  
25 some other amount is prescribed such other amount,".

**4.** The Motor Vehicles Taxation Management Act, 1949, as amended by subsequent Acts, is amended— Amendment of Act No. 34, 1949.

(a) by omitting section five and by inserting in lieu thereof the following section : — Subst. sec. 5.

30 **5.** The owner of any motor vehicle which (not being a motor vehicle exempted from registration) is not registered, or which being registered is liable to tax but upon which the prescribed tax though  
35 due and payable has not been paid, who uses or drives the vehicle, or causes or permits or suffers it to be used or driven upon a public street shall  
be



*Motor Traffic (Amendment).*

5 be liable to a penalty not exceeding one hundred  
 pounds and, in addition to imposing a penalty  
 for the offence the court may, where the vehicle  
 is not registered, order the owner to pay to the clerk  
 of the court within a time to be specified in the  
 order the fee for the registration or renewal of the  
 registration of the vehicle together with the tax  
 which would be due upon the application for such  
 registration or renewal for a period of one year  
 10 or for such greater or lesser period as the court  
 in all the circumstances may think just or, where  
 the vehicle is registered, the tax so due and payable.

(b) by inserting at the end of subsection three of section  
 seven the following new paragraphs :—

15 (i) any motor vehicle, for which exemption or  
 power to exempt in whole or in part from  
 tax is not provided elsewhere in this Act,  
 which is used solely or principally as an  
 ambulance ;

20 (j) any motor lorry, tractor or trailer which  
 is owned by a pastures protection board  
 constituted or continued by or under the  
 Pastures Protection Act, 1934, or any Act  
 amending or replacing the same, and which,  
 25 whilst upon a public street, is used solely  
 for carrying out the statutory functions of  
 such board ;

(k) (i) any tractor or trailer ; or  
 30 (ii) any motor vehicle which comprises a  
 chaff-cutter, thresher, plough, air  
 compressor, welding plant or bulldozer,  
 or apparatus for well-boring or the  
 excavation or shovelling of earth, or  
 a concrete agitator, crane, fork-lift  
 35 truck or similar machinery or  
 apparatus,

for which exemption or power to exempt  
 in whole or in part from tax is not provided  
 elsewhere in this Act, if the Commissioner  
 is

Sec. 7.  
 (Exemptions.)



*Motor Traffic (Amendment).*

is satisfied that, by reason of the construction, use or ownership of such tractor or trailer or motor vehicle, it will travel on the public streets to a limited degree only.

5 (c) by omitting from subsection two of section nine the words "such penalty, he shall be liable to pay" and by inserting in lieu thereof the words "imposing a penalty for the offence the court may order him to pay to the clerk of the court within a time to be specified in the order";

Sec. 9.  
(Adjust-  
ment of  
tax.)

10 (d) by omitting section ten and by inserting in lieu thereof the following section :—

Subst.  
sec. 10.

15 10. (1) Where during the currency of the registration of a motor vehicle there is any alteration, whether temporary or otherwise, in the construction, equipment, use or ownership of the vehicle of such a nature that tax or additional tax would be payable were the registration due for renewal at the time such alteration was effected—

Notice of  
alteration  
and ad-  
ditional  
tax.

20 (a) the person in whose name the vehicle is registered shall forthwith notify the Commissioner of such alteration; and

25 (b) where the alteration is in the construction, equipment or use of the vehicle, the person in whose name it is registered and, where the alteration is in the ownership of the vehicle, the new owner, shall forthwith, or within such period as the Commissioner may allow, pay tax or additional tax.

30 (2) The tax or additional tax payable under this section shall be for the period for which the vehicle is registered unexpired at the date of the alteration or for such lesser period as the Commissioner having regard to the temporary nature of any alteration aforesaid determines should be applicable, and shall be calculated at the rate of—

35 (a) where the registration current at the date of the alteration was effected for a period exceeding three months—one-twelfth of the



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*Motor Traffic (Amendment).*

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5 the tax applicable after the alteration in respect of a yearly registration of the vehicle where the vehicle was exempt from or not liable for tax before the alteration or, as the case may be, one-twelfth of the difference between the tax applicable before the alteration and the tax applicable after the alteration in respect of a yearly registration of the vehicle;

10 (b) where the registration current at the date of the alteration was effected for a period not exceeding three months—one-third of the tax applicable after the alteration in respect of a quarterly registration of the vehicle where the vehicle was exempt from  
15 or not liable for tax before the alteration or, as the case may be, one-third of the difference between the tax applicable before the alteration and the tax applicable after  
20 the alteration in respect of a quarterly registration of the vehicle,

for each month or part thereof in such unexpired period or lesser period, as the case may be.

25 (3) Any person who fails to comply with the provisions of subsection one of this section shall be liable to a penalty not exceeding one hundred pounds and to a further penalty of twenty pounds for each month during any part of which  
30 such offence continues and in addition to imposing a penalty for the offence the court may order him to pay to the clerk of the court within a time to be specified in the order any amount which from the evidence given during the proceedings the court is satisfied should have been, but has not been, paid  
35 by the person so convicted to the Commissioner by way of tax or additional tax.

(e) by inserting in section thirteen after the word "and" the words " , except as provided in subsection two of section fifteen of this Act,"; Sec. 13.  
(Recovery of tax.)

(f)



*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

(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.

5 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— Transitional provisions.

10 (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

15 (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—

20 (a) have been settled by agreement followed by release or by entry of verdict or judgment; or

25 (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,

30 shall not be revived or continued.

35 (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 and fifty-nine, to the date upon which Her Majesty's assent to this Act is signified, time shall not run for the



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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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 5 of the Common Law Procedure Act, 1899-1962, or for the purposes of any rules of court.

(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 sub- 10 section 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 sub- 15 section 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.

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BY AUTHORITY:

V. C. N. BLIGHT. GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962  
[1s.]



New South Wales



ANNO UNDECIMO

**ELIZABETHÆ II REGINÆ**

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**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.]

BE.



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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**B**E 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 :—

Short title  
and citation.

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

(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.

Amendment  
of Act No.  
15, 1942.

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

Sec. 10.  
(Third-party  
policy.)

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

(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 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)



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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- (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.

- (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) by inserting at the end of the same section the 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 (Miscellaneous Provisions) Act, 1944,

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



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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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 Provisions) Act, 1946, 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 pursuant to Part II of that Act or for contribution 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 Provisions) Act, 1944, be deemed to have continued in full force and effect notwithstanding the enactment of or anything contained in that Part.

(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



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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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 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;

(c)



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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- (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 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,



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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as the case may be, have been carried to judgment no further proceedings in respect of the same cause of action shall lie.

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

Sec. 16.  
(Presumption of agency.)

(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 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

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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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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.

Amendment  
of Act No.  
28, 1944.

**3.** (1) The Law Reform (Miscellaneous Provisions) Act, 1944, is amended—

Sec. 2.  
(Effect of  
death on  
certain  
causes of  
action.)

(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”;

(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”;

(ii) by inserting in the same subsection after the words “rights conferred” where secondly occurring the words “or obligations created”.

(2)



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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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(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.

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—

Transitional provisions.

(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 and fifty-nine, to the date upon which Her Majesty's assent to this Act is signified, time shall not run for the

purpose

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*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

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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.

(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.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1963



*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 7 December, 1962.*

## New South Wales



ANNO UNDECIMO

**ELIZABETHÆ II REGINÆ**

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**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.]

BE.

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

HOWARD T. FOWLES,  
*Chairman of Committees of the Legislative Assembly.*



*Motor Vehicles (Third Party Insurance) and Law Reform  
(Miscellaneous Provisions) Amendment.*

**B**E 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 :—

Short title  
and citation.

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

(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.

Amendment  
of Act No.  
15, 1942.

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

Sec. 10.  
(Third-party  
policy.)

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

(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 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)



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- (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.

- (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) by inserting at the end of the same section the 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 (Miscellaneous Provisions) Act, 1944, be

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



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- 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 Provisions) Act, 1946, 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 pursuant to Part II of that Act or for contribution 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 Provisions) Act, 1944, be deemed to have continued in full force and effect notwithstanding the enactment of or anything contained in that Part.
- (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



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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 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;

(c)



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- (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 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



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as the case may be, have been carried to judgment no further proceedings in respect of the same cause of action shall lie.

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

Sec. 16.  
(Presumption of agency.)

(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 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



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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.

Amendment  
of Act No.  
28, 1944.

**3.** (1) The Law Reform (Miscellaneous Provisions) Act, 1944, is amended—

Sec. 2.  
(Effect of  
death on  
certain  
causes of  
action.)

(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”;

(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”;

(ii) by inserting in the same subsection after the words “rights conferred” where secondly occurring the words “or obligations created”.

(2)



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(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.

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—

Transitional provisions.

(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 and fifty-nine, to the date upon which Her Majesty's assent to this Act is signified, time shall not run for the

purpose



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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.

(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.

*In the name and on behalf of Her Majesty I assent to  
this Act.*

E. W. WOODWARD,  
*Governor.*

*Government House,  
Sydney, 14th December, 1962.*