

PROOF

Legislative Council.

No. , 1970.

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# A BILL

To make provision in respect of the licensing of insurers engaged in or those intending to engage in the business of motor vehicle property damage insurance; to make provision with respect to the cancellation or suspension of such licenses, the examination of books and accounts, the provision of penalties; and for purposes connected therewith.

[MR DOWNING—10 *September*, 1970.]

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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 :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Motor Vehicles Short title.  
(Property Damage Insurance) Act, 1970".

10 2. This Act shall commence upon a day to be appointed Commence-  
by the Governor and notified by proclamation published in ment.  
the Gazette.

3. This Act shall be read and construed subject to the Con-  
Commonwealth of Australia Constitution Act, and so as not struction.  
15 to exceed the legislative power of the State to the intent that  
where any provision of this Act, or the application thereof to  
any person or circumstance, is held invalid, the remainder of  
this Act, and the application of such provision to other  
persons or circumstances shall not be affected.

20 4. This Act is divided into Parts and Divisions as Division into  
follows :— Parts.

PART I.—PRELIMINARY—ss. 1–6.

PART II.—LICENSES—ss. 7–17.

25 DIVISION 1.—*Grant or Renewal of Licenses*—ss.  
7–13.

DIVISION 2.—*Suspension or Termination of Licenses*  
—ss. 14–16.

DIVISION 3.—*Returns*—s. 17.

PART III.—OFFENCES—ss. 18–20.

30 PART IV.—REGULATIONS—s. 21.

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5. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

5 “Commissioner” means the Commissioner for Motor Transport constituted under the Transport (Division of Functions) Further Amendment Act, 1952, as amended by the State Transport (Co-ordination) Amendment Act, 1954.

10 “Government Insurance Office” means the Government Insurance Office of New South Wales established under the Government Insurance Act, 1927.

“Insurer” means a person who is for the time being the holder of a license granted under this Act and includes the Government Insurance Office.

15 “License” means license granted under this Act and in force at any material time.

20 “Motor vehicle” means any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by any volatile spirit, steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer, but does not include any vehicle used on a railway or tramway.

25 “Motor Vehicle Property Damage Insurance” means any insurance whatsoever relating to the loss of or damage to a motor vehicle and/or to the loss of or damage to property arising from the use of a motor vehicle.

“Prescribed” means prescribed by this Act or the regulations.

“Regulations” means regulations made under this Act.

30 6. (1) Subject to the control of the Minister this Act shall be administered by the Commissioner in the Department of Motor Transport.

(2) Any expenses incurred in connection with the administration of this Act may be paid by the Commissioner  
35 for Motor Transport out of funds voted by Parliament.

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PART II.

LICENSES.

DIVISION 1.—*Grant or Renewal of Licenses.*

5     **7.** A person shall not in New South Wales undertake or carry on Motor Vehicle Property Damage Insurance Business unless he is licensed under this Act as an insurer.

**8.** Subject to this Act the Commissioner may grant licenses to persons to undertake or carry on Motor Vehicle Property Damage Insurance Business.

10   **9.** (1) A license under this Act shall be in or to the effect of the form prescribed.

      (2) A license granted under this Act shall specify the name of the licensed holder and the place of business in respect of which it is issued.

15     (3) A license shall unless sooner suspended or cancelled, be in force for twelve months from the date of its issue.

      (4) A license may be renewed, and on each renewal shall take effect for a further period of twelve months.

20   **10.** (1) An application for a license or for the renewal of a license shall be in or to the effect of the prescribed form and shall be lodged with the Commissioner.

      (2) An application shall be accompanied by the prescribed fee. Different fees may be prescribed in respect of  
25 licenses and renewals of licenses.

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11. On application made by any person to the Commissioner in the form and manner and accompanied by the information prescribed and upon consideration of such evidence as he may submit and of such information, documents, particulars, and other evidence as the Commissioner may receive, the Commissioner may after due inquiry grant to that person, without conditions or subject to such conditions as the Commissioner deems fit, a license to carry on in New South Wales Motor Vehicle Property Damage Insurance Business, or the Commissioner may refuse such application.

12. A license under this Act shall not be granted to a person other than a corporation.

13. (1) Every person licensed under this Act—

15 (a) shall furnish to the Commissioner within the time specified in the notice hereafter referred to in this paragraph such information, particulars, accounts, documents and copies of accounts and documents as to the business and financial position of any corporation or corporations, being the holding company or a subsidiary or subsidiaries of the licensee, specified in the notice as—

(i) is or are in the possession or under the control of the licensee; and

25 (ii) the Commissioner may by notice in writing to the licensee from time to time require to be furnished;

(b) shall notify the Commissioner in writing of any of the following matters, events, or things within twenty-one days of the happening thereof (whether within or outside the State), namely—

30 (i) any default by such licensee or its holding corporation in the payment of principal or interest under any debenture issued by such licensee or corporation;

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- (ii) the appointment of a liquidator, receiver or manager of the property of such licensee or corporation ;
- 5 (iii) that such licensee or corporation has resolved by special resolution that it be wound up voluntarily or by a court ;
- 10 (iv) that a person claiming to be a creditor by assignment or otherwise of such licensee or corporation for a sum exceeding one hundred dollars then due has served on such licensee or corporation by leaving at its registered office a demand under his hand or under the hand of his agent thereunto lawfully authorised requiring such licensee or corporation to pay the sum so claimed to be due, and such licensee or corporation has for three weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor ;
- 15 20 (v) the return unsatisfied in whole or part of execution or other process issued on a judgment, decree or order of any court in favour of a creditor of such licensee or corporation ;
- 25 (vi) the receipt by such licensee or corporation, or the giving, or causing to be given by such licensee or corporation, of any notice or statement mentioned in subsection two of section one hundred and eighty-four of the Companies Act, 1961 ;
- 30 (vii) the making of an order for the winding-up of such licensee or by any court.

In this subsection "holding corporation" means a corporation of which the licensee is a subsidiary.

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(2) The Commissioner may by the terms of a notice given to any person pursuant to paragraph (a) of subsection one of this section, or by a subsequent notice, require that person to supply to the Commissioner a certificate by a registered public accountant under the Public Accountants Registration Act, 1945, approved by the Commissioner or an actuary so approved, as to the correctness of any information, particulars, accounts or documents which, or copies of which, has or have been, or is or are required to be furnished pursuant to the first mentioned notice, and where the Commissioner has so required, the information, particulars, accounts, documents or copies shall be deemed not to have been furnished unless such a certificate in respect thereof has been so supplied. The expense of obtaining any such certificate shall be borne by the person required to supply it.

(3) A licensee who fails to comply with any of the provisions of subsection one of this section shall be guilty of an offence against this Act.

DIVISION 2.—*Suspension or Termination of Licenses.*

20 14. (1) Subject to the provisions of this section, the Commissioner may suspend, or terminate, any license granted under section eight of this Act, or limit, or vary the period thereof, or attach any conditions thereto, or vary the conditions thereof, if he is satisfied of one or more of the following matters, events or things—

- (a) that the licensee is unable to pay its debts;
- (b) that the licensee has resolved that it be wound up voluntarily or by a court;
- (c) that the licensee has not commenced the business for which he is licensed for a year from the date at which his license was granted, or has suspended his said business for a whole year;

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- 5 (d) that an inspector appointed under section one hundred and sixty-nine or section one hundred and seventy of the Companies Act, 1961, or under any equivalent provision of any Act or ordinance relating to companies for the time being in force in any other State or Territory of the Commonwealth, has reported that he is of the opinion—
- (i) that the licensee cannot pay its debts and should be wound up, or
- 10 (ii) that it is in the interests of the public or of the shareholders or of the creditors that the licensee should be wound up;
- (e) that the licensee has failed to comply with any provision of this Act and such failure constitutes a substantial breach of the requirements of this Act;
- 15 (f) that the licensee has been guilty of repeated breaches of this Act, whether of the same kind or of different kinds;
- 20 (g) that the licensee has failed to arrange suitable and adequate reinsurance of liabilities undertaken by him under policies of insurance or indemnity issued by him;
- (h) that the licensee has failed to make suitable and adequate provision for his accrued, continuing, future, and contingent liabilities under policies of insurance or indemnity issued by him;
- 25 (i) that the licensee has in any one or more financial years incurred underwriting or other losses that in the opinion of the Commissioner are excessive;
- 30 (j) that the licensee has failed to comply with the conditions of his license;
- (k) that the licensee has unreasonably failed, or unreasonably refused, to satisfy a judgment made by a court against the licensee;
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(1) that the conduct of the licensee, his employees, and officers, and the arrangement of its affairs have been such that, in the opinion of the Commissioner he should not continue to hold a license.

5     **15.** (1) Any such license may be cancelled by the Commissioner after a notice specifying the grounds upon which the action is taken and the date (not being earlier than fourteen days after the giving of such notice) upon which he proposes to cancel the license has been served on the holder  
10 of the license.

(2) Where, pursuant to section sixteen of this Act, an appeal is lodged on or before the date specified in the notice, such license shall not be cancelled unless and until the proposed cancellation is confirmed by the court or the  
15 appeal is for any reason dismissed.

**16.** (1) Where an application for a license has been refused or where the Commissioner gives notice of intention to cancel or suspend the license of any person there shall be the right of appeal to the Supreme Court against such refusal  
20 or proposed cancellation or suspension.

(2) The jurisdiction of the Supreme Court in any appeal under this section may be exercised by any Judge of that Court.

(3) The decision of the Court on any such appeal  
25 shall be final and the Commissioner shall give effect to the same.

(4) Rules of Court of the Supreme Court may be made prescribing all matters necessary or convenient to be prescribed for carrying this section into effect.

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DIVISION 3.—Returns.

17. (1) Every insurer shall, in the month of July in each year, or at such other time as the Commissioner may notify, send to the Commissioner a certified copy of the balance-sheet  
5 for its last financial year together with a return showing the total amount of the premium income received by or due to such insurer in respect of Motor Vehicle Property Damage Insurance Business during the year ending the thirtieth day of  
10 June then last past, less any part of such premium income actually paid by way of reinsurance to any other insurers together with a statutory declaration by the insurer, or his manager, secretary, or agent in this State that, to the best of his knowledge, information, and belief, such return is a true return of such amount.

15 (2) If any such insurer fails to send such return within the time so prescribed or notified, such insurer shall be liable to a penalty not exceeding one hundred dollars for every day during which such default continues.

20 (3) If any such return is false in any material particular, such insurer shall be liable to a penalty not exceeding one thousand dollars.

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PART III.

OFFENCES.

18. (1) The Commissioner where he has reasonable  
25 cause to believe that a licensee, or any person employed by a licensee, has committed an offence against this Act or that there is reasonable cause to believe that grounds exist for the license of a licensee being dealt with under any provision of this Act and that evidence of the committing of the offence

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or of the existence of any such grounds is to be found in any books, documents, papers or records of or under the control of the licensee, the Commissioner may—

- 5 (a) authorise in writing any person named therein to inspect and make copies of or extracts from such books, documents, papers or records or any of them; or
- 10 (b) require the licensee or any employee of the licensee named or designated in the order to produce such books, documents, papers or records or any of them to a person and at a place named in the order.

(2) Any person hindering or preventing a person authorised thereto from inspecting or making copies of or extracts from any such books, documents, papers or records 15 and any licensee or any employee of the licensee who refuses or neglects to produce any such books, documents, papers or records, shall be guilty of an offence against this Act.

**19.** (1) The Commissioner shall keep records in relation to all licenses which records shall include particulars of the 20 granting, refusal, duration, suspension and termination of licenses, the conditions thereof and such other matters pertaining thereto as the Commissioner may think fit.

**20.** Every person who is guilty of an offence against this Act for which a penalty is not expressly prescribed shall be 25 liable to a fine not exceeding one hundred dollars for each offence or where the offence is a continuing one to a fine not exceeding one hundred dollars for each day during which the offence continues.

Where a person, by failing to perform any act at or within 30 a time specified for its performance by or under this Act, is guilty of an offence against this Act, or the regulations thereunder, such offence shall be deemed to continue from day to day until that person performs that act.

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PART IV.

REGULATIONS.

5     **21.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect.

10     (2) Without prejudice to the generality of the power conferred by subsection one of this section, the Governor may make regulations with respect to—

- (a) prescribing any forms to be used under this Act;
- (b) prescribing any books, documents or records to be kept by a licensed insurer under this Act;
- 15     (c) prescribing such information, documents particulars and other evidence as may be required by the Commissioner when an application for a license or a renewal of a license is made under this Act;
- (d) prescribing the times for the lodging of any documents with the Commissioner;
- 20     (e) prescribing all matters or things which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for giving effect to this Act.

25     (3) The regulations may impose a penalty not exceeding one hundred dollars for any breach thereof.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1970