

FIRST PRINT

**MOTOR ACCIDENTS (THIRD-PARTY PROPERTY
INSURANCE) BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to make third-party property insurance for motor vehicles a condition of registration, to make it an offence to drive a vehicle that does not carry such insurance and to enact necessary consequential provisions.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will commence on 1 July 1993.

Clause 3 defines terms used in the proposed Act.

Clause 4 defines "owner" for the purposes of the proposed Act.

Clause 5 provides that the proposed Act will bind the Crown.

PART 2—THIRD-PARTY PROPERTY INSURANCE

Clause 6 makes it an offence to use, or cause or permit another person to use, a motor vehicle which is not insured against third-party property damage. The maximum penalty will be 20 penalty units (currently \$2,000).

Clause 7 provides that a third-party property policy takes effect after an insurer accepts a premium for the policy.

Clause 8 prohibits the Roads and Traffic Authority from registering a vehicle unless the applicant for registration certifies that there is a third-party property policy in force for the vehicle, supplies specified particulars of the policy and undertakes to maintain a policy.

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Clause 9 makes it an offence to supply false or misleading particulars of a third-party property policy when registering a motor vehicle. The maximum penalty will be 10 penalty units (currently \$1,000).

Clause 10 provides that a third-party property policy ceases to have effect on the date specified in the policy.

Clause 11 provides that a third-party property policy cannot be cancelled by an insurer, except as provided by clause 12.

Clause 12 sets out a procedure for the cancellation of a policy if a cheque tendered for a premium is not met and the premium subsequently remains unpaid.

Clause 13 provides that a third-party property policy remains in force even though the correct premium has not been paid. The insurer may recover any amount owing as a debt.

PART 3—MISCELLANEOUS

Clause 14 gives an insurer a right to recover costs incurred by the insurer from an unauthorised driver of a motor vehicle.

Clause 15 requires the Roads and Traffic Authority to notify an insurer of any changes in the registered particulars of a motor vehicle.

Clause 16 provides that the Act applies despite any contract to the contrary.

Clause 17 makes it clear that the Act will apply to third-party property policies in force when the Act commences. All of the Act will apply to any renewal of any such policy.

Clause 18 makes a director or a person concerned in the management of a corporation liable for an offence under the proposed Act that is committed by the corporation if the director or person knowingly authorised or permitted the commission of the offence.

Clause 19 provides that offences under the proposed Act are to be dealt with by a Local Court constituted by a Magistrate sitting alone.

Clause 20 contains a regulation-making power.

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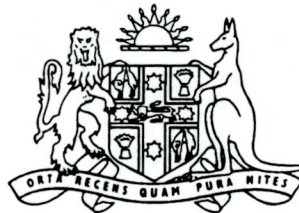
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**MOTOR ACCIDENTS (THIRD-PARTY PROPERTY
INSURANCE) BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act relating to compulsory insurance against liability for damage to property as a consequence of motor accidents and for other purposes.

Motor Accidents (Third-party Property Insurance) 1992

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Motor Accidents (Third-party
5 Property Insurance) Act 1992.

Commencement

2. This Act commences on 1 July 1993.

Definitions

3. (1) In this Act:

10 “**driver**” means a person driving a motor vehicle, and includes:

(a) a person riding and operating a motor cycle; and

(b) a person for the time being in charge of a motor vehicle;

“**fault**” means negligence or any other tort;

15 “**insured motor vehicle**” means a motor vehicle in relation to which
a third-party property policy is in force;

20 “**motor vehicle**” means a 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, but does not include a trailer or a vehicle used on a railway
or tramway;

“**public street**” means any street, road, lane, thoroughfare, footpath
or place open to or used by the public, and includes any place open
to or used by the public on the payment of money or otherwise;

“**registration**” means:

25 (a) registration of a motor vehicle under the Traffic Act 1909 or
the Recreation Vehicles Act 1983; or

(b) the issue of a permit for a motor vehicle under Regulation 53A
of the Motor Traffic Regulations 1935; or

30 (c) registration in New South Wales of a motor vehicle under the
Interstate Road Transport Act 1985 of the Commonwealth;

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“third-party property policy” means a policy of insurance which:

(a) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against liability (other than liability for any amount less than the amount which must be exceeded before liability will be met) in respect of loss of or damage to property caused by the fault of the owner or driver of the vehicle in the use or operation of the vehicle in any part of the Commonwealth (whether or not on a public street); and 5
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(b) insures the owner of the motor vehicle to which the policy relates and any other person who at any time drives the vehicle (whether or not with the consent of the owner) against loss or damage to property of the owner or other person caused by the fault of another owner or driver of a motor vehicle in the use or operation of a motor vehicle that is not an insured motor vehicle, 15

whether or not the policy also insures against other matters;

“trader’s plate” means a special number plate issued to a manufacturer or repairer of or a dealer in motor vehicles in accordance with the regulations under the Traffic Act 1909. 20

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and
(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty. 25

(3) For the purposes of the definition of **“third-party property policy”**, **“motor vehicle”** includes:

(a) a trailer attached to a motor vehicle and a trailer running out of control having become detached from the towing motor vehicle; and 30
(b) if the motor vehicle is a tow truck, a motor vehicle which is not an insured motor vehicle and which is towed or carried by the tow truck.

(4) In this Act, a reference to the use or operation of a motor vehicle includes a reference to the maintenance or parking of the vehicle. 35

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Owner—definition

4. (1) In this Act, “owner” in relation to a motor vehicle, means a person who is the owner of the vehicle by virtue of subsections (2)–(4).

(2) For the purposes of this Act:

- 5 (a) in the case of a motor vehicle which is registered, the owner is:
- (i) the person in whose name the vehicle is registered, unless the person has sold or ceased to have possession of the vehicle; or
 - 10 (ii) if the person in whose name the vehicle is registered has sold or ceased to have possession of the vehicle—any person who solely or jointly or in common with any other person is entitled to the immediate possession of the vehicle; or
- (b) in the case of a motor vehicle which is unregistered, the owner is any person who solely or jointly or in common with any other person is entitled to the immediate possession of the vehicle; or
- 15 (c) in the case of a motor vehicle to which a trader’s plate is fixed, the owner is the trader to whom the trader’s plate is issued.

(3) For the purposes of subsection (2), a person is taken not to have ceased to have possession or, as the case may be, not to have acquired possession of a motor vehicle where a change of possession occurs by way of:

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- (a) any hiring (not being a hiring under a hire-purchase agreement) or lending of the vehicle for a period not exceeding 3 months; or
- 25 (b) the passing of the possession of the vehicle to a bailee for the purpose of sale or disposal or for the purpose of alteration, repair, renovation, garaging, storing or other like purpose not involving the use of the motor vehicle for the benefit of the bailee.

(4) In the application of any provision of this Act to and in respect of a motor vehicle to which a trader’s plate is fixed (whether or not with the authority of the trader), a reference in any such provision to the owner is to be read as a reference to the trader, and a reference to the third-party property policy in relation to that motor vehicle is to be read as a reference to the third-party property policy in relation to motor vehicles to which the trader’s plate is fixed (whether or not with the authority of the trader).

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Act to bind Crown

5. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—THIRD-PARTY PROPERTY INSURANCE 5

Offence of using etc. uninsured motor vehicle on public street

6. (1) A person who uses, or causes or permits another person to use, a motor vehicle that is not an insured motor vehicle on a public street is guilty of an offence.

Maximum penalty: 20 penalty units. 10

(2) It is a defence to proceedings for an offence against this section if the defendant establishes that at the time the motor vehicle was used on the public street the defendant had reasonable grounds for believing and did in fact believe that the motor vehicle was an insured motor vehicle.

(3) This section does not apply to a person who uses, or causes or permits another person to use, on a public street a vehicle that is not required to be registered. 15

Issue of policy of insurance

7. (1) An insurer who accepts a premium for the insurance under a third-party property policy of a motor vehicle, or motor vehicles to which a trader's plate is or is to be fixed, is taken to have issued a third-party property policy for the motor vehicle or motor vehicles to which the policy relates. 20

(2) If 2 or more insurers accept premiums for insurance which (but for this subsection) would be capable of having effect at the same time in respect of the same motor vehicle, a third-party property policy is taken to have been issued only by the insurer recorded by the Roads and Traffic Authority in connection with the registration or renewal of registration of the motor vehicle or the issue of a trader's plate as being the insurer. 25

Evidence of insurance required before registration 30

8. The Roads and Traffic Authority must not register, renew or transfer the registration of a motor vehicle or issue or transfer a trader's plate unless:

(a) the applicant certifies that there is a third-party property policy in force in relation to the motor vehicle or trader's plate and the 35

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applicant supplies to the Roads and Traffic Authority the number of the third-party property policy and the name of the insurer; and

- 5 (b) the applicant undertakes to maintain an appropriate third-party property policy during the period of registration or the period for which the trader's plate is issued.

False or misleading information

9. A person must not furnish information, for the purposes of section 8, that the person knows is false or misleading in a material particular.

Maximum penalty: 10 penalty units.

10 **Duration of policies**

10. A third-party property policy taken to have been issued for a motor vehicle, or for motor vehicles to which a trader's place is or is to be fixed, ceases to have effect at the end of the period for which the policy specifies it is in force.

15 **Cancellation of policies—generally**

11. An insurer has no power to cancel a third-party property policy, except as provided by section 12.

Cancellation of policies—unpaid premiums

20 12. (1) If the whole or any part of the premium payable in respect of a third-party property policy is paid by cheque and the cheque is not met on due presentation, the insurer may cancel the policy.

(2) Before cancelling the policy, the insurer must notify the owner of the motor vehicle that the third-party property insurance will be cancelled if the amount outstanding is not paid.

25 **Liability of insurers where correct insurance premiums not paid**

13. (1) The fact that the correct insurance premium has not been paid in respect of a third-party property policy does not affect the validity or operation of the policy.

30 (2) An insurer to whom an incorrect insurance premium has been paid may recover any balance outstanding of the premium from the person liable to pay it as a debt.

PART 3—MISCELLANEOUS**Right of insurer against unauthorised driver of motor vehicle**

14. If a person uses or operates a motor vehicle without the authority of the owner or without reasonable grounds for believing that he or she had the authority of the owner and an insurer pays any money or incurs any costs (under a third-party property policy) in respect of a motor accident arising from that use or operation, the insurer may recover the money so paid and the costs so incurred from the person as a debt. 5

Notice of change of registered particulars relating to motor vehicles etc. 10

15. (1) The Roads and Traffic Authority must notify the insurer under a third-party property policy in force in relation to a motor vehicle and, if requested to do so by the Motor Accidents Authority, the Motor Accidents Authority, of any change in any registered particulars relating to the motor vehicle which is notified to the Roads and Traffic Authority. 15

(2) If, as a consequence of the change in ownership of a motor vehicle, a change in the place at which the motor vehicle is usually garaged or any other change, a higher premium would be payable in relation to the vehicle than the premium paid or payable under the third-party property policy in force in relation to the vehicle before the change occurred, the insurer may recover the appropriate difference from the owner as a debt. 20

No contracting out of Act

16. This Act applies despite any contract to the contrary.

Policies issued before 1 July 1993

17. (1) This Act applies to a third-party property policy in force immediately before the commencement of this Act, despite any provision of the policy to the contrary, and any such policy has effect, and terminates, in accordance with this Act. 25

(2) This Act applies to a renewal of any policy referred to in subsection (1), despite any provision of the policy to the contrary. 30

Offences by corporations

18. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person being a director of the corporation or a person concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention. 35

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(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or convicted.

5 (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

10 19. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

15 20. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
