

QUEENSLAND**MOTOR ACCIDENT INSURANCE BILL
1994****EXPLANATORY NOTE****GENERAL OUTLINE****Objectives of the Bill**

The objectives of the Bill are to provide a compulsory third party insurance scheme (CTP insurance) covering liability for personal injury arising out of motor vehicle accidents:

- by continuing and improving the compulsory third party motor vehicle insurance system;
- by licensing and supervising insurers who are providing insurance under policies of compulsory third-party motor vehicle insurance;
- by encouraging the expeditious resolution of personal injury claims resulting from motor vehicle accidents;
- by promoting and encouraging, as far as practicable, the rehabilitation of claimants who sustain personal injury resulting from motor vehicle accidents;
- by establishing and maintaining a register of motor vehicle accident claims to assist in the administration of the scheme and to assist in the prevention and detection of fraud;
- by promoting measures directed at eliminating or reducing causes of motor vehicle accidents and mitigating their consequences;

- by continuing the system providing for personal injury claims arising from uninsured or unidentified motor vehicles.

Reasons for the Bill

The need for this legislation is:

- to provide for the licensing and prudential supervision of insurers to ensure a stable, viable, compulsory third party motor vehicle insurance system;
- to facilitate an effective and efficient approach to the management of personal injury claims arising from motor vehicle accidents;
- to develop opportunities for the rehabilitation of claimants who sustain personal injury from motor vehicle accidents.

Estimated Cost for Government Implementation

There will be no cost for Government as the administration of the system will be fully funded by the statutory insurance scheme levy payable by licensed insurers in respect of the gross amount of all CTP insurance premiums.

Consultation

The Insurance Commissioner has consulted widely with stakeholders/parties associated with or directly involved in CTP motor vehicle insurance, including:

- Bar Association of Queensland;
- Queensland Law Society;
- Association of Labor Lawyers;
- Australian Insurance Law Association;
- ALP Law and Law Enforcement Committee;
- Individual members of the legal profession representing insurers;
- Individual members of the legal profession representing plaintiffs;

- Insurance Council of Australia;
- Individual licensed insurers;
- Motor Trades Association;
- RACQ representing consumers;
- Allied health professional associations;
- Government Departments
 - Department of Justice and Attorney General
 - Queensland Department of Transport
 - Queensland Health Department
 - Queensland Ambulance Service
 - Workers' Compensation Board of Queensland
- Litigation Reform Commission.

PART 1—PRELIMINARY

Clause 1 gives the short title of the Act.

Clause 2 states that the provisions of the Act are to commence on a date to be proclaimed.

Clause 3 sets out the objectives of the Act.

Clause 4 defines terms that are to be used in the Act.

Clause 5 specifies circumstances and incidents causing personal injury arising from motor vehicle accidents to which the Act applies.

PART 2—MOTOR ACCIDENT INSURANCE COMMISSION

Division 1—Establishment of the Commission

Clause 6 establishes the Motor Accident Insurance Commission.

Clause 7 appoints the Insurance Commissioner and constitutes this position as the Commission.

Clause 8 establishes the Commission as a

- body corporate with seal of authority; and
- which may sue or be sued; and
- has powers of an individual person for or in connection with the performance of the Commission's functions.

Clause 9 establishes the Commission's power of delegation.

Division 2—General Functions of Commission

Clause 10 empowers the Commission to perform functions relevant to the business of compulsory third-party insurance, including:

- issuing, supervision, suspension and withdrawal of insurance licences;
- establishing prudential supervision of licensed insurers;
- monitoring of claim management and rehabilitation servicing;
- recommending premium rates and levies;
- funding relevant research and education initiatives;
- increasing public awareness;
- promoting strategies directed at eliminating or reducing causes and

consequences of motor vehicle accidents.

Clause 11 provides for the Commission to establish an advisory committee approved and appointed by the Minister to advise on statutory functions.

Division 3—Recommendation and Fixing of Insurance Premiums, Levies and Administration Fee

Clause 12 requires the Commission annually to obtain submissions and consider actuarial advice and to recommend all premium and levy rates to the Minister.

Clause 13 sets out the principles governing the reason for levies:

- statutory insurance scheme levy funds administration of the Act and functions of the Commission;
- hospital and ambulance levy funds public hospital and public ambulance usage;
- Nominal Defendant levy funds the operation of the Nominal Defendant Scheme.

Clause 14 sets out the principles and requirements upon which insurance premiums are recommended.

Clause 15 prescribes the regulatory obligations to be followed for the fixing of premiums and levies.

Division 4—The Nominal Defendant

Clause 16 establishes the Nominal Defendant as a body corporate with the Commissioner as Nominal Defendant and sets out Nominal Defendant's powers.

Clause 17 states that the Nominal Defendant must have a public office and provides for legal process serving.

Clause 18 establishes the Nominal Defendant as a licensed insurer for the purposes of the Act and subject to the industry deed.

Division 5—Annual Report

Clause 19 requires the Commission to prepare and furnish to the Minister an annual report under the requirements of the Financial Administration and Audit Act 1977.

PART 3—COMPULSORY INSURANCE

Division 1—Obligation to Insure

Clause 20 states that a person must not drive an uninsured vehicle on a road and provides penalty units for an offence.

Division 2—Selection of Insurer

Clause 21 specifies the method and process by which applications for CTP insurance of a motor vehicle or renewal of the CTP insurance of a motor vehicle are nominated by the owner to a particular licensed insurer under the CTP insurance scheme and provides for the payment of an Administration Fee to the Queensland Department of Transport.

Clause 22 establishes that an insurer cannot decline an application, refuse to renew, or terminate an existing CTP insurance policy and provides penalty units and withdrawal of licence for an offence.

Clause 23 sets out the process by which a CTP insurance policy is effected and the terms under which it remains in force or may be cancelled. Also

provides that gratuitous insurance may be provided by Nominal Defendant.

Clause 24 provides for CTP cover not to be affected by change of ownership or transfer of registration.

Clause 25 requires an owner to apply for insurance under the correct motor vehicle classification and provides penalty units for an offence. Also prevents an insurer from knowingly insuring a vehicle under an incorrect class and provides for penalty units.

Clause 26 states cases where application of this Division does not apply—specifically trailers and self insured motor vehicles.

Division 3—Financial Obligations of Insurers

Clause 27 requires a licensed insurer to submit periodic returns of income from CTP insurance premiums and pay levies to the Commission and administration fees to Queensland Department of Transport. Penalty units apply to this clause and interest may also be charged against an insurer for late payment.

Division 4—The Statutory Funds

Clause 28 provides for the establishment of a Motor Accident Insurance Fund and the control requirements under the responsibility of the Commission to manage this Fund.

Clause 29 provides for the establishment of a Nominal Defendant Fund and the control requirements under the responsibility of the Commissioner to manage this Fund.

Division 5—Transfer of CTP Business

Clause 30 sets out the procedure to be followed for the transfer of CTP business from one licensed insurer to another licensed insurer.

PART 4—CLAIMS

Division 1—The Insurer

Clause 31 sets out the principles to be followed in determining the CTP insurer of a motor vehicle.

Clause 32 specifies the liability of a self-insurer (e.g. the Commonwealth) for personal injury arising out of a motor vehicle accident.

Clause 33 specifies the liability of the Nominal Defendant for personal injury arising out of a motor vehicle accident and includes the involvement of the Nominal Defendant in the event of an insurer becoming insolvent.

Division 2—Duty to Notify Accidents and Claims and Provide Information

Clause 34 specifies the time frame and written requirements to an insurer which a motor vehicle driver, person in charge or owner of a vehicle or a claimant must comply with on a motor vehicle accident causing personal injury. Penalty units apply to this clause.

Clause 35 requires the driver, person in charge or owner of a motor vehicle involved in an accident out of which personal injury arises to provide information about the accident within one month of an insurer's request. Penalty units apply to this clause.

Clause 36 requires a person who receives a CTP claim to forward it to the licensed insurer within one month. Penalty units apply to this clause

Division 3—Claims Procedures

Clause 37 specifies the requirement for written claim notices and timeframe for such notices. Requires an insurer receiving a claim notice to forward a copy

to all other involved insurers.

Clause 38 provides the conditions under which one insurer may act for another insurer as claims manager where two or more vehicles are involved in an accident.

Clause 39 specifies the response to notice requirements (including timeframes) between a claimant and defendant insurer and the requirements on a claimant before bringing a proceeding in Court.

Clause 40 provides protection for claimant during minority or a period of legal incapacity.

Clause 41 sets out the requirements on an insurer in respect of admission/denial of liability and the making of offers of settlement.

Clause 42 states that, once liability has been admitted, a licensed insurer has the duty to make payments to or on behalf of a claimant for private hospital, medical and pharmaceutical expenses to the extent of liability admitted. Allows payment recovery in the event of fraud.

Clause 43 prohibits an insured person from admitting liability or offering to settle a claim. States that any admissions so made do not bind the insurer.

Clause 44 authorises and requires the licensed insurer to conduct and control the management of the liability claim on behalf of the insured.

Division 4—Co-operation between Claimant and Insurer

Clause 45 requires the claimant to co-operate with the licensed insurer and to provide information reasonably requested by the insurer. A claimant is required to undergo medical and other assessments as requested.

Clause 46 provides for the claimant and insurer to jointly arrange an expert report.

Clause 47 requires the insurer to co-operate with a claimant by providing information related to the claim.

Clause 48 relates to the rights of a claimant or insurer to not disclose

information protected by legal professional privilege other than medical or other reports connected with rehabilitation. It permits an insurer to withhold information where fraud is suspected. Penalty units apply to this clause.

Clause 49 provides for information disclosure under this Division to have same privileges as if disclosed in course of proceedings before the Supreme Court.

Clause 50 authorises the Court to order an insurer and/or claimant to comply with the duties imposed by this Division.

Division 5—Rehabilitation

Clause 51 specifies the obligatory requirements of an insurer in relation to the provision of rehabilitation services and payment for such services. Stipulates courses of action available to a claimant to ensure delivery of reasonable and appropriate rehabilitation. Allows insurer to recover costs if fraud involved.

Division 6—Proceedings in Court

Clause 52 states that, where a damages action for personal injury arises out of a motor vehicle accident, both the licensed insurer and insured person are joint defendants. A licensed insurer may also be a sole defendant if the insured person cannot be joined.

Clause 53 provides the insurer with the right to cross-examine the insured person, subject to the leave of the Court.

Clause 54 specifies the requirements on an insurer who seeks to establish that a claimant has not attempted to mitigate damages.

Clause 55 states that an insured person is not indemnified in respect of an award of exemplary or punitive damages.

Clause 56 specifies that proceedings based on a motor vehicle accident claim

shall be heard and determined by a court sitting without a jury.

Clause 57 provides some modification to the period of limitation applicable to a claim and provision to give notice to the Commission where time limitation is near expiry and claimant is unsure of the insurer.

Division 7—Insurer's Rights of Recourse

Clause 58 sets out the factors which allow the licensed insurer to have the right of recovery against the insured person where unlawful use of vehicle, driving under the influence of alcohol or deliberate intention to injure, is involved.

Clause 59 enables an insurer or the Nominal Defendant in the event of fraud to recover from a claimant costs reasonably incurred by the insurer or the Nominal Defendant.

Clause 60 provides for the Nominal Defendant to have the right of recovery in the case of an uninsured vehicle.

Clause 61 enables the Nominal Defendant to have the right of recovery against the insurer in the event of insolvency.

PART 5—LICENSED INSURERS

Division 1—Licensing of Insurers

Clause 62 specifies the requirements for an application for a licence to the Commission. Penalties for false or misleading material.

Clause 63 provides for the Commission a process by which the determination of an application and granting of a licence is made.

Clause 64 sets out the factors which the Commission may consider appropriate as conditions for the granting of a licence. Penalty units provided

for contravening a condition including possible withdrawal of licence.

Clause 65 states the requirements/content of the Industry Deed.

Clause 66 sets out the conditions under which the Commission may withdraw or suspend a licence and the process involved.

Clause 67 states that withdrawal or suspension of a licence does not affect liabilities incurred under CTP insurance policies and provides for the allocation of the renewal business of an insurer whose licence has been withdrawn or suspended.

Clause 68 allows an insurer to appeal to the Supreme Court against the Commission's decision to withdraw or suspend the insurer's licence.

Division 2—Supervision of Licensed Insurers

Clause 69 requires a licensed insurer to provide to the Commission a business plan for its CTP insurance business. It also defines the business plan and outlines variation and revision requirements.

Clause 70 requires a licensed insurer to keep records relating to accounts and returns which reflect the prescribed accounting or other standards required by regulation or industry deed. Such records may require certification by an auditor or actuary. Penalty units are applicable for non-compliance.

Clause 71 states that the Commission may appoint an appropriately qualified person to audit or inspect accounting and other records relating to the licensed insurer's business or financial position. Penalty units or imprisonment apply to this clause.

Clause 72 outlines matters which must be reported in writing to the Commission concerning information relating to the business or the financial position of the insurer or a related body corporate. Penalty units apply.

Clause 73 provides for the Commission to be able to apply to the Supreme Court to make orders on a licensed insurer to protect the statutory insurance scheme.

Division 3—Special Investigations

Clause 74 sets out the process by which the Commission may appoint an investigator of an insurer.

Clause 75 allows an investigator with the written consent of the Commission to investigate the affairs of a related body corporate to a licensed insurer.

Clause 76 empowers an investigator by written notice to require an insurer or body corporate to assist, appear and produce relevant documents for the investigation.

Clause 77 allows an investigator to take possession of documents for the period of the investigation and permits access and inspection of such documents by an entitled person.

Clause 78 states the compliance requirements of an officer of an insurer or other body corporate being investigated. Penalty units or imprisonment apply to this clause.

Clause 79 stipulates that an officer is required to answer questions or produce documents irrespective of self incrimination. Protection is provided where the officer asserts that such action might be self incriminatory.

Clause 80 sets out the circumstances which apply to an officer who fails to comply with the requirements of the investigator

Clause 81 requires an investigator to make a record of an examination of a person under this Division.

Clause 82 states the Commission may provide a copy of the record of examination to a legal practitioner who satisfies the Commission that the practitioner is conducting or contemplating legal proceedings in relation to affairs being investigated. Penalty units apply to this clause with regard to inappropriate use of the information provided.

Clause 83 allows an investigator to delegate powers under the Division, except the power to administer oaths or affirmations.

Clause 84 sets out the requirements for an investigator to provide a report to the Commission, which may take various actions in respect of the report.

Clause 85 empowers the Commission to give a certified copy of an investigator's report as admissible evidence in any legal proceeding arising out of the investigation. This action does not diminish the protection given to witnesses by law.

Clause 86 states the Commission may recover costs of and incidental to an investigation under this Division from an insurer or other body corporate where an irregularity is established.

Clause 87 declares that it is an offence to purposefully delay or obstruct the carrying out of an investigation under this Division. Penalty units and imprisonment apply.

PART 6—MISCELLANEOUS

Clause 88 requires an insurer to periodically provide the Commission with returns providing details on claimants, claims, claims management, rehabilitation, costs, awards and settlements. Penalty Units apply.

Clause 89 requires the Commission to maintain a register of claims and provide access to the register as the Commission determines.

Clause 90 requires Queensland Department of Transport to provide information regarding a registered motor vehicle and its CTP insurer.

Clause 91 states the liquidator of an insolvent insurer must give the Commission any information regarding the stage reached by the insurer in processing claims before becoming insolvent. Penalty units apply to this clause.

Clause 92 restricts a person engaged in work related to the administration of the statutory insurance scheme from disclosing information relevant to this scheme or a claimant. The clause allows the exchange of information between insurers and others to facilitate the proper operation of the statutory scheme. Penalty units apply to this clause.

Clause 93 sets out provisions to penalise a person who makes false or misleading statements in connection with a motor vehicle claim. Penalty units or imprisonment apply to this clause.

Clause 94 states that a person must not, without proper reason, interfere with documents relevant to the selection of insurers under the statutory insurance scheme. Penalty units apply to this clause.

Clause 95 declares that only a licensed insurer can issue a CTP insurance policy. Penalty units apply to this clause.

Clause 96 deals with the restriction of commission payments. Penalty units apply to this clause and withdrawal of licence.

Clause 97 declares that a CTP policy premium cannot be discounted or waived. Penalty units apply to this clause and withdrawal of licence.

Clause 98 provides for the Commission or the Attorney General to authorise for the prosecution of an offence against an individual.

Clause 99 requires all monetary penalties recovered for offences against this Act to be paid into the Motor Accident Insurance Fund.

Clause 100 states that the Governor in Council may make regulations for the purposes of this Act.

Clause 101 requires the review of the Act after 5 years.

PART 7—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS

Clause 102 repeal of the existing Motor Vehicles Insurance Act 1936 and Amendment Acts.

Clause 103 repeal of Insurance Act 1960 and Amendment Acts.

Clause 104 stipulates the circumstances in which the existing Act applies and when the provisions of this Act apply. This clause has an expiry date.

Clause 105 provides that existing licensed insurers are taken as insurers under this Act until licences are determined. This clause has an expiry date.

Clause 106 provides for continuation of the rights and liabilities of the Nominal Defendant under this Act and provides for the disbursement of funds from The Nominal Defendant Fund. Provides for creation of Nominal Defendant Fund under this Act.

Clause 107 confirms that the contract of insurance in existence prior to the commencement of the Motor Accident Insurance Act 1994 the insurer under the contract is deemed to be previously selected as the insurer. This clause has an expiry date.

Clause 108 stipulates that if the date fixed for the commencement of this Act is not the beginning of a financial year, then the levies, administration fee and premiums must be fixed under the Motor Accident Insurance Act 1994 for the remainder of the financial year.

SCHEDULE—POLICY OF INSURANCE

Clause 1 outlines the circumstances under which the provisions of the Act apply in relation to personal injuries i.e. insurance policy.

Clause 2 indicates the persons insured by a policy under this Act.

Clause 3 outlines the areas relevant to exclusion of the scope of cover under a policy.