

MOTOR ACCIDENT INSURANCE LEGISLATION AMENDMENT BILL 1996

EXPLANATORY NOTE

GENERAL OUTLINE

Objectives of the Bill

The objectives of the Bill are to:

- extend the Nominal Defendant scheme to provide greater protection for people injured in motor vehicle accidents;
- ensure the long term financial stability of the Compulsory Third Party (CTP) scheme by reinforcing the intent of provisions of the *Motor Accident Insurance Act 1994* in respect of the indemnity afforded owners and drivers of motor vehicles;
- introduce additional penalties in respect of the use of uninsured motor vehicles and also provide explicit authority to authorised officers for activity associated with breaches of the legislation;
- change the hospital and ambulance levy to generally encompass the cost of emergency services associated with motor vehicle accidents.

Reasons for the Bill

The Bill is seen as necessary to ensure the long term financial stability of the CTP scheme. It is essential that the intended cover of a CTP policy of insurance is accurately reflected in the legislation and that the scheme remains fully funded. Equally, it is important that the scheme provides appropriate entitlements for injured parties cognisant of community expectations.

Further, with the scheme being a compulsory form of insurance for the benefit of the community as a whole, an appropriate mechanism including penalties, must be established and maintained for those that avoid their obligation.

Achievement of Objectives

The objectives of the Bill are achieved by:

- ensuring compensation under the Nominal Defendant Fund is available for persons injured in motor vehicle accidents, in circumstances involving “at fault” uninsured motor vehicles, occurring at certain places outside the current definition of a “road”.
- more explicitly stating the intent of the legislation in the “Application of this Act” and similarly in the wording of a CTP policy.
- extending the responsibility of motor vehicle owners in respect of uninsured motor vehicles and also expanding the existing authority, under the *Transport Operations (Road Use Management) Act 1995* (permitting officers of the Department of Transport to stop vehicles and question owners and drivers) to include matters relating to CTP insurance.
- altering the levy system, paid as a component of CTP premiums, to broadly cover emergency services which continues the cost effective means of payment of services associated with the treatment of motor accident victims.

Alternative Ways of Achieving the Policy Objectives

The *Motor Accident Insurance Act 1994* provides the basis of a policy of insurance for motor vehicle owners and drivers against legal liability for personal injury incurred in connection with motor vehicle accidents. Features of this Bill relate specifically to the scope of cover under the legislation and are fundamental to its continued effective operation. Although the intent of the *Motor Accident Insurance Act 1994* is relatively clear, there is the option of not making change and leaving the scope of cover subject to future court interpretation with possible financial implications for the scheme.

The Nominal Defendant Fund provides insurance cover in many circumstances where otherwise the injured party would be left without recourse to compensation. Present liabilities to the Nominal Defendant Fund relating to uninsured motor vehicles is in the vicinity of \$7.5 million per annum. The community has an expectation that the Nominal Defendant

Fund will provide cover for accidents involving uninsured motor vehicles in places frequented by the public. The alternative is to leave an injured party without the financial security of the Fund and subject to a negligent party's capacity to financially satisfy any settlement or judgement.

The activity associated with detection of unregistered/uninsured motor vehicles could be undertaken by officers of the Motor Accident Insurance Commission as the regulating authority for the CTP scheme or alternatively left for Police. However, the detection work of the Department of Transport is generally conducted in concert with registration and roadworthiness audits thereby avoiding duplication of functions.

Individual billing of insurers for hospital and emergency services is a viable alternative and ensures those organisations receive appropriate payment for their service to injured parties. However, the concept of levies based on a fair proportion of the cost of treatment is viewed as the most cost effective means with payment received by the respective organisations in the year of service. This method alleviates the cumbersome and costly administrative process associated with individual billing.

Estimated Cost for Government Implementation

The CTP scheme is fully funded by way of premiums levied on motor vehicle owners and this Bill will not result in any implementation costs to Government, insured motor vehicle owners or claims cost on underwriting insurers beyond the current actuarial costing of the scheme.

Consistency with Fundamental Legislative Principles

The Bill provides for retrospective application of two key provisions associated with the scope of cover afforded owners and drivers. The change does not impinge on the rights and liberties of individuals and therefore the Bill will not breach fundamental legislative principles. The provisions make the original intent of the legislation more explicit, alleviating a possible unintended interpretation.

Consultation

The *Motor Accident Insurance Act 1994*, prior to introduction was subject to extensive consultation and this Bill is not inconsistent with issues previously discussed and which had broad community agreement prior to the introduction.

Notes on Provisions

PART 1—PRELIMINARY

Clause 1—Short title

This is a formal provision that states that the Act will be referred to as the *Motor Accident Insurance Legislation Amendment Act 1996*.

Clause 2—Commencement

This clause sets a commencement date for Sections 5(1) and 10 as 1 September, 1994 which coincides with the commencement of the *Motor Accident Insurance Act 1994*. These particular amendments reinforce the intent of the legislation.

The remaining provisions commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF MOTOR ACCIDENT INSURANCE ACT 1994

Clause 3—Act amended in pt 2

This clause identifies the *Motor Accident Insurance Act 1994* as the legislation to be amended.

Clause 4—Amendment of s 4 (Interpretation)

The section will be changed to *Definitions* and the clause will introduce a new definition of “**public place**”. The definition will be aligned to the “public place” definition in the *Motor Vehicles Control Act 1975* in order that the obligation to insure under CTP correlates with an obligation to register a motor vehicle.

Clause 5—Amendment of s 5 (Application of this Act)

This clause, by the addition of wording in s 5 (1) (b) seeks to make the intent of the provision clearer. It reinforces the policy of insurance wording that cover is limited to the insured motor vehicle.

The clause also broadens the scope of cover provided by the Nominal Defendant Fund by extending cover to a public place, subject to various other provisions, to a person sustaining personal injury as a result of the negligence of the owner or driver of an uninsured motor vehicle. However, it is not intended in any way, to alter the existing position in respect of other classes of vehicles outlined in the current s 5 (2) which limits cover to injuries happening on a road.

Clause 6—Amendment of s 12 (Premiums, levies and administration fee)

The purpose of the clause is to alter the name of the ambulance levy to the emergency services levy in recognition of the wider scope of rescue work performed at motor vehicle accident scenes.

Clause 7—Amendment of s 13 (Principles governing levies)

The clause introduces a complementary amendment attributable to the change in name of the ambulance levy to emergency services levy.

Clause 8—Amendment of s 20 (Offence of driving uninsured vehicle)

The existing legislation prescribes a penalty for driving an uninsured motor vehicle on a road but it was an omission that provision was not made for the circumstances of a person knowingly permitting another person to drive an uninsured motor vehicle. This clause addresses that aspect and also extends the offence to a public place.

Clause 9—Amendment of s 28 (Motor Accident Insurance Fund)

This clause introduces further complementary amendments in respect of the change in name from ambulance levy to emergency services levy.

Clause 10—Amendment of sch (Policy of insurance)

This clause will operate retrospectively to coincide with the commencement of the *Motor Accident Insurance Act 1994*. The clause specifies the negligence indemnified is in respect of the insured motor vehicle and thereby reinforces the intent of the legislation.

**PART 3—AMENDMENT OF TRANSPORT
OPERATIONS (ROAD USE MANAGEMENT) ACT
1995****Clause 11 - Act amended in pt 3**

This clause identifies the *Transport Operations (Road Use Management) Act 1995* as the legislation to be amended.

Clause 12 - Amendment of sch 3 (Dictionary)

The clause broadens the authority of officers authorised under the *Transport Operations (Road Use Management) Act 1995* to perform similar functions in respect of the *Motor Accident Insurance Act 1994*.