

## AUSTRALIAN CAPITAL TERRITORY

### PROPOSED AMENDMENTS OF MOTOR TRAFFIC ORDINANCE AND LAW REFORM (MISCELLANEOUS PROVISIONS) ORDINANCE)

#### EXPLANATORY MEMORANDUM

No. 13 of 1965

No. 14 of 1965

Section 41P (shortly to be re-numbered section 61) of the Motor Traffic Ordinance 1936-1964 deals with the matter of the recovery of money from insurers. Sub-section (3.) of that section is in terms virtually identical with section 15 (2) (a) of the Motor Vehicles (Third Party Insurance) Act 1942-1962 (N.S.W.) as it stood before the 1962 N.S.W. amendments referred to below.

2. Section 4 (1.) of the Law Reform (Miscellaneous Provisions) Ordinance 1955 (A.C.T.) is, in effect, identical with a provision made by section 2 (1.) of the Law Reform (Miscellaneous) Provisions) Act 1944 (N.S.W.).

3. In the case of Genders v. Government Insurance Office 102 C.L.R. 363 the High Court held that, as a result of the enactment of section 2 (1.) of the N.S.W. Act of 1944, which provides that causes of action survive the death of the tortfeasor, the provisions of section 15 (2.) (a) of the Motor Vehicles (Third Party Insurance) Act, in so far as they enabled an injured person to sue the authorized insurer of a deceased tortfeasor, were spent. Causes of action of this kind, the Court held, could be maintained only against the personal representative of a deceased tortfeasor.

4. In order to give section 15 (2.) (a) the effect that it had before the Act of 1944 was passed, that is, in order to restore the right of action against the authorized insurer, the New South Wales Parliament passed the Motor Vehicles (Third Party Insurance) and Law Reform (Miscellaneous Provisions) Amendment Act, 1962.

5. In addition, this Act –

- (a) extended the liability of the authorized insurer so that it would cover, as well as the primary liability of the tortfeasor, cases in which liability is deemed to have been subsisting against the tortfeasor before his death though he died before or at the time of causing the damage, cases in which alternative defendants and third party procedures are involved and cases where contribution between joint tortfeasors is sought;
- (b) provided that the right of action against the authorized insurer should be alternative to the right of action against the personal representative, but that liability should not be duplicated;

- (c) provided that the principle of agency should be applicable in the contingencies mentioned in (a) above;
- (d) provided for extension of the period (twelve months after probate or letters of administration are taken out) within which proceedings must be taken; and
- (e) enacted transitional provisions to cover problems which existed between the date of the decision in Genders' case (1 July, 1959) and the date upon which the Act became operative.

6. The amending Ordinance now proposed for the Australian Capital Territory are designed to achieve, in the Territory, the result obtained in New South Wales by the passage of the Act of 1962 referred to above.